European Rule of Law Mechanism: input from Hungary

Addendum

Content:

Update on the Hungarian measures relating to COVID-19 pandemic

The COVID-19 was declared a pandemic by WHO on 11 March, on the same day when the Hungarian government declared the state of danger. 18 May, parallel with the decreasing number of reported new coronavirus cases, the Government of Hungary decided to ease the lockdown measures overall the country. On 16 June 2020, the Hungarian Parliament adopted Act LVII of 2020 on terminating the state of danger, as well as the Act LVIII of 2020 on transitional rules for the termination of the state of danger and on epidemiological preparedness. As of 18 June, the state of danger was terminated.

During the state of danger, constitutional provisions and institutions safeguarded the proper implementation of human rights and rule of law.

According to the Article 53 Paragraph (1) of the Fundamental Law,[1] *"in the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate its consequences, the Government shall declare a state of danger, and may introduce extraordinary measures laid down in a cardinal Act."*

In a state of danger, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures [Article 53, paragraph (2) of the Fundamental Law]. These decrees of the Government shall remain in force for fifteen days, unless the Government, on the basis of authorisation by the National Assembly, extends those decrees. On 30 March, the National Assembly passed the Act XII of 2020 on the containment of coronavirus.[2] The Act explicitly stated that the extraordinary powers of the Government stipulated in Section 2 Paragraph (1) of the Act, may only be exercised insofar as those are necessary and proportional to the purpose of preventing, tackling and eliminating the COVID-19 outbreak and preventing and combating its detrimental effects.

The National Assembly has been holding regular plenary and committee sessions since the state of danger was proclaimed. The Government was to report to the National Assembly about its measures introduced to curb the coronavirus pandemic regularly. This solution ensured the democratic control over the activities of the Government.

Article 54 (1) of the Fundamental Law adds further guarantees to the protection of human rights under special legal order by listing those rights, which cannot be subject to further limitations even under special legal order.

Paragraph (2) of Article 54 of the Fundamental Law adds that under a special legal order, the application of the Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted.

The functioning of the Constitutional Court was continuous during the state of danger and provided an independent and adequate constitutional review of legal provisions (as under normal conditions); special procedural rules facilitated its activities.

[1] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.376083; for official English translation, see: http://njt.hu/translated/doc/TheFundamentalLawofHungary_20191213_FIN.pdf

[2] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=218767.381192, for official English translation see: http://www.njt.hu/translated/doc/J2020T0012P_20200401_FIN.pdf

The proper implementation of the principle of checks and balances can be demonstrated well on the example of the legal provision related to fearmongering. In its decision[3] from 17 June 2020 the Constitutional Court confirmed that the safeguards in the special criminal law provision (fearmongering in time of special legal order) are in line with the Fundamental Law (see attached). In order to avoid misinterpretations, the Constitutional Court defined as a constitutional requirement that only the statement of such facts may be punishable under the provision on fearmongering, about which the perpetrator had to know at the time when the crime was committed that it was false or was distorted by himself and which is able to hinder or restraint the efficiency of protective measures during special legal order. Thus the constitutional review confirmed that this provision ensures public peace in crisis situations while safeguarding the freedom of expression.

Unlike some Member States, Hungary has not introduced any derogation under Article 15 of the European Convention on Human Rights.

We underline that the comparative perspective as regards compliance with EU and international standards is highly important for Hungary. In this sense, we have prepared a table comparing the legal basis of crisis measures in different EU countries, carried out a dialogue on it, updated it with the help of other Member States, and sent the updated table to the Commission. In the framework of this full comparative analysis it has been made clear that the Hungarian provisions on state of danger are in line with the models applied by other Member States. Further comparison of the concrete and rapidly evolving measures taken in a quickly changing situation is not possible in a clear methodological framework, and thus should be omitted from the report.

[3] https://www.alkotmanybirosag.hu/kozlemeny/nem-alaptorveny-ellenes-a-remhirterjesztessel-kapcsolatos-uj-kulonleges-jogrendben-alkalmazando-buntetojogi-szabalyozas

1. Could you elaborate on how the COVID-19 epidemic has affected the functioning of the courts system? Have there been judicial decisions regarding the emergency measures taken?

In relation to the judicial system Act CLXII of 2011 on the legal status and remuneration of judges (hereinafter: Legal Status of Judges Act),[4] and Act CLXIV of 2011 on the legal status of the Prosecutor General, prosecutors and other prosecution employees and the prosecution career (hereinafter: Legal Status of Prosecutors Act)[5] lay down rules on the different procedures concerning status (e.g. application procedure, the procedure in connection with evaluation, conflict of interest procedure, disciplinary procedure). Act CLXI of 2011 on the organization and administration of the courts (hereinafter: Courts' Administration Act)[6] lays down – among others – the rules applicable to the heads of the judiciary, the judicial bodies and their members.

On 31 March 2020, Government Decree 74/2020 (31 March) on certain procedural measures applicable during the period of state of danger (hereinafter: Procedural Measures Decree)[7] was published. It contained specific provisions concerning the judicial system during the state of danger in order to guarantee the continuous functioning of the administration of justice. The temporal scope of this Decree was limited to the period of state of danger.

The Procedural Measures Decree provided for an extension of definite appointments until the measures and procedures necessary for indefinite appointment (or the extension of definite appointment) are completed after the end of the period of state of danger.

