



**CENTER FOR
FUNDAMENTAL RIGHTS**

**CONTRIBUTION OF THE CENTER FOR FUNDAMENTAL RIGHTS
TO THE TARGETED STAKEHOLDER CONSULTATION OF THE
EUROPEAN COMMISSION ON THE 2021 RULE OF LAW
REPORT**

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General remarks concerning the questionnaire addressing the situation of the rule of law in the Member States

The principle of the rule of law is an organizing principle of state and constitutional order, it is one of our core values that must be enforced. However, one of the generally applied, most important principles of the European Union is the principle of conferral of competences set down in Article 5 of the Treaty on European Union (TEU). According to this Article, the EU can only act within the limits of the competences conferred upon it by the Member States to attain the objectives set out by the Treaty.

However, since the issue of the rule of law was tabled by the European Commission in 2014, we are witnessing the recurring attempt to expropriate this topic by the Commission and use it to force certain Member States into giving up their position in matters of political importance, e.g., migration or family policy. This is happening in spite of the fact that during the constitutional process in 2011, in Hungary, sufficient safeguards for the principle of the rule of law were created by the Hungarian National Assembly. Forming the constitutional system is an organic element of national sovereignty – a competence that was never conferred upon the EU by the Member States. This would also be unconstitutional in the case of Hungary. It is right to say that violating the principles of conferral of competences, subsidiarity and proportionality; disregarding the national sovereignty and constitutional identities of Member States, the Commission is trying to create an EU level control over the application of the principle of the rule of law within the Member States.

The values enumerated in Article 2 TEU are political and philosophical categories, as a consequence, all Member States have a different approach when interpreting these values. It also follows that these values might be co-opted by ideologies and burdened with political content resulting in the prospect of becoming compulsory benchmarks for the Member States, shaped by the prevailing ideological winds. Unfortunately, this is what we have been experiencing in all Commission proposals related to the rule of law, constantly accompanied by the application of double standards relating to the Member States. The 2020 rule of law reports clearly proved that the Member States are not measured by the same objective standards. While in Hungary several issues were put on the table that are factually incorrect, in case of other Member States the Commission did not even mention that there is an ongoing rule of law crisis. Several examples could be brought up when questioning the integrity of the rule of law related proceedings of the European Commission.

Clearly, the rule of law debate is a political debate masquerading as a legal one; its primary aim is to interfere with the sovereignty of the Member States. What is more, recent experience shows that the tools currently available in the EU have been used for political motives, without paying heed to real dialogue, professional or legal arguments. Tools aimed at investigating breaches of the fundamental values of the EU raise the prospect of violations of Member State sovereignty. This cannot be remedied with a soft law toolset, as these categories themselves are unsuitable to determine whether the rule of law prevails in a Member State.

There are differing views on the matter, whether the discourse regarding the application of the rule of law mechanisms as political tools to discipline Member States should play a key role in shaping Europe's future. The arguments of those who wish the Member States should have a weaker role are feeble, at least for the reason, that there are matters more immediate and unprecedented in the history of the EU on the agenda, namely handling the COVID crisis, which should be the priority for all European actors.

The overall view of this topic is contrasting: while the egregious cooperation of the left-wing parties with the antisemitic Jobbik party indeed raises serious concerns, as the political leaders of the cooperation and their legal experts announced to suspend the rule of law and modify the Fundamental Law and cardinal acts with an absolute majority (i.e. with only more than 50% of the votes cast) after a potential left-wing win in the 2022 general elections, the EU remains silent. At the same time, however, there is a hardily and steadily fought fight to push the rule of law against the will of the Member States and the letter of the primary law of the EU.

Justice System - Hungary

Independence

Appointment and selection of judges, prosecutors and court presidents (The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

Under Article 9 (2) f) of the Fundamental Law of Hungary (Fundamental Law) the President of the Republic shall appoint professional judges after a process of application. The presidents of the regional courts of appeal and the regional courts are appointed by the National Office for the Judiciary (NOJ), the presidents of district courts are appointed by the president of the respective regional court for six years¹. The president of the Supreme Court (Curia) shall be elected with the votes of two thirds of the Members of the National Assembly from among the judges for nine years on a proposal from the President of the Republic.²

Article 29 (1) of the Fundamental Law ensures the independence of the prosecution service. The Prosecutor General shall be elected by the National Assembly from among the prosecutors for nine years on a proposal from the President of the Republic³. A Hungarian citizen with a university degree in law and a Bar examination and with no criminal records may be appointed as a prosecutor⁴. They are appointed by the Prosecutor General.

The guarantees of the independence of the Constitutional Court are laid down in a cardinal Act⁵. All Hungarian citizens with no criminal record and eligibility may be elected as members of the Constitutional Court, if they are in possession of a law degree, between 45 and 70 years of age. They must be exceptionally skilled lawyers with at least 20 years of relevant experience. The members are

¹ <https://birosag.hu/en/appointment-court-executives>

² Article 26 (3) of the Fundamental Law

³ Article 29 (4) of the Fundamental Law

⁴ Article 11 of Act CLXIV of 2011

⁵ Act CLI of 2011

elected with the votes of two thirds of the Members of the National Assembly for twelve years which cannot be prolonged. The president of the Constitutional Court is also elected by the National Assembly with a two third majority.⁶ The Constitutional Court has a very important role in protecting the independence of judges.

