

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

January 2022



HUNGARIAN
HELSINKI
COMMITTEE



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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 2022 Annual Rule of Law Report. The document follows the structure and applies the headings of the European Commission's stakeholder consultation survey.

The present document is a compilation of the contributions of the following Hungarian civil society organisations:

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TARGETED STAKEHOLDER CONSULTATION 2022 RULE OF LAW REPORT



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I. Justice System

A. Independence

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

All concerns raised in the 2020¹ and 2021² CSO contributions remain relevant. These include: (i) the scoring system of applicants **favouring experience gained in public administration** against experience gained at courts; (ii) the right of the President of the National Office for the Judiciary (“NOJ President”) to **declare an application procedure unsuccessful without any external control** even after the establishment of the ranking of applicants (in case of judicial applications at the Kúria, the President of the Kúria holds the same power³); (iii) the possibility for Hungarian Constitutional Court (HCC) justices to **automatically become judges at the Kúria upon their request**, which, according to the Venice Commission “*opens the door to a potential politicisation of the supreme court*”.⁴

In February 2021, the Győr Regional Court of Appeal⁵ delivered a final and binding⁶ judgment in a lawsuit initiated by a judge, who ranked first in two subsequent application procedures, but could not fill any of the applied positions because the NOJ President declared both procedures unsuccessful without any meaningful justification. The judgment rendered the NOJ President’s decisions null and void and ordered the NOJ President to finish up the application proceedings. In March 2021, **the NOJ President challenged the decision**. The Kúria quashed the judgment **declaring in a precedential decision⁷ that the judge affected shall not be entitled to challenge the NOJ President’s decision declaring an application proceeding unsuccessful**. The Kúria’s judgment means in practice that **judicial remedy is excluded** against such decisions of the NOJ President (and the President of the Kúria).

On 2 January 2021, the new President of the Kúria started his mandate after being transferred to the Kúria as judge and elected as chief justice as a result of a series of *ad hominem* legislative amendments

¹ 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. 4.

² 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 p. 3.

³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 19.

⁴ See: Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges Adopted by the Hungarian Parliament in December 2020, CDL_AD(2021)036, para 16.

⁵ See judgment Mf.V.30.054/2020/13/I. of the Győr Regional Court of Appeal of 2 February 2021. The challenged final and binding judgement ordered that (i) the judge ranked first shall be transferred to the applied position, or (ii) the NOJ President shall seek the consent of the NJC if he/she wants to divert from the original ranking and appoint the judge who came in 2nd or 3rd in that ranking; or (iii) invalidate the call based on a detailed reasoning specifying the grounds for the invalidation.

⁶ I.e. a judgement that can only be challenged by an extraordinary appeal at the Kúria and not by an ordinary appeal.

⁷ See judgment Mfv.10.049/2021/16. of the Kúria, sections [58]-[93].

and in complete disregard of the objection of the National Judicial Council (NJC).⁸ In February 2021, the President of the Kúria selected⁹ András Patyi as Vice President of the Kúria, who was also transferred to the Kúria in 2018 based on an **ad hominem legislative amendment**,¹⁰ without an application procedure. In May 2021, the President of the Kúria selected as judge of the Kúria Barnabás Hajas,¹¹ who served as state secretary in the Ministry of Justice until March 2021.¹² Applying exceptional rules of appointment by discretion of the President of the Kúria, Hajas (who was appointed without any judicial experience) started his judicial career directly at the top tier of the judiciary and for an indefinite term.¹³ In 2021, 14 judicial and 10 leadership positions were granted at the Kúria, significantly changing its composition.¹⁴

The **practice of secondment¹⁵ extends far beyond its legal objectives** and may be used to circumvent the guarantees of judicial appointments in regular application procedures.¹⁶ In 2020, 471 justices were seconded, with 43 secondments taking place to the Kúria.¹⁷

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

All concerns raised in the 2020 and 2021 CSO contributions remain relevant.¹⁸ These include: (i) the 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 in the meantime**;¹⁹ (ii) the fact that **the legislation allows the NOJ President to second judges without their consent for one year every three years**;²⁰ (iii) the **possibility to transfer judges outside the judiciary to other state organs**, which, according to the

⁸ 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 p. 4.

⁹ The President of the Kúria holds exclusive right to select the Vice President of the Kúria for appointment by the President of the Republic in accordance with Act CLXI of 2011 on the Organisation and Administration of Courts, Article 128 (1).

¹⁰ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 23 (3) was modified in order to enable the transfer of András Patyi to the Kúria as chamber president without an application procedure, after resignation from his position as university rector. The law was passed in July 2018, the same month when Patyi resigned from his position. <https://helsinki.hu/en/yet-another-government-friendly-judicial-leader-at-the-supreme-court-of-hungary/>

¹¹ <https://birosag.hu/sites/default/files/2021-07/125.e.pdf>

¹² In 2018, at the time the government attempted to set up a heavily government-controlled separate administrative court system, Hajas served as state commissioner for "the development of administrative justice". See: Order of the Minister of Justice no. 11/2018. (V. 31.) IM <http://www.kozlonyok.hu/kozlonyok/Kozlonyok/12/PDF/2018/21.pdf>

¹³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 23 (1) c).

¹⁴ According to Decision no. 41.sz./2020 (III.24.) OBHE of the NOJ President as of 31 December 2021 there are altogether 114 judicial positions at the Kúria. In 2021, 8 out of the 14 highest judicial leadership positions were filled, amongst others the position of the President of the Kúria, the Vice-President of the Kúria (one position was filled out of three, while one further position remains vacant since June 2021); the position of secretary general and deputy secretary general, three college leadership positions, and three deputy college leadership positions (out of three).

¹⁵ Judges can be seconded to another court for two reasons: for their professional advancement and to manage the workload at the courts. Any judge may be seconded even against their will up to one year, in each 3-year period of time. Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 31.

¹⁶ See for example the subsequent extension of the secondment of a judge to the Kúria: first from 15 January 2019 to 31 December 2019 <https://birosag.hu/sites/default/files/2019-01/10.e.pdf>; then from 1 January 2020 to 31 December 2020 <https://birosag.hu/sites/default/files/2020-02/618.e.pdf>; and finally, from 1 January 2021 to 31 December 2021. <https://birosag.hu/sites/default/files/2021-01/446.e.pdf> altogether for an uninterrupted 3 years.

¹⁷ See: <https://birosag.hu/beszamolok/az-orszagos-birosagi-hivatal-einokenek-2020-evi-beszamoloja> p. 17.

¹⁸ According to the UN's Basic Principles on the Independence of the Judiciary, "12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."

¹⁹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 145 (4).

²⁰ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 31(3).

Venice Commission “could be used to institute a practice of bypassing the ordinary processes of promoting judges”.²¹

In 2021, the case of Justice Gabriella Szabó clearly proved that **the legislation lacks sufficient guarantees against the unlawful removal of a judge from the judiciary**. Justice Szabó - who claims to be forced to leave the bench for political reasons²² - was appointed as judge in 2018 for a definite period of three years.²³ In 2021, the regular evaluation process was initiated as prescribed by law to establish whether she is apt for an appointment for an indefinite period. In March 2021, as a result of the evaluation process, she was disqualified. Even though she immediately challenged her evaluation before the first-instance service court, **the legislation did not provide for an interim measure to prevent the interruption of her judicial career during the review of the evaluation**. As a result, her mandate ended on 30 June 2021, with the lapse of the definite term, before a final and binding judgment could have been delivered. In November 2021, the final and binding judgment²⁴ of **the Kúria as service court of appeal declared that, in the absence of a legal norm that would expressly allow this, Justice Szabó could not challenge the evaluation serving as ground for her disqualification** and that she should seek remedy under the general rules of qualification,²⁵ even though it is a matter of interpretation whether these grant the possibility of being reinstated as a judge.

Since the Omnibus Act of 2019 abolished labour and administrative courts, **judges dealing with administrative cases shall explicitly be assigned for this task** within the ordinary court system.²⁶ Assignments are granted based on the proposal of court presidents, but the final **decision is taken by full discretion of the NOJ President** (or the President of the Kúria with respect to judges serving at the Kúria).²⁷ **The assignment can be terminated by the NOJ President any time without the consent of the assigned judge and without objective reasons or the obligation to justify the decision.**²⁸ Neither the criteria nor the terms of an assignment or the termination thereof are set out by law. In 2021 the NOJ President unilaterally terminated the assignment of several judges (including chamber presidents) without any meaningful justification, within a 2-3 days’ notice period.²⁹

²¹ See: Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges Adopted by the Hungarian Parliament in December 2020, CDL_AD(2021)036, para 60.

²² See: <https://helsinki.hu/en/the-forcing-out-of-a-judge-and-meantime-a-threat-to-all-hungarian-judges/> The allegation that Justice Szabó was removed for political reasons shall be considered in the light of the fact that in former years all probatory judges qualified as suitable for an indefinite tenure. In 2019 all 53 probatory judges qualified as suitable <https://birosag.hu/beszamolok/az-orszag-orszag-birosagi-hivatal-elnokenek-2019-evi-beszamolaja> p. 19.

In 2020 all 109 probationary judges qualified as suitable

<https://birosag.hu/beszamolok/az-orszag-orszag-birosagi-hivatal-elnokenek-2020-evi-beszamolaja> p. 18.

²³ The legislation prescribes the first appointment to create a probationary tenure of three years. Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 23 (1): “the judge’s first appointment – with the exception included in subsection 2 – is valid for 3 years, in other cases is valid for an indefinite period of time”.

²⁴ See: judgment Szfé9.2021/14. of the Kúria.

²⁵ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 84.

²⁶ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 30.

²⁷ Assigned judges shall grant their consent to the assignment. Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 30 (3).

²⁸ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article, Article 30 (7).

²⁹ See: the termination of the assignment as administrative judge of a chamber president of the Szekszárd Regional Court <https://birosag.hu/sites/default/files/2021-05/104.e.pdf>; termination of the assignment as administrative judge of the Miskolc Regional Court <https://birosag.hu/sites/default/files/2021-05/102.e.pdf>; termination of the assignment as administrative judge of the Metropolitan Court <https://birosag.hu/sites/default/files/2021-07/122.e.pdf> and <https://birosag.hu/sites/default/files/2021-07/166.e.pdf> and <https://birosag.hu/sites/default/files/2021-10/167.e.pdf>.

3. Promotion of judges and prosecutors

Due to the lack of relevant modifications in the law,³⁰ the **NOJ President continues to have the same overly broad and excessive powers and discretion regarding the appointment of court presidents** (which have earlier been in the forefront of the conflict between the NOJ President and the National Judicial Council, the NJC), including that the NOJ President has the power to annul any call for applications³¹ for court leadership positions and render the procedure unsuccessful without the consent of any judicial body (e.g. the NJC or local judicial councils).

In addition, the **potential reasons for invalidating a call for applications are not determined by the law**, providing the NOJ President with complete discretion in this regard.³²

The **practice of invalidating applications for leadership positions has not come to a complete halt under the new NOJ President** either.³³ In 2020, altogether 20 applications for leadership positions had been invalidated by the new NOJ President; in 2021, he deemed altogether seven court leader applications unsuccessful.³⁴ Although it is an improvement that these decisions contain reasons for the invalidation, it is a warning sign that at its session of 5 May 2021, the NJC made the following observations and raised concerns regarding the new NOJ President's practice for 2020, pointing out the "lack of unified criteria".³⁵

The legal environment in which the NOJ President operates has not changed and the **relevant regulations do not provide appropriate and sufficient legal and institutional guarantees against**

³⁰ As was repeatedly recommended by the Council of Europe's Venice Commission, the European Commission, the Council of the European Union, the Commissioner for Human Rights of the Council of Europe, the Council of Europe's GRECO group or the European Association of Judges.

³¹ According to the Act CLXI of 2011 on the Organisation and Administration of Courts, Article 130 (1) and (2), court leadership positions must be filled based on a public call for application (unless otherwise provided by law). The call for application shall be issued by the person holding the power to appoint the court leader (e.g. the NOJ President, the President of the Kúria or court presidents respectively).

³² Act CLXI of 2011 on the Organisation and Administration of Courts, Article 133 (1) simply provides that "[t]he application may be declared invalid if the person with the power to appoint the judicial leader does not accept any of the applications. In case of such invalidation a new call for application must be published."

³³ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 128 (2): "the NOJ President appoints the presidents and vice-presidents of regional courts and regional appeal courts, college leaders of the regional courts and of the regional appeal courts."

³⁴ Reasons for invalidating court leadership applications by the NOJ President have included the following: (i) deficiencies with archiving case files (Resolution No. 27.E./2021. (II. 8.) of the NOJ President) where the reasoning admits that these deficiencies may not be substantial, but merely constitute a result of undue administration of the archiving activities; or (ii) no application filed (Resolution 8.E./2021. (I.20.) of the NOJ President and 306.E./2021. (XI.11.) of the NOJ President); or (iii) in case the applicant has not received the support of the judges' plenary meeting or the college meeting (Resolutions 169.E., 172.E., 185.E., 187.E. of the NOJ President).

³⁵ "The NJC discussed the report of the President of the National Office for the Judiciary (NOJ) on the appointment of judges and judicial leaders (court presidents, vice-presidents etc.) in 2020 and formed the following opinion:

- In the case of court leadership applications where the NOJ President did not accept any of the candidates (invalidated applications), the NJC raises concerns about the lack of unified criteria.
- The system of criteria as stipulated by the NOJ Regulation on Court Administration was not adequately applied.
- The NJC finds it worrisome that some of [the] justifications of the invalidating resolutions referred to facts which the candidate had no opportunity to comment on or challenge during the procedure and were based on data that was accessed [by the NOJ President] without the prior approval of the candidate.
- The NJC also notes that the President of the NOJ failed to respect deadlines in some of the procedures.
- There were no other objections regarding the appointment practice of court leaders and no negative comments on the appointment of judges."

Summary on the NJC meeting of 5 May 2021, p. 73-74., available at: <https://orszagosbiroitanacs.hu/2021-05-05/>

the NOJ President’s potential abuse of authority and discretion. 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.

Although judicial appointments shall be granted in the framework of an appointment procedure,³⁶ the legislation allows for a **wide range of exceptions**.³⁷ Decisions on appointments without an application procedure lie in their entirety in the hands of **the NOJ President, who may also have full discretion to grant judicial leadership positions eliminating the guarantees attached to a transparent application procedure**³⁸. **No judicial remedy is available against judicial appointments made without an appointment procedure**. In 2021, the list of exceptions was further widened³⁹ enabling the elimination of an application procedure after the termination of a transfer outside the judiciary, to other state organs.⁴⁰ As observed by the Venice Commission, there are no criteria established for the NOJ President *“to assign (de facto promote) a judge to a higher position (i.e. president of chamber)”*⁴¹ therefore it is necessary to establish *“clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment.”*

4. Allocation of cases in courts

All concerns raised in the CSO contributions of 2020 and 2021 remain relevant. **Persisting concerns** include: (i) the **deficiencies with respect to guarantees against undue interference**; (ii) the fact that the process of case allocation is neither computerised nor automated, but **reliant on direct human intervention**; (iii) that **court presidents shall have exclusive and unlimited right to establish the case allocation scheme**; (iv) judicial self-governing bodies are not entitled to exert meaningful control over the process of adopting case allocation schemes;⁴² (v) **parties in a court proceeding cannot verify the proper application of the scheme** and whether any of the (vi) wide range of exceptional rules were applied in allocating their case.

In 2021, the Venice Commission recommended that the opinion of the judicial bodies provided in the process of adopting the case allocation scheme should be made *“public and binding in order to ensure the transparency of the process and increase the trust of the citizens in the good and impartial functioning of the judiciary, given the reported complexity of the case allocation system.”*⁴³

³⁶ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 7 (1).

³⁷ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 8 (1).

³⁸ E.g. the control function of judicial councils.

³⁹ Act LI of 2021, Article 48 a).

⁴⁰ The judge formerly transferred to an other state organ can be appointed to any judicial position at a court equal or higher than the one prior to the assignment and may even become chamber president without an appointment procedure based on full discretion of the NOJ President. See: Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 58 (3) and 62/C (3).

⁴¹ See: Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges Adopted by the Hungarian Parliament in December 2020, CDL_AD(2021)036, para 58.

⁴² Act CLXI on the Organisation and Administration of Courts, Article 9.

⁴³ See: Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges Adopted by the Hungarian Parliament in December 2020, CDL_AD(2021)036, para 66 b).

Specific concerns can be raised with respect to **case allocation at the Kúria**. In 2021, the case-allocation scheme was modified 12 times,⁴⁴ which indicates a continuous change in the composition of chambers. Although as a main rule, the Kúria adjudicates in panels of three, **the chambers established in the case allocation scheme consist of more than three members**. This means that even though a case is allocated to a given chamber, the composition of the chamber is not exactly pre-determined by the scheme. In the case of a chamber consisting of five members, the combination of possible three-member chambers allows for nine possible panels. The final composition of the adjudicating panel is established under non-transparent rules.

In 2021, **in several politically sensitive cases the composition of the adjudicating panel was not in line with the case allocation scheme**. For example, in one of the actions brought against the National Election Office in August 2021 with respect to a referendum of exceptional importance for the government, one member of the adjudicating panel was replaced by Barnabás Hajas, who served as high-ranking government official until March 2021.⁴⁵ Upon the freedom of information request lodged by the Hungarian Helsinki Committee, the Kúria declared that it does not keep record of derogations from the case allocation scheme. Regarding the question whether parties of the legal proceeding are informed of any derogation from the case allocation scheme, the Kúria claimed that it has no obligation by law to provide such information.⁴⁶

5. Independence and powers of the body tasked with safeguarding the independence of the judiciary

The competences of the NJC have remained unchanged, 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 Commission⁴⁷ and the Council of the EU,⁴⁸ and also in the European Commission's 2020 and 2021 Rule of Law Report. Since the last Rule of Law Report, **no legislative steps have been taken to address structural issues, although both in November and December 2021 the laws on judges and courts have been amended regarding other matters**.⁴⁹ Consequently, without any amendment to the laws, the NJC still cannot reassuringly and effectively fulfil its constitutional role.

The relationship between the NOJ President and the NJC remains problematic.

⁴⁴ See: <https://kuria-kozadatok.birosag.hu/kozerdeku-adatok/tevekenysegre-mukodesre-vonatkozo-adatok/a-szerv-alaptevekenysege-feladat-es-hataskore>

⁴⁵ See: Judgment Knk.40648/202/23. of the Kúria, where Hajas adjudicated as part of chamber K.IV. while in accordance with the case allocation scheme he was member of the K.VI. chamber and the rules of substitution did not allow his transfer as substitute member to the adjudicating K.IV. chamber.

⁴⁶ See the answer of the Kúria to the request of the Hungarian Helsinki Committee <https://helsinki.hu/wp-content/uploads/2022/01/Kuria-valasz-20210108.pdf> answers to questions 6/A, 6/B and 6/C.

⁴⁷ See: 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, para 32.

⁴⁸ 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>

⁴⁹ Act CXXII of 2021 amending certain laws on justice and related matters and Act CXXXIV of 2021 on Amending Certain Criminal Laws and Other Related Laws

The NJC still has not been given access (e.g., admin rights) to the central website of the judiciary.⁵⁰ Only excerpts and decisions of the NJC meetings and other NJC data strictly prescribed by the law are available on the central website of the courts⁵¹. The list of the current members of the NJC, the complete minutes of their meetings or public communication materials towards the judges are only available on the NJC members' private website, thus **limiting the NJC's access to judges**. The NJC repeatedly asked the NOJ President to either provide the NJC access to the central website of the courts so that they can freely publish their communication materials towards the judges, or alternatively, from the NJC's budget pay the costs (HUF 20,000, ca. EUR 55/month) of the separate NJC website currently set up and paid privately by the NJC members.⁵² The NOJ President declined both requests.⁵³

The NJC still does not have a permanent court clerk to keep the minutes of the NJC meetings.⁵⁴ Instead, usually the current NJC president arranges for a court clerk.

Several times the NJC proposed⁵⁵ that the NOJ President requests the Ministry of Justice to amend certain laws on courts and judges. However, the **NOJ President did not request any amendments proposed by the NJC.**⁵⁶

According to NJC meeting minutes, the **NOJ President has personally attended only half of the NJC meetings held in 2021**, i.e., six out of twelve (otherwise, usually the NOJ vice-president attended). NJC members criticized the NOJ President for this and for not attending the NJC meetings in their entire length.⁵⁷

Another symbolic example that shows the weakness of the NJC's legal status (that partly results from the fact that the NJC does not have a legal personality) is **the lack of a registered seat of the NJC**. The vice president of the Kúria recently sent a letter to the NJC indicating that the NJC must officially request the Kúria to allow that the registered seat of the NJC could be at the same building as the Kúria.⁵⁸ As a consequence, the NJC decided to remove the registered seat from its bylaws.

⁵⁰ 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/>.

⁵¹ I.e. on birosag.hu (translated in English "court.hu"), where all official documents concerning courts are published.

⁵² The NOJ may dispose over the NJC's budget, the NJC not having a separate legal personality.

