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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 Rule of Law Report Country Chapter on the rule of law situation in Hungary**

#### *Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

#### **2022 Rule of Law Report The rule of law situation in the European Union**

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## **ABSTRACT**

As regards judicial independence, concerns expressed in the context of the Article 7(1) TEU procedure initiated by the European Parliament, as well as in previous Rule of Law Reports, remain unaddressed. This is also the case for the relevant recommendation made under the European Semester. These concerns relate in particular to the challenges faced by the independent National Judicial Council in counter-balancing the powers of the President of the National Office for the Judiciary, the rules on electing the President of the Supreme Court, and the possibility of discretionary decisions as regards judicial appointments and promotions, case allocation as well as bonuses to judges and court executives. Following the Supreme Court decision declaring unlawful a request for preliminary ruling, the European Court of Justice ruled that such decision is contrary to EU law. As regards efficiency and quality, the justice system performs well in terms of the length of proceedings and has an overall high level of digitalisation. The gradual increase of salaries of judges and prosecutors continues.

The implementation of most measures under the 2020-2022 anti-corruption strategy was postponed and no new strategy has been announced. Shortcomings persist as regards lobbying, revolving doors as well as political party and campaign financing. Independent control mechanisms remain insufficient to detect corruption. Concerns remain regarding the lack of systematic checks and insufficient oversight of asset declarations as well as the lack of conflict of interest rules for the public interest trusts. The lack of a robust track record of investigations of corruption allegations concerning high-level officials and their immediate circle remains a serious concern, although some new high-level corruption cases have been opened. The lack of judicial review of decisions not to investigate and prosecute corruption remains a cause of concern, in particular in an environment where risks of clientelism, favouritism and nepotism in high-level public administration remain unaddressed. The Commission sent Hungary a written notification under the Regulation on a general regime of conditionality to protect the EU budget in case of breaches of the principles of the rule of law.

The functional independence of the Media Authority needs to be strengthened. The continued channelling of significant amounts of state advertising to pro-government media creates an unlevel playing field in the media landscape. Public service media operates in a complex institutional system, amid concerns over its editorial and financial independence. Media professionals continue to face challenges in exercising their activities, including with the surveillance of investigative journalists. Access to public information continued to be hindered under the state of danger.

As regards the system of checks and balances, the transparency and quality of the legislative process remain a source of concern. The Government has been using its emergency powers extensively, also in areas not related to the COVID-19 pandemic as initially invoked. The Commissioner for Fundamental Rights has gained more competences, but his accreditation was downgraded following concerns regarding his independence. The ineffective implementation by state organs of judgments of European and national courts is a source of concern. Pressure continues on civil society organisations, whilst the public-interest trusts receiving significant public funding and managed by board members close to the Government have become operational.

## **RECOMMENDATIONS**

In addition to recalling the obligation to comply with the rule of law-related rulings of the ECJ and the rule of law related infringement procedures referred to in the country chapter, the concerns raised under the conditionality regulation, the relevant concerns raised in the Article 7 TEU procedure initiated by the European Parliament, and recalling the relevant country-specific recommendations under the European Semester, it is recommended to Hungary to:

- Strengthen the role of the National Judicial Council, while safeguarding its independence, to effectively counter-balance the powers of the President of the National Office for the Judiciary.
- Adapt the rules related to the *Kúria* to remove judicial appointments outside the normal procedure, to strengthen eligibility criteria for the *Kúria* President, and to strengthen control by judicial bodies over the *Kúria* President, taking into account European standards, and to remove the possibility of reviewing the necessity of preliminary references, in line with EU law requirements.
- Adopt comprehensive reforms on lobbying and revolving doors, and strengthen the system of asset declarations, providing for effective oversight and enforcement.
- Establish a robust track record of investigations, prosecutions and final judgments for high-level corruption cases.
- Introduce mechanisms to enhance the functional independence of the media regulatory authority taking into account European standards on the independence of media regulators.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Adopt legislation to ensure fair and transparent distribution of advertising expenditure by the state and state-owned companies.
- Remove obstacles affecting civil society organisations.

## I. JUSTICE SYSTEM

Hungary has a four-tier ordinary court system. 113 district courts operate at first instance, while 20 regional courts hear appeals against district court decisions and decide on certain cases at first instance. Five regional appeal courts decide on appeals against decisions of the regional courts. The main role of the Supreme Court (*Kúria*) is to guarantee the uniform application of the law. The Fundamental Law tasks the President of the National Office for the Judiciary (NOJ), elected by Parliament, with the central administration of the courts. The National Judicial Council is an independent body, which, under the Fundamental Law, supervises the NOJ President and participates in the administration of the courts. Judges are appointed by the President of the Republic following a recommendation of the NOJ President based on a ranking of candidates established by the local judicial councils (composed of judges elected by their peers). The NOJ President cannot deviate from this ranking without the prior consent of the National Judicial Council. The Constitutional Court is not part of the ordinary court system and reviews the constitutionality of laws and judicial decisions. The prosecution service is an independent institution vested with powers to investigate and prosecute crime. The Hungarian Bar Association and the regional bar associations are autonomous self-governing public bodies.

### **Independence**

**Perceived judicial independence continues to be average among the general public and low among companies.** The level of perceived judicial independence by the general public remains average, marking a slight increase from 40% in 2021 to 43% in 2022<sup>1</sup>. According to data in the 2022 EU Justice Scoreboard, perceived judicial independence by companies remains low, 34% of companies perceive judicial independence as ‘fairly or very good’, an increase compared to the 32% in 2021<sup>2</sup>. As regards the general public, the five-year negative trend in perceptions turned in 2022; as regards companies, after a significant drop in 2019, perceptions continue to improve.

**There have been no legislative steps to address concerns related to the lack of checks and balances in the administration of courts.** On 23 May 2022, in the context of the European Semester, the Commission proposed<sup>3</sup> to the Council to address to Hungary a recommendation to strengthen judicial independence, noting that the National Judicial Council continues to face difficulties in counter-balancing the powers of the NOJ President as regards the management of the courts<sup>4</sup>. Although there have been some positive developments regarding the NOJ President’s cooperation with the National Judicial Council<sup>5</sup>, the powers of the National Judicial Council have not been extended to ensure effective

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<sup>1</sup> Figure 50, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>2</sup> Figure 52, 2022 EU Justice Scoreboard.

<sup>3</sup> Recital (27), Recommendation for a Council Recommendation on the 2022 National Reform Programme of Hungary and delivering a Council opinion on the 2022 Convergence Programme of Hungary.

<sup>4</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 2.

<sup>5</sup> Stakeholders report that since November 2021, the NOJ President has regularly attended the meetings of the National Judicial Council and has had an improved track record in reacting to the requests of the Council. Thus, on 1 December 2021 the NOJ President agreed that the Office would cover the costs of the Council’s website (contribution from the Hungarian Association of Judges for the 2022 Rule of Law Report, p. 11; contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 6).

oversight over the NOJ President<sup>6</sup>, and further guarantees against possible arbitrary decisions by the NOJ President are necessary<sup>7</sup>. In its Opinion<sup>8</sup> of 16 October 2021, the Venice Commission recalled its previous consideration that the powers of the NOJ President remain very extensive when wielded by a single person and their effective supervision remains difficult.

**The absence of effective control over the NOJ President increases the possibility of arbitrary decisions as regards the career of judges.** Judges' first appointments are limited to three years, at the end of which the court president assesses their suitability for judicial tenure and may, if they are found suitable, request the NOJ President to recommend the President of the Republic to appoint them for an unlimited period of time<sup>9</sup>. On 4 November 2021, the second-instance service court attached to the *Kúria* ruled<sup>10</sup> that judges who, after their initial appointment, are found unsuitable for tenure by the court president, cannot challenge the assessment report itself, but only have a remedy when proceedings are brought against them by the court president with a view to establishing their professional incompetence<sup>11</sup>. There is no possibility to grant interim relief to prevent an interruption of the judicial career during the review of the evaluation. Stakeholders have underlined that this raises concerns as regards effective judicial protection of the judges concerned, affecting their independence<sup>12</sup>. After consulting the National Judicial Council, the NOJ President has prepared a draft legislative proposal to amend the rules, which was subsequently agreed by the Council<sup>13</sup>. In another set of proceedings, on 2 June 2021, the *Kúria* ruled<sup>14</sup> that there is no

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<sup>6</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, pp. 10-11. The NOJ President has not acted on a call made on 2 February 2022 by the National Judicial Council to initiate disciplinary proceedings against a Regional Court President because of his failure to shield a senior judge from undue external pressure. To be noted that the National Judicial Council has no legal basis to oblige the NOJ President to initiate disciplinary proceedings against a court president.

<sup>7</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 5. For instance, the Integrity Policy issued by the NOJ President, which can be used to deter judges from discussing in public issues related to judicial independence, has not been amended (*ibid.*, p. 9). Stakeholders argue that its provisions are unclear and leave room for arbitrary interpretation and may hinder judges' involvement in public discourse (Amnesty International Hungary (2021), Status of the Hungarian judiciary, p. 24). Article 26(1) of the Fundamental Law and 39(1) of Act CLXII of 2011 prevent judges from engaging in political activities.

<sup>8</sup> CDL-AD(2021)036, para. 66, point a).

<sup>9</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 7. The court president evaluates the overall performance of the judge based on the examination material and the documents and assessments obtained.

<sup>10</sup> Decision SzfÉ.9/2021/14. In the case at hand, the former judge challenged this decision before the Constitutional Court; the case is pending (IV/00390/2022). Stakeholders relate the finding of unsuitability for that judge to the fact that, on 7 September 2018, she had made a request for a preliminary ruling in an asylum case (Judgment of the CJEU of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, ECLI:EU:C:2020:218): joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 4.

<sup>11</sup> Section 81 of Act CLXII of 2011 provides that if a judge is found unfit, the court president – when communicating the evaluation results – calls on the judge to resign from office within thirty days. If the judge fails to comply, the court president notifies the first-instance service court which opens incompetency proceedings following the rules of disciplinary proceedings.

<sup>12</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 4.

<sup>13</sup> Meeting of the National Judicial Council of 13 June 2022.

<sup>14</sup> Judgment Mfv.X.10.049/2021/16. The plaintiff, a District Court judge, ranked first in two subsequent application procedures for posts at a Regional Appeal Court. The NOJ President annulled both procedures without any meaningful explanation, thereby preventing the plaintiff's promotion. The judge concerned challenged the *Kúria* judgment before the Constitutional Court; the case is pending (IV/03595/2021).

judicial remedy available against decisions of the NOJ President annulling a call for applications. Stakeholders report that the NOJ President does not publish calls for applications for all vacated judicial posts<sup>15</sup>. Although there is an appointment and promotion procedure in place, the NOJ President has extensively used the exceptions allowed by the law to fill a vacancy without a call for applications. In 2021, the reassignment of judges after the end of their secondment to other state bodies outside the judiciary was added to the list of exceptions<sup>16</sup>. As observed by the Venice Commission in its Opinion<sup>17</sup> of 16 October 2021, this system should not be used to institute a practice of bypassing the ordinary processes of promoting judges, noting that there are no criteria established for the NOJ President to assign a judge to a higher position.

**The courts hearing administrative cases have been reorganised and the possibility of discretionary termination of judges' assignment raises concerns.** As of 1 March 2022, an 'omnibus' law<sup>18</sup> reorganised the judicial review of administrative decisions<sup>19</sup>. The Budapest Regional Appeal Court now hears appeals against first-instance decisions of the eight regional courts with an administrative department. The *Kúria* hears petitions for review and uniformity complaints limited to points of law. Exceptionally, in cases related to elections, referenda and freedom of assembly<sup>20</sup> the *Kúria* proceeds as a first and last instance court<sup>21</sup>. The *Kúria* reviews the legality of municipal decrees. Since there is no separate administrative courts system, judges are specifically assigned, with their consent, to hear administrative cases. In the *Kúria*, judges dealing with administrative cases are assigned by the *Kúria* President; in other courts, they are assigned by the NOJ President upon proposal of the court president<sup>22</sup>. Neither the criteria nor the terms of an assignment or the termination thereof are set out by law. In the absence of such criteria, such assignments can be terminated on a discretionary basis, without the consent of the judge concerned. Judicial review is available against these decisions<sup>23</sup>. In the absence of criteria for the termination of the assignment, there are doubts as regards the effectiveness of such judicial review. This possibility of a discretionary removal from the pool of judges hearing administrative cases raises concerns as regards judicial independence, given that it could exert undue pressure on the judges concerned. According to European standards, individual judges must be free not only from

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<sup>15</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 5. Under Section 9(3) of Act CLXII of 2011, vacated judicial posts are not necessarily published, as the NOJ President may decide to transfer the post to another court, or to fill the vacancy without publishing a call for applications.

<sup>16</sup> Sections 8(f), 27/A, 58 and 62/C of Act CLXII of 2011.

<sup>17</sup> Venice Commission (CDL-AD(2021)036), para. 59.

<sup>18</sup> Act CXXXIV of 2021 was adopted by Parliament on 14 December 2021, without public consultation, following the request of the *Kúria* President.

<sup>19</sup> Another 'omnibus' legislation introduced structural changes to the existing court system seeking to make administrative justice work faster and more predictably (2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 6).

<sup>20</sup> Except for the dissolution of an assembly by the police.

<sup>21</sup> Section 229 of Act XXXVI of 2013.

<sup>22</sup> Section 30(1) and (3) of Act CLXII of 2011 and Sections 76(5)(e) and 77(1) of Act CLXI of 2011.