Irremovability of judges; including transfers, dismissal and retirement of judges, court presidents and prosecutors

Judges are independent and only subordinated to Law; they cannot be instructed in relation to their judicial activities. Judges may only be removed from office for the reasons and in a procedure specified in Act CLXII of 2011. The Constitutional Court has a very important role in protecting the independence of judges.

Promotion of judges and prosecutors

In the appointment of court executives, the right of the judicial bodies to form an opinion on the appointment remains unchanged. Some of the court executives are appointed by the president of NOJ, while a much larger part of the executives are appointed by the presidents of high courts and of regional courts.

The powers of the bodies forming an opinion remain intact with regard to all executive appointments. Indeed, the rights of the president of NOJ are more limited than the powers of the presidents of high courts and of regional courts. The president of NOJ has to obtain the advance opinion of the National Judicial Council (NJC), if he or she would like to appoint an executive who did not receive the majority of the votes of the body forming an opinion on the appointment. The president of the NOJ shall – at the same time as the appointment – provide a written notification to the NJC and present the reasons for the decision on the next session of NJC, in case of appointing a different person than the one proposed by the body providing an opinion.

The most important element of the system of applications for court executive posts is that the applicants must elaborate on their long-term plans and the way of their realization, and how the post in question can contribute to his or her plans. The president of the NOJ may initiate legislation in the interest of affecting the courts.⁷

Prosecutors, with the exception of the Deputy Prosecutor General, are appointed to senior and managerial prosecution positions by the Prosecutor General. The Prosecutor General fills the senior and managerial prosecution offices falling within his competence of appointment as well as the prosecutor positions at the Office of the Prosecutor General and the Appeals Public Prosecution Office by

⁶ Article 24 (8) of the Fundamental Law

⁷ <https://birosag.hu/en/national-office-judiciary>

application. With the exception of the office of Deputy Prosecutor General, the Prosecutor General may also order the filling of other positions by application. Job advertisements must be initiated by the Prosecutor General. The public job advertisement must contain all conditions necessary for being awarded the position and the deadline for the assessment of applications. Job advertisements must be published in the Prosecution Gazette (Ügyészégi Közlöny) and on the website of the prosecution office. The time limit established for the submission of applications may not be shorter than ten days reckoned from publication on the Internet. Before the assessment of applications, the Prosecutor General acquaints himself/herself with the opinions regarding the candidate of the prosecutors' council.⁸

Allocation of cases in courts

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 Hungary, the central responsibilities of the administration of courts is performed by the President of the National Office for the Judiciary (NOJ). It is the body entrusted with the supervision of the central administration of courts⁹. The President of the NOJ shall be elected from among the judges by the National Assembly for nine years on the proposal of the President of the Republic. The President of the NOJ is elected with the votes of two thirds of the Members of the National Assembly.¹⁰

There are also other bodies of judicial self-administration (like the NJC) that also participate in the administration of courts. This feature is laid down in the Fundamental Law as well, thus protected at the highest level. The administrative work of the NOJ's President is supervised by the NJC. The powers of the bodies forming an opinion remain intact with regard to all executive appointments. Indeed, the rights of the President of NOJ are more limited than the powers of the presidents of high courts and of regional courts. The President of NOJ has to obtain the advance opinion of the NJC, if he or she would like to appoint an executive who had not received the majority of the votes of the body forming an opinion on the appointment. The President of the NOJ shall – at the same time as the appointment – provide a written notification to the NJC and present the reasons for the decision on the next session of the NJC, in case of appointing a different person than the one proposed by the body providing an opinion. Members of the NJC may consult the documents related to the operation of the NOJ and the president of NOJ, and may request data and information from the President of the NOJ. Furthermore, the impeachment of the President of the NOJ may be initiated by the NJC.¹¹ The President of the Curia must be a member of the NJC, but to provide maximum independence further members are elected by judges among themselves for six years. The Minister of Justice, the Prosecutor General, the President of the Hungarian Bar Association, the President of the Hungarian National Chamber of Notaries and the

⁸ Sections 18-20 of Act CLXIV of 2011

⁹ Article 25 (5) of the Fundamental Law

¹⁰ Article 25 (6) of the Fundamental Law

¹¹ <https://birosag.hu/en/national-office-judiciary>

President of the NOJ participate in the meetings of the NJC with deliberative rights. As a result, NJC meetings are an important platform for interprofessional cooperation. The functioning of the NJC is secured by a cardinal Act.

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

In Hungary judges are independent in their judicial activities. Judges, however, are entitled to the same immunity as Members of Parliament. To lift the immunity of judges, the President of the Republic shall make a decision based on a proposal by the President of the NJO. In the event of a breach of immunity, the necessary measures shall be taken by the President of the Republic based on a proposal by the President of the NJO.¹²

If the suspicion of a disciplinary breach emerges in respect of a senior court official, the person exercising the right of appointment initiates disciplinary proceedings before the president of the disciplinary court of first instance. If the suspicion of a disciplinary breach emerges in respect of a judge not holding a senior appointment, disciplinary proceedings are initiated by the President of the Curia; in the case of the judges of the Curia, by the president of the court of appeal; in the case of court of appeal judges, by the president of the regional court; in the case of regional court, district court, by the president of the disciplinary court of first instance. The President of the NOJ may initiate disciplinary proceedings only against the court executives appointed by him and against a judge assigned to the NOJ.

It should be noted that in 2018, eleven court presidents exercising employer powers initiated disciplinary proceedings against 20 judges. Of the 2,933 judges, 6 were given a written warning.¹³ There is also an Ethical Code of the Jury, which is approved by the President of the NJC.

Remuneration/bonuses for judges and prosecutors

Independence/autonomy of the prosecution service

As laid down in the Fundamental Law, the Prosecutor General and the prosecution service are independent and contribute to the administration of justice by exclusively enforcing the State's demand for punishment as public prosecutor. The Prosecutor General is elected by the National Assembly from among the prosecutors for nine years on a proposal from the President of the Republic. The Prosecutor General is elected with the votes of two thirds of the Members of the National Assembly. Despite being elected by the National Assembly, the Prosecutor General cannot be instructed. To provide the autonomy of the prosecution service, prosecutors may not be members of political parties or engage in political activities. To avoid arbitrariness, the detailed rules for the organization and operation of the

¹² Sections 1 and 2 of Act CLXII of 2011

¹³ <https://jogaszvilag.hu/napi/egyre-kevesebb-fegyelmi-ugy-indul-a-birosagokon/>

prosecution service and for the legal status of the Prosecutor General and the prosecutors, as well as their remuneration, must be laid down in a cardinal Act. The independence of the prosecution service is laid down in Act CLXIII of 2011 stating that it is an independent, constitutional organization subject only to the law. The Prosecutor General and prosecutors enjoy the same immunity as a Member of the National Assembly. Prosecutors may not engage in gainful activity outside his or her job, except for academic and educational (coaching, judging, refereeing), artistic, copyright-protected, proofreading and editorial activities, technical creative work and the establishment of an employment relationship as a foster parent. Prosecutors may not engage in political activity¹⁴.

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

The Hungarian Bar Association and the regional bar associations are self-governing public bodies representing the interests of the legal profession, laying down and enforcing professional standards, including through disciplinary measures. To ensure its independent working, the Hungarian Bar Association has an independent administrative organization and budget. In Hungary, a lawyer/advocate entitled to practice law may be a member of a regional bar association. The officers, except for the President, Executive Board, Committees and Members of the Hungarian Bar Association, are elected directly by secret ballot every four years. The preceding exceptions, such as the President, are being elected by the main decision-making body of the Bar, the Delegate's Meeting (which consists of 150 Bar Members). The functioning of the Hungarian Bar Association is protected by Act LXXVIII of 2017.

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

Based on the 2018 Eurobarometer Report on the perceived independence of the national justice systems in the EU among the general public, 48 percent of the respondents in Hungary have a very good or fairly good rating in terms of the independence of courts and judges, contrary to 30 percent of the respondents, who have fairly bad or very bad views on that. These numbers remained practically unchanged, showing a stable public perception tendency between 2016 and 2018.

The 2020 EU Justice Scoreboard also dealt with the perceived independence of the judicial system. The latest data was for 2020 and showed that almost 50% of the respondents believe that the perceived independence of the judicial system is very good or fairly good in Hungary. In general, we can say that in the last five years, there is no significant change in the public perception.

The 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary summarizes that the perceived judicial independence is at an average level among the general public and very low among companies, although the latest data shows improvement. The level of independence of courts and judges is perceived as average (48% 'fairly or very good') by the general population, but very low (26%

¹⁴ <http://ugyeszseg.hu/en/about-us/fag/>

‘fairly or very good’) by companies. However, in 2020 the negative trend observed for a number of years has turned, with both indicators improving.

Nevertheless, despite the clear progress that Hungary made regarding the public perception of the judiciary, the Hungarian judicial system is under continuous political attacks by Members of the European Commission, most remarkably by Commissioner Vera Jourová. The public statements made by the Commission in this regard aim at undermining public trust in the Hungarian judicial system, which we strongly condemn.

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".)

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

Resources of the judiciary (human/financial/material) Material resources refer e.g. to court buildings and other facilities.

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

Digitalization (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic) (Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540final, does not need to be repeated)

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

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

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".)

Length of proceedings

Hungary ensures fair and open proceedings that are completed within a reasonable period as it is a fundamental constitutional requirement. Based on the Constitutional Court's practice, the reasonable time can be decided according to the circumstances of a case. In practice, the evaluation of the individual circumstances, the complexity of the case, the scope and the length of the evidentiary procedure, etc. predict the length of a proceeding. The violation of the right to be tried within a reasonable time can have legal consequences according to the Act CXXX of 2016 on the Code of Civil Procedure and the Criminal Procedure and the Act XC of 2017 on the Criminal Procedure. Both acts ensure the opportunity to lodge an objection which protects the litigants properly.