⁵³ See the relating public communication of the NJC here: <https://orszagosbiroitanacs.hu/harom-ev-utan-is-maguk-finanszirozak-az-obt-tajjai-az-obt-honlap-fenntartasat/>. There are signs, however, that the NJC and the NOJ President agreed to amend the NJC budget and thus the NJC's website will be paid by the NOJ; see the minutes of the NJC's meeting held on 6 October 2021, p. 51. Available at: <https://orszagosbiroitanacs.hu/2021-10-06/>

⁵⁴ See the minutes of the NJC's meeting held on 8 September 2021, p. 72. Available at: <https://orszagosbiroitanacs.hu/2021-09-08/>

⁵⁵ For example, in 2018, see <https://orszagosbiroitanacs.hu/wp-content/uploads/2018/10/2018-10-03-Az-OBT-javaslat-a-b%C3%ADr%C3%B3s%C3%A1gok%C3%A9rint%C5%91-jogszab%C3%A1lyok-m%C3%B3dos%C3%ADt%C3%A1s%C3%A1ra-PDF-mell%C3%A9klet.pdf>

⁵⁶ See the minutes of the NJC's meeting held on 7 April 2021, p. 50. Available at: <https://orszagosbiroitanacs.hu/2021-04-07/>

⁵⁷ See the minutes of the NJC's meeting held on 8 September 2021, p. 61. Available at: <https://orszagosbiroitanacs.hu/2021-09-08/>

⁵⁸ See the minutes of the NJC's meeting held on 8 September 2021, p. 9-15. Available at: <https://orszagosbiroitanacs.hu/2021-09-08/>

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

The Integrity Policy⁵⁹ issued by the NOJ President still 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.⁶⁰

The disciplinary cases of judges are decided by the first instance and second-instance service courts, whose operation and decisions, however, are not public according to the law,⁶¹ and the service courts' decisions are not available even for the judges. Therefore, it is difficult to assess the operation of the disciplinary proceedings in action both for the judges and the public. Related to this, in July 2021 the NJC proposed⁶² to the NOJ President to initiate an amendment of the Act to ensure that the anonymised decisions of the service courts be published on the courts' internal IT system.⁶³

One outstanding disciplinary case in 2019 was the case of criminal district court judge Csaba Vasvári, also mentioned by the European Commission's 2020 Rule of Law report, against whom a disciplinary proceeding was initiated because of his filing a preliminary ruling request with the CJEU. Recently the Court of Justice of the European Union held in its judgement⁶⁴ that "*Article 267 TFEU must be interpreted as precluding disciplinary proceedings from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the [CJEU] [...].*"

In judge Vasvári's case, the Kúria had also declared, following an appeal in the interests of the law, that the request for a preliminary ruling had been unlawful. The CJEU ruled that "*Article 267 TFEU must be interpreted as precluding*" the Kúria from such declaration and that "*the principle of the primacy of EU law requires that lower court to disregard such a decision of the national supreme court*". It is concerning, however, that **after the publication of the CJEU judgement, the Kúria issued a press release⁶⁵ saying that the Kúria's previous decision in the case of judge Vasvári "is final and its legal interpretation is binding, therefore the Kúria maintains the position expressed in its previous communications"**. This may be interpreted in a way that the Kúria insists that the lower courts in fact should not disregard the Kúria's decision that the CJEU ruled is contrary to EU law.⁶⁶

In late 2021 the latest Plenary Meeting of the Group of States against Corruption (GRECO)⁶⁷ adopted a new compliance report regarding corruption prevention in respect of members of parliament, judges and

⁵⁹ <https://birosag.hu/obh/szabalyzat/62016-v31-obh-utasitas-az-integritasi-szabalyzatrol-0>

⁶⁰ To learn more, see Section 8 of Amnesty International Hungary's report *Status of the Hungarian judiciary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>, p. 24.

⁶¹ "*Disciplinary proceedings and preliminary investigations shall be conducted in camera.*" Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 119.

⁶² NJC Resolution No. 63/2021 (VII. 7.).

⁶³ There is no information whether the NOJ President has indeed initiated such an amendment with the Ministry of Justice or not.

⁶⁴ Judgement of 23 November 2021, C-564/19, EU:C:2021:949

⁶⁵ <https://www.kuria-birosag.hu/hu/sajto/kuria-kozlemenye-az-europai-unio-birosaga-c-56419-szamu-ugyben-hozott-itelete-vonatkozasaban>

⁶⁶ As a comparison, the European Commission referred Poland to the European Court of Justice https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1524 to challenge a Polish law preventing Polish courts from putting references for preliminary rulings on such questions to the Court of Justice.

⁶⁷ Group of States against Corruption, Decisions passed on 89th GRECO Plenary Meeting Strasbourg | KUDO (online), 29 November – 3 December 2021, <https://rm.coe.int/0900001680a4e54e>

prosecutors, according to which they concluded that the level of compliance with the recommendations remains “globally unsatisfactory” in Hungary.⁶⁸ Therefore, the problems and concerns regarding disciplinary investigations against prosecutors expressed in the latest published GRECO report on Hungary in November 2020⁶⁹ still remain.

7. Remuneration/bonuses/rewards for judges and prosecutors, including changes, transparency on the system and access to the information

For 2022, the salary raise for judges continued. The base salary of both judges and prosecutors has been raised from gross HUF 507,730 (ca. EUR 1,418) – for the year 2021⁷⁰ - to **HUF 566,660 (ca. EUR 1,538) for the year 2022.**⁷¹

However, the Hungarian legislation⁷² provides a **wide discretion to the NOJ President and judicial leaders in determining the bonuses** of their employees, therefore self-censorship can easily be achieved by cutting (or rewarding) bonuses. There is no statutory list or definition of the types and forms of support that the NOJ President and other judicial leaders can distribute among judges, nor are there clear criteria as to what can serve as the basis of such decisions.⁷³ For instance, the internal regulations⁷⁴ list premiums and bonuses that can be granted in the framework of the labour force preservation program of the court system.⁷⁵ Regarding these supplements and bonuses, **it is often the discretionary decision of the employer whether to allow the judge to participate in the activities that serve as the basis of granting the bonus.** E.g., a court president can prevent a judge from participating in projects, acting as an instructor for younger judges or being a member in judicial working groups, which automatically deprives them from the possibility of receiving such bonuses. On its December 2021 meeting, the NJC discussed concerns about the lack of transparency and the potentially discriminatory nature of 2021 end-of-year bonuses distributed by court presidents.⁷⁶

⁶⁸ This report is not yet published, its publication awaits the Hungarian authorities' authorization.

⁶⁹ 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.

⁷⁰ Act XC of 2020 on the Central Budget of Hungary for 2021, Article 65 (1)–(2).

⁷¹ In Hungary, from 1 January 2022, the gross minimum wage is HUF 200,000 (ca. EUR 543).

⁷² Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 179–196.

⁷³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 189 stipulates that besides cafeteria-type of allowances, “other types of payments” may be provided to judges, and this provision is followed by an open list of allowances, supplements and bonuses, which means that there is no statutory list or definition of the types and forms of support that the NOJ President and other judicial leaders can distribute among judges, nor are there clear criteria as to what can serve as the basis of such decisions.

⁷⁴ NOJ President Order No. 5/2013. (VI. 25.), Article 20 of Annex 2.

⁷⁵ These include the “acknowledgment of outstanding achievements”, the “acknowledgment of exceptional work”, extra financial support granted on the occasion of state or church holidays, or leisure financial support.

⁷⁶ “*The National Council of the Judiciary discussed the issue of the lack of transparency in the practice of remuneration in 2021, and the discriminatory distribution of allowances in some courts. The President of the Hungarian Judges' Association and several members of the NJC also deplored the practice of presidents of several courts making their decisions on the basis of criteria that are not even known to the interest groups and the judicial self-administration bodies, and that are not even subject to any control by the NOJ President.*” Summary on the NJC meeting of 1 December 2021, available at: <https://orszagosbiroitanacs.hu/2021-12-01/>

Information on the payment of some of these bonuses are not available even for the NJC that is supposed to exercise oversight over the courts' budgets.⁷⁷ On 28 December 2020 the NJC's dedicated committee requested⁷⁸ anonymized, individual information about project premiums, purpose-based premiums and other personal premiums paid out in 2018-2019 to judges, court secretaries and court leaders. The aim of the request was to learn how much premium each individual received and what were the highest premiums paid out. However, the NOJ President has declined⁷⁹ the NJC's request, claiming that the NJC does not have a competence to have access to such data. In response to the NOJ President's refusal, **the NJC made an official warning to the NOJ President** in June 2021.⁸⁰

As regards transparency and access to information, the results of a survey on the perception of judges about the threats to their independence and integrity (published yearly since 2015) are only partly public⁸¹ and are retracted, so the general public is not able to get to know, let alone to fully evaluate their results. In late 2020 Amnesty International submitted a freedom of information request to the NOJ President to obtain the full documentation of these surveys, but the request was declined, claiming that these surveys do not constitute data of public interest.

8. Independence/autonomy of the prosecution service

The prosecution service and the incumbent Prosecutor General (PG), re-elected in 2019 for 9 years by the governing parties over the objections of the opposition, has long been subject to heavy criticism for not bringing high-profile corruption cases of government politicians and their close affiliates before courts. In November 2021, the **governing majority adopted an amendment requiring a two-thirds majority for the removal of the PG**.⁸² As the previous regulation did not set any qualified majority for the dismissal of the PG from office, the new law further cemented the position of the current PG and thereby the power of the governing parties in case of an electoral defeat in 2022. The concerns raised in the 2021 CSO contribution about the lack of accountability of the PG has also remained.⁸³

In August 2021, in a joint statement the **PG together with the President of the Kúria ordered the display of the so-called National Avowal**, the controversial Preamble of the 2011 Fundamental Law in the entrance hall of the Justice Palace.⁸⁴ This symbolic act was taken on the request of the government at the 10th anniversary of the adoption of the Fundamental Law.

While the practice of "cherry-picking" of cases has not changed and still raises serious concerns around the independence and impartiality of the prosecution service, in 2021 **investigations have been**

⁷⁷ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103 (2) b): "[t]he NJC in the area of the budget (a) gives an opinion on the draft budget of the courts and the report on its implementation, (b) oversees the financial management of the courts; and (c) gives an opinion on the detailed terms and amount of the other benefits."

⁷⁸ <https://www.dropbox.com/s/dxynfpo7uvw84qb/5.%20OBT%20bizottsag%20megkereses%202020-12-28.pdf?dl=0> p 2., par. 2.

⁷⁹ NOJ President: "Based on the above, the NJC does not have competence to have access to further information regarding payments to judges above their base salary and does not have jurisdiction to make any statements in this regard." <https://www.dropbox.com/s/z6x4gmle41d6jcp/6.%20OBH%20elnok%20valasza%202021.02.22.pdf?dl=0> p 6., par. 7.

⁸⁰ NJC Resolution No. 54/2021 (06.02). This NJC Resolution is available at: <https://orszagosbiroitanacs.hu/2021-06-02>

⁸¹ For 2019, see: <https://birosag.hu/hirek/kategoria/birosagokrol/az-encj-felmeresen-kimagasloan-ertekelt-fuggetlenseguket-magyar>

⁸² Act CXXII of 2021 amending certain laws on justice and related matters.

⁸³ 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. 10-11.

⁸⁴ https://www.kuria-birosag.hu/sites/default/files/sajto/2021.el_i.a.7._kozos_lu-kuria_intezkedes_3.pdf

launched in some high-profile criminal cases related to government officials, such as the Pegasus case⁸⁵ and the case of Pál Völner, Deputy Minister of Justice accused of accepting bribes.⁸⁶

The PG exercises firm control over the prosecution service and over the functions and operations of prosecutors.⁸⁷ The PG is the ultimate superior prosecutor in relation to all prosecutors, and prosecutors are subordinated to the line of command headed by the PG.⁸⁸ In practice, the PG is not giving instructions directly, or at least instructions coming personally from the PG are not common, instead the PG relies on the strictly hierarchical architecture of the prosecution service, which enables him to issue instructions through the line of command. **The PG and superior prosecutors may instruct prosecutors working at local level prosecutor offices**, i.e., the PG and senior members of the prosecutorial hierarchy may circumvent county chief prosecutors and their offices and may give instructions directly to city or district prosecutors, although in this case, the county chief prosecutor needs to be informed without delay.

Besides, **the PG and superior prosecutors may take away cases assigned to a prosecutor at any stage of the criminal process without explanation**. Taking a case away from the original prosecutor may result either in the re-assigning of the case to another subordinate prosecutor, or in the taking of the case to the PG's or superior's own hands. However, this latter option rarely occurs.

9. Independence of the Bar and of lawyers

In 2021, with the assistance from Amnesty International's Security Lab experts' in-depth forensic analysis of numerous mobile devices around the world, the investigative news outlet Direkt36 revealed that **the Hungarian government had been spying on Hungarian attorneys-at-law, including the President of the Hungarian Bar Association**, János Bánáti using the Pegasus Spyware produced by the Israeli technology firm, the NSO Group. For months, the government practically remained silent and while other EU Member States initiated immediate investigations into the scandal, the Hungarian government dismissed the issue and boycotted investigations. At last, in November 2021, a high-ranking governmental politician commissioned as the head of the Defence and Law Enforcement Committee of the Parliament, publicly admitted that the Hungarian government had purchased the Pegasus Spyware.⁸⁹

The current legal background practically enables the secret surveillance of any citizen for the purposes of overly broad grounds of national security.⁹⁰ The only criteria set out by law is that the information cannot be obtained in any other manner. The legislation does not prescribe stricter conditions with respect to lawyers. **The Minister of Justice has sole discretion in allowing the secret surveillance for reasons of national security without any meaningful oversight and control over the decision taken.**

⁸⁵ See: <https://ugyesszeg.hu/nyomozas-elrendeleserol-a-kozponti-nyomozo-fogyesszeg-sajtokozlomenye/>

⁸⁶ See: <https://ugyesszeg.hu/a-kozponti-nyomozo-fogyesszeg-gyanusított-kent-hallgatta-ki-dr-volner-pal-orszaggyulesi-kepviselot/>

⁸⁷ This is explained by Articles 12-13 of Act CLXIII of 2011 on the Prosecution Service (hereinafter referred to as: Prosecution Service Act).

⁸⁸ The PG or the superior prosecutor may instruct any subordinate prosecutor and prosecutors are expected to obey and fulfil instructions given by their superiors, or, ultimately, the PG.

⁸⁹ See: <https://telex.hu/direkt36/2021/11/05/igy-foszlott-szet-a-kormanyzati-kodosites-a-pegasus-ugyben>

⁹⁰ Act CXXV of 1995, Articles 53-62/A.

As revealed until now, the Pegasus Spyware had been applied against more than ten attorneys-at-law, and the government has failed to clarify the background of the secret surveillance.

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

According to the Venice Commission *“the regime of appointment of the President of the Curia introduced with the 2019 amendments could pose serious risk of politicisation and important consequences for the independence of the judiciary, or the perception thereof by the public, considering the crucial role of this position in the judicial system.”*⁹¹

The practice of appointments increasing the risk of politicisation of the judiciary continued⁹² in 2021. In 2021, the new President of the Kúria selected⁹³ as Vice President of the Kúria Justice András Patyi, who was transferred to the Kúria in 2018 based on an *ad hominem* legislative amendment,⁹⁴ and became a chamber president without an application procedure. In May 2021, the President of the Kúria selected as judge Barnabás Hajas,⁹⁵ who had served as state secretary in the Ministry of Justice until March 2021.⁹⁶ Exceptional rules of appointment by discretion of the President of the Kúria allowed Hajas to start, without any prior judicial experience, his judicial career directly at the top tier of the judiciary and for an indefinite term.⁹⁷

The perception of independence is undermined with respect to the **members of the uniformity complaint chambers**⁹⁸. According to the Venice Commission: *“the President of the Curia comes to play a central role that could influence in a decisive manner the uniformity complaint chamber and consequently the overall jurisprudence on a relevant matter. In the light of the Commission’s concerns that the system lacks sufficient guarantees in relation to the President’s appointment and dismissal, the Commission finds that there is a risk of politicisation.”* Therefore, the Venice Commission recommended *“removing the prerogative of the President of the Curia to appoint temporary presiding judges or at least to eliminate any margin of discretion in their selection.”*⁹⁹

⁹¹ See: Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges Adopted by the Hungarian Parliament in December 2020, CDL_AD (2021)036, para 15.

⁹² Currently serving appointees capable to raise the perception of being politically loyal to the government (such as the President of the Kúria, who was elected by the Parliament as a result of a series of *ad hominem* legislative amendments against the manifest opposition of the NJC or the NOJ vice-president, who is the mother-in-law of the Minister of Justice).

⁹³ The President of the Kúria holds exclusive right to select the Vice President of the Kúria for appointment by the President of the Republic in accordance with Act CLXI of 2011 on the Organisation and Administration of Courts, Article 128 (1).

⁹⁴ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 23 (3) was modified in order to enable the transfer of András Patyi to the Kúria as chamber president without an application procedure, after resignation from his position as university rector. The law was passed in July 2018, the same month when Patyi resigned from his position. <https://helsinki.hu/en/yet-another-government-friendly-judicial-leader-at-the-supreme-court-of-hungary/>

⁹⁵ <https://birosag.hu/sites/default/files/2021-07/125.e.pdf>

⁹⁶ In 2018, at the time the government attempted to set up a heavily government-controlled separate administrative court system, Hajas served as state commissioner for “the development of administrative justice”. See: Order of the Minister of Justice no. 11/2018. (V. 31.) IM <http://www.kozlonyok.hu/kozlonyok/Kozlonyok/12/PDF/2018/21.pdf>

⁹⁷ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 23 (1) c).

⁹⁸ Uniformity complaints may be submitted if, regarding questions of law, a chamber of the Kúria deviates from the published decision of the Kúria. Act CLXI on the Organisation and Administration of Courts, Article 41/B

⁹⁹ See: Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges Adopted by the Hungarian Parliament in December 2020, CDL_AD(2021)036, para 48 and 49.

The perception of independence was affected negatively by **the case of judge Gabriella Szabó, who was disqualified at the end of her three-year tenure as probationary judge**. The case gained publicity in the media as Justice Szabó claimed that “[i]t is presumable that the real motivation of my removal from the judiciary can be linked to my previous order for a preliminary reference that interferes [with] the political interests of the Hungarian government.”¹⁰⁰ In 2018, Justice Szabó turned to the CJEU to request a preliminary ruling on the asylum rules introduced by the Hungarian government. Based on her request, the CJEU in March 2020 ruled¹⁰¹ that the new Hungarian rules were indeed contrary to EU legislation. The ruling made the government’s asylum policy legally unsustainable. Not much later, the evaluation process of Justice Szabó became due as prescribed by law, ahead of her appointment for an indefinite period. As a result of the evaluation process, she was disqualified in March 2021, and as a consequence her mandate ended with the lapse of the definite term.¹⁰²

B. Quality of justice

11. Accessibility of courts

As it was described in the 2020 CSO contribution for the Rule of Law Report,¹⁰³ the Omnibus Act of 2019¹⁰⁴ restricted access to justice in administrative cases, as it prescribed that *“in cases launched after 1 March 2020, it is no longer possible to submit an appeal against first instance administrative decisions: instead, they have to be challenged before the court instantly. First instance judicial reviews are conducted only by 8 designated county courts out of the 20, and so some of them have to cover 3 counties. This way, in many instances courts where the cases are tried will be far away from where the parties live, and since writing a court submission is much more difficult than drafting an administrative appeal, there is a much higher chance that parties will have to hire an attorney. Thus, obtaining a remedy will cost more time, money and other resources, affecting negatively especially indigent or low-income persons.”*

Available data show that **the amendment has indeed restricted access to justice in relation to the decisions of public authorities impacting citizens**. According to the reasons attached to the Omnibus Act,¹⁰⁵ approximately 25% of second instance administrative decisions had been challenged before a court in the system replaced by the Omnibus Act. In 2019, 14,358 judicial reviews were initiated,¹⁰⁶ which means that administrative authorities delivered approximately 57,400 second instance decisions in that year. As opposed to this, in the first half of 2021, only 10,176 judicial reviews of administrative decisions were initiated by the concerned parties.¹⁰⁷ If the trends remain similar (and based on the 2020 data,¹⁰⁸

¹⁰⁰ See: Eszter Zalán: Hungarian judge claims she was pushed out for political reasons, available at: <https://euobserver.com/democracy/152349>

¹⁰¹ Judgement of 19 March 2020, C-564/18, EU:C:2020:218

¹⁰² She could not challenge at the service court (which has the right to review the disqualification) the evaluation procedure’s decision before her tenure ended. The 2021 European Commission Rule of Law Report also raised concerns regarding the fact that in such cases *“the service court cannot grant interim relief to prevent an interruption of the judicial career during the review of the evaluation.”*

¹⁰³ https://helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf, p. 18.

¹⁰⁴ Act CXXVII of 2019 <https://www.parlament.hu/irom41/08016/08016.pdf>, p. 149

¹⁰⁵ <https://www.parlament.hu/irom41/08016/08016.pdf>, p. 149.

