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SAFEGUARDS | CORRUPTION | INDEPENDENCE | FREEDOM | JUSTICE | MEDIA
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JANUARY
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Contributions of Hungarian CSOs to the European Commission's Rule of Law Report

The contributions included in the present document on the rule of law in Hungary were submitted to the European Commission in the framework of the targeted stakeholder consultation the European Commission launched in relation to its 2024 Annual Rule of Law Report. The document follows the structure and applies the headings and numbering of the European Commission's [stakeholder consultation survey](#).

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The contributing organisations submitted their contributions separately, therefore, some individual submissions may at certain points diverge from this compilation.

The above civil society organisations bear responsibility solely for the content of those chapters where they are indicated as authors.

For further information regarding the issues covered, please contact the respective organisations indicated as authors at the beginning of each chapter.

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I. JUSTICE SYSTEM

1. Information on measures taken to follow-up on the recommendations received in the 2023 Rule of Law Report regarding the justice system

Until the cut-off date of the present CSO contribution (9 January 2024) no steps have been taken by the Hungarian government and the Parliament to address the recommendation (regarding the case allocation system) formulated by the European Commission (EC) with respect to the independence of the judiciary in the 2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary (hereafter referred to as: 2023 Rule of Law Report).¹ In line with the commitments of Hungary under the Recovery and Resilience Plan (RRP) and the horizontal enabling conditions of 10 different operative programmes, the rules governing the case allocation system of the Kúria (the apex court of Hungary) have been amended by Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan (hereafter referred to as: Judicial Reform)² to enhance the transparency of case allocation of the Kúria, but no legislative measures have been taken to improve the transparency of case allocation systems in lower-instance courts, as recommended by the 2023 Rule of Law Report.

A. Independence

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

As a main rule, judicial appointments are granted via an ordinary application procedure³ that includes certain guarantees⁴ against arbitrary appointments. With respect to the appointment

¹ See: European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 2.

² See the assessment of the Judicial Reform in light of the super milestones set out in the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee here: https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf

³ See: Article 7 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges.

⁴ The main guarantees are: a system of objective and subjective points, a ranking established by judicial councils, and the right to veto by the NJC.

of judges and court presidents, several concerns raised in the 2020,⁵ 2021,⁶ 2022⁷ and 2023⁸ CSO contributions remain relevant.

(1) The distorted points system for the assessment of applications for judicial posts remains in force forming a crucial element in the career of judges.⁹ The points system is problematic in many respects, amongst others for giving preference to candidates for a judicial post who apply from the executive branch over candidates who apply from within the judiciary. Although the Judicial Reform granted the National Judicial Council (NJC) the power to give a motivated binding opinion on future modifications of the points system, it did not set a deadline for the submission of a new draft regulation. By not introducing transitional rules that guarantee the effective application of the new powers of the NJC, the Government can keep up the distorted points system for an indefinite period, leaving the Judicial Reform meaningless in this respect.¹⁰ Promoting the amendment of the regulation in force, the NJC adopted a draft modification.¹¹

(2) Although the Judicial Reform has *pro futuro* terminated the possibility of members of the Constitutional Court (CC) to be appointed to the ordinary court system without following the standard application procedure, it has provided a solution that is still concerning from the perspective of judicial independence. With effect from 1 June 2023, those members of the CC who got appointed as judges by the legislative branch via (later withdrawn) *ad hominem* legislation¹² circumventing the standard application procedure and without the involvement of

⁵ 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.

⁶ 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.

⁷ See: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, January 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/01/HUN_NGO_contribution_EC_RoL_Report_2022.pdf, p. 3.

⁸ See: *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, p. 3.

⁹ The effective scoring system was adopted by the Minister of Justice by Decree 14/2017. (X. 31.) IM without a meaningful consultation with the judiciary and judges' associations. The current ministerial decree was adopted in 2017 without a meaningful consultation with the judiciary and has been widely criticised ever since, because it radically modified the points system in a way that favours experience gained in the public administration over experience gained within the judiciary. See: Magyar Bírói Egyesület [Hungarian Association of Judges], 14 November 2017, <https://www.mabie.hu/index.php/kozlemenyek/339-a-mabie-allasfoglalasa-a-biroi-allaspalyazatok-elbiralasanak-reszletes-szabalyairol-es-a-palyazati-rangsor-kialakitasa-soran-adhato-pontszamokrol-szolo-7-2011-iii-4-kim-rendelet-modositasarol>.

¹⁰ See: Hungarian Helsinki Committee, *Fundamental Deficiencies of the Hungarian Judicial Reform*, 31 October 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/Fundamental_deficiencies_Judicial_Reform_20231030.pdf, p. 4.

¹¹ Resolution 125/2023. (XII. 6.) OBT. See the minutes of the NJC's meeting held on 5-6 December 2023, pp. 82-91. Available at: <https://orszagosbiroitanacs.hu/download/az-obt-2023-december-5-es-6-napjan-megtartott-ulesenek-jegyzokonyve/?wpdmurl=2795&refresh=659bbef8db6f01704705784>.

¹² The series of *ex lege* appointments by *ad hominem* legislation included (i) the judicial appointment and judicial leadership appointment of the incumbent Kúria Vice-President András Patyi by way of a last-minute legislative modification passed in 2018 that exempted Judge Patyi from two ordinary application procedures: one for getting appointed as judge at the Kúria and one to get appointed as head of panel at the Kúria (see: <https://helsinki.hu/en/yet-another-government-friendly-judicial-leader-at-the-supreme-court-of-hungary/>); (ii) the judicial appointment and judicial leadership appointment of the incumbent Kúria President, András Zs. Varga by way of legislative modifications passed less than one year prior to his election, that exempted Judge Varga from getting appointed as judge and head of panel at the Kúria (see: <https://helsinki.hu/en/new-chief-judge-potential-transmission-belt-of-the-executive/>); (iii) the judicial appointment of further seven Constitutional Court justices (six of whom have not served previously as ordinary judges); and (iv) the transfer of judges complying with certain specific preconditions to the newly established Administrative Court of Appeal (see:

judicial self-governing bodies, cannot be directly appointed to the Kúria, but they can still choose to be transferred to any Court of Appeal, the second highest court instance within the four-tier ordinary court system of Hungary.¹³ This solution maintains the original concern raised by the EC according to which *“in practice, the election by Parliament to the Constitutional Court, which does not entail the involvement of a body drawn in substantial part from the judiciary, can in itself lead to the appointment as a judge”*.¹⁴ Applying the new rules on transfer to the ordinary court system, one former CC member was already appointed as judge of the Metropolitan Court of Appeal after the termination of his mandate.¹⁵

(3) The Judicial Reform radically limited the pool of potential judge candidates for the position of the Kúria President by introducing a new condition that requires the Kúria President to *“have at least two years of experience as a Kúria judge”*.¹⁶ Thanks to the introduction of the new eligibility criterion, the pool for potential candidates was significantly narrowed from the former ca. 2,500 judges to approximately 100 judges without any reasonable explanation. This new criterion cannot be linked anyhow to the professional qualities required for the position (independence, impartiality, integrity, probity and a trustful experience as a court leader) and also raises concerns in light of the court capture process carried out with respect to the Kúria in the past years.¹⁷

(4) No legislative amendment has been adopted to regulate multiple applications (when several calls for applications for judicial posts are published simultaneously) and the order of considering such applications in order to exclude the possibility of determining (through the arbitrary order of deciding on applications) the outcome of applications and to circumvent the right to consent by the NJC in a non-transparent manner.¹⁸ In 2022, both the Kúria President and the President of the National Office for the Judiciary (NOJ President) appointed several judges to the bench in ways circumventing the right to consent by the NJC through opening several positions in one package and then manipulating the outcome of the application procedure by considering the applications in an arbitrary order.¹⁹ In the absence of legislative amendments, this loophole is still available to circumvent the merit-based appointment system.

(5) The legislation finally meets the requirement of good governance by partially requiring the Kúria President and the NOJ President to state reasons for their administrative decisions,

https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CSJ_contribution_EC_RoL_Report_2023.pdf, p. 5).

¹³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 232/X

¹⁴ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0316&from=EN>, p. 8.

¹⁵ See Resolution 349.E/2023. (VIII. 15.) OBHE (available at: https://birosag.hu/sites/default/files/2023-09/birosagi_kozlony_2023_7_8_0.pdf). The former Constitutional Court judge was transferred to the Metropolitan Court of Appeal with effect from 2 September 2023 and requested his transfer to the Ministry of Foreign Affairs with effect from 1 October 2023. The NJC denied to consent to the transfer in its Decision 89/2023. (X. 4.) OBT (available at: <https://birosag.hu/birosagi-kozlonyok/2023/2023-evi-10-szam>).

¹⁶ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 114(1)

¹⁷ See: Hungarian Helsinki Committee, *Court Capture Project Completed – The Hungarian recipe for getting a grip on the Judiciary*, 26 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Court-Capture-Project-Completed-20221026-.pdf>

¹⁸ See the minutes of the meeting of the NJC held on 6-7 September 2023 at

<https://orszagosbiroitanacs.hu/download/az-obt-2023-szeptember-6-es-7-napjan-tartott-ulesenek-jegyzokonyve/>, p. 63.

¹⁹ See: Hungarian Helsinki Committee, *Tribunal Established by Sleight of Hand – Unlawful Judicial Appointments at the Kúria*, 4 September 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/09/Tribunal-Established-by-Sleight-of-Hand.pdf>.

albeit only for decisions subject to the agreement or binding opinion of the NJC.²⁰ In order to comply with basic principles of the rule of law, all administrative decisions should be duly reasoned.

(6) As a significant positive development, the Judicial Reform granted a right to veto to the NJC against the decade-long powers of the NOJ President to declare any judicial application procedure unsuccessful without any external control or a need for a transparent reasoning even after the establishment of the ranking of applicants by the judicial councils.²¹

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

(1) The Judicial Reform amended the rules on different types of temporary transfers of judges ensuring that the NJC gives a binding opinion on certain decisions.²² Despite the enhanced supervisory function of the NJC, the legislation on transfers still lacks fundamental guarantees for the irremovability of judges.

In case of secondments (*“kirendelés”*),²³ the law only requires the NJC’s consent to secondments (or their prolongation), but not their termination. As the practice of the NOJ President shows, secondments may be terminated unilaterally, with immediate effect, by a resolution of the NOJ President even before the pre-established term of secondment expires.²⁴ The legislation still lacks objective criteria regarding when the legal conditions of a secondment are met,²⁵ for the designation of the receiving court, the selection of the seconded judge or for determining the term of the secondment.

In case of assignments (*“kijelölés”*),²⁶ the law only requires the NJC’s consent to the termination of assignment in lack of consent of the judge concerned. Assignments continue

²⁰ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 77(2)

²¹ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 103(3)(o) and (p)

²² Act CLXI of 2011 on the Organisation and Administration of the Courts, Articles 76(5)(h) and 103(3)(m)

²³ Secondment is a measure of court administration that entails the transfer of the judge concerned from one court to another. According to Article 31(1) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges: *“A judge may be seconded by the president of the regional court, if the secondment takes place between a regional court and a district court or between district courts operating within the territory of the same regional court. In all other cases the NOJ President shall be entitled to second a judge.”*

²⁴ The Kúria President has expressly affirmed this interpretation (which is, again, in breach of the irremovability of judges): *“A precondition of seconding a judge is a consent between the court where the judge holds a post, the court of secondment and the judge. In the absence of the consenting declaration of any party, the secondment cannot be ordered or it shall be terminated. Secondment is an extraordinary form of judicial service. Therefore, withdrawal of the consenting declaration and thus the termination of the secondment shall not be explained or reasoned.”* (Press release of the Kúria of 4 May 2022 on the termination of the secondment of a judge dealing with a high-profile corruption case, <https://kuria-birosag.hu/hu/sajto/kuria-kozlemenye-questor-ugyben-eljaro-biro-kirendelesenek-megszuntetese-targyaban>)

²⁵ According to Article 31(2) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges, judges may only be seconded for two reasons: (i) to reduce excessive workload at the receiving court or (ii) to facilitate their professional advancement, but the legislation does not provide for any objective criteria for assessing whether the legal grounds of secondment are in place. See: Hungarian Helsinki Committee, *Background paper on Systemic Deficiencies of the Legal Framework and Practice of the Secondment of Judges in Hungary*, 6 September 2022, <https://helsinki.hu/wp-content/uploads/2022/09/Background-Paper-on-the-Secondment-of-Judges-in-Hungary-updated-06092022.pdf>, Section III.

²⁶ According to Article 30 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges, judges dealing with specific cases – such as administrative and labour law cases or criminal cases initiated against young offenders – shall explicitly be assigned for this task within the ordinary court system. Assignments have a substantial impact both on the status of individual judges and on the adjudication of specific type of cases

to be granted by full discretion of the NOJ President (with respect to judges serving at lower tier courts) or the President of the Kúria (with respect to judges serving at the Kúria), while from the perspective of irremovability, both an assignment and the termination thereof entail a removal of the judge from their former position.²⁷

Transfers of judges (*beosztás*)²⁸ outside the judiciary to a wide range of administrative organs²⁹ continue to raise serious concerns as to their purpose. According to the law, such transfers concurrently aim that judges gain professional experience and that they support the administrative organ with their own professional experience.³⁰ This aim is most doubtful in case of judges dealing with criminal or civil cases, who do not have or need any relevant experience at administrative organs. While the aim of the transfer remains unclear, its consequences are explicit. Judges transferred to an administrative organ get a significantly higher remuneration and bonus during the term of the transfer.³¹ The transfer also entails handing over employer's rights (including the right to evaluate the judge) and disciplinary rights to the leader of the administrative organ (e.g. a member of the Government in case of a ministry).³²

(2) Transfers create a bypass in judicial careers enabling the transferred judge – under the pertaining legislation – to acquire a judicial leadership position circumventing the ordinary promotion proceedings³³ upon the termination of the transfer. Due to the fact that the minimum term of the transfer is not regulated by law, short term transfers can be applied as a disguised promotion.³⁴

(3) According to the law, in case a court leader is dismissed unlawfully, and their reinstatement is subsequently ordered by the court deciding on the matter of the dismissal, they can only be

concerned. On one hand, the assignment affects the status of the assigned judge as it determines his/her areas of work, expertise and the types of cases he/she shall deal with. On the other hand, the assignment may affect the adjudication of the specific cases that shall be dealt with by assigned judges.

²⁷ Assignments are problematic even if consented by a judge, because they may serve to circumvent the appointment system, where calls for applications are published not only for specific branches of adjudication (civil, criminal and administrative), but also by areas of expertise and types of cases.

²⁸ The NOJ President is entitled to transfer judges (i) to the NOJ (which does not form part of the judiciary), to work for the judicial administration [Article 27(2) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges]; (ii) to the Kúria to prepare unification decisions and fulfil tasks regarding the analysis of the law [Articles 27(2) and 63 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges]; and (iii) to other state organs [Article 27/A of Act CLXII of 2011 on the Legal Status and Remuneration of Judges]. In case of all types of transfers, the consent of the judge to be transferred is a precondition to the transfer. Transferred judges cannot be involved in adjudication. The legislation does not provide for a minimum term of the transfer, it may also be ordered for an indefinite period, thereby creating a permanent new status for the judge.

²⁹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 27/A

³⁰ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 62/A(1)

³¹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 195(2) and (5)

³² From 1 January 2023, two judges were transferred to the Prime Minister's Office by Resolution 488.E/2022. (XII. 16.) OBHE. From 15 October 2023, one judge was transferred to the Ministry of Economic Development by Resolution 408.E/2023. (X. 2.) OBHE. None of the resolutions provide a clear reasoning for the transfer and its purpose.

³³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 58(3)

³⁴ As warned by the Venice Commission, the possibility of transfers *“could be used to institute a practice of bypassing the ordinary processes of promoting judges”*. See: European Commission for Democracy Through Law (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, 16 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)036-e), para. 60.

reinstated into their leadership position if that has not been filled in the meantime.³⁵ This loophole can be used to overhaul certain judicial leadership positions.

(4) In 2023, at several meetings of the NJC, when the agenda of the NJC included tasks related to the first and second instance Service Courts³⁶ or the Disciplinary Court of Bailiffs,³⁷ the Kúria President, as ex officio member of the NJC, publicly questioned the legitimacy of these courts, claiming that these courts are established as “separate courts”. According to the Kúria President, the Seventh Amendment to the Fundamental Law “*abolished all kinds of separate courts, therefore since the Seventh Amendment, except for district courts, regional courts, courts of appeal and the Kúria, no other courts can be established*”.³⁸ The Kúria President repeatedly claimed that “*the constitutional basis for the existence of service courts and disciplinary courts has ceased to exist*” anticipating the necessity of reorganising these courts for fully theoretical reasons.

(5) The Hungarian legislation allows certain individuals to get transferred from outside the judiciary to the judicial system, even if their former position was highly political. Former MPs and MEPs can be appointed as judges in case they had served as judges before taking their seat as MPs or MEPs. Once their mandate as MPs or MEPs terminates, they shall be appointed as judge upon their own request, automatically, without a cooling-off period and without an application procedure³⁹ and may be appointed to any court higher than the one they had served at before and may become a “head of panel” without the otherwise necessary separate application procedure. Neither the consent nor the non-binding opinion of the NJC is required for their appointment. Similarly, former university rectors can be appointed as judges⁴⁰ upon their request in case they had served as judges before taking their seat as university rectors.⁴¹

4. Promotion of judges and prosecutors

As a main rule, judicial promotions and leadership positions shall be granted in the framework of an ordinary application procedure,⁴² but the legislation allows for a wide range of exceptions.⁴³ Decisions on promotions without an application procedure lie in their entirety in

³⁵ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 145(4)

³⁶ The first and second instance of Service Courts are established by Articles 101-104 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges. The NJC holds powers to appoint judges and the court president of the Service Court.

³⁷ The first and second instance Disciplinary Courts of Bailiffs are established by Articles 270-276 of Act LIII of 1994. The NJC holds powers to appoint judges and the court president of the Disciplinary Court of Bailiffs.

³⁸ See the minutes of the meeting of the NJC held on 10 March 2023 at <https://orszagosbiroitanacs.hu/download/az-obt-2023-marcius-1-i-ulesenek-jegyzokonyve/?wpdmdl=2526&refresh=64466d7e3a47e1682337150>, p. 6. See also the minutes of the meeting of the NJC held on 4 October 2023 at <https://orszagosbiroitanacs.hu/download/az-obt-2023-oktober-4-i-ulesenek-jegyzokonyve/?wpdmdl=2735&refresh=6596fb21074d31704393505&ind=1698205202127&filename=Jegyzokonyv-2023-oktober-4-vegleges.pdf>, p. 8.; and the minutes of the meeting of the NJC held on 5-6 December 2023 at <https://orszagosbiroitanacs.hu/download/az-obt-2023-december-5-es-6-napjan-megtartott-ulesenek-jegyzokonyve/?wpdmdl=2795&refresh=659704f14a6641704396017&ind=1703157039368&filename=2023-12-05-06-jkv-vegleges.pdf>, pp. 15. and 25.

³⁹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 8(3)

⁴⁰ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 23(3)

⁴¹ The request should be submitted within 30 days after the expiry of their mandate. Former university rectors can also become heads of panel without an application procedure. Their appointment as judge and judicial leader fully lacks the consent of judicial self-governing bodies.

⁴² Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 7(1)

⁴³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 8(1)

the hands of administrative leaders, who may also have full discretion to grant judicial leadership positions, which eliminates the guarantees attached to a transparent application procedure.⁴⁴ No judicial remedy is available against appointments made without an appointment procedure. Concerns with respect to the elimination of an application procedure for judicial leadership position of head of panel after the termination of a transfer remain unaddressed (see also above at Question I.3.).⁴⁵

Even the outcome of a standard application procedure can be manipulated by court leaders through several means. Applications for judicial leadership positions (such as the position of head of panel or deputy-college leadership positions)⁴⁶ are assessed by the president of the relevant court in a fully discretionary manner. Judge peers hold the right to form a non-binding opinion⁴⁷ on the candidates by secret ballots. Although the opinion is non-binding, court presidents should consider it when assessing the candidates. Despite the above, due to the lack of guarantees, court presidents may appoint judicial leaders even against the manifest opposition of judicial peers. The appointment of a judge (the wife of the Kúria President) as head of panel at the Metropolitan Court of Appeal became public as an outstanding example of disregarding the votes of judge peers.⁴⁸

Besides formal appointments, the legislation provides for a variety of informal means to promote a judge. Informal appointments include (i) the possibility to assign administrative tasks to a judge (or terminate such assignment)⁴⁹ and (ii) in the case of the Kúria, the possibility to assign special judicial positions via the case allocation scheme of the Kúria.⁵⁰ Informal appointments are made on the basis of non-transparent decisions.

An outstanding example for an informal appointment in 2022 was to one of the highest judicial leadership positions at the top tier: it was the *de facto* assignment of a deputy-college leader at the Kúria for eight months.⁵¹ The leadership position was granted by the sole discretion of

⁴⁴ For example, the position of head of panel can be granted even for an indefinite period based on full discretion by the NOJ President under Articles 8(4), 23(3) and 58(3) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges.

⁴⁵ See Articles 8(1)(e) and 58(3) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges and all further provisions referring back to it: (i) Article 28(1) on the rules governing the transfer of a judge to perform an external foreign service; (ii) Article 62/C(3) on the rules governing the transfer of a judge to another administrative organ; (iii) Article 64(2) on the rules governing the transfer of a judge to the Kúria; and (iv) Article 88 on the rules governing the status of judges who wish to stand for election to the Parliament, the European Parliament or a local government.

⁴⁶ According to Article 128(4)-(5) of Act CLXI of 2011 on the Organisation and Administration of the Courts, the president of the court of appeal is entitled to appoint deputy-college leaders and heads of panel at the court of appeal and the president of the regional court is entitled to appoint deputy-college leaders and heads of panel at the regional court as well as the president, the vice-president, the group leaders and deputy group leaders of the local courts falling within the territorial scope of jurisdiction of the regional court.

⁴⁷ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 131

⁴⁸ See the details at: <https://helsinkifyelo.444.hu/2022/08/19/egy-itelotablai-tanacselnoki-kinevezes-magyarazatanak-marqojara-a-tenyek-tukreben>.

⁴⁹ According to Article 29(1) Act CLXII of 2011 on the Legal Status and Remuneration of Judges, “*the employer may assign the judge, with his written consent, with the performance of administrative tasks for a fixed or indefinite term, exclusively or partly*”.

⁵⁰ For example, the membership in the panel that reviews the regulations of municipalities.

⁵¹ The Hungarian Helsinki Committee has turned to the Kúria with a freedom of information request to acquire information on the legal basis of the assignment. See the answer of the Kúria here: https://helsinki.hu/wp-content/uploads/2023/01/informalis_vezetoi_kinevezesek_a_Kurian_2022.pdf.

the Kúria President despite the fact that no deputy-college leadership positions were open during that term.⁵²

Another outstanding example for an informal appointment at the Kúria in 2023 was assigning additional “administrative tasks” to judge Barnabás Hajas (former State Secretary who was appointed as judge by the Kúria President without any former experience as a judge based on an unlawful appointment procedure).⁵³ Judge Hajas was assigned by the Kúria President with additional administrative tasks “to provide professional support in commenting on legislation, to coordinate the staff responsible for monitoring, reviewing and organising draft laws, legislation published in the National Gazette and organisational regulations, to participate in the monitoring of the legislative and rule-making process, to participate in the process of preparing internal regulations”.⁵⁴ The Kúria President also ordered the payment of a 30% extra supplement for the additional administrative tasks assigned. The decision on granting additional administrative tasks to Judge Hajas and the extra remuneration were taken in a completely non-transparent manner by the Kúria President. Neither the criteria of nor the terms for an assignment for specific administrative tasks, nor the termination thereof are set out by law.

5. Allocation of cases in courts

(1) The rules of case allocation at the Kúria were amended by the Judicial Reform with effect from 1 June 2023, but concerns remain with respect to the proper implementation of the new rules. Amongst others, the existence of an electronic system guaranteeing the automated case allocation without human intervention is questionable. Based on the answers provided to freedom of information requests,⁵⁵ neither the Kúria nor the NOJ could provide proof that a proper IT system guarantees the due application of the new rules on case allocation at the Kúria. Confirming the doubts around the functioning of the new case allocation system, the Kúria President publicly claimed in a radio interview that the Judicial Reform was externally driven and imposed on Hungary, is unimplementable, causes legal instability in the operation of the Kúria and was ultimately “ordered” to petrify the Hungarian judicial system.⁵⁶

Special concerns can be raised with respect to electoral cases. In all electoral cases, the adjudicating panels shall consist of three judges. Instead of establishing fix three-member panels for electoral matters with a transparent and foreseeable case allocation system between them, the current case allocation scheme of the Kúria defines the composition of electoral panels applying exceptional rules (under which the three-member panel can be

⁵² See: *Contributions of Hungarian CSOs to the European Commission’s Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, p. 9.

⁵³ See: Hungarian Helsinki Committee, *Tribunal Established by Sleight of Hand – Unlawful Judicial Appointments at the Kúria*, 4 September 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/09/Tribunal-Established-by-Sleight-of-Hand.pdf>.

⁵⁴ See Decision 2022.El.VI.A.112/10. of the Kúria President.

⁵⁵ See: Hungarian Helsinki Committee, *A brief assessment of the case allocation scheme and system of the Kúria based on the experiences of the period since the entry into force of the judicial reform*, 9 September 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/09/case_allocation_system_of_Kuria_20230926.pdf.

⁵⁶ See the interview at <https://www.youtube.com/watch?v=EspkKuhQ4Zo>. See an outline of the interview here: https://helsinki.hu/wp-content/uploads/2023/10/Baka_v_Hungary_NGO_Communication_under_Rule_9_2-20231005.pdf, Section III.2.

established out of a five-member chamber) from which further derogation is allowed (in case the first exceptional rule cannot be applied for any reason). The fact that electoral panels are not fixed, but are established through the application of special rules, from which further derogation is allowed, makes it difficult for parties to a case to track back whether the panel was established in accordance with the case allocation scheme. In addition to the above, in case of electoral matters, submissions can be filed not only electronically (but also on paper). When a case is not filed electronically, nothing guarantees the application of the newly established automated system, as the pertaining legal provision only prescribes the use of the automated scheme for electronically initiated cases.

(2) With respect to the case allocation system of lower tier courts, all concerns raised in the 2023 CSO contribution remain relevant.⁵⁷ The possibility to modify the case allocation scheme is unlimited in time.⁵⁸ Modifications of the case allocation schemes are carried out on a regular basis, sometimes from one day to the other.⁵⁹ Court presidents have an exclusive and unlimited right to establish the case allocation scheme.⁶⁰ Judicial self-governing bodies are not entitled to exert meaningful control over the process of adopting case allocation schemes.⁶¹ The process of case allocation is not automated, but reliant on direct human intervention. The law provides for a wide range of exceptional rules without establishing guarantees against their inappropriate application. Parties in a court proceeding cannot verify the proper application of the scheme and whether any of the wide range of exceptional rules were applied in allocating their case.

(3) The CC does not have a case-allocation scheme at all. Since 2012, the CC has had the competence to review final and binding judgments delivered by ordinary courts with respect to their compliance with the Fundamental Law.⁶² The safeguards attached to the right to a lawful judge shall be applied at least in relation to the resolutions regarding the review of

⁵⁷ See: *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, p. 9.

⁵⁸ The modification of Article 9 of Act CLXI of 2011 on the Organisation and Administration of the Courts with effect from 1 April 2020 removed an important safeguard clause prescribing a fixed one-year term as temporal scope of schemes. According to the explanatory memorandum attached to the original wording of Act CLXI of 2011 on the Organisation and Administration of the Courts, “[t]he law – in accordance with the former legislation – still contains that the case allocation scheme shall be established by 10 December of the previous year, as it is of great importance that case allocation schemes are available in time, because this is what will determine who shall be deemed as ‘lawful judge’. The aim of setting a date is to limit the possibility of amending the case allocation scheme, because only a stable case allocation scheme can guarantee that the right to a procedure before a judge prescribed by law is not infringed.”

⁵⁹ The case allocation scheme of the Metropolitan Court of Appeal was modified on 13 occasions in 2023. All modifications were introduced with immediate effect or within a couple of days after their adoption. See: https://fovarosiitlotabla.birosag.hu/sites/default/files/field_attachment/a_fovaros_i_tlotabla_2023_evi_hatalyos_ugyelosztasi_rendje_10.pdf.

⁶⁰ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 9

⁶¹ The recommendation of the Venice Commission remains unaddressed, according to which 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*”. See: European Commission for Democracy Through Law (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, 16 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)036-e), para. 66. b).

⁶² Fundamental Law of Hungary, Article 24(2)(d)

ordinary court decisions, however, the CC does not have a case allocation scheme and cases are handed down to judges as rapporteurs under non-transparent rules.

(4) At appeal courts in Hungary, judges are assigned to chambers and the case allocation schemes also determine which chambers deal with which types of cases. There is no legal obstacle to apply the case allocation scheme as an informal method to transfer judges from one adjudicating chamber to another arbitrarily, without their consent and thereby reshuffle or even to fully dissolve well-functioning adjudicating chambers. Such transfers are widely applied despite having a substantial impact both on the status of individual judges and on the adjudication of specific types of cases. On one hand, arbitrary transfers affect the status of the judge as being the member of a specific chamber determines a judge's areas of work, and the types of cases they shall deal with. On the other hand, the reshuffling of chambers may affect the adjudication of specific types of cases heard by the chambers. An outstanding example for reshuffling the composition of chambers was the dissolution of a full and well-functioning chamber at the Kúria as an alleged response to dissent.⁶³ No judicial remedy is available against this type of transfers as it is practically carried out on the basis of an amendment to the case allocation scheme (which determines which judges shall make up a given chamber, and what types of cases that chamber will adjudicate).

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

Effective from 1 June 2023, the Judicial Reform significantly improved the legal status and competences of the NJC, which is a step in the right direction.⁶⁴

After establishing stronger powers for the NJC under the Judicial Reform – so it can effectively exercise its constitutional role in supervising the central administration of courts – it is also extremely important to safeguard the independence of the NJC by ensuring that its composition represents the will of the judges and is free from any formal or informal pressure. Only an independent NJC may fulfil its constitutional role in line with its newly strengthened powers.

Several factors prove, however, that significant political and administrative pressure was exerted on the election process.⁶⁵

- Referring to the fact that the Judicial Reform exceptionally allowed for current NJC members to get re-elected,⁶⁶ Gergely Gulyás, the Minister heading the Prime Minister's Office hinted at a news conference that some NJC members acted in their own interests.⁶⁷

⁶³ See: Ágnes Kovács, Taking Revenge for Dissent: Hungary's Chief Justice to Fully Eliminate Judicial Autonomy, *VerfBlog*, 13 December 2023, <https://verfassungsblog.de/taking-revenge-for-dissent/>.

⁶⁴ For an in-depth analysis of the new status and competences of the NJC, see the joint assessment by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee of Hungary's judicial reform, issued on 23 May 2023: <https://www.amnesty.hu/joint-assessment-of-hungarys-judicial-reforms>.

⁶⁵ Happening between September 2023 and January 2024.

⁶⁶ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 197/F(1)

⁶⁷ *"It was regrettable that some members of the NJC as judges were happy to negotiate with foreign governments in Brussels and report their own government in order to achieve personalised legislation so that they could be re-elected. So it seems that they have not stopped their activity. And what is particularly ridiculous is that these people used to say that ad hominem legislation was unacceptable, and even saw it where it did not exist, and then when the legislation was tailor-made to fit them and their needs, they said that they did not wish to*

To disprove this claim and to protest against *ad hominem* legislation, elected members of the NJC waived their right to be re-elected, arguing that they had not sought for such a right.⁶⁸

- Another reported example is the top-down interference of the President of Hungary's largest regional court in Budapest, the Metropolitan Regional Court, who instructed court leaders to convene open plenary "consultations" at their judicial departments to choose the electors.⁶⁹ This is problematic because the law prescribes full secrecy of the voting process. Despite concerns publicly raised by current members of the NJC, the "consultations" were held, breaching the rules of the election process.⁷⁰
- According to news reports,⁷¹ the Kúria President sent a letter to the Hungarian Association of Judges (MABIE), in which he expressed that he would "*consider it fortunate*" if the electors would elect as member of the NJC one or two administrative leaders falling within the power of appointment of the NOJ President. The NJC publicly stated⁷² that the letter questions whether the Kúria President respects the electors' autonomy in their decision-making and the fairness of the NJC election and also pointed out that the electors could easily identify the "administrative heads" referred to by the Kúria President.

The Judicial Reform failed to establish a conflict-of-interest rule whereby judicial leaders appointed by the NOJ President⁷³ and with respect to whom the NOJ President exercises the employer's rights are excluded from becoming members of the NJC.⁷⁴ The lack of such conflict-of-interest rule is problematic for the future election and operation of the new NJC, as (i) non-judicial leader NJC members may not dare to challenge judicial leader NJC members on issues within the NJC decision-making processes; (ii) it is questionable whether judicial leaders appointed by the NOJ President are able to exercise independent and impartial supervision over the NOJ President exercising the rights of employer with respect to them; and (iii) judicial leaders' formal and informal influence at courts makes it easier for them to be elected as NJC members at the NJC's Assembly of Delegates.

make use of it and they do not want to become candidates again for the elections [for the next term of the NJC]. Watch them all run!" See: <https://magyarnemzet.hu/belfold/2023/07/hamarosan-kezdodik-a-kormanyinfo-kovesse-nalunk-eloben-2> (from minute 33, in Hungarian).

⁶⁸ National Judicial Council, *The statement of the elected members of the NJC*, 6 September 2023, <https://orszagosbiroitanacs.hu/az-obt-valasztott-tagjainak-nyilatkozata/>

⁶⁹ See the detailed report from 23 August 2023: <https://444.hu/2023/08/23/maris-megkezdodott-a-kuzdelem-a-birosagokert>.

⁷⁰ See in more detail: Hungarian Helsinki Committee: *Fundamental Deficiencies of the Hungarian Judicial Reform*, 31 October 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/Fundamental_deficiencies_Judicial_Reform_20231030.pdf, Section IV.2.

⁷¹ <https://www.szabadeuropa.hu/a/kuria-elnok-orszagos-biroi-tanacs-megvalasztas-befolyasolas-level-biroi-egyesulet/32739875.html>

⁷² National Judicial Council, *Statement of the NJC on the letter of the Kúria President on the NJC election*, 21 December 2023, https://orszagosbiroitanacs.hu/az-obt-kozlemenye-a-kuria-elnokenek-levelerol-az-obt-valasztas-kapcsan/?utm_source=substack&utm_medium=email

⁷³ I.e., court presidents, court vice-presidents, chairs of the departments of judges.

⁷⁴ Controversially, the legislation explicitly excludes the possibility of being elected as member of the NJC in case of close relatives of the NOJ President, the Kúria President and the presidents and vice-presidents of appeal courts and regional courts [see Article 90(2)(e) of Act CLXI of 2011 on the Organisation and Administration of the Courts].

As regards to the last point, a concerning example is that at the Veszprém Regional Court, only court leaders⁷⁵ were elected as delegates in the current NJC election procedure. According to the first news, one of the 14 elected members for the next six-year term of the NJC is a regional court president.⁷⁶

Court leaders, government politicians and pro-government media outlets continued⁷⁷ to discredit the operation and question the integrity and independence of the NJC in 2023:

- On 2 March 2023, the Kúria President spoke⁷⁸ to ambassadors based in Budapest. In his speech, in relation to the draft of the Judicial Reform, he stated that NJC's new functions and powers *"do not correspond to the European standards"*. He also commented that district court members of the NJC *"despite their lack of professional experience at the highest court level, have a say in the administrative affairs of the Kúria which is unprecedented in Europe"*.
- On 5 July 2023, the Kúria President released a public statement⁷⁹ on the Kúria's official website, stating that the 2023 EC Rule of Law Report adopted *"without verification, the arbitrary opinion of the National Judicial Council on the Kúria"*⁸⁰ (see more under Question IV.16. of this contribution). Minister Gulyás also commented publicly⁸¹ that *"it is difficult not to agree with the words of the Kúria President"*, referring to the Kúria President's earlier comment.
- Smear campaigns discrediting judges who are members of the NJC continued, also putting pressure on potential candidates of the new NJC.⁸²

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

The Integrity Policy⁸³ issued by the NOJ President can still be used as a tool to silence judges who want to speak up inter alia for judicial independence, by claiming that the topic is political

⁷⁵ Judges elected the president of the regional court, a head of department, a president and a vice-president of a district court. See: <https://veszpremitorvenyszek.birosag.hu/hirek/20230926/kuldottvalaszto-osszbiroi-ertekezesletet-tartottak-veszpremi-torvenyszeken>.

