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Transparency International Hungary and K-Monitor, as members of the coalition of civil society organisations that included also Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, Mertek Media Monitor and Political Capital, contributed to the report on the rule of law in Hungary in the framework of the [targeted consultation](#) launched by the European Commission in relation to the European Commission's 2021 Annual Rule of Law Report.

This document follows the structure of the European Commission's stakeholder consultation survey, therefore it applies the headings and numbering of the survey. It contains those sections of the survey, which have been authored or co-authored by Transparency International Hungary and K-Monitor, while those sections of the survey, to which neither Transparency International Hungary, nor K-Monitor contributed, are left out.

Sections 19 to 30 in chapter II (Anti-Corruption Framework - Hungary) of this document are identical with the respective sections contained in the joint submission of the coalition of Hungarian civil society organisations. Other sections of this document reflect the opinion of Transparency International Hungary and K-Monitor and are intended to supplement the joint submission of the coalition of Hungarian civil society organisations.

Information on horizontal developments:

According to Transparency International's 2020 Corruption Perceptions Index, Hungary's resistance to corruption did not improve, the country is still considered as one of the most corrupt Member States within the European Union. In the assumption of Transparency International Hungary, the country's poor anti-corruption and rule of law performance interrelate, and the coronavirus pandemic negatively impacted both areas.

The outbreak of the coronavirus pandemic and the government's response to the challenges accelerated the deconstruction of the country's democratic edifice. One of the examples to mention is the introduction of a rule by decree regime, which substantially broadened the government's room for manoeuvre. Moreover, the government revoked numerous competences of municipalities and diverted a significant share of their revenues by the designation of so-called special economic zones and by depriving some of the municipalities' most important non-restricted financial resources, such as vehicle tax and local business tax.

The government used the need to combat the pandemic as a pretext to further curtail the accessibility of public interest information. Beside tripling the 15-day deadline set out in the law for servicing freedom of information requests, the government also amended the Fundamental Law, for the ninth time since its entry into force in 2012. The Ninth Amendment rewrites the constitutional definition of public funds, and it condones the government's recently developed practice to transform public funds into private assets by using so-called asset management foundations as special purpose vehicles.

The changing of electoral rules is equally worrisome, as it fails to put the 'fake party system' to an end, even though this phenomenon resulted in the misappropriation of some HUF 7 billion worth of public funds since 2014. In light of the above, Transparency International Hungary holds that rule of law still remains in a defunct state in Hungary.

Though the coronavirus pandemic undoubtedly necessitated changes to the country's 2020 budget, resources designed to mitigate the consequences of the global epidemic were often used inefficiently. These financial resources were used to promote oligarchs and the government's clientele, whereas the society's most indigent groups received much less direct aid than needed.

In the meantime, the amount of public funds dedicated to the management of the crisis in itself was less than expected, and the efficiency of the use of these funds remains a question, as



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some of the projects subsidized by the government served much more the survival of the new ownership class than the economy's long-term resilience.

The correlation between corruption and economic performance in Hungary is beyond doubt. Hungary has locked itself in the EU's lower house of countries with serious exposure to corruption and with humble national incomes, despite seven years of robust economic growth before the coronavirus pandemic. Hungary performs worst from an anticorruption perspective among the Visegrad countries and is next to last within this group in respect of per capita GDP by slightly exceeding Poland's output. The Hungarian economy's serious structural problems, triggered by factors that go well before the present crisis, prevail.

Hungary performs poorly in the global competitiveness rankings, for which the weaknesses of the democratic institutions, the declining output of the healthcare and the education systems, and the low level of innovation are to be blamed.

The disruption of the checks and balances system going hand in hand with the massive centralisation and systemic corruption explain why Hungary, in spite of the unprecedentedly generous funding by the European Union, failed to embark on a trajectory of inclusive and sustainable economic growth.

The ambiguous trend of growing investments regardless of the decay in the country's rule of law performance can be explained, among other things, by the fact that most investors have already accommodated systemic corruption as part of doing business in Hungary.

One of the few positive developments regarding good governance is the attempt to push back informal payments (petty corruption) in healthcare through the increase of salaries, the introduction of more deterrent criminal sanctions and stricter rules on the relations between private and public healthcare service.

I. Justice system

A. Independence

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

In the submission of 2020, Transparency International Hungary and K-Monitor have underlined the significance of an independent judiciary. Although the Hungarian judiciary remains the only state organ to retain a substantial portion of its professional autonomy, there are worrisome developments. During the pandemic law courts, and especially the Curia, Hungary's highest court have become more vulnerable to government endeavours. Mainly with the appointment of government-leaning judges to judicial leadership positions, the executive seeks ways to influence the judiciary. The independence of higher instances courts and of the Curia is at stake.

Transparency International Hungary and K-Monitor still perceive no bias or partiality on judges' behalf to unduly favour the government. Contrarily, we observe impartiality and objectivity in the courtroom, irrespectively of how sensitive the case commenced by CSOs may be for the government.

Transparency International Hungary and K-Monitor assert that both individual and organisational ethical standards within the judiciary are high, which help prevent the government from expanding its influence over law courts.

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



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Concerns prevail regarding the professional autonomy and the reliability of the Prosecution Service, a hierarchical institution that functions under the leadership of the Prosecutor General (PG).

Although in response to GRECO's recommendations, the obligation to hire a disciplinary commissioner was introduced, the superior prosecutor remains firmly involved in disciplinary processes of subordinate prosecutors, which is still a ground for concerns.

As highlighted in our submission of 2020, there are no tools to hold the PG accountable, as the PG has no superior to launch a disciplinary procedure in order to examine alleged wrongdoing.

In practice, there is no legal avenue to unseat the PG, unless found guilty of a felony or otherwise becoming unworthy to the position.¹ These provisions serve as an example of *contradictio in adiecto* for the following reasons:

The PG has immunity, but the law fails to specify who is supposed to initiate a waiver process. In lack of such a specification, one could suppose that the PG is expected to initiate a waiver process in his / her own case, just as in case of the immunity of Parliamentarians.

From a different perspective, as the PG is a prosecutor himself / herself, it may reasonably be supposed that the PG is obliged to waive his / her own immunity, because the immunity of prosecutors may only be waived by the PG.

Both scenarios run counter to the fundamental legal principle of the prohibition of self-incrimination (*onus probandi*).

The law fails to define what constitutes the unworthiness of the PG and who and in what kind of a process is supposed to establish that the PG became unworthy.

As a result, the PG may lead the Prosecution Service at will and may unaccountably outcompete any professional consideration, whereas his / her arbitrary actions or omissions remain unsanctioned.

8. Independence/autonomy of the prosecution service

Concerns raised in our 2020 submission regarding the autonomy of the prosecution service remain. It continues to be a problem that the Prosecutor General (PG) may instruct subordinate prosecutors and may take over cases from prosecutors or reassign cases to other prosecutors at any stage of the procedure without explanation.² Obligated to adhere to the line of command, individual prosecutors cannot be deemed independent, nor are empowered to autonomously decide in cases assigned to them.

There is no independent forum where a decision by the prosecutor to not bring a case to court can be challenged. Decisions regarding appeals against dismissals or the termination of an investigation remain within the prosecution service. The PG may unaccountably prevent law courts from adjudicating criminal cases by intentionally failing to bring charges.

The PG is elected for a term of nine years by a two-third majority vote of the Parliament.³ If the PG's mandate expires and the Parliament is unable to elect a replacement, the acting PG exercises his / her powers until the beginning of the successor's mandate.⁴ A one-third plus one group of members of Parliament can act as a blocking minority and can keep the acting PG in office indefinitely.

¹ Subsection 23(7) of Act CLXIV of 2011

² Subsections 12(1) and 13(1) of Act CLXIII of 2011.

³ Article 29(4) of the Fundamental Law of Hungary.

⁴ Subsection 22(2) of Act CLXIV of 2011.

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Hungary's current Prosecutor General, in office since 2010, was re-elected for a new nine-year term in 2019. As a result, Mr Peter Polt, who served his first term between 2000 and 2006, has spent over 15 years in the Prosecutor General's seat, and with completing his current term, Mr Polt will have 24 years in office. Such an extremely long time in public service is disquieting.

The Venice Commission has expressed concerns about the PG's "strong hierarchical control over other prosecutors" and urged the establishment of a "system of checks and balances" internally.⁵ The Group of States against Corruption (GRECO) concluded that the law "increase[s] considerably the political influence in respect of the election" of the PG and recommends that the "possibility to maintain the PG in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor be reviewed by the Hungarian authorities."⁶ GRECO asserted that decisions on removal of cases "ought to be guided by strict criteria and be justified in writing in order to avoid arbitrary decisions".⁷

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

In Hungary, the prosecution service is exclusively entitled to exercise the State's power to punish, i.e., it holds the monopoly to prosecute criminal offences.⁸ Therefore the prosecution service may prevent law courts' decisions by failing to bring cases to judgment. As the law excludes the possibility for private prosecution in corruption cases and in cases related to the abuse of power, the Prosecution Service can filter out sensitive cases.

