European Rule of Law Mechanism: input from Hungary

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Addendum

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Preliminary Statement

Hungary is committed to the fundamental values of the EU as enshrined in Article 2 TEU. Hungary participates in the network of national contact points on rule of law in order to contribute to a factually correct, balanced and objective assessment of the situation prevailing in Hungary. However, based on the negative experience gained in relation to the Rule of Law Report 2020, this cooperation cannot be regarded as a commitment to the Commission's Rule of Law Mechanism. The current Addendum provides further information on certain topics raised in the meetings with the Ministry of Justice and the Ministry for the Interior during the virtual country visits.

Recent developments

As outlined several times in the rule of law related mechanisms, Hungary attaches particular importance to constitutional dialogue. Certain developments that have occurred since the submission of the national input and are relevant from the point of view of the Rule of Law Report underline this commitment.

Concerning the execution of the judgment of the Court of Justice of the European Union in case C-78/18, the following shall be reported: in our written input we have mentioned that the elaboration and adoption of the adjusted legal framework in line with the EU Court's guidance and in close cooperation with the European Commission is underway. The draft new act was presented to the Commission; the Hungarian authorities answered the questions raised. On 20th April, the Government introduced the bill to the Parliament, which revokes the former act on the transparency of organizations supported from abroad, and introduces new rules taking the decision of the Court of Justice into account. According to our opinion this piece of legislation will remedy all relevant concerns in this regard.

Similar results have been achieved as regards the execution of the judgment relating to the higher education regulation. The draft act would transpose an already existing model from another Member State and shall therefore comply with European standards.

As the Rule of Law Report 2020 touched upon the application procedure of judges, a recent decision by the Constitutional Court shall be mentioned [Decision 13/2021. (IV. 14.) AB]. The Constitutional Court has significantly broadened the possibilities of remedy against the results of application procedures for judicial positions. This example shows that the current national institutional framework can safeguard the independence of the judiciary and the rights of judges at a high level; there is no need for external organs to intervene. This has been confirmed by the Advocate General's recent opinion in the case IS as well.

These examples demonstrate that constitutional dialogue based on mutual trust and respect contributes best to the fostering of the rule of law.

Judicial reforms

Previously the legal background of the judicial system was subject to several modifications and it was fine-tuned in close cooperation with international expert bodies, especially the Venice Commission.

Commissioner Reding confirmed already in 2013 that 'after many exchanges, Hungary has respected the legal views of the Commission and has brought its constitution back in line with EU law with regard to all the points raised by the Commission.'

In its opinion, in March 2019 (Opinion no. 943/2018, Point 21-22.), the Venice Commission acknowledged that a number of pivotal elements of the Hungarian judicial system and powers of the NOJ's President 'had been transferred to the National Judicial Council. Furthermore, the amendments resulted in the improved accountability of the President of the NOJ.'

It must be further highlighted that the GRECO, in its report (adopted on 27 March 2015) particularly acknowledged the amendments that were made concerning the rules of judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the National Judicial Council (hereinafter: NJC) has received a stronger supervisory function in the selection process .

In late 2019 new President of the National Office for the Judiciary (hereinafter: NOJ) was elected by the Parliament. The election of a new President contributed to the renewal of the institutional relationship between the President of NOJ and the NJC without unnecessary amendments in the existing legal environment. As a consequence of that the President of the NOJ efficiently cooperates with the NCJ. Hence, it is evident that a smooth cooperation has been established between the NOJ and the NJC. It shall be emphasised, that the election of the new President of the NOJ was unanimously supported by the NJC. Besides this, new members have been elected to the NCJ during 2020; therefore the council can operate now at a fully staffed level.

Even the Report of the Amnesty International in 2021 acknowledged that the relationship is not problematic now between the President of NOJ and the NCJ. This has been confirmed by MPs from the opposition as well in a recent parliamentary debate.

It follows from the above that there are no structural issues as regards the legal relationship of NJC and the President of the NOJ that should be addressed by legislative steps.

It shall be highlighted that in 2019 the Parliament adopted an unprecedented increase in the remuneration of judges. An important guarantee of judicial independence is that the judge should be remunerated in a manner that is commensurate with the dignity and responsibilities of his or her profession. Therefore, in 2019 the Hungarian Parliament adopted the Act CXXVII of 2019 on the Amendment of Certain Acts Related to the Establishment of One-level District Office Procedures which contains – among others –the rules relating to the significant salary increment of judges.