¹⁰⁶ <https://helsinki.hu/a-polgarnak-lesz-rosszabb-hogy-a-kormany-nak-jobb-legyen/>

¹⁰⁷ <https://birosag.hu/ugyforgalmi-adatok>

¹⁰⁸ Ibid.

this seems to be a highly plausible scenario), the 2021 caseload of the administrative courts is likely to be around 20,400, amounting to a 65% decrease in the number of administrative decisions challenged by the concerned individuals. This means that **the level of protection available in practice for the individuals against the unfavourable decisions of public administrative bodies has significantly decreased.**

12. Resources of the judiciary

As regards material resources, judges interviewed by Amnesty International¹⁰⁹ 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 2021, the proposed central budget expenditure was 141,964.5 million (ca. EUR 396 million).¹¹⁰ **For 2022, the proposed central budget expenditure of the courts was increased** to HUF 155 649,5 million (ca. EUR 422 million).¹¹¹

As regards material resources, according to an amendment in December 2021 to a NOJ President order¹¹², the NOJ President granted regional court presidents and regional court of appeal presidents use of a company car that they can even use for personal reasons up to 15,000 km per year. In April 2021, the NJC objected¹¹³ the draft amendment, saying that such possibility grants a substantial extra payment to the court presidents, and argued that it ***“is not supported by legislation, and it would provide an additional benefit the amount of which is questionable, especially taking into account the significantly higher increase of court leaders’ salaries as compared to those of judges.”*** Regardless of the NJC’s objection, the NOJ President passed the amendment to the abovementioned order.

16. Geographical distribution and number of courts/jurisdictions and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases.

The **district court** is the lowest level of ordinary courts and there are 113 of them (out of which 6 in Budapest). **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, and 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. From 1

¹⁰⁹ For more details, see Amnesty International’s *Fearing the Unknown* report, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>

¹¹⁰ Act XC of 2020 on the Central Budget of Hungary for 2021, Appendix 1.

¹¹¹ Act XC of 2021 on the Central Budget of Hungary for 2022, Appendix 1.

¹¹² NOJ President Order No. 5/2013. (VI. 25.)

¹¹³ NJC Resolution No. 37/2021 (IV.7.)

March 2022, appeals from these regional courts will be generally decided not by the Kúria, but the Metropolitan Regional Court of Appeal.¹¹⁴

In cases against administrative authorities started after 1 March 2020, **it is no longer possible to submit an appeal against first instance decisions of administrative authorities within the administrative system**: instead, they have to be challenged before the court instantly (see also Part 11 above). Moreover, as an additional step towards centralization, as from 1 March 2022, some first-instance administrative cases (the set of cases is not yet set forth by the law)¹¹⁵ will be decided solely by the Metropolitan Regional Court of Appeal and not by the eight designated regional courts,¹¹⁶ further limiting access to court.

At the Metropolitan Regional Court of Appeal newly appointed members of the administrative college will adjudicate in these administrative cases. What is problematic is that according to a December 2021 amendment to the law, certain judges with a regional court of appeal experience may have requested until 10 January 2022 to be appointed a member of such administrative college without any application procedure (and the NOJ President must appoint them),¹¹⁷ which also **eliminates the guarantees attached to a transparent application procedure (see also points 1, 2 and 3)**.

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

First-instance corruption cases are handled by the regional courts and not by the district courts.¹¹⁸

C. Efficiency of the justice system

17. Length of proceedings

In response to the long-standing demand by the Council of Europe Committee of Ministers overseeing the execution of ECtHR judgments concerning excessive length of judicial proceedings in Hungary, the **Hungarian Government submitted to Parliament a draft law introducing a compensatory remedy for the excessive length of proceedings** on 11 May 2021. The Parliament adopted the new law¹¹⁹ in June 2021.

The most important deficiency of the legislation is that **it only provides compensation for excessively lengthy civil proceedings, no similar compensation is envisaged for either administrative court procedures or criminal proceedings**, although the protracting of this latter type may be the most detrimental to persons subjected to it.

¹¹⁴ Act I of 2017 on Public Administration Procedure, Article 7 (2).

¹¹⁵ On 1 January 2022, Act I of 2017 on Public Administration Procedure only channels matters related to appointing which administrative authority shall process the administrative case to the Metropolitan Regional Court of Appeal, other cases will be determined by other laws.

¹¹⁶ Act I of 2017 on Public Administration Procedure, Article 12 (2).

¹¹⁷ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article, Article 232/U (2)-(3).

¹¹⁸ Act XC of 2017 on Criminal Procedure, Article 20 (1).

¹¹⁹ Act XCIV of 2021 on Enforcing Pecuniary Compensation for Civil Lawsuits of Unreasonable Length

Furthermore, the legislation has been criticised for the low amount of compensation offered (a year of unjustified delay is compensated with HUF 146,000, i.e., ca. EUR 400) and the definition of what length can be regarded as reasonable.

The annual statistical analysis of the National Office for the Judiciary regards as “unreasonably long” the following time periods:

- First instance: over 2 years;
- Second instance at a regional court: over 1 year;
- Second instance at an appellate court: 6 months.¹²⁰

However, the **new law is significantly more lenient vis-à-vis the courts, when it comes to the definition of reasonable length** (although with regard to certain lawsuits, e.g., cases concerning minors, or labour lawsuits, stricter time limits are applied):

- First instance: over 30 months;
- Second instance at both regional and appellate courts: over 18 months.¹²¹

Other

In its latest opinion¹²² regarding the Hungarian judiciary, the **Venice Commission raised several concerns about the uniformity procedures conducted by the Kúria**. One of the concerns related to the uniformity decisions¹²³ with the communicated aim¹²⁴ to address the concerns, the Hungarian Parliament passed an amendment to the Act on the Organisation and Administration of the Courts in December 2021.¹²⁵ One solution to address the concerns of the amendment was to integrate the uniformity procedure¹²⁶ into the uniformity complaint procedure.¹²⁷ This means that the procedural rules of a uniformity procedure will be based on the procedural rules of the uniformity complaint procedures. A uniformity procedure may be initiated i) if “*a uniformity decision is necessary to ensure uniform case-law, or to alter or annul a previous uniformity decision*” or ii) by an adjudicating panel of the Kúria that wants to differ in a legal question from a previously published decision of the Kúria.¹²⁸ In case i), the uniformity procedure may be initiated by regional court presidents and regional court of appeal presidents, the president, vice president and college leader of the Kúria, and the attorney-general.¹²⁹ However, **the amendment has not reassuringly addressed the concerns of the Venice Commission**.

¹²⁰ https://birosag.hu/sites/default/files/2021-10/ugyforgalmi_elemzes_2021_i_felev.pdf, p. 170.

¹²¹ Act XCIV of 2021, Article 6

¹²² Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges by the Hungarian Parliament in December, CDL-AD (2021)036

¹²³ Ibid. “*possibility to adopt uniformity decisions on questions of principle with the aim to further develop the interpretation of the law, [...]. Such decisions, which are binding for all courts, are not related to one specific case [...].*”

¹²⁴ The official explanatory memorandum for the amendment is available here (in Hungarian): <https://magyarkozlony.hu/hivatalos-lapok/W7X216vklCz40SfOKIN61b7bafad7fae/indoklasok>

¹²⁵ Act CXXXIV of 2021 on Amending Certain Criminal Laws and Other Related Laws.

¹²⁶ Act CLXI of 2011 on the Organisation and Administration of Courts, Titles 10-12 .

¹²⁷ Act CLXI of 2011 on the Organisation and Administration of Courts, Title 12/A.

¹²⁸ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 32 (1).

¹²⁹ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 27 (2).

First, the “authoritative type”¹³⁰ uniformity procedures still exist and it still can be initiated in relation to questions of principle (i.e. not only in individual cases) with the aim to further develop the interpretation of the law.

Second, in its opinion the Venice Commission stated that “[i]t should certainly not be the competence of any court’s president alone to select areas in which case law should be unified authoritatively.”¹³¹ The new amendment¹³², however, makes it possible for the regional court and regional court of appeal presidents to initiate a uniformity procedure instead of - as was before - for the college leaders. **It is not a good direction that a professional-legal matter, such as the initiation of a uniformity procedure, is vested with the administrative leaders of the courts (i.e., the presidents) and not with the professional leaders thereof** (for example college leaders or judges).

The Omnibus Act of 2019 entitled public authorities to file a constitutional complaint with the HCC on the ground that their rights have been violated or their competences have been unconstitutionally constrained.¹³³ We saw this new provision in action recently when the Kúria rejected to approve one of the Hungarian government’s homophobic and transphobic referendum question that is aimed to further stigmatize LGBTQI people.¹³⁴ The Hungarian Government challenged Kúria’s rejection before the HCC, the members of which had been largely elected by a one-party majority in Parliament. **The HCC held¹³⁵ that the Government’s right to fair trial had been violated and annulled Kúria’s decision**, effectively giving green light to this question.

¹³⁰ A term used by the Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges by the Hungarian Parliament in December, CDL-AD (2021)036, p. 66. c).

¹³¹ Venice Commission, Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges by the Hungarian Parliament in December, CDL-AD (2021)036, p. 41.

¹³² Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 27 (2).

¹³³ Act CLI of 2011 on the Hungarian Constitutional Court, Article 27 (1) a).

¹³⁴ The question on the referendum is “Do you support that gender-reassignment treatment be also available to minors?”

¹³⁵ <https://www.alkotmanybirosag.hu/dontes/ab-hatarozat-biroi-dontes-megsemmiteserol-4>



II. Anti-corruption framework

A. The institutional framework capacity to fight against corruption

18. List any changes as regards relevant authorities in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities including the cooperation among domestic authorities

Most concerns raised in the 2020 and 2021 CSO contributions remain relevant.

The government's main institution in charge of anti-corruption work is the National Protective Service (NPS), a branch of the police, which reports directly to the Minister of Interior.¹³⁶ From 2021 on the NPS is not only responsible for the prevention of crime within the law enforcement agencies, but also to carry out regular and systematic integrity tests for almost the entire public service/administration. Although this increases the government's potential to fight petty corruption, the NPS has no mandate to carry out crime detection among political leaders within the government. The NPS is also in charge of the Government's anti-corruption strategy, however the strategy is not implemented according to the original schedule. According to the Prosecutor General's (PG's) annual report,¹³⁷ mainly the NPS was responsible for conducting crime detection in corruption cases it investigated, which explains why there are no procedures related to corruption in the corporate world as the latter falls out of the scope of NPS's competences.

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' declarations on campaign expenses. The SAO is designed to be entirely independent from the executive branch and is by law only subordinated to the Parliament.¹³⁸ However, the **SAO has since decades been underusing its powers** and has proven **incapable to uncover and sanction questionable spending by political parties that tend to underreport expenditure**.

These authorities, together with the Kúria, the prosecution service, the National Office for the Judiciary (NOJ), the Central Bank, the Public Procurement Authority (PPA), and the Hungarian Competition

¹³⁶ Article 1 of Government Decree 293/2010. (XII. 22.) on the assignment of internal crime prevention and crime detection bodies within the Police, moreover on the fulfilment of its duties, the control of immaculate lifestyle and the establishment of detailed rules for reliability controls.

¹³⁷ Prosecutor General's annual report for 2020, pp. 20-21.

http://ugyeshseg.hu/wp-content/uploads/jaskupeter/2021/10/ogy_beszamolo_2020.pdf

¹³⁸ Fundamental Law of Hungary, Articles 43 and 44 and Act LXVI of 2011.

Authority (HCA) have jointly endeavoured to promote integrity and combat corruption¹³⁹. However, their cooperation still does not manifest in any meaningful achievements and is limited to joint declarations.

Interestingly the National Tax and Customs Administration of Hungary (NAV) is neither included as a stakeholder in the government's anti-corruption strategy nor in the above-mentioned cooperation, while this body is responsible for the cooperation with OLAF. A serious shortcoming of relevant regulation is **the tax authority's limited mandate to conduct investigation on illicit enrichments**.

A new law on the ultimate beneficial owner's registry was adopted in May 2021 within the transposition of the EU's AMLD.¹⁴⁰ However, the law does not provide an open access to the UBO registry. Third parties will only be able to access it after submitting an application and paying a fee. Managing the registry falls into the competence of NAV. Another shortcoming is the scope of the **regulation that does not cover private equity funds, a popular form of hiding assets by oligarchs**. A majority of these funds are linked to businessmen close to the government¹⁴¹ and have a similar role as offshore companies.

19. Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

A number of different state organs are charged with the enforcement of existing anti-corruption regulations. Albeit anti-corruption enforcement primarily belongs to the jurisdiction of the NPS and the SAO, other agencies, such as the tax administration, the HCA, the PPA, the Prosecution Service, and the Police are also tasked with combating corruption. Some of these authorities are government offices directly administered by the minister in charge, such as the police, who belong to the Minister of Interior, or the tax administration, whose head is the deputy finance minister. Other authorities have an autonomous standing and are formally independent of the executive, which is the case with, for example, the SAO, the Prosecution Service, the HCA, and the PPA. By law, even government offices have a functional independence from their ministerial hierarchy, for instance the Minister of Interior does not have access to individual case files of the police and may not instruct the police. Statutes of authorities with an autonomous standing explicitly exclude instructions by the government and provide that such authorities are only allowed to follow and respect the laws while carrying out their duties.

However, as Transparency International Hungary has warned on multiple occasions since 2012, the **phenomenon of state capture emerges in Hungary**.¹⁴² In the process of state capture, the two most important steps taken were 1) the packing of institutions by appointing (electing) loyalists with often poor professional backgrounds to key public positions and 2) the amendment of the regulations at will to domesticate the institutions concerned. Captured institutions exhibit **clear signs of partiality and bias** in the performance of their functions by disproportionately punishing misconduct related to the political

¹³⁹ See e.g.: Ügyészség: Egy évtizede az integritásért, elkötelezetten a korrupció ellen. Press Release. [Prosecution Service: A decade for integrity, committed to corruption] <http://ugyeszseg.hu/egy-evtizede-az-integritasert-elkotelezetten-a-korrupcio-ellen/>

¹⁴⁰ Act XLIII of 2021 on the establishment and operation of a data provision framework related to the identification task of financial and other service providers.

¹⁴¹ See the article by Válaszonline.hu: *43 titkos pénzalapot kezel a NER felsőelitje* [43 secret funds managed by Hungary's elite] <https://www.valaszonline.hu/2021/05/19/exkluziv-43-titkos-penzalapot-kezel-a-ner-felsoelitje/>

¹⁴² On state capture, see Black Book. Corruption in Hungary 2010–2018 by Transparency International Hungary. https://transparency.hu/wp-content/uploads/2018/03/Black-Book_EN.pdf

opposition, while leaving incidents of perceived corruption associated with the governing party-elite non-investigated and unsanctioned. Signs and consequences of state capture are clearly observable in case of all state organs in Hungary, including the ones tasked with anticorruption duties.

A more concrete example of inadequacies following from the lack of authorities' functional autonomy is the case of state organs tasked to oversee management of EU funding. Managing authorities were merged into government ministries, resulting in a situation where planning and evaluation of projects belong to the same ministry. The minister may, at will, instruct the head of the managing authority, as the latter is a subordinate. For instance, the Directorate General for Audit of European Funds is part of the Ministry of Finance, and its employees are government bureaucrats. This puts institutional guarantees of independence to doubt. The fact that the **mismanagement of EU funding** in Hungary is a serious issue is not entirely unrelated to the **lacking functional autonomy of authorities** devised by the government **to scrutinize the use of European subsidies**.¹⁴³

20. Information on the implementation of measures foreseen in the strategic anti-corruption framework

The Government adopted an anti-corruption strategy for the public administration in 2020 and set milestones for the implementation. However, in December 2021 most of the deadlines have been postponed by the government to 2023.¹⁴⁴ The reasons for the postponement have not been made public.

The key elements of the strategy are the following:¹⁴⁵ preparatory work of the general anti-corruption strategy and enforcement regarding e-administration, development of an automated decision-support system to improve the transparency and accountability of the decision-making, elaboration of an IT concept, which is essential for the proper functioning of the internal control system, in particular the integrated risk management system, supporting the coherent management and sharing of process models between departments, organisation of joint anti-corruption trainings for judges, prosecutors and police forces, editing a casebook on tackling corruption and dissemination for practitioners, organisation of training for prosecutors conducting investigations on the use of surveillance tools, setting up an online database and carry out a survey in the public administration to identify positions with a high risk of corruption and integrity problems, conducting analysis based on the information collected to the database, incorporating the data into the risk assessment scheme of NPS, creating a legal framework for reducing integrity risks at major infrastructural investments, making a pilot project for corruption prevention at police units serving border control, examination of possibilities of introducing ISO system at state companies, based on surveys determining what model of integrity management would be appropriate for state bodies as well as for state companies, elaboration of a Good Governance indicator system, dissemination of information on foreign bribery crimes, training of integrity officers, elaboration of learning materials. Just as in the case of other anti-corruption efforts of the government, the strategy

¹⁴³ See the report by Transparency International Hungary: Corruption, Economic Performance and the Rule of Law in Hungary The results of the 2019 Corruption Perceptions Index (<https://transparency.hu/wp-content/uploads/2020/02/Korruptci%C3%B3-gazdas%C3%A1gi-teljes%C3%ADtm%C3%A9ny-%C3%A9s-jog%C3%A1llamis%C3%A1g-Magyarorsz%C3%A1gon-CPI-2019-EN-1.pdf>)

¹⁴⁴ K-Monitor: A kormány csendben elhalasztotta halovány antikorrupciós vállalásainak teljesítését. [The government deferred its anti-corruption endeavours] https://k.blog.hu/2022/01/18/a_kormany_csendben_elhalasztotta_halovany_antikorrupcios_vallalásainak_teljesiteset

¹⁴⁵ 1328/2020. (VI. 19.) Government Resolution adopting the medium-term National Anti-Corruption Strategy for 2020-2022 and the related action plan.

only focuses on eliminating petty corruption, but does not address systemic issues (such as political finance, public procurements, the system of asset declarations, lobbying, whistleblower protection, access to information) or impunity in case of high-level crimes. **The implementation of the strategy cannot be followed by the public as no follow up has been published since its adoption.**

B. Prevention

21. Measures to enhance integrity in the public sector and their application

Although public institutions need to have integrity mechanisms in place, and integrity assessments are conducted annually at many institutions, there is **no sign that integrity assessments are centrally evaluated, and findings are channelled into anti-corruption policies.**

As included in our previous CSO contributions, with regard to the prevention of the “**revolving door**” phenomenon, defined by the European Parliamentary Research Service¹⁴⁶ 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 and the regulations pertaining to public officials contain confidentiality clauses, there is no overarching regulation specifying any time restriction for public officials to pursue business careers in the same sector. However, there are institutions where some regulation applies. Therefore, public fund watchdogs have repeatedly called for the introduction of legal safeguards that would prevent high-ranking public officials from entering business sector jobs where the information they acquired in their previous role might provide an unfair advantage.¹⁴⁷

A recent example of how the revolving door phenomenon manifests in practice of the career change of two former government officials is who are now deputy CEOs of Hungary's second largest bank.¹⁴⁸ Csaba Szomolai was a leading official of the Central Bank of Hungary, and András Puskás was deputy mayor of a municipality led by the governing party and then head of a bank owned by the state, Eximbank. The latter is a close confidant of Antal Rogán, a minister responsible for governmental communication. According to press reports, Puskás received a compensation of HUF 15 million following his leaving Eximbank.¹⁴⁹ In both cases the private bank could have benefitted from hiring leaders from a state-owned institution.

While civil servants, judges and prosecutors have adopted a code of ethics, **there are still no rules for members of government and MPs.** The latter was also raised by GRECO.¹⁵⁰ In those areas of public

¹⁴⁶ 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)

¹⁴⁷ 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/forgojto-jelenseg_az_allami_es_maganszfera_kozti_atjaras_korrupcios_kockazatai

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

¹⁴⁸ *Rogán Antal bizalmasa is beül Mészáros Lőrinc szuperbankjába* [Antal Rogán's confidant joins Lőrinc Mészáros' superbank] <https://forbes.hu/uzlet/rogan-puskas-bankholding-meszaros/>

¹⁴⁹ Ibid.

¹⁵⁰ FOURTH EVALUATION ROUND. Corruption prevention in respect of members of parliament, judges and prosecutors SECOND INTERIM COMPLIANCE REPORT. HUNGARY. <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>

administration where there is a code of ethics adopted, there are no known ethical procedures conducted but only training activities.

22. General transparency of public decision-making

All concerns raised in the 2020 and 2021 CSO contributions remain relevant.

The Government **used emergency rules to rule by decree, bypassing parliamentary debate**. It has also continued the trend of **failing to consult the public or stakeholders** before submitting a legislation, which is a clear breach of law.¹⁵¹ It has also reduced the transparency of legislation by **bundling completely different regulatory subjects** into omnibus bills.

Deficiencies in asset and interest declarations by public functionaries identified already in our previous submissions still prevail. Declarations are not accessible publicly, save for the case of MPs and the most senior public officials. Spousal declarations' publication is not prescribed either. A scrutiny of the declarations' accuracy is entirely missing, and no effective sanction to prevent and punish false or deficient declarations is in place.¹⁵² The scheme is still unable to allow the monitoring of the enrichment of declarants, as well as to clarify the source of assets declared.

As highlighted in our previous submissions, though the Government's decree on integrity of public administration¹⁵³ 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.