Since 2010, the Prosecution Service has regularly let the perpetrators off the hook in cases embarrassing to the government. Progress has been made in this field, which is exemplified by the case of former government MP Roland Mengyi, sentenced to time in prison for budget fraud, and by the cases of György Simonka and István Boldog, current Fidesz MPs, both prosecuted for the suspected misappropriation of EU funds.⁹ Still, in cases that are particularly delicate for the government, the beneficiaries of supposed corruption can rely on the benevolent inaction of the prosecution service. This is how the stakeholders in the Elios case, including the son-in-law of Prime Minister Viktor Orbán, have evaded prosecution even though according to OLAF, they embezzled approximately HUF 13 billion (EUR 43 million) public funds with mafia methods.¹⁰

The perpetrators of the irregularities surrounding the "Bridge to the World of Work" project associated with the National Roma Self-Government, previously headed by ruling party MP Flórián Farkas and resulting in billions in refunds have also evaded prosecution until the completion of the present submission.¹¹

⁵ Venice Commission opinion on Acts CLXIII and CLXIV of 2011 (CDL-AD(2012)008, para 87.

⁶ The Greco Fourth evaluation round report on Hungary on corruption prevention in respect of members of Parliament, judges and prosecutors (July 2015), page 42, para 177

⁷ The Greco Fourth evaluation round report on Hungary on corruption prevention in respect of members of Parliament, judges and prosecutors (July 2015), page 44, para 190,

see: [www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2014\)10_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2014)10_Hungary_EN.pdf)

⁸ Article 29(1) of the Fundamental Law of Hungary.

⁹ The case against György Simonka and similar cases were covered in detail by a series of articles by 24.hu that later won the Transparency-Soma 2019 Award for Best Investigative Journalism (see: <https://transparency.hu/hirek/a-24-hu-uj-sagi-rojanyerte-az-idei-transparency-soma-dijat/>).

¹⁰ A comprehensive report of the Elios-case is to be found in the article entitled *This is how authorities sabotaged the fraud investigation against Orbán's son-in-law*, May 2019 (<https://atlatszo.hu/2019/05/06/tobb-mint-hiba/>)

¹¹ See the article of József Spirk at 24.hu entitled: *Itt az OLAF-jelentés a Farkas Flórián regnálása alatt elherdált 1,6 milliárdról* [Here is OLAF's report about the 1,6 billion forints squandered during the rule of Florian Farkas]: https://24.hu/belfold/2019/06/21/itt-az-olaf-jelentes-a-farkas-florian-regnalasa-alatt-elherdalt16-milliardrol/?_ga=2.11183028.1841777718.1561028343-1797508791.1537555946

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Between 2015 and 2019, the prosecution service dismissed eight cases filed on the basis of OLAF's recommendations and brought indictments in seven cases. Accordingly, the indictment rate reached by the prosecution service was 47 percent in 2019, better than the EU average (36 percent). However, Hungary's prosecution service had the worst indictment rate in the EU for years. At the end of 2019, however, 18 cases were still pending in Hungary that had been initiated on the basis of OLAF's judicial recommendations.¹²

By failing to bring incidents of high-level corruption and cases of grievous government malpractice before justice, the Prosecution Service grants impunity to the suspected perpetrators and undermines public trust in crime control and anti-corruption enforcement system, including also criminal courts.

B. Quality of justice (Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

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

Public procurement processes offer another example for the government's moves to hinder the accessibility of justice. Besides state organs, only (potential) bidders may commence processes to redress irregularities in public procurement processes. In such cases bidders first need to exhaust legal remedy processes by the so-called Public Procurement Arbitration Board (PPAB), a state agency whose independence from the executive branch of the government is more than questionable (for details see section 24). Bidders in most cases are reluctant to turn to the PPAB, because of the extremely high amount of fees required. Though PPAB's procedural fees progressively follow the value of the public procurement process concerned, in the case of a higher value contract the procedural fee amounts to ca. EUR 71 000, an extremely high amount of money for a Hungarian SME. Litigants get only reimbursed if the legal remedy process is successful for them. This is yet another tool to dissuade litigants from turning to law courts.

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

In this section, we intend to highlight only one aspect of judicial trainings, namely the strong dissuasion on judicial leaders' behalf exercised in order to prevent civil participation.

In 2017 Transparency International Hungary planned to organise a specialised conference and training session for judges in order to introduce them the EU's directive on the actions for damages for infringements of the competition law provisions. Our efforts to reach out to judges and to involve them almost entirely failed.

We later learned that our failure was due to an information note¹³ issued by the President of the National Judicial Office on 13 July 2017. In this information note, circulated among members of the judicial leadership, the President of the National Judicial Office banned judges from participating at our conferences and trainings due to potential integrity risks.

C. Efficiency of the justice system (Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

17. Length of proceedings

Court experience of Transparency International Hungary and of K-Monitor primarily relates to freedom of information litigations. As freedom of information litigations belong to so-called

¹² Figures contained in this section come from the OLAF Report 2019: https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2019_en.pdf

¹³ In the possession of Transparency International Hungary.



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priority cases, the law expects courts to award final decisions in access to information litigations as expeditiously as practicable, still, the length of an average freedom of information court case may expand to a year and a half. Since the implementation of the 'requester covers the costs first' approach, the length of freedom of information litigations practically doubled, as requestors of information have to first challenge the imposition of the 'tax on transparency', which itself leads to lengthy processes. In Transparency International Hungary's first-hand experience, government agencies and ministries systemically and wrongfully exploit the possibility to charge labour related costs associated with the servicing of a freedom of information request to the requestor, which prolongs the timeframe of a freedom of information litigation to the extreme. Length of freedom of information litigations may in certain cases exceed two years and a half, an embarrassing development with regards to the fact that such cases have priority and should therefore be tried expeditiously.

18. Other - please specify

The issue we highlighted in our 2020 submission, namely that the government malignantly and positively hinders the enjoyability of the fundamental right to access public information by charging the costs¹⁴ related to the servicing of freedom of information requests to the requestor is still a concern.

Managers of public interest information tend to excessively charge requestors, which is an insurmountable obstacle in the way of access to justice, too, since as long as the legal dispute about the costs are unsettled, no litigation may be commenced as regards the merits of the case.

The making of the *ex ante* payment of arbitrarily defined and often excessive charges a prerequisite of the servicing of information requests seriously limits the extent to which the fundamental right to access public interest information can be enjoyed.

Transparency International Hungary and K-Monitor wish to underline how severely the state's obstructive practices hinder the fundamental right to impart information by 1) refusing to properly respond to information requests, and subsequently 2) constraining the requestor to become party to lengthy and dubious juridical processes in order to obtain the information sought. Taking into account that the enjoyability of freedom of expression depends in most cases on the accessibility of public interest information, the government's toxic practices in the freedom of information arena deprives citizens from the possibility of informed decisions and the participation in the political discourse.

A very concrete example of how the executive branch of the government disrespects the court's final decision is discussed below, under Section 47. In that particular litigation the country's Human Resources Ministry fails to share information sought by Transparency International Hungary, even though the court decided in our favour at every instance of the process.

II. Anti-Corruption Framework – Hungary

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

19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Resources allocated to these (the human, financial, legal, and practical resources as relevant)

As already highlighted in our 2020 submission, Hungary has no stand-alone anti-corruption agency. Instead, the implementation of policies to prevent and sanction abuses is an obligation

¹⁴ Subsection 29(4) of Act CXII of 2011, for details, see also Gov. decree 301 of 2016.

of state institutions in general, while certain bodies have special competences to counter corruption, with the ‘anti-corruption police’ called National Protective Service playing an increasingly important role in terms of anti-corruption coordination and corruption prevention, and the implementation of the government’s anti-corruption strategy. However, it remains a concern that most state institutions are under the leadership of political partisans or loyalists.¹⁵ Although most of them have the necessary capacities, state organs tend to underuse their resources by mainly focusing on small scale corruption.

The National Protective Service (NPS) is a separate branch of Police, which reports directly to the Minister of Interior.¹⁶ It is responsible for the prevention of crime within the police, law enforcement, and other government agencies. Besides, it is in charge of the government’s anti-corruption strategy. Among the few areas where significant progress has been achieved in the recent years is the pushback on small scale bribery especially among officers of the police, which is explained, among other things, by the regular and systematic integrity tests among sworn-in officers conducted by the NPS.

The State Audit Office (SAO) is charged to oversee the accountability of the use of public funds. Besides public institutions, the SAO also audits political parties. The SAO is designed to be entirely independent from the executive branch and is by law only subordinated to the Parliament.¹⁷ However, the SAO has since decades been underusing its powers and has proven incapable to uncover and sanction questionable spending by political parties, who tend to underreport expenditure. The SAO also denies measuring political parties’ declarations on campaign expenses against the reality, and this leaves the systemic overspending unsanctioned.¹⁸ The SAO continues the practice of imposing excessive fines on opposition parties while there is no direct opportunity for legal remedy, which is seen by many as the misuse of powers.¹⁹

The above-mentioned authorities, together with the Curia (Hungary’s supreme judicial forum), the prosecutor service, the National Office for the Judiciary, the Central Bank of Hungary, the Public Procurement Authority, and the Competition Authority have jointly endeavoured to promote integrity and combat corruption,²⁰ however, their cooperation does not manifest in any meaningful achievements in the field of anti-corruption. Actions within the framework of this cooperation is limited to the joint declaration issued by these agencies on 9 December every year, which is the International Anti-corruption Day. In other words, most of these agencies’ commitment against corruption seems to be only rhetorical.