The increase of an average 32% in the salary of judges in 2020 was followed by a salary growth of more than 12% in 2021 when the Act XC of 2020 on the central budget of Hungary in 2021 raised the salary base of judges. The proposal for a significant increase of remuneration for judges and prosecutors was announced by the Minister of Justice on 20th November 2019. The proposal was welcomed by the representatives of both organisations and by certain opposition parties as well. The decision affected cca. 3000 judges and 2000 public prosecutors.

To achieve such development the legislator followed the procedure set forth in the Act CLXI of 2011 on the Organization and Administration of the Courts, Article 76, Section (1) e) that reads as follows: „*The President of NOJ, in his overall central administration responsibility […] e) shall provide an assessment of bills of legislation relating to the judiciary - excluding municipal decrees - relying on an analysis of the opinions of the courts, obtained through NOJ;*"

As a consequence of the above, it is clearly visible that the President of the NOJ is in the position to collect the opinion of the interested parties – in this case, the opinions of the judges. Therefore, the legislator consulted with the President of the NOJ to get familiar with the judges' views regarding this issue.

The President of the NOJ collected a wide range of opinions from the judiciary. She confirmed to involve the whole scale of judicial staff in the review, beginning the work on their professional event held on 2nd September, 2019, attended by all the Regional Courts' and Regional Courts of Appeal's representatives. To achieve a review of as many interested parties as possible, it was possible for the judges to give opinion by completing an anonymous questionnaire. For the purpose of providing as supported proposals as possible conciliation took place with the Judicial Workers' Union, the Association of Hungarian Judges, the Curia of Hungary and the Attorney General's Office.

As a result of these efforts the legislator gathered more knowledge of the position of the interested parties and received opinions as well from the interested organisations, for example the Association of Hungarian Judges.

The process of developing the increase of remuneration was inclusive; the decision was welcomed by all relevant actors.

Strengthening the integrity framework

The Government has accepted the National Anti-Corruption Strategy (hereinafter as: Strategy) and the Action Plan on the implementation of the Strategy by its Government Decision 1328/2020. (VI.19.). The implementation of the Strategy has started according to the Action Plan. It defines the tasks to be completed, their deadlines and the ministers responsible for the implementation. The actions are monitored in the reporting order defined in the Government Decision. The National Protective Service participates in the coordination of the implementation of the Strategy and monitors its implementation.

The central objective of the Strategy is to establish conditions that facilitate the recognition and the management of corruption situations in time, and thus support all the players in public administration and the society in preventing, recognising and managing dangers of this type. At the same time, the Strategy highlights all the possibilities and instruments that can be used to manage the harmful effects of corruption in a lawful way. The costs of the measures partly are covered by the Public Administration and Public Service Development Operational Program and partly by Internal Security Fund.

The Strategy implements its objectives through the following three intervention areas:

1. technology-based,
2. compliance-based and
3. value-based

intervention area.

1. The Minister of Interior and the affected ministers work out the uniform system of considerations for the prevention of corruption to be enforced in the planning and implementation of electronic public administration developments, and ensure its continuous enforcement. The aim of further mitigating the risks inherent in administrative processes is to develop and apply a unified system of corruption prevention criteria in the case of implementing e-government developments. The Minister of the Interior, with the involvement of related-ministers, defines a common set of criteria that is appropriate for all e-government projects.

   The deadline for the implementation is 30 September 2021.

2. The Minister of Interior - in the framework of a pilot project - takes steps for the **development of an automated decision support system** for certain procedures in his competence, in order to improve the transparency and the controllability of the decision-making process, and thus ensure the corruption-free nature of the procedure. In relation to the electronic public administration projects, we can say that the IT developments created by them will simplify and accelerate office administration, and will make it safer, too, as the electronization of the issues replaces the previous personal processes with electronic methods including proper verification processes and the establishment of professional logging systems. These processes that offer the possibility of electronization will basically reduce the possibility of corruption, as the transfer of issues to the digital space makes the processes easier to follow with IT supported tools. The application of digital decision support systems may facilitate the making of correct decisions in the deliberation-based application of law, too. The cases and issues recorded in the electronic systems may generate a mass of data that reflects official legal practices, and this may assist officials acting in a given case on the site in making a decision

(e.g. what should be the amount of the fine imposed within the limits allowed by legal regulations). On the one hand, this may offer guidance for the official acting in the case, and on the other hand, it can be checked whether a measure corresponding to the governing practices was taken, within the discretionary limits provided by legal regulations. It is possible to produce inquiries and reports of much better quality on operation and the number of clients, on processes and statistical data for decision-making.

