Ms. Viviane Reding
European Commission Vice-President, Commissioner in charge of Justice, Fundamental Rights and Citizenship
BE-1049 Brussels
Belgium

Dear Vice-President Reding,

We, the heads of the below listed Hungarian non-governmental organisations, are writing to provide you with alternative answers to your questions posed to Deputy Prime Minister Tibor Navracsics concerning the reduction of the mandatory retirement age of judges, the reorganisation of the judiciary, and the termination of the Data Protection Commissioner's mandate. We believe that in the present Hungarian situation it is important (i) to describe the general context in which the changes you have inquired about are taking place, (ii) to outline what aspects of these issues have not been reflected in Mr. Navracsics's response and (iii) to point out the deficiencies of the official answer's argumentation. We kindly ask you to take into account the facts set forth below when considering the compatibility of the Hungarian Government's measures with the norms and principles of the European Union.

I. The General Context

We firmly believe that the three issues you have raised cannot be adequately assessed without looking at the context in which these measures have been adopted. Since the time when the ruling party Fidesz received a two-third majority in the Hungarian Parliament and consequently obtained a legally unrestricted power to shape the state structure, the system of checks and balances has been dramatically weakened if not demolished. This endangers the prevalence of the fundamental values of the European Union as enshrined in the Charter of Fundamental Rights of the European Union, especially the principles of democracy and the rule of law.

The ruling party adopted a new constitution without the support of any other political force. Both the process of adopting the Fundamental Law and its content have been seriously criticised by the Venice Commission of the Council of Europe. The Fundamental Law expressly limits the Constitutional Court's (CC) previously unrestricted power to review the constitutionality of certain laws (for instance, laws concerning taxes and other budgetary issues practically cannot be reviewed by the CC). Another method to weaken the control exercised by the CC has been to include into the Constitution and/or the Fundamental Law

provisions which had been previously found unconstitutional by the CC