B. Prevention

20. Integrity framework: including incompatibility rules (e.g.: revolving doors)

¹⁵ For references, see the following reports by Transparency International Hungary: Korupció Magyarországon a koronavírus-járvány árnyékában – A Korupció Érzékelési Index eredményei 2020-ban [*Corruption in Hungary in the shade of the coronavirus pandemic – The results of the 2020 Corruption Perceptions Index*] https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag_CPI-2020_jelentes.pdf, and Javaslatok a korrupció visszaszorítására Magyarországon (<https://transparency.hu/wp-content/uploads/2018/01/Javaslatok-a-korrupci%C3%B3-visszaszor%C3%ADt%C3%A1s%C3%A1ra-Magyarorsz%C3%A1gon.pdf>) - Proposals to reduce corruption in Hungary (https://transparency.hu/wp-content/uploads/2018/01/transparency_int_jogallam_korruptio_tanulmany_kivonat_angol_nyelven_2.pdf)

¹⁶ Section 1 of Gov. decree No. 293 of 2010

¹⁷ Articles 43 and 44 of the Fundamental Law of Hungary, and Act LXVI of 2011.

¹⁸ For details, see the study entitled „Total Eclipse – Campaign Spending in Hungary” (page 36) by Transparency International Hungary (<https://transparency.hu/wp-content/uploads/2016/02/Total-Eclipse-Campaign-Spending-in-Hungary-Study.pdf>), related correspondence with the State Audit Office in possession of Transparency International Hungary.

¹⁹ See the opinion of the Hungarian Civil Liberties Union: <https://tasz.hu/cikkek/allasfoglalasunk-az-allami-szamvevoszek-ellenzeki-partokat-ert-szankcioirol> and a comprehensive press report on Hvg.hu entitled 4 év alatt 816 millió forintot szedett be az ellenzéki pártoktól az ÁSZ [*The SAO has collected HUF 816 million from opposition parties over four years*]: https://hvg.hu/itthon/20190131_4_ev_alatt_816_millio_forintot_szedett_be_az_ellenzeki_partoktol_az_ASZ

²⁰ <https://korrupciomegelozes.kormany.hu/sikerseknek-tartjak-a-korrupcioellenes-fellepest-az-allami-szervek-vezetoi>

As included in our submission of 2020, the prevention of the “revolving door” phenomenon, defined by the European Parliamentary Research Service²¹ as “the movement of experts or expertise from one position to another, between the public and private sectors”, Hungary lacks any specific regulation. Although both the Labour Code as well as regulations pertaining to public officials contain confidentiality clauses, they do not specify any time restriction for public officials to pursue business careers in the same sector, despite the existence of legislative best practices in this realm (not only in the European Parliament and the European Commission, but also in Norway, the Netherlands and France). Therefore, both transparency International Hungary²² and K-Monitor²³ have repeatedly called for the introduction of legal requirements that would prevent high-ranking public officials from entering business sector jobs where the information they acquired in their previous role might provide unfair advantage.

An outstanding example of how the revolving door phenomenon manifests in practice is the corruption scandal associated with Microsoft Hungary, which entailed bid rigging and bribery aiming to create inflated margins that were used to fund improper payments in connection with the sale of Microsoft software to Hungarian government agencies. This procurement was covered from European Union funds.²⁴ Some of the employees who worked with Microsoft’s wholly owned Hungarian subsidiary during the occurrence of these conducts, upon leaving Microsoft, were hired by the government. For example, Microsoft’s former key account manager in Hungary, who served in the period concerned, became a vice-president at Hungary’s investment promotion agency, a state-owned enterprise. Another Microsoft employee in Hungary, who also worked with the company in the period concerned, was hired as a government commissioner charged with the oversight of EU funded projects aiming at the development of state administration.²⁵

Transparency International Hungary and K-Monitor suppose that in this case, the lack of a reliable investigation on the Hungarian authorities’ behalf is not entirely unrelated to the revolving door phenomenon.

The case of Mr János Süli exemplifies that these problems exist within public administration, too. Mr Süli was the director of the state owned Paks Nuclear Power Plant, later elected mayor of Paks city, and subsequently appointed to minister responsible for the extension of the Paks power plant. Besides, Mr Süli is an MP, who sits in the Parliament for Paks. It is likely that the power plant, the city and the government have conflicting interests.

21. General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

As indicated in our 2020 submission, the reliability of asset and interest declarations by public functionaries is still a cause for concern. Key decision makers. e.g.: Members of Parliament, cabinet ministers, judges, prosecutors, and public officials involved in decisions relating to the use of EU funds are expected to regularly declare their assets and interests. However, deficiencies identified in our submission prevail. Among other things, declarations are not accessible publicly, save for the case of Members of Parliament and the most senior public officials, but even they are not required to publish spousal declarations. Scrutiny of the declarations’ content and validity entirely lacks, and no effective sanction to prevent and

²¹ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625105/EPRS_BRI\(2018\)625105_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625105/EPRS_BRI(2018)625105_EN.pdf)

²² <https://transparency.hu/wp-content/uploads/2016/02/Revolving-Door-Phenomenon-In-Hungary.pdf>

²³ https://k.blog.hu/2014/04/18/forgoajto-jelenseg_az_allami_es_maganszfera_kozti_atjaras_korrupcios_kockazatai

²⁴ For details, see the letter by Transparency International Hungary to US DoJ: https://transparency.hu/wp-content/uploads/2019/08/Transparency_Int_HUN_letter_to_DoJ_Microsoft_HUN_08022019.pdf

²⁵ For more details, see: https://korrupcio.blog.hu/2019/10/04/a_microsoft_magyarorszagi_korrupcios_botranya

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punish false or deficient declarations is in place.²⁶ As a result, the system of asset and interest disclosure in Hungary is still unable to allow the monitoring of the enrichment of declarants, as well as to clarify the source of funds declared. Over the past years Transparency International Hungary and K-Monitor have repeatedly advocated in vain for the resolution of this problem.²⁷

Regulation of lobbying in Hungary remains incomplete and it lacks proper enforcement. As highlighted in our previous submission, though the government's decree on integrity of public administration²⁸ regulates some aspects of encounters between government officials and lobbyists, it fails to provide for the mandatory registration of lobbyists and for the disclosure of contact reports. With respect to these deficiencies, Transparency International Hungary concluded in its 2015 study²⁹ that the country's current lobbying regulation has no impact on anti-corruption whatsoever. The EU's first and only Anticorruption Report published in 2014 also stressed that there was "no mechanism in place targeting the monitoring of the implementation of these obligations."³⁰

22. Rules on preventing conflict of interests in the public sector

There is no improvement in the area of conflict of interest regulation in the public sector, which means that findings and conclusions in our 2020 submission are still valid. Though the laws prohibit certain activities and specify incompatibilities as well as define rules on conflict of interests in the public sector, these provisions have proven unable in the past decade to prevent the interlacement between the oligarchs and the government in certain sectors of the economy.

The Act on Public Procurement defines those public officials whose relatives may not participate in a public procurement process, however, only relatives who live in the same household are excluded. Otherwise, the provisions on conflict of interest in the Public Procurement Act give enough flexibility to cover all kind of conflict of interest situations. Nevertheless, the lack of proper enforcement of these provisions is still a ground for concern. For example, the Public Procurement Authority should have uncovered and sanctioned at least 35 incidents of conflict of interests alone in the Elios-case. In this case the consultancy firm, which prepared the public procurement documents on behalf of the contracting authorities was co-owned by the business partner of the Prime Minister's son-in-law who also had shares in the Elios company, which is a clear indication of conflicting interests.

The government's granting practices in the tourism industry are a key example of how corruption arises from conflict of interest schemes. The Hungarian Tourism Agency has distributed non-refundable grants in the magnitude of HUF 83.5 billion since the outbreak of the coronavirus pandemic to tourism service providers without the application of transparency measures. Though the amount of grants and the names of the grantees are disclosed, no information is made available on the eligibility criteria, on grant applications or on the composition of selection panels. Top government backed oligarchs were among the biggest

²⁶ For details, see the following reports by Transparency International Hungary: Vagyonynyilatkozati Minimum [Minimum Standards for Asset and Interest Declarations] (https://transparency.hu/wp-content/uploads/2016/07/policy_paper3_FIN.pdf) and A vagyonynyilatkozati rendszer működésével kapcsolatos problémák és a rendszer reformjára vonatkozó ajánlások [Recommendations to address problems relating to and to reform the system of Asset and Interest Declarations] (https://transparency.hu/wp-content/uploads/2016/07/policy_paper2_FIN.pdf)

²⁷ Átlátszó.hu – K-Monitor – Transparency International Hungary, *Civilek vagyonynyilatkozati 12 pontja* [CSOs' 12 points on Asset Declarations], December 2014, <https://transparency.hu/hirek/civilek-vagyonynyilatkozati-12-pontja/>

²⁸ Gov. decree 50 of 2013.