⁷⁶ See: <https://www.szabadeuropa.hu/a/a-birol-megvalasztottak-az-oroszagos-birol-tanacs-uj-tagjait/32766711.html>. Further court presidents may be elected as substitute members. The election of substitute members is expected after the cut-off date of the present CSO contribution, in a second round.

⁷⁷ See: *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, p. 16.

⁷⁸ Kúria President, *Dr. Varga Zs. András, a Kúria elnökének köszöntő beszéde a 2023. március 2-i nagyköveti villásreggelin [Dr. Varga Zs. András Varga, President of the Kúria, in his welcome speech at the opening ceremony of the 2 March 2023 Ambassador's Brunch]*, 2 March 2023, https://kuria-birosag.hu/sites/default/files/sajto/20230302_varga_zs_a_koszonto_eloadas_hu.pdf

⁷⁹ Kúria President, *A Kúria elnökének közleménye [Statement of the Kúria President]*, 5 July 2023, <https://kuria-birosag.hu/hu/sajto/kuria-elnokenek-kozlemenye-2>

⁸⁰ "[T]he chapter on Hungary in the European Commission's 2023 Rule of Law Report regrettably adopted, without verification, the arbitrary opinion of the National Judicial Council on the Kúria, which is without any factual basis, that has been repeatedly refuted with data, and violates the personal integrity of many judges. It can be stated that not a single word of the findings is true."

⁸¹ <https://magyarnemzet.hu/belfold/2023/07/hamarosan-kezdodik-a-kormanyinfo-kovesse-nalunk-eloben-2>

⁸² See in more detail: Hungarian Helsinki Committee: *Fundamental Deficiencies of the Hungarian Judicial Reform*, 31 October 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/Fundamental_deficiencies_Judicial_Reform_20231030.pdf, Section III.1.

⁸³ <https://birosag.hu/obh/szabalyzat/62016-v31-obh-utasitas-az-integritasi-szabalyzatról-0>

and/or an activity that infringes their integrity.⁸⁴ The NOJ President has not amended the Integrity Policy since his election.⁸⁵

The disciplinary cases of judges are decided by service courts, the operation of which is not public according to the law.⁸⁶ For years, not even the individual decisions of the service courts were published in any way, only aggregated data were provided by the NOJ President regarding the number and the outcome of the disciplinary proceedings.⁸⁷ From November 2022, the NJC has started to publish on its website⁸⁸ some recent anonymized disciplinary decisions for the years 2021 (14 decisions), 2022 (eight decisions) and 2023 (11 decisions).

The Kúria President implicitly questioned the legitimacy of the service courts on at least two occasions,⁸⁹ claiming that the Seventh Amendment to the Fundamental Law⁹⁰ cancelled all special courts other than the ordinary courts.

In the first half of 2022, four judges received written warnings, three of them for misconduct in the performance of their duties and one for a behaviour harming the dignity of the judiciary. In the first half of 2022, disciplinary proceedings were initiated against six judges before the first instance service court (in four cases for misconduct in the performance of their duties and in two cases for a behaviour harming or endangering the dignity of the judiciary). In the first half of 2022, three proceedings ended with the imposition of disciplinary sanctions (one case of rebuking, one case of reprimanding, one case of reduction by one salary level).⁹¹

Judgment C-564/19 of the Court of Justice of the European Union (CJEU) remains non-executed, as the Judicial Reform failed to address the effects of the binding precedential

⁸⁴ According to Article 7(2) of the Integrity Policy: *"The integrity is compromised by other activities that undermine the independence or impartiality of the judge or judicial staff member."*

⁸⁵ To learn more, see Section 8 of Amnesty International, *Status of the Hungarian judiciary*, 2021, https://www.amnesty.hu/wp-content/uploads/2021/02/Status-of-the-Hungarian-judiciary_EN_FINAL.pdf, p. 24.

⁸⁶ *"Disciplinary proceedings and preliminary investigations shall be conducted in camera."* (Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 119)

⁸⁷ According to the 2021 annual review (https://orszagosbiroitanacs.hu/download/az-elfofoku-szolgalati-birosag-elnokenek-2021-evi-tajekoztatoja/?wpdmdl=2074&refresh=63b9c3c182cfb1673118657&ind=1646666429528&filename=2-2022.OBT_V.3-3-melleklet-beszamolo-2021.-ELSOFOK.pdf) of the first instance service court, there were 23 disciplinary cases completed in 2021, out of which 11 cases ended with a disciplinary measure. According to the 2021 annual review (<https://orszagosbiroitanacs.hu/download/a-masodfoku-szolgalati-birosag-elnokenek-2021-evi-tajekoztatoja/?wpdmdl=2075&refresh=63b9c3951d88d1673118613>) of the second instance service court, there were 13 disciplinary cases completed in 2021.

⁸⁸ <https://orszagosbiroitanacs.hu/fegyelmi-birosagok-hatarozatai/>

⁸⁹ *"My question to you – both to the service court of first and second instance – is whether you have examined the normative basis for your own operations after the Seventh Amendment? I see that you are surprised by the question. All special courts have been abolished by the Fundamental Law, so after the Seventh Amendment, no court other than the district courts, regional courts, regional courts of appeal, and the Kúria can be established for a separate class of cases."* (See the minutes of the NJC's meeting held on 1 March 2023, pp. 6-7., available at: <https://orszagosbiroitanacs.hu/download/az-obt-2023-marcius-1-i-ulesenek-jegyzokonyve/?wpdmdl=2526&refresh=65830020959971703084064>.)

"Just for the record, and repeating what I have said several times before, after the Seventh Amendment to the Fundamental Law, if I remember correctly, the constitutional legal basis for these special courts ceased to exist, [...]." (See the minutes of the NJC's meeting held on 4 October 2023, p. 8., available at:

<https://orszagosbiroitanacs.hu/download/az-obt-2023-oktober-4-i-ulesenek-jegyzokonyve/?wpdmdl=2735&refresh=65830116212601703084310>.)

⁹⁰ Unofficial translation by the Hungarian Helsinki Committee: <https://helsinki.hu/wp-content/uploads/T332-Constitution-Amendment-29-May-2018-ENG.pdf>.

⁹¹ Review of the NOJ President for the first half of 2022, https://birosag.hu/sites/default/files/2023-11/obhe_2022_i_feleves_beszamolo.pdf, pp. 51-52.

decision by the Kúria,⁹² according to which referring a question to the CJEU is unlawful under Hungarian law if the question referred is not relevant to and necessary for the resolution of the dispute concerned (see more at Question IV.10. of this contribution). This is particularly concerning, as the mere act of referring a question to the CJEU served as the basis for initiating a disciplinary action against a judge in the past.⁹³

In March 2023, the Plenary Meeting of the Group of States against Corruption (GRECO) adopted a new interim compliance report⁹⁴ regarding corruption prevention in respect of members of Parliament, judges and prosecutors. The report concluded that there are still serious deficiencies regarding the implementation of GRECO's recommendations, including the ones regarding the immunity of judges⁹⁵ or the immunity of public prosecutors⁹⁶ that remain not implemented or the one regarding the disciplinary proceedings against prosecutors⁹⁷ that is only partly implemented.

The procedure regarding the constitutionality of the new, NJC-adopted Code of Ethics at the CC is still pending,⁹⁸ and the ongoing dispute and the chilling effect that it exerts on the NJC and the judges continues to have a negative impact on judges' freedom of expression and participation in professional debates.

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

The salary of judges and court staff is critically low in Hungary, does not commensurate with the status, dignity and responsibility of the judicial office and endangers the independence of the judiciary (see more at Question I.13. of this contribution).

The Hungarian legislation⁹⁹ 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 granting) bonuses. There is no closed 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 for such

⁹² Order Bt.III.838/2019/11. of the Kúria

⁹³ See: <https://mabie.hu/index.php/1501-a-szolgalati-birosag-megszuntette-a-figyelmi-eljarast-a-pkkb-birajaval-szemben>.

⁹⁴ Group of States against Corruption (GRECO), *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Interim Compliance Report – Hungary*, GrecoRC4(2023)7, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab87f1>,

⁹⁵ GRECO recommended that the immunity of ordinary judges be limited to activities relating to their participation in the administration of justice (“functional immunity”).

⁹⁶ GRECO recommended that the immunity of public prosecutors be limited to activities relating to their participation in the administration of justice (“functional immunity”).

⁹⁷ GRECO recommended that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the prosecution service and in a way that provides for enhanced accountability and transparency.

⁹⁸ <https://alkotmanybirosag.hu/ugyadatlap/?id=B1E83AFC8B10B1D2C125885B005B3B7E>

⁹⁹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 179-196

decisions.¹⁰⁰ For instance, the internal regulations¹⁰¹ list premiums and bonuses that can be granted in the framework of the labour force preservation programme of the court system.¹⁰² 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 for 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 certain types of bonuses.

Tamás Matusik NJC President¹⁰³ and Judit Oltai, former MABIE President¹⁰⁴ lately also criticized the lack of transparency of paying allowances.

The Judicial Reform gave competence to the NJC over the “other allowances”,¹⁰⁵ as the law from 1 June 2023 provides that “[t]he amount and the detailed conditions and rates of the allowances provided for in Paragraphs (1) and (2) [of Article 189], including the conditions for the granting of allowances, shall be laid down by the NOJ President in their internal regulations, in cooperation with the representative bodies, and with the NJC’s consent”. However, the Judicial Reform did not set a deadline for amending the current internal regulations that have been in effect since 2013 (amended last from 1 January 2023). The NOJ President has not amended the internal regulations in question, i.e. NOJ President Order 5/2013. (VI. 25.) in 2023 and therefore the NJC could not exercise its right to consent yet. An approach in line with rule of law principles require the NOJ President to amend the part of the internal regulations dealing with “other allowances”, the draft of which would be shared with the NJC for its consent. There is a risk that the NOJ President will not amend the internal regulations, thus preventing the NJC from influencing the detailed conditions and rates of the allowances for judges.

Furthermore, the law provides that other allowances including bonuses must be given “in cooperation with the representative bodies”. However, the MABIE President – regarding the year-end bonus of minimum HUF 650,000 (€ 1,700) to judges and court staff – claimed that

¹⁰⁰ Article 189 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges 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 for such decisions.

¹⁰¹ NOJ President Order 5/2013. (VI. 25.), Article 20 of Annex 2

¹⁰² 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.

¹⁰³ “[T]he practice of previous years – not the last year but the years before – bonuses were paid at the end of the year, with huge differences, in a way that was completely lacking transparency.” (See the minutes of the NJC’s meeting held on 8 November 2023, p. 19., available at:

<https://orszagosbiroitanacs.hu/2023-11-08/>.)

¹⁰⁴ “Act CLXII of 2011 on the Legal Status and Remuneration of Judges and the management regulations list precisely which benefits in particular may be paid. This is not an exhaustive list, but the word ‘in particular’ defines what range of benefits is appropriate to give. In comparison, each payment has recently been given under a new name and under new conditions of payment. There were therefore no two benefits whose conditions were identical in their entirety.” (See the minutes of the NJC’s meeting held on 8 November 2023, p. 18., available at: <https://orszagosbiroitanacs.hu/2023-11-08/>.)

¹⁰⁵ Listed under Article 189 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges.

the MABIE was not consulted before making the proposal for such bonuses neither in 2022 nor in 2023.¹⁰⁶

The CC rejected a complaint based on a freedom of information lawsuit which sought to access data on the bonuses paid to the NOJ's senior staff (see in more detail under Question IV.5. of this contribution).

9. Independence/autonomy of the prosecution service

The concerns raised by the 2023 Rule of Law Report in relation to the organisation of the prosecution service have not been addressed in any form; structural shortcomings following from the lack of internal checks and balances within the prosecution service and from the Prosecutor General's ability to unaccountably influence the work of subordinate prosecutors and to interfere in individual cases have not been tackled. Thus, the 2023 Rule of Law Report's conclusion that there is a *"persistent risk of top prosecutors influencing the work of subordinate prosecutors and interfering in individual cases, which is facilitated by the strictly hierarchical architecture of the prosecution service and a lack of internal checks and balances within the prosecution service"*¹⁰⁷ remains valid.

Furthermore, as also pointed out by the 2023 Rule of Law Report, the *"continued possibility to maintain the Prosecutor General in office after the expiry of his/her mandate"* by a minority blocking the election of its successor in Parliament *"could expose him/her to undue political influence"*.¹⁰⁸ This situation was criticized by the Venice Commission as early as 2012,¹⁰⁹ and GRECO also recommended that this possibility is reviewed by the Hungarian authorities, to no avail.¹¹⁰ Moreover, the Prosecutor General can only be removed from office with a two-thirds majority of Members of Parliament as a result of a 2021 amendment.¹¹¹ The incumbent Prosecutor General was re-elected in 2019 for nine years by the governing parties.

¹⁰⁶ "[T]here has therefore been no meaningful consultation with stakeholders or opportunity to put forward genuine comments that could be used as a basis for correcting the proposal." (See the minutes of the NJC's meeting held on 8 November 2023, p. 18., available at: <https://orszagosbiroitanacs.hu/2023-11-08/>.)

¹⁰⁷ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 8.

¹⁰⁸ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 8. According to Article 22(2) of Act CLXIV on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecutor Career, if the mandate of the Prosecutor General expires, he/she shall exercise the powers of the Prosecutor General until the new Prosecutor General takes office. Under Article 29(4) of the Fundamental Law, the Prosecutor General shall be elected with the votes of two thirds of the Members of Parliament.

¹⁰⁹ Group of States against Corruption (GRECO), *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Interim Compliance Report – Hungary*, GrecoRC4(2023)7, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab87f1>, paras 54-57.

¹¹⁰ European Commission for Democracy Through Law (Venice Commission), *Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career of Hungary*, CDL-AD(2012)008, 19 June 2012, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)008-e), paras 55-60.

¹¹¹ See Article 61/A(1)(i) of Act XXXVI of 2012 on the Parliament, as introduced by Article 85 of Act CXXII of 2021 on Amending Certain Laws on Justice and Related Matters.

GRECO's recommendation that the immunity of prosecutors be limited to activities relating to their participation in the administration of justice ("functional immunity") remains not implemented.¹¹²

It was also recommended by GRECO that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the prosecution service and in a way that provides for enhanced accountability and transparency. As a result, the respective rules were amended to involve a disciplinary commissioner in disciplinary proceedings. GRECO welcomed this step, but pointed out in its 2023 compliance report that the disciplinary commissioner's *"role is limited, and the superior prosecutor is still leading the overall procedure"*, and that *"[n]o measures to increase the transparency of the process has been reported"* by the Hungarian authorities.¹¹³

In sum, out of the four recommendations issued by GRECO in 2015 in relation to corruption prevention in respect of prosecutors, one recommendation remains not implemented, while two remain only partly implemented.

The recommendation made by the EC in the 2023 Rule of Law Report to *"[e]stablish a robust track record of investigations, prosecutions and final judgments for high-level corruption cases"* (i.e. high-level officials and their immediate circles) has not been complied with.¹¹⁴

With a view to accessing EU funds by fulfilling the respective "super milestone" set under Hungary's RRP¹¹⁵ and adopting the corresponding anti-corruption measure from among the 17 remedial measures that Hungary committed to in the framework of the conditionality mechanism,¹¹⁶ a new law was adopted that, as of 1 January 2023, provides for the judicial review of prosecutorial decisions not to open or to close an investigation in corruption-related cases. The new special remedy process allows for private prosecution in such cases, enabling both private individuals and legal entities under private law to take cases of corruption before justice. However, *"the prevailing rules (short deadlines, limited access to case files, lack of the right to legal remedies) make an effective prosecution impossible. According to information received from the National Office for the Judiciary, until the end of October 2023, 22 complaints were submitted, out of which the court dismissed 17, while the decision regarding the remaining 5 complaints was underway. Until the end of October, no motion for private prosecution was submitted. A major deficiency of the regulation is that it is only applicable in case of criminal processes terminated or crime reports submitted on 1 January 2023 or later,*

¹¹² Group of States against Corruption (GRECO), *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Interim Compliance Report – Hungary*, GrecoRC4(2023)7, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab87f1>, paras 58-61.

¹¹³ Group of States against Corruption (GRECO), *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Interim Compliance Report – Hungary*, GrecoRC4(2023)7, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ab87f1>, paras 62-66.

¹¹⁴ The issue is elaborated on in more detail in the "II. Anti-Corruption Framework" chapter of the present CSO contribution.

¹¹⁵ Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, <https://data.consilium.europa.eu/doc/document/ST-15447-2022-INIT/en/pdf>

¹¹⁶ Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, https://eur-lex.europa.eu/eli/dec_impl/2022/2506/oj

which is in clear contradiction with the requirements laid down in [the respective RRP] milestone.”¹¹⁷

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

(1) In 2023, the Committee of Ministers (CM) monitoring the execution of judgments by the European Court of Human Rights (ECtHR) put on its agenda the execution of the judgment in the *Baka v. Hungary* case in March¹¹⁹ and subsequently in December¹²⁰ again. In its decisions passed, the CM reiterated its utmost concern about the lack of information in response to Interim Resolution CM/ResDH(2022)47¹²¹ and the absence of progress, more than seven years after the *Baka* judgment became final. The CM urged the authorities to present an evaluation of the guarantees and safeguards protecting judges from undue interferences, to enable “a full assessment as to whether the concerns regarding the ‘chilling effect’ on the freedom of expression of judges caused by the violations in these cases have been dispelled”. The CM invited the authorities to provide information on developments in the proceedings before the Constitutional Court initiated by the Kúria President with respect to the new Code of Ethics for Judges.¹²²

(2) Despite the enhanced monitoring of the freedom of expression of Hungarian judges in the *Baka* case and the fact that elections to the NJC started in September 2023, smear campaigns¹²³ against judges as members of the NJC continued. On 7 July 2023, the government-aligned propaganda media released an article claiming that the NJC should be abolished for being biased. The title of the article suggested that members of the NJC are “old guttersnipes”.¹²⁴ On 5 October 2023, another smear article claimed that members of the NJC are “service staff of the empire” (hinting at the US and its Ambassador to Hungary).¹²⁵

(3) The Kúria President publicly questioned on several occasions the legitimacy of the rules on court administration. On 2 March 2023, in his welcome address to ambassadors assigned to Hungary, the Kúria President discredited the supervisory functions of the NJC claiming that the “National Judicial Council has a large number of members coming from local courts who, in spite of their lack of experience at a supreme level, interfere with the [Kúria’s] management

¹¹⁷ Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Assessment of Hungary’s compliance with conditions to access European Union funds*, 15 November 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/11/HU_EU_funds_assessment_Q3_2023_table.pdf, pp. 4-5.

¹¹⁸ Note that no response was provided to Question I.10. on “Independence of the Bar (chamber/association of lawyers) and of lawyers”.

¹¹⁹ 1459th meeting, 7-9 March 2023 (DH), decision CM/Del/Dec(2023)1483/H46-17 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa7338

¹²⁰ 1483rd meeting, 5-7 December 2023 (DH), decision CM/Del/Dec(2023)1483/H46-17 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ad3fd0

¹²¹ Interim Resolution CM/ResDH(2022)47

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5c339
<https://helsinki.hu/en/ngos-turn-to-the-constitutional-court-in-support-of-judicial-independence/>

¹²³ See more on “black campaigns” of the Hungarian propaganda media at: <https://www.youtube.com/watch?v=ego4aQLZKIQ>.

¹²⁴ See the article here: <https://magyarnemzet.hu/tollhegyen/2023/07/regi-csibeszek-6?fbclid=IwAR183cd9dHW957kE-SMkLzxcntul2XmAM60ISx4PkiYHKCZU2rzHVvhbF44>.

¹²⁵ See the article here: <https://magyarnemzet.hu/velemeney/2023/10/a-jurisztokracia-mar-a-spajzban-van>.

matters, which is also unprecedented in Europe.¹²⁶ On 3 July 2023, barely one month after the entry into force of the Judicial Reform, the Kúria President gave a radio interview¹²⁷ in which he claimed that the Judicial Reform was externally driven and forced on Hungarians, inapplicable, causing legal instability in the operation of the Kúria and was ultimately “ordered” to petrify the Hungarian judicial system. The interview outlined a new political narrative, according to which the sovereignty of Hungary needs to be protected against the actors requiring the country to adopt the Judicial Reform.

(4) Overruling final and binding decisions of ordinary courts has been a practice of the Hungarian legislation to enforce the political will of the ruling majority.¹²⁸ At his hearing before the Justice Committee of the Parliament, the new Minister of Justice, Bence Tuzson publicly claimed that the Ministry of Justice (MoJ) will pay attention to the content of the judgments delivered at Hungarian courts and *“if the judgments do not serve the interests of Hungarian citizens and institutions”* the MoJ will amend the legislation.¹²⁹

A first example of threatening courts with “over-legislating” a final and binding judgment was a case where a transgender woman’s right to pension after 40 years of employment was acknowledged by the court. Ruling party politician Gabriella Selmeczi claimed the ruling to be proof of the LGBTQ propaganda in Hungary and a provocation against the legislature, and envisaged the modification of the law.¹³⁰ 10 days later, a draft law was submitted to the Parliament,¹³¹ excluding the possibility of trans women’s right to pension after 40 years. According to the explanatory memorandum attached to the draft law, *“the amendment clarifies what the legislator’s original intention was, and what had not been in doubt under common sense until now: that the ‘women 40’ preferential pension entitlement is for those who have worked as women for 40 years [...] The Fundamental Law clearly states that Hungary takes into account the sex at birth, so it is not possible to take into account any change contrary to biological determination, but even in countries other than Hungary, which allow gender reassignment almost at will, it is inconceivable that an entitlement which recognises the prominent role played by women in society could be abused by those who, after 39 years of employment as men, suddenly feel themselves to be women.”* The draft law was drawn up to be applicable with immediate effect, also in pending cases ensuring that the merit of the decision of ordinary courts is overturned.

¹²⁶ See the Kúria President’s welcome address at https://kuria-birosag.hu/sites/default/files/sajto/dr._varga_zs._andras_elnok_eloadasa.pdf.

¹²⁷ See the interview at <https://www.youtube.com/watch?v=EspkKuh04Zo>.

¹²⁸ See more at: Hungarian Helsinki Committee, *Non-Execution of Domestic and International Court Judgments in Hungary*, December 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf, p. 20.

¹²⁹ See: <https://444.hu/2023/07/03/tuzson-bence-mar-a-miniszterjelolti-meghallgatasan-nyomas-ala-helyezte-a-birosagokat>.

¹³⁰ See: <https://444.hu/2023/07/12/selmeczi-gabriella-torvenymodositast-igert-amiatt-mert-egy-birosagi-itelet-szerint-a-transznemuek-is-elmehetnek-40-ev-utan-nyugdijba>.

¹³¹ Bill T/4659., available at: <https://www.parlament.hu/irom42/04659/04659.pdf>

B. Quality of justice

12. Accessibility of courts

(1) In criminal procedures, defendants are entitled to use their mother tongue, or any other language spoken/understood by them, as well as sign language.¹³² However, the law stipulates that if it is not possible to find an interpreter who meets the statutory criteria, any other person having “*sufficient knowledge of a certain language*” could be appointed as an *ad hoc* interpreter.¹³³ This may cause problems in practice with regard to the quality of interpretation and translation, as there are no measurable guarantees for what is sufficient, and persons not having sufficient command of a given language may be appointed as well. The lack of a formalised quality assurance system is also a concern. There is still no central state register for independent translators and interpreters who are appropriately qualified, and Hungary has not taken any other concrete measures either to ensure that the quality of the interpretation and translations provided is sufficient to enable defendants to understand the accusation against them and in order that that interpretation can be reviewed by the national courts. It can be argued that this goes against the CJEU’s preliminary ruling handed down in Case C-564/19.¹³⁴ The law only requires the translation of those documents that are to be served,¹³⁵ and defendants have no right to request the translation of further documents they regard to be essential, contrary to EU law.¹³⁶

(2) If it is foreseen that due to their financial situation the defendant will be unable to pay the costs of the procedure or parts of it, authorities may grant them cost reduction, entailing that the fee and the costs of the defence counsel are advanced and borne by the state.¹³⁷ However, the threshold for such cost reduction is too high: defendants have to live way below the minimum subsistence level to qualify.¹³⁸ In addition, administrative requirements are rigid and difficult to comply with. As a result, it can be presumed that many indigent defendants are not granted a cost reduction. The high eligibility threshold applies to legal aid in other areas as well, and so concerns as regards the level of inclusiveness of the legal aid scheme in general,

¹³² Act XC of 2017 on the Code of Criminal Procedure, Articles 8 and 78

¹³³ Act XC of 2017 on the Code of Criminal Procedure, Article 201(2)

¹³⁴ See:

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=642B74353C3D61EF94193B74317206F4?text=&docid=249861&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=60>.

¹³⁵ Act XC of 2017 on the Code of Criminal Procedure, Article 78(7)

¹³⁶ For more details on the right to interpretation and translation in criminal procedures, see: András Kristóf Kádár – Nóra Novoszádek – Dóra Szegő, *Inside Police Custody 2 – An empirical study of suspects’ rights at the investigative stage of the criminal process in nine EU countries. Country Report for Hungary*, December 2018, https://www.helsinki.hu/wp-content/uploads/IPC_Country_Report_Hungary_Eng_fin.pdf, pp. 33–45.

¹³⁷ Act XC of 2017 on the Code of Criminal Procedure, Articles 75(1), 76(a) and 77(1)

¹³⁸ According to Article 5(1) and (3) of Act LXXX of 2003 on Legal Aid, the state bears the costs of the legal services if the net monthly income of the person concerned does not exceed the base of calculation for social benefits (or, if they live alone, 150% of the base of calculation for social benefits), and have no assets. According to Article 15 of Government Decree 613/2022. (XII. 29.) on the Differing Rules of the Budget of Hungary for the Year 2023 due to the State of Danger, the sum of the base of calculation for social benefits for 2023 was HUF 28,500 (ca. € 75). At the same time, Policy Agenda calculated that the minimum subsistence level was HUF 124,820 (ca. € 330) in 2020. (See: <https://policyagenda.hu/elemezsek/tarsadalom/2023/letminimum-magyarorszagon-2019-2020/>.)

as raised by the 2023 Rule of Law Report,¹³⁹ remain valid. There is no quality assurance system in place for legal aid lawyers.

(3) The Constitutional Court's emerging practice when reviewing the constitutionality of ordinary court judgments gives rise to concerns. In general, the CC avoids to review the courts' adjudication in concrete details, e.g. their interpretation of the applicable laws,¹⁴⁰ and only sets the constitutional boundaries for interpretation.¹⁴¹ The CC does not as a general rule act as a court of appeal or super-court, it annuls a judicial decision only if it violates a fundamental right. In most cases, not even a clearly *contra legem* interpretation of the law is regarded to amount to a violation of the right to a fair trial.¹⁴² However, the CC's jurisprudence has started to change by introducing an argument that, exceptionally, on a case by case basis defined by the CC, the *contra legem* interpretation of the law by ordinary courts may qualify as a breach of the right to a fair trial.¹⁴³ This has allowed the CC to act essentially as a fourth instance court in politically sensitive cases and to annul judicial decisions unfavourable for the Government.¹⁴⁴ There seems to be an imbalance in this regard, whereby, the CC is more inclined to act as a fourth instance in such cases than in relation to ordinary constitutional complaints without political connotations.

(4) The lack of deadlines in the CC's proceedings, or the CC's failure to respect the existing deadlines, constitutes a serious obstacle to access to justice. In May 2023, the CC decided after 10 years on a constitutional complaint challenging an individual judgment on a freedom of information request.¹⁴⁵ The Fundamental Law stipulates that on the request of a judge, the CC should review, within 90 days at the latest, the constitutionality of the law applicable to the individual case.¹⁴⁶ However, the CC occasionally ignores even the 90-day constitutional deadline, making it unforeseeable for the parties to the main proceeding when their case

¹³⁹ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 9.

¹⁴⁰ See lately: Ruling 3534/2023. (XII. 14.) AB, paragraphs [17]-[18]; Ruling 3542/2023. (XII. 21.) AB, paragraph [22].

¹⁴¹ See lately: Ruling 3509/2023. (XII. 1.) AB, paragraph [16].

¹⁴² See lately: Ruling 3548/2023. (XII. 21.) AB, paragraph [26].

¹⁴³ See: Decision 20/2017. (VII. 18.) AB, paragraphs [23]-[30]; Decision 23/2018. (XII. 28.) AB, paragraphs [26]-[30].

¹⁴⁴ Examples for this tendency include the following CC decisions. In Decision 33/2021. (XII. 22.) AB, based on a constitutional complaint lodged by the Government, the CC annulled a ruling of the Kúria that prohibited holding a referendum on a question whether sex change operations should be allowed for children. In Decision 3130/2022. (IV. 1.) AB, again on the basis of a constitutional complaint of the Government, the CC annulled a ruling of the Kúria which found that the Government violated the fairness of the elections by sending a newsletter to citizens who had earlier registered for COVID-19 vaccinations. In Decision 10/2022. (VI. 2.) AB, the CC annulled a ruling of the Kúria, which this time allowed to hold a referendum on repealing the law concerning the establishment of a foundation of the Fudan University in Hungary. In Decision 11/2022. (VI. 2.) AB, the CC annulled another ruling of the Kúria, approving a question for referendum on extending the entitlement period of the jobseeker's allowance. In Decision 16/2023. (VII. 25.) AB, the CC annulled a ruling of the Győr Regional Court that allowed a local referendum concerning the expansion of the local industrial zone. In Decision 20/2023. (VIII. 7.) AB and Decision 21/2023. (VIII. 7.) AB, the CC annulled two rulings of the Kúria which allowed referendums on questions concerning public education.

¹⁴⁵ See Decision 3233/2023. (VI. 2.) AB, and also: <https://atlatszo.hu/kozpenz/2023/05/15/tiz-ev-utan-utasitotta-el-az-ab-a-panaszunkat-kozel-ketmillio-forintba-kerult-az-allamnak-a-keslekedes/>.

¹⁴⁶ Fundamental Law of Hungary, Article 24(2)(b)

resumes before the ordinary court. A striking example is that it took more than one and a half years for the CC to deliver its ruling on the ban on legal gender recognition.¹⁴⁷

13. Resources of the judiciary

Regarding financial resources provided for courts by the state, for 2021, the proposed central budget expenditure was HUF 141,964.5 million (ca. € 396 million).¹⁴⁸ For 2022, the proposed central budget expenditure of the courts was increased to HUF 155,649.5 million (ca. € 422 million).¹⁴⁹ For 2023, the proposed central budget expenditure of the courts was HUF 160,377.3 million (ca. € 418 million).¹⁵⁰ For 2024, the proposed central budget expenditure of the courts was HUF 155,662.4 million (ca. € 406 million).¹⁵¹

The salary of judges and court staff is critically low in Hungary, does not commensurate with the status, dignity and responsibility of the judicial office and endangers the independence of the judiciary. The legislation does not guarantee the periodical review of judicial salaries to overcome or minimise the effect of inflation. The salary increase for judges made in previous years was discontinued for the year 2024. The base salary¹⁵² of both judges and prosecutors has been raised from gross HUF 507,730 (ca. € 1,418) for the year 2021¹⁵³ to HUF 566,660 (ca. € 1,538) for the year 2022¹⁵⁴ – but remained at this level both for 2023¹⁵⁵ (when the annual inflation exceeded 15%) and for 2024 (when the annual inflation exceeded 17%).¹⁵⁶

Court staff's salary consists of a base salary (that is connected to the judges' base salary) plus potentially a "place of work" supplement (if an employee works at the Kúria, the NJC or the NOJ) or a "title supplement" (that the court, the NJC or the Minister may grant to employees with more than 10 years of work experience). From 1 December 2023, the base salary may not be lower than gross HUF 266,800 (€ 698) and gross HUF 326,000 (€ 853) for posts that require secondary education. According to an NJC member¹⁵⁷ the salary of a court staff with 35 years of experience is a net HUF 270,000 (€ 706).

In 2023, representatives of judges called upon the necessity of a salary increase for judges and court staff.¹⁵⁸ The NJC made a statement to the news media claiming that the "NJC is

¹⁴⁷ See Decision 3058/2023. (II. 16.) AB. See also: Tamás Dombos – Eszter Polgári, Ignorance and Evil: The Hungarian Constitutional Court on Legal Gender Recognition for Trans People, *VerfBlog*, 21 February 2023, <https://verfassungsblog.de/ignorance-and-evil/>.

¹⁴⁸ Act XC of 2020 on the Central Budget of Hungary for 2021, Appendix 1

¹⁴⁹ Act XC of 2021 on the Central Budget of Hungary for 2022, Appendix 1

¹⁵⁰ Act XXV of 2022 on the Central Budget of Hungary for 2023, Appendix 1

¹⁵¹ Act LV of 2023 on the Central Budget of Hungary for 2024, Appendix 1

¹⁵² For reference, from 1 December 2023, the gross minimum wage is HUF 266,800 (ca. € 696) in Hungary.

¹⁵³ Act XC of 2020 on the Central Budget of Hungary for 2021, Article 65(1)-(2)

¹⁵⁴ Act XC of 2021 on the Central Budget of Hungary for 2022, Article 65(1)-(2)

¹⁵⁵ Act XXV of 2022 on the Central Budget of Hungary for 2023, Article 69(1)-(2)

¹⁵⁶ Act LV of 2023 on the Central Budget of Hungary for 2024, Article 66(1)

¹⁵⁷ NJC member Balázs Barkóczi. See the minutes of the NJC's meeting held on 8 November 2023, p. 23., available at: <https://orszagosbiroitanacs.hu/2023-11-08/>.

¹⁵⁸ "It has been repeatedly mentioned in previous meetings that the salaries of judicial staff, and also of judges, need to catch up, at least to the level of inflation, so that their purchasing power can return to at least the pre-inflation level and reflect the dignity of the tasks and activities carried out in the judiciary and in this profession. Unfortunately, this has not yet been achieved, despite the fact that the NOJ President, the Kúria President and the NJC itself have made requests, appeals and signalled to the decision-makers in this regard." (NJC member Balázs Barkóczi. See the minutes of the NJC's meeting held on 8 November 2023, p. 23., available at: <https://orszagosbiroitanacs.hu/2023-11-08/>.)

also aware that the high turnover of judicial staff, due to low salaries, is a threat to the viability of the judicial organisation".¹⁵⁹ In June 2023, the NJC proposed an amendment of the laws that from 1 September 2023 the salaries of both judges and court staff be increased at least in line with the inflation.¹⁶⁰ MABIE in a public statement "drew the attention of the Minister of Justice to the worrying situation in the organisation of the judiciary, which is already threatening the functioning of the courts and the independence of the judiciary"¹⁶¹. On 4 January 2024, the MABIE issued another public statement¹⁶² in which it stated that despite the high inflation in the last years, the salaries at courts have not been increased, while salaries in other public sectors have been, which could mean that "not only the functioning of the judiciary but also compliance with the rule of law in the EU is at stake!" and which jeopardizes the material aspect of judiciary independence.