In connection with the time limit for the performance of a procedural act relating to launching a call for applications for the position of a judge expiring during the period of state of danger according to the Procedural Measures Decree such procedural acts shall recommence on the first day following the end of the period of state of danger. In a pending tender for the position of a judge that may not be conducted during the period of state of danger, the next procedural act shall be performed after the end of the period of state of danger. The starting day of the time limit set for the performance of the procedural act shall be the day following the end of the period of state of danger. The state of danger should not hinder the functioning of the judiciary; therefore, the term of office of a member of a body elected for a fixed period, should it expire during the period of state of danger, is extended until a new member is elected immediately following the end of the state of danger. The Procedural Measures Decree contains similar provisions in case of public prosecutors.

These rules have ensured the continuous functioning of the justice system; however, they did not alter the safeguards for the independence of judges.

In crisis situations, such as the COVID-19 epidemic it is crucial to ensure the possibility of initiating proceedings on the one hand, and continuing pending proceedings on the other, while keeping the number of procedural acts that require personal contribution to a minimum in all of the proceedings and excluding such acts completely, where possible.

[4] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139703.377416
[5] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139717.377296
[6] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139695.377293
[7] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=218769.383443, for official English translation, see: http://www.njt.hu/translated/doc/J2020R0074K_20200601_FIN.pdf

Special procedural rules allowed for a more extensive use of written communication, but the Procedural Measures Decree also supported the use of modern communication tools for conducting procedural acts requiring direct oral contribution. The rules ensured the possibility not only of accessing the electronic communications network as regulated by the relevant procedural Codes (remote hearing), but also of conducting hearings and making statements by means of widely known and used platforms suitable for identification.

In order to facilitate the enforcement of the rights of the parties, the Procedural Measures Decree clarified that time limits, for both the courts and the parties, continue to run during the period of state of danger. The only exception is where the procedural act in question cannot be carried out in writing or by electronic means, which brings the proceedings to a halt. Except for such procedural acts, the court had to conduct all other procedural steps and perform the evidentiary procedure. Only procedural acts requiring personal contribution that cannot be carried out otherwise may constitute an obstacle to the proceedings, and consequently, the period until the removal of the obstacle or the end of the state of danger is not to be calculated into the relevant time limit.

The starting point of the Procedural Measures Decree was that, as a general rule, procedures may be initiated and conducted even during the state of danger. However, if there is an obstacle to the initiation or conduct of the proceedings, both the time limit for initiating the procedure and the time limit for performing the next procedural act shall recommence from the day following the end of the period of state of danger.

The Procedural Measures Decree provided for derogations from the provisions of the Court Administration Act to suspend client reception on the courts' premises, as well as the so-called 'Day of Complaint', in order to avoid personal contact with a view to protecting health.

During the state of danger, the President of the National Office for the Judiciary facilitated the operation of the courts in his presidential decisions, and the Administrative and Civil Chambers of the Curia facilitated the uninterrupted functioning of the courts and the judiciary in their collegiate opinions.

The above described rules ensured the proper review of administrative decisions during the state of danger; in case of legislative measures relating to COVID-19, the Constitutional Court carries out constitutional review as described above. (Several cases are pending or already adjudicated in this regard.)

The measures adopted in respect to the judiciary recognize the crucial role of an independent judiciary in emergency situations and ensure the right to take proceedings before a court on questions relating to the lawfulness of emergency measures.

2. Could you elaborate on plans to address structural issues identified by European Court of Human Rights judgments, e.g. in cases Baka (2016, freedom of expression of judges) and Gazsó (2015, excessive length of civil and criminal proceedings and absence of effective remedies)?

In the case of BAKA v. Hungary, the European Court of Human Rights found a violation of the freedom of expression of the applicant, former President of the Hungarian Supreme Court, on account of the premature termination of his mandate on 1 January 2012 – i.e. three and a half years before its normal date of expiry – as a result of his criticisms of legislative reforms expressed publicly in his professional capacity (Article 10). The Court also found a violation of the right of access to a court on account of the lack of any form of judicial review in this respect (Article 6 § 1).

Firstly, it shall be emphasized that there is no basis in generally accepted international standards to require the establishment of domestic judicial or constitutional review of constitutional-level legislation and the Grand Chamber's judgment does not contain any provisions that could be interpreted to this effect.

The assessment of the Venice Commission on the review of constitutional amendments by constitutional courts concludes that this is a rare feature of constitutional jurisdiction and that "such a control cannot therefore be considered as a requirement of the rule of law."

Secondly, the impugned measures in the cases of Baka resulted from one-time constitutional reform, encompassing changes also in the competences of the supreme judicial body. There are not any structural problems in this field.

According to the European Convention on Human Rights, the Committee of Ministers is responsible for the execution of the judgments of the Court. The Baka case is under enhanced supervision. The Government cooperate with the Council of Europe and submit action plans regularly.

The excessive length of judicial and related proceedings is a complex problem, and it needs a comprehensive solution. As far as prevention is concerned, the solution includes substantive and procedural legislation, effective administration and organisation of courts as well as allocating sufficient budgetary and human resources.