²⁹ Lifting the Lid on Lobbying (<https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.pdf>)

³⁰ European Commission, *Anti-Corruption Report – Hungary*, 2014, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf

beneficiaries of the scheme. Beyond that, several luxurious resorts and yacht clubs with government-related owners in the region of Lake Balaton were granted non-refundable financial support, while providers in Budapest – that suffered most from the breakdown of international tourism and that is governed by a Lord Mayor who belongs to the opposition – were excluded from the program. Moreover, beneficiaries of a HUF 1.5 billion special fund geared towards the Balaton region were arbitrarily selected by an ad hoc advisory board whose chair also presided the lobby group ‘Balaton Circle’, many of whose members, including the president, were among the main beneficiaries.³¹

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

The lack of effective protection to persons who report on or publicly expose wrongdoing continues to be a serious problem. Willingness to report wrongdoing in Hungary is low (only 21 percent of Hungarians would be willing to notify the authorities when encountering corruption), and the country ranks last among EU Member States in the tolerance index to corruption.

The Whistleblower Protection Act (WPA)³² provides anonymity for whistleblowers and enables the submission of complaints electronically, using a designated reporting channel which is operated by the country’s fundamental rights commissioner (‘ombudsman’). However, the ombudsman has only limited competence in relation to reports submitted to his office. In lack of the right to impose sanctions and set requirements, examinations by the ombudsman remain formal.

From a practical perspective, the WPA does little more than simply declaring that any punishment of whistleblowers is unlawful. It fails to provide effective protection to reporting persons, and it entirely neglects their relatives. The WPA does not absolve whistleblowers from their obligation of keeping confidential information, nor does it reverse the burden of proof. Though detrimental measures against whistleblowers are prohibited, this does not prevent proceedings against the whistleblower. The law also lacks clear provisions on providing legal aid and the practical conditions of compensation.³³

The implementation of the WPA is not obligatory for private business organisations resulting in even humbler protection of corporate whistleblowers. In case of publicly owned corporations, the introduction of a complaint-reporting system and the adoption of corporate rules on whistleblower protection are mandatory. (That said, the related regulation³⁴ only defines a very vague framework, while it says nothing about the content of the complaint-reporting system.)

Government institutions’ leadership is required by a separate regulation³⁵ to hire 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.

³¹ See page 17 and 18 of the report by Transparency International Hungary on the findings of the 2020 Corruption Perceptions Index (see footnote 15).

³² Act CLXIX of 2016.

³³ The opinion of Transparency International Hungary is contained in the open letter addressed to the President of Hungary in seek of reconsidering the promulgation of the law concerned (<https://transparency.hu/wp-content/uploads/2016/04/A-TI-ny%C3%ADlt-levele-dr.-%C3%81der-j%C3%A1nos-k%C3%B6zt%C3%A1rsas%C3%A1gi-eln%C3%B6k-%C3%BArhocz-a-k%C3%B6z%C3%A9rdek%C5%B1-bejelent%C5%91k-v%C3%A9delme-%C3%A9rdek%C3%A9ben.pdf>).

³⁴ Gov. decree 339 of 2019.

³⁵ Gov. decree 50 of 2013.

The lack of a robust legislation is probably the reason why prosecution and judiciary avoid referring to the WPA and process cases that involve whistleblowers based on other legal provisions (Labor Code, protection of business secrets, etc.).

As of March 2021, there is no sign of the comprehensive transposition of Directive 2019/1937/EU, despite the fact that several provisions of the Directive are not covered by the current Hungarian regulations. Among these are the protection of whistleblowers in case of public disclosure, the reversed burden of proof in case of detrimental measures, the necessity for private sector companies to establish reporting channels and access to compensation.

24. List of the sectors with high-risks of corruption in a Member State and relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other)

Two, mutually interrelated sectors with high corruption risks are public procurement processes and the allocation of European Union funding. To indicate the significance of EU funds, we remind that for the 2014–2020 programming period, Hungary receives financial support amounting to 25 billion euro, which corresponds to 4 percent of the country's GDP on average annually. In the 2021-2027 period some 40,6 billion euro worth of EU funding is expected.³⁶

The use in Hungary of EU funds entails a number of systemic corruption risks state institutions are unable to control. Projects implemented with EU funding are often overbudgeted and overpriced. The institutional guarantees of genuine independence are questionable in state organs charged with the oversight of the use of EU funding, as these organs operate under the control of the same managing authority. For instance, the Directorate General for Audit of European Funds operates within the Finance Ministry and its employees are government officials.³⁷

According to its 2019 report, OLAF concluded processes with a recommendation concerning 43 EU funded projects implemented in Hungary between 2015 and 2019. Hungary was the first in this ranking, i.e., OLAF found the most irregular EU-funded projects in Hungary. Besides, OLAF recommended to the Commission to recover almost 4 percent of the resources allocated for European Union projects implemented in Hungary. This exceeds almost ten times the EU average.³⁸

Hungarian public authorities spent HUF 3,430 billion through public procurement processes in 2019, which corresponds to 7.8 percent of the country's GDP in that year. In 2018, the amount spent through public procurement processes represented 7.3 percent of the GDP, and in 2017 this amount equated to almost 10 percent of the country's GDP. On average, approximately half of all public procurement processes are funded in part or in full of EU funds.³⁹

Though public procurement processes are adequately regulated, practice does not reflect the principles enshrined in the law, and such principles are often questionably enforced. The proportion of single-bidder processes among public procurement processes above the EU

³⁶ See page 27 of the report by Transparency International Hungary on the findings of the 2020 Corruption Perceptions Index (see footnote 15). Calculations are based, among other sources, on an article by Attila Weinhardt entitled *Kiszivárgott, hogy milyen közlekedési és vidékfejlesztési célokra akar 2050 milliárdnyi új EU-pénzt költeni a kormány* [It was leaked on which traffic and rural development goals the Hungarian government intends to spend HUF 2050 billion worth of European Union funding] (<https://www.portfolio.hu/unios-forrasok/20210105/kiszivargott-hogy-milyenkozlekedesi-es-videkfejlesztesi-celokra-akar-2050-milliardnyi-uj-eu-penzt-kolteni-a-kormany-464070>).

³⁷ See page 37 of the study by Transparency International Hungary entitled *The European Public Prosecutor's Office and Hungary – Challenge or Missed Opportunity?* (eupai-ugyveszseg-eng-VEGSO.pdf (transparency.hu)).

³⁸ The OLAF Report 2019, see footnote 12.

³⁹ The 2019 report of Hungary's Public Procurement Authority (https://kozbeszerzes.hu/data/filer_public/89/0a/890a30f6-732b-4200-ac5bacbd70567e14/kozbeszerzesi_hatosag_2019_evi_beszamoloja.pdf)

threshold was 40 percent in 2019, which is one of the highest ratios in the European Union.⁴⁰ Parallel to this, the concentration of the public procurement market continued: in 2019, in 51 percent of tenders allocated to government-near businesses there was only one bidder in the public procurement process, and this proportion grew to 68 percent in 2020's first trimester.⁴¹

Something more concretely alarming is that procurements and emergency purchases related to the Covid-19 pandemic were exempted from public procurement rules. Information on these transactions was only released after repeated data requests by civil society and media.

25. Measures taken to address corruption risks in the context of the COVID-19 pandemic

Despite the fact that there are official documents⁴² that acknowledge increased corruption risks caused by the pandemic, we could not identify a single measure that was specifically dedicated to mitigating these risks.

Fifteen renowned economists stated in April 2020 that the crisis management measures “have not only been insufficient in numerical terms, but also lacked transparency and feasibility checks and could potentially lead to a social disaster.”⁴³ The government established a HUF 3,628 billion Economic Protection Fund to cover investments and programmes aimed at mitigating the negative impact of the pandemic. However, according to an overview by Hvg.hu, one of the largest news portals, only a quarter of expenditures were directly related to managing the crisis, while many of the financed projects have been irrelevant from the perspective of the pandemic.⁴⁴

Public resources reallocated for crisis management purposes have been often used to benefit oligarchs and the government's clientele. This is exemplified by the distribution of grants worth HUF 83.5 billion by Hungary's Tourism Agency, of which approximately 20 percent went to the hotel chain Hunguest Hotels. The company is an interest of Lőrinc Mészáros, the country's wealthiest individual and a close ally of Prime Minister Orbán. These funds were also used to finance the development of yacht harbours and luxury resorts around Lake Balaton. The investigative media revealed that out of HUF 300 billion distributed by the Tourism Agency between 2018 and 2020, 0.5 percent of the applicant has got the two-third of total spending.⁴⁵

Cronyism is also present in the healthcare sector. The procurement of ventilators was overpriced,⁴⁶ as the government purchased at least 16,000 life-saving machines from China (instead of the 8000 that would have been enough to cover even a worst case scenario),

⁴⁰ Single Market Scoreboard, Közbeszerzés, 1. indicator

(https://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm).