In the first phase, it is necessary to assess the procedures in the competence of the Ministry of Interior, select issues that are especially suitable for automation, and start the pilot operation of their application. Based on the results, the application may be improved and rolled out in the whole public administration.

The deadline is 31 December 2021.

3. The president of the National Office for the Judiciary and the Prosecutor General shall arrange for joint anti-corruption trainings every year for judges, prosecutors and the police force.

   In the rule-based fight against corruption, law enforcement bodies, the prosecutors' offices and courts play a dominant role, as they perform their tasks in a clearly defined order of responsibilities and using specific powers, as determined in the Criminal Proceedings Act and related legal regulations. Therefore it is of high importance that the staff of organisations that have responsibilities and competence in connection with secret information collection and criminal procedures have proper professional competences for the achievement of strategic objectives. These are in particular the factors that facilitate their development and the efficiency of joint work, which contribute to the extension of up-to-date theoretical and practical professional skills to recognize the new corruption phenomena inherent in social-economic changes. It is also essential that the professionals of these organisations regularly exchange their experiences with each other, and open communication will establish long-term uniform approaches and practices among them. The preservation and the transfer of these collective experiences, special methodologies, up-to-date skills and cooperation strategies may serve the professional, time- and cost-efficient anti-corruption measures that satisfy international requirements. The trainings will be held annualy.

4. The Minister of Interior summarises criminal evidentiary methodologies and experiences for law enforcement and judicial organisations and their training institutions in the form of a collection of corruption crime cases. It is necessary to produce an anti-corruption case collection to facilitate the preservation and transfer of special professional skills obtained in the activities of law enforcement bodies and criminal justice - considering court resolutions, legal interpretations and theoretical guides - which is suitable for transferring the existing practical

experience to the new generation joining the authorities and the professional area. The developed case collection may become an up-to-date training material for criminal trainings and various professional trainings, facilitating fast reactions, the flow of information and the acquisition of the necessary special skills.

The deadline is 30 June 2022.

5. The Minister of Interior organises a training for investigating prosecutors on the practices used by law enforcement bodies in confidential information collection. A series of practical trainings consisting of 7 one-day training will be held for 160 investigating prosecutors and prosecutors on the use of covert investigative tools.

   The deadline is 30 June 2022.

6. In order to identify the positions and jobs most exposed to corruption and integrity risks, the Minister of Interior and the affected ministers in cooperation with the University of Public Service will establish a data collection interface and perform data assessment at the public administration authorities. The deadline for data collection is 30 June 2021 and for the analysis of the data assessment is 31 December 2021.

   In the course of implementing the NACP, jobs especially exposed to corruption risks were mapped at public administration authorities. In parallel with repeating the previous job risk assessment - to make it up-to-date - it is advntageous to carry out the revision, backtesting, and if necessary, extension of the risk factors (e.g. exercising of discretionary rights) applied in the analysis of the corruption risks of the whole public administration job system. As the integrity of the organisation is stronger when its head knows the risks inherent in the official activities of his colleagues, it is worth publishing the results on an on-line interface, as this way the organisation is able to take various risk management steps to mitigate risks in a concentrated way, and - as it can also use the related analysis - the data supplied by the organisation can be expected to improve.

7. Considering the recommendations of the OECD Anti-Bribery Working Group, the Minister of Interior, the Minister of Foreign Economy and Foreign Affairs and the Minister of Finance distribute knowledge about the reporting obligation regarding the bribery of a foreign official, and about international bribery of legal entities, among the institutions of the public sector, the players of business life, especially SME's, and work out the related training programmes. The implementation of the training project entitled "Anti-corruption trainings, especially in the field of international bribery" financed from the Internal Security Fund started this year. As part of the project, we are planning a wide-ranging training program for the public sector (foreign affairs staff, judges, prosecutors, police officers, public

administration staff) and companies to transfer knowledge about the obligation to report international bribery and about the liability of legal entities for international bribery. The project is planned to involve nearly 1,400 people in 34 trainings.