<sup>23</sup> Sections 76(5)(e) and 77/A(2) of Act CLXI of 2011 and Section 145(1) of Act CLXII of 2011). In 2021, the NOJ President, following a proposal from the respective court presidents, unilaterally terminated the assignment of several judges (including presiding judges) without any meaningful justification, with a 2-3 days' notice (Decisions 102.E/2021 (IV. 26.) OBHE, 104.E/2021 (IV. 27.) OBHE, 122.E/2021 (V. 17.) OBHE, 137.E/2021 (VI. 9.) OBHE, 166.E/2021 (VI. 28.) OBHE, 167.E/2021 (VII. 2.) OBHE, 176.E/2021 (VII. 22.) OBHE, 312.E/2021 (XI. 23.) OBHE). In their joint contribution for the 2022 Rule of Law Report (pp. 4-5), Amnesty International Hungary and eight other CSOs also refer to such situation.

undue influences outside the judiciary, but also from within, such as from those who have administrative responsibilities in the court<sup>24</sup>.

**Appointments to and the case allocation in the *Kúria* have raised concerns.** As of 1 March 2022, as a rule, administrative cases are heard in the *Kúria* by panels of five judges<sup>25</sup>; in cases related to elections and referenda, the bench is composed of three judges<sup>26</sup>. The *Kúria*'s case allocation scheme assigns judges to chambers organised in civil, criminal and administrative departments. The scheme for the allocation of cases between chambers<sup>27</sup> does not determine the composition of the judicial panel<sup>28</sup>. The key elements of the case allocation scheme are regulated by law<sup>29</sup>. The case allocation scheme is established by the *Kúria* President; the *Kúria*'s judicial council and the competent department give a non-binding opinion<sup>30</sup> and have limited powers<sup>31</sup>. Litigants can consult the case allocation scheme and obtain information about the number of chambers and their composition on the *Kúria*'s website. The Venice Commission Opinion of 16 October 2021 analysed the *Kúria*'s case allocation scheme and made proposals to the authorities<sup>32</sup>. Stakeholders complained that the *Kúria*'s case allocation scheme does not allow the parties to verify on the basis of which criteria the composition of the bench has been determined<sup>33</sup>. European standards<sup>34</sup> require that the allocation of cases within a court follow objective, pre-established criteria in order to safeguard the right to an independent and impartial judge. As regards the appointments to the *Kúria*, the concerns on the rules on electing its President, expressed in the 2021 Rule of Law Report, have not been addressed<sup>35</sup>. The number of judicial posts in the *Kúria* is not set by statute but by a decision of the NOJ President<sup>36</sup>. New judicial posts have been opened in the

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<sup>24</sup> See judgment of the European Court of Human Rights of 22 December 2009, *Parlov-Tkalčić v. Croatia*, 24810/06, para. 86.

<sup>25</sup> Section 8(6) of Act I of 2017. Before this amendment, all cases were heard by three judges of the *Kúria*. In civil and criminal cases, the *Kúria* President may set up five-judge panels for certain groups of cases, following a non-binding opinion of the department concerned and of the judicial council of the *Kúria* (2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 3). The Venice Commission has recommended to determine in the law itself the criteria for setting-up a five-judge panel for certain types of cases (CDL-AD(2021)036), para. 66, point b).

<sup>26</sup> Section 229(2) of Act XXXVI of 2013.

<sup>27</sup> Section 10(1) of Act CLXI of 2011.

<sup>28</sup> Chambers in the *Kúria* include two to four presiding judges and three to five other judges. The panel hearing a case is composed of judges belonging to the same chamber.

<sup>29</sup> Section 10(1) of the Act CLXI of 2011.

<sup>30</sup> Sections 9(1), 151(1)(d) and 155(c) of Act CLXI of 2011.

<sup>31</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 3-5.

<sup>32</sup> The Venice Commission recommended that the opinion of the judicial bodies be made public and binding in order to ensure the transparency of the process and increase the trust of the citizens in the good and impartial functioning of the judiciary (CDL-AD(2021)036), para. 66, point b).

<sup>33</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 7. According to stakeholders, in 2021, in at least one politically sensitive case the composition of the adjudicating panel was not in line with the case allocation scheme. Upon the freedom of information request lodged by the Hungarian Helsinki Committee, the *Kúria* responded (2021.El.IV.H.35/2) that it does not keep record of derogations from the case allocation scheme and that it has no obligation by law to inform parties on any such derogation.

<sup>34</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 24. See also judgment of the European Court of Human Rights of 2 May 2019, *Pasquini v. San Marino*, 50956/16, paras. 100, 101 and 110.

<sup>35</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 5-6.

<sup>36</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 5.

*Kúria*, mainly in the administrative department<sup>37</sup>. According to stakeholders, due to the points system<sup>38</sup> applied for the assessment of applications, candidates with little judicial experience or coming from a political career without judicial experience have also been appointed<sup>39</sup>. Stakeholders report that the practice of secondment extends far beyond its legal objectives and may be used to circumvent the guarantees of judicial appointments in regular application procedures<sup>40</sup>.

**The Court of Justice issued a ruling precluding the *Kúria* from declaring a request for preliminary ruling unlawful.** Following a decision of 10 September 2019 in which the *Kúria* had considered a preliminary reference by a Hungarian court to the Court of Justice unlawful, the Court of Justice ruled on 23 November 2021<sup>41</sup> that EU law precludes a national supreme court, following an appeal in the interests of the law brought by the Prosecutor General, from declaring a request for a preliminary ruling submitted by a lower court unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings. The Court of Justice also found that EU law precludes disciplinary proceedings from being brought against a national judge on the ground that the judge has made a preliminary reference<sup>42</sup>. On the same day, the *Kúria* issued

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<sup>37</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 5. In 2021, 14 judicial and 10 senior (executive) positions were opened at the *Kúria*, significantly changing its composition. The Government notes that due to legislative changes that entered into force on 1 April 2020, the number of administrative cases brought before the *Kúria* has almost doubled. This required the setting-up of new chambers within the *Kúria*'s administrative department and an increase in the number of *Kúria* judges dealing with administrative cases. As soon as the obstacles caused by the COVID-19 pandemic were removed in 2021, 10 vacancies in the *Kúria* could be filled through calls for applications. Further vacancies were also filled through calls for applications.

<sup>38</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 2. Judicial applications are assessed on the basis of a points system established by Decree 7/2011 of 4 March 2011, issued by the Minister of Justice and based on Act CLXII of 2011, which contains an exhaustive list of criteria to be taken into consideration in determining the ranking of applicants. The Minister of Justice can define the number of points to be awarded for these criteria. The assessment system awards points based on an interview and certain elements of the application file (e.g. length of service as a senior civil servant, experience with the assessment and preparation of draft legislation). According to the Government, the points system ensures that both candidates with a previous judicial experience and candidates coming from outside the court system may be appointed a judge under the same conditions. It determines the objective criteria for awarding points to candidates.

<sup>39</sup> For example, a candidate who had been a State Secretary. Contribution from the European Association of Judges for the 2022 Rule of Law Report, pp. 5-6.

<sup>40</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 7. In 2020, 43 judges were seconded to the *Kúria* (NOJ President (2021), 2020 Annual Report, p. 17). Some judges spend years at the *Kúria* without a call for applications. Judges can be seconded to another court to support their professional development or to guarantee the even distribution of the workload between courts (Section 31(2) of Act CLXII of 2011). The Government notes that by summer 2022, long-term secondments to the *Kúria* have been completely abolished. As of 1 March 2022, the number of administrative cases brought to the *Kúria* has been decreasing which also contributes to a significant change in the practice of secondments.

<sup>41</sup> Judgment of the CJEU of 23 November 2021, *IS*, C-564/19, ECLI:EU:C:2021:949.

<sup>42</sup> On 10 September 2019, the *Kúria* held a preliminary reference by a District Court judge to the Court of Justice to be unlawful, considering the questions irrelevant for the case at hand. The *Kúria* decision was of a declaratory nature and did not annul the decision to refer the case to the Court of Justice. Nevertheless, in October 2019, the ad interim president of the Budapest Regional Court, referring explicitly to the decision of the *Kúria*, initiated disciplinary proceedings against the judge who issued the preliminary reference. In November 2019, the court president withdrew his motion for the opening of disciplinary proceedings.



a statement<sup>43</sup> confirming that until it decides otherwise, its decision<sup>44</sup> is final and its interpretation of the law binding. The procedural rules<sup>45</sup> allowing to challenge before the *Kúria* the necessity of a preliminary reference have not been amended. The Court of Justice has made clear that a decision by the *Kúria* considering a preliminary reference unlawful is liable to weaken both the authority of the answers that the Court is to provide to the referring judge and the decision that the latter will give in the light of those answers<sup>46</sup>.

**The rules on the uniformity procedure have been amended.** In response to the 16 October 2021 Opinion of the Venice Commission<sup>47</sup>, as of 1 January 2022, Parliament amended<sup>48</sup> the rules of the uniformity procedure<sup>49</sup> conducted by the *Kúria*. The legislative amendment assimilated the rules of the uniformity procedure to those of the uniformity complaint procedure which may be initiated by parties to proceedings<sup>50</sup>.

**Judicial salaries continued to increase, while the discretionary award of bonuses by court managers continues to raise concerns.** Judicial salaries have been increased over a period of three years<sup>51</sup>. In the third phase, as of 2022, the salary base for judges and prosecutors was further increased by 13%. As regards bonuses, there is no statutory list or definition of the types and forms of bonuses that the NOJ President and court presidents can distribute among judges, nor are there clear criteria as to what serves as the basis of such

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<sup>43</sup> *Kúria* (2021), Statement regarding the judgment delivered by the Court of Justice of the EU in case C-564/19. In an earlier statement dated 16 April 2021, the *Kúria* reaffirmed that its decision was limited to declaring a violation of criminal procedure rules.

<sup>44</sup> Bt.III.838/2019/11.

<sup>45</sup> Sections 667 and 490(1) of Act XC of 2017.

<sup>46</sup> Judgment of the CJEU, of 23 November 2021, *IS*, C-564/19, ECLI:EU:C:2021:949, paras. 74-75. In its contribution to the 2022 Rule of Law Report (pp. 20 and 22), the European Association of Judges considered that this could dissuade Hungarian courts from referring questions for a preliminary ruling to the Court of Justice.

<sup>47</sup> CDL-AD(2021)036.

<sup>48</sup> Section 71 of Act CXXXIV of 2021 amending Act CLXI of 2011.

<sup>49</sup> The *Kúria*'s uniformity decisions are binding on courts (Article 25(3) of the Fundamental Law). As explained in the 2021 Rule of Law Report, the uniformity procedure – now renamed ‘preliminary reference procedure in the interest of uniformity of law’ – can be applied in two scenarios. In the first scenario, when a *Kúria* chamber wishes to deviate from the *Kúria*'s published case law, it must stay the proceedings and request a uniformity decision. In the second scenario, the *Kúria* (vice) President, the heads of *Kúria* departments and the Prosecutor General may request a uniformity decision if it is necessary to ensure the uniform interpretation of the law, or to alter or annul a previous uniformity decision (2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 4). Section 27(2) of Act CLXI of 2011 provides that the regional (appeal) court presidents may propose that the head of the competent *Kúria* department make a preliminary reference in the interest of uniformity of law.

<sup>50</sup> The amendment did not abolish the possibility to adopt the binding uniformity decisions as proposed by the Venice Commission (CDL-AD(2021)036), para. 66, point c). Parties to the proceedings may lodge a uniformity complaint against a final decision of the *Kúria* if it deviates from the *Kúria*'s published case law (2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 4). After the amendment, the preliminary reference in the interest of uniformity of law is decided by the uniformity complaint panel (Section 34 of Act CLXI of 2011). Although the legal rules on the composition of the uniformity complaint panel have not been changed (it is chaired by the *Kúria* President or Vice President; its other members are selected by the chair), as of 1 January 2022, the *Kúria* President amended the case allocation scheme to set up two uniformity complaint panels, each composed of the *Kúria* President and Vice President and 19 senior *Kúria* judges.

<sup>51</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 6. As of January 2020, salaries were increased on average by 32%, and as of January 2021, by 12%.

decisions<sup>52</sup>. According to stakeholders, this wide discretion can lead to self-censorship by judges<sup>53</sup>. The NOJ President's refusal<sup>54</sup> to provide the National Judicial Council with anonymised data regarding the award of bonuses further adds to a lack of transparency. According to the interpretation of the NOJ President, this issue is not covered by the supervisory powers of the National Judicial Council. According to the Council of Europe, the principal rules of the system of remuneration for professional judges should be laid down by law and systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges<sup>55</sup>.

**The rules on the removal of the Prosecutor General have been amended, while GRECO recommendations remain to be fully addressed.** Certain elements of the legal framework led GRECO to issue recommendations to review the rules for appointment of the Prosecutor General in order to safeguard the office from political influence<sup>56</sup>. As of 18 November 2021, an amendment to a cardinal law<sup>57</sup> introduced the requirement of two-thirds majority of all members of Parliament when voting on the removal of the Prosecutor General from office. This rule applies to the incumbent Prosecutor General, elected in 2019 for a period of nine years<sup>58</sup>. The recommendation of GRECO to remove the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate remains unaddressed<sup>59</sup>. Stakeholders have expressed concerns as regards the discretionary powers of the prosecution service to decide on the investigation and prosecution of cases, which are further amplified by the strictly hierarchical architecture of the prosecution service enabling the Prosecutor General and other senior prosecutors to instruct subordinate prosecutors and to reallocate cases assigned to them<sup>60</sup>.