⁴¹ New Trends in Corruption Risk and Intensity of Competition in the Hungarian Public Procurement from January 2005 to April 2020. Corruption Research Centre Budapest, Flash Report 2020:1, Budapest: CRCB. (http://www.crcb.eu/wp-content/uploads/2020/05/2020_hpp_0520_flash_report_1_200526.pdf). See also page 24 of the report by Transparency International Hungary on the findings of the 2020 Corruption Perceptions Index (see footnote 15).

⁴² See the press release by the State Audit Office entitled Integritással a korrupció ellen [With integrity against corruption] ([Integritással a korrupció ellen - Állami Számvevőszék \(asz.hu\)](http://integritassal.a-korrupcio-ellen-allami-szamvevorszek.asz.hu)).

⁴³ See the blogpost entitled Vélemény és javaslat [Opinion and recommendation] ([Vélemény és javaslat - Válságkezelés \(blog.hu\)](http://velemeny-es-javaslat-valasagkezelés.blog.hu)).

⁴⁴ See the article by Iván Stojcsev on Hvg.hu entitled A gazdaságvédelemre szánt pénzeknek legfeljebb a negyede mehetett válságkezelésre [Only a quarter of economic relief funds was spent on the crisis management] (https://hvg.hu/gazdasag/20210119_gazdasagvedelmi_alap_szamok).

⁴⁵ See the article by András Bódis on Válaszonline.hu entitled Sokkoló: a kormány az igénylők fél százalékának adta a turisztikai támogatások kétharmadát

[Shocking: the government gave two-thirds of tourism subsidies to 0.5 percent of applicants]

(<https://www.valaszonline.hu/2021/02/26/turisztika-tamogatások-ugynökség-mtu-guller-zoltan/>).

⁴⁶ See the article by Blanka Zöldi on Direkt36.hu entitled a kormány dicsekedett a lélegeztetőgépek vásárlásával, mégis ők kötötték a legrosszabb üzletet Kínával az egész EU-ból [The government boasted the purchase of respirators, still Hungary made the worst deal with China in the EU] (<https://www.direkt36.hu/a-kormany-dicsekedett-a-lelegeztetogepek-vasarlasaval-megis-ok-kotottek-a-legrosszabb-uzletet-kinaval-az-egesz-eu-bol/>).

benefiting some intermediary companies with links to the government including, as shown⁴⁷ by the media, one of the prime minister's foreign affairs advisors. The price of these purchases, carried out without an open tendering procedure, was ten times more than similar purchases made by the German and Italian governments from China. Today, the majority of these machines are lying in storage and the government is unable to sell them, as the Ministry of Foreign Affairs and Trade admitted in response to a Freedom of Information request by Transparency International Hungary in February 2021.⁴⁸

Another example⁴⁹ of cronyism is the Mathias Corvinus Collegium, formerly a modest post-graduate institution that got at least HUF 500 billion (EUR 1.4 billion), a sum equivalent to the aggregate annual budget of the entire higher education sector in Hungary, in various assets including stocks and cash. Moreover, the government has started a radical transformation⁵⁰ of the country's universities, placing half of them under the control of asset management foundations led by Fidesz loyalists.⁵¹

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

Poor system of political finance, including the lack of transparency and accountability is one of the main origins of corruption in Hungary. The most important official tranche of political parties' revenues come from the central budget, whereas laws in place formally prohibit all forms of corporate contributions and donations from non-Hungarian individuals. However, political parties are not expected to give detailed accounts on their incomes and expenses, and the State Audit Office (SAO) fails to control if legal requirements are respected (see section 19).

The Campaign Finance Act (CFA)⁵² in place since 2014 covers only national parliamentary elections, thus opening the door to corruption in municipal and European Parliamentary election campaigns. The CFA provides for state subsidies to parties in support of their national parliamentary election campaigns between the range of 500 thousand euros and 2 million euros, depending on the number of parties' candidates. These direct funds paired with vaguely defined and underenforced rules on reimbursement and on nomination of candidates resulted in the emergence of fake parties. This is exemplified by the fact that the 13 fake parties which ran at the 2018 elections failed to present a credible financial report on their campaign spending and have been reluctant to reimburse the public funds they received. These parties received approximately HUF 3 billion in total from public funds, a share of which was deferred to them by their single member district candidates. Information regarding the use of the latter disclosed by the SOA in September 2020 after a lengthy FOI court case revealed that at least

⁴⁷ See the article by András Bódis on Válaszonline.hu entitled *Nekik jól jött a vírus: Orbán főtanácsadójának köre a lélegeztetőgép-bizniszben* [They profited from the virus: the circle of Orbán's top advisers and the respirator business] (<https://www.valaszonline.hu/2020/09/04/vereb-balazs-rahoi-zsuzsanna-fourcardinal-lelegeztetogep/>).

⁴⁸ Details in possession of Transparency International Hungary, see also the article by Babett Oroszi in Hvg.hu entitled *A külügyminisztérium eddig nem adott el egy lélegeztetőgépet sem* [The Foreign Affairs Ministry did not sell a single respirator so far] (https://hvg.hu/gazdasag/20210203_A_KKM_eddig_nem_adott_el_egy_lelegeztetogepet_sem).

⁴⁹ See the article by Ádám Kolozi on Telex.hu entitled *Nagyon színvonalas, de kezd kínos lenni, hogy oda tartoztam: a kormányközeli elitképző belülről* [Outstanding quality, but having attended feels embarrassing: the government-near elite boarding school from inside] (<https://telex.hu/belfold/2021/01/15/nagyon-szinvonallas-megis-kezd-kinos-lenni-hogy-oda-tartoztam-a-kormanykozeli-elitkepzo-belulrol>).

⁵⁰ See the opinion piece by Edit Inotai on Balkan Insight entitled: *Fidesz Makes Hungary's Universities an Offer They Can't Refuse* (<https://balkaninsight.com/2021/02/23/fidesz-makes-hungarys-universities-an-offer-they-cant-refuse/>).

⁵¹ For an overview on intensification of cronyism see József Péter Martin's op-ed on Balkan Insight: <https://balkaninsight.com/2021/02/24/amid-the-pandemic-its-now-corruption-that-performs-better-in-hungary/> and Bálint Mikola's piece on TI Secretariat's blog: <https://www.transparency.org/en/blog/hungarys-rule-of-law-backsliding-continues-amidst-the-covid-19-crisis>.

⁵² Act LXXXVII of 2013.

HUF 400 million were spent by parties on dubious purposes, including the procurement of unnecessary services from entities with conflicts of interest or irrelevant backgrounds.⁵³

Discrepancies of party financing and lack of available data on the itemized expenditure in election campaigns remains a source of abuse by political parties. Detailed data on expenditure are generally only available through Freedom of Information requests. The State Audit Office audits only those parties whose list receive at least 1 percent of the votes, however, most of the abuse occurs below this threshold, especially in case of fake parties. Moreover, expenditure of GONGOs, who provide third party campaigning, as well as that of state organs who promote government propaganda is neither regulated, nor monitor. On top of that municipal and European Parliament election campaigns are entirely unregulated, which opens the door wide to corruption and misuse.

Although the tools to prevent such misuse of public funds would be relatively straightforward, the government used the pretext of sanctioning fake parties as an excuse to change the electoral law amid the COVID-19 pandemic (see section 44) instead of taking appropriate action to install more rigorous monitoring mechanisms on how campaign funds are spent.

B. Repressive measures

27. Criminalisation of corruption and related offences

Transparency International Hungary and K-Monitor have long been advocating for the criminalisation of abuses related to asset and interest declarations on behalf of public officials and users of public funds. For years now, the government has ignored recommendations and has been tolerating the emergence of grievous malpractice in the interest disclosure scene, which remains a pervasive risk of corruption.

The most widespread form of petty corruption in Hungary is the phenomenon of informal payments in the healthcare system (so-called “gratitude payment”), a clear-cut manifestation of corruption with a corrosive impact on the integrity and the performance of the healthcare system. The government, which has for long turned a blind eye on this issue, recently endeavoured to take action. Consequently, an amendment to the Criminal Code foresees custodial sanctions to those involved in facilitation payments. Compliance with the new regulations will be monitored by a specialized section of the National Protective Service, with 50 employees and with subsections in cities where the largest healthcare service providers operate.