8. In order to improve the efficiency of the integrity management systems of public administration authorities, the Minister of Interior organizes a training for integrity officials and integrity staff that assist in the activities of integrity advisors - performing some tasks in a specialised way, or supporting the coordination of integrity issues at bigger organisational units. Integrity advisors play central roles in the operation of the integrity management systems of public authorities. The tasks the integrity advisors are extremely complex, they contain a number of smaller tasks, and require the use of a wide range of competences and methodology skill elements. As a consequence of the integration of public administration authorities in multiple phases, the staff number per public administration authority has increased significantly. Consequently, an integrity advisor has to perform its tasks for higher and higher staff numbers at the organisations. All this implies that the tasks of integrity advisors - while preserving the results already achieved and depending on the challenges at the given organisation - should be distributed. In the case of almost all organisations working with a large staff number and at multiple locations, it is advantageous to appoint integrity officials at each location, and perhaps even at larger organisational units, too, who will - in addition to performing their original tasks - keep contact with the integrity advisor and participate in the performance of the coordination tasks of the integrity advisor at the given location or organisational unit. At public administration authorities with the highest staff numbers, it is necessary to have integrity officials who - under the control of the appointed integrity advisor - carry out some parts of the work of the integrity advisor, in a specialised way (e.g. training, investigating reports, process management, risk management etc.). In order to implement that, it is necessary to hold intensive trainings of short periods to prepare the integrity officials and integrity staff of public administration authorities for their tasks.

   We provide training for integrity staff and integrity officials, disaggregated according to their subtasks and specialization, with the participation of the National University of Public Service.

   The training system will be established by 31 December 2021. After that the training will be provided on an ongoing basis.

9. The Minister of Interior will arrange for the development of trainings supporting the integrity development processes of public authorities and media contents that can be used for communication purposes.

Measures to be implemented in 2021:

1. The Minister of Interior - with the involvement of the affected ministers - works out the uniform system of considerations for the prevention of corruption to be enforced in the planning and implementation of electronic public administration developments, and ensure its continuous enforcement.
2. The Minister of Interior - in the framework of a pilot project - takes steps for the development of an automated decision support system for certain procedures in his competence, in order to improve the transparency and the controllability of the decision-making process, and thus ensure the corruption-free nature of the procedure.
3. With the cooperation of the Minister of Finance, the Minister of Interior elaborates the concept of an IT system that is essential for the proper operation of the internal control system, especially the integrated risk management system, and supports the uniform management of process models and their distribution among organisations.
4. The Minister of Interior - with the involvement of the Minister of Justice - organises joint anti-corruption trainings every year for judges, prosecutors and the police force.
5. NPS organises a training for investigating prosecutors on the practices used by law enforcement agencies in confidential information collection.
6. The Minister of Interior - with the involvement of the affected ministers - in cooperation with the University of Public Service - identifies the positions and jobs most exposed to corruption and integrity risks at public administrative organisations.
7. The minister without portfolio for the management of national assets, in cooperation with the Minister of Innovation and Technology, the Minister of Finance, the Minister of Interior and the Minister of Justice, examines the possibility of creating a uniform legal background for the preparation and implementation of major investments financed from public funds and for the management of the related integrity risks.
8. The minister without portfolio for the management of national assets, in cooperation with the Minister of Innovation and Technology, the Minister of Finance, the Minister of Interior and the Minister of Justice examines the conditions of using the ISO system and its expected effects at the economic associations in public ownership, then - depending on the results of the audit - makes a recommendation to the Government about the necessary actions.
9. In order to improve the efficiency of the integrity management systems of public administration authorities, the Minister of Interior arranges for the training of integrity officials and integrity staff that assist in the activities of integrity advisors - performing some tasks in a specialised way, or supporting the coordination of integrity issues at bigger organisational units.

Main priorities and outcomes expected as regards the measures to be implemented in 2021

- Corruption prevention criteria system for IT developments
- Pilot project to automate official decisions
- The concept of a common IT system for budgetary bodies to support process management and risk management
- Job risk assessment and analysis
- Training of staff assisting integrity advisors.

A formal report on the implementation of the strategy will be made to the government. Citizens receive information about the achieved results on the *"korrupciomegelozes.kormany.hu"* website.

Anti-corruption risk management activities of state authorities, reports on integrity and corruption risks

Risk management activity within the integrated risk management system by now became a valuable prevention tool for budgetary authorities. The compliance of public authorities' risk management systems with the methodological requirements showed an improving trend from 2016 to a few years and then started to stagnate at a medium level. Bodies appear to have met the requirements that are easier to meet relatively quickly, and more significant and time-consuming changes in the way organizations operate are needed to move forward. The number of public authorities nearly doubled in mid-2020 as school maintenance centers also received this status. These institutions show a different level of compliance as the other authorities. These issues are addressed in Paragraph 3 of the Action Plan.

With the cooperation of the Minister of Finance, the Minister of Interior will work out the concept of an IT system that is essential for the proper operation of the internal control system, especially the integrated risk management system, and supports the uniform management of process models and their distribution among organisations.

As far as reports on integrity and corruption risks are concerned, it shall be highlighted that the head of the organization is obliged to receive and investigate the reports on integrity and corruption risks with regard to the operation of the organization, in the framework of which they have to develop an internal regulation. The internal rules to be issued by the number one leader must provide, inter alia, for the receipt of reports of abuse, the investigation of abuses, the hearing of those concerned, the review of documents and the proposal for action.

The integrity advisor is usually, but not necessarily, is given a central operational and coordinating role in these. The public authorities keep internal records of events that violate integrity. In connection with public interest disclosures, different responsibilities are defined by Act CXI of 2011 on the Commissioner for Fundamental Rights (Act on CFR, Hungarian acronym: Ajbt.) as of 1 January 2012, and in Act CLXV of 2013 on Complaints and Public Interest Disclosures (Act on CPID, Hungarian acronym: Pkbt.) as of 1 January 2014, with regard to which the Commissioner ensures – through his Office – the operation of an electronic system for making and recording public interest disclosures. The Office of the Commissioner for Fundamental Rights is an alternative route for reporting. Since 2014, nearly ninety thousand public interest announcements have come here. Public extracts of these are available online. *(http://www.ajbh.hu/kozerdeku-bejelentes-publikus-kivonat)*

Conflict of interests in the context of the current anti-corruption program

The job risk assessment also covers the risks associated with conflicts of interest.

In the course of implementing the NACP, jobs especially exposed to corruption risks were mapped at public administration authorities. Using these results in its operative work, the NPS is able to use the indicators showing the corruption exposure of the service carried out by the affected person, regarding its protected personnel, for the interruption of corruption crimes and situations, and for the efficiency of investigation, as well as for the selection of the subjects of integrity checks in the documented risk analysis required by the prosecutor's office. All that requires the maintenance of the current personnel table and the continuous collection of job-related data (including conflict of interest rules related to jobs, and obligation to make asset declarations).

The integrity methodologies for different types of organizations also cover the topic of specific ethical requirements for conflicts of interest.

The Minister of Interior, in cooperation with the Minister of Finance and the minister without portfolio for the management of national assets, in order to improve the integrity of the public sphere - utilising the operational experience of public administration authorities in integrity management - will examine, based on the assessment of requirements and good practices among public organisations, what integrity management model should be applied in the case of public organisations belonging to various sectors and categories, and in the case of economic associations in majority national ownership. Public administration authorities are obliged by a decree to operate integrity management systems, but a number of other public authorities also indicated their intention to introduce an integrity management system on their own initiative. In order to support that, the Ministry of Interior issued a recommendation to public authorities wishing to introduce an integrity management system.

Based on the recommendation, the next step should be the production of manuals and sample regulations - separately for each type of authority - describing the individual steps of introducing the system at operational level, with the involvement of the representatives of the

affected types of organisations, on the basis of experiences related to good practices established in sample projects at selected authorities. Based on the results, it can be decided whether it is justified to oblige individual groups of organisations to operate integrity management systems.

The development of integrity and security awareness at organisational level communicates the policy objectives to the individuals working for these organisations. They formulate the internal regulatory and cultural environment within the organisation that expresses the importance of integrity and security awareness, and encourage the staff of the organisation to pay more and more attention to this topic. At organisational level, awareness may be increased by information programmes (strengthening of internal control), new methodologies (recognition of corruption behaviour forms in official procedures), rules on involvement (detection of additional conditions that are not specified as reasons for conflict of interest in legal regulations), internal integrity trainings on the use of easy-to-understand official language, strengthening cooperation among integrity advisors, and - to support the activities of integrity advisors - train integrity officials.