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<sup>52</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 8. There are normative bonuses based on objective criteria (e.g. years of service) or measurable surplus activity. For the latter, detailed guidelines have been issued by the NOJ President (Directive 5/2013 (VI. 25.) OBH).

<sup>53</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 10. In addition to deciding directly on end-of-the-year bonuses, it is often the discretionary decision of the employer whether to allow the judge to participate in the activities that serve as the basis of granting the bonus. E.g. a court president can prevent a judge from participating in projects, acting as an instructor for younger judges or being a member in judicial working groups, which automatically deprives them from the possibility of receiving such bonuses.

<sup>54</sup> Letter (2021.OBH.III.D.1/34) of the NOJ President to the President of the National Judicial Council. The NOJ President is of the view that this issue is not covered by the supervisory power of the National Judicial Council.

<sup>55</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 53 and 55. According to the Venice Commission, bonuses which include an element of discretion should be excluded (CDL-AD(2010)004, para. 51).

<sup>56</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 8. See GRECO Fourth Evaluation Round – Second Interim Compliance Report.

<sup>57</sup> Section 85 of Act CXXII of 2021 amending Section 61/A(1)(i) of Act XXXVI of 2021.

<sup>58</sup> The Prosecutor General is nominated by the President of the Republic from among prosecutors and elected by Parliament with a two-thirds majority (Article 29(4) of the Fundamental Law). This rule has been unchanged since 1 January 2012.

<sup>59</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 8.

<sup>60</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 12.

## Quality

**The digitalisation of the justice system continues to be overall high<sup>61</sup>.** Hungary ranks very high when it comes to digital solutions to conduct and follow court proceedings in criminal cases and online access to published judgments by the general public. It also ranks high as regards the use of digital technology by courts and prosecution services, and the existence of digital solutions to initiate and follow proceedings in civil/commercial and administrative cases<sup>62</sup>. Moreover, Hungary has very good results as regards the promotion of and incentives for using alternative dispute resolution methods<sup>63</sup>.

## Efficiency

**The efficiency in civil and administrative cases remains high<sup>64</sup>.** Hungary performs very well as regards the estimated time needed to resolve litigious civil and commercial cases at all court instances, to resolve administrative cases at first instance and at all court instances; the number of pending civil, commercial and administrative and other cases, and pending administrative cases<sup>65</sup>. In January 2022, a new law<sup>66</sup> on pecuniary compensation for delay in civil proceedings entered into force. This law provides for compensation in the form of pecuniary satisfaction in case of violation of the fundamental right to have civil proceedings completed within a reasonable time. Administrative and criminal proceedings are not affected by this law<sup>67</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

The Ministry of Interior is responsible for the overall coordination of the anti-corruption policy and oversight over the National Protection Service. As a law enforcement agency, the National Protection Service is in charge of crime detection within the police, law enforcement and other government agencies, including lifestyle monitoring and integrity tests of public officials. A smaller division in the National Protection Service is also entrusted with corruption prevention tasks, including intra-governmental cooperation and evaluation of the anti-corruption strategy and action plans. The police can investigate private sector corruption and corruption-related economic crimes. However, the investigation and prosecution of corruption in the public sector fall under the exclusive competence of the Investigation Division of the Central Chief Prosecution Office of Investigation and its five regional offices. The prosecution service is supported by the investigative forces of the police and the National Protection Service; it oversees investigations carried out by other investigative entities, including the National Tax and Customs Administration. The State Audit Office contributes to corruption prevention with its competences for the control of the financial management of public funds, the monitoring of state-owned companies' compliance with statutory public disclosure obligations, as well as political party finance and campaign finance audits.

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<sup>61</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 9.

<sup>62</sup> See Figures 47, 48, 43 and 46, 2022 EU Justice Scoreboard.

<sup>63</sup> Figure 29, 2022 EU Justice Scoreboard.

<sup>64</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 9.

<sup>65</sup> See Figures 8, 9, 10, 14 and 16, 2022 EU Justice Scoreboard.

<sup>66</sup> Act XCIV of 2021.

<sup>67</sup> Contribution from Liberties for the 2022 Rule of Law Report, pp. 9-10. Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, pp. 16-17.

**The perception of public sector corruption among experts and the business executives is that the level of corruption in the public sector remains high.** In the 2021 Corruption Perceptions Index by Transparency International, Hungary scores 43/100 and ranks 26<sup>th</sup> in the European Union and 73<sup>rd</sup> globally<sup>68</sup>. This perception is relatively stable over the past five years<sup>69</sup>. The 2022 Special Eurobarometer on Corruption shows that 91% of respondents consider corruption widespread in their country (EU average 68%) and 27% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>70</sup>. As regards businesses, 75% of companies consider that corruption is widespread (EU average 63%) and 45% consider that that corruption is a problem when doing business (EU average 34%)<sup>71</sup>. Furthermore, 37% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>72</sup>, while 17% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>73</sup>.

**The implementation period of the 2020-2022 Anti-Corruption Strategy<sup>74</sup> and of the related Action Plan has been extended.** In December 2021, the Government Resolution<sup>75</sup> adopting the mid-term strategy and action plan was amended to postpone the deadlines for the majority of the measures until the end of 2022<sup>76</sup> or the first semester of 2023. Most of the strategy tasks are delegated to the Ministry of Interior, while the National Protection Service is tasked with the overall coordination of the implementation of the strategy. Little information is, however, publicly available on their activities to implement the strategy, which reduces possibilities for public monitoring and oversight<sup>77</sup>. Among the non-

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<sup>68</sup> Transparency International (2022), Corruption Perceptions Index 2021. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>69</sup> In 2017 the score was 45, while, in 2021, the score is 43. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points) and is relatively stable (changes from 1-3 points) in the last five years.

<sup>70</sup> Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>71</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>72</sup> Special Eurobarometer 523 on Corruption (2022).

<sup>73</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

<sup>74</sup> Medium-term National Anti-Corruption Strategy for the period of 2020-2022.

<sup>75</sup> The Action Plan was adopted by the Government Decision 1328/2020 of 19 June 2020 on the Mid-term National Anti-Corruption Strategy for 2020-2022 and the accompanying action plan.

<sup>76</sup> Measures affected by the postponement until 31 December 2022 comprise, for instance, trainings for prosecutors on the use of surveillance tools in investigations; a corruption prevention pilot project for the border control police; development of a Good Governance indicator system; dissemination of foreign bribery information; trainings of integrity officers.

<sup>77</sup> In 2021, three articles were made publicly available on trainings for officials in foreign services conducted by the National Protection Service, on the OECD Public Integrity Toolkit, and a consultation of health worker representatives. Apart from this, the website of the Ministry of Interior provides only information on the main office holders in the ministry and news as part of the centralised Government communication, <https://kormany.hu/belugyminiszterium>, while the website of the National Protection Service's website only links back to the official, dedicated anti-corruption website without any relevant content on activities either, <https://nvsz.hu/tevekenyseg/korruptcioellenes-tevekenyseggel-osszefuggo-kormanyzati-feladatokban-valo-kozremukodes-0> and <https://nvsz.hu/szervezet/nemzeti-vedelmi-szolgalat/korruptciomegelozesi-foosztaly>.

implemented measures are those with the potential to contribute to a more effective detection and prosecution of corruption in public institutions and state-owned enterprises<sup>78</sup> as well as the strategy implementation report<sup>79</sup>. More generally and as previously noted, the scope of the anti-corruption strategy is limited to fostering integrity in the public administration<sup>80</sup>. Strategic policy coordination in relevant anti-corruption areas, such as lobbying, ‘revolving doors’, asset disclosure and political party financing, does not take place under the strategy, as they remain outside its scope<sup>81</sup>. Although an evaluation of the past ten years of Hungary’s fight against corruption was reported to have taken place, there is no public information about the preparation of a new strategic anti-corruption framework and action plan beyond 2022<sup>82</sup>.

**Despite amendments to the Criminal Code to address foreign bribery, there is still an absence of enforcement.** The relevant anti-corruption offences are criminalised, including bribery and foreign bribery<sup>83</sup>. As reported last year, an amendment to the Criminal Code, which entered into force on 1 January 2021, modified the definition of ‘foreign public official’ by clarifying that it includes officials of foreign public enterprises, and introduced stricter sanction levels for facilitation payments<sup>84</sup>. There are concerns about the continued absence of enforcement efforts as no new investigations into foreign bribery have started despite OECD-recorded allegations and the presence of significant foreign bribery risk factors, notably related to multinational enterprises exporting from Hungary in a number of high-risk sectors<sup>85</sup>. Regarding detection of foreign bribery, Hungary has yet to develop and

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This would need to be seen in the context of the freedom of information law requiring proactive publishing of data (see pillar III).

<sup>78</sup> See European Semester country report on Hungary (2022). Information received from Transparency International/K-Monitor/Corruption Research Centre in the context of the country visit to Hungary.

<sup>79</sup> Measures affected by the postponement to 2023 relate, for instance, to the development of an automated decision-support system to improve the transparency and accountability of the decision-making process (31 January 2023); a casebook on tackling corruption for practitioners (30 June 2023); data entries in the risk assessment system of the National Protection Service (30 June 2023); a legal framework on corruption in major infrastructure investments (30 June 2023); surveys on integrity management models for state entities and state-owned enterprises (30 June 2023); and Implementation report of the tasks set out in the Strategy 2020-2022 by the Minister of Interior (31 May 2023 for the report of the Ministers; 30 June 2023 for the summary report of the Minister of Interior).

<sup>80</sup> The strategy includes primarily actions relating to the culture of integrity and e-administration, such as the introduction and development of electronic solutions to increase transparency (e.g. automated decision-making), monitoring integrity risks, integrity trainings for civil servants, and specialised anti-corruption training for law enforcement, judges and prosecutors, cf. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11.

<sup>81</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11, and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11.

<sup>82</sup> Hungarian Competition Authority (2021), Press release, ‘A decade for integrity committed to eliminating corruption’.

<sup>83</sup> Hungary’s criminal code includes the relevant definitions of corruption and corruption-related offences and criminalises, among others, active bribery (Sections 290, 293, 295 of Act C of 2012) and passive bribery (Sections 291, 294, 296), and trading in influence, embezzlement, misappropriation of public funds, abuse of office (Chapter XXVII), and failure to report a crime of corruption.

<sup>84</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11.

<sup>85</sup> OECD, Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report: Hungary (2021), p. 3, para. 3 and p. 6 on recommendation 4.a., reporting that only one small-scale foreign bribery case has been concluded, resulting in the conviction of 26 natural persons between 2008 and 2011, since the entry into force of the Convention in Hungary. In turn, Croatia’s Supreme Court upheld in October 2021 its verdict against the ex-prime minister of Croatia and the CEO of the Hungarian oil and gas company MOL, for active and passive bribery in connection with MOL’s acquisition of stakes in INA, Croatia’s oil company. Reportedly, the MOL’s CEO was tried in absentia, and sentenced to two years in prison. Hungarian Spectrum (2021), ‘MOL’s CEO Zsolt Hernádi won’t be gallivanting around the globe any time

implement a dedicated strategy<sup>86</sup>. Notably, criminal sanctions can be reduced or even be dispensed by judges if the suspect confesses corruption, surrenders the illegally obtained advantage, and discloses the circumstances of the criminal act to the authorities before they become aware of the commission of the offence<sup>87</sup>.

**Integrity tests and ‘lifestyle monitoring’ continue to be the main tool to deter and detect corruption in the public sector, while oversight could benefit from more independence.**

The prosecution service considers the National Protection Service to be the main and indispensable source for evidence-gathering to initiate corruption investigations and prosecutions<sup>88</sup>, in particular of petty corruption, such as gratuity payments in the healthcare sector. The possibility of conducting covert surveillance of public officials through ‘integrity tests’ to establish whether they commit corruption has to be approved by the public prosecutor and, in case a suspected crime is detected, reported to the competent agency<sup>89</sup>. The ‘lifestyle monitoring’ is conducted at the request of the responsible head of the public institution and related findings can be a ground for dismissal of the public official<sup>90</sup>. Other detection tools, including asset declarations, whistleblower disclosures and registries, play a relatively minor role in corruption investigations<sup>91</sup>. State bodies with supervisory functions have seen political appointments raising questions as to their impartiality in detecting

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soon’. See also Hungary Today (2021), ‘Croatia Top Court Affirms Prison Sentence for MOL Chief Hernadi’. In general, Hungary’s exposure to export-related foreign bribery risks largely stems from the activities of multinational enterprises whose activities are expanding into new technology-based industrial production, including in the transportation, healthcare and pharmaceutical industries – all sectors at high risk of corruption, see OECD (2019), Implementing the OECD Anti-Bribery Convention, Phase 4 Report - Hungary, p. 10. With regard to state-owned enterprises, the electricity and gas, transport and finance sectors are at risk due to challenges in the implementation of effective governance arrangements, *ibid*, p. 8.

<sup>86</sup> OECD (2021), Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report: Hungary, following up on the OECD recommendation of the Phase 4 Report – Hungary (2019), p. 54.

<sup>87</sup> Sections 290 to 299 Act C of 2012 on the Criminal Code. According to the Government, the underlying rationale for the reduction of dispensing of sanctions is to encourage the reporting and thus detection of corruption crimes, while criminal liability would be established nevertheless. Under the UN Convention Against Corruption State Parties can, but are not obliged to, allow for mitigating punishment to special witnesses that assist the investigation of other, sophisticated offenders.