The low salaries and the increased workload mean that according to news reports¹⁶³ many people are leaving the judicial system at some courts. A few dozen judges also signed a petition in May 2023 that requested the salary increase of court staff helping their work. According to the 2022 annual report of the President of the biggest Hungarian court, the Metropolitan Regional Court,¹⁶⁴ between 1 January and 31 December 2022 the actual number of judges working at the court decreased by 35 (the allowed the number of judges was 764 on 31 December 2022) and the actual number of court staff working at the court decreased by 88 (the allowed number of court staff was 2156 on 31 December 2022).

14. Training of justice professionals

It is the NOJ President who decides on and supervises the implementation of the central training program and who determines, with the NJC's consent, the rules for the judicial training system and fulfilling training obligations.¹⁶⁵ The NOJ President publishes the annual training plan on the central court website.¹⁶⁶ Since 2021, an expert group of 16 judges, invited by the NOJ President, has also assisted in preparing and executing the central training plan.¹⁶⁷

The Hungarian Academy of Justice (*Magyar Igazságügyi Akadémia*, MIA) is responsible for the training of judges and others involved in the administration of justice and carries out the task of the uniform, central training of judge trainees ("fogalmazók").¹⁶⁸ MIA operates within the NOJ, and its head is appointed by the NOJ President. The information on the MIA website is very scarce; not even the name of MIA's director is indicated.¹⁶⁹

¹⁵⁹ <https://rtl.hu/belfold/2023/10/30/birosag-fizetes-igazsagugyi-dolgozok-birok>

¹⁶⁰ Resolution 46/2023. (VI. 7.) OBT

¹⁶¹ <https://mabie.hu/index.php/1710-a-mabie-ismet-az-igazsagugyi-miniszterhez-fordult-hiaba>

¹⁶² Magyar Bírói Egyesület [Hungarian Association of Judges], *Salary increase for the courts, too!*, 4 January 2024, <https://mabie.hu/index.php/1728-beremelest-a-birosagok-szamaras-is>

¹⁶³ <https://rtl.hu/belfold/2023/05/22/birosag-pest-felmondas-rossz-korulmenyek-alacsony-fizetes>

¹⁶⁴ https://fovarositorvenyszek.birosag.hu/sites/default/files/field_attachment/ft_elnoki_beszamolo_2022.pdf

¹⁶⁵ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 76(7)

¹⁶⁶ These plans back to 2018 are available at: <https://birosag.hu/birosagokrol/birosagi-szervezet/obh/mia/kepzesi-rendszer>.

¹⁶⁷ <https://birosag.hu/birosagokrol/birosagi-szervezet/obh/mia/kepzesi-rendszer>

¹⁶⁸ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 171/A

¹⁶⁹ <https://birosag.hu/birosagokrol/birosagi-szervezet/obh/mia>

The NJC makes a proposal for the central training plan. Since the Judicial Reform entered into force,¹⁷⁰ it can exercise the right to consent regarding the rules for the judges' training system.¹⁷¹

Participation in different training programs and teaching is important for judicial career development. These activities are rewarded with points in judicial applications. In recent years, the NJC has urged a more transparent and merit-based system for selecting judge trainers and providing equal access to national and international training.¹⁷²

In April 2023, the NJC made some proposals regarding the 2024 central training plan, which concerned mainly the principles of the judicial training system.¹⁷³ The NJC emphasised that training plans should reflect the demands of practising judges to the greatest extent possible. It argued for organising training programs with other legal professionals, such as prosecutors, attorneys and notaries, and stressed that preference should be given to in-person training. The NJC highlighted that a "trainer database" should be established and made public, and equality of access to training should also be safeguarded. In December 2023, when the NJC discussed revising the scoring system for judicial applications, some NJC members raised similar concerns.¹⁷⁴

According to the 2024 training plan, as a very recent development, MIA established the required "trainer database".¹⁷⁵ Trainers for the database can be recommended by the expert group, professional court leaders, but judges can also apply voluntarily. The expert group will select the trainers for a particular event based on their previous professional work and training evaluation record. The database will be searchable based on fields of law and updated every two years. No further information about the database is yet available.

Compulsory trainings are organised primarily for junior judges appointed for a fixed three-year term, court clerks and judge trainees, aiming to prepare for the judicial office.¹⁷⁶ As the Hungarian judiciary is traditionally built on a career system, judges are selected mainly among court clerks who previously entered the judiciary as judge trainees. Therefore, judges are typically trained and socialised within the judicial organisation, making compulsory training important. Court executives should participate in leadership training; in 2023, district court presidents and vice-presidents had to take part in such training.¹⁷⁷ The 2024 training plan

¹⁷⁰ Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan

¹⁷¹ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103(4)

¹⁷² For the criticism of the training system, see: *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wpcontent/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, pp. 19-20.

¹⁷³ See Resolution 22/2023. (IV. 5.) OBT on the proposal for the 2024 central training plan and the minutes of the meeting of the NJC held on 5 April 2023 at <https://orszagosbiroitanacs.hu/download/az-obt-2023-aprilis-5-i-ulesenek-jegyzokonyve/>.

¹⁷⁴ See the minutes of the meeting of the NJC held on 5-6 December 2023 at <https://orszagosbiroitanacs.hu/download/az-obt-2023-december-5-es-6-napjan-megtartott-ulesenek-jegyzokonyve/>.

¹⁷⁵ Resolution 84.SZ/2023. (X. 4.) OBHE on the 2024 Central Training Plan, available at https://birosag.hu/sites/default/files/2023-10/84_sz_2023_x_4_obhe_hatarozat_a_2024_evi_kozponti_oktatasi_tervrol_0.pdf.

¹⁷⁶ <https://birosag.hu/birosagokrol/birosagi-szervezet/obh/mia/kepzesi-rendszer>

¹⁷⁷ <https://orszagosbiroitanacs.hu/download/az-orszagos-birosagi-hivatal-elnokenek-tajekoztatoja-a-2023-i-felelvi-tevekenysegerol/>

envisages training for the presidents and vice-presidents of regional courts and regional courts of appeal.¹⁷⁸

In March 2023, when the draft of the Judicial Reform was under negotiations, the Kúria organised an international conference titled “*Institutional safeguards of judicial independence*”.¹⁷⁹ The conference was not publicly advertised, and NGOs, academics and journalists who sought to register for the event were not allowed to attend on the grounds that the conference was already full, thus preventing any debate from developing on the spot.¹⁸⁰ Even the NJC complained at one of its meetings that it had not been invited to the conference.¹⁸¹ Later, the Kúria President argued that everything was done to ensure full publicity for the event: the conference was broadcast live in the hall of the Kúria, and the presentations were soon made available on YouTube.¹⁸²

In December 2022, representing Hungary as an observer member of the Organisation of Turkic States (OTS), the NOJ joined the Turkic Judicial Training Network (TJTN) as the sole member from the EU.¹⁸³ The TJTN was established to draw an institutional frame under the umbrella of the OTS and “facilitate cooperation and coordination in the field of judicial training”.¹⁸⁴ Reminding of the fact that thousands of Turkish judges have been sacked or jailed in recent years, members of the NJC pointed out that taking part in the TJTN goes against acknowledging the independence of judges and being solidary with judges who were persecuted and harassed for their independence, therefore the NJC requested the NOJ President to review the participation of the NOJ in the TJTN.¹⁸⁵

15. Digitalisation

As far as the legal framework is concerned, in criminal procedures, if the technical conditions are in place, the use of a telecommunication device (i.e. a remote hearing) shall be the main rule for procedural acts requiring the presence of the defendant in certain cases (e.g. if the defendant is detained).¹⁸⁶ Prescribing remote hearings as a general rule is problematic due to

¹⁷⁸ Resolution 84.SZ/2023. (X. 4.) OBHE on the 2024 Central Training Plan

¹⁷⁹ In 2021, the Kúria President András Zs. Varga established a research institute (*Werbőczy István Országbírói Kutatóintézet*) operating directly subordinated to him. According to the Organisational and Operational Regulations of the Kúria, the research institute conducts research regarding the history and constitutional role of the justice system, and judicial independence. It also supports the adjudicating chambers and chairs of departments and provides theoretical contributions for the Kúria to ensure the uniform application of the law. (See https://kuria-birosag.hu/sites/default/files/szabalyzatok/a_kuria_szervezeti_es_mukodesi_szabalyzata_modositasokkal_egyes_eges_szerkezetben_3.pdf.) In 2022, the research institute launched a research project on judicial independence, and the main findings were presented at the abovementioned conference.

¹⁸⁰ <https://telex.hu/belfold/2023/03/23/amnesty-biroi-fuggetlenseg-konferencia>; <https://444.hu/2023/03/21/a-biroi-fuggetlensegrol-tart-konferenciat-a-kuria-es-pont-az-tortenik-amire-szamitani-lehetett>

¹⁸¹ See the minutes of the meeting of the NJC held on 5 April 2023 at <https://orszagosbiroitanacs.hu/download/az-obt-2023-aprilis-5-i-ulesenek-jegyzokonyve/>, p. 14

¹⁸² Ibid.

¹⁸³ <https://helsinkifigyelo.444.hu/2023/04/28/a-kurultaj-akar-mar-birakat-is-kepezhet-magyarorszagon>

¹⁸⁴ https://www.turkicstates.org/en/haberler/the-founding-ceremony-of-the-turkic-judicial-training-network-was-held-in-istanbul_2717

¹⁸⁵ See the minutes of the meeting of the NJC held on 4 October 2023 at <https://orszagosbiroitanacs.hu/download/az-obt-2023-oktober-4-i-ulesenek-jegyzokonyve/?wpdmdl=2735&refresh=659c226fc08071704731247&ind=1698205202127&filename=Jegyzokonvy-2023-oktober-4-vegleges.pdf>, p. 28.

¹⁸⁶ Act XC of 2017 on the Code of Criminal Procedure, Article 122(1)(b)

the breach of the principle of immediacy that remote hearings necessarily entail, also with a view to the ECtHR's related case-law.¹⁸⁷ Furthermore, it gives rise to concerns that there is no right of appeal against the rejection of a request to use a telecommunication device, and, as a main rule, against the ordering of a remote hearing.¹⁸⁸ This is problematic because the use of a telecommunications device may have a material impact on the evidence obtained in the course of the hearing, particularly in the case of digitally vulnerable persons (the elderly, or persons with intellectual disability, psychosocial disability or certain mental disorders).

Under the law, the interrogation of the defendant in the course of the investigation may also be conducted via telephone conference. This can carry a risk for the defendant, e.g. because potential coercion may be more difficult to detect. These concerns also apply to the interrogation of witnesses as well, who can be questioned via a telephone conference in any phase of the procedure.¹⁸⁹

When a remote connection is established between several separate locations and in the case of having multiple cameras at the location of the procedural act in a criminal procedure, simultaneous transmission of all camera recordings at the location of the procedural act and at each separate location shall be ensured as far as possible.¹⁹⁰ However, the procedural act may be conducted even if the simultaneous detection of the camera recordings of the procedural act or from the separate locations cannot be ensured, i.e. if not all of the transmissions are visible to the proceeding authority and the participants of the procedural act.¹⁹¹ The latter possibility may raise concerns as regards the right to defence and the effective right to be present at the trial.

As far as the practice is concerned, the preliminary findings of an empirical research currently being carried out by the Hungarian Helsinki Committee in the framework of the EU-funded project "*DigiRights - Digitalisation of defence rights in criminal proceedings*"¹⁹² show that while it is true that digital tools are widely available in the criminal justice system and in general in the judicial system in Hungary in comparison with other EU jurisdictions (as also shown by the country's respective rankings in the EU Justice Scoreboard as cited by the 2023 Rule of Law Report¹⁹³), but stakeholders are mostly left to their own devices in terms of acquiring the soft skills necessary for running a digital justice system, and effective trainings for judges, prosecutors and attorneys seem to be lacking. From the attorneys' point of view, it can be burdensome that several digital systems are operated and need to be used by them simultaneously, and, naturally, each of them can be accessed and work differently. At the same

¹⁸⁷ *Dijkhuizen v. the Netherlands* (Application no. 61591/16), *Zagaria v. Italy* (Application no. 58295/00), *Fenech v. Malta* (Application no. 19090/20), *Sakhnovskiy v. Russia* (Application no. 21272/03), *Yevdokimov and Others v. Russia* (Application nos 27236/05, 44223/05, 53304/07, 40232/11, 60052/11, 76438/11, 14919/12, 19929/12, 42389/12, 57043/12 and 67481/12), *Grigoryevskikh v. Russia* (Application no. 22/03)

¹⁸⁸ Act XC of 2017 on the Code of Criminal Procedure, Article 121(2). The defence may initiate a personal hearing if the court orders remote a remote hearing, and in such cases, the court is obliged to hold a personal hearing (with some very narrow and strict expressions), however, the deadline for putting forth such a motion is very short: three days from the communication of the court's decision to hold a remote hearing.

¹⁸⁹ Act XC of 2017 on the Code of Criminal Procedure, Article 120(2)-(3)

¹⁹⁰ Decree 12/2018. (VI. 12.) IM of the Minister of Justice on the Rules Pertaining to Certain Criminal Procedural Acts and Persons participating in the Criminal Procedure, Articles 46(6) and 47(5)-(6)

¹⁹¹ Decree 12/2018. (VI. 12.) IM of the Minister of Justice on the Rules Pertaining to Certain Criminal Procedural Acts and Persons participating in the Criminal Procedure, Articles 46(7) and 47(7)

¹⁹² Project number: 101056667, project website: <https://www.digirights.net/>.

¹⁹³ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 9.

time, digital skills are not part of the curriculum of the basic and advanced legal training. Furthermore, there are large geographical differences in the efficiency of digital document management.

16. Use of assessment tools and standards

The NOJ President conducted surveys on the perception of judges about the threats to their independence and integrity yearly between 2015 and 2019. In the years 2020, 2021, 2022 and 2023 however, the NOJ President has not conducted such surveys.

Annual reports on judicial administration data by the NOJ President get published with a considerable delay: it was only on 15 November 2023 that the central judicial website published the NOJ President's annual review for the first half of 2022 that the Parliament had just approved.¹⁹⁴ Data in the review include caseload, arrival and termination of cases, timeliness, soundness of the judgments, efficiency, the changes of laws affecting courts' operation, human resources, composition of the judiciary, judicial career, material resources, management of the judicial organisation, disciplinary proceedings, education, functioning of the NOJ.

In June and in July¹⁹⁵ 2023 the NJC had to request additional information from the Kúria President to be able to assess his practice for appointing judges and court leaders in 2022. Eventually, the NJC deemed that the Kúria President provided the necessary information¹⁹⁶ which, however, is not available to the public.

The publication of the detailed minutes uniquely contributes to the transparency of court administration, however, the law¹⁹⁷ only prescribes the publication of the excerpt of the minutes of the NJC meetings, not the minutes themselves, which is only made available by the current NJC's practice. This provides much needed transparency over the central court administration and the Kúria administration. As a response to criticism and undermining the evident need for the transparency of decision-making with respect to court administration decisions, the Kúria launched an "investigation" after information with respect to the adoption of a new case allocation scheme became public.¹⁹⁸ Parallel to the press release issued by the Kúria, an anonymous article in the propaganda media appeared, suggesting that a judge from the Kúria leaked classified data when sharing information with respect to the process of adoption of the case allocation scheme of the Kúria.¹⁹⁹

¹⁹⁴ Available at:

<https://birosag.hu/beszamolok/az-orszag-orszag-birosagi-hivatal-elnokenek-2022-i-felevi-beszamoloja>.

¹⁹⁵ Once on 27 June 2023 by the NJC vice-president (see the minutes of the NJC's meeting held on 5 July 2023, p. 6., available at: <https://orszagosbiroitanacs.hu/2023-07-05/>), and once on 5 July 2023 by Resolution 62/2023. (VII. 5.) OBT of the NJC.

¹⁹⁶ See Resolution 81/2023. (IX. 7.) OBT of the NJC.

¹⁹⁷ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 108

¹⁹⁸ <https://kuria-birosag.hu/hu/sajto/kuria-kozlemenye-4>

¹⁹⁹ <https://tuzfalcsoport.blogstar.hu/2023/12/14/szivarogtatas-a-kuriarol-nem-nyilvanos-informaciok-egy-nemet-blogon/125007/>

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

The Hungarian court system went through a definite centralisation process between 2019-2021 through a series of legislative steps adopted in the form of omnibus acts.²⁰⁰ The centralisation was particularly strong in the administrative section of adjudication, where the stakes for the Hungarian government are high and where judges decide in matters of fundamental rights (e.g. elections, administrative decisions by the police, asylum or the exercise of the right to peaceful assembly) and in cases with significant economic relevance (e.g. disputes over taxation and customs, media, public procurement, construction and building permits, cases of land and forest ownership, land and real estate public records or even market competition matters). In the new system, an overwhelming part of the administrative judicial powers is concentrated in the hands of the Kúria.²⁰¹ The centralisation process modified the court system in a manner that increased the likelihood of adjudicating politically sensitive cases in a way that is favourable for the Government.²⁰²

The centralisation process progressed further in 2023. Besides new narrowed rules on eligibility for the position of Kúria President (see above under Question I.2.), a new regulation was introduced with respect to the composition of uniformity complaint chambers. The composition of uniformity complaint chambers is of high importance from the perspective of both the outcome of individual cases and the jurisprudence of all Hungarian courts, due to the fact that uniformity complaint chambers are entitled to review and overrule the final and binding decisions of other chambers of the Kúria and issue uniformity decisions establishing mandatory interpretations of the law.²⁰³ Due to the fact that uniformity complaint chambers function as a supreme court within the supreme court, membership in the uniformity complaint chamber practically means the highest possible professional position within the ordinary court system.²⁰⁴

The new rules on the uniformity complaint chamber govern its size, quorum, composition, and the chamber's case allocation, converting the formerly applicable rules arbitrarily established and introduced by the Kúria President into cardinal law.²⁰⁵ While uniformity decisions are a

²⁰⁰ The three relevant omnibus acts are Act CXXVII of 2019, Act CLXV of 2020 and Act CXXXIV of 2021. All omnibus acts were adopted circumventing the statutory obligation for consulting about drafts with both the public and representatives of the concerned professionals.

²⁰¹ See the process of court capture in more detail here: Hungarian Helsinki Committee, *Court Capture Project Completed – The Hungarian recipe for getting a grip on the judiciary*, 26 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Court-Capture-Project-Completed-20221026-.pdf>

²⁰² See more at: *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, p. 22.

²⁰³ After being published in the National Gazette, the application of uniformity decisions is compulsory for all ordinary courts.

²⁰⁴ As the Venice Commission underlined on several occasions, a system of uniformity procedures may raise concerns regarding the internal independence of the judiciary. See: European Commission for Democracy Through Law (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, 16 October 2021, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)036-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)036-e), pp. 10-13.

²⁰⁵ The composition of the uniformity complaint chamber was formerly criticised by the Venice Commission on the basis that the Kúria President "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". See: European Commission for Democracy Through Law (Venice Commission), *Opinion on the Amendments to the Act on the*

very powerful tool to control the content of adjudication and may even serve to “*balance external judicial influences*”²⁰⁶ (i.e. to counter decisions of international courts, ECtHR and the CJEU), the new rules do not adequately guarantee the required level of autonomy and professionalism in decision-making. The size of the chamber is not defined with sufficient clarity, leaving a wide margin for manoeuvring in practice.²⁰⁷ The rules on the composition of the chamber do not ensure professionalism in decision-making. The judge rapporteur is not automatically appointed, and the rules do not require any adjustment of the chamber’s composition depending on the subject matter of the case. The Kúria President has a central role holding the right to preside over uniformity complaint cases, and the administrative powers to appoint judges who may become members of the chamber.²⁰⁸ Through this privileged role, the Kúria President holds a strong formal and informal power in the adjudication of individual cases and in shaping the mandatory interpretation of the law.

C. Efficiency of the justice system

18. Length of proceedings

As reported in previous years, in response to the long-standing demand by the Committee of Ministers of the Council of Europe supervising the execution of ECtHR judgments, with a view to complying with the pilot judgment handed down in 2015 in the *Gazsó v. Hungary* case²⁰⁹ concerning the excessive length of judicial proceedings, the Parliament adopted Act XCIV of 2021 on the Enforcement of Pecuniary Satisfaction Relating to the Protractedness of Civil Contentious Proceedings, which introduced a compensatory (financial) remedy for the excessive length of certain proceedings as of 1 January 2022.

However, the law (which took five years, 14 CM decisions and three CM interim resolutions to get adopted after the pilot judgment) introduced the compensatory remedy only for excessively lengthy civil proceedings (civil law trial cases). Thus, no compensatory remedy is available for protracted administrative court procedures or criminal proceedings, and the law does not cover non-contentious (non-trial) procedures either, such as enforcement proceedings, or constitutional review procedures.²¹⁰ In its latest decision, issued in June 2023, the CM “*expressed their serious concern that despite the authorities’ announcements for a draft legislation by June 2023 and the [CM’s] request for an accelerated planning, no information has been communicated as regards the outstanding administrative and criminal*

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, 16 October 2021, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)036-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)036-e), para 48.

²⁰⁶ As highlighted by the Kúria President in his speech held at a working breakfast of 2 March 2023. See: https://kuria-birosag.hu/sites/default/files/sajto/dr._varga_zs._andras_elnok_eloadasa.pdf.

²⁰⁷ As a main rule, it is a 40-judge chamber, but alternatively it can adjudicate in two 20-judge sub-chambers as well. The legislation fully leaves it to the decision of departments of judges (although not quite clear whether their agreement should be unanimous in this matter) to decide on the application of the main rule, or the exception. The rules do not address the situation where the number of these senior officials exceeds 40 or is less than 40.

²⁰⁸ Uniformity complaint chambers are composed solely of senior court officials (the Kúria Secretary General, chairs and vice-chairs of departments, presiding judges) selected and appointed by the Kúria President.

²⁰⁹ Application no. 48322/12, Judgment of 16 July 2015

²¹⁰ See also: CM/Notes/1419/H46-15, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a48aca, footnote 9.

remedies; urged the authorities to intensify their efforts in these respects and to provide the [CM] with a concrete timetable for the legislative process for administrative and criminal remedies without further delay; given that the compensatory remedy in Act No. XCIV of 2021 is not applicable to non-contentious civil proceedings, firmly invited them to find a solution ensuring that all kinds of civil proceedings falling under the scope of Article 6 of the Convention (in particular non-contentious proceedings) are covered by a remedy for excessively lengthy proceedings as required by the [European Convention on Human Rights] and the [ECtHR's] case-law".²¹¹ However, no legislative steps have been taken to date to comply with the CM's decision in this regard.

In its decision of 30 March 2023 delivered in the case of *Szaxon v. Hungary*,²¹² the ECtHR found that the newly introduced compensation scheme guaranteed in principle a genuine redress for violations of the European Convention on Human Rights originating in the protractedness of contentious civil proceedings. In light of the ECtHR's decision, the CM decided to end its supervision in the *Gazsó* case in respect of contentious civil proceedings in June 2023.²¹³

However, it has to be highlighted that the new compensation (pecuniary satisfaction) scheme suffers from deficiencies. The law determines the durations that are regarded as excessive, but these are more lenient vis-à-vis the courts than the ECtHR jurisprudence or the time periods that the statistical analysis of the NOJ itself²¹⁴ uses when analysing the performance of courts from the point of view of "reasonable length". While Hungarian courts can deviate from the default rule and determine a shorter (or longer) length of time that counts as reasonable in a specific case, but the criteria for doing so are not specified in the law. Furthermore, the daily amount of pecuniary satisfaction is arguably insufficient, even in the context of the Hungarian "economic realities": the daily amount of pecuniary satisfaction is HUF 400 (ca. € 1) per day,²¹⁵ which in practice means that e.g. the sum of the pecuniary satisfaction for one year of protractedness is 3% of the average yearly net income.

According to the statistics issued by the NOJ, the overall number of pending court cases considered as protracted under the NOJ's methodology decreased by 8.5% by 30 June 2023 as compared to the first half of 2022. The number of court cases pending for over 5 years also decreased by 8.6% by the end of the first half of 2023 as compared to the first half of 2022. The NOJ concluded that overall, the decrease in protracted court cases had continued also in 2023, but added that certain sub-scores, typically criminal case numbers have increased.²¹⁶

19. Other

(1)²¹⁷ Despite substantial reforms of the criminal procedure law resulting from the entering into force of the new Criminal Procedure Code in 2018, whose alleged aim was to create a system where cases are adjudicated more expeditiously, processes in major corruption cases

²¹¹ CM/Del/Dec(2023)1468/H46-13, <https://hudoc.exec.coe.int/eng?i=004-10875>

²¹² Application no. 54421/21

²¹³ CM/Del/Dec(2023)1468/H46-13, <https://hudoc.exec.coe.int/eng?i=004-10875>

²¹⁴ See for instance: https://birosag.hu/sites/default/files/2023-10/ugyforgalom_2023.felev_.pdf, p. 175.

²¹⁵ Government Decree 372/2021. (VI. 30.) on the Amount of Pecuniary Satisfaction for Protraction in Civil Contentious Proceedings and the Rules for Calculating the Amount to be Paid, Article 1(2)

²¹⁶ See: https://birosag.hu/sites/default/files/2023-10/ugyforgalom_2023.felev_.pdf, pp. 226-229.

²¹⁷ This section of the response was provided by Transparency International Hungary.

are still protracted due to malfunctions of the judicial administration. For example, in the so called “Quaestor-case”, the prosecution service pressed charges in early 2016 for embezzlement and fraud committed in a criminal organisation, and there is still no first instance court decision.²¹⁸ The case had to be reassigned and, consequently, the process restarted in the court’s first instance twice, due to a change of the judge hearing the case.²¹⁹ In the “Simonka-case”, the prosecution service indicted former government MP György Simonka for budgetary fraud committed in a criminal organisation in 2019 and three and a half years did not suffice for the first instance court to decide in the merits of this case.²²⁰ Again, this case was also reassigned twice following indictment, and had to be restarted due to the change of the judge. In February 2024, this process starts from the first hearing for the third time.²²¹ These incidents indicate that despite the reforms, the judicial administration is still not capable of dealing with complex criminal cases in a timely manner. The protraction of criminal proceedings violates the fair trial principles, and, according to long-standing judicial practice, if it is imputable to the authorities, it entails the mitigation of the sanction. Protraction therefore not only places the enforcement of fair trial principles into doubt, but, due to compulsory mitigation, it results in disproportionately soft punishments.

(2)²²² Despite the regulatory reforms, concerns relating to freedom of information litigations prevail. Although changes to the freedom of information legal framework introduced in 2022 removed some of the most burdensome legal barriers of accessing information, many obstacles remain. A fundamental shortcoming of the enacted changes is that none of them addressed the widespread practice of data holders to not comply with requests or to reject them with vague justifications that can only be contested efficiently before court. This empties out the freedom of information framework for many who do not have capacities to engage in litigation.

Due to the reforms, courts are expected to expeditiously rule in all instances in legal disputes relating to the accessibility of public interest information. These provisions are applicable since 1 January 2023 and the first experiences are promising, although not all the courts respect the new regulations when setting the deadlines of hearings. Transparency International Hungary suggested in the Anti-Corruption Task Force that the Ministry of Justice assesses if these new regulations are properly enforced by all courts concerned in practice. On the other hand, the reform enables third party litigants to intervene in order to prevent the publication of business secrets, which puts disproportionate burden on the plaintiff. Furthermore, the reform fails to repeal all legal obstacles thrown in the way of accessing information introduced since 2012, and it omits to amend rules on legal remedies in freedom of information cases, which, at present, do not reflect the principle of equality of arms in a court process, and disproportionately distribute the burden of proof. This results from court

²¹⁸ Press statement by the prosecution service on 5 February 2016: *Vádemelés a Quaestor-ügyben [Indictment in the Quaestor-case]*, <https://ugyeszseg.hu/vademeles-a-quaestor-ugyben-videoval/>.

²¹⁹ See e.g.: <https://hirklick.hu/kozelet/harmadszor-indult-ujra-a-questor-per/405017>.

²²⁰ Press statement by the prosecution service on 21 August 2019: *Vádemelés az országgyűlési képviselő és társai elleni büntetőeljárásban [Indictment in the case against the Member of Parliament and accomplices]*, <https://ugyeszseg.hu/vademeles-az-orszaggyulesi-kepviselo-es-tarsai-elleni-buntetoeljarasban/>

²²¹ See e.g.: <https://magyarnarancs.hu/kismagyarorszag/masodjara-is-teljesen-elolrol-kell-kezdeni-a-simonka-pert-jon-a-harmadik-felvonas-264596>.

²²² This section of the response was provided by K-Monitor and Transparency International Hungary.

precedents that allow for the defendant to present new evidence and invoke new grounds to justify the denial of the public interest information request during the process.

(3) From 1 July 2021, the Kúria President established a research institute (*Werbőczy István Országbíró Kutatóintézet*) at the Kúria, operating directly subordinated to him. Its budget was HUF 80 million, ca. € 211,000 (excluding the salaries of the staff) for 2023.²²³ According to the Kúria,²²⁴ there are 26 consultants (*“főtanácsadó”*) working at the research institute as part of the court staff. Their job is both to help the research activities of the Kúria (e.g. writing papers for the 300-year anniversary of the Kúria) and to assist with their research work the Kúria’s judges in their adjudication. As to the latter, while participating in the preparation of judgments, they may also access court files. These consultants are selected via *“calls for application or by individual applications, with the involvement of college leaders”*, which makes their selection procedures lacking any kind of transparency and may pave the way for arbitrary selection of court staff accessing court files and influencing Kúria judgments.

²²³ Government Resolution 1757/2021. (X. 27.)

²²⁴ Amnesty International Hungary has turned to the Kúria with a freedom of information request to acquire information on the research institute. See the answer of the Kúria here: https://www.amnesty.hu/wp-content/uploads/2024/01/2023.El_IV_H.16_6_valaszlevel.pdf.

II. ANTI-CORRUPTION FRAMEWORK

1. Information on measures taken to follow-up on the recommendations received in the 2023 Rule of Law Report regarding the anti-corruption framework

Hungary received two anti-corruption recommendations in the 2023 Rule of Law Report, neither of which was followed upon by the government.

(1) As regards “adopting comprehensive reforms on lobbying and revolving doors, and further improving the system of asset declarations, providing for effective oversight and enforcement” there has been no development. These topics should be covered by the new anti-corruption strategy, but according to the latest publicly available draft of the anti-corruption action plan, lobbying and revolving door mechanism will be governed by soft-law tools (i.e., as a topic to be covered in Codes of Conduct).²²⁵ No guideline is available on the content of future regulations and no dissuasive sanctions are foreseen. Neither the substance of the asset declarations nor the sanctions mechanism associated with them have advanced, notwithstanding the fact that the implementation of sanctions was scheduled to commence in the summer of 2023 as per the Recovery and Resilience Plan. In December 2023, the Integrity Authority published its report and recommendations pertaining to the asset declaration system.²²⁶ However, the Government’s acceptance of these materials remains uncertain.

(2) According to the other recommendation Hungary should “[e]stablish a robust track record of investigations, prosecutions and final judgments for high-level corruption cases”. Obviously, it is too early to assess the full implementation of the recommendation, but in theory the 2022 criminal procedure reform, with the introduction of the “motion for revision”, was partly intended to facilitate the prosecution of high-level cases even if they are derailed by the investigating authorities or the prosecution service. According to the analysis by K-Monitor,²²⁷ the new legal instrument has not improved the fight against corruption. The right of representation is only a formal opportunity, and it is costly and risky for individuals. The new provisions do not effectively grant procedural rights. Moreover, no legal or institutional reform took place aiming to change the hierarchical structure of the prosecution service, one of the root causes underlying malfunctions within the system and the failure to take action in

²²⁵ Available on the webpage of the Anti-Corruption Task Force, as an annex to the government position on the opinion on the draft National Anti-Corruption Strategy of the Task Force: <https://kemcs.hu/wp-content/uploads/2023/10/NKS-kiegészito-jelentesre-adott-Kormanyzati-allaspon.pdf>.

²²⁶ Integrity Authority, *Vagyonnyilatkozatokról szóló eseti jelentés 2023 [Ad-hoc report on asset declarations, 2023]*, https://integritashatosag.hu/wp-content/uploads/2023/12/Integritas_Hatosag_Vagyonnyilatkozatok_Eseti_Jelentes_2023-1.pdf

²²⁷ K-Monitor, *Antikorrupciós büntetőeljárás reform: a szabályok léteznek, a gyakorlat azonban változatlan.* [Anti-corruption reform of the criminal procedural law: provisions exist, but no change in the practice, 15 December 2023, https://k.blog.hu/2023/12/15/antikorrupcios_buntetoeljarasi_reform

prominent corruption cases. In lack of groundbreaking changes, no improvement can be anticipated.

A. The institutional framework capacity to fight against corruption

2. 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 and with foreign authorities

In late 2022, mainly in response to EU procedures, the institutional framework for anti-corruption action in Hungary changed significantly with the establishment of new agencies, such as the Integrity Authority and the Directorate for Internal Audit and Integrity (DIAI). In addition, the Anti-Corruption Task Force was set up as a consultative body manned with representatives of both the Government and the non-governmental sector. Moreover, the Directorate General for Audit of European Funds (DGAEF), originally a government agency within the Ministry of Finance, was transformed into an independent (“autonomous”) state organ. However, the newly created institutions have mainly subsidiary and parallel competencies and rely to a great extent on the powers and cooperation of other, pre-existing institutions; therefore, these amendments had no substantial impact.

The National Protective Service (NPS), through the Ministry of Interior, remained the main coordinator of the Government’s anti-corruption policy, while the institutional system as a whole has become even more fragmented. The NPS still lacks the competence to facilitate information exchange between quasi-independent institutions such as the State Audit Office, the Public Procurement Authority, the Competition Authority, the Integrity Authority, the Prosecution Service and the judiciary. Cooperation between such bodies and governmental agencies is mostly based on bilateral agreements.

The Constitutional Protection Authority (CPA) has assumed responsibility for several duties: reliability investigations and corruption detection for basically all government employees except for those working under the Ministry of Interior (law enforcement, health, and education) in 2022, greatly narrowing the purview of the NPS and the Police. The CPA’s 2023 budget has more than doubled, going from around € 33 million to € 73 million,²²⁸ while the NPS’s workforce and funding have remained mostly unchanged.²²⁹

The Integrity Authority maintains a nearly 44-million-euro budget and employs over 70 individuals.²³⁰ For reporting malfeasance, it maintains a confidential channel.²³¹ As of December 2023, 186 reports have been received, and 21 cases involving a total of € 315 million in EU funds are under investigation.²³² The majority of the Integrity Authority’s powers

²²⁸ Information relating to the CPA’s budget is available at the CPA’s webpage: <https://ah.gov.hu/gazdalkodasi-adatok/>.

²²⁹ The NPS’s balance sheet is available at the NPS’s webpage: https://www.nvsz.hu/files/2022_merleg_iv_negyedev.pdf.

²³⁰ See information disclosed by the Integrity Authority: https://integritashatosag.hu/wp-content/uploads/2023/10/Tajekoztato-es-kozzeteteli-lista_1031.pdf.

²³¹ <https://integritashatosag.whispli.com/lp/bejelentes?locale=hu>

²³² <https://24.hu/fn/gazdasag/2023/12/06/podcast-della-biro-ferenc-integritas-hatosag-mesterseges-intelligencia-vagyonylathozat-tiborc-eli-os/>

can only be exercised when a suspected violation involves EU funds. Its capacities are further restricted because of the lack of legal and infrastructural background to access necessary data for analysis and risk assessment. Another major hindrance results from the lack of empowerment to carry out investigations on its own, which makes the Integrity Authority dependent on other state agencies.