It remains a concern that **political parties regularly overspend** during election campaigns and fail to sufficiently report on their resources and expenditure. Use of public funds and financing of political parties is monitored by the SAO. The mandate of the President of the SAO, elected by a two-third majority vote by the Parliament, lasts for 12 years, which is a particularly long period.¹⁵⁴ Even more worrying is the fact that if the SAO president's mandate expires and a replacement is not elected, **the incumbent president's mandate automatically prolongs** until the election of a new president. Since 2010, the SAO has been headed by László Domokos, who had been a member of the governing party and also an active MP. In 2021, Mónika Karas, formerly known as a lawyer working for the governing party, took up

¹⁵¹ Act CXXX of 2010 on law-making, Article 19. https://ial-online.org/wp-content/uploads/2019/09/J2010T0130P_20180518_FIN.pdf

¹⁵² For details, see the following reports by Transparency International Hungary: *Vagyonnyilatkozati Minimum [Minimum Standards for Asset and Interest Declarations]*, 2016, https://transparency.hu/wp-content/uploads/2016/07/policy_paper3_FIN.pdf; *A vagyonnyilatkozati 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.

¹⁵³ Government Decree 50/2013. (II. 25.) on the integrity management system of public administration bodies and the procedure for receiving interest representatives)

¹⁵⁴ See K-Monitor's summary on the leading public law positions in Hungary: https://k.blog.hu/2021/11/12/omnibus_bill_passed_prosecutor_general_polit_to_be_irremovable_without_supermajority

the position of the SAO's deputy president. Ms Karas was appointed¹⁵⁵ after she voluntarily resigned from her position as the head of National Media and Infocommunications Authority after 8 years of service.¹⁵⁶

The SAO has been criticised for **imposing payment obligations on the opposition** more frequently than on the government parties.¹⁵⁷ The SAO insists that the payment obligations imposed by it are not fines, so there is no remedy against them before the court. This position has been confirmed by the Hungarian Constitutional Court (HCC).¹⁵⁸ In contrast, the SAO has in several cases limited its own decision-making powers when it comes to the expenditure of the governing parties. The SAO refuses to assess advertisements in social media and campaign spending by pro-government NGOs. Criminal procedures started in 2021 in relation to campaign irregularities during the general elections of 2014.

23. Rules and measures to prevent conflict of interests in the public sector

Concerns raised in the 2020 and 2021 CSO contributions remain relevant. There is still **no improvement in the area of conflict of interest regulation in the public sector**. 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 to prevent the interlacement between the private sector and the Government in certain sectors of the economy, especially in the case of procurements and government-subsidized touristic developments. A recent legal change introduced in 2021 is that the Parliament, dominated by a supermajority of the governing parties, **dissolved all conflict of interest rules** that prevented an MP or a member of the government from taking a leading role in **a public interest trust**,¹⁵⁹ a recently introduced *sui generis* type of a legal entity condoned in the Fundamental Law. Until the end of 2021's first semester, the government set up 35 public interest trusts, and endowed them with state assets in the amount of multiple billion euros, including cash, stocks and real estates. More importantly, all but five higher education institutions in Hungary were conferred upon these newly formed public interest trusts. The President of the Republic duly promulgated the law that governs public interest trusts, therefore it is in force but currently pending before the HCC upon a petition submitted by opposition MPs.

¹⁵⁵ Az ÁSZ Elnöke alelnöknek kérte fel dr. Karas Mónikát. [The President of the SAO asked dr. Mónika Karas to be vice president] 29 October 2021. Press Release. <https://www.asz.hu/hu/sajtokozlomenyek/az-asz-elnok-alelnoknek-kerte-fel-dr-karas-monikat-2021-10-29-12-00-00>

¹⁵⁶ Bita, D: Lemondott a médiahatóság elnöke, 9 évre így még a jelenlegi kormánytöbbség választhat utódot. [The chairman of the media authority has resigned, allowing the current majority of the government to choose a successor for 9 years] 24.hu. <https://24.hu/kozelet/2021/10/15/karas-monika-nmhh-lemondas/>

¹⁵⁷ 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. 108 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 szedett 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_szedett_be_az_ellenzeki_partoktol_az_ASZ.

¹⁵⁸ Case No. IV/1655/2018

¹⁵⁹ Act VIII of 2021 amending Act XXXVI of 2012 on the Parliament, Article 19.

K-Monitor¹⁶⁰ and Transparency International Hungary¹⁶¹ separately submitted *amicus curiae* briefs to the HCC in relation to the aforementioned petition.

Numerous government MPs and members and senior officials of the cabinet were appointed to boards of public interest trusts, enabled by the amendment to lift the ban on parallel occupations. This is best exemplified by the case of István Nagy, a Fidesz MP, Minister of Agriculture and now a member of the board of trustees of a former state university that was privatised recently. Holding more positions in the different branches of government and in a private law entity does not just breach the separation of powers doctrine enshrined in the Fundamental Law but constitutes a high risk of corruption as well.

Regarding the transparency of public administration, it must be noted that the **government abolished the general publicity of government appointments**, so since March 2019 the government is no longer obliged to publicly disclose certain lower-level government appointments in the official journal as it had previously been required by law.¹⁶²

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

All concerns raised in the 2020 and 2021 CSO contributions remain relevant. Hungary has **failed to transpose the Whistleblower Directive** (2019/1937/EU) until the given deadline. According to a response to a FOI-request in 2021, legislative preparatory work regarding the transposition was underway in the Ministry of Justice,¹⁶³ however not even a draft piece of legislation was publicly disclosed or sent for stakeholder consultation so far.

Hungary has an act on whistleblower protection (WPA) in effect since 2013,¹⁶⁴ which covers most of the issues addressed in the Directive, but does not meet the detailed requirements set out in the EU-legislation in regard of the level of protection, the handling of the reports and the provided incentives – not to mention the fact, that the Hungarian Act only requires the application of mandatory whistleblowing system in the public sector. (Note that according to the law¹⁶⁵, publicly owned companies are required to maintain a safe reporting system.)

The lack of adequate incentives is especially striking as the **willingness to report corruption is very low** in Hungary. According to TI Global Corruption Barometer, only 34% of the respondents claimed that people can report corruption without fear for retaliation,¹⁶⁶ and Eurobarometer's latest survey on

¹⁶⁰ K-Monitor: Petition submitted to HCC.

[http://public.mkab.hu/dev/dontesek.nsf/0/6a96c3f521143e12c12587640033dd6c/\\$FILE/II_2280_4_2021_amicus_K-MonitorKE_anonim.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/6a96c3f521143e12c12587640033dd6c/$FILE/II_2280_4_2021_amicus_K-MonitorKE_anonim.pdf)

¹⁶¹ TI Hungary: Petition submitted to HCC.

[http://public.mkab.hu/dev/dontesek.nsf/0/6a96c3f521143e12c12587640033dd6c/\\$FILE/II_2280_2_2021_amicus_curiae_Transparency_International_Magyarorszag_anonim.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/6a96c3f521143e12c12587640033dd6c/$FILE/II_2280_2_2021_amicus_curiae_Transparency_International_Magyarorszag_anonim.pdf)

¹⁶² See Minister of Justice's decree 32/2010. (XII. 31.) out of force since March 2019 and replaced by Minister of Justice's decree 5/2019. (III. 13.)

¹⁶³ See the answer of the Minister of Justice at

https://kimitud.hu/request/18287/response/26282/attach/5/V%20133%203%202021%20Koller%20Gabor%202021%2007%2012.pdf?cookie_passthrough=1

¹⁶⁴ Act CLXV of 2013 on Complaints and Notices of Public Interest.

¹⁶⁵ Government Decree 339/2019. (XII. 23.) on the internal control system of publicly owned companies

¹⁶⁶ Transparency International (2021): GLOBAL CORRUPTION BAROMETER EUROPEAN UNION 2021 CITIZENS' VIEWS AND EXPERIENCES OF CORRUPTION. https://files.transparencycdn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf

corruption attests that Hungarians are more pessimistic about the possible impact of whistleblowing than the EU average.¹⁶⁷

The WPA basically requires whistleblowers to (at least partly) identify themselves. However, in case of complaints and reports against public authorities, citizens might use a designated electronic reporting channel operated by the country's Ombudsperson, the Commissioner for Fundamental Rights (CFR). However, the **CFR has limited rights to investigate reports, to impose sanctions or setting out requirements**. According to the latest available report of the CFR, only a fraction of the reports received on the submission channel were well-founded. As the independence of the CFR is questionable (the Global Alliance of National Human Rights Institutions has also initiated to downgrade him to "B" status¹⁶⁸) **mistrust in the institution** may also contribute to the limited incidences of whistleblowing.

Note also, that by a separate regulation¹⁶⁹ Government institutions' leadership is required to appoint 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.

Some government institutions (PPA, Prime Minister's Office, HCA) operate their own reporting channels, but there is little information available on the reports received.

25. List the sectors with high risks of corruption in your Member State and list the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors

Public procurement and the allocation of EU funding remain interrelated sectors with high corruption risks. Concerns regarding these topics were also key reasons why the EC did not approve Hungary's RRP so far. NGOs did not find the government's commitments and proposed reforms on these matters satisfactory either.¹⁷⁰

Despite the lack of an approved RRP, the government launched numerous procurement tenders to be funded by the RRF. A series of scandals from recent years have shown that **projects implemented with EU funding are often overpriced** while the **institutional guarantees** of genuine independence of oversight bodies remain **questionable**. Even the risk of delayed access to RRF funds did not lead to relevant changes regarding the funds management system.¹⁷¹

Though public procurement processes are adequately regulated, practice does not reflect the principles enshrined in the law. In 2021, HUF 4,222 billion was spent through public procurement, which is the

¹⁶⁷ Special Eurobarometer Corruption Report.

<https://europa.eu/eurobarometer/api/deliverable/download/file?deliverableId=72934>.

¹⁶⁸ Global Alliance of National Human Rights Institutions (GANHRI) Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) 14-24 June 2021. <https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>

¹⁶⁹ Government Decree on the integrity management system of public administration bodies and the procedure for receiving lobbyists') <https://net.jogtar.hu/jogszabaly?docid=a1300050.kor>

¹⁷⁰ RRF: How Far Will the EU Go to Protect its Financial Interests in Hungary?, K-Monitor, 23 September 2021 https://k.blog.hu/2021/09/23/rrf_how_far_will_the_eu_go_to_protect_its_financial_interests_in_hungary

¹⁷¹ O. Vincze: Hungary's bluffed solutions to improve its funds management system, K-Monitor, 17 November 2021 <https://k.blog.hu/2021/11/17/recovery-fund-hungary>

highest annual amount ever,¹⁷² while the number of procedures was significantly lower than in most of the years before. It became a trend to launch gigantic (often framework) tenders that can only be accessed by a small circle of competitors, giving market dominance to government friendly businesses in many sectors¹⁷³, such as construction (accounting for 62% of procurements, expenditures here grew by HUF 1000 billion compared to 2020¹⁷⁴) or IT. The **share of single bidder procurement remained high**. Companies linked to the ruling elite reached higher profits than others in the same industry.¹⁷⁵

The government has launched concession tenders for motorway construction and maintenance, and waste management for 35 years that **might violate the EU Directive on Concessions**. TI-H submitted official complaints related to these two cases to Hungary's PPA¹⁷⁶ and to the Commission.¹⁷⁷ In addition, the government has prolonged concessions awarded to cronies in the field of gambling without competition.

Many government competences, including the control of huge sectors, have been reorganised into a **new authority**¹⁷⁸, that is formally independent of the government. It is **headed by a confidant of the PM with a 9-year mandate**.¹⁷⁹ The authority oversees tobacco trade, gambling, concessions, judicial enforcement (bailiffs), liquidations and mining supervision. Key market players of these **sectors are businesses with ties to the government party**. One of the most serious corruption scandals of 2021¹⁸⁰ is linked to the Hungarian Chamber of Judicial Officers controlling a sector that will be overseen by the new authority.

The number of **investments labelled as significant for the national economy** had exceeded 3,000 by the end of 2021, with investors being **exempted** from a great part of construction rules and permits that would apply to them under regular procedures. The way how investments are labelled as such is totally arbitrary, while most of these involve investors close to the government or political interests of the government party.¹⁸¹

¹⁷² Közbeszerzési Hatóság: Rekordév: több mint 2500 milliárd forint értékben nyertek közbeszerzéseket tavaly a kkv-k. [PPA: Record year: SMEs won more than HUF 2,500 billion in public procurement last year] Press release.

<https://kozbeszerzes.hu/hirek/rekordev-tobb-mint-2500-milliard-forint-ertekben-nyertek-kozbeszerzeseket-tavaly-a-kkv-k/>
¹⁷³ Merényi, M.: Nem kérték, nem indokolták, csak eltették — az állami vagyon volt 2021 legnagyobb vesztese. [Not asked for, not justified just taken – state property was the biggest loser of 2021] *K-Monitor*.

https://k.blog.hu/2022/01/03/nem_kertek_csak_eltettek_az_allami_vagyon_volt_2021_legnagyobb_vesztese

¹⁷⁴ Közbeszerzési Hatóság: Rekordév: több mint 2500 milliárd forint értékben nyertek közbeszerzéseket tavaly a kkv-k. [PPA: Record year: SMEs won more than HUF 2,500 billion in public procurement last year] Press release.

<https://kozbeszerzes.hu/hirek/rekordev-tobb-mint-2500-milliard-forint-ertekben-nyertek-kozbeszerzeseket-tavaly-a-kkv-k/>

¹⁷⁵ Jandó, Z: NER-építők mérlege: 30 milliárd bér, 60 milliárd osztalék [Balance sheet of NER builders: 30 billion for wages, 60 billion for dividends] *24.hu* <https://g7.hu/vallalat/20210721/ner-epitok-merlege-30-milliard-ber-60-milliard-osztalek/>

¹⁷⁶ See these Transparency's two submissions at: https://transparency.hu/wp-content/uploads/2021/09/KH-elnok_jogorvoslat_hulladeggazdalkodasi-koncesszio.pdf

https://transparency.hu/wp-content/uploads/2021/07/KH-elnok_jogorvoslat_autopalyakoncesszio.pdf

¹⁷⁷ See the submission at: https://transparency.hu/wp-content/uploads/2021/07/TI-HU-letter-to-COM-on-concession_05072021.pdf

¹⁷⁸ I.e. the Supervisory Authority for Regulated Activities. See: *K-Monitor*: Csendben elindult a Kormány mindent felfaló hatósága [The Government's all-consuming authority set off in silence]

https://k.blog.hu/2021/10/25/elindult_a_kormany_kisgombochatosaga

¹⁷⁹ Domány, A. "Kilenc évre egy fideszes exállamtitkár került az új koncessziós hatóság élére." [For nine years, a former Fidesz secretary of state took over the new concession authority.] *hvg*. 1 October 2021.

https://hvg.hu/itthon/20211001_biro_marcell_szabalyozott_tevekenysegek_felugyeleti_hatosaga

¹⁸⁰ Makszimov, V: Fidesz MP resigns from state secretary post after allegations of graft. *Euractiv*.

https://www.euractiv.com/section/politics/short_news/fidesz-mp-resigns-from-state-secretary-post-after-allegations-of-graft/

¹⁸¹ Domokos, E: Több mint 3000 beruházást tett kiemeltté a kormány. [The government has prioritized more than 3,000 investments] *napi.hu* <https://www.napi.hu/ingatlan/kiemelt-beruhazas-kormany-budai-var-szabaly-ingatlan.739748.html>

26. Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic

All concerns raised in the 2020 and 2021 CSO contributions remain relevant. Even though there are official documents¹⁸² that acknowledge **increased corruption risks caused by the pandemic**, we could not identify a single measure that was specifically dedicated to mitigating these risks.

Furthermore, **accessing information of public interest became even harder** under the pandemic than in the years before. The government did not publish up-to-date, relevant data on the infected and the deceased¹⁸³, the situation in hospitals, the studies and analyses that would justify government decisions, and often no information on the fate of the money spent on fighting the epidemic. It was not only the public that was left without data, but municipalities were also not informed by the government about COVID-related figures that would have been necessary to implement measures against the pandemic.¹⁸⁴ Secrecy also affected information on COVID-related spending: the government has spent hundreds of billions of forints on health equipment that were exempted from public procurement, without giving account of these. In addition to overpricing, there were quality problems, while firms having close ties to the government have earned an extreme profit from the pandemic.¹⁸⁵ Thousands of never-installed ventilators are still lying in storage and the Ministry of Human Resources in charge of selling them did not release basic information on the fate of these machines. A lawsuit by TI Hungary is still ongoing in this matter.¹⁸⁶

The government has taken advantage of its emergency powers under pandemic and issued **specific rules for freedom of information requests**. The special rules,¹⁸⁷ which are still in force, provide that the general 15-day deadline for responding may be extended by 45 days and then again by 45 days. The special law was challenged before the HCC. The HCC found no violation but imposed a constitutional requirement for public bodies. In case of an extension of the deadline, a public body shall indicate those reasons related to the pandemic in a precise manner that prevent it from responding within 15 days.¹⁸⁸ Experiences show that **unjustified extensions have become a common practice in public administration**. For example, the Hungarian National Authority for Data Protection and Freedom of Information (DPA) found, upon a complaint by a journalist, that the World of Hunting and Nature Exhibition

¹⁸² 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/integritással-a-korrupcio-ellen>.

¹⁸³ Atlatszo: A magyar járványügyi tájékoztató oldalnál nincsen szűkszavúbb a régióban [The Hungarian epidemiological information page is the least comprehensive in the region]

<https://atlatszo.hu/adat/2021/03/24/a-magyar-jarvanyugyi-tajekoztato-oldalnal-csak-a-szerb-szukszavubb-a-regioban>

¹⁸⁴ 444: Az adatvédelmi hatóság közölte, hogy ki kell adni a települési fertőzöttségi adatokat a polgármestereknek. [According to the data protection authority, municipal infection data should be released to mayors]

<https://444.hu/2021/11/11/az-adatvedelmi-hatosag-kozolta-hogy-a-polgarmestereket-tajekoztatni-kell-a-telepulesi-fertozottsegi-adatokrol>

¹⁸⁵ Szabó, Y: Nem jött be a thai masszázs, az állami Covid-tesztekéből viszont milliárdokat kaszáltak. [The thai massage did not work, however, billions were made from state Covid-tests] *hvg360*.

https://hvg.hu/360/202121_haszon_ajarvanybol_allami_beszerezesek_haverok_vagy_ugyesek_felepulnek_acovidbol

¹⁸⁶ 24.hu: Kásler tárcája úgy csinál, mintha fogalma sem lenne, sikerült-e megszabadulni a lélegeztetőgépektől [Kásler's ministry pretends to have no idea if they've managed to get rid of the ventilators]

<https://24.hu/belfold/2021/10/07/emmi-lelegeztetogepek-eladas-transparenc-international/>

¹⁸⁷ Government Decree No. 521/2020. (XI. 25.), Article 1

¹⁸⁸ Decision No. 15/2021. (V. 13.), See an official summary in English:

<http://public.mkab.hu/dev/dontesek.nsf/0/52D7D58B7355E709C125867200613717?OpenDocument>

supported extensively by the Government could not extend the deadline under the special law because it was not performing a public task related to the pandemic.¹⁸⁹

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

The HCC considered it to be in line with the Fundamental Law that the special law adopted by the governing majority **classified the international contracts related to the expansion of the Paks nuclear power plant** for 30 years.¹⁹⁰ For 6 years, the HCC had not delivered a decision on the issue, despite submissions from civil society and MPs.

The **activities of the DPA were very limited** in the field of FOI last year. In total, the DPA issued seven reports in 2021, continuing the downward trend of recent years. While the DPA issued 44 reports in 2017 and 17 in 2018, it published only eight reports in 2019 and five in 2020.¹⁹¹ In December 2021, the president of the DPA issued a statement in which he called on the public not to request any data during the holidays.¹⁹²

The **DPA underuses its competencies** in other issues, too. For example, the DPA concluded in two reports¹⁹³ that Hungary's wholly state-owned National Tourism Agency wrongfully refused to publish the names of those who sat on the boards tasked with evaluating proposals aiming at the allocation of state funds to tourism providers in the magnitude of HUF 219 billion alone in 2020. Despite the DPA's findings, the agency keeps on with these secretive practices,¹⁹⁴ and the DPA's only reaction to this contempt by the agency is the publication of the reports, although the DPA could launch a *qui tam* litigation before the court, which would compel the agency to comply with transparency requirements. In lack of the DPA's activity, Transparency International Hungary commenced multiple FOI-litigations.

The Council of Europe Convention on Access to Official Documents came into force on 1 December 2020. According to the Convention, members of the Group of Specialists shall be elected by the Consultation of Parties from a list of experts proposed by Parties. Even though each Party shall ensure that the national selection procedure leading to the nomination of candidates for the Group is transparent and open to competition, including through public calls for candidatures and involving relevant State and non-governmental bodies,¹⁹⁵ the **Hungarian government has not shared any information on the nomination procedure**, not even in response to a FOI request.

¹⁸⁹ See the report of HVG in Hungarian:

https://hvg.hu/itthon/20220108_Jogsertesesen_kaptak_a_vadaszati_kiallitast_szervezo_ceget

¹⁹⁰ Decision No. 4/2021. (I. 22.). See an official summary in English:

<http://public.mkab.hu/dev/dontesek.nsf/0/92F193F8152A7BD3C1257E1800585B4F?OpenDocument>

¹⁹¹ Reports published by the DPA in recent years,

<https://www.naih.hu/jelentesek>

¹⁹² See the statement in Hungarian issued on 17 December 2021:

<https://www.naih.hu/dontesek-informacioszabadsag-tajekoztatok-kozlemenyek/file/470-aktualis-kozlemeny-a-kozerdeku-adatigenylesekrol>

¹⁹³ See the DPA's reports in cases NAIH-2095-1/2021 and NAIH/2020/3680/7

(https://www.naih.hu/files/Infoszab_jelentes_NAIH-2021-2095-1.pdf).

¹⁹⁴ For details, see transparency International Hungary's report: *Room with benefits - transparency of tourism subsidies and exposure to corruption during the epidemic in Hungary* https://transparency.hu/wp-content/uploads/2021/12/TIHu_tourism_Subsidies.pdf

¹⁹⁵ Resolution CM/Res(2021)2 on rules on the election procedure of the members of the Group of Specialists on Access to Official Documents, Rule 6

C. Repressive measures

28. Criminalisation, including the level of sanctions available by law, of corruption and related offences including foreign bribery

In the conclusion of K-Monitor and Transparency International Hungary, the law adequately defines corruption and related offenses and provides for deterrent sanctions. Although there are some regulatory gaps, such as the case of the lacking criminalisation of abuses related to asset and interest declarations on behalf of public officials and users of public funds, as indicated in our previous CSO contribution, the much bigger problem is the **poor implementation of existing regulations**.

A new development, welcomed by both K-Monitor and Transparency International Hungary was the **criminalisation** of informal payments in the healthcare system (so-called “**gratitude payment**”) in 2021. The government seems devoted to putting this phenomenon to an end, even though the efficiency of criminal sanctions in eliminating such a widespread and deeply rooted social phenomenon as gratuity payments is arguable. Nevertheless, the implementation of the newly introduced regulation started and the 50-employee strong new section at the National Protective Service started to operate and brought 42 cases until the end of 2021.¹⁹⁶

Another promising development follows from Hungary’s new criminal procedure code in force from 2018, which **encourages the employment of plea bargains**, a particularly important tactical tool in the control of high-level corruption and mismanagement. Although not much related information is out, it is reasonable to suppose that indictments in incidents of corruption related to the country’s senior leadership are the result of settlements with their accomplices, who, in exchange of a mitigated (non-custodial) sanction, undertook to provide evidence against their principals.

Loopholes in the regulation on criminal sanctions applicable to legal entities and poor implementation make **existing laws defunct**. This is especially disturbing with regard to poor results in the area of recovery of stolen assets and of proceeds of crime.

Another regulatory issue is the **overwhelming influence of the prosecution** service on criminal procedures. As the prosecution service is a captured institution, which often fails to bring cases of high-level corruption with a political connotation before justice, its monopoly to indict and the potential to block criminal procedures is positively a hindrance to the effective enforcement of existing anti-corruption laws. To address challenges following from the inadequate regulation and management of the prosecution service, recommendations made by the Council of Europe’s Venice Commission¹⁹⁷ and by GRECO¹⁹⁸ should be considered.

29. Data on investigation and application of sanctions for corruption offences and their transparency, including as regards to the implementation of EU funds

¹⁹⁶ Népszava: Megdöbbentő történetekkel találkozunk a rendőrök az egészségügyben [Police officers come across shocking stories in healthcare] https://nepszava.hu/3141646_megdobbento-tortenetekkel-talalkoznak-a-rendorok-az-egeszsegugyben

¹⁹⁷ See: 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-e

¹⁹⁸ See GRECO’s Fourth Evaluation Report ([FOURTH EVALUATION ROUND \(coe.int\)](https://www.coe.int/t/e/treaties/4eval/4eval_en.asp))

Concerns raised in our previous submission still prevail, therefore we only briefly summarise assertions contained in the 2021 CSO contribution to the Rule of Law Report.

Access to information relating to the implementation of EU funds is limited (contracts, information on subcontracting and data on project evaluations are not disclosed, the Government's official database on EU funds (palyazat.gov.hu) does not allow bulk access or access through an API).

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 irregularity processes and to sanctions**. Transparency International Hungary had to file lawsuits against managing authorities to obtain information related to irregularity of EU-funded projects. In one case, the court ordered the publication of the information, but in two other cases the courts denied publication.

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

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.

Statistical information on offending and on corruption and related offences is available only on request submitted to the Ministry of Interior or to the Prosecution Service, both charged with the keeping of crime stats (basic data on the volume of corruption offences is available in the annual reports of the Prosecutor General, presented to the Parliament).

Court decisions are published in anonymised form, and statistics on criminal convictions are managed by the NOJ, 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.

The recently adopted law on UBO registry - Act XLIII of 2021, see section 18 above - **does not enable free and open access to the UBO registry**. To the contrary, access to information in the UBO registry shall be dependent on the payment of fees to be determined by the office in charge of keeping this registry, i.e., the tax administration NAV, that will also be entitled to define accessibility conditions.¹⁹⁹ No information as regards these details is available at present.

30. Potential obstacles to investigation and prosecution as well as to the effectiveness of sanctions of high-level and complex corruption cases

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**. Political interests seemingly outcompete professional considerations and the needs of justice when it comes to corruption offences associated with the political elite. Since 2019, three government MPs - György Simonka, István Boldog and Pál Völner - have been accused of corruption, or mismanagement of EU funding. On the one hand, this is telling of the general integrity performance of Hungary's governing elite, while on the other hand, openly accessible information relating to these processes reveal that the authorities are reluctant to take intransigent action to recover assets involved in abuse. Immunity regulations, which, in the case

¹⁹⁹ Act XLIII of 2021, Article 8 (5)-(6)

of members of Parliament, prevent the employment of coercive measures to freeze property are equally hindering the interests of justice.

In the case of the three MPs mentioned above, another common feature is that none of them was detained. Albeit detention is not automatic in Hungary, Simonka has admittedly colluded to hinder doing justice, which should have been prevented by detaining him. There is reason to suppose that the lack of apprehension is to be explained by the fact that government MPs' presence in Parliament is required to maintain the Fidesz supermajority. This scenario could feasibly explain why Völner, a Fidesz MP and until recently Deputy Minister of Justice, accused of bribery and abuse of public authority is not apprehended either. Völner has allegedly abused his functions and misused his leverage to interfere with the appointment of judicial officers (bailiffs) in exchange of bribes paid by the chair of the Hungarian Chamber of Judicial Officers. Authorities suppose that this corruption scheme functioned for years and earned altogether some HUF 83 million in bribes to Völner, who, among other responsibilities, was charged with overseeing the bailiffing landscape. Although Völner resigned as deputy minister, he still holds his seat in the Parliament as a government MP and in light of the experience of Simonka and Boldog, it is difficult to disregard the fact that the lack of a single Fidesz MP puts the government supermajority to an end.

Another hindrance in bringing corruption cases before justice is the **monopoly held by Hungary's prosecution service to exercise the state's right to punish**. Being a **captured institute**, political bias sometimes outclasses the interests of law enforcement in the processes of the prosecution service. With regard to the legal standing of the prosecution service, these hindrances are hardly circumventable. A potential solution would be Hungary's accession to the European Public Prosecutor's Office, the lack of which in itself gives grounds for concerns.²⁰⁰

31. Information on effectiveness of administrative measures and sanctions, in particular recovery measures and administrative sanctions on both public and private offenders

It has to be noted that **no information relating to the effectiveness of sanctions or recovery** is to avail. In the case of EU funding, the State Treasury in its capacity as control authority is charged with recovering parts of funding involved in irregularities. Transparency International Hungary filed multiple freedom of information lawsuits against the State Treasury to explore if recovery measures are employed and to what degree these are successful. In two different court cases against the State Treasury, both related to subsidies benefiting György Simonka, the court's final and binding judgment forced the Treasury to publish information. As a consequence, it turned out that the Treasury failed to take timely action in order to recover appr. HUF 1.5 Billion from a company that used to belong to Simonka's interest group, called 'Magyar Termés TÉSZ Kft.', resulting in the loss of the sum concerned.²⁰¹ In another case, Simonka, who admittedly successfully lobbied for the amendment of regulations on repayment requirements relating to irregularities filed numerous claims to the State Treasury for the revocation of

²⁰⁰ For details, see Transparency International Hungary's study: *The European Public Prosecutor's Office and Hungary Challenge or Missed Opportunity?* https://transparency.hu/wp-content/uploads/2021/02/europai_ugyesszeg_eng_VEGSO.pdf

²⁰¹ See Transparency International Hungary's Press Release [We have won an important lawsuit in the Simonka case] <https://transparency.hu/hirek/fontos-pert-nyertunk-a-simonka-uggyel-kapcsolatban/> and blogpost: <https://korrupcio.hvgblog.hu/2021/03/25/simonka-gyorgy-es-a-szabalytalanul-felhasznalt-unios-tamogatasok-visszafizetese/>

repayment orders.²⁰² Surprisingly, the prosecution service failed to indict Simonka for this attempted subsidy fraud, citing that the Treasury did not revoke any of the repayment orders.²⁰³

Another cause for concern deriving from cases is when certain projects, originally designed to be submitted for EU funding are actually withdrawn from application following an OLAF investigation or an audit finding, is that **no information on any domestic follow-up measures or processes** are available. This gives ground to suppose that no measures are taken to investigate supposed irregularities and prosecute crimes concerned at national level. The supposed practice that irregularities leading to the withdrawal of projects remain unsanctioned in Hungary would explain why the government plans to allocate 110 to 115 percent of EU funding available in the framework of certain operational programs. Such a practice allows for the government to replace withdrawn projects by other ones not found irregular by OLAF or by an audit, and thus limiting the risk of losing EU funding due to irregularities identified by the COM.

In addition, it has to be noted that even in cases where withdrawal does not occur and therefore the sanction by EU organs of irregularities is not prevented, information on the occurrence of recovery and on the amount of money to be repaid are unavailable. Not even EU organs publish information related to correction orders, making it practically impossible for the people to track and follow the consequences of irregularities.

Other

1. **Poor system of political finance**, including the **lack of transparency and accountability** remains one of the **main origins of corruption**. Political parties are not expected to give detailed accounts on their incomes and expenses, and the SAO fails to control if legal requirements are respected²⁰⁴. **Discrepancies of party financing and lack of available data** on the itemized expenditure remain a source of abuse by political parties. The SAO audits only those parties whose list receive at least 1 percent of the votes, meaning that parties established solely to embezzle campaign funds (so called fake parties) remain under its radar. 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. Moreover, regular state funding for incumbent parliamentary parties was halved, which mainly impacts the campaign potential of opposition parties.

2. The **economic clientele of the government is taking over key positions in Hungarian infrastructure and business sectors** in 2021. Besides benefiting from high value procurement contracts, framework agreements and concessions (see section 25) government-close companies have

²⁰² Ibid.

²⁰³ 24.hu: Parlamenti segítséggel százmilliók visszafizetését próbálta megúszni Simonka György egykori cége [György Simonka's former company tried to escape the repayment of hundreds of millions with the help of the parliament] <https://24.hu/belfold/2021/12/02/simonka-gyorgy-bekes-megye-pusztatoatlaka-paprikakert-tesz-magyar-allamkincstar-transparency-international/>

²⁰⁴ See Points 18 and 22 of this CSO contribution.

been participating in acquisitions that have led or will likely lead to total market dominance. This was often supported by loans from state owned banks.²⁰⁵

4iG, a company linked to the oligarch close to the government, Gellért Jászai has benefitted from public procurements worth hundreds of billions of Forints²⁰⁶ in recent years. In 2021 4iG bought shares in a satellite operator,²⁰⁷ semi-privatised the state-owned Antenna Hungária (AH)²⁰⁸ responsible for national terrestrial television and radio broadcasting in a questionable process without competition,²⁰⁹ as well as wireless business telecommunication. AH owns a quarter of the mobile provider Telenor and MVM Net,²¹⁰ which operates the government's strategic telecoms infrastructure. 4iG also bought Digi,²¹¹ the cable TV and internet provider covering most of the country and will likely become the most dominant player of the Hungarian telecommunication sector.

A government-backed takeover of the Budapest Airport was probably also part of this scheme to transfer complete sectors to the PM's clientele. Due to concerns by the EU and lack of funding, this deal has been postponed. The state has also intervened in the insurance market after prohibiting the acquisition of the Hungarian branch of Aegon by Austrian VIG. The government eventually approved the deal and acquired a 45% stake both in Aegon and VIG-owned insurance company Union in return.²¹² These shares may soon end up at government-close interests. Other sectors that might experience government interventions or even structural reforms to enable the expansion of cronies might be the retail sector and private healthcare.

²⁰⁵ See 444's article: Tiborcz és köre az MFB hitelprogramjának egyik nagy nyertese. [Tiborcz and his circle are one of the big winners of MFB's loan program] <https://444.hu/2021/05/21/tiborcz-es-kore-az-mfb-hitelprogramjanak-egyik-nagy-nyertese>

²⁰⁶ See the article of Magyar Narancs 'Nemzetbiztonsági kockázata is lehet, ha Jászai Gellérték bekebelezik az Antenna Hungáriát' [There may also be a risk to national security if Gellért Jászai takes over Antenna Hungária] <https://magyarnarancs.hu/belpol/nemzetbiztonsagi-kockazata-is-lehet-ha-jaszai-gellertek-bekebelezik-az-antenna-hungariat-242457>

²⁰⁷ Forbes: Jászai Gellérték tényleg meghódítanak a világrt. [Gellért Jászai would really conquer outer space.] <https://forbes.hu/penz/4ig-felvasarlas-spacecom/>

²⁰⁸ Forbes: Jön a távközlési szuperholding, amit az egyik milliárdos cégével épít az állam [Here comes the telecommunications superholding that the state is building with one of its billionaire companies] https://forbes.hu/uzlet/privatizacio_jaszai_gellert_4ig_antenna_hungaria/

²⁰⁹ Koncz Tamás: Nemzetbiztonsági kockázata is lehet, ha Jászai Gellérték bekebelezik az Antenna Hungáriát [Acquisition of the Antenna Hungaria company by Gellért Jászai may run national security risks] <https://magyarnarancs.hu/belpol/nemzetbiztonsagi-kockazata-is-lehet-ha-jaszai-gellertek-bekebelezik-az-antenna-hungariat-242457>

²¹⁰ Hsws.hu: Frissítve: megveszi az MVM NET-et az Antenna Hungária. Updated: Antenna Hungária buys MVM NET. <https://www.hsws.hu/hirek/63608/antenna-hungaria-mvm-net-adasvetel-eladas-exkluziv.html>

²¹¹ Hsws: Bearázták a Digi-t, 232 milliárdot fizet érte a 4iG. [Digi has a Price tag: 4iG pays 232 billion] <https://www.hsws.hu/hirek/64066/digi-rcs-rds-4ig-akvizicio-mobil-internet-telefon-teve-media-antenna-hungaria.html>

²¹² Palkó, I: Bejelentették: beszáll a magyar állam az Aegon és az Union biztosítóba! [It has been announced that the Hungarian state will buy into Aegon and Union insurance companies!] <https://www.portfolio.hu/uzlet/20211223/bejelentettek-beszall-a-magyar-allam-az-aegon-es-az-union-biztositokba-517896>



III. Media freedom and pluralism

A. Media authorities and bodies

32. Measures taken to ensure the independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

The issues raised in our previous contributions to the Rule of Law Reports still prevail.²¹³ The National Media and Infocommunications Authority (“Media Authority”) 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 Authority; it has a distinct competence in the media field.

Similarly to the previous years, the clearest proof of the political bias of the Media Council was the **practice of the radio frequency tenders**. The most concerning decision of the Media Council in 2021 was the **Klubrádió case**. 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.²¹⁴ The Media Council launched a new tender for the frequency in November 2020. In March 2021, the Media Council declared the tender procedure inconclusive, and Klubrádió's bid was found to be invalid in both form and substance. In April 2021, the Media Council granted a temporary media service right for the former Klubrádió frequency to Spirit FM with good ties to the government.²¹⁵

In a recent study Mertek Media Monitor analysed the radio frequency tenders between January 2018 and April 2021. In this period, the Media Council closed a total of 77 tenders. **A quarter (24.4%) of the closed procedures were won by the KESMA-affiliated (Central European Press and Media Foundation) pro-government political talk radio station Karc FM. Radio 1, a pro-government music radio network won 18% of the tenders, while another 26% of the frequencies went to different religious radio stations.** The new pro-government music radio network Best FM acquired 4 frequencies, while KESMA-affiliated Gong Radio gained 3 frequencies in the same period. Only 15.4% of the applications - 12 frequencies - were won by applicants not belonging to any network.²¹⁶

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

²¹³ Contributions of Hungarian NGOs to the European Commission's Rule of Law Report, March 2021 https://mertek.eu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf pp. 34-35.

²¹⁴ 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/>

²¹⁵ Spirit FM was otherwise also excluded from the original tender. In January 2022 Spirit FM was still available on the frequency. Owner of Spirit FM leads an evangelical church that receives massive funding from the government, so he has a vested financial interest in nurturing good ties to the government.

²¹⁶ Mertek Media Monitor, Four Shades of Censorship – State Intervention in the Central Eastern European Media Markets, 2021 https://mertek.eu/wp-content/uploads/2021/10/Mertek-fuzetek_19.pdf

foundation. The Media Council approved all mergers in the 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.²¹⁷

In 2022, the Media Authority's budget is HUF 47.8 billion (ca. EUR 133 million). Parliament approves the Media Council's budget as part of the Media Authority's integrated budget. The Media Council's operating budget in 2022 is HUF 695 million (ca. EUR 1,9 million).²¹⁸ These amounts are theoretically suitable to guarantee high-level professional work, however, in the case of the Media Authority and the Media Council these serve as the price of the loyalty.

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

The President of the Media Authority is in charge of overseeing the irregularities of the media market while simultaneously regulating media services as the President of the Media Council, the Authority's regulatory body.²¹⁹ The President of the Media Authority is nominated²²⁰ by the Prime Minister and appointed by the President of the Republic for 9 years.²²¹ Once appointed, s/he is the only candidate²²² for the presidency of the Media Council. Though Parliament elects the president of the Media Council with a $\frac{2}{3}$ supermajority, **Parliament's role is limited to a mere right to reject the nominee.**²²³ There is some room for more substantive parliamentary control in the election of the 4 other members of the Council (also holding a 9-year-long mandate), as they are nominated by an ad hoc committee consisting of one member of each parliamentary faction.²²⁴

In October 2021, the dual President with less than a year remaining of her mandate suddenly resigned²²⁵ making it possible for the governing parties to appoint another government-chosen President for another 9 years. As the dual President's term would have expired just after the Parliamentary election coming up in 2022, her serving her term could have allowed a newly constituted, potentially more pluralistic Parliament to elect a cross-party nominee.²²⁶ **Opposition MPs** called the move an "antidemocratic and

²¹⁷ MerteK Media Monitor, Media Landscape after a Long Storm - the Hungarian Media Politics Since 2010

<https://mertek.eu/wp-content/uploads/2021/12/MertekFuzetek25.pdf>

²¹⁸ Act CXXVII of 2021 on the Consolidated Budget of the National Media and Infocommunications Authority for 2022

²¹⁹ Self-regulatory bodies also contribute to the work of the Council as co-regulators (their decisions can be overruled by the Council). Their head's/members' mandate is regulated by their own Statute.

²²⁰ The PM nominates after receiving nominee suggestions of the Public Service Body and other organizations of electronic communications, media service providers, program distributors, journalists. These suggestions are not binding, the PM is free to nominate someone else. The nominee must have the right to stand for election in parliamentary elections, clean criminal record, no restrictions on exercising an occupation aligned with the President's activities related to spent or unspent convictions, a higher education degree, and either at least 5 years of work experience in regulatory supervision of the media/press services or electronic communications; or an academic degree in the field of media or electronic communication, or 10 years higher education teaching experience.

²²¹ The procedure is laid out in Act CLXXXV of 2010 on Media Services and Mass Media, Article 111/A.

²²² According to Act CLXXXV of 2010 on Media Services and Mass Media, Article 125 (1).

²²³ In that case, the rejected nominee loses her mandate as the president of the Authority too according to Act CLXXXV of 2010 on Media Services and Mass Media, Article 113 (1) e).

²²⁴ According to Act CLXXXV of 2010 on Media Services and Mass Media, Article 124 (3).

²²⁵ <https://24.hu/kozelet/2021/10/15/karas-monika-nmhh-lemondas/>.

²²⁶ The current governing coalition holds $\frac{2}{3}$ of the votes in Parliament, pre-empting the need for any consensus over the nominee.

concerning step” and **boycotted the nomination of the next president.**²²⁷ On December 3rd,²²⁸ the **President of the Republic appointed the new President of the Authority**, and on December 14th,²²⁹ **Parliament elected him as President of the Media Council** and elected a new member of the Council.²³⁰

The mandates of the Council's members and President may terminate upon expiration, resignation, death, conflict of interest, guardianship, imprisonment, failure to perform duties.²³¹ **There is no legal basis to remove the members or the President of the Council if they abuse their powers.** Options for dismissal are merely formal and technical options, granting immovability **for 9 years.**

The Public Service Public Foundation's²³² Board²³³ consists of elected and delegated members with a **9-year-long term.**²³⁴ The Parliament elects 6 members to the Board (3 nominated by the governing parties and 3 by the parties of the Opposition)²³⁵, while another member and the President is delegated by the Media Council for 9 years²³⁶. Membership ceases with conflict of interest, *dispensation* (in case the person is undergoing conservatorship), *exclusion* (if the person culpably fails to perform the role for more than 6 months, or if convicted and sentenced to imprisonment, or if professionally disqualified regarding the person's role in the Board, or deprivation of civic rights.)²³⁷

²²⁷ <https://media1.hu/2021/10/18/karas-lemondasa-nmhh-mediatanacs-ellenzeki-bojkott-tiltakozas/>.