<sup>88</sup> Information received from the Prosecutor General’s Office in the context of the country visit to Hungary. See also Prosecutor General (2021), Parliamentary report on the activities of the Prosecution Service in 2020, p. 25. As reported last year, criminal proceedings for corruption offenses are mainly initiated on the basis of the criminal investigation activities of the investigating authorities. The majority of the investigated cases are detected by the National Protective Service, see 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12.

<sup>89</sup> The range of public officials who may be subject to the integrity test is defined in Act XXXIV of 1994 on the Police. For more details, see National Protection Service website on integrity testing. As reported last year, the amendment of 1 January 2021, broadened the scope of staff that may be subjected to integrity tests to all members of the Government and the public administration, including medical staff and social workers, see 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12. The individual concerned by the surveillance shall only be informed once evidence of corruption is detected and this resulted in criminal proceedings. Input from Hungary for the 2020 Rule of Law Report.

<sup>90</sup> The lifestyle monitoring takes into account whether or not the public official’s way of living is beyond his/her salary. In order to conduct the lifestyle monitoring, the curriculum vita and a completed consent declarations have to be submitted by the concerned person and those living in the same household, see National Protection Service website on lifestyle monitoring.

<sup>91</sup> Information received from the Prosecution Service in the context of the country visit to Hungary. See also contribution from K-Monitor for the 2022 Rule of Law Report, p. 18, and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12.

corruption<sup>92</sup>. Deficient independent oversight mechanisms and close interconnections between politics and certain national businesses are conducive to corruption<sup>93</sup>.

**Some measures to improve corruption investigations involving EU funds have been taken.** Concerns exist regarding the frequent practice of the Hungarian authorities to withdraw EU-funded projects in case of financial recommendations issued by the EU Anti-Fraud Office (OLAF) or the opening of OLAF investigations, while amounts due are not systematically recovered from the economic operator who committed the irregularity or fraud<sup>94</sup>. Similarly, the refusal of economic operators to cooperate during on-the-spot checks conducted by OLAF have been in focus<sup>95</sup>. In order to better protect the EU funds from potential fraud and corruption, the Prosecutor General's Office and OLAF have signed a cooperation agreement in February 2022, which commits both parties to closer cooperation. However, as it was recently signed, the effectiveness of the cooperation agreement will still have to be seen in practice. The recent allegations regarding the existence of a corruption ring in management authorities linked to national and EU funds raise concerns as to the lack of systemic oversight<sup>96</sup>.

**Despite good inter-institutional cooperation and adequate levels of resources, challenges remain in establishing a track-record of investigations, prosecutions and final judgments in high-level corruption cases.** The prosecution service reports adequate levels of human and financial resources, and of specialisation to carry out their tasks<sup>97</sup>, and the legal framework provides the conditions for effective investigation and prosecution of corruption. Cooperation between the relevant anti-corruption entities, including the prosecution service, police, tax and custom authorities, and the National Protection Service, is considered good<sup>98</sup>. To facilitate more effective investigations, including in corruption cases, new IT systems for the prosecution service are under development<sup>99</sup>. The planned IT cooperation system for the handling and sharing of sensitive data among investigative authorities aims at addressing by 1 December 2024 the persisting challenges in evidence-gathering, particularly with regard to

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<sup>92</sup> Appointments have recently also been sought for unusually long periods for a mandate, such as in the newly created Supervisory Authority of Regulated Activities overseeing concessions, for which the President was appointed in October 2021 for a period of nine years, while grounds for the termination of the mandate are limited, or the appointment of the vice-president of the State Audit Office for the next twelve years. See State Audit Office (2021), The President of the SAO has asked Dr. Mónika Karas to be Vice-President. See also Freedom House (2022), Freedom in the World – Hungary Country Report, emphasising the government's broad control over auditing and investigative bodies; and the 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12.

<sup>93</sup> As recognised also by the OECD (2021), Economic Survey Hungary, p. 57; and also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12.

<sup>94</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 15. See also the OLAF (2021), 2021 Annual Report, for the latest data on irregularities, as well as OLAF's contribution to the 2022 Rule of Law Report.

<sup>95</sup> Cf. 2021 Rule of Law report, Country Chapter on the rule of law situation in Hungary, p. 15.

<sup>96</sup> See Central Investigation Prosecutor's Office (2022), Press Statement 'Grants obtained through corruption'; Telex (2022), '18 people questioned over bribery in Finance Ministry case'; Telex (2022), 'Five arrested, one placed under criminal supervision in corruption case involving Finance Ministry'.

<sup>97</sup> Information received from the Prosecutor General's Office in the context of the country visit to Hungary. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11.

<sup>98</sup> Information received from the Prosecutor General's Office in the context of the country visit to Hungary.

<sup>99</sup> The reform includes two IT components to handle sensitive information and to manage case files. Information received from the Prosecutor General's Office in the context of the country visit to Hungary.

obtaining relevant financial data from the currently numerous separate state registries<sup>100</sup>. Moreover, a new case management system is planned to take up operations in support of prosecutorial investigations by 1 July 2026. The number of registered criminal procedures initiated for corruption crimes increased in 2021<sup>101</sup>. The overall increase is reportedly due to the increase in the number of criminal proceedings opened for private sector corruption cases, including primarily petty corruption<sup>102</sup>. Furthermore, the increase in the number of proceedings for public sector corruption significantly fluctuated over the years<sup>103</sup>. The indictment rates for corruption are reported to be overall high<sup>104</sup>. Some new high-level cases involving politicians were investigated in 2021<sup>105</sup>. However, serious concerns remain regarding the absence of a robust track record of investigations of corruption allegations concerning high-level officials and their immediate circle<sup>106</sup>. This poses a risk of low

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<sup>100</sup> The IT database would offer the possibilities to all prosecutors to interconnect and thus investigate criminal cases, including through artificial intelligence and an open-source element, according to information received by the Prosecutor General's Office in the context of the country visit to Hungary.

<sup>101</sup> See written contribution from the Prosecution Service in the context of the country visit, p. 6, stating an increase from 872 (in 2020) to 1306 (2021).

<sup>102</sup> With 185 private sector corruption cases initiated in 2020 compared to 317 proceedings initiated in 2021. According to the prosecution service, the increase is due to the amendments to the Criminal Code in force since 1 January 2021 and the criminalisation of informal facilitation payments ('gratitude payments') in the health care sector, thus relating to petty corruption, see written contribution from the Prosecution Service in the context of the country visit, p. 7.

<sup>103</sup> Public sector corruption proceedings initiated varied over time: 853 (in 2019); 508 (in 2020); and 729 (in 2021). See in this context also the Prosecutor General's released video message on the activities of the Prosecution Service in 2020 (6 October 2021) on the annual report to Parliament on the activities of the prosecution service, indicating that the trend of previous years of a growing number of registered criminal procedures initiated for public sector corruption crimes was reversed and even dropped in 2020. See also the Prosecutor General (2021), Extract of the Parliamentary report on the activities of the Prosecution Service in 2020.

<sup>104</sup> Written contribution from the Prosecution Service in the context of the country visit, p. 8. See also 2021 Rule of Law report, Country Chapter on the rule of law situation in Hungary, p. 12. See also the OLAF (2021), 2021 Annual Report, for the latest data on irregularities, indicating an indictment rate of 67% in Hungary.

<sup>105</sup> List of cases in the written contribution from the Prosecution Service in the context of the country visit, pp. 12 et seq. and Press release (2021), The Central Chief Prosecution Office of Investigation has interrogated MP Dr Pál Völner concerning allegations of accepting bribes from the chief bailiff. The crime was reportedly detected through phone tapping by the National Protective Service. The Member of Parliament's immunity was lifted on 14 December 2021, after he had formally become a suspect. While he resigned from his position at the Ministry on the day the scandal broke out on 7 December 2021, he continued to serve as a Member of Parliament, along with fellow MPs György Simonka and István Boldog, whose cases are heard in court. None of the suspects were detained in pre-trial detention but remained with their seat in Parliament.

<sup>106</sup> 2020 and 2021 Rule of Law reports, Country Chapter on the rule of law situation in Hungary, pp. 10 (for 2020) and 12 (for 2021). See *Átlátszó* (2021), 'Botched investigations: 20 important cases that got stuck with prosecutors', outlining that investigations have either stalled for a long time or, on the contrary, the proceedings were quickly closed 'in the absence of crime', or no investigations were launched. Notably, even where cases are dismissed at an early stage in the detection phase on lower levels of the police or the National Tax Authority, the prosecution service has the right to take on the investigation and instruct the police forces to act accordingly. In general, the Prosecutor General's Office does not collect separate statistics on 'high-level corruption' cases as this is not a category defined in criminal law but made reference to corruption cases that concerned top executives performing public functions. See also Civitas Institute/Transparency International (2021), Black Book II – Corruption and State Capture in Hungary. Contribution from K-Monitor for the 2022 Rule of Law Report, p. 22; contribution from IDEA Institute for the 2022 Rule of Law Report, pp. 11-12 with regard to EU funds-related cases. See also Bertelsmann Stiftung (2022), Transformation Index: Hungary Country Report, highlighting that the prosecution of corruption is limited to those cases, which can be considered political petty corruption, happening outside of the negotiated rules of the power pyramid.



accountability, in view of the lack of judicial review for prosecutorial decisions not to investigate and prosecute corruption allegations<sup>107</sup>. Risks of clientelism, favouritism and nepotism in high-level public administration remain unaddressed<sup>108</sup>. The full implementation of the GRECO recommendations as regards the effective functioning of the prosecution would further strengthen the anti-corruption framework<sup>109</sup>.

**Hungary's integrity rules on asset declaration and conflicts of interest require more effective oversight and enforcement.** Hungary has an extensive asset disclosure system in place, that requires members of Parliament, Government officials and public officials to declare their assets and interests<sup>110</sup>. Concerns have been raised in particular regarding the asset declarations' content of members of Parliament last submitted in February 2021<sup>111</sup>. Asset declarations are verified only upon notification of suspicions, and potential follow-up is left to the discretion of the public official's employer or, in case of members of Parliament and other high-ranking officials, to the Parliamentary Committee on Immunity<sup>112</sup>. Any incompatibility of conflicts of interest of members of Parliament must be declared to the Speaker<sup>113</sup>, following which, they are subject to certain restrictions pending the resolution of the situation<sup>114</sup>. However, neither declarations of interests nor information about any follow-up are publicly available. Despite long-standing calls, no reform efforts have been initiated to make the supervision, verification and enforcement of rules of conduct, conflicts of interest and asset declarations for members of Parliament more effective<sup>115</sup>. The government proposal introducing amendments to the asset declarations rules for members of Parliament with an indicative timeline for adoption on 27 July 2022 does not aim to address these calls to strengthen the data verification, oversight or sanctions in case of failure to comply with the

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<sup>107</sup> 2022 EU Justice Scoreboard, pp. 70-71, noting that victims of other crimes have the remedy of a judicial review by means of 'substitute private prosecution'. Notably, the Prosecutor General is accountable to Parliament and members of Parliament can pose questions. However, they have no right to reply, and Parliament cannot decide on whether the response was sufficient with the consequence in practice that questions concerning the justification on the closure of high-level corruption cases can be refused and left unanswered.

<sup>108</sup> E.g. Bertelsmann Stiftung (2022), Transformation Index: Hungary Country Report, stressing that the highly centralised political corruption became the main modus operandi of Hungarian politics, with political corruption and informal power networks as key pillars of party-state capture. For an overview of alleged corruption cases, Civitas Institute/Transparency International (2021), Black Book II – Corruption and State Capture in Hungary. In addition, Corruption Research Center Budapest (2022), Corruption Risks and the Crony System in Hungary: a brief analysis of EU funded contracts in Hungarian public procurement 2005-2021; Corruption Research Center Budapest (2021), Political Favoritism in Public Tenders in Hungary: Analysis of the odds of winning, investigating the system in Hungary based on data of more than 227 000 public tenders.

<sup>109</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation xiv, paras. 37 and 42. See also pillar I and 2021 Rule of Law report, Country Chapter on the rule of law situation in Hungary, pp. 8-9.

<sup>110</sup> Cf. also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12.

<sup>111</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, p. 11, para. 56. See also Hungary Today (2022), 'Asset Declaration: Hungary's Politicians Hardly Have Any Savings', Hungary Today (2021), 'MP's Asset Declarations Yet Again Raise Concerns, Causing Calls for Stricter Rules'.

<sup>112</sup> The Committee rejected almost all notifications as unsubstantiated in the years between 2017-2021 (15 out of 16), while in the remaining case the procedure was not initiated due to the subsequent correction of the declarations, see 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 13.

<sup>113</sup> The Speaker is the President of Parliament.

<sup>114</sup> Act XXXVI of 2012, amended in December 2019.

<sup>115</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, p. 5.

rules<sup>116</sup>. In addition, the Government plans to introduce new rules on conflicts of interest, on gifts and similar benefits for parliamentarians<sup>117</sup>. Until then, conflicts of interest rules are not applicable to members of Parliament, state secretaries and other public officials of the government who serve, at the same time, as board members of ‘public interest trusts’, despite the fact that these trusts receive significant public funding, entailing increased risks of corruption<sup>118</sup>. Since such trusts may receive funding not only from the Hungarian state but also from the private sector and foreign states, the trustees may engage in fundraising and lobbying activities. The legal framework has been challenged before the Constitutional Court<sup>119</sup> due to concerns regarding the separation of powers, as trustees are not prevented from holding high ranking positions, such as Minister and member of Parliament, at the same time. The absence of codes of ethics for members of the Government, state secretaries, or members of Parliament represents another integrity gap. Verification procedures by the National Tax and Customs Authority upon suspicions of unjustified wealth can only be initiated if investigative authorities have also opened criminal inquiries, thus significantly limiting the possibility for such verifications<sup>120</sup>.