The Anti-Corruption Task Force has no dedicated budget, and there are also uncertainties over its ability to effectively utilise its powers to contribute to the success of the anti-corruption efforts. While the Task Force includes representatives of all governmental and state agencies involved in the anti-corruption action (at least in a consultative capacity), as well as 10 non-governmental members with proven track record in the fight against corruption, it plays only a limited and formal role in the anti-corruption coordination. Effective consultation on the anti-corruption framework does not occur in this setting. The Task Force was only formally involved in the drafting of the new anti-corruption strategy.²³³ Important legislative amendments, such as the new whistleblowing act,²³⁴ or regulations relating to asset declarations or accessibility of public interest information were not even tabled at the Task Force. On the non-governmental side, where participating members lack the required apparatus and funding, capacity issues are also more pronounced.²³⁵ Hence, three of the 10 original members have filed their resignations in less than six months, and no replacement were found despite repeated prolongation of the deadline for applicants.

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

Concerns raised in previous contributions prevail. The majority of the state's control institutions are headed by individuals loyal to the Government, which undermines their independence. Furthermore, there is a lack of internal autonomy, preventing staff from conducting investigations freely due to the possibility of interference from the leadership of the institution. The Integrity Authority and the DGAEF, which were established or reformed at the end of 2022, enjoy formal autonomy, nevertheless, the powers of these institutions are limited. The Integrity Authority mostly relies on other state agencies to take action upon its signals.

Various government agencies preserved some or all of their tasks to combat corruption, such as the National Protective Service, which is a law enforcement agency subordinated to the Ministry of Interior, the National Tax and Customs Administration (subordinated to the Ministry of Finance), and to a lesser degree, the Government Control Office (GCO, subordinated to the Cabinet Office of the Prime Minister). The GCO is the internal control institution of the Government and carries out its audits on the basis of annual plans, however its reports are not publicly available. The Government approves the audit plan and has wide powers to order ad hoc audits or to terminate an audit in progress. As a consequence, the GCO can in no way be considered an independent or autonomous institution.

²³³ C(2023) 8999 final

²³⁴ Act XXV of 2023 on Complaints, Public Interest Announcements and Rules Relating to Reports on Wrongdoing

²³⁵ K-Monitor, *Anti-corruption task force: what is the situation eight months after its launch?*, 28 September 2023, https://k.blog.hu/2023/09/28/anti-corruption_task_force_what_is_the_situation_eight_months_after_its_launch

Other institutions that are formally independent from the executive branch of the government, such as the State Audit Office (SAO), the Hungarian Competition Authority (HCA), the Public Procurement Authority (PPA), the prosecution service, etc. remain exposed to undue government influence and exhibit low levels of autonomy in performing their functions. This is mainly reflected in the selective way in which these institutions decide whether or not to examine individual cases of suspected corruption. A report by the SAO concerning the 2022 election campaign, which exposed “*illicit (foreign) party funding*” in the campaigns of opposition parties,²³⁶ invoked allegations of bias for failing to equally sanction similar practices on behalf of pro-government entities.²³⁷

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

The deadline for the implementation of the medium-term anti-corruption strategy for 2020–2022 has been extended multiple times until July 2023, still there is no publicly available evaluation of its implementation. Hungary does not currently have an anti-corruption strategy in place, even though the deadline for a new one was June 2023 according to Hungary’s Recovery and Resilience Plan. As of January 2024, the strategy’s development is still in progress. Two initial drafts have been released to the public following their distribution to the Anti-Corruption Task Force. Regarding the first draft, the Government allowed the Task Force to offer feedback, yet neither the Task Force nor the Integrity Authority were included in the actual drafting stage. No public consultation took place either, for which the OECD has also criticised the process.²³⁸ The second draft²³⁹ gives only a broad outline of the primary goals of the anti-corruption action plan. One key objective is the implementation of codices of conduct for high-ranking government officials and Members of Parliament, a measure long recommended by GRECO.²⁴⁰ Although the draft action plan indicates the topics the codices of conduct should cover, it does not give any guidance on the specific rules of conduct and sanctions.

Among other issues, the draft action plan includes, as in previous strategies, a strong focus on various integrity trainings. Some of the proposed measures concern the increase of transparency and tightened controls on public procurement and national and EU subsidies. However, these commitments are in many ways technical and do not fit into a broader vision of reform.

²³⁶ The letter of 16 March 2023 by the SAO’s president to the chairperson of the Parliament’s Economic Committee under filing number EL-3712-568/2023 is available here: https://www.asz.hu/files/ASZ_level_Gazdasagi_Bizottsag_203_03_16.pdf.

²³⁷ See e.g.: <https://444.hu/2023/12/06/brutalis-mikulas-a-szamvevoszek-260-milliora-buntette-az-ellenzeki-partokat-de-fejenkent-felmilliard-is-lehet-a-vege>.

²³⁸ OECD, *A Strategic Approach to Public Integrity in Hungary: The 2023-25 National Anti-Corruption Strategy and Action Plan*, OECD Public Governance Reviews, 2023, <https://doi.org/10.1787/a5461405-en>

²³⁹ Available on the webpage of the Anti-Corruption Task Force, as an annex to the government position on the opinion on the draft National Anti-Corruption Strategy of the Task Force: <https://kemcs.hu/wp-content/uploads/2023/10/NKS-kiegeszito-jelentesre-adott-Kormanyzati-allaspon.pdf>.

²⁴⁰ Group of States against Corruption (GRECO) *Fifth Evaluation Round – Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies. Evaluation Report – Hungary*, GrecoEval5Rep(2021)3, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680ab87f5>

B. Prevention

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

As “integrity” has been the anti-corruption buzzword for the Government in the past years, there are numerous mechanisms in place to support the enhancement of integrity for public sector officials, such as annual integrity reporting, training courses on integrity and integrity officers working in state bodies, etc. Doubts, however, remain about their effectiveness. In the Schadl–Völner case, where the prosecution service indicted the former Deputy Justice Minister Pál Völner for allegedly having rigged the appointment of bailiffs in exchange of bribes, several staffers in the Ministry of Justice, who found out about this malpractice did not dare to approach the Ministry’s integrity adviser, whom they believed to have been involved in the wrongdoing. Testimonies suggest that strong hierarchical structures in the ministries and other high-level agencies positively obstruct any possibility of action despite the existing mechanisms.²⁴¹

The new Directorate for Internal Audit and Integrity, set up at the end of 2022 is tasked to monitor conflict of interest declarations and raise awareness of potential incidents of conflict of interest at national authorities involved with the implementation of European Union support. The DIAI has so far not published any reports relating to its operations and performance, nor has this agency announced the identification of any wrongdoing within its scope of competence.

Moreover, there is still no comprehensive regulation on conflict of interests, lobbying, nepotism, or the revolving door phenomenon despite repeated requests by international stakeholders such as GRECO and the EC. It is telling that the law requires a cooling-off period in the case of only four government agencies – the nuclear energy agency, the Integrity Authority, the concessions bureau, and the public utility agency.²⁴² Despite regulatory obligations, the Government keeps on failing to introduce a general ban on the revolving door phenomenon.²⁴³

6. General transparency of public decision-making

Over the past decade, the regulatory framework governing lobbying in Hungary has remained unchanged. There is no transparency register in Hungary, although regulations are often tailored in a way to promote the interests of certain groups or individuals, which suggests that undue influence may lurk behind the decisions concerned, exemplified in a recent case, where a legal amendment allowed basically only one company to meet the criteria for cyber security

²⁴¹ See: <https://telex.hu/belfold/2023/02/01/schadl-volner-igazsagugyi-miniszterium-tanuvallomas-korrupcio-mukodese>.

²⁴² The presidents and vice-presidents of the four agencies named fall under post-employment restrictions including a one-year cooling-off period and the ban on acquiring corporate shares under the respective provisions, see: Article 40(2) of Act XXVII of 2022, Article 11(2) of Act XXXII of 2021, Article 10(2) of Act XXII of 2013 and Article 6/F(2) of Act CXVI of 1996.

²⁴³ Act CXXV of 2018 on Government Administration, Articles 117 and 281(4)(23)

certifications.²⁴⁴ The company concerned can be linked to the minister in charge of the Prime Minister's Cabinet Office.²⁴⁵

Lobbying is also facilitated in the case of so-called priority investments. Until the end of 2023, the government had a free hand to declare any private investment totalling a value of HUF 90 million (ca. € 237,000) a "priority" if it contributed to the creation of at least 15 new jobs, which made the entry threshold for lobbying relatively low. This regulation was recently amended, but its actual impact cannot yet be assessed.²⁴⁶

The transparency of legislation has not been improved by reinforcing in the second half of 2022 the requirement of the on-line public consultation of draft legislations. Published drafts are not easily accessible for citizens and other stakeholders. In the vast majority of cases the Government does not take stakeholder suggestions into account at all.²⁴⁷ It has also become a practice over the last year that the most problematic legislative texts are only included in the draft legislation's final reading, in the last stage of parliamentary debate, during the Legislative Committee's procedure, which makes it practically impossible for the public to follow such proposals, while in the same time this process is entirely exempted from consultations. This phenomenon was illustrated when the legislative proposal to digitise asset declarations was completely replaced at the very last minute by text of the Judicial Reform.²⁴⁸

The material and personal scope of public asset declarations was modified in 2022, with the changes primarily impacting senior state and government officials and MPs. Regarding the material scope, the current format of asset declarations contains less detail regarding the declarants' tangible assets, revenues, and investments than the forms that were operational prior to 2022.²⁴⁹ The currently used form is far from being comprehensive, specifically with regards to fiduciary relationships, investments into private equity funds, foreign assets, and non-taxable revenues such as royalty insurance. The introduction of a system of digitised and searchable asset declarations was unsuccessful, as the Government swept away the relating draft legislation during the final stage with an amendment by the Parliament's Legislative Committee.

The Hungarian government has shifted its attention towards foreign campaign financing in 2023. During the 2022 national parliamentary election campaign, opposition parties received donations from abroad via unclear intermediary organisations. The opposition parties claim that funding came partially from individual donors from abroad, while domestic funding was collected at events and rallies, using donation boxes. Concerns were raised regarding the origin of funds and the reliability of in-payment reports of donations collected in boxes,

²⁴⁴ Government Decree 45/2015. (III. 12.)

²⁴⁵ See: <https://telex.hu/belfold/2023/09/21/hunguard-bankok-biztositok-penzugyi-cegek-informatikai-tanusitasi-kiberbiztonsag-rogan-antal-mnb-sztfh>.

²⁴⁶ Act C of 2023 on Construction

²⁴⁷ K-Monitor, *Public consultation with the Orban government – Is it worth it?*, 13 June 2023, https://k.blog.hu/2023/06/13/public_consultation_with_the_orban_government_how_much_is_the_commitment_to_the_eu_worth

²⁴⁸ See the joint letter of 2 May 2023 by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee to Commissioner Reynders regarding the adoption of Hungarian legislation on judicial super milestones breaching lawmaking rules: https://helsinki.hu/en/wp-content/uploads/sites/2/2023/05/joint_letter_EC_judicial_reform_20230502.pdf.

²⁴⁹ K-Monitor, *Hungarian MP's assets: less declared and still not monitored*, 15 February 2023, https://k.blog.hu/2023/02/15/hungarian_mp_s_assets_less_declared_and_still_not_monitored

therefore the OTP Bank, where the umbrella organisation that raised funds for the opposition holds its account, filed a criminal complaint to the Police.²⁵⁰ Foreign funding has been highlighted as the primary concern by the government, and the State Audit Office, in charge of overseeing political finances, found irregularities at the end of an investigation into opposition parties' campaign funding. In its report, still not available publicly, the SAO concluded that the opposition parties have to pay billion forints in sanctions for having unlawfully absorbed almost HUF 4 billion from abroad.²⁵¹ In the meantime, the SAO overlooks signs of irregular campaign funding on behalf of the governing Fidesz party, which includes, among other things, proxy campaigning by GONGOs and covert financing by the government. Transparency International Hungary requested the SAO to assess the Fidesz party's 2022 campaign funding,²⁵² but the SAO denied doing so.²⁵³

In December, the Parliament adopted Act LXXXVIII of 2023 on the Defence of National Sovereignty (hereafter referred to as: Defence of Sovereignty Act) and set up the Office for the Defence of Sovereignty tasked with investigating persons/organisations suspected of representing foreign interests.²⁵⁴ The new law, which provoked harsh criticism from civil society organisations²⁵⁵ and independent media, also prohibits foreign funding for candidate organisations and limits domestic support options for them and expands the definition of foreign funding in a way that besides political parties it applies to civil society organisations, too. These provisions might aim to make it even more difficult for the opposition to raise funds either domestically or from abroad, instead of endeavouring to resolve long-standing issues of political financing.

7. Rules and measures to prevent and address conflicts of interest in the public sector

Conflict of interests are governed by sectoral rules. In late 2022, Hungary implemented novel conflict of interest regulations that specifically address public procurements, the institutional structure for allocating EU resources, and the governing bodies of public interest asset management foundations. According to the new procurement rules, it is required that all individuals participating in the procurement procedure make a formal declaration of interest and the contracting authority is entrusted with the responsibility of verifying and administering these declarations.²⁵⁶ In the absence of a general procedural regulation, the Public Procurement Authority advises that contracting authorities incorporate transparent procedural

²⁵⁰ See e.g.: <https://magyarnemzet.hu/belfold/2023/09/banki-feljelentes-valami-nagyon-nem-stimmel-karacsonyek-adomanyladas-magyarazataval>.

²⁵¹ See: <https://24.hu/belfold/2023/06/20/ellenzek-asz-buntetes-kampany-marki-zay-peter/>.

²⁵² See the open letter of 29 June 2023 by Transparency International Hungary to the State Audit Office: https://transparency.hu/wp-content/uploads/2023/06/Transparency_Int._Mo._nyilt_level_ASZ_proxy_honlapra_230629.pdf.

²⁵³ Response by the State Audit Office dated 17 July 2023 under filing number AJF-0670-002/2023. The open letter of 29 June 2023 by Transparency International Hungary is in the possession of Transparency International Hungary.

²⁵⁴ Act LXXXVIII of 2023 on the Defence of National Sovereignty

²⁵⁵ Transparency International Hungary, *12 pont, avagy mi a baj a Fidesz szuverenitásvédelmi javaslatával [12 points – What is wrong with the law on the defence of sovereignty proposed by Fidesz]*, <https://transparency.hu/hirek/12-pont-avagy-mi-a-baj-a-fidesz-szuverenitasvedelmi-javaslataval/>

²⁵⁶ Act CXLIII of 2015 on Public Procurement, Article 25

rules for the prevention and verification of conflict of interest into their procurement regulations.²⁵⁷

Individuals operating within the institutional framework responsible for the allocation of EU funds are also required to comply with new, stringent protocols as part of the EU resource allocation institutional system. At each procedural point, they are required to disclose potential conflicts of interest and provide a declaration of interests with details of their affiliations, financial interests, and other data. These declarations are subject to verification by the Directorate of Internal Audit and Integrity (either randomly or on a basis of a whistleblower report).

As a result of the suspension of Erasmus+ and Horizon Funds, the participation of high-ranking public officials in the governing bodies of public interest asset management foundations has generated controversy. Such mandates are not precluded from being held by high-ranking officials, and legal provisions explicitly permit senior public and municipal officials to participate in such bodies.²⁵⁸

Despite the forthcoming anti-corruption strategy mandated by the Recovery and Resilience Plan and the conditionality mechanism, regulations pertaining to conflicts of interest remain inadequate, especially concerning high-ranking officials. In its report, the Integrity Authority asserts that the conflict-of-interest policy and the relating regulatory landscape is intricate and inadequate.²⁵⁹ The proposal put forth by the Integrity Authority aiming to digitise conflict of interest declarations and introduce a centralised, risk-based control system was declined by the government.²⁶⁰

8. Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given

Almost two years beyond the deadline, Hungary transposed the EU Whistleblowing Directive in 2023 by the adoption of Act XXV of 2023. Nevertheless, an analysis by K-Monitor and Transparency International Hungary reveals that the legislation only marginally meets anticipated standards, fails to put adequate safeguards into place for individuals who approach the media, and contravenes European Union legislation.²⁶¹

Hungary's new whistleblower protection act (WPA) follows a minimalistic approach when translating the directive's provisions into the national context, which results in disappointingly

²⁵⁷ See the guide published on 25 May 2023 by the Public Procurement Authority's Council on conflict of interest: https://kozbeszerzes.hu/media/documents/Utmutato_osszeferhetelenseg.pdf.

²⁵⁸ See the joint statement by Commissioners Hahn and Gabriel on the application of Council Implementing Decision of 15 December 2022 in relation to Hungarian public interest trusts, issued on 26 January 2023: <https://erasmus-plus.ec.europa.eu/news/joint-statement-by-commissioners-hahn-and-gabriel-on-the-application-of-council-implementing-decision-of-15-december-2022-in-relation-to-hungarian-public-interest-trusts>.

²⁵⁹ See the Integrity Authority's yearly report for 2022: https://integritashatosag.hu/wp-content/uploads/2023/06/Integritas_Hatosag_Eves_Elemzo_Integritasjelentes_20220629.pdf.

²⁶⁰ See the Government's response to the Integrity Authority's yearly report for 2022 under filing number EUFÁT/57: <https://integritashatosag.hu/wp-content/uploads/2023/10/int-hat-2022jelentes-korm-valasz.pdf>.

²⁶¹ For details, see the joint assessment of the new whistleblower legislation by the Hungarian Civil Liberties Union, K-Monitor and Transparency International Hungary: *New Whistleblower Protection Bill in Hungary: Failed*, 19 May 2023, https://k.blog.hu/2023/05/19/whistleblower_protection_bill_in_hungary_the_hungarian_government_to_comply_with_the_eu_directive_bu

low levels of protection offered to reporting persons. Moreover, instead of amending the previous whistleblowing protection law to align it with the directive's requirements, the WPA creates a special regime for reports of breaches of EU law in the areas of the directive, while other reports outside the directive's scope are still governed by provisions originating from the pre-existing 2013 law, which proved insufficient both in terms of protection of reporting persons and investigation of reports. This results in the fragmentation of the protection regime, leaving many potential whistleblowers with no or just very feeble protection.

Besides, the WPA lacks stringent provisions on enforcement, as it gives limited competencies to the government's employment agency to monitor the law's implementation. The agency lacks the ability to impose a fine or issue a banning order in case of non-compliance with requirements under the directive.

Even more disturbingly the WPA expressly states that disclosures to the press are not covered by whistleblower protection. The only protection available to whistleblowers going to the press is the protection of sources under the Press Act, which is only guaranteed if invoked by the journalist. Consequently, the WPA intentionally fails to properly transpose provisions relating to public disclosure of whistleblower reports to the press, a clear case of infringement. To call attention to the failed transposition, K-Monitor and Transparency International Hungary jointly submitted a complaint to the European Commission.²⁶²

The new legislation has failed to remove confusion about whistleblowing: it is still unclear where and how citizens and potential whistleblowers can turn to in cases of wrongdoing, how they can preserve their anonymity and be protected from retaliation. In this respect, the forthcoming anti-corruption draft strategy would launch an awareness-raising campaign – at this moment it would be obviously premature to assess its potential impacts.

Despite the general perception that whistleblowing is not prevalent in Hungary, and authorities do little to encourage whistleblowing, numerous authorities and institutions receive reports about incidents of potential wrongdoing. Anonymous whistleblowing regarding EU fraud, for instance, is possible on the anti-lop.hu website, which, from 2023, also provides a brief summary of the reports. 25 reports were received in 2023, of which three are the subject of investigation, while 10 have been deemed unfounded or rejected subsequent to investigation. Regarding the remaining cases, the course of action taken is unclear.

Conflict of interest cases involving EU funding may also be submitted online through an anonymous whistleblowing channel since the end of 2022. These are investigated by the Directorate of Internal Audit and Integrity. There is no information regarding the number of reports, nor is data relating to the action taken available.

The Public Procurement Authority also receives reports on wrongdoing via the public procurement anonymous chat or the standard procedure, which does not guarantee the anonymity of the submitter. When information is received anonymously, the governing body is not obliged to adhere to any procedural requirements. Based on the most recent annual report, the PPA received 89 reports in 2022. In 28 of these cases, the President of the PPA

²⁶² See the joint letter by K-Monitor and Transparency International Hungary dated 21 December 2023 to the European Commission: https://transparency.hu/wp-content/uploads/2024/01/K-Monitor_Transparency-Int-HU_letter_to_COM_on_transposition_of_whistleblower_directive_21122023.pdf.

commenced ex officio appeal processes before the Public Procurement Arbitration Board. A total of 19 notifications were received through the public procurement anonymous chat during the same period. The whistleblower reports received by the PPA are often not based on insider information, but on publicly available procurement data that are gathered by investigative journalists or enthusiastic citizens.²⁶³

The Hungarian Competition Authority initiated 39 ex officio oversight processes based on 94 whistleblowing reports. The HCA releases no statistical data regarding the efficacy of anonymous cartel chats. The Integrity Authority manages a safe reporting platform for whistleblowers since July 2023 and this is the only whistleblowing platform that was widely advertised.²⁶⁴

9. Sectors with high-risks of corruption

Public procurement in Hungary faces challenges in risk-based analysis and audit, particularly in cases not covered by EU funding. High-quality public procurement data is essential for identifying corruption patterns, but the government's pledge to allow bulk downloads of data from the Electronic Procurement System has resulted in mixed results.

Central purchasing bodies based on large framework agreements often do not use methods to measure efficiency or compare procurement value with market prices, leading to monopolization of service markets to government cronies.²⁶⁵ The Government's action plan to boost competition in public procurement is modest, with only two significant innovations: complete anonymous access to public procurement documents in the Electronic Procurement System and a reduction in appeal fees.²⁶⁶

Concentration of the public procurement market remains high, and some pro-government players established themselves in leading position, which is a cause for concern. In its Tender Champions project, Transparency International Hungary analysed a total of HUF 12.7 billion worth of public procurement contracts conducted between 2019 and 2021.²⁶⁷ Among the owners of the winning companies, Lőrinc Mészáros, a childhood friend of Prime Minister Viktor Orbán and László Szíjj were by far the most prominent, with their companies accounting for 8.9 and 6.6% of the total public procurement in the period under review, mostly through construction projects. Gyula Balásy, an entrepreneur active in the advertisement market pocketed HUF 295 billion worth of public procurement contracts via three companies: Lounge Design, New Land and Media Dynamics Ltd. Most of this, HUF 293 billion, came from the National Communications Office through more than 300 projects. The fact that Balásy's

²⁶³ See e.g.: the announcement of the Public Procurement Authority on 9 October 2023: <https://kozbeszerzes.hu/hirek/feljelentest-tett-a-kozbeszerzesi-hatosag-28-esetben-manipulalhattak-a-kozbeszerzeseket/>.

²⁶⁴ See the communiqué by the Integrity Authority: https://www.linkedin.com/posts/integritas-hatosag_anonim-whispli-vizsg%C3%A1lat-activity-7087323158797516805-UBDS?trk=public_profile_like_view.

²⁶⁵ See Annexes 5 and 7 of the results of the performance measurement framework to assess the efficiency and cost-effectiveness of public procurement: <https://ekr.gov.hu/portal/hirek/8798092096856>.

²⁶⁶ Government Resolution 1118/2023. (III. 31.) on the Action Plan for the Period of 2023–2026 on Measures Aiming to Increase Competition in Public Procurements

²⁶⁷ See: Transparency International Hungary, *Tender Champions – The performance of public companies profiting from public resources and owners' involvement in public offices*, 2023, https://transparency.hu/wp-content/uploads/2023/12/Tender-Champions_2022_final.pdf.

companies account for 65% of the money the National Communications Office allocated via public procurement in the three-year period, is indicative of the very low level of competition in this segment, dominating the communications and event management activities of the entire government sector.

The fact that in many cases the true ownership of contracting authorities is not known makes it difficult to assess corruption risks. Recently, owners have been hiding their wealth in private equity funds because this business form does not require the disclosure of the investors' identity. Due to a recent amendment to the law on ultimate beneficial owners, information relating to the identity of investors is not accessible publicly as of 1 January 2024.²⁶⁸ Besides hindering the detection of conflict-of-interest cases, the participation of private equity funds in public procurement processes violates Articles 38(4) and 39(2) of the Fundamental Law, which require that national property and public funds are used transparently. In 22 of the 2,541 companies examined in Transparency International Hungary's Tender Champions project, 15 private equity funds had a stake in 2022. These 22 companies won public procurement contracts worth a combined HUF 608 billion, accounting for 4.8% of all public procurement tenders in Transparency International Hungary's analysis. Among the private equity fund managers, one finds companies linked to István Tiborcz, the son-in-law of Prime Minister Viktor Orbán, as well as well-known oligarchs nurturing close relations with the country's political elite.

Another way of concealing wealth is the use of preferential shares. Hungarian investigative news portal G7²⁶⁹ revealed that in 2021, a trust fund linked to László Szíjj acquired preferential shares in Soltút LLC., a company previously owned solely by Kálmán Rencsár. Due to the preferential shares, which enable earlier or higher payout from the company's profits, László Szíjj got hold of 70% of the dividends. According to the Tender Champions, Soltút LLC. was awarded more than 206 public procurement contracts with a total value of HUF 231 billion between 2019 and 2021.

Different areas for improvement include domestic state aids, where the control system and transparent allocation of funds are major challenges. State-owned enterprises and state-founded foundations often redistribute resources non-transparently to enrich government cronies. The management of state assets is also problematic, with public bodies or publicly owned enterprises buying assets above market value without any reasonable justification. Deals of this kind occurred most recently when the Government undertook in a clandestinely concluded contract to buy out a construction development in Budapest from a crony company named Bayer Construct for a dazzling HUF 244 billion, when it was no longer profitable,²⁷⁰ as

²⁶⁸ Act CXI of 2023 on the Amendment of Act LIII of 2017 on Prevention and Combating of Money Laundering and Financing of Terrorism, Article 40(a)

²⁶⁹ <https://g7.hu/vallalat/20230911/igy-lesz-az-allami-tenderekbol-milliardos-luxusjacht/>

²⁷⁰ For details, see:

https://hvg.hu/gazdasag/20231129_Hadhazy_Akos_244_milliard_zuglo_gigaberuhazas?fbclid=IwAR2dUkUSnOOHoaktCeITpkMbc1rOk7M7kAEYyKjiNntXaExUSb1nY6N4vkw. Note that Transparency International Hungary litigates the Government for the publication of this contract.

well as by the acquisition of the minority stock of Vodafone Hungary in 2023.²⁷¹ The planned purchase of Budapest Airport is anticipated to follow the same logic.²⁷²

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

The Parliament amended the regulations relating to accessibility of public interest information in December 2023 without any previous consultations. The amending provisions, proposed by the Parliament's Legislative Committee, define new legal grounds to refuse freedom of information requests. Accordingly, state organs or users of public funds are, as of 1 January 2024, entitled to refuse to comply with a public interest information request in case the information sought is in the possession of a subordinate entity under the control or supervision of the entity to which the request was originally submitted.²⁷³ This is particularly disturbing, because the requirement enshrined in Article 5(2) of the Council of Europe Convention on Access to Official Documents ("Tromsø Convention") to adequately inform the requester of the entity that possesses the data she or he is seeking is not enforced in Hungary, therefore the newly introduced ground for refusal gives even more opportunity for abusive practices by data managers.²⁷⁴ Another newly adopted provision exempts state owned enterprises from transparency requirements in relation to foreign investments and external relations for a period of 10 years.²⁷⁵ A third amendment, which enters into force on 1 March 2024, empowers the Government to keep its resolutions secret for a maximum period of 20 years commencing on the date of issuance of the resolution.²⁷⁶ These developments indicate that not even the processes commenced by the European Commission and the Council of Europe against Hungary because of the Government's poor anticorruption performance prevent the introduction of further restrictions on transparency and accountability.

Since 28 February 2023, certain public bodies can opt out from publishing data on contracts on their websites, once publishing them on a new site, the so-called Central Public Data Information Register. The Register is an online repository of contract data where public bodies are required to upload metadata on their contracts. The Register has a limited scope compared to the already existing, but not widely used public data site run by the Government (kozadat.hu). Only public bodies having a budgetary status under the Public Finance Act fall under the scope of law. Municipalities, public interest trusts, state-owned or municipally owned companies, the Hungarian National Bank are not required to provide data to the Register. This exempts a great share of institutions spending vast amounts of national and EU funds from the new repository. The bodies falling out of the scope of the new law are still obliged to publish data in accordance with the so-called General Disclosure List set out in Annex 1 to the Freedom of Information Act, but non-compliance is not sanctioned by any institution.

²⁷¹ For details, see: <https://www.direkt36.hu/en/az-orban-rendszer-csucsvallalatának-titkai/>.

²⁷² For details, see: <https://www.bloomberg.com/news/articles/2023-11-15/orban-son-in-law-s-firm-advises-hungary-on-budapest-airport-deal>.

²⁷³ Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information, Article 30(2a)

²⁷⁴ CETS No. 205.

²⁷⁵ Act CXXII of 2009 on Austerity Measures Applicable to Publicly Owned Enterprises, Article 3/A

²⁷⁶ Act CXXV of 2018 on Government Administration, Article 7/A

Although the new law requires that data ought to be uploaded in a machine readable and searchable format, the search engine only allows looking up the institutions uploading data, but not the companies that received contracts. Bodies only bi-monthly upload the prescribed data in separate documents, that are not accessible in bulk. The files can only be downloaded separately and after filling out captchas. Information on contracts is also hardly comparable.

New rules provide that the National Authority for Data Protection and Freedom of Information can launch a so-called transparency procedure, if a public body with budgetary status fails to upload or incompletely uploads the information to be published on the new Registry. As many public bodies that use public money, but do not have budgetary status, cannot be subject to a transparency procedure ending in a sanction.

A welcomed change is that public bodies cannot ask for excessive fees in exchange for the data. However, there are already bad practices spreading that need to be monitored in the future. Public bodies increasingly provide insight into the requested data only if the data requester appears in person, but do not release the information which is a restriction of the right to distribute data of public interest.

The Government, citing the CJEU's ruling in Cases C-37/20 and C-601/20, repealed the possibility to access the ultimate beneficial ownership registry kept by the National Tax and Customs Administration.²⁷⁷ As a consequence, actors outside the governmental sector, i.e., private individuals and other third persons cannot access the UBO registry save for cases when they provide a written document that proves the legitimate interest of access.²⁷⁸

C. Repressive measures

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

Conclusions in the previous contributions by K-Monitor and Transparency International Hungary remain relevant. Important development is the adoption of a new regulation enabling private prosecution of high-level incidents of corruption and mismanagement, applicable in cases where the prosecution service fails to take appropriate action. Due to a series of procedural hindrances, however, this new special remedy process to bring private prosecution in corruption cases is unsuitable to provide a meaningful solution if the state fails to prosecute corruption cases. Despite the importance of enabling both private individuals and legal entities under private law to take cases of corruption before justice, concerns regarding the accessibility of casefiles and the shortness of deadlines still remain.

Although the Integrity Authority is enabled to submit a complaint under the new regulations, only private individuals and entities under private law may act as private prosecutor. As prosecution of high-level delicts, and especially incidents of corruption is extremely resource

²⁷⁷ Act CXI of 2023 on the Amendment of Act LIII of 2017 on Prevention and Combating of Money Laundering and Financing of Terrorism, Article 40(a)

²⁷⁸ Act XLII of 2021 on the Creation and Maintenance of the Information-Infrastructure Relating to the Identification of Financial and Other Service Providers, Article 8(6)

intensive, it is more than questionable if private individuals and non-state organs do have the capacity to proceed if the relevant authorities are reluctant to do so.

Moreover, the new regulation applies only to crimes which are not time-barred due to the statute of limitations, on condition that no decision dismissing a crime report or terminating the proceedings were adopted before 1 January 2023. This not only limits the applicability of the new regulation, but violates commitments made by the Hungarian government under the Recovery and Resilience Plan to introduce a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property (Milestone 169).

K-Monitor concluded in an assessment that most of the 170 resolutions on the termination of processes published by the authorities until end of November 2023 related to cases of petit corruption, where the original complainant aimed to articulate their discontent about a government agency's unfavourable decision.²⁷⁹ According to information received by the members of the Anti-Corruption Task Force, until the end of October 2023, only 22 special remedy complaint was presented, out of which the court has decided in 17 cases, rejecting 15 complaints.²⁸⁰ The Integrity Authority has filed five motions for revisions, two of which are pending. These suggest that the new special remedy process, though it formally breaks the monopoly held by the prosecution service to bring cases of corruption before justice, due to the procedural hindrances, proves unsuitable to provide a meaningful solution if the state fails to prosecute wrongdoing or abuse of power.

In addition, this amendment to the Criminal Procedure Code does not tackle structural shortcomings following from the lack of internal checks and balances within the prosecution service and from the possibility of the Prosecutor General and superior prosecutors to unaccountably influence the work of subordinate prosecutors and to interfere in individual cases.

Another alarming change relates to the Constitutional Protection Authority, which, due to an amendment in 2022, is tasked with the detection of all corruption offences whose supposed perpetrators are employed by the Government or by institutions that are significant from a national security perspective.²⁸¹ This is a serious cut of the jurisdiction of Police, which carries the general responsibility for combating crimes, including corruption offences. As national security services are exempted from the obligation to report supposed criminal incidents to the investigating agencies on condition that the submission of a criminal complaint would jeopardise the fulfilment of their duties, it cannot be excluded that the CPA, when it detects a supposed incident of corruption, instead of reporting the conduct concerned and forwarding the evidence to the Police, it withholds relevant information, which may result in the impunity of corrupt perpetrators.²⁸²

²⁷⁹ K-Monitor, *Antikorrupciós büntetőeljárás reform: a szabályok léteznek, a gyakorlat azonban változatlan* [Anti-corruption reform of the criminal procedural law: provisions exist, but no change in the practice], 15 December 2023, https://k.blog.hu/2023/12/15/antikorrupcios_buntetoeljarasi_reform

²⁸⁰ Letter by the President of the National Office for the Judiciary dated 30 October 2023 under filing number 2023.OBH.XXI.I.33/6.

²⁸¹ Act CXXV of 1995 on the National Security Services, Article 5(hb) and (hd)

²⁸² Act CXXV of 1995 on the National Security Services, Article 44(2a)

As part of the Government's endeavour to stop corruption in the healthcare, the National Protective Service examined 105 cases of gratuity payments, which involved 250 perpetrators since March 2021 and reported 19 cases of bribery in the healthcare to investigating agencies in 2023.²⁸³ In January 2024, the NPS launched a campaign against gratuity payments, which costs HUF 473 million from European Union resources and includes two videos.²⁸⁴ This indicates that the Government is capable of making quite innovative steps in the fight against wrongdoing, at least in cases where the anti-corruption upthrust coming from the general public or from stakeholders is not held back by the lack of political will.

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

The conclusions drawn by K-Monitor and Transparency International Hungary in previous contributions regarding impunity in high-level corruption cases due to partiality in the work of law enforcement agencies and the prosecution service continue to be pertinent. The prosecution service reaffirmed in its most recent report that the concept of high-level or grand corruption did not qualify as a criminal offence, and consequently, no such statistics are compiled.²⁸⁵ As stated in the 2023 report by the Anti-Corruption Task Force,²⁸⁶ the Task Force commits to *"evaluate, with a view to the recommendation by non-governmental members, if it is necessary to define 'high-level corruption', a term widely used in public discourse"*. The wording is instructive, as it reveals that the Task Force is only looking at the need to define high level corruption, not trying to define it.

Impunity of a supposed high-level perpetrator of grand corruption is most recently exemplified in the Schadl–Völner case, where the prosecution service indicted the former Deputy Justice Minister Pál Völner for allegedly having rigged the appointment of bailiffs in exchange of bribes. Leaked documents of the investigation, such as surveillance transcripts strongly suggest that Judit Varga, who is on the top of the list of Fidesz for 2024's European Parliamentary elections, who served as Minister of Justice during the time when Deputy Minister Pál Völner allegedly perpetrated the offences may have been involved in the commission, or, at least, was informed of the wrongdoing. Still the prosecution service did not interrogate her as a witness, nor was she accused or indicted.

Furthermore, adjudicating of major corruption cases is still protracted due to malfunctions of the judicial administration. For example, in the so called "Quaestor-case", the prosecution service pressed charges in early 2016 for embezzlement and fraud committed in a criminal

²⁸³ See e.g.: <https://infostart.hu/belfold/2024/01/05/csak-az-kapott-kemoterapias-kezelest-aki-fizetett-teritette-lapjait-a-nemzeti-vedelmi-szolgalat>.