²²⁸ https://nmhh.hu/cikk/225194/Koltay_Andras_az_NMHH_uj_elnoke.

²²⁹ https://nmhh.hu/cikk/225460/Megvalasztotta_a_parlament_a_Mediatanacs_elnoket_es_uj_tagjat.

²³⁰ It is still concerning that the Media Act does not require the election process of members of the Council (a key regulatory body) to contain mandatory consultation with civil society stakeholders or representatives of the journalist profession. HCLU wrote an open letter to the ad hoc Committee that nominated the new member, emphasizing the need for independence in the appointment procedure. <https://ataszjelenti.444.hu/2021/09/21/ki-vigyaz-a-sajtoszabadsagra>. The open letter: https://tasz.hu/a/img/mediatanacs_nyilt_level.pdf.

²³¹ Act CLXXXV of 2010 on Media Services and Mass Media, Article 129.

²³² This Foundation was created by Parliament and owns public service media services, with a role to “*ensure the independence and public supervision of public service media and national news agency towards supporting free and independent public service media service, freedom of speech and freedom of press, independence of information, the right to information, universal and national culture and diversity of opinions and culture*” (according to its Statute).

<http://www.kszka.hu/dokumentumok/torvenyi-hatter/1491-alapito-okirat>.

Its fundamental role is to enforce the lawful requirements of the Code of Public Service pertinent to public service media services. The Code of Public Service is written by the Council (and is amended by the CEO of public service media with the agreement of the Body and the Board) according to the Act CLXXXV of 2010 on Media Services and Mass Media, Article 95 (2)-(3). The Code lists the requirements that are needed to ensure balanced and pluralistic public information (adopted by the Media Council with the agreement of the Board and the opinion of the CEO of the public service media service provider). <http://www.kszka.hu/attachments/article/2084/kozszolgalati-kodex-20210601.pdf>.

²³³ The Board approves the financial plans of the Foundation and its media services, *protects the media services' independence*, and approves modifications to its Code, removes the CEOs of the service providers who violate the requirements of public service, and is authorized to initiate the Media Council's regulatory procedure.

²³⁴ The Procedure is laid out in Act CLXXXV. of 2010 on Media Services and Mass Media, Article 86.

²³⁵ According to the Act CLXXXV of 2010 on Media Services and Mass Media, Article 86 (2).

²³⁶ According to the Act CLXXXV of 2010 on Media Services and Mass Media, Article 86 (6).

²³⁷ According to the Act CLXXXV of 2010 on Media Services and Mass Media, Article 88(4)-(7).

The Public Service Body's²³⁸ **members** are delegated for a 3-year term by 15 CSOs²³⁹ unrelated to the media. **In May 2021, a new pro-government member of the Board was elected by the Parliament**²⁴⁰ (former campaign-chief and party member of the ruling party, Fidesz).²⁴¹

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

The situation has remained unchanged since the latest CSO contribution to the Rule of Law report was submitted.²⁴² The Hungarian media law created a co-regulation system as an alternative to the Media Council's control (Media Council is the media authority in Hungary). 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 Law 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.

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 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 relevant pages on the websites of three industry organisations are completely blank; these organisations purely uploaded the underlying agreement with the authority. There is **no indication whatsoever that any kind of**

²³⁸ This Body can request (with a 2/3rd majority) the Board to dismiss the CEOs of the service providers who fail to comply with the requirements of public service (e.g. unbiased reporting of public events, independence from political parties and organizations).

²³⁹ According to the Act CLXXXV of 2010 on Media Services and Mass Media, Article 97 (3) and Annex I of the Act. Code of Public Service, organizations who can delegate members to the Public Service Body include churches, some CSOs (e.g. one that represents families), the Olympic Committee, the Chamber of Trade and Industry, academic bodies etc. No professional media or journalist organization is represented.

²⁴⁰ <http://www.kszka.hu/hirek/2115-a-kszka-kuratorium-uj-tagja-tirts-tamas>.

²⁴¹ https://mandiner.hu/cikk/20200409_tirts_tamas.

²⁴² Contributions of Hungarian NGOs to the European Commission's Rule of Law Report, March 2021 https://mertek.eu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf pp 35-36

proceedings have been conducted in recent years. The only exception is the Advertising Self Regulation Board; this organization regularly publishes monitoring documents about certain issues.

B. Transparency of media ownership and safeguards against government or political interference

35. Measures taken to ensure the fair and transparent allocation of state advertising

The issues raised in our 2021 report still prevail.²⁴³ It is well documented that **state advertisers favour individual companies, and they thereby distort competition.** 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: 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.**²⁴⁴

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. During the 2014–2018 term there was a massive surge in the total amount of spending. Several pro-government investors bought up media companies and they were heavily financed by state sources. In 2018 the pro-government media became centralized again with the creation of KESMA (Central European Media and Press Foundation), but state advertising continues to be published in government-friendly media.²⁴⁵ The surge in the advertising volume owes primarily to the Government's 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. 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. At the same time independent media outlets become extremely vulnerable because of the unfair competition.²⁴⁶

A major development in 2021 was the significant spending in social media, especially because of a fund (Megafon) created for pro-government social media influencers. In the last year Megafon spent HUF 503 million (ca. 1,4 million EUR) on Facebook and all sponsored influencers echoed the

²⁴³ Contributions of Hungarian NGOs to the European Commission's Rule of Law Report, March 2021, https://mertek.eu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf pp. 37–38.

²⁴⁴ 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

²⁴⁵ For data visualization about state advertising from 2006, see: <https://mertek.atlatszo.hu/allamihirdetesek/>

²⁴⁶ Mertek Media Monitor and its partners turned to the European Commission with a state aid complaint. See here: <https://mertek.eu/en/2020/09/07/ec-complaints/>

government propaganda. The second biggest political advertiser on Facebook was the Government itself, the third one was the Fidesz, the ruling party.²⁴⁷

State advertising spending lacks transparency. The Hungarian state does not publish a database about its advertising activity. Majority of the social media platforms do not publish data about their advertisers. There are research companies that monitor the advertising market, but 2021 monitoring data were not available in January 2022.

36. Safeguards against state / political interference

Section 7 of the so-called Media Constitution²⁴⁸ protects the independence of journalists in the following way: journalists are entitled to professional independence from the owner of the media content provider and from the person supporting the media content provider or placing a commercial announcement in the media content, as well as to protection against pressure from the owner or the person supporting the media content to influence the media content (editorial and journalistic freedom). A journalist cannot be penalised under employment law or any other legal penalty for refusing to comply with an order that would curtail his editorial and journalistic freedom. **In practice, however, this rule has no practical significance and no journalist has ever taken legal action on this ground.**

As also pointed out by previous EC Rule of Law Reports, there are serious governance and transparency problems around the public service media.²⁴⁹ **The Hungarian public media operate in the framework of a very complex and confusing institutional structure.** The Media Service Support and Asset Management Fund (Fund) 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 (Duna).

According to the media law Duna is the public service media provider and it is more or less appropriately subject to external control mechanisms (Board of Public Service Public Foundation, Public Service Body, Public Service Fiscal Council), but in reality, the oversight is merely a façade since it has no resources. And then there is the Fund, which disposes of taxpayer funds without being subject to any meaningful independent control. The Fund is subject to the review of a single organisation: the Media Council. Budget of Duna for 2022 is ca 1,8 billion HUF (ca 5 million EUR), while the budget of the Fund is 130 billion HUF (ca 361 million EUR).²⁵⁰ It is obviously hacking of the media law.

The extension of the licence is an arbitrary decision of the Media Council. According to the Media Act, a media service provider may not establish a right to renew a media service right, and the Media Council is not obliged to conclude a contract based on an initiative to renew a media service right. Repeated infringements by the media service provider exclude the possibility of renewal, even if the infringements are of a very minor nature, e.g., a minor exceeding of advertising time. In the case of

²⁴⁷ <https://telex.hu/belfold/2022/01/03/elertunk-egy-ujabb-alomhatart-atlepte-az-500-millio-forintot-a-megafon-facebookos-reklamkoltese>

²⁴⁸ Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content
<https://net.jogtar.hu/jogszabaly?docid=a1000104.tv>

²⁴⁹ MerteK Media Monitor and its partners turned to the European Commission with a state aid complaint, see:
<https://merteK.eu/en/2020/09/07/ec-complaints/>

²⁵⁰ Act CXXVII of 2021 on the Consolidated Budget of the National Media and Infocommunications Authority for 2022

Klubrádió, the Media Council did not renew the radio's licence because the radio was late in submitting a data declaration in two cases in one year. Moreover, the same repeated breaches of the law by other radio stations did not lead to a refusal to renew, despite the wording of the law. The practice of the Media Council is arbitrary and non-transparent.

37. Transparency of media ownership and public availability of media ownership information, including on media concentration

Besides KESMA (the Central European Press and Media Foundation) several commercial media companies are owned by pro-government investors, like TV2 commercial television, Radio1 network and Index news portal. The ruling party controls other elements of the media ecosystem, e.g. media agency market, sales houses, printing facilities, distribution systems, and so on.²⁵¹

The transparency of ownership is not a major problem in the Hungarian media landscape. The owners can be checked in the company registry and the offshore background is not typical.

There are **no real ownership constraints in the Hungarian media legislation, it is allowed to build a big media empire.** Article 171 of the Media Act²⁵² provides that the HCA is obliged to obtain the position statement of the Media Council for the approval of concentration of enterprises if enterprises or the affiliates of two groups of companies bearing editorial responsibility and the primary objective of which is to distribute media content to the general public via an electronic communications network or a printed media product. The official position statement of the Media Council shall bind the HCA. The Media Council shall not have the right to reject granting an official licence when the level of merger between independent opinion sources after the merger will ensure the right for diversity of information within the particular market segment for the media content service.

Until now the Media Council issued reasoned opinions in only three of the seven cases, of which it granted regulatory clearance for the merger in one case. The most important feature of the technical content of the opinions is that they are unsubstantiated and inconsistent.²⁵³

As also pointed out by previous EC Rule of Law Reports, there are serious transparency problems around the public service media.²⁵⁴ **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) 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.

²⁵¹ MerteK Media Monitor, Media Landscape after a Long Storm - the Hungarian Media Politics Since 2010
https://mertek.eu/wp-content/uploads/2021/12/MerteK_Fuzetek25.pdf

²⁵² Act CLXXXV. of 2010 on Media Services and Mass Media, Article 171.

²⁵³ MerteK Media Monitor, Media Landscape after a Long Storm - the Hungarian Media Politics Since 2010
https://mertek.eu/wp-content/uploads/2021/12/MerteK_Fuzetek25.pdf

²⁵⁴ MerteK Media Monitor and its partners turned to the European Commission with a state aid complaint, see:
<https://mertek.eu/en/2020/09/07/ec-complaints/>

C. Framework for journalists' protection

38. Rules and practices guaranteeing journalist's independence and safety

The Act on Freedom of the Press²⁵⁵ formally provides for the “right to professional independence” of the persons working for media content providers from the owner or sponsor of the media content provider, and from advertisers. This right has **no enforcement mechanism**. **Nominally independent papers owned by the Central European Press and Media Foundation (KESMA) regularly provide the exact same content at the same time**, typically favourable to the governing parties (Fidesz-KDNP).²⁵⁶ This serves as evidence of either or both **proprietary control over content and a lack of independence from their largest advertiser: the government**. Papers owned by KESMA recently issued textually identical statements emphasizing that each of them operates as an independently edited outlet.²⁵⁷ The leader of KESMA having permanent access to the PM's Office also raises concerns.²⁵⁸

Journalists working for independent media are still subject to negative narratives²⁵⁹ by pro-government media and by government representatives. Minister of Justice Judit Varga publicly threatened to sue for defamation and file criminal complaints against all media outlets which report on an alleged blog leak that concerned her sexual identity in the midst of public debates about the constitutionality of the new statutory provisions against “propagating homosexuality”.²⁶⁰ An appellate court has confirmed the conviction of a female journalist writing for 444.hu, a news portal, for criminal defamation, for failing to prove she was physically coerced out of a Fidesz party event she was reporting on.²⁶¹ The case is under review by the Kúria. Female journalists report to continue to be subject to disparate harassment.²⁶²

Journalists' safety is threatened by the government's use of the Pegasus spyware also targeting journalists. The government acknowledged the acquisition of this software.²⁶³ Evidence has been found

²⁵⁵ Article 7 (1) of Act CIV of 2010 on Freedom of the Press and the Basic Rules of Media Content

²⁵⁶ Already in January 2021, KESMA owned 50% of Hungarian national press outlets: out of 88 national papers, 44 were owned by KESMA.

<https://www.valaszonline.hu/2021/01/04/a-ner-mar-a-sajto-50-szazalekat-kontrollalja-itt-a-nagy-mediaterkep/>.

<https://www.szabadeuropa.hu/a/kesma-mediaworks-fidesz-sajto-megyei-lap/31402428.html>.

See earlier evidence as well: <https://444.hu/2018/04/07/az-osszes-megyei-lap-ugyanazzal-a-kozponti-orban-interjuval-jelent-meg-a-valasztas-elotti-napon>.

²⁵⁷ <https://444.hu/2019/05/25/nezed-es-nem-hiszted-el-kozpontbol-megkuldott-cikkben-kerik-ki-maguknak-a-fideszes-lapok-hogy-kozpontositjak-oket>.

²⁵⁸ <https://24.hu/belfold/2021/12/12/karmelita-orban-viktor-szantho-miklos-kesma-nezopont/>. He also calls Telex “fake news media”: <https://telex.hu/video/2021/12/12/karmelita-orban-viktor-emberei-magyarazo>.

²⁵⁹ Telex (an independent news medium that launched in 2020 by a large group of journalists who left Index.hu when the government took over it, endangering the independence of the medium) is regularly called along with other non-pro-government media outlets “fake news media” by the Prime Minister or “fake news factory” (Index was also called that before it was taken over by a government-friendly editorial staff in 2020.)

²⁶⁰ <https://telex.hu/belfold/2021/12/28/varga-judit-feljelentes-ordog-ugyvedje>.

²⁶¹ Metropolitan Regional Court, 21.Bf.5290/2021/9., on 6 May 2021.

²⁶² <https://marieclaire.hu/riporter/2021/02/11/noi-ujsagirok-szexista-zaklatas/>

²⁶³ See, in particular: https://nepszava.hu/3136996_kosa-lajos-elismerte-hogy-a-kormany-hasznalja-a-pegasust, <https://444.hu/2021/11/11/gulyas-elismerte-a-pegasus-botranyrol-a-megjelent-ugyek-kozott-van-olyan-aminek-van-valosagalapja>.

for the government surveillance of at least 4 journalists:²⁶⁴ including a reporter specialized in crime stories,²⁶⁵ a photojournalist who has worked on covering the luxurious holidays of government-friendly oligarchs and political actors,²⁶⁶ and persons working for the news site *Átlátszó.hu*, which focuses on high profile corruption cases.²⁶⁷ Further, Zoltán Varga, CEO of Central Media Group (one of the most significant independent media holdings still standing in Hungary, which owns the news portal 24.hu) was also among those surveilled.²⁶⁸ No apologies have been issued for targeting journalists with Pegasus. At the same time, the state secretary overseeing secret surveillance within the Ministry of Justice, Pál Völner, became a suspect in a high-profile corruption case, further eroding trust in the lawfulness of this oversight; the investigation of the Chief Prosecutor is ongoing, his parliamentary immunity has been suspended.²⁶⁹ The Minister has not publicly commented on her state secretary's suspected criminal involvement.

39. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

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.²⁷⁰

Until 23 May 2021, the **government banned all kinds of assemblies referring to Covid19.**²⁷¹ Thus, only demonstrations of a negligible number and size were held and reported on, and hence law enforcement had no role in ensuring the safety of journalists during protests and marches. While the general ban on assembly was replaced with a qualified one, and then it was lifted later during the year, no situation arose that would have tested the ability or willingness of law enforcement to ensure journalists' safety.

In July 2021 a **possible state-approved surveillance came to light that affected numerous journalists** who might have been targeted by the government, by an **abuse of the spyware Pegasus** (sold to states only).²⁷² There have been **no steps taken by the government** since July 2021 to offer protection to the affected journalists.

Hungary is still not in compliance with the ECHR regarding regulations on authorizing state surveillance. In particular, the government failed to make any efforts²⁷³ to implement the 2016

²⁶⁴ <https://www.szabadeuropa.hu/a/pegasus-csikasz-brigitta-ujsgiro-lehallgatas-fidesz/31389771.html>.

²⁶⁵ https://hvg.hu/itthon/20210802_Pegasusugy_kemsofter_Blikk_ujsgiro.

²⁶⁶ <https://telex.hu/direkt36/2021/09/21/pegazus-megfigyeles-nemeth-daniel-fotos-ujsgiro-ner-elit>.

²⁶⁷ <https://atlatszo.hu/kozugy/2021/09/25/amikor-ez-a-kep-keszult-eppen-pegasus-kemprogrammal-figyeltek-minket/>.

²⁶⁸ <https://www.szabadeuropa.hu/a/pegasus-csikasz-brigitta-ujsgiro-lehallgatas-fidesz/31389771.html>.

²⁶⁹ <https://24.hu/belfold/2021/12/15/volner-pal-fidesz-gyanusított-kihallgatas-ugyesszeg-vesztegetes-kenopenz-vegrehajtok/>, <https://magyararancs.hu/belpol/varga-judit-szerint-nem-is-o-hanem-a-helyettese-ad-engedelyt-a-megfigyelesekre-240314>, <https://jelen.media/hirsarok/korrupcioval-vadolja-az-ugyesszeg-a-titkos-megfigyelesek-engedelyezo-allamtitkart-2617>, <https://24.hu/belfold/2021/12/14/volner-pal-mentelmi-jog-felfuggesztes/>.

²⁷⁰ https://www.amnesty.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf,

https://mertek.eu/wp-content/uploads/2020/05/HUN_NGO_contribution_EC_RoL_Report_2020.pdf.

²⁷¹ Until 14 June 2021, maximum 500 persons could gather in a single assembly. On 14 June, this restriction was lifted.

²⁷² <https://www.direkt36.hu/leplezodott-egy-durva-izraeli-kemfegyver-az-orban-kormany-kritikusait-es-magyar-ujsgirokat-is-celba-vettek-vele/>.

²⁷³ https://helsinki.hu/wp-content/uploads/2021/12/MHB_birosagi_dontesek_vegrehajtasa_2021.pdf, p. 48.

ECtHR judgement Szabó and Vissy vs. Hungary²⁷⁴ that stated: Hungary has no effective control over the government-authorized surveillance, and the excessively broad range of potential victims of surveillance may give rise to mass-surveillance²⁷⁵ – a concern of the ECtHR that came to realization in 2021. Although the decision specifically warned against the potential threat the legislation may impose on journalists,²⁷⁶ the **government’s failure to set up an effective control mechanism to prevent the abuse of surveillance resulted in a surveillance action of an unprecedented extent targeting journalists**. Since the public learned about this surveillance action (July 2021), the Minister of Justice has been reluctant to publicly account for her role as the official authorizer for non-judicial surveillance. When a journalist addressed the Minister of Interior in his role as head of the National Security Committee in charge of examining abuses of surveillance, **the Minister threatened the journalist with a criminal charge**.²⁷⁷

Threats to journalists still prevail all over the political spectrum.²⁷⁸ **Political pressure led to a chief editor leaving Index.hu** in November 2021, on his account.²⁷⁹ The alleged pressure included clear expectations to create a smear campaign against the mayor of Budapest, a former leader of the United Opposition.²⁸⁰ An opposition politician wished to **ban all journalists from their profession** who have been part of spreading the rhetoric of the government, an idea that **multiple journalist organizations strongly opposed**.²⁸¹ The **Constitution Protection Office** (intelligence services) **pressured and threatened** journalist Dezső András to expose his American sources in 2015,²⁸² which he revealed in an interview in October 2021.

40. Access to information and public documents

Access to information regarding the pandemic is still heavily restricted for journalists.²⁸³ **Access to public health-related data was a major challenge throughout 2021**. At the end of March 2021, at the peak of **the third wave of Covid-19 in Hungary, all media were banned from hospitals**. 28 online

²⁷⁴ Application no. [37138/14](#), judgement of 12 January 2016.

²⁷⁵ “It is of serious concern, however, that the notion of ‘persons concerned identified ... as a range of persons’ might include indeed any person and be interpreted as paving the way for the unlimited surveillance of a large number of citizens. The Court notes the absence of any clarification in domestic legislation as to how this notion is to be applied in practice” *Szabó and Vissy*, Para. 67.

