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the rights of persons
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JANUARY
2023

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 2023 Annual Rule of Law Report. The document follows the structure and applies the headings and numbering of the European Commission's stakeholder consultation survey.

The present document is an edited compilation of the contributions of the following Hungarian civil society organisations (CSOs):

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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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HUNGARIAN
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I. JUSTICE SYSTEM

1. Information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system

Until the date of closure of the present CSO contribution no steps have been taken by the Hungarian government and the Parliament to address the recommendations formulated by the European Commission (EC) with respect to the independence of the judiciary in the 2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary (hereinafter: 2022 Rule of Law Report).¹ Special concerns can be raised with respect to the non-execution of Judgment C-564/19² of the Court of Justice of the European Union (CJEU) which maintains the likelihood of prompting Hungarian courts to refrain from referring questions for a preliminary ruling to the CJEU. None of the specific recommendations were addressed to (i) strengthen the role of the National Judicial Council (NJC) while safeguarding its independence, to effectively counter-balance the powers of the President of the National Office for the Judiciary (NOJ President); (ii) adapt the rules related to the Kúria to remove judicial appointments outside the normal procedure; (iii) strengthen the eligibility criteria for the Kúria President and (iv) strengthen control by judicial bodies over the Kúria President.

Note that the present CSO contribution does not cover the draft law on the judiciary that was put to public consultation on 18 January 2023.³

A. Independence

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

All concerns raised in the 2020,⁴ 2021⁵ and 2022⁶ CSO contributions remain relevant.⁷

¹ See: 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. 2.

² The judgment was delivered on 23 November 2021. The CJEU delivered judgment C-564/19 (ECLI:EU:C:2021:949, hereinafter referred to as Judgment C-564/19) as 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.

³ The draft law is available here: <https://kormany.hu/dokumentumtar/egy-es-igazsagugyi-targyu-torvenyek-modositasarol-szolo-torvenyjavaslat>.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ The main concerns include the following:

As a main rule, judicial appointments are granted via an ordinary application procedure⁸ that includes certain guarantees⁹ against arbitrary appointments. At the same time, the legislation provides for several loopholes through which administrative leaders, the NOJ President or the President of the Kúria (Hungary's apex court), can block or circumvent an ordinary application procedure.

On the one hand, the possibility to declare the application procedure unsuccessful without a legal remedy allows political appointees (both the NOJ President and the Kúria President are elected by the parliamentary majority) to block any judicial appointment, creating the effect of a "glass ceiling" in judicial careers and exerting a palpable chilling effect amongst potential candidates.¹⁰

(1) The distorted scoring system of candidates of a judicial application procedure favouring experience gained in public administration against experience gained at courts. The 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. 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>.

(2) The right of the NOJ President to declare any application procedure unsuccessful without any external control or a need for a transparent reasoning even after the establishment of the ranking of applicants [Article 18(4) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges]. In case of judicial applications at the Kúria, the Kúria President holds the same power (Article 19 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges). A precedential decision of the Kúria excludes judicial remedy against such decisions [see judgment Mfv.10.049/2021/16. of the Kúria, sections (58)-(93)].

(3) Constitutional Court justices may automatically become judges and heads of panel at the Kúria upon their unilateral request. This means that the legislation grants a possibility to Constitutional Court justices (elected by the political majority of the Parliament) to circumvent the otherwise obligatory application procedure to (i) acquire their first appointment as judge (ii) get promoted to the Kúria and (iii) get their judicial leadership position as head of panel. According to the Venice Commission, this solution "*opens the door to a potential politicisation of the supreme court*". [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. 16.]

⁸ See: Article 7 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges.

⁹ 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 to any deviation from the ranking.

¹⁰ In 2022 the NOJ President declared two application procedures for court president positions unsuccessful. In one case, the NOJ President rejected the appointment of a candidate as regional court president who was supported by the majority of the judges' plenary meeting, but the NOJ President – in part for a harsh criticism expressed by the candidate with respect to the court administration measures applied by the NOJ in front of judicial peers – rejected the appointment. According to the reasoning, the NOJ President as "*the decision-maker is not bound by the opinion of the judicial bodies*" and that "*a contrary interpretation would in practice mean that any person applying for a leadership position on his or her own would, merely by fulfilling the narrow statutory conditions for appointment and with the support of the judicial body, acquire a substantive right to appointment, which would render the procedure of the assessor [the NOJ President] completely empty and formalistic*" (Decision no. 286.E/2022. (VII. 14.) OBHE; see the minutes of the hearing at https://birosag.hu/sites/default/files/2022-08/meghallgatasi_jegyzokonyv.pdf). After declaring the appointment unsuccessful, the NOJ President mandated a hand-picked judicial leader to temporarily fill the position of court president at the Győr Regional Court by Decision no. 287.E/2022. (VII. 14.) OBHE. Later, in December 2022, the temporarily assigned court president got appointed as sole candidate of an application procedure by Resolution no. 484.E/2022. (XII. 15.) OBHE, also supported by the judges' plenary meeting. The NOJ President declared further five judicial application procedures unsuccessful [see: Decision no. 113.E/2022. (IV. 7.) OBHE (procedure declared unsuccessful for procedural irregularities); Decision no. 122.E/2022. (IV. 21.) OBHE (procedure declared unsuccessful for problems "*related to work organisation*", but in reality, for the full rejection of the candidate by the local judicial council), Decision no. 193.E/2022. (V. 24.) OBHE (procedure declared unsuccessful for procedural irregularities); Decision no. 277.E/2022. (VII. 4.) OBHE (procedure declared unsuccessful for procedural irregularities), and Decision no. 429.E/2022. (XI. 21.) OBHE (procedure declared unsuccessful for problems related to work organisation)].

On the other hand, the same political appointees hold formal and informal rights that can be (due to the lack of effective control and accountability) misused to circumvent the ordinary application procedure creating the effect of a “glass elevator” for hand-picked candidates.

In 2022, several such loopholes were actively utilised, distorting the merit-based judicial career system. As signalled by the NJC in 2022, both the Kúria President¹¹ and the NOJ President¹² appointed several judges to the bench in ways circumventing the right to consent by the NJC. Both administrative leaders created a loophole by opening several positions in one package and then manipulating the outcome of the application procedure by considering the applications in an arbitrary order. While the illusion of a regular application procedure was maintained, judicial appointments were not granted in a transparent, foreseeable and objective manner. In 2021, the Kúria President granted five appointments to the Kúria¹³ while the NOJ President granted four appointments to the bench utilising the same loophole.¹⁴ As revealed by the data published, Barnabás Hajas, a former state secretary without any prior judicial experience also became a judge at the Kúria as a consequence of this unlawful practice.¹⁵

In addition to the above, the series of judicial appointments by *ad hominem* legislation¹⁶ continued. On 1 January 2022, a new piece of legislation entered into force inserting a new Administrative Court of Appeal (ACA) in the administrative court system.¹⁷ According to the legislation, judges who complied with specific preconditions¹⁸ could request their transfer to

¹¹ See the minutes of the meeting of the NJC held on 6 July 2022 at <https://orszagosbiroitanacs.hu/download/az-obt-2022-julius-6-i-ulesenek-jegyzokonyve-2/?wpdmdl=2234&refresh=63c4457de40081673807229>, p. 25. The report of the Kúria President is available at: https://helsinki.hu/wp-content/uploads/2022/09/Kuria_elnok_tajekoztato_palyazatok_2021.pdf.

¹² See the minutes of the meeting of the NJC held on 5 October 2022 at <https://orszagosbiroitanacs.hu/download/az-obt-2022-oktober-5-i-ulesenek-jegyzokonyve/?wpdmdl=2339&refresh=63c44722d1bad1673807650>, p. 21.

¹³ 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>.

¹⁴ See: <https://helsinkifyelo.444.hu/2022/11/24/sulyos-valsagtunetek-a-birosagok-igazgatasaban>.

¹⁵ See the detailed report of the Kúria President here: https://helsinki.hu/wp-content/uploads/2022/09/Kuria_elnok_tajekoztato_palyazatok_2021.pdf.

¹⁶ 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/yes-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).

¹⁷ The legislative process leading to the establishment of the new Administrative Court of Appeal was extra speedy, it took less than 23 calendar days from the first draft of the bill until entry into force, leaving no chance to any meaningful consultation with the public or with judges (see: <https://helsinki.hu/wp-content/uploads/2022/06/Annex-II-Legislative-Process-of-Establishing-a-New-Administrative-Court.pdf>). The ACA operates technically within the organisation of the Metropolitan Court of Appeal as a college dealing with administrative cases (in Hungarian: *Fővárosi Ítéltábla Közigazgatási Kollégiuma*).

¹⁸ According to Article 232/U (2) inserted to Act CLXII of 2011 on the Legal Status and Remuneration of Judges by omnibus legislation: “The judge who priorly served at a court of appeal and falls under the personal scope of application of Article 191(7) of [Act CLXI of 2011 on the Organisation and Administration of the Courts] and Article 232/A of [Act CLXII of 2011 on the Legal Status and Remuneration of Judges] may request by declaration issued to the NOJ President his/her transfer to the administrative court of appeal, in case he or she has at least two years experience as sitting judge at the [former] Supreme Court of Hungary, the Kúria or any court of appeal.”

the new ACA within the very tight period of 10 calendar days.¹⁹ According to the information provided by the NOJ President, only four concrete judges (0.14% of the total number of judges²⁰) could meet the statutory criteria for being transferred to the new court.²¹ This might raise concerns as to a potential intervention by the legislative branch in judicial appointments.

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

Several concerns raised in the 2020, 2021 and 2022 CSO contributions remain relevant. These include: (i) the general rule that if a court leader is unlawfully dismissed and their reinstatement is subsequently ordered by the court deciding on the matter of the dismissal, they can only be reinstated into their leadership position if that has not been filled in the meantime;²² (ii) the fact that the legislation allows the NOJ President to second judges without their consent for one year every three years;²³ (iii) the possibility to transfer judges outside the judiciary to other state organs,²⁴ which, according to the Venice Commission *“could be used to institute a practice of bypassing the ordinary processes of promoting judges”*;²⁵ (iv) the right of the NOJ President to terminate unilaterally the assignment of judges dealing with administrative cases without meaningful justification, within a short term.²⁶

The legal framework of secondment of judges in Hungary is prone to misuse of powers. Decisions on the secondment of judges are fully left to the discretion of administrative leaders, jeopardizing the independence of the judiciary and leading to a mass application of secondments.²⁷ The legislation does not provide for criteria narrowing the discretion of the NOJ President (and the court presidents respectively), opening a path to abusive application

¹⁹ According to Article 232/U(2) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges, the declaration requesting the transfer should have arrived to the NOJ President by 10 January 2022 (i.e. within 10 days after the entry into force of the new legislation). Taking into account the fact that the legislation was adopted on 17 December 2021 directly before the year-end holidays and the obligatory judicial vacations, only eight working days were available to make the statement on the transfer.

²⁰ According to the data provided by the NOJ President, 2,710 judges were serving in the ordinary court system by the end of 2021.

²¹ Out of the four judges meeting the criteria set out by the law, only two judges requested their transfer by the end of the limitation period by Resolution no. 11.E/2022. (I. 24.) OBHE. See the answer of the NOJ President to questions II. 6-7. of the Hungarian Helsinki Committee here: <https://helsinki.hu/wp-content/uploads/2022/06/OBH-valasza-kozerdeku-adatigenylesre-20220517.pdf>.

²² Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 145(4)

²³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 31(3)

²⁴ In 2022, the NOJ President assigned two judges to the Prime Minister’s Cabinet by Resolution no. 367.E/2022. (X. 11.) OBHE for a definite term of one year. Two months later, the assignment was modified and the same judges were assigned to the Ministry of Economic Development by Resolution no. 488.E/2022. (XII. 16.) OBHE.

²⁵ 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.

²⁶ In 2022, the NOJ President terminated the assignment of several judges dealing with administrative cases. Resolution no. 316.E/2022. (VIII. 9.) OBHE terminated the assignment of two judges, one of them holding the position of head of panel. Several further resolutions granted assignments only for a defined period of time [see e.g. Resolution no. 399.E/2022. (XI. 3.) OBHE] that automatically terminated at the end of the term.

²⁷ 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.1.

of the discretionary powers.²⁸ The lack of procedural guarantees allow misuse of the legal grounds, *inter alia* by creating a disguised probationary period at higher court positions, including the Kúria.²⁹ Data show that secondments may also divert the outcome of an application procedure and facilitate the appointment of judges who were priorly seconded.³⁰ The decisions on secondments lack sufficient democratic accountability and therefore arbitrary application of the law and abusive practices cannot be contested.³¹ In 2022, the NJC was forced to issue an official warning towards the NOJ President for blocking the exercise of supervisory functions by the NJC via denying access for members of NJC to the background documents related to secondments.³²

The wide-spread practice of secondments to the Kúria on the legal ground of professional development raises specific concerns.³³ During the past two years, altogether ten judges were appointed to the Kúria after being “tested” as seconded judges, out of which at least three judges directly benefited from the secondment during the application procedure by tailor-made criteria built in the call for applications.³⁴ Secondment as a court administration measure also contributed to blocking the normal course of the proceeding in two high-profile criminal cases.³⁵

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,³⁶ but the legislation allows for a wide range of exceptions.³⁷ Decisions on promotions without an application procedure lie in their entirety in the hands of administrative leaders, who may also have full discretion to grant judicial leadership positions eliminating the guarantees attached to a transparent application procedure.³⁸ No judicial remedy is available against appointments made without an appointment procedure.

²⁸ Ibid., Section III.2.

²⁹ Ibid., section III.3.

³⁰ Ibid., Annex 3. In case of the Kúria the following calls for application expressly favoured priorly seconded judges: 105.E/2022. (IV. 4.) OBHE, 106.E/2022. (IV. 4.) OBHE, 143.E/2021. (VI. 15.) OBHE. In all three application procedures the position opened was filled by a judge who was priorly seconded to the Kúria.

³¹ 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.6.

³² See the minutes of the NJC’s meeting held on 13 June 2022, available at: <https://orszagosbiroitanacs.hu/download/az-obt-2022-junius-13-i-ulesenek-jegyzokonyve-2/?wpdmdl=2251&refresh=63bf72cb46f8a1673491147>.

³³ See: Hungarian Helsinki Committee, *Szabálytalan bírói kirendelések a Kúrián [Irregular secondments at the Kúria]*, 16 September 2022, <https://helsinkifigyele.444.hu/2022/09/16/szabalytalan-biroi-kirendelesek-a-kurian>.

³⁴ 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>, Section II.3.

³⁵ See: Hungarian Helsinki Committee, *Da capo without fine – The hunt for corruption until the end of times*, 7 December 2022, <https://helsinki.hu/wp-content/uploads/2022/12/Da-capo-without-fine-20221207.pdf>.

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

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

³⁸ 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 Article 8(4), 23(3) and 58(3) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges.

Concerns with respect to the elimination of an application procedure after the termination of a transfer outside the judiciary remain unaddressed.³⁹

Even in case of an ordinary application procedure, the outcome of the procedure can be manipulated by several means.⁴⁰ Applications for judicial leadership positions (such as the position of head of panel or deputy-college leadership positions)⁴¹ are assessed by the sole discretion of the president of the relevant court. Judge peers hold the right to form a non-binding opinion⁴² 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 chamber president at the Metropolitan Court of Appeal became public as an outstanding example of disregarding the votes of judge peers.⁴³

Besides formal appointments, the legislation provides for a variety of informal means to promote a judge. Informal appointments include (i) assignment as an administrative judge⁴⁴ (ii) granting temporary leadership positions and (iii) in case of the Kúria, special judicial positions assigned via the case allocation scheme of the Kúria.⁴⁵ Informal appointments are fully carried out on the basis of a non-transparent decision.

An outstanding example for an informal appointment to one of the highest judicial leadership positions at the top tier was the *de facto* assignment of a deputy-college leader at the Kúria for eight months.⁴⁶ The leadership position was granted by the sole discretion of the Kúria President despite the fact that no deputy-college leadership positions were open during that

³⁹ The judge formerly transferred to another state organ can be appointed to any judicial position at a court equal or higher than the one prior to the assignment and may even become chamber president without an appointment procedure based on full discretion of the NOJ President. See: Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 58(3) and 62/C(3). As observed by the Venice Commission, there are no criteria established for the NOJ President “to assign (*de facto* promote) a judge to a higher position (i.e. president of chamber)” therefore it is necessary to establish “clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment”. 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. 58.

⁴⁰ For example, secondments may be utilized by court presidents to create a *contra legem* probationary period before opening an application procedure and later may grant unjustified advantages to seconded judges during the application proceeding by being favoured on the basis of the time spent at the higher court as a result of the secondment. See: <https://helsinki.hu/en/the-hungarian-recipe-for-getting-a-grip-on-the-judiciary/>.

⁴¹ 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.

⁴² Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 131

⁴³ See the details at: <https://helsinkifyelo.444.hu/2022/08/19/egy-itelotablai-tanacselnoki-kinevezes-magyarazatanak-margojara-a-tenyek-tukreben>.

⁴⁴ After 1 April 2020, in order to deal with administrative cases, judges must be explicitly assigned as administrative judges within the ordinary court system (Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 30).

⁴⁵ For example the membership in unification complaint panels or the panel that reviews the regulations of municipalities.

⁴⁶ 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.

term. Later, an “extra” deputy-college leadership position was created⁴⁷ and filled in by the judge who was priorly selected and informally assigned by the Kúria President. Resolutions on informal appointments (promotions) are taken in a completely non-transparent manner. Neither the criteria nor the terms of an appointment or the termination thereof are set out by law and the assignment can be withdrawn without the judge’s agreement any time, preventing the judge from continuing to adjudicate in the same position, also entailing the possibility of undue pressure and interference with the parties’ right to their lawful judge.

5. Allocation of cases in courts

All concerns raised in the 2020, 2021 and 2022 CSO contributions remain relevant.⁴⁸ The possibility to modify the case allocation scheme is unlimited in time.⁴⁹ The law grants full discretion to court presidents to establish the case allocation scheme.⁵⁰ Modifications of the case allocation schemes are carried out on a regular basis, sometimes even from one day to the other.⁵¹ The law provides for a wide range of exceptional rules without establishing guarantees against their inappropriate application. Parties of a court proceeding cannot verify the proper application of the scheme or whether there was a derogation from it.⁵²

⁴⁷ The NOJ President modified Resolution no. 41.SZ/2020. (III. 24.) OBHE on the number of authorized staff at the Kúria with effect from 1 May 2022, raising the number of deputy college leaders from three to four.

⁴⁸ Persisting concerns include: (i) the deficiencies with respect to guarantees against undue interference; (ii) the fact that the process of case allocation is neither computerised nor automated, but reliant on direct human intervention; (iii) that court presidents shall have exclusive and unlimited right to establish the case allocation scheme; (iv) judicial self-governing bodies are not entitled to exert meaningful control over the process of adopting case allocation schemes; (v) 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; (vi) the recommendation of the Venice Commission remained 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)).

⁴⁹ 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.”

⁵⁰ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 9

⁵¹ See for example the case allocation scheme of the Kúria effective from 15 May 2022, which was published on 13 May 2022 and adopted on 11 May 2022: https://kuria-kozadatok.birosag.hu/sites/default/files/field_attachment/a_kuria_2022_evi_ugyelosztasi_rendjenek_modositas_a_2022.05.15.pdf.

⁵² The Hungarian Helsinki Committee asked the Kúria whether parties are informed of the derogation applied. Instead of providing an answer, the Kúria informed the Hungarian Helsinki Committee that “*in this respect neither [Act CLXI of 2011 on the Organisation and Administration of the Courts], nor Decree 14/2002. (VIII. 1.) IM of the Minister of Justice on the Rules of Court Administration contains provisions*”, indicating that the parties are not informed in case of derogation from the scheme.

As of 1 March 2022,⁵³ administrative cases are adjudicated by panels of five at the Kúria, but, if the nature of the case justifies so, two of the judges on the panel can be judges who have not been assigned as administrative judges. In addition, the presiding judge may exceptionally order that the case be adjudicated by a panel of three. These instances require a great deal of discretion regarding whether a judge not assigned to act in administrative cases shall be on the panel and who that judge should be, and whether instead of a panel of five, a panel of three shall adjudicate the case and who the three judges on the panel should be. The Kúria's case allocation scheme⁵⁴ does not make it clear by whom and how those decisions are to be made. The law expressly authorizes the Kúria President to use the case allocation scheme as a tool to transfer judges.⁵⁵

The new ACA gained nationwide competence in adjudicating administrative cases on second instance⁵⁶ with effect from 1 March 2022. While from this day parties were obliged to submit their actions and appeals to this court, the case allocation scheme of the court within which the ACA is integrated effective and published between 1 and 10 March 2022 did not even mention the existence of the new judicial forum, let alone the judges assigned to it. The subsequently published case allocation scheme⁵⁷ indicated that the new court started its operation with two panels, but three members of both panels were the same judges.⁵⁸

The Constitutional Court (CC) does not have a case-allocation scheme at all. Since 2012, the CC has gained competence to review final and binding judgments delivered by ordinary courts with respect to their compliance with the Fundamental Law.⁵⁹ The safeguards attached to the right to a lawful judge shall be applied at least in relation to the review resolutions of ordinary courts, nevertheless, the CC does not have a case allocation scheme and cases are handed down to judges as rapporteurs under non-transparent rules.

The data of the most recent survey of the European Network of Councils for the Judiciary on the Independence of Judges (ENCJ Survey 2022)⁶⁰ shows that every fifth Hungarian judge⁶¹ believes that during the last three years, cases have been allocated to judges other than in accordance with established rules in order to influence the outcome of the particular case.

⁵³ Article 8(6) of Act I of 2017 on the Administrative Court Procedure as amended by Act CXXXIV of 2021

⁵⁴ See: https://kuria-kozadatok.birosag.hu/sites/default/files/field_attachment/ugyelosztasi_rend_2022_03_01_am_vegleges.pdf.

⁵⁵ According to Article 10(2) of Act CLXI of 2011 on the Organisation and Administration of the Courts: *"The case allocation scheme of the Kúria shall also indicate the judges who shall be members of the municipal panel and the uniformity complaint panel."*

⁵⁶ In certain cases it also acts as a court of first instance.

⁵⁷ See the case allocation scheme published on 10 March 2022 by the Metropolitan Court of Appeal: https://fovarosiitlotabla.birosag.hu/sites/default/files/field_attachment/a_fovaros_i_tlotabla_2022_evi_hatalyos_ugyelosztasi_rendje_2.pdf, Section V., p. 15.

⁵⁸ Three judges became members of both panels. See the last page of the case allocation scheme published on 10 March 2022 by the Metropolitan Court of Appeal: https://fovarosiitlotabla.birosag.hu/sites/default/files/field_attachment/a_fovaros_i_tlotabla_2022_evi_hatalyos_ugyelosztasi_rendje_2.pdf.

⁵⁹ Fundamental Law of Hungary, Article 24(2)(d)

⁶⁰ The ENCJ Survey 2022 was published on 3 June 2022, and 29% of Hungarian judges participated in the survey. See: <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf>. See the Hungarian summary of the ENCJ Survey 2022 at <https://orszagosbiroitanacs.hu/2022-06-13/>, p. 2.

⁶¹ Further 16% was not sure and 65% disagreed.