²⁸⁴ The videos were uploaded on the NPS's Facebook account: <https://www.facebook.com/Nemzetivedelmiszolgalat/videos/3691064221137963> and <https://www.facebook.com/Nemzetivedelmiszolgalat/videos/918693319825479>.

²⁸⁵ *A legfőbb ügyész országgyűlési beszámolója az ügyészség 2022. évi tevékenységéről [Report by the Prosecutor General to the Parliament on the performance of the prosecution service in 2022]*

²⁸⁶ *A Korrupcióellenes Munkacsoport 2022. évre vonatkozó jelentése [Report by the Anti-Corruption Task Force for the year 2022]*, <https://eutaf.kormany.hu/download/7/d2/13000/Korrupci%C3%B3ellenes%20Munkacsoport%202022%20%C3%A9vre%20vonatokoz%C3%B3%20jelent%C3%A9se.pdf>

organisation, and there is still no first instance court decision.²⁸⁷ The case had to be reassigned and, consequently, the process restarted in the court's first instance two times, due to a change of the judge hearing the case.²⁸⁸ In the "Simonka-case", the prosecution service indicted former government MP György Simonka for budgetary fraud committed in a criminal organisation in 2019 and three and a half years did not suffice for the court's first instance to decide in the merits of this case.²⁸⁹ Again, this case was also reassigned twice following indictment, and had to be restarted due to the change of the judge. In February 2024, this process starts from the first hearing for the third time.²⁹⁰ These incidents indicate that despite the reforms, the judicial administration is still not capable of dealing with complex criminal cases in a timely manner. The protraction of criminal proceedings violates the fair trial principles, and, according to long-standing judicial practice, if it is imputable to the authorities, it entails the mitigation of the sanction. Protraction therefore not only places the enforcement of fair trial principles into doubt, but, due to compulsory mitigation, it results in disproportionately soft punishments.

²⁸⁷ Press statement by the prosecution service on 5 February 2016: *Vádemelés a Quaestor-ügyben [Indictment in the Quaestor-case]*, <https://ugyeszseg.hu/vademeles-a-quaestor-ugyben-videoval/>

²⁸⁸ See e.g.: <https://hirklikk.hu/kozelet/harmadszor-indult-ujra-a-questor-per/405017>.

²⁸⁹ Press statement by the prosecution service on 21 August 2019: *Vádemelés az országgyűlési képviselő és társai elleni büntetőeljárásban [Indictment in the case against the Member of Parliament and accomplices]*, <https://ugyeszseg.hu/vademeles-az-orszaggyulesi-kepviselo-es-tarsai-elleni-buntetoeljarasban/>

²⁹⁰ See e.g.: <https://magyarnarancs.hu/kismagyarorszag/masodjara-is-teljesen-elolrol-kell-kezdeni-a-simonka-pert-jon-a-harmadik-felvonas-264596>.



III. MEDIA PLURALISM AND MEDIA FREEDOM

1. Information on measures taken to follow-up on the recommendations received in the 2023 Rule of Law Report regarding media pluralism and media freedom

The recommendations were not implemented. No legislative proposals have been made to introduce mechanisms strengthening the functional independence of the media regulator. Neither has been any steps taken to strengthen the independent governance and the editorial independence of public service media. There is still no progress in enhancing the functional independence of the media regulator taking into account European standards on the independence of media regulators or in enhancing the independent governance and editorial independence of public service media taking into account European standards on public service media.

The media regulator body exercises no substantial control over the public service media. The two bodies responsible for monitoring the requirements of public service media (Public Service Public Foundation, Public Service Body) do not have competences to monitor if the public service media is in line with the requirements of public service, no such procedure exists (existing mechanisms only pertain to the public service medium CEO's yearly report: if they do not accept the report, they can terminate the CEO's position with a supermajority vote). Neither body has professional background related to the media either which weakens the prospects of the expectable control. Even the Media Council does not have overall monitoring competences, only regarding the specific programs (imposing fines) thus cannot act as an effective check/balance in guaranteeing the requirements of public service media.

Pursuant to Article 181(1) of Act CLXXXV of 2010 on Media Services and Mass Media, the Media Council is entitled to initiate official proceedings on the basis of a request in the event of a violation of the obligation of balance specified in Article 13 and Article 12(2) of the Act with regard to the media services of significant influence power²⁹¹ media service providers and public service media service providers. However, there is no existing procedure for the monitoring of the systemic breach of balance either on request or ex officio in the Act.

²⁹¹ Linear audiovisual media service providers with an average annual audience share of at least 15%, provided that at least one of its media services has an average annual audience share of at least 3%. A linear radio media service provider with an average annual audience share of at least 20%, with the exception of public service, community and thematic media service providers, shall also be considered a media service provider with significant influence power, provided that at least one of its media services has an average annual audience share of at least 5%. [According to Article 69(1) of Act CLXXXV of 2010 on Media Services and Mass Media.]

Furthermore, the current Media Council is not initiating proceedings about the breaches of requirements of public service even about specific programs. Neither the Public Service Public Foundation, nor the Public Service Body has issued any public declaration about any arisen criticism.²⁹² There are no existing mechanisms in which the deficiencies of the service of the Public Service Public Foundation, the Public Service Body or the Media Council could be pronounced and their displacement could be reached.

As regards the transparency of state advertising spending, there has been no improvement. There is no change either at legislative level or in the day-to-day practice of public institutions. There is still no transparency in the state advertising; it is not known exactly how much money is spent by the state on which media, nor is it known what the decision-making mechanism behind public spending is.

A. Media authorities and bodies

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

The issues raised in the previous contributions to the Rule of Law Report still prevail.

The National Media and Infocommunications Authority (hereafter referred to as: Authority) is a convergent authority, which handles as regulator 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.

Opposition MP Ákos Hadházy has complained to the Authority that the news programme of the public service M1 television on 25 October 2023 violated the obligation of balanced reporting. The public media argued that *"the obligation of balanced information can clearly no longer be interpreted as meaning that the media service provider is obliged to present all opposing views in detail, since the viewer, once informed that there are opposing views, can also obtain detailed information from other sources"*.²⁹³ The argument was not trying to prove the balanced nature of the particular report, but essentially saying that public service media does not need to be balanced, as viewers can consume other news sources. It is worrying that the Authority accepted this argument and closed the case without investigation.

In 2023, the Authority's budget was HUF 58.6 billion (ca. € 147 million). Parliament approves the Media Council's budget as part of the Authority's integrated budget. The Media Council's operating budget in 2023 was HUF 621 million (ca. € 1,5 million).²⁹⁴ These amounts are

²⁹² In one session, the president of the Public Service Body argued that *"in no ways shall we get ourselves mixed up with some kind of complaints committee or Media Council or something like that, that's not our job. It is not for us to do that."* See the minutes of the Public Service Body's session on June 21 2023:

<https://www.kszt.hu/hivatalos-anyagok/testuleti-ulesek/146-2023-junius-21-ules/470-2023-junius-21-ules-jegyzokonyve>.

²⁹³ Ákos Hadházy, *A közmédián nem lehet számonkérni a kiegyensúlyozottságot [Public media cannot be held accountable for balance]*, 2023, <https://hadhazyakos.hu/2023/12/19/kozmedia-kiegyensulyozott-tajekoztatas/>

²⁹⁴ Act LXXXI of 2022 on the Consolidated Budget of the National Media and Infocommunications Authority for 2023

theoretically suitable to guarantee high-level professional work, however, in the case of the Authority and the Media Council these serve as the price of the loyalty.

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

The framework for the appointment of the president of the Authority and the Media Council (the regulatory body of the Authority) has not changed. The president of the Authority is appointed by the President of Hungary for nine years upon the proposal of the Prime Minister. Upon appointment, the President becomes the nominee for the presidency of the Media Council and is elected by the Parliament with a two-thirds supermajority for nine years: the Parliament's role is limited to a mere right to reject the nominee.²⁹⁵ Somewhat more substantive parliamentary control is present in the election of the four other members of the Council (each for nine years), which from August 2022 is based on the proposal of the Parliament's Cultural Committee, in which the two-thirds majority of the members are of the governing parliamentary²⁹⁶ group Fidesz-KDNP, but opposition delegates are still present.²⁹⁷

According to the Authority's recently issued analysis²⁹⁸ in July 2023 regarding the international media freedom reports concerning the Hungarian media landscape and the Authority since 2010, the sole fact that the president of the Authority is nominated by the Prime Minister is not a threat to the Authority's independence: *"The mere fact that the law gives the Prime Minister the power to propose the president of a non-governmental body does not in itself imply that the non-governmental body is acting on the instructions of the Government or the Prime Minister."*²⁹⁹ The president of the Authority expressed in an interview in October 2023 that they are *"not looking for the opportunity to punish"*, they *"wait if a complaint arises from the audience, rather rarely start ex officio proceeding"*.³⁰⁰ The Authority did not initiate ex officio proceeding³⁰¹ against HírTV's manipulated news war reporting on 17 July 2023, only launched a procedure after civil complaints were sent to the Authority. However, the Authority did not

²⁹⁵ In that case, the rejected nominee loses her mandate as the president of the Authority too according to Article 113(1)(e) of Act CLXXXV of 2010 on Media Services and Mass Media.

²⁹⁶ Currently, there are 18 members of the Cultural Committee, 11 from Fidesz, one from KDNP, one from DK, two from MSZP, two from Momentum, one from Mi Hazánk: <https://www.parlament.hu/web/kulturalis-bizottsag/a-bizottsag-jelenlegi-tagjai>.

²⁹⁷ The earlier legislation prescribed an *ad hoc* committee for nomination made up of one member from each parliamentary group, requiring a unanimous vote in proportion to their parliamentary representation.

²⁹⁸ The report is available in English here:

https://english.nmhh.hu/document/241411/Evaluation_of_Media_Freedom_Reports.pdf.

The article about the report:

https://english.nmhh.hu/article/241039/Evaluation_of_Media_Freedom_Reports?_gl=1*pvr663*_ga*0Tk40TU40Tk3LjE2MjcyODM2NzI.*_ga_D5LOSMBZTF*MTcwNDI4Njk5NC4xMy4xLjE3MDQyODgxMDkuMC4wLjA.*_ga_9TVC_G3TVNV*MTcwNDI4Njk5NC4xMy4xLjE3MDQyODgxMDkuMC4wLjA.

²⁹⁹ The fact that the current president was elected four months prior to the parliamentary election as the preceding president chose to resign before the end of her term led to the common conclusion that the ruling party this way secured the position for another nine years for a government-favoured nominee. This conclusion is regarded to be a *"speculation of a political nature, without any factual basis"* by the Authority's report.

³⁰⁰ <https://index.hu/belfold/2023/10/02/media-hirkozles-nmhh-koltay-andras-europai-bizottsag-gyermekvedelem-streaming-sajtoszabadsag/>

³⁰¹ <https://media1.hu/2023/07/20/elbocsatottak-a-hirtv-s-kephamisitas-egyik-feleloset-ekozben-nemzetkozi-nyilvanossagot-is-kapott-az-ugy-de-a-hatosag-nem-indit-eljarast/>

wait for complaints to launch a procedure ex officio against the biggest independent commercial TV on 30 November 2023 on age restriction rating issues.³⁰²

The Public Service Public Foundation's³⁰³ duty is to ensure the legislative requirements over the public service media. Its Board,³⁰⁴ the operating body, consists of six members elected by the Parliament (three nominated by the governing parties and three by the opposition parties)³⁰⁵ for nine years,³⁰⁶ the president of the Authority and another delegate of the Authority.³⁰⁷ Membership ceases with conflict of interest, a dispensation (in case the person is undergoing conservatorship), or exclusion (if the person culpably fails to perform the role for more than six months, or if convicted and sentenced to imprisonment, or if professionally disqualified regarding the person's role in the Board or deprived of civic rights).³⁰⁸ If a vacancy arises in the same parliamentary term or a different one with the same parliamentary composition, either the governing group or the opposition which nominated the previous member has the right to nominate.³⁰⁹ Since August 2022, if a vacancy arises in a different parliamentary term that changes the composition, the Parliament's Cultural Committee nominates, considering the changes.³¹⁰ In both cases, after nomination, the Parliament elects the new members for a term lasting until the expiration of the other elected members' term. If the delegated president's or the delegated member's status ceases, the Authority delegates another president/member in 15 days for a term lasting until the expiration of the other elected members' term. The current Public Service Public Foundation members were elected in 2019³¹¹ by the Parliament, with an additional member elected in 2021³¹² as one of the former members died.

The Authority's president pointed out the responsibility of the Public Service Public Foundation's Board,³¹³ however, so far, the Board has not made any significant steps against the misuse of the public service media.

³⁰² https://nmhh.hu/cikk/243459/Mediatanacs_hatosagi_eljarasok_indultak_az_RTL_mediaszolgalatoja_ellen

³⁰³ The Foundation was created by the 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 the 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 Article 95(2)-(3) of Act CLXXXV of 2010 on Media Services and Mass Media. 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). The Code is available here: <http://www.kszka.hu/attachments/article/2084/kozszolgalati-kodex-20210601.pdf>.

³⁰⁴ 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.

³⁰⁵ Act CLXXXV of 2010 on Media Services and Mass Media, Article 86(2)

³⁰⁶ Act CLXXXV of 2010 on Media Services and Mass Media, Article 86(10)

³⁰⁷ Act CLXXXV of 2010 on Media Services and Mass Media, Article 86(6)

³⁰⁸ Act CLXXXV of 2010 on Media Services and Mass Media, Article 88(4)-(7)

³⁰⁹ Act CLXXXV of 2010 on Media Services and Mass Media, Article 87(2)

³¹⁰ Act CLXXXV of 2010 on Media Services and Mass Media, Article 87(3)-(4)

³¹¹ <https://njt.hu/jogszabaly/2019-38-30-41>

³¹² <https://njt.hu/jogszabaly/2021-14-30-41>

³¹³ In a 2022 interview, he stressed that in relation to how the public service media is operating, *"the Public Service Media Foundations' Board too has direct competencies"*. See: <https://24.hu/belfold/2022/02/21/koltay-andras-nmhh-elnok-mediatanacs-interju/>.

The Public Service Body's role is to oversee whether public service requirements are met by the state media.³¹⁴ Members of the Public Service Body are delegated by specific organisations³¹⁵ for three years. New members were delegated in 2023³¹⁶ from the preexisting categories. CSOs with expertise and/or experience in the media are still ineligible to apply. According to Article 97(6) of Act CLXXXV of 2010, the Public Service Body ensures the social monitoring of the public service media and, according to Article 97(7) of Act CLXXXV of 2010, continuously monitors the implementation of the public service obligation and shall exercise control over the public service media service provider concerning the implementation of the provisions of this Act, in accordance with Paragraphs (8) to (13).

In February 2023, the Public Service Body approved³¹⁷ the report of the CEO of the major public service media outlet, Duna Zrt. with slight critical remarks³¹⁸.

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

The situation has remained almost unchanged since the latest CSO contribution to the Rule of Law Report was submitted.

The Hungarian media law created a co-regulation system as an alternative to the Media Council's control (the Media Council is the media authority in Hungary). The law authorised media market players to set up co-regulatory bodies which have the authority – with exclusive

³¹⁴ This Body can request (with a two-thirds 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 organisations).

³¹⁵ According to Article 97(3) and Annex I of Act CLXXXV of 2010 on Media Services and Mass Media, organisations that can delegate members to the Public Service Body include churches, municipality organisations, some CSOs (representing families and disability rights), the Olympic Committee, the Chamber of Trade and Industry, the Hungarian Academy of Sciences, the Hungarian Rectors' Conference, the Hungarian Chamber of Commerce and Industry, and the Hungarian Academy of Arts. No professional media or journalist organisation is represented.

³¹⁶ https://nmhh.hu/cikk/236876/Ok_lesznek_a_Kozszolgalmi_Testulet_tagjai_a_kovetkezo_harom_evben

³¹⁷ In the specific evaluative questions, out of the 15 votes, there were two opposing (and two residual) votes on the public service media's duty to inform; three opposing (and three residual) votes on the public service media's impartiality; one residual vote on the public service media's operational expectations; one residual vote on the standards for program production; and five residual votes on the social presence and capacity for dialogue of the public service media. See: <https://www.kszt.hu/hivatalos-anyagok/testuleti-ulesek/143-2023-februar-23-ules/456-2023-februar-23-ules-hatarozatai>.

³¹⁸ "14. There was no consensus in the Board on the question of whether news and information programs, beyond political appearances, enforce the impartiality and impartiality of the Code. Here, on the one hand, some presenters and commentators were criticized for their biased or tendentious appearances and the lack of questioning. On the other hand, some Board members criticized the ideological one-sidedness and the questionable professionalism of the panel of experts interviewed (with particular reference to the commentaries on the first weeks of Russian aggression, given their particular importance). The editorial autonomy, which is also a basic principle of the report, does not invalidate the requirement for balance. The remedying of such anomalies (such as the change in the head of the foreign policy editorial board) can also strengthen the social acceptance of public media.

15. It is also a matter of balance, but the basic expectation of the information needs of Hungarian citizens is that sound expert knowledge from the widest possible range should be presented in the information and professional programs of public media. The debate also highlighted the positive trend, for example, in the increasing representation of the literary canon and the representativeness of portrait programs of scientific and artistic excellence. Some of the panel members felt that this was not the case in other professional fields and that instead of the recognized scientific and professional workshops and personalities, there were often one-sided speeches and discussions, which were in line with government narratives and questionable in terms of their professional background. There is no consensus on this within the Board."

See: <https://www.kszt.hu/hivatalos-anyagok/testuleti-ulesek/143-2023-februar-23-ules/456-2023-februar-23-ules-hatarozatai>.

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 co-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 co-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.

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

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

There was a major development in 2023. The Hungarian Newspaper Publishers' Association addressed a letter to the President of the Republic, Katalin Novák, who was asked not to sign the Defence of Sovereignty Act adopted by the Parliament in December 2023. First the Index.hu news portal, then Mediaworks publishing house announced leaving the Association. Both companies have owners with close ties to the ruling party; the owner of the Mediaworks is the well-known pro-government foundation, KESMA (Central European Press and Media Foundation).

In assessing the effectiveness of the co-regulatory system, it is very telling that relevant pages on the websites of three industry organisations are blank or visibly incomplete. There is no indication whatsoever that any kind of proceedings have been conducted in recent years. In the case of the Hungarian Newspaper Publishers' Association the last decision in a co-regulatory case was published in 2017.³¹⁹ The only exception is the Advertising Self-Regulation Board; this organisation regularly publishes monitoring documents about certain issues.

Co-regulation is clear evidence of how an otherwise good, rule-of-law system in Hungary has become so empty that it is failing to fulfil its original purpose.

Self-regulatory bodies are weak and have no significant role in the Hungarian media. The Association of Hungarian Journalists (MÚOSZ) is a journalists' organisation with long

³¹⁹ See: <https://tarsszabalyozas.hu/aktualis/>.

traditions, but the average age of members is quite high, and the organisation is not very active. The Forum of Editors-in-Chief was established in 2012 but has not been active for years.

B. Safeguards against government or political interference and transparency and concentration of media ownership

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

The issues raised in the previous CSO contribution to the Rule of Law Report still prevail.

It is well documented that state advertisers favour pro-government companies and avoid independent media. This practice renders fair competition impossible and distorts the market.³²⁰ State sources finance politically favoured media outlets, and it helps 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.³²¹ The market distorting effect of state advertising spending is still prevalent, as recent research shows.³²²

The overall volume of state advertising spending started heavily increasing in the second term of the Orbán-system (2014–2018). In 2018, the pro-government media became centralized with the creation of KESMA, but state advertising continued to be published in government-friendly media.³²³ 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.

The state advertising spending is built on public procurement. The significant part of entire public sector communication activity is carried out under one framework agreement with the National Communications Office (NKOH). In the last years the very same consortium of New Land Media Kft. and Lounge Design Kft. won the communication public procurement tenders. They have the same owner, Gyula Balásy, a pro-government businessman.³²⁴ In the first three quarters of 2023, this consortium won communications tenders worth HUF 42.8 billion (ca. € 113 million).³²⁵ The media contracts of this consortium are not published, there is no information how these state sources are spent in the media market.

³²⁰ Attila Bátorfy – Ágnes Urbán, State advertising as an instrument of transformation of the media market in Hungary, *East European Politics*, 2020, 36:1, <https://www.tandfonline.com/doi/full/10.1080/21599165.2019.1662398>, pp. 44-65.

³²¹ For data visualisation about state advertising from 2006, see: <https://mertek.atlatszo.hu/allamihirdetesek/>.

³²² Mertek Media Monitor, *Befagyott médiarendszer [Frozen media system]*, 2023, <https://www.hdmo.eu/a-befagyott-mediarendszer/>

³²³ For data visualisation about state advertising from 2006, see: <https://mertek.atlatszo.hu/allamihirdetesek/>

³²⁴ New Land Media Kft. and Lounge Design Kft. were not major players in the media agency market before the public procurement procedures. In fact, New Land Media started its operations in 2013, but a few years later, in 2017, the advertising company was already 33 times the EU productivity average and has been leading the domestic market ever since, demonstrably largely through public contracts. But similar observations can be made about Lounge Design Ltd.

³²⁵ See e.g.: <https://telex.hu/belfold/2023/10/29/rogan-kormanyzati-kommunikacio-balasy-new-land-media-lounge-design>.

The social media spending of political actors is still high. Based on the data of Meta Ad Library, Hungarian political advertising has reached HUF 10 billion (ca. € 26 million) spending on Facebook in the period of 2019–2023.³²⁶ By far the biggest advertisers were the Government and those affiliated with the governing party. It is worth mentioning the Megafon group, which advertises the posts of pro-government influencers for huge sums. The financial background of Megafon is not known.

State advertising spending lacks transparency. The Hungarian state does not publish a database about its advertising activity.

6. Safeguards against state/political interference

The issues raised in the previous CSO contributions still prevail.

Article 7 of the so-called Media Constitution³²⁷ 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 Rule of Law Reports, there are serious governance and transparency problems around the public service media.³²⁸ The Hungarian public media operate in the framework of a very complex and confusing institutional structure. The Media Service Support and Asset Management Fund (hereafter referred to as: 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. (hereafter referred to as: 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 the 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. The budget of Duna for 2023 was HUF 2,1 billion (ca. € 5,5 million), while the budget of the Fund was HUF 127 billion (ca. € 334 million).³²⁹ It is obviously the hacking of the media law.

³²⁶ See e.g.: <https://telex.hu/belfold/2023/12/01/politika-propaganda-fidesz-hirdetes-facebook-megafon-kormany-mediaworks>.

³²⁷ Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content

³²⁸ 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/>.

³²⁹ Act LXXXI of 2022 on the Consolidated Budget of the National Media and Infocommunications Authority for 2023

The extension of radio licence is an arbitrary decision of the Media Council. In 2023, the Authority continued to support the expansion of Fidesz-affiliated radio stations. Based on the analysis of the Authority's decisions, there were 23 radio frequency tenders in 2023, four of which were inconclusive tenders. Out of the remaining 19 tenders, 14 frequencies were allocated to an operator close to the Government (eight radio stations are owned by pro-government investors, six radios are owned by a church), and only five frequencies were allocated to other operators.

7. Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

Besides KESMA, several commercial media companies are owned by pro-government investors, like TV2 commercial television, Radio1 network and Index.hu 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.³³⁰

The transparency of ownership is not a major problem in the Hungarian media landscape. The owners can be checked in the company registry and 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 Act³³¹ provides that the Hungarian Competition Authority is obliged to obtain the position statement of the Media Council for the approval of concentration of enterprises if the enterprises or the affiliates of two groups of companies are 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.³³²

The Government has a possibility to avoid the investigation of the Media Council and the HCA. When KESMA was transformed into a media empire in 2018, the Prime Minister signed an order declaring the transactions to be a matter of "national strategic importance in the public interest". This is a tool to avoid the investigation of authorities.

³³⁰ Mertek Media Monitor, *Media Landscape after a Long Storm – the Hungarian Media Politics Since 2010*, December 2021, <https://mertek.eu/wp-content/uploads/2021/12/MertekFuzetek25.pdf>

³³¹ Act CLXXXV of 2010 on Media Services and Mass Media, Article 171

³³² Mertek Media Monitor, *Media Landscape after a Long Storm – the Hungarian Media Politics Since 2010*, December 2021, <https://mertek.eu/wp-content/uploads/2021/12/MertekFuzetek25.pdf>

C. Framework for journalists' protection, transparency and access to documents

8. Rules and practices guaranteeing journalists' independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists

It concerns Alert no. 229/2023³³³ that the Parliament passed³³⁴ the Defence of Sovereignty Act on 12 December 2023 despite the objection of, e.g., the International Press Institute³³⁵ as the law threatens independent journalists and investigative media outlets³³⁶ who receive financial support from abroad. 10 Hungarian news outlets (Átlátszó, Magyar Narancs, Magyar Hang, Partizán, Telex, Direkt36, Nyugat.hu, Media1, 444, Qubit, Válasz Online, Lakmusz) issued a joint statement³³⁷ as “[i]ndependent media outlets that obtain and report information in the public interest are repeatedly accused of serving ‘foreign interests’” and “[t]he creation of [an Office for the Defence of Sovereignty] that can collect unlimited data, can interrogate anyone, and can be used against anyone, is contrary to the most basic norms of the rule of law”. The Defence of Sovereignty Act established the Office for the Defence of Sovereignty³³⁸ “in the interest of protecting constitutional identity” to “carry out analytical, evaluative, proposal-making and investigative activities”,³³⁹ a body which proceedings are unregulated yet has excessive investigative powers, and will make the results of its investigations public against which legal remedy is explicitly excluded.

³³³ The European Centre for Press and Media Freedom also issued a media freedom alert:

<https://www.mapmf.org/alert/31032>.

³³⁴ The President of Hungary signed the adopted law on 20 December 2023 and it was promulgated in National Gazette no. 185. on 21 December 2023 as Act LXXXVIII of 2023 on the Defence of National Sovereignty.

³³⁵ <https://ipi.media/hungary-draft-sovereignty-protection-act-poses-fresh-threat-to-independent-media/>

³³⁶ “Article 8

(1) In the course of its investigation procedure under this Chapter, the Office shall, as an act of evidentiary nature, as defined by an Act of Parliament,

a) have access to all data in the possession of the organisation under investigation and the state or local government body concerned in the case in question that may be related to the case under investigation, make copies thereof and inspect or request copies of all such documents, including those stored on an electronic medium,

b) may request written and oral information from the investigated organisation, from any member of the investigated organisation's staff or from the state or local government body concerned in the case in question,

c) may request written or oral information from any organisation or person that may be related to the case under investigation, and may also request a copy of any data or documents, including documents stored on an electronic medium, that may be related to the case under investigation.

(2) The investigative procedure of the Office under this Chapter shall not constitute an administrative procedure, and no administrative lawsuit may be brought in relation to its activities under this Chapter.”

³³⁷ The international Press Institute republished the statement in solidarity with Hungarian journalists:

<https://ipi.media/hungary-ipi-joins-condemnation-of-passing-of-sovereignty-protection-act/>.

³³⁸ The Office for the Defence of Sovereignty shall “investigate”, among others, “activities aimed at influencing democratic debate and the decision-making processes of the State and society [...] carried out in the interests of another State or, regardless of its legal status, of a foreign body or organisation or natural person [...] if they could harm or threaten the sovereignty of Hungary”, “organisations whose activities using foreign funding may influence the outcome of elections”, and “organisations that use foreign funding to influence the will of voters, or support such activities”.

³³⁹ According to Article 1(1) of the Defence of Sovereignty Act.

The Defence of Sovereignty Act was announced months after a pro-government institute issued a report³⁴⁰ which positioned independent Hungarian news outlets' funding as a risk to Hungarian sovereignty³⁴¹ arguing that *"in the Hungarian media landscape content producers financed from abroad have reached a critical level; thus the structure of foreign-funded structural financing raises the question of the harm of domestic interests. [...] 54% of the media products examined in the analysis, on aggregate average, express explicitly anti-government messages, and not merely critical opinion of the government."*³⁴² The report pointed to Hungarian news outlets³⁴³ as receivers of foreign financial support. The Defence of Sovereignty Act is opposed by journalists and media outlets as well as non-governmental organisations.³⁴⁴

Hungary is still not in compliance with the European Convention on Human Rights regarding regulations on authorizing state surveillance. The Government failed to make any effort³⁴⁵ to implement the 2016 ECtHR judgment *Szabó and Vissy v. Hungary*³⁴⁶ 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-surveillance³⁴⁷ – a concern of the ECtHR that came to realization in the Pegasus-affair. Although the judgment specifically warned against the potential threat the legislation may impose on journalists,³⁴⁸ 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.

As regards Alert no. 180/2020,³⁴⁹ the Constitutional Court rejected³⁵⁰ the constitutional complaint of the publisher of the news outlet Népszava on 6 December 2022, which published a caricature³⁵¹ at the time of the pandemic about the Government's surgeon general and against which a Christian MP launched a lawsuit. The caricature ridiculed the surgeon general's frequent saying that people killed by the virus had underlying diseases (in Hungarian,

³⁴⁰ XXI. Század Intézet, *Veszélyben a médiaszuverenitás – A külföldről finanszírozott média forrásai és donorjai* [Media sovereignty at risk – The foreign-funded media sources and donors], 2023,

<https://www.xxiszazadintezet.hu/wp-content/uploads/2023/03/mediaszuverenitas-trend-1-2023.pdf>

³⁴¹ See the respective Mapping Media Freedom Alert: <https://www.mapmf.org/alert/30944>.

³⁴² XXI. Század Intézet, *Veszélyben a médiaszuverenitás – A külföldről finanszírozott média forrásai és donorjai* [Media sovereignty at risk – The foreign-funded media sources and donors], 2023,

<https://www.xxiszazadintezet.hu/wp-content/uploads/2023/03/mediaszuverenitas-trend-1-2023.pdf>, p. 5.

³⁴³ 444, Átlátszó, Direkt36, K-Monitor, Lakmusz, Partizán, Szabad Európa, Telex

³⁴⁴ CSOs' petition against the Defence of Sovereignty Act gained more than 15,000 signatures, with more than 100 CSOs joining: <https://szabad.ahang.hu/petitions/a-demokracia-nem-veszelyezett-magyarorszag-szuverenitasat> (last retrieved: 5 January 2024).

³⁴⁵ Cf. Interim Resolution CM/ResDH(2023)33 of the Committee of Ministers of the Council of Europe, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa6b2b

³⁴⁶ Application no. 37138/14, Judgment of 12 January 2016. The decision has been confirmed again in the 2022 ECtHR judgment *Hüttl v. Hungary* (Application no. 58032/16, Judgment of 29 September 2022).

³⁴⁷ *"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 v. Hungary*, para. 67.)

³⁴⁸ *"[I]n 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 v. Hungary*, para. 77.)

³⁴⁹ <https://fom.coe.int/en/alerte/detail/64037610:globalSearch=true>,

³⁵⁰ Decision 3488/2022. (XII. 20.) AB

³⁵¹ https://nepszava.hu/3179023_nepszava-alkotmanybirosag-karikatura-papai-gabor

the text of the caricature can be interpreted as a pun) and pointed out that the surgeon general would comment on Jesus Christ's death as though his underlying disease could have caused the death. The context of the caricature is that the current ruling coalition includes the Christian Democratic People's Party, and the Government refers to Christianity (a Christian country) in its rhetoric. The court held the news outlet liable for violating the MP's personality right in relation to his belonging to the Christian religious community³⁵² and ordered the news outlet to pay HUF 400,000 (ca. € 1,055) for compensation.

Smear campaigns against critical journalists are coming from government-friendly media against the uncovering the spending of public money³⁵³ or the investigative reporting about abuses in a Christian children's home.³⁵⁴ The public service media in its news program called Telex and 444 newspapers liars for uncovering the biased reporting of the news³⁵⁵ on air.

Mayors in some areas also pose a threat to local journalists. The mayor of Győr smeared the local newspaper *ugytudjuk.hu*.³⁵⁶ The mayor of Nagyatád supposedly fired the editor-in-chief and the photojournalist of *Atádhír* as the local news reported about the public ridicule of a tourist centre's inauguration by the President of Hungary has turned into as the bathroom was not ready yet: the dividing walls were missing around the toilets.³⁵⁷

9. 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.

The police used tear gas in two major student protests in April and May 2023. Protesters were mostly students and teachers, they were affected the most. However, journalists were also injured by the tear gas.³⁵⁸

³⁵² Article 2:54 (5) of Act V of 2013 on the Civil Code articulates that *"Any member of the community may enforce his/her personality rights within a 30-day term of preclusion from the occurrence of a legal injury that was committed with great publicity in relation to some essential trait of his/her personality, his/her belonging to the Hungarian nation or some national, ethnic, racial or religious community, and is grossly offensive to the community or unduly insulting in its manner of expression. With the exception of relinquishing the material gain obtained through the violation of rights, any member of the community may enforce any sanctions of the violation of personality rights."*

³⁵³ See the respective Mapping Media Freedom Alert: <https://www.mapmf.org/alert/25544>.

³⁵⁴ See the respective Mapping Media Freedom Alert: <https://www.mapmf.org/alert/30663>.

³⁵⁵ See: <https://444.hu/2023/05/24/a-kozteve-beleallt-a-manipulacioba-az-m1-a-444-et-vadolja-hazudozassal>. See also the respective Mapping Media Freedom Alert from 25 May 2023: <https://www.mapmf.org/alert/30355>.

³⁵⁶ See: https://ugytudjuk.hu/cikk/2023-06-08_dezsi-csaba-andras-bergyilkosokhoz-hasonlitotta-az-ugytudjukhu-ujsgairoit. See also the respective Mapping Media Freedom Alert: <https://www.mapmf.org/alert/30357>.

³⁵⁷ See: <https://media1.hu/2023/07/24/levaltottak-a-novak-katalin-latogatasarol-szolo-cikkek-utan-a-nagyatadi-lap-foszerkesztojet-es-mas-szemelyi-valtozas-is-tortent/>. See also the respective Mapping Media Freedom Alert: <https://www.mapmf.org/alert/30582>.

³⁵⁸ See how the journalists were affected: <https://telex.hu/video/2023/12/28/ev-videoi-karmelita-konnygaz-oktatas-fiatalok-rendorok>.

A journalist of online medium Mércé was threatened on the phone in February 2023 after reporting from a counterprotest of a far-right memorial event with being killed by an unknown person.³⁵⁹ The police started investigating the case and interrogated a suspect.³⁶⁰

A security guard attacked and damaged the equipment of a journalist interviewing the president of Jobbik political party on 27 June 2023.³⁶¹

It took more than one and a half months for the Hungarian Standby Police National Bureau of Investigation to start investigating a series of Distributed Denial of Service (DDoS) attacks³⁶² which happened against at least 40 Hungarian news outlets³⁶³ (and the website of Budapest Pride) as the Police investigated each case separately at first. The International Press Institute (IPI) issued a warning in August 2023, calling the attacks “unprecedented” and “one of the broadest cyber-attacks against an independent media community within a European Union member state to date”.³⁶⁴ The IPI Deputy Director suggested that the attacks “could also pose a major threat to election integrity and democracy” and urged Hungarian law enforcement authorities to step up in investigating the case. The National Cyber Security Centre, which was first notified by Media1 about the case, refused to look into the case, referring to no power of investigation; however, later joined the investigation after the Hungarian Standby Police National Bureau of Investigation took over the case upon the call of IPI. The Association of Hungarian Journalists called on the Authority to perform its existing duties towards enabling a safe infocommunication space, ensuring central protection against such attacks.³⁶⁵

³⁵⁹ See the respective Mapping Media Freedom Alert from 14 February 2023:

<https://www.mapmf.org/alert/30178>.