Inspections by the new department started on March 1, 2021 and focus on medical professionals working in public healthcare institutions, while patients will not be subject to such tests (see section 19). Beyond introducing deterrent criminal sanctions, the government, following negotiations with the Hungarian Medical Chamber, devised a system to significantly raise the salaries of medical professionals. Although this reform is welcomed by Transparency International Hungary, and K-Monitor, it is highly plausible that the transition from widespread informal payments to a categorical ban will not be smooth. One reason for this is that the opportunity to choose a preferred doctor and the informal payments paid in return have been nearly universal in obstetric interventions and maternity care. According to expert opinions, they may persist through an expected loophole in the regulation which would provide the opportunity to offer addition

al pecuniary compensation to obstetricians within a contractual framework, which condones facilitation payments in maternity care. A related survey by K-Monitor revealed that informal payments were offered in 68 percent of all childbirths, and the average amount paid was HUF 111 thousand (slightly above 300 EUR).⁵⁴ Therefore, it might take longer than expected to

⁵³ For details, see this report by Transparency International Hungary: https://transparency.hu/wp-content/uploads/2020/12/kamupartok_elszamolasa_tanulmany_2020.pdf

⁵⁴ https://k.blog.hu/2021/01/02/maternity_english

change popular attitudes towards informal payments, especially as a representative survey conducted by Transparency International Hungary in 2020 indicates that only 40 percent considered such payments as a form of corruption, while 56 percent found to some extent justifiable that doctors and medical staff accept such benefits.⁵⁵

⁵⁵ See the study by Transparency International Hungary entitled Public Perceptions of Corruption in Hungary – Opinions and their Main Social Drivers (https://transparency.hu/wp-content/uploads/2020/06/CEU-TI-survey-report_final_with-cover.pdf).



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28. 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 the implementation of EU funds

- 1) Accessibility of information relating to the implementation of EU funds is limited as contracts are not disclosed, neither data on project evaluations, subcontracts. Furthermore, the official database of the government on EU funds (palyazat.gov.hu) does not allow bulk access to the database or access through an API that would enable easy analysis by media, experts or civil society.
- 2) The managing and the auditing authorities involved in monitoring and overseeing the use of EU funds under shared management fail to publish information in relation to irregularity processes and to sanctions. It is open to questions if and how efficiently Hungarian authorities map out irregularities occurring in EU-funded projects. Transparency International Hungary has filed numerous lawsuits against managing authorities to obtain information related to irregularity of EU-funded projects, because the authorities denied disclosing irregularity reports. OLAF also refuses to disclose its reports on the projects in question.
- 3) In case public procurement processes include EU funding, basic information on the EU project is disclosed, as expected by the Public Procurement Act, however databases are not interlinked.
- 4) The database on agricultural subsidies under the CAP is comprehensive and more detailed than in many other MSs. However, it is lacking information on the plots the subsidies are applied for.
- 5) As regards availability of data on sanctions imposed for corruption offences, the Interior Ministry, charged with the management of statistics on offending, records the number of offences reported and registered, investigations commenced, investigations terminated and indictments for all offences, including corruption and related offences. While this information is not publicly available, it is available on request.
- 6) Meanwhile, basic data on the volume of corruption offences is available in the annual reports of the Prosecutor General, presented in the Parliament. According to the latest report, which relates to 2019, the number of investigations into corruption offences steadily increased since 2017, while the number of cases closed decreased in the same period. The prosecutor service refuses to collect data on high-level crime on the ground that 'high-level crime' is not a distinct criminal category.
- 7) Court decisions are published in anonymised form, and statistics on criminal convictions are managed by the National Judicial Office, while these are published by the Central Statistical Office. However publicly available information on criminal convictions are not broken down by thy types of offences.
- 8) The Anti-Money Laundering Act (Act LIII of 2017) provides for the central register of ultimate beneficial ownership information, however, information contained in this registry is not accessible either publicly or on request, as opposed to the business registry, where data on individual companies is accessible for free (although not as comprehensive database).

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29. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The impunity of perpetrators of high-level corruption, which results from partiality in the work of law-enforcement agencies and of the Prosecution Service, remains a significant problem.

Beyond the authorities' intentional failure to enforce laws and impose sanctions, immunity regulations of public functionaries also contribute to impunity, as highlighted in our previous report. Immunity not only prevents the interrogation or the apprehension of the persons concerned, but also the application of coercive measures aiming to collect evidence and to prevent continuation of offending (the seizure of property, search of premises, freezing of assets and bank accounts, etc.).

In its Fourth Round Evaluation Report Greco stressed the importance to ensure that the immunity of parliamentarians does not hamper criminal investigations in respect of members of parliament suspected of having committed corruption related offences, as well as the necessity to limit the immunity of judges and of prosecutors to functional immunity.⁵⁶ In the subsequently published compliance reports Greco took note of the lack of progress and reminded that broad immunity enjoyed by judges, prosecutors and parliamentarians can hamper criminal investigations of corruption offences.⁵⁷

The case of Mr. György Simonka (see section 10) is particularly telling. Mr Simonka, an incumbent ruling party MP was brought before justice for subsidy fraud, and related corruption offences. However, the Prosecutor General inexplicably delayed the submission of a motion to waive the immunity of Mr Simonka. Even more disturbingly, Mr Simonka is at large, although he is charged for colluding with and bribing witnesses to abstain from giving a testimony, which is a ground for detention.⁵⁸

Political considerations perceivably outcompete judicial interests in other high profile corruption cases, too, as exemplified not only by the Elios case, where the son-in-law of Prime Minister Viktor Orbán and other stakeholders, have evaded prosecution even though according to OLAF, they embezzled approximately HUF 13 billion (EUR 43 million) public funds with mafia methods, but also by the case related to the "Bridge to the World of Work" project. This latter project, managed by the National Roma Self-Government, which was previously headed by ruling party MP Flórián Farkas, resulted in billions in refunds due to irregularities uncovered by the managing authority. However the law enforcement agency, which investigates this particular subsidy fraud scheme since 2015 has so far failed to identify any suspect.⁵⁹

30. Other

The government adopted a new anti-corruption strategy in July 2020 without consulting any non-governmental stakeholders. Positive elements of the strategy are the broader definition of corruption and the recognition of the importance of digitization in public administration and public service integrity development and training. The strategy doesn't suggest significant legislative changes, claiming that legislation in the past decade has established the necessary anti-corruption legal framework. The strategy follows a threefold approach, based on technology (strengthening e-administration, automated decision making), rules (increasing the efficiency of investigations, assessment of corruption risks and legal framework) and values (establishing internal controls in public administration, strengthening integrity measures, improving security and integrity related consciousness within public administration). At the same time key issues also mentioned in this submission are not addressed. Transparency

⁵⁶ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e>

⁵⁷ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>

⁵⁸ See page 4 of the study referred to in footnote 37.

⁵⁹ See page 5 of the study referred to in footnote 37.

International Hungary criticised the strategy for ignoring risks and deficiencies that surround the public procurement landscape (see section 24) and political finance (see section 26), it fails to identify corruption, and it also lacks quantitative indicators to measure progress and impact.⁶⁰

III. Media Pluralism – Hungary

B. Transparency of media ownership and government interference

38. Access to information and public documents

The accessibility of public interest information and the freedom of information framework in general have severely deteriorated since our previous submission. In an emergency decree⁶¹ issued during the epidemic's first wave the government stringently restricted the access to public information by tripling the 30-day deadline for servicing freedom of information requests set out in the FOI Act.⁶² Although this measure had been revoked when the first wave of the global epidemic ended, the government reintroduced⁶³ this restriction in November 2020 as the second wave of the coronavirus arrived.

In practice, data managers extensively use the emergency provision to delay the fulfilment of requests. In a reminder, the president of the National Data Protection and Freedom of Information Authority claimed that the emergency provision can only be used by data managers fighting at the front lines of the pandemic and it is an exception and not the general rule, which is disregarded by most public authorities.⁶⁴

Besides, the Parliament amended the Fundamental Law, for the ninth time since its entry into force in 2012. The Ninth Amendment rewrites the constitutional definition of public funds, thus enabling the easier transformation of public assets into private wealth. These regulatory changes add to the impact of measures adopted by the government since 2013 with the intention to curtail the accessibility of public information, the most devastating of which is the enabling the managers of public interest information to ex-ante charge labour-related costs associated with the servicing of FOI requests on data requestors. Data managers systematically misuse the possibility to charge cost on requesters, even though the National Data Protection and Freedom of Information Authority, as well as multiple law courts have concluded that fulfilling FOI requests is not a service for fee, but a constitutional obligation to uphold the fundamental right of freedom of information.⁶⁵ With regards to these conclusions, Transparency International Hungary holds that imposing excessive charges in association with FOI requests is against Hungary's Fundamental Law.

By 2020, state institutions routinely deny to properly respond to most freedom of information requests submitted by Transparency International Hungary, citing grounds for denial that proves indefensible in court. This means that the state institutions concerned unlawfully refuse to provide information on request. Moreover, some of these institutions are unwilling to comply with the court's final binding verdict, which expects them to publish the data sought, albeit this qualifies as a criminal offence (misdemeanour).

⁶⁰ <https://korrupcio.hvgblog.hu/2020/07/20/szelesebb-es-szilardabb-elkeszult-a-kormany-uj-korrupcio-elleni-strategiaja/>

⁶¹ Gov. decree 179 of 2020.

