

2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

About you

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Civil society organisation/NGO
- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

* Organisation name

250 character(s) maximum

Main Areas of Work

- ☐ Justice System
- ☐ Anti-corruption
- ☐ Media Pluralism
- ☒ Other

If "Other", please specify

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan

- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☒ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti

- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☐ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho

- ☐ Liberia
- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation

- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela

- ☐ Viet Nam
- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Surname

Email Address of the organisation (this information will not be published)

* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☒ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☐ Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here



The developments encompassed in this submission point to systematic attacks on the fundamental rights of LGBTI people enabled by the weakening of rule of law and democratic structures. We have kept our inputs relevant to the content asked for by the consultation, and therefore we have not included all fundamental rights violations against LGBTI people, or all restrictions experienced by LGBTI civil society in the respective countries. We have only included them where there is a clear link to the issues of rule of law contained in the consultation.

In 2022 we continued to see the manipulation of judicial processes to attempt to erode the human rights of LGBTI people and their access to justice. Harassment and intimidation of LGBTI people and human rights defenders via the courts continued in a number of countries. Particularly in Poland, the Prosecutor General being also the Minister of Justice has resulted in the misuse of the prosecutor's office to repeatedly appeal verdicts in favour of LGBTI defendants, and the use of prosecutors to intimidate LGBTI people undergoing judicial processes, or the outcome of said processes. In a couple of countries, we also saw politicians attempting to discredit and delegitimise the rulings of courts when the rulings did not align with their political preferences.

In addition, we saw that in countries where the independence of the media has been eroded, there were consistent smear campaigns and negative narratives against LGBTI people, often under the guise of combating so-called "LGBT ideology" or "gender ideology". Smear campaigns are often deployed ahead of elections or anti-LGBT referenda, in which LGBTI people are used as a scapegoat to distract people from government failings, creating fear among society, and against which the government proposes to defend the nation from, in order to win votes. This leads to an environment in which violence and discrimination is enabled, and in which laws violating the fundamental rights of LGBTI people are proposed and often adopted. For example, smear campaigns in Hungary ahead of the national election and referendum on the anti-LGBT amendments of the Child Protection Act, resulted in a significant increase in hate crime and hate speech at the beginning of 2022. The European Commission referred the latter law to the CJEU on 15 July 2022, for breaching a number of EU laws.

Issues related to civic space shifted more towards legislative proposals or policy practices which restrict the functioning of and funding of civil society organisations, such as laws and draft laws banning LGBTI content in the public space, and an attempt in one country to ban foreign funding of civil society organisations, among others. However, smear campaigns, restrictions to the right to freedom of assembly, vandalism of LGBTI themed projects and flags and LGBTI-phobic campaigns continued in a number of countries, and hate crimes against LGBTI people often are not sufficiently investigated. A number of EU countries still do not have hate crime legislation with sexual orientation, gender identity or sex characteristics as aggravating grounds. In some countries which do have such legal protection, it is often not implemented properly by police, prosecutors or even Ombudspersons.

For more information please refer to country specific submissions.

Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022[1]. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☒ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands

- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

3000 character(s) maximum

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

3000 character(s) maximum

Promotion of judges and prosecutors (incl. judicial review)

3000 character(s) maximum

Allocation of cases in courts

3000 character(s) maximum

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

3000 character(s) maximum

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

3000 character(s) maximum

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

The prosecution service often fails to carry out its duty to initiate public interest procedures to ensure that (administrative) authorities act in line with the applicable laws. In particular, the prosecution service has the power to call on public bodies to revoke unlawful administrative decisions and initiate court proceedings if the public bodies decline to do so [Act CLXIII of 2011 on the prosecution service, Sections 29. (2) and 26. (4)]. In 2020 the Budapest Government County Office transferred dozens of cases of transgender persons requesting legal gender recognition to local registrars, who later rejected them. These procedures had been initiated before May 2020 when legal gender recognition was still allowed. Courts found the rejections unlawful in dozens of cases (<https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>). Two applicants who did not take their cases to court at the time of the rejection, requested the prosecution service to call on the registrars to revoke their decisions that they issued ultra vires. In one case, the prosecution service called on the local registrar in 2021 to revoke their decision, but did not initiate judicial proceedings after its request was declined (District Prosecution Service of Szombathely, case no. T.K.1214 /2021/5.). In 2022 the chief prosecution service agreed with the district prosecution service for not taking any further action in the case (Vas County Chief Prosecution Service, case no. T.K. 2601/2022/2-I). In 2022 one more applicant submitted the same request, but the chief prosecution service refused to take any action in the case after it was transferred to them by the district prosecution service (Metropolitan Chief Prosecution Service, case no. T.K. 2096/2022). They claimed the petition was not submitted within the deadline: the prosecution service can reject the petition if it was submitted more than a year after the challenged decision had become final and binding.