³⁶⁰ <https://rtl.hu/belfold/2023/02/16/aktivista-fenyegetes-becsulet-napja-tamadas-merce-szikra-autonomia-bede-zsolt>

³⁶¹ See: <https://alfahir.hu/hirek/ratamadt-kollegainkra-egy-biztonsagi-or-az-asz-epuletene?v=638234772991052869>. See also the respective Mapping Media Freedom Alert from 27 June 2023: <https://www.mapmf.org/alert/30394>.

³⁶² See Safety of Journalists Platform Alert no. 127/2023,

<https://fom.coe.int/en/alerte/detail/107639256;globalSearch=true>. The European Centre for Press and Media Freedom also issued media freedom alerts in the case, see Hungarian newspapers' alerts of DDoS attacks on Mapping Media Freedom in 2023: 12 January 2023 – Radiocafé radio station website (<https://www.mapmf.org/alert/25554>); 16 April 2023 – 444, hvg.hu, Nyugati Fény, Ellenzél, Ellenlábás, Balramagyar, Hírhubó (<https://www.mapmf.org/alert/30208>); 19 April 2023 – several news outlets including Pécsma, Klubrádió, Magyar Narancs, ATV and HVG (<https://www.mapmf.org/alert/30226>); 13 May 2023 – owner of media outlets Indamédia group targeted, resulting of multiple news websites' access blocked (<https://www.mapmf.org/alert/30277>); 16 May 2023 – Media1 and vipcast.hu (<https://www.mapmf.org/alert/30280>); 5 June 2023 – Mércé, Media1, HVG, Nyugat, Enyugat, ATV and Átlátszó (<https://www.mapmf.org/alert/30356>); 14 June 2023 – Forbes Hungary (<https://www.mapmf.org/alert/30418>); 18 June 2023 – Media1, vipcast.hu (<https://www.mapmf.org/alert/30420>); 19 June 2023 – Magyar Hang, Hang.hu and Mfor.hu (<https://www.mapmf.org/alert/30421>); 20 June 2023 – frissirek.hu (<https://www.mapmf.org/alert/30422>); 21 June 2023 – Forbes Hungary (<https://www.mapmf.org/alert/30419>); 3 July 2023 – Spirit FM, Naphire and WMN (<https://www.mapmf.org/alert/30548>); 7 July 2023 – media platform Media1 and Vipcast (<https://www.mapmf.org/alert/30557>); 8 July 2023 – HVG (<https://www.mapmf.org/alert/30423>); 10 July 2023 – media platform Media1 (<https://www.mapmf.org/alert/30860>); 4 September 2023 – Kreatív (<https://www.mapmf.org/alert/30725>); 13 September 2023 – Szombat and Infovilág (<https://www.mapmf.org/alert/30735>).

³⁶³ <https://media1.hu/2023/09/27/kihallgatta-a-nemzeti-nyomozo-iroda-a-media1-foszerkesztojet/>

³⁶⁴ See: <https://ipi.media/hungary-ddos-cyber-attacks-pose-major-new-threat-to-media-freedom/>. After the warning, IPI was also attacked by the DDoS.

³⁶⁵ <https://muosz.hu/2023/10/01/muosz-allasfoglalas-a-kibercenzura-ellen-kozponti-fellepesre-van-szukseg/>

10. Access to information and public documents by public at large and journalists

The Parliament introduced new restrictions regarding the state's compliance with freedom of information in December 2023. According to the new provisions, state organs (and other public fund users) can deny freedom of information (FOI) requests if the requested data requires the comparison of certain data in their possession³⁶⁶ or if the requested data is only accessible by the organ through the means of being the supervisory body of the organ which generated the data.³⁶⁷

State owned enterprises now have to deny FOI requests regarding foreign investments and relations for a period of 10 years upon the evaluation of the Minister of the Cabinet Office of the Prime Minister (exercising the ownership rights) about the potential threat to the state's foreign interests.³⁶⁸

HVG online newspaper won a FOI lawsuit to uncover semi-confidential public government resolutions.³⁶⁹ However, a newly adopted provision³⁷⁰ orders non-classified government resolutions to remain secret for a period of 20 years if “*endangering public interest*”.

The prolonged extension of the deadline to answer FOI requests has been abolished³⁷¹ from January 2023, thus the deadline is 15 days again as is originally prescribed by law. In addition, legislative modifications entering into force in January 2023 made FOI lawsuits faster. Receiving first instance decisions has become faster, but it is not resulting in the data becoming public: it takes months/years for such lawsuits to bear substantial results. The documents³⁷² of the Operative Board (the decision-making body about pandemic measures) have just been ordered to be made public by the Ministry of Interior in a legally binding decision in December 2023, although the lawsuit was launched in May 2022.

FOI lawsuit procedures are protracted due to the fact that data holders request exceptional legal remedies by bringing legally binding decisions to the Kúria. The Prime Minister's Office lost a FOI lawsuit against Háttér Society first and second instance, however, took the decision to the Kúria.³⁷³ The State Audit Office lost a FOI lawsuit against Mertek Media Monitor³⁷⁴ and turned to the Kúria in November 2023 after the court's legally binding decision to disclose the data. The municipality of Nyíregyháza also lost a FOI lawsuit, both first and second instance,

³⁶⁶ Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information, Article 30(2a)(b)

³⁶⁷ Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information, Article 30(2a)(a)

³⁶⁸ Act XXII of 2009 on Austerity measures applicable to publicly owned enterprises, See Section 3/A of and Chapter 2, Section B) 6.

³⁶⁹ See:

https://hvg.hu/itthon/20230320_Birosag_per_titok_adatnyilvanossag_kozerdeku_kormany_titkolozas_itelet. See also the respective Mapping Media Freedom Alert from 17 March 2023: <https://www.mapmf.org/alert/30131>.

³⁷⁰ See Article 7/A of Act CXXV of 2018 on Government Administration, entering into force in March 2024.

³⁷¹ According to the reply of the National Authority for Data Protection and Freedom of Information no. NAIH-1754-2/2023, the earlier state of danger government decree lost its effect from 1 January 2023.

³⁷² The documents of the Operative Board were qualified as “decision-preparatory” documents generally by a state-of-danger government decree which resulted in these documents not being available publicly (for 10 years). The Government also ordered the courts that when dealing with such cases, judges have to go to the data holder (in this case, to the Ministry of Interior) if they wish to look into the documents, which is a deviation from the norm as the courts can request the documents in question otherwise. Both the first instance and second instance judges went to the Ministry of Interior to look into the documents.

³⁷³ The Prime Minister's Office lost the case in front of the Kúria as well on 26 April 2023.

³⁷⁴ The requested data were the results of the monitoring of the management of public service media MTVA.

against a local CSO asking for the local desegregation applications, and also requested a review from the Kúria. This case (launched in October 2021) is still under judicial review in January 2024.³⁷⁵

Access to data regarding public funds remains still restricted based on the constitutional amendment that narrowed down the definition of public funds.³⁷⁶ Parliament is still in failure to comply with the legislative duty ordered in a 2020 Constitutional Court decision³⁷⁷ that set a due date of 31 December 2020 to amend the Act of Parliament regulating FOI procedures³⁷⁸ since the current law does not guarantee judicial remedy if the public information is not held by a public authority but by an organisation which entered into financial relations with a public body.³⁷⁹ Currently, this omission results in the lack of legal remedies for those requesting such public data, as courts do not order these data holders to disclose the data referring to the not-yet-existing legal grounds. Recently, a constitutional complaint raised this issue in front of the Constitutional Court.³⁸⁰

A journalist of investigative news portal Átlátszó was stopped from interviewing a high-profile convict on 31 July 2023, referring to “*technical issues*” and later not allowed to continue (some questions involved the current Minister of Interior’s supposed role in the crimes committed³⁸¹). As there is no domestic legal remedy against such banning of the realization of an interview, Átlátszó turns to the ECtHR.³⁸² In September 2023, Átlátszó was banned from interviewing another convict related to the previous case.³⁸³

The Secretariat of the President of Hungary pressured the online medium Válasz Online to change the journalist who would have conducted an interview with the President.³⁸⁴

³⁷⁵ A trial is set to February 2024 in the case.

³⁷⁶ Article 39(3) of the Fundamental Law: “*Public funds shall be the revenues, expenditures and claims of the State.*”

³⁷⁷ Decision 7/2020. (V. 13.) AB

³⁷⁸ Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information. The legislative duty is on the list “*Legislative tasks of the Parliament arising from the decisions of the Constitutional Court*”, <https://www.parlament.hu/az-orszaggyules-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>.

³⁷⁹ The Constitutional Court declared in its Decision 7/2020. (V. 13.) AB that the right to freedom of information extends to all public data and judicial remedies must exist to fulfil this fundamental right vis-à-vis all persons handling public data. The Constitutional Court’s decision obliges the legislature to create legal remedies for the violation of Article 27(3a) of the Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information.

³⁸⁰ See the complaint here:

<https://alkotmanybirosag.hu/ugyadatlap/?id=BEDD497BC0BE11F5C1258A78006046E5>.

³⁸¹ See: <https://atlatszo.hu/kozugy/2023/09/13/a-pinter-sandorra-is-vonatkozo-kerdesek-miatt-nem-engedelyeztek-a-portik-interju-folytatasa/>. See also the respective Mapping Media Freedom Alert of 31 July 2023: <https://www.mapmf.org/alert/30730>.

³⁸² <https://atlatszo.hu/kozugy/2023/09/26/strasbourgba-visszuk-a-felbeszakitott-majd-letiltott-portik-interju-ugyet/>

³⁸³ See: <https://atlatszo.hu/kozugy/2023/09/29/a-jozef-rohac-interjut-is-megtiltotta-a-bortonparancsnoksag/>. See also the respective Mapping Media Freedom Alert: <https://www.mapmf.org/alert/31025>.

³⁸⁴ See: <https://www.valaszonline.hu/2023/04/12/novak-katalin-interju-visszamonddas-keh-koztarsasagi-elnok-a-szerk/>. See also the respective Mapping Media Freedom Alert from 12 April 2023: <https://www.mapmf.org/alert/30187>.

Specific journalists or media outlets are still not granted access to government press conferences,³⁸⁵ including the one the Prime Minister held on 21 December 2024,³⁸⁶ the only instance where independent media outlets had the opportunity to ask questions from the Prime Minister in an organised manner. The minister of the Cabinet Office of the Prime Minister admitted that he holds background discussions with only government-friendly journalists invited.³⁸⁷

Magyar Hang independent newspaper was not accredited to the press events of Pope Francis' visit to Budapest in April 2023.³⁸⁸ A photojournalist from the online newspaper 444 was also banned from attending the papal press events due to allegedly posing national security risks.³⁸⁹

Hungarian journalists were not accepted to report from the Hungarian CPAC conference starting from 4 May 2023,³⁹⁰ while a journalist from the Guardian was thrown out of the conference due to "superior orders".³⁹¹

11. Lawsuits (including SLAPPs) and convictions against journalists and measures taken to safeguard against manifestly unfounded and abusive lawsuits

Serving business interests and exercising municipal oppression were the two main trends in SLAPP lawsuits in Hungary in 2023.

Business-owners are abusing the provisions of the European Union's General Data Protection Regulation (GDPR), the goal of which is personal data protection, to prohibit the press from reporting about significant enrichment of businesses in the country which also frequently involves state subsidies. Even if the challenged article was produced using data from public databases or otherwise public data, GDPR is still weaponized against the press. A common feature of the cases is that the articles involved in the proceedings concern public affairs, typically with the political-economic relations of the actors concerned as the main subject.

As the regulation of GDPR does not expressly guarantee protection rules for the freedom of the press, it can be abused to suppress the functioning of the press in countries that have not adopted specific rules exempting the press from the rules of GDPR (which legislative action the GDPR allows).

³⁸⁵ See: <https://media1.hu/2023/07/07/folytatodik-a-sajtoszabadsag-sarba-tiprasa-megint-nem-engedtek-be-tobb-ujsgairot-a-kormanyinfora/>. See also the respective Mapping Media Freedom alert from 6 July 2023: <https://www.mapmf.org/alert/30424>.

³⁸⁶ See: <https://media1.hu/2023/12/21/ismet-lapokat-zartak-ki-az-orbaninforol-itt-a-video-arrol-mi-tortent-a-miniszterelnoki-sajtotajekoztato-elott/>.

³⁸⁷ <https://telex.hu/video/2023/11/14/rogan-antal-media-szuvereintas-kormany-fidesz-propaganda-telex>

³⁸⁸ See: <https://hang.hu/belfold/a-magyar-hang-nem-lehet-ott-ferenc-papa-latogatasanak-sajtonyilvanos-esemenyein-154065>. See also the respective Mapping Media Freedom Alert from 28 April 2023: <https://www.mapmf.org/alert/30251>.

³⁸⁹ See: <https://444.hu/2023/04/27/rogan-titkosszolgalata-szerint-nemzetbiztonsagi-kockazatot-jelentene-ha-a-444-munkatarsa-lefotozhatna-a-papat>. See also the respective Mapping Media Freedom Alert from 27 April 2023: <https://www.mapmf.org/alert/31067>.

³⁹⁰ See: <https://media1.hu/2023/05/04/a-magyarok-mutattak-meg-az-amerikai-politikusnak-hogy-ki-lehet-tiltani-rendezvenyekrol-a-sajtot/>. See also the respective Mapping Media Freedom Alert from 4 May 2023: <https://www.mapmf.org/alert/30276>.

³⁹¹ See: <https://telex.hu/english/2023/05/05/guardians-hungarian-reporter-kicked-out-of-cpac-hungary-mid-interview>. See also the respective Mapping Media Freedom Alert from 4 May 2023: <https://www.mapmf.org/alert/30274>.

Regarding Alert no. 176/2020,³⁹² in which case the court prevented the publishing of part of an article in Magyar Narancs newspaper granting a preliminary injunction to a business owner who filed a GDPR complaint against the newspaper, the Budapest Metropolitan Court issued a decision on the merits favouring the press, ruling that there was no violation of personality rights due to publishing a portrait of one of the wealthiest Hungarian families in a weekly magazine. As there was no legal remedy against the preliminary injunction, which prohibited part of the newspaper's article from being published, the newspaper turned to the Constitutional Court, which rejected the complaint against the lack of remedy in its Decision IV/493-4/2023. of 10 May 2023, claiming that the contested decision cannot be regarded as a decision on the substance of the case. Magyar Narancs filed a complaint before the ECtHR in September 2023; the case is pending.³⁹³

Regarding Alert No. 12/2020,³⁹⁴ in which case Forbes magazine was prohibited from indicating one of the wealthiest Hungarians in their annual list, as the businessman complained on GDPR grounds, the newspaper turned to the Constitutional Court against the ruling of the preliminary injunction order. Still, the Constitutional Court rejected the complaint, claiming that the contested decision could not be regarded as a decision on the substance of the case (Decision IV/1908-23/2020). Forbes filed a complaint to the ECtHR in May 2023; the case is pending.³⁹⁵

Mayors are repressing local journalists who articulate criticism towards the municipality's leadership, in which cases the current jurisprudence grants protection to the critical voices. The mayor of Nyírmártonfalva filed a lawsuit against investigative news site Átlátszó following a report on the outrageous misuse of EU funds: cutting down a forest upon which a canopy walk site should have been installed.³⁹⁶ The court ruled in favour of Átlátszó, granting protection to investigative journalism.³⁹⁷ A mayor posed criminal charges against a local newspaper's journalist, Makói Csípős, who wrote³⁹⁸ about the mayor's criminal record; the criminal proceeding was terminated in favour³⁹⁹ of Makói Csípős.⁴⁰⁰ The mayor of the district of Zugló, Budapest, launched and lost a lawsuit for press correction against a TV2 article reporting about his real estate acquisition and turned to the Constitutional Court in August 2023 for the supposed violation of his reputation and fair trial rights.⁴⁰¹ A CEO of the

³⁹² <https://fom.coe.int/en/alerte/detail/74257876:globalSearch=true>

³⁹³ See more about the current SLAPP trend using GDPR in Hungary here:

<https://magyarnarancs.hu/publicisztika/perozon-es-porhintes-259643>.

³⁹⁴ <https://fom.coe.int/en/alerte/detail/58705920:globalSearch=true>

³⁹⁵ The case was registered at the ECtHR under no. 22950/23. Another connected case is pending, as the National Authority for Data Protection and Freedom of Information also granted partially the GDPR claim of the businessman. The Hungarian Civil Liberties Union filed for judicial review, but as neither the Kúria, nor the Constitutional Court granted remedy for the press, the CSO challenged the Constitutional Court's Decision IV/1538-7/2022. before the ECtHR as well.

³⁹⁶ See the respective Mapping Media Freedom Alert from 3 May 2023: <https://www.mapmf.org/alert/30247>.

³⁹⁷ See: <https://atlatszo.hu/orszagszerte/2023/05/13/elso-fokon-az-atlatszo-kiuteses-gyozelmevel-vegzodott-a-lombkoronas-sajtoper/>. The decision is final: <https://media1.hu/2023/07/14/jogerosen-is-pert-nyert-az-atlatszo-a-lombkoronas-fideszes-polgarmester-ellen/>.

³⁹⁸ <https://mcsipos.hu/apatfalva-fideszes-polgarmesteret-elitelték-a-makoi-csipos-megirta-erre-feljelentette-az-ujsagirot/>

³⁹⁹ <https://szegeder.hu/megye/2023-08-10/megnyerte-a-pert-a-makoi-csipos-ujsagirolja-apatfalva-fideszes-polgarmesterevel-szemben-a-tasz-segitett-ebben/64d490be47d3c06f8eab6459>

⁴⁰⁰ <https://media1.hu/2023/07/22/megszuntettek-a-buntetoeljarast-a-makoi-csipos-foszerkesztoje-ellen-ami-azert-indult-mert-megirt-egy-hirt/>

⁴⁰¹ See: <https://media1.hu/2023/08/17/az-alkotmanybirosaghoz-fordult-a-zugloi-polgarmester-a-jogerosen-is-elvesztett-sajtopere-utan/>. See also the respective Mapping Media Freedom Alert from 25 July 2023: <https://www.mapmf.org/alert/30606>.

municipality of Szeged's company sued local newspaper Szegeder for an article that included criticism from a municipal councillor,⁴⁰² the Court of Szeged ruled in favour of the newspaper on second instance in July 2023.

12. Other

As mentioned above, in late 2023, the ruling majority in the Hungarian parliament passed the Defence of Sovereignty Act to stigmatise political opponents, civil society and think tanks critical of the Government.⁴⁰³ However, Hungary's information space is the most visibly affected by malign foreign influence in the European Union. Nevertheless, the Government has not taken effective action against foreign (mainly Russian and Chinese) information influence. Moreover, the government-organised media have become the main disseminators of disinformation narratives. As a result, anti-EU, pro-Kremlin, and pro-Beijing narratives are mainstreamed and normalised in the social and political discourse. As a result, the Hungarian population is more pro-Russian, pro-China, and critical of the West than the regional average. The effect of government communication critical of the West is also that fewer Hungarians have a favourable opinion of the country's allies, the European Union and the United States.⁴⁰⁴

The Hungarian government has also often given disinformation answers to the 2023 crisis in the economic sector in order to deflect its responsibility. The government-organised media mainly blamed the European Union for the EU record inflation and recession. The Government's "national consultation" questionnaire, which in reality is a push poll and was distributed to all Hungarian households, accused "Brussels" of outright falsehoods, such as the European Commission's intention to force the Hungarian government to abolish the subsidies on utility bills. At the same time, a national poster campaign was launched against Brussels, with a picture of Ursula von der Leyen and Alex Soros and the slogan "*Let's not dance to the tune they whistle!*".

The Orbán regime's disinformation machine has also had a strong impact on Hungarian minority communities in neighbouring countries. According to Political Capital's research, the Government's anti-war and anti-sanctions "peace narrative" was the most dominant of the main disinformation narratives prevalent among Hungarian minorities in Romania, Serbia, Slovakia and Ukraine in the first half of 2023. However, the presence of the anti-migration narrative was also significant, while the anti-gender narrative was the least prevalent. The Hungarian government also tried to influence the election results in two regional countries through disinformation in 2023: in Slovakia and Poland, the Prime Minister's Office promoted anti-immigration campaign videos on YouTube in the run-up to the parliamentary elections.⁴⁰⁵

⁴⁰² <https://szegeder.hu/kozlemeny/2023-07-13/megnyerte-also-sajto-peret-a-szegeder-amelyben-a-varosi-piacigazgato-lepett-jogi-utra-velunk-szemben/6477563847d3c00a43becbc0>

⁴⁰³ Political Capital, *12 pont, avagy mi a baj a Fidesz szuverenitásvédelmi javaslatával? [12 points – What is wrong with the law on the defence of sovereignty proposed by Fidesz]*, 29 November 2023, https://politicalcapital.hu/hirek.php?article_read=1&article_id=3299

⁴⁰⁴ Political Capital, *Keleti nyitás mellett keleti vakság alakult ki a magyar társadalomban [Eastern blindness has developed in Hungarian society alongside Eastern openness]*, 28 February 2023, https://politicalcapital.hu/hirek.php?article_read=1&article_id=3174

⁴⁰⁵ See e.g.: <https://www.szabadeuropa.hu/a/orban-viktor-szuverenitas-kulfoldi-valasztas-trump-vucic/32718744.html>.



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IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

1. Information on measures taken to follow-up on the recommendations received in the 2023 Rule of Law Report regarding the system of checks and balances

Relevant recommendation: *“Foster a safe and enabling civic space and remove obstacles affecting civil society organisations, including by repealing legislation that hampers their capacity of working, in particular the immigration tax.”* – The Hungarian government made no move to implement this recommendation. Restrictive legislation, including the immigration tax, remains in effect, though not enforced in practice. No measures were introduced to foster an enabling civil space, to the contrary: government-coordinated smear campaigns and vilification of independent civil society organisations remained a routine practice. No new funding options for independent CSOs were opened either. Some progress was made regarding CSO participation in official consultative bodies (in the Monitoring Committees that oversee the spending of EU funds at national level, or the Anti-Corruption Task Force), but these are offset by Act LXXXVIII of 2023 on the Defence of National Sovereignty adopted at the end of the year, with potentially wide-ranging consequences and further silencing any critical voice.

A. The process for preparing and enacting laws

2. Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'/public consultations, and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

The transparency and quality of the legislative process and the efficiency of public consultations in practice remain a source of concern despite the amendment of Act CXXXI of 2010 on Public Participation in Preparing Laws,⁴⁰⁶ which was adopted in 2022 with the aim of complying with milestones set under the RRP. As detailed in our previous contribution,⁴⁰⁷ the new rules do not provide a real solution.⁴⁰⁸ Key regulatory flaws include that (i) laws adopted

⁴⁰⁶ Act XXX of 2020 on the Amendments of Act CXXX of 2010 on Law-making and on Act CXXXI of 2010 on Public Participation in Preparing Laws in the Interest of Reaching an Agreement with the European Commission

⁴⁰⁷ *Contributions of Hungarian CSOs to the European Commission’s Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, p. 56.

⁴⁰⁸ See also: press release of 10 Hungarian CSOs of 27 July 2022 at <https://helsinki.hu/en/the-governments-bill-on-public-consultation-does-not-offer-real-solutions/>; Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Half-Hearted Promises, Disappointing Delivery. An Assessment of the Hungarian*

in breach of public consultation rules can still become/remain part of the legal system, (ii) the range of exceptions when draft laws do not have to or must not be subject to public consultation remains wide, and (iii) the Government Control Office which can now impose fines on ministries for violating the rules on public consultation is subordinated to the Government.

The 2023 Rule of Law Report concluded that the *“practical impact of new rules on formal public consultations remains to be assessed”*.⁴⁰⁹ Experience from 2023 shows that this impact remains rather limited, and the practice of public consultation remains deeply flawed.

Similar to 2022, several significant laws were not published for public consultation in 2023 either, such as the Twelfth Amendment to the Fundamental Law, the law that severely curtailed the Hungarian Medical Chamber’s powers after it protested against regulatory steps affecting the medical profession,⁴¹⁰ the law⁴¹¹ which was supposed to transpose the EU’s Whistleblower Directive,⁴¹² and a bill related to asset declarations.⁴¹³ The Government failed to inform the Anti-Corruption Task Force as well that it intends to submit the latter two bills to the Parliament.

Ministries almost never provide a longer consultation period than the statutory minimum of eight days, irrespective of the length and complexity of the draft law. The quality of impact assessments is often inadequate. The way in which draft laws are published only formally meets the legal requirements: purely technical amendments are put to consultation, and the titles and summaries of the published legislative packages rarely indicate clearly the subject matter of the proposals. The draft law authorising the Government to extend the state of danger⁴¹⁴ and a draft omnibus law (that extended the asylum system that the CJEU had found to be in violation of EU law – see Question IV.11.)⁴¹⁵ were both published for consultation with

Government’s New Measures to Protect the EU Budget and Related Recommendations, 7 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/Assessment-of-measures-to-protect-EU-budget.pdf>, pp. 4-5.

⁴⁰⁹ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 1.

⁴¹⁰ Act I of 2023 on Amending Act XCVII of 2006 on Professional Chambers in the Health Sector and Act CLIV of 1997 on Health Care. For more information, see e.g.: <https://telex.hu/english/2023/02/28/a-battle-of-wills-hungarian-doctors-vs-the-government>; <https://telex.hu/english/2023/03/03/the-bill-on-medical-chamber-could-threaten-eu-funds-for-hungary>; *Response of the Hungarian Helsinki Committee to Service Request no. 14. – FRANET contributions to the Fundamental Rights Report 2024 / Threats to democratic values*, 29 September 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/HHC-reply_FRANET-service-request-no-14_20230928.pdf, p. 14. (Section 2.4.).

⁴¹¹ Act XXV of 2023 on Complaints, Notifications of Public Interest and Rules on the Notification of Abuse

⁴¹² Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. For a CSO assessment of the bill, see e.g.: https://k.blog.hu/2023/05/19/whistleblower_protection_bill_in_hungary_the_hungarian_government_to_comply_with_the_eu_directive_bu.

⁴¹³ Bill T/3131. Available in Hungarian at: <https://tinyurl.com/3mca9yzu>. The content of Bill T/3131. was later entirely replaced by the Judicial Reform (see the details below), and was adopted as Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan.

⁴¹⁴ See the relevant documents here: <https://kormany.hu/dokumentumtar/2022-evi-xlii-torveny-modositasarol-szolo-torvenytervezet-1>. The one-sentence reasoning is available here: <https://cdn.kormany.hu/uploads/document/6/69/690/6903852ff11dc0a4a59fdb61023cf565c94bc2f.pdf>.

⁴¹⁵ See the relevant documents here: <https://kormany.hu/dokumentumtar/a-kozbiztonsag-mege-es-a-migr-ell-kuzdelem-erdekeben-szukseges-torvenyek-mod>. The one-sentence reasoning is available here: <https://cdn.kormany.hu/uploads/document/b/b0/b06/b06ffc72454de3204c322ca5e05b0ab1bde29ae8.pdf>.

a one-sentence reasoning, in violation of the respective rules.⁴¹⁶ A bill on third-country nationals was submitted to the Parliament 10 minutes after it was published for public consultation,⁴¹⁷ also violating the law.⁴¹⁸ The overwhelming majority of opinions submitted by the public are rejected by the Government without any real reasoning, e.g. that they “do not align with government policies”.⁴¹⁹

In an attempt to circumvent obligatory public consultation, the Government returned to its practice of introducing laws to the Parliament that are clearly part of government policy via governing majority MPs. In November 2023, the bill on the defence of national sovereignty was submitted by governing party MPs, including the head of the Fidesz parliamentary group.⁴²⁰ Another avenue used is the Legislative Committee of the Parliament, a super committee the composition of which reflects that of the Parliament and which can introduce amendments to any bill directly prior to the plenary vote. This opportunity was used twice in relation to the Judicial Reform adopted in 2023 to access EU funds: in May, the Legislative Committee introduced the final judicial package as an amendment to a bill on asset declarations, violating the Parliament’s Rules of Procedure;⁴²¹ while in December, a last-minute amendment to an unrelated bill changed the rules related to preliminary references to the CJEU.⁴²² A problematic provision that amended election rules and excluded by-elections in the period between the elections and 1 April of the preceding year was also tabled by the Legislative Committee.⁴²³

In violation of Milestone 235 of the RRP, which would have been due by the end of 2022, there is no public information that would indicate that any steps have been taken to develop the

⁴¹⁶ See the respective opinions submitted by CSOs in the framework of the public consultation here: https://helsinki.hu/wp-content/uploads/2023/10/AI-EKINT-MHB-TASZ_velemenyeveszelyhelyzet_20231013.pdf, p. 2.; and here: https://helsinki.hu/wp-content/uploads/2023/09/MHB_velemenyezes_20230928.pdf, p. 2.

⁴¹⁷ The public consultation site showing the date of publication is available here: <https://kormany.hu/dokumentumtar/a-harmadik-orzagbeli-allampolgarok-beutazasara-es-tartozkodasara-von-alt-szab>, the site showing the date of submission to the Parliament is available here: <https://tinyurl.com/5c2r8zej>.

⁴¹⁸ See the Hungarian Helsinki Committee’s respective opinion submitted in the framework of the public consultation here: https://helsinki.hu/wp-content/uploads/2023/11/Magyar-Helsinki-Bizottsag_-tarsadalmi-egyeztetes_-2023-nov-22.pdf.

⁴¹⁹ For more details and for statistical data supporting the concerns raised in this paragraph, see: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Assessment of compliance by Hungary with conditions to access European Union funds*, April 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/04/HU_EU_funds_assessment_Q1_2023.pdf, pp. 40-45.; K-Monitor, *Public consultation with the Orban government – Is it worth it?*, 13 June 2023, <https://tinyurl.com/tzjacezy>.

⁴²⁰ See the Parliament’s website: <https://tinyurl.com/2ubk24ud>.

⁴²¹ For details, see: Erika Farkas – András Kádár, *Restoring the Rule of Law by Breaching it: Hungary’s Judicial Reform and the Principle of Legality*, *VerfBlog*, 10 July 2023, <https://verfassungsblog.de/restoring-the-rule-of-law-by-breaching-it/>. See also the letter of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee to members of the European Commission: <https://helsinki.hu/en/parliamentary-process-of-the-bill-on-judicial-super-milestones-breaches-lawmaking-rules/>.

⁴²² For more information, see: Amnesty International Hungary – Hungarian Helsinki Committee, *Last-minute, makeshift solutions cannot resolve long-standing rule of law concerns*, 8 December 2023, <https://helsinki.hu/en/wp-content/uploads/sites/2/2023/12/Makeshift-solutions-cannot-resolve-RoL-concerns.pdf>.

⁴²³ Act XXIV of 2023 on Amending the Election Procedure Rules in Relation to Electronic Administration, Article 66, Points 2-3. For more information on the content of the amendment, see: *Response of the Hungarian Helsinki Committee to Service Request no. 14. – FRANET contributions to the Fundamental Rights Report 2024 / Threats to democratic values*, 29 September 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/HHC-reply_FRANET-service-request-no-14_20230928.pdf, pp. 17-18. (Section 2.5.).

capacity of the Office of the Parliament to help MPs and parliamentary committees to prepare impact assessments and conduct stakeholder consultations for the bills proposed by them.

Other forms of public participation in law-making beyond the commenting on draft laws have not been strengthened in any way. Public hearings have been weakened: in April, an emergency government decree opened up the possibility of not holding personal public hearings in administrative authorities' procedures and by local governments;⁴²⁴ while as of 1 January 2024, an Act of Parliament allows local governments, nationality self-governments and administrative authorities to hold public hearings without the personal attendance of the public, and even only via publishing materials on their websites.⁴²⁵

3. Rules and use of fast-track procedures and emergency procedures

Parliamentary Resolution 10/2014. (II. 24.) OGY on Certain Provisions of the Rules of Procedure establishes three main fast-track parliamentary procedures: the "discussion with urgency" ("sürgős tárgyalás"),⁴²⁶ the "exceptional procedure" ("kivételes eljárás"),⁴²⁷ and the "derogation from the provisions of the Rules of Procedure" ("a határozati házszabályi rendelkezésektől való eltérés").⁴²⁸

A discussion with urgency may be initiated by the stakeholder submitting the bill, but if the bill was submitted by an MP, the initiative for a discussion with urgency shall be supported by at least 25 MPs. The Parliament shall decide on ordering a discussion with urgency with a two-thirds majority of the MPs present. A discussion with urgency may be ordered by the Parliament not more than six times in any six-month period. The initiator may propose, among others, that the general debate on the bill would begin on the day of the sitting specified by the proposal, but not earlier than two days after the day on which the bill is submitted (instead of the ordinary six days); that the time limit for the submission of proposed amendments to the bill be shorter than the time limit provided for in the ordinary rules. A discussion with urgency shall be ordered in a way that at least six days must elapse between ordering it and the final vote on the bill.

An exceptional procedure may be initiated by the stakeholder submitting the bill, but if the bill was submitted by an MP, the initiative for an exceptional procedure shall be supported by at least one-fifth of the MPs. The Parliament shall decide on ordering an exceptional procedure with a majority of the votes of all the MPs. An exceptional procedure may be ordered up to four times every six months, and there are certain topics regarding which no exceptional procedure may be conducted: the adoption or amendment of the Fundamental Law, international treaties,

⁴²⁴ Government Decree 146/2023. (IV. 27.) on Establishing Rules on the Operation of Certain Organisations During the State of Danger and Certain Administrative Procedures Rules. See also: K-Monitor, *Hungarian government to hollow out public consultations despite commitments*, 28 April 2023, https://k.blog.hu/2023/04/28/hungarian_government_to_hollow_out_public_consultations_despite_commitment.

⁴²⁵ Act LXX of 2023 on Provisions Relating to Further Simplifying the State's Administration. For more details, see: *Response of the Hungarian Helsinki Committee to Service Request no. 14. – FRANET contributions to the Fundamental Rights Report 2024 / Threats to democratic values*, 29 September 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/HHC-reply_FRANET-service-request-no-14_20230928.pdf, p. 15. (Section 2.1.).

⁴²⁶ Parliamentary Resolution 10/2014. (II. 24.) OGY on Certain Provisions of the Rules of Procedure, Article 60

⁴²⁷ Parliamentary Resolution 10/2014. (II. 24.) OGY on Certain Provisions of the Rules of Procedure, Articles 61-64

⁴²⁸ Parliamentary Resolution 10/2014. (II. 24.) OGY on Certain Provisions of the Rules of Procedure, Article 65

cardinal provisions, the Parliament's Rules of Procedure, and the laws on the central budget and its execution. When ordering an exceptional procedure, the Parliament decides on the various procedural deadlines. Bills debated in an exceptional procedure can be adopted even the day after their submission.

A derogation from the provisions of the Rules of Procedure may be ordered by the vote of at least four-fifths of the MPs present, upon the proposal of the House Committee. No derogation may be ordered with respect to the adoption or amendment of the Fundamental Law, international treaties, and the Parliament's Rules of Procedure. Since no minimum time limits are set out, the derogation from the provisions of the Rules of Procedure can mean that the bill is adopted the same day as it is submitted.

From among the 121 Acts of Parliament promulgated in 2023, only one was adopted in a discussion with urgency procedure, Bill T/3131. on asset declarations, the content of which was entirely replaced by the Judicial Reform adopted to access EU funds through an amendment submitted by the Legislative Committee, in breach of the Parliament's Rules of Procedure.⁴²⁹ Four Acts of Parliament were adopted in an exceptional procedure, one of them being the law that severely curtailed the powers of the Hungarian Medical Chamber after the Chamber protested against regulatory steps affecting the medical profession. The respective bill was submitted to the Parliament without public consultation on 27 February 2023, was adopted the next day, and entered into force on 1 March.⁴³⁰ No Act of Parliament was adopted via derogation from the provisions of the Rules of Procedure in 2023.

