

Contributions of Hungarian NGOs to the European Commission's Rule of Law Report

May 2020



The contributions included in the present document on the rule of law in Hungary were submitted to the European Commission in the framework of the [targeted consultation](#) the European Commission launched in relation to its 2020 Annual Rule of Law Report. The document follows the [structure](#) and applies the headings and numbering of the European Commission's stakeholder consultation survey.

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The contributing organisations submitted their contributions separately, therefore, some individual submissions may at certain points diverge from this compilation. The above civil society organisations bear responsibility solely for the content of those chapters where they are indicated as authors.

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Contents

I. JUSTICE SYSTEM	4
A. INDEPENDENCE	4
B. QUALITY OF JUSTICE.....	18
C. EFFICIENCY OF THE JUSTICE SYSTEM	19
II. ANTI-CORRUPTION FRAMEWORK	22
A. THE INSTITUTIONAL FRAMEWORK CAPACITY TO FIGHT AGAINST CORRUPTION (PREVENTION AND INVESTIGATION / PROSECUTION)	22
B. PREVENTION	23
C. REPRESSIVE MEASURES.....	30
III. MEDIA PLURALISM	33
A. MEDIA REGULATORY AUTHORITIES AND BODIES	33
B. TRANSPARENCY OF MEDIA OWNERSHIP AND GOVERNMENT INTERFERENCE	35
C. FRAMEWORK FOR JOURNALISTS' PROTECTION	38
IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES	42
A. THE PROCESS FOR PREPARING AND ENACTING LAWS	42
B. INDEPENDENT AUTHORITIES	45
C. THE ENABLING FRAMEWORK FOR CIVIL SOCIETY	46
D. THE RIGHT TO VOTE AND TO STAND AS A CANDIDATE.....	49



I. JUSTICE SYSTEM

A. INDEPENDENCE

1. Appointment and selection of judges and prosecutors

1. According to the European Network of Councils for the Judiciary (“2019 ENCJ Survey”),¹ roughly half of the Hungarian judges agree that judges have been appointed other than solely on the basis of ability and experience during the last two years.

The National Judicial Office (“NJO”) puts out a call for applications to which any lawyer with a legal professional exam can apply. The applications are evaluated based on a detailed scoring system, points are assigned, and a ranking is set by the local judicial council (the local self-governing body of judges). The judicial council then forwards the top 3 applicants to the NJO President who should choose the top-ranking candidate, unless they have the approval of the National Judicial Council (the national self-governing body of judges) to do otherwise. The Minister of Justice, with Decree 14/2017. (X. 31.), without a meaningful consultation with the judiciary and judges’ associations,² modified the pointing system in a way that it **favours experience gained in the public administration**.

The judges interviewed for Amnesty International’s research conducted amongst Hungarian judges between November 2019 and January 2020 (“Amnesty Research”)³ confirmed that **the application system is distorted and for systemic reasons⁴ it is not guaranteed that the most qualified lawyers become judges**. A critical problem is that due to a vague legal provision, the law allows the **NJO President to declare the application procedure unsuccessful** even after applications were submitted⁵ without any external control, and these powers had been used by the previous NJO President. She was elected by the Parliament as a member of the Constitutional Court (“CC”) in November 2019 and consequently a new NJO President was elected on 10 December 2019. Nevertheless,

¹ European Network of Councils for the Judiciary, *Independence and Accountability of the Judiciary – ENCJ Survey on the Independence of Judges*, 2019, <https://tinyurl.com/y87jfg8u>, pp. 69–70.

² Magyar Bírói Egyesület [Hungarian Association of Judges], 14 November 2017, <https://www.mabie.hu/index.php/kozlemenyek/339-a-mabie-allasfoglalasa-a-biroi-allaspalyazatok-elbiralasanak-reszletes-szabalyairol-es-a-palyazati-rangsor-kialakitasa-soran-adhato-pontszamokrol-szolo-7-2011-iii-4-kim-rendelet-modositasarol>

³ Amnesty International Hungary, *Fearing the Unknown*, 2020, https://www.amnesty.hu/data/file/4871-final_fearing-the-unknown_report_amnesty-hungary_e1.pdf?version=1415642342

⁴ Amnesty International Hungary, *Fearing the Unknown*, 2020, Section 2.3.4.

⁵ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 20(1)

relevant laws were not amended and until the law is amended, this possibility can be abused by any NJO President in the future.

2. Despite international criticism, e.g. from the CoE Commissioner for Human Rights,⁶ on 12 December 2019, the Parliament adopted Act CXXVII of 2019 ("2019 Omnibus Act"), amending various legal provisions pertaining to the court system and the status of judges. **The 2019 Omnibus Act makes it possible for newly elected CC justices, and for those already on the bench, to become judges and even Kúria⁷ chamber presidents simply on their request. CC justices may be appointed to this judicial position "without an application process".** This rule raises concerns, since to become a judge, and especially a Kúria chamber president, certain skills and experience are necessary that a CC justice does not necessarily have.⁸ Several judges saw this possibility as concerning, since judges consider CC justices as political figures. Moreover, research⁹ has shown that the CC is an institution that has previously been packed with loyalists to the governing majority and has failed to resist direct or indirect political pressure in high-profile human rights related cases.

2. Irremovability of judges, including transfers of judges and dismissal

1. According to the Fundamental Law,¹⁰ judges may only be removed for a reason and in a procedure prescribed by the law. The respective law¹¹ details the grounds for removal. So-called service courts, comprising of judges elected by their peers, decide in disciplinary cases or if the judge challenges the court president's decision on their professional incompetence. However, reportedly, **some judges¹² have left the bench** as a result of recurring organisational changes and insecurity within the judiciary.

In 2012, new laws lowered the mandatory retirement age of judges from 70 to 62, affecting 229 judges.¹³ In November 2012, the Court of Justice of the European Union (CJEU) concluded¹⁴ that the law had violated EU norms on equal treatment in employment. In response, the legislature passed Act XX of 2013, which allowed the judges to request their reinstatement, however they could only reclaim their judicial administrative leadership

⁶ *The Commissioner urges the Hungarian Parliament to modify a bill affecting the independence of the judiciary*, 28 November 2019, <https://www.coe.int/en/web/commissioner/-/the-commissioner-urges-the-hungarian-parliament-to-modify-a-bill-affecting-the-independence-of-the-judiciary>

⁷ The highest judicial forum of Hungary.

⁸ Amnesty International Hungary, *Nothing ever disappears, it only changes*, November 2019, https://www.amnesty.hu/data/file/4721-nothingeverdisappearsitonlychanges_independenceofjudiciary_amnesty_hungary_20191119.pdf?version=1415642342

⁹ Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Analysis of the performance of Hungary's "one-party elected" Constitutional Court judges between 2011 and 2014, 2015*, http://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf

¹⁰ Fundamental Law of Hungary, Article 26(1)

¹¹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 89–90

¹² See: <https://www.valaszonline.hu/2019/02/05/keviczki-istvan-biro-hando-polt/>, <https://444.hu/2018/09/13/lemond-szepeshazi-peter-biro-a-hando-fele-igazsagszolgalatas-egyik-leghangosabb-kritikusa>.

¹³ Source: <https://web.archive.org/web/20130728050053/http://birosag.hu/media/aktualis/nyilatkozatot-tettek-2012-ben-felmentett-birak>.

¹⁴ *European Commission v Hungary*, Case C-286/12, Judgment of the Court (First Chamber), 6 November 2012, ECLI identifier: ECLI:EU:C:2012:687

positions if those had not been filled in the meantime. Out of the 229 judges who were unlawfully dismissed, 92 were judicial leaders. Of these, 55 were Presidents of Chamber, 17 of whom chose to return, and so were reinstated to their former positions. Out of the 37 judges who had “real” administrative leadership positions earlier, eventually only four got reinstated, so as an ultimate result of the law that was found to be in breach of the EU non-discrimination acquis, **close to 90% of the most experienced judicial administrative leaders over the age of 62 were removed from the system.**¹⁵

Act XX of 2013 made it a general rule that if a judicial leader is dismissed unlawfully, and their reinstatement is subsequently ordered by the court deciding on the unlawfulness of the dismissal, they can only be reinstated into their leadership position if that has not been filled by someone else in the meantime. This is an important loophole in the system, as it makes it **possible to replace court leaders at the price of the state losing some money.**

2. Transferring judges to other courts or the secondment of judges to fulfil leadership positions has happened regularly. According to the 2019 ENCJ Survey, 9% of Hungarian judges agreed with the statement “I was moved to another function, section or court against my wishes”,¹⁶ which was the highest proportion amongst the 25 countries surveyed.

By law, judges may be seconded to another court only for two reasons: for professional advancement and to manage the workload at the courts.¹⁷ The National Judicial Council (“NJC”) found in 2018 that the previous NJO President unlawfully seconded judges to courts to fulfil leadership tasks.¹⁸ Also, judges reported that a regional court of appeal judge was seconded to be a college leader at the Metropolitan Regional Court. **The law still allows the NJO President to second judges for such unlawful purposes, and there is no effective remedy against it** except for the NJC requesting the removal of the NJO President from the Parliament.

3. Promotion of judges and prosecutors

In the 2019 ENCJ Survey,¹⁹ 56% of judges agreed that judges have been promoted other than on the basis of ability and experience.

The NJO President appoints the (deputy) county court presidents, the (deputy) regional court of appeal presidents, and the college leaders. (Colleges are professional groups of judges at most courts.) County court presidents appoint lower lever court leaders. After candidates file an application, judges’ plenary meetings hear them and express their opinion

¹⁵ Sources: National Judicial Office, 8 May 2013, <https://web.archive.org/web/20130728050053/http://birosag.hu/media/aktualis/nyilatkozatot-tettek-2012-ben-felmentett-birak>; response nr. 14.026-/2013.OBH of the National Judicial Office of 5 December 2013 to the Hungarian Helsinki Committee’s FOI request.

¹⁶ European Network of Councils for the Judiciary, *Independence and Accountability of the Judiciary – ENCJ Survey on the Independence of Judges*, 2019, p. 77.

¹⁷ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 31(2)

¹⁸ Documentation of the National Judicial Council’s meeting on 2 May 2018, <https://orszagosbiroitanacs.hu/2018-05-02/>

¹⁹ European Network of Councils for the Judiciary, *Independence and Accountability of the Judiciary – ENCJ Survey on the Independence of Judges*, 2019, p. 71.

by secret ballot. After, the NJO President interviews the candidate. Generally, presidents are appointed for six years, which is once renewable.

The NJO President is on the top of the judiciary's management hierarchy.²⁰ All judges interviewed in the Amnesty Research confirmed that **promotion to key court leader positions has been subject to the personal formal or informal approval of the previous NJO President through which she exerted control over the whole judiciary system**, and that factors such as the interests of judges, the professional knowledge of an applicant or support of the local judges were hardly taken into consideration.

In several cases, the NJO President invalidated applications for court leadership positions of candidates supported by the judges' plenary meeting without a clear justification. Since 2012, the proportion of invalidated leadership applications has increased (33.33% in 2016, 50% in 2017, 55.31% in 2018).²¹ Usually after such invalidation, the position was filled not by regular application procedures, but through a temporarily assigned interim leader²² already known by and loyal to the NJO President.

Now, **practically all county court and regional court of appeal presidents have been replaced by judges loyal to the central administration, all having been entrusted by the previous NJO President.**²³ Judges reported that this mentality of loyalty trickled down to the lowest level of court leaders. Ordinary judges wishing to advance their career have been expected to support their court leadership and that promotions are not always based on experience or acumen in adjudication. This results in counterselection and a culture where nobody knows who will be promoted.²⁴

Regular evaluation happening every six year is an important factor when deciding about a judge's promotion to a higher court.²⁵ Most interviewees in the Amnesty Research did not know of any case where a judge had been pressured through the regular evaluation. However, judges were concerned whether they would get objective regular evaluations and some judges thought that evaluation may be a tool of retaliation against active or "renitent" judges, and court presidents may abuse the system e.g. by appointing an examiner biased against the judge.

Basically all legal provisions that enabled the above are still in effect and while the present NJO President has shown self-restraint so far, technically nothing prevents him from following the above described practices.

²⁰ About the appointment of court leaders, see Articles 127–128 of Act CLXI of 2011 on the Organisation and Administration of Courts.

²¹ Ágnes KOVÁCS, *Ki védi meg a magyar bíróságok függetlenségét?*, 2019, https://jog.tk.mta.hu/uploads/files/2019_10_Kovacs.pdf

²² Act CLXI of 2011 on the Organisation and Administration of Courts, Article 133(2)

²³ See more on this at: Amnesty International Hungary – Hungarian Helsinki Committee, *Timeline of undermining the independence of the judiciary in Hungary 2012–2019*, 2019, https://www.amnesty.hu/data/file/4742-hungary_judiciary_timeline_ai-hhc_2012-2019.pdf?version=1415642342.

²⁴ To learn more, see Sections 1.1.1. and 1.1.2. of Amnesty International Hungary's *Fearing the Unknown* report.

²⁵ Decree No. 7/2011. (III. 4.) KIM of the Minister of Justice, Article 16

4. Allocation of cases in courts

According to the 2019 ENCJ Survey,²⁶ 13% of Hungarian judges agreed or strongly agreed with the statement “I believe during the last two years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case.” According to the survey, this is a high number amongst other European countries.

According to the concept of the Hungarian law,²⁷ a case should be allocated based on predetermined rules included in a so-called case-allocation scheme that is approved for each court. Usually, the cases are allocated by a court leader (e.g. a court president or their deputy, a group leader at major courts). Different criteria and any combination thereof may be used in the case allocation scheme devised for each court to determine which judge will get a case: for example, alphabetical order of a defendant’s name, time of arrival, even and odd numbers, etc.

An individual’s case should be allocated to a judge impartially, without any predilection, however recent **research found that this is not always the case in practice. The allocation system operates in a way that a client or even a judge does not always know why a case has been allocated or re-allocated to a specific judge.**²⁸ Such a system allows the case allocator wide discretion to decide who to allocate a case to, and this allows court leaders to manipulate allocations and to pick a judge based on political or other inappropriate motivation, and also not to allocate a case to certain judges. Adding that the case allocator may be under the informal influence of a court president and/or the NJO President, the case allocation system seriously threatens the right to a fair trial in Hungary. Even so because the client does not get notified about the re-allocation of his/her case, and they cannot challenge such re-allocation.

The problem with case allocation is especially felt in courts where more important or potentially politically sensitive cases are dealt with. Judges at lower court levels or at courts where cases are not relevant from a political perspective, however, did not feel that there are major problems with the case allocation scheme. Most of the interviewees, though, told that deviations from the case allocation scheme (that are allowed by the law) happen regularly, which results in a system where the case allocator may manually decide case-by-case about the allocation and re-allocation of the case. This is possible because the law permits the use of any combination of different case allocation criteria simultaneously.

²⁶ European Network of Councils for the Judiciary, *Independence and Accountability of the Judiciary – ENCJ Survey on the Independence of Judges*, 2019, p. 65.

²⁷ Act CLXI of 2011 on the Organisation and Administration of Courts, Articles 8–11

²⁸ To learn more, see Section 1.1.3. of Amnesty International Hungary’s *Fearing the Unknown* report.

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

The NJC is the supervising organ of the courts' central administration, the body tasked with safeguarding the independence of the judiciary, and it also manages some administrative tasks.²⁹ The NJC has 15 members: the president of the Kúria and 14 members elected by elector judges at the NJC electoral meeting by secret ballot. Elector judges to the NJC electoral meetings are elected by judges at the local level. The NJC electoral meeting must elect one judge from regional courts of appeal, six judges from county courts and seven judges from district courts. A judge must have at least five years of tenure to become elected as NJC member.

The remit of the NJC includes: supervising the administrative operation of the NJO President; giving opinions on the NJO President's internal policies; approving the Judges' Code of Ethics, appointing the members of the service courts; giving its consent if the NJO President wants to appoint a candidate for court president who has not received the support of the judges' plenary meeting; giving its consent if the NJO President wants to appoint a candidate for an ordinary judge position who is ranked second or third; giving its consent if a court president or deputy court president wants to apply for the presidency for a third time; giving its prior opinion about the candidates for the NJO President and the president of the Kúria.

According to the Venice Commission,³⁰ "the powers of the President of the NJO still clearly prevail over those of the NJC, also because the current Council, composed exclusively of judges, cannot enjoy a true autonomy and independence from the NJO". The European Association of Judges in its report on the fact-finding mission to Hungary in 2019³¹ found that "the competences of the [NJO], which are vested in one person, the president, are much too large, almost comprehensive [...] On the other hand, the jurisdiction of the NJC is too restricted almost nonexistent and can easily be neutralized."

In a recent research,³² most of the judges agreed that **judicial self-governance** had never been strong, but it has **become even weaker after 2011, and the 2-year-long NJO-NJC conflict in 2018–2019 has put judges' self-governance into a crisis**. Most respondents felt that the NJO President's competences should be restricted, the competences of the NJC are very weak, and if the NJO does not cooperate with the NJC, the NJC cannot even exercise those already weak powers.³³ During the NJO-NJC conflict the institution designated by the

²⁹ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 88

³⁰ European Commission for Democracy through Law (Venice Commission), *Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary*, CDL-AD(2012)020-e, 15 October 2012, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)020-e), § 32.

³¹ European Association of Judges, *Report on the fact-finding mission of the EAJ to Hungary*, 2019, <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 10.

³² To learn more, see Section 1.1.4. of Amnesty International Hungary's *Fearing the Unknown* report.

³³ For more on this conflict, see: Amnesty International Hungary – Hungarian Helsinki Committee, *A Constitutional Crisis in the Hungarian Judiciary*, 9 July 2019, <https://www.amnesty.hu/data/file/4586-a-constitutional-crisis-in-the-hungarian-judiciary-09072019.pdf?version=1415642342>.

Fundamental Law to supervise the operation of the NJO, i.e. the NJC, was prevented from doing so by the previous NJO President so the conflict clearly showed that checks and balances did not work. The previous NJO President refused to cooperate and provide data to the NJC and did not participate in the NJC meetings. Even though the present NJO President does not question the legitimacy of the NJC, without solving the systemic issues, the conflict between the two organs may evolve again.

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules

1. According to the 2019 ENCJ Survey,³⁴ only 1.8% of Hungarian judges felt that they have been affected by a threat of, or actual, disciplinary or other official action because of how they have decided in a case. Nevertheless, empirical evidence has shown that while this was not felt by interviewees from smaller courts outside of the capital, judges – mainly based in Budapest and major courts – reported on disciplinary proceedings that had been initiated against judges based on non-justifiable legal grounds.³⁵

One outstanding case in 2019 was the **case of criminal judge Mr. Csaba VASVÁRI**, a district court judge working at the Central District Court of Pest who was also an NJC member. A disciplinary proceeding was initiated against him by his court's president³⁶ which the judges believed was in retaliation for a preliminary ruling request he filed with the CJEU. In this request, Judge Vasvári raised questions regarding compliance with the principle of judicial independence under the Treaty of the European Union, in particular the appointment procedures for court presidents, and remuneration for judges, as well as questions regarding the right to interpretation in court. Eventually the court president withdrew the request for the disciplinary proceeding.

Many judges reported to Amnesty International that **judges are afraid of disciplinary proceedings and some also reported cases where judges were actually threatened with the possibility of a disciplinary proceeding without a formal procedure being officially launched.**

The **Integrity Policy** issued by the NJO President is also used as a tool to silence judges who would want to speak up in defence of their judicial independence, by saying that this topic is political and/or an activity that infringes their integrity. It also contains a catch-all provision saying that "other activities" may also infringe integrity, leaving a wide room for interpretation for the NJO President. Moreover, the judge must report to the court president any fact or event that may affect their tenure or integrity.

2. The latest GRECO report on Hungary, the Interim Compliance Report of December 2018, concludes that **GRECO's recommendation about "the immunity of public prosecutors be**

³⁴ European Network of Councils for the Judiciary, *Independence and Accountability of the Judiciary – ENCJ Survey on the Independence of Judges*, 2019, p. 64.

³⁵ To learn more, see Section 3.3.1. of Amnesty International Hungary's *Fearing the Unknown* report.

³⁶ See e.g.: International Commission of Jurists, *Hungary: disciplinary action against judge for recourse to EU Court must cease*, 18 November 2019, <https://www.icj.org/hungary-disciplinary-action-against-judge-for-recourse-to-eu-court-must-cess/>.

limited to activities relating to their participation in the administration of justice” **remains not implemented.**³⁷

Whereas GRECO “welcomed the amendment making the involvement of a disciplinary commissioner in disciplinary proceedings against prosecutors compulsory”, it was concerned that “the role of the disciplinary commissioner remains limited to investigating the case, with the superior prosecutor still leading the overall procedure”. This points “to **the need to exclude the direct superior prosecutor from dealing with disciplinary proceedings**”, which has not been addressed. As a result, GRECO considered the respective recommendation only partly implemented.

7. Remuneration/bonuses for judges and prosecutors

In 2019 the **salary scales of prosecutors and judges were different**. Consequently, in some categories **judges’ salaries were lower than those of prosecutors**. As a result of a salary raise by the 2019 Omnibus Act, the judges’ and prosecutors’ salaries have been levelled and judges’ salaries are being raised by 32% percentage point on average,³⁸ while prosecutors’ salaries are being raised by 21% percentage point on average from 1 January 2020 in three stages.

Before the raise, the 2019 ENCJ Survey showed that 40% of judges agreed that in the category of their payment, “during the last two years changes occurred in my working conditions that **negatively influenced my independence.**”³⁹ The base salary of both judges and prosecutors is gross HUF 453,330 (ca. EUR 1,280). This amount did not change in 2019–2020.⁴⁰ The base salary is multiplied by a multiplier that is corresponding with the judges’ tenure times in a way that after each 3 years of tenure time, the judges reach a new payment grade.⁴¹ From 1 January 2020, the multipliers for both judges and prosecutors were raised to the same extent, for example from 1.00 to 1.25 in the 1st pay grade, 1.40 to 1.75 in the 7th pay grade or 1.75 to 2.10 in the 14th pay grade.⁴²

From 1 January 2020, the so-called supplementary salary for judges has also been raised by 100% in the case of district court judges, county court judges and Kúria judges, while by 75% for regional court of appeal judges.⁴³ In case of prosecutors, the supplementary salary was

³⁷ Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report – Hungary*, GrecoRC4(2018)16, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483>, §§ 27–30.

³⁸ *The outstanding performance of Hungarian courts is rewarded – judicial salaries increase by over 60%*, 22 November 2019, <https://birosag.hu/en/news/category/about-courts/outstanding-performance-hungarian-courts-rewarded-judicial-salaries>

³⁹ European Network of Councils for the Judiciary, *Independence and Accountability of the Judiciary – ENCJ Survey on the Independence of Judges*, 2019, p. 72.

⁴⁰ Act L of 2018 on the Central Budget of Hungary for 2019, Article 64 (1)–(2); Act LXXI of 2019 on the Central Budget of Hungary for 2020, Article 62 (1)–(2)

⁴¹ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 169

⁴² Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Appendix 2; Act CLXIV of 2011 on Prosecutors, Appendix 1

⁴³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 173(2)

only raised for prosecutors at higher levels.⁴⁴ Moreover, based on the decision of their superiors, the judges may receive performance bonus, amounting from 5% to 30% of their base salary and qualification bonus if they possess an additional qualification they can apply in performing their duties, amounting from 10% to 30% of their base salary.⁴⁵

Nevertheless, in a recent research, **judges criticized that primarily the salaries of court leaders were raised** by the 2019 Omnibus Act, while the raise for judges not holding such positions was less significant, and one judge said that the 2019 Omnibus Act has been used as a Trojan horse: **for higher salary the judges get less independence**. As officials claimed in public that critical judges may endanger the salary increase for the judiciary, some judges had been discouraged to support the NJC's activities because they were worried that as a retaliation, they may not receive their prospective salary increase. This was felt to be a serious threat for many respondents. The Amnesty Research revealed that **bonuses can be a tool of retaliation against activist judges**: there was a case mentioned where a "renitent" judicial council president (who was also a college leader) received zero year-end bonus, while the other college leader received a good year-end bonus. A judge told Amnesty International that it was possible for a **court president to withdraw a judge's language or other bonus as a tool of retribution**.

8. Independence/autonomy of the prosecution service

Doubts can be raised as to the full functional independence of the prosecution service due to systemic organisational problems, the lack of accountability of the Prosecutor General ("PG"), and the factors eroding the public's perception of its independence. The latest GRECO report on Hungary, the Interim Compliance Report of 2018, shows that many recommendations set by GRECO pertaining to the prosecution were not or only partially implemented.

In 2015, GRECO recommended that "the **possibility to maintain the [PG] in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor** be reviewed".⁴⁶ (This was criticized by the Venice Commission⁴⁷ as early as 2012.) However, as noted by GRECO's 2018 report, Hungary has failed to comply with this recommendation.⁴⁸

⁴⁴ Act CLXIV of 2011 on Prosecutors, Article 64(1)

⁴⁵ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 181–182

⁴⁶ Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report – Hungary*, Greco Eval IV Rep (2014) 10E, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e>, § 117.

⁴⁷ European Commission for Democracy through Law (Venice Commission), *Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career of Hungary*, CDL-AD(2012)008, 19 June 2012, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)008-e), §§ 57–59.

⁴⁸ Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report – Hungary*, GrecoRC4(2018)16, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of-1680969483>, §§ 19–22.

It remains highly problematic from the aspect of checks and balances that **the right of Members of Parliament to pose interpellations to the PG was abolished** in 2010. MPs are still allowed to pose questions to the PG, but that is a weaker instrument than interpellations. (Unlike in the case of questions, the MP making an interpellation may react to the response received to the interpellation, and may reject the response. If the MP rejects the response, the Parliament shall vote on it, and if the response is rejected also by the Parliament, it shall be referred to a parliamentary committee for further examination. Based on the committee's report, the Parliament shall vote on the matter again, and if still dissatisfied with the response, it may request the committee to prepare an action plan.⁴⁹)

GRECO also recommended in 2015 that “the **removal of cases from subordinate prosecutors** be guided by strict criteria and that such decisions are to be justified in writing”. In its 2018 report, GRECO noted that it was satisfied with the subsequent legal amendment “prescribing that a brief reason for the removal of a [...] case from a prosecutor must be indicated in the case file”. However, GRECO concluded that its **recommendation has remained only partly implemented**, because it “**was not provided with any information as to whether strict criteria [...] had been put in place to avoid arbitrary decisions**”.⁵⁰

Furthermore, it is a recurring problem that the prosecution **may and often does omit to take cases of corruption concerning politically well-linked persons before the court**. As a result, **several high-level corruption allegations remain essentially unsanctioned**.⁵¹ A judge who left the judiciary on his own accord publicly stated in 2019 that the prosecution decides on a political basis mainly in economic cases which case goes before the court and which does not.⁵² The **perception of the prosecution's independence** is also **eroded** by the fact that the current PG was a member and an MP candidate for Fidesz in the 90s, and was elected for his third term by the governing parties in 2019: he served as PG between 2010–2019 and 2000–2006 (elected under the 1st Fidesz-government).

9. Independence of the Bar (chamber/association of lawyers)

Bars are able to operate independently from direct government influence, however, in the past years, attorneys and the bars have been subjected to attacks by governing party politicians and government-aligned media, similarly to judges.

In January 2020, the Government announced its plans to review the scheme of compensations paid to inmates for inadequate detention conditions, introduced after a pilot judgment by the European Court of Human Rights (“ECtHR”).⁵³ This was accompanied by

⁴⁹ Act XXXVI of 2012 on the Parliament, Article 42(6)–(7a)

⁵⁰ Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report – Hungary*, GrecoRC4(2018)16, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483>, §§ 23–26.

⁵¹ See e.g.: <https://atlatso.hu/2015/02/06/polt-peter-kinevezese-ota-meredeken-zuhan-a-politikai-korrupcios-ugyekben-inditott-buntetoeljarasok-szama/>.

⁵² See: <https://www.valaszonline.hu/2019/02/05/keviczki-istvan-biro-hando-polt/>.

⁵³ For background information on compensation payments, see: Hungarian Helsinki Committee, *Compensations for inadequate detention conditions threatened by the Hungarian government*, January 2020,

attacking the attorneys representing inmates in domestic compensation cases, basically for applying Hungarian law that provides for compensations.

On 15 January 2020, a high-level representative of the Cabinet Office of the Prime Minister stated in relation to this that a “business” has been built on compensation payments by CSOs and their attorneys.⁵⁴ On 17 January, the **Prime Minister** also talked about “**prison business**” in an interview, and said that “**the attorneys** [involved] **should be dealt with** as well, because, after all, they took several billion forints from the state’s pocket”.⁵⁵

On 30 January, a **government-aligned news site published the list of attorneys who represented inmates in compensation cases, publishing also the sums these attorneys allegedly “won”** from the state.⁵⁶ As a reaction, the Hungarian Bar Association issued a statement, condemning the attacks against attorneys and the listing, and warning that such steps undermine the authority of the justice system.⁵⁷ An affected attorney asked the Ministry of Justice whether they were the ones disclosing the names and sums to the news site, or whether they have launched any investigation into how the site got the data, but all what the Ministry replied was that they processed the data according to the law. The news site that published the list also attacked the President of the Budapest Bar Association for calling on colleagues in a closed Facebook group to show solidarity with the attacked attorneys, and stated that the influence of George Soros has increased in the Budapest Bar Association.⁵⁸

This was not the first time that attorneys were attacked in politically sensitive cases, tying into the hate campaign against migrants, CSOs and George Soros. For example, in 2018 a political blog with anonymous authors and editors, whose “lead” is often followed by government-friendly media, and which also attacked judges, published a series on how “the net of Soros captures the justice system”. The news site referred in this regard to trainings held by the Hungarian Helsinki Committee for attorneys, or that the Budapest Bar Association included Transparency International’s recommendations on fighting corruption in its magazine.⁵⁹

Also in 2018, **the attorney representing Ahmed H.**, a Syrian man charged with terrorism after a clash between migrants and the police at the Hungarian-Serbian border, **was**

https://www.helsinki.hu/wp-content/uploads/HHC_info_note_prison_overcrowding_compensations_2020Jan.pdf.

⁵⁴ The interview is available here in Hungarian: <https://hirtv.hu/magyarorszageloben/tuzson-az-nem-lehetseges-hogy-bunozoknek-fizet-a-magyar-allam-2493378>.

⁵⁵ For the full interview in English, see: *Prime Minister Viktor Orbán on the Kossuth Radio programme “Good morning, Hungary”*, 17 January 2020, <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-6/>

⁵⁶ See: <https://www.origo.hu/ittthon/20200129-magyar-gyorgy-irodajanak-felmilliardot-fizettek-ki.html>.

⁵⁷ See e.g.: <https://jogaszvilag.hu/a-magyar-ugyvedi-kamara-visszautasitja-az-ugyvedeket-ert-tamadasokat/>.

⁵⁸ See: <https://www.origo.hu/ittthon/20200120-budapesti-ugyvedi-kamara-szervezkesed-a-bortonkartritesek-leallitasa-miatt.html>.

⁵⁹ See: <https://tuzfalcsoport.blogstar.hu/2018/05/30/hogyan-szovi-be-soros-haloja-a-magyar-igazsagszolgaltatast-7-resz-53339/>.

attacked by governing party politicians, including a high-level Ministry of Justice representative, simply for acting as a defence counsel in the case.⁶⁰

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

1. The **overly centralised court administration** weakens judicial independence and **allows for undue internal influence** among judges. Still, the **general public perceives the judiciary as mostly independent**⁶¹ and capable of exercising control over the executive.

2. As the last line of defence of human rights and the rule of law in Hungary, the judiciary became the target of fierce criticism by the ruling party. **Breaching the standards on freedom from undue external influence**,⁶² the governing majority widely used public statements and the media to interfere with the competences of the judiciary. These manifestations of criticism have eroded confidence in the judiciary and the perception of independence.

a) Several public statements **questioned the requirement itself that the judiciary has to be independent**. Within the context of building an “illiberal democracy”, judicial independence was labelled as a “liberal requirement”.⁶³ Amidst the government’s attempt to establish a politically controlled administrative court system, the **Speaker of the Parliament** claimed that judges “must decide whether they side with the defenders and builders or the attackers and destroyers of the State”⁶⁴ and that “[t]he system of checks and balances is dumb” and “has nothing to do with the rule of law or with democracy”.⁶⁵

b) Public trust in judicial independence was further undermined by **attacks of the government-friendly propaganda media against individual judges** who criticised the state of judicial independence and the NJO. With the escalation of the “constitutional

⁶⁰ See: <https://magyarnemzet.hu/archivum/belfold-archivum/ilyen-a-partallamban-sem-volt-tiltakozas-az-ugyvedek-elleni-tamadasok-miatt-3849068/>.

⁶¹ *The 2019 EU Justice Scoreboard*, https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf, Section 3.3.1.

⁶² Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states “Judges: independence, efficiency and responsibilities”, Sections 18 and 60; UN Basic Principles on the Independence of the Judiciary, Sections 2 and 4.

⁶³ By Szilárd NÉMETH, MP of the Fidesz, on 31 January 2016. See e.g.: <https://444.hu/2016/01/31/nemeth-szilard-elszamoltna-a-birosagokat>.

⁶⁴ The speech was held on the occasion of the 150th anniversary of the act guaranteeing the independence of the judiciary. See e.g.: <https://hungarianspectrum.org/2019/04/24/soon-enough-hungarian-judicial-independence-will-exist-only-in-history-books/>.

⁶⁵ The speech was held at the National University of Public Service on 25 October 2019. László KÖVÉR said the following: “[T]he system of checks and balances, I don’t know what you learned, but it is dumb, forget about it. It has nothing to do with either the rule of law or with democracy. [...] The problem is that some people seriously think that a government needs checks after being established as a result of the democratic expression of the people’s will. They think that constantly putting spokes in the wheel constitutes democracy.” See: https://index.hu/english/2019/10/25/laszlo_kover_checks_balances_dumb_forget_it_rule_of_law_hungary_fidesz.

crisis”⁶⁶ within the judiciary (stemming from the NJO-NJC conflict), government-affiliated media published a series of articles with false accusations, aimed at discrediting these judges. The articles, along with the retaliatory measures by the President of the NJO aimed at hindering the professional advancement of these judges, contributed to a chilling effect.⁶⁷ Monitoring the execution of an ECtHR judgment, the CoE Committee of Ministers noted in 2019 “with grave concern” the reports that the chilling effect on the freedom of expression of judges “has not only not been addressed but rather aggravated”.⁶⁸

c) High-ranking **government officials**, including the Prime Minister, **repeatedly disregard the requirement of non-interference with pending court procedures** by publicly formulating expectations regarding the judgment to be delivered. Judges face political pressure especially when dealing with cases concerning the protection of individuals or vulnerable minorities against state actors. Examples for this include political pressure against an acquittal,⁶⁹ pressure for more rigorous penalties,⁷⁰ or public political campaign against compensations for prison overcrowding⁷¹ and a judgment granting Roma pupils damages for segregation, which the Prime Minister called – while the judgment was still pending review – a “provocation” and unjust because the Roma plaintiffs “receive a significant amount of money without performing any work”.⁷²

11. Other

1. Throughout 2018–2019, the governing majority planned to set up a **separate administrative court system** that would have had jurisdiction over taxation; public

⁶⁶ European Association of Judges, *Report on the fact-finding mission of the EAJ to Hungary*, May 2019, <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 5.

⁶⁷ For a non-comprehensive list of articles and a list of retaliatory measures, see the communication submitted by the Hungarian Helsinki Committee in August 2019 to the Committee of Ministers regarding the execution of the judgment of the ECtHR in the *Baka v. Hungary* case: https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Baka_v_Hungary_201908.pdf, pp. 5–8.

⁶⁸ See the decision taken by the Committee of Ministers of the Council of Europe in September 2019 regarding the execution of the judgment of the ECtHR in the *Baka v. Hungary* case: CM/Del/Dec(2019)1355/H46-11, [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1355/H46-11E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1355/H46-11E).

⁶⁹ Courts were put under high pressure in the criminal case of the toxic red sludge disaster, where the first instance court acquitted all defendants. Later, in 2019, after a series of intense criticism by ruling party politicians, the court found 10 out of 15 defendants guilty. See e.g.: https://index.hu/belfold/2019/12/13/gyori_itelotabla_vorosizap_per_itelet/.

⁷⁰ Gergely GULYÁS, the head of the Prime Minister’s Office blamed the Kúria for a tragic family drama that evolved in the end of 2019, claiming that “[t]he Kúria shall be responsible for the delivery of sufficiently rigorous judgments, because today judges hand down extremely lenient verdicts”.

⁷¹ For summaries in English, see: Hungarian Helsinki Committee, *NGO communication with regard to the execution of the judgments of the European Court of Human Rights in the cases Varga and Others v. Hungary and István Gábor Kovács v. Hungary (Application no. 14097/12 and 15707/10)*, https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Varga_and_Others_v_Hungary_20200120.pdf, pp. 3–4; Csaba GYÓRY, *Fighting Prison Overcrowding with Penal Populism – First Victim: the Rule of Law*. *New Hungarian Law* “Suspends” the Execution of Final Court Rulings, 12 March 2020, <https://verfassungsblog.de/fighting-prison-overcrowding-with-penal-populism-first-victim-the-rule-of-law/>.

⁷² See e.g.: Lilla FARKAS, *The EU, Segregation and Rule of Law Resilience in Hungary*, 8 March, 2020, <https://verfassungsblog.de/the-eu-segregation-and-rule-of-law-resilience-in-hungary/>.

procurement and other economic matters; as well as elections, freedom of assembly, asylum, and other human rights issues. The Venice Commission,⁷³ the First Vice-President of the European Commission,⁷⁴ the CoE Commissioner for Human Rights,⁷⁵ and the UN Special Rapporteur on the Independence of Judges and Lawyers⁷⁶ criticized the proposed system as being a threat to judicial independence. The Hungarian Parliament first postponed, then dropped the new law in November 2019.

The **2019 Omnibus Act was designed to guarantee judicial decisions favourable to the government** in politically sensitive cases even without setting up a separate administrative court system, mainly through allowing **state bodies to challenge final and binding judicial decisions before the Constitutional Court** if the judgment violates their fundamental rights. This means that politically important **cases can be channelled out from the ordinary judiciary to a body that has many times helped out the Government**. Judges think that this is nonsense and the amendment indeed stomps on judicial independence and is a further step to alter judgments to the taste of the Government.

2. Recent organisational developments, vaguely formulated internal policies and media attacks on judicial independence have resulted in a **palpable chilling effect amongst judges**. Judges reported a very **bad atmosphere at various courts**, where most judges do not dare to speak openly and freely; cliques have formed and there is mistrust among judges. The interviewees mentioned that the chilling effect materializes in a **fear amongst judges that prevents them from speaking up or protesting administrative decisions and pieces of legislation affecting the judiciary**.

The judges that Amnesty International interviewed said that **judges are afraid of potential threats of disciplinary proceedings, disadvantageous case allocation, bad evaluation results, financial consequences, consequences related to family members, and repercussions on professional training and development**. A good illustration of the chilling effect is that sometimes judges do not even know what they are afraid of: they are fearing an abstract potential future consequence, or they are fearing the unknown. Yet, this indirect and subtle consequence of the chilling effect may influence their thinking and decision making.⁷⁷

3. Since 2018, the Fundamental Law sets out that the reasonings of laws, which are often political statements, must be the primary source for judges when establishing the aim of a

⁷³ European Commission for Democracy through Law (Venice Commission), *Opinion on the Law on Administrative Courts and on the Law on the Entry into Force of the Law on Administrative Courts and Certain Transitional Rules*, CDL-AD(2019)004, 19 March 2019, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)004-e), § 113.

⁷⁴ *Rule of Law in Hungary: MEPs Call on Council to Act*, 31 January 2019, <https://www.liberties.eu/en/news/rule-of-law-ep-debate-hungary-jan-2019/16931>

⁷⁵ *Commissioner calls on Hungary's President to return to the Parliament the legislative package on administrative courts*, 14 December 2018, <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-hungary-s-president-to-return-to-the-parliament-the-legislative-package-on-administrative-courts>

⁷⁶ UN Special Rapporteur on the independence of judges and lawyers, *Hungary: more needs to be done to bring legislation on administrative courts in line with international standards*, UN Expert says, 5 April 2019, <https://www.ohchr.org/Documents/Issues/Judiciary/InfoNoteHungary8Apr2019.docx>

⁷⁷ To learn more, see Section 3. of Amnesty International Hungary's *Fearing the Unknown* report.

law. According to the **CoE Commissioner for Human Rights**, there is “a risk that interpretative guidance in legislation can be used in a political manner to limit the independence of judges in their interpretation of the law”.⁷⁸

4. The Government maintains that Hungary **will not join the European Public Prosecutor’s Office**.

B. QUALITY OF JUSTICE

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

1. **The 2019 Omnibus Act restricts access to justice in administrative cases.** Due to the Act, in cases launched after 1 March 2020, it is no longer possible to submit an appeal against first instance administrative decisions: instead, they have to be challenged before the court instantly. First instance judicial reviews are conducted only by 8 designated county courts out of the 20, and so some of them have to cover 3 counties. This way, in many instances courts where the cases are tried will be far away from where the parties live, and since writing a court submission is much more difficult than drafting an administrative appeal, there is a much higher chance that parties will have to hire an attorney. Thus, **obtaining a remedy will cost more time, money and other resources, affecting negatively especially indigent or low-income persons.** According to its ministerial reasoning, the Act aims to speed up administrative cases, but no impact studies were provided on how it aims to achieve that, and it is more likely to slow down the adjudication of these cases: (1) The Act **will increase the workload of county courts significantly.** (2) Judicial review processes tend to be longer than second instance administrative procedures, and if the courts’ workload will grow, **court procedures are likely to get even more protracted.**⁷⁹

2. Act CXXX of 2016 on the **Code of Civil Procedure (CCP)**, in force since 1 January 2018, **restricts access to justice in civil law cases.** It made **representation by an attorney obligatory in first instance cases before county courts**, including FOI or privacy cases. This is an unjustifiable restriction, also because at the same time legal representation is not obligatory in FOI and privacy cases launched at district courts, and **makes it more expensive for individuals to bring their cases to court.** The time period between submitting a claim and the first trial got significantly longer, and 6 months can pass without any response from the court as to whether a claim was admitted or not. The **CCP made submitting civil law claims more difficult**, and resulted in the **mass rejection of civil law claims**: in 2018, 25% of the cases closed ended with a rejection.⁸⁰ As a consequence, the number of attorneys undertaking representation in civil law cases decreased, resulting in turn in an increase in the fees of attorneys undertaking such cases. The restriction the CCP means on access to justice

⁷⁸ Commissioner for Human Rights of the Council of Europe Dunja Mijatović, *Report Following her Visit to Hungary from 4 to 8 February 2019*, CommDH(2019)13, 21 May 2019, <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942fod>, § 103.

⁷⁹ In more detail, see: Hungarian Helsinki Committee, *New law threatens judicial independence in Hungary – again*, January 2020, https://www.helsinki.hu/wp-content/uploads/HHC_Act_CXXVII_of_2019_on_judiciary_analysis_2020Jan.pdf, pp. 7–8.

⁸⁰ See e.g.: *7-ből 1 visszautasított keresetlevél az új Pp. alapján - A bíróságok ügyforgalmi adatai 2018-ban*, 23 January 2019, <https://www.jogiforum.hu/hirek/40071>.

is also shown by the fact that in 2018, the number of civil lawsuits before county courts decreased by 45% as compared to 2017, and the number of all labour law cases decreased by 51%.⁸¹

3. As a positive development, since July 2018, **ex officio / legal aid defence counsels in criminal cases** are, as a main rule, **appointed by the bar association**. (Earlier, cases were assigned to attorneys on the sole discretion of the police, resulting in a disproportionate appointment practice and endangering the right to effective defence.)⁸²

C. EFFICIENCY OF THE JUSTICE SYSTEM

16. Length of proceedings

The CoE Committee of Ministers (CM) has been supervising the execution of ECtHR judgments concerning excessive length of judicial proceedings in Hungary since 2003.⁸³ In 2015, with a view to the scale of the problem, the ECtHR delivered a **pilot judgment** in *Gazsó v. Hungary*,⁸⁴ and requested Hungary to introduce, by October 2016, “**an effective domestic remedy or combination of such remedies capable of addressing, in an adequate manner, the issue of excessively long court proceedings**”.

The **Gazsó group of cases** covers judgments condemning Hungary for the **excessive length of judicial proceedings in civil, criminal and administrative matters**, and the **lack of an effective remedy** in this respect. The CM adopted an **interim resolution** regarding the group of cases in **March 2018**,⁸⁵ following which the Government submitted a Bill⁸⁶ to Parliament, providing for a compensatory remedy for the excessive length of all types of judicial proceedings. However, after the CM informed Hungary of shortcomings with regard to the Bill, its adoption was postponed. Also in 2018, new procedural codes entered into force, which were expected to reduce the length of judicial proceedings, but to date, Hungary has failed to provide information on their impacts to the CM. In **June 2019**, the CM adopted a **second interim resolution**.⁸⁷ Subsequently, authorities informed the CM that they will develop a revised concept for the remedies in criminal cases,⁸⁸ but to date, they have not presented this to the CM.⁸⁹

⁸¹ See e.g.: *Drasztikusan csökkenő bírósági ügyforgalom – 21 százalékkal kevesebb per indult 2018-ban*, 29 May 2019, <https://www.jogiforum.hu/hirek/40514>.

⁸² See in detail: András Kristóf KÁDÁR – Nóra NOVOSZÁDEK – Dóra SZEGŐ, *Inside Police Custody 2 – An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries. Country Report for Hungary*, December 2018, https://www.helsinki.hu/wp-content/uploads/IPC_Country_Report_Hungary_Eng_fin.pdf, pp. 80–81.

⁸³ *Tímár v. Hungary* (Application no. 36186/97, Judgment of 25 February 2003)

⁸⁴ Application no. 48322/12, Judgment of 16 July 2015

⁸⁵ CM/ResDH(2018)106, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168079312c

⁸⁶ Bill T/2923 on Financial Compensation for Court Proceedings of Excessive Length, <https://www.parlament.hu/irom41/02923/02923.pdf>

⁸⁷ CM/ResDH(2019)152, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168094d32a

⁸⁸ DH-DD(2019)1344, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168098doc1

⁸⁹ This section is based on the Notes on the Agenda for the 1369th DH meeting of the Committee of Ministers (CM/Notes/1369/H46-12, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809c78b6).

In its **March 2020 decision**,⁹⁰ the CM expressed its deepest concern that **the deadline set in the pilot judgment expired more than 3 years ago “without any tangible progress having been presented”**, and recalled that **“Hungary is one of the very few remaining member States faced with the issue of excessively lengthy judicial proceedings which has not yet introduced an effective remedy in this respect”**. The CM will resume examination of the *Gazsó* group of cases at its June 2020 meeting, foreseeing the adoption of a third interim resolution, should no tangible progress be achieved by then.

Data published by the NJO show that the **average length** of closed court cases **increased** from 188 to 202 days between 2010 and 2018, and from 191 in the 1st half of 2010 to 207 in the 1st half of 2019. The average length of ongoing cases increased from 248 to 274 days from 2010 to 2018, and from 250 to 256 from the 1st half of 2010 to the 1st half of 2019. At the same time, **the number of protracted court procedures still in progress decreased** between 2010–2018, from 14,579 to 8,050. As compared to 13,858 protracted cases in progress in the 1st half of 2010, the same number was 6,891 in the 1st half of 2019. (“Protracted” cases are cases ongoing for over 2 years at first instance courts, for over 1 year at county courts at second instance, and for over 6 months at regional courts of appeal.) 87% of court cases closed in 2018 and 86% of cases closed in the 1st half of 2019 ended within a year.⁹¹

17. Enforcement of judgements

1. As a warning signal of disrespect towards the rule of law, there are **instances of state organs manifestly resisting the execution of final and binding court decisions** imposing obligations on them. The unwillingness of state authorities to accept domestic court rulings is not only detrimental to the independence of the judiciary but also creates a perception in the public that final and binding judgments can be disregarded, which further undermines general trust in the force of fair adjudication. The reluctance to execute judgments is even more alarming since the affected cases concern severe and systemic breach of fundamental rights.

a) The Prime Minister publicly challenged as “unjust”⁹² a **court ruling which awarded compensation for non-pecuniary damages** to around 60 former Roma pupils of Gyöngyöspata for their **continued segregation** in the local primary school. The deadline for paying the damages granted by the court has long passed. Meanwhile, the Ministry of Human Capacities, as well as the ruling party’s MP representing the region keep insisting that the respondents of the lawsuit should be allowed to provide educational opportunities to the plaintiffs instead of the compensation payment, although the court refused to consider this option in the course of the trial, and awarded financial compensation as requested by the victims of the segregation.⁹³

⁹⁰ CM/Del/Dec(2020)1369/H46-12, [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2020\)1369/H46-12E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1369/H46-12E)

⁹¹ See: National Judicial Office, *Részletes elemzés a 2018. évi bírósági ügyforgalomról [Detailed Analysis of the Caseload of Courts in 2018]*, <https://birosag.hu/ugyforgalmi-adatok/reszletes-elemzes-2018-evi-birosagi-ugyforgalomrol>, pp. 16–17, 192 and 199; National Judicial Office, *Részletes elemzés a 2019. I. félévi bírósági ügyforgalomról [Detailed Analysis of the Caseload of Courts in the First Half of 2019]*, <https://birosag.hu/ugyforgalmi-adatok/reszletes-elemzes-2019-i-felevi-birosagi-ugyforgalomrol>, pp. 18–19, 203 and 210.

⁹² Prime Minister Viktor Orbán’s “State of the Nation” address, 16 February 2020,

<http://www.miniszterelnok.hu/prime-minister-viktor-orbans-state-of-the-nation-address-4/>

⁹³ See e.g.: <https://magyarnemzet.hu/belfold/ingyen-tanulhatnanak-gyongyospata-romai-7680440/>.

b) In March 2020, the Parliament adopted a law that **suspended the execution of final and binding court decisions granting compensation to detainees for inhuman and degrading prison conditions.**⁹⁴ Although the domestic compensation system was created as a result of an ECtHR pilot judgment requiring Hungary to remedy prison overcrowding and inhuman detention conditions,⁹⁵ the Prime Minister interpreted the application of it as “prison business”, a “misuse of law by activists and groups of lawyers with the support of international courts”.⁹⁶

c) **Enforcement of judgments is repeatedly disobeyed by state organs in the field of freedom of information.** While the right to information is protected by the Fundamental Law, and the failure to comply with a court decision to disclose data is punishable under the Criminal Code, in practice, state organs frequently deny the execution of judgments.⁹⁷ E.g. a parliamentary committee complied with a judgment ordering it to disclose data on the residency bond program⁹⁸ to a newspaper only after judicial enforcement and criminal procedures were launched against it.⁹⁹

2. Hungary has an **extremely poor record on the implementation of ECtHR judgments.** 74% of leading cases of the last 10 years are still pending.¹⁰⁰ The list of non-executed judgments indicates systemic or structural problems concerning discrimination and segregation of Roma children,¹⁰¹ freedom of expression of judges,¹⁰² unchecked state surveillance,¹⁰³ inhuman and degrading treatment in prisons,¹⁰⁴ freedom of conscience and religion,¹⁰⁵ or excessive length of civil procedures.¹⁰⁶

⁹⁴ Act IV of 2020 on Urgent Actions to Stop the Abuse of Compensation Claims Due to Prison Overcrowding. For more information in English, see e.g.: Csaba Györy, *Fighting Prison Overcrowding with Penal Populism – First Victim: the Rule of Law. New Hungarian Law “Suspends” the Execution of Final Court Rulings*, 12 March 2020, <https://verfassungsblog.de/fighting-prison-overcrowding-with-penal-populism-first-victim-the-rule-of-law/>.

⁹⁵ *Varga and Others v. Hungary* (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, Judgment of 10 March 2015)

⁹⁶ See e.g.: <https://insighthungary.444.hu/2020/01/23/hungarian-bar-association-government-is-damaging-confidence-in-the-rule-of-law/>.

⁹⁷ For more details, see: Dániel G. Szabó, *Executive and Legislative Organs of Hungary Disobey Court Rulings*, 2 October 2018, <https://verfassungsblog.de/executive-and-legislative-organs-of-hungary-disobey-court-rulings/>.

⁹⁸ The severely criticized Hungarian residency bond program made it possible for wealthy third-country citizens to obtain residency permits allowing free movement in the EU. See e.g.: <https://444.hu/2018/09/10/members-of-russias-elite-got-hungarian-residence-permitsthrough-controversial-golden-visa-program/>.

⁹⁹ See: <https://magyarnemzet.hu/archivum/gazdasag-archivum/vegrehajtast-kezdemenyezettunk-az-orszaggyules-gazdasagi-bizottsaga-ellen-3891494/>, <https://magyarnemzet.hu/archivum/gazdasag-archivum/buntetoeljaras-indulhat-a-gazdasagi-bizottsag-ellen-3891174/>.

¹⁰⁰ Source: European Implementation Network, *Hungary – 46 leading judgments pending implementation*, <http://www.einnetwork.org/hungary-echr>.

¹⁰¹ *Horváth and Kiss v. Hungary* (Application no. 11146/11, Judgment of 29 January 2013), <http://hudoc.exec.coe.int/eng?i=004-10905>

¹⁰² *Baka v. Hungary* (Application no. 20261/12, Judgment of 23 June 2016), <http://hudoc.exec.coe.int/eng?i=004-10859>

¹⁰³ *Szabó and Vissy v. Hungary* (Application no. 37138/14, Judgment of 12 January 2016), <http://hudoc.exec.coe.int/eng?i=004-10745>

¹⁰⁴ *Varga and Others v. Hungary* (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, Judgment of 10 March 2015), <http://hudoc.exec.coe.int/eng?i=004-10809>

¹⁰⁵ *Magyar Keresztény Mennonita Egyház and Others v. Hungary* (Applications nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12; Judgment of 8 April 2014), <http://hudoc.exec.coe.int/eng?i=004-10965>

¹⁰⁶ *Gazsó v. Hungary* (Application no. 48322/12, Judgment of 16 July 2015), <http://hudoc.exec.coe.int/eng?i=004-10875>

II. ANTI-CORRUPTION FRAMEWORK

A. THE INSTITUTIONAL FRAMEWORK CAPACITY TO FIGHT AGAINST CORRUPTION (PREVENTION AND INVESTIGATION / PROSECUTION)

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

Hungary has no stand-alone anticorruption enforcement institution, instead, the implementation of policies to prevent and sanction abuses is an obligation of state institutions in general, while certain bodies have special competences to counter corruption. The main obstacle for fulfilling their duties comes from the entire **lack of functional autonomy** as almost all organs concerned are under the leadership of political partisans or loyalists, appointed by the Government.¹⁰⁷ According to our assessment, **most institutions have the necessary capacities but mainly focus on small scale corruption**. Below, we give a digest of the practice of three prominent institutions tasked with anticorruption duties.

- a) The **National Protective Service** and the **Ministry of Interior** are responsible for the design and implementation of integrity systems within the public sector. Among the few areas where significant progress has been achieved in the recent years is the pushback on small scale bribery especially among officers of the police. Furthermore, the government introduced an excessive integrity management system, but it is poorly implemented and serves as a window-dressing to cover larger scale corruption. At least studies on integrity are part of the curriculum of higher education related to public administration.
- b) The **State Audit Office** ("SAO") is charged to oversee the accountability of the use of public funds and to contribute to good governance. Besides public institutions, the SAO also audits political parties. The SAO is designed to be entirely independent from the executive branch and is by law only subordinated to the Parliament.

¹⁰⁷ For references, see the following documents: Transparency International Hungary, *Corruption, Economic Performance and the Rule of Law in Hungary – The results of the 2019 Corruption Perceptions Index, 2020*, (<https://transparency.hu/wp-content/uploads/2020/02/Korruptio%20B3-gazdas%20A1gi-teljes%20ADtm%20Agyy-%20Ags-jog%20A1llamis%20A1g-Magyarorsz%20A1gon-CPI-2019-EN.pdf>); Joint Submission to the UN Universal Periodic Review by Transparency International Hungary and K-Monitor, May 2016, <https://transparency.hu/wp-content/uploads/2015/09/Joint-Submission-to-the-UN-Universal-Periodic-Review.pdf>; K-Monitor, *Megváltozott a korrupció az elmúlt négy évben [Corruption has changed in the last four years]*, April 2014, https://k.blog.hu/2014/04/02/megvaltozott_a_korrupcio_az_elmult_negy_evben.

However, the SAO has since decades been underusing its extensive control powers and has omitted the conduction of in-depth investigations into campaign finance issues. Recently, the SAO was accused by opposition parties to misuse its powers to pester them by the questionable imposition of excessive fines without providing the opportunity for legal remedy.¹⁰⁸

- c) The **Hungarian Competition Authority** (“HCA”) is an autonomous oversight body that cannot be instructed and is submitted solely to the laws, however, its independence and integrity was put to doubts by the appointment in 2010 of a lawyer, Mr. Miklós JUHÁSZ, who had earlier been sanctioned for insider trading.¹⁰⁹ Mr. Juhász also lacked an impressive professional track record, which he overtly asserted in an interview where he declined any expertise in the field of competition law.¹¹⁰ Not surprisingly, the HCA, expected to sanction breaches of the competition law, failed to do so in several significant cases of alleged cartels.¹¹¹ Mr. Juhász had recently ended his second term as President of the HCA and was elected a Constitutional Court justice. His replacement as head of the HCA is the Public Procurement Authority’s former President.

B. PREVENTION

20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

Hungary requires most public decision makers, e.g.: Members of Parliament, cabinet ministers, judges, prosecutors, and public officials involved in decisions relating to the use of EU funds to regularly declare their assets and interests. However, **declarations are not accessible publicly, save for the case of Members of Parliament and senior public officials, and the scrutiny of declarations’ content and reliability entirely lacks.** Besides, there is practically **no effective sanction** to prevent and punish false or deficient declarations. As a result, Hungary’s asset and interest disclosure system has proven unable to allow the monitoring of the enrichment of declarants, as well as to clarify the source of funds declared.¹¹² Over the past years Transparency International Hungary and K-Monitor have repeatedly advocated in vain for the resolution of this problem.¹¹³

¹⁰⁸ See e.g.: <https://www.reuters.com/article/us-hungary-opposition-fine/hungarys-jobbik-party-says-might-disband-after-second-audit-fine-idUSKCN1PQ58Z>

¹⁰⁹ See e.g.:

https://index.hu/gazdasag/magyar/2010/08/09/bennfentes_kereskedes_miatt_magyarazkodhat_a_gvh_elnok_jeloltje/.

¹¹⁰ See e.g.: https://index.hu/gazdasag/magyar/2010/08/06/zoldfulu_gvh_elnokot_valasztott_orban/.

¹¹¹ Hungarian Civil Liberties Union, *Orbán’s Media Empire Unlawfully Given Green Light*, January 2020, <https://hclu.hu/en/articles/orbans-media-empire-unlawfully-given-green-light>

¹¹² European Commission, *Anti-Corruption Report – Hungary*, 2014, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf

¹¹³ Átlátszó.hu – K-Monitor – Transparency International Hungary, *Civilek vagyonynyilatkozati 12 pontja [CSOs 12 points on Asset Declarations]*, December 2014, <https://transparency.hu/hirek/civilek-vagyonynyilatkozati-12-pontja/>

Regulation of lobbying in Hungary is incomplete and lacks proper enforcement. The government, after having revoked in 2010 the country's previous lobbying regulation that was not effective either, fallen into disuse due to lack of compliance, issued a decree on integrity of public administration.¹¹⁴ However, this decree regulates only certain aspects of meetings between government officials and lobbyists, and it fails among others to provide for the mandatory registration of lobbyists or the obligation to disclose or report contacts with lobbyists to an independent control body, nor does it expect civil servants to ask permission and report back on contacts. With respect to these deficiencies, Transparency International Hungary concluded in its 2015 study¹¹⁵ that the country's current lobbying regulation has no impact on anticorruption whatsoever. The EU's first and only Anticorruption Report published in 2014 also stressed that there was "no mechanism in place targeting the monitoring of the implementation of these obligations".¹¹⁶

Regarding the prevention of the "revolving door" phenomenon, defined by the European Parliamentary Research Service¹¹⁷ as "the movement of experts or expertise from one position to another, between the public and private sectors", **Hungary lacks any specific regulation.** Although both the Labour Code as well as a special act on public officials contains confidentiality clauses, they do not specify any time restriction for public officials to pursue business careers in the same sector, despite the existence of legislative best practices in this realm (not only in the European Parliament and the European Commission, but also in Norway, the Netherlands and France). Therefore, both K-Monitor¹¹⁸ and Transparency International Hungary¹¹⁹ have repeatedly called for the introduction of legal requirements that would prevent high-ranking public officials from entering business sector jobs where the information they acquired in their previous role might provide unfair advantage.

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

Though laws relative to public sector employees prohibit certain activities and specify incompatibilities as well as define rules on conflict of interests in the public sector, these **provisions have proven unable** in the past decade **to prevent the interlacement between the oligarchs and the Government in certain sectors of the economy, and, parallel, the enrichment of cronies and the clientele.** This tendency may be explained to a certain extent by deficient and/or poorly enforced regulations on, inter alia, asset and interest declarations, the revolving door phenomenon or lobby contacts. Moreover, there are some explicit **loopholes in the legislative framework of conflict of interests.** For example, the law on

¹¹⁴ Government Decree 50/2013 (II. 25.)

¹¹⁵ Transparency International Hungary, *Lifting the Lid on Lobbying: National Report of Hungary. Lobbying in an Uncertain Business and Regulatory Environment*, 2015, <https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.pdf>

¹¹⁶ European Commission, *Anti-Corruption Report – Hungary*, 2014, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf

¹¹⁷ European Parliamentary Research Service, *Revolving doors in the EU and US*, July 2018, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625105/EPRS_BRI\(2018\)625105_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625105/EPRS_BRI(2018)625105_EN.pdf)

¹¹⁸ K-Monitor, *Forgóajtó-jelenség: az állami és magánszféra közti átjárás korrupciós kockázatai [The revolving door phenomenon]*, 18 April 2014, https://k.blog.hu/2014/04/18/forgoajto-jelenseg_az_allami_es_maganszfera_kozti_atjaras_korrupcios_kockazatai

¹¹⁹ Transparency International Hungary, *The Revolving Door Phenomenon in Hungary*, 2012, <https://transparency.hu/wp-content/uploads/2016/02/Revolving-Door-Phenomenon-In-Hungary.pdf>

transparency of state subsidies excludes senior public officials and their immediate relatives as well as companies owned or directed by them from becoming beneficiaries. However, it fails to exclude companies owned by the non-immediate relatives of senior public officials. Though one could argue in favour of the lack of such a ground of exclusion, empirical facts indicate serious misfunctions in this regard, resulting in the inexplicable enrichment of cronies and the clientele at the expense of public funds, as manifested also by the so-called Elios-case.

The Elios-case is an illustrative example of deficient regulation and poor enforcement of conflict of interests in public procurement procedures and in the processes that serve to allocate European Union funding.

The new Public Procurement Act adopted in 2015 introduced a relatively strict rule on conflict of interest, giving an extensive list of public officials whose relatives may not participate in a public procurement procedure. However, a month later – before it even entered into force – this regulation was loosened, limiting the excluded relatives to those living in the same household. Otherwise, the provisions on conflict of interest in the Public Procurement Act give enough flexibility to cover all kind of conflict of interest situations. Nevertheless, these provisions are not enforced. For years, there has been no, or only one conflict of interest case before the Public Procurement Authority (“PPA”) – as it was stated by the General Secretary of the PPA at a conference organised by Transparency International Hungary – while, for example, just in the Elios-case the PPA should have addressed at least 35 incidents of conflict of interests. The Elios-case involved the son-in-law of the Prime Minister, but this would not have been a conflict of interest case *per se* since they do not live in the same household. However, the consultancy that prepared the public procurement documents on behalf of the contracting authorities was co-owned by the business partner of the Prime Minister’s son-in-law who also had shares in the Elios company, which is a clear indication of conflicting interests.¹²⁰

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

Hungary is one of the nine Member States of the European Union with a **standalone legislation to protect persons who report on or expose wrongdoing**. Nevertheless, Hungary’s Whistleblower Protection Act¹²¹ (WPA) **has not yet encouraged a real and functional whistleblowing culture**. Research based evidence¹²² sustain that willingness to report wrongdoing in Hungary is low, and the country ranks next to last among EU Member States in the tolerance index to corruption. Transparency International’s 2016 Global

¹²⁰ *This is how authorities sabotaged the fraud investigation against Orban’s son-in-law*, May 2019, <https://english.atlatszo.hu/2019/05/11/this-is-how-authorities-sabotaged-the-fraud-investigation-against-orbans-son-in-law/>

¹²¹ Act CLXIX of 2016

¹²² For details, see Eurobarometer’s survey 470 in 2017 on public attitudes towards corruption in the EU (<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2176>) and survey 457 in 2017 on businesses’ attitudes towards corruption in the EU (<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2177>).

Corruption Barometer,¹²³ based on a public opinion polling showed that only 21% of Hungarians were willing to notify the authorities when encountering corruption.

The WPA provides anonymity for whistleblowers and enables the submission of complaints electronically, using a **designated reporting channel** which is **operated by the country's Commissioner for Fundamental Rights** (Ombudsperson). However, the Ombudsperson has only limited competence in relation to reports submitted to his office. Primarily the Ombudsperson forwards the reports to competent authorities, while secondarily he is entitled to examine on request or *ex officio* if such authorities properly follow up reports forwarded to them. In lack of the right to impose sanctions and set requirements, examinations by the Ombudsperson remain formal.

Whistleblowers can also directly turn to the body they consider to be entitled to take action, however, public officials to whose perceived misconduct whistleblower reports relate are not excluded from the examination of reports.

From a practical perspective, the WPA does little more than simply declaring that any punishment of whistleblowers is unlawful. It **fails to provide effective protection** to reporting persons, and it entirely neglects their relatives. The WPA does not absolve whistleblowers from their obligation of keeping confidential information, nor does it reverse the burden of proof. Though detrimental measures against whistleblowers are prohibited, this does not prevent proceedings aiming to reveal a possible crime on the whistleblower's behalf. The law also lacks clear provisions on providing legal aid and the practical conditions of real protection are totally missing.¹²⁴

Besides, the Government decriminalised the exposure of reporting persons to retribution, a form of intentional wrongdoing to which previously criminal sanctions used to have applied. The implementation of the WPA is not obligatory for business organisations resulting in even humbler protection of corporate whistleblowers.

Government institutions' leadership is required by a government decree to hire an integrity adviser charged with the management of whistleblower reports. Integrity advisers are not independent from the hierarchy and are often tasked with the oversight of privacy practices, equal treatment policies and disciplinary procedures, a reason why their impact remains very limited.¹²⁵

¹²³ Transparency International Hungary, *Globális Korrupciós Barométer 2016 [Global Corruption Barometer 2016]*, <https://transparency.hu/wp-content/uploads/2016/11/Globalis-Korrupcios-Barometer-2016-Jelentes.pdf>

¹²⁴ For details, see the "Hungary" chapter in Transparency International's *Exporting Corruption – Progress Report 2018: Assessing Enforcement of the OECD Anti-Bribery Convention* (https://www.transparency.org/whatwedo/publication/exporting_corruption_2018).

¹²⁵ Hungarian Civil Liberties Union – K-Monitor, *Submission to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on the Hungarian legal framework and practices governing whistleblower protection*, August 2015, https://tasz.hu/files/tasz/imce/2015/whistleblower_protection_in_hungary_20150806_1.docx

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

Public procurement processes in Hungary are highly prone to corruption. Although the legal framework can be considered satisfactory, the practice does not reflect legal prescriptions. **The share of single-bidder procedures above the EU threshold is one of the highest in the EU.** Though the PPA's statistics indicate that share of single-bidder procedures above EU threshold fell to 24% in 2018¹²⁶ and it was 25.5 % in 2019,¹²⁷ the European Commission's data for 2018 showed that the proportion of single-bidder procedures was 39% in tenders above EU threshold.¹²⁸ The Commission stressed that the PPA could not sustain its statistics for the year 2018.¹²⁹ According to verbal information received from the Commission, the proportion of single-bidder procedures rose in 2019 to 42%.

K-Monitor and Transparency International Hungary have pointed out several times that procurement calls are regularly tailored to preselected bidders and competition is often faked through bid-rigging. The European Semester Report formulated similar concerns, stating that obstacles of competition are related to systemic irregularities in the tendering processes, in particular related to inadequate selection and award criteria and unequal treatment of tenderers.¹³⁰ A horizontal audit focusing on procurements involving EU funds by the European Commission resulted in high correction payments by Hungary. In our conclusion, the domestic public procurement market sees only very limited competition.

The concentration of the public procurement market is also significant: three companies controlled by government-close oligarch and the Prime Minister's close friend Lőrinc MÉSZÁROS, and various consortium partners of these companies have been securing an increasing share of public procurement contracts since 2011. While they won less than 1% of such contracts annually in 2011–2016, they were awarded 5.4% of total public procurement value in 2017 and 3.7% in 2018. Their share of EU-financed projects was even higher. Since 2011, they won some 20% of public procurement value that involved EU co-financing, landing them HUF 426 billion. It is also remarkable that while final contract prices are usually on average 6% lower than the original estimate, in the case of public procurement contracts won by Lőrinc Mészáros and his partners it was 8.6% higher.¹³¹

¹²⁶ Public Procurement Authority, *Annual Report to the National Assembly 2018*, https://www.kozbeszerzes.hu/data/filer_public/5c/d4/5cd4554c-5aab-4900-9c6f-908fcocdf1bb/annual_report_2018.pdf

¹²⁷ Public Procurement Authority, *Gyorsjelentés 2019 – A magyar közbeszerzések számokban [Flash Report 2019 – The Hungarian Public Procurements in Numbers]*, https://kozbeszerzes.hu/data/filer_public/b7/6a/b76ad9b4-f131-4e58-baf2-9d496e1cd2e9/kh_gyorsjelentes_2019_a4_fin.pdf

¹²⁸ European Commission, *Country Report Hungary 2019*, SWD(2019) 1016 final, p. 43.

¹²⁹ European Commission, *Country Report Hungary 2019*, SWD(2019) 1016 final

¹³⁰ European Commission, *European Semester Report – Country Report Hungary, 2019*, https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-hungary_en.pdf

¹³¹ István János TÓTH, *Nyolc ábra egy magyar csodáról [Eight figures on a Hungarian miracle]*, May 2019, <https://g7.hu/kozelet/20190521/nyolc-abra-egy-magyar-csodarol/>

In line with EU regulation, **Hungary has made e-procurement mandatory and introduced a new procurement database (ekr.gov.hu)**. This has only led to **limited improvement regarding access to procurement data**. Contracts and other documents related to procedures are accessible on the new portal, however, basic information on tenders can only be found after several clicks and downloads. This would be less of an issue if bulk download or API access to procurement data would be available. No easy access to data has led several times to arguments between analysts and the PPA on procurement related figures as external experts can only work with scraped data, while the PPA does not publish raw data to justify statistics. Limited access to company registry information makes investigation related to procurements also difficult.

The **PPA** is an autonomous body under the supervision of the Parliament, designed to be independent from the government. The PPA oversees the implementation of the Public Procurement Act, controls and published public procurement notices, approves contract amendments and launches restricted procedures. The President of the PPA is appointed for five years by the PPA's Council, a body with 15 members, seven of whom are designated by the Government. Since the appointment of the PPA's President requires a two-third majority decision of the Council, it is obvious that the President's appointment is only possible with the consent of Council members designated by the Government. Moreover, the Council exercises the employer's rights over the President, a reason why the President's independence from the Government is questionable. One example to illustrate his position: the PPA's President asserted in an interview that the Elios-case was an inflated matter, and the PPA did not initiate any procedure or examination because it had not received any official information relating to the case.

The independence of the **Public Procurement Arbitration Board (PPAB)**, which is the first instance of legal remedy in public procurement cases, is also questionable due to the same reasons that place the functional autonomy of the PPA's President into doubt. The PPA's Council appoints the President and Vice-President of the PPAB with a two-third majority decision which makes the appointment of the PPAB's leadership equally reliant on the consent of members of the Council designated by the Government, who can form a blocking minority. Moreover, the President of the PPA exercises the employer's rights over the President, the Vice-President, and the acting commissioners of the PPAB, resulting in even higher levels of interdependency. The case of Lajos SIMICSKA, once one of Hungary's most influential oligarchs and a very close ally to Prime Minister Viktor Orbán illustrates that PPAB does not in practice live up to functionality requirements prescribed in the law. Following the 2015 fall-out of Mr. Simicska with the Prime Minister, Közgép, a construction company and the flagship of Mr. Simicska's economic empire, was excluded from all public procurement procedures for a period of three years due to a minor error in the data they provided in a concrete public procurement process. Previously, during the friendship/alliance between Mr. Simicska and Hungary's Premier Közgép won basically all major public contracts in the construction industry, in some cases with questionable practices, such as e.g. the tailoring of calls to the bids submitted by Közgép, without being sanctioned.

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

Lack of transparency and accountability in political finance is one of the original sins of corruption in Hungary. The most important tranche of political parties' revenues comes from the central budget, whereas laws in place formally prohibit all forms of corporate contributions and donations on non-Hungarian individuals' behalf. However, **political parties are not expected to give detailed accounts on their incomes and expenses**, and the SAO, to whom the task of the oversight of parties' finances belongs also **fails to control if legal requirements are respected** (for details, see Subchapter 19 of the present contribution).

Hungary's campaign finance landscape is even more disappointing due to the **deficient rules of the Campaign Finance Act**¹³² (CFA) in place since 2014. The CFA **covers only national parliamentary elections**, thus opening the door to corruption in municipal and European Parliamentary election campaigns. Second, the CFA **provides for state subsidies to parties in support of their national parliamentary election campaigns** between the range of EUR 500,000 and EUR 2 million, depending on the number of parties' candidates. To become a parliamentary candidate, 500 supporting signatures are needed, however, laws allow citizens to sign the supporting sheets of multiple candidates. As authorities fail to control the validity of signatures, forgery goes unsanctioned. Generous state subsidies are installed in-cash and parties are not required to submit invoices or to make a reliable financial statement, which, paired with vaguely defined and underenforced requirements on reimbursement and on nomination of candidates resulted in the emergence of a unique **phenomenon of fake/sham parties**. Sham parties are formally political parties that lack any tangible support on voters' behalf but are clearly inclined to absorb state funding. Though politically minuscular, sham parties pocketed some 11 million Euros worth of state funding during the 2014 parliamentary election campaign, and this phenomenon resurfaced in 2018, resulting in the absorption of EUR 8.5 million.

Besides, the CFA enables third party campaigning by GONGOs, and allows government propaganda, financed from the state's financial resources to promote the interests of the governing parties. In addition, Hungary's uneven media landscape helped the incumbent political elite in creating a situation where the governing Fidesz party enjoys an unchallengeable dominance in the media, which robustly amplifies political messaging on behalf of the Government and the Fidesz party, parallel to hindering opposition forces media campaigns.

All this made K-Monitor and Transparency International Hungary conclude in a 2015 study¹³³ that the Hungarian parliamentary elections in 2014 were free but were not fair. Transparency International Hungary repeated this conclusion vis-à-vis the 2018 parliamentary elections in a joint statement¹³⁴ with Political Capital.

¹³² Act LXXXVII of 2013

¹³³ *Campaign Spending in Hungary: Total Eclipse*, 2015, <https://transparency.hu/wp-content/uploads/2016/02/Total-Eclipse-Campaign-Spending-in-Hungary-Study.pdf>

¹³⁴ See: <https://transparency.hu/hirek/kormanypartok-mellelt-kampanykorrupcio-ment-nagyot-2018-valasztasokon/>.

25. Criminalisation of corruption and related offences

Hungary is a **signatory to** the relevant multilateral anticorruption instruments, such as, most prominently, **the UNCAC and the OECD's Anti-Bribery Convention**, therefore the **criminal law definitions** of corruption and related offences such as, for example, different forms of bribery and trading in influence, embezzlement, misappropriation of public funds, subsidy fraud, tax evasion, abuse of public authority, money laundering, etc. **are in line with international and European Union standards**. Since 2015, all public officials are expected to report incidents of corruption and the failure to do so qualifies as an offence.

Hungary's **Criminal Procedure Code introduced a new regime for covert policing and intelligence gathering** that provides prosecutors with unlimited access to information and oversight of relevant tools and methods.¹³⁵ The Criminal Procedure Code also empowers prosecutors to accept plea bargains offered by offenders,¹³⁶ which anticipates the improvement of control of corruption.

There is still room for regulatory improvements. Transparency International Hungary and K-Monitor have long been advocating for the criminalisation of abuses related to asset and interest declarations on behalf of public officials and users of public funds.¹³⁷ For years now, the government has intentionally turned a blind eye on our recommendations and has been tolerating the emergence of grievous malpractice in the interest disclosure scene. Transparency International Hungary's attempt to advocate for the imposition of more severe criminal punishments to prodigal spending at the expense of public funds equally aborted.

The **phenomenon of informal payments in the public healthcare system** serves as an illustrative example of how criminal provisions fall into disuse. Though the Hungarian Criminal Code prescribes that requesting or accepting informal payments in relation to the performance of medical services in the public healthcare system is a criminal offense, the widespread practice of posterior, voluntary payments not coerced by medical professionals remains unsanctioned, although the omission to enforce existing criminal provisions is unlawful. Authorities' reluctance to sanction medical professionals is substantiated by a Labour Code provision, which has empowered employers since 2012 to give an ex ante authorisation to employees to accept extra payments made on behalf of third persons in relation to the performance of work duties. Albeit this provision is controversial from a criminal law perspective, it still generally serves as a ground of exclusion to exonerate suspected offenders. More controversy stems from tax law provisions, which expect the declaration of informal payments and compel beneficiaries to pay taxes, a concept that could give rise to concerns related to the prohibition of self-incrimination (*onus probandi*).

¹³⁵ Act XCIII of 2017

¹³⁶ Act XC of 2017 on the Code of Criminal Procedure

¹³⁷ Átlátszó.hu – K-Monitor – Transparency International Hungary, *Civilek vagyonyilatkozati 12 pontja [CSOs 12 points on Asset Declarations]*, December 2014, <https://transparency.hu/hirek/civilek-vagyonyilatkozati-12-pontja/>

However, as the tax administration fails to sanction those who benefit from these informal payments, this provision is practically defunct.

26. Application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

1. Criminal law sanctions applicable to legal entities: Hungarian law states that criminal sanctions shall be applicable to legal entities, provided that the criminal conduct aims at or results in an unlawful advantage on the legal entity's behalf or in a case where the legal entity has been employed as a Special Purpose Vehicle in order to commit a criminal offence. However, legal entities can only be held vicariously responsible for criminal offences, as the law requires that a natural person be convicted for, or at least be aware of the criminal conduct concerned before the liability of a legal person could be established.¹³⁸ This is a serious barrier to holding companies accountable for corrupt activities, and explains why Hungary has, so far, failed to charge or sanction any legal entity for corruption or related offences.

2. Informal payments in the public healthcare system: Beyond criminal law and tax law implications discussed under Subchapter 25 of the present contribution, the perspective of medical professionals and that of their interest representations is worth highlighting.

Professional associations including the Hungarian Medical Chamber have for long argued that the penalization of gratuity payments would only be feasible with a simultaneous and significant increase in medical professionals' salaries which have historically lagged behind regional and EU average figures, contributing to labour shortage in public healthcare.

As Transparency International Hungary demonstrated in a joint policy paper¹³⁹ with the Hungarian Women's Lobby, informal payments are especially prevalent in obstetrics and maternity care which amplifies existing gender inequalities. A study¹⁴⁰ presented by K-Monitor and EMMA association has also shown that informal payments indirectly lead to unneeded medical interventions and an increase in the application of C-sections. Although the Government acknowledges that gratuity payments are a structural deficiency of the public healthcare system, they shift responsibility to healthcare professionals who are divided over the issue.

Despite these challenges, the recently elected leadership of the Hungarian Medical Chamber has made the elimination of informal payments a top priority, however, the inclusion of accepting such payments in the Criminal Code is both politically implausible and could exacerbate already pressing human resources problems. Therefore, Transparency International Hungary encourages an approach whereby such undocumented payments are instead sanctioned as a form of tax evasion which seems both politically more viable and easier to enforce. According to K-Monitor and Transparency International Hungary, a

¹³⁸ Act CIV of 2001 on Criminal Measures Against Legal Entities

¹³⁹ Transparency International Hungary – Hungarian Women's Lobby, *Cherchez la Femme! Gender and Corruption, with special regard to violence against women and gratitude payments in maternity care*, 2019, https://transparency.hu/wp-content/uploads/2019/03/cherchez_la_femme_summary.pdf

¹⁴⁰ See: <https://abcug.hu/tobb-halapenz-tobb-meginditott-szules-es-csaszarmetszes/>.

complex program needs to be designed against informal payments, that include education of patients, self-regulation of medical institutions, significant raise of salaries in the health care sector and the application of criminal sanctions as a final instance.

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

The **impunity of perpetrators of high-level corruption** results from the authorities' intentional failure to enforce laws and impose sanctions. Besides the Elios-case and the Microsoft-case, the case of the foundations established and endowed in the magnitude of HUF 267 billion at the expense of public money by the Central Bank of Hungary serves as another emblematic example of high-level corruption going unsanctioned. In Transparency International Hungary's view, this constituted misappropriation of public funds and abuse of public authority, therefore we made a formal criminal complaint to the Prosecution Service and to the police. The Prosecution Service entirely omitted to respond to Transparency International Hungary's complaint, thus failing to explain why it believed that the reported acts on behalf of the Hungarian Central Bank's leadership did not qualify as a criminal offence.¹⁴¹ Though the full neglect of a complaint is unlawful, there are no tools to hold the Prosecution Service or the individual prosecutors concerned accountable, nor has Transparency International Hungary had the possibility to privately prosecute the suspected offence.

Hungarian criminal judicature understands immunity regulations of public functionaries in a broad sense, not only preventing the interrogation or the apprehension of the persons concerned, but also the implementation of coercive measures (the seizure of property, search of premises, freezing of bank accounts, etc.). This **extensive understanding of immunity practically prevents the collection of evidence in cases where the supposed offender has immunity**. From an anticorruption perspective, the cases of parliamentarians are especially relevant. In at least two recent corruption incidents related to members of the governing Fidesz party's parliamentary group, the Prosecutor General, obliged by the law to initiate the waiver process, inexplicably delayed the submission of the respective motion to the Parliament. There have been extensive media reports before the Prosecutor General initiated the waiver process in both cases. The MPs concerned, György SIMONKA and István BOLDOG have been involved in a mafia type of a fraud scheme resulting in the misappropriation of substantial amounts of European Union funding. Mr. György Simonka and his accomplices, among others immediate relatives of other Fidesz MPs were charged with subsidy fraud. The "middleman" of Mr. István Boldog has been apprehended on subsidy fraud charges.¹⁴² Political considerations may have outcompeted the interests of the criminal justice in both cases, thus putting the chance to recover misappropriated funds and prevent the continuation of the suspected offences to risk.

¹⁴¹ Miklós LIGETI, *Elveszíti ügyészségjellegét [It is losing the character of a prosecution service]*, July 2016, <https://magyarnarancs.hu/publicisztika/elvesziti-ugyeszsegjelleget-100274>

¹⁴² See e.g.: <https://merce.hu/2020/04/06/egy-fideszeszes-es-egy-ellenzeki-kepviselo-mentelmi-jogat-is-felfuggesztettek/>.



III. MEDIA PLURALISM

A. MEDIA REGULATORY AUTHORITIES AND BODIES

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

The **National Media and Infocommunications Authority** (*Nemzeti Média és Hírközlési Hatóság*, “NMHH”) is a convergent authority, which handles as regulator of the telecommunications and media markets within a single body. Its competences comprise all regulatory issues regarding the telecommunication and the media field, both infrastructure and content. The Media Council is part of the NMHH, it has a distinct competence on the media field. The president of the NMHH is the president of the Media Council at once.

The most significant turn in the history of Hungarian media regulation was when the new media laws extended the supervisory and sanctioning scope of the media authority relating to the printed and online press. All these, including **the uncertainty of the media law situation, the prospects of severe sanctions and a broad legal scope of the authority and last but not least the newly organised media authority can pose a serious threat against the freedom of information through the media.**¹⁴³

The NMHH’s consolidated budget shall be approved by the Parliament in a separate act. The president is entitled to restructure the resources between the approved allotment accounts of the integrated budget. In 2020, the NMHH’s budget is HUF 38.4 billion (ca. EUR 107 million). Parliament approves the Media Council’s budget as part of the NMHH’s integrated budget. The Media Council’s operating budget in 2020 is HUF 627 million (ca. EUR 1,7 million).¹⁴⁴ These amounts are theoretically suitable to guarantee high-level professional work, however, in the case of the NMHH and the Media Council these serve as the price of the loyalty.

¹⁴³ Mertek Media Monitor, *Hungarian Media Law*, 2015, <https://mertek.eu/wp-content/uploads/2017/04/MertekFuzetek1.pdf>

¹⁴⁴ Act XCV of 2019 on the Consolidated Budget of the National Media and Infocommunications Authority for 2020

The most serious sanction against dailies and online press products is a fine of 25 million forints. Audiovisual service providers can be punished by the withdrawal of its licence; the highest amount of the fine against these providers is 200 million forints.

However, the clearest proof of the political bias of the Media Council is its activity on the field of media market regulation, namely the **practice of the radio frequency tenders** and the approval of the media market mergers. The result of the frequency tender practice is a monopolistic national commercial radio owned by the Fidesz-affiliated media foundation, the strong domination of a Fidesz-near radio network at the local radio market level, and the liquidation of almost all critical talk radios. **The merger control decisions of the Media Council were essential tools of building up a highly concentrated media market**, where almost 500 media outlets belong to the Fidesz-affiliated media foundation. The Media Council approved all mergers in interest of Fidesz-affiliated businessmen, mostly without any reasoning. Without these decisions, the stopping of the biggest political daily and indirectly the establishing of the Fidesz-affiliated media foundation would have not been possible.¹⁴⁵

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

Hungary's Media Act fails to instate adequate safeguards for a pluralistic and autonomous oversight of either commercial or public service media. The rules governing the election of the president and members to the Media Council, an authority vested with broad regulatory powers, are incapable of barring one-sided political influence from decisions concerning media market management and control over media content. In fact, these rules locked in the majority of ruling-party delegates to the media authority.

The president of the NMHH is nominated by the Prime Minister and nominated by the President of the Republic. The president of the NMHH is candidate for the presidency of the Media Council at once. Into this position, he/she must be elected by two thirds of the Parliament. This complicated procedure is, however, purely formal in a case when all participants belong to the same party.

The four members of the Media Council are nominated by an ad hoc parliamentary committee. The Parliament votes on the delegates who were nominated by this ad hoc committee. In the first round of voting, the ad hoc committee needs to nominate the candidates for Council membership unanimously. In the event that the Government and opposition members of the committee fail to unanimously agree on the nominees, the law provides that nominations in the second round only require a two-thirds majority. Since the partisan make-up of the ad hoc committee is proportionally the same as the share of the respective parties in the Parliament, with their two-thirds majority **the governing parties can effectively nominate a slate of candidates that is exclusively made up of their own nominees without including any opposition-delegated candidates.**¹⁴⁶

¹⁴⁵ Mertek Media Monitor, *Centralised Media System – Soft Censorship 2018, 2019*, <https://mertek.eu/wp-content/uploads/2020/01/MertekFuzetek18.pdf>

¹⁴⁶ Act CLXXXV of 2010 on Media Services and Mass Media

That was precisely the goal of the Media Council vote back in 2010, and this is how a Media Council exclusively made up of members who had been nominated by the governing parties came into being. The same procedure went on in 2019; the current Media Council members are in their positions until 2028.

From the point of view of media freedom, the nine-year term for which president and members of the Media Council are appointed is problematic. The constitutional mission of these media supervisory agencies is to represent social diversity in their decisions pertaining to the media. Social diversity, however, is not a static fact but a dynamic attribute in constant flux. The excessively long term of appointment increases the risk of perpetuating in media-related decisions a momentary stratification of society that will not reflect actual conditions of diversity in the more distant future.

B. TRANSPARENCY OF MEDIA OWNERSHIP AND GOVERNMENT INTERFERENCE

30. The transparent allocation of state advertising (including any rules regulating the matter)

It is well documented that **state advertisers favour individual companies and they thereby distort competition**. While before 2010, when the Socialist government was in power, state advertising spending was relatively balanced, and there wasn't any media outlet that operated solely based on state advertising, after 2010 this has changed: it is apparent that under the Fidesz-government state advertising was immediately diverted to companies acquired by investors with close ties to the Government. What is even more striking is that **independent competitors are clearly being avoided by state advertisers, thereby rendering fair competition impossible**.

There are two distinct advertising strategy periods since Fidesz entered into office in 2010: between 2010 and 2014, the overall volume of state advertising spending was not much higher than in the foregoing period, but it was much more centralised than previously. This was the time when almost all state advertising was funnelled to the well-known media oligarch, Lajos Simicska's media companies. During the 2014–2018 term there was a massive surge in the total amount of spending. Throughout this period, Simicska was completely squeezed out of the Hungarian media market. What has not changed, however, is that state advertising continues to be published in government-friendly media.¹⁴⁷ The surge in the advertising volume owes primarily to the Government's successive and continuously ongoing campaigns. The billions spent on various state communication campaigns mostly end up with media whose owners have close ties to the Government and which uncritically relay government propaganda.

State sources finance politically favoured media outlets and it helped several pro-government media enterprises to flourish, or at least survive the economically difficult years.¹⁴⁸ These media companies are unquestionably loyal to the government: the editorial

¹⁴⁷ For data visualization about state advertising from 2006, see: <https://mertek.atlatszo.hu/allamihirdetesek/>.

¹⁴⁸ Mertek Media Monitor and its partners turned to the European Commission with a state aid complaint (<https://mertek.eu/en/2019/01/29/state-advertising-spending-in-hungary-an-unlawful-form-of-state-aid/>).

practice has to serve the interest of the ruling parties if they want to preserve their most important revenue source. All this happens in a period when the entire media market is struggling with problems concerning its business model: the distortion that has emerged in the Hungarian market has the result that pro-government players in the media market are relatively sheltered against the challenges of market competition, while the independent players in turn become extremely vulnerable with respect to their competitive position in the market.¹⁴⁹

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

The Orbán-government is unique in the EU in that it has not only done nothing to counter authoritarian (mainly Russian and Chinese) disinformation aimed at the European Union, but it has also been playing an active part in popularizing certain conspiracy theories. **Government-controlled media and the Government's own communication has launched media-, social media- and billboard-campaigns against the European Union.** Since the 2015 migration crisis,¹⁵⁰ the main message of these campaigns has been increasingly that George Soros and the EU influenced by him are undermining Hungarian national sovereignty.

Numerous studies by Political Capital¹⁵¹ have shown that a pro-Russian media network – including, among others, disinformation portals with ties to the government – is spreading pro-Kremlin narratives in a conspiratorial context and the style of tabloids that also discusses popular news concerning lifestyle, “alternative medicine”, etc. Moreover, since the vast majority of Hungarian mainstream media outlets are under the direct or indirect control of the Government, these are also spreading pro-Kremlin narratives.

A report published by the Oxford University Computational Propaganda Project¹⁵² also reveals the **disinformation activities of the Hungarian government.** According to the report, this has five goals: (1) disseminating and popularizing the Government's (and the ruling party's) messages, (2) attacking the opposition, (3) diverting attention from important topics, (4) deepening societal fault lines, and (5) silencing dissenting opinions. The latter is the easiest to achieve by personally attacking, abusing opposition figures to dissuade them from commenting on similar debates on the next occasion.

Significant amount of public funds was spent on politically motivated governmental advertisement campaigns through a selected group of media outlets in the last years. These campaigns had different political messages, like “Hungary is getting stronger”, “Stop

¹⁴⁹ Attila BATORFY, – Ágnes URBÁN, *State advertising as an instrument of transformation of the media market in Hungary*, *East European Politics*, 2020, 36:1, pp. 44–65, DOI: [10.1080/21599165.2019.1662398](https://doi.org/10.1080/21599165.2019.1662398)

¹⁵⁰ Political Capital, *The political effects of migration-related fake news, disinformation and conspiracy theories*, 2017, https://politicalcapital.hu/library.php?article_read=1&article_id=1505

¹⁵¹ Political Capital, *Példátlan az EU-ban, hogy egy kormány az álhírek fő forrása [It is unprecedented in the EU that a government is the main source of fake news]*, 2018,

https://politicalcapital.hu/konyvtar.php?article_read=1&article_id=2292

¹⁵² Samantha BRADSHAW – Philip N. HOWARD, *The Global Disinformation Order: 2019 Global Inventory of Organised Social Media Manipulation*, <https://comprop.oii.ox.ac.uk/wp-content/uploads/sites/93/2019/09/CyberTroop-Report19.pdf>

Brussels”, or “Stop Soros”. Based on the 2019 December framework contract the campaign budget is HUF 50 billion (ca. EUR 140 million), but it can be multiplied twice, altogether to HUF 150 billion (ca. EUR 420 million).¹⁵³

Broadcast of government propaganda does not comply with the media law, since radios and television channels may only broadcast political advertising in the campaign period before elections. In a decision with massive ramifications, the Media Council declared that the abovementioned spots which were clearly instances of political advertising actually qualified as public service advertisements. In this way the government is allowed to run continuous campaigns with clear political messages.

32. Rules governing transparency of media ownership

There were several changes in the media ownership structure in the last decade. Until 2015 an old friend of the Prime Minister, one of the wealthiest entrepreneurs in Hungary, Lajos Simicska, was the owner of the largest media empire in Hungary, and the oligarchic system appeared to function reliably. After a serious conflict between Orbán and Simicska in February 2015, Orbán diversified the pro-government media empire. The new owners were well-known businessmen or political figures with close ties to the ruling parties.

The media system radically changed at the end of November 2018. **The private owners of 476 government-friendly media outlets “donated” their entire asset to a foundation, called Central European Press and Media Foundation (KESMA).** Its board members have strong ties to ruling Fidesz party. After the years of pseudo diversification, the media system became concentrated again.¹⁵⁴ On 5 December 2018 Viktor Orbán signed a **decree declaring the merger to be an event of strategic national importance** that serves “the public interest of saving print media” and **exempting it therefore from all possible national scrutiny** of the Hungarian Competition Authority, and by extension of the Media Council. KESMA also started its international expansion, since V4 News Agency (V4NA) was created in 2019. The majority owner is a commercial company, part of KESMA. The launch of the V4NA news agency represents an effort by Orbán to expand its regional influence.

There are **serious transparency problems around the public service media.**¹⁵⁵ The Hungarian public media operate in the framework of a very complex and confusing institutional structure. The Media Service Support and Asset Management Fund (MTVA in Hungarian) performs practically all of the public media’s content acquisition and show production and it is also the legal employer of the public service media employees. At the same time, however, the editorial responsibility for the content lies with another organisation, the Duna Médiaszolgáltató Nonprofit Zrt.

¹⁵³ Zoltán Jandó, *Egy Puskás stadionnyi pénzt költhet propagandára az állam [State can spend the price of Puskas Arena for propaganda]*, February 2020, <https://g7.hu/kozelet/20200220/egy-puskas-stadionnyi-penz-kolthet-propagandara-az-allam/>

¹⁵⁴ Mertek Media Monitor, *Centralised Media System – Soft Censorship 2018*, 2019, <https://mertek.eu/wp-content/uploads/2020/01/MertekFuzetek18.pdf>

¹⁵⁵ Mertek Media Monitor and its partners turned to the European Commission with a state aid complaint (<https://mertek.eu/en/2019/01/09/funding-for-public-service-media-in-hungary-a-form-of-unlawful-state-aid/>).

The complexity of the system is no sheer coincidence: while the operations of the Duna are subject to the outside review of several public bodies, especially the Public Service Media Board that is made up of the delegates of organisations specified in the relevant law, MTVA is subject to the review of a single organisation: the Media Council. So there is the Duna, which is more or less appropriately subject to external control mechanisms. And there is the MTVA, which disposes of all these taxpayer funds without being subject to any meaningful outside control and no one has a clue of where and how it spends the money.

C. FRAMEWORK FOR JOURNALISTS' PROTECTION

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

1. Editorial and journalistic independence is declared by the Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content¹⁵⁶ but the **guarantees are insufficient**. Limitation of editorial freedom is present in **the public service media: specific topics are subject to prior authorisation**.¹⁵⁷

2. Independent media outlets are hindered with various tools by the Government from carrying out their duty. Although these media outlets are not subject to traditional forms of censorship their work is made harder by state authorities with measures that cannot be legally challenged.

The government categorizes media outlets in the document "*Factsheet on media freedom and pluralism in Hungary*" based on their alleged political views, referring to the most prominent media outlets as "heavily government-critical". The Hungarian Civil Liberties Union (HCLU) conducted research among journalists of the abovementioned independent media outlets in 2019¹⁵⁸ (and in 2020 during the COVID-19 pandemic¹⁵⁹). The **research revealed systemic obstruction of the work of the independent media in the form of ignoring press inquiries, open rejection,¹⁶⁰ physical distancing of journalists, discreditation, stigmatization, and finally intimidation of their sources**. Prominent politicians often refer to independent media outlets as opposition propaganda or Soros-media: "I'll not give a statement to a fake news factory", as the Prime Minister said.

3. Centralisation of state institutions and intimidation of potential sources leads to withholding information from the press related to key sectors like healthcare or education.

¹⁵⁶ Article 4(2)

¹⁵⁷ See e.g.: <https://www.politico.eu/article/hungarian-state-media-not-free-to-report-on-greta-thunberg-human-rights/>, <https://www.theguardian.com/world/2018/apr/13/hungary-journalists-state-tv-network-migrants-viktor-orban-government>.

¹⁵⁸ Hungarian Civil Liberties Union, "*The minister and the barkeep are all that's left in the public sphere*" – *Research on barriers to Hungarian journalism*, 2020, https://tasz.hu/a/files/press_research.pdf

¹⁵⁹ Hungarian Civil Liberties Union, *Research on the obstruction of the work of journalists during the coronavirus pandemic in Hungary*, 15 April 2020, https://tasz.hu/a/files/coronavirus_press_research.pdf

¹⁶⁰ See:

https://hvg.hu/itthon/20180706_miniszteriumok_bojkottja_a_nem_kormanyparti_szerkesztosegek_ellen.

4. **Journalists in Hungary often face physical restrictions when it comes to reporting.** It is especially problematic in the Parliament building.¹⁶¹ According to the Government these limitations are similar to the European Parliament's regulations as written in the document "*Factsheet on the rights of journalists (freedom of expression) in Hungary*". However, a case is pending before the ECtHR regarding these restrictions.¹⁶² As the ECtHR already found in the case *Selmani and Others v. the Former Yugoslav Republic of Macedonia*¹⁶³ that removing journalists from a specific area of the parliament without a pressing social need violates Article 10 of the European Convention on Human Rights, it is reasonable to expect that in *Mándli v. Hungary* the state will be found in violation of the Convention.

5. Entrance to refugee camps was also denied from journalists, and the ECtHR found this measure unlawful in 2019 in the case *Szurovecz v. Hungary*. In its decision the ECtHR emphasises the importance of first-hand data collection and finds that the only way of getting information in this way is the personal presence of the reporter.¹⁶⁴

6. András DEZSÓ, a journalist at index.hu, was charged with violating personal data under the GDPR, although he used publicly available sources in his investigation.¹⁶⁵ Despite the relatively low number of such cases, these procedures have a chilling effect on the media.¹⁶⁶

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

1. In 2015, the Council of Europe issued the "*Journalism at Risk*" study, which emphasises that among other threats journalists have to face acts of intimidation and smear campaigns. These phenomena are prevalent in Hungary (see also Subchapter 33 of the present contribution).¹⁶⁷ Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors contains several recommendations to member states, but most of these are not followed by Hungary, especially the ones in subchapter "Protection".

2. There is no dedicated law enforcement capacity to prevent or investigate attacks on journalists, and neither criminal law nor law enforcement practice treats journalists as a group that requires enhanced protection.

3. **The actions of the authorities are unsatisfactory with regards to attacks on journalists.** Júlia Halász, photojournalist of 444.hu was attacked in 2018 in a campaign event of the

¹⁶¹ See Article 8 of Order 9/2013. of the Speaker of the Parliament (<https://www.parlament.hu/documents/10181/509284/2013r09.pdf/g1a317a1-8f25-8eef-dcee-762224966742?t=1571236292674>).

¹⁶² In more detail, see: <https://www.mediadefence.org/news/restrictions-parliamentary-reporting-violates-free-expression-mldi-files-intervention-european>.

¹⁶³ Application no. 67259/14, Judgment of 9 February 2017, § 85.

¹⁶⁴ Application no. 15428/16, Judgment of 8 October 2019, §§ 72–77.

¹⁶⁵ See e.g.: <https://mappingmediafreedom.org/index.php/country-profiles/hungary/>.

¹⁶⁶ *Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey. Country Report: Hungary*, https://cadmus.eui.eu/bitstream/handle/1814/61143/2018_Hungary_EN.pdf?sequence=1&isAllowed=y, p. 8.

¹⁶⁷ <https://rm.coe.int/leaflet-safety-of-journalists-en/1680735c28>

governing party. Her case was eventually closed by the prosecutor's office without reaching a court of law, while her attacker initiated a criminal defamation case against her for publishing a story of the incident; this latter case is currently pending before court.

4. In November 2019 anti-Semitic posters were placed to several points of Budapest, depicting the editor-in-chief and a journalist of the news site index.hu. The antecedent of the case was that the editor-in-chief participated in the inauguration of the new national football stadium in Budapest; after that he published a report on the event, which caused outrage in some sections of the right-wing publicity. Several pro-government media outlets published intimidating articles¹⁶⁸ and also an anti-Semitic drawing.¹⁶⁹ Contrary to the denunciation (filed by a Jewish organisation) regarding the posters, there is no information about any ongoing procedure in the case.

35. Access to information and public documents

1. In most cases, **public interest data which might be politically sensitive** (e.g. state subsidies to the professional sports clubs, questionable contracts of state organs) **to the government becomes accessible only after the final binding judgment** of the court as government organs and other data managers refuse to fulfil the freedom of information (FOI) requests of journalist and citizens alike.¹⁷⁰ In some cases the data is held back even after the judgment and further enforcement is necessary through a bailiff;¹⁷¹ in extreme cases even that is not sufficient.¹⁷² (See also Subchapter 17 of the present contribution.) This particularly hinders the work of the press, as months, sometimes years can pass between the FOI request and the fulfilment, and during this period the topic can lose its relevance. This is a clear violation of freedom of expression. The ECtHR has previously found that "gathering of information is an essential preparatory step in journalism and is an inherent and protected part of press freedom (see *Dammann v. Switzerland*, no. 77551/01, § 52, 25 April 2006). Obstacles created in order to hinder access to information which is of public interest may discourage those working in the media or related fields from pursuing such matters. As a result, they may no longer be able to play their vital role as 'public watchdogs,' and their ability to provide accurate and reliable information may be adversely affected (see *Shapovalov v. Ukraine*, § 68, and *Társaság a Szabadságjogokért v. Hungary*, § 38)."¹⁷³ The abovementioned findings are applicable for the other forms of hindering (see Subchapter 33 of the present contribution).

¹⁶⁸ See e.g.: <https://pestisracok.hu/plakatra-kerultek-a-magyarokat-gyalazo-indexesek/>, <https://ripost.hu/politik/az-index-ujsgiroja-tudatosan-alazta-az-eneklo-felvideki-magyar-gyerekeket-2163558/>.

¹⁶⁹ See: <https://888.hu/kinyilott-a-pitypang/tokeletes-rajz-keszult-az-index-provokatorarol-4215264/>.

¹⁷⁰ See e.g.: https://hvg.hu/itthon/20190919_Nem_titkolhatja_a_kormany_mire_adott_milliardokat_a_Szazadvegnek.

¹⁷¹ See e.g.: https://index.hu/gazdasag/2017/04/15/gazdasai_bizottsag_letelepedesi_kotveny_vegrehajtasi/.

¹⁷² See e.g.: https://index.hu/sport/2020/01/23/rossz_pendrive_miatt_akadt_el_ujra_a_felcsuti_tao-penzek_elszamolasa/, <https://24.hu/belfold/2019/08/21/vizes-vb-hosszu-katinka-duna-arena/>.

¹⁷³ *Szurovecz v. Hungary* (Application no. 15428/16, Judgment of 8 October 2019), § 52.

2. **Possibility to charge labour-related costs associated with the servicing of FOI requests on data requestors is systematically misused by data managers.**¹⁷⁴ Other grounds of exclusion (such as confidential business information) are also often misused to refuse FOI requests.¹⁷⁵

3. The **guarantees of impartiality of the leader of the Hungarian National Authority for Data Protection and Freedom of Information (NAIH) are weak** as the president of the NAIH is appointed upon the suggestion of the Prime Minister.¹⁷⁶ There are concerns about the impartiality of the current president of the NAIH based on some of his public statements and his reluctance to find violation of information right committed by the state.¹⁷⁷ It is also notable that the CJEU found that the premature dismissal of the Data Protection Supervisor in 2012, Hungary has infringed EU law – the NAIH was established after this unlawful decision.¹⁷⁸

4. The NAIH has the right to intervene in ongoing FOI cases before the court in order to enhance the protection of freedom of information, however, according to the public interest data request of the HCLU, the NAIH used this tool only once between 2012 (establishment of NAIH) and June 2019.

¹⁷⁴ https://transparency.hu/wp-content/uploads/2019/10/NGO_rebuttal_of_Article_7_Hun_gov_info_note_18102019.pdf pg. 18.; https://nepszava.hu/3003768_milliokert-arulna-el-a-kincstar-mennyit-fizettek-vissza-a-kamupartok

¹⁷⁵ See e.g.:

https://ataszjelenti.blog.hu/2019/06/06/itt_a_vege_kiharcoltuk_nyilvanossagra_kell_hozni_a_korhazi_fertozesek_adatait.

¹⁷⁶ Act CXII of 2011 on Informational Self-Determination and Freedom of Information, Article 40(2)

¹⁷⁷ See e.g.: <https://www.origo.hu/itthon/20191004-fennall-a-jogsertes-gyanuja-a-jozsefvarosi-adatkezelesi-ugyben.html>.

¹⁷⁸ *European Commission v Hungary*, Case C-288/12, Judgment of the Court (Grand Chamber), 8 April 2014, ECLI identifier: ECLI:EU:C:2014:237. See also: https://ec.europa.eu/commission/presscorner/detail/en/CJE_14_53.



IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

A. THE PROCESS FOR PREPARING AND ENACTING LAWS

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

Act XII of 2020 on the Containment of the Coronavirus (**Authorization Act**) provided the Government with a **carte blanche mandate without any sunset clause** to suspend, with decrees, the application of Acts of Parliament, derogate from the provisions of Acts, and take other extraordinary measures until the Government maintains the “state of danger” declared. The Authorization Act fails to comply with criteria set by national law for a special legal order,¹⁷⁹ and allows the Government to introduce significant rights restrictions **without any guarantee for the swift and effective constitutional review** of its decrees.¹⁸⁰ The Authorization Act was criticized e.g. by the CoE Secretary General,¹⁸¹ the CoE Commissioner for Human Rights,¹⁸² the UN High Commissioner for Human Rights,¹⁸³ and OSCE/ODIHR.¹⁸⁴

¹⁷⁹ In more detail, see: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Unlimited power is not the panacea – Assessment of the proposed law to extend the state of emergency and its constitutional preconditions*, 22 March 2020, <https://www.helsinki.hu/en/unlimited-power-is-not-the-panacea/>.

¹⁸⁰ In more detail, see: Hungarian Helsinki Committee, *Background note on Act XII of 2020 on the Containment of the Coronavirus*, 31 March, https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf.

¹⁸¹ *Secretary General writes to Viktor Orbán regarding COVID-19 state of emergency in Hungary*, 24 March 2020, <https://www.coe.int/en/web/portall/-/secretary-general-writes-to-viktor-orban-regarding-covid-19-state-of-emergency-in-hungary>

¹⁸² Commissioner for Human Rights of the Council of Europe, 23 March 2020, <https://twitter.com/CommissionerHR/status/1242036471508414464>

¹⁸³ Spokesperson for the UN High Commissioner for Human Rights, *Press briefing note on Hungary*, 27 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25750>

¹⁸⁴ OSCE Office for Democratic Institutions and Human Rights, *Newly declared states of emergency must include a time limit and parliamentary oversight, OSCE human rights head says*, 30 March 2020, <https://www.osce.org/odihr/449311>

Public consultation is obligatory for laws prepared by Ministers, and shall involve publishing the Bills online before they are submitted to the Parliament for the public to comment on them.¹⁸⁵ The governing majority has regularly circumvented this rule by significant Bills being often submitted by governing party MPs or parliamentary committees (e.g. the Bill on the CC¹⁸⁶). The Minister of Justice submitted to the Parliament the 2019 Omnibus Act without subjecting it to public consultation beforehand. Deadlines for commenting are often very tight. By law, comments should be published, with the reasons for rejecting them,¹⁸⁷ but this never happens. Targeted consultation with stakeholders is not without problems either: e.g. a trade union was asked by a ministry on 9 April 2020 to comment by 14 April (over Easter) on a Bill transforming the status of certain public sector employees.¹⁸⁸

“**National consultations**” use manipulative questions on issues politically important for the Government; responses are counted in a methodologically neither sound nor controlled manner. Therefore, they are not suitable to replace meaningful public consultation, and rather serve as propaganda tools.¹⁸⁹ An example is the national consultation announced for 2020 on whether compensation for segregation and prison overcrowding is fair after a campaign hammering it in that according to the Government these are unjust.

Some Bills were **adopted within a very short timeframe**. Bills were adopted in urgent or exceptional legislative procedures 134 and 26 times respectively out of 859 Bills in the 2010–2014 cycle, and 7 and 31 times out of 730 Bills in the 2014–2018 cycle.¹⁹⁰ It has been a recurring practice for the governing majority to amend Bills substantially in the last phase of the legislative process, after the in-depth parliamentary debate has already been taken place.

The Speaker of the Parliament has **extensive disciplinary powers**, which the current Speaker tends to overuse in a partisan manner. In *Karácsony and Others v. Hungary*,¹⁹¹ ECtHR ruled that fines imposed by the Speaker on opposition MPs for using billboards and a megaphone violated their freedom of expression for the lack of adequate procedural safeguards.

38. Regime for constitutional review of laws

While Hungary has a written **Fundamental Law** (FL) with all the necessary elements that a modern constitution should have, in practice it does not restrict the state power. For several reasons, it is rather **a political tool in the hand of the Government used for legitimising**

¹⁸⁵ Act CXXXI of 2010 on Public Participation in Preparing Laws, Articles 1 and 8(1)–(2)

¹⁸⁶ Act CLI of 2011 on the Constitutional Court

¹⁸⁷ Act CXXXI of 2010 on Public Participation in Preparing Laws, Article 11(1)

¹⁸⁸ See e.g.: <https://444.hu/2020/04/11/elvenne-a-kormany-a-kulturalis-dolgozok-kozalkalmazotti-statuszat-a-hosszu-hetveget-hagytak-a-velemenyezesre>.

¹⁸⁹ See also: Agnes BATORY – Sara SVENSSON, *The use and abuse of participatory governance by populist governments*, Policy & Politics, 2019, 47(2), pp. 227–244.

¹⁹⁰ Sources: www.parlament.hu; Országgyűlés Hivatala [Office of the Parliament], *Parlamenti jog – Az Országgyűlés működése, feladat- és hatáskörei, kapcsolódó intézmények* [Parliamentary Law – The Operation, Tasks and Powers of the Parliament and Related Institutions], 2018, <https://www.parlament.hu/documents/10181/56582/Parlamenti+jog/obf1e7bb-2654-5631-1068-481392d61552>, pp. 462–463.

¹⁹¹ Applications nos. 42461/13 and 44357/13, Judgment of 17 May 2016

actions which are interfering with the generally recognised constitutional norms. Using the FL as a mere instrument of power politics is inconsistent with the elemental function of a constitution.¹⁹²

1. **The FL is not reflecting national consensus.** The Government was able to pass an entirely new FL and its amendments with the votes of only the governing majority in 2012. Since 2010, the Government has possessed the constitution-making and -amending majority most of the times (except for the years 2015–2018); therefore the FL and its amendments could be passed without the support of any other political force.

2. **The FL is not able to serve as a stable basis of the legal system,** as it was amended every time whenever the Government's political interests required so. The FL was amended for the 8th time in 2019.¹⁹³ Previous amendments affected almost all parts of it. Therefore it is not the constitution that regulates the Government's work, but it is **the Government** that **adjusts the FL to its needs.**

3. Even though the FL recognises a modern set of fundamental rights, it is unusual in that it includes not only the rules that guarantee rights but also the exceptions that allow for the restrictions of them. Some amendments to the FL were direct consequences of a decision of the Constitutional Court (CC) that found collision between some laws and the FL. Many amendments served to make several unconstitutional legal restrictions indisputable under the (modified) FL. As such, **the fundamental rights chapter of the FL contains unjustifiable legal restrictions of the rights too.**¹⁹⁴

4. Although the **CC** is responsible for enforcing the norms of the FL, its **competence is incomplete:** laws adopted in the period when the national debt is above 50% of the GDP will not be subject to full and comprehensive supervision by the CC.¹⁹⁵

5. **The independence of the CC is also questionable.** Through appointing new judges, amending rules and increasing the size of the court,¹⁹⁶ the Government has succeeded in shaping the CC into a loyal body supportive of the governing majority's agenda, as opposed to the independent and genuine counterbalance to government power it should represent. As a result, this CC rarely decides against the supposed will of the Government in politically sensitive cases.¹⁹⁷

¹⁹² Grazyna SKAPSKA, The decline of liberal constitutionalism in East Central Europe. In: Peeter VIHALEMM – Anu MASSO – Signe OPERMANN, *The Routledge International handbook of European social transformations*, 2017

¹⁹³ 2012: the First, Second and Third Amendments, 2013: the Fourth and Fifth Amendments, 2016: the Sixth Amendment, 2018: the Seventh Amendment, 2019: the Eighth Amendment.

¹⁹⁴ See most notably the Fourth Amendment of the Fundamental Law (25 March 2013).

¹⁹⁵ Fundamental Law, Article 37

¹⁹⁶ See in detail: *Stating the Obvious – Rebutting the Hungarian Government's response to the Reasoned Proposal in the Article 7 procedure against Hungary (A reaction paper by NGOs)*, 18 October 2019, https://www.helsinki.hu/wp-content/uploads/NGO_rebuttal_of_Article_7_Hun_gov_info_note_18102019.pdf, p. 5.

¹⁹⁷ See for example the following CSO research from 2015: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Analysis of the performance of Hungary's "One-Party Elected" Constitutional Court Judges between 2011 and 2014*, 2015, http://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf.

6. An amendment of 2019 to the Act on CC changed the nature of constitutional complaints: not only the citizens are entitled to human rights protection from the state, but **under certain circumstances, public authorities may also claim constitutional protection from the CC.**¹⁹⁸ That is, the constitutional complaint is no longer an exceptional constitutional remedy for the protection of citizens' rights against state powers.

B. INDEPENDENT AUTHORITIES

39. Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

The role of independent institutions as checks on and balances to political power has been systematically undermined through restructuring as well as re-staffing these institutions. The ruling majority has gained control over state institutions through their appointed or elected leaders. The President of the Supreme Court and the Parliamentary Commissioner for Data Protection and Freedom of Information, members of the National Election Commission, the Vice Presidents of the Hungarian Competition Authority, the Vice-President of the Supreme Court, and the members of the National Radio and Television Body were all removed before the end of the fixed term of their office via legislative steps. (In the cases *Erményi* and *Baka v. Hungary*, the ECtHR concluded that the premature dismissal of the Vice-President and President of the Supreme Court violated the European Convention on Human Rights;¹⁹⁹ while the CJEU ruled that by prematurely bringing to an end the term served by the Parliamentary Commissioner for Data Protection and Freedom of Information, Hungary had failed to fulfil its obligations under Directive 95/46.²⁰⁰) The Presidents of the Republic elected since 2010 were former Fidesz MEPs/MPs, a former Fidesz MP was elected as Head of the State Audit Office, two CC judges are also former Fidesz MPs, while some others are former administration leaders. As a consequence, independent institutions have been restructured in such a way as to deprive them, in law or in practice, of their capacity to exercise control over the executive effectively. The lack of independence of election commissions is particularly problematic (see Subchapter 45 of the present contribution in more detail).

In 2019, the GANHRI Sub-Committee on Accreditation **deferred the review of the Commissioner for Fundamental Rights' (CFR) NHRI status**²⁰¹ because the CFR's selection process "is not sufficiently broad and transparent", and it did "not demonstrate adequate efforts in addressing all human rights issues, nor has it spoken out in a manner that

¹⁹⁸ Article 55 of the Authorization Act, amending Act CLI of 2011 on the Constitutional Court

¹⁹⁹ *Erményi v. Hungary* (Application no. 22254/14, Judgment of 22 November 2016), *Baka v. Hungary* (Application no. 20261/12, Judgment of 27 May 2014)

²⁰⁰ *European Commission v Hungary*, Case C-288/12, Judgment of the Court (Grand Chamber), 8 April 2014, ECLI identifier: ECLI:EU:C:2014:237.

²⁰¹ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 14–18 October 2019, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20October%202019%20English.pdf>, pp. 23–26.

promotes and protects all human rights". Also, the CFR has made limited use of international human rights mechanisms "in relation to sensitive issues".²⁰²

C. THE ENABLING FRAMEWORK FOR CIVIL SOCIETY

42. Measures regarding the framework for civil society organisations

In June 2017, the "Foreign Funded Organisations Act"²⁰³ was adopted and it obliged the organisations receiving funding from abroad above a certain (relatively low) threshold to register with the court as such, report their funding and **label themselves publicly as "foreign funded"**. The Act also requires CSOs to **submit the personal data of foreign donors**, even private individuals. Since the Government has continuously tried to discredit CSOs²⁰⁴ and the data has already been available,²⁰⁵ in reality the Act has a **stigmatising effect** and creates the false impression that CSOs serve foreign interests (which is also implied by the Preamble of the Act).

Civil society has been opposing the Act from the beginning since it unlawfully interferes with freedom of expression and association, plus it violates the right to privacy and the protection of personal data. A vast number of international actors including the Venice Commission (VC),²⁰⁶ the Parliamentary Assembly of the Council of Europe²⁰⁷ and UN special rapporteurs²⁰⁸ also criticised the Act.

The EC – following an unresolved infringement procedure launched in July 2017 – referred Hungary to the CJEU in December 2017.²⁰⁹ The **Advocate General** of CJEU stated that **the**

²⁰² See also the following NGO report in this regard: Hungarian Helsinki Committee, *Assessment of the Activities and Independence of the Commissioner for Fundamental Rights of Hungary in Light of the Requirements Set for National Human Rights Institutions*, September 2019, https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_2014-2019_HHC.pdf.

²⁰³ Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad, available: https://www.helsinki.hu/wp-content/uploads/14967_NGO_bill_20170407_with_reasoning.pdf.

²⁰⁴ For further information see: *Stating the Obvious – Rebutting the Hungarian Government's response to the Reasoned Proposal in the Article 7 procedure against Hungary (A reaction paper by NGOs)*, 18 October 2019, https://www.amnesty.hu/data/file/4660-ngo_rebuttal_of_article_7_hun_gov_info_note_18102019.pdf, pp. 24–26.

²⁰⁵ Act CLXXV of 2011 on the Freedom of Association, Non-profit Status and the Operation and Support of Civil Organisations

²⁰⁶ European Commission for Democracy through Law (Venice Commission), *Hungary – Opinion on the Draft Law on the Transparency of Organisations Receiving Support From Abroad*, CDL-AD(2017)015, 20 June 2017, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

²⁰⁷ Parliamentary Assembly of the Council of Europe, *Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University*, Resolution 2162 (2017), 27 April 2017, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23715&lang=en>

²⁰⁸ *UN rights experts urge Hungary to withdraw Bill on foreign funding to NGOs*, 15 May 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21617&LangID=E>

²⁰⁹ *Infringements – European Commission refers Hungary to the Court of Justice for its NGO Law*, 7 December 2017, https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5003

Act violates the right to the protection of private life and the right to freedom of association and infringes the principle of free movement of capital.²¹⁰

In June 2018, the Parliament adopted a legislative package – the so-called Stop Soros legislation – that **criminalized a set of legal activities of CSOs** by creating the criminal offence of “facilitating illegal immigration”. According to the law, these activities include “building or operating a network”, “preparing or distributing information materials” or “organising border monitoring” if they assist asylum-seekers in submitting an asylum claim that later proves to be unfounded. The law was heavily criticised by international actors, for instance the VC and OSCE/ODIHR concluded in their joint opinion that the provision **“infringes upon the right to freedom of association and expression and should be repealed”**.²¹¹ The EC decided to refer Hungary to CJEU in July 2018 since in their assessment the legislation violates EU directives.²¹²

In August 2018, the Parliament imposed a special 25% tax on donors if they provide funds for “immigration-supporting” activities. In the event that the donor does not pay the tax, the beneficiary is obliged to do it. The law²¹³ provides vague and ill-defined examples for such activities e.g. carrying out media campaigns or conducting “propaganda activities” that portray immigration in a positive light. The VC and the OSCE/ODIHR stated that the **special immigration tax is “a disproportionate interference with the right to freedom of association”**, and represents “an unjustified interference with the right to freedom of expression of CSOs, since it limits their ability to undertake research, education and advocacy on issues of public debate”.²¹⁴

43. Other

The legislative measures above were accompanied by an **extensive governmental smear campaign, aimed at discrediting, intimidating, harassing and creating a hostile environment** for Hungarian human rights CSOs.²¹⁵

²¹⁰ Advocate General Campos Sánchez-Bordona: *the restrictions imposed by Hungary on the financing of civil organisations from abroad are not compatible with EU law*, 14 January 2020, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-01/cp200002en.pdf>

²¹¹ European Commission for Democracy through Law (Venice Commission) – OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Hungary – Joint Opinion on the Provisions of the so-called “Stop Soros” Draft Legislative Package which Directly Affect NGOs (In particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration)*, CDL-AD(2018)013, 25 June 2018, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)013-e)

²¹² *Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones*, 25 July 2019, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260

²¹³ *Section 253 on the special immigration tax of Act XLI of 2018 Amending Certain Tax Laws and Other Related Acts and on a Special Immigration Tax*, CDL-REF(2018)059, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2018\)059-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)059-e)

²¹⁴ European Commission for Democracy through Law (Venice Commission) – OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Hungary – Joint Opinion on Section 253 on the Special Immigration Tax of Act XLI of 20 July 2018 Amending Certain Tax Laws and Other Related Laws and on the Immigration Tax*, CDL-AD(2018)035, 17 December 2018, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)035-e)

²¹⁵ For a detailed timeline of events up to November 2017, see: Eötvös Károly Policy Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – Transparency International, *Timeline of Governmental*

The long line of verbal attacks started in 2013 and focused on CSOs receiving funds from or distributing funds of the EEA/Norway Grants NGO Fund,²¹⁶ with officials alleging that these CSOs serve “foreign interests”. These attacks culminated into a state audit with no legal basis, and the police raiding CSO offices. Authorities initiated criminal and tax procedures, but these were dropped or closed without disclosing any violation. Subsequently, attacks became **tied into the Government’s hate campaign against migrants, asylum-seekers, the EU, and George Soros**: the focus shifted to CSOs protecting the rights of asylum-seekers and migrants and/or receiving funding from Open Society Foundations.

CSOs are being **repeatedly bashed by the Prime Minister (“PM”) and by various high-ranking government officials**. In 2017, the **questionnaires of the national consultation “Let’s Stop Brussels”** referred to “organisations funded from abroad” that “operate in Hungary with the aim of interfering in the internal affairs of our country in a non-transparent manner”,²¹⁷ while the questionnaire of the “Stop Soros” national consultation explicitly mentioned two CSOs in a negative context. In April 2018, a **magazine, part of the government’s propaganda machinery, published a list of George Soros’s “people”**, including CSO staff members, investigative journalists, and faculty members of the Central European University.²¹⁸ Later that year, the same weekly published a list of Hungarian academics, shaming them for their “liberal” research topics such as migration, LGBT rights, and gender studies.²¹⁹ In June, the offices of three CSOs were **physically labelled** by a Fidesz MP and youth groups as “organisations promoting migration”.²²⁰

Preceding the 2019 EP elections, the PM suggested that Hungarians should vote in a way to “show Brussels that what happens in Hungary [...] will not be decided in [...] the offices of George Soros-style ‘civil society organisations’”.²²¹ In July 2019, he stated that **CSOs, “which are acting against the will of the majority”, should not receive funds from the EU budget**.²²² In 2020, government representatives accused the Hungarian Helsinki Committee (HHC) that it is involved in a “prison business” built on compensations paid to inmates for inadequate detention conditions.²²³

Attacks against Hungarian Civil Society Organisations, 17 November 2017, http://www.helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_17112017.pdf.

²¹⁶ The EEA/Norway Grants NGO Fund consists of “the contribution of Iceland, Liechtenstein and Norway to reducing economic and social disparities and to strengthening bilateral relations with 15 EU countries in Central and Southern Europe and the Baltic.” See: <https://eeagrants.org/Who-we-are>.

²¹⁷ See e.g.: <https://budapestbeacon.com/lets-stop-brussels-new-national-consultation/>.

²¹⁸ See e.g.: <https://apnews.com/6fc8ca916bdf4598857f58ec4af198b2>.

²¹⁹ See e.g.: <https://hungarytoday.hu/fidesz-linked-magazine-publishes-list-attacking-supposedly-liberal-academy-researchers/>, <https://sciencebusiness.net/news/orban-allies-target-hungarian-social-scientists-battle-academy-sciences>.

²²⁰ See e.g.: <http://polgarportal.hu/fidelitas-a-magyar-helsinki-bizottsag-bevandoorlast-tamogato-szervezet/>.

²²¹ The respective interview with the Prime Minister is available here in English: <http://www.miniszterelnok.hu/interview-with-prime-minister-viktor-orban-on-the-kossuth-radio-programme-sunday-news-2/>.

²²² The respective interview with the Prime Minister is available here in English: <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-2/>.

²²³ See e.g.: <https://hirtv.hu/magyarorszageloben/tuzson-az-nem-lehetseges-hogy-bunozoknak-fizet-a-magyar-allam-2493378>, <https://www.kormany.hu/hu/miniszterelnoki-kabinetiroda/hirek/a-magyar-helsinki-bizottsag-rendezi-sorait-a-bortonbiznisz-ugyeben>. For background information on compensation payments,

Most authorities refuse to cooperate with stigmatised CSOs, reject invitations to workshops and participation in researches. E.g. in 2019, Justice Ministers refused to discuss planned judicial reforms with Amnesty International and the HHC,²²⁴ and a judicial official sent a circular to judges warning them not to attend a training by the HHC.²²⁵ The Human Rights Roundtable, often referred to by the Government as the forum for dialogue, has been left already in 2014 by many CSOs in protest to stigmatisation.²²⁶

D. THE RIGHT TO VOTE AND TO STAND AS A CANDIDATE



Disclaimer: the right to vote and to stand as a candidate was not included as a separate topic in the European Commission's stakeholder consultation. However, the authors of the present contribution are of view that presenting information on the right to vote, the independence of election commissions, the fairness of campaigns, etc. are inevitable to give a full picture of the state of the rule of law in Hungary.

44. The electoral system and the right to vote

Although the Hungarian election system, restructured by the current governing parties between 2010 and 2014, and fine-tuned in 2018, has not made its creators invincible, there are **plenty of factors that provide Fidesz an unfair advantage**. These should be distinguished from issues like winner compensation that give an advantage to the most popular party (but not inevitably the incumbent ruling party).²²⁷

see: <https://www.helsinki.hu/en/compensations-for-inadequate-detention-conditions-threatened-by-the-government/>.

²²⁴ Hungarian Helsinki Committee, *New law threatens judicial independence in Hungary – again*, January 2020, [https://www.helsinki.hu/wp-content/uploads/HHC Act CXXVII of 2019 on judiciary analysis 2020Jan.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Act_CXXVII_of_2019_on_judiciary_analysis_2020Jan.pdf), p. 1.

²²⁵ See e.g.:

https://index.hu/belfold/2019/05/24/obh_helsinki_bizottsag_hando_tunde_gerber_tamas_kepzes/.

²²⁶ See: <http://www.helsinki.hu/a-helsinki-bizottsag-kilepett-az-emberi-jogi-kerekasztalbol/>, <http://dev.neki.hu/kileptunk-az-emberi-jogi-kerekasztalbol/>, <http://vs.hu/kozelet/osszes/a-neki-az-errc-es-a-tasz-is-lelep-az-emberi-jogi-kerekasztaltol-0918>.

²²⁷ Although the Hungarian electoral system is a mixed-member proportional system, it mostly carries the characters of majoritarian models. Compared to the system in place between 1990 and 2010, the proportion of single-member constituencies became even higher (from 45.6% to 53.3%), and the second round was eliminated. In a unique Hungarian twist, Fidesz also introduced the so-called “winner compensation”, which expands the compensation method to the winning candidates’ parties as well, providing them overrepresentation in the Parliament. However, the abovementioned majoritarian elements can be beneficial for the opposition as well at any future election if their support exceeded that of Fidesz. See more details in: Róbert LÁSZLÓ (Political Capital), *The new Hungarian election system's beneficiaries*, 8 January 2016, <http://www.valasztasirendszer.hu/?p=1943209>.

In 2011, a new law was adopted on the electoral system, including a **new constituency map**. While it is evident that the creation of a new constituency map is a politically highly sensitive matter, information about it was shared neither with the public nor with the opposition during its designing process: on 20 November 2011 (a Sunday evening), the draft on the new electoral system simply appeared on the Parliament's website, including the brand new constituency map. **The lack of transparency and a total absence of professional and political consultations raised the suspicion of political motivations; i.e., gerrymandering**, supported by several model calculations, e.g. by Political Capital.²²⁸

The constituency map was not a decisive factor either in the 2014 or 2018 election victories of Fidesz, but the effects of gerrymandering kick in only when the candidates run neck and neck; so it certainly can be a critical factor in any of the upcoming elections.²²⁹

The option of **voting by mail is available exclusively to Hungarian citizens with no residential address in Hungary** (mostly living in surrounding countries). In contrast, **other voters outside the country** on election day with a residential address in Hungary (students, workers, or vacationers, primarily residing in Western European countries) **must visit an embassy or consulate** to cast their ballots. While the first option is more convenient and cheaper than the latter one, such discrimination in voting may violate fundamental rights (though the CC, packed with pro-government loyalists, ruled it does not²³⁰).

In conjunction with the extremely simple criteria for nominating candidates and party lists, the **campaign financing regulations** have evolved into a system that **in part benefits political opportunists** (sham parties can run to embezzle state campaign funds worth between EUR 500,000–2,000,000²³¹), and is equally **suitable for misleading voters** (dozens of parties without political ambitions show up on the ballots, but a significant number of voters can be "diverted" by their appealing names), putting the fairness of the elections in doubt. Moreover, it became legal for one citizen to recommend several candidates to stand in the election, therefore **many candidates were copy-pasting the data of citizens from one nomination sheet to the other**, which conveys **serious data protection concerns**. In the 2014 elections, around EUR 11 million, and in the 2018 elections around EUR 8.5 million was transferred to sham parties, more or less "legally".

²²⁸ Political Capital, *Halfway into the Hungarian electoral reform*, 19 April 2012, http://www.valasztasirendszer.hu/wpcontent/uploads/PC-FES_ConferencePaper_HalfwayIntoTheHungarianElectoralReform_120417.pdf

²²⁹ Developed in 2013, Political Capital's Mandate Calculator helps trace evidence of gerrymandering in certain scenarios. If we gave 50% of the vote to Fidesz and the leftist party alliance each, in the electoral districts the two blocks would not receive an equal number of 53-53 mandates; instead, the governing party would get 58 and its opposition only 48 individual mandates. Of course, as all model calculations, this is also unable to give an accurate picture of the future, although it discloses the intentions of Fidesz's "map designers", considering that they too could only work with historical election data. The Mandate Calculator is available at: <http://www.valasztasirendszer.hu/mandatum/>.

²³⁰ Decision 3086/2016 (IV. 26.) of the Constitutional Court

²³¹ Individual candidates receive HUF 1 million (ca. EUR 2,900), and parties, depending on the number of their candidates in single-member constituencies, receive anywhere between HUF 150–600 million (ca. EUR 425,000–1,700,000). Two of the odd rules: (1) While individual candidates receive state funding through a card issued by the Treasury to prevent the withdrawal of cash, parties have access to funds in cash amounting to hundreds of millions. (2) Even as individual candidates must make detailed accounts of the funds received, parties face extremely lax accounting obligations.

45. Election commissions and the right to appeal

The **lack of independence of election commissions** is particularly problematic. Outside of campaign periods, the members of the National Election Commission are de facto government-appointed since the two-thirds governing majority elects them in the Parliament without any support from the opposition.²³² Other parties delegate members balancing out the pro-government officials in late stages of the parliamentary election period; there are no party-delegates for municipal elections. The independence of the lower-level election committees is also questionable. They consist of three members elected by the local government as proposed by the head of the respective committees. They are headed by politically-appointed municipal clerks, raising concerns among some stakeholders about their impartiality. While OSCE/ODIHR recommended Hungary to select members through open and transparent recruitment, based on clear criteria,²³³ there is no attempt to comply with this recommendation.

The amendment of Act XXXVI of 2013 on the Electoral Procedure, which entered into effect on 1 September 2018, **significantly restricted the right to appeal** against unfavourable first instance decisions on election matters.²³⁴ The amendment makes it practically impossible for citizens or their organizations other than candidates to challenge decisions on e.g. unfair campaign practices in most of the cases, and allows only candidates or parties to proceed.²³⁵ The formal criteria are also very strict, and plaintiffs have only three days to submit their objection.²³⁶ This is in breach of the Venice Commission's position that "failure to comply with the electoral law must be open to challenge before an appeal body".²³⁷

46. Electoral campaign and coverage by the media

According to the Venice Commission, "[e]quality of opportunity should be ensured between parties and candidates", and "the **neutrality requirement** applies to the electoral campaign

²³² The Parliament appointed the current elected members of the National Election Commission for nine years with its Decision 77/2013. (X. 1.) OGY. The decision was voted for only by MPs from governing parties.

²³³ OSCE Office for Democratic Institutions and Human Rights, *Hungary – Parliamentary Elections 8 April 2018, ODIHR Limited Election Observation Mission Final Report*, 27 June 2018, <https://www.osce.org/odihr/elections/hungary/385959?download=true>, pp. 7–8.

²³⁴ Article 221(1) of Act XXXVI of 2013 on the Electoral Procedure has been amended. Before 1 September 2018, anyone could appeal against an election committee decision, after the modification only persons concerned. The practice of the courts and also the practice of the CC is extremely unfavourable in defining who is a "person concerned". E.g. in the case no. Pk.VI.50.002/2017/3. the Regional Court of Appeal of Pécs decided that a delegated member of the polling station commission is not "concerned" in the case which was initiated by him in the first instance.

²³⁵ In the campaign for the European Parliament elections in 2019, the National Election Commission even denied to accept the right to appeal of a nominating organization (a political party) in its decision no. 56/2019. The Kúria changed this part of the decision in its decision no. Kvk.II.37.706/2019/4.

²³⁶ E.g., in its decision no. 132/2019. (X. 17.), the Borsod-Abaúj-Zemplén County Territorial Election Commission rejected the plaintiff because he forgot to indicate his personal identification number, despite the fact that he could have been identified based on other personal data.

²³⁷ European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report*, CDL-AD (2002) 23, 30 October 2002, <https://rm.coe.int/090000168092af01>, § 92.

and coverage by the media, especially the publicly owned media, as well as to public funding of parties and campaigns".²³⁸ In Hungary, this requirement is **not fulfilled**.

According to the Final Report of OSCE/ODIHR on the general elections in 2018, "The campaign was [...] hostile and intimidating campaign rhetoric limited space for substantive debate and diminished voters' ability to make an informed choice. [...] [T]he **ability of contestants to compete on an equal basis was significantly compromised by the government's excessive spending on public information advertisements** that amplified the ruling coalition's campaign message."²³⁹ Among several facts showing the **non-equality of the campaign**, OSCE/ODIHR mentions as the most significant that **the public broadcaster "showed bias in favour of the ruling coalition and the government**, which received 61% of the news coverage. On average, 96% of it was positive in tone, while 82% of the coverage devoted to the opposition was negative."

Further, **the state and the governing party interweaved in the last three elections**.²⁴⁰ State and local municipality bodies and companies owned by them²⁴¹ provided illegal support to the governing parties in the 2018 general and 2019 municipal and EP election campaigns. E.g., a billboard campaign was financed by the state in support of the EP campaign of Fidesz.²⁴²

²³⁸ European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters Guidelines and Explanatory Report*, CDL-AD(2002)23, 30 October 2002, <https://rm.coe.int/090000168092afo1>, § 18.

²³⁹ OSCE Office for Democratic Institutions and Human Rights, *Hungary – Parliamentary Elections 8 April 2018, ODIHR Limited Election Observation Mission Final Report*, 27 June 2018, <https://www.osce.org/odihr/elections/hungary/385959?download=true>, p. 2.

²⁴⁰ The Kúria even stated in 2019 that the Fundamental Law and the practice of the CC allow interfusion of government and party communications in election campaigns. See: decision of the Kúria no. Kvk.III.38.043/2019/2. [23].

²⁴¹ Typically, municipality-owned local media supported the governmental party in the campaigns. See for example: Kúria case no. Kvk.III.37.236/2018/4.

²⁴² See for example: Decision of the Kúria no. Kvk. III.37.421/2018/8. In this decision, the Kúria stated that the state financed a country-wide billboard campaign which supported the campaign of the governing party. The decision obliged the state to remove the billboard concerned. Despite this decision the state had not removed them.