²⁷⁶ “(...) in certain respects and for certain circumstances, the Court has found already that ex ante (quasi-)judicial authorisation is necessary, for example in regard to secret surveillance measures targeting the media. In that connection the Court held that a post factum review cannot restore the confidentiality of journalistic sources once it is destroyed (...) For the Court, supervision by a politically responsible member of the executive, such as the Minister of Justice, does not provide the necessary guarantees.” *Szabó and Vissy*, Para. 77.

²⁷⁷ <https://24.hu/belfold/2021/07/28/pinter-sandor-ujsgiro-pegasus-fenyegetes/>.

²⁷⁸ <https://media1.hu/2021/10/07/halalosan-megfenyegettek-a-nyugat-hu-ujsgiroit-es-csaladtagjait/>, <https://www.origo.hu/itthon/20210506-brfk-nyomoz-fussy-angela-ugyeben.html>, <https://168.hu/itthon/halalos-fenyegetes-apat-bence-hir-tv-feljelentes-kalman-olga-kivancsisag-209007>.

²⁷⁹ Index.hu is an online medium that has been taken over by pro-government leadership in 2020. The majority of the editors and journalists left Index.hu in 2020 and founded Telex.hu by community financing.

<https://www.portfolio.hu/gazdasag/20200904/telex-neven-inditanak-uj-lapot-a-tavoazo-indexesek-447394>.

²⁸⁰ <https://444.hu/2022/01/03/politikai-nyomasgyakorlas-miatt-tavozott-az-index-belpolitikai-rovatvezetoje>.

²⁸¹ <https://magyarnemzet.hu/belfold/2021/03/felszamolna-a-sajtoszabadsagot-fekete-gyor-andras>.

²⁸² <https://www.szeretlekmagyarorszag.hu/hirek/dezso-andras-elarulta-o-volt-az-az-ujsgiro-akit-megprobalt-beszervezni-a-titkosszolgalat/>.

²⁸³ In a recent survey, most journalists name the greatest challenge “the access to information” as public authorities continue to reject journalists’ requests of public data.

<https://mertek.atlatszo.hu/a-fekete-auto-nem-jon-de-lehet-mashogy-is-presszionalni-az-ujsgirok-helyzete-magyarorszagon/>.

newspapers wrote an **open letter to the Prime Minister** demanding the right to inform²⁸⁴ which the government refused.²⁸⁵ **The government's Vaccination Plan²⁸⁶ was unavailable for public debate throughout the unrolling of the first two doses, and even beyond. HCLU had to launch 6 lawsuits against the government²⁸⁷ in April to get hold of the Vaccination Plan.²⁸⁸ The National Public Health Center continues to withhold the most important day-to-day statistics of the pandemic data in violation of a court order.²⁸⁹**

A **45-day extended deadline** for answering FOI-requests,²⁹⁰ is still applicable for the disclosure of public data if the FOI request endangers the authority's ability to perform its duties related to the state of danger.²⁹¹ **An MP turned to the Hungarian Constitutional Court (HCC) arguing the extended deadline infringes her right to freedom of information.** The HCC refused the constitutional complaint, yet articulated a **'constitutional requirement'**²⁹² in May 2021 regarding the 45(x2)-days extension: viz., that **authorities can only use this timeframe if they define in their reply the specific reasons why addressing the FOI request would endanger their duties.**

In July 2021 investigative journalists shed light on the **possible state-approved surveillance of members of the opposition, journalists** and others who could have been targeted by the government, **abusing the spyware Pegasus.**²⁹³ The government only admitted in November 2021 that some public allegations are not unfounded.²⁹⁴ **The Minister of Justice** responsible for the authorization of secret surveillance is **reluctant to provide answers.**²⁹⁵

It has been 2 years since **Parliament has omitted to comply with its duty specified in a HCC's decision** from 2020 that set a due date of December 31, 2020, to amend the Act regulating FOI

²⁸⁴ "Freedom of information can save lives!" <https://telex.hu/koronavirus/2021/03/31/nyilt-level-szerkesztosegek-szabad-tajekoztatas-eleteket-menthet-covid>.

²⁸⁵ The government's response was that "hospitals are places for healing not for filming", and "leftist portals" are spreading fake news "discrediting Hungarian healthcare".
<https://24.hu/belfold/2021/03/31/kovacs-zoltan-fuggetlen-sajto-tajekoztatas/>.

²⁸⁶ The Vaccination Plan contains the exact prioritization, scheduling and logistical planning of COVID-19 vaccination.

²⁸⁷ <https://ataszjelenti.444.hu/2021/12/02/a-vegsokig-ement-a-kormany-hogy-eltitkolja-az-oltasi-tervet>.

²⁸⁸ The HCLU only managed to pressure the government to disclose the Vaccination Plan by the end of 2021. By that time, it became irrelevant for public debate about it (at the time of the third round of vaccinations). <https://ataszjelenti.444.hu/2021/11/11/megszereztuk-az-oltasi-tervet-amit-majd-egy-eve-probal-titkolni-a-kormany>.

²⁸⁹ <https://ataszjelenti.444.hu/2021/12/17/jo-sok-kozpenzt-kolt-az-nnk-az-ingyen-rendelkezesre-allo-jarvanyadatok-eltitkolasara>.

²⁹⁰ When the state of danger is not in force, FOI requests have to be answered in 15 days (with another 15 days extension if needed). However, an extended, 45-day window to reply to FOI requests was introduced for the period of the state of danger in 2020 instead of the 15-day deadline. Further, the deadline to answer can be extended for another 45 days. Thus, requesters may need to wait for as long as 90 days to have access to what were current data related to the course and management of the pandemic at the time of the request.

²⁹¹ In an internal leaked accidentally, the Chief Medical Officer asked colleagues if "they had anything better" to supply as a reason for extending the deadline for answering the request than the official text of "endangering the discharge of public duty pertaining to the state of danger" <https://hang.hu/belfold/hadhazy-muller-cecilia-leleplezte-hogy-a-kormany-visszael-a-rendkivuli-jogrenddel-122983>.

²⁹² Decision no. 15/2021. (V.13.)

²⁹³ <https://www.direkt36.hu/leleplezodott-egy-durva-izraeli-kemfegyver-az-orban-kormany-kritikusait-es-magyar-ujsgirokat-is-celba-vettek-vele/>.

²⁹⁴ <https://444.hu/2021/11/11/gulyas-elismerte-a-pegasus-botranyrol-a-megjelent-ugyek-kozott-van-olyan-aminek-van-valosagalapja>.

²⁹⁵ HCLU sued the Ministry of Justice in October for withholding public data related to the authorization.
<https://www.facebook.com/atasz/posts/10165502705705234>.

procedures²⁹⁶ since it does **not guarantee judicial remedy** in the case where public information is not held by a public authority.²⁹⁷

Transparency of public funds is still highly inadequate. Courts' interpretations vary as to whether or not they order the disclosure of data related to funds that have a public source but are not directly managed by the state.²⁹⁸ **Obstruction of the disclosure of data concerning public funds by data holders resisting the order of the court is another obstacle to which there is no effective judicial remedy.**²⁹⁹

Journalists are still physically obstructed from questioning members of the Government.³⁰⁰ **Freedom to report is a right not granted to all journalists as the government continues to ban access to its press conferences** from online newspaper *Magyar Hang*.³⁰¹ Annual data show a clear pattern of favoring pro-government media's questions at regularly held "Government Info"³⁰² press conferences.³⁰³

41. Lawsuits and convictions against journalists and measures taken to safeguard against abusive lawsuits

Courts continue to issue injunctions banning the dissemination of, and even research into, data related to the business activities of high-profile public figures. A ban on the liberal weekly *Magyar Narancs* reported in the 2020 RoL report is still in effect and has been upheld by the appellate court as well as the Kúria.³⁰⁴ Injunctions upheld by the Kúria in 2020 against *Forbes Hungary* are still in effect, related civil litigation in which a judgment could replace interim measures is still pending before first-instance courts. Some of these injunctions have been in force for more than 2 years.

By 2021, a new pattern of SLAPP lawsuits and other legal actions has emerged which specifically weaponize the GDPR. These actions abuse the fact that in Hungary, no statutory journalism exemption

²⁹⁶ It is on the list of "the legislative tasks of the Parliament arising from the decisions of the Constitutional Court":

<https://www.parlament.hu/az-orszaggyules-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>.

²⁹⁷ The Constitutional Court declared in its ruling no. 7/2020. (V. 13.) that the right to freedom of information extends to all public data and judicial remedies must exist to fulfil this fundamental right vis-a-vis all persons handling public data.

²⁹⁸ Parliament amended the Constitution to narrow the definition of 'public funds' to that directly managed by the state in 2020, it awoke an ambivalent interpretation. <https://ataszjelenti.444.hu/2021/08/17/ha-a-birosagon-mulik-nem-tunik-el-a-szemunk-elol-a-meszaros-cegehez-kerulo-kozpenz>.

²⁹⁹ The National Infrastructure Developing Private Company Limited **has been withholding data about public funds from an investigative journalist for 4 years now**, despite a court's order, acting as if it is not in possession of the requested documents.

³⁰⁰By cordoning the journalists from the Carmelite monastery where the Government sits (the only place where journalists could still question some ministers since entry to the corridors of the Parliament have effectively been banned from them previously) now the last area is also out of reach due to reconstruction works. <https://telex.hu/belfold/2021/11/30/a-parlament-folyosoi-utan-a-karmelita-elotti-utcaban-sem-lehet-vezeto-kormanyzati-politikusokat-kerdezni>, <https://telex.hu/video/2021/12/01/karmelita-lezaras-orban-viktor-hivatal-sajto>. The reconstruction works even after one month do not seem to impede government members entering and using the restricted area, but only journalists approaching them. <https://telex.hu/belfold/2022/01/18/karmelita-lezaras-epitkezés>.

³⁰¹*Magyar Hang* is a media outlet created after its predecessor, *Magyar Nemzet*, was taken over by pro-government ownership. Accidentally, the PM's Office almost granted access to the regularly held press conference "Government Info" in December 2021 to *Magyar Hang*, but shortly after withdrew the permission to participate, referring to Covid-19 measures (which did not raise any challenges for other participants' presence at the press conference).

<https://hang.hu/publicisztika/hibazott-a-kabinetiroda-majdnem-beengedtek-lapunkat-a-sajtotajekoztatora-134818>.

³⁰² "Government Info" ["Kormányinfó"] is a periodically held press conference of the Government.

³⁰³ <https://telex.hu/belfold/2022/01/13/kormanyinfo-media-sorrend-mediapreferencia-kormany>.

³⁰⁴ Metropolitan Regional Court, 2.Pkf.25.949/2020/2.; Kúria, Pfv.IV.20.336/2021/4., on 2 June 2021.

has been enacted (as per Art. 85 of the GDPR), and attempt to obstruct journalistic activities, from research to publication, on subjects concerning the extent and origins of the wealth of public figure business persons who often acquired wealth through business projects which received ample state funding or which have or are likely to have a lasting impact on the natural and built environment in Hungary or have otherwise significant political relations and a national economic significance. A first-instance court found that the estimation of a public figure's wealth in a list of the wealthiest Hungarians in *Forbes* violated his rights, despite that it was based on public data and a consistent methodology.³⁰⁵ The plaintiff's main complaint was that in his view, *Forbes'* methodology underestimated his wealth, and hence violated the accuracy requirement of GDPR.

Hungary's DPA has consistently ruled against the press when it dealt with GDPR-based complaints of said public figures. It did not find any violations only in one case (*Magyar Narancs*),³⁰⁶ but even in that case, it attempted to withdraw its finding that the weekly did not violate GDPR requirements. An administrative court found the DPA proceeded unlawfully when it withdrew the no-violation decision and failed to consider its significance for the newspaper in validating its data protection practice.³⁰⁷

While GDPR-based cases against media outlets represent an emerging new trend, defamation (incl. criminal defamation) continues to be used in high politics to threaten journalists. An appellate court has confirmed the conviction of a female journalist writing for 444.hu, a news portal, for criminal defamation, for failing to prove she was physically coerced out of a Fidesz party event she was reporting on.³⁰⁸ The case is under review by the Kúria. Another journalist has lost a civil defamation lawsuit before the Kúria, for violating the dignity of "the Hungarian nation", as an opinion piece written by the defendant referred to Hungarians as 'stinky migrants' – a phrase obviously meant to provoke rightist anti-migration discourse in a tongue-in-cheek language.³⁰⁹

Other

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.³¹⁰ 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.

Political Capital and its regional partners evaluated COVID-related disinformation in the Visegrád Group.³¹¹ The most frequent messages were those 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. This held true in 2021, too.

³⁰⁵ Metropolitan Regional Court, 65.P.20.336/2021/31, on 21 October 2021.

³⁰⁶ NAIH 438-2/2021., on 23 March 2021.

³⁰⁷ Metropolitan Regional Court, 104.K.703.533/2021/9., on 8 December 2021.

³⁰⁸ Metropolitan Regional Court, 21.Bf.5290/2021/9., on 6 May 2021.

³⁰⁹ <https://www.kuria-birosag.hu/hu/sajto/tajekoztato-kozosseghhez-tartozassal-osszefuggo-szemelyisegi-jog-megsertese-targyaban-indult>.

³¹⁰ Vulnerability Index, 2021, <http://www.vulnerabilityindex.org/hungary.html>

³¹¹ *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

Besides mainstream political actors, anti-vax groups have also become extremely active in social media, 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. Using qualitative and quantitative approaches of narrative and statistical network analysis, Political Capital revealed how the Hungarian far-right and pro-Kremlin subculture contributed to the radicalization of the anti-vax discourse and audience, which became both the recipient and producer of anti-West, more specifically anti-US narratives and conspiracy theories related to the COVID-19 pandemic.³¹²

Russian state propaganda does not only permeate the Hungarian public sphere, but Hungary is often used as Moscow's tool in Russian media. The Hungarian government's conflicts with the European Union have also generated extensive coverage in the Russian media, which seeks to support the Kremlin's narrative of a divided and incapacitated Europe. In this context, Hungary often appears as an instrument of Moscow. An article in Sputnik is telling in this respect: 'Russia is preparing to use Hungary as an anti-sanctions battering ram.' In the examined Kremlin-backed media outlets, Hungary is presented as the defender of a "traditions-based" Europe. Russian media regularly present Western criticism of the Hungarian government's actions, and then defend the Hungarian government's position in support of the traditional family model. In these materials, Hungary is praised as a follower of the Russian example. It is important to note that the current Hungarian parliament has on several occasions passed legislation similar to Russian laws restricting fundamental rights: the 2017 anti-NGO-law was identical to its Russian counterpart in several points, and the "Child Protection Law" attacking LGBTQ people is stricter than its Russian predecessor.³¹³

³¹² COVID-9.11: The transformation and anti-West radicalization of the Hungarian antivax movement, 9 November 2021, https://www.politicalcapital.hu/library.php?article_read=1&article_id=2891

³¹³ This is how the Russian press sees Hungary and the Hungarian government, 10 January 2022, https://www.politicalcapital.hu/library.php?article_read=1&article_id=2932



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IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

42. Framework, policy and use of impact assessments, stakeholders'/public consultations and transparency and quality of the legislative process

The lack of public consultations continued to remain an issue in 2021. **Public consultation is obligatory for laws prepared by Ministers** and shall involve publishing the draft laws online for the public to comment on them.³¹⁴ However, the **Government has been systematically failing to comply** with this obligation: according to its website, only three draft laws were published for commenting in 2021³¹⁵ of the 145 prepared by Ministers last year. However, even from these three, only one can be deemed as having been genuinely open for consultation;³¹⁶ the other two drafts were published 3 weeks after the bills had already been submitted to the Parliament. Moreover, no amendments could have been submitted by the time the texts were published for “consultation”.³¹⁷

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**. An illuminating case is the fate of the Russian-style stigmatising 2017 Lex NGO. As the CJEU’s judgment of June 2020 had not been implemented, the Commission sent a letter of formal notice under Article 260(2) TFEU to Hungary in February 2021. The next day, the Minister of Justice claimed that the government has “sent the legislative text on the regulation’s recast to the Commission, indicating that as soon as they inform us about the text’s admissibility, the government will submit it to the Parliament immediately.”³¹⁸ **The HHC’s Fol request regarding the legislation was rejected by the**

³¹⁴ Act CXXXI of 2010 on Public Participation in Preparing Laws, Articles 1 and 8(1)–(2).

³¹⁵ See: the relevant section of the official government website here:

https://kormany.hu/dokumentumtar?categories=2&publishDateGt=2021-1-1&publishDateLt=2021-12-31&limit_rows_on_page=8&limit_page=0.

³¹⁶ On cross-border conversions, mergers and divisions, submitted in order to bring domestic legislation in compliance with Directive EU 2019/2021.

³¹⁷ See the deadlines for the bills: https://www.parlament.hu/web/guest/iromanyok-lekerdezese?p_p_id=hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=uBsi1vKj& hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pair>Action=%2Finternet%2Fcpls%2Fogy_irom.irom_adat%3Fp_ckl%3D41%26p_izon%3D17432 and https://www.parlament.hu/web/guest/iromanyok-lekerdezese?p_p_id=hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=uBsi1vKj& hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pair>Action=%2Finternet%2Fcpls%2Fogy_irom.irom_adat%3Fp_ckl%3D41%26p_izon%3D17433

³¹⁸ See the post in English:

https://www.facebook.com/permalink.php?story_fbid=4136935899658668&id=2024678420884437

Ministry.³¹⁹ In April 2021, a bill was submitted to Parliament without any consultation that repealed the Lex NGO, but introduced a new controlling mechanism by the State Audit Office.³²⁰

The governing majority also continued **circumventing the rule** for mandatory public consultation by submitting bills through MPs or parliamentary committees. For example, the infamous **homophobic amendment was tabled by the Committee on Legislation 5 days prior to the final vote on the child protection bill without prior notice or consultation.**³²¹

The Human Rights Roundtable, often referred to by the Government as the forum for dialogue with NGOs,³²² was left in 2014 by many NGOs in protest to stigmatisation,³²³ and does not ensure that human rights concerns are considered. As not even the LGBT thematic working group was informed of, or convened after, the above-mentioned homophobic amendment was tabled, the **Roundtable has clearly become an empty shell.**

The government opened the RRP for consultation on 16 April 2021 for 14 days. On 25 April the Minister heading the PM's Office announced that the plan under consultation will never be sent to the Commission.³²⁴ On 17 May, two minutes before Parliament was set to begin debating on the RRP-related amendment of the annual budget, a completely new RRP was published.³²⁵ **Thus no public consultation was held on the RRP Hungary submitted to the Commission and is pending approval at the time of this submission.**

44. Regime for constitutional review of laws

1. All concerns raised in the 2020 and 2021 CSO contributions remain relevant. These include: (i) a strong **political influence of the governing majority over the Hungarian Constitutional Court (HCC)** through the election of one-party nominees as HCC justices with a $\frac{2}{3}$ majority of Fidesz-KDNP in Parliament. As a result of the court-packing process, twelve justices out of fifteen HCC justices were elected without any opposition support. (ii) The possibility to initiate an **“actio popularis” has been abolished** since 2011. (iii) The **HCC has wide powers to review final and binding decisions of ordinary courts**, even based on complaints lodged by state authorities. (iv) Constitutional oversight over the executive has not been strengthened during the state of danger, despite the fact that the government gained extraordinary power to rule by decree³²⁶ and the state of danger is continuously upheld since 3 November 2020³²⁷ and has most recently been extended until 1 June 2022.

³¹⁹ See the FOI request and the response: https://kimittud.atlatszo.hu/request/normaszoveg_az_eub_a_c_7818_sz_u

³²⁰ See the statement of Civilizáció: <https://helsinki.hu/en/repealing-the-lex-ngo-important-step-but-more-is-needed/>

³²¹ See the bill's file: https://www.parlament.hu/web/guest/iromanyok-egyszerusített-lekerdezes?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=uBsi1vKj&_hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pair_Action=%2Finternet%2Fcplsq%2Fogy_irom.irom_adat%3Fp_ckl%3D41%26p_izon%3D16365

³²² Cf. for example: *European Rule of Law Mechanism: input from Hungary*, p. 30.

³²³ 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>.

³²⁴ See: <https://koronavirus.gov.hu/cikkek/gulyas-magyarorszag-az-egeszsegugyre-kolti-legtobbet-helyreallitasi-alapbol>

³²⁵ See in detail the „consultation” process: https://helsinki.hu/en/wp-content/uploads/sites/2/2021/05/RRFassessment_May2021.pdf

³²⁶ See: Overview of Hungary's Emergency Regimes Introduced due to the COVID-19 Pandemic https://helsinki.hu/en/wp-content/uploads/sites/2/2021/09/HHC_Hungary_emergency_measures_overview_27092021.pdf

³²⁷ See 478/2020. (XI. 3.)