Results of integrity testing

As outlined in the written input, 2020, from the completed integrity tests, criminal proceedings have commenced against nine individuals because they breached their official duty for undue advantage. Three of the criminal proceedings were initiated because of supplying data from public registers in the simulated situation of the integrity tests. Two border guards let persons with invalid documents cross the Schengen external border. A security guard disclosed data (false data provided beforehand) to our officer posing as a private investigator. Two policemen did not turn in valuables given to them as derelict objects found by a pool. Two prison guards kept for themselves part of a false package intended to smuggle into the institution.

Asset declarations, revolving doors, lobbying

The system of asset declarations has been described in details in the Input documents 2020 and 2021 and these are continuously assessed by international fora (e.g. in the framework of GRECO evaluations).

There are different types of procedures in the jurisdiction of the National Protective Service in which cross-checks on assets and interests declarations carried out with varying regularity: e.g. covert intelligence gathering, preparatory procedure according to the provisions of Act XC. of 2017 on criminal proceedings and integrity testing. By the nature of these instruments the uncovered anomalies can lead to the initiation of criminal investigations and/or the involved person’s dismissal from service.

Of course there are other legal methods aimed at confirming the veracity of asset declarations and the legality of the accumulation of wealth. For example the National Tax and Customs Administration have the right to make such inquiries in the scope of their tax administration procedures and the Constitution Protection Office may examine a person's financial position during national security vettings. Within the police the National Investigation Office has a designated assets recovery unit. Act CLII. of 2007 on asset declaration obligations contains special inspection procedures that are to be conducted by the employer and the National Tax and Customs Administration.

Section 117 Paragraph (1) of the Act CXXV of 2018 on governmental administration (Kit.) entitles the Government to define sectors and jobs within these sectors, in which the government official may not enter an employment relationship after the termination of his government service relationship (if the given business association operates in those sectors as its main scope of activity). The term of the restriction specified is the equivalent of the time spent in the job subject to the restriction, but maximum two years. However, the information obtained in the period of the government service relationship shall not be used for business purposes after the expiry of the deadline specified, either.

As described in the input documents, the provisions of the Act CXXXI of 2010 establish a proper framework for the involvement of stakeholders, while the Code of Ethics and the Government Decree No. 50 of 2013 on the Integrity Management of Public Administration and the Regulation of Accepting Lobbyists ensure that opaque informal contacts cannot have an improper impact on the attitude of civil servants.

Legislative measures in the field of corruption

Hungary is committed to develop the most adequate legal framework for the prevention of corruption. Examples for relevant changes are the following:

In 2020, by Act no. XLIII. of 2020 – amending among others the Criminal Code – Hungary amended its rules on bribery; in order to comply with the Phase IV recommendations of the OECD, the definition of the foreign public official (Article 459 of the CC, point 13) now includes those persons who perform public duties (ie. legislative, judicial, administrative or law enforcement tasks) in state-owned or municipality-owned enterprises.

The Criminal Code also clarifies that trafficking in influence may be also committed by any person who pretends to be a public official and thereby requests or accepts any undue advantage. In the past, when a person pretended to be a public official, and by deception requested or accepted an undue advantage, his/her was criminalised as a fraud. In this case, the person offering an undue advantage was considered as a victim of the fraud, which was also an undesired consequence of this approach. Under the amended legislation already in force, this is considered as trafficking in influence.

Act no. C of 2020 amended the rules on active bribery by explicitly forbidding bribes in the context of providing healthcare services. The passive bribery offence had already implied the prohibition of accepting or requesting a bribe, but the Criminal Code was amended to clarify what constitutes an undue advantage in this context.

In addition, in 2017, the statute of limitations of corruption-related criminal offences (Chapter XXVII) was extended to 12 years.

Finally, effective regret is a reason for reduced penalty, which now applies across the entire anti-corruption chapter of the CC, for example under section 290 (5), 293 (6) and 294 (5) of the Criminal Code. It does not provide immunity from prosecution.

These examples show that there is a continuous monitoring in order to develop efficient solutions in the field of fight against corruption.

The role of the National Protective Service in the fight against corruption

The resources allotted to the National Protective Service are adequate. The members of the personnel measure up to our high standards and constantly strive for further improvement.

The National Protective Service have always paid special attention to maintaining a high level of cooperation with the protected bodies, the other law enforcement authorities, the civilian national security services, the courts and the prosecution service. Some of our activities (integrity testing, covert intelligence gathering, preparatory procedures) require constant liaison with the judges and prosecutors and the high quality of our relation is a precondition to our highly effective and legally impeccable procedures. Alongside the good working relationships there are many cooperative agreements in force between the National Protective Service and the partner authorities.

Transparency of political party financing

Act XXXIII of 1989 on the Operation and Financial Management of Political Parties provides in Section 10 that the State Audit Office shall be authorized to control the legality of the financial management of the parties. The State Audit Office shall biennially audit the financial management of the parties drawing aid from the central budget on a regular basis. If the State Audit Office notices that the party has acted illegally in the sphere of its financial management, it shall request the party to re-establish its legal state of affairs.

As described in our Input document, the Hungarian law contains detailed provisions on the transparency of campaign financing and political party financing. A separate Act, Act LXXXVII of 2013 on the Transparency of Campaign Costs related to the Election of the Members of the National Assembly deals with the campaign funding.

A recent amendment – in order to prevent abuses related to campaign financing – has modified Act CCIII of 2011 on the Election of Members of Parliament. According to this amendment instead of the 27 individual candidates, 71 individual candidates are required – instead of the former 9 – in 14 counties and the capital to set a national list. According to the Proposal 50 individual candidates were required to set a national list, instead of the previous 27 candidates. However, for the motion of the opposition it was amended, so that not only 50 but 71 individual candidates will have to be nominated to set a national list.

If a nominating organisation has already set a list but the number of its candidates falls below 71, the list shall be deleted.

The amendment ensures that only parties with real public support can set up a party list, so those nominating organizations whose sole purpose is to run candidates to obtain state support cannot abuse the electoral rules.

With regard to “fake parties” without social support, a report of the State Audit Office found that some nominating organizations used their state support - contrary to the rules - not solely to cover real costs related to campaign activities during the election campaign period.

This way the rule contributes to more transparency in the campaign funding.

According the Act XXXVI of 2013 on Electoral Procedure the election campaign period is a fixed period, it shall last from the 50th day before the voting until the end of voting on voting day. The Act on the Transparency of Campaign Costs states that the support may only be used during the election campaign period to cover real costs related to campaign activities as defined in the Act on Electoral Procedure. It should be emphasised that the costs during the election campaign period are capped under the Act on the Transparency of Campaign Costs. In order to ensure transparency all candidates and nominating organisations shall publish in the Official Gazette of Hungary the amount, source and use of state and other funds spent on the election within 60 days after the election of the Members of the Parliament. The State Audit Office performs audits concerning the use of all support, including the audit on capped costs during the election campaign period.

It shall be emphasized that the control of the financial management of parties as well as of campaign funding is very strict in Hungary, also compared to other European countries.

Section 2:54, paragraph (5) of the Civil Code

The efficient fight against hate speech presupposes a balance between the right to freedom of expression and the protection of dignity of social groups. In this context, the Fourth Amendment of the Fundamental Law has added two essential elements to the provision defining freedom of expression.

One of these, – according to which exercising the freedom of expression and opinion cannot be aimed at violating other person’s human dignity – raised the former case-law of the Hungarian Constitutional Court to a constitutional level. Namely, the Constitutional Court stated explicitly as a principle that “*human dignity, which is under constitutional protection (...), may limit the freedom of expression realised in value judgements*”. [Decision No. 36/1994. (VI. 24.) AB]. The Fourth Amendment stipulates this constitutional principle, and does not overrule earlier constitutional interpretations, which, for instance, established more stringent conditions with respect to public actors.

The other innovation of the Fourth Amendment provides members of national, ethnic, racial or religious groups the possibility to bring action before the court - as defined by law - against any statement considered injurious to the group alleging violation of their human dignity.

According to Section 2:54 (5) of the Act V of 2013 on the Civil Code (hereinafter referred to as 'Civil Code') '*(a)ny member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty-day preclusive period. All members of the community shall be entitled to invoke all sanctions for violations of personality rights, with the exception of laying claim to the financial advantage achieved.*' These rules of the Civil Code and the range of communities defined therein are based on the provision according to Article IX (5) of the Fundamental Law of Hungary which states that '*(e)xercising the freedom of expression and opinion cannot be aimed at violating the dignity of the Hungarian nation or the dignity of any national, ethnic, racial or religious group. Members of such groups are entitled to bring action before the court - as defined by law - against any statement considered injurious to the group alleging violation of their human dignity'*.

The Constitutional Court pointed out in several decisions – for first time in Decision No. 30/1992. (V. 26.) AB – that "*the dignity of communities may serve as a constitutional limit to the freedom of the expression*".

The Constitutional Court also laid down that even though the dignity of communities cannot be interpreted as an independent fundamental right, it is the inalienable right of individuals to be protected by law and order against the violation of their human dignity which relates to them on account of being members of a community [Decision No. 96/2008. (VII. 3.)]. It must be emphasised that this latter decision of the Constitutional Court expressly acknowledged the constitutional possibility of the legislator to provide civil law instruments against hate crimes.

The rules of the Fundamental Law and the Civil Code state explicitly as a principle that individuals belonging to a community can enforce their claims against expressions of opinion insulting to the community, for the violation of their human dignity, before the court. Thus, it makes it clear that an insult aimed at the community may result in the infringement of the subjective rights of the member of the community, and this infringement of rights can be repaired through the means of civil law.

It is not task of the Government to form an opinion on the case-law of the courts. Generally, we can say that the ordinary courts and the Constitutional Court have developed a detailed framework for the protection of freedom of the press and freedom of expression and apply these consistently. Therefore, if in an individual case the decision of ordinary courts would amount to a violation of fundamental rights, the Constitutional Court can ensure an efficient protection for fundamental rights.

Media regulation

The general right of freedom of expression is safeguarded in Article IX of the Fundamental Law. Freedom of expression enjoys traditionally a high level of fundamental rights protection in Hungary: the case-law of the Constitutional Court attaches priority to freedom of expression in the system of fundamental rights, as the freedoms of expression, speech and press are basic preconditions for developing and upholding democratic public opinion.

The National Media and Infocommunications Authority is an autonomous regulatory agency subordinated solely to the law. The Media Council is an independent body reporting to Parliament, being the successor in title of National Radio and Television Board.

The provisions of the Media Act ensure that the supervisory organs of the media services are appointed in a democratic and transparent manner in line with the relevant guidelines of the Council of Europe. The rules of nomination ensure that the members of the Media Council are appointed after reaching a high level of political consensus. The recent appointment procedure complied with the rules of the Media Act.

The model that members of an elected organ can remain in office if the parliamentary majority fails to elect new members, is not unprecedented in Europe, such models exist is many other Member States and ensure the continuous functioning of the respective organs. This is especially important in case of regulatory and administrative tasks in the field of media and infocommunication.

The Media Council and its members are subject only to the law, and cannot be instructed within their official capacity. Strict rules of conflict of interest (including political activities) contribute also to the independence of these officials.

The regulatory framework for media activities has been developed in consultation with the Commission. Hungary is one of the few Member States where genuine pluralism prevails in the media and ideological debates as well as in the general opinion. The legal situation related to the establishment of KESMA has been examined by the Constitutional Court; the Constitutional Court found no violation of media pluralism, thus the case can be seen as closed.

Based also on the findings of last year's Rule of Law Report, it cannot be confirmed that a specific regulation on the transparency of media ownership would be required by common European standards. As outlined in the inputs 2020 and 2021, the current legal framework in Hungary contains transparency regulations on media ownership in certain cases; detailed data are available from national registers. Furthermore, the Media Act contains detailed provisions on the prevention of market concentration.

The Government has taken several steps to react to the economic and social consequences of the pandemic. Considerable support has been provided for the artistic sector and for media as well. E.g. Government Decree on the different application of the rules of the Media Act on the obligation to pay media service provision fees during an emergency came into force on 8 April.

In accordance with this Decree, commercial linear media service providers shall be exempt from paying the quarterly media service provision fee, due to the coronavirus pandemic, until the end of the quarter in which the emergency ends, as was the case last year (Government Decree 132/2020.)

Pursuant to the current Government Decree, the National Media and Info communications Authority shall recognise the media service provision fees paid for the first quarter of 2021 as a fee due for the quarter following the quarter in which the emergency ends for those authorised to provide media services. The media service provision fees for the second quarter of this year do not need to be paid, so the 341 service providers concerned shall be entitled to an exemption from their fees of at least half a year.

This measure alleviates the economic and media market situation of a total of 374 operators, including 81 commercial radio and 293 television stations, affected by the coronavirus pandemic.