Several elements of the solution are already in place. A new Code of Civil Proceedings (Act No. CXXX of 2016)[8] entered into force on 1 January 2018. It is expected to accelerate civil proceedings by introducing a double-phase procedure before first-instance courts in which the trial phase is preceded by a preparatory phase aimed at clarifying the scope of the case and fixing the claims of the parties. The Code of Administrative Proceedings (Act No. CL of 2016)[9] now provides for an automatic compensation system if administrative authorities fail to adopt decisions within the legal time-limit. The Code of Administrative Court Proceedings (Act No. I of 2017)[10] entered into force on 1 January 2018. The most important provisions which are expected to contribute to the timely conclusion of administrative proceedings are the ones relating to default judgments in cases when the administrative authorities fail to observe time-limits for their decisions. A new Code of Criminal Proceedings (Act No. XC of

[8] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=198992.377344, for official English version see: http://njt.hu/translated/doc/J2016T0130P_20200101_FIN.pdf

[9] See text at http://njt.hu/cgi_bin/njt_doc.cgi?docid=199170.362806, and the official English translation at: https://njt.hu/translated/doc/J2016T0150P_20190710_FIN.pdf.

[10] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=200732.377426, and the official English translation at: https://njt.hu/translated/doc/J2017T0001P_20180101_FIN.pdf.

2017)[11] entered into force on 1 July 2018. It is expected that the enhanced rights of the defence in the course of the investigation will also contribute to the expediency and effectiveness of the proceedings. At the trial phase, a preparatory hearing is held to fix the scope of the case and, in order to prevent prolonging tactics, new motion for evidence can thereafter be submitted only in exceptional circumstances.

There will be more room for holding trials in absentia or hearings without the presence of the defendants. At the appeal stage, the reformatory power of the appeal court will be strengthened.

The 2018 edition of the report by the European Commission for the Efficiency of Justice also confirms that in addition to legislative activities, administrative and organisational measures to enhance the efficiency of justice have also been successful. The disposition time for civil and commercial, criminal and administrative cases is well below average in Hungary on all levels. Clearance rate in all branches is close to or over 100%. Without a doubt, the once systemic deficiencies in the Hungarian judicial system with excessive length in proceedings and an accumulating backlog are no longer present. The EU Justice Scoreboard 2019 shows similar positive results (which are described in our written input).

At the moment, there are about 70 pending cases related to excessive length of procedures against Hungary before the Court. Last December, this number stood at 200. This is also a clear sign that effective steps have been taken to reduce the caseload of the Court in this matter.

3. Have there been any recent developments in addressing the recommendations of the GRECO 4th evaluation round report?

In line with the international commitment within the framework of the Council of Europe, Hungary has assessed the recommendations of GRECO in details and undertook the necessary modifications in all relevant fields. We presented our arguments at several fora and they are enshrined in the relevant GRECO documents.

In connection with the recommendations of GRECO, in December 2019, the Parliament adopted amendments to the laws on the functioning of parliament and the status of its members. These amendments (which have entered into force on 1 February 2020)[12] list the rights an MP may not exercise in the event of a conflict of interest, for reasons of legal certainty and clarify that the Member shall inform the Speaker of the cause of incompatibility or conflict of interest without delay after it occurs or he learns of it. These amendments are in line with GRECO's recommendation that appropriate measures should be taken to ensure effective supervision and enforcement of the existing and yet to be established rules on the conduct, conflicts of interest and interest declarations of members of parliament and that adequate and proportionate sanctions be introduced to that end.

In case of the other recommendations, which are classified as not implemented, the Hungarian authorities found that the proposed change would run contrary to other requirements (e.g. in case of immunity of judges the limitation of immunity would appear to be a setback in the level of independence of judges) or is otherwise unnecessary (e.g. in case of secondment of judges, where the safeguards and the practical experience does not underline any need for amendment).

[11] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=202672.377060

[12] See current consolidated text of Act XXXVI of 2012 on the National Assembly at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=148174.383587

As the ratio of not implemented recommendations does not stick out in EU comparison, the unimplemented GRECO recommendations cannot be considered as indicators of any structural problem as regards the independence of the judiciary, corruption prevention or rule of law in general.

4. As regards the written contribution on asset declarations, can you outline how many cases have been registered when sanctioning measures have been enacted in view of the failure of the requested person to declare their assets or to declare false or deficient information? Some declarations are in written format and some digitalized. Is there a centralized digitalized system in place?

As described in our input document, several groups of officials have to submit asset declarations.

Not only MPs, members of the Government, but a significant group of public officials and even judges are obliged to submit such declarations.

However, the legal status rules for all these groups are highly divergent. Factors, like independence of judges, protection of privacy in case of lower ranking public officials and the self-regulatory powers of the Parliament etc. have to be taken into account. The asset declaration obligations shall be proportionate with these interests.

That is why the rules on format of declarations, publicity, ways of sanctioning are divergent in case of different sectors. The establishment of a centralized digitalized system does not seem to be adequate for the same reasons.

The number of sanctioning measures related to asset declarations itself is not the primary indicator when examining the system of asset declarations. This obligation serves the fight against corruption through transparency (e.g. in case of MPs) and they contribute to the prevention or detection of more serious crimes. Thus it is rather the personal scope, the content and the regularity that can give insights into the efficiency.

5. Are there codes of conduct in place for elected officials at central or local level and are there any statutory provisions that could trigger dissuasive sanctions in case of unjustified wealth or conflict of interest? Are there plans to criminalise vertical collusion in public procurement between a public authority and one of the bidders?