2. During the state of danger various emergency measures were taken to the HCC, but the HCC has found several complaints inadmissible or terminated the procedure on the ground that the challenged laws were no longer in force.³²⁸ However, in contradiction with its own former decisions, the HCC decided on the merits of the complaint lodged against the blanket ban on assemblies³²⁹ even though the decision was taken after the blanket ban was lifted. In its decision, **the HCC found that the total ban on the right to peaceful assembly introduced by the government and sustained for over a half year shall be deemed as a proportionate restriction.** Going further, the decision of the HCC practically authorised the government to introduce bans in the future prescribing as constitutional requirement the sole criteria that the government shall periodically review whether the ban is still necessary.³³⁰ The HCC also **declared that extending the 15-day deadline for fulfilling freedom of information requests to 45 and, in some cases 90 days during the state of danger shall be deemed as constitutional** as long as the data manager indicates the reasons that predict a likelihood that the fulfilment of the freedom of information request within the 15-days deadline may endanger the performance of their public service tasks in the state of danger.³³¹

3. Beyond the scope of the state of danger, in 2021 the HCC continued to rule in favour of the government in politically sensitive cases, for instance, in its decision on the execution of the CJEU judgment on push-backs, where the HCC avoided to overrule the CJEU judgment, but established that where an obligation stemming from EU law cannot be effectively implemented, Hungary shall have the sovereign right to pass laws for the protection of fundamental rights, until the conditions to effectively execute EU law are guaranteed.³³²

B. Independent authorities

46. Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsperson institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

In 2019, the GANHRI Sub-Committee on Accreditation (SCA) deferred the review of the NHRI, the Commissioner for Fundamental Rights (CFR) to provide the CFR to refute the doubts that it does *“not demonstrate adequate efforts in addressing all human rights issues”*.³³³ However, the CFR failed to do so. Therefore, confirming the concerns of Hungarian CSOs, in June 2021, the SCA concluded that **“the CFR has not effectively engaged on [...] all human rights issues, including in relation to vulnerable**

³²⁸ This happened, for instance, in relation to the new labour law legislation [Decision no. 3326/2020. (VIII. 5.) AB], the rules on designating special economic zones [Decision no. 3388/2020. (X. 22.) AB] and to the extended 45-day deadline for fulfilling freedom of information requests. [Decision no. 3413/2020. (XI. 26.) AB]

³²⁹ See more on the blanket ban: https://helsinki.hu/wp-content/uploads/2022/01/OHCHR_SR_report_on_Hungary_HCLU_HHC_20210731.pdf

³³⁰ See an analysis of the decision in Hungarian at: <https://helsinkifigyelo.444.hu/2021/07/21/az-alkotmanybirosagkrokodiltetele-a-kormany-azt-tesz-gyulekezesi-jogunkkal-ami-akar>

³³¹ Decision no. 15/2021. (V.13.) AB

³³² For a detailed discussion of the judgement see: Zsolt Szekeres, Don't be fooled: Hungarian court ruling didn't allow pushbacks, <https://www.euronews.com/2021/12/16/don-t-be-fooled-hungarian-court-ruling-didn-t-allow-pushbacks-view>.

³³³ 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.

groups such as ethnic minorities, LGBTI, refugees and migrants as well as constitutional court cases deemed political and institutional, media pluralism, civic space and judicial independence. The [...] CFR has not spoken out in a manner that promotes protection of all human rights. The failure to do so demonstrates a lack of sufficient independence. Therefore, [...] the CFR is operating in a way that has **seriously compromised its compliance with the Paris Principles**.³³⁴ For these reasons, the SCA recommended that the CFR be downgraded to B status.

This makes the **merging of Hungary's equality body, the Equal Treatment Authority (ETA) into the CFR' Office** all the more problematic.³³⁵ In its October 2021 opinion, the Venice Commission (VC) criticised that the law on the merger was “*adopted during the state of emergency, in a rushed manner, apparently without consultation with civil society and other stakeholders*”.³³⁶ It noted with regret “*that no Director General for Equality Treatment [within the CFR's Office] has been appointed to-date, 9 months after the merger*” and that the CFR could not confirm either the date for filling this vacancy or elaborate on the selection criteria, although without a Director General for Equality Treatment, “it is hard to imagine the promotion and visibility of equality mandate as required by ECRI General Policy Recommendation No 2.”³³⁷ The VC expressed concerns that the Equal Treatment Directorate (ETD) “*is currently understaffed, which affects the overall quality of its performance*.”³³⁸

The CFR did not provide the VC with accurate information on the ETD's budget. Therefore, it could only remain “*hopeful that ETD is under no risk of under financing*”.³³⁹ Finally, the VC concluded that as a result of the merger, “*the new system of protection against discrimination is overall more complicated and thus has the potential to be less effective than the previous one*”³⁴⁰ and that this is a risk “*that may undermine the effectiveness of the work in the field of promoting equality and combating discrimination*”.³⁴¹ This conclusion is supported by a **drastic drop in the number of discrimination complaints after the merger**. According to Hättér Society's briefing note prepared for the VC, in 2019, the ETA received 868 cases throughout the year, whereas “in the first 6 months of 2021, ETD received only 156 complaints, proportionate to the time only one third of the 2019 number of complaints”.³⁴²

³³⁴ Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021, <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>, pp. 12-15.

³³⁵ For more details 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, p. 52.

³³⁶ See: Venice Commission, Opinion on the Amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as Adopted by the Hungarian Parliament in December 2020, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)034-e), para 13.

³³⁷ Ibid. p. 11. Further information on staffing issues and other problems around the merger can be found here: Hättér Society, Information on the Abolishment of the Equal Treatment Authority in Hungary: a Briefing Written for the Experts of the Venice Commission on 15 September 2021, <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-eta.pdf>.

³³⁸ See: Venice Commission, Opinion on the Amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as Adopted by the Hungarian Parliament in December 2020, CDL-AD(2021)034-e, p. 11.

³³⁹ Ibid. p. 12.

³⁴⁰ Ibid. p. 10.

³⁴¹ Ibid. p. 11.

³⁴² Hättér Society interviewed former staff members of the ETA, who also worked for the CFR's ETD after the merger for at least some time. One of them recalled that she used to have 15-20 cases parallelly being investigated, while she only had 2-3 when she left the CFR's Office. Interviewees listed the following reasons for such a drastic drop in the number of complaints: the termination of the equal treatment referees' network; lack of active communication; unclear information on

C. Accessibility and judicial review of administrative decisions

50. Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

The trends described in the previous CSO contributions to the Rule of Law continued in 2021.³⁴³

1. There are still instances of **state bodies refusing to execute court decisions**, several of these concern **data of public interest**. E.g., in August 2021, the Ministry of Finance was fined for the non-implementation of an October 2019 judgment obliging the Ministry to disclose documents regarding the Paks nuclear plant loan agreement.³⁴⁴ According to HHC's recent study on the non-implementation of judgments by Hungarian State bodies,³⁴⁵ one of the systemic problems contributing to this phenomenon is the **lack of effective and genuinely coercive enforcement tools**.³⁴⁶

The number of non-implemented judgments in which the Constitutional Court declared that a legislative omission resulted in the violation of the Fundamental Law, but the Parliament has failed to remedy the situation to date, has grown from 11 to 13 since the previous CSO report. The court-set deadline for implementing these decisions has expired in 10 out of the 13 cases, the oldest one in 2013.³⁴⁷

2. Although there has been improvement compared to previous years, **Hungary's record of implementing ECtHR judgments remains poor**. 48 leading cases, that is, 72% of the leading cases from the last 10 years are still pending execution.³⁴⁸

The staff working on implementation in the Ministry of Justice is insufficient. There is no separate national structure with the explicit aim to bring together various actors to coordinate implementation, and meaningful parliamentary oversight is also lacking.³⁴⁹

3. Problems related to the **execution of the judgments of the CJEU** have also persisted:

a) The system Hungary introduced as a reaction to the CJEU judgment in May 2020 that condemned the **unlawful detention of asylum-seekers in border transit zones**, practically removed the country from

the webpage. "Interviewees also mentioned the COVID situation but emphasized that the number of cases decreased even compared to last year, where the COVID situation was already bad." For more details, see: Háttér Society, Information on the Abolishment of the Equal Treatment Authority in Hungary: a Briefing Written for the Experts of the Venice Commission on 15 September 2021, <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-eta.pdf>, p. 6.

³⁴³ For a full analysis of the issues see: Hungarian Helsinki Committee: Non-Execution of Domestic and International Court Judgments in Hungary, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf

³⁴⁴ See e.g.: <https://444.hu/2021/08/24/penzbirsagot-kapott-a-penzugyminiszterium-mert-nem-adjak-ki-a-paksi-hitelszerzodes-modositasarol-szolo-dokumentumokat>.

³⁴⁵ Hungarian Helsinki Committee: Non-Execution of Domestic and International Court Judgments in Hungary, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf, p. 10.

³⁴⁶ For example, in the said case, the amount of the fine imposed on the Ministry was only HUF 200 000 (ca. EUR 540).

³⁴⁷ The full list of the respective Constitutional Court decisions is available here: <https://www.parlament.hu/az-orszaggyules-donteseire-vonatkozó-alkotmánybíró-sági-határozatok>.

³⁴⁸ Source: European Implementation Network, <https://www.einnetwork.org/hungary-echr>.

³⁴⁹ For a detailed description of the issue see: Hungarian Helsinki Committee: Non-Execution of Domestic and International Court Judgments in Hungary, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf, pp. 50-54.

the Common European Asylum System,³⁵⁰ so **while it formally complied with the judgment, it did so by creating new breaches**. As a result, the Commission referred Hungary to the CJEU for unlawfully restricting access to the asylum procedure in July 2021.³⁵¹

b) On 17 December 2020, the CJEU ruled that **the Hungarian law and practice of push-backs** violated EU law.³⁵² However, the collective expulsions have continued and over 70,000 such measures have been carried out since the CJEU ruling. In February 2021, the Minister of Justice asked the Constitutional Court to rule that the judgment could not be enforced as its implementation would breach Hungary's constitutional identity. Although the Constitutional Court refrained from expressly taking a stance on the implementation question in its 10 December judgment, it offered a lifeline for the Government by ruling that when the "fundamental right to self-determination stemming from one's traditional social environment" is violated, Hungary should have the right to temporarily not apply EU law.³⁵³ On 12 November, the Commission referred Hungary to the CJEU over its failure to comply with Court judgment.³⁵⁴

D. The enabling framework for civil society

51. Measures regarding the framework for civil society organisations

The basic legislation governing the registration and operation of CSOs has remained essentially unchanged in 2021, and generally conforms with international standards. However, regulations and oversight tend to place unnecessary administrative burdens on smaller organizations, while larger ones, especially those with public benefit status (20% of all) and those receiving public funding must meet rigorous reporting obligations.³⁵⁵

According to the latest official statistics, the total income of associations and foundations is approximately HUF 900 billion (ca. EUR 2.6 billion). Of this, somewhat less than 40% comes from public funding, around 20% from private sources, with the rest originating from generated own income and a variety of other sources. However, this income is very unevenly distributed across the sector³⁵⁶. Also, it has been shown that the distribution of public funding lacks transparency and is politically biased against independent organizations – most recently in 2021, a new 'City Civil Fund' was opened, but as investigative journalists revealed³⁵⁷ that about half of its biggest beneficiaries are organizations directly controlled by local

³⁵⁰ 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>.

³⁵¹ See: https://ec.europa.eu/commission/presscorner/detail/EN/IP_21_3424.

³⁵² 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/>.

³⁵³ For a detailed discussion of the judgment see: Zsolt Szekeres, Don't be fooled: Hungarian court ruling didn't allow pushbacks, <https://www.euronews.com/2021/12/16/don-t-be-fooled-hungarian-court-ruling-didn-t-allow-pushbacks-view>.

³⁵⁴ https://ec.europa.eu/commission/presscorner/detail/EN/IP_21_5801.

³⁵⁵ CSOs must annually and publicly report separately on their accounts and activities, on the collection of donations and the use of the 1% personal income tax assignments, but thereby their transparency is guaranteed as well.

³⁵⁶ More than 70% of all CSOs operate on an annual budget of less than HUF 5 million (ca. EUR 16,000).

³⁵⁷ <https://telex.hu/belfold/2021/07/28/fideszes-vezetesu-civil-szervezeteket-tamogat-a-magyar-allam-egy-uj-palyazati-alapbol>

politicians of the governing party or their affiliates. **While independent CSOs – e.g., those engaged in human rights or LBGQI issues – are not excluded from applying for public funding *per se*, they rarely have a chance to secure a grant.**³⁵⁸

In 2021 a major development affecting CSO funding was the **unsuccessful conclusion of the negotiations concerning the third period of the EEA & Norway Grants.**³⁵⁹ For civil society, it means a loss of EUR 10 million for the coming years.

Traditional channels of CSO advocacy, both formal (consultative bodies and processes) and informal (petitions and signature collections) ceased functioning years ago, as both the Government and Parliament routinely ignore CSOs' requests for dialogue and remain unresponsive, or often downright hostile to any criticism or proposals coming from CSOs. Thus, CSOs' advocacy efforts rarely bring results: the few successful cases of the past years involved multi-year concentrated campaigning, broad coalitions, and popular mobilization³⁶⁰.

Independent, critical CSOs are often labelled by government officials and media as being “political”, and as such not being truly civic, although the intensity of such smear campaigns have decreased somewhat compared to earlier years. Still, civil society is still largely viewed as positive by the public, reinforced by the visible efforts and role many organizations played especially during the first wave in mitigating the social crisis brought by the pandemic by providing information, relief and contributing to online schooling, as also shown by a recent research³⁶¹. The latest results of the 1% personal income tax assignments point in the same direction³⁶².

52. Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders

The two legislation governing civil society operation in Hungary - the Civil Code³⁶³ and the Act on the Right to Association³⁶⁴ - generally conform with relevant international standards: the former regulates the fundamental legal forms of organizations – associations and foundations, while the latter provides for the freedom of association, public benefit status and rules of operation. Under these laws, anyone can register a CSO at the administrative courts (and with the introduction of an electronic system some years

³⁵⁸ These independent organizations remain dependent on international philanthropic and institutional donors and on individual giving. CSOs themselves are also becoming more and more professional in collecting donations, especially online, but also through other creative tools. At the same time, institutional domestic philanthropy (grantmaking foundations) remains very underdeveloped.

³⁵⁹ While the donors and the Hungarian government signed a Memorandum of Understanding (MoU) in late 2020, and the open call to find a Fund Operator managing the Active Citizens Fund, eventually the parties could not come to the required consensus to select a mutually acceptable candidate. According to the MoU, if no agreement was reached in this respect in 7 months after signing the whole support to Hungary becomes void – this deadline was passed at the end of July 2021, and thus, as the Norwegian Foreign Minister announced “no programmes will be implemented in Hungary under the EEA and Norway Grants scheme during this period” – making it the single such country out of the 15 eligible ones.

³⁶⁰ As was recently the case with a planned experimental oil drilling project in the Western border area.

³⁶¹ <https://civilizacio.net/hu/tevekenysegek/programelem/civilkutatas-2021>

³⁶² After several years of steady decline, in 2021 more taxpayers directed more money to civil society, including to organizations most harassed and intimidated by the government, e.g. Háttér Association, the biggest and oldest LBGQI organisation tripled its income from this source.

³⁶³ Act V of 2013 on the Civil Code of Hungary

³⁶⁴ Act CLXXV of 2011 on Association and the Public Benefit Status and the Operation of and Support to Civic Organizations

ago, this process has become easier, though geographic differences among courts still prevail), and the organizations can by and large freely operate.

In June 2021 the Parliament finally retracted the Act on the Transparency of Organizations Supported from Abroad of 2017, which was found by the Court of Justice of the EU a year earlier to breach EU law on several counts.³⁶⁵ However, it was **replaced with similarly worrying new clauses (Act XLIX of 2021) that affect organizations “capable of influencing public life”, i.e. those with an annual budget above HUF 20 million (ca. EUR 60,000), making them subject to inspection by the State Audit Body.** As this law will apply first to the 2021 financial year, its practical consequences are yet to be seen, but at a minimum, new administrative burdens and inspections are expected.

In November 2021, the CJEU made another ruling with significant impact on CSOs working to support refugees and asylum-seekers by declaring the so-called ‘Stop Soros’ law package criminalizing such activities to be contrary to EU law.³⁶⁶

These rulings demonstrate that often judicial independence and intervention is needed to maintain basic guarantees for CSOs and human rights defenders in Hungary. Indeed, the **Government views and presents in its communication independent CSOs as enemies**, agents not serving the “national interest”. In 2021, sexual and gender minorities and CSOs representing them became the Government’s latest target.

In June 2021, under the disguise of a legislation regarding paedophile criminal offences was introduced to Parliament, and through last-minute amendments, it was used to **ban “homosexual propaganda to minors,” i.e., the appearance of LBGTQI people in media and schools**³⁶⁷. In spite of domestic and international protests, the amended law was adopted. Reports from LBGTQI organizations show that the number of hate incidents have increased since then. One of the key messages of the governmental propaganda is that they don’t want to “leave the sexual education of children to LBGT* activists”, which in practice means the elimination of sensitisation and education programs carried out by CSOs.

E. Initiatives to foster a rule of law culture

53. Measures to foster a rule of law culture

In 2021 there has been no government measures to foster a rule of law culture. Also, the centralized, compulsory curriculum of public education incorporates very few elements of citizen education. Instead of “fostering” it, in 2021 as in the previous year, **the Government took various non-legislative steps that 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 2021 Rule of Law Report.** Instead, in August 2021, the Government issued a “Government resolution”,³⁶⁸ which heavily criticized the report. The document claimed that the Rule of Law Report “*echoes the views of NGOs funded by the EC from abroad or by the Commission itself*”, its

³⁶⁵ C-78/18 Commission v. Hungary, ECLI:EU:C:2020:476

³⁶⁶ C-821/19 Commission v. Hungary, ECLI:EU:C:2021:930

³⁶⁷ See: <https://www.amnesty.hu/wp-content/uploads/2021/07/EUR2744922021ENGLISH.pdf>

³⁶⁸ <https://magyarkozlony.hu/dokumentumok/5835dc1de8802d8abe7e753ffa13224537064635/letoltes>

sources are “one-sided and politically biased, making its findings inaccurate and biased” and the Report used “double standards”, and that the EC abused its powers.

2. In the summer of 2021, the Government launched a new national consultation “on the coronavirus and restarting the economy”.³⁶⁹ (“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.³⁷⁰) For instance, **in the latest national consultation the Government attacked - amongst others - the EU (“Brussels”)**, by posing the following questions:

“7. Brussels will abuse its power again after the pandemic, launching proceedings against our country to impose its will on the Hungarians. There are those who think that Hungary must take the debates and stand up for its interests. Others think Hungary should give in to Brussels.”
“WHAT DO YOU THINK?”

“8. Brussels wants to impose new taxes on us to make Hungarian families pay the costs of pollution and climate change caused by multinational corporations through higher utility bills.”
“WHAT DO YOU THINK?”

3. Furthermore, **prominent government leaders** (such as PM Viktor Orbán³⁷¹ or Minister of Justice Judit Varga³⁷²) **criticized the European Commission’s Rule of Law report and the CSOs contributing thereto in the public, further undermining respect for the rule of law in Hungary.**

Other

On 21 January 2022 news broke,³⁷³ according to which the **former president of the Hungarian Chamber of Judicial Officers,³⁷⁴ György Schadl wanted a Hungarian judge removed from the judiciary** in 2021. Schadl has been arrested recently and is accused with corruption charges together with Pál Völner, the former Deputy Minister of Justice and governing party MP.

According to the secret surveillance documents of the National Protective Service published in the news, in the summer of 2021, referring to his connections with Völner, Schadl approached the NOJ President, György Senyei and talked with him about a judge (who is also a court group leader³⁷⁵) at the Central District Court of Pest. Schadl claimed that the judge had broken internal confidentiality rules and wanted them removed from the judiciary. Thereafter, the NOJ President connected him with the president of the Metropolitan Regional Court, Justice Péter Tatár-Kis who exercises the employers’ rights over all Central District Court of Pest judges. Based on the secret surveillance transcripts, the regional court president and Schadl met on 9 June 2021 and the former told György Schadl that “*he cannot fire the judge, but he*

³⁶⁹ <https://koronavirus.gov.hu/cikkek/nemzeti-konzultacio-kormany-kozzetette-most-indulo-nemzeti-konzultacio-kerdeseit>

³⁷⁰ See also: Agnes Batory – Sara Svensson, *The use and abuse of participatory governance by populist governments*, Policy & Politics, 2019, 47(2), pp. 227–244.

³⁷¹ <https://kormany.hu/hirek/erthetetlen-jogallami-vitakat-general-az-eu>

³⁷² <https://kormany.hu/hirek/varga-judit-a-jogallamisagi-jelentesnek-nincs-jogalapja>

³⁷³ See: <https://444.hu/ldr/2022/01/21/a-birot-rugjak-ki-mert-ez-verlazito>

³⁷⁴ Judicial officers are public officials charged with enforcing final and binding court judgements, in cooperation with the courts.

³⁷⁵ At all courts, within colleges, groups may be formed to deal with certain types of cases within a field (e.g. court judgements’ enforcement). Court group leader is a court leader heading such group and organizes the professional work thereof. Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 125

can revoke their group leader assignment and he can make sure that the judge feels bad at their workplace". The court president also promised to Schadl that he would request a formal investigation in the judge's case.

Senyei acknowledged that he had spoken on the phone with György Schadl on several occasions in 2021 but emphasised that these phone calls had not had any unlawful purpose or content. Justice Tatár-Kis refused – through the court's press office – to respond to the journalist's questions on the basis that the court could not comment on an ongoing investigation. In any event, **the allegations included in the secret surveillance documents, according to which the NOJ President and the president of the biggest regional court in Hungary would even discuss the removal of a judge with an external actor severely and gravely undermine the perception of Hungarian judiciary independence.**