In two similar cases the applicants requested the prosecution service to call on the Budapest Government County Office to revoke their decision: in these cases their legal gender recognition applications were rejected and after the failed delivery of the decision they could not pursue remedy. Both petitions were rejected by the chief prosecution service after the requests were transferred to them by the district prosecution service claiming the petitions were not submitted by the deadline (Metropolitan Chief Prosecution Service, case nos. T. K. 6193/2022 and T.K. 4249/2022).

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

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

3000 character(s) maximum

On 1 February the Metropolitan Court of Appeal changed the first instance verdict in the case between Labrisz Lesbian Association and Magyar Nemzet, ruling that the newspaper did not damage the reputation of Labrisz when it labelled them paedophiles (<https://helsinki.hu/a-kormanyfo-hamis-szovege-perdontonek-bizonyult-egy-mai-perben/>). In its oral reasoning the court referred to the speech of Prime Minister Viktor Orbán, from 14 January, as justification, namely that the Prime Minister also sees a connection between homosexuality and paedophilia, and the author of the impugned article supported that with “scientific evidence”. Labrisz launched an appeal before the Curia, which upheld the second instance court’s decision. Labrisz submitted a constitutional complaint against the judgement. The case is pending.

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

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

3000 character(s) maximum

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities)

3000 character(s) maximum

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

3000 character(s) maximum

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

3000 character(s) maximum

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

3000 character(s) maximum

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

3000 character(s) maximum

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Length of proceedings

3000 character(s) maximum

The Constitutional Court has no deadline for adjudicating constitutional complaints or abstract review petitions submitted by those with standing, and the procedures take unreasonably long. Even where there is a deadline (constitutional reviews in concrete cases initiated by lower level courts), the deadlines are not kept. For example, according to Article 24(2) b) of the Fundamental Law, the Court should decide on the constitutionality of a legislative provision within 90 days if the review is initiated by an ordinary judge in a concrete case pending before them. In the case III/02647/2021 concerning the ban of legal gender recognition for trans and intersex people, the deadline for the Court’s decision was 23 September 2021, but no decision has been issued, the case was put on the agenda of the Court only in late November 2022. The other constitutional complaints challenging the ban on legal gender recognition (case nos. IV/00948/2020, IV/01154/2020, IV/01155/2020, IV/02001/2020) where there is no deadline required by law, have been pending at the Court for over 32 months. In comparison, in cases where the interest of the government is a prompt decision, the Court decides in a very speedy way. For instance, in December 2022 the Court delivered a decision in a case where the petition for an abstract review had been submitted in early September 2022. The petition related to abolishing a preferential taxation scheme, which triggered harsh criticism and nation-wide demonstrations.

Other - please specify

3000 character(s) maximum

II. Anti-Corruption Framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission’s attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

3000 character(s) maximum

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

3000 character(s) maximum

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

3000 character(s) maximum

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

3000 character(s) maximum

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

3000 character(s) maximum

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

3000 character(s) maximum

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

3000 character(s) maximum

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

3000 character(s) maximum

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken / envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

3000 character(s) maximum

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

3000 character(s) maximum

C. Repressive measures

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

3000 character(s) maximum

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)

3000 character(s) maximum

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

3000 character(s) maximum

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

III. Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

3000 character(s) maximum

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

3000 character(s) maximum

The Media Council in several cases reached out to its foreign counterparts with requests to proceed against service providers registered in another EU member state. Háttér Society knows about six procedures and continues to monitor the practice with the periodical use of freedom of information requests. The files of the four closed cases were received as a result of a freedom of information request submitted by Lakmusz, a fact-checking website (the analysis of Lakmusz is available here <https://www.lakmusz.hu/lepattan-a-kulfoldi-hatosagokrol-a-mediatanacs-amikor-meleg-szexjelenetre-es-mas-lmbtq-tartalmakra-panaszkodik/>, Háttér's analysis of the impact of the anti-LGBT amendments of the "child protection" law is available here <https://hatter.hu/kiadvanyaink/Report-on-Act-LXXIX-of-2021-and-its-implementation>).

There is no publicly available information on the outcome of proceedings initiated before the Dutch media authority. On 17 August the Hungarian media regulator launched an investigation into Netflix show "Jurassic World Camp Cretaceous" for violating the anti-LGBTI law due to two female characters kissing, following a number of complaints from the public (<https://www.politico.eu/article/hungary-probes-netflix-cartoon-girls-kissing-lgbtq>). On 29 September, the media regulator also received a complaint against Baymax! on Disney+, as supposedly a robot is encouraging a boy to ask another boy out and in the opinion of the Hungarian authority, it should have been offered only for children above 12 (instead of its original classification of 9+).

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

3000 character(s) maximum

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

3000 character(s) maximum

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

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

3000 character(s) maximum

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

3000 character(s) maximum

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

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

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

3000 character(s) maximum

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

3000 character(s) maximum

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

3000 character(s) maximum

In March 2021 information was leaked that the Prime Minister's Office urgently requested local governments to submit a list of actions taken to counter so-called "LGBTQI propaganda". In August, Hátter filed a public interest data request with the Prime Minister's Office, asking it to send all the documents it received from the municipalities through the government offices. In its brief response, the ministry claimed that the requested documents serve as the basis for a further future decision, and therefore refused to release them. Subsequently, Hátter filed a lawsuit against the Prime Minister's Office, asking the court to oblige it to release the requested data. The defence of the Prime Minister's Office consisted only in the fact that the data prepared for internal use may even contain freer wording, and their disclosure could therefore harm the employees' right to work free from external influence. The first instance court ruled in favour of Hátter (<https://hatter.hu/hirek/hazugsaggal-vedte-titkolozasat-gulyas-gergely-miniszteriuma-sikertelenul>), however, the Prime Minister's Office appealed (case no. 40.P.22.648/2022/13). In December the Metropolitan Court of Appeal upheld the first instance judgement: according to the court, the Prime Minister's Office did not intend the requested data for any decision-preparation purpose, the correspondence sent to the Prime Minister's March 2021 inquiry "does not contain more than, different from, opinions, evaluations, blanket statements, or anything similar". The court ordered the Prime Minister's Office to release the requested data within only 3 working days, which have passed and the documents have not been received by Hátter (case no. 2.Pf. 20.579/2022/4.).

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

3000 character(s) maximum

On 8 April, the National Election Commission (NVB) delivered a series of decisions declaring the campaign calling for invalid votes on the April referendum ballots illegal and imposing high fines on 16 CSOs. The decisions argue that while voters do have the option to consciously cast an invalid vote, campaigning for such an invalid vote is an abuse of rights. In decision no 324/2022 NVB imposed a fine of 3 million HUF (c. 8,000 EUR) on Hátter Society (<https://www.valasztas.hu/hatarozat-megjelenito/-/hatarozat/324-2022-nvb-hatarozat-a-hatvanegy-varmegye-ifjusagi-mozgalom-egyeselet-es-b-g-maganszemely-altal-benyujtott-kifogasok-targyaban>) and in decision no. 325/2022 a fine also of 3 million HUF (c. 8,000 EUR) on Amnesty International Hungary (<https://www.valasztas.hu/hatarozat-megjelenito/-/hatarozat/325-2022-nvb-hatarozat-a-b-b-maganszemely-altal-benyujtott-kifogasok-targyaban>). In decision no. 327/2022 NVB imposed a fine of 176,400 HUF (c. 500 EUR) on 16 CSOs each who - allegedly - also campaigned for an invalid vote (<https://www.valasztas.hu/hatarozat-megjelenito/-/hatarozat/327-2022-nvb-hatarozat-p-cs-maganszemely-altal-benyujtott-kifogas-targyaban>). The list of CSOs fined: Amnesty International Hungary, Hátter Society, Artemisszió Foundation, Rainbow Mission Foundation / Budapest Pride, Labrisz Lesbian Association, Hungarian Asexual Community, Hungarian Helsinki Committee, Atlasz LGBTQ Sports Association, PATENT Association, Ökotárs Foundation, noÁr mi vagyunk!, Prizma Transgender Association, Szimpozion LGBT Youth Association, Rainbow Families Foundation, Hungarian Civil Liberties Union, and Transvanilla Transgender Association. Three of the fined CSOs (Patent, Atlasz, Artemisszió) did not in fact join the campaign. In decision no. 328/2022 NVB also found the campaign website to also be unlawful on the same grounds, but no fine was imposed (<https://www.valasztas.hu/hatarozat-megjelenito/-/hatarozat/328-2022-nvb-hatarozat-b-e-l-maganszemely-altal-benyujtott-kifogas-targyaban>). In decision no 329/2022 NVB also found a post on the website of the Hungarian Civil Liberties Union calling for an invalid vote illegal on the same grounds <https://www.valasztas.hu/hatarozat-megjelenito/-/hatarozat/329-2022-nvb-hatarozat-a-dr-g-t-es-t-i>

m. On 11 April all affected organizations challenged the decisions at the Curia (highest regular court), which had three days to decide. On 13 April the Curia rejected to review the appeal brought by Hatter Society, based on a legal technicality (<https://www.kuria-birosag.hu/hu/valhat/kvkiv3941920224-szamu-hatarozat>), and on 15 April the Curia ruled the other fines unlawful. Háttér Society and Amnesty International Hungary submitted a constitutional complaint to the Constitutional Court which on 19 April declared the complaints inadmissible (<http://public.mkab.hu/dev/dontesek.nsf/0/D2169A2043DA000AC1258829005B9186?OpenDocument>). The case is currently pending before the European Court of Human Rights (case no. 43901/22).

Other - please specify

3000 character(s) maximum

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

3000 character(s) maximum

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] This includes also the consultation of social partners

3000 character(s) maximum

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

Regime for constitutional review of laws

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

3000 character(s) maximum

B. Independent authorities

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

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

3000 character(s) maximum

On 27 April the Commissioner for Human Rights' status was demoted from "A" to "B" by GANHRI with reference to the lack of effective engagement with the human rights of vulnerable groups, among them LGBTI people (https://ganhri.org/wp-content/uploads/2022/04/StatusAccreditationChartNHRIs_27April2022.pdf). On 1 December 2020, the Parliament adopted legislation to abolish the Equal Treatment Authority (Act no. CXXVII of 2020), Hungary's most important equality body established in 2005. In recent years the Equal Treatment Authority was one of the last public bodies standing up for the rights of LGBTQI people in Hungary. From 1 January 2021, the tasks of the Equal Treatment Authority were taken over by the Commissioner for Fundamental Rights (CFR). While the law requires that the equal opportunity related tasks of CFR are carried out by a separate directorate (Equal Treatment Directorate) within the Office of the CFR, no director has been appointed for over 24 months now.

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

3000 character(s) maximum

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

3000 character(s) maximum

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

3000 character(s) maximum

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

3000 character(s) maximum

In April 2022 the Ministry of Justice confirmed that same-sex marriages conducted abroad are not recognised in Hungary (<https://docs.google.com/document/d/1GxuhvVnYttq5LwKaZXdZCsRny9BDsjwbnxQTI9Wmz0/edit?usp=sharing>), because it would be against the public order, and since these marriages are not valid, they cannot serve as the basis for family member status for immigration purposes either, not even among persons with citizenship of countries that do recognize same sex marriage. This contravenes the 2018 CJEU judgment in the Coman Case (C-673/16) by which was recognized that the term “spouse” includes same-sex spouses under EU freedom of movement laws, and therefore EU Member States’ national authorities should recognize the right of residence of the spouse of an EU citizen in a same-sex marriage.

In June 2018, in a case launched by a transgender refugee from Iran, the Constitutional Court found that there was a constitutional omission because Hungary has no procedure for legal gender recognition for transgender people who are not Hungarian citizens, but lawfully reside in the country permanently. The Court gave a deadline of 31 December 2018 for the government to adopt new legislation (6/2018. (VI. 27.) CC decision). No such legislation has been adopted to date, and in May 2020, the Parliament adopted legislation that banned legal gender recognition for Hungarian citizens as well. The same person also turned to the ECtHR, which also sided with the applicant arguing that the lack of such procedure infringes on the right to respect for private life (Art. 8) of the applicant (Rana v. Hungary, no. 40888/17, <https://hudoc.echr.coe.int/eng?i=001-203563>). The just satisfaction was paid to the applicant, but he still has to live with official documents that are not in line with his gender identity, no legislation has been passed to remedy his situation. After extensive litigation, the Budapest Government County Office started to proceed in the cases that had been submitted prior to the adoption of the law banning legal gender recognition in line with Constitutional Court Decision 11/2021. (IV. 7.). For the overview of these procedures see: <https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

3000 character(s) maximum

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

3000 character(s) maximum

In the months leading up to the national elections of 3 April, the government announced that they would hold a referendum on the anti-LGBT amendments of the child protection law on the same day. Council of Europe Commissioner for Human Rights, Dunja Mijatović, condemned this as instrumentalization of the human rights of LGBTI people. The questions of the referendum were deliberately leading and in bad faith, encouraging people to vote “no” which would be in favour of the anti-LGBT amendments (<https://ilga-europe.org/news/referendum-hungary-3-april-2022/>).

On 14 January, Viktor Orbán said on national radio “Homosexuality may also turn into paedophilia, there is much debate over this.” This was during months of anti-LGBT rhetoric from government officials and media leading up to the referendum.

LGBTI and other human rights CSOs campaigned for voters to invalidate their votes on the referendum. This tactic proved successful, with around 32% of the ballots cast being invalid (21% of those eligible to vote) and 33% of those eligible to vote not showing up / not casting a ballot – so a total of 54% helping to create an invalid result, with 41% voting the way the government wanted them to. The Hungarian Fundamental Law requires 50% of the votes to be valid for a referendum to be valid, therefore the referendum was declared invalid. Notably there was no majority in favour of the government line for any of the four referendum questions. On 4 April, Fidesz in the European Parliament sent an email to all MEPs, falsely stating that the referendum result was valid and the majority voted in favour of the government line. The National Elections Commission imposed high fines on the CSOs who campaigned (see under section III.C. above). This can further contribute to the silencing of civil society as most organisations and (informal) groups would not have the means to pay such fines. The differing outcomes of the appeals against the fines erode predictability and foreseeability, and ultimately undermine legal certainty that is central to the rule of law.

Act CXCV of 2011 on national public education was one of the amended laws, and “content that is pornographic or that depicts sexuality as having a purpose in itself or that depicts or propagates divergence from self-identity corresponding to sex at birth, sex change or homosexuality” was outlawed. Furthermore, the National Public Education Act - as amended - authorises the minister responsible for education (currently the Minister for Interior) to issue a decree which designates the state organ maintaining the registry of experts and civil society organisations that may hold sex education classes in institutions of public education. It authorises the minister to regulate in a decree the exact conditions of registration. However, no such decree has been issued as of January 3, 2023. As a result, currently no civil society organisation may hold sex education classes in institutions of public education.

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

3000 character(s) maximum

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

3000 character(s) maximum

E. Initiatives to foster a rule of law culture

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

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

On 15 July the European Commission referred Hungary to the CJEU due to amendments adopted in June 2021 to its child protection law, which discriminate against LGBTI people (<https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=C-769%252F22&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lgrec=en&lg=&page=1&cid=557227>). Háttér Society has reported that the amendments have already had a severe impact on LGBTI people in Hungary, as media service providers, bookshops, libraries, schools, and other actors covered by the law have begun to implement it voluntarily, in fear of sanctions (<https://en.hatter.hu/publications/one-year-after-implementation-of-act-lxxix-of-2021-amending-certain-acts-for-the>). The discriminatory amendments and government campaigning around them have also resulted in a stark increase in hate crime against LGBTI people, and the amendments also leave LGBTI people and organisations at risk of arbitrary legal proceedings.

Furthermore, in December the European Commission referred to this law as one of the examples in which Hungary does not fulfil the horizontal enabling condition on compliance with the Charter of Fundamental Rights in the implementation of certain specific objectives of three cohesion programmes (https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7801). If Hungary continues to not comply, the Commission will not be able to reimburse related expenditure.

In 2012 the Human Rights Roundtable aimed at fostering dialogue with civil society was set up with thematic working groups on both women's and LGBT persons' human rights. However, there has been no call for civil society organisations to join the Roundtable since 2012, and the request of Transvanilla Transgender Association to join was rejected. There have been no meetings of the LGBT Working Group since April 2021, although member organisations have requested meetings several times. The duty to allow time for public consultation is often circumvented, and the working groups were not consulted either in the past years on any restrictive legislative development.

Contact

rule-of-law-network@ec.europa.eu