The Act on the Parliament and the Act on local self-governments contain detailed provisions for the legal status of elected officials. These rules are regularly assessed, and fine-tuning is carried out, if necessary, as referred to e.g. under Point 3.

Chapter XXVII of Act C of 2012 on the Hungarian Criminal Code[13] provides for corruption crimes. Furthermore, the Hungarian Criminal Code provides for the further crimes considered by the general public to be related to corruption crimes, not in the chapter dedicated to corruption crimes, including abuse of authority/office, embezzlement, economic fraud, misappropriation of funds, budget fraud, money laundering, agreement restricting competition in public procurement and concession procedures.

In our opinion, these provisions ensure an all-round criminal law framework; further modifications do not seem to be necessary.

[13] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.381189, official English translation at: https://njt.hu/translated/doc/J2012T0100P_20200331_FIN.PDF

6. Could you elaborate on the effectiveness of the system for access to public information?

As described in our input document, Act CXII of 2011 on the right to informational self-determination and on the freedom of information[14] safeguards the right to access to public information in line with international and European standards.

Data of public interest shall be made available to anyone upon a request presented orally, in writing or by electronic means.

The organ performing public duties and processing the data of public interest shall fulfil the request for access to such data as soon as possible, but not later than 15 days from receiving the request. If a document containing data of public interest also contains any other data that the requesting party may not access, the data that must not be accessed shall be made unrecognisable on the copy. Data shall be supplied in a comprehensible form and in the format and via the means requested by the requesting party, provided that the organ performing public duties and processing the data is capable of fulfilling such a request without disproportionate difficulties.

The InfoAct provides only a very limited opportunity to restrict public access to data of public interest (e.g. with regard to confidential information, protection of decision-making process). All of these restrictions are in line with applicable international norms, and are necessary and proportionate in a democratic society. The burden of proof for the lawfulness and the reasons for refusal shall lie with the data controller.

Article VI paragraph (4) of the Fundamental Law states that the application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by a cardinal law. The Info Act contains all relevant rules on the composition and functioning of the National Authority for Data Protection and Freedom of Information (hereinafter: NAIH). Any person shall have the right to initiate an inquiry with the Authority by submitting a notification of an alleged infringement relating the processing of personal data or concerning the exercise of the right to access data of public interest or data accessible on public interest grounds, or of an imminent threat of such an infringement.

This framework properly ensures the effectiveness of the system for access to public information.

7. How would you assess the public consultations in the process of decision-making? Can you please provide data on number of input received, results of the input (accepted/rejected) and length of the public consultations? Would you have some examples? Where and how can the public access this information? Bills proposed by Members of Parliament are not subject to public consultations. Is the government considering making this a possibility?

Hungarian law offers a complex framework of consultations. The publication on the website of the Government – and later on the website of the Parliament – ensures a high-level of transparency and accessibility. Strategic partnerships and the formation of working groups related to significant pieces of legislation also ensure the proper involvement of relevant stakeholders.

[14] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139257.381624, and the official English translation at: http://www.njt.hu/translated/doc/J2011T0112P_20200101_FINrev.pdf

Although there is no legal obligation for the Government to publish regular reports on regulatory reforms, the preliminary directions of the most important legislative reforms are usually published in a decree of the Government. In case of certain reforms of general social interest (e.g. Civil Code) working groups are established, which also report on their activities. If a certain sector-specific law prescribes the obligation the carry out consultation with a given organisation, the failure might result in the formal unconstitutionality (invalidity) of the norm, as concluded several times by the Constitutional Court. Thus the system can be seen as efficient.

As far as concrete numbers are concerned, it shall be reiterated that the consultation process and the impact assessment is the responsibility of the minister concerned (in line with international models). Thus, there are no uniform statistics on the deadlines or impact assessments. Examples for summaries are available at the website of the Government.

Regarding public consultations in case of bills proposed by Members of Parliament, the following shall be emphasized. The Fundamental Law stipulates that the President of the Republic, the Government, any parliamentary committee or any Member of the National Assembly may initiate Acts. Due to the highly divergent constitutional status of these persons, institutions, a uniform system of preparation of legislative proposals does not seem to be adequate. Furthermore, according to the Fundamental Law, the submission of bills is a basic prerogative of MPs. The fact that there are no procedural conditions in this regard, ensures the efficient implementation of this right. A formalized public consultation scheme would cause unnecessary administrative burden for MPs, especially in case of smaller parliamentary groups or independent MPs.

8. How would you assess collaboration with external stakeholders, including civil society, for example through the Thematic Working Groups? Can you please provide us with details of how often these working groups have met over the last years and who the members are? Would you have other examples?

The Government established the Human Rights Working Group in its decision adopted in February 2012 (Government Resolution 1039/2012 (II.22).) with the main purpose of monitoring the implementation of human rights in Hungary, conducting consultations with civil society organisations, representative associations and other professional and constitutional bodies as well as of promoting professional communication on the implementation of human rights in Hungary.

During its constitutive meeting held in 2012, the Working Group decided to establish the Human Rights Roundtable, which currently operates with 71 civil organisation members and further 40 organisations take part in the activities of the thematic working groups with consultative status. The Roundtable holds its meetings in 11 thematic working groups; each of them is intended to deal separately with legal and practical problems of and sectoral political proposals for vulnerable groups of society.