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

The competences of the NJC have remained unchanged, thus it cannot perform its statutory role to be an effective check on the NOJ President and should be strengthened as recommended by the Venice Commission,⁶² the Council of the EU,⁶³ and also by the European Commission in its 2020, 2021 and 2022 Rule of Law Reports. Since the last Rule of Law Report, no legislative steps have been taken to address structural issues. Consequently, without any amendment to the laws, the NJC still cannot effectively fulfil its constitutional role. The data of the ENCJ Survey 2022 show that 39% of Hungarian judges do not believe that the NJC has the appropriate mechanisms and procedures to defend judicial independence effectively.⁶⁴

The relationship between the NOJ President and the NJC remains problematic.⁶⁵ In 2022 the NJC issued two official warnings calling attention to the breach of law by the NOJ President. The first official warning was issued after the NOJ President denied access to documents and information requested by the *ad hoc* committee established by the NJC⁶⁶ to examine the secondment practice of the NOJ President.⁶⁷ The second official warning was issued by the NJC after the NOJ President classified the report on the comprehensive investigation initiated to clarify the role of the President of the Metropolitan Regional Court in the Schadl-case⁶⁸ [see in more detail in Section I.C., Question 19. of the present CSO contribution] without any reasonable explanation and refused to inform the members of the NJC about the investigation's outcome even in an in-camera session.⁶⁹ The NJC called upon⁷⁰ the NOJ President to release his resolution on the classification to the NJC and to make the underlying documents that had informed such a decision available for inspection for the NJC members. The NOJ President did not comply, therefore the NJC made an official warning.⁷¹

⁶² See: European Commission for Democracy Through Law (Venice Commission), *Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary*, CDL-AD(2012)020-e, 15 October 2012, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e), para. 32.

⁶³ Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary, <https://op.europa.eu/hu/publication-detail/-/publication/421552eb-cffd-11e9-b4bf-01aa75ed71a1/language-en>

⁶⁴ Further 27% was not sure and only 35% agrees. See: ENCJ Survey 2022, p. 66.

⁶⁵ See a summary of main conflicts between the NOJ President and the NJC at: Hungarian Helsinki Committee, *Súlyos válságtünetek a bíróságok igazgatásában [Serious signs of crisis in the administration of courts]*, 24 November 2022, <https://helsinkifigyelo.444.hu/2022/11/24/sulyos-valsagtunetek-a-birosagok-igazgatasaban>

⁶⁶ See more on the *ad hoc* committee established by the NJC at: 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>, p. 13.

⁶⁷ NJC Resolution no. 43/2022. (VI. 13.). See the minutes of the NJC's meeting held on 13 June 2022, p. 34. Available at: <https://orszagosbiroitanacs.hu/2022-06-13/>.

⁶⁸ See the summary of the whole case here: Hungarian Helsinki Committee, *The Schadl–Völner case and the battered independence of Hungarian courts*, 18 November 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HHC_Schadl-Volner-case_18112022.pdf.

⁶⁹ See the records of the NJC's 13 June 2022 meeting, available at: <https://orszagosbiroitanacs.hu/2022-06-13/>, pp. 51-55. The records were published on 27 June 2022.

⁷⁰ See the summary of the NJC's 6 July 2022 meeting, available at: <https://orszagosbiroitanacs.hu/download/az-obt-2022-julius-6-i-ulesenek-osszefoglaloja/>.

⁷¹ NJC Resolution 72/2022 (X. 5.). See the minutes of the NJC's meeting held on 5 October 2022, p. 38. Available at: <https://orszagosbiroitanacs.hu/2022-10-05/>.

The NJC also discovered that the NOJ President presented false information to the NJC regarding his appointment practice.⁷²

The NJC proposed several times, most recently on 7 September 2022 that the NOJ President requests the Ministry of Justice to amend certain laws on courts and judges.⁷³ The NOJ President only considered the legislative amendment of the NJC to ensure that, in the case of several tenders being evaluated at the same time, the order in which applications are evaluated is precisely regulated.⁷⁴

The NJC also asked for information⁷⁵ from the NOJ President about the practice of regional court and court of appeal presidents regarding their appointment of court leaders (e.g. chamber presidents or college presidents) and judges. The NOJ President declined⁷⁶ the NJC's request, claiming that the NJC does not have the competence to oversee local court administration.

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

The Integrity Policy⁷⁷ 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 and/or an activity that infringes their integrity. The new NOJ President has not amended the Integrity Policy since his election.⁷⁸

The disciplinary cases of judges are decided by service courts, the operation of which is not public according to the law.⁷⁹ 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 disciplinary proceedings.⁸⁰ In lack of published decisions, the jurisprudence on disciplinary offences was non-transparent both for judges and the public, creating unclarity about the disciplinary regime. Nevertheless, in November 2022,

⁷² In October 2022, the members of the NJC discovered that the information provided by the NOJ President on his appointment practices in 2021 was not based on real data. While the NOJ President informed the members of the NJC that in 30 out of 32 applications evaluated, he had proposed appointments or transfers in accordance with the ranking of the local judicial council and had requested the NJC's consent in cases of deviation from the ranking, it became clear to the NJC members, after a file review, that in four other cases, the second-ranked judge had actually been appointed without the NJC's consent. Because of the false information, the members of the NJC could only conclude that their powers had been circumvented after due enquiry.

⁷³ See the proposal prepared by the NJC in 2018 [here](#). See the proposal prepared by the NJC in September 2022 here: <https://orszagosbiroitanacs.hu/a-hataskoreit-es-mukodesi-felteteleit-erinto-torvenyek-modositasat-javasolja-az-orszagos-biroi-tanacs/>.

⁷⁴ See the opinion released by the NJC on 12 January 2023 regarding the proposed legislation [here](#).

⁷⁵ See the minutes of the NJC's meeting held on 7 September 2022, pp. 41-42. Available at: <https://orszagosbiroitanacs.hu/2022-09-07/>.

⁷⁶ Ibid., p. 20.

⁷⁷ <https://birosag.hu/obh/szabalyzat/62016-v31-obh-utasitas-az-integritasi-szabalyzatrol-0>

⁷⁸ To learn more, see: Amnesty International Hungary, *Status of the Hungarian Judiciary – Legal Changes Have to Guarantee the Independence of Judiciary in Hungary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>, p. 24.

⁷⁹ "Disciplinary proceedings and preliminary investigations shall be conducted in camera." (Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 119)

⁸⁰ According to the [2021 annual review](#) 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](#) of the second instance service court, there were 13 disciplinary cases completed in 2021.

the NJC published on its website⁸¹ some recent anonymized disciplinary decisions for the years 2021 (14 decisions) and 2022 (8 decisions).

Judgment C-564/19 of the CJEU remains non-executed, the law and a precedential decision of the Kúria⁸² allow the Kúria to declare a judge's reference for a CJEU preliminary ruling unlawful after a so-called appeal in the interests of the law, which is particularly concerning, as this served as the basis for initiating a disciplinary action against one particular judge in the past. Despite the clear obligation to execute the judgment of the CJEU, both the Kúria President and the Prosecutor General publicly claimed on several occasions⁸³ that the Kúria's relevant precedential judgment is binding and obligatory on Hungarian judges.

In late 2021, the Plenary Meeting of the Group of States against Corruption (GRECO)⁸⁴ adopted a new compliance report regarding corruption prevention in respect of members of Parliament, judges and prosecutors, which concluded that there are still serious deficiencies regarding the implementation of GRECO's recommendations, and e.g. the recommendation regarding the immunity of judges remains not implemented.⁸⁵

At its meeting on 2 March 2022, the NJC adopted the new Code of Ethics for judges that includes a more permissive wording with regard to judges' participation in public discussions.⁸⁶ An important development is that the Code also states that judges are free to express opinions on "laws, the legal system and the administration of justice", which was previously at least doubtful. On 27 May 2022, the Kúria President challenged⁸⁷ the constitutionality of the Code before the CC and the law allowing the NJC to adopt it.⁸⁸ While the petition to the CC will not legally hinder the new Code's entry into force, the ongoing dispute and the chilling effect that it exerts on the NJC and the judges will continue to have a negative impact on judges' freedom of expression and participation in professional debates.

⁸¹ <https://orszagosbiroitanacs.hu/fegyelmi-birosagok-hatarozatai/>

⁸² Order no. Bt.III.838/2019/11. of the Kúria

⁸³ The Kúria President publicly claimed that "*It is beyond dispute that the CJEU said that this will scare, or curb, or freeze the Hungarian judges' willingness for submitting a preliminary reference.*" See the public statements of the Prosecutor General and the Kúria President at: https://helsinki.hu/wp-content/uploads/2022/11/Public-statements-and-press-releases-C_564_19.pdf.

⁸⁴ Group of States against Corruption (GRECO), *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Third Interim Compliance Report – Hungary*, GrecoRC4(2021)24, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a7f171>

⁸⁵ The full report – published in September 2022 – concluded that when it comes to judges, "*no further progress has been achieved regarding the three remaining recommendations*" and that "*GRECO's findings on the need to review the powers of the President of the National Judicial Office, both as regards the process of appointing/promoting candidates for judicial positions and in respect of reassigning judges remain areas of particular concern, closely linked to the independence of the judiciary. The far-reaching immunity of judges is also a concern.*" As regards the prosecutors, "*disciplinary proceedings are still not handled outside the direct hierarchical structure, which remains a concern. Furthermore, no progress has been achieved regarding the prolongation of the term of the Prosecutor General and the broad immunity enjoyed by prosecutors*", according to GRECO.

⁸⁶ The Code states that a judge may participate in "public events organised in accordance with the law", but their participation should not create the perception of political commitment.

⁸⁷ The motion is available [here](#).

⁸⁸ On 8 July 2022, Hungarian CSOs submitted a joint amicus curiae to the CC to defend judges' freedom of expression. See in more detail about the context, the submission of the Kúria President and the amicus curiae here: https://www.amnesty.hu/wp-content/uploads/2022/07/Briefing-paper_New-Code-of-Ethics-for-Hungarian-judges_20220712.pdf.

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

The salary increase for judges made in previous years was discontinued for the year 2023. The base salary⁸⁹ of both judges and prosecutors has been raised from gross HUF 507,730 (ca. EUR 1,418) – for the year 2021⁹⁰ – to HUF 566,660 (ca. EUR 1,538) – for the year 2022⁹¹ – but remained at this level (HUF 566,660) for the year 2023.⁹²

The Hungarian legislation⁹³ 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 decisions.⁹⁴ For instance, the internal regulations⁹⁵ list premiums and bonuses that can be granted in the framework of the labour force preservation programme of the court system.⁹⁶ 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.

In 2020 the NJC decided to establish a committee to review the extraordinary payments (bonuses) granted between 1 January 2018 and 31 December 2019 on a discretionary basis by the NOJ President to judicial leaders appointed by the NOJ President as well as to judges assigned by the NOJ President to the NOJ.⁹⁷ The committee requested the NOJ President to provide access to the documents containing the relevant data under the legislation authorising the NJC to control the budget of courts.⁹⁸ The NOJ President refused to provide the NJC with the relevant data, and only informed the committee of the aggregated amounts of payments effected. The aggregated data showed that in years 2018 and 2019 immense amount was paid out under full discretion of the NOJ President as “project premium, targeted benefit and other personal premium”. Although the payments in question may have concerned projects completed from EU funds, the NOJ President successfully obstructed their review by

⁸⁹ For reference, from 1 January 2023, the gross minimum wage is HUF 232,000 (ca. EUR 585) in Hungary.

⁹⁰ Act XC of 2020 on the Central Budget of Hungary for 2021, Article 65(1)-(2)

⁹¹ Act XC of 2021 on the Central Budget of Hungary for 2022, Article 65 (1)-(2)

⁹² Act XXV of 2022 on the Central Budget of Hungary for 2023, Article 69 (1)-(2)

⁹³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 179–196

⁹⁴ 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.

⁹⁵ Order 5/2013. (VI. 25.) OBH of the NOJ President, Article 20 of Annex 2

⁹⁶ 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.

⁹⁷ See Decision no. 85/2020. (VII.1.) OBT of the NJC.

⁹⁸ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 103(2)(b)

the NJC, therefore the committee had to close its investigation without the possibility to supervise the legality of these payments.⁹⁹

9. Independence/autonomy of the prosecution service

The prosecution service and the incumbent Prosecutor General (re-elected in 2019 for nine years by the governing parties, who can only be removed with a two-thirds majority as a result of a 2021 amendment¹⁰⁰) has long been subject to heavy criticism for not bringing high-profile corruption cases of government politicians and their close affiliates before courts.

In relation to prosecution of corruption concerning EU funds, the European Commission cited issues as regard limitations to the effective investigation and prosecution of alleged criminal activity and the organisation of the prosecution services as grounds for triggering the rule of law conditionality mechanism¹⁰¹ in relation to Hungary in 2022. In particular, the European Commission *“pointed out a serious risk of weakening the effective pursuit of investigations and prosecutions in cases involving Union funds, due to the concentration of powers in the hands of the Prosecutor General’s Office, the strictly hierarchical organisation of the prosecution service, the lack of a requirement to give reasons when cases are attributed or reassigned, the absence of rules to prevent arbitrary decisions that could hamper an effective investigation and prosecution policy, as well as the lack of judicial review of decisions by the investigating authorities or the prosecution service not to pursue a case”*.¹⁰² As a result, in the autumn of 2022, a new special remedy process to bring private prosecution in corruption cases was introduced, enabling both private individuals and legal entities under private law to take cases of corruption before justice. However, due to a series of procedural hindrances, this new special remedy process is unsuitable to provide a meaningful solution if the state fails to prosecute corruption cases.¹⁰³

Moreover, the problems raised 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 possibility of the Prosecutor General to unaccountably influence the work of subordinate prosecutors and to interfere in individual cases have not been tackled.¹⁰⁴ Thus, the *“concerns as regards the discretionary powers of the prosecution service to decide on the investigation and prosecution of cases,*

⁹⁹ In 2021, Transparency International Hungary submitted an official request for public interest information under the freedom of information act to the NOJ to obtain the information concerned, but the NOJ denied responding. Successively, Transparency International Hungary launched a freedom of information lawsuit against the NOJ on 6 October 2021. The court’s first instance ruled in favour Transparency International Hungary, but the Budapest Court of Appeal, in response to the appeal submitted by the NOJ, overturned the first instance decision in its ruling of 22 November 2022.

¹⁰⁰ Act CXXII of 2021 Amending Certain Laws on Justice and Related Matters, Article 85

¹⁰¹ I.e. the procedure under Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

¹⁰² Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, COM/2022/485 final, Explanatory Memorandum (34)

¹⁰³ This issue is elaborated on in more detail in the “II. Anti-corruption framework” chapter of the present CSO contribution. See also: Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *The European Commission should be more intransigent to stop systemic corruption in Hungary – Civil society on Hungary’s unfolding anticorruption package*, 17 November 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HU_17_measures_assessment_17112022.pdf, in particular p. 4.

¹⁰⁴ Ibid.

*which are further amplified by the strictly hierarchical architecture of the prosecution service enabling the Prosecutor General and other senior prosecutors to instruct subordinate prosecutors and to reallocate cases assigned to them*¹⁰⁵ as raised by the European Commission's 2022 Rule of Law Report remain valid.

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.¹⁰⁶

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

In March 2022 the Committee of Ministers (CM) monitoring the execution of judgments by the European Court of Human Rights (ECtHR) issued an interim resolution¹⁰⁷ on the execution of the judgment in the *Baka v. Hungary* case. In its resolution, the CM noted with grave concern the continuing lack of progress, almost six years after the judgment became final and 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"*.

Few months after the interim resolution was issued urging guarantees against undue interference in the freedom of expression of judges under Article 10 of the ECHR, an intense smear campaign was targeted in the government-friendly propaganda media against two judges acting in their capacities as members and representatives of the NJC. As the constitutional body mandated by the Fundamental Law to supervise the central administration of courts, the NJC voiced criticism on several occasions against measures undermining the independence of judges and the rule of law in Hungary. The smear campaigns directed against the judges as members of the NJC were closely connected with the criticism voiced and were launched in two waves. (i) In August 2022, in an article by the *Guardian*,¹⁰⁸ the spokesperson of the NJC voiced his concerns over government overreach aimed at swaying courts; his statements triggered severe and defamatory attacks against him from the pro-government propaganda media. (ii) In October 2022, another massive smear campaign was launched by the pro-government media and government officials against the NJC's spokesperson and its member responsible for international relations.¹⁰⁹ The judges were attacked and their independence was questioned for accepting an invitation to meet the ambassador of the USA

¹⁰⁵ 2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary, p. 9.

¹⁰⁶ Group of States against Corruption (GRECO), *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Third Interim Compliance Report – Hungary*, GrecoRC4(2021)24, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a7f171>, para. 31-50 and 55.

¹⁰⁷ CM/ResDH(2022)47, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5c339.

¹⁰⁸ <https://www.theguardian.com/world/2022/aug/14/viktor-orban-grip-on-hungary-courts-threatens-rule-of-law-warns-judge>

¹⁰⁹ See e.g.: *The US Embassy in Budapest speaks out against state media's attack on visiting judges*, 4 November 2022, <https://telex.hu/english/2022/11/04/the-us-embassy-in-budapest-has-also-spoken-out-against-the-government-medias-attack-on-visiting-judges>.

in their capacity as representatives of the NJC, to talk about the situation of judges and judicial independence in Hungary.

The NJC promptly issued a public statement¹¹⁰ in defence of its representatives. The Hungarian Association of Judges (MABIE),¹¹¹ the European Association of Judges (EAJ)¹¹² and the representatives of the European Network of Councils for the Judiciary¹¹³ openly expressed their solidarity towards the targeted members. However, the NOJ President,¹¹⁴ the Kúria President,¹¹⁵ a high-ranking ruling majority MP,¹¹⁶ government politicians¹¹⁷ also joined the smear campaign by criticising the activity of the judges. The members of the NJC requested the NOJ President and the Kúria President as representatives of the judicial branch in vain to protect the freedom of expression of judges raising their voice in protection of the rule of law and the independence of the judiciary.¹¹⁸

B. Quality of justice

12. Accessibility of courts

After the new Code on Civil Procedure came into force in 2018, the number of civil lawsuits dropped significantly as the new law erected serious barriers to file a complaint, which resulted in the restriction of the right to access courts.¹¹⁹ While in 2020, the Parliament adopted a comprehensive amendment of the Code to make it easier to start a civil law proceeding,¹²⁰ recent caseload statistics show that the amendment could not make a significant improvement and the number of incoming cases in first instance courts has fallen to two-thirds of the 2017 figures, and are constantly decreasing.¹²¹ It is still very difficult to submit a civil law claim, and the high costs of litigation also discourage people from seeking justice before courts.

¹¹⁰ See: <https://orszagosbiroitanacs.hu/az-orszagos-biroi-tanacs-kozlemenye/>.

¹¹¹ See: <http://www.mabie.hu/index.php/1669-a-mabie-elnoksegenek-kozlemenye-a-birokat-ert-sajtotamadasokrol>.

¹¹² See: <https://www.iaj-uim.org/news/eaj-statement-on-hungary/>.

¹¹³ See: <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/News/ENCJ%20visit%20to%20Budapest%20report%202022.pdf>.

¹¹⁴ See: <https://birosag.hu/hirek/kategoria/birosagokrol/az-orszagos-birosagi-hivatal-elnokenek-kozlemenye>.

¹¹⁵ See: <https://kuria-birosag.hu/hu/sajto/kuria-elnokenek-allaspontja-az-obt-kozlemenyevel-kapcsolatban>.

¹¹⁶ See the interview with the chair of the Parliament's Committee on Legal Affairs from 1 November 2022: https://mandiner.hu/cikk/20221101_beavatkozas_amerikai_nagykovet_obt_talalkozo_vejkey_imre.

¹¹⁷ See the statement of Gergely Gulyás, the Minister heading the Prime Minister's Office from 9 November 2022: (https://mandiner.hu/cikk/20221109_gulyas_gergely_az_obt_ket_tagjanak_latogatasa_az_amerikai_nagykovetnel_jol_mutatja_a_fuggetlenseghez_valo_hozzaallasukat).

¹¹⁸ See the minutes of the NJC's meeting held on 7 December 2022, available at: <https://orszagosbiroitanacs.hu/download/az-obt-2022-december-7-i-ulesenek-jegyzokonyve/?wpdmdl=2431&refresh=63c00a30a85a01673529904>.

¹¹⁹ On these barriers, see: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, https://helsinkihub.europa.eu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf, p. 18.

¹²⁰ Act CXIX of 2020 Amending Act CXXX of 2016 on the Code of Civil Procedure

¹²¹ <https://birosag.hu/birosagokrol/statistikai-adatok/ugyforgalmi-adatok>

The problems with access to justice in administrative cases, discussed in the 2022 CSO contribution,¹²² have also remained in place. The official caseload data for the first half of 2022 clearly indicate that the number of administrative cases has been continuously decreasing compared to previous years' figures.¹²³ These data prove that an administrative lawsuit as a tool is not equivalent to an appeal before an administrative body, and provides a much limited possibility for individuals to seek justice against state bodies. Data from 2022 therefore confirm our finding from last year that by abolishing the possibility of appeal within the administrative system, *"the level of protection available in practice for the individuals against the unfavourable decisions of public administrative bodies has significantly decreased"*.¹²⁴

The Hungarian justice system provides some arrangements to support people with disabilities to participate in the administration of justice on an equal basis with others, but access to information in specific formats is limited.¹²⁵

13. Resources of the judiciary

As regards material resources, judges interviewed by Amnesty International¹²⁶ asserted that material resources (e.g., buildings, technical equipment, IT supplies) are sufficiently provided by the court administration, and they are more concerned about the independence of the judiciary.

As regards financial resources provided for courts by the state, for 2021, the proposed central budget expenditure was HUF 141,964.5 million (ca. EUR 396 million).¹²⁷ For 2022, the proposed central budget expenditure of the courts was increased to HUF 155,649.5 million (ca. EUR 422 million).¹²⁸ For 2023, the proposed central budget expenditure of the courts was HUF 160,377.3 million (ca. EUR 406 million).¹²⁹

As regards material resources, according to a December 2021 amendment to a NOJ President order,¹³⁰ the NOJ President granted regional court presidents and regional court of appeal presidents the use of a company car that they can even use for personal purposes up to 15,000 km per year. In April 2021, the NJC objected¹³¹ to the draft amendment, saying that such a possibility amounts to a substantial extra payment to the court presidents, and argued that it *"is not supported by legislation, and it would provide an additional benefit, the amount of which*

¹²² *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, pp. 15-16.

¹²³ https://birosag.hu/sites/default/files/ugyforgalom_2022.felev_.pdf

¹²⁴ *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. 16.

¹²⁵ See: *2022 EU Justice Scoreboard*, https://commission.europa.eu/system/files/2022-05/eu_justice_scoreboard_2022.pdf, p. 26.

¹²⁶ For more details, see: Amnesty International Hungary, *Fearing the Unknown – How rising control is undermining judicial independence in Hungary*, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>.

¹²⁷ Act XC of 2020 on the Central Budget of Hungary for 2021, Annex 1

¹²⁸ Act XC of 2021 on the Central Budget of Hungary for 2022, Annex 1

¹²⁹ Act XXV of 2022 on the Central Budget of Hungary for 2023, Annex 1

¹³⁰ Order 5/2013. (VI. 25.) OBH of the NOJ President

¹³¹ NJC Resolution No. 37/2021 (IV. 7.)

is questionable, especially taking into account the significantly higher increase of court leaders' salaries as compared to those of judges". Regardless of the NJC's objection, the NOJ President passed the amendment to the abovementioned order. On 5 October 2022, the NJC questioned¹³² the legality of such a company car allowance and pointed out that since these court presidents exercise employers' rights over judges, discretionary decisions related to such allowances by the NOJ President raise integrity concerns.