From among the 33 parliamentary resolutions promulgated in 2023, one was adopted in a discussion with urgency procedure, one in an exceptional procedure, and one via derogation from the provisions of the Rules of Procedure.⁴³¹

4. Rules and application of states of emergency, including judicial review and parliamentary oversight

The Government continues to have excessive emergency regulatory powers, and continues to use its mandate to issue emergency decrees extensively and in an abusive manner.⁴³² Thus,

⁴²⁹ Bill T/3131. was adopted as Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan. For details, see: Erika Farkas – András Kádár, Restoring the Rule of Law by Breaching it: Hungary's Judicial Reform and the Principle of Legality, *VerfBlog*, 10 July 2023, <https://verfassungsblog.de/restoring-the-rule-of-law-by-breaching-it/>. See also the letter of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee to members of the European Commission: <https://helsinki.hu/en/parliamentary-process-of-the-bill-on-judicial-super-milestones-breaches-lawmaking-rules/>.

⁴³⁰ Act I of 2023 on Amending Act XCVII of 2006 on Professional Chambers in the Health Sector and Act CLIV of 1997 on Health Care. See the dates on the Parliament's website here: <https://tinyurl.com/3tpbnjp5>. For more information, see e.g.: <https://telex.hu/english/2023/02/28/a-battle-of-wills-hungarian-doctors-vs-the-government>; <https://telex.hu/english/2023/03/03/the-bill-on-medical-chamber-could-threaten-eu-funds-for-hungary>; *Response of the Hungarian Helsinki Committee to Service Request no. 14. – FRANET contributions to the Fundamental Rights Report 2024 / Threats to democratic values*, 29 September 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/HHC-reply_FRANET-service-request-no-14_20230928.pdf, p. 14. (Section 2.4.).

⁴³¹ Source of numbers in this and the preceding paragraph: search on the Parliament's website (<https://www.parlament.hu/web/quest/iromanyok-lekerdezese>).

⁴³² For a comprehensive overview, see: Hungarian Helsinki Committee, *Government gains excessive powers from forever renewable state of danger*, 24 February 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC_Hungary_state_of_danger_24022023.pdf.

the concern included in the 2023 Rule of Law Report that “[l]egal certainty has been undermined by [...] the extensive and prolonged use of the Government’s emergency powers, also interfering with the operation of businesses in the single market”⁴³³ remains valid. The legal framework and the practice are in stark contrast with the requirements set out by the Venice Commission.⁴³⁴

The Government first acquired excessive emergency powers with a view to the pandemic in spring 2020: it declared a “state of danger”, a special legal order regime, while the legislative framework was transformed in a way that the Government had a *carte blanche* mandate to override any Act of Parliament via emergency decrees once a state of danger was declared. The Government has been maintaining a “rule by decree” system ever since, with only a few months of intermission, most recently using the war in Ukraine as a pretext for keeping its excessive regulatory powers. The constitutional and statutory framework governing special legal order regimes was amended as of November 2022, and these amendments cemented the problematic practices developed during the pandemic.⁴³⁵ Main concerns include the following:

- The legal framework allows the Government to override basically any Act of Parliament in emergency decrees during a state of danger due to the excessive, *carte blanche* mandate the Government was granted by law in terms of the scope and subject matter of these decrees – also to suspend or restrict most fundamental rights beyond the extent permissible under ordinary circumstances.
- There is no automatic and regular parliamentary oversight over individual emergency decrees, also depriving the opposition from the possibility to contest the decrees publicly in the Parliament.
- The effective and swift constitutional review of emergency decrees is not ensured.

The Government extended the state of danger declared with a reference to the war in Ukraine two times in 2023 with the statutory maximum of 180 days.⁴³⁶ In both instances, CSOs shared their concerns in the form of opinions submitted in the framework of the public consultation on the draft laws that provided parliamentary authorisation to the Government to extend the

⁴³³ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, pp. 1. and 31-32.

⁴³⁴ European Commission for Democracy Through Law (Venice Commission), *Report – Respect for Democracy, Human Rights and the Rule of Law During States of Emergency: Reflections*, CDL-AD(2020)014, 19 June 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)014-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)014-e). See especially paras 10., 14., 65., 81., 84. and 87-88.

⁴³⁵ A detailed analysis of the changes, covering also the special order regimes beyond the state of danger, is available here: Gábor Mészáros: *Exceptional Governmental Measures without Constitutional Restraints*, 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/Meszaros_special_legal_order_02112022.pdf.

⁴³⁶ By Act XI of 2023 on Amending Act XLII of 2022 on Eliminating and Managing the Consequences in Hungary of an Armed Conflict and Humanitarian Catastrophe in a Neighbouring Country (promulgated on 11 May 2023) and by Act LXXII of 2023 on Amending Act XLII of 2022 on Eliminating and Managing the Consequences in Hungary of an Armed Conflict and Humanitarian Catastrophe in a Neighbouring Country (promulgated on 17 November 2023).

state of danger.⁴³⁷ However, the Government did not take these into account.⁴³⁸ The state of danger is currently extended until 23 May 2024.

The Government continues to use its mandate to issue emergency decrees extensively: in 2022, 42% of all government decrees (267 out of 637) were adopted as emergency decrees,⁴³⁹ while in 2023, 29.5% (203 out of 688).⁴⁴⁰

The practice of regularly adopting emergency decrees for purposes not related to the cause of the state of danger (previously the pandemic, presently the war) continues as well.⁴⁴¹ Examples from 2023 include the following:

- Government Decree 4/2023. (I. 12.) changed the rules of how employers can dismiss employees of educational institutions (extending the deadline from 15 days to long months to be counted from the alleged violation of the labour obligations), thus putting more pressure on teachers who participated in civil disobedience due to the fact that their right to strike had been curbed.⁴⁴²
- Government Decree 146/2023. (IV. 27.) opened up the possibility of not holding personal public hearings in administrative authorities' procedures and by local governments.⁴⁴³
- As a reaction to the growing number of foreigners convicted of human smuggling, it was set out in Government Decree 148/2023. (IV. 27.) that such detainees shall be released into "reintegration detention", which in practice means that they are simply released and must leave the country on their own accord within 72 hours.⁴⁴⁴ This prompted the EC to launch an infringement procedure in July.⁴⁴⁵

⁴³⁷ The opinions submitted jointly by Amnesty International Hungary, the Eötvös Károly Institute, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee in March 2023 and October 2023 are available here: https://helsinki.hu/wp-content/uploads/2023/03/AI-EKINT-MHB-TASZ_velemen_y_vezelyhelyzet_20230328.pdf, https://helsinki.hu/wp-content/uploads/2023/10/AI-EKINT-MHB-TASZ_velemen_y_vezelyhelyzet_20231013.pdf.

⁴³⁸ See the summary reasoning published concerning opinions submitted in March 2023: <https://cdn.kormany.hu/uploads/document/1/1e/1eb/1eb9b1162e06e2716e8eb8be4e7a7e6e91414dc1.pdf>. The summary reasoning concerning opinions submitted in October 2023 is available here: <https://cdn.kormany.hu/uploads/document/2/2a/2a1/2a1acc8b05ee88a8854103b41033698a9eea95b.pdf>. In violation of Article 4(4) of Government Decree 301/2010. (XII. 23.) on the Publication and Commenting on Draft Legislation and Regulatory Concepts, which sets out that the summary reasonings shall be published within 15 days after the bill's submission to the Parliament, the latter summary reasoning was published only on 9 January 2024.

⁴³⁹ Source: <https://www.wolterskluwer.com/hu-hu/news/2022-jogalkotasi-statisztika>.

⁴⁴⁰ Source: the Hungarian Helsinki Committee's calculations.

⁴⁴¹ For examples from 2022, see: Hungarian Helsinki Committee, *Government gains excessive powers from forever renewable state of danger*, 24 February 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC_Hungary_state_of_danger_24022023.pdf, pp. 6-7.

⁴⁴² Government Decree 4/2023 (I. 12.) on Certain State of Danger Rules Affecting Public Education Institutions. For more details, see: Hungarian Helsinki Committee, *Curtailling the rights of teachers in Hungary – How the Government used legal tools to crack down on teachers asking for improvements in the public education system*, 23 March 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/HHC_Hungary_teachers_23032023.pdf, pp. 6-8.

⁴⁴³ Government Decree 146/2023. (IV. 27.) on Establishing Rules on the Operation of Certain Organisations During the State of Danger and Certain Administrative Procedures Rules. See also: K-Monitor, *Hungarian government to hollow out public consultations despite commitments*, 28 April 2023, https://k.blog.hu/2023/04/28/hungarian_government_to_hollow_out_public_consultations_despite_commitment_s.

⁴⁴⁴ Government Decree 148/2023. (IV. 27.) on the Reintegration Detention of those Convicted for Human Smuggling. For further details, see: <https://helsinki.hu/en/how-to-gamble-with-criminal-law-the-hungarian-government-lets-foreign-smugglers-loose/>.

⁴⁴⁵ See: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_3445.

- Government Decree 207/2023. (V. 31.) interfered with the right of the municipality of Budapest to decide on entering into a contract regarding the use of advertising space on electricity poles.⁴⁴⁶
- Government Decree 432/2023. (IX. 21.) allows the environmental protection authority to conclude an “environmental protection authority contract” with companies violating environmental rules in which the violator undertakes to cease the violation, without being subjected to consequences otherwise prescribed by law.⁴⁴⁷ This “backdoor” was used by the Government to “save” the metallurgical plant Dunafer.⁴⁴⁸
- Government Decree 523/2023. (XI. 30.) negates the protection granted to buildings and local heritage requirements established by local municipalities in the case of certain investments of strategic importance for the national economy.⁴⁴⁹ The mayor of the 8th district of Budapest claimed that the decree was designed to facilitate the building of the new campus of the Pázmány Péter Catholic University in the district.⁴⁵⁰

5. Regime for constitutional review of laws

In 2023, four new justices were elected to the Constitutional Court to replace those whose terms of office expired. The new justices were nominated in a process that lacked transparency and prior consultation with the opposition and was governed by new rules adopted by the Fidesz-KDNP majority alone in the summer of 2022.⁴⁵¹ Only the governing parties, having a two-thirds majority in Parliament, voted for the candidates. As a result, the selection procedure lacked any guarantees for the independence of the new justices.

The 2023 Justice Reform, adopted in exchange for Hungary’s access to frozen EU funds, made an important change to the powers of the CC. The reform abolished the possibility of public authorities to challenge judicial decisions before the CC on the grounds that their rights guaranteed by the Fundamental Law were violated.⁴⁵² This amendment ended a highly

⁴⁴⁶ Government Decree 207/2023. (V. 31.) on Amending Government Decree 574/2022. (XII. 23.) on the Different Application of Certain Traffic Laws during the State of Danger. For background, see:

<https://444.hu/2023/06/08/volt-valami-karacsonyeknal-ami-nagyon-kellett-orbaneknak>,
https://nepszava.hu/3197634_elefantfulek-reklambiznisz-garanci-istvan-ner-orban-kormany-budapest.

⁴⁴⁷ Government Decree 432/2023. (IX. 21.) on the Environmental Protection Authority Contract

⁴⁴⁸ For further details, see e.g.: <https://444.hu/2023/11/10/gulyas-gergely-jovahagyta-a-dunaferr-hasznalhatja-a-kornyezetvedelmi-kiskaput>, <https://telex.hu/belfold/2023/10/10/miniszterelnokseg-kormanyrendelet-kornyezetvedelmi-hatosagi-szerzodes-dunaferr>.

⁴⁴⁹ Government Decree 523/2023. (XI. 30.) on the Different Application of Certain Rules on Investments of Strategic Importance for the National Economy during the State of Danger

⁴⁵⁰ See e.g.: <https://telex.hu/belfold/2023/12/04/piko-andras-magyar-radio-bontas-kormany-rendelet>.

⁴⁵¹ See Article 26 of the Act XVIII of 2022 on the Amendment of Act XXXVI of 2012 on Parliament and Certain Related Laws. Since its inception, Constitutional Court justices were nominated by an *ad hoc* parliamentary committee dedicated to this specific task. In 2010, when Fidesz took power, it changed the composition of this committee by abolishing the principle of parity to be able to nominate justices on its own, without consultation with opposition parties. In 2022, the governing parties transferred the competence of nomination to a standing committee of the Parliament dealing with constitutional affairs (the Justice Committee), presumably to make it even easier to select its own candidates for the Constitutional Court.

⁴⁵² See Article 13 of Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan. For a detailed assessment of the Justice Reform, see the contribution of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee:
<https://helsinki.hu/en/assessment-of-hungarys-judicial-reforms/>.

controversial practice, enabling the CC to annul judicial decisions detrimental to the interest of the Government.

The problem, indicated in recent years' CSO contributions,⁴⁵³ that the CC failed to confront the Government, also persisted in 2023. The CC found no human rights violation regarding the 2020 law that banned legal gender recognition.⁴⁵⁴ The legal issue concerned the question of whether the right to human dignity and the right to privacy are disproportionately restricted if gender and name change can no longer be registered. However, the CC evaded addressing the genuine human rights issues by focusing on the question of whether registering sex at birth is compatible with the Fundamental Law.⁴⁵⁵ The reasoning of the CC completely ignored its previous decisions and the relevant case law of the ECtHR.⁴⁵⁶

The CC failed to find the disciplinary powers of the Speaker of the Parliament unconstitutional, which enable him to impose, on vaguely formulated grounds, heavy fines on MPs (namely the reduction of MPs' monthly salaries) for violating the effective functioning and authority of the Parliament.⁴⁵⁷ In recent years, the Speaker has used these powers extensively against opposition MPs, thereby restricting their rights, including their freedom of expression.

The CC also rejected a complaint based on a freedom of information lawsuit which sought to access data on the bonuses paid to the senior staff of the National Office for the Judiciary.⁴⁵⁸ The practice of NOJ Presidents awarding bonuses to employees in a discretionary, non-transparent way has long been criticized by the NJC and domestic watchdog institutions.⁴⁵⁹ However, the CC argued that even though the NOJ is an organisation managing public funds, freedom of information does not constitute a right to access information about the bonuses of all senior staff members.

When referendum questions were brought before the CC in 2023, the justices ruled almost exclusively in favour of the Government, thereby blocking attempts to challenge important government policies. This happened in relation to organising local referendums on the construction of Chinese-owned battery factories and also when the CC annulled the Kúria's judgments that gave the green light to a referendum on issues related to public education. In the former case, the CC was reluctant to review the challenged judicial decision that had refused to validate the referendum question based on the lack of clarity.⁴⁶⁰ The CC emphasized that the clarity of the question to be put to a referendum is, in general, not a question of constitutionality, so the CC has no jurisdiction to review judicial decisions on these grounds

⁴⁵³ See for instance: *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, pp. 58-59.

⁴⁵⁴ Decision 3058/2023. (II. 16.) AB

⁴⁵⁵ It was the Ninth Amendment to the Fundamental Law that entrenched the "right of children to a self-identity corresponding to their sex at birth" under Article XVI(1).

⁴⁵⁶ For the criticism of the CC's decision, see for instance: Tamás Dombos – Eszter Polgári, Ignorance and Evil: The Hungarian Constitutional Court on Legal Gender Recognition for Trans People, *VerfBlog*, 21 February 2023, <https://verfassungsblog.de/ignorance-and-evil/>

⁴⁵⁷ Decision 4/2023. (V. 16.) AB

⁴⁵⁸ Decision 3483/2023. (XI. 17.) AB

⁴⁵⁹ On this see: *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, pp. 14-15.

⁴⁶⁰ Decision 3311/2023. (VI. 21.) AB. However, the CC annulled a judicial decision allowing a local referendum on a similar issue in Győr. See Decision 16/2023. (VII. 25.) AB.

unless the interpretation is arbitrary.⁴⁶¹ However, when the Kúria validated questions regarding public education, the CC annulled these judgments on the ground that by stretching the criteria of clarity, the Kúria's interpretation was arbitrary and, therefore, violated the right to a fair trial.⁴⁶²

The Commissioner for Fundamental Rights turned to the CC requesting the abstract interpretation of the Fundamental Law related to life imprisonment sentences. While the 2011 Fundamental Law explicitly provides for a sentence of life imprisonment without parole,⁴⁶³ Article III declares the prohibition of torture, inhuman or degrading treatment or punishment. The Commissioner asked whether Article III requires that detainees must be given the possibility for release in a pre-determined, foreseeable period, which is set at a statutory level. Hungary has long refused to execute those ECtHR judgments that found the Hungarian legal regime regarding whole-life sentences in breach of basic human rights standards.⁴⁶⁴ Notwithstanding the problems mentioned above, the CC did not examine the issue on merit. The CC held that the questions to be put to interpretation could not be answered based on the Fundamental Law alone, and the relevant statutory framework provides for the possibility of release in a foreseeable period, so it regulates precisely what the Commissioner's question was aimed at.⁴⁶⁵

B. Independent authorities

6.⁴⁶⁶ Independence, resources, capacity and powers of national human rights institutions (NHRIs), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

The finding by the 2023 Rule of Law Report that “[c]oncerns regarding the independence and effective functioning of the Commissioner for Fundamental Rights persist”⁴⁶⁷ remains valid. As recalled in our previous contribution,⁴⁶⁸ the GANHRI Sub-Committee on Accreditation (SCA) downgraded the Commissioner for Fundamental Rights (CFR) as Hungary's NHRI from an A to a B status since its inactivity in a number of areas evidenced a lack of independence. In

⁴⁶¹ The CC also relied on this argument when it refused to review a judicial decision failing to validate a local referendum concerning the establishment of the Chinese Fudan University's campus in Budapest. See Decision 3133/2023. (III. 14.) AB.

⁴⁶² Decisions 20/2023. (VIII. 7.) and 21/2023. (VIII. 7.) AB. Following these annulments, the Kúria again approved the same questions for a referendum, but in January 2024, the CC annulled the Kúria's rulings for the second time. See the decisions of the CC on cases no. IV/2680/2023 and no. IV/2679/2023.

⁴⁶³ Article IV(2) states the following: “Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences.”

⁴⁶⁴ For details see: Hungarian Helsinki Committee, *Hungary fails to comply with ECtHR judgments on life sentence*, 1 August 2023, available at: <https://helsinki.hu/en/hungary-fails-to-comply-with-ecthr-judgments-on-life-sentence/>.

⁴⁶⁵ Decision 3492/2023. (XII. 1.) AB

⁴⁶⁶ Note that no response was provided to Question IV.7. on the “Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years”.

⁴⁶⁷ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 33.

⁴⁶⁸ *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, p. 61.

particular, the SCA found that the CFR has not substantiated that it is “fulfilling its mandate to effectively promote and protect all human rights”, that it is “effectively carrying out its mandate in relation to vulnerable groups such as ethnic minorities, LGBTQI people, human rights defenders, refugees and migrants, or related to important human rights issues such as media pluralism, civic space and judicial independence”. Its “engagement with the constitutional court and international human rights mechanisms in relation to cases deemed political and institutional” was also deemed insufficient.⁴⁶⁹ In addition, concerns were raised that the CFR’s selection and appointment process is not sufficiently broad and transparent.

The deficiencies pointed out by the SCA as a reason for the downgrading continue to exist. The rules of the selection and appointment process have not been amended, and respective concerns have not been addressed. Furthermore, the publicly available information on the CFR’s work evidences that it still does not effectively promote and protect all human rights and vulnerable groups. An overview of the titles of the 106 reports published by the CFR in 2023 (including OPCAT reports) shows that the CFR did not issue any public reports that dealt with the rights of LGBTQI people or refugees and migrants, despite the wide-ranging rights violations suffered by these groups in Hungary,⁴⁷⁰ and did not focus in any of its public reports on the situation of human rights defenders, media pluralism or judicial independence either.⁴⁷¹ The public statements available on the CFR’s website do not cover any of the above topics or vulnerable groups either.⁴⁷² In its 2022 annual report, the word “LGBTQ” is mentioned only once, in relation to a conference the CFR’s representative attended. The report also states that the CFR did not submit a constitutional review request to the Constitutional Court in 2022.⁴⁷³

At the same time, it should be mentioned that according to its annual report, in 2022 the CFR provided assistance and monitored the situation of persons fleeing Ukraine, and the Deputy Commissioner for the Rights of National Minorities considered, among others, the situation of Ukrainian and Roma persons fleeing from Ukraine as a priority topic in 2022.⁴⁷⁴ In December 2023, the Deputy Commissioner organised a conference together with a judicial association on vulnerable groups in the courtroom, with a special focus on children and refugees.

As highlighted by previous CSO contributions as well, there has been a trend to merge all specialised human right protection institutions into the CFR’s Office: as of 2021, Hungary’s

⁴⁶⁹ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14-25 March 2022, https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf, pp. 43-47.

⁴⁷⁰ See e.g.: Amnesty International Hungary – Háttér Society, *Hungary: Continued Backsliding on LGBTQI Rights*, November 2023, <https://hatter.hu/sites/default/files/dokumentum/konyvlap/hatter-amnesty-art7-2023nov.pdf>; the Hungarian Helsinki Committee’s statement submitted in October 2023 to the OSCE Warsaw Human Dimension Conference on the systemic rights violations committed against migrants and asylum-seekers, available at: <https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/OSCE-WHDC-2023-HHC-refugees-and-displaced-persons-statement.pdf>.

⁴⁷¹ The reports of the CFR are available in Hungarian here: <https://www.ajbh.hu/jelentesek-inditvanyok-allasfoglalasok>.

⁴⁷² The CFR’s public statements are available here in Hungarian: <https://www.ajbh.hu/kozlemenyek>.

⁴⁷³ *Beszámoló az alapvető jogok biztosának és helyetteseinek tevékenységéről 2022 [Report on the Activities of the Commissioner for Fundamental Rights and its Deputies in 2022]*, https://www.ajbh.hu/documents/10180/7828043/AJBH_%C3%89ves_besz%C3%A1mol%C3%B3_2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.1&t=1702897869314, p. 136.

⁴⁷⁴ *Beszámoló az alapvető jogok biztosának és helyetteseinek tevékenységéről 2022 [Report on the Activities of the Commissioner for Fundamental Rights and its Deputies in 2022]*, https://www.ajbh.hu/documents/10180/7828043/AJBH_%C3%89ves_besz%C3%A1mol%C3%B3_2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.1&t=1702897869314, pp. 143-145.

equality body under EU law, the Equal Treatment Authority, was merged into the CFR's Office (a move criticized by the Venice Commission and CSOs);⁴⁷⁵ the same happened to the Independent Law Enforcement Complaints Board in 2020; and in 2022, the CFR's Office was designated as Hungary's independent mechanism established under the UN Convention on the Rights of Persons with Disabilities. Moreover, the CFR's Office was designated as Hungary's national preventive mechanism (NPM) under the OPCAT as of 2015.

This level of concentration of mandates is highly problematic due to not only the lack of functional independence of the CFR's Office, which has led to its downgrading as Hungary's NHRI, but also due to the inevitably decreased institutional focus and resources these topics can receive in a large organisation with multiple mandates. Organisational concerns include that, based on the information on the CFR's website, both the Directorate General for Equal Treatment and the Directorate General for Disability Affairs operate within the CFR's Office without directors having been appointed for them, even though the appointment of directors is foreseen by the law.⁴⁷⁶ In 2022, the Directorate General for Equal Treatment dealt with 465 equal treatment cases (including pending cases from previous years),⁴⁷⁷ which is much lower than the 868 cases the Equal Treatment Authority received in 2019.⁴⁷⁸

C. Accessibility and judicial review of administrative decisions

9.⁴⁷⁹ Judicial review of administrative decisions: short description of the general regime

Judicial review of administrative decisions takes place on three different ordinary court levels and on four different instances. (i) First instance judicial review is carried out by eight designated regional courts.⁴⁸⁰ Exceptionally, in certain cases defined by law, such as electoral and referendum cases and freedom of assembly cases,⁴⁸¹ the Kúria acts as first instance court.⁴⁸² (ii) Second instance judicial review of administrative decisions is carried out by the Metropolitan Court of Appeal (with respect to decisions delivered by regional courts) and the Kúria (with respect to decisions delivered by the Metropolitan Court of Appeal).⁴⁸³ (iii) Extraordinary review of final and binding judgments is exclusively carried out by the Kúria.⁴⁸⁴ In addition, and constituting a fourth instance of review, (iv) the Kúria's uniformity complaint

⁴⁷⁵ 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.; *Country report – Non-discrimination – Hungary*, 2021, <https://www.equalitylaw.eu/downloads/5732-hungary-country-report-non-discrimination-2022-1-63-mb>, pp. 100-115.

⁴⁷⁶ Act CXI of 2011 on the Commissioner for Fundamental Rights, Article 42(2h) and (2l)

⁴⁷⁷ *Beszámoló az alapvető jogok biztosának és helyetteseinek tevékenységéről 2022 [Report on the Activities of the Commissioner for Fundamental Rights and its Deputies in 2022]*, https://www.ajbh.hu/documents/10180/7828043/AJBH_%C3%89ves_besz%C3%A1mol%C3%B3_2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.1&t=1702897869314, p. 106.

⁴⁷⁸ For more details, see: Hátér 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.

⁴⁷⁹ Note that no response was provided to Question IV.8. on the "Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)".

⁴⁸⁰ Act CLXXXIV of 2010 on the Names of the Courts, their Seats and their Territorial Jurisdiction, Annex 4

⁴⁸¹ Act I of 2017 on Public Administration Procedure, Article 12(3)

⁴⁸² Act I of 2017 on Public Administration Procedure, Article 7(1)

⁴⁸³ Act I of 2017 on Public Administration Procedure, Article 7(2)

⁴⁸⁴ Act I of 2017 on Public Administration Procedure, Article 7(3)

chamber holds powers to review and overrule the final and binding decisions delivered by other chambers of the Kúria. The chamber may also issue uniformity decisions establishing mandatory interpretations of the law for lower tier courts and administrative organs.⁴⁸⁵

The jurisprudence of the chamber is of key importance from the outcome of individual administrative cases and the jurisprudence of all Hungarian courts in administrative matters.

Despite the key importance of its adjudicative activity, the new provisions introduced by the Judicial Reform on the composition of the uniformity complaint chambers do not adequately guarantee the required level of autonomy and professionalism in its decision-making. The Kúria President holds strong formal and informal powers in the uniformity complaint proceeding⁴⁸⁶ and the size of the chamber is not defined by law with sufficient clarity.⁴⁸⁷ No adjustment of the chamber's composition depending on the subject matter of the case is legally required, posing a risk that cases will not be adjudicated in a professional manner.

In practice, the uniformity complaint chamber may overturn a long-standing administrative jurisprudence of the Kúria with a uniformity decision delivered even if it is not composed in majority of judges assigned to administrative cases. The system of judicial review of administrative decisions has not changed in 2023, except that effective from 1 June 2023, the Judicial Reform stripped state authorities of the ability to submit constitutional complaints at the CC.⁴⁸⁸

As a general rule, judicial review does not suspend the execution of administrative decisions.⁴⁸⁹ However, parties seeking judicial review may request the court for interim measures, including suspension of execution or pretrial collection of evidence.⁴⁹⁰

Since 1 March 2020, appeals against first instance decisions of administrative authorities have to be challenged before the court instantly. Moreover, from 1 March 2022, the law opened the way to some first instance administrative cases to be decided solely by the Metropolitan Regional Court of Appeal (although so far, only one type of case has been set by the law),⁴⁹¹ further limiting access to court in those cases.

⁴⁸⁵ After being published in the National Gazette, the application of these uniformity decisions is compulsory for all ordinary courts.

⁴⁸⁶ The Kúria President holds the right to become the presiding judge in a uniformity complaint case, and because this chamber is composed solely of senior court officials (the Kúria Secretary General, chairs and vice-chairs of departments, presiding judges), he/she holds the administrative powers to appoint judges who may become members of the chamber. Through this privileged role, the Kúria President holds a strong formal and informal power in the adjudication of individual cases and in shaping the mandatory interpretation of the law.

⁴⁸⁷ The provisions leave a wide margin for manoeuvre in practice. As a main rule, it is a 40-judge chamber, but alternatively it can adjudicate in two 20-judge sub-chambers as well. The legislation fully leaves it to the decision of departments of judges (although not quite clear whether their agreement should be unanimous in this matter) to decide on the application of the main rule, or the exception. The rules do not address the situation where the number of these senior officials exceeds 40 or is less than 40.

⁴⁸⁸ *"Paragraph (1) [the right to file a constitutional complaint to the CC against a court decision that violated the Fundamental Law] shall not apply to an applicant that is exercising public authority."* [Act CLI of 2011 on the Constitutional Court, Article 27(2)]

⁴⁸⁹ Act I of 2017 on Public Administration Procedure, Article 39(6)

⁴⁹⁰ Act I of 2017 on Public Administration Procedure, Article 50(2)

⁴⁹¹ , Article 12(2) of Act I of 2017 on Public Administration Procedure only channels to the Metropolitan Regional Court of Appeal matters related to appointing which administrative authority shall process the administrative case. Other cases may be determined by other laws in the future.

Judges dealing with administrative cases shall explicitly be assigned for this task within the ordinary court system.⁴⁹² 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 Kúria President with respect to judges serving at the Kúria).⁴⁹³ The assignment can be terminated by the NOJ President or the Kúria President any time without the consent of the assigned judge, however, in such a case the NJC's consent must be obtained⁴⁹⁴ and the decision must be justified effective from 1 June 2023.⁴⁹⁵ Neither the criteria nor the terms of an assignment or the termination thereof are set out by law.

The use of assignment for an entire branch of adjudication could lead to misuse of powers, since the failure or refusal to assign a judge to an administrative judicial post may prevent the filling of the judicial post which has been awarded via a formal application procedure. Further guarantees are required against misuse of powers, including criteria for assignment in law and extending the right of consent of the NJC so that it covers the decision on assignment, in addition to its termination.

Available data show⁴⁹⁶ that there has been a reduction in the number of review applications filed between 2021 and 2022 by 5%, raising concerns that the recent amendments could have impacted people's access to justice regarding the decisions of public authorities.

10. Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Article 267 TFEU)

(1) By 1 February 2024, a new authority will be established under the Defence of Sovereignty Act to *“protect the constitutional identity”* of Hungary. The new authority, called the Office for the Defence of Sovereignty, is mandated to (i) investigate activities carried out *“in the interests of a foreign body, organisation or natural person regardless of its legal status,”* including activities influencing the decision-making process of persons exercising public authority if such activities could harm or threaten the sovereignty of Hungary;⁴⁹⁷ (ii) investigate individual cases and publish on its website the results of its case-by-case investigations, including the facts found during the investigations, as well as the findings and the conclusions based thereon;⁴⁹⁸ (iii) prepare an annual national sovereignty report including on legislation affecting national sovereignty and the effectiveness of its application, problems of implementation and enforcement, and analysis of enforcement and administrative practice and recommendations to the competent bodies and an assessment of how the competent bodies have taken into account previous reports and recommendations.⁴⁹⁹

⁴⁹² Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 30

⁴⁹³ Assigned judges shall grant their consent to the assignment. See: Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 30(3).

⁴⁹⁴ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 30(7a)

⁴⁹⁵ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 77(2)

⁴⁹⁶ In 2022, 17,697 judicial reviews of administrative decisions were initiated by the concerned parties, which represents a 5% decrease from the previous year (in 2021, 18,608 were initiated). See:

<https://birosag.hu/ugyforgalmi-adatok/birosagi-ugyforgalom-2022-eves-adatai>.

⁴⁹⁷ Act LXXXVIII of 2023 on the Defence of National Sovereignty, Article 3(a)(ac)

⁴⁹⁸ Act LXXXVIII of 2023 on the Defence of National Sovereignty, Article 6(1)

⁴⁹⁹ Act LXXXVIII of 2023 on the Defence of National Sovereignty, Article 6(2)

The anticipated activities of the Office for the Defence of Sovereignty interfere with Hungarian judges' right to request a preliminary ruling from the CJEU on several grounds. First, the right of the Office for the Defence of Sovereignty to investigate individual cases of activities conducted in the interest of a foreign body may be interpreted to include the right to investigate preliminary references, as those serve the EU's common interest for a uniform interpretation of the EU law. This means that the Office for the Defence of Sovereignty may investigate the adjudicating activity of individual judges and the content of their preliminary reference to the CJEU to assess whether that harms the sovereignty of Hungary. And if the Office for the Defence of Sovereignty finds that a preliminary reference submitted to the CJEU threatens the sovereignty of Hungary, it will publish a report in which the name of the individual judge and the preliminary reference as an activity breaching national sovereignty may appear. Second, the Office for the Defence of Sovereignty prepares an annual report that identifies legislation affecting national sovereignty. This allows the Office for the Defence of Sovereignty to create a pool of national legal provisions, the applicability of which cannot be questioned without endangering national sovereignty. This way, the Office for the Defence of Sovereignty may forecast that questioning the compatibility of these laws with the *acquis* via a preliminary reference will necessarily trigger the proceeding of the Office for the Defence of Sovereignty. Third, the Office for the Defence of Sovereignty can prevent judges from requesting a preliminary ruling from the CJEU by formulating recommendations to judges on protecting national sovereignty and assessing compliance with its recommendations. Recommendations may entail that judges refrain from questioning the compatibility of certain national laws with the *acquis*. These powers of the Office for the Defence of Sovereignty not only create an obstacle for national judges to request a preliminary ruling under Article 267 TFEU but also breach Article 19 TEU as the adjudicating activities of the national judge might be exposed to the investigation of an administrative authority.

(2) Despite holding the power to review final and binding judgments of ordinary courts, the Constitutional Court has never turned to the CJEU with a preliminary reference. Even in cases where the compatibility of the Hungarian legislation with the *acquis* was questioned by the EC, the CC avoided initiating a dialogue under Article 267 TFEU with the CJEU by suspending the proceedings.⁵⁰⁰

(3) Despite modifications of the Criminal Procedure Code⁵⁰¹ required under the horizontal enabling conditions, Judgment C-564/19⁵⁰² of the CJEU remains partially unimplemented and may prompt Hungarian judges to refrain from referring questions for a preliminary ruling to the CJEU. While the Judicial Reform fully abolished the procedural obstacles to making a preliminary reference, it failed to address the effects of the binding precedential decision by the Kúria,⁵⁰³ according to which referring a question to the CJEU is unlawful under Hungarian

⁵⁰⁰ See Decisions 22/2016. (XII. 15.) AB, 2/2019. (III. 5.) AB and 32/2021. (XII. 20.) AB. The respective orders on suspension have been deleted from the website of the Constitutional Court, see the relevant press release here: <https://alkotmanybirosag.hu/kozlemeny/az-alkotmanybirosag-az-europai-alkotmanyos-parbeszed-jegyeben-felfuggesztette-eljarasat-a-nemzeti-felsooktatasi-torvenyt-es-a-civil-torvenyt-erinto-ugyekben/>.

⁵⁰¹ With effect of 13 February 2024, Article 490 of Act XC of 2017 on the Code of Criminal Procedure is amended to eliminate the wording that expressly confirmed the Kúria precedent, nevertheless it does not exclude the applicability of the Kúria precedent.

⁵⁰² Judgment C-564/19 was a result of a request for a preliminary ruling from the Pesti Központi Kerületi Bíróság (Hungary), lodged on 24 July 2019 in the criminal proceedings against IS.

⁵⁰³ Decision Bt.III.838/2019/11. of the Kúria. See in Hungarian here: https://helsinki.hu/wpcontent/uploads/2022/11/Bt.838_2019_11.pdf

law if the question referred is not relevant to and necessary for the resolution of the dispute concerned. In order to exclude the direct effect of the precedential decision of the Kúria, all relevant procedural codes⁵⁰⁴ should be modified expressly declaring that requesting a preliminary ruling from the CJEU is a right of Hungarian judges, the exercise of which falls within their judicial discretion and cannot constitute a breach of the law.