The thematic working groups are led by appointed State Secretaries or Deputy State Secretaries; the Working Group members are government agencies, civil society organisations, representative associations and professional bodies. The following thematic working groups operate within the framework of the Human Rights Round Table.

Thematic Working Group	**Chair**
Thematic Working Group Responsible for Other Civil and Political Rights	Deputy Minister of the Ministry of Justice
Thematic Working Group Responsible for the Rights of Persons Living With Disabilities	State Secretary for Social Affairs, Ministry of Human Capacities
Thematic Working Group Responsible for the Rights of Children	State Secretary for Family and Youth Affairs, Ministry of Human Capacities
Thematic Working Group Responsible for Homeless Affairs	State Secretary for Social Affairs, Ministry of Human Capacities
Thematic Working Group Responsible for the Rights of the Elderly	State Secretary for Family and Youth Affairs, Ministry of Human Capacities
Thematic Working Group Responsible for LGBT Rights	Deputy Minister of the Ministry of Justice
Thematic Working Group Responsible for Refugees and Migration	State Secretary for Public Administration, Ministry of Interior
Thematic Working Group Responsible for National Minority Affairs	Secretary for Churches and National Minorities, Prime Minister's Office
Thematic Working Group Responsible for the Rights of Women	State Secretary for Family and Youth Affairs, Ministry of Human Capacities
Thematic Working Group Responsible for Roma Affairs	Deputy State Secretary for Social Inclusion, Ministry of Interior
Thematic Working Group Responsible for the Freedom of Speech	State Secretary for Cooperation in European and International Judicial Affairs, Ministry of Justice

Since 2013 the thematic working groups have had 138 meetings. The Working Group had fourteen meetings.

The thematic working groups provide an opportunity for a dialogue with civil organisations and for the approximation of government and civil views. Apart from the members, other organisations have also been invited in order to enable the participants of the meetings to discuss the same topic from several aspects. Thematic Working groups also held joint meetings which were not only attended by representatives of the civil organisations and the Government, but also of the National Police Headquarters, the Prosecutor General's Office and the National Office for the Judiciary.

In more general context: according to Act CXXXI of 2010 on public participation in the drafting of legislation,[15] the minister responsible for drafting the legislation may decide to form a "strategic partnership" and hold working groups or agree on other forms of consultation with the partners. E.g. the Ministry of Justice concluded agreements of strategic partnership with the Association of Lecturers of Private Law, Hungarian Association of Competition Law, AmCham Hungary, Hungarian Association of Judges, Joint Venture Association, Hungarian-French Chamber of Commerce and Industry etc.

There are several examples for the establishment of working groups as regards preparation or assessment of legal regulation as well. Recently, the Ministry of Justice established the Family Law Working Group, which keeps contact with more than 60 civil society organisations. The working group concerning the implementation of DSM Directive and SatCab2 Directive held 6 thematic meetings with the participation of more than 50 stakeholders in November and December last year. The Committee responsible the preparation of the new act on private international law held 30 meetings between June 2015 and February 2017 and was composed of more than 15 acknowledged legal professionals from several fields.

These examples adequately demonstrate the proper functioning of collaboration with external stakeholders.

9. Has Hungary organised a systemic review of its legislation and enforcement mechanisms as recommended in the guidelines attached to the 13 April 2016 Council of Europe Committee of Ministers Recommendation on the protection of journalism and safety of journalists and other media actors? Has Hungary put in place specific legislative measures regarding the protection of journalism and safety of journalists in line with the Recommendation? If so, has Hungary put in place administrative capacities to enforce these, notably as regards combating impunity for perpetrators of crimes against journalists and protection of journalistic sources and whistle-blowers?

Law enforcement authorities are obliged by the relevant laws (Act on the Police, Criminal Procedure Code etc.) to carry out their duties without discrimination. This applies to crimes committed against journalists as well. In case of public crimes, the authorities have to start criminal proceedings ex officio (they have no margin of appreciation).

In case of crimes, where the journalist is attacked due to, in connection with his activity as a journalist, this can be taken into account as an aggravating circumstance, where relevant (as a base reason or purpose).

Journalists shall have – with limited exceptions – the right in accordance with the relevant legislation not to reveal in court and administrative proceedings the identity of any person from whom they receive information relating to their activities in providing media content, as well as they have the right to refuse to surrender any document, written instrument, article or data medium that may reveal the identity of the source of information. Secret surveillance measures shall not be applied to discover such sources. The scope of exceptions is narrow.

Such a phenomenon as the impunity for perpetrators of crimes against journalists does not exist in Hungary. There are no provisions or practices that would result in impunity for such crimes. If the question refers to cases where the crime is related to a person entitled to

[15] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=132784.366975.

immunity, it shall be stressed that immunity is not an absolute privilege; when the person's mandate terminates, he or she is no longer protected by immunity, a proceeding can be launched against him or her and he or she can be called to account.

As far as the protection of whistle-blowers is concerned, the FRA Annual Report from 2019 acknowledged that at that time Hungary was among the few Member States who had comprehensive laws protecting whistleblowers. The Commission and the European Parliament also confirmed this.