In this respect, Hungary performs among the best at EU level, leaving - for example - The Netherlands, France and Finland behind, based on the 2020 EU Justice Scoreboard. Compared to the previous year of the period examined, the country improved in this area and the proceedings became shorter. In this regard, Hungary ranks 7th among the twenty-three examined Member States.

Other - please specify

Anti-Corruption Framework - Hungary

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

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

Besides strict rules helping to fight against corruption, there is a great focus on the prevention and influence of social attitudes capable of combating corruption. The Fundamental Law sets out in Article 39 (2) that organizations managing public funds must be publicly accountable, furthermore, the public funds and national assets shall be managed transparently and according to the principle of purity of public life.

The State Audit Office of Hungary was commissioned by the National Assembly to strengthen the fight against corruption and has the mission to support accountability of public funds and to contribute to good governance. The President of the State Audit Office is elected by the National Assembly with two thirds majority for twelve years. The Assembly sets up a nominating committee of eight members who propose persons that may be elected as a president. The elected president nominates the vice-president of the State Audit Office for twelve years. The post of the president, the vice-president and the auditor are incompatible with the duties of any organization which receives assistance from a subsystem of the Government.

The State Audit Office, the Curia of Hungary, the Prosecution Service of Hungary, and the Ministry of Public Administration and Justice signed a declaration whereby they committed to making the of public bodies led by them more resilient in the face of corruption and to develop anti-corruption methods,

which is unique in the world. These national bodies, and other important institutions that later joined that declaration, make concerted steps to prevent and fight corruption, to this end they constantly consult and seek to establish a network of corporations.¹⁵

In Hungary, procedures against perpetrators of corruption-related crimes are to be carried out by the police, the Prosecution Service of Hungary and the National Tax and Customs Administration of Hungary. The Police is an armed law enforcement service, and is the general investigative authority of Hungary. Its staff consists of trained and armed officers, who are determined to fight against every criminal offence, including corruption. The Prosecution Service also takes investigative steps, if the crime has been committed in the public sector and files and represents the indictment at court. When investigation is done by a different authority, the Prosecution Service's task is to supervise the investigation. It plays a major role in the fight against corruption, and if there is evidence of that kind of crime, it fulfils its duties to conduct a procedure. National Tax and Customs Administration of Hungary conducts investigation only in special cases, prescribed by the Criminal Procedure Code of Hungary. This includes budgetary fraud, which is not specified as a corruption-related crime, but technically can be treated as such. The Authority also has the necessarily trained and qualified personnel, and has an armed body as well.

Prevention

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

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

The Fundamental Law of Hungary guarantees the right to freedom of the press, and the right to access data of public interest, cornerstones of a democratic society. The right of access to information processed by public authorities is regulated by an Act, ensuring that every relevant information processed by state organs and local governments is easily available to anyone, having a proper request lodged with these institutions.

The Act CXII of 2011 on the right to informational self-determination and on the freedom of information (Information Act) sets a procedure whereby anyone can request the public authorities to provide access to data of public interest. The concept of data of public interest encompasses data controlled by anyone carrying out public duties. National Authority for Data Protection and Information Freedom (NAIH) is also regulated in the Information Act and is an autonomous state administration organ; it may not be instructed in its functions and operates independently of other organs and of undue influence. The tasks of the NAIH may only be determined by an Act of Parliament. This authority is responsible for controlling and fostering the right to access data of public interest. NAIH is able to conduct inquiries if the controller denies access of the requested information.

¹⁵ korrupciomegelozes.kormany.hu

There are plenty of other rules guaranteeing transparency in several sectors. One of the most important one is the public procurement, where there is an obligation for a fair, transparent and public competition. The Authority for Public Procurements is responsible for examining and controlling the execution of this rule.

The Act CXXXI of 2010 on public participation in the drafting of legislation obligates the ministries to hold social consultations during the drafting of legislation. The aim is to ensure that the opinion of every group of society is taken into account, and the new rules to be based on a broad consensus. The administration is obligated to a transparent and accessible cooperation with civil society in this context. The Government shares its Legislative Plan for every parliamentary session as well, and the ministers shall have all information made available to the public related to the legislation in their competence.

All political parties get financial support from the state budget for their expenses, if they reach at least one percent of the votes cast in the last general election, and also get special support for their campaign costs. Parties must not accept any kind of financial support from legal entities and foreign nationals. The State Audit Office of Hungary is responsible for controlling the execution of these rules.

Rules on preventing conflict of interests in the public sector.

There are strict rules in Hungary to prevent conflicts of interests in the public sector.

The President of the Republic cannot be a member of Government or Parliament or the judiciary system. The members of Government can be Members of Parliament, but it is prohibited for them to hold higher parliamentary offices, such as Speaker of the Parliament or chair of a committee. The non-political officials of the Government (deputy state secretaries and public servants of ministries) cannot be Members of Parliament, or cannot hold a position in a political party leadership. Mayors also cannot be Members of Parliament or Government.

Judges cannot be members of political parties; political institutions and every political activity is forbidden in their case. The Fundamental Law and the related Acts guarantee their independence in every relevant aspect: they have financial independence and they cannot be instructed in relation to their judicial activities.

The president of the NAIH cannot be a member of a political party, cannot conduct any political activities and cannot hold any position in the public sector.

Every public sector official (and politician as well) is obligated to prepare their annual financial statement. In this document they report their valuables, as well as their financial status. If there is a disproportionality between someone's legal income and actual wealth, examination may be conducted. In addition, obviously the scope of the Criminal Code extends to every single act of corruption.

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

The Government took comprehensive anti-corruption measures along with the National Anti-corruption Programme. The corruption related criminal offences became stricter and public bodies have strengthened their anti-corruption activities, which made the Hungarian economy more transparent. In 2020 the Government adopted the National Anti-corruption Programme which defines the prevention of corruption and other measures.

The integrity management system was established by Government Decree 50/2013 (II.25) and is mandatory in public administrations. It is responsible for examining the abuses in the institutions, to receive the reports concerning suspected corruption and to notify and provide advice for the leaders and employees of the institution in the arising ethical issues. State administration organs have to be assessed annually on corruption risks and have to make an annual action plan.¹⁶

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

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

There were no special measures in this context, because the Criminal Code of Hungary had already had strict rules against any act of corruption. The Code criminalizes active and passive bribery, and there are even special, stricter punishments when a public sector official commits any of these crimes. There is also the crime of abuse of authority, which involves officials who overstep their competence, and the passive and active trading in influence. Officials are also obligated to report any corruption which comes to their knowledge. If they fail to do so, it counts as a criminal offense.

For a short period of time in March 2020, there was an extraordinary judicial vacation, but it is no longer in force.

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

Repressive measures

Criminalisation of corruption and related offences.

The Hungarian legal system contains a wide range of corruption related offences. Chapter XXVII of the Hungarian Criminal Code (Act C of 2012) regulates the corruption related criminal offences. The Hungarian penal system incorporates active bribery, passive bribery. Active and passive bribery in court or in authority proceedings is also sanctioned by law, just as active and passive trading in influence. These offences with regards to their severity and other circumstantial elements can be punished by

¹⁶ [STRATÉGIA közzétett.pdf \(kormany.hu\)](#)

imprisonment for one to ten years in some cases. Furthermore, the failure to report a corruption criminal offence for a public officer shall also be punished by imprisonment for up to three years.

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

The Hungarian law enforcement and judiciary system is dedicated to the fight against corruption. There are several cases, when the perpetrators of such crimes were punished. Everybody has the right to report alleged crimes, and the authorities will look into these cases and investigate them thoroughly.

For example, one former Member of Parliament, Roland Mengyi is now in prison for attempt of budgetary fraud and for trading in influence. Another MP, György Simonka's proceedings are pending before court for similar crimes. MP István Boldog is under investigation for passive corruption and other offences. Although MPs have immunity, the National Assembly is entitled to suspend it if the Prosecutor General initiates that. As of this point, the National Assembly did so in all corruption cases.

There are other cases from the past ten years: for example, János Zuschlag and György Hunvald were convicted by the courts for fraud and for misappropriation respectively.

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

Immunity concerns a number of political and constitutional actors in Hungary. Members of the National Assembly are entitled to immunity and to remuneration ensuring their independence¹⁷. The member of the National Assembly cannot be held liable before a court or authority from the date of his nomination, during and after his or her term of office for any fact or opinion expressed by him in connection with his or her term of office. Criminal proceeding or – in the absence of voluntarily waiving immunity in the case concerned – infraction procedure can only be instituted or conducted, and a coercive measure under criminal procedure can only be applied against the Member with the prior consent of the National Assembly. Certain criminal offences however are an exception to immunity, and it does not apply to procedures of the Code of General Administrative Procedure. The suspension of immunity is decided with a two thirds majority by the National Assembly.¹⁸

Immunity also concerns the Commissioner for Fundamental Rights and his or her Deputies¹⁹, the Members of the Constitutional Court²⁰, the President of the State Audit Office and his or her Deputy²¹,

¹⁷ Article 4 (2) of the Fundamental Law

¹⁸ Section 73 and the followings of Act XXXVI of 2012

¹⁹ Section 14 of Act CXI of 2011

²⁰ Section 14 of Act CLI of 2011

²¹ Section 10 (1) of Act LXVI of 2011

Judges²², Members of the European Parliament²³, prosecutors and the Prosecutor General²⁴. Nevertheless, immunity can always be lifted thus making the conviction of the respective actors possible.

Other - please specify

Media Pluralism - Hungary

Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies.

The National Media and Infocommunications Authority (hereinafter: NMHH) was created as an independent regulatory body as defined in the Section 109 (1) of Act CLXXXV of 2010 on Media Services and Mass Media (Media Act) and is subordinated only to the law. As stipulated in Section 109 (4) of the Media Act, the President of NMHH reports to the National Assembly annually about the activities of the Authority. The Authority may be required to carry out a task only by law or by a legislation issued under the authority of a law. The authority's independent bodies are the President of the National Media and Infocommunications Authority, the Media Council President of the National Media and Infocommunications Authority and the Office of the National Media and Communications Authority. The President of the Authority reports annually on the activities of the Authority to the National Assembly. According to Article 134 (1) of the Media Act, the Authority's budget is submitted to the National Assembly by the committee responsible for budgetary affairs of the Parliament. The Authority's own revenue includes frequency charges, charges for the trying and use of identifiers, as well as fees paid for the administrative procedure, supervisory fees and fines from actors in the communications and film markets. The authority passes enforceable resolutions that can be challenged in court.

The Media Council of the NMHH is an independent body of the Authority, under the supervision of the National Assembly. The Council and its members are subject only to the law and cannot be instructed in the course of their activities according to Article 123 of the Media Act.

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

The NMHH is managed by its President, who is nominated by the President of the Republic on a proposal from the Prime Minister for nine years, which cannot be extended according to Section 111/A (1)–(3)

²² Section 2 (1) of Act CLXII of 2011

²³ Section 10 (1) of Act LVII of 2004

²⁴ Section 3 (5) of Act CLXIII of 2011

of the Media Act. Anyone may be appointed as President who may be elected at the election of Members of Parliament, has no criminal record, is not banned from exercising an occupation corresponding to his or her activities, has a higher education degree and has at least five years of work experience in the regulatory supervision of media services or press products, or the regulatory supervision of infocommunications. An alternative to the latter precondition is to have an academic degree recognized in Hungary, or at least ten years of experience as a lecturer in an institution of higher education, with respect to a subject-matter relating to media or infocommunications. The President can appoint two Vice-Presidents. The President furthermore appoints the chief executive officer of the Office of the National Media and Communications Authority.

The President and the four members of the Media Council of the NMHH are elected by the National Assembly for nine years by a simultaneous voting by list. The same conditions apply to their election as to the President of the Authority according to Section 124 of the Media Act. The member's mandate expires if his or her term expires, with his or her resignation, when a conflict of interest is established, with their dismissal, exclusion or death according to Section 129 (1) of the Media Act.

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

The Media Council is the Authority's body that has autonomous competence and it is a legal entity under the supervision of the National Assembly. The Council's functions are laid down in Section 132 of the Media Act which declares that the Council shall oversee and guarantee the freedom of press under the Act and the Press Freedom Act; ensure the performance of tasks related to the tendering and contract awarding procedure for media service provision rights using state-owned limited resources made available for media services; perform the supervisory and control tasks prescribed by the Act – by recording programme flows or programmes, or examining the programme flows recorded by the media service provider, or by making official requests; it operates a programme flow monitoring and analysis service through the Office; expresses its opinion regarding draft legislation on media and communications; reviews regularly compliance with public contracts; elaborates official positions and proposals with respect to the theoretical aspects of developing the Hungarian system of media services; initiates proceedings with respect to consumer protection and the prohibition of unfair market practices; prepares a report to the European Commission on the fulfilment of obligations with regard to programme quotas; is entitled to propose amendments to the Act as may be necessary vis-à-vis the Minister responsible for audiovisual policy; undertakes a pioneering role in developing media literacy and media awareness in Hungary and, in this context, coordinates the activities of other state actors in the area of media literacy, assists the Government in drafting its upcoming interim report to the EU on the subject matter.

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

Rules governing transparency of media ownership and public availability of media ownership information

The diversity of media services is a particularly important value according to Section 4 of the Media Act. The protection of diversity includes the avoidance of the formation of ownership monopolies and any unjustified restriction of competition on the market. An additional guarantee of the regulation is that the provisions of the Media Act must be interpreted in consideration of the protection of diversity. Should any changes take place to the media service provider's ownership structure or its data indicated in the public contract must be reported to the Media Council within five days according to Section 63 (14) of the Media Act.

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

In Hungary, everyone has the right to freedom of expression. Hungary recognizes and protects the freedom and diversity of the press, and ensures the conditions for the free dissemination of information necessary for the formation of democratic public opinion. The detailed rules relating to the freedom of the press and the organ supervising media services, press products and the communications market is laid down in a cardinal Act.²⁵ These aspects are protected by the Fundamental Law.

In Hungary, media services may be provided and press products may be published freely, information and opinions may be transmitted freely through means of mass media, and media services originating from Hungary and elsewhere, intended for the general public may be accessed freely. The contents of media services and press products may be determined freely, however, the media service provider and the publisher of press products must comply with the provisions of the cardinal Act.²⁶

The owner of the media company can determine the long-term strategy and orientation of the media product, but the selection and compilation of the specific content falls within the competence of the editorial office, which has editorial responsibility. The owner is not involved in the production of media content.²⁷

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

The police and other law enforcement services are dedicated to ensure every Hungarian citizen's safety. If journalists' safety is in danger, they can press charges against anyone, and the police investigates the case. If the police finds that someone committed a crime against a journalist, criminal procedure is initiated. If the police itself commits any attack, oversteps its authority, or misuses its power, the victim can challenge the actions of the police. The Commissioner for Fundamental Rights has the power to look into the case, and the courts can also carry out their procedure. When the right of the journalist

²⁵ Article IX of the Fundamental Law

²⁶ Section 3 of Act CLXXX of 2010

²⁷ https://mertek.eu/jogi_kerdesek/ujsgairoi-fuggetlenseg/

guaranteed by the Fundamental Law is violated by a judicial decision, there is the possibility of submitting a constitutional complaint to the Constitutional Court.

It is important to note that there is no recent example for any serious attack against journalists in Hungary, in contrast to other Member States like Malta or Slovakia.

Access to information and public documents

Any person or organ performing state or local government functions, or performing other public duties defined by law, must allow any person to have free access to data of public interest and data accessible on public interest grounds under its control if so requested, with the exceptions provided by an Act.

The name of the person acting within the functions and powers of the organ performing public duties, as well as his functions and duties, executive mandate, his other personal data relevant to performing public duties, and his personal data to which access is ensured by an Act, is data accessible on public interest grounds. Personal data accessible on public interest grounds are disseminated in compliance with the principle of data processing limited to the intended purpose.

Data of public interest is made available to anyone upon a request presented orally, in writing or by electronic means. Access to data accessible on public interest grounds is governed by the provisions of an Act pertaining to data of public interest.

The organ performing public duties and processing the data of public interest must fulfil the request for access to such data as soon as possible, but not later than 15 days from receiving the request, which may be extended by 15 days on one occasion, of which the requesting party must be informed within 15 days of the date of receiving the request, if the request concerns data large in number or in volume.²⁸

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

Article II of the Fundamental law of Hungary declares that human dignity shall be inviolable. On these grounds there are several means to protect the various aspects of human dignity. The Hungarian Civil Code ensures the personality rights, such as the right to honor and reputation. Defamation (violation of honor) can be sanctioned by several means, such as the grievance award.²⁹

Not only civil, but also criminal sanctions are applicable in some cases. The Criminal Code punishes defamation by imprisonment for up to one year, if it is committed in front of a large audience with regard to the performance of the job, public mandate or public interest activity of the injured party. Harassment and humiliation are also penalized.³⁰

Of course, not only the rights of journalists are protected. Article 12 of Act CIV of 2010 states that if false facts are stated or disseminated about a person or if true facts related to a person are represented

²⁸ Chapter III of Act CXII of 2011

²⁹ Title XI of Act V of 2013

³⁰ Chapter XXI of Act C of 2012

as false in any media content, such person may demand the publication of a corrective statement suitable to identify the part of the statement that was false or unfounded, or the facts that the statement has distorted, while also presenting the true facts.

Other - please specify

The overall picture of the Hungarian media makes certain observers believe, that there is a cleavage between journalists because of their views on their profession. What the experience shows, however, is a bit different from and more complicated than this aspect. For decades on, employees of left-wing and liberal media outlets tend to exclude other journalists stating, that those not keen on going along with their ideological, or political views are lack professionalism, and – unlike them – not independent from any influence during their work. Albeit factual data contradicts this argumentation, biased left-tilting journalists try still harder to deepen this fragmentation. This process however, might imperil the functioning of the free press in the long term, thus putting in jeopardy the constitutional values Hungarians seek to enjoy.

Other institutional issues related to checks and balances - Hungary

The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms) and transparency and quality of the legislative process

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)

The National Assembly holds two ordinary sessions each year, but an extraordinary session must be convened upon a motion by the President of the Republic, the government, or one-fifth of the Members of Parliament. The pandemics did not have any significant impact on the application of this rule neither in the first, nor in the second wave of the epidemic. In 2020, the same number (55) of new laws were passed as in 2019, though there was an increasing number of amendments (125 acts modifying other laws in effect compared to 79 in 2019). The obvious reason for that is that introduction of the state of danger required several adjustments in the legal system.

For the reason of being rejected by the parliamentary opposition six motions were discussed with urgency in 2020, one of them was the Act XII of 2020 on the containment of coronavirus, and nine motions were adopted in an exceptional procedure. The National Assembly held a vote on the derogation from the provisions of the Rules of Procedure laid down in a resolution on ten occasions to speed up legislative procedures for specific reasons. One of these reasons was the passing of the Act

CIX of 2020 on the containment of the second wave of the coronavirus pandemic, with the votes of the opposition parties in favor.

Regime for constitutional review of laws.

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

The Government declared state of danger in Government Decree 40/2020 (11 March) on the declaration of state of danger, Government Decree 478/2020 (3 November) on the declaration of state of danger, and Government Decree 27/2021 (29 January) on the declaration of state of danger and the entry into force of state of danger measures, on each occasion for a duration of fifteen days, in compliance with Article 53 of the Fundamental Law. The National Assembly enabled the Government to take all extraordinary measures necessary for the prevention of the human epidemic with the following legislative acts: Act XII of 2020 on the containment of coronavirus, Act CIX of 2020 on the containment of the second wave of the coronavirus pandemic, and the Act I of 2021 on the containment of the coronavirus pandemic.