11. Follow-up by the public administration and State institutions to final court decisions, as well as available remedies in case of non-implementation

(1) Non-execution of domestic court decisions:

The concern included in the 2022 Rule of Law Report that there are *“cases where state bodies refuse to execute decisions of the domestic courts; several of these concern access to documents”*⁵⁰⁵ continues to apply, and court decisions issued e.g. in press rectification and personality rights lawsuits launched against government-affiliated media are often not executed either (or only after repeated sanctions are imposed on the media outlets by the courts overseeing the execution of judgments). As detailed in our previous contribution,⁵⁰⁶ one of the systemic problems contributing to this is the lack of effective and genuinely coercive enforcement tools: the sanction regime for non-execution has no deterrent/dissuasive effect, and the enforcement proceedings are excessively long. CSOs argued that this amounts to the non-implementation of the ECtHR judgment in the *Kenedi v. Hungary* case,⁵⁰⁷ and subsequently, the Department for the Execution of Judgments requested the authorities *“to submit a revised action plan or report by 1 December 2023, containing information on the adoption of targeted general measures [...] considering that, according to the information submitted by the NGOs, it appears that the violations in the [...] case cannot be considered an isolated incident”*.⁵⁰⁸ As of 9 January 2024, the Government has not submitted a new action report.

Decisions of the Constitutional Court are not always implemented either. As of 9 January 2024, there were 12 decisions in which the CC declared that a legislative omission resulted in the violation of the Fundamental Law, but the Parliament had failed to remedy the situation. The court-set deadline expired in 11 of these cases, the oldest one in 2013.⁵⁰⁹

⁵⁰⁴ Besides the Criminal Procedure Code, all other procedural laws, including civil and administrative, should be amended, as the current precedent also applies beyond the Criminal Procedure Code, to all branches of adjudication.

⁵⁰⁵ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 29.

⁵⁰⁶ *Contributions of Hungarian CSOs to the European Commission’s Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, pp. 64-65.

⁵⁰⁷ The Rule 9(2) communication submitted by the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee to the to the Committee of Ministers of the Council of Europe in July 2022 is available here: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/08/HCLU-HHC_Rule_9_Kenedi_072022.pdf.

⁵⁰⁸ <https://hudoc.exec.coe.int/eng?i=004-11114>

⁵⁰⁹ The list of the respective Constitutional Court decisions is available here: <https://www.parlament.hu/az-orszagguyeles-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>.

(2) Non-execution of European court judgments:

The 2023 Rule of Law Report's conclusion that the *"ineffective implementation by state authorities of the judgments of European courts remains a source of concern"*⁵¹⁰ continues to apply.

Hungary's record of implementing ECtHR judgments remains poor. As included in the 2023 Rule of Law Report, on 1 January 2023, Hungary had 43 leading ECtHR judgments pending implementation, and the rate of leading judgments from the past 10 years that remain pending was at 76%, an increase from 2022.⁵¹¹ This was the highest within the EU and the fourth highest within the Council of Europe.⁵¹² On 9 January 2024, the number of pending leading judgments was 45.⁵¹³ Pending leading cases concern crucial human rights issues, including unchecked secret surveillance, freedom of expression of judges, excessive length of judicial proceedings, whole life imprisonment, police ill-treatment, and discrimination of Roma children in education.⁵¹⁴ In 2023, five Hungarian cases under enhanced procedure were on the agenda of CM-DH meetings. The Committee of Ministers of the Council of Europe found implementation insufficient in four of them, issued interim resolutions in two cases, and found partial compliance in only one of them.⁵¹⁵ There is still no separate national structure to bring together various actors to coordinate the implementation of ECtHR judgments; meaningful parliamentary oversight is lacking.⁵¹⁶

In the past few years, severe problems have emerged with regard to the execution of CJEU judgments as well, amounting to non-compliance. A 2022 study showed that Hungary had not

⁵¹⁰ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 1.

⁵¹¹ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf.

⁵¹² Democracy Reporting International – European Implementation Network, *Justice Delayed and Justice Denied: Non-Implementation of European Courts Judgments and the Rule of Law*, 2023, <https://tinyurl.com/4wuwjz3f>

⁵¹³ Source: HUDOC-EXEC, <http://tinyurl.com/uxxk954r>.

⁵¹⁴ See, respectively: *Szabó and Vissy v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10745>; *Baka v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10859>; *Gazsó v. Hungary* group of cases, <http://hudoc.exec.coe.int/eng?i=004-10875>; *László Magyar v. Hungary* group of cases, <https://hudoc.exec.coe.int/eng?i=004-10897>; *Gubacsi v. Hungary* group of cases, <https://hudoc.exec.coe.int/eng?i=004-10515>; *Horváth and Kiss v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10905>.

⁵¹⁵ The cases on the agenda: *Baka v. Hungary* (decisions: CM/Del/Dec(2023)1459/H46-11 at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa7338 and CM/Del/Dec(2023)1483/H46-17 at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ad83c1), *Szabó and Vissy v. Hungary* group (Interim Resolution CM/ResDH(2023)33 at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa6b2b), *Gazsó v. Hungary* group (decision CM/Del/Dec(2023)1468/H46-13 at https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680ab7a45 – see Question I.18. of the present CSO contribution as well), *László Magyar v. Hungary* group (decision CM/Del/Dec(2023)1475/H46-17 at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ac9a49), *Ilias and Ahmed v. Hungary* group (Interim Resolution CM/ResDH(2023)260 at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aca0b9).

⁵¹⁶ For a detailed description of the issue, see: Hungarian Helsinki Committee, *Non-Execution of Domestic and International Court Judgments in Hungary*, December 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf, pp. 50-54.

(or only partially) implemented 9 out of 13 CJEU judgments issued in the field of asylum and migration.⁵¹⁷ Non-executed CJEU judgments include the following:

- The judgment in Case C-808/18 concerned, among others, the domestic legalisation of collective expulsions. In December 2020, the CJEU found Hungarian law and practice to be in breach of EU law.⁵¹⁸ As the Government refuses to implement the judgment and push-backs continue, the EC referred Hungary back to the CJEU, requesting the imposition of fines.⁵¹⁹ This is the first such case in the history of Hungary's EU membership.
- In 2021, the CJEU found in Case C-821/19 that the so-called "Stop Soros" law that criminalised assistance to asylum-seekers was in breach of EU law. As a result, in 2022, the original provisions were amended, but this amendment has failed to implement the CJEU's judgment, since the law continues to have a deterring effect on the provision of legal assistance to asylum-seekers.⁵²⁰
- In June 2023, the CJEU found in Case C-823/21 that the so-called "embassy system" was in breach of EU law.⁵²¹ The embassy system was introduced in May 2020: it sets a compulsory precondition for those seeking asylum to first submit a statement of intent at the Hungarian embassy in Belgrade or Kyiv. The system was introduced under the guise of the special legal order declared due to the pandemic and has been extended on an annual basis ever since. Following the judgment, the Parliament adopted a bill that extends the embassy system until the end of 2024.⁵²²

D. The enabling framework for civil society

12. Measures regarding the framework for civil society organisations and human rights defenders

The overall legal framework for CSOs, Act V of 2013 on the Civil Code, Act CLXV of 2011 on the Freedom of Association, Public Benefit Status and the Operation and Financing of Civil Society Organisations and other relevant regulations, including the provisions for registration, operation and dissolution of CSOs effectively did not change in 2023, and generally conform to European standards. CSOs (associations and foundations) pursuing any legal objectives may be registered freely, and with the use of electronic means relatively easily, too. According to the latest statistical data,⁵²³ in 2022, approximately 53,000 CSOs operated in Hungary, with only slight fluctuations in numbers observed in the past five years, typically with a decrease in

⁵¹⁷ Hungarian Helsinki Committee, *Implementing judgments in the field of asylum and migration on odd days*, 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Implementing-judgments-in-the-field-of-asylum-and-migration-on-odd-days.pdf>, with special regard to pp. 42-43.

⁵¹⁸ <https://curia.europa.eu/juris/document/document.jsf?jsessionid=DD3A9CDB3A1B4FB736E6928274A83835?text=&docid=235703&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4691075>

⁵¹⁹ <https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-123/22>

⁵²⁰ In more detail, see: Hungarian Helsinki Committee, *Criminalisation continues – Hungary fails to implement CJEU judgment*, 21 December 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/Criminalisation-continues.pdf>.

⁵²¹ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=274870&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4691161>

⁵²² Act XCI of 2023 on the Amendment of Certain Acts in Order to Strengthen Public Security and the Fight Against Migration, Article 91

⁵²³ Central Statistical Office, https://www.ksh.hu/stadat_files/gsz/hu/gsz0014.html

the number of foundations offset by an increase in associations. In 2023, there were no reports of forced dissolution of any organisation. Up until the adoption of the Defence of Sovereignty Act at end of the year, no new legislation affecting civil society (positively or negatively) was passed either, however, some problematic acts remained in effect and continue to pose threats to civil society, the following in particular:

- The Government has still not fully implemented the CJEU's ruling in Case C-821/19, issued in November 2021, and has not repealed the provisions of the so-called "Stop Soros" legal package passed in 2018, criminalising persons providing aid and support to asylum-seekers and refugees (see also Question IV.11.). Likewise, the 25% punitive "special immigration tax" remains in the books. Albeit no individual or organisation has been subjected to these provisions so far, the threat to CSOs and their activists working with migrants and refugees remain.⁵²⁴
- Based on the provisions of Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life, in 2022 the State Audit Office obligated hundreds of CSOs falling under this legislation (i.e. having annual income above HUF 20 million) to submit data and documents, primarily their internal financial regulations. Up to now the State Audit Office has apparently not followed up on its report published at the end of 2022, nevertheless, affected CSOs have been kept in uncertainty.

The major legal development affecting (among others) civil society arrived at the end of 2023, in the form of the so-called Defence of Sovereignty Act passed on 12 December, consisting of two main elements:

- forbidding individual candidates and nominating organisations, including associations running or supporting candidates in elections (European, national and local) to receive support from foreign sources, plus also forbidding funds from domestic legal entities and anonymous donations with regard to nominating organisations; and
- establishing a new Office for the Defence of Sovereignty with broad and ill-defined competences to collect information (even via using the intelligence services) and publish a report on any person or organisation it suspects of serving foreign interests and/or receiving funding, with no legal remedies available.⁵²⁵

The (likely) intentionally vague wording of the law can potentially threaten any critical person or organisation – including CSOs, journalists, philanthropic donors, trade unions or churches – with smear campaigns, intimidation and harassment (ab)using the data published by the Office for the Defence of Sovereignty, and it can also form the basis of further procedures carried out by other state agencies (e.g. the tax authority). The new authority is to be established in early 2024. The Commissioner for Human Rights of the Council of Europe has already spoken up and warned Hungary not to adopt the law.⁵²⁶ The Council of Europe

⁵²⁴ See e.g.: <https://civilizacio.net/hu/hirek-jegyzetek/ot-eves-a-stop-soros>.

⁵²⁵ See more e.g. at: <https://www.amnesty.hu/53233-2/>. The unofficial English translation of the Defence of Sovereignty Act is available here: <https://helsinki.hu/wp-content/uploads/2023/12/Defence-of-Sovereignty-bill-T06222-EN-adopted.pdf>.

⁵²⁶ Commissioner for Human Rights of the Council of Europe, *Hungary: The proposal for a "defence of national sovereignty" package should be abandoned*, 27 November 2023, <https://www.coe.int/en/web/commissioner/-/hungary-the-proposal-for-a-defence-of-national-sovereignty-package-should-be-abandoned>

Parliamentary Assembly requested Hungary to submit the draft to the Venice Commission for review.⁵²⁷

13. Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders

Smear and vilification campaigns against human rights defenders, CSOs engaged in advocacy or critical of certain government policies remained a routine practice in government-controlled media, and in the communication of associated social media influencers in 2023, too. Mostly no more serious (e.g. physical) forms of intimidation or harassment were reported in the year on the one hand, but of course no monitoring or support services were available either on the other. The most recurring narrative remained unchanged, accusing certain CSOs as being members of the “Soros-network” and/or part of the (foreign-funded) political opposition and thus allegedly undermining Hungarian national interest. This led to a generally depressed atmosphere in and a marked polarisation within civil society whereby many organisations do not dare speak out on public issues and/or refuse to be associated with organisations perceived as “problematic” or political. While many organisations are regularly labelled as such, in 2023 several cases of extended attacks may be highlighted:

(1) The Association of Alternative Communities in Debrecen (East-Hungary) that provided a community space for the citizens protesting against a planned car factory battery (see also below) to organise and coordinate their activities was accused in both local and national media with being the “instigator” of the protests and a politically biased and controlled organisation.⁵²⁸ A journalist even camped outside their office for days with a video camera, taking pictures of those who entered the premises.

(2) The From Streets to Homes Association, a Budapest-based CSO that provides (among other activities) low-rent housing to people emerging from homelessness was attacked for their cooperation with the municipality of the 19th district and accused of bringing “*filth and deviance*” to the neighbourhood. It was also implied that they are closely connected to the opposition leadership of the city, and thus, act on their behalf.⁵²⁹

(3) The EU Citizens, Equality, Rights and Values (CERV) programme and USAID’s Central Europe fund were also targeted with allegations that they support “Soros-organisations” and the “LGBTQI-lobby” and that thereby “Brussels” continues the work and acts under the guidance of George Soros in Europe. Most major human rights groups were named in a series of articles, and in particular the new re-granting program managed by a consortium led by Ökotárs Foundation, with pre-suppositions about which organisations would receive support

⁵²⁷ Hungary should submit the bill on the ‘defence of national sovereignty’ to the Venice Commission, PACE monitors say, 27 November 2023, <https://pace.coe.int/en/news/9289/hungary-should-submit-the-bill-on-the-defence-of-national-sovereignty-to-the-venice-commission-pace-monitors-say>

⁵²⁸ See e.g.: <https://magyarnemzet.hu/belfold/2023/02/az-akkumulatorgyar-elleni-hergelessel-gyanusított-egyesület-valoban-kapott-penzt-sorostól-video>.

⁵²⁹ See e.g.: <https://magyarnemzet.hu/belfold/2023/02/kudarcba-fulladt-kispesti-program>.

from this source.⁵³⁰ After the actual grant decision, many of the grantees were exposed again in a similar negative context.

(4) In the autumn, the tax authority deducted HUF 384 million (ca. € 1,011,000) from the bank accounts of the Hungarian Evangelical Fellowship (HEF) due to outstanding public debts.⁵³¹ This was the latest move in a long-standing dispute, as the organisation's debts were incurred in the first place because HEF was stripped of its church status and its related funding in 2011 in violation of its rights according to the judgment of the ECtHR.⁵³² Although Hungary has paid € 3,000,000 in damages accordingly in 2017, due to lack of access to grants obtainable only for incorporated churches, HEF still not being recognised as such results in a continued lack of access to certain funds.

(5) After the elections in 2022, the National Information Centre, a newly set up all-powerful intelligence agency investigated the financial management of opposition political actors that had received foreign funding from the US-based private donor organisation, Action for Democracy, during the 2022 general election campaign. In its declassified but redacted report, the National Information Centre dedicated a chapter to a number of independent CSOs, think-tanks and media outlets that have received grants from the German Marshall Fund and the National Endowment for Democracy, portraying them in the context of threats to national security and sovereignty, thereby conveying a serious chilling message to these organisations.⁵³³

In the autumn months, after Fidesz first introduced the idea of developing and adopting the Defence of Sovereignty Act, the up-to-then relatively low-key anti-NGO campaign received a new momentum, and more "news" on the alleged objectives and activities of human rights organisations in particular (e.g. Amnesty International Hungary, Hungarian Helsinki Committee) were published along with accusations of them representing foreign interests and powers.

14. Organisation of financial support for civil society organisations and human rights defenders

The financial situation of Hungarian civil society continues to be characterised by an abundance of funding for some organisations and "starving" others. According to the latest official statistics, the sector's overall income in 2022 continued to grow [to HUF 1,270 billion (€ 3.3 billion) from HUF 1,070 billion (€ 2.8 billion) in 2021, probably also as a result of the record-high inflation], while the share of public funding decreased somewhat, to 40% (with increasing private funding amounting to another 25%).⁵³⁴ Still, 68.5% of all CSOs operate with an annual budget of under HUF 5 million (ca. € 13,000), and only 8% have income larger than

⁵³⁰ See: <https://magyarnemzet.hu/kulfold/2023/09/itt-tartunk-brusszel-fizet-soros-helyett>, <https://magyarnemzet.hu/belfold/2023/09/vajon-mi-az-amire-brusszel-es-a-soros-halozat-is-sok-szazmilliot-hajlando-aldozni>.

⁵³¹ <https://metegyhaz.hu/2023/09/08/384-milliot-vont-le-a-nav-a-miniszterelnokseggel-targyalunk-elnoki-tajekoztato/>

⁵³² *Magyarországi Evangéliumi Testvérközösség v. Hungary*, Application no. 54977/12, Judgment (Just satisfaction) of 25 April 2017

⁵³³ The National Information Centre's summary report of 21 June 2023 on foreign interference in the 2022 parliamentary elections in Hungary is available here: <https://tinyurl.com/yhkswd3e>.

⁵³⁴ Central Statistical Office, https://www.ksh.hu/stadat_files/gsz/hu/gsz0014.html

HUF 50 million (ca. € 130,000), with the average income being ca. HUF 25 million (ca. € 65,000).

Independent organisations promoting human rights and similar issues rarely are able to secure public funding. While in theory they may apply to major state grant schemes, such as the National Cooperation Fund and the Village and the Town Civil Funds, they mostly remain unsuccessful (with no special justification) or cease to try altogether. There are no dedicated sources available for the protection of human rights or democracy either. Most recently, another negative trend in state funding has affected a special subset of CSOs, i.e. independent, alternative theatres. Such groups could apply for operational funding at the Ministry of Culture and Innovation annually (albeit to a continuously shrinking budget), however, similar to 2022, in 2023 many long-standing, well-respected groups received zero support⁵³⁵ in a non-transparent, unknown decision-making process. For most of them this means that their mere survival is at grave risk, and more generally the elimination of alternative or critical voices from cultural life.

CSOs cut off from public funding remain dependent on crowdsourcing tools, which more and more of them use with increasing success, and on foreign philanthropies and donors. In this respect, in 2023, important new opportunities opened thanks to the EU Citizens, Equality, Rights and Values (CERV) and USAID's Central Europe programs. The largest of these is the CERV re-granting program managed by Ökotárs Foundation and its partners which provided grants in the order of € 1.5 million in 2023 (and will distribute a similar amount in 2024),⁵³⁶ but the "Stronger Roots" program operated by NIOK Foundation and the grant programs of the German Marshall Fund/Transatlantic Foundation must be mentioned, too.⁵³⁷

The increasing lack of state funding is to some extent offset by the growing amount of individual donations. In 2023, both the amount collected from the assignment of 1% of income taxes (available since 1997) and the number of taxpayers using this option grew significantly, by approximately 26% compared to 2022 [total amount HUF 15.3 billion (€ 40 million), number of taxpayers 1.8 million].⁵³⁸ While still mainly charitable organisations are the top beneficiaries of this source, human rights and similar CSOs were able to collect more, too [e.g. the Hungarian Civil Liberties Union, HUF 36.8 million (€ 97,000) compared to HUF 35.5 million (€ 93,500) in 2022, or the Hungarian Helsinki Committee, HUF 10 million (€ 26,500) versus HUF 7.8 million (€ 20,500) in 2022]. At the same time, tax incentives for donations remain meagre or absent: there are no tax benefits at all for private persons after their donations, and companies may decrease their corporate tax base with 20% of the donation, but only in case of CSOs with public benefit status (21% of all organisations).

⁵³⁵ https://emet.gov.hu/app/uploads/2023/06/EMT-TE-23_dontesi-lista.pdf

⁵³⁶ <https://kozsertekeink.hu/>

⁵³⁷ <https://www.niok.hu/tarsadalmibazis> <https://www.gmfus.org/democracy-work/engaging-central-europe>

⁵³⁸ <https://www.nonprofit.hu/hirek/Nagy-meglepetesek-a-2023-as-1-felajanlas-teren-novekvo-osszegek-novekvo-felajanlasok-uj-szereplok>

15. Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process

Since 2020, the outbreak of the Covid-pandemic, the government has sustained and regularly extended the state of danger (most recently to May 2024) enabling it to “rule by decree”, which generally contributes to the unpredictable legal environment (see Question IV.4. of the present contribution for details). In spite of amending Act CXXXI of 2010 on Public Participation in Preparing Laws (in response to the milestones set under the country’s RRP), there is still little or no room for CSOs and citizens to engage with public institutions and decision-making. While pieces of draft legislation are published on the Government’s website, response times are short (usually not more than 8 days), and most often there is no meaningful feedback, e.g. on why opinions from the public were not taken into account (see Question IV.2. for details). Also, in cases generating strong public concern, participation is typically token, and instead the vilification of involved CSOs and activists could be observed (see also above).

The Defence of Sovereignty Act itself was prepared and adopted without any dialogue whatsoever – the draft was submitted to the Parliament by individual MPs instead of the Government, a recurring practice in case of the most sensitive pieces of legislation, which circumvents legal provisions for public consultation on draft laws. The Government has also continued with its practice of launching “national consultations”, this time “*on the defence of our sovereignty*”, i.e. a questionnaire or rather a list of misleading and distorted statements posted to all households (see also Question IV.16.).

All in all, “usual” forms of protest or expression of opinion such as petitions, statements, etc. are completely ignored by the Government, and this in some cases led both to stronger citizen action and government backlash:

- The single piece of legislation generating the broadest public interest and protest in 2023 was undisputedly Act LII of 2023 on the Legal Status of Teachers, passed in July. While the Government claimed to have organised the “*broadest public consultation ever*”, in fact, relevant trade unions and teachers’ associations were not allowed to speak up at meetings organised with relevant ministers and state secretaries, and most written submissions were neglected, too. This, together with the general crisis of the public education system, generated demonstrations and acts of public disobedience throughout the spring, to no avail: protesters were rather met with tear gas at least twice (when trying to access the Prime Minister’s office) in an apparently excessive police response than with real dialogue on the side of the officials.⁵³⁹ Several protestors, including high-school students (teenagers) also received heavy fines in the order of several hundred thousand HUF or face criminal proceedings for participating in “illegal assemblies” or breaching assembly rules.⁵⁴⁰
- Another issue that received much public attention were the plans to build battery factories for electric cars in several locations around the country (Győr, Debrecen, etc.), engendering local protests for fear of the overuse of water supplies and pollution. These investments

⁵³⁹ See e.g. <https://444.hu/2023/06/23/tobb-mint-szazezer-eszrevetel-erkezhett-a-statusztorvenyhez-de-a-belugyminiszterium-nem-hozza-nyilvanossagra-oket>, <https://444.hu/2023/05/24/politikai-babszinhaz-vs-brusszelezes-a-szakszervezetek-szot-sem-kaptak-a-statusztorvenyes-egyeztetesen>.

⁵⁴⁰ See e.g.: https://eduline.hu/kozoktatasi/20230614_Birsagot_kapott_Pankotai_Lili, https://eduline.hu/kozoktatasi/20230614_Sas_Biborka_EDF_hivatalos_szemely_elleni_eroszak.

have mostly been prepared in secret, with the public being informed only at late stages of the process, which led to angry scenes at the compulsory public hearings organised by the local permitting authorities. In response, Government Decree 146/2023. (IV. 27.) was passed in April (using the state of danger), changing the rules so that participation in local matters and permitting processes can be organised without personal presence, solely via electronic means, thereby saving officials from having to meet citizens face-to-face. In practice this means that relevant documents are simply placed on the website of the authority and citizens can respond only through email, or by leaving (time-limited) messages on an answerphone.

Various consultative forums continue to exist and operate but their impact is usually limited. The new Monitoring Committees of the various Operational Programmes of EU Cohesion and RRP funds have been set up in spring 2023. This time, CSOs working in relevant fields could apply to become members in an open process, and a number of independent organisations were selected to participate, too. As the Monitoring Committees meet only a few times a year, it is too early to see whether they will have an impact on decision-making in any way. Besides, an Anti-Corruption Task Force was created to assist the Integrity Authority (established in late 2022), with the participation of several CSOs, including Transparency International Hungary and K-Monitor, but the Task Force has already been criticised for adopting its first report largely neglecting CSOs' opinions and motions.⁵⁴¹

E. Initiatives to foster a rule of law culture

16. Measures to foster a rule of law culture

No government measures were introduced in 2023 to foster a rule of law culture. Also, the centralised, compulsory curriculum of public education continues to incorporate very few elements of civic education. Instead of “fostering” it, the Government took, as in the previous years, various non-legislative steps that eroded rule of law culture in Hungary, as shown below.

The Government did not organise any meaningful national level discussion about the 2023 Rule of Law Report. Referring to an observation in the 2023 Rule of Law Report,⁵⁴² on 5 July 2023, the Kúria President released a public statement⁵⁴³ on the Kúria's official website, stating that “[t]he chapter on Hungary in the European Commission's 2023 Rule of Law Report regrettably adopted, without verification, the arbitrary opinion of the National Judicial Council on the Kúria, which is without any factual basis, that has been repeatedly refuted with data, and violates the personal integrity of many judges. It can be stated that not a single word of the findings is true.”

⁵⁴¹ See e.g.: <https://transparency.hu/hirek/korrupcioellenes-munkacsoport-jelentes-nemszavazat/>.

⁵⁴² “[I]n 2022, the National Judicial Council found that the Kúria President and the NOJ President had not respected applicable rules when appointing several judges to the bench in 2021.” (European Commission, 2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 4.)

⁵⁴³ Kúria President, *A Kúria elnökének közleménye [Statement of the Kúria President]*, 5 July 2023, <https://kuria-birosag.hu/hu/sajto/kuria-elnokenek-kozlemenye-2>

In its response,⁵⁴⁴ the NJC publicly stated that *“all the data necessary for the NJC’s annual mandatory opinion on the practice of the Kúria President’s and the NOJ President in the appointment of judges and court executives are provided by the Kúria President and the NOJ President, and that the proposals are discussed in meetings open to the judges”*. Furthermore, the NJC stated that *“[the Kúria President’s] latest statement has drawn the NJC into the political arena, even though he himself is a member of this body”*. The Minister heading the Prime Minister’s Office, Gergely Gulyás, also publicly commented⁵⁴⁵ that *“it is difficult not to agree with the words of the Kúria President”*, referring to the above comments of the Kúria President, which from the Government’s side questioned the authenticity and professionalism of the Rule of Law Report.

From 17 November 2023, the Government launched a new so-called “national consultation” on “Hungary’s sovereignty” and started to mail⁵⁴⁶ the questions thereof to the population.⁵⁴⁷ “National consultations” are not adequate tools to ensure meaningful public consultations on key issues. They tend to ask manipulative questions on issues politically important for the Government, and not necessarily those important to have public discussions about.⁵⁴⁸ 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.⁵⁴⁹ In this latest national consultation questionnaire, the Government asked questions about EU institutions (“Brussels”) and more specifically the European Commission, and asked the public questions about foreign funding⁵⁵⁰ of Hungarian organisations, the Propaganda Law (see Question IV.17. on the latter),⁵⁵¹ the financial and military support to Ukraine and Ukraine’s EU membership.

⁵⁴⁴ National Judicial Council, *Az Országos Bírói Tanács közleménye a jogállamisági jelentésről [The statement of the National Judicial Council on the rule of law report]*, 10 July 2023, <https://orszagosbiroitanacs.hu/az-orszagos-biroi-tanacs-kozlemenye-a-jogallamisagi-jelentesrol/>

⁵⁴⁵ See e.g.: <https://magyarnemzet.hu/belfold/2023/07/hamarosan-kezdodik-a-kormanyinfo-kovesse-nalunk-eloben-2>.

⁵⁴⁶ Facebook page of Máté Kocsis, fraction leader of Fidesz, <https://www.facebook.com/100044307195412/posts/899439731542925>

⁵⁴⁷ See e.g.: https://hvg.hu/itthon/20231117_Ezzel_a_11_kerdessel_startol_a_nemzeti_konzultacio_Brusszel_Ukrajnamigrans_getto_dollarbaloldal_es_gyermekvedelem_a_temak.

⁵⁴⁸ See, for example, a question of a national consultation in 2021: *“George Soros will attack Hungary again after the epidemic because Hungarians are against illegal migration. Some say we should resist pressure from Soros organisations, others say Hungary should give ground in the migration debate.”* For all the questions of the 2021 national consultation, see e.g.: https://hvg.hu/itthon/20210701_nemzeti_konzultacio_2021_kerdeseik.

⁵⁴⁹ See: Agnes Batory – Sara Svensson, *The use and abuse of participatory governance by populist governments, Policy & Politics*, 2019, 47(2), pp. 227-244.

⁵⁵⁰ *“They want to influence Hungarian politics with money from Brussels and overseas. In the past, various foreign organisations have spent billions to support Hungarian political actors and activist groups linked to them. This is how they want to force Hungary to change its position on key issues. Many believe this is nothing more than political corruption.*

A – More stringent measures, including stricter legislation, should be taken against foreign influence peddling.

B – Current legislation is adequate.”

⁵⁵¹ *“Brussels wants to abolish the Child Protection Act.*

Brussels is constantly attacking the Hungarian Child Protection Act. The European Commission has also challenged the law in court. Meanwhile, news of aggressive LGBTQ propaganda targeting children is on the rise. What do you think?

A – We need to tighten up child protection legislation.

B – Based on Brussels’ proposals, we need to relax the Child Protection Act.”

On 27 March 2023, the Kúria organised a conference dedicated to *the “Institutional Guarantees of Judicial Independence”*.⁵⁵² Hungarian CSOs requested to attend the conference but were rejected by the organisers *“due to lack of space”*.⁵⁵³ The NJC and the Hungarian Association of Judges were not invited to the conference.

17. Other

The Propaganda Law⁵⁵⁴ passed in 2021 amending several laws and restricting freedom of expression and stigmatising LGBTQI people is still in effect. Article 9/A of the amended law on national public education⁵⁵⁵ limits schools from providing programs or lectures on certain topics, such as sex education, drug prevention, and internet usage. These programs or lectures can only be provided by individuals or organisations registered with a *“state agency defined by law”*. If a school violates this rule and works with an unregistered organisation or individual, the head of the school and the person or member of the unregistered organisation may face petty offence proceedings. In its Explanatory Report on the Propaganda Law to the Venice Commission,⁵⁵⁶ the Government justified the registration of CSOs as a precondition to be permitted to provide sex education in schools as necessary to exclude organisations of *“questionable professional credibility”* that have been set up to *“represent a specific sexual orientation”*. The minister in charge of education is required to appoint a state agency to maintain a register and specify the registration criteria. This has not yet happened. As a result, several CSOs have been denied access to public schools. Teachers and school psychologists have also reported⁵⁵⁷ being pressured to stop discussing LGBTQI topics. Limiting children’s access to information in such a manner impacts several of their human rights.⁵⁵⁸

In August 2021, a new Government Decree⁵⁵⁹ was passed amending the existing decree on commercial activities⁵⁶⁰ (hereafter referred to as: Packaging Decree). It prescribes that products which propagate or portray so-called *“divergence from self-identity corresponding to sex at birth, sex change or homosexuality”* can only be sold if they are wrapped and separated from other goods and are not allowed to be marketed within 200 metres of any entrance to educational, child and youth protection institutions, churches and other places of religious practice. These rules are not subject to the ongoing infringement procedure,⁵⁶¹ however the Packaging Decree also unduly restricts people’s right to access information in a manner that is inconsistent with EU law and international human rights law and standards, as its provisions are vague, they do not serve any legitimate aim, and the Government has failed to demonstrate

⁵⁵² <https://kuria-birosag.hu/hu/sajto/biroi-fuggetlenseg-intezmenyes-garanciai-kuria-verboczy-intezetenek-osszehasonlito>

⁵⁵³ See e.g.: <https://telex.hu/english/2023/03/23/amnesty-international-hungary-not-allowed-to-attend-conference-on-judicial-independence-citing-lack-of-space>.

⁵⁵⁴ Act LXXIX of 2021 on Stricter Action against Paedophile Offenders and Other Amending Acts for the Protection of Children

⁵⁵⁵ Act CXC of 2011 on National Public Education

⁵⁵⁶ *Hungary – Explanatory Report to Act LXXIX of 2021*, CDL-REF(2021)090, 19 November 2021, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)090](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)090)

⁵⁵⁷ For a questionnaire-based overview of the situation of LGBTQI students in Hungarian public education, see: <https://hatter.hu/tevekenysegunk/kutatasok/befogado-terek-emberi-jogi-es-alternativ-oktatas/befogado-terek-lmbtqi>.

⁵⁵⁸ Hungarian Psychological Association, 21 January 2022, <https://mpt.hu/a-tarsasagrol/allasfoglalasok/>

⁵⁵⁹ Government Decree 473/2021. (VIII. 6.)

⁵⁶⁰ Government Decree 210/2009. (IX. 29.)

⁵⁶¹ *European Commission v Hungary* (Case C-769/22)

how these restrictions are necessary or proportionate. Based on the Packaging Decree, Lira Book Zrt. was fined HUF 12 million (€ 31,200) over the book *“Heartstopper”*, which *“portrays homosexuality”*, for categorising and selling it as a youth book without wrapping it.⁵⁶² The Consumer Protection Authority also fined Libri-Bookline Zrt. for HUF 1 million (€ 2,600) based on the unlawful distribution of the book *“Good Night Stories for Rebel Girls”*. According to the authority, the book contains the story of Coy, a young transgender girl which depicts *“deviation from sex at birth and sex change, thus seriously violating the legal requirement to protect the physical and mental integrity of children and adolescents”*.⁵⁶³

The Propaganda Law introduced blanket prohibitions⁵⁶⁴ in the Child Protection Act⁵⁶⁵ and the Family Protection Act⁵⁶⁶ which are not addressed to specific entities and can be applied to any form of portrayal of LGBTI-related issues. It violates the principles of the rule of law, such as legal certainty, that the Propaganda Law lacks the specificity essential for any regulation limiting the right to freedom of expression. Therefore, it is unpredictable which content will be restricted, and the consequences of violating the Child Protection Act and the Family Protection Act are also unforeseeable, as the rules do not specify sanctions. The provisions in question were used in the October 2023 decision of the National Museum of Hungary which announced⁵⁶⁷ that people under 18 years of age were not allowed to purchase tickets for the World Press Photo exhibition in Budapest because some of the exhibited photos portrayed LGBTQI people. However, the restriction was not enforced in practice, as the museum is not authorised to check ID cards, resulting in the dismissal of the museum’s director general.⁵⁶⁸

Smear campaigns continued against CSOs working on LGBTQI rights in 2023. The government-aligned media commonly labelled LGBTQI rights organisations as “LGBTQP”, P standing for paedophilia.⁵⁶⁹ This is exemplified by a case involving the Labrisz Lesbian Association and their publication of *“A Fairytale for Everyone”*, a children's book in 2020. Magyar Nemzet, a government-aligned newspaper, labelled Labrisz as a *“paedophile organisation”*. Even though the organisation took legal action against these claims, the Kúria found that the article did not violate their right to a good reputation. On 26 September 2023, the Constitutional Court found that Kúria's decision was constitutional.⁵⁷⁰

⁵⁶² Government Office of Budapest, Consumer Protection Department, Case no. BP/2200/03940-5/2023

⁵⁶³ Government Office of Budapest, Consumer Protection Department, Case no. BP/2200/02500-5/2023

⁵⁶⁴ Articles 1(2) and 3 of Act LXXIX of 2021 on Stricter Action against Paedophile Offenders and Other Amending Acts for the Protection of Children forbid to *“make accessible to persons who have not attained the age of eighteen years content that [...] propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality”*.

⁵⁶⁵ Act XXXI of 1997 on the Protection of Children and Guardianship Administration

⁵⁶⁶ Act CCXI of 2011 on the Protection of Families

⁵⁶⁷ See e.g.: https://hvg.hu/elet/20231028_Kitiltottak_a_18_ev_alattiakat_a_Nemzeti_Muzeum_kiallitasarol.

⁵⁶⁸ See e.g.: <https://www.theguardian.com/world/2023/nov/07/hungary-national-museum-director-fired-lgbt-homosexuality-laws>.

⁵⁶⁹ See e.g.: <https://kuruc.info/r/66/261270/>.

⁵⁷⁰ Decision 3408/2023. (X. 11.) AB