10. Could you elaborate on the results of the evaluation of the previous Anti-Corruption strategy? How will the new Strategy take on board the lessons learnt, in particular as regards to risk analysis, comparative data of risk factors? Further, what is the timeline of the launching of the new Anti-Corruption Strategy?

The objectives of the National Anti-Corruption Programme (2015-2018) ('NAP') and other tasks set out in the action plans and undertaken in connection with them have contributed to the consolidation of the anti-corruption fight in Hungary.

In recent years, Hungary has taken comprehensive anti-corruption measures, such as stricter criminalisation of corruption offences. All public bodies have strengthened their anti-corruption activities (investigating authorities, State Audit Office, Public Procurement Authority, Government, etc.). Anti-corruption measures will continue in the public sector and throughout the state administration in the future as well. The Government remains ready to provide all support for anti-corruption activities to the police, the Prosecutor's Office, the courts. The Government has also launched a significant increase of remuneration for judges and prosecutors. The Government also intends to broaden the cooperation of public bodies in anti-corruption. Among the Government's planned measures it is strives to encourage joint training in anti-corruption for judges, prosecutors and the police in cooperation with the Prosecutor General's Office and the National Office for the Judiciary.

During the implementation of the NAP, a wide range of forms of measures were applied, from value-based methods to strict rule-based processes, such as legislative actions. As a novelty of the NAP, it has addressed a broad spectrum of society through its anti-corruption measures: from students in the 2nd grade to the businesses. The methods and tools used were tailored to the specificities of the target groups.

In the implementation of the NAP, there has been a strong need from the employers of public administrations to organize mind-setting training courses for their staff, to understand the potential of developing individual and organisational integrity, and to be able to implement and operate the integrated risk management system on the basis of their legal obligation with staff who can identify with its spirit.

In the fight against corruption, the most important aim is to preserve the achievements already reached at and to continue to develop the attitude shaping with tried and tested training methods, so that as many social groups and organisations as possible become committed to integrity-based actions. For the future, it is necessary to further promote the published methodological guidelines, the attitude-shaping trainings, the high-quality trainings, but also open up to areas that have not been included in the NAP.

All available means should be used to further reduce the risks of corruption in Hungary and to reduce the latency of corruption offences. The main elements of previous anti-corruption strategies were based on compliance-based intervention and envisaged a revision of the legislative environment and a reconsideration of some legal institutions. In view of recent years, legislation is no longer of such a major role in the Strategy, as the effectiveness of the instruments provided in the recently established substantive and procedural codes is appropriate on the basis of the information used in the legislation. In view of this, the new Strategy places greater emphasis on identifying and significantly reducing the risk factors inherent in the functioning of organisations, in particular public administration, and on the use of the technological potential of e-administration to combat corruption. The objectives set out in the NAP, and other tasks envisaged in the action plans, have created the basis for strengthening the prevention of corruption in Hungary.

The new strategy, which will be published soon, incorporates a number of measures related to risk management, building on previous measures and building on their experience. Examples are:

- IT support for the internal risk management activities of each body.
- assessment of the risks of corruption in public sector jobs periodically.

The NPS carries out the continuous assessment of the integrity and corruption risks of public administrative organizations and the corruption situation on the basis of the relevant Government Decree. During the implementation of the NAP, the jobs and types of jobs of public administration bodies exposed to increased corruption risks were mapped, the results of which helped to select of subjects for integrity testing while also carrying out the documented risk analysis required by the prosecution (predisposition). All this requires the registration of the current table of organization and the continuous collection of job-related data (including job-related conflict of interest rules, the obligation to make asset declaration).

Together with the repetition of the previous risk mapping of jobs - ensuring timeliness - it is expedient to review, re-measure and, if necessary, expand the risk factors used in the corruption risk (so-called weighted) analysis of the entire public administration job system. As the integrity of the organization is strengthened if the head of the organization is aware of the risks inherent in the official activities of his employees, it is worth publishing the results online, as the organization can take various risk management measures to reduce risks. The quality of the data provided by the organization is also expected to improve.

- Management of integrity risks related to the preparation and execution of significant publicly funded investments.
- Reducing the risks of border police posts.

Implementation of the new strategy will begin as soon as it is adopted and published.

11. Hungary's written contribution refers to the application of integrity tests (p. 11, para 3). Can you elaborate on the type of officials that generally covered by this type of testing? What impact do they have on the evolution of the situation as regards the number of corruption cases detected and investigated within the relevant categories of officials?

The range of persons who may be subject to the integrity test that can be carried out exclusively by the NPS is defined in Act XXXIV of 1994 on the Police.[16]

a) a government official and a government case manager may be subject to an integrity check who is entitled to prepare a decision, make a decision or exercising control:
   - in matters relating to nationality proceedings, immigration proceedings, infringement proceedings, concession proceedings, expropriation proceedings, building authority proceedings, occupational safety and health proceedings, labour inspections, property registration proceedings,
   - during a public procurement procedure, in the performance of their duties over budgetary or other funds, as well as for the management of public assets and allocated public funds, chapter-managed appropriations,
   - in the procedure for deciding on individual State subsidy,

[16] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=21269.377252

- in examining or accounting for the use of State subsidy, in matters related to the issuance of an identity card, official card certifying address, driving license, passport, Hungarian identity card, Hungarian identity card for relatives, registration certificate, motor vehicle registration certificate, official certificate for good conduct and registration and cancellation of individual entrepreneurial activity.

b) the professional staff of the police, the Parliamentary Guard, the penitentiary organization, the professional disaster management body, the National Tax and Customs Authority (hereinafter: NAV), the Constitution Protection Office (hereinafter: AH), the National Security Service and the law enforcement agencies, members of the professional staff assigned to the Counter-Terrorism Information and Crime Analysis Centre (hereinafter: TIBEK).

c) Government officials, civil servants, law enforcement administrative staff, members of the judicial expert institution as legal staff, as well as employees of the professional disaster management body, the penitentiary organization and the body established for general police duties.

d) Government officials, civil servants, law enforcement administrative employees of the ministries responsible for the supervision of the bodies defined above, as well as for law enforcement and public administration data management, financial and economic supply, training and education organs of these bodies.

e) The cabinet established by the Government for the purpose of national security on the basis of the Government Administration Act, as well as the members of the body assisting its work, who do not qualify as senior political leaders, as well as persons authorized to replace members and perform secretarial duties.

The person concerned shall be informed of the cases that have been detected and resulted in criminal proceedings and final court convictions, by means of the information specified by law. Through the media, information is provided to the whole of society, including the entire protected staff. Convictions will be sent to the heads of the bodies protected by the NPS in accordance with the relevant legislation, where the staff concerned will be informed. In connection with integrity tests, protected personnel will be informed at crime prevention lectures.

Detailed statistics on integrity tests:

	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Completed integrity tests	**163**	**124**	**159**	**212**	**256**	**214**	**244**	**323**	**270**
The person concerned acted lawfully (chose the right path)	162	116	146	201	230	188	227	314	263
Report to the Police (the person concerned chose the wrong path)	1	8	13	11	26	26	17	9	7
	0,6%	6%	8%	5%	10%	12%	7%	2%	2%

The figures show that although the number of integrity tests is increasing, the number of people who take illegal action or ask for or accept money from a citizen / client in order to refrain from taking action is decreasing.

The legal institution of integrity tests and the procedures completed with penalties have a significant deterrent effect primarily on the protected staff and more broadly, on the whole society.

12. Would you consider the current allocation of resources in your service and specialisation of officers in relation to corruption offences as appropriate?

We consider the allocation of resources provided to the National Protective Service in connection with the elimination of corruption offenses to be appropriate and efficient. The division of the directorates of the NPS ensures that the protection of all protected bodies is provided by officers specialized in the given protected staff.
The Government provides the financial resources for the operation of the NPS in full, on the basis of which they can efficiently perform the internal crime prevention and crime detection tasks specified by law.

Only staff with high knowledge, primarily in crime prevention and detection, may be included in the NPS staff. A basic expectation is at least five years of service in the criminal field.

In addition, it is important that each member of staff has additional special expertise or skills (such as technical, economic, financial, tax administration knowledge, special driving experience) that are required to perform protecting duties more effectively.

13. Could you please provide an overview of the cooperation with other bodies involved in the fight against corruption (e.g. Financial Intelligence Unit, prosecution service)?

Between 2016 and 2018, the NPS developed and held a series of workshops involving about 553 specialists, including 110 prosecutors, and the police officers (partly the NPS) and the prosecutor's office with the participation of its consortium partner, the International Training Center.

On the one hand, the novelty of the training was given by the fact that NPS attached the frontal lectures, which also included several international lecturers, to the process of a virtual investigation, which were followed by small-group processing of the topic per module. On the other hand, police and prosecutors could “investigate” together, thinking together during a series of exercises.

The training provided an opportunity for the participants in the investigations to exchange experiences and information, and for cooperation between different partners. The long-term goal of the training was to develop a common approach and legal practice with regard to the bodies involved in the prevention, detection and investigation of corruption. The training series ended in 2018 with a 107-person conference that included frontal lectures and podium discussions. 19 of the conference participants were prosecutors.

In the vast majority of corruption offenses detected by the Departments of the NPS, the prosecution conducts the investigation, during which the NPS is asked to assist. NPS works closely with NAV's criminal authorities in detecting budget fraud, because according to the experience, perpetrators often seek to influence the proceedings initiated by NAV's criminal authorities, as well as during tax proceedings.

The work of NPS in these cases runs in parallel and is essential for success. The NPS obtains information necessary to support the specific investigations through requests (e.g. to NAV's Financial Intelligence Unit (hereinafter: NAV-FIU) and banks).

There is close professional co-operation between the NPS and NAV in connection with the development of trainings for integrity purposes, in the framework of which a joint train-the-trainer event took place in 2018. In the action against corruption, co-operation with domestic counterparts is ongoing, based on bilateral co-operation agreements in addition to the general legal framework.

The most important task is to strengthen the process of ensuring that the competent bodies provide each other with up-to-date information, and that the flow of information is continuous and reciprocal. In this way, the available personal and material capacities can be used in a practical and coordinated manner with the partner bodies, and the information necessary for the success of the cases can be shared in a timely and complete way.

The information related to the actions falling within the competence of NPS is sent by the partner authorities in order to carry out the necessary procedure, during which the co-operation with the body sending the information is continuous. Information on acts falling within the competence of another body (e.g. NAV, Counterterrorism Centre, AH, Police) will be forwarded to the person entitled to the procedure. In the course of its investigations into corruption, NPS constantly makes data requests and data transfers to the partner authorities (e.g. NAV-FIU, banking GIRO system, land register data, TIBEK, Military National Security Service , etc.). If an investigation order is initiated, NPS will assist in the use of covert tools in criminal proceedings at the request of the prosecutor's offices.

14. Could you elaborate on the state of play of access to different databases, access and sharing information as well as the use of technology in order to better mitigate corruption?

The NPS carries out its crime prevention and detection activities in accordance with Act XXXIV of 1994 on the Police and Act XC of 2017 on Criminal Procedure. Both laws regulate in detail the data request possibilities and their process. Some of the databases and registers listed in the law can be accessed directly by the NPS, and others by contacting the body managing the given database and register.

The sharing of information with some law enforcement and national security bodies is two-way, so the partner bodies can also turn to the NPS with a request for data, depending on the purpose.

In its procedures for preventing and detecting corruption, NPS collects a wide range of data from statutory repositories. Security officers have personal access to the various databases, the data content of which is mostly processed in the framework of independent analytical-evaluation work during a given secret information gathering, preparatory procedure or integrity testing.

Just as criminals strive to use new technical tools when committing crimes (e.g. internet communication, use of new types of financial services), NPS always strives to use these novelties and new technologies in its work, which can significantly improve the effectiveness of the detection work.

The prevention, detection and suppression of corruption is supported by the IT-based registration systems of various authorities and partner bodies and service providers (eg: personal registers, real estate registers, financial data, criminal records, investigative

authorities' procedural data, call records, analyst databases) and other opportunities capable of processing significant databases based on them (e.g., analytics programs, image recognition services, etc.). Covert technical tools based on new technologies available from the National Protective Service and civilian national security services also make a significant contribution to the prevention, detection and repression of corruption.

15. How is professionalism and neutrality of the administration promoted in the civil service? (Would you have some examples, like a code of ethics?)

This issue is regulated by the Act CXCIX of 2011 on Civil Servants. Pursuant to Section 76 (1) (a) of the Act, a government official is required to perform his or her duties impartially and fairly. Section 83 (1) lists the principles of impartiality and professionalism among the principles of professional ethics applicable to government officials. Pursuant to Section 85 (1) and (4) (b), a government official may not be a local government representative of a local government, of the local government operating in the area of competence of the public administration body employing him or her, nor may he or she hold office in a party with the exception of participation in parliamentary, European Parliament or local elections as a candidate for public office.

Similar conflict of interest rules are contained in Act CXXV of 2018 on Government Administration Act, which discusses the principle of professionalism in detail among the general requirements and principles of conduct (Section 65).

On 21 June 2013, the National Assembly of the Hungarian Civil Servants Corps adopted the Code of Professional Ethics for Government Officials, which entered into force on 1 September 2013. From 1 January 2020, a new Code of Professional Ethics is in force, but the text of which relies very heavily on its predecessor. The text of both codes of ethics contains the ethical principles of professionalism and impartiality and interprets them in detail. In addition, both contain the rules on professionalism and neutrality set out in Recommendation Rec (2000) 10 of the Committee of Ministers of the Council of Europe on the content of a code of ethics for civil servants, adopted on 11 May 2000, and the procedural rules for enforcing its content.

In Hungary, law enforcement agencies are part of the public administration. The issue is regulated by Act XLII of 2015 on the employment status of the professional staff of bodies performing law enforcement tasks. Pursuant to Section 102 (1) (b) of the Act, a member of the professional staff is obliged to perform his / her duties in connection with the performance of the service with the required expertise and impartially. Section 14 (1) lists impartiality and professionalism among the ethical principles of the law enforcement profession.

Pursuant to Section 108 (1), a member of the police staff may not be a member of a party or association serving party political purposes, may not establish a legal relationship with a foundation for such a purpose, may not participate in its work, perform political public service outside service - members of parliament, members of the European Parliament, except for the participation in the election of local government representatives and mayors, as well as representatives of nationality self-governments, as a candidate. Pursuant to Section 109 (2) and (6), a member of the professional staff may establish other employment-related legal relations only with a permit, but no permit may be granted if other employment-related legal relations, participation in a non-governmental organization or office endanger the service's impartiality and presents a risk of undue influence.

The Hungarian Law Enforcement Corps adopted the Code of Ethics for Law Enforcement on 28 May 2013, which entered into force on 27 June 2013.

16. How is stability of civil service ensured, independently of political changes?

According to the Hungarian legislation of the public service, the recruitment of civil servants is based solely on professional criteria, and it is not affected by political influence. The professional criteria are based on uniformly applicable conditions, and recruitment is predominantly by public competition, with equal opportunities. A strict professional, political and economic conflicts of interest policy is applied in the central and local government sector, and the employees' salary is guaranteed by law, which takes into account professional merits. The civil servants are obliged to attend regular vocational trainings, which contain integrity training as well. These rules guarantee the professionalism and the independence from any external influence in the public service.

The level of protection for civil servants is ensured: employers are required to fully justify their dismissal. The reasoning shall clearly specify the grounds for termination. The civil servant may request judicial review, if they feel that their rights were not respected during the process.

The new salary system in the government sector has implemented a supportive, fairer, merit-based system with a real opportunity for the younger generation to progress with their talent and performance as opposed to only seniority-based rigid remuneration system which takes limited account of the performance.