Act. I of 2021 is to be repealed on the 90th day reckoned from the entry into force of that law. The Government is authorized by the Act I of 2021 to extend the applicability of 70 government decrees adopted during the period of the state of danger until this Act is repealed, however, the National Assembly may withdraw this authorization sooner. Additionally, the Government must regularly provide information on the measures taken to eliminate the consequences of the SARS-CoV-2 coronavirus pandemic at the sessions of the National Assembly until these measures are in effect.

judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic

The Constitutional Court received 519 new cases in 2020, while 408 cases were already on the Courts agenda. It is important to add, that 552 cases were closed in that year, reducing the workload significantly. According to the official statistical data of the Constitutional Court, the number of new cases received in Q1 was 134, while in the first wave of the pandemic only 109 new cases were registered. A different trend could be seen in Q3 and Q4, when the number of new cases started to rise, from 113 to 163, mainly for the reason, that the containment of the second wave of the coronavirus included the declaration of the state of danger from 10th November. Various stakeholders, interested parties turned to the Constitutional Court from this date on, including individuals, Members of Parliament and civil society organizations. The Constitutional Court seeks to process the new cases related to the decrees adopted in the state of danger in an expedited manner.

oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic

The COVID-19 pandemic caused a serious concern in early 2020, especially after the virus arrived in Hungary in March. The Government made several decisions to prevent the escalation of the situation, and declared a state of emergency on 11 March. The Fundamental Law of Hungary provides this right for the executive branch in case of natural or industrial disaster. In this special legal regime, the Government can govern by decrees, even if those are not compliant with the Acts, but these decrees are in force only for 15 days, unless the National Assembly authorizes the Government to extend this period. This decision requires a two-third majority of MPs, in order to create a broad consensus and a strict control on the executive branch.

The National Assembly gave its consent to lengthen the effect of the government decrees, and therefore the Government had the chance to react to the challenges of the crisis in an expedited manner. These special government decrees remain in force only as long as the state of emergency stands. At the end of the first wave of the COVID-19 pandemic, the National Assembly withdrew the special authorization from the Government, and therefore the normal legal regime came into effect again.

The second wave of the pandemic got stronger in Autumn 2020, and therefore the Government declared a state of emergency for the second time. Again, the National Assembly gave authorization for extending the effect of the government decrees. The framework of the current legal regime is the Government Decree 27/2021 (29 January) on the declaration of state of danger and the entry into force of state of danger measures, and the Act I of 2021 on the containment of the coronavirus pandemic.

It is of utmost importance to note, that the main constitutional institutions of the state, namely the National Assembly and the Constitutional Court are continuously working during the state of emergency as well, so the checks and balances are constantly in effect.

measures taken to ensure the continued activity of Parliament (including possible best practices)

The basic rules of the functioning of the Hungarian National Assembly are laid down in the Fundamental Law of Hungary which states in its Article 3 that the mandate of the National Assembly commences with its inaugural session until the inaugural session of the next Parliament. The inaugural session is convened by the President of the Republic within thirty days from the general elections.

Act XXXVI of 2012 on the National Assembly states the rules of the parliamentary sessions. According to Sections 32-35, the National Assembly has two ordinary sessions a year: from the first day of February to the fifteenth day of June, and from the first day of September to the fifteenth of December. The sessions consist of sittings, which consist of sitting days. The expected number of sitting days are indicated at time of convening the sitting. These sessions are convened by the Speaker who secures that the sittings follow each other in a reasonable period in order to guarantee the complete performance of the duties of the National Assembly specified in the Fundamental Law. The proposal for the orders of the day of the Assembly's sitting have to be published not later than 72 hours before the sitting, or 48 hours before if it is necessary to convene more than one sitting within a calendar week. At the written

proposal of the President of the Republic, the Government or on the one-fifth of the Members, the National Assembly convenes an extraordinary session or sitting.

Independent authorities

Independence, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>

Accessibility and judicial review of administrative decisions - Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

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

The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

The main rules concerning civil society organizations are found in the Act CLXXV of 2011 on the Right of Association, Public Benefit Status, and Operation and Founding of Civil Society Organizations. According to the Act, civil society organizations are civil companies, associations registered in Hungary (except political parties, trade unions and mutual insurance associations) and foundations (with the exception of public foundations and political party foundations).

In order to have a transparent function, civil society organizations are required to prepare their annual accounting report regarding their assets, operations, finances and revenues. These types of organizations are also required to report their public benefit activities, their received donations and the 1% personal tax income contributions.

Initiatives to foster a rule of law culture

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

The National Assembly frequently debates on topics related to the rule of law.

Other - please specify

Fostering rule of law culture is of utmost importance in Hungary as left-wing opposition party politicians and lawyers have recently made worrying statements on rule of law. They plan to modify various cardinal acts with an absolute majority instead of the necessary two-third majority after a potential left-wing win in the 2022 general elections. They also envisage the temporary suspension of rule of law in Hungary until they can modify the acts and the Fundamental Law, which they call the „restoration” of rule of law. While their argumentation relies on the Article C) (2) of the Fundamental Law in saying, that they shall have the right to lawfully resist any action with the aim of exclusively possessing power, should any opposition party gain the absolute majority of the seats in the National Assembly, such argumentation would create a legal conundrum, that, for its artificial nature, would be a breach of the rule of law principle. This concept of suspending the rule of law in Hungary clearly shows, that there is indeed a bad need for fostering the rule of law culture in Hungary.