⁶² Transparency International Hungary was very critical about this measure, for details, see: <https://transparency.hu/hirek/az-alkotmanybirosaghoz-fordulunk-az-informacioszabadsag-rendeleti-korlatozasa-miatt/>

⁶³ Gov. decree 521 of 2020.

⁶⁴ See the opinion concerning by the president of the National Data Protection and Freedom of Information Authority concerning Gov. decree 179 of 2020: <https://naih.hu/files/NAIH-4333-2-2020-200603.pdf>.

⁶⁵ See the operational report of the National Data Protection and Freedom of Information Authority for the year 2018, submitted to the Parliament under filing number B/452 of 2019, page 120-121.



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IV. Other institutional issues related to checks and balances – Hungary

A. The process for preparing and enacting laws

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

As underlined in our 2020 submission, Transparency International Hungary and K-Monitor hold that legislative acts have become instruments of the government's power machinery, and this has significantly downgraded the importance of preparatory processes and social or stakeholder consultations. As a result of the repeated declaration of state of emergency and the introduction by the government of a rule by decree regime with the excuse to meet the requirements generated by the coronavirus pandemic, the regulatory landscape severely deteriorated. The government recurrently issues emergency regulations that have very little or nothing to do with the global epidemic, and prior consultations are, *per se*, omitted. The most telling example for this is the tripling of the time limit to respond to freedom of information requests, which the government first explained by the large number of inquiries submitted to hospitals, but later, in response to Transparency International Hungary's questions, admitted that it had no idea of the actual number of data requests received by hospitals.

43. Regime for constitutional review of laws

Concerns raised in our previous submission about the performance of Hungary's Constitutional Court remained.

The Hungarian Constitutional Court has become one of the most captured state institutions that clearly reflects and promotes the interest of the governing Fidesz party. Beyond packing the Constitutional Court with partisans and loyalists, the government, based on its super-majority in Parliament, has undermined the Constitutional Court's capacity to control the legislature. On the one hand, the Government has lifted ordinary legal provisions which had been previously found unconstitutional and were annulled by the Constitutional Court, to the constitutional level to thus prevent further Constitutional Court rulings. On the other hand, the Fundamental Law restricted the Constitutional Court's power relative to legislation on the central budget, taxes, and pension and health care contributions. Moreover, the Fundamental Law declared void the Constitutional Court's decisions adopted prior to the entry into force of Fundamental Law on 1 January 2012, thus calling the validity of 20 years' constitutional adjudication into question.

On top of that, the Fundamental Law erased the possibility of public petitioning (*actio popularis*), i.e. the right of any person to turn to the Constitutional Court in seek of annulment of a legal provision perceived to run counter to constitutional provisions. Since the entry into force of the Fundamental Law, only senior public officials can make individual petitions, and one fifth of parliamentarians can make a joint petition. As a result, the number of petitions to the Constitutional Court has dramatically declined.

The restriction of the Constitutional Court's jurisdiction and the packing of the Constitutional Court with questionable appointees have practically neutralised this institution. In Transparency International Hungary's and K-Monitor's experience, the government of Hungary has little to fear from the Constitutional Court's decisions as this institution does not seem to have the ambition to intransigently control the actions of the executive and legislative branches. Instead, if petitioned to the Constitutional Court at all, even the most controversial legislative concepts such as the criminalisation of homelessness are approved and stamped.

As the Constitutional Court's jurisdiction is not limited to the abstract supervision of legal norms, but it makes rulings on appeals in individual litigations as a judicial forum of the very last resort, where litigants may turn with constitutional complaints, the undermining of the

Constitutional Court is not only an attack against the rule of law but, in the meantime, it also puts at risk the enforceability of persons' entitlement to a fair and public hearing by a competent, independent and impartial tribunal established by law, as it undermines one of the institutional safeguards designed to protect this fundamental right.

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

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- measures taken to ensure the continued activity of Parliament (including possible best practices)

While the government communication focuses on how to stop the coronavirus pandemic and make the economy and the population more resilient, in reality, it has used the extraordinary circumstances to further concentrate its power.⁶⁶ It sought the parliament's empowerment to rule by decree,⁶⁷ first without temporal restrictions – in retrospect until June 2020.⁶⁸ During the second wave of the pandemic, the government reintroduced rule by decree for 90 days,⁶⁹ which was prolonged in February for another 90 days.⁷⁰

The government keeps on using its extraordinary powers to fight his opponents in municipalities and in opposition, introduce regulations and adopt resolutions independent of the pandemic and redirect public money and assets to the regime's clientele and cronies.

The municipalities were deprived of a significant portion of their own revenues. Vehicle tax was redirected to the state budget,⁷¹ and the local business tax was halved without any consultations. Subsequently, some local governments, however, were compensated – if they were governed by Fidesz.

The government also enabled the diversion of municipal revenues through the designation of the so-called 'special economic zones'.⁷² The opposition-held town Göd, home to a major Samsung factory is the first municipality where this new regime has been tested, as a result of which Göd stands to lose 10 percent of its annual budget due to being placed in special economic zone whose tax income is transferred to the county budget led by Fidesz representatives instead of the local authority.

As another measure independent from the crisis management, the government has also changed the constitution for the ninth time since it was passed in 2011.⁷³ The latest amendment entailed to narrow the definition of public money which might enable the exemption of state companies and foundations established by the state from public oversight – a measure that can

⁶⁶ For an overview on further power concentration, see two op-eds. Bálint Mikola's piece on TI Secretariat's blog: <https://www.transparency.org/en/blog/hungarys-rule-of-law-backsliding-continues-amidst-the-covid-19-crisis>, and József Péter Martin's article on Balkan Insight: <https://balkaninsight.com/2021/02/24/amid-the-pandemic-its-now-corruption-that-performs-better-in-hungary/>

⁶⁷ Act XII of 2020.

⁶⁸ For Transparency International Hungary's opinion, see: <https://transparency.hu/en/news/the-state-of-emergency-must-be-limited-in-time-says-transparency-international-hungary/>

⁶⁹ See Act CIX of 2020.

⁷⁰ See Act I of 2021.

⁷¹ See the article by Péter Bucsky on G7.hu entitled Már azelőtt padlóra kerültek az önkormányzatok, hogy a kormány tovább ütötte volna őket [*Municipalities went bankrupt even before being hit by the government*] (<https://g7.hu/kozelet/20200407/mar-azelott-padlora-kerultek-az-onkormanyzatok-hogy-a-kormany-tovabb-utotte-volna-oket/>).

⁷² See the article by Iván Szójcsev on Hvg.hu entitled Megszavazták a különleges gazdasági övezetek törvényét [*Law on special economic zones adopted*] (https://hvg.hu/gazdasag/20200616_parlament_kulonleges_gazdasagi_ovezetek_koltsegvetes_taborok_illetek_szavazas).

⁷³ For the opinion of Transparency International Hungary, see: <https://korruptio.hvgblog.hu/2020/11/11/elveszitheti-alaptorveny-jelleget/>

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pave the way for further money transfers to newly established entities with pro-government officials on their boards, as preceded recently in the higher education sector (see section 25.)

The pandemic also served as a pretext to change the electoral rules unilaterally, in a way that substantially elevates barriers to contest the elections, raising the minimum number of candidates required to have a national party list from 27 to 71.⁷⁴ The amendment is anticipated to force opposition parties to form a joint national party list, as there does not seem to be any other arithmetically viable solution to distribute the 106 single member districts among them. Therefore, the amendment is expected to restrict the room for manoeuvre of all opposition parties.

Moreover, regular state funding for incumbent parliamentary parties was halved, which incommensurately impacts opposition parties, being financially much more exposed than the ruling party.

45. Independent authorities

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

Concerns raised in our submission of 2020 prevail.

Since 2010, Fidesz constructed a de facto “upper house” of government by staffing its own loyalists to leadership of public institutions, resulting in state capture, which entails the systematic downplaying of the furtherance of common good for particularistic gains.

Transparency International Hungary regards this as the biggest corruption risk because of the following factors:

This has made the impartial control of white-collar corruption almost impossible. Between 2010 and 2017, there was not a single indictment against pro-government actors (politicians or businesspeople) due to the inaction of the prosecution service. Even in the years since, there has only been a few such cases.

It has enabled state-driven corruption systems in order to unduly funnel public money to private hands.

With downgrading pluralism and competition, it has enhanced rent-seeking, namely money distribution to loyalists and clients and resource transfer of state assets to cronies without market or merit-based performance. The Hungarian state capture is ‘political’ which means that an informal network of politicians and oligarchs rule, and in most cases PM Orbán has the final say.⁷⁵

After 2010, the Hungarian political and economic system has become the most centralized one inside the European Union, meaning that the executive power nowhere in the EU has got such a big power as in Hungary by undermining almost entirely the democratic checks and balances in the institutional system. These trends are reflected in extremely centralized, top-down nature of corruption, and imply the instrumentalization of legislation and the pursuit of particularistic interests.

The collapse of independent control institutions also manifests in Hungary’s constant downgrading on Transparency International’s Corruption Perceptions Index (CPI), where the country scored a 44 in 2020, a steep, 11-point decline since 2012, which leaves Hungary at

⁷⁴ For the opinion of Transparency International Hungary, see: <https://korruptcio.hvgblog.hu/2020/11/11/ismet-mellelo-az-allam-a-kamupartok-megfogasaban/>

⁷⁵ C.f. József Péter Martin (2020): Resource Reallocation and Ambiguous Economic Performance in a Captured State – The Case of Hungary. In: Systems, Institutions and Values in East and West. Edited by Dóra Piroška & Miklós Rosta. pp. 173-203. Budapest-New York: CEU Press.

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the last position among European Union Member States together with Romania and Bulgaria and ranks the country at 69th place among the world's countries.⁷⁶

During the pandemic, the already captured institutions have assisted to further power grab of the government. This is exemplified e.g., in the attitude of the Media Council which silenced the last oppositional political radio station, Klubrádió by not extending its broadcasting licence.⁷⁷ The court upheld the decision of the media authority. This marked yet another setback for the independent media in the country.

During the pandemic, law courts, and especially the Curia, Hungary's Supreme Court have become more vulnerable to government endeavours. Mainly with the appointment of government-leaning judges to judicial leadership positions, the executive seeks ways to influence the judiciary. The independence of higher instances courts and of the Curia is at stake.⁷⁸

Accessibility and judicial review of administrative decisions

47. Implementation by the public administration and State institutions of final court decisions

It continues to be a problem that Hungary's government, as highlighted in our 2020 submission, employs an instrumental approach towards law courts' judgements and behaves as if a *carte blanche* type of permission to exempt the government from the obligation to duly execute the courts' final binding judgements existed.

Though contempt of court in general is not a criminal offence in Hungary, still, criminal sanctions are applicable to those who fail to comply with transparency measures ordered by the court in a freedom of information case ('mismanagement of public interest information'). Transparency International Hungary has provided the Police with formal criminal complaints in at least half a dozen of cases where the defendant (state organs or state-owned enterprises) failed to comply with the court's final verdict compelling the publication of data. The Police dismissed most of our reports without reliably examining if publication requirements were met. In three cases, the Police failed to react in any way to Transparency International Hungary's complaints.

In other freedom of information cases the government enforces the courts' decisions, but with a substantial delay, which prevents the litigant party who won the court case from accessing the information sought in a timely manner.

Most recently the Ministry of Human Resources denied to properly respond to a freedom of information request, even though the Curia, which is the country's highest judicial forum, has ruled in favour of Transparency International Hungary.

These examples indicate the extent to which the government of Hungary is reluctant to properly comply with final binding judgements, provided that the enforcement of such judgements would undermine or compromise its party-political interests.

B. The enabling framework for civil society

48. Measures regarding the framework for civil society organisations

Conclusions in our submission of 2020 relating to the government's hostility towards certain civil groups are still valid, and, consequently, the concerns following thereof remain.

⁷⁶ For more elaboration see Transparency International Hungary's report (in Hungarian) and an executive summary (in English): https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag_CPI-2020_jelentes.pdf and https://transparency.hu/wp-content/uploads/2021/01/TI-Hungary_CPI-report_executive-summary.pdf

⁷⁷ See e.g. this piece: <https://www.euronews.com/2021/02/09/hungary-s-first-independent-radio-station-klubradio-to-go-off-air-on-sunday>

⁷⁸ See the report of Amnesty International: <https://www.amnesty.hu/still-at-risk-the-status-of-the-hungarian-judiciary/>

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From 2016, attacks against NGOs have become tied into the government's vigorous hate campaigns against migrants, asylum-seekers and refugees, against "Brussels" (indirect reference to the European Union), and George Soros. The government has been primarily targeting NGOs providing assistance to asylum-seekers and/or receiving funding from the Open Society Foundations. Before the 2018 elections, the government launched a propaganda war: the critical NGOs were bashed by the Prime Minister and various high-ranking government officials; the country was flooded with government billboards blaring the need to "Stop Soros";⁷⁹ and in April 2018, a government-friendly newspaper published a list of 200 persons as "Soros mercenaries" (including Transparency International Hungary and other NGO staff members, investigative journalists, academics).⁸⁰

The Foreign Funded Organisations Act, a milder form of Russia's "foreign agent" law was approved in 2017.⁸¹ The Hungarian law prescribes that civil society organisations that receive "foreign" funds in excess of HUF 7.2 million (approx. EUR 20, 300 EUR) annually have to register at court as an "organisation receiving foreign funding", have to label themselves this way on their websites and on all of their publications, and have to separately report their foreign funding. The law aims to discredit NGOs by alluding that they serve foreign interests, while the title of the law aims to hint that NGOs were not operating transparently prior to the adoption of the law which is factually false as main NGOs including Transparency International Hungary publish yearly their incomes, expenditures and donors. Non-compliance with this Act in principle results in sanctions. In reality, however, this law was not implemented therefore its breach was not sanctioned, either.⁸²

In June 2020, the European Court of Justice (ECJ) ruled that the Hungarian government had broken EU law by the Foreign Founded Organizations Act.⁸³ The ECJ ruled that Hungarian law violates both free movement of capital and fundamental rights.

Further laws were approved in the summer of 2018, of which the so-called "Stop Soros" law criminalises a range of asylum supporting activities, while another law imposes a surtax on donors supporting NGOs that "facilitate" migration.⁸⁴

However, this seems to be a "dead law" too as it has not been executed. The European Commission has also challenged this legislative package at ECJ against the Hungarian government. The case is currently pending.

Apart from the legislation, the critical NGOs, with different intensity although continuously face discreditation attempts by the pro-government media and the propaganda machine as they are blamed by labels such as fake civil society organizations, foreign interest and migration promoters, traitors of Hungary as well as they are accused of being linked to George Soros and the opposition.⁸⁵

C. Initiatives to foster a rule of law culture

50. Other - please specify

As a result of the eleven year-long rule of Viktor Orbán's government, the state institutions' capability to function justly and impartially and to thus prevent, uncover and sanction

⁷⁹ <https://www.bbc.com/news/world-europe-40554844>

⁸⁰ <https://apnews.com/6fc8ca916bdf4598857f58ec4af198b2>

⁸¹ <https://www.helsinki.hu/wp-content/uploads/LexNGO-adopted-text-unofficial-ENG-14June2017.pdf>

⁸² It needs to be noted, however, that a government-established public foundation rejected an NGO's EU grant application over non-compliance with the Foreign Funded Organisations Act. See related correspondence between the affected organisation, the public foundation, and the European Commission at: <https://www.emberseg.hu/en/advocacy-issues/>

⁸³ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

⁸⁴ <https://www.helsinki.hu/wp-content/uploads/Criminalization-and-taxation.pdf>

⁸⁵ See for example the piece of the largest pro-government portal, Origo.hu entitled: Egyre nagyobb teret nyernek az álcivil szervezetek a baloldali önkormányzatoknál [Fake civil society organizations gain ground in leftist local governments] <https://www.origo.hu/itthon/20200909-sorosek-halojaban-a-baloldali-onkormanyzatok.html>



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corruption has been undermined. This is related to the fact that Viktor Orbán's administration has been systematically disrupting democratic checks and balances, which results in an uninterrupted deterioration of Hungary's rule of law performance and in democratic backsliding.

State institutions that under the former liberal democratic system between 1990 and 2010 were designed to control the power of the executive, have become the instruments of it. The list of captured institutions is long including Constitutional Court, State Audit Office, Competition Authority, Central Bank of Hungary, National Media Authority, National Election Committee, the Office of the Commissioner for Fundamental Rights and other equality bodies although the level to what extent they were replenished by loyalists and / or have served particularistic interests rather than the common good has been different. The parliament, though formally independent from the executive branch of government, has also stopped functioning as an oversight body, instead, it simply approves measures proposed by the government.

The government's determination to weaken the capacity of independent institutions entailed an instrumental approach towards legal norms, including the Fundamental Law, which is the country's Constitution. Since the takeover by the Fidesz government in 2010, there have been nineteen constitutional amendments. Besides, the government's practice demonstrates a clear tendency to pack independent institutions with politically partisan appointees. Political loyalty of such appointees towards the ruling elite is more important than their professional background, which is often questionable. By now, except for the law courts, state institutions originally designed to keep the executive branch of the government under control, have become instruments of Mr Orbán's power machinery, turning most components of the checks and balances system into a loyally behaving and obedient political upper-house of government. The only exception to this trend is the judiciary, which preserved a considerable level of its autonomy thanks to, among others, the decentralised functions and the reliable integrity framework within the court system as well as to the high ethical standards of judges.

In Transparency International Hungary's observations, corruption has become systemic in Hungary and it results in the decline of state institutions' reliability. State institutions tend to act mainly in the interest of preserving the power of the governing elite and tolerate or even promote corruption. Members of the ruling elite will increase their power and wealth, and the well-being of citizens largely depends upon the grace of the government. This leads to extensive rent seeking and to the emergence and spread of cronyism.