14. Training of justice professionals

In recent years, the NJC has put forward a series of proposals for the central training plan of the judiciary, thereby highlighting the most fundamental problems of the current system of judicial training.¹³³

It is the Hungarian Academy of Justice (*Magyar Igazságügyi Akadémia*, MIA) that is responsible for the training of justice professionals.¹³⁴ MIA operates within the NOJ and it is the NOJ President who appoints the director of MIA and determines the central tasks of judicial training. The NJC urged the NOJ to strengthen the role of MIA in training and to organize central training programs which are broadly available for judges on an equal basis.

The NJC stressed that trainers should be selected solely on merit, and courtroom experience, especially experience in conducting trials should be an important factor for selecting those who train their peers.¹³⁵

The major problem lies in the fact that trainers are selected by court executives, and this system lacks transparency. Similarly, the criteria of selecting judges for participating in international training programmes are not set, which makes the selection procedure arbitrary.

In 2022, the NOJ President made a commitment to establish a "trainers' database" which was welcomed by members of the NJC.¹³⁶ In order to strengthen transparency, the NJC requires that the database be published, and clear eligibility criteria be determined with a quality assurance system.

The NJC also raised concerns about the quality of training programs.¹³⁷ Some judges criticized the method of presenting formal legal rules to judges without genuine discussion about the related problems. Furthermore, the NJC emphasized the relevance of developing competences, organizing moot court hearings for law clerks, and strengthening fundamental elements of judicial ethos such as independence, impartiality and fairness.¹³⁸ Finally, the NJC encouraged the NOJ to involve other legal professionals (e.g. attorneys, prosecutors, notaries) into judicial training.

¹³² See the records of the NJC's meeting held on 5 October 2022 meeting, available at: <https://orszagosbiroitanacs.hu/2022-10-05/>, pp. 49-52.

¹³³ See Decision no. 53/2021. (VI. 2.) OBT of the NJC.

¹³⁴ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 171/A

¹³⁵ See Decision no. 47/2022. (VI. 13.) OBT of the NJC.

¹³⁶ See the minutes of the NJC's meeting held on 2 November 2022 here :

<https://orszagosbiroitanacs.hu/download/az-obt-2022-november-2-i-ulesenek-jegyzokonyve/>, p. 10.

¹³⁷ See the minutes of the NJC's meeting held on 2 June 2021 here: <https://orszagosbiroitanacs.hu/2021-06-02/>.

¹³⁸ See also: <https://orszagosbiroitanacs.hu/kepzes/>.

According to the NJC, there have been several occasions in recent years when the selection of the topic as well as the trainers and the participants was based on factors other than what would have been appropriate from a professional point of view.¹³⁹ As judicial training is highly important in the career of judges, a trainer position or easy access to training programmes can be a form of reward given by court executives, therefore the NOJ must establish a transparent and merit-based system for selecting trainers and provide judges with access to training on an equal footing.

16. Use of assessment tools and standards

The results of surveys on the perception of judges about the threats to their independence and integrity (published yearly since 2015) are only partly public¹⁴⁰ and are redacted, so the general public is not able to become acquainted, let alone to fully evaluate their results. In late 2020, Amnesty International submitted a freedom of information request to the NOJ President to obtain the full documentation of these surveys, but the request was declined, claiming that these surveys do not constitute data of public interest. In the years 2020, 2021 and 2022, however, the NOJ President has not conducted such surveys.

The NJC criticised¹⁴¹ the NOJ President that at no time since taking office has the NOJ President informed the NJC of his programme of long-term tasks for the administration of justice and the conditions for their implementation.

Annual reports on judicial administration data by the NOJ President gets published with a considerable delay: it was only on 16 November 2022 that the central judicial website published the NOJ President's annual review for the first half of 2021 that the Parliament had just approved.¹⁴²

The NJC still has not been given meaningful access (e.g. admin rights) to the central website of the judiciary.¹⁴³ Only excerpts and decisions of the NJC meetings and other NJC data strictly prescribed by the law are available on the central website of the courts.¹⁴⁴ The list of the current members of the NJC, the complete minutes of their meetings or public communication materials addressed to the judges are only available on the NJC members' private website,¹⁴⁵ which significantly limits the NJC's access to judges. The NJC repeatedly asked the NOJ President to provide the NJC with access to the central website of the courts

¹³⁹ Ibid.

¹⁴⁰ For 2019, see: <https://birosag.hu/hirek/kategoria/birosagokrol/az-encj-felmeresen-kimagasloan-ertekelte-fuggetlenseguket-magyar>.

¹⁴¹ <https://orszagosbiroitanacs.hu/a-hataskoreit-es-mukodesi-felteteleit-erinto-torvenyek-modositasat-javasolja-az-orszagos-biroi-tanacs/>

¹⁴² Available at: <https://birosag.hu/hirek/kategoria/birosagokrol/az-orszaggyules-igazsagugyi-bizottsaga-elfogadta-az-obh-elnokeket-2021>.

¹⁴³ To learn more, see: Amnesty International Hungary, *Status of the Hungarian Judiciary – Legal Changes Have to Guarantee the Independence of Judiciary in Hungary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>, Section 6.

¹⁴⁴ I.e. on birosag.hu (translated in English "court.hu"), where all official documents concerning courts are published.

¹⁴⁵ <https://orszagosbiroitanacs.hu/>

so that it could freely convey communication materials addressed to the judges, but the NOJ President refused these requests.¹⁴⁶

17. Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization

The Hungarian court system went through a definite centralisation process between 2019-2021 through a series of legislation adopted in the form of omnibus acts.¹⁴⁷ 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, which went under significant transformation.¹⁴⁸ With effect from 1 April 2020,¹⁴⁹ the Kúria gained exclusive competence to rule (i) as the first instance court,¹⁵⁰ (ii) as the second instance court¹⁵¹ and (iii) as the court of extraordinary review¹⁵² in different types of cases. In addition to the above, with effect from 1 July 2020, an additional level of judicial review was inserted in the system of adjudication. The new “uniformity complaint procedure” was claimed to be designed to guarantee the uniform application of the law. This legal remedy may be initiated before the Kúria in case a final and binding court decision deviates from judgments previously published by the Kúria. If a complaint is lodged and the Kúria establishes a deviation from published jurisprudence, the final and binding court resolution can be quashed. This means that the uniformity complaint panel of the Kúria gained competence to overrule the final and binding judgments of all other panels of the Kúria as a fourth instance and also became entitled to establish the mandatory interpretation of the law as a result of the procedure by way of uniformity decisions. With effect from 1 March 2022, the system of administrative adjudication was modified, establishing a third tier in the system.¹⁵³ The new administrative court level was introduced¹⁵⁴ with the aim of replacing the Kúria as the general court of second instance for first instance

¹⁴⁶ See the relevant public communication of the NJC here: <https://orszagosbiroitanacs.hu/harom-ev-utan-is-maguk-finanszirozzak-az-obt-tagjai-az-obt-honlap-fenntartasat/>. However, the NJC and the NOJ President agreed to amend the NJC budget and thus the NJC’s website is paid for by the NOJ; see the minutes of the NJC’s meeting held on 6 October 2021 at <https://orszagosbiroitanacs.hu/2021-10-06/>, p. 51.

¹⁴⁷ 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.

¹⁴⁸ See the process of court capture more in 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>.

¹⁴⁹ With effect from 1 April 2020, the Administrative and Labour Courts (20 of them, one for each county) were dissolved and the competences of the dissolved courts were distributed between eight designated regional courts that gained general competence as first instance courts and the Kúria.

¹⁵⁰ Especially in certain politically sensitive matters, including cases related to elections and the right to freedom of assembly.

¹⁵¹ In general in all cases where regional courts ruled as first instance.

¹⁵² In all administrative cases.

¹⁵³ Act I of 2017 on Public Administration Procedure, Article 7(2)

¹⁵⁴ Formally, a new administrative college of the already existing Metropolitan Court of Appeal was established.

judgments handed down by regional courts in administrative cases. Although the new court started to operate on 1 March 2022, until 30 May 2022 none of the judicial positions were filled by an ordinary application procedure. All judges of the new administrative court of appeal were transferred either by way of secondment, or assignment, or on the basis of *ad hominem* legislation.¹⁵⁵ The centralisation process introduced in the form of a series of legislative steps modified the court system in a manner that increases the likelihood of adjudicating politically sensitive cases in a manner that is favourable for the government.

C. Efficiency of the justice system

18. Length of proceedings

As reported last year, in response to the long-standing demand by the Committee of Ministers of the Council of Europe supervising the execution of ECtHR judgments, in the framework of complying with the pilot judgment handed down in 2015 in the *Gazsó v. Hungary* case¹⁵⁶ concerning the excessive length of judicial proceedings in Hungary, the Parliament adopted a law¹⁵⁷ in June 2021 that introduced a compensatory (financial) remedy for the excessive length of certain proceedings.

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, as of January 2022, only for excessively lengthy civil proceedings (civil law trial cases). No similar compensation is envisaged by the law for either administrative court procedures or criminal proceedings, and the law does not cover non-trial procedures either, such as enforcement proceedings.¹⁵⁸ Furthermore, the new law has also been criticized for the low amounts of compensation offered and for its leniency vis-à-vis the courts when it comes to defining the reasonable length of procedures.¹⁵⁹

The CM does not consider the pilot judgment issued in the *Gazsó v. Hungary* case executed either. In its latest, 2021 December decision,¹⁶⁰ it “*firmly called on the authorities to ensure [the new law’s] Convention-compliant application and invited them to provide the [CM] with*

¹⁵⁵ Instead of opening new appointment procedures to fill in the new positions opened at the Metropolitan Court of Appeal, the NOJ President opted for transferring judges to the Administrative Court of Appeal by administrative measures. In addition to the two judges transferred by *ad hoc* legislation (i) three judges were transferred by secondment ordered on the legislative basis of “reducing excessive workload” at the new court, and (ii) two further judges working in another sector of adjudication of the same court were assigned to deal with administrative cases. All transfers of judges were affected in a non-transparent procedure, without any clear criteria for the selection of the transferred judges.

¹⁵⁶ Application no. 48322/12, 16 July 2015

¹⁵⁷ Act XCIV of 2021 on the Enforcement of Pecuniary Satisfaction Relating to Protraction of Civil Contentious Proceedings

¹⁵⁸ See also: CM/Notes/1419/H46-15,

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a48aca, footnote 9.

¹⁵⁹ For more details, 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, pp. 17–18. The English translation of the law as provided by the Government is available here: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1067E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1067E).

¹⁶⁰ CM/Del/Dec(2021)1419/H46-15,

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a2b564

concrete information on its implementation in practice, as well as a detailed analysis on the compliance with the [ECtHR's] case-law of the levels of compensation regulated in the relevant Government Decree". In addition, the CM "noted the authorities' timetable for preparing a proposal for a remedy covering other types of judicial proceedings by the end of June 2023" and "in light of the importance of the matter, its technical nature and the expiry of the deadline set by the [ECtHR] in its pilot-judgment more than five years ago, strongly encouraged the authorities to explore any possible avenue for accelerating their planning". However, since then, no related draft law has been published or submitted to the Parliament by the Government. Finally, the CM also "encouraged the authorities to continue their efforts in resolving the problem of excessively lengthy court proceedings at the stage of prevention" and "strongly urged the authorities to provide more detailed statistical information on the length of proceedings before all three [civil, criminal, administrative] jurisdictions allowing a comprehensive assessment of the situation".

The CM requested the authorities to submit updated information on all the above issues by the end of June 2022, however, the Government has not submitted a new action plan/report to date.¹⁶¹

19. Other

In 2021, the prosecution brought charges against György Schadl, President of the Hungarian Chamber of Bailiffs, according to which Schadl regularly used to give cash as an undue advantage to the then State Secretary of the Ministry of Justice, who, in turn, made use of his competence deriving from his position as deputy minister according to the interests of the person offering the bribe to him. As indicated in the investigation documents leaked in January 2022, Schadl contacted the NOJ President in June 2021 with the aim of attaining the removal of a judge from position. According to the documents of the National Protective Service, the NOJ President arranged a meeting for Schadl with Péter Tatár-Kis, the President of the Metropolitan Regional Court (MRC); at the meeting, Schadl asked Tatár-Kis to fire the judge. As a response Tatár-Kis informed him that *"he was unable to fire the judge, but he could revoke her appointment as group leader, and could achieve that she feels at unease at her workplace"*. The NJC urged the NOJ President to initiate a disciplinary procedure against Tatár-Kis.¹⁶² Instead, the NOJ President initiated a comprehensive targeted administrative investigation related to complaints' handling with respect to the MRC and all the district courts operating within its jurisdiction regarding the full calendar year of 2021. In June 2022, the NOJ President classified the full documentation of the internal investigation as *"intended for limited distribution"*, which, under the law, means that access may be granted to the outcomes of the internal investigation in 2037 at the latest. Although the law explicitly allows NJC

¹⁶¹ Cf.: <https://hudoc.exec.coe.int/ENG?i=004-10875>.

¹⁶² The public statement pointed out that *"the lack of response to an arbitrary managerial conduct could have an unfavourable, chilling effect on the members of the Hungarian judiciary, it may pose a threat of rendering their situation impossible in terms of professional work and livelihood. That amounts to a direct and genuine threat to independent judicial activity free from external interference."* See: <https://orszagosbiroitanacs.hu/hatekony-azonnali-es-torvenyben-szabalyozott-fellepes-szukseges-a-fuggetlen-igazsagszolgalatast-veszelyeztetendo-minden-jelenseg-ellen/>.

members to consult classified documents, the NOJ President has refused to grant the possibility for NJC members to consult the documents of the case.¹⁶³

The data of the ENCJ survey 2022¹⁶⁴ show that over a longer timespan the independence of the judiciary has deteriorated in Hungary.¹⁶⁵ The answers given to questions related to appointment and promotion of judges in Hungary show a very concerning picture: 42% of judges agreed that judges have entered the judiciary on first appointment other than solely on the basis of ability and experience during the last three years;¹⁶⁶ 52% of judges agree that judges in Hungary have been appointed to the Kúria other than solely on the basis of ability and experience during the last three years;¹⁶⁷ 44% of judges agree that judges in first instance and appeal courts in Hungary have been appointed to other positions other than on the basis of ability and experience during the last three years;¹⁶⁸ 15% of judges believe that corruption is an issue and individual judges have accepted bribes or have engaged in other forms of corruption as an inducement to decide cases in a specific way.¹⁶⁹ Based on the outcome of the survey, the ENCJ distinguished three categories where Hungary falls in the group of European countries in which a higher percentage of judges believe that corruption occurs.¹⁷⁰

¹⁶³ See a thorough description of the Schadl case here: Hungarian Helsinki Committee, *The Schadl–Völner case and the battered independence of Hungarian courts*, 18 November 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HHC_Schadl-Volner-case_18112022.pdf.

¹⁶⁴ The ENCJ Survey 2022 was published on 3 June 2022, and is available at <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf>. 29% of Hungarian judges participated in the survey. See the Hungarian summary of the ENCJ Survey 2022 at <https://orszagosbiroitanacs.hu/2022-06-13/>, p. 2.

¹⁶⁵ ENCJ Survey 2022, main findings, point 3., p. 3.

¹⁶⁶ Further 18% are not sure and only 40% disagree. This is the worst data in whole Europe.

¹⁶⁷ Further 17% are not sure and only 31% disagree.

¹⁶⁸ 17% are not sure and 38% disagree. This is the worst data in whole Europe. ENCJ Survey 2022, question 21., p. 75.

¹⁶⁹ 24% are not sure and only 61% disagree. According to the ENCJ, *“the fact that judges are uncertain about the occurrence of corruption is a bad sign in itself”*.

¹⁷⁰ In this category 6%–36%, and more than 15% (up to 51%) are uncertain. See: ENCJ Survey 2022, p. 26.

II. ANTI-CORRUPTION FRAMEWORK

1. Information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework

In 2022, the Government of Hungary made some important steps to upgrade the country's rule of law performance, although not in response to the findings and recommendations included in the 2022 Rule of Law Report, but as part of 1) the conditionality mechanism triggered by the European Commission and 2) the negotiations over Hungary's Recovery and Resilience Plan. The 17 commitments made by the Hungarian government, embedded in the altogether 27 so-called "super" milestones, relate to the Hungarian control system aiming at the protection of the financial interests of the European Union.

Hungarian CSOs have closely monitored the process leading up to the definition of the milestones and have assessed the measures taken by the Hungarian government to implement the commitments made in the framework of the conditionality mechanism. The Hungarian Helsinki Committee, K-Monitor and Transparency International Hungary (TI-Hungary) concluded in their joint evaluation¹⁷¹ published in October 2022 that the Hungarian government delivered its commitments in a disappointing manner, which therefore result "in changes that remain insufficient to protect the Union budget". In lack of substantial progress, the organisations reiterated their concerns in November 2022.¹⁷² In addition, K-Monitor summarized a number of topics that remained unaddressed by the remedial measures.¹⁷³ Among these are issues covered by the 2022 recommendations, such as lobbying or revolving doors. Neither did the measures deal with creating a better track record of criminal investigations nor did the system of asset declarations fundamentally change.

Despite the reforms, Hungary's institutional landscape remains mainly untouched, which guarantees the survival of the ecosystem of corruption and gives reason to suppose that newly devised mechanisms aiming to curb corruption will have limited impact in practice.

¹⁷¹ Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Half-hearted Promises, Disappointing Delivery – An Assessment of the Hungarian Government's New Measures to Protect the EU Budget and Related Recommendations*, 7 October 2022, <https://transparency.hu/wp-content/uploads/2022/10/Assessment-of-measures-to-protect-EU-budget.pdf>

¹⁷² Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *The European Commission should be more intransigent to stop systemic corruption in Hungary - Civil society on Hungary's unfolding anticorruption package*, 17 November 2022, https://transparency.hu/wp-content/uploads/2022/11/HU_17_measures_assessment_17112022.pdf

¹⁷³ K-Monitor, *Almost there? A number of issues remained unaddressed in Hungary's anti-corruption reforms*, 9 November 2022, https://k.blog.hu/2022/11/09/almost_there_a_number_of_issues_remained_unaddressed_in_hungary_s_anti-corruption_reforms

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

The Ministry of the Interior preserved its first-hand responsibility for anti-corruption coordination, but the competencies of the National Protective Service (NPS) significantly shrank. Since mid-2022, the NPS is only responsible for the prevention of crime among the staff of institutions subordinated to the Ministry of Interior and agencies under its supervision, as well as public healthcare providers. In respect of these agencies and their personnel, the NPS carries out integrity tests. Integrity tests and crime detection for the rest of Hungary's public administration shall be carried out by the Constitution Protection Office (CPO), one of Hungary's civilian secret services, overseen by the Prime Minister's Cabinet Office.¹⁷⁴ While the detailed budget and information on the staffing of the NPS are publicly available, this does not stand for the CPO. Moreover, shortcomings of the mandate to carry out crime detection remain, as the CPO is not empowered to test the integrity and the reliability of political leaders.

The State Audit Office (SAO), charged to oversee the accountability of the use of public funds is also responsible for the audit of political parties' declarations on campaign expenses. In 2022, the SAO ignored warnings by CSOs about systemic overspending.¹⁷⁵

In 2022, the Government introduced the Integrity Authority as a standalone state agency to protect the financial interests of the European Union.¹⁷⁶ The Authority cannot exercise most of its competences on its own, instead it must invite other state bodies to take action therefore its work is entirely reliant on other government agencies, which have proven reluctant to uncover and combat wrongdoing associated with the Government. The Authority's competencies are limited and only supplementary. Public documents show the planned staff is at least 50 persons, however, the president of the Authority stated that he planned to set up a body with a staff of 100-150 employees.¹⁷⁷

Besides, the Government set up an Anti-Corruption Task Force to assess and to make recommendations to improve the efficiency of the Government's anti-corruption policies. The first session of the Anti-Corruption Task Force took place in December 2022. CSOs highlighted

¹⁷⁴ Amendments were introduced by Act IV of 2022 to Act XXXIV of 1994 on the Police and to Act CXXV of 1995 on National Security Services. New rules of integrity testing and reliability assessments by the CPO are defined in Government Decree 194/2022. (V. 27.).

¹⁷⁵ K-Monitor – Political Capital – Transparency International Hungary, *Orban's Fidesz to overspend in Hungary's election campaign*, https://transparency.hu/wp-content/uploads/2022/03/KMon_PC_TI_Hu_public_billboards_EN.pdf. For a detailed analysis, see: K-Monitor – Political Capital – Transparency International Hungary, *Választási kampány 2022: törvényt sérthetett a Fidesz, nyolcszoros túlerőben a kormányoldal plakátkampánya az ellenzékkel szemben – Civil szervezetek gyorsjelentése a választási plakátkampány 2022. márciusi költségeiről* [Election campaign 2022: Fidesz may have violated the law, the poster campaign by the government's side outnumbers the opposition by eight to one – Flash report by civil society organisations on the costs of the March 2022 election poster campaign], https://transparency.hu/wp-content/uploads/2022/03/kozteruleti_kampanykoltesek_2022_gyorsjelentes_marcius.pdf.

¹⁷⁶ The Integrity Authority is governed by Act XXVII of 2022.

¹⁷⁷ *A korrupcióról annyit, hogy nem kell csinálni* [About corruption: Just don't do it], 9 December 2022, <https://telex.hu/gazdasag/2022/12/09/biro-ferenc-az-integritas-hatosag-elnoke-ez-olyan-mint-az-eszaki-sark-meghoiditasa-nincs-kitaposott-osveny>

its weak jurisdiction and the fact that the Anti-Corruption Task Force was only established after an intense period of anticorruption legislation.

Complementary to the amendments to the code on criminal proceedings, the Buda Central District Court's group of investigative judges would be assigned with an exclusive competence to examine all complaints of individuals challenging termination of investigation in corruption cases. Data proactively published by the court shows that the increase in competences has not been followed by an increase in court staff yet.¹⁷⁸

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

Concerns raised in previous contributions prevail. Besides the NPS and the SAO, other agencies, such as the tax administration, the Hungarian Competition Authority (HCA), the Public Procurement Authority (PPA), the prosecution service, the Government Control Office and the police are also tasked to combat corruption. All these agencies are exposed to undue government influence, although to different extents. Government offices are directly administered by the respective minister in charge. However, authorities with an autonomous status, that, by law, shall function independently of the executive branch of government, such as the SAO, the prosecution service, the HCA, and the PPA exhibit low levels of autonomy in performing their functions. This demonstrates best in the lack of ambition to examine and sanction incidents of wrongdoing that can be linked to government-near circles.

Legal provisions on the functional independence of these agencies, whether overseen by the Government or autonomous, have little or no impact on their performance due to the phenomenon of state capture since 2012. Captured institutions exhibit clear signs of partiality and bias in the performance of their functions.

So far, the new Integrity Authority cannot be regarded as a captured institution, however, the appointment of the Authority's board conducted by the Directorate General for the Audit of European Funds (EUTAF) and the SAO lacked transparency (e.g. name of applicants, CV, assessment criteria).

A newly adopted legislation¹⁷⁹ turned the EUTAF, which has until the end of 2022 functioned as a government agency overseen by the finance minister, into an autonomous state body. The new regulation left the competences of EUTAF unchanged. With regard to the fact that the EUTAF has not objected to the misuse of European Union funds posterior to 2010, it is yet a question if the change in its legal status will have a positive impact on this agency's performance.

To promote cooperation with OLAF, an amendment to the relevant law was also adopted, which would in the future provide financial police support in the event of OLAF investigations and foresee fines for persons and bodies that refuse to cooperate.¹⁸⁰ As of the time of this submission there is no data available to assess the effectiveness of this amendment, but

¹⁷⁸ See the webpage of the Buda Central District Court at <https://fovarositorvenyszek.birosag.hu/20211211/budai-kozponti-keruleti-birosag-archiv>.

¹⁷⁹ Changes were introduced by Act XLIV of 2022.

¹⁸⁰ Changes were introduced by Act XXIX of 2022.

some opinions suggest that it may not represent a significant improvement on the current situation.

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

There is still no publicly available information on the implementation and the milestones of the Medium-Term Strategy 2020-2022,¹⁸¹ the Government's anti-corruption website released just 10 news items, nine of which related to various training courses (the backbone of the medium-term strategy) and one example of stakeholder consultation (the healthcare rebate phase-out measures; the consultation happened after the measures had already been put in place) – no information on the implementation or monitoring of the strategy was made publicly available.¹⁸² The deadline for implementing the strategy was extended until 2023 – no further delay is expected as the Recovery and Resilience Plan sets out that the main elements of the strategy must be implemented by 31 March 2023 and the strategy as a whole by 30 June 2023. The adopted Recovery and Resilience Plan, however, contains provisions on the content of the following anti-corruption strategy and action plan which shall be adopted by 30 June 2023.¹⁸³ The new strategy is therefore expected to be more ambitious and comprehensive than the previous one, for example, it will have to include the development of ethical standards for high-level political officials (including the prevention of nepotism, the re-regulation of the revolving door phenomenon and lobbying) and the introduction of effective asset declaration procedures.

The Minister of Justice announced on 10 January 2023 that a new working group has been set up to improve the administration of justice's efficiency.¹⁸⁴ The working group consisting of the Ministry of Justice, the Ministry of Interior, the Kúria, the National Office for the Judiciary, the Prosecutor General's Office, the police and the National Tax and Customs Administration will assess criminal procedures. Anti-corruption related considerations and plans have not been shared in it.

B. Prevention

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

Integrity remains an anti-corruption buzzword for the Government, however concerns as regards the reliability of the Government's actions to enhance integrity in the public life raised in previous contributions by K-Monitor and TI-Hungary are still prevalent. In addition to existing integrity mechanisms in place at many state organs (integrity officers and reports, trainings)

¹⁸¹ Government Resolution 1328/2020 (19. VI.) on the Adoption of the Medium-Term National Anti-Corruption Strategy 2020-2022 and the Related Action Plan

¹⁸² The government website on anti-corruption is available here: <https://korrupciomegelozes.kormany.hu/>.

¹⁸³ Annex to the proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, COM(2022) 686 final, https://eur-lex.europa.eu/resource.html?uri=cellar:aaafc026-70cb-11ed-9887-01aa75ed71a1.0001.02/DOC_2&format=PDF, p. 121.

¹⁸⁴ Facebook page of Judit Varga, Minister of Justice, <https://www.facebook.com/photo/?fbid=719885862838198&set=a.428311828662271>

and to integrity and reliability testing by the NPS and newly by the CPO, a new Directorate for Internal Audit and Integrity (DIAI) was set up.¹⁸⁵ The DIAI functions under the direction of the minister in charge of regional development, but has a mandate to monitor conflict of interest declarations and raise awareness of potential incidents of conflict of interest at any national authority involved with the implementation of European Union support. The DIAI will carry out its monitoring tasks by examining random sampled interest declarations and by selecting a given number of declarations based on risk assessments. Its powers related to incidents of conflict of interests are limited to awareness raising and trainings. The DIAI has to operate a reporting platform at a designated website to receive information, including anonymous reports on incidents of conflict of interests.

As included in previous CSO contributions, there is no comprehensive regulatory ban on the “revolving door” phenomenon, however, a cooling off period is required in case of senior officials of certain authorities (such as the newly established Integrity Authority, the Supervisory Authority for Regulatory Affairs, the Hungarian Energy and Public Utility Regulatory Authority and the Hungarian Atomic Energy Authority). Moreover, Act CXXXV of 2018 on Government Administration theoretically provides for the Government to determine sectors and posts that are subject to placement restriction, however, this provision fell into disuse due to the Government’s failure to adopt the necessary regulation.

The most recent example of the revolving door phenomenon is the case of Mr László Palkovics, who, as described below, jumped from his previous ministerial position to the board of one of Hungary’s newly established public interest asset management foundations,¹⁸⁶ without having to wait for the elapse of a cooling off period. Another example is the case of Minister of Defence Szalay-Bobrovniczky, appointed this year, who owned a military plane factory (and casinos) and quickly sold them to a government-friendly businessman¹⁸⁷ (and a spin-doctor of the Government¹⁸⁸).

6. 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

After the pandemic, the Government used Russia’s war against Ukraine as an excuse to declare a state of danger and to thus enable rule by decree. Since the end of 2022, in an attempt to persuade the European Commission of its commitment toward the inclusion of stakeholders, the Government started to upload legislative drafts to a designated website.¹⁸⁹ However, consultations remain a one-way type of a tick-box exercise with no or just formal

¹⁸⁵ See Act XXVIII of 2022.

¹⁸⁶ Website of the Széchenyi University: *Magasabb dimenzióban a tudomány, innováció és vállalkozás az egyetemet fenntartó alapítványnál [Higher dimension of science, innovation and entrepreneurship at the foundation behind the university]*, 22 December 2022, <https://bit.ly/3kvBtpw>.

¹⁸⁷ *A Mol-vezérhez került a honvédelmi miniszter csehországi repülőgyára [Mol CEO acquired the Czech plane factory of the defence minister]*, 24 June 2022, <https://rtl.hu/belfold/2022/06/24/hernadi-zsolt-szalay-bobrovniczky-kristof-aero-vodochody>

¹⁸⁸ *Habony Árpád beszáll a milliárdos kaszinóbizniszbe, miután a honvédelmi miniszter kiszállt [Árpád Habony entered the casino business worth billions after the exit of the defence minister]*, 9 January 2023, <https://24.hu/belfold/2023/01/09/habony-arpad-kaszino-beszall-szalay-bobrovniczky-kristof/>

¹⁸⁹ <https://kormany.hu/dokumentumtar?categories=2>

feedback. It has also reduced the transparency of legislation by bundling completely different regulatory subjects into omnibus bills.

Deficiencies regarding the asset declarations of MPs and high-level political decision makers prevail. Under the conditionality mechanism, Hungary implemented reforms, however, these were to a great extent the reestablishment of its failed asset declaration system, that was purposely deteriorated in the summer of 2022.¹⁹⁰ A serious loophole of the reformed system already in force is the opportunity not to declare a real estate used by the declarant. Another deterioration is that incomes do not have to be disclosed as exact sums, but in broad ranges. Spousal declarations remain non-public. The new Integrity Authority received competences regarding the verification of asset declaration, however, details of the procedure are not fully elaborated. A new system of sanctions shall be elaborated by the end of 2023. It would be crucial to empower the Authority to verify asset declarations of high-level decision makers and high-risk officials (such as leaders of government agencies). In the case of MPs, the SAO should be empowered to carry out these tasks. The shortcoming following from the lack of competences of relevant institutions to proactively investigate illicit enrichments remains.

Mandatory registration of lobbyists and the obligation to disclose contact reports are still lacking and the topic of lobbying was not covered by the conditionality mechanism.

The 2022 national elections have shown that political finance remains a serious source of corruption. According to observations by K-Monitor and TI-Hungary, government parties overspend and fail to sufficiently report on their resources and expenditure.¹⁹¹ Introduction of dedicated bank accounts to be used by parties for their incomes and expenses to be regularly checked against their reports would be needed. Corruption risks arise from the lack of regulation on third party's engagement in campaigns (such as GONGOs) and the abuse of public administration or government capacities. Use of public funds and financing of political parties is monitored by the SAO, however, the SAO interprets its role narrowly and does not check reports against real political expenditures. According to the SAO, the payment obligations it imposes are not fines, therefore cannot be challenged before the court. This practice has been confirmed by the Constitutional Court.¹⁹²

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

Concerns raised in previous contributions by K-Monitor and TI-Hungary remain relevant. A new phenomenon of conflict of interests emerged pervasively in 2022.¹⁹³ Public interest asset

¹⁹⁰ K-Monitor, *A Fidesz megszüntetné a vagyonynyilatkozati rendszert [Fidesz would abolish the system of asset declarations]*, 29 June 2022, https://k.blog.hu/2022/06/29/megszunik_a_vagyonynyilatkozati_rendszer

¹⁹¹ K-Monitor – Political Capital – Transparency International Hungary, *Választási kampány 2022: törvényt sérthetett a Fidesz, nyolcszoros túlerőben a kormányoldal plakátkampánya az ellenzékkal szemben – Civil szervezetek gyorsjelentése a választási plakátkampány 2022. márciusi költségeiről [Election campaign 2022: Fidesz may have violated the law, the poster campaign by the government's side outnumbers the opposition by eight to one – Flash report by civil society organisations on the costs of the March 2022 election poster campaign]*, https://transparency.hu/wp-content/uploads/2022/03/kozteruleti_kampanykoltesek_2022_gyorsjelentenes_marcius.pdf

¹⁹² K-Monitor, *Számvevőszék vs. valóság [State Audit Office vs reality]*, 23 March 2021, https://k.blog.hu/2021/03/23/szamvevoszek_vs_valosag

¹⁹³ Sándor Léderer – Miklós Ligeti, Miklós, *New types of foundations for the preservation of power. In: Hungary Turns its Back on Europe 2. Dismantling culture, education, science and the media in Hungary, 2020–2021*,

management foundations have been substantially endowed at the expense of public resources.¹⁹⁴ While they are tasked to provide public services in the areas of higher education, healthcare and the management of public assets, public interest asset management foundations have the legal status of private law foundations. By 2022, the Government has transferred most universities and significant funding at the expense of public resources to public interest asset management foundations.

Boards and supervisory boards of public interest asset management foundations are mainly manned with government loyalists, including ministers, members of the Parliament's Fidesz-group, secretaries of state, government commissioners and mayors of Fidesz-led municipalities. Rights exercised by the boards of public interest asset management foundations include the cooptation of board members and the selection of their own replacement as well as the management of assets. The provision which allows political leaders to be board members was first removed by 13 October 2022 and reintroduced by another legislative amendment as of 1 November 2022.¹⁹⁵ Two ministers have multiple board memberships: Mr János Lázár, Minister of Construction and Traffic sits on the board of three public interest asset management foundations, and Mr Mihály Varga, Minister of Finance holds two board memberships. Six out of the eight ministers concerned receive some kind of a remuneration for their board membership. In addition, public interest asset management foundations also exemplify how the revolving door phenomenon remains unaddressed. Mr László Palkovics, former Minister of Technology and Industry, after having resigned, was elected president of the board of a public interest asset management foundation. The monthly remuneration of the president of the board at the very foundation where Mr Palkovics serves amounts to HUF 1,5 million (ca. EUR 3,820).¹⁹⁶

Minister Márton Nagy's case has shown the ineffectiveness of conflict of interest rules. After it was discovered in summer of 2022 that the minister had had another post in the corporate sector, he terminated his contract as supervisory board member of the company.¹⁹⁷ His case not only proved that the bodies assigned to examine asset declarations do not check the accuracy of data submitted by officials but that no consequences apply for breaching the law.

Decisions of the National Election Commission and the respective case-law related to the general elections of 2022 has shown that there is no strict line set by law between the use of office and public funds by MPs, government officials and campaigning for party interests.¹⁹⁸ It became a common phenomenon that public officials used their infrastructure and positions to campaign for their re-election or the election of party affiliates.

Human Platform – Hungarian Network of Academics, Budapest, 2022, http://oktatoihalozat.hu/wp-content/uploads/2022/03/hungary_turns_its_back_on_europe_2_20200308_web.pdf, pp. 18-23.

¹⁹⁴ See Act IX of 2021 and the Ninth Amendment to the Fundamental Law.

¹⁹⁵ On the removal of this specific provision, see Article 17(a) of Act XXIX of 2022, while on the re-introduction, see Article 35 of Act XXXI of 2022.

¹⁹⁶ *Palkovics László lett a győri egyetem kuratóriumának elnöke* [László Palkovics to become president of the board of the University of Győr, 8 December 2022, <https://www.gyorplusz.hu/gyor/palkovics-laszlo-lett-a-gyori-egyetem-kuratoriumanak-elnoke/>

¹⁹⁷ K-Monitor, *Lázár vette az összeférhetetlenségi szabályokat a miniszter – a mentelmi bizottsághoz fordultunk* [The minister took conflict of interest rule easy – we turned to the Impunity Committee], 15 August 2022, https://k.blog.hu/2022/08/15/lazan_vette_az_osszeferhetetlensegi_szabalyokat_a_miniszter_a_mentelmi_bizott_saghoz_fordultunk

¹⁹⁸ K-Monitor, *Election Campaign: The Hungarian Government in Action*, 19 April 2022, https://k.blog.hu/2022/04/19/election_campaign_the_hungarian_state_in_action

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

Concerns raised in the previous contributions by K-Monitor and TI-Hungary regarding the availability and the reliability of whistleblower protection remain relevant. Hungary has failed to transpose the Whistleblower Directive (2019/1937/EU) despite the aim to build on whistleblower reports when preventing EU fraud (e.g. in the case of the new Integrity Authority or the DIAI). Hungary's act on whistleblower protection (WPA) is in effect since 2014,¹⁹⁹ which covers many issues addressed in the Directive, but does not meet the detailed requirements set out in the EU-legislation in regard of the level of protection, the handling of the reports and the provided incentives – not to mention the fact that the WPA only requires the application of mandatory whistleblowing system in the public sector. Especially safeguards such as a reversed burden of proof, unbiased professional investigations, protection for private sector employees, providing protection even in the case of reporting to the public are serious shortcomings. The WPA basically requires whistleblowers to (at least partly) identify themselves. However, in case of complaints and reports against public authorities, citizens might use a designated electronic reporting channel operated by the country's Ombudsperson, the Commissioner for Fundamental Rights. Note also, that by a separate regulation government institutions' leadership is required to appoint an integrity adviser charged with the management of whistleblower reports. Integrity advisers are not independent from the hierarchy and are often tasked with the oversight of privacy practices, equal treatment policies and disciplinary procedures, a reason why their impact remains very limited. Some government institutions (PPA, Prime Minister's Office, HCA) operate their own reporting channels, but there is little information available on the reports received.

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

Public procurement and the allocation of EU funds remain interrelated sectors with high corruption risks. Related issues were addressed in the framework of the conditionality mechanism and the negotiations about the Recovery and Resilience Plan. A visible shortcoming is the high proportion of single-bid procurements, therefore the majority of the proposed measures also revolve around this issue. The government proposed to reduce the share of single-bid procurements to 15%,²⁰⁰ which is currently more challenging in case of procurements funded from national resources. In the case of EU-funded procurements, where the precondition for successful procurement is often multiple bids, the base figure is closer to the target, at 16%.

The Government has also set up a framework for public procurement evaluation and performance measurement, with the help of external experts, to examine the shortcomings of the Hungarian public procurement system²⁰¹ – its work and findings, as well as the results of

¹⁹⁹ Act CLXV of 2013

²⁰⁰ Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, COM(2022) 686 final, https://commission.europa.eu/publications/proposal-council-implementing-decision-approval-assessment-recovery-and-resilience-plan-hungary_en

²⁰¹ Government Resolution 1425/2022. (IX. 5.)

the single-bid reporting tool, are not publicly available yet. A development to be welcomed regarding transparency is the somewhat improved access to procurement data. The e-procurement portal²⁰² now allows structured, machine-readable search and bulk export of all contract award notices, however, a software (API) connecting to the entire database, including the text of all other notices, is still not provided, and it remains unclear why the reform only commits to quarterly updates. At the same time, several data types are still unavailable for bulk download, such as the related EU grant reference number, the name and identifier of unsuccessful bidders, the justification for the use of exceptional procedures, deadlines and information on direct purchasing orders based on framework agreements.

Meanwhile, a number of issues related to the shortcomings of the procurement system have not been addressed during the negotiations, such as the large share of procedures (35% of all procedures below the threshold) without publication of a contract notice in the national procurement regime, which also facilitates fake bidding; or the high prevalence of framework agreements and conditional procurements. Trust towards the integrity of public procurement is also undermined by the fact that in many cases legislation itself circumvents public procurement principles and directives: the law may allow for the use of exceptional procedures (without examining the substantive conditions), or even exempt certain purchases from the application of the procurement rules (that was the case in the COVID-related procurements).²⁰³

Rules on public procurement were also circumvented by establishing concessions, with which, for example, waste management and the operation of expressways were entrusted to actors for 35 years.²⁰⁴

Given that the majority of its members represent governmental institutions or government-close agencies, the independence of the Public Procurement Council is in doubt too.

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

The Parliament removed some of the most burdensome legal barriers of accessing information and made significant changes to the freedom of information legal framework.²⁰⁵ However, a number of issues remain unresolved.

An important commitment was the abolishment of rules that allowed data holders to respond to freedom of information (FOI) requests in a renewable 45-day period under the emergency regime established during the pandemic and maintained ever since instead of the statutory (renewable) 15-day response deadline. The temporal scope of the law dissolving the 45-day-rule²⁰⁶ is contradictory [see in more detail in Section III.C., Question 10. of the present CSO

²⁰² E-Procurement portal of the government, available at: ekr.gov.hu.

²⁰³ K-Monitor, *Public procurement measures proposed within the conditionality mechanism won't fix systemic flaws*, 17 October 2022, https://k.blog.hu/2022/10/17/public_procurement_conditionality

²⁰⁴ See Transparency International Hungary's letter to the European Commission on the highway concession case of 7 July 2021, <https://transparency.hu/en/news/letter-to-the-european-commission-on-the-highway-concession-case/>.

²⁰⁵ Changes were introduced by Act XXVIII of 2022 and Act LVI of 2022. An evaluation of the new regulations is available here: K-Monitor, *Adatigénylők figyelme! Új információszabadság szabályok 2023-tól!* [Attention data requesters! New freedom of information rules from 2023!], 4 January 2023, https://k.blog.hu/2023/01/04/adatigenylok_figyelem_uj_informacioszabadsag_szabalyok_2023-tol.

²⁰⁶ Government Decree 425/2022. (X. 28.)

contribution]. Another step forward, even though with just minimal impact in practice was the removal of the possibility for data holders to require the payment of labour-related costs in advance of servicing an FOI request. New regulations on costs and fees are in line with the Tromsø Convention.²⁰⁷

Moreover, newly adopted changes aim to improve proactive data disclosure of public contract data and foresee the imposition of fines up to HUF 50 million (ca. EUR 127,000) by the National Authority for Data Protection and Freedom of Information if information is not uploaded in the newly designed publicly accessible data repository. Unfortunately, data submission to the repository is limited to bodies being part of the state budget. Other agencies performing public services do not fall under the scope of the scheme of disclosure. Another shortcoming is that the repository will only include metadata of contracts, but not the contracts. Thus, data requests will remain an important tool to get access to information on public spending.

Furthermore, deadlines for bringing arguments and contestations in freedom of information litigations have been radically shortened, and courts are obliged in cases commenced after 1 January 2023 to schedule hearings within a shortened timeframe. Although the intention must have been to speed up court cases, this may not be the result, while shortened deadlines put an incommensurate burden on requesters who turn to the court, as fast paced court procedures are more challenging for requesters of information, who, in general, are under resourced compared to state agencies and publicly owned enterprises, being the usual defendants in freedom of information litigations.

Despite these steps, fundamental shortcomings remain in the freedom of information framework. One of this is that none of the legal changes addresses 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. Besides, new provisions on proactive publication of data do not apply to public interest asset management foundations and to state-owned enterprises, nor will they compel the publication of contracts financed at the expense of public resources. Even more disturbingly, the new rules enable entities affected by business secret to engage in court cases as third party litigants.

C. Repressive measures

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

Conclusions in the previous contributions by K-Monitor and TI-Hungary remain relevant. Important development is the adoption of a new regulation aiming to enable private prosecution of high-level cases of corruption and mismanagement, should the prosecution service fail to take appropriate action.²⁰⁸

The new regulations enable both private individuals and legal entities to submit a complaint to a judge in seek of an assessment if the termination of the investigation by an investigating

²⁰⁷ The Council of Europe Convention on Access to Public Interest Documents (CETS No. 205), also referred to as the Tromsø Convention.

²⁰⁸ Act XLIV of 2022

agency or by the prosecution service was well-founded. In response to the complaint, the judge may issue a binding order on the commencement or the continuation of the investigation. If the investigation is terminated again, the complainant may submit a second complaint, in response to which the judge may enable the complainant to act as private prosecutor and take the case before a court of trial. The complainant has one month from the date of termination of the investigation to submit the complaint or to indict as private prosecutor and may only access the anonymized decision on the termination of the investigation and the anonymized excerpt of the casefile.

K-Monitor and TI-Hungary have warned that the very limited accessibility of casefiles and the stringently short procedural deadlines make private prosecution practically impossible.

Moreover, private prosecutors of corruption may not appeal against the court's decision, while the law enables the court of trial to dismiss the case without a hearing if it finds the indictment by the private prosecutor unfounded. Giving more rights as regards appeals to the defendant than to the private prosecutor clearly violates the principle of equality of arms.

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 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.

This new special remedy process, though breaks the monopoly held by the prosecution service to bring cases of corruption before justice, due to the procedural hindrances, seems unsuitable to provide a meaningful solution if the state fails to prosecute wrongdoing or abuse of power.

In 2022, the NPS continued to enforce regulations that ban the offer and acceptance of bribes in the healthcare system. Accordingly, the NPS conducted 287 processes relating to healthcare providers, involving 195 healthcare professionals and 291 clients. The NPS submitted criminal complaints in 75 cases, including 11 cases of accepting a bribe. Amounts of bribes ranged between 10 thousand and 800 thousand forints. In 2022, the NPS conducted 98 reliability assessments, resulting in two criminal complaints for misbehaviour.²⁰⁹

12. 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

Most concerns raised in our previous submissions still prevail. Access to information related to the implementation of EU funds is limited (contracts, information on subcontracting and data on project evaluations are not disclosed, the Government's official database on EU funds²¹⁰ does not allow bulk access or access through an API). The managing and the auditing authorities involved in monitoring and overseeing the use of EU funds under shared management fail to publish comprehensive information in relation to irregularity processes, sanctions and recovered assets. The database on agricultural subsidies under the CAP was

²⁰⁹ Information provided here is available at the webpage of NPS: <https://www.nvsz.hu/2/>.

²¹⁰ <https://www.palyazat.gov.hu/>

comprehensive and more detailed than in many other Member States until last year. Its main shortcoming was the lack of information on the plots the subsidies are applied for. A new piece of legislation²¹¹ adopted in December 2022 introduces the term “funding secret” and referring to compliance with Commission Implementing Regulation (EU) 2022/128 withdraws the addresses of beneficiaries from the data types to be published, without making the publication of unique IDs compulsory. This will hinder analysts and watchdogs to connect subsidy data among beneficiaries and throughout several years. Detailed statistical information on corruption and related offenses is available only on request submitted to the Ministry of Interior or to the prosecution service, both charged with the keeping of crime statistics (basic data on the volume of corruption offenses is available in the annual reports of the Prosecutor General, presented to the Parliament). Court decisions are published in anonymised form, and statistics on criminal convictions are managed by the National Office for the Judiciary, while these are published by the Central Statistical Office.

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

Conclusions relating to impunity of perpetrators of high-level corruption, which results from partiality in the work of law enforcement agencies and of the prosecution service, underlined in previous contributions by K-Monitor and TI-Hungary remain relevant. Most recently, the case related to an EU funded project called “Bridge to the Word of Labour” illustrates how prosecution of high-level corruption is hindered. In this case the tax administration terminated the process in 2022 after having investigated into supposed subsidy fraud for seven years in lack of evidence of a criminal conduct. The prosecution service approved this decision, albeit both the European Commission (OLAF) and the Hungarian government uncovered signs of serious misconduct. The European Commission ordered the repayment of the entire project budget (HUF 1.5 billion). The decision on the termination of the investigation cites the lack of evidence to sustain that the intention of those in charge of the implementation of the project was to misappropriate the grant. According to the investigating agency, what OLAF took for subsidy fraud was nothing but a series of financial irregularities caused by non-intentional failure to properly implement the project. The beneficiary of the grant was the National Roma Self-Government, whose president during the grant period, Mr Flórián Farkas used to serve as a governing party MP. Mr Farkas was not interrogated during the process. The Prosecutor General, in response to a question by an opposition MP, condoned the lack of interrogation of Mr Farkas by saying that none of the persons interrogated during the process referred to Mr Farkas as the instigator of their conduct.²¹²

²¹¹ Act LXV of 2022

²¹² The question was introduced under the filing number K/2387 (<https://www.parlament.hu/irom42/02387/02387.pdf>), while the response by the prosecutor general was introduced under the filing number KSB.883/2015/106 (<https://www.parlament.hu/irom42/02387/02387-0001.pdf>).

The case of Ms Margit Veres²¹³ serves as another example of impunity of high-level corruption.²¹⁴ In 2018, Ms Margit Veres was sentenced to five years imprisonment for bribery. According to the court's verdict, Ms Margit Veres, the town clerk in Balmazújváros at the time of commission, took bribes in the amount of HUF 5 million (ca. EUR 12,700) aiming to arrange for state subsidies to an entrepreneur. This entrepreneur testified that Ms Margit Veres was brokering the bribe, which the entrepreneur wanted to give to Mr István Tiba, mayor of the town, and, simultaneously, a Fidesz MP. The prosecution service did not indict Mr István Tiba, who, as a witness, said in his defence that the entrepreneur only intended to borrow the money, and not to bribe him. Mr János Áder, the former President of the Republic pardoned Ms Margit Veres in 2022 in response to her pardon petition of 2018. As a pardon petition does not interrupt or delay the enforcement of criminal sanctions, the Ministry of Justice must have granted a deferral to Ms Margit Veres.

14. Information on effectiveness of non-criminal measures and of sanctions on both public and private offenders

Concerns raised by K-Monitor and TI-Hungary related to the low efficiency of asset recovery and the lack of information on follow-up measures to be taken by domestic authorities to uncover and sanction supposed irregularities found by OLAF remain relevant.

Another cause for concern is the lack of compliance with court decisions awarded in freedom of information litigations. Non-compliance occurs mostly in high-level cases, where the publication of sensitive information would embarrass the Government. Under the Criminal Code, failing to comply with the court's final binding judgment ordering to reveal public interest information is a form of contempt of court and qualifies a misdemeanour. Still, police and prosecution tend to ignore these unlawful conducts and deny investigating cases. This was exemplified in a freedom of information litigation won by TI-Hungary against the National Institute of Pharmacy and Nutrition, where the court obliged the Government to open up the medical documents relating to COVID-19 vaccines purchased from Chinese and Russian makers. Despite the court's ruling, the Government removed the most sensitive parts from the document. TI-Hungary reported this case of contempt of court to the police,²¹⁵ which unlawfully denied investigation. By dismissing TI-Hungary's complaint, the prosecution service condoned the wrongful negligence of the police.²¹⁶

²¹³ *Titokban kaphatott kegyelmet az öt év börtönre ítélt volt balmazújvárosi polgármester [Ex-mayor of Balmazújváros must have been pardoned secretly]*, 6 October 2022, <https://24.hu/belfold/2022/10/06/veres-margit-volt-balmazujvarosi-polgarmester-titok-kegyelem-borton-itelet-ader-janos-koztarsasgi-elnok-novak-katalin/>

²¹⁴ See e.g.: Civitas Institute – Transparency International Hungary, *Black Book II. – Corruption and State Capture in Hungary*, https://transparency.hu/wp-content/uploads/2022/02/TI_Hu_Black_Book_II_ENG.pdf, pp. 109-110.

²¹⁵ Transparency International Hungary, *Feljelentést tettünk az OGYÉI-vel szemben, miután a jogerős ítélet ellenére részben kitakarva kaptuk meg az orosz és kínai vakcinák dokumentációját [We turned to the police after we received redacted documentations on Russian and Chinese vaccines despite final court ruling]*, 21 December 2021, <https://transparency.hu/hirek/feljelentest-tettunk-az-ogyei-vel-szemben-miutan-a-jogeros-itelet-ellenere-reszben-kitakarva-kaptuk-meg-az-orosz-es-kinai-vakcinak-dokumentaciojat/>

²¹⁶ Transparency International Hungary, *Panasszal fordultunk az ügyészséghez, miután a BRFK elutasította a feljelentésünket az OGYÉI által kiadott, és részben kitakart iratok ügyében [We filed a complaint to the prosecution after the police rejected our report on the partially redacted documents released by OGYÉI]*, 7 January 2022, <https://transparency.hu/hirek/panasszal-fordultunk-az-ugyeszseghez-miutan-a-brfk-elutasította-a-feljelentésünket-az-ogyei-által-kiadott-es-reszben-kitakart-iratok-ugyeben/>

In an incident of non-compliance, the plaintiff may commence a bailiff process against the defendant, however, in freedom of information lawsuits this is not an effective tool, as the only coercive method bailiffs can employ to incentivise compliance with the court's ruling is the imposition of fines. The maximum amount of money to be imposed is HUF 500,000 (ca. EUR 1,300), which does not deter state agencies from non-compliance, even if the fine can be reimposed.²¹⁷

Failing to comply with the proactive disclosure rules of Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information has not had sanctions. Proactive disclosure of public interest data therefore remained non-enforceable. From March 2023, the National Authority for Data Protection and Freedom of Information might impose administrative fines in such cases. However, companies owned by state or municipality, public interest asset management foundations and other entities performing public duties without a status in the state budget do not fall under the scope of Authority's power.²¹⁸

15. Other

The Government keeps on promoting the economic interests of crony elites at the expense of public resources. In 2021, 4iG Ltd. owned by the government-close oligarch Gellért Jászai acquired stocks of the state-owned broadcasting company Antenna Hungária Ltd., which the Government had repurchased shortly before this deal from its previous owner. 4iG Ltd. made a series of capital increases in Antenna Hungária Ltd., as a result of which its share in Antenna Hungária Ltd. exceeded 75% by April 2022. As the acquisition took place without the purchase of state-owned stocks of the Antenna Hungária Ltd., regulations expecting open tendering of state assets could be circumvented. As a next step, in 2022, the Government announced that it was going to buy 49% of Vodafone Hungary Ltd., Hungary's second largest mobile telecommunications company, while 4iG Ltd. was to buy the rest of the shares of Vodafone Hungary Ltd. In January 2023, the government first undertook to grant suretyship for a 425 million euros loan to be taken out by the state-owned Hungarian Development Bank with the aim to finance the purchase of the shares of Vodafone Hungary Ltd. by 4iG Ltd.²¹⁹ In addition, the Government, by a decree, exempted this transaction from the HCA's cartel oversight.²²⁰

Oligarchs, such as Mr Jászai often use private equity funds to hide their assets from the public. Such funds are normally established for investment purposes. In Hungary, oligarchs increasingly apply this scheme for reasons of secrecy, just as if they were offshore companies. Thus, in many cases the investor owning the shares of the fund also controls the fund manager, that is supposed to act autonomously. The ruling²²¹ of the CJEU that declared rules on open beneficial ownership registers invalid will likely lead to even less transparency

²¹⁷ Hungarian Helsinki Committee, *Hiába a jogerős ítélet, ha az államot nem érdekli* [Final court decisions do not make a difference if the state does not care], 9 December 2022, <https://helsinkifigyelo.444.hu/2022/12/09/hiaba-a-jogeros-itelet-ha-az-allamot-nem-erdekl>

²¹⁸ Changes were introduced by Act XXVIII of 2022 and Act LVI of 2022. An evaluation of the new regulations is available here: *Adatigénylők figyelme! Új információszabadság szabályok 2023-tól!* [Attention data requesters! New freedom of information rules from 2023!], 4 January 2023, https://k.blog.hu/2023/01/04/adatigenylok_figyelem_uj_informacioszabadsag_szabalyok_2023-tol.

²¹⁹ See Government Resolution 1001/2023. (I. 8.).

²²⁰ See Government Decree 2/2023. (I. 9.).

²²¹ Access Info Europe, *Open Beneficial Ownership Register Rules Declared Invalid by EU's Highest Court*, 23 November 2022, <https://www.access-info.org/2022-11-23/open-bo-invalid-eu-court/>

regarding the owners²²² of these funds. The economic news site G7 estimated that by 2021, 6.5% of Hungarian-owned companies' profits were realized in private equity funds.²²³

Another recurring issue is the Government's aim to limit the competences and funds of local municipalities, especially those ruled by opposition parties. This was already the case when the Government took away certain tax incomes from municipalities as a COVID response policy, while later compensating some of them based on political affiliation. In 2022 the Government exempted local governments from the freezing of utility prices. As a result, utility costs increased for some by up to ten times. Again, a compensation scheme was introduced that favoured municipalities led by Fidesz mayors. According to calculations by K-Monitor, Fidesz-led municipalities received approximately HUF 9,400 on average per inhabitant as a compensation, while opposition-led municipalities received on average only HUF 4,650.²²⁴

²²² Direkt 36, *Database exposes Hungarian oligarchs hiding huge fortunes*, 19 January 2023, <https://www.direkt36.hu/en/oriasi-vagyonokat-rejtettek-el-kormanykozeli-korok-de-most-egy-hivatalos-adatbazis-leleplezte-oket/>

²²³ *Mészáros-féle alapokat gazdagítja a magyar cégek profitjának 6 százaléka* [Mészáros' funds benefit from 6% of profits of Hungarian companies], 14 February 2022, <https://g7.hu/vallalat/20220214/a-meszaros-fele-alapokat-gazdagitja-a-magyar-cegek-profitjanak-6-szazaleka/>

²²⁴ K-Monitor, *44 milliárd önkormányzatoknak: kompenzáció Fidesz-módra* [HUF 44 billion: Fidesz-way compensation], 3 January 2023, https://k.blog.hu/2023/01/03/44_milliard_az_onkormanyzatoknak_rezsivedelem_fidesz-modra



III. MEDIA FREEDOM AND PLURALISM

1. Information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism

The recommendations received in the 2022 Rule of Law Report had no consequences in the Hungarian media landscape.

The Media Council and the public service media still serve the interest of the ruling party. They have done nothing to protect the integrity of the 2022 election campaign. The OSCE's analysis of the campaign clearly showed that the public service media and the pro-government commercial media were heavily biased towards the governing parties.²²⁵ However, the Media Council did not launch an investigation to verify the fair and balanced coverage, neither during the campaign nor afterwards. Similarly, it did not initiate proceedings on the occasions when the public media broadcast Russian propaganda messages about Russian aggression against Ukraine.

The practice of state advertising spending did not change at all, it still favours the pro-government media outlets. No steps have been taken to improve the transparency of state advertising, the exact spending decisions are hidden behind a public procurement framework agreement.

It should be noted that the new rules on the regulator in the Audiovisual Media Services Directive did not create any legislative constraints for the Hungarian legislator, and the Media Council's political dependence was not reduced at all by the new directive. The draft European Media Freedom Act in its current form does not bring any improvement to the Hungarian situation either.

A. Media authorities and bodies

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

The issues raised in our previous contributions to the Rule of Law Reports still prevail. The National Media and Infocommunications Authority (hereinafter: Authority) is a convergent

²²⁵ Parliamentary Elections and Referendum, 3 April 2022, <https://www.osce.org/odihr/elections/hungary/511441>

authority, which handles as regulator of the telecommunications and media markets within a single body. The Media Council is part of the Authority; it has a distinct competence in the media field.

In 2022, the Authority did not have any high-profile cases. However, it continued to support the expansion of Fidesz-affiliated radio stations by concluding another four frequency contracts with Karc FM, a KESMA (Central European Media and Press Foundation) affiliated station.

The new president of the Media Council gave an interview to 24.hu news portal and he questioned whether media independence can exist at all: *“Even in the West, there are brave authors who write that media independence is a myth of its own making. After all, it always works in the interests of the owner and other interest groups, and the journalist is necessarily biased.”*²²⁶ This says a lot about the president’s perception of his role.

In 2023, the Authority’s budget is HUF 58.6 billion (ca. EUR 147 million). The Parliament approves the Media Council’s budget as part of the Authority’s integrated budget. The Media Council’s operating budget in 2023 is HUF 621 million (ca. EUR 1.5 million).²²⁷ These amounts are 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 appointment of the president of the Authority’s and the appointment of the head of the Media Council (the Authority’s regulatory body) remains unchanged despite sustained critique. The president of the Authority, who is by law the president of the Council too, regulates²²⁸ the media services in the latter role. The president of the Authority is appointed by the President of the Republic for nine years²²⁹ on the advice of the Prime Minister.²³⁰ Once appointed, they become the only nominee²³¹ for the presidency of the Media Council. Though the Parliament elects the president of the Media Council with a two-thirds supermajority, the Parliament’s role is limited to a mere right to reject the nominee.²³² More substantive parliamentary control is present in the election of the four other members of the Council (each

²²⁶ See: <https://24.hu/belfold/2022/02/21/koltay-andras-nmhh-elnok-mediatanacs-interju/>.

²²⁷ Act LXXXI of 2022 on the Consolidated Budget of the National Media and Infocommunications Authority for 2023

²²⁸ Self-regulatory bodies also contribute to the work of the Council as co-regulators (their decisions can be overruled by the Council). Their head’s/members’ mandate is regulated by their own statute.

²²⁹ The procedure is laid out in Act CLXXXV of 2010 on Media Services and Mass Media, Article 111/A.

²³⁰ The Prime Minister nominates after receiving nominee suggestions of the Public Service Body and other organisations of electronic communications, media service providers, program distributors, journalists. These suggestions are not binding, the Prime Minister is free to nominate someone else. The nominee must have the right to stand for election in parliamentary elections, clean criminal record, no restrictions on exercising an occupation aligned with the president’s activities related to spent or unspent convictions, a higher education degree, and either at least five years of work experience in regulatory supervision of the media/press services or electronic communications, or an academic degree in the field of media or electronic communication, or 10 years higher education teaching experience.

²³¹ Act CLXXXV of 2010 on Media Services and Mass Media, Article 125(1)

²³² In that case, the rejected nominee loses their 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.

for nine years), as their election is based on the proposal of an ad hoc committee consisting of one member of each parliamentary faction.²³³

2022 was the first entire calendar year within the nine-year mandate of the president elected in 2021.²³⁴ In his first year, he expressed his satisfaction with the diversity of media outlets.²³⁵ Meanwhile, the Media Council did not impose a fine on the major TV channel TV2 which made its own political video campaign available online, featuring its news reporters endorsing Viktor Orbán in the general parliamentary election campaign and urging viewers to vote for him.²³⁶ The Media Council also refused to investigate and take a stand on the public complaints it received on Russian propaganda infiltrating TV channels of the public service media – however, it expressed dissatisfaction with related public criticism of the public service media.²³⁷ The lack of a (major) fine in these cases suggests the Media Council remains silent over politically sensitive cases.²³⁸

The Public Service Public Foundation's²³⁹ Board²⁴⁰ consists of elected and delegated members with a nine-year-long term.²⁴¹ The Parliament elects six members to the Board (three

²³³ Act CLXXXV of 2010 on Media Services and Mass Media, Article 124(3)

²³⁴ Appointed four months earlier than the parliamentary election due to the sudden resignation of the former president whose term would have just expired after the election potentially leaving room for a candidate not nominated by Viktor Orbán should the election turned out otherwise.

²³⁵ *NMHH-elnök: nem igaz, hogy a kisvárosi és a falusi emberek csak egyféle híradót néznek és kizárólag a megyei napilap híreit fogyasztják* [President [of the Authority]: it is not true that people in small towns and villages watch only one type of news and consume only the news of the county daily], 23 December 2022, https://nepszava.hu/3179910_koltay-andras-nmhh-mediafogyaszta

²³⁶ See e.g.: *Ismét Orbán Viktor mellett agítálnak a TV2 műsorvezetői, holott korábban már hasonló miatt bírságot kapott a médiaszolgáltató* [TV2 presenters once again campaign for Viktor Orbán, even though the media service provider has already been fined for similar actions], 28 March 2022, <https://media1.hu/2022/03/28/ismet-orban-viktor-mellett-agitalnak-a-tv2-musorvezetoi-holott-korabban-mar-hasonlo-miatt-birsagot-kapott-a-mediaszolgáltato/>.

²³⁷ See e.g.: *Bírálja a Médiatanács az ellenzék, amiért kritizálta az orosz propagandát terjesztő közmédiát és Papp Danielt, az MTVA vezérigazgatóját* [The Media Council criticises the opposition for criticising the public media for spreading Russian propaganda and Dániel Papp, the CEO of MTVA], 1 March 2022, <https://media1.hu/2022/03/01/biralja-a-mediatanacs-az-ellenzeket-amiert-kritizalta-az-orosz-propagandat-terjeszto-kozmediat-es-papp-danielt-az-mtva-vezeregazgatojat/>.

²³⁸ In the previous election campaign period, the same channel was fined for airing a same political ad on TV by the National Election Commission for unlawful campaign that is violating the media law. In the 2022 case, the National Election Commission has not found it to be a violation (<https://www.valasztas.hu/hatarozat-megjelenito/-/hatarozat/268-2022-nvb-hatarozat-dr-k-zs-maganszemely-es-a-magyar-szocialista-part-1114-budapest-villanyi-ut-11-13-a-tovabbiakba-beadvanyozo2-altal-benyujtott-k>) since the video was aired online, on the website of the running TV program *Tények* [Facts] and the National Election Commission argued that it falls out of the scope of the media law.

²³⁹ This 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 press, independence of information, the right to information, universal and national culture and diversity of opinions and culture” (according to its statute, available at <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 (available at: <http://www.kszka.hu/attachments/article/2084/kozszolgaltati-kodex-20210601.pdf>) 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 the 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).

²⁴⁰ 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.

²⁴¹ The procedure is laid out in Article 86 of Act CLXXXV of 2010 on Media Services and Mass Media.

nominated by the governing parties and three by the parties of the opposition),²⁴² while another member and the president is delegated by the Media Council for nine years.²⁴³ Membership ceases with conflict of interest, 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 deprivation of civic rights).²⁴⁴

The Public Service Body's role is to oversee whether public service requirements are met by the state media.²⁴⁵ Its members are delegated for a three-year term by 15 CSOs²⁴⁶ unrelated to the media. On 8 December 2022 the Authority issued a call²⁴⁷ for CSOs to apply for eligibility to delegate members for the next three-year term. Terms did not change in 2022: CSOs with expertise and/or experience in the media are still ineligible to apply.

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

The situation has remained unchanged since the latest CSO contribution to the Rule of Law Report was submitted.²⁴⁸ The Hungarian media law created a co-regulation system as an alternative to the Media Council's control (Media Council is the media authority in Hungary). The law authorised media market players to set up self-regulatory bodies which have the authority – with exclusive jurisdiction – to implement rules relating to media content. Media law provides that the Media Council may conclude administrative agreements with the co-regulation bodies. Based on these agreements, the self-regulation body handles a specified range of cases within the official authority's jurisdiction and performs other functions relating to media administration and media policy. In this framework the responsibility of self-regulatory bodies is to decide upon complaints concerning the activities of service providers, to arbitrate disputes between media enterprises and to monitor the activities of providers.

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

The co-regulation system never really took off, however, and it was obvious that no one felt confident that it would be worthwhile to resort to this forum for settling disputed issues. The co-regulation procedure is not independent of the authorities since – based on the underlying legal agreement – the Media Council provides the co-regulatory bodies with financial support. Nor is it independent of the market, since the market players delegate members to serve on these bodies. Furthermore, the market players can also keep track of who lodged complaints

²⁴² Act CLXXXV of 2010 on Media Services and Mass Media, Article 86(2)

²⁴³ Act CLXXXV of 2010 on Media Services and Mass Media, Article 86 (6)

²⁴⁴ Act CLXXXV of 2010 on Media Services and Mass Media, Article 88(4)-(7)

²⁴⁵ 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).

²⁴⁶ According to Article 97(2) and Annex I of the Act CLXXXV of 2010 on Media Services and Mass Media, organisations who can delegate members to the Public Service Body include churches, some CSOs (e.g. one that represents families), the Olympic Committee, the Chamber of Trade and Industry, academic bodies etc. No professional media or journalist organisation is represented.

²⁴⁷ https://nmhh.hu/cikk/234208/Uj_tagokat_var_a_Kozszolgaltati_Testulet

²⁴⁸ *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, January 2022, https://mertek.eu/wp-content/uploads/2022/01/HUN_NGO_contribution_EC_RoL_Report_2022.pdf, pp. 39-40.

against them. Hence, it was in no one's interest to launch such proceedings. The market players feel that it is better to keep the peace and avoid a scenario where they would have to delve into each other's disputes, and also that it would not be a good idea to alert the authority to problems. Civic organisations and citizens also do not report issues, either because they do not know the system or because they do not want to legitimise a regulatory practice in which the Media Council plays a role.

In assessing the effectiveness of the co-regulatory system, it is very telling that 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 Hungarian Publishers' Association, the 2020 annual report is the last available report at the beginning of 2023.²⁴⁹ 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.

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 our 2022 report still prevail.²⁵⁰ 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.²⁵¹ 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.²⁵²

At the beginning of the Orbán-system (between 2010 and 2014), the overall volume of state advertising spending was not much higher than in the foregoing period, but it was much more centralised than previously. During the 2014–2018 term there was a massive surge in the total amount of spending. Several pro-government investors bought up media companies and they were heavily financed by state sources. In 2018 the pro-government media became centralized again with the creation of KESMA, but state advertising continues to be published in government-friendly media.²⁵³ The surge in the advertising volume owes primarily to the Government's campaigns. The billions spent on various state communication campaigns

²⁴⁹ See: <https://tarsszabalyozas.hu/archivum/beszamolo/>.

²⁵⁰ *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, January 2022, https://mertek.eu/wp-content/uploads/2022/01/HUN_NGO_contribution_EC_RoL_Report_2022.pdf, pp. 40-41.

²⁵¹ Attila Bátorfy – Ágnes Urbán, State advertising as an instrument of transformation of the media market in Hungary, *East European Politics*, 2020, 36:1, pp. 44-65, DOI: 10.1080/21599165.2019.1662398

²⁵² Mertek Media Monitor and its partners turned to the European Commission with a state aid complaint. See here: <https://mertek.eu/en/2020/09/07/ec-complaints/>.

²⁵³ For data visualization about state advertising from 2006, see: <https://mertek.atlatszo.hu/allamihirdetesek/>.

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). The latest framework agreement,²⁵⁴ concluded in 2022, stipulates in Point 10.7 that the agreement can be renewed twice, each time for a maximum amount of HUF 75 billion. The contract is therefore worth up to HUF 225 billion (ca. EUR 562 million).²⁵⁵

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.²⁵⁶ The contracts of this consortium are not published, there is no information how these state sources are spent in the media market.

The social media spending was high, especially in the first quarter of 2022, in the campaign of the parliamentary elections. A fund (Megafon) created for pro-government social media influencers spent more than HUF 1 billion (ca. EUR 2,5 million) on Facebook and all sponsored influencers echoed the government propaganda. The financial background of Megafon is not known.²⁵⁷

State advertising spending lacks transparency. The Hungarian state does not publish a database about its advertising activity. Majority of the social media platforms do not publish data about their advertisers.

6. Safeguards against state/political interference

Article 7 of the so-called Media Constitution²⁵⁸ 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.

²⁵⁴ <https://ekr.gov.hu/ekr-szerzodestar/hu/szerzodes/499859>

²⁵⁵ Based on the data of the Hungarian Advertising Association the size of the communication market in Hungary was HUF 524 billion (ca. EUR 1.3 billion) in 2021. Obviously, the framework agreement is very significant in relation to the size of the Hungarian market.

²⁵⁶ 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.

²⁵⁷ See e.g.: *Újabb álomhatárt értünk el: egymilliárd forint felett a Megafon facebookos reklámköltése [Another record high: Megafon's Facebook ad spend is over one billion HUF]*, 28 March 2022, <https://telex.hu/belfold/2022/03/28/ujabb-alomhatart-ertunk-el-egymilliard-forint-felett-a-megafon-facebookos-reklamkoltese>.

²⁵⁸ Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content

As also pointed out by the European Commission's previous Rule of Law Reports, there are serious governance and transparency problems around the public service media.²⁵⁹ The Hungarian public media operate in the framework of a very complex and confusing institutional structure. The Media Service Support and Asset Management Fund (hereinafter: 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 Ltd. (hereinafter: Duna).

According to the media law, Duna is the public service media provider and it is more or less appropriately subject to external control mechanisms (Board of Public Service Public Foundation, Public Service Body, Public Service Fiscal Council), but in reality, the oversight is merely a façade since it has no resources. And then there is the Fund, which disposes of taxpayer funds without being subject to any meaningful independent control. The Fund is subject to the review of a single organisation: the Media Council. Budget of Duna for 2023 is HUF 2.1 billion (ca. EUR 5.3 million), while the budget of the Fund is HUF 127 billion (ca. EUR 318 million).²⁶⁰ It is obviously hacking of the media law.

The extension of radio licence is an arbitrary decision of the Media Council. According to the Act CLXXXV of 2010 on Media Services and Mass Media, a media service provider may not establish a right to renew a media service right, and the Media Council is not obliged to conclude a contract based on an initiative to renew a media service right. Repeated infringements by the media service provider exclude the possibility of renewal, even if the infringements are of a very minor nature, e.g. a minor exceeding of advertising time. In the case of Tilos Rádió, the Media Council did not renew the radio's licence in 2022 because the Media Council found some problems (age rating and broadcasting time, data providing) in the previous licencing period between 2015 and 2022.²⁶¹ Similar repeated breaches of the law by other radio stations did not lead to a refusal to renew, despite the wording of the law. The practice of the Media Council is arbitrary and non-transparent.

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 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.²⁶²

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.

²⁵⁹ 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/>.

²⁶⁰ Act LXXXI of 2022 on the Consolidated Budget of the National Media and Infocommunications Authority for 2023

²⁶¹ See: <https://fom.coe.int/en/alerte/detail/107637534>.

²⁶² 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>

There are no real ownership constraints in the Hungarian media legislation, it is allowed to build a big media empire. Article 171 of Act CLXXXV of 2010 on Media Services and Mass Media 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 enterprises or the affiliates of two groups of companies bear 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 Hungarian Competition Authority. 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.²⁶³

The Government has a possibility to avoid the investigation of the Media Council and the Hungarian Competition Authority. 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”. It is a tool to avoid the investigation of authorities.

C. Framework for journalists’ protection

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

The Act on Freedom of the Press²⁶⁴ formally provides for the “right to professional independence” of the persons working for media content providers from the owner or sponsor of the media content provider, and from advertisers. This right has no effective enforcement mechanism. Newspapers and media sites are either indirectly financed by the Government (as a major advertiser²⁶⁵), or they barely survive in an advertising scene dominated by the Government, maintaining substantial independence by crowdfunding. Journalistic independence in the state media is entirely taken away. Evidence shows governmental control over the Hungarian state news agency.²⁶⁶ Journalists formerly working at “public service” state media stated in a documentary²⁶⁷ that they had worked under direct political control.²⁶⁸

²⁶³ Ibid.

²⁶⁴ Act CIV of 2010 on Freedom of the Press and the Basic Rules of Media Content, Article 7(1)

²⁶⁵ For instance, in the case of nominally independent papers owned by KESMA.

²⁶⁶ The detailed report from the investigative portal Direkt36 shows the evidence:

<https://www.direkt36.hu/en/kiszivargott-iratok-mutatjak-hogyan-diktalnak-orbanek-a-nemzeti-hirugynoksegnek/>.

²⁶⁷ https://www.youtube.com/watch?v=EjngDVtU4ik&ab_channel=444.hu

²⁶⁸ One journalist recalled that she was assigned to make a report on “migrants” with a message that those people are “bringing diseases that we have already overcome” and was told to “find a doctor who can tell this as an expert” so the channel found one that told to the camera the sentences that the editor was “asking for” word by word (11:20-11:54). Another former journalist at MTVA recounted that there could be no content that is “negative about Russia” (12:59-13:16) and that keywords for the contents were determined by the ministry (13:46-14:10).

In 2021 it came to light that numerous journalists were victims of state-approved secret surveillance by the abuse of the spyware Pegasus.²⁶⁹ To this date, no steps were taken by the Government to offer protection to the affected journalists. The Government did not even apologize, despite having acknowledged the surveillance.²⁷⁰ The National Authority for Data Protection and Freedom of Information (DPA) launched an investigation and found nothing against the law or objectionable about the surveillance of journalists.²⁷¹ The Hungarian Civil Liberties Union represented victims who filed complaints to the ministers responsible for secret services (Constitution Protection Office, Information Office) who found no violation of law either. Victims appealed these findings to the National Security Committee of the Parliament, which confirmed the ministerial findings or, in one case, did not even investigate the case. Victims launched several lawsuits to learn more about their own surveillance, without success so far.²⁷²

Journalists are still denied direct access to public institutions, and this practice is supported by the Government. At the height of the pandemic, the Ministry of Human Resources has denied journalists entry into hospitals, preventing the independent media reporting on the COVID-19 situation. An independent news site, Telex won a lawsuit²⁷³ against the ministry: the court stated hospital directors, and not the ministry, have authority to make decisions about entry. A week after the court judgment, a new government decree empowered the Government's Operative Board²⁷⁴ to "establish a procedure in which hospitals maintain communications with the media"²⁷⁵ including granting entry.

Journalists cannot report from public court trials if they fail to indicate precisely, to the judge's satisfaction, to which medium they are reporting to thus excluding freelance and/or citizen journalists from the opportunity to report. There is no legal remedy against the judge's decision.

²⁶⁹ See: Direkt36, *Hungarian journalists and critics of Orbán were targeted with Pegasus, a powerful Israeli cyberweapon*, 19 July 2021, <https://www.direkt36.hu/leleplezodott-egy-durva-izraeli-kemfegyver-az-orban-kormany-kritikusait-es-magyar-ujsgirokat-is-celba-vettek-vele/>.

²⁷⁰ See e.g.: https://nepszava.hu/3136996_kosa-lajos-elismerte-hogy-a-kormany-hasznalja-a-pegasust, <https://444.hu/2021/11/11/gulyas-elismerte-a-pegasus-botranyrol-a-megjelent-ugyek-kozott-van-olyan-aminek-van-valosagalapja>, https://www.washingtonpost.com/investigations/2021/07/18/responses-countries-pegasus-project/?itid=lk_inline_manual_22.

²⁷¹ <https://www.naih.hu/adatvedelmi-jelentesek/file/486-jelentes-a-nemzeti-adatvedelmi-es-informacioszabadsag-hivatalbol-inditott-vizsgalatanak-megallapitasai-a-pegasus-kemsoftver-magyarorszagon-torteno-alkalmazasaval-osszefuggesben>, <https://www.naih.hu/hirek/424-koezlemeny-a-naih-altal-a-pegasus-kemsoftver-magyarorszagon-toerteno-alkalmazasaval-osszefuggesben-vegzett-vizsgalatarol-szolo-osszefoglalojaval-kapcsolatban>

²⁷² <https://hclu.hu/en/pegasus-whats-new>, <https://www.washingtonpost.com/world/2022/01/28/hungary-pegasus-legal-action/>, <https://www.theguardian.com/world/2022/jan/28/hungarian-journalists-targeted-with-pegasus-spyware-to-sue-state>

²⁷³ The court decided on 27 January 2022, see e.g.: *Nem tilthatja ki a sajtót a kórházakból a minisztérium* [The ministry cannot ban the press from hospitals], 2 February 2022, <https://telex.hu/belfold/2022/02/02/telex-gyozelem-birosag-emmi-jogtalanul-utasította-ki-a-korhazakból-a-sajtót>.

²⁷⁴ A governmental body making all the epidemiological decisions during the COVID-19 pandemic entitled by the ruling of Government to do so in the state of danger.

²⁷⁵ Government Decree 33/2022. (II. 4.). See also e.g.: *Pár nappal a Telex pernyerése után a kormány rendeletben írta felül a bírósági ítéletet arról, ki engedheti be a kórházakba a sajtót* [A few days after Telex won a lawsuit, the Government overturned a court ruling on who can enter hospitals to allow the press], 4 February 2022, <https://telex.hu/belfold/2022/02/04/kormanyrendelet-korhazak-sajto-koronavirus-per-itelet>.

Even in the time of the Russian aggression in Ukraine, the Prime Minister usually refuses to answer questions addressed to him by independent media outlets²⁷⁶ – although in practice, he sets the direction of foreign policy. The few cases when the Prime Minister also attends government press conferences are still the exception.

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.²⁷⁷

Hungary is still not in compliance with the European Convention on Human Rights regarding regulations on authorizing state surveillance. In particular, the Government failed to make any efforts²⁷⁸ to implement the 2016 ECtHR judgment *Szabó and Vissy v. Hungary*²⁷⁹ 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-surveillance²⁸⁰ – a concern of the ECtHR that came to realization in the Pegasus-affair. Although the decision specifically warned against the potential threat the legislation may impose on journalists,²⁸¹ 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. This has been confirmed again in the 2022 ECtHR judgment *Hüttl v. Hungary*.²⁸² The Minister of Justice has still been reluctant to publicly account for her role as the official authorizer for non-judicial surveillance.

Threats to journalists still prevail especially in the propaganda media. A smear campaign in the propaganda media targeting independent journalists and civil society activists aimed to create an impression before the general elections that these journalists serve foreign interests dictated by human rights NGOs, by publishing ruthlessly edited videos of fake job interviews these actors were invited to.²⁸³ To the best of our knowledge, the DPA did not launch any

²⁷⁶ <https://telex.hu/video/2022/12/12/orban-viktor-matolcsy-gyorgy-oktatas-tuntetesek-interju>

²⁷⁷ *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, https://mertek.eu/wp-content/uploads/2020/05/HUN_NGO_contribution_EC_RoL_Report_2020.pdf, pp. 39-40; *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, March 2021, https://www.amnesty.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf, pp. 41-42.

²⁷⁸ See also: 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. 46.

²⁷⁹ Application no. 37138/14, Judgment of 12 January 2016

²⁸⁰ "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.)

²⁸¹ "[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.)

²⁸² Application no. 58032/16, Judgment of 29 September 2022

²⁸³ See e.g.: <https://magyarnemzet.hu/belfold/2022/02/baloldali-ujsgiro-a-legtobb-ngo-kezben-tartja-a-kulfoldi-ujsgirok-iranyitasat-az-amnesty-international-is-videok>,

investigations in the case. In another case, the CEO of the publisher of 24.hu, one of the few remaining independent news sites, was interrogated as a criminal suspect by the National Tax and Customs Administration.²⁸⁴ A physical attack against a journalist working for a national TV channel is still exceptional.²⁸⁵

10. Access to information and public documents

The Government continued to abuse its special powers under the new kind of special legal order declared in May 2022²⁸⁶ [see in more detail in Section IV.A., Questions 3. and 5. of the present CSO contribution], and continued to restrict access to information: it prolonged the extension of the deadline to respond to FOI requests again to a (once renewable) 45 days.²⁸⁷ The respective decree²⁸⁸ was supposedly withdrawn as of 31 December 2022,²⁸⁹ but its withdrawal was merely nominal as according to Article 3 of Act XLII of 2022, the extension of the deadline to respond to FOI requests for a (once renewable) 45 days still remains applicable.²⁹⁰

https://mandiner.hu/cikk/20220214_helsinki_bizottsag_bizarr_kerdes_hogy_milyen_eljaras_szerint_kommunikalunk_ujsagirokkal,

https://mandiner.hu/cikk/soros_aktak#20220301_andrej_nosko_lejaratas_magyarorszag_ujsagirok_soros_halozat,

https://mandiner.hu/cikk/soros_aktak#20220206_kettos_merce_befolyasolas_es_evi_szazmillio_dollar_dolgozik_a_soros_halozat.

²⁸⁴ <https://24.hu/belfold/2022/11/07/varga-zoltan-nav-gyanusitas-papp-gabor-kozlemeny/>

²⁸⁵ See e.g.: <https://kreativ.hu/cikk/fellokte-a-hirtv-tudositojat-egy-tunteto-a-kossuth-teren>.

²⁸⁶ A special legal order was introduced as of May 25, justified by the cause of the Russian aggression in Ukraine: <https://kormany.hu/hirek/haborus-veszelyhelyzetet-hirdet-a-kormany>. The 10th Amendment to the Fundamental Law, which entered into force on 25 May 2022, created such a new category of special legal order, empowering the Government to declare a state of danger “*in the event of an armed conflict, war situation or humanitarian disaster in a neighbouring country*” as well [see now in Article 51(1) of the Fundamental Law]. See also: <https://ataszjelenti.444.hu/2022/05/24/mostantol-a-kulonleges-jogrend-az-uj-normalis>.

²⁸⁷ Government Decree 190/2022. (V. 26.), which, as of 1 June 2022, re-entered into force under the new type of state of danger 37 emergency decrees adopted under the previous states of danger declared due to the pandemic – including Government Decree 521/2020. (XI. 25.) which introduced the possibility for the prolongation for a (once renewable) 45 days for the state of danger –, to avoid that these decrees lose their force on 1 June as a result of the state of danger based on the pandemic being terminated. These emergency decrees were confirmed on 8 June by Article 4 of Act VI of 2022 on Eliminating the Consequences in Hungary of an Armed Conflict and Humanitarian Disaster in a Neighbouring Country in effect until 1 November 2022. On 1 November, Government Decree 424/2022. (X. 28.) entered into force, ordering a new state of danger, as well as Government Decree 425/2022. (X. 28.) which re-enacted Government Decree 521/2020. (XI. 25.) on 28 October 2022. Act XLII of 2022 on 23 November 2022 permitted the Government to extend the state of danger for another six months and confirmed Government Decree 425/2022. (X. 28.) which re-enacted 107 government decrees (all issued in state of danger) including the one that extends the deadline for responding to FOI requests [Act XLII of 2022, Article 3(1)].

²⁸⁸ Government Decree 521/2020. (XI. 25.) introduced the possibility for the prolongation for a (once renewable) 45 days for the state of danger and since then was re-enforced – see the previous footnote.

²⁸⁹ First, Article 1 of Government Decree 383/2022. (X. 10.) ordered to withdraw Government Decree 521/2020. (XI. 25.) on 31 December 2022 according to Article 2. Then, Article 4 of Government Decree 425/2022. (X. 28.) expressed that Government Decree 383/2022. (X. 10.) will not enter into force. Instead, Article 5(2) of Government Decree 425/2022. (X. 28.) ordered to repeal Government Decree 521/2020. (XI. 25.) with its promulgation on 28 October 2022 on the condition by its provision in Article 3(2) according to which the withdrawal would only gain effect on 31 December 2022.

²⁹⁰ Article 3 of Act XLII of 2022 which enabled the Government to prolong the state of danger for 180 days also approved Government Decree 425/2022. (X. 28.) which (as the Act states in Point 1 of Article 3) re-entered into force among others Government Decree 521/2020. (XI. 25.) with a temporal scope as of its status on 31 October 2022. Article 3 of Act XLII of 2022 specifically expresses that the legal effects regarding the expiry of the government decrees [which in the case of Government Decree 521/2020. (XI. 25.) took place on 31 December

The abolition of the fee for “disproportionate workload” involved in answering FOI requests was abolished on 13 October 2022.²⁹¹ However, the main barrier for access to information is an abusive tendency of state entities’ response to FOI requests: state entities first deny they are in possession of the data requested from them and withhold the data requested, thus forcing the individual to seek legal remedy. Then in the court proceedings, they provide the data requested in the documents submitted to the court, leaving the court no other option than to terminate the proceeding as the data requested has been granted, while the plaintiff formally loses in the lawsuit. One example is the result of the multiple lawsuits launched to gain access to the COVID-19 vaccination plan: the defendant state entities presented the plan only in the middle of the trial proceedings.²⁹² The metadata on the data files showed that they were made available after the trial started, yet this did not (and could not) affect the legal outcome of the proceedings. In another case,²⁹³ the Prime Minister’s Office obstructed access to public data on a public development project by providing them to the journalist who requested it using a technology that made access impossible. Further, the Government declared in a decree²⁹⁴ that public data that the Government Operative Board had produced should be considered “decision-preparatory”²⁹⁵ data, and as such, can be denied access to for 10 years.²⁹⁶

Access to data regarding public funds is restricted based on an earlier constitutional amendment that narrowed down the definition of public funds.²⁹⁷ Current jurisprudence upholds²⁹⁸ that data about subcontractors’ participation in national constructions realized by EU funds need not be disclosed in response to FOI requests.²⁹⁹

Public bodies resisting courts’ orders to disclose public data continues to be a major obstacle.³⁰⁰ Judgments ordering the disclosure of public data cannot be effectively executed, and there is no special legal remedy for such cases.

2022] have not gained effect and the decrees – including Government Decree 521/2020. (XI. 25.) – still remain applicable.

For further information, see our evaluation about the legislative changes in Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information promulgated in November 2022 by Act XL of 2022, made as a means to reaching an agreement with the European Commission: <https://tasz.hu/allaspontunk-az-informacioszabadsag-szabalyozasanak-2022-oszi-modositasarol>.

²⁹¹ With Government Decree 382/2022. (X. 10.).

²⁹² <https://tasz.hu/cikkek/a-kozadatpereket-elvesztettuk-de-elertuk-az-oltasi-terv-nyilvanossagra-hozasat>

²⁹³ Judgment no. 8.Pf.20.563/2022/4. of the Budapest Court of Appeal

²⁹⁴ See Article 2 of Government Decree 356/2022. (IX. 19.). The decree was issued after FOI lawsuits started about accessing those exact documents.

²⁹⁵ Article 27(5) of Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information states: *“Any data compiled or recorded by an organ performing public duties as part and in support of its decision-making process within the limits of its powers and duties shall not be disclosed for 10 years from the date it was compiled or recorded. After considering the weight of public interest with respect to granting or denying access, the head of the organ that processes the data in question may permit access.”*

²⁹⁶ See Article 1(1) of Government Decree 356/2022. (IX. 19.). See also:

https://hvg.hu/itthon/20220112_Tiz_evre_titkositjak_az_Operativ_Torzs_minden_donteset.

²⁹⁷ Article 39(3) of the Fundamental Law sets out the following: *“Public funds shall be the revenues, expenditures and claims of the State.”*

²⁹⁸ Kúria, Pfv.IV.20.904/2021/5.

²⁹⁹ <https://tasz.hu/cikkek/alkotmanybirosaghoz-fordultunk-az-unios-forrasok-elkoltesenek-atlathatosagaert>

³⁰⁰ As in the case of judgment no. 29.P.23.279/2017/9. of the Budapest-Capital Regional Court in which a journalist asked data about public investments: the National Infrastructure Developing Ltd. has been withholding data about public funds from an investigative journalist for years now, despite a court’s order, acting as if it is not in possession of the requested documents.

Parliament has still failed to comply with its duty specified in a 2020 Constitutional Court decision³⁰¹ that set a due date of 31 December 2020 to amend the Act of Parliament regulating FOI procedures³⁰² since it does not guarantee judicial remedy in case public information is not held by a public authority but by an organisation which entered into financial relations with a public body.³⁰³

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

Courts continue to issue injunctions banning the dissemination of and research into data related to the business activities of high-profile public figures. A ban on the liberal weekly *Magyar Narancs* (see the 2020 and 2021 Rule of Law Reports) was momentarily lifted (due to plaintiffs' procedural omission) but was reinstated and confirmed by an appellate court.³⁰⁴ Injunctions upheld by the Kúria in 2020 against *Forbes Hungary* are still in effect, related civil litigation is pending before first-instance courts. Complaints against the injunctions have been pending for more than two years before the Constitutional Court.³⁰⁵

By 2022, the new tendency of SLAPP (strategic litigation against public participation) lawsuits and other legal actions specifically weaponizing the GDPR gained further traction. These actions abuse the fact that Hungary has enacted no statutory journalism exemptions (as per Article 85 of the GDPR), and obstruct journalistic reporting, from research to publication, on the extent and origins of the wealth of public figures who have benefitted from state funding or political ties, or whose projects have a lasting impact on the environment or have national economic significance. An appellate court confirmed that the estimation of a public figure's wealth in a list of the most wealthy Hungarians in *Forbes* violated his rights, despite that it was based on public data and a consistent methodology.³⁰⁶ The decision was partly confirmed by the Kúria.³⁰⁷ The plaintiff alleged that *Forbes'* methodology underestimated his wealth and thus violated the accuracy requirement of GDPR. The legal aid service of the Hungarian Civil Liberties Union also encountered a case in which a politician attempted to use the GDPR to erase traces of his past candidacy in local elections from an online newspaper.

Hungary's DPA has consistently ruled against the press when it dealt with GDPR-based complaints of public figures. In the only case we know of in which it found no violations (*Magyar Narancs*),³⁰⁸ it later withdrew its finding that the weekly did not violate GDPR requirements. The Kúria found the DPA lawfully withdrew its no-violation decision.³⁰⁹ The DPA

³⁰¹ Decision no. 7/2020. (V. 13.) AB of the Constitutional Court

³⁰² It is on the list of "the legislative tasks of the Parliament arising from the decisions of the Constitutional Court": <https://www.parlament.hu/az-orszaggyules-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>.

³⁰³ The Constitutional Court declared in its Decision no. 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-a-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.

³⁰⁴ Budapest Court of Appeal, 8.Pkf.25.884/2022/3., 3 November 2022

³⁰⁵ Constitutional Court case no. IV/1908-19/2020.

³⁰⁶ Budapest Court of Appeal, 8.Pf.20.853/2021/4., 17 February 2022

³⁰⁷ Kúria, Pfv.IV.20.651/2022/5., 14 December 2022

³⁰⁸ NAIH 438-2/2021., 23 March 2021

³⁰⁹ Kúria, Kfv.I.37.121/2022/8., 25 May 2022

asked another news site covering the extensive corruption practices of public figures and their links to the Government to reveal its sources.³¹⁰

While GDPR-based cases against media outlets represent an emerging new trend, defamation (including criminal defamation) continues to be used in high politics to threaten journalists. The Kúria denied review of the conviction of a female journalist writing for 444.hu, a news portal, for criminal defamation, for failing to prove she was physically coerced out of a Fidesz party event she was reporting on.³¹¹ An independent newspaper, *Népszava* lost a defamation lawsuit concerning a critical caricature depicting the Surgeon General, a public figure regularly commenting on anti-COVID measures, on a cross. The Constitutional Court ruled the caricature was a case of arbitrary defamation of Christians.³¹²

12. Other

It still held true in 2022 that the Orbán regime was unwilling to take effective steps against foreign (primarily Russian) information manipulation and interference. The Hungarian government even aggravated the effects of such manipulation by disseminating geopolitical messages in line with Russian narratives. This practice was elevated to a new level in 2022, mainly due to Russia's invasion against Ukraine.

Due to the Government's control over the vast majority of the media,³¹³ its dominance on social media, the use of state resources for party interests (e.g. state advertisements and campaigns in line with the governing party's messages), and the enhanced use of the so-called "grey zone" media (non-transparent outlets, whose aim is to influence public opinion through biased, often manipulated content),³¹⁴ the Government has practically established an informational autocracy, where the state exerts influence through the manipulation of information.³¹⁵

Two major examples of information manipulation by the governing party occurred in 2022. One relates to the parliamentary elections, where Fidesz's whole campaign was based on a factually false message that the opposition, should it win, would drag Hungary into war, created by manipulating a statement of the opposition parties' prime minister candidate. The other example relates to the war in Ukraine. Since the invasion's start, the government-organised traditional and "grey zone" media and social media influencers have disseminated Russian war propaganda to justify the war and to blame the West, especially the US, for the

³¹⁰ Case number: NAIH-3028-9/2022.

³¹¹ Kúria, Bfv.I.901/2021/6., 8 March 2022

³¹² Decision no. 3488/2022. (XII. 20.) AB of the Constitutional Court. See also: https://hvg.hu/itthon/20221207_alkotmanybirosag_kdnp_nepszava, <https://media1.hu/2022/12/09/beperli-a-magyar-allamot-a-nepszava-strasbourgban/>.

³¹³ Mertek Media Monitor, *Mindent beborít a Fidesz-közeli média [Everything is covered by the media close to Fidesz]*, 25 April 2019, <https://mertek.eu/2019/04/25/mindent-beborit-a-fidesz-kozeli-media/>

³¹⁴ Political Capital, *Agents of influence – Hidden malign domestic and foreign "grey zone" media influence in Hungary*, 2022, https://politicalcapital.hu/pc-admin/source/documents/PoliticalCapital_Grey_Zone_HU_20220523.pdf

³¹⁵ *Russian influence in Hungary* – Dr. Péter Krekó's contribution at the ING2 Committee Hearing on Russian interference in the EU: the distinct cases of Hungary and Spain, 27 October 2022, Brussels, https://www.europarl.europa.eu/cmsdata/256493/OJ%20item%204_peter_kreko_ing2_hearing_20221027_speak_ing_points.pdf

war, and the EU (“Brussels sanctions”) for the negative economic and social consequences.³¹⁶ Moreover, mainstream communication paints Ukraine and the West, mainly the US and “Brussels”, as the primary source of danger instead of Russia. The high proportion of Fidesz supporters, who identify with the Russian position in the war or consider Russia’s responsibility less, is clear evidence of the Government’s ability to influence the public discourse.³¹⁷ Hence, in 2022, malign Russian influence constituted in Hungary mainly through the government-organised media and the pro-Kremlin narratives of the Hungarian government.

³¹⁶ Political Capital, *Hazugságok a háború szolgálatában [Lies in the service of war]*, 18 March 2022, https://politicalcapital.hu/konyvtar.php?article_read=1&article_id=2969; Political Capital, *Disinformation in the election campaign – Hungary 2022*, 10 May 2022, https://politicalcapital.hu/news.php?article_read=1&article_id=3004

³¹⁷ Political Capital, *A Fidesz-szavazók fele szerint a kormány nem szavazta meg a szankciókat – kutatás az orosz-ukrán háborúval kapcsolatos attitűdökről [Half of Fidesz voters say the Government did not vote for sanctions – Research on attitudes towards the Russia–Ukraine war]*, 16 November 2022, https://www.politicalcapital.hu/hirek.php?article_read=1&article_id=3107; *Propaganda Without Borders. A study of pro-Kremlin propaganda among far-right and radical voices in Hungary, Poland, Romania and Serbia*, October 2022, https://www.politicalcapital.hu/pc-admin/source/documents/Zinc_XFR%20Disinfo_Report_Final%20report_221010.pdf

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

1. Information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances

The Government made no efforts towards implementing the European Commission's recommendation in the 2022 Rule of Law Report to "[r]emove obstacles affecting civil society organisations" - some earlier passed restrictive and stigmatising legislation remained in effect, instances of administrative harassment were observed, and the distribution of public funding to civil society continues to be non-transparent and politically biased. See more in Section D. below on the enabling environment for civil society.

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

The "absence of effective public consultation on draft laws"³¹⁸ remains an issue despite new legislative amendments. In recent years, public consultation on draft laws has virtually ceased to exist;³¹⁹ "rules on the obligatory public consultation of draft legal acts and their impact assessments have been systematically disregarded".³²⁰ The provision that draft laws by ministers should be subject to public consultation as a main rule has been consistently ignored; the requirement that a summary of the comments received and the reasons for their rejection shall be published has not been respected even when a consultation took place.

³¹⁸ 2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary, p. 24.

³¹⁹ For more details, see: *Submission by Amnesty International Hungary, the Eötvös Károly Institute, and the Hungarian Helsinki Committee for the third cycle of the Universal Periodic Review of Hungary*, 25 March 2021, https://helsinki.hu/wp-content/uploads/2021/03/AIHU_EKINT_HHC_UPR2021_Hungary_RoL_web.pdf, pp. 13-15; *Statement of the Hungarian Helsinki Committee made during the OSCE SHDM II 2021 on Democratic Law-Making: Ensuring Participation*, 26 April 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/04/OSCE-SHDM-II-2021_HungarianHelsinkiCommittee.pdf.

³²⁰ *Council Recommendation of 12 July 2022 on the 2022 National Reform Programme of Hungary and delivering a Council opinion on the 2022 Convergence Programme of Hungary*, (28)

Although in October 2022, with a view to accessing EU funds, Act CXXXI of 2010 on Public Participation in Preparing of Laws was amended,³²¹ the new rules do not provide a real solution:³²²

- a) The Government now “bears a responsibility” to ensure that annually, 90% of draft laws fall into the category where public consultation is mandatory. However, the wide range of exceptions when draft laws do not have to or cannot be subject to public consultation was left intact. As a result, the Government may comply with the new rule without consulting on bills that are truly significant socially.
- b) The new rules set out that at least 8 days are provided for commenting. This is an improvement compared to the previous wording (setting out that “adequate time” should be provided), but in the case of voluminous bills, it is highly questionable whether 8 days is sufficient.
- c) The Government Control Office (GCO) can now impose fines on ministries for violating the rules on public consultation. However, this will have no deterrent effect because fines will ultimately end up in the same state budget from which ministries are allocated funds. Secondly, the GCO is subordinated to the Government, it has no functional independence, a factor that questions whether it can appropriately fulfil this role. Furthermore, the GCO played a key role in the 2014 crackdown on the CSOs that distributed EEA/Norway grants, showing that it is ready to spearhead a government action with shaky legal grounds and illustrating clear political bias.³²³
- d) There are no further consequences foreseen if a law is adopted in breach of public consultation rules, so such laws can become/remain part of the legal system.
- e) Other forms of public participation in law-making have not been strengthened in any way.

In the last period of 2022, ministries started to publish laws for consultation, but several significant laws were omitted – most notably, all drafts laws the Government submitted in order to comply with the commitments it made in the conditionality procedure, and the above amendment of Act CXXXI of 2010.

³²¹ 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; entry into force: 26 October 2022

³²² 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 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.

³²³ See e.g.: EU Observer, *Hungary raids Norway-backed NGOs*, 10 September 2014, <https://euobserver.com/eu-political/125537>; or news items on the official website of the GCO related to this issue, e.g.: <https://kehi.kormany.hu/http-mno-hu-celpont-musor-norveg-minta-1232085>.

In August 2022, CSOs requested the Minister of Justice to address problems of the judiciary after consulting both with the general public and experts, including self-governing and representative organs of the judiciary, but have not received a response ever since.³²⁴

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

On 24 May 2022, the governing majority adopted the 10th Amendment to the Fundamental Law, which authorised the Government to declare a state of danger in the case of an armed conflict, war or humanitarian disaster in a neighbouring country. This was accompanied by a law³²⁵ that excessively widened the scope of emergency decrees the Government can issue during a state of danger, providing it with yet another *carte blanche* mandate to suspend or derogate from Acts of Parliament.³²⁶

The Government made use of the possibility to declare the new type of state of danger instantly, as of 25 May, with a reference to the “armed conflict and humanitarian disaster” in Ukraine.³²⁷ Subsequently, the Fourth Authorization Act³²⁸ removed parliamentary oversight over individual emergency decrees, following the practice developed during the COVID-19 pandemic.³²⁹ Thus, the amendments (none of them put to public consultation) allowed the Government to use the war as a pretext to keep its excessive regulatory powers acquired with a view to the pandemic, and maintain a “rule by decree” system.

Furthermore, provisions of the 9th Amendment to the Fundamental Law and accompanying laws that entered into force on 1 November transformed the framework for special legal orders, including the state of danger. As a new element, the Government needs an authorization from the Parliament to extend the state of danger after an initial 30 days; this authorization can be given for a maximum of 180 days per occasion, but can be repeated without limitation. The oversight of the Parliament over individual emergency decrees has been removed (they do not need the approval of the Parliament any more to stay in force after an initial period), cementing the framework created in the past years via the “authorization acts”. New provisions include a similar *carte blanche* mandate as the one created during the pandemic. As of 1 November, the Government declared a new state of danger under these

³²⁴ The open letter of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee is available here: <https://helsinki.hu/en/open-letter-by-civil-society-organizations-to-the-minister-of-justice/>.

³²⁵ Act III of 2022 on the Amendment of Act CXXVIII of 2011 on Disaster Management and Amending Certain Related Acts of Parliament

³²⁶ For more details, see: Hungarian Helsinki Committee, *The 10th Amendment of Hungary’s Fundamental Law: the Hungarian Government is using the war in Ukraine as a pretext to keep its excessive regulatory powers*, 5 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_HU_10th_const_amendment_05052022.pdf.

³²⁷ Government Decree 180/2022. (V. 24.) on Declaring a State of Danger Due to the Armed Conflict and Humanitarian Disaster in the Territory of Ukraine, and in Order to Eliminate the Consequences of these in Hungary and on Certain State of Danger Rules

³²⁸ Act VI of 2022 on Eliminating the Consequences in Hungary of an Armed Conflict and Humanitarian Disaster in a Neighbouring Country

³²⁹ For more information, see: Hungarian Helsinki Committee, *Hungary’s Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again*, 9 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_HU_4th_Authorization_Act_09062022.pdf.

new rules, with a reference to the war on Ukraine,³³⁰ and subsequently the Government extended the state of danger with an additional 180 days³³¹ based on the Parliament's authorization.³³²

In the case of the other special legal order regimes introduced by the 9th Amendment to the Fundamental Law ("state of war" and "state of emergency"), the power to regulate and take measures is also concentrated in the hands of the Government without adequate constitutional restraints.³³³

The Government continued to use "its emergency powers extensively".³³⁴ In 2022, out of the 637 government decrees, 267 (41.9%) were adopted as emergency decrees, either with a reference to the pandemic or the war. (In 2020, at the height of the pandemic, fewer, 257 such decrees were issued.) 82 of these were issued in November-December, including a decree restructuring the state budget.³³⁵

From among the 81 Acts of Parliament promulgated in 2022, five were adopted in an exceptional procedure, and eight were adopted in a discussion with urgency procedure.³³⁶

4. Regime for constitutional review of laws

All concerns raised by CSOs in recent years about the independence and effective functioning of the CC have remained in 2022. The CC has continued to rule in favour of the incumbent parties in politically sensitive cases.

In 2022, parliamentary elections were held in Hungary, and the CC has the power to review the constitutionality of Kúria's judgments in electoral cases. While the Kúria ruled against the Government only in a limited number of cases, the CC annulled even those decisions that were detrimental to the interests of the Government. For instance, the CC held that the fairness of the elections was not compromised when the Government used personal data collected for COVID vaccination for spreading campaign messages.³³⁷ The impugned message provided a distorted view about the standpoint of the opposition parties on the war in Ukraine, depicting it as irresponsible, but according to the CC, this communication fell under the Government's

³³⁰ Government Decree 424/2022. (X. 28.) on Declaring a State of Danger Due to the Armed Conflict and Humanitarian Disaster in the Territory of Ukraine, and in Order to Eliminate and Manage the Consequences of these in Hungary and on Certain State of Danger Rules

³³¹ Government Decree 479/2022. (XI. 28.) on Extending the State of Danger Declared Due to the Armed Conflict and Humanitarian Disaster in the Territory of Ukraine, and in Order to Eliminate and Manage the Consequences of these in Hungary

³³² Act XLII of 2022 on Eliminating and Managing the Consequences in Hungary of an Armed Conflict and Humanitarian Disaster in a Neighbouring Country

³³³ For more details, see: <https://helsinki.hu/en/exceptional-governmental-measures-without-constitutional-restraints/>.

³³⁴ Cf. 2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary, p. 25.

³³⁵ See: <https://www.wolterskluwer.com/hu-hu/news/2022-jogalkotasi-statisztika>.

³³⁶ Source: search on the Parliament's website (<https://www.parlament.hu/web/guest/iromanyok-lekerdezese>). For the detailed rules of the exceptional and the discussion with urgency procedure, see subheadings 44 and 45 of Parliamentary Resolution 10/2014. (II. 24.) OGY on Certain Provisions of the Rules of Procedure [here](#) in English.

³³⁷ Also on this problem see: Human Right Watch, *Trapped in a Web: The Exploitation of Personal Data in Hungary's 2022 Elections*, 1 December 2022, <https://www.hrw.org/report/2022/12/01/trapped-web/exploitation-personal-data-hungarys-2022-elections>.

obligation to provide information for the people.³³⁸ Similarly, in referendum cases, the CC overturned those Kúria judgments that gave green light to referenda initiated by a key opposition figure,³³⁹ while in late 2021, it reversed a judgment which refused to validate one of the questions of the anti-LGBTQI referendum initiated by the Government.³⁴⁰

The CC failed to intervene and examine the Kúria's judgment that rejected the complaint about the fine imposed on a CSO for encouraging voters to cast invalid ballots in the 2022 anti-LGBTQI referendum.³⁴¹ Furthermore, the CC upheld the Kúria's judgment declaring its lack of jurisdiction concerning the potential irregularities in delivering postal ballots for Hungarians in Serbia.³⁴²

In 2022, the CC terminated the procedures in relation to the 2017 "Lex NGO" which was found to be in breach of EU law by the CJEU in 2020.³⁴³ While the CC first decided to suspend the procedure until the EU court delivers its decision on the contested legislation,³⁴⁴ the CC was reluctant to continue the cases for years, and finally rejected the complaints on the ground that the challenged legislation had already been repealed.³⁴⁵

The CC failed to consider those complaints on the merits that challenged the overhaul of a small-business tax (KATA) which was pushed through the legislation overnight without any public consultation.³⁴⁶ The mid-year tax reform negatively affected hundreds of thousands of entrepreneurs. Also, the CC did not annul the law which stripped the Hungarian Academy of Sciences (MTA) of its research institutions and transferred them with its related assets to a government-controlled institution.³⁴⁷ According to the CC, the reform did not raise concerns about academic freedom.

Finally, the CC also failed to invalidate the law that effectively hollowed out the right to strike in public education.³⁴⁸ While the CC concluded that the restrictions pursued a constitutionally legitimate aim by protecting the interest of children, the justices did not engage in any meaningful proportionality analysis.

5. COVID-19: update on significant developments with regard to emergency regimes or measures in the context of the COVID-19 pandemic

The state of danger as a special legal order regime declared due to the pandemic was in place until 31 May 2022. Thus, the Government was in the position to issue emergency decrees suspending or derogating from Acts of Parliament during the period directly leading up to the

³³⁸ Decisions no. 3130/2022. (IV. 1.) AB and no. 3151/2022. (IV. 12.) AB

³³⁹ Decisions no. 10/2022. (VI. 2.) AB and no. 11/2022. (VI. 2.) AB

³⁴⁰ Decision no. 33/2021. (XII. 22.) AB

³⁴¹ Decision no. 3216/2022. (V. 11.) AB. On how the National Election Commission justified the fines, see: Renáta Uitz, From Shrinking to Closing Civil Society Space in Hungary, *Verfassungsblog*, 10 April 2022, <https://verfassungsblog.de/from-shrinking-to-closing-civil-society-space-in-hungary/>.

³⁴² Decision no. 3201/2022. (IV. 29.) AB

³⁴³ Case C-78/18, *Commission v Hungary* (Transparency of associations), Judgment of the Court (Grand Chamber) of 18 June 2020, ECLI:EU:C:2020:476

³⁴⁴ Decision no. 3198/2018. (VI. 21.) AB

³⁴⁵ See for instance Decision no. 3410/2022. (X. 21.) AB.

³⁴⁶ See for instance Decision no. 29/2022. (XII. 6.) AB.

³⁴⁷ Decision no. 30/2022. (XII. 6.) AB. The decision of the CC is available in English [here](#).

³⁴⁸ Decision no. 1/2023. (I. 4.) AB

national elections, held on 3 April 2022. In this period, the Third Authorization Act³⁴⁹ also remained in force. This law authorized the Government to extend the effect of future, not-yet-adopted emergency decrees, until the end of the state of danger. Thus, the substantive constitutional restriction that emergency decrees should remain in effect after an initial period of 15 days only with the Parliament's approval continued to be circumvented in this period.³⁵⁰

The Government continued to "regulate matters unrelated to the COVID-19 pandemic"³⁵¹ in emergency decrees. For example, a decree³⁵² lifted tax secrecy in order to enable the tax authority to send information letters to beneficiaries of a new, unusually generous tax refund just before the elections. On this basis, a letter signed by the Prime Minister was sent out a week before the launch of the election campaign,³⁵³ being another example of the "pervasive overlap of government information and ruling party messaging" in terms of the election, criticized by OSCE/ODIHR.³⁵⁴ Another decree³⁵⁵ overruled a judicial decision quashing a ministerial decision limiting media access to hospitals and thereby limited media freedom when it provided full discretion to the government's pandemic taskforce to regulate relations between the media and healthcare institutions.³⁵⁶ Another decree³⁵⁷ restricted teachers' right to strike for better pay and working conditions when it determined the necessary minimum services that must be provided during a strike in such a broad manner that made a meaningful and at the same time lawful strike impossible.³⁵⁸

As of 1 June 2022, the Government terminated the state of danger declared due to the pandemic.³⁵⁹ As a result, all emergency decrees lost their force, with the exception of 37 decrees that were specifically kept in force.³⁶⁰ The latter was possible because as discussed above, the Government declared a new state of danger as of 25 May, with a reference to the war in Ukraine. 19 of these 37 decrees were adopted way before the start of the war (mostly in 2021), and had no connection to it whatsoever. A remarkable example is a decree from

³⁴⁹ Act I of 2021 on the Containment of the Coronavirus Pandemic

³⁵⁰ For an overview, see: Hungarian Helsinki Committee, *Overview of Hungary's Emergency Regimes Introduced due to the COVID-19 Pandemic. Update of 1 June 2022*, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_Hungary_emergency_measures_overview_01062022.pdf, especially pp. 6-7.

³⁵¹ Cf. *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, p. 25.

³⁵² Government Decree 5/2022. (I. 12.) on Further Measures Related to Tax Refunds for Individuals Raising Children with a View to the State of Danger

³⁵³ For more details, see: Hungarian Helsinki Committee, *Baseline Information Note – National Elections of Hungary 2022*, 18 February 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/02/HU_electionmonitor_baseline.pdf, p. 6.

³⁵⁴ OSCE Office of Democratic Institutions and Human Rights, *Hungary – Parliamentary Elections and Referendum – 3 April 2022. ODIHR Election Observation Mission. Final Report*, 29 July 2022, <https://www.osce.org/files/f/documents/2/6/523568.pdf>, pp. 20-21 and footnote 87.

³⁵⁵ Government Decree 33/2022. (II. 4.) on Certain State of Danger Rules for the Operation of Healthcare Institutions

³⁵⁶ Cf. *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, p. 25, footnote 196.

³⁵⁷ Government Decree 36/2022. (II. 11.) on Certain State of Danger Rules Affecting Public Education Institutions

³⁵⁸ For more on this issue, see: Hungarian Helsinki Committee, *Hungary: Continued Backsliding on Democracy and Rule of Law – Selected Developments and Recommendations for the Council Hearing on 23 May under Article 7(1) TEU*, 13 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_Hungary_RoL-HR_issues_and_rec_13052022.pdf, pp. 1-2.

³⁵⁹ Government Decree 181/2022. (V. 24.) on Declaring a State of Danger and Terminating the State of Danger Declared by Government Decree 27/2021. (I. 29.) on Declaring a State of Danger and the Entry into Force of State of Danger Measures

³⁶⁰ For more details, see: Hungarian Helsinki Committee, *Hungary's Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again*, 9 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_HU_4th_Authorization_Act_09062022.pdf.

2020 that excessively extended the deadline for authorities to respond to freedom of information requests.³⁶¹

As presented above, bad practices developed during the pandemic in relation to the state of danger were cemented by the new legal framework that entered into force in November: new rules currently applied do not foresee parliamentary oversight over individual emergency decrees, and provide the Government with a similar *carte blanche* mandate as the one created during the pandemic.

B. Independent authorities

6. 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

In June 2021, the GANHRI Sub-Committee on Accreditation (SCA) recommended that Hungary's NHRI, the Commissioner for Fundamental Rights (CFR) is downgraded from an A to a B status.³⁶² The downgrading became final in March 2022.³⁶³ In its March 2022 report, the SCA concluded,³⁶⁴ confirming the concerns of Hungarian CSOs,³⁶⁵ 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*", or its "*engagement with the constitutional court and international human rights mechanisms in relation to cases deemed political and institutional*". The SCA emphasized that the failure to do so "*evidences a lack of independence*", and concluded that the CFR is acting in a way that "*seriously compromises its compliance with the Paris Principles*". The concern raised earlier that the CFR's selection and appointment process is not sufficiently broad and transparent has not been addressed either. The deficiencies pointed out by the SCA as a reason for the downgrading continue to exist.

The above development made the merging of Hungary's equality body, the Equal Treatment Authority (ETA) into the CFR's Office as of 2021 all the more problematic.³⁶⁶ In its October 2021

³⁶¹ Government Decree 521/2020. (XI. 25.) on Derogations from Certain Data Request Provisions During the State of Danger

³⁶² Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14-24 June 2021, <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>, pp. 12-15.

³⁶³ <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>, p. 13.

³⁶⁴ 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.

³⁶⁵ For more information, see: Hungarian Helsinki Committee, *Shadow report to the GANHRI Sub-Committee on Accreditation on the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, 18 February 2021, https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf.

³⁶⁶ 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.

opinion, the Venice Commission (VC) raised various concerns regarding this merger.³⁶⁷ It noted with regret “that no Director General for Equality Treatment [DGET, within the CFR’s Office] has been appointed to-date, 9 months after the merger”, although without a DGET “it is hard to imagine the promotion and visibility of equality mandate as required by ECRI General Policy Recommendation No 2”.³⁶⁸ For that reason, the VC encouraged the authorities “to ensure a timely appointment of DGET and his/her Deputy in accordance with clear and transparent criteria defined by law”.³⁶⁹ However, based on the information provided by the CFR’s website, at the time of submitting the present contribution, still no DGET or Deputy seem to have been appointed.

The VC was of the view that “the new system of protection against discrimination is overall more complicated and thus has the potential to be less effective than the previous one”³⁷⁰ and that this is a risk “that may undermine the effectiveness of the work in the field of promoting equality and combating discrimination”.³⁷¹ This conclusion is supported by a drop in the number of discrimination complaints after the merger. According to Hättér Society, the ETA received 868 cases in 2019, whereas “in the first 6 months of 2021, [the Directorate] received only 156 complaints”.³⁷² According to the CFR’s annual report, in 2021 the Directorate dealt with altogether 462 cases, but this number also includes pending complaints from previous years.³⁷³

C. Accessibility and judicial review of administrative decisions

9. Judicial review of administrative decisions

From 1 April 2020, the specialized Administrative and Labour Courts (20 of them, one for each county) were dissolved, and the first instance administrative cases were channelled to eight designated regional courts. With effect from 1 March 2022, the system of administrative adjudication was modified, once again. A new administrative court level was introduced³⁷⁴

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.

³⁶⁷ European Commission for Democracy through Law (Venice Commission), *Opinion on the Amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as Adopted by the Hungarian Parliament in December 2020*, CDL-AD(2021)034, 18 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)034-e).

³⁶⁸ *Ibid.*, para. 44. Further information on staffing issues and other problems around the merger can be found here: Hättér Society, *Information on the Abolishment of the Equal Treatment Authority in Hungary: a Briefing Written for the Experts of the Venice Commission on 15 September 2021*, <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-eta.pdf>.

³⁶⁹ European Commission for Democracy through Law (Venice Commission), *Opinion on the Amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as Adopted by the Hungarian Parliament in December 2020*, CDL-AD(2021)034, 18 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)034-e), para. 44.

³⁷⁰ *Ibid.*, para. 40.

³⁷¹ *Ibid.*, para. 59.

³⁷² For more details, see: Hättér Society, *Information on the Abolishment of the Equal Treatment Authority in Hungary: a Briefing Written for the Experts of the Venice Commission on 15 September 2021*, <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-eta.pdf>, p. 6.

³⁷³ *Beszámoló az alapvető jogok biztosának és helyetteseinek tevékenységéről – 2021 [Report on the Activities of the Commissioner for Fundamental Rights of Hungary and his Deputies – 2021]*, <https://bit.ly/3QskMax>, p. 97.

³⁷⁴ Formally, a new administrative college of the already existing Metropolitan Court of Appeal was established as an administrative court of appeal.

with the aim of creating a general court of second instance for first instance judgments handed down in administrative cases, instead of the Kúria that acted as a court of second instance in such cases starting with 1 April 2020.³⁷⁵

As a general rule, judicial review does not suspend the execution of the administrative decision.³⁷⁶ However, people seeking judicial review may ask the court for interim measures including suspension of execution or pretrial collection of evidence.³⁷⁷

In cases against administrative authorities started after 1 March 2020, it is no longer possible to submit an appeal against first instance decisions of administrative authorities within the administrative system: instead, they have to be challenged before the court instantly. Moreover, as an additional step towards centralization, as from 1 March 2022, the law opened the way to 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)³⁷⁸ and not by the eight designated regional courts,³⁷⁹ further limiting access to court. In a limited subset of cases, e.g. in freedom of assembly cases, the Kúria passes the first instance judgment.³⁸⁰

Judges dealing with administrative cases shall explicitly be assigned for this task within the ordinary court system.³⁸¹ 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).³⁸² The assignment can be terminated by the NOJ President any time without the consent of the assigned judge and without objective reasons or the obligation to justify the decision.³⁸³ Neither the criteria nor the terms of an assignment or the termination thereof are set out by law. This also entails the possibility of practically “taking away” cases from judges, since if the assignment to hear administrative cases is withdrawn from a judge he/she will no longer be able to hear his/her ongoing administrative cases and must be replaced. In 2022, the NOJ President unilaterally terminated the assignment of two judges without any meaningful justification, within a 1-day notice period.³⁸⁴

Available data show³⁸⁵ that the amendment of the remedial framework has indeed restricted access to justice in relation to the decisions of public authorities impacting citizens. This

³⁷⁵ Act I of 2017 on Public Administration Procedure, Article 7(2)

³⁷⁶ Act I of 2017 on Public Administration Procedure, Article 39(6)

³⁷⁷ Act I of 2017 on Public Administration Procedure, Article 50(2)

³⁷⁸ 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.

³⁷⁹ Act I of 2017 on Public Administration Procedure, Article 12(2)

³⁸⁰ Act I of 2017 on Public Administration Procedure, Article 12(3)

³⁸¹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 30

³⁸² 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).

³⁸³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article, Article 30(7)

³⁸⁴ See: the termination of the assignment as administrative judges of a chamber president and a judge of the Metropolitan Regional Court, <https://birosag.hu/obh/hatarozat/316e2022-viii9-obhe-hatarozat-kozigazgatasi-ugyekben-eljaro-birok-kijelolesenek>.

³⁸⁵ In 2021, 18,608 judicial reviews of administrative decisions were initiated by the concerned parties, which represents a 22.1 percentage point decrease from the previous year. In the first half of 2022, the decrease in the number of initiated administrative judicial reviews continued: 8,989 administrative decisions were challenged by the concerned parties, amounting to a 11.7 percentage point decrease from the first half of 2021. Source: <https://birosag.hu/birosagokrol/statisztikai-adatok/ugyforgalmi-adatok>.

means that the level of protection available in practice for the individuals against the unfavourable decisions of public administrative bodies has significantly decreased.

10. 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

Concerns raised by previous CSO contributions with regard to the non-execution of domestic and regional court judgments remain valid.³⁸⁶

1. There are still “cases where state bodies refuse to execute decisions of the domestic courts; several of these concern access to documents”,³⁸⁷ and court decisions issued e.g. in press rectification and personality rights lawsuits launched against government-affiliated media are often not executed either. According to a 2021 study by the Hungarian Helsinki Committee, one of the systemic problems contributing to this is the lack of effective and genuinely coercive enforcement tools.³⁸⁸ As reported by lawyers, the enforcement (bailiff) proceedings is a “costly and lengthy legal process which does not promise certain success”.³⁸⁹ The sanction regime has no deterrent/dissuasive effect, the issue of excessively lengthy enforcement proceedings has not been addressed, and a number of practical problems limits its accessibility. In freedom of information cases it is also a problem that enforcement is only possible in practice through imposing a fine, but the maximum amount of fines is too low (HUF 500,000 per instance, ca. EUR 1,300).³⁹⁰ Criminal procedures launched for non-compliance with the obligation to disclose data in violation of a court decision very rarely lead to indictments: in 2018–2020, charges were filed in only 3 out of 59 cases.³⁹¹ Criminal procedures have been reported to be discontinued solely on the basis that the alleged perpetrator eventually disclosed the data requested after the criminal procedure had been launched, although with the denial to disclose data, the offence is already completed.³⁹²

2. The number of judgments in which the CC declared that a legislative omission resulted in the violation of the Fundamental Law, but the Parliament has failed to remedy the situation to

³⁸⁶ For a full analysis 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.

³⁸⁷ Cf. 2022 Rule of Law Report Country Chapter on the rule of law situation in Hungary, p. 29.

³⁸⁸ 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. 10-13 and 15-16.

³⁸⁹ <https://444.hu/2021/11/17/egymas-utan-mondjak-ki-a-birosagok-hogy-amit-a-kormany-media-csinal-annak-nincs-sok-koze-az-ujsagirashoz>

³⁹⁰ Act LIII of 1994 on Judicial Enforcement, Article 174(c)

³⁹¹ Source of data: response of the Chief Prosecutor's Office of 26 July 2022 to the Hungarian Helsinki Committee's freedom of information request (LFIIGA//419-3/2022).

³⁹² For a detailed analysis of the issue and how it amounts to the non-implementation of a related judgment by the ECtHR, see the communication of the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee, submitted to the Committee of Ministers of the Council of Europe in July 2022 in relation to the *Kenedi v. Hungary* case: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/08/HCLU-HHC_Rule_9_Kenedi_072022.pdf.

date, has grown from 13 to 16 since last year. The court-set deadline for implementing these decisions has expired in 15 cases, the oldest one in 2013.³⁹³

3. Hungary's record of implementing ECtHR judgments remains poor: 43 leading cases are still pending execution.³⁹⁴ Pending leading cases concern e.g. unchecked secret surveillance,³⁹⁵ freedom of expression of judges,³⁹⁶ excessive length of judicial proceedings,³⁹⁷ whole life imprisonment,³⁹⁸ police ill-treatment,³⁹⁹ and discrimination of Roma children in education.⁴⁰⁰ There is still no separate national structure to bring together various actors to coordinate the implementation of ECtHR judgments; meaningful parliamentary oversight is lacking.⁴⁰¹

4. Problems related to the execution of CJEU judgments have also persisted. A recent study by the Hungarian Helsinki Committee shows that, as of October 2022, Hungary has not (or only partially) implemented 9 out of the 13 CJEU judgments issued in the field of asylum and migration.⁴⁰² In December, the "Stop Soros" law that criminalises assistance to asylum-seekers and which was found to be in breach of EU law by the CJEU in 2021 in one of those judgments⁴⁰³ was amended, but this amendment has failed to implement the CJEU's judgment.⁴⁰⁴

D. The enabling framework for civil society

11. Measures regarding the framework for civil society organisations and human rights defenders

The freedom of association is embedded in Act CLXV of 2011 which at the same time also contains detailed rules on the operation of non-profit organisations. The freedom of (peaceful) assembly is regulated by the Act LV of 2018, while the freedom of expression and the press is enshrined in Act CIV of 2010. Furthermore, the Civil Code (Act V of 2013) contains provisions on the establishment and general functioning of associations and foundations.

³⁹³ The full list of the respective Constitutional Court decisions is available here: <https://www.parlament.hu/az-orszaggyules-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>.

³⁹⁴ Source of data: HUDOC EXEC.

³⁹⁵ *Szabó and Vissy v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10745>

³⁹⁶ *Baka v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10859>

³⁹⁷ *Gazsó v. Hungary* group of cases, <http://hudoc.exec.coe.int/eng?i=004-10875>

³⁹⁸ *László Magyar v. Hungary* group of cases, <https://hudoc.exec.coe.int/eng?i=004-10897>

³⁹⁹ *Gubacsi v. Hungary* group of cases, <https://hudoc.exec.coe.int/eng?i=004-10515>

⁴⁰⁰ *Horváth and Kiss v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10905>

⁴⁰¹ 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.

⁴⁰² 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.

⁴⁰³ C-821/19, *Commission v Hungary*, Judgment of the Court (Grand Chamber) of 16 November 2021, ECLI:EU:C:2021:930

⁴⁰⁴ For more details, see: Hungarian Helsinki Committee, *Criminalisation continues – Hungary fails to implement CJEU judgment*, 21 December 2022, <https://helsinki.hu/en/criminalisation-continues-hungary-fails-to-implement-cjeu-judgment/>.

The letter of these laws generally conforms with relevant international standards, and has not changed in the past year, and no new legislation relevant to civil society has been passed. Accordingly, anyone can freely register an association or foundation at the administrative courts (also online which has made the process easier, though geographic differences among courts still occur), and there have been no cases of deregistration either. Organisations can also operate freely, but in practice, both regulation and oversight place unnecessary administrative burdens on smaller groups, while larger ones, especially those with public benefit status (20% of all) and those receiving public funding must meet rigorous reporting obligations: e.g. they must annually and publicly report separately on their accounts and activities, on their donations and the use of the 1% personal income tax assignments – but thereby, their transparency is guaranteed, too.

At the same time several pieces of earlier legislation negatively affecting civil society remain in effect, though are not or only partially implemented. A notable example for the former is the 25% punitive tax on donations to organisations that are regarded as “supporting” immigration, and the 2021 acts on organisations “capable of influencing public life” (Act XLIX) and on “homosexual propaganda to minors” (Act LXXIX) for the latter – for more on the application of these, see the next chapter on safe space.

12. Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders

Intimidation and harassment by governmental agencies based on legislation passed in previous years was observed in 2022, too.

On 21 February, the tax authority conducted a raid at the headquarters of ‘Oltalom’ Charitable Association/Hungarian Evangelical Brotherhood, as a follow-up of an earlier fine imposed on them for the non-payment of due taxes. However, the root cause for this omission on the side of the association was that following a 2016 ruling of the ECtHR, the Government failed to restore the organisation’s earlier church status, thereby causing them to lose billions in subsidies to which they were rightfully entitled to finance their services to poor people.

In the spring of 2022, Amnesty International Hungary and Háttér Society organised a campaign with 14 other major CSOs entitled “Invalid answer to invalid questions - CSO response to the anti-LGBTQI referendum”. This referendum, held on the day of the parliamentary election, was an important element in the government’s anti-LGBTQI campaign, aimed at mobilising the more homo- and transphobic part of the society in the general elections. As a response to the manipulative nature of the referendum questions, the CSOs’ campaign encouraged voters to cast an invalid vote in the referendum, successfully: as 1.7 million people crossed both answers (Y/N) to all four questions, the number of valid votes remained under the validity threshold (50%).

Five days after the referendum, the 16 CSOs which signed up to the campaign received a ruling from the National Election Commission imposing a fine of HUF 3 million (ca. EUR 8,100) on the two main organisers and HUF 176,400 (ca. EUR 475) on each supporting CSO (in 5 separate decisions), with the justification that such campaign amounts to an “abuse of rights”, it defeats the purpose of the referendum. The affected CSOs appealed to the Kúria which

overturned 3 of the decisions, nullifying 15 of the 16 fines, but rejected to deal with 2 cases on the merit citing the lack of a sufficiently clear argument in the appeals. Amnesty International Hungary and Háttér Society turned to the ECtHR in the matter.

Another instance of interference was based on the Act on organisations “capable of influencing public life”, passed in April 2021.⁴⁰⁵ In late May 2022, coinciding with the deadline to submit their annual reports, hundreds of CSOs falling in this category received an order from the State Audit Office (SAO) to submit internal financial rules and guidelines through the agency’s online platform with a deadline of about 10 days. (Regulations oblige CSOs to have these documents at their disposal, but in practice, most use templates more or less well adapted to their own circumstances.) In spite of the occasional malfunctioning of the online platform, affected CSOs complied with the request. To our best knowledge none of them received any follow-up or further requests from the SAO by the end of the year.

13. Organisation of financial support for civil society organisations and human rights defenders

The total income of associations and foundations in 2021 (according to latest official statistics⁴⁰⁶ available) was ca. HUF 1,070 billion (ca. EUR 2.8 billion), a little more than the year before (900 billion). However, this income is very unevenly distributed in the sector with 35% of the organisations working with an annual budget of not more than HUF 500,000 (ca. EUR 1,350) and three-quarters below 5 million, with the average per organisation being around HUF 21 million (€ 57,000).

About 44% of the sector’s income is comprised of public funding, including EU Structural Fund support distributed by the Government, while 22% comes from private sources, and the remaining is made up of CSOs’ own and other incomes. The central state support instrument to CSOs, the National Cooperation Fund⁴⁰⁷ provides grants annually to ca. 4,000 organisations with a total budget of HUF 11 billion (ca. EUR 29 million) in 2022, and 9 million in 2021. Additionally, the so-called Village and Town Civil Funds (for CSOs operating in settlements under and over 5,000 inhabitants) each distributed HUF 5 billion (ca. EUR 13 million). The operation of these funds is rather non-transparent (e.g. grants are not searchable on the webpage), and as journalists revealed,⁴⁰⁸ about half of the biggest beneficiaries were organisations directly controlled by local governing party politicians or their affiliates. The Government did not provide any additional funding or relief to CSOs in response to the effects

⁴⁰⁵ For more details on this act, see: Hungarian Helsinki Committee, *LexNGO 2021 – A look into Hungary’s second anti-NGO law on its first anniversary*, 12 May 2012, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_LexNGO2021_info_note.pdf.

⁴⁰⁶ Hungarian Central Statistical Office, *A nonprofit szervezetek működési jellemzők szerinti száma és bevétele szervezeti forma szerint [The number of non-profit organisations broken down by characteristics of their operations and their income broken down by organisational form]*, https://www.ksh.hu/stadat_files/gsz/hu/gsz0014.html

⁴⁰⁷ <https://bgazrt.hu/tamogatasok/nemzeti-egyuttmukodesi-alap/>

⁴⁰⁸ *Fideszes vezetésű civil szervezetek sorát támogatja a magyar állam egy új pályázati alappal [Hungarian state to support a range of Fidesz-led NGOs with a new grant fund]*, 28 July 2021, <https://telex.hu/belfold/2021/07/28/fideszes-vezetesu-civil-szervezeteket-tamogat-a-magyar-allam-egy-uj-palyazati-alapbol>

of the pandemic on the sector and lagged behind civil society in treating the refugee crisis stemming from the war in Ukraine.

There are no dedicated national public funding sources specifically supporting CSOs engaged in the areas of democracy, rule of law and fundamental rights. While independent CSOs are not excluded from applying for public funding per se, they rarely have a chance to secure a grant. Therefore, they remain dependent on international philanthropic and institutional donors (although foreign funding comprises a minor part of the sector's overall income, it plays a crucial role in the income structure of these organisations), and individual giving. The latter has gained public recognition in the past years, and was instrumental in raising support to aid the refugees arriving from Ukraine in the spring of 2022. CSOs themselves are also becoming more and more professional in collecting donations, especially online (e.g. through the adjukossze.hu platform, a crowdfunding site). However, the cost-of-living crisis will most probably negatively impact the success of future campaigns. Indeed, the amount of the 1% income tax assignments, and the number of people that used this opportunity decreased in 2022 compared to the year before,⁴⁰⁹ but as the period of collecting these donations coincided with the election campaign, the latter probably diverted people's attention. Domestic institutional philanthropy (grantmaking foundations) remains very underdeveloped, with just a handful of (relatively small) actors.

14. Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process

As described above, Act CXXXI of 2010 in theory provides for public participation in the legislative process, however, it has hardly been implemented recently: in practice, draft legislation is – if at all – usually published for comments with a very short deadline. Important acts have often not been consulted at all, or submitted to Parliament by individual MPs, thus circumventing participation. In the autumn, an amendment of the act was passed, introducing (weak) sanctions for non-compliance. But, as CSOs pointed out,⁴¹⁰ it is no more than window-dressing in the absence of the proper implementation of existing rules. Also, human right defenders and anti-corruption organisations must regularly go to court to obtain public interest data and even after a positive ruling, authorities often drag their feet to implement the court's orders.

While various consultative bodies with civil society representatives do exist (such as the National Council on Sustainable Development), they are rarely convened and their functions are often formal, without any substance. Again in the framework of the efforts to meet EU criteria, a new Anti-Corruption Task Force⁴¹¹ was established towards the end of the year including representatives of relevant CSOs, but it remains to be seen whether this body will have any real impact in practice. Other forms of dialogue and civic participation have become practically non-existent, as traditional channels of advocacy and consultation with state

⁴⁰⁹ *Közel 15%-kal csökkent az adó 1% felajánlók száma 2022-ben* [Nearly 15% reduction in the number of 1% tax donors in 2022], 13 September 2022, <https://www.nonprofit.hu/hirek/Kozel-15-szazalekkal-csokkent-az-ado-1-felajanlok-szama-2022-ben>

⁴¹⁰ *The Government's bill on public consultation does not offer real solutions*, 27 July 2022, <https://civilizacio.net/en/news-blog/the-governments-bill-on-public-consultation-does-not-offer-real-solutions>

⁴¹¹ <https://eutaf.kormany.hu/korrupcioellenes-munkacsoport-ih>

institutions ceased to work years ago. Open letters, petitions even on the scale of the ongoing teachers' demonstrations are routinely ignored – or even vilified – by the Government. While some organisations are still able to maintain good contacts with lower levels of the public administration, their results are more often than not overruled by the higher levels.

Instead of real participation, the Government introduced the so-called “national consultation” i.e. questionnaires on topical issues with leading questions and distorted statements that are sent occasionally to all households. In the autumn of 2022, such a “consultation” on the “damages” caused by “Brussels’ sanctions” was carried out. As the Government rarely releases verifiable information on the result of the questionnaires (return rate, division of responses, etc.), it is safe to say that these exercises rather serve to promote the Government’s narratives than offer a real opportunity to people to express their opinions.

On the local level, opposition-led municipalities (elected in 2019) are usually open to dialogue and experiment with various participation methods, e.g. citizen assemblies (Budapest, Miskolc, Érd), participatory budgeting (Budapest and some of its districts, Pécs). However, they often lack the necessary expertise, and even more importantly have little room to manoeuvre as their competencies and financing have been severely curtailed.

E. Initiatives to foster a rule of law culture

15. Measures to foster a rule of law culture

In 2022, there were no government measures to foster a rule of law culture. Also, the centralized, compulsory curriculum of public education incorporates very few elements of civic education. Instead of “fostering” it, in 2022 as in the previous year, the Government took various non-legislative steps that eroded rule of law culture in Hungary or at the minimum, were not aimed at increasing respect for the rule of law.

The Government or the governing majority have not organized any meaningful national level discussion about the European Commission’s 2022 Rule of Law Report. Instead, Minister of Justice Judit Varga posted on her Facebook page⁴¹² that “the report, like in previous years, is based on uncertain indexes, biased NGOs and prejudices”.

Instead, in fall 2022, Hungarian CSOs (including the CSOs submitting the present contribution) organized offline events in Szombathely, Pécs and Debrecen to have public discussion about current topics related to the rule of law in Hungary, including the European Commission’s 2022 Rule of Law Report and they also prepared short videos⁴¹³ explaining the topics therein.

⁴¹² <https://www.facebook.com/VargaJuditMinisterofJustice/posts/590804125746373>

⁴¹³ https://www.youtube.com/watch?v=m4_gWLJ2tqo