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

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The present document, prepared by Hungarian non-governmental organisations (NGOs), is a reaction paper to the Hungarian Government's updated Information Note to the General Affairs Council of the European Union on the Resolution on Hungary adopted by the European Parliament on 12 September 2018, submitted in the framework of the procedure under Article 7(1) TEU against Hungary (hereafter referred to as "Information Note").

The reaction paper collates the most significant false or misleading statements of the Government's Information Note and rebuttals by civil society organisations thereto, along with pointing out the most important instances when the Hungarian Government failed to react to the concerns included in the EP resolution (hereafter referred to as "Reasoned Proposal"). It also contains the most important new developments in the area of rule of law and human rights in Hungary since the adoption of the Reasoned Proposal. While doing so, the reaction paper focuses on the parts of the Government's Information Note that are relevant for the procedure under Article 7(1) TEU.

The reaction paper follows the structure of the Reasoned Proposal and the Information Note, primarily uses the chapter headings and sub-headings applied by the Information Note, and mostly covers only the issues listed in these documents. Therefore, it should not be considered a full account of the rule of law and human rights situation in Hungary.

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The reaction paper was prepared by the following NGOs:
Amnesty International Hungary, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, Hungarian LGBT Alliance, Mérték Media Monitor, Transparency International Hungary.
Chapter (6) on academic freedom was prepared by the Hungarian Academy Staff Forum.
The part "Criminalising homelessness" in Chapter (12) was prepared by the Streetlawyer Association.

Amnesty International does not currently work on corruption, separation of powers, election and election-related matters. As such, Amnesty International has no position on the respective chapters of the reaction paper (1a, 1b, 3) and is therefore not in a position to bear responsibility for the contents of these chapters.

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For further information regarding the issues covered, please contact the respective lead organisation(s) indicated at the end of each chapter.

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(1A) FUNCTIONING OF THE CONSTITUTIONAL SYSTEM

CONSTITUTION-MAKING PROCESS *(Government Information Note, pp. 7-8)*

1. The Government states that a 45-member ad hoc parliamentary committee was set up for the purpose of having a "political debate" about the new constitution. However, it fails to mention that **the concept paper prepared by this ad hoc committee was downgraded and practically put aside** by the governing majority. Parliamentary Resolution 9/2011. (III. 9.) on the Preparation for the Adoption of the New Constitution of 9 March 2011 set out that the Parliament considers the proposal of the ad hoc committee as only "support for the constitution-making work of MPs", and invited MPs to "to submit their Bills on the new constitution to the Parliament until 15 March 2011, with or without taking into consideration the proposal" of the ad hoc committee as annexed to the Parliamentary Resolution.
2. As far as the claim of the Government that the ad hoc parliamentary committee "represent[ed] all parliamentary parties" is concerned, it shall be recalled that even though the governing parties would have had the legal possibility to appoint MPs to the committee on an equal basis (one half could have been nominated by the ruling parties, and one half by the opposition), the governing parties did not do so. Instead, **the ad hoc committee was set up with 30 MPs nominated by the governing parties and 15 MPs nominated by the opposition parties** (reflecting their share of seats in the Parliament). As a result of this composition, **opposition parties were unable to have an impact on the decisions of the ad hoc committee**. Furthermore, **opposition parties left the committee** along the way: the Hungarian Socialist Party and the LMP announced in October 2010 that they will no longer participate in its work, and Jobbik announced the same in November 2010, claiming that the ruling parties did not take into consideration their proposals.
3. It shall be highlighted that **the draft Fundamental Law was submitted to the Parliament by MPs of the governing majority** on 14 March 2011, only seven days after the adoption of Parliamentary Resolution 9/2011 (III. 9.). Thus, the **concept paper** prepared by the ad hoc parliamentary committee **could not have had a real impact** on the text of the draft Fundamental Law, and **the new constitution was in fact drafted by politicians who had no democratic legitimacy for the task**. Furthermore, since the draft was submitted by MPs, **the legal obligation for subjecting it to a "public consultation"**, i.e. to publish the draft before submitting it to the Parliament and to **allow citizens to comment on it, was circumvented,** because this obligation pertains only to Bills prepared by Ministers.
4. The "professional and political debate in the Parliament" referred to by the Government was in fact a hasty process: the debate on the draft began on 14 March 2011 and the Fundamental Law was adopted on 18 April 2011. The one-month timeframe in reality meant as few as **nine days of actual parliamentary debate, which obviously left no chance for any kind of in-depth, substantive discussion.**
5. The Government states that "the Fundamental Law was voted by more than 2/3 of the members of the Hungarian Parliament" as if that was a commendable achievement. In reality, this majority only meant that all MPs of the governing parties had voted yes – in fact, the Fundamental Law **was adopted without the support of any other political force and so it is a product of solely one political party**. It is worth recalling as well that with an amendment of 5 July 2010, the governing majority removed Article 24(5) of the old Constitution, which required a 4/5 majority of MPs to adopt the procedural rules for preparing a new constitution. Thus, **the constitutional obligation to seek consensus with the opposition parties when drafting a new constitution was abolished by the governing parties**.
6. The Information Note mentions the **national consultative body** which was set up by a governing party MEP and was not mandated by the Parliament, and therefore **had dubious democratic legitimacy**. Furthermore, the referred "large scale public survey", i.e. **the first "National Consultation", had no measurable impact** on the text of the Fundamental Law. In spite of what the Government suggests, the **consultation questionnaire did not include any draft provisions whatsoever to express opinions on.** Instead, it contained 12 questions which were either only loosely related to the constitution-writing process or were a populist "wish-list". The questionnaire **did not cover issues important in a constitution-making process and ignored dilemmas that had already emerged**, e.g. questions around the competencies of the Constitutional Court. There was no transparency on the assessment of the questionnaires and on how they would be used in the process. Moreover, the timeline also indicates that the National Consultation was **a populist move and not a form of honest direct democracy**: it had been announced that the questionnaires would reach all citizens by 7 March 2011, and that citizens would have

two weeks to respond after receiving the questionnaire, however, the draft Fundamental Law was submitted to the Parliament already on 14 March 2011.

COMPETENCES OF THE CONSTITUTIONAL COURT *(Government Information Note, pp. 8-11)*

7. The **Government falsely claims that "the current competences of the Constitutional Court [CC] reflect a professional and political compromise**". As explained above, the Fundamental Law establishing the current scope of competences was drafted and adopted by the governing parties alone. Furthermore, the Bill on the Constitutional Court was submitted to the Parliament by a parliamentary committee, not a Minister, and so **the legal obligation for public consultation was circumvented** once again.
8. **Limiting the powers of the CC in budgetary matters** (*Government Information Note, p. 10)*
   a) The Government fails to address the fact that the Venice Commission was "particularly worried" that **the Fourth Amendment of the Fundamental Law "institutionalised" this limitation on the CC's powers:** according to Article 37(5) of the Fundamental Law introduced by the amendment, **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 even when the budget situation has improved beyond that target**. Thus, **the restriction of the CC's powers is not "temporary"** in this sense. In addition, it is hard to call the above limitation "temporary" when the national debt of Hungary has been over 50% of the GDP at least in the last 20 years.
   b) Also, the Government fails to explain how this limitation "assure[s] the balance between the scope of economic stability [...] and the protection of fundamental rights". Instead, as acknowledged by the Government, the restriction "may limit the room for action for future governing parties to adopt certain economic policy measures". Thus, the Fundamental Law **deprives any political force that would replace the current governing majority of the possibility to realize its own governmental program,** and so undermines equality in political change and in the democratic political competition.
9. The Government **fails to address the concerns raised by the UN Human Rights Committee that "the current constitutional complaints procedure affords more limited access to the [CC],** does not provide for a time limit for the exercise of constitutional review and does not have a suspensive effect on legislation that is challenged". These concerns are all the more worrying considering that, as a result of **abolishing the possibility of *actio popularis* submissions,** the CC is now primarily focused on adjudicating complaints on the individual level, and is **mostly unable to deal with systemic constitutional issues**.
10. The Government also **fails to adequately address the following problems surrounding the appointment of CC judges.** (*Government Information Note, p. 11)*
    a) As a result of amending the constitutional rules on the composition of the parliamentary committee that nominates judges to the CC in 2010, the **parliamentary majority may nominate and elect CC judges without the support of any opposition party**. Furthermore, the number of CC members was increased from 11 to 15 by another constitutional amendment in 2011. These steps led to a situation where **the majority of the current CC judges were nominated and elected solely by the governing parties.**
    b) As a result of removing the mandatory retirement age for CC judges in 2013, **the length of the mandate of some of the CC judges who were elected with the sole support of the governing majority got considerably extended**.
    c) The law **fails to prescribe a "cooling-down" period for former MPs** before they could be elected as CC judges. This loophole was utilized on the occasion of the appointment of two current CC judges.
    d) A research into significant CC cases showed that through the above **"court-packing", the governing majority succeeded in shaping the CC into a loyal body,** protecting the Government's interests.
11. It shall be recalled that, as also concluded by the Venice Commission, it became the governing majority's "**systematic approach**" that **provisions** of ordinary laws which had been previously **found unconstitutional** and were annulled by the CC **were reintroduced on the constitutional level,** overruling the CC.

NATIONAL CONSULTATION "LET'S STOP BRUSSELS" *(Government Information Note, pp. 13-14) – See §11 of Chapter (8) on freedom of association.*

(1B) FUNCTIONING OF THE ELECTORAL SYSTEM

1. Even though the Information Note only refers to the delineation of single-member constituencies in the title of the chapter reacting to Recital (10) of the Reasoned Proposal *(Government Information Note, pp. 11-13)*, the OSCE/ODIHR Limited Election Observation Mission report on the 2018 parliamentary elections cited by the Reasoned Proposal criticised several other features of the campaign and the election rules as well. Moreover, referring to the **substantial amendments to the legal framework of the national elections in recent years,** the OSCE/ODIHR Limited Election Observation Mission report on the 2014 parliamentary elections also confirmed that "**a number of key amendments negatively affected the electoral process, including the removal of important checks and balances**".

CONCERNS REGARDING THE ELECTION CAMPAIGNS

2. The Hungarian Government failed to confute the following statements in the Reasoned Proposal: "The campaign was animated but 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." The following paragraphs explain the background of these OSCE/ODIHR statements in more detail.
   a) The National Election Commission fined media outlets in connection to their unfair programming in the course of the 2018 parliamentary elections campaign, but sanctions were not able to stop the practice.
   b) The OSCE/ODIHR statement following the parliamentary elections of 2018 reported **clearly biased coverage by the public media**: "In its editorial coverage on M1, **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."**
   c) Different **state and local municipality bodies as well as state- or local-municipality-owned companies provided illegal support to the governing parties** in the 2018 national election campaign. The same unlawful behaviour was repeated during the 2019 European Parliament elections campaign in May, and the municipal elections campaign in October 2019, e.g. a billboard campaign was financed by the state in support of the EP campaign of Fidesz.
   d) The Fourth and Fifth Amendment to the Fundamental Law created a situation where **TV media campaign for political parties is practically restricted to the public media with a very limited amount of total time per campaigns**: commercial media outlets may only broadcast political ads for free, which resulted that none of the commercial outlets with a national coverage chose to undertake to broadcast political advertisements in 2014.

CONCERNS REGARDING THE NATIONAL ELECTION SYSTEM

3. The Hungarian electoral system has become extremely disproportionate due to Act CCIII of 2011 on the Election of the Members of Parliament. At the 2018 general elections, the governing parties were able to gain 67% of the seats in the Parliament with only 48% of the popular vote. Beyond the gerrymandering referred to in the Reasoned Proposal, the reason behind this is the so-called **"winner compensation"**, introduced before the 2014 parliamentary elections. This method brought **six extra mandates** for the governing Fidesz-KDNP coalition in the 2014 national elections.
4. The Information Note fails to address the issue of the difference of voting procedures for voters living abroad with and without in-country domicile. This infringes the principle of equal suffrage, and **in effect, it results in a system where pro-government voters can vote via post, while those who tend to be voting for the opposition can only vote personally at embassies.** Voters living outside of Hungary who keep their Hungarian addresses can only vote at embassies of Hungary which means that sometimes they need to travel long hours and spend several hundred euros. Voters who do not have Hungarian domicile can vote via mail. Members of the latter group typically received their citizenship due to the simplified

naturalization which has been introduced by Fidesz. **OSCE/ODIHR** noted in its report on the 2014 national elections that "[o]pposition and civil society representatives alleged that these differing modalities of voting rights were introduced for partisan reasons". The latter views were later reaffirmed by the fact that in the 2014 and 2018 national elections, **about 96% of the mail ballots were cast on the governing party**. The governing majority extended these rules to the European Parliament elections from 2019 on.

FURTHER STEPS UNDERMINING THE FAIRNESS OF THE ELECTIONS

5. **Serious concerns emerged about the independence of state bodies.** The **State Audit Office** (SAO) **scheduled to investigate only opposition parties** in the year of the 2018 parliamentary elections. The SAO consequently **only fined opposition parties in these proceedings.** The SAO examined Fidesz only in 2019 and found no irregularities. The independence of the SAO is also questionable because it is led by a former Fidesz MP. The fines caused serious difficulties in the campaign for parties concerned. The lack of independence is also a problem with regard to the National Election Commission, as outside of campaign periods the members of the National Election Commission are almost all *de facto* government-appointed. Other parties are only able to delegate members balancing out the pro-government officials in election periods. Moreover, there are no party-delegates for municipality elections.
6. Hungarian courts issued several decisions in the past years that increased the fairness of the elections. However, **the governing majority overruled a significant number of these court decisions with legal amendments for their own benefit**. For example, courts ruled that parties can hold campaigning events in parking lots of shopping centres, which was beneficial for smaller parties to reach voters in smaller cities. The governing majority made this campaigning extremely difficult with a legal amendment.
7. 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. The amendment makes it practically impossible for citizens or NGOs to challenge general election decisions on e.g. unfair campaign practices in most of the cases, and allows only candidates or parties to proceed.

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(2A) INDEPENDENCE OF THE JUDICIARY AND THE RIGHTS OF JUDGES

CENTRALIZED ADMINISTRATION OF COURTS & COMPETENCES OF THE PRESIDENT OF THE NATIONAL JUDICIAL OFFICE *(Government Information Note, pp. 14-22)*

1. The Government claims *(p. 14)* that it "has successfully conducted discussions with the Venice Commission and the European Commission and closed all remaining issues in a satisfactory manner" in relation to centralising the administration of courts in the hands of the Parliament-elected President of the National Judicial Office (NJO). This statement by the Government is false, as demonstrated by the following:
   a) Whereas it is true that following the Venice Commission's first related report, the control of the National Judicial Council (NJC, a judicial self-governing body) over the powers of the President of the NJO was somewhat strengthened, the Venice Commission in its latest related report from October 2012 stated that "**the powers of the President of the NJO remain very extensive to be wielded by a single person and their effective supervision remains difficult**. [The] amendments do not fully dispel the Venice Commission's concerns." The report listed numerous recommendations on how to improve the independence of the judiciary, but Hungary failed to implement these.
   b) In its recent, 2019 recommendation to Hungary within the European Semester Framework, the Council of the European Union stated that **"[c]hecks and balances**, which are crucial to ensuring judicial independence, **are seen to be under further pressure within the ordinary courts system**. The **[NJC] faces increasing difficulties in counter-balancing the powers of the [President of the NJO].** Questions have been raised regarding the consequences of this for judicial independence."
   c) According to a recent European Association of Judges (EAJ) report, "**[t]he 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 non-existent** and can easily be neutralised".
2. The Information Note claims that "the organisation of the judiciary is [...] independent" *(p. 15)*. However, the NJO President is an external actor to the judiciary who is elected by the Parliament and may be removed only by the Parliament; and **the Parliament is not legally obliged to consult any judicial body before electing the NJO President. Potential conflicts of interest were not investigated regarding the current President,** even though she appears to be a close friend of the Prime Minister and is the wife of a ruling party MEP.
3. The Information Note claims *(p. 16)* that "the NJC has a decisive mandate in the appointing/promoting procedure of judges and it is not the president of the [NJO] who has the most important role in the process". However, in practice the President of the NJO indeed has very strong powers in relation to appointing and promoting judges. Problems in this regard include that the **NJO President has the power to annul any call for appointments for court presidents and render the procedure unsuccessful without the consent of any judicial body**. In this case, she may appoint an interim court president for up to one year. (Selecting court presidents is a strong power of the NJO President, because court presidents have broad authority over judges and the allocation of cases of their courts.)
4. The Information Note claims *(p. 16)* that great progress has been made according to the Group of States against Corruption's (GRECO) standards as well. However, the latest, December 2018 GRECO report highlights that "[a]s regards judges, no further progress has been reported [...].GRECO notes with concern the developments in Hungary since the adoption of the Compliance Report, including allegations of **pressure on members of the [NJC]** and challenges that have reportedly been made to the legitimacy of the [NJC]." Out of the **11 recommendations set by GRECO pertaining to the judiciary and prosecution, only 4 were fully implemented.**
5. On multiple occasions, the Hungarian Government describes the *performance* of the Hungarian court system *(pp. 14 and 16-20),* based on evaluations and rankings – amongst others – by the EU Justice Scoreboard. However, the Justice Scoreboard measures primarily the timeliness and effectiveness of the judiciary, while the Reasoned Proposal focuses on the *independence* of the judiciary, not the performance thereof.

6. **New developments** since the adoption of the Reasoned Proposal:

   a) In May 2018, the NJC **found that the NJO President violated the law with the practice of repeatedly annulling** – often without any proper justification – **calls for applications for judicial leadership positions** where the result of the judicial vote on candidates was not in line with her preferences. A **prolonged conflict between the NJC and the NJO President** ensued. In May 2018, **the NJO President** declared that in her view the NJC is not operating lawfully, and she **refuses cooperation with the NJC** ever since. All other stakeholders continue to participate in the work of the NJC. This situation was characterized by the EAJ as a **"constitutional crisis" within the judiciary.** In May 2019, the NJC requested the removal of the NJO President from the Parliament on the grounds that she had breached her duties and had become unworthy of the office. In June 2019, the Parliament rejected the motion. Consequently, **the conflict remains between the NJO and the NJC with no end in sight – jeopardizing any effective control over the administration of the judiciary.**

   b) **Pressure on individual judges has increased.** As referred to also below in relation to the *Baka v. Hungary* case, **NJC-member judges critical of the NJO President's steps have been facing retaliatory measures, such as bonus cuts, exclusion from judicial working groups or training opportunities, and harsher working conditions.** Furthermore, the Hungarian National Authority for Data Protection and Freedom of Information found that in February 2019 a regional court president illegally blacklisted 51 judges in his district who were members of a judges' association. Reportedly, he also tried to persuade court leaders at his court to encourage judges to end their membership in the association critical of the NJO President. Government-aligned propaganda media have targeted and attempted to discredit individual judges, including members of the NJC and other judges who publicly criticized the NJO President.

   c) A 2018 amendment to the Fundamental Law established that the reasonings attached to laws, which are often political statements, must be the primary source for judges when establishing the aim of a piece of legislation. The **Council of Europe Commissioner for Human Rights** in her report of 21 May 2019 underlined that **"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"**.

PLANNED SYSTEM OF ADMINISTRATIVE COURTS *(Government Information Note, pp. 22-23)*

7. The governing majority had planned to set up a separate, **heavily government-controlled** administrative court system that would have had jurisdiction over environmental protection, taxation, public procurement, elections, freedom of assembly, asylum and other human rights issues, providing for a wider risk of political interference in these cases. The Venice Commission found that according to the respective new Act adopted by the Parliament, "very extensive powers" would have been concentrated in the hands of a few stakeholders, and there were "**no effective checks and balances** to counteract those powers" in the system. On 3 June 2019, the Parliament indefinitely postponed the entry into force of the Act establishing the administrative courts. However, **provisions on administrative courts remained included in the Fundamental Law and there are further signs that the Government aims to eventually introduce them**, including the Speaker of the Parliament's statement about relaunching the Act.

COMPULSORY RETIREMENT OF JUDGES *(Government Information Note, pp. 23-25)*

8. The compulsory retirement of judges **resulted in the replacement of a significant part of the leadership of the judiciary within a very short timeframe**, and so undermining the independence of the judiciary, and by extension, fair trial guarantees. This step cannot be left out of consideration when assessing whether there is a "clear risk of a serious breach" of the values referred to in Article 2 TEU; and the Government's argument that the respective infringement procedure was closed is immaterial, because the aim and scope of the two procedures are not the same.

9. The Government **misleadingly conflates two categories of judicial leaders when falsely claiming that "reinstatement to leading administrative positions was guaranteed"** under Act XX of 2013 *(p. 25):*

   a) "Presidents of Chamber" are judges presiding over judicial panels of 3 or 5 judges deciding on individual cases *("tanácselnök")* and are appointed for an indefinite term by law. They indeed had to be reinstated to their former leading positions, irrespective of whether their post had been filled or not in the meantime. However, **the position of a President of Chamber is not a real management or administrative post**, and most of its functions are of procedural nature.

b) In contrast, **reinstatement to leading positions with real administrative powers** (e.g. court presidents and vice-presidents), to which all appointments were fixed-term by law, **was possible only if the position had not been filled**. Since Act XX of 2013 was adopted almost a year after the first dismissals, only few vacant administrative leading positions were left at the time.

10. Out of the 229 judges who were unlawfully dismissed under the compulsory retirement scheme, 92 were judicial leaders. Of these, 55 were Presidents of Chamber, 17 of whom chose to return to the judiciary, 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 as court leaders**, 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 judicial administrative leaders over the age of 62 were removed from the system.**

BAKA V. HUNGARY *(Government Information Note, pp. 27-30)*

11. The **Government misrepresents the content of the judgment by the European Court of Human Rights** (ECtHR) **in the *Baka v. Hungary* case already in the title of the respective chapter**: the title only says "Violation of the right of access to a court", while **the judgment also established the violation of** Article 10 of the European Convention of Human Rights on **freedom of expression,** because the early dismissal of Mr. Baka as President of the Supreme Court was "prompted by the views and criticisms that he had publicly expressed in his professional capacity". Nevertheless, **the Government does not address the issue of the right to freedom of expression of judges** in the Information Note at all.

12. The **Committee of Ministers** of the Council of Europe, monitoring the execution of ECtHR judgments, **recommended in 2017 that Hungary takes measures to lift and countervail the "chilling effect" of the violation in the *Baka v. Hungary* case on the right to freedom of expression of judges.** However, **the Government has failed to do so**. Instead, **retaliatory measures against judges expressing criticism and attempts to undermine their professional reputation have been common since 2018**, with the NJO and government-affiliated media systematically targeting judges critical towards the President of the NJO.

13. In its recent decision of 23-25 September 2019, the **Committee of Ministers** "**noted with grave concern the reports suggesting that the 'chilling effect' of the violation found by the [ECtHR] under Article 10** and affecting the freedom of expression of judges and court presidents in general **has not only not been addressed but rather aggravated**"; and "urged the authorities to provide information on the measures envisaged to counter this 'chilling effect'".

14. **The Committee of Ministers did not find the Government's arguments satisfactory with regard to the general measures pertaining to the right of access to a court either** in its recent, September 2019 decision. It shall be added in this regard that the Hungarian law fails to guarantee that judges who are unlawfully dismissed to be reinstated into their previous judicial leading administrative position if the court orders their reinstatement as judges.

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(2B) INDEPENDENCE OF OTHER INSTITUTIONS

THE OMBUDSPERSON(S) OF HUNGARY *(Government Information Note, pp. 30-31)*

1. It shall be stressed that the Government's argument that the infringement procedure about prematurely bringing to an end the term served by the Parliamentary Commissioner for Data Protection and Freedom of Information is closed is immaterial, since the aim and scope of the infringement procedure and the procedure under Article 7(1) TEU are not the same.
2. As a result of the coming into force of the Fundamental Law, the former four Ombudspersons (Parliamentary Commissioners) were replaced by the sole Commissioner for Fundamental Rights as of 1 January 2012. The former Parliamentary Commissioner for Civil Rights became the Commissioner for Fundamental Rights, but **the mandates of the other three Ombudspersons were terminated before the end of their fixed term of office**. Thus, it was not only András Jóri (the Parliamentary Commissioner for Data Protection and Freedom of Information) whose mandate was terminated prematurely.
3. As a result of the above changes, the **Parliamentary Commissioners** for the Rights of National and Ethnic Minorities and for Future Generations were **replaced by Deputy Commissioners with the same thematic focus**. The Commissioner exercises the rights of an employer over the Deputies, and the Deputies **have rather limited powers**: they **cannot conduct independent investigations at all,** and may only propose the Commissioner to launch an ex *officio* investigation or to turn to the Constitutional Court, but cannot do so independently. This has significantly reduced the level of protection for minority and environmental rights.
4. The Commissioner for Fundamental Rights is the national human rights institution (NHRI) of Hungary. In **2014,** the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (SCA) criticized that the previous Commissioner for Fundamental Rights **was selected by the President of the Republic as the candidate for the position in a non-transparent and non-participatory manner**. The SCA recommended changing the selection process, but Hungary failed to comply. Instead, in spite of the request of NGOs, former Ombudspersons and over two thousand citizens, the current Commissioner for Fundamental Rights was appointed once again in a non-transparent and non-inclusive manner in the summer of 2019.
5. The Commissioner for Fundamental Rights has the legal means at his disposal to protect and promote fundamental rights effectively, and the previous holder of the position has indeed done so in a number of areas, but **he has repeatedly failed to address (or address adequately) pressing human rights issues that are politically sensitive and high-profile,** such as the criminalization of homelessness, the violations of the rights of migrants, and the governmental attacks on human rights NGOs, even though the measures in question were considered problematic by various international human rights stakeholders. The performance of the previous Commissioner, taken together with the deficiencies of the selection process as referred to above, raises **serious doubts as to how independent the newly elected Commissioner will be in practice**.

THE PROSECUTION SERVICE *(Government Information Note, pp. 31-33)*

6. The Information Note remains silent about the fact that in 2015, GRECO recommended that "the **possibility to maintain the Prosecutor General in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor** be reviewed by the Hungarian authorities". (This issue was also criticized by the Venice Commission as early as 2012.) However, as noted by the GRECO's Interim Compliance Report of 2018, Hungary has failed to comply with this recommendation.
7. 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*".* The 2018 Interim Compliance Report notes that GRECO 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", as also referred to by the Information Note *(p. 32 on "transferring of cases").* However, the Information Note fails to mention that **GRECO** concluded that its related **recommendation has remained only partly implemented,** due to the fact that **GRECO "was not provided with any information as to whether strict criteria [...] had been put in place to avoid arbitrary decisions**".

8. The 2018 GRECO Interim Compliance Report concludes that GRECO's **recommendation about "the immunity of public prosecutors be limited to activities relating to their participation in the administration of justice" remains not implemented**.

9. Whereas it is true that GRECO "welcomed the amendment making the involvement of a disciplinary commissioner in disciplinary proceedings against prosecutors compulsory" *(Government Information Note, p. 32)*, the Information Note fails to acknowledge that GRECO's concern that "the role of the disciplinary commissioner remains limited to investigating the case, with the superior prosecutor still leading the overall procedure", which points "to **the need to exclude the direct superior prosecutor from dealing with disciplinary proceedings", has not been addressed**. As a result, GRECO considered the respective recommendation only partly implemented.

10. It remains highly problematic from the aspect of checks and balances that **the right of MPs to pose interpellations to the Prosecutor General was abolished** in 2010.

11. The Information Note also fails to address the fact that the prosecution service **may and often does omit to take cases of corruption before courts without any legal consequence**. This reflects one of the largest problems in the legal framework that governs the operations and procedure of the prosecution service, namely that if the prosecution service fails to take a corruption case before court, there is no legal remedy to redress such a prosecutorial omission. The reason for this is a provision in the Hungarian Code of Criminal Procedure that limits the possibility of private prosecution to cases with an individual victim, a condition none of the corruption offences meet, giving exclusive jurisdiction to the prosecution service to take corruption cases before justice. The practice and the consequences of such omissions are clearly visible in a number of high-level corruption scandals that remain essentially unsanctioned. In relation to that, a judge who left the judiciary on his own accord publicly stated in early 2019 that the prosecution service decides on a political basis mainly in economic cases which case goes before the court and which does not.

FURTHER STEPS AIMED AT REMOVING CHECKS AND BALANCES

12. Another factor undermining a properly functioning system of checks and balances is **the control the ruling majority has gained over state institutions through their appointed or elected leaders**. Between 2010 and 2014, beyond 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 v. Hungary* and *Baka v. Hungary*, the European Court of Human Rights concluded that the premature dismissal of the Vice-President and President of the Supreme Court violated the European Convention on Human Rights – *see also §§11-14 of Chapter (2a) on the independence of the judiciary and the rights of judges –;* 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.) 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 as well, and two Constitutional Court judges are also former Fidesz MPs *(see also §10(c) of Chapter (1a) on the functioning of the constitutional system)*.

13. Legal amendments adopted in 2010 allowed for the **dismissal of civil servants without justification, as a result of which thousands of civil servants were fired from the public administration.** The rules were declared unconstitutional by the Constitutional Court in February 2011, but were quashed only *pro futuro,* as of 30 May 2011, and so dismissals continued even after the Constitutional Court's decision. In the *K.M.C. v. Hungary* case brought by affected civil servants, the European Court of Human Rights concluded that Hungary had **violated their right of access to a court** under Article 6 of the European Convention on Human Rights, due to the law depriving them of an effective judicial review of their dismissals. However, neither the applicant of the case nor other concerned civil servants were reinstated after the judgment was handed down.

(3) CORRUPTION AND CONFLICTS OF INTEREST

CONFLICTS OF INTEREST OF MEMBERS OF THE PARLIAMENT *(Government Information Note, pp. 34-35)*

1. The Government falsely claims that the current system of asset and interest declarations of Hungarian Members of Parliament is one of the most stringent and most comprehensive in the European Union. The Government fails to admit that **MPs' asset and interest declarations,** though published on-line**, are uploaded in a digitally non-searchable .pdf format,** and that the statements included in the declarations are not at all scrutinised nor are they measured against reality. The Parliament's Committee on Immunity does not exercise any content check and fails therefore to filter out false declarations or misstatements. If a scandal erupts, the MPs concerned may clear themselves by referring to unintentional obliviousness. MPs' **spousal declarations are not published, making the obfuscation of the patrimonial situation easy**. The Committee on Immunity's process to examine the content of the declarations may only be commenced with reference to a concrete statement of the declaration and with the specification of the reason for concern, an impossible condition in case of publicly non-accessible spousal declarations. **MPs whose lawful income does not correspond to their living standard incline to explain their enrichment with parental or private loans**. Indebtedness outside of financial institutions is a risk that the current system of asset and interest declarations entirely fails to address.

LIMITED MONITORING OF CAMPAIGN SPENDING *(Government Information Note, pp. 35-36)*

2. Though the Government enumerates correctly some of the specificities of the Hungarian campaign finance regulation, it fails to unveil how easy it is in practice to circumvent the vaguely defined legal prescriptions. For example, it is concealed that the campaign finance regulation covers only the national parliamentary elections**, leaving both municipal and EP elections unregulated from a campaign finance perspective**. Moreover, the Government omits that strict accounting requirements only apply to individual candidates, whereas the bigger part of state subsidies, injected directly into political parties, are spent without any evidence-based control. This means in practice that **of the approximately 15,000 euros a party may spend per candidate, only 3,000 euros are spent accountably and scrutinised properly**, leaving the rest of the spending to parties' self-declarations, without any obligation to enclose proper financial documents.

3. The Government also fails to highlight the **State Audit Office's dubious and often ambiguous role** in the control of unlawful campaign practices as part of the control of campaign spending. *(See also §5 of Chapter (1b) on the functioning of the electoral system.)* Regarding the State Treasury reviews of campaign expenditure of individual candidates *(p. 36)*, the Government fails to mention that the Treasury denied access to the conclusions of its review, resulting in a lengthy freedom of information litigation.

4. The Government also fails to shed light on the consequences of the legal framework that allows citizens to support multiple individuals to become candidates, which, combined with the authorities' reluctance to check the authenticity of supporting signatures has led to the emergence of the so-called "fake party system". Such **fake parties have extracted state campaign subsidies in the amount of 8 billion Hungarian forints during the 2014 and the 2018 national election campaigns**.

THE FOLLOW-UP OF THE OLAF'S RECOMMENDATIONS AND PUBLIC PROCUREMENT *(Government Information Note, pp. 37-44)*

5. The Government states that the 45% indictment rate of the Hungarian prosecution service in follow-up to recommendations made by the European Union's Anti-fraud Office (OLAF) exceeds the EU average of 36%. At the same time, the Government omits that **Hungary has the highest number of cases that have not been followed up for years** (20 cases in 2018). In reality, other, comparable Member States with an equally high number of OLAF-cases have better indictment rates, e.g. Poland's rate of indictment is 78%, Greece's is 80%. The relatively low EU average indictment rate is due to Member States with only 1 or 2 OLAF-cases (e.g.: Croatia dismissed 1 case out of 1, Cyprus dismissed 2 cases out 2, producing zero percent indictment rates).

6. The Government states that the Hungarian **conflict of interest** regulation is one of the strictest in the EU *(p. 40)*. This might be true in principle, however, strict **rules are not enforced in practice**. It needs to be highlighted that solely in the well-known Elios case, resulting in the questionable **absorption of 43 million euros by companies partially belonging to the interest group of the Prime Minister's son-in-law,** called

by OLAF a mafia-type of a cartel, the Public Procurement Authority failed to recognise conflict of interest schemes in at least 35 instances.

7. The Government highlights the introduction of two new exclusion grounds in the Act on Public Procurement aiming to foster competition *(p. 41)*. These rules originate from the respective EU Directives, therefore these can hardly be regarded as the invention of the Hungarian Government. Moreover, the transposition was done in a way that enables the Government to give individual exemption under the exclusion ground related to the participation in a cartel. As no such derogation is provided for by the relevant EU directives, this provision is potentially in breach of EU law.
8. The Government reports that the number of single bid procedures has decreased *(p. 42)*, however, the European Commission's 2019 country report contests the validity and the reliability of the statistics concerned as the "methodology underlying these statistics was not agreed with the Commission, and they cannot be verified as no access is granted to a downloadable and easily searchable database".

EFFECTIVE GOVERNANCE AND CORRUPTION *(Government Information Note, pp. 44-48)*

9. Though Government statements relating to the adoption and implementation of anticorruption strategies, ratification of multilateral anticorruption agreements, and accession to international anticorruption initiatives are true on a factual level, the Government fails at some instances to give a fully realistic account. For example, Hungary's current national anticorruption program, instead of addressing the deficiencies of the system of asset declarations among public decision-makers, stresses the importance to oblige NGO workers to declare their assets and interests, as they exhibit a "considerable level of threat through employing their pressure potential to gain illicit advantages".
10. The Government falsely contests the validity and the reliability of the World Economic Forum's (WEF) Global Competitiveness Report, suggesting that this ranking's survey unfoundedly mentions corruption as one of the five "most problematic factors for doing business in Hungary". As opposed to the unclear argumentation presented by the Government *(p. 45)*, the **WEF's Executive Opinion Survey** has for many years employed an unchanged methodology to assess the relevance of corruption among factors that may hinder a successful business in countries. In the 2018 report **corruption** was mentioned on **the second place as the most problematic factor of doing business in Hungary**.
11. Moreover, the achievements in the anticorruption arena referred to by the Government have all in all failed to improve the public perceptions of the Hungarian government's anticorruption performance, which has been very poor over the past years according the global anticorruption ranking of Transparency International (TI). As demonstrated by TI Hungary's 2018 report on corruption, "the CPI data of the past six years reveal that even within the group of the most corrupt Member States, Hungary's performance has been deteriorating steadily: [in 2018] **Hungary was the 26th most corrupt of the 28 Member States**".
12. The increasing number of corruption cases brought before justice may be reasoned by one large corruption case that supposedly involves more than a thousand bribery charges. In the first semester of 2018, the number of bribery charges jumped to 1,062, an unprecedented increase most likely explained by a large-sized series of petty corruption. The number of bribery charges registered in the second semester of 2018 dropped from over 1,000 to 19.
13. In light of the country's undeniable economic achievements, the Government considers it "inconceivable that there could be a significant amount of corruption in Hungary" *(p. 38).* Some short-term macroeconomic indicators are indeed favourable and the public finances are kept under control. On the other hand, the WEF ranking indicates that **Hungary's competitiveness has nosedived in the past 15 years, due to the shallow performance of the state institutions**. The redistribution systems such as education and healthcare have poor outcome partly because of over-centralization and partly because these systems are severely underfinanced.
14. Based on the Eurostat data, **Hungary's cumulative GDP was the lowest amongst the four Visegrad countries** between 2010 and 2018, and the country's growth rate is sluggish in comparison with the other peer countries. Economic growth in Hungary heavily relies on EU funding and on the automobile and construction industries, and the latter one is prone to overpricing, which may distort the GDP data upwards. The change of the productivity rate remain very modest not only compared to EU average but also compared to CEE countries.

(4) PRIVACY AND DATA PROTECTION

VIOLATION OF THE RESPECT FOR PRIVATE LIFE (SZABÓ AND VISSY V. HUNGARY) *(Government Information Note, p. 48)*

1. First and foremost it shall be emphasized that although under Article 4(2) of the TEU Member States fully retain the right to formulate their own national security policy, it is obvious that this rule merely serves to clarify that the European Union has no legislative powers concerning the national security regulations of individual Member States, and **does not allow for the principles set out in Article 2 TEU to be freely disregarded by Member States when creating their national security legislation**, contrary to what the Government implies.
2. In 2016, **the European Court of Human Rights** (ECtHR) **ruled in the *Szabó and Vissy v. Hungary* case that the deficiencies in the democratic oversight over secret surveillance amounted to a violation of human rights**. As also acknowledged by the Information Note, **the judgment has not been implemented ever since**. It is revealing that the same governing majority that was repeatedly criticized for the speedy manner in which it adopted important laws (including the new constitution) claims that the three years that have passed since the judgment were not enough for the "detailed revision and consideration in order to comply with the judgment and also the needs of modern times", and that the "examination of the requirements stemming from the judgment in terms of legislative amendments, which is currently underway, is expected to take some time". It shall also be stressed that in its decision of December 2017 the Committee of Ministers of the Council of Europe, supervising the execution of the judgment, "invited the authorities to address the entirety of the shortcomings of the legislation on secret surveillance measures identified by the [ECtHR]". As a response, the Government submitted an updated action plan indicating that the Ministry in charge of drafting the legislative amendments requested the opinion of the National Security Committee of the Parliament, and they **undertook to submit an updated action plan by 31 December 2018, but failed to do so ever since.**
3. In order to put into context the Information Note of the Government, it is necessary to emphasise that **the Hungarian data protection authority, the National Data Protection and Freedom of Information Authority (NAIH) cannot be considered an independent body**. Its head is appointed by the President of the Republic upon the proposal of the Prime Minister, and since the President has no real veto power in this regard, this means that **technically the head of the executive decides who the head of NAIH will be**.
4. It should also be noted that the Fundamental Law changed the institutional framework of data protection, and replaced the Parliament-elected Data Protection Supervisor (the Parliamentary Commissioner for Data Protection and Freedom of Information, having the status of an Ombudsperson) with the new authority for data protection, the NAIH. Not only is the head of NAIH technically appointed by the Prime Minister as mentioned above, the Parliamentary Commissioner for Data Protection and Freedom of Information was forced to vacate his office before the end of his term due to this change, which amounted to an infringement of EU law, as ruled by the CJEU in 2014. **The institutional guarantees of the independence of the body responsible for data protection have been therefore significantly curtailed and have not been restored since**. *(See also §§1-5 of Chapter (2b) on the independence of other institutions.)*

LEGAL FRAMEWORK ON SECRET SURVEILLANCE FOR NATIONAL SECURITY PURPOSES *(Government Information Note, pp. 49-50)*

5. The Government's insufficient response to this section of the Reasoned Proposal necessitates that we describe in detail the deficiencies of the legislation pertaining to the oversight mechanisms of state surveillance. The lack of sufficient oversight of secret surveillance conducted by national security services has been a major deficiency of the Hungarian legal system for decades, but the situation has deteriorated after the Fidesz-KDNP government came into power in 2010 with a parliamentary supermajority. The most important structural problems are the following.
6. **There are no efficient legal tools that could serve to remedy the violation of the right to privacy of persons subjected to surveillance, and the control mechanisms of supervision are incapable in practice of providing adequate and effective guarantees against abuse.**

a) **No subsequent notification of persons subjected to secret surveillance is prescribed by law**, even though the ECtHR ruled that this was a violation of the European Convention on Human Rights, because victims almost always remain unaware of illegal secret surveillance, and therefore in the absence of notification have no means to seek redress.

b) NAIH is not an independent body and therefore cannot exert meaningful control over the secret services. Incidentally, **NAIH's procedures do not necessarily remedy individual grievances**. National security services almost always classify their data handling, which means that the only way people concerned may access the content of their reports is if NAIH initiates a "classification supervision procedure", a procedure that can only be opened on NAIH's own motion. In the case of the handling of personal data NAIH is prone to accept that the disclosure of personal data would in itself reveal the contacts and possible positions of the Information Office (IH) in foreign countries, which is a threat to national security in itself and excludes the disclosure of said data — a broad argument that can, in effect, be used by any national security agency in any kind of case.

c) The legality of secret surveillance is supposed to be ensured by the Minister overseeing the given national security agency, rendering this oversight mechanism biased and ineffective. The Parliament's National Security Committee has the right to question the agencies and access classified information, but pro-government MPs need to be present for a quorum, which renders this remedial institution prone to abuse by the Government in politically sensitive cases, as it has happened several times when pro-government MPs boycotted the sessions of the Committee.

d) Judicial remedy is technically only possible if the person subjected to secret surveillance accidentally gains knowledge about the surveillance, which is highly unlikely.

7. **Prior judicial authorisation of surveillance is not required for every national security agency.** The foreign intelligence agency — the Information Office — can conduct secret surveillance without prior judicial authorisation, and the Counter-Terrorism Agency (TEK) may also conduct surveillance without judicial authorisation under certain circumstances.

8. The lack of effective control has possibly led to serious breaches of privacy rights, for example the drafting of classified reports on NGOs on national security grounds. Notably, the Information Office is known to have made reports on NGOs, but these remained classified even after NAIH's "classification supervision procedure" — despite the fact that NAIH had acknowledged that the contents of the reports were of concern to the public.

FURTHER ISSUES OF CONCERN REGARDING PRIVACY RIGHTS

9. Although in 2014 the CJEU annulled Directive 2006/24/EC — commonly known as the "Data Retention Directive" — for violating EU law, **Hungary has not fulfilled its obligation to annul its national legislation that had implemented the Directive**. **On the contrary,** since 2016 **a broader range of entities have an obligation to retain data**, and since 1 July 2018 further branches of the police, notably the Counter-Terrorism Agency have gained access to such data.

10. The Ministry of Interior has proposed to centralise the data flow of about 35,000 CCTV cameras operated by the police, local municipalities, banks and public transportation companies, dubbed "Project Dragonfly". The relevant legislation came into effect in mid-2019. The data is stored in the Government Data Centre, a data storage and processing facility that would also store the data from the planned "Smart Cities Project", as well as all data generated by government entities and public service providers. The Government Data Centre is physically located in the same building that also serves as the headquarters of the Constitution Protection Office (AH), the internal intelligence agency, and the Counter-Terrorism Information and Criminal Analysis Centre (TIBEK), a national security agency that has access to all data gathered by other agencies. Project Dragonfly, the Smart Cities Project, AH and TIBEK are al overseen by the Ministry of Interior. These recent developments could facilitate mass surveillance, and with the lack of effective oversight over national security services as well as the physical proximity of the internal security service to the location of data storage, they present a serious threat to the right to privacy.

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(5) FREEDOM OF EXPRESSION

MEDIA LEGISLATION *(Government Information Note, pp. 51-56)*

1. The Government states that "the public statements of the Council of Europe's Secretary General in early 2013 found that the fundamental problems of Hungarian media legislation had been resolved", while in fact the **Venice Commission was critical of the Hungarian media freedom** in its opinion published in 2015 and listed issues that require revision. It had no consequences at all, neither in the legislation nor in the case-law of the Media Council.
2. The regulatory details and the practices tend to work against a free and pluralistic media system. Act CLXXXV of 2010 on the media with its insufficient cross-ownership rules led to a **distorted and imbalanced media market**, and the results are already visible: the Hungarian market has become more concentrated, plenty of independent local stations disappeared, and the previously flourishing segment of community radios has also been losing out.
3. The Central European Press and Media Foundation (abbreviated as KESMA in Hungarian) was created in November 2018, after previous owners offered the media companies without any compensation to the new entity. KESMA owns 476 media brands, including all 18 regional newspapers, the only national commercial radio (Retro), the only free newspaper (Lokál), and one of the biggest news portals (origo.hu). The creation of KESMA led to an **unprecedentedly high ownership concentration**. A Government Decree declared the consolidation a transaction of "national strategic importance", meaning that it is exempt from reviews and approvals of the Media Council and the Hungarian Competition Authority.
4. **Funding of the Hungarian public service does not comply with the European regulations on state aid.** All of the public media's content acquisition and show production is performed by the MTVA (Media Service Support and Asset Management Fund), and it is also the legal employer of the public service media employees. At the same time, the editorial responsibility for the content lies with another organisation, the Duna Médiaszolgáltató Nonprofit Zrt. (Duna Media Service Provider Non-Profit Corporation). While the operations of 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. This means in practice that **MTVA disposes of all these taxpayer funds without being subject to any meaningful outside control** over how and to what companies or individuals public funds are spent.
5. The media laws do not guarantee the editorial and journalistic freedom of expression. An illustrative example is that in March 2018, an **investigative journalist at a major news portal, index.hu was convicted for forging public documents and misleading the authorities.** The journalist carried out undercover reporting back in 2015, disguising himself as an asylum-seeker from Kyrgyzstan. His goal was to inform about the Hungarian authorities' treatment of asylum-seekers. After he revealed himself to the authorities, he was charged. In this context OSCE stated that "[j]ournalistic work should never be criminalized" and "the media were banned from accessing refugee centres in the country, and he had no other means of collecting the necessary information". **This practice is also clearly against the so-called Media Constitution,** for Act CIV of 2010 on the freedom of the press stipulates that a journalist cannot be held liable for obtaining information of public interest otherwise unavailable to the general public if the breach of law was not disproportionate or was not obtained in violation of the Act on the protection of qualified data.

ELECTION OF THE MEMBERS OF MEDIA COUNCIL *(Government Information Note, pp. 56-58)*

6. The Media Council has been a **politically homogeneous media authority** since 2010. All of its members were delegated by the governing parties. According to the customs established after the transition, similar supervisory bodies were elected by the Parliament in a way that reflected the number and size of political parties in the Parliament.
7. The Government submits in the Information Note that the "Media Council and its members are only subject to the law and they cannot be instructed in their activities". However, the experience is different. Over the past few years, the radio frequency tenders issued by the Media Council and its frequency award practices have fundamentally reshaped the pre-2010 map of the radio market. The Hungarian radio market is characterised by deep distortions and high levels of market concentration. The number of

independent stations decreased. The only national commercial radio (which is in monopoly in its segment) is owned by the pro-government media foundation, KESMA. It is also in the Media Council's remit to issue a position statement that either authorises or bars media market mergers. The Media Council allowed all acquisitions and mergers involving pro-government players, while it stopped the media mergers when independent market players were involved.

8. The Government states that "prohibition of the re-election of the President and the members of the Media Council ensure independence from both the Government and the Parliament", but this is not true in practice. The Media Council's nine-year term is about to expire and, theoretically, the new members of the body should have been elected by September 2019. That has not happened, **Fidesz sabotaged the process** as follows. The Parliament votes on the delegates who are nominated by an ad hoc committee. In the first round of voting, the ad hoc committee needs to nominate the candidates for Council membership unanimously. In the lack of unanimity on the nominees, the law provides that nominations in the second round only require a two-thirds majority. Fidesz failed to nominate its own candidates and refused to vote, effectively forestalling the possibility of either a unanimous or a two-thirds decision. At the same time, the provisional paragraphs in the law include a clause that terminates the mandate of the President and the members of the Council on the date the newly elected President and/or members commence their term. Thus, despite the fact that the term of the current members has expired, they can stay in office practically for life. *(Cf. §6 of Chapter (2b) on the independence of other institutions.)*

ACT CXII OF 2011 ON INFORMATIONAL SELF-DETERMINATION AND FREEDOM OF INFORMATION

(Government Information Note, pp. 58-60)

9. The Government **forgets to highlight that it has taken a number of measures since 2013 to restrict the accessibility of public interest information**. Among others, the Government had first banned large scale information requests in 2013 (restriction abolished in 2015), then in 2015 and in 2016 it redefined the grounds of exclusion based on which an FOI request may be denied. The recourse to protection of business secrecy was made easier, protection of preparatory documents relating to future government/public decisions was strengthened, and copyrighted information was exempted from freedom of information requests. Furthermore, data managers, i.e. mainly public organs were provided with a new excuse exempting them from having to service data requests repeated within a calendar year. Besides, further grounds of exclusion have been introduced in sectoral regulations, such as the one that broadens the concept of tax secrecy, and the one that exempts certain state owned enterprises (e.g. the national postal service and companies owned by the Central Bank of Hungary) from the obligation to comply with and properly respond to FOI requests. In certain cases, these exemptions have an ad hoc character, meaning that the **Government tends to react to an unwanted and unpleasant FOI court case by amending the relevant regulations so as to prevent the court from delivering in favour of the requestor of information**. For instance, the Government expanded in 2016 the scope of tax secrecy in response to a FOI request submitted by Transparency International Hungary, with the aim of preventing the publication of tax exempt transfers to sports organisations, a scheme that has diverted some 1,5 billion euros in public funding. More recently, the Government successfully exempted the state-owned Hungarian Development Bank and the Ministry of Foreign Affairs from the obligation to make public interest information in their possession accessible by adopting legislative amendments in the course of ongoing litigations commenced by Transparency International Hungary, thus disabling the court to uphold FOI requests.

10. The Information Note entirely fails to draw attention to how the **possibility to charge labour-related costs associated with the servicing of FOI requests on data requestors is systematically misused by data managers**. The National Data Protection and Freedom of Information Authority's Yearbook of 2018 highlights that managers of public interest information disregard the requirements of the Fundamental Law when imposing excessive and disproportionate charges in association with FOI requests.

11. Moreover, the Government entirely omits to give an account of the freedom of information landscape, thus failing to reveal that **managers of public interest information** often wrongfully deny to comply with FOI requests, and more often **tend to disrespect the court's final binding judgment compelling them to publish information**. Such non-compliance is a criminal violation on the one hand, while it expects requestors of information to commence a bailiff process, further deferring the accessibility of the information requested.

RESTRICTIONS OF FREEDOMS OF THE MEDIA AND ASSOCIATION DURING THE 8TH APRIL 2018 ELECTIONS

(Government Information Note, pp. 60-61) – See §2 of Chapter (1b) on the functioning of the electoral system.

RESTRICTIONS ON FREEDOM OF OPINION AND EXPRESSION *(Government Information Note, pp. 61-62)*

12. The Government refers to **Freedom House** *(p. 62)*, but omits **its heavy criticism of the Hungarian model in its 2019 report**: "In Hungary, the governing Fidesz party has all but consolidated its control over the media, and has built a parallel reality where government messages and disinformation reinforce each other. […] Viktor Orbán's government in Hungary and Aleksandar Vučić's administration in Serbia have had great success in snuffing out critical journalism, blazing a trail for populist forces elsewhere. Both leaders have consolidated media ownership in the hands of their cronies, ensuring that the outlets with the widest reach support the government and smear its perceived opponents. **In Hungary, where the process has advanced much further, nearly 80 percent of the media are owned by government allies**." The report also outlines that "Hungary's Fidesz has perfected the use and abuse of market forces to take over media, and has extended its political power as a consequence".
13. In the **Reporters Without Borders** list (World Press Freedom Index) **Hungary was 87th in 2019. In 2013, Hungary was 56th on the same list.** In its narrative summary, Reporters Without Borders states the following: "The most important critical media outlets have had to close, while the editorial independence of others has been threatened by the presence of pro-government oligarchs on their boards, among their shareholders or within the financial institutions that fund them."
14. **State advertising seriously distorts the media market, favouring pro-government media outlets**, as was demonstrated in the findings of a recent academic research.

PUBLICATION OF A LIST OF PEOPLE ALLEGEDLY WORKING TO "TOPPLE THE GOVERNMENT" AND THE DENIAL OF ACCREDITATION TO SEVERAL INDEPENDENT JOURNALISTS *(Government Information Note, pp. 62-63)*

15. Journalists of government-critical media are often seriously hindered while doing their job. They are **regularly banned from entering the Parliament or from attending different events. In 2015, at the height of the "refugee crisis", journalists were denied entry to open asylum reception facilities**, which was found to be a violation of the right to freedom of expression by the European Court of Human Rights.
16. Government politicians do not give interviews to government-critical media outlets. Press departments of public institutions typically do not reply to questions of independent media. Foreign journalists often have to face harassment, and journalists are criticised by Government spokespersons because of their reporting.
17. The Information Note attempts to dismiss the infamous listing of citizens in the weekly *Figyelő* by referring to its commitment to "ensure freedom of expression and editorial freedom" (*p. 63*). To decide whether this commitment is substantiated by facts is part of the procedure to determine the existence of a clear risk of serious breach of the values on which the European Union is founded. However, it must be noted that the list itself followed the government-fuelled anti-NGO campaigns *(see Chapter (8) on freedom of association)*, and that the weekly was transferred to KESMA when the pro-government media conglomerate was set up. The same publication played an important role in the attacks against researchers of the Hungarian Academy of Sciences *(see §§7-14 of Chapter (6) on academic freedom).*

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(6) ACADEMIC FREEDOM

AMENDMENT OF THE NATIONAL TERTIARY EDUCATION ACT & NEGOTIATIONS WITH FOREIGN HIGHER EDUCATION INSTITUTIONS – THE CEU *(Government Information Note, pp. 63-68)*

1. The Government claims that it only wants to ensure the quality of universities in Hungary, but as a result it **managed to drive away the Central European University (CEU) from Hungary**, which is currently one of the best universities in Hungary.
2. **The Government falsely claims that CEU does not fulfil Hungarian regulations regarding foreign universities.** There are two main conditions: higher education activity in the country of origin, and an international agreement between the Hungarian Government and the government of the country of origin (which conditions by themselves are questioned to some extent, for instance by the Venice Commission).
    a) The Government falsely claims that "the Central European University did not carry out education activity in the US, only in Budapest while issuing an American diploma". In fact, **CEU launched higher education programs in the United States,** as evidenced by the New York State Education Department. However, the Hungarian Educational Authority refused to check the respective documents, and did not even start the process for more than one and a half year. This violated administrative regulations, and left CEU in legal limbo. *(Government Information Note, pp. 67-68)*
    b) **There is an international agreement between the Hungarian Government and the government of the country of origin**, as required by the law, which in the case of the CEU was signed in 2004, but the current Hungarian Government considers that document insufficient. A new agreement was prepared bilaterally in 2017, but was signed only by the US party, as the Hungarian Government failed to sign the contract without providing any justification. (*Government Information Note, pp. 64-67)*
3. Upon the initiative the European People's Party and the Bavarian government, CEU signed an agreement on cooperation with the Technical University of Munich (TUM), potentially leading to joint certificates and/or degrees accredited in Germany and the US that could provide CEU with a legal ground to continue operation in Hungary. The Hungarian government however failed to provide the necessary legal guarantees, and started to claim that the Bavarian laws hamper the cooperation.

DISPROPORTIONATE RESTRICTIONS ON UNION AND NON-UNION UNIVERSITIES – GENDER STUDIES *(Government Information Note, pp. 68-69)*

4. The Hungarian **Government revoked the right of universities to issue Hungarian diplomas in gender studies.** The accreditation of gender studies has been nullified by a Government Decree, based on non-professional reasons, such as "there is no need for these graduates in the labour market" and "that gender studies does not fit into Christianity and Christian values". This practically means that ideology rather than neutral professional arguments determine the future of research and higher education in Hungary.
5. The Hungarian government still claims that gender can be studied in private universities and other faculties. However, it is to be noted that gender studies have been accredited in two universities (CEU and Eötvös Loránd University – ELTE) based on strict procedures determined by Hungarian law. The administrative decision of the Government means that even though gender courses still can be launched and students may opt to choose them, nobody can earn a diploma in these fields.
6. The Government also argues that the ban does not affect all gender studies programmes but only those accredited by the Government. However, Hungary's state-funded universities, such as ELTE, can only issue diplomas accredited in Hungary, and will not be able to accredit their gender studies diplomas elsewhere.

NEW DEVELOPMENTS SINCE THE ADOPTION OF THE REASONED PROPOSAL: THE SITUATION OF THE HUNGARIAN ACADEMY OF SCIENCES (MTA)

7. In 2018, the Hungarian Government decided to reorganise the entire sector of research, development and innovation in Hungary in order to improve Hungary's innovation and competitiveness positions in the EU. However, **the Ministry for Innovation and Technology** (MIT), entitled to carry out this plan, **introduced its arbitrary and permanently changing plan without proper reform-planning and the necessary**

consultations with those affected. At the end of a year-long struggle between the Government and the Hungarian Academy of Sciences, **on 2 July 2019 the Parliament adopted a Bill that deprives the independent Academy of its research network and places it under governmental control.** This new law radically narrows the framework of independent scientific institutions in Hungary and violates academic freedom to various degrees.

8. In the summer of 2018, all of a sudden (leaving only 54 minutes for the Academy to comment) **the annual financial support for the academic research network of the Academy was reallocated to the MIT without justification**. From January 2019, the MIT decided to withhold the disbursement of subsidies covering material expenses of research centres for 2019, and threatened to withhold the salaries of employees (approximately 5,000 active staff members) in an effort to force the Presidium of the Academy to agree to the handover of its research network to the Government. The MIT refused to execute the provisions in force of the Act of Parliament on the 2019 budget of Hungary, and blackmailed the leadership of the Academy. As a result, **the Academy lost financial control over its own budget** (i.e. its financial autonomy), **and became unable to make binding contracts** for the whole year or longer (thus lost predictability and stability).
9. Meanwhile, **a public shaming campaign was carried out by pro-government media outlets against many of the researchers and institutes of the Academy, criticizing their choice of research topics, and stigmatizing them as liberals and people acting on behalf of or in the interests of George Soros.** These individualised attacks have a strong **chilling effect** not only on the affected individuals, but also on the Hungarian academic community as a whole, and may lead to self-censorship.
10. The Government and the Academy conducted negotiations that resulted in compromises on several issues. Nonetheless, the Government submitted a Bill to the Parliament that included none of those elements, and the Parliament passed the law on 2 July 2019, which entered into force on 1 August 2019, **leaving no time to prepare for the changes**. As a result, among others, **the entire research network was separated from the Academy.**
11. The new law renders the research network (named Loránd Eötvös Research Network, LERN) under a Governing Body that consists of 13 members, all of them appointed by the Prime Minister. Six members are nominated by the President of the Academy, six by the MIT. The President of the Body is appointed by the Prime Minister, following the joint nomination of the President of the Academy and the Minister. The Prime Minister has the right to appoint the President of the Governing Body if no agreement is reached between the Minister and the President of the Academy. This **new structure puts the research network under direct political influence.**
12. The new law obliges the Academy to provide the infrastructure (placement and necessary appliances) for the LERN without compensation, **effectively expropriating its private property**.
13. Employees of the Secretariat of LERN – who have previously been employed by the Academy – lost their public servant status and consequently the additional safeguards and guarantees the status entailed.
14. The entire procedure was accompanied by **concerted attacks in the pro-government media**. A recurring line of attack, echoed by the Government, was the **inefficiency of research centres in securing funds or producing innovation**. The Academy attempted to question the connection between alleged inefficiencies and institutional settings, and pointed out that Hungary, and the Academy especially, has been very successful in the region in securing third party (especially EU research) funding. The Government failed to provide any meaningful answer to this.

(7) FREEDOM OF RELIGION

RIGHT TO FREEDOM OF CONSCIENCE AND THE LEGAL STATUS OF RELIGIOUS COMMUNITIES *(Government Information Note, pp. 70-71)*

1. The Government states that before 2011, the "Eye of Heart Contemplative Order" the "Message-societies" or the "Witch Alliance" were held in exactly the same status as for example the Hungarian Catholic Church, as if this situation indicated a serious problem of the previous legislation. On the contrary, this indicates that **the previous legislation did not make a distinction between the religious communities based on the substantial characteristics of their faith**. For a truly neutral state, no apparent difference should be present when it comes to the legal status of the abovementioned religious communities.
2. According to the Information Note, "10 people may set up a religious organisation in Hungary, which also ensures that freedom of religion is guaranteed". This statement **overlooks the obvious differences between the legal status of religious organisations and churches**. The fact that all religious groups are entitled to some kind of legal recognition by the state does not mean automatically that they enjoy the same level of freedom of religion.
3. The Government states that deregistered churches, as religious associations, might retain their legal personality and were entitled to use the term "church" in their name (since 2013). **The amendment added two additional tiers to the existing legal framework that distinguishes among churches for the purposes of allocating government resources and benefits, resulting in a more complex system.** Higher-tier churches are entitled to state benefits to support both their public interest and religious activities, while religious communities do not enjoy such rewards. The distinction among churches in the lower tiers are based on objective criteria, the length of existence and social embeddedness, which is justified by the legislative purpose. However, the differentiation of categories is confusing and no legitimate legislative purpose can be discovered: only religious associations are excluded from obtaining the special "ecclesiastical legal personality", which is open for the churches in the upper three tiers. Religious associations were effectively deregistered by the law in 2011. **To regain any legal status, they must reapply for it in a new registration procedure, and can only achieve the lowest tier status this way.** On the other hand, non-deregistered, established churches do not face these obstacles. Using the term "church" can hardly compensate deregistration and its consequences, and the prevailing differences between the status of high- and low-tier churches.
4. The Government recalls that "in five EU Member States there are 'national churches' (state religions) and in at least two Member States there is no separate legal category for other religious groups at all". While this can be true, the fundamental rights framework in Europe, including the case-law of the European Court of Human Rights (ECtHR) only allows for a wide margin of appreciation in the case of religious freedom if it stems from historical and national characteristics. As the ECtHR states in *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, "any such scheme normally belongs to the historical-constitutional traditions of those countries which operate it, and **a State-Church system may be considered compatible with Article 9 of the [European Convention on Human Rights] in particular if it is part of a situation pre-dating the Contracting State's ratification of the Convention**" (§100). However, no pressing need was ever presented by the Government to justify the transformation of the egalitarian Hungarian system in place for more than two decades, apart from the existence of the so-called "business churches". The ECtHR stated that the Church Law can be considered to serve the legitimate aims by attempting to combat fraudulent activities, but noted that **"it has not been demonstrated by the Government that less drastic solutions to the problem** perceived by the authorities, such as the judicial control or dissolution of Churches proven to be of an abusive character, **were not available**" (§96). As the ECtHR also stated: "although States have a certain margin of appreciation in this field, this cannot extend to total deference to the national authorities' assessment of religions and religious organisations; the applicable legal solutions adopted in a member State must be in compliance with the Court's case-law and subject to the Court's scrutiny".
5. Regarding the reference to "business churches", and consequently regarding the aim of the regulation, the following must be noted. **Abuses, that included financial irregularities and some communities registering as churches solely to enjoy state benefits, stemmed from the regulation allowing support for churches from the state budget, as opposed to regulation of the church status.** In the meantime,

state authorities were entitled to supervise the financial activities of churches and investigate any alleged abuses under the 1990 Church Law, but only a handful of procedures were initiated.

UNCONSTITUTIONAL DEREGISTRATION OF RECOGNISED CHURCHES *(Government Information Note, pp. 72-73)*

6. The Government states that "the difference in the legal status of the two forms on conducting religious activities did not infringe the right to freedom of religion under Article 9 and the prohibition on discrimination under Article 14 of the European Convention on Human Rights" without providing a clear legal basis for this argument. On the contrary, the ECtHR stated in *Magyar Keresztény Mennonita Egyház and Others v. Hungary* concerning the Hungarian legislation that "the outcome of the impugned legislation was to deprive existing and operational Churches of their legal framework, in some cases with far-reaching consequences in material terms and in terms of their reputation" (§97). In relation to the fact that in Hungary, the Parliament is responsible for granting the highest status to churches, the ECtHR said that "the granting or refusal of Church recognition may be related to political events or situations", which "scheme **inherently entails a disregard for neutrality and a risk of arbitrariness**" and "a situation in which **religious communities are reduced to courting political parties for their votes is irreconcilable with the requirement of State neutrality in this field**" (§102).

VIOLATION OF THE FREEDOM OF CONSCIENCE AND RELIGION *(Government Information Note, pp. 73-75)*

7. According to the Government, the recent amendment to the Church Act means that "every community defining itself as a religious community (even without having a legal personality) is entitled to all that constitutional protection". However, **only communities falling in the categories of registered church I. and II. and established churches have the whole range of rights previously enjoyed by all religious organisations** recognized before the 2011 Church Act, and only established churches are eligible to benefit from the widest range of privileges, state subsidies and donations. For example, **pastoral service in the army, in penitentiary and health care institutions may only be performed by churches in the upper three tiers**. As to public education, where one-hour-per-week faith-and-ethics or ethics-only education is mandatory, faith-and-ethics class may be provided by churches with special "ecclesiastical legal personality" only. **Religious associations are still excluded from providing religious service or education in public institutions.**
8. The law does not materially remedy the situation of churches deprived of their former status. To become registered church I. – among other requirements – at least 1,000 individuals should donate 1% of their personal income tax in the previous three consecutive years to a religious community; while to become registered church II., at least 4,000 individuals should donate 1% of their personal income tax in the previous five consecutive years to a registered church. **This condition, however, is currently impossible to meet by any deregistered church, since all deregistered churches have been prevented by law from collecting the 1% of personal income tax since 2011.** Another way **for lower-tier churches to reach a higher-tier status is to basically refrain from public interest activities**: in case they fail to meet the 1% threshold, to proceed to a higher status, the law forces them to pledge not to use any funding coming from state, EU or international sources, practically excluding themselves from providing social and other services financed by public sources.
9. The Government notes that "the National Assembly does not decide on church status, only on cooperation, which is totally justified taking into consideration the volume of the so-called comprehensive agreement of this cooperation". According to the recent amendments of the law, the state shall make a comprehensive agreement with established churches for an unlimited time, and this agreement shall be enacted by the Parliament. The law enables the Government to conclude the comprehensive agreement with registered church I. and II. on state support for religious life and faith-based activities, as well as for public interest activities, in a non-transparent and unspecified procedure in which the state can arbitrarily select, without any normative constraints, religious activities of churches. This results in a situation in which **top-tier churches are entitled to state funding not just for their public interest activities, but their religious life as well in a procedure heavily influenced by the government, while religious communities are deprived of any opportunity for cooperation with the state**.

(8) FREEDOM OF ASSOCIATION

AUDITS OF NGOS WHICH WERE BENEFICIARIES OF THE NORWEGIAN CIVIL FUND *(Government Information Note, pp. 76-77)*

1. The Government claims that Hungarian human rights defenders' "support level and playing field have not diminished: tens of thousands of organisations participate in tenders run by the Trust for National Cooperation". However, the Trust tasked to distribute funds from the central state budget amongst NGOs is headed by the president of Civil Összefogás Fórum (CÖF), an NGO closely aligned with the governing majority that **is financially supported by state-owned companies and the Fidesz's party foundation** and is mainly known for organising pro-government mass demonstrations. Additionally, the Trust tends to mostly support NGOs that are closely linked to Fidesz politicians or their family members.
2. The Government claims that the EEA/Norway Grants NGO Fund (referred to as Norwegian Civic/Civil Fund in the Information Note) "can be considered public money", supposedly to argue that the Government Control Office (GCO) had the right to audit NGOs distributing and supported by the NGO Fund. However, while the GCO had the power to audit EU and other international funds under domestic law earlier, this power was specifically revoked by a Government Decree in 2010. Therefore, as also argued by Norway and the NGOs concerned, the **GCO had no legal authority to carry out any audit into the use of the NGO Fund**, taking into account also that this power was specifically allocated by bilateral agreements to external auditors selected by the Financial Mechanism Office, the secretariat of the EEA/Norway Grants donor states.
3. The Government claims that the review of Ernst & Young "revealed several misconducts", but in reality, the audit report declared that despite some minor issues, the **selection of projects supported by the NGO Fund was transparent,** and the system and the manner in which the funds were **distributed were lawful and satisfactory.** Upon the request of Norway, a London-based accounting company also carried out a review, which concluded that the handling of the fund and the **evaluation mechanisms complied with the applicable regulations.**
4. The **GCO lacked safeguards for independence and impartiality** as the president of the authority was appointed and could be dismissed by the Prime Minister. Moreover, the GCO could be ordered to audit specific organisations by the Prime Minister's Office or other government officials, many of whom had made public statements asserting the guilt of the NGOs in question prior to the commencement of the audit. Later it was revealed that **Prime Minister Orbán personally ordered the investigation** by the GCO.
5. The Government argues that the investigation carried out by the GCO "had the sole purpose" of finding out whether all Hungarian NGOs had equal conditions in competing for the grants, but the smear campaign against NGOs surrounding the investigation shows that this could not be less true. In the spring of 2014, the Prime Minister and other high-level government officials started accusing the NGOs concerned e.g. of being "paid political activists who are attempting to enforce foreign interests here in Hungary". The **smearing allegations** – for example, a Deputy State Secretary referred to these NGOs as **"party-dependent, cheating nobodies"** was repeated and echoed by the government-friendly media. In December 2014, the Commissioner for Human Rights of the Council of Europe reiterated his earlier concern regarding the stigmatizing rhetoric used by government officials against NGOs, and stated that he is "worried" about further developments. It shall be stressed that the propaganda campaign against human rights and anti-corruption NGOs is still ongoing.
6. It shall be highlighted that the campaign against NGOs culminated in criminal and tax procedures launched against concerned NGOs, with the police raiding two NGO offices (later found unlawful by the court). In October 2015, the **criminal investigations against NGOs were terminated because no criminal offence was committed**; and **tax procedures yielded no result** either.
7. The future of the Norwegian Civic/Civil Fund in Hungary is still uncertain. It was reported in April 2019 that **Hungary is the only** potential EEA/Norway Grants **recipient country that had not reached an agreement with Norway** regarding the next funding period. According to the reports, **Hungary would like to gain veto power** over the selection of the consortium that distributes the funds amongst NGOs, but Norway refused this request. According to diplomatic sources, Prime Minister Orbán asked President Trump at their meeting in May 2019 to exert pressure on Norway so the Norwegian government would provide

Hungary the long-desired veto power. In exchange for that, the Prime Minister allegedly suggested that Hungary would not obstruct a U.S.-Norwegian-Hungarian arms deal.

THE LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD *(Government Information Note, pp. 77-82)*

8. The Government repeatedly claims that the aim of Act LXXVI of 2017 on the Transparency of Organisations Receiving Foreign Funds (hereafter: Foreign Funded Organisations Act) was to enhance the transparency of NGOs. However, **the new law was not necessary to guarantee or enhance transparency, as under the previously existing laws, NGOs were already required to submit** to state authorities as part of their annual report **and publish their financial data**, also indicating the sources of support.

9. The Foreign Funded Organisations Act requires affected NGOs to **register at court as an "organisation supported from abroad"** and to **label themselves as such on their websites and publications**. In spite of what is claimed by the Information Note *(p. 79)*, the above label is not "purely factual", but has similar **discrediting and stigmatising effect** as the term "foreign agent" used in Russia, and builds on the **government rhetoric that NGOs are paid by foreign powers to serve their interests** under the disguise of doing human rights work. The **preamble of the law echoes the government propaganda**, stating that "funding from unknown foreign sources [...] might enable foreign interest groups to enforce their own interests instead of public interest in the political and social life of Hungary".

10. The Foreign Funded Organisations Act was preceded by a long line of verbal attacks by government and Fidesz party representatives against human rights NGOs. As put by the Parliamentary Assembly of the Council of Europe, **"the overall accusatory and labelling rhetoric by Hungarian public officials surrounding the drawing up and discussion of the draft law** [...] **raises doubts about the real aims of the proposed legislation"**. The Venice Commission was of the opinion that **"placed in the context prevailing in Hungary, marked by strong political statements against associations receiving support from abroad, [the] label** ["organisation supported from abroad"] **risks stigmatising such organisations"**.

11. As part of the smear campaign against NGOs, **the national consultation "Let's Stop Brussels"** *(Government Information Note, pp. 13-14)* was launched in the spring of 2017 (before the adoption of the Foreign Funded Organisations Act) with e.g. the following leading question: "A growing number of organisations funded from abroad operate in Hungary with the aim of interfering in the internal affairs of our country in a non-transparent manner. The work of these organisations could jeopardize our independence. What do you think Hungary should do? (a) Require them to register and to reveal on behalf of which country or organisation they work and what objectives they pursue. (b) Allow them to continue their risky activities without any supervision." The Prime Minister's letter accompanying the print version of the questionnaire in fact expressly used the Russian terminology when it claimed that "[s]ince the Government wants greater transparency regarding **agent organisations supported from abroad**, we must expect harsh attacks in this area too" [emphasis added].

12. The Government **misrepresents the content of the Venice Commission's respective opinion**:

    a) The Information Note recalls that enhancing the transparency of the funding of NGOs was recognized as a legitimate aim by the Venice Commission, but fails to acknowledge that the Venice Commission concluded that "while on paper certain provisions requiring transparency of foreign funding may appear to be in line with [Council of Europe] standards, **the context surrounding the adoption of the relevant law and specifically a virulent campaign by some state authorities against civil society organisations receiving foreign funding, portraying them as acting against the interests of society, may render such provisions problematic**".

    b) While it is true that some recommendations of the Venice Commission were complied with by Hungary, the Information Note fails to acknowledge that the Venice Commission concluded that **"amendments do not suffice to alleviate the** [...] **concerns that the Law will cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination"**.

13. It shall be recalled that, as also presented by the Reasoned Proposal, the Foreign Funded Organisations Act was **heavily criticized by a variety of international human rights stakeholders**.

THE "STOP SOROS" LEGISLATIVE PACKAGE *(Government Information Note, pp. 82-88)*

14. By creating the criminal offence of "facilitating illegal immigration", the Stop Soros law **criminalized a range of otherwise legal activities aimed at assisting migrants and asylum-seekers**. According to the law, these activities include, but are not restricted to "**building or operating a network", "preparing or distributing information materials", or "organising border monitoring"**, which are crucial human rights activities. Thus, the text of the law itself counters the Government's statements that "the new criminal offence is not applied to those who advocate for human rights" *(p. 87)* and that "informing about the applicable law [...] shall not be considered as organising activity within the meaning of the criminal offence" *(p. 84)*.
15. The Government **falsely claims that the "the target group is not the NGOs"** *(p. 84)* and that "the concept of the organisational behaviour does not include representation, legal counselling, protection in asylum or criminal procedures, and, hence [the law] does not impede civil society organisations with legitimate goals" *(p. 87)*. This claim can be countered e.g. by the following:
    a) **The exemplificative list of prohibited activities in the law shows a stunning coincidence with the types of activities that the Hungarian Helsinki Committee, a human rights NGO that had been in the crosshairs of the governing majority for years, had been carrying out in the past 25 years** in the field of asylum: the creation of a network (of lawyers), border monitoring, and the preparation of information materials.
    b) In the process leading up to the passing of the law, the Government made it clear whom the legislation targets: in March 2018, the **Government's press office** issued a **press release** stating that "**the operation of Soros organisations must be banned**, the operation of organisations focusing on immigration must be made dependent on the permission of the state, and the Stop Soros legislative package [...] must be passed by the Parliament immediately after the elections".
    c) The **explanatory memorandum of the Stop Soros law makes an express reference to organisations** and envisages sanctions to be applied against them: "practical experience shows that persons entering Hungary or staying in Hungary illegally get assistance and support from not only international, but also from Hungarian organisations, which requires the use of criminal law measures. The introduction of the new offence will make it possible to investigate the responsibility of legal persons providing the organisational, personal and material conditions for such actions, and [...] these [legal persons] will be sanctionable."
    d) The Stop Soros law was **preceded by a years-long smear campaign against human rights NGOs**, which in the past years was **increasingly linked to the anti-migrant propaganda** through the allegation that as part of his plan of flooding Europe with Muslim migrants in order to undermine Christian and European values, George Soros finances "fake" NGOs which under the disguise of human rights activities work only to realise his intentions. Many government statements illustrate that the Stop Soros package builds on this propaganda. For instance, the Minister Heading the Cabinet of the Prime Minister said that the Government has a list of the organisations that propagate and enhance through legal assistance illegal migration, and he added that those who carry out such activities, "be it the Helsinki Committee or anyone else", will fall under the Stop Soros law.
16. The Information Note **misrepresents the Venice Commission's opinion** once again *(p. 86)*, and fails to acknowledge that the joint opinion of the Venice Commission and the OSCE/ODIHR concluded that the provision establishing criminal liability for assisting migrants **"infringes upon the right to freedom of association and expression and should be repealed"**.
17. Further legal amendments in 2018 introduced a **25% "special tax on immigration"** to be paid by donors if they provide funds for "immigration-supporting" activities, such as carrying out media campaigns and media seminars, organising education, building and operating networks, or "propaganda" activities that portray immigration in a positive light. These vague provisions pave the way for politically-targeted tax investigations of NGOs. The **Venice Commission and the OSCE/ODIHR** stated in a joint opinion that the special immigration tax is **"a disproportionate interference with [the NGO's] right to freedom of association",** and also represents **"an unjustified interference with the right to freedom of expression of NGOs, since [it] limits their ability to undertake research, education and advocacy on issues of public debate".**

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(9A) RIGHT TO EQUAL TREATMENT: WOMEN

UNEVEN BALANCE BETWEEN THE PROTECTION OF FAMILIES AND WOMEN'S RIGHTS *(Government Information Note, pp. 90-93)*

1. The Government's claim that the distinction between women's rights and family rights is redundant *(pp. 89-90)* is false: while international human rights law clearly sets out the right to family life, the "family unit" is not in and of itself a subject of human rights protection. A **standardized approach to "the family"** understood as "the union of a man and a woman established by voluntary decision" **excludes, discriminates against and stigmatizes many forms of families.** In September 2019, during the third Budapest Demographic Summit, the **Speaker of the Parliament suggested that childless people are "not normal" and "stand on the side of death", and added that "having children is a public matter, not a private one"**. The promotion of the conservative and exclusive definition of the family is discriminatory against all people who do not live in families that do not correspond to such definition. In addition, it has a negative impact on women's human rights in both private and public sphere: it promotes family relations underpinned by harmful gender stereotypes and conceals gender inequality within the family, and undermines women's political, economic and social rights through adoption of policies informed by such a model whereby women are reduced to wives and homemakers as opposed to being treated as equal participants in public, political and economic life.
2. The Government's declaration regarding providing women with free choice *(p. 90)* seems far-fetching if we look at the data indicating access to sexual and reproductive health services. Despite the recommendations of various UN treaty monitoring bodies, Hungary's health scheme offers no reimbursement for any method of contraception and thus denies women their right to access modern family planning. Furthermore, **Hungary is one of the few EU Member States that requires a prescription for emergency contraception (morning after pill), which goes against the 2015 decision from the European Commission that emergency contraceptives be made available over the counter**. In addition, the requirement to undergo a **mandatory counselling and a medically unnecessary waiting period for women seeking abortion** is still in place, complicating and stigmatizing women's access to abortion services.
3. **The Information Note fails to address the gender inequality in political representation and lack of incentives to increase women's political participation and representation.** The European Union considers achieving a gender balance in political representation and participation as a matter of justice, equality and democracy. Yet, according to the Gender Equality Index developed by the European Institute for Gender Equality (EIGE) to measure gaps in progress towards gender equality, **the domain of power is the area where Hungary has the lowest score in the EU-28. Eurostat data demonstrates that Hungary has the lowest rate of seats held by women both in the national parliament (13%) and national government (only 7%) among all EU and EEA countries**. The inadequate approach of Hungarian politicians in this regard is demonstrated by the instance when the Prime Minister said that "women cannot handle the style of Hungarian politics".
4. Since the revision of textbooks in 2013 in order to enable students to "develop awareness about gender equality" *(p. 92)*, **the Government revoked funding for gender studies programmes in 2018 and used its communications channels to frame gender studies departments as an evil tool to weaken the traditional nuclear family structure and even the nation state**. The attacks on gender studies through the so-called "gender ideology" intensified further the chilling effect of the law stigmatizing NGOs receiving funding from abroad *(see Chapter (8) on freedom of association)* on women's rights organisations.
5. While there are a few **family policy measures** that support gender equality, numerous other instruments **actually increase gender inequality**. **Family tax allowances, for instance, since men typically earn higher wages, are more likely to be received by men than women. On the other hand, the amount of allowances typically received by women (e.g. family allowance and childcare allowance) have not been raised since 2008, therefore they lost their value.** The Child Care Allowance Extra/GYED Extra, allowing for accessing childcare allowance while being fully employed, is often collected by men, while the women, who oftentimes carry out the real childcare tasks, are left unprovided for. These measures thus increase the economic dependency of women.
6. Family tax allowance *(Government Information Note, p. 93)* does not differentiate between lower- and higher-income families and, as such, it favours middle-class families. Similarly, **the recent family**

protection action plan mentioned on p. 93 of the Information Note appears to favour middle- to high-income parents over low-income families who are ineligible to claim most such benefits.

THE PROTECTION OF WOMEN VICTIMS OF DOMESTIC VIOLENCE *(Government Information Note, pp. 93-96)*

7. The Hungarian **Government has been delaying the ratification of the Council of Europe Convention on combating and preventing violence against women and domestic violence (Istanbul Convention) since 2014.** According to the recent report by the Council of Europe Commissioner for Human Rights, the ratification of the Convention would be an essential step towards a comprehensive response to violence against women and girls in Hungary, where **at least one woman a week dies due to domestic abuse and one in five women admits to have experienced physical or sexual violence in her lifetime**. Nevertheless, the newly elected **Minister of Justice** described **the urging of the ratification as a "political whining"**.
8. As far as the effectiveness of the current legal framework around violence against women is concerned, the respective 2013 law *(p. 93)* declared only a narrow range of acts punishable, while **restraining orders could be best described as symbolic measures as they are not being used and implemented properly and thus leave victims unprotected.** According to Hungarian NGOs working with victims, the current law does not place sufficient emphasis on the accountability of perpetrators. Furthermore, **the Criminal Code does not fully protect women victims of domestic violence because** it fails to explicitly refer to sexual offences by an intimate partner as a form of domestic violence and because it imposes undue conditions for an act to qualify as domestic violence. While the Information Note mentions Parliamentary Resolution 30/2015. (VII. 7.) *(p. 93)* about the national strategy for countermeasures against violence committed in a relationship, it is important to note that this resolution still considers intimate partner violence as a manifestation of lifestyle and partnership problems, rather than that of gender inequality and power relations. Further, the Government's response mentions a number of funds allocated to help women who have suffered abuse *(p. 94).* Nevertheless, the **allocation of these funds is often questionable, as leading women's rights NGOs are excluded from the funding and are not consulted by the Government since 2017.**

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(9B) RIGHT TO EQUAL TREATMENT: LGBTQI PERSONS

1. The Reasoned Proposal recalls that the UN Human Rights Committee expressed concerns in its 2018 concluding observations "about **acts of violence and the prevalence of negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons**, particularly in the employment and education sectors" in Hungary. Furthermore, the Reasoned Proposal referred to the report of the Council of Europe Commissioner for Human Rights from 2014, in which the Commissioner spoke about **"a recrudescence of** [...] **intolerance affecting** [...] **LGBTI persons**". The Information Note **fails to address these issues, and fails to provide any information whatsoever on steps taken or envisaged to tackle hate crimes and discrimination targeting LGBTI persons**.
2. The silence of the Information Note on the above is all the more worrying if one considers that LGBTQI people face an **increasingly hostile environment** in Hungary, with **high-level public officials**, as well as the state- and pro-government media **repeatedly making anti-LGBTQI statements**. Examples include the following:
   a) In 2015, the **mayor of Budapest called the Budapest Pride "unnatural and repulsive**" on national TV, and stated that the Budapest Pride should be banned from the downtown street the march used because it is "not worthy for the historic surrounding".
   b) In May 2019, the **Speaker of the Parliament,** a founding member of the governing party Fidesz stated at a public event that **"normal homosexuals do not see themselves as equal",** and that "morally there is no difference between the behaviour of a paedophile and the behaviour of someone who demands" marriage and adoption by same-sex couples. As a follow-up, the Prime Minister's Chief of Staff said that they "do not believe it is right if a child has to grow up with two fathers".
   c) In June 2019, a **Fidesz MP** called for the ban of Budapest Pride in the Parliament and stated the following: "I support that we protect our children from sexual and other kinds of aberrations, so **I ask that everything be done so that the upcoming Pride cannot be held publicly**. Everyone does what they want inside four walls, I don't care, they don't have their disagreements with me, but with nature."
   d) In January 2019, a **public broadcast television channel** presented a programme about homosexuality. The introductory narration **"Status? Sickness? Distortion?"** was followed by a discussion on the **possible treatment of homosexuality**. The programme was reported to the Media Council, but the Council found no problems with the way LGBTQI people and homosexuality was portrayed. In September 2019 the same programme devoted another hour-long discussion to curing homosexuality.
3. The provision on the ban on discrimination is not the only instance when the **Fundamental Law fails to list sexual orientation or gender identity**: Article IX(5) of the Fundamental Law sets out that the "right to freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community", failing to mention LGBTI people once again. Furthermore, the legal provision making it possible to launch civil law action against hate speech (Article 2:54(5) of Act V of 2013 on the Civil Code) contains a closed list of grounds, and sexual orientation and gender identity are not included.
4. As to the concern cited by the Reasoned Proposal that the Fundamental Law's "**restrictive definition of family** could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples", the Information Note laconically submits that "Act XXIX of 2009 on Registered Partnership gives extended rights to unmarried couples" *(p. 98)*. However, registered partnership does not grant the right for same-sex couples to adopt jointly, participate in assisted reproduction, or adopt their partner's child. This puts the growing number of children raised by same-sex couples in a legal vacuum.
5. The Government also **fails to address the areas where LGBTI persons are discriminated against by law**. For example, same-sex parenting remains an issue where *de jure* discrimination against same-sex couples continues: even though single individuals are permitted to adopt children, the legislation prescribes authorities to give preference to married couples; while single women as well as married women and a woman cohabiting with a man are allowed to participate in assisted reproduction, women cohabiting or

living in a registered partnership with another woman are prohibited by law from having children in this way. While there is a legal provision allowing transgender persons to have their gender legally recognized, **all legal gender recognition procedures have been suspended since May 2018**. This means that transgender people cannot have their documents changed even if their appearance no longer fits their sex assigned at birth. This leads to serious problems during job search and when trans people have to identify themselves, for example when crossing borders, receiving official letters or during police ID checks.

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(10) RIGHTS OF PERSONS BELONGING TO MINORITIES, INCLUDING ROMA PERSONS

RACISM AND INTOLERANCE, ANTI-GYPSYISM AND ANTI-SEMITISM *(Government Information Note, pp. 100-102 and 116-121)*

1. The Government claims that "[z]ero tolerance in case of any form of racism is [...] repeated univocally in the highest political statements" *(p. 100)*. However, in reality, the **biased attitude** of the population is **not only not countered but is enhanced by public statements of high-level representatives** of the Government, sometimes **even combining anti-Roma statements with their anti-immigration rhetoric**:
   a) In 2015, a Minister, while stating that the integration of migrants in EU Member States is impossible, put it forward as an argument for the validity of that statement that Hungary has been "struggling" for many years with the integration of the Roma population living in the country for some 600 years, and asked: "How could we integrate anyone who is not one of us?"
   b) László Trócsányi, the former Minister of Justice and EC Commissioner-designate for Neighbourhood and Enlargement, said in 2015 that Hungary cannot take in economic migrants partly because the country has to fend for 800,000 Roma people. In a speech in 2016, the Prime Minister described the Roma population as a burden on the Hungarian society as well.
   c) In a February 2018 speech, the Prime Minister expressly rejected diversity: "We must say it: we do not want to become diverse in a way that we get mixed, our colour, our traditions, our national culture get mixed with others. We don't want that."
2. The Government's stance is also reflected by **symbolic gestures**: a state award was given for example to columnist Zsolt Bayer in 2016, who has a long track-record of hate-inciting articles against the Roma, Jews, migrants and liberals, with statements such as the following: "They are unfit to live among human beings. This part of the Gypsy population are animals [...] The animals should not exist. [...] This is what we must take care of." Another state award recipient in 2019 was a writer known for anti-Semitic statements. Earlier this year, the Government tasked an extreme right-wing literary historian known for his anti-Semitic statements as well with ensuring that the National Education Plan is "patriotic" enough.

SEGREGATED EDUCATION OF ROMA CHILDREN *(Government Information Note, pp. 109-114)*

3. The **Government falsely claims that "segregation within schools decreased**" *(p. 114)*. While changes in the definition of "disadvantaged" and "especially disadvantaged" children in 2013 (these categories are used as proxies for "Roma") have made it more difficult to conduct comparable impact studies, data shows that the degree of segregation is on the rise: **the segregation index increased nationally** from 27.7 to 38.6 and from 26.6 to 36.4, respectively, **between 2008 and 2016.** (The index is 100 when disadvantaged or especially disadvantaged children are fully separated from their non-disadvantaged peers.) **Segregation has been on the rise** not just within but **also among schools**.
4. Court cases show that the Hungarian state has largely abandoned the problem of segregation:
   a) In February 2019, it was established in a final court judgment that **the Ministry responsible for education had violated the requirement of equal treatment in relation to Roma pupils in 28 elementary schools** by failing to take action against school-level segregation. (The Ministry actually did not question in the case that in the schools identified Roma pupils were highly overrepresented, but denied responsibility for the violation.)
   b) Another relevant case was launched by an NGO against a church that reopened a school in the middle of a segregated Roma neighbourhood that had been previously closed down with the purpose of putting an end to the segregation of the Roma children going there. In April 2013, **the Minister responsible for educational matters gave a witness testimony** in the case, **arguing that the court should allow the segregated religious school to continue functioning,** and that in his view it was possible to assist the children in catching up in segregated educational institutions if the children are taught by good teachers with good methods in a loving environment.
5. Statistical analyses from 2016 show that the number of denominational schools has been steeply rising in Hungary, and that denominational primary schools **prefer pupils from relatively more favourable social background**, which disproportionately negatively impacts Roma inscription in these schools, **thereby boosting segregation**.

6. The **Anti-Segregation Roundtable** mentioned in the Information Note *(p. 105)* was indeed envisaged to enhance the communication between governmental and civil society actors. However, two representatives of the civil society sector left the Roundtable in 2013, claiming that the Government disregarded their opinion and that the Roundtable was not productive at all. In 2017, two further prestigious desegregation experts also left, citing the Government's intimidating attitude towards civil society and hostility towards the EU.

ROMA DISCRIMINATION *(Government Information Note, pp. 102-109 and 115-116)*

7. The Government states that the employment rate among the Roma minority has risen. However, as also acknowledged by the Information Note, **the growing employment rate of the Roma is rooted in the expansion of the public work scheme**. This scheme was said to be designed to help the unemployed in the country, but is currently failing to yield the expected results for the following reasons:
   a) "Activities offered in the frame of public work tend to be **ungratifying and encompass undignified jobs, which are not designed to develop new skills and thus foster reintegration** in the open labour market."
   b) Journalistic and academic articles report on a concerning tendency – mostly occurring in poverty-ridden countryside communities – regarding the public works scheme: **it enhances local hierarchies** by allowing mayors to decide in an arbitrary manner who to involve in the scheme. Thus, **mayors may use the public work programme to coerce people e.g. into voting for them** in the elections.
   c) The European Commission's Country Report Hungary 2019 also notes that **labour market outcomes for various vulnerable social groups, including Roma, are weak:** "The per capita cost of the public works scheme is higher and its efficiency is lower than that of active labour market policies."
   d) The early school leaving rate in Hungary increased in 2017 to 12.5%, and this rate is particularly high among the Roma. It is reported that the increase is the result of the combined effect of **reducing of the upper compulsory school age from 18 to 16** and the possibility of public work.
8. As far as the issue of housing is concerned, problems include that **programmes aimed at eliminating slums**, also cited by the Information Note *(p. 107)*, **only reach a small section of the population concerned**. For example, the EU-funds to be dispensed in the 2014–2020 period ensure the promotion of the integration of Roma in one in every seven segregated areas, which means that **85% of the segregated areas will not benefit from the allocated desegregation funds.** A graphic example of the related problems is the community sporting ground that had been built using EU funds in Hajdúhadház, which is practically inaccessible for the Roma residents due to their inability to pay the entrance fee, even though the EU bid was aimed at Roma integration.
9. The Information Note claims that the Family Housing Support Program (CSOK) "made it possible for the Roma to change their houses from Roma settlements to houses" *(p. 102)*. However, CSOK's eligibility criteria effectively exclude families living in poverty, and so most Roma families: the rules e.g. exclude those from CSOK who work in the public work scheme or who have been unemployed in the past six months.
10. **Forced evictions:** After the first instance court decision in December 2018 establishing that the **Miskolc** municipality had violated the human dignity and the right to non-discrimination of the Roma of the city through the raids held in the Roma neighbourhoods and the elimination of social housing without providing adequate guarantees against homelessness, **the mayor, a member of the governing party Fidesz, declared publicly that he had absolutely no intention of changing his respective policies**.

HATE CRIMES *(Government Information Note, pp. 101-102, 114-115 and 123)*

11. The Reasoned Proposal lists several European Court of Human Rights judgments establishing a rights violation on the basis that the authorities had not considered or investigated effectively the possible biased, racist motive behind various incidents. The Information Note **fails to provide adequate information on how the Government addressed or plans to address the general concerns raised by the judgments**. This is all the more problematic because even though the legal framework for effectively tackling hate crimes is in place in Hungary, when it comes to the implementation and application of the relevant laws, **systemic deficiencies in the state authorities' practice** (e.g. under-classification of hate crimes, lack of special training for authorities, etc.) **prevent those laws from working effectively.**

(11) FUNDAMENTAL RIGHTS OF MIGRANTS, ASYLUM-SEEKERS AND REFUGEES

AMENDING ASYLUM LAW *(Government Information Note, pp. 125-129)*

1. It must be noted at the outset that while the Government claims that Hungary "fulfils all of its international obligations that deal with safeguarding of human rights of asylum seekers and refugees", both the relevant sections of the Reasoned Proposal as well as this reaction paper provide ample evidence to the contrary. In this context, **the Government's attempt to frame its systemic rights violations merely as a justified position in the ongoing discussion on the future of the EU asylum *acquis* is without any basis**. This false statement is **later transformed** in the Government's response, **arguing that the automatic, arbitrary detention of asylum-seekers in shipping containers indefinitely is followed by "the new initiatives at the EU level"** *(p. 129)*.
2. It must also be noted that **the reference throughout the Information Note to Article 72 TFEU as a generic basis for all kinds of derogation from EU law** (e.g. *pp. 130, 138 and 145*) **is incorrect.** The EU asylum *acquis* does allow for derogations under clearly defined circumstances from clearly defined articles of particular directives. This is an exhaustive list, and Article 72 TFEU cannot be understood as a basis for derogation from any regulation set out in EU law. **If one were to accept this position, the entire ongoing procedure pursuant to Article 7(1) of the TEU could be closed on the sole basis of Article 72 TFEU.**
3. Regarding the declaration of the **crisis situation due to mass migration** for the entire territory of Hungary in March 2016, it must be noted that **the respective law** enabling the Government to do so **contains an exhaustive list of the potential grounds** based on which such a state of crisis could be declared. **None of these grounds are in any way related to the number of migrants in North Macedonia, not to mention Turkey.** The fact that the crisis situation is upheld at a time when less than 400 foreigners were allowed to lodge an asylum application in 2019 calls into question the legitimacy of declaring the "special situation" as the Government put it.
4. The Government addresses what it calls "fast-track procedures" (correctly: accelerated procedures), but the Reasoned Proposal clearly cites UNHCR's criticism in the context of the **fast-track procedure for amending the asylum legislation** in the summer of 2015 without any substantial consultation or impact assessment. **The Government does not address this problem at all**, despite it having been persisted throughout the many amendments introduced to the asylum system since the summer of 2015.
5. Concerning ill-treatment of migrants during collective expulsions, the Government fails to mention the fact that according to the Office of the Prosecutor General, there were in fact **at least two cases where law enforcement agents were found guilty of ill-treatment committed against migrants** between September 2015 and the beginning of 2017. Throughout the entire respective section of the Information Note, the Government pretends that allegations of systemic ill-treatment were and are made in relation to the transit zones, which is not the case. On the contrary, as watchdog organisations, international institutions such as the CPT, the UNHCR or the Fundamental Rights Officer of Frontex all pointed out: **the very nature of the collective expulsions legalised through a set of amendments entering into force on 5 July 2016 and on 28 March 2017 inherently hinders victims' access to justice.**
6. As it is pointed out in **Frontex's** Fundamental Rights Officer's reports of 2016 and 2017, **the Hungarian legislation allows for the removal of third country nationals from Hungary to Serbia without any registration**. The lack of registration stems from the Government's wish **to avoid providing access to the asylum system** to these individuals as well as **to hinder any effective remedies** against the measures. However, the lack of identification and registration poses a **significant security risk to the entire Schengen Area** and is in breach not just of the Charter of Fundamental Rights and the Asylum Procedures Directive, but the Schengen *acquis* as well. The situation was exacerbated when the area from which these push-backs can take place was extended from an 8-km area from the border fences to the entire territory of Hungary in March 2017. The Government does not address this concern at all. Repeated calls for and references to the need to strengthen the external borders made throughout the Government's response should be read against this.
7. The Government fails to address the concerns raised in relation to the introduction of a new inadmissibility ground not provided for by EU law *(p. 141)*, apart from the argument that it is in line with the Fundamental Law of Hungary *(p. 143)*. The Government fails to mention that this is only true because at the same time the new inadmissibility ground was introduced to the Asylum Act, the Fundamental Law was also

amended accordingly. Regarding the consequences of the practical implementation of these new provisions, the Government fails to address the asylum authority's **deportation shopping practice and streamlined refoulement to countries of origin**: rejected applicants are attempted to be deported to Serbia, but as Serbia refuses to readmit failed asylum-seekers from Hungary since September 2015, the asylum authority merely changes the destination country of deportation from Serbia to the country of origin of the applicants. **In none of these cases was the asylum application examined on the merits as Hungary only conducts an inadmissibility procedure since 1 July 2018.** Regarding the issue of withholding food from detainees, the Government again fails to explain on what basis the non-provision of meals to a total of 27 persons under the full custody of the state for an indefinite time could be acceptable.

DETENTION OF ASYLUM-SEEKERS AND MIGRANTS (INCLUDING THE ILIAS AND AHMED V. HUNGARY CASE) *(Government Information Note, pp. 129-131, 139-141 and 143-145)*

8. To question the fact that placement in the transit zone amounts to *de facto* detention not only according to the long list of UN and Council of Europe bodies, the European Court of Human Rights (ECtHR) cited in the Reasoned Proposal, but the European Commission itself, the Government again relies on the argument that the facilities can be left towards Serbia. At the same time, it purposefully **omits that if an asylum-seekers leaves the transit zone towards Serbia, they a) by virtue of exiting the facility abandon their asylum claim, and b) must enter Serbia unlawfully.** In the case of asylum-seekers rejected by the Hungarian authorities, there is a standing deportation order to a third country in their case. Merely walking out of the transit zone and crossing into Serbia unlawfully would be against the decision issued by the Hungarian authorities. In short, **in order to leave the transit zones, migrants would have to violate Serbian, and in certain cases, Hungarian law as well.**
9. It merits specific mention, especially in light of the automatic and indefinite detention of all asylum-seekers except unaccompanied children under the age of 14 since March 2017, that the Government falsely claims that the ECtHR in ***O.M. v. Hungary*** referred "to the need to have special regard to the special needs of LGBT people like the applicant only in *obiter dictum,* having no effect on the outcome of the judgment" (*p. 130).* In fact, the judgment is clear to the contrary: "Lastly, the Court considers that, **in the course of placement of asylum-seekers who claim to be a part of a vulnerable group** in the country which they had to leave, **the authorities should exercise particular care** in order to avoid situations which may reproduce the plight that forced these persons to flee in the first place" (§53).
10. The Government **erroneously argues** that the relevant recitals of the Reasoned Proposal that raise serious concerns only "refer to when Hungary faced enormous challenges following massive arrivals" *(p. 132)*. **In fact, 19 out of the 26 statements, reports and judgments cited in the Reasoned Proposal refer to post-2015 developments.**
11. The Government fails to address another fundamental violation that otherwise appears repeatedly in the Reasoned Proposal, namely the **arbitrary reduction of admittance to the transit zones**. Since January 2018, on average **one person per transit zone per working day** is allowed to enter the facilities and ask for asylum. This arbitrary limit, coupled with the legalisation of collective expulsions and the regulation that asylum can only be sought in the two transit zones, hinders access to the asylum procedure to an extent not compatible with EU law. It also renders inexplicable parallel claims of a mass migration crisis and the need for related special regulations.
12. Regarding the statements concerning the judgment in the case of *Ilias and Ahmed v. Hungary*, the Government **misleadingly brings up the issue of "asylum-shopping"** *(p. 139):* the **case did not concern the right to seek asylum**, consequently the ECtHR did not decide on it. What the ECtHR decided on was whether placement in the transit zone without a formal detention order is a violation of Article 5 of the European Convention on Human Rights. The Government also falsely claims that returning third country nationals from the transit zone to Serbia does not require "negotiations between the Hungarian and the Serbian authorities" as transfers of third country nationals between the two States are regulated by the EU-Serbia readmission agreement.

THE PROCEDURE AGAINST AHMED H. *(Government Information Note, pp. 140-141)*

13. The Government states that "there is no information that would support any concerns" regarding the **violation of the right to a fair trial** in the Ahmed H. case *(p. 140)*. Though Ahmed H.'s procedural rights

were not violated during the court procedures by the criminal courts, it is worth to note that throughout the entire criminal proceeding high-level government officials were heavily engaged in a **stigmatizing propaganda campaign against Ahmed H.** Most notably, the Government referred to him as an already convicted terrorist in one of its "National Consultation" questionnaires sent out to more than 8 million Hungarian citizens long before the court had delivered its final judgment. Such statements and the comprehensive campaign against him in the government-aligned media could have affected his right to a fair trial, namely the presumption of innocence.

UNACCOMPANIED CHILDREN *(Government Information Note, pp. 131-138)*

14. **The Government argues that unaccompanied children aged between 14 and 18 are kept in the transit zones as this "protects them against sexual exploitation and abuse.** The children who are the most exposed to exploitation are the children on route *(sic!)* and those who can leave the open child protection facilities on their own (between 14 to 18 years of age)" *(p. 134)*. This statement in itself **contradicts the Government's position echoed throughout the Information Note that the transit zones are not closed facilities.**
15. Regarding **the transfer of unaccompanied children from the Károlyi István Children's Centre in Fót** (*p. 135)*, it must be noted that despite repeated attempts by civil society organisations and members of Parliament, the Government **failed to disclose its related plans**. Currently the only **available information** is that unaccompanied children will be accommodated at the premises of the **Aszód Juvenile Reformatory**.

INFRINGEMENT PROCEDURE REGARDING HUNGARIAN ASYLUM SYSTEM *(Government Information Note, pp. 141-143)*

16. The lengthy comments of the Information Note do not address the **merits of the ongoing procedures**. There are currently **three ongoing infringement procedures against Hungary, two of which is in their last stages pending at the CJEU**.
    a) The first concerns the restriction to lodge an asylum application only in the transit zones coupled with the additional restrictions on the number of applications that can be submitted there (1/day/transit zone); not respecting the 4-week limit of stay in the transit zone set out in the Asylum Procedures Directive (as placement is indefinite); not respecting the guarantees provided for vulnerable applicants (as contrary to the Asylum Procedures Directive, vulnerable applicants are placed in the transit zones as well); collective expulsions and consequent denial of access to the asylum procedure; and the indefinite de facto detention in the transit zones.
    b) The second concerns the criminalisation of assistance *(see in detail under §§14-16 in Chapter (8) on freedom of association);* and the inadmissibility ground not provided for by EU law that results in the automatic rejection of practically all applications *(see §7 above)*.
    c) The third infringement procedure, launched on 25 July 2019, concerns the withholding of food from certain detainees in the transit zones.

(12) ECONOMIC AND SOCIAL RIGHTS

CRIMINALISING HOMELESSNESS *(Government Information Note, pp. 147-150)*

1. Hungary ratified a number of UN human rights treaties (e.g. the International Covenant on Economic, Social and Cultural Rights), thus accepted the obligation to **respect, protect and fulfil the right to adequate housing** as a binding obligation under international human rights law. However, **the country fails to comply with its international human rights obligations in this regard.**
2. In the Information Note the Government denies that Hungary criminalises homelessness. In reality, **criminalizing homelessness has been a recurring aim of the incumbent governing party for years**. An earlier version of the respective law (that was in effect from 15 April 2012) gave authorization to local governments to criminalize street homelessness on certain parts of the public premises through local decrees, and it was also applicable on World Heritage sites. As also noted by the Reasoned Proposal, one of the latest steps in the criminalization was the **Seventh Amendment to the Fundamental Law which elevated the complete prohibition of residing on public premises for habitation (rough sleeping) to a constitutional level.** Due to an amendment of Act II of 2012 on petty (minor) offences (hereafter Act on Petty Offences) coming into force on 15 October 2018, **rough sleeping became unlawful in the whole territory of Hungary**. Anyone who has been warned three times within 90 days for rough sleeping or refuses to obey the order by the police to leave the public premises is committing the petty offence of "residing on public premises for habitation". **The petty offence is punishable by confinement in jail for up to 60 days.** The law does not limit the interval between the warnings, thus all warnings can be applied even within 1 hour in a single day.
3. The Government argues in its Information Note that "in order to protect the right to human life and dignity the State shall secure the basic preconditions of human existence. Accordingly, in the case of homelessness, the State shall be obliged to provide support and shelter for those in need in situations where human life is directly threatened." *(p. 148)* The fact that the state has an obligation to operate such a service does not legitimize forcing people into using it and imposing criminal punishment on them if doing otherwise. The Government also states that the sanction for the petty offence only applies as an ultimate measure in the absence of cooperation by the individual. However, **there is no other crime or petty offence that requires the police to take the accused immediately into custody and bring them before a court within 72 hours:** this rule of the Act on Petty Offences only applies to individuals who are charged with committing the petty offence of "residing on public premises for habitation". If a homeless person is caught by the police for the fourth occasion for rough sleeping, by law, **the police are not allowed to consider the homeless person's intention of leaving the public premises or accepting help from social services**, and are obliged to launch a petty offence procedure. Moreover, the police must ensure that the accused is clean and provided with clean clothes when taking them into custody, which can potentially cause the forced cleaning of the person. During the petty offence hearing, the court can prohibit the accused to enter the courtroom without any reasoning. In this case the person concerned can only follow the procedure against them on a screen from custody. In addition to not being allowed to attend the hearing in person, **homeless people are usually forced to wear handcuffs during the hearings.**
4. In the course of the week after the above amendment of the Act on Petty Offences came into effect, the first lawsuits against homeless people already took place in Hungary. Judges having to proceed in such petty offence cases turned to the Constitutional Court regarding the law, but, as cited by Reasoned Proposal, the Constitutional Court found in June 2019 that the prohibition was not unconstitutional – in spite of the amicus curiae of NGOs, former Constitutional Court judges and the UN Special Rapporteur on housing.
5. Contrary to the Government's claims in the Information Note, **the number of places in the homeless and social care institutions is in fact not sufficient**. According to the official state database on social care facilities, **there are only 3,719 places in the country's shelters that can be used at night**, and most of these shelters operate above 100% capacity during the winter. According to the Central Statistical Bureau, homeless shelters provided some form of care to 10,201 people in 2017, and to 9,931 people in 2019. Based on the annual assessment of the February 3rd Working Group (an expert group of social sphere professionals conducting yearly assessment of the number of homeless persons) during a winter day of 2017/2018 there were **on average 14,000 people in a situation of homelessness**. However, the actual

number of people in need of homeless care is probably even higher, since the February 3rd Working Group only counts those who in some way get in touch with a social care institution (shelter or street care service). The homeless care centre operator Menhely Association highlights that only 55 Hungarian cities and towns have some type of homeless shelter (capacities ranging from several hundred to 10), meaning that 3,100 towns/villages are completely without such institutions., Additionally, **the current homeless care system is not equipped to address the special needs of the diverse homeless population: the number of places available for homeless women is inadequate, and there are hardly any specific services for homeless people with special medical needs, disabilities, mental health problems and addictions.** Thus, the homeless care system is not capable of addressing the needs of the most vulnerable people living in homelessness. The number of shelter accommodations for whole families in housing distress is even more critically low, hence there are always long waiting lists for places in such institutions.

6. Based on the experience of the Streetlawyer Association and the homeless activists of the group The City is for All, **the conditions in most of the homeless shelters are also inadequate and sometimes degrading.** The most common problems are overcrowding, bed bug infections, and the generally bad condition of the buildings. Additionally, the shelters cannot provide the conditions for a dignified life, as people are often only allowed to enter with minimal belongings (there are no storage places, and especially no lockers), and since there are very few shelter places for couples, they are often forced to go into separate shelters. The homeless care system also lacks institutions and housing forms that could ensure an assisted way out of homelessness.

7. Consequently, though it is defined as an objective of the state, **Hungary clearly cannot ensure enough places and adequate conditions for people who live in homelessness**. As a result, many people are forced to live on the streets or in public places. **The most extreme consequence of this is that every year a lot of people die from hypothermia – around 180 people during the winter of 2016/2017, and 120 during 2017/2018** – either on the streets or in their own homes.

AMENDMENT OF THE ACT ON STRIKES *(Government Information Note, pp. 153-155)*

8. Since Fidesz-KDNP gained majority in the Parliament in 2010, the rules on strikes were modified significantly two times. In 2010, Act VII of 1989 on Strikes was amended, **widening the possibilities of the courts to rule that a strike was unlawful**. For instance, the new rules stipulate that in companies providing essential services (such as public transport, communications, electricity, or water supply), employees and employers must agree on the sufficient level of service prior to the strike if there is no law establishing that level. If the agreement has not been reached and the court rules that the sufficient level of services has not been provided, the strike is declared unlawful by the court. In the **case of an unlawful strike, the employment contract of those participating in the strike may be terminated without notice, and the employees may be liable for the pecuniary damage caused by the strike.** In **2011, the Fundamental Law has further restricted the right to strike on a constitutional level**. Furthermore, the **legal protection of trade union leaders have decreased** with the new Labour Code of 2012, e.g. the number and types of protected trade union leaders have decreased and the time of their protection after their role has ceased has shortened.

9. Contrary to what the Government suggests *(p. 155),* these changes have **caused a significant chilling effect and resulted in a significant decrease in the number of strikes**. While between 1989 and 2014 270 strikes were organised altogether, only one took place between 2010 and 2014, after the legislative amendments took place in 2010. Between 1989 and 2010, 12.8 strikes took place in a year on average, while between 2010 and 2018 only 3.5 strikes happened in a year on average.

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