**Lobbying rules remain incomplete with no systematic follow up in case of non-compliance.** Hungary has no comprehensive lobby regulation, transparency register or legislative footprint in place to disclose contacts with interest representatives<sup>121</sup>. According to a 2013 Government Decree, employees of state administration bodies need to document meetings and may only meet interest representatives in relation to their work after informing their superiors, who may prohibit the meeting<sup>122</sup>. However, there is no obligation to make the encounters or the content public, nor are there any sanctions provided in the Decree in case of failure to comply. No steps have been taken to establish a clear set of rules for contacts between members of Parliament and lobbyists to address concerns regarding the level of transparency in the decision-making process<sup>123</sup>. Comprehensive lobbying rules would be of particular importance with regard to the increasing number of ‘investments of major national economic interests’<sup>124</sup>, as they are exempted from regular requirements and safeguards in order to simplify and accelerate investment procedures. This exemption applies regardless of whether such investments are of private or public nature.

**Post-employment rules and cooling-off periods are fragmented and apply only to a small group of public officials.** Overall ‘revolving doors’ are scarcely regulated with rules existing only for a few institutions, such as the State Audit Office and the National Media and Infocommunications Authority, while confidentiality clauses are contained in Hungary’s labour code<sup>125</sup> as well as in some specific legislation applicable to public officials<sup>126</sup>. In

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<sup>116</sup> The proposal for the amendment of the Act XXXVI of 2021 was submitted on 21 June 2022 <https://www.parlament.hu/irom42/00369/00369.pdf>

<sup>117</sup> Information received from the Government in the context of the draft report consultation.

<sup>118</sup> The regulation on public interest was codified in April 2021, see Act IX of 2021.

<sup>119</sup> Constitutional Court Case No. II/02280/2021.

<sup>120</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 13.

<sup>121</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 13.

<sup>122</sup> Government Decree 50/2013 of 25 February 2013.

<sup>123</sup> See GRECO Fourth Evaluation Round – Second Interim Compliance Report, paras. 8-9.

<sup>124</sup> While the concept of ‘investments of major national economic interest’ was introduced by Act LIII of 2006, there has been a significant growth in the number of public and private investments declared subject to the law with 67 investments being declared of major national interest only in the course of 2021. See Government Decree 83/2021 of 23 February 2021.

<sup>125</sup> Section 8(4) of Act I of 2012.

practice, however, these rules are not effectively enforced, as the Government is still to specify the sectors and public officials' positions to which cooling-off time restriction will apply with regard to business careers of public officials in the area, in which they were active beforehand<sup>127</sup>. A code of conduct for members of Parliament that would include post-employment guidelines is neither in place nor planned<sup>128</sup>.

**The regulatory framework on whistleblowers requires further steps to enhance their protection in practice.** Amendments to the current law have not yet been proposed to transpose the EU Directive<sup>129</sup>. Various state agencies operate online reporting channels, including the Commissioner for Fundamental Rights<sup>130</sup>, the Hungarian Competition Authority<sup>131</sup>, the Public Procurement Authority<sup>132</sup> and the Prime Minister's Office. The latter can receive disclosures related to the misuse of EU funds<sup>133</sup>. No steps have been taken yet to address the major operational deficiencies in the whistleblower regime, including the limited protection against retaliation and the risks of disclosure of the whistleblowers' identity<sup>134</sup>.

**Challenges remain with regard to political party and campaign financing<sup>135</sup>.** The State Audit Office is responsible to oversee the use of public funds and to control the legality of political parties' financial management. However, political advertising on the social media platform Facebook, including by financed third parties<sup>136</sup>, is not considered to fall within the legal definition of political advertising under the Electoral Procedure Act and has therefore not been audited so far by the State Audit Office<sup>137</sup>, even if recent elections have shown that

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<sup>126</sup> Section 93(1)(g) of Act CXXV of 2018, stipulating that a Government official shall retain classified information and, in addition, not disclose to any unauthorised person or entity any fact which came to his knowledge in the course of his activities and the disclosure of which would have adverse or beneficial consequences for the State, a governmental authority, an employee or a citizen.

<sup>127</sup> The term of the restriction specified by law is the equivalent of the time spent on the job subject to the restriction, with a maximum of two years (Section 117(2) of Act CXXV of 2018). Section 117(1) provides that the Government must determine the sectors and positions where a government official may not be employed after the termination of his/her public service. That provision remains to be implemented.

<sup>128</sup> GRECO has repeatedly called for the introduction of a code of ethics/ conduct for members of Parliament to be adopted, covering, among others, post-employment rules, and complementary, practical measures for their implementation, see GRECO Fourth Evaluation Round – Second Interim Compliance Report, pp. 3-4, with reference to the Fourth Evaluation Report, p. 17.

<sup>129</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. The OECD recognised the positive aspects of the existing regulatory framework, but raised concerns as regards the effectiveness of the protection of whistleblowers, see OECD (2021), Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report: Hungary.

<sup>130</sup> The Commissioner acts as a reporting channel and operates the electronic platform but has limited formal competence as regards whistleblower complaints, including the forwarding of reports to competent authorities. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 14.

<sup>131</sup> Hungarian Competition Authority, General information about how Cartel chat works, [https://www.gvh.hu/kartellchat/kcfaq/faqentry\\_568311.html](https://www.gvh.hu/kartellchat/kcfaq/faqentry_568311.html).

<sup>132</sup> Public Procurement Authority, Public Procurement Anonymous Chat (KAC) launched, <https://www.kozbeszerzes.hu/hirek/elindult-kozbeszerzesi-anonim-chat-kac/>.

<sup>133</sup> See the Magyarorszag.hu portal, Public interest announcements, [www.anti-lop.hu](http://www.anti-lop.hu).

<sup>134</sup> Including the limited protection against retaliation and the risks of disclosure of the whistleblowers' identity. See OECD (2021), Implementing the OECD Anti-Bribery Convention, Phase 4 Two-Year Follow-Up Report: Hungary, p. 3.

<sup>135</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12.

<sup>136</sup> This can include proxies, such as the so-called GONGOs, companies, informal grouping of people or individuals that are involved in campaigning activities as special purpose vehicles to promote political parties or candidates, the related spending of which would not appear in party accounts.

<sup>137</sup> Information received by Transparency International and the State Audit Office in the context of the country visit to Hungary. Act XXXVI of 2013 on electoral procedure covers media content or audiovisual content

most of the political party campaigning is taking place on this communication tool<sup>138</sup>. While some measures have been taken to ensure that political party financial registries are transparent and up-to-date to clarify party income sources and campaign periods as well as to ensure a more in-depth monitoring, overall concerns remain as regards the transparency of party financing<sup>139</sup>.

**The trend of heightened COVID-19 related corruption risks in public procurement persists<sup>140</sup>, including for public interest trusts.** There is some transparency in public procurement and monitoring by the Public Procurement Authority reportedly increased in 2021<sup>141</sup>. Yet specific data on beneficiaries and overall amounts on exempted, pandemic-related procurements is not publicly available despite heightened risks of corruption<sup>142</sup>. At the same time, the share of contracts awarded with a single-bidder, and thus without competition, increased from 2020 to 2021<sup>143</sup>. A Government Decree<sup>144</sup> introduced measures to reduce this high share of single bids targeting, however, only public procurements above the EU public procurement thresholds, thus relating only to a limited number of procurements, while no concrete timeline is in place<sup>145</sup>. According to the Public Procurement Authority, fewer but much larger investments have been procured<sup>146</sup>. Furthermore, as reported previously<sup>147</sup>, the

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published in a press product promoting or encouraging a candidate organisation or an independent candidate, while political advertising content on the social media platform Facebook is considered not to be from a media promotion provider. Thus, its social media content does not qualify as press product within the meaning of Section 146(b) of the Media Act. In this context, see also the Handbook of the State Audit Office, Elections: Handbook prepared to support election regularity (23 December 2021).

<sup>138</sup> BIRN (2022), Hungary Election: Virtual Smear Tactics Alive and Well on Facebook. According to information received by the CSOs K-Monitor, Transparency International and Corruption Research Center Budapest in the context of the country visit to Hungary, the amounts spent on Facebook being by far the largest. See also Hungary Today (2022), Political Parties Spent HUF 3 Billion during Campaign Period on Facebook Alone; BIRN (2022), Hungary Election: Virtual Smear Tactics Alive and Well on Facebook; Euractiv (2022), Orbán's influencers shower cash, become largest social media spenders.

<sup>139</sup> In practice, the State Audit Office (SAO) has limited competence to control the expenditure of political parties, and only parties that have gained at least one percent on the ballot from the party list can be monitored. Corruption risks therefore exist for public funds, for example, if parties below this threshold are founded to obtain access to state subsidies, terminating their operations after the elections. Furthermore, findings of the SAO that can result in serious sanctions, such as the withdrawal of state funds, cannot be challenged before an administrative court. See also GRECO Third Evaluation Round - Second Addendum to the Second Compliance Report, para. 24.

<sup>140</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 15.

<sup>141</sup> Hungarian Government (2021), Press Statement, A decade for integrity, committed to eliminating corruption.

<sup>142</sup> In this context, see *Átlátszó* (2020), 'The Government has abused the pandemic multiple times according to K-Monitor and HCLU'.

<sup>143</sup> Corruption Research Center Budapest (2021), Two tendencies in the Hungarian public procurement, pp. 3-4, including an analysis of more than 250 000 public contracts awarded between 2005 and 2021 in general, stating that the contracts awarded to single-bidders in 2021 rose to 34.6% in 2021 (from 32.1% in 2020). According to the single bid indicator of the Single Market Scoreboard, until 2020, the proportion of contracts awarded in procedures where there was just one bidder had stagnated around 40% between 2018-2020, which was among the highest in the EU.

<sup>144</sup> Government Decree 63/2022 of 28 February 2022, which entered into force on 15 March 2022.

<sup>145</sup> The government target is to reduce the share of single bids for all public procurements below 15%, although without a concrete timeline. Hungary also committed to developing a comprehensive performance measurement methodology and to exploring measures to address some of the problems in the public procurement sector. Government Decree 63/2022 of 28 February 2022.

<sup>146</sup> Public Procurement Authority (2021), Flash Report: Hungarian Public Procurement in Numbers, p. 3, reporting a 23% increase of the total value compared to 2020 and considerably above the level of the total value calculated in the years prior to the coronavirus pandemic.

2021 law<sup>148</sup> repealed a specific requirement of the public procurement law<sup>149</sup> taking trusts established by the state as well as legal persons managed by them, out of the scope of application of procurement rules in respect of procurements financed by European Union funds<sup>150</sup>. This carries the potential to increase corruption risks in a procurement market that is already vulnerable to corruption<sup>151</sup>.

**On 27 April 2022, the Commission sent a written notification to Hungary under the budget conditionality Regulation<sup>152</sup>.** The Commission has serious concerns about the use of the EU budget in Hungary. The concerns relate to breaches of the principles of the rule of law in relation to the use of public procurement and the functioning of the authorities implementing the budget, financial control, audit, monitoring, accountability process, transparency, prevention of fraud, corruption and other breaches of EU law, and the constant failure to implement the recommendations addressed to the authorities for several years. This is demonstrated by an exceptionally high level of financial corrections over the years, documented by audit work and contradictory procedures. In the written notification, the Commission also referred to possible breaches in connection to public procurement, such as the limits to investigation and independent prosecution, as well as the lack of an effective anti-corruption framework. Hungary replied to the written notification on 27 June 2022 and the Commission is assessing the information and observations provided in the reply.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

Hungary's Fundamental Law and sectoral legislation provide the legal framework for the protection of media freedom and pluralism and for the right to access information held by public authorities<sup>153</sup>. The Media Act provides the legislative framework for both the Hungarian media regulator as well as for the regulation of public service media. Hungary transposed the AVMS Directive in 2019<sup>154</sup>.

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<sup>147</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 14.

<sup>148</sup> Act VIII of 2021.

<sup>149</sup> Section 5(3) of Act CXLIII of 2015, defining the entities required to apply public procurement rules: 'In respect of procurements financed by European Union funds trusts established by the State shall apply the provisions of this Act, as well as legal persons maintained by such trusts [...]'.  
<sup>150</sup> In 2021, several public-interest trusts were set up by the government performing public duties and donations of public assets were made amounting to more than 2% of GDP. Public-interest trusts performing public duties and legal persons maintained by them are not expressly covered by Section 5(1) of Act CXLIII of 2015. They may fall under Section 5(2) but in respect of procurements financed by European Union funds that provision does not cover all situations that were covered by the former Section 5(3), repealed by Act VIII of 2021. The same law also removed rules aimed at preventing conflict of interest, thereby allowing holders of public office to sit on the board of trustees of such trusts, see further above. Cf. also OECD, Economic Survey Hungary (2021), p. 58, recommending that all public procurements should be subject to competitive tendering to secure transparent procedures and to improve cost efficiency, while full financial scrutiny should apply, including to public-interest trusts.

<sup>151</sup> Cf. European Semester (2022), p. 11.

<sup>152</sup> Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 4331, 22.12.2020, p. 1.

<sup>153</sup> Hungary ranks 85<sup>th</sup> in the 2022 Reporters without Borders World Press Freedom Index compared to 92<sup>th</sup> in the previous year.

<sup>154</sup> Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

**The functional independence of the Hungarian media regulator needs to be strengthened**<sup>155</sup>. While the Media Act provides for a detailed legal framework for the establishment and operation of the Media Authority and while the authority is endowed with sufficient funding for the accomplishment of its tasks, concerns persist over the Authority's functional independence. The decision-making body of the Authority - the Media Council - remains composed of members all nominated by the ruling party<sup>156</sup>. The Media Council's refusal to renew the broadcasting license of independent radio station *Klubrádió*, based on the station's failure to comply with certain administrative obligations, and which resulted in the radio being taken off air, remains the subject of an ongoing Commission infringement procedure against Hungary<sup>157</sup>. On 14 April 2022, the Media Council refused to renew the licence of another independent radio station, *Tilos Rádió*, based on the radio's media service provider having violated legal requirements on the use of inappropriate language four times during a seven-year period<sup>158</sup>. The 2022 Media Pluralism Monitor confirms its previous assessment that while the rules governing eligibility and incompatibility of the Media Authority's board members are specified in the Media Act, they do not ensure objective and transparent procedures in practice. It therefore, once more registers medium risk for Hungary in terms of the independence and effectiveness of the Media Authority<sup>159</sup>.

**The channelling of significant state resources to pro-government media continues to create an unlevel playing field in the Hungarian media landscape**<sup>160</sup>. The majority of CSOs and media experts concur that there has been an increase in the number of government-critical outlets over the past decade but point out that the manner in which the significant volumes of state resources are channelled to pro-government media outlets and other relevant structures continues to create an unlevel playing field. Furthermore, there appears to be no transparency in the distribution of these resources<sup>161</sup>. An analysis of the impact of the establishment of the 'KESMA'<sup>162</sup> media conglomerate in November 2018 found that the latter has had a significant negative impact on the market for daily regional newspapers and on the distribution and printing market and an impact on radio, with far less or negligible impact on the television and national newspaper markets<sup>163</sup>. The 2022 Media Pluralism Monitor explains that in the sectors identified as having witnessed a significant impact, one can observe 'political' or 'ideological' concentration in which outlets 'on paper independent

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<sup>155</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 16.

<sup>156</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 16. The former President of the Council and Authority resigned one year prior to the end of her mandate.

<sup>157</sup> The Commission considers that the Media Council's decisions to reject *Klubrádió*'s application were disproportionate and non-transparent and that Hungarian media law has been applied in a discriminatory way in breach of EU telecoms rules, set out in Directive (EU) 2018/1972 establishing the European Electronic Communications Code (Recast). On 17 June 2021, the *Kúria* upheld the Media Council's decision.

<sup>158</sup> International Press Institute (2022), 'Hungary: Fidesz Media Council moves to silence independent station *Tilos Rádió*'.

<sup>159</sup> Media Pluralism Monitor 2022, country report on Hungary, p. 14.

<sup>160</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 17-18.

<sup>161</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, pp. 38-39.

<sup>162</sup> Central European Press and Media Foundation. An ad-hoc report by the Centre for Media Pluralism and Media Freedom concluded in 2019 that the establishment of KESMA would exacerbate the overall risks to media pluralism in Hungary (2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 14).

<sup>163</sup> Contribution from the National Media and Infocommunications Authority, pp. 3-4 largely corroborated by stakeholder meeting with the Hungarian Editors-in-Chief Forum and Mertek Media Monitor.

from each other, follow the same political interests and share the same narratives'<sup>164</sup>. For these reasons, the 2022 Media Pluralism Monitor confirms the previous year's high risk scores with regard to both news media concentration and state advertising in the country respectively<sup>165</sup>.

**There are no plans to introduce legislation to enhance transparency of media ownership**<sup>166</sup>. The 2022 Media Pluralism Monitor continues to rate transparency of media ownership at high risk, finding that 'the legal provisions and the Media Council itself fall short in guaranteeing effective transparency for all media, as well as effective and easy access to the relevant information by the public, particularly for the disclosure of ultimate and beneficial owners of media outlets'<sup>167</sup>. Nonetheless, stakeholders do not consider this to be a major concern given that most data can be found in the generic company register and that offshore incorporation and registration in this field is rare<sup>168</sup>.

**Public service media operates within a complex institutional system amid concerns over its financial and editorial independence.** The Media Act provides the legal framework for public service media via the establishment of a Public Service Foundation<sup>169</sup> and a Public Service Board, both of which exercise supervision over the Duna Media Service Nonprofit Private Limited Company, the public service media provider with editorial responsibility for the broadcast content<sup>170</sup>. The Media Act provides for societal control over public service media via the Public Service Board, composed of representatives of fifteen public bodies and organisations<sup>171</sup>. Under the Media Act, another entity, the Media Service Support and Asset Management Fund (MTVA)<sup>172</sup> is responsible for content acquisition and show production and is, in effect, the employer of public service media journalists. The Fund's substantial annual budget is subject to parliamentary approval<sup>173</sup>, but concerns exist as to the absence of effective oversight over its spending<sup>174</sup>. The 2022 Media Monitor considers this to be a high risk area given that there is 'a lack of transparency, civil control and oversight over the budget of the Fund' and that supervision is carried out by MTVA, which is, in turn, managed

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<sup>164</sup> 2022 Media Pluralism Monitor, country report on Hungary, p.17.

<sup>165</sup> 2022 Media Pluralism Monitor, country report on Hungary, p. 17 and 24, respectively.

<sup>166</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 17.

<sup>167</sup> Media Pluralism Monitor 2022, country report on Hungary, p. 17.

<sup>168</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 41.

<sup>169</sup> Parliament elects the members of the Board of Trustees of the Public Service Foundation for a period of nine years. Half of them are nominated by the governing faction and the other half by the opposition, while the seventh member is nominated by the President of the Media Council. The Board of Trustees appoints and terminates the employment of Duna's executive director while Section 91 of the Media Act expressly lays down that the Board of Trustees shall have no control over the content of public service media programmes.

<sup>170</sup> Duna's budget for 2022 is HUF 1.8 billion (approximately EUR 5 million).

<sup>171</sup> Churches, public bodies, local government bodies, bodies of national and ethnic minorities, and other non-governmental organisations nominate members to the Public Service Board. Its main function is the supervision of the implementation of the Public Service Media Code.

<sup>172</sup> The chairperson of the Media Council appoints, establishes the salary of and exercises employers' rights over MTVA's Director-General, deputy directors, as well as the chairperson and all four members of its Supervisory Board. The Media Council is responsible for approving MTVA's annual plan and financial policy and for determining the rules governing use and management of MTVA's assets.

<sup>173</sup> MTVA's budget for 2022 is HUF 130 billion (approximately EUR 361 million).

<sup>174</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 41.

by the Media Council<sup>175</sup>. Concerns persist as to public service media’s editorial independence and stakeholders have pointed out its role in amplifying disinformation by third actors<sup>176</sup>.

**Journalists and media outlets continued to face diverse challenges in Hungary.** Some journalists have continued to face difficulties when attempting to access members of the Government and are barred from attending certain events, while court proceedings targeting certain journalistic investigations have been launched on data protection grounds<sup>177</sup>. The uncovered secret surveillance of journalists<sup>178</sup> and the *Tilos Rádió* case constitute the two new alerts registered on the Council of Europe’s Platform to promote the protection of journalism and the safety of journalists concerning Hungary since July 2021.

**Access to public information continues to be hindered.** Access to public information has been hindered under the ‘state of danger’: deadlines for public authorities to process such requests were extended from 15 to 45 days (renewable once), also allowing them to charge fees where the fulfilment of the access to public information request would endanger or hinder the public authority in carrying out its task related to fighting the pandemic<sup>179</sup>. Stakeholders report that transparency of public-interest funds is inadequate, in particular due to the limited scope of the disclosure obligations<sup>180</sup>, and the lack of effective enforcement of judicial decisions ordering the disclosure of data concerning public funds<sup>181</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Hungary is a parliamentary republic with a unicameral Parliament (National Assembly). Parliament that, among other functions, adopts and amends<sup>182</sup> the Fundamental Law of Hungary, legislates, including cardinal laws<sup>183</sup>, elects the Prime Minister, and elects – by a

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<sup>175</sup> 2022 Media Pluralism Monitor, country report on Hungary, p. 24.

<sup>176</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 47; Political Capital: Russian Disinformation in Hungarian Public Broadcast Media: Complaint to the European Commission, 2022; Contribution from International Press Institute for the 2022 Rule of Law Report, p. 15.

<sup>177</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, pp. 46-47.

<sup>178</sup> See pillar IV.

<sup>179</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 18.

<sup>180</sup> Parliament has failed to implement Decision 7/2020 (V. 13.) AB of the Constitutional Court finding that the right to freedom of information extends to all public data and that judicial remedies must exist to fulfil this fundamental right vis-a-vis all persons handling public data. In Decision 15/2021 (V. 13) AB, the Constitutional Court held that the derogations introduced during the ‘state of danger’ are in line with the Fundamental Law. The Constitutional Court – as a constitutional requirement – also laid down that if an access request is fulfilled within the deadline of 45 or 90 days, the data controller must record the reasons justifying the endangerment of the performances of the public tasks of the controller in relation to the state of danger, and it shall also inform the requesting party of these reasons. The Constitutional Court also pointed out that the extension can only apply to public tasks that are related to the fight against the pandemic, thus other types of – unrelated – public tasks are not included in the derogation.

<sup>181</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 46.

<sup>182</sup> A two-thirds majority of all the members is required to adopt or amend the Fundamental Law.

<sup>183</sup> The Fundamental Law provides for the adoption of 33 cardinal laws implementing its provisions and containing detailed rules on the functioning of key institutions or on the exercise of certain fundamental rights. They may be adopted or amended by a two-thirds majority of the members of Parliament present. The Venice Commission criticised Hungary for using cardinal acts beyond what is strictly necessary, and even in respect of detailed legislation, which has been considered questionable from a democratic perspective as it makes it difficult to introduce reforms in the future (CDL-AD(2012)009, para. 47).



two-thirds majority – the top rank public officials of the country. The President of the Republic is elected by Parliament. There are a number of institutions tasked with counterbalancing the powers of the legislature and the executive and entrusted with guaranteeing the respect of the constitutional order, including the Constitutional Court, the State Audit Office and the Ombudsperson (‘Commissioner for Fundamental Rights’). In addition to the Government, the President of the Republic and every parliamentary committee, any member of Parliament may table a bill.

**The lack of public consultation coupled with an accelerated legislative process has further weakened the quality of the regulatory environment**<sup>184</sup>. Whilst the Government has organised ‘national consultations’ on certain topics<sup>185</sup>, the absence of effective public consultation on draft laws raises questions as regards legal certainty and the quality of legislation<sup>186</sup>. CSOs report that decisions are made without the genuine involvement of relevant stakeholders<sup>187</sup>. The Government has been almost systematically failing to comply with its legal obligation of publishing online draft laws for public consultations<sup>188</sup>. Government policies often circumvent existing consultation mechanisms by submitting significant bills through individual members of Parliament or by using extraordinary or urgent procedure<sup>189</sup>. For business stakeholders, the quality of law-making is an important factor for investor confidence and a reason for concern about effectiveness of investment protection for nearly a quarter of companies in Hungary<sup>190</sup>.

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<sup>184</sup> For example, a non-COVID-19 related legislative change to several parts of the Criminal Procedure Code was adopted one day and entered into force on the following day. Another example is the proposed amendment to the law initiated by the Minister of Justice, which has brought about substantial changes in the practice of child custody. As there was insufficient consultation with the CSOs concerned, family rights CSOs sent written comments to the Ministry expressing their concerns about several elements of the new legislation (contribution from Hungarian Association of Judges for the 2022 Rule of Law Report, p. 14).

<sup>185</sup> The Government notes that a total of five national consultations were held during the ‘state of danger’. The consultations are conducted on the basis of direct inquiries from citizens. The Government considers that the national consultation is a well-proven tool by which the opinion of the Hungarian people is regularly sought.

<sup>186</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 21.

<sup>187</sup> Contributions from Civil Society Europe for the 2022 Rule of Law Report, p. 8; European Transport Workers’ Federation for the 2022 Rule of Law Report, p. 18.

<sup>188</sup> According to the government website, out of the 145 government draft laws in 2021, only three laws were published for public consultations. From these three, only one can be deemed as having been genuinely open for consultation; the other two drafts were published three weeks after the bills had already been submitted to Parliament. Moreover, no amendments could have been submitted by the time the texts were published for ‘consultation’ (joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 49). The absence of clear minimum deadlines for consultation resulted in a deadline for comments expiring the same day as the draft bill was published (in 2018 this was the case for 9 out of the 18 draft laws published for consultation).

<sup>189</sup> This happened for example in the case of Act LXXIX of 2021. To the original proposal to tighten penalties for paedophile offences, the Legislative Committee tabled an amendment seeking to shield minors from content referring to homosexuality, sex-change and divergence from self-identity corresponding to sex at birth. The individual motion allowed Parliament to decide on the amendment without a public debate and consultation (contribution from Hungarian Association of Judges for the 2022 Rule of Law Report, p. 14). According to information available on the Parliament’s website, in 2021, 11 bills tabled by members of Parliament (nine by the majority, one by the opposition, one by a non-allied member) were passed into law.

<sup>190</sup> Figure 55, 2022 EU Justice Scoreboard indicates that ‘[F]requent changes in legislation or concerns about quality of the law-making process’ is the most stated reason for concern about effectiveness of investment protection for companies in Hungary. Eurobarometer survey FL504; replies to the question: ‘What are your main reasons for concern about the effectiveness of investment protection?’ if the response to Q3 was ‘fairly unconfident’ or ‘very unconfident’.

**The Government has used its emergency powers extensively.** As of 1 June 2022, the Government terminated<sup>191</sup> the second ‘state of danger’ it declared<sup>192</sup> in January 2021 in response to the COVID-19 pandemic. During the reporting period, Parliament authorised<sup>193</sup> the Government to further extend the applicability of the Government’s emergency measures until the end of the pandemic-related ‘state of danger’. The Government went beyond the Parliament’s authorisation when it issued emergency measures<sup>194</sup> to regulate matters unrelated to the COVID-19 pandemic. It also used its emergency powers to overrule judicial decisions, thereby limiting the right to strike<sup>195</sup> and media freedom<sup>196</sup>. Several emergency measures have been challenged before the Constitutional Court, but most applications were found inadmissible, or proceedings were discontinued on the ground that the challenged rules were no longer in force. When deciding cases on the merits, the Constitutional Court confirmed the ban on assemblies<sup>197</sup>, the extension of the statutory deadline for addressing access to documents requests<sup>198</sup>, the rules related to COVID-19 immunity certificates<sup>199</sup> and the cancellation of a semester in higher education<sup>200</sup>. On 24 May 2022, Parliament adopted the Tenth Amendment, allowing the Government to declare a ‘state of danger’ in case of an armed conflict, war or a humanitarian catastrophe in a neighbouring country. On 25 May 2022, the Government declared<sup>201</sup> another ‘state of danger’ under the amended Article 53(1) of the Fundamental Law, in view of the armed conflict and humanitarian catastrophe in Ukraine and with a view to averting their impact on Hungary. On 8 June 2022, Parliament adopted Act VI of 2022, authorising the Government to extend the applicability of emergency measures until 1 November 2022.

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<sup>191</sup> Government Decree 181/2022 of 24 May 2022.

<sup>192</sup> Government Decree 27/2021 of 29 January 2021.

<sup>193</sup> Section 1 of Act CII of 2021 extended the authorisation until 1 January 2022; Section 84 of Act CXXX of 2021 further extended the authorisation until 1 June 2022.

<sup>194</sup> E.g. the Government overruled Acts of Parliament to regulate the retail of fuel (Government Decrees 84/2022 of 5 March 2022 and 94/2022 of 10 March 2022) and the access to SIM cards by Ukrainian refugees (Government Decree 88/2022 of 7 March 2022) before the adoption of the Tenth Amendment (see below).

<sup>195</sup> The court allowed the industrial action of the air traffic controllers of the Hungarian Air Navigation Service Provider while determining the minimum service for air traffic control (Budapest Regional Appeal Court, order of 20 July 2021, 2.Mpkf.35.080/2021/5). Yet, Government Decree 446/2021 of 26 July 2021 banned any strike by air traffic controllers during the state of danger. (Contribution from Österreichischer Gewerkschaftsbund for the 2022 Rule of Law Report, p. 17). Subsequently, the Constitutional Court confirmed the constitutionality of this emergency measure (Decision 3065/2022 (II. 25.) AB).

<sup>196</sup> Shortly after a court ruling (Budapest Regional Court, judgment of 27 January 2022, 109.K.705.866/2021/5) quashing the ministerial decision limiting media access to hospitals, the Government issued an emergency measure (Government Decree 33/2022 of 4 February 2022) allowing the administrative authorities to regulate contacts between hospitals and the media.

<sup>197</sup> Decision 23/2021 (VII. 13.) AB. The Constitutional Court established as a constitutional requirement that the lawmaker may only suspend the exercise of the right of assembly in times of a state of danger for a period of time and within the scope of what is indispensably necessary, and only in such a way that it must examine at reasonable intervals whether the circumstances giving rise to the restriction still justify the suspension of the fundamental right.

<sup>198</sup> The Constitutional Court ruled that extending the 15-day deadline for fulfilling freedom of information requests to 45 and, in some cases 90 days during the ‘state of danger’ is constitutional as long as data managers indicate the reasons that predict a likelihood that the fulfilment of the request within the 15-days deadline may endanger the performance of their public service tasks in the state of danger.

<sup>199</sup> Decision 27/2021 (XI. 5.) AB.

<sup>200</sup> Decision 28/2021 (XI. 5.) AB.

<sup>201</sup> Government Decree 180/2022 of 24 May 2022.

**Investigations have been initiated following allegations related to the use of Pegasus and equivalent spyware surveillance software against lawyers and journalists, while there are concerns due to the absence of effective judicial supervision as regards the use of secret surveillance measures outside criminal proceedings.** The national data protection authority carried out an investigation following allegations<sup>202</sup> that at least ten Hungarian lawyers, including the President of the Hungarian Bar Association, and at least five Hungarian journalists<sup>203</sup>, had been targeted by the Pegasus spyware<sup>204</sup>. The report by the data protection authority<sup>205</sup> published on 31 January 2022 confirmed that the Hungarian authorities<sup>206</sup> had used the Pegasus spyware for covert surveillance of information systems and premises, and that information gathering subject to authorisation<sup>207</sup> was carried out with respect to several persons identified in the press. The report concluded that the spyware had been used in accordance with the relevant legal regulations. On 15 June 2022, the prosecution service closed its investigation finding that there had been no unauthorised covert information gathering or illegal use of covert means. Stakeholders also report that the rules of secret information gathering are so loose in Hungary that lawyers, like any citizen, may legally become surveillance targets<sup>208</sup> and that the Minister of Justice has discretion in allowing the secret surveillance for reasons of national security without any meaningful oversight and control over the decision taken<sup>209</sup>. Already in its judgment *Szabó and Vissy v. Hungary*<sup>210</sup>, the European Court of Human Rights found that authorisation and application of secret surveillance measures lacked judicial supervision<sup>211</sup>. The execution of the judgment is still ongoing, and Hungary remains under enhanced supervision of the Committee of Ministers of the Council of Europe. The absence of guarantees, including effective judicial oversight, in case of secret surveillance of lawyers on grounds of national security, raises serious concerns

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<sup>202</sup> Direct36 (2021), ‘President of the Hungarian Bar Association and several other lawyers have been targeted by Pegasus’. On 31 March 2022, Direkt36 also reported that a lawyer who acted as a defense counsel in a high-profile murder case was also targeted by Pegasus.

<sup>203</sup> Including investigative reporters, a newspaper editor, a photojournalist working on high-level corruption and a media owner.

<sup>204</sup> Contribution from Liberties for the 2022 Rule of Law Report, p. 7. Contribution from the Council of Bars and Law Societies of Europe for the 2022 Rule of Law Report, p. 32. Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, pp. 12-13.

<sup>205</sup> Findings of the investigation of the Hungarian National Authority for Data Protection and Freedom of Information launched ex officio concerning the application of the ‘Pegasus’ spyware in Hungary, p. 50.

<sup>206</sup> The Specialised National Security Service provides covert information and data gathering services to other national security agencies and law enforcement agencies.

<sup>207</sup> Section 56(1) of Act CXXV of 1995 on national security services provides that the services may, with external authorisation, a) search residences in secret and record their observations with technical devices; b) observe and record what is happening on the residence with the help of technical devices; c) open letters and other postal items, inspect their contents and record them with technical devices; d) learn communication through a public telephone line or some other telecommunication service transmitting said communication and record the relevant observations by technical devices. In accordance with Section 58(2), intelligence information gathering activities listed in Section 56(1), carried out during the performance of national security tasks – with some exceptions – are authorised by the Minister of Justice.

<sup>208</sup> Contribution from Liberties for the 2022 Rule of Law Report, p. 8. Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 12.

<sup>209</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 12.

<sup>210</sup> Judgment of the European Court of Human Rights of 12 January 2016, *Szabó and Vissy v. Hungary*, 37138/14.

<sup>211</sup> The Government notes that the use of surveillance devices is subject to strict conditions and judicial or other external authorization under Hungarian law. Regardless of professional orders, professions, occupations, jobs, anyone can be subject to covert surveillance provided that the legal conditions are met.

because it weakens their independence, undermining the confidentiality of client-lawyer communication<sup>212</sup>.

**Concerns as regards the independence of the Commissioner for Fundamental Rights have been aggravated by the takeover of the responsibilities of the Equal Treatment Authority by the Commissioner.** In March 2022, the UN Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI) confirmed its earlier recommendation<sup>213</sup> that the Hungarian national human rights institution be downgraded to B-status. The SCA found that the Commissioner for Fundamental Rights ‘has not effectively engaged on [...] all human rights issues, including in relation to vulnerable groups such as ethnic minorities, LGBTI, refugees and migrants as well as constitutional court cases deemed political and institutional, media pluralism, civic space and judicial independence’<sup>214</sup>. As of January 2021, through new legislation, the Commissioner for Fundamental Rights took over all the responsibilities and functions of the Equal Treatment Authority. In its 18 October 2021 Opinion<sup>215</sup>, the Venice Commission criticised that the law was ‘adopted during the state of emergency, in a rushed manner, apparently without consultation with civil society and other stakeholders’. The Venice Commission concluded that as a result of the merger, ‘the new system of protection against discrimination is overall more complicated and thus has the potential to be less effective than the previous one’ and that this is a risk ‘that may undermine the effectiveness of the work in the field of promoting equality and combating discrimination’. According to stakeholders, the number of discrimination complaints has significantly dropped after the merger<sup>216</sup>.

**The Constitutional Court continues to review final judicial decisions, including upon request of public authorities**<sup>217</sup>. The new possibility to review final judicial decisions upon request of public authorities raises questions in particular as regards legal certainty<sup>218</sup>. Although it is not part of the court system, the Constitutional Court adjudicating on the merits

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<sup>212</sup> According to the Government, secret surveillance for national security purposes does not target the client-lawyer relationship.

<sup>213</sup> Global Alliance of National Human Rights Institutions (GANHRI): Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021, pp. 12-13.

<sup>214</sup> Global Alliance of National Human Rights Institutions (GANHRI) (2022): Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-25 March 2022, pp. 43-47.

<sup>215</sup> CDL-AD(2021)034, para. 57. The Venice Commission noted with regret ‘that no Director General for Equality Treatment [within the Commissioner’s Office] has been appointed’ (para. 58) and that the Commissioner could not confirm either the date for filling this vacancy or elaborate on the selection criteria, although without a Director General for Equality Treatment, ‘it is hard to imagine the promotion and visibility of equality mandate as required by ECRI General Policy Recommendation No 2’ (para. 44). The Venice Commission expressed concerns (para. 42) that the Equal Treatment Directorate (ETD) ‘is currently understaffed, which affects the overall quality of its performance’.

<sup>216</sup> According to stakeholders, in 2019, the Equal Treatment Authority received 868 cases throughout the year, whereas ‘in the first 6 months of 2021, the ETD received only 156 complaints, proportionate to the time only one third of the 2019 number of complaints’ (Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 52).

<sup>217</sup> In 2021, the Constitutional Court quashed 23 final judicial decisions following constitutional complaints by the parties, two of them being upon request of public authorities (the Northern Transdanubian Water Management Directorate (Decision 16/2021. (V. 13.) AB) and the Government (Decision 33/2021. (XII. 22.) AB)).

<sup>218</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 24. According to the Government, the availability of a constitutional complaint against a final and binding court decision guarantees the general principles of legal certainty and constitutionality.

of the case has been characterised as ‘a court of fourth instance’<sup>219</sup>. According to stakeholders, in 2021, the Constitutional Court continued to overrule *Kúria* decisions in politically sensitive cases<sup>220</sup>. This role of the Constitutional Court, composed of members elected by Parliament without the involvement of the judiciary, in reviewing judgments of the ordinary courts, has also been raised by the Commission in the context of the 2022 European Semester<sup>221</sup>. As regards the constitutional control of the legislative and the executive, in 2021, the Constitutional Court annulled six legal acts and in 11 cases it did not annul the acts but formulated requirements for their application.

**The Government’s stance conditioning compliance with a judgment of the Court of Justice of the European Union upon a ruling of the Constitutional Court raises concerns.** On 17 December 2020, the Court of Justice<sup>222</sup> ruled that Hungary failed to fulfil its obligations under EU law in the area of procedures for granting international protection and returning illegally staying third-country nationals. On 26 February 2021, the Government submitted a petition to the Constitutional Court seeking an interpretation of the Fundamental Law, arguing that the implementation of this judgment raised a constitutional problem. In its reply, on 7 December 2021, the Constitutional Court<sup>223</sup> ruled that as long as the EU institutions do not take the measures necessary to ensure the effectiveness of the joint exercise of competences, Hungary is entitled to exercise the relevant non-exclusive field of competence of the EU<sup>224</sup>. On 12 November 2021, the Commission decided to refer Hungary to the Court of Justice<sup>225</sup> over its failure to comply with this judgment of the Court of Justice.

**On 1 January 2022, Hungary had 47 leading judgments of the European Court of Human Rights pending implementation.** Hungary’s rate of leading judgments from the past 10 years that remain pending is at 71%, and the average time that the judgments have been pending implementation is over 6 years and three months<sup>226</sup>. The oldest leading

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<sup>219</sup> Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 23; Contribution from the *Kúria* President for the 2021 Rule of Law Report, p. 2, considering that the Constitutional Court acting in the same manner as ordinary appellate courts.

<sup>220</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 51. For example, on 14 December 2021, the Constitutional Court (case IV/03991/2021) quashed the *Kúria* order (Knk.II.40.646/2021/9) not allowing that a referendum to be held about the availability of gender reassignment treatment for children. Also, on 18 May 2022, the Constitutional Court (IV/234/2022) quashed the *Kúria* order (Knk.I.40.792/2021/10) allowing a referendum to be held on establishment of the Chinese Fudan University in Budapest.

<sup>221</sup> Recital (27), Recommendation for a Council Recommendation on the 2022 National Reform Programme of Hungary and delivering a Council opinion on the 2022 Convergence Programme of Hungary.

<sup>222</sup> Judgment of the CJEU of 17 December 2020, *Commission v Hungary*, C-808/18, ECLI:EU:C:2020:1029.

<sup>223</sup> Decision 32/2021. The Constitutional Court did not assess whether the incomplete effectiveness of the joint exercise of competences was realised in the specific case. It also emphasised that the abstract interpretation of the Fundamental Law cannot include a review of the Court of Justice judgment, nor does the procedure allow it to rule on the matter of the primacy of EU law (contribution from the Conference of European Constitutional Courts for the 2022 Rule of Law Report, pp. 15-16).

<sup>224</sup> The Constitutional Court did not assess in the specific case whether the effectiveness of the joint exercise of competences was incomplete. It emphasised that the abstract interpretation of the Fundamental Law cannot extend to a review of the Court of Justice judgment or to the examination of the primacy of EU law (contribution from the Conference of European Constitutional Courts for the 2022 Rule of Law Report, pp. 15-16).

<sup>225</sup> Case C-123/22.

<sup>226</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 48.

judgment, pending implementation for 13 years, concerns the violation of the right to freedom of assembly<sup>227</sup>. On 1 July 2022, the number of leading judgments pending implementation has decreased to 45<sup>228</sup>. There are cases where state bodies refuse to execute decisions of the domestic courts; several of these concern access to documents<sup>229</sup>.

**Independent civil society remains under pressure.** Although legislation<sup>230</sup> governing the registration and operation of CSOs remained essentially unchanged in 2021, and conforms with international standards<sup>231</sup>, civic space in Hungary continues to be rated as ‘obstructed’<sup>232</sup>. On 16 November 2021, the Court of Justice held that Hungary breached Union law by criminalising<sup>233</sup> the organisation of activities carried out with a view to assisting the initiation of applications for international protection that do not fulfil the national criteria for granting that protection<sup>234</sup>. Hungary’s failure to implement this judgment maintains the pressure on CSOs active in the field of asylum. The implementation of new rules<sup>235</sup> giving the State Audit Office the power of carrying out legality checks on the accounts of CSOs with an annual balance sheet total exceeding a certain amount has been scheduled for the first semester of 2022. Independent CSOs are often being labelled as

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<sup>227</sup> Judgment of the European Court of Human Rights of 7 October 2008, *Patyi and Others v. Hungary*, 5529/05, pending implementation since 2009.

<sup>228</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>229</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 53. E.g., in August 2021, the Ministry of Finance was fined for the non-implementation of an October 2019 judgment obliging the Ministry to disclose documents related to the loan agreement signed with the Russian Federation with a view to finance the construction of the Paks II nuclear power plant. In May 2021, the text was tabled in Parliament as a draft law and published. In another case, the Budapest Regional Court (judgment 22.P.21.144/2021/6), confirmed by the Budapest Regional Appeal Court on 14 October 2021 (judgment 2.Pf.20.641/2021/4/II), ordered a government agency to provide a CSO with certain data related to the impact of the COVID-19 pandemic from November 2020. The government agency failed to execute the binding judicial decision until April 2022. According to the Hungarian Helsinki Committee, one of the systemic problems contributing to this phenomenon of non-implementation is the lack of effective and genuinely coercive enforcement tools (Hungarian Helsinki Committee: Non-Execution of Domestic and International Court Judgments in Hungary, 2021, p. 10).

<sup>230</sup> Act V of 2013 (Civil Code) regulates the legal forms of organisations: associations and foundations. Act CLXXV of 2011 provides for rules of operation. Stakeholder report that under these laws, anyone can register a CSO at the courts. With the introduction of an electronic system some years ago, this process has become easier, though geographic differences among courts still prevail. The organisations can by and large freely operate (Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, pp. 55-56).

<sup>231</sup> Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 54.

<sup>232</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>233</sup> Section 353/A of Act C of 2012, introduced by Section 11(1) of Act VI of 2018 (part of the so-called ‘Stop Soros’ legislative package).

<sup>234</sup> Judgment of the CJEU of 16 November 2021, *Commission v Hungary*, C-821/19, ECLI:EU:C:2021:930.

<sup>235</sup> Under Act XLIX of 2021, the State Audit Office (SAO) annually prepares a report on civil organisations and foundations with an annual financial balance over HUF 20 million. According to the Government, the ability of CSOs to influence public life may be related to the means at their disposal; requiring transparency in the operation and funding of CSOs is an overriding reason in the public interest. Stakeholders argue such an audit may impose an unnecessary administrative burden on human rights defenders critical of the government and could be misused to make their work as difficult as possible. According to stakeholders, the law also discriminates against specific CSOs, as religious, sport and national minority organisations are exempted from auditing. CSOs state that while the law is disguised as a legal measure intended to ensure transparency, its purpose is to ‘stigmatise Hungarian civil society’, since transparency over the finances of CSOs is already ensured under current legislation (contribution from CIVICUS for the 2022 Rule of Law Report, p. 14; contribution from Philea for the 2022 Rule of Law Report, p. 4).

‘political’, thus not truly civic, and as ‘agents’ not serving the ‘national interest’<sup>236</sup>. Organisations representing the LGBTIQ community complain of being targeted by Government’s smear campaigns<sup>237</sup>. After the referendum<sup>238</sup> related to the ‘Child-protection Law’<sup>239</sup>, the National Election Commission fined the CSOs that had called for invalid votes be cast<sup>240</sup>. The *Kúria* overturned most of these administrative decisions<sup>241</sup>. CSOs have also reported difficulties as regards access to justice, in particular growing obstacles in challenging environmental permitting processes<sup>242</sup>.

**The State’s role in financing civil society raises questions.** According to stakeholders, the Government has centralised the distribution of funding through the National Cooperation Fund and favours the financing of so-called GONGOs<sup>243</sup>. Almost 40% of civil society’s resources come from public funding<sup>244</sup>; stakeholders report that such funding is uneven, lacks transparency and is politically biased against independent organisations<sup>245</sup>. In July 2021, the

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<sup>236</sup> Contribution from Ökotárs for the 2022 Rule of Law Report, p. 19.

<sup>237</sup> A key message of the Government is that the sexual education of children should not be left to LGBTIQ activists (contribution from Ökotárs for the 2022 Rule of Law Report, p. 19). Pro-government media present LGBTIQ issues as an ideology, and accuse CSOs seeking to recruit more children to become LGBTIQ, conflating sexual orientation and gender identity with paedophilia (contribution from ILGA-Europe for the 2022 Rule of Law Report, p. 15). According to the Government, the purpose of communication on the child protection law is about the parents’ right to upbringing their children and the protection of minors. The Hungarian Fundamental Law strictly prohibits, and laws severely punish the exclusion and discrimination of sexual minorities.

<sup>238</sup> The 3 April 2022 referendum called by the Government failed because less than half of the voters cast a valid vote.

<sup>239</sup> Act LXXIX of 2021, adopted on 15 June 2021, lays down a number of restrictive and discriminatory measures; in particular, it prohibits or limits access to content that propagates or portrays the so-called ‘divergence from self-identity corresponding to sex at birth, sex change or homosexuality’ for individuals under 18. The Commission has launched infringement proceedings, because it considers that the law violates a number of EU rules. In its Opinion of 13 December 2021, the Venice Commission assessed that the amendments concerning ‘propaganda of homosexuality’ can hardly be seen as compatible with the European Convention on Human Rights and international human rights standards (CDL-AD(2021)050, para. 95).

<sup>240</sup> Decisions 324/2022, 325/2022, 327/2022, 328/2022 and 329/2022.

<sup>241</sup> Two administrative chambers of the *Kúria* overturned Decisions 325/2022, 327/2022 and 329/2022 of the National Election Commission (Orders Kvk.V.39.421/2022/5, Kvk.V.39.422/2022/3 and Kvk.VI.39.423/2022/6, respectively). As regards Decisions 324/2022 and 328/2022, a third chamber rejected on formal grounds the application of CSOs (Orders Kvk.IV.39.419/2022/4 and Kvk.IV.39.420/2022/4, respectively, confirmed by the Constitutional Court in Orders 3216/2022. (V. 11.) AB and 3217/2022. (V. 11.) AB, respectively).

<sup>242</sup> Contribution from Ökotárs for the 2022 Rule of Law Report, pp. 18-19. Contribution from Liberties for the 2022 Rule of Law Report, p. 8, Joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, pp. 14-15.

<sup>243</sup> Contribution from Civil Society Europe for the 2022 Rule of Law Report, pp. 14-15. GONGOs are government-organised non-governmental organisations.

<sup>244</sup> The total income of associations and foundations is approximately HUF 900 billion. Of this, somewhat less than 40% comes from public funding, around 20% from private sources, with the rest originating from generated own income and a variety of other sources (joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, p. 54). The budget of the National Cooperation Fund (NCF) was increased from HUF 3.4 billion to HUF 10.9 billion between 2012 and 2022. In recent years, two new forms of support available to associations and foundations registered in Hungary have been introduced: the Village Civil Fund and the Urban Civil Fund with a budget of HUF 5-5 billion for each fund. 85% of NCF grants (HUF 9.7 billion in 2022) will be distributed through tenders. In the NCF, five committees with 9 members each decide on the allocation of resources, and they partly carry out their activities with representatives elected by CSOs (3 civil delegates).

<sup>245</sup> Contribution from Ökotárs for the 2022 Rule of Law Report, pp. 18-19. In 2021, an Urban Civic Fund was launched to replace the EEA/Norway Grants, but as *Átlátszó* revealed, about half of its biggest beneficiaries

failure to agree on an independent grant operator in charge of distributing funds to civil society, led to Hungary losing funds from the European Economic Area and Norway Grants Scheme, of which approximately EUR 9.6 million were earmarked for civil society<sup>246</sup>. The number of public-interest trusts<sup>247</sup> has increased to 35. Twenty-one trusts are in charge of operating formerly state-run higher education institutions<sup>248</sup> that cover two-thirds of the students in Hungarian higher education.

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are organisations directly controlled by local politicians from the governing party or their affiliates (contribution from CIVICUS for the 2022 Rule of Law Report, p. 14). While independent CSOs – e.g. those engaged in human rights or LGBTIQ issues – are not formally excluded from applying for public funding, they rarely have a chance to secure a grant.

<sup>246</sup> While the donors and the Hungarian Government signed a Memorandum of Understanding in late 2020, and the call for applications to find a fund operator managing the Active Citizens Fund was published (contribution from Liberties for the 2022 Rule of Law Report, p. 8; joint contribution from Amnesty International Hungary and eight other CSOs for the 2022 Rule of Law Report, pp. 14-15). Many arts organisations struggle to continue their operations, also due to the loss of EEA/Norway grants (contribution from Artistic Freedom Initiative for the 2022 Rule of Law Report).

<sup>247</sup> Public-interest trusts are private law entities managed by a board of trustees of at least five natural persons, appointed for an unlimited period of time. After the transfer of the rights of the founder from the Minister to the board of trustees, only the board will be able to remove and appoint board members. The legislation allows the founder to give up any form of control over the board of trustees, making its members autonomous and irremovable.

<sup>248</sup> Among the 106 board members, it is estimated that less than 25% have academic background and only three persons have had a relevant international professional career. Over 70% of the board members have links to the current Government or personally to the Prime Minister, including current and former ministers and State secretaries, government commissioners, managers of the central bank, members of Parliament, (deputy) mayors, vocal members of pro-government groups, relatives. Out of 21 universities that have undergone the ‘model change’, 19 have boards with a majority of members thus linked to the Government.



## Annex I: List of sources in alphabetical order\*

\* The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).

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## Annex II: Country visit to Hungary<sup>249</sup>

The Commission services held virtual meetings in February and March 2022 with:

- *Alapjogokért Központ*
- Amnesty International Hungary
- Corruption Research Center Budapest
- Editors-in-Chief's Forum (*Főszerkesztők Fóruma*)
- Eötvös Károly Policy Institute
- Hungarian Association of Judges (*MABIE*)
- Hungarian Bar Association
- Hungarian Civil Liberties Union (*TASZ*)
- Hungarian Helsinki Committee
- K-Monitor
- *Kúria* (the Supreme Court)
- Mathias Corvinus Collegium
- Mérték Media Monitor
- National Authority for Data Protection and Freedom of Information
- National Judicial Council
- National Media and Infocommunications Authority
- National Office for the Judiciary
- *Nézőpont*
- Office of the Commissioner for Fundamental Rights
- Office of the Constitutional Court
- Prosecution Service of Hungary
- Res Iudicata Association
- State Audit Office (*Állami Számvevőszék*)
- *Századvég*
- Transparency International Hungary

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute

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<sup>249</sup> The Hungarian government did not provide written input and decided not to participate in relevant meetings of the country visit. However, it commented on the draft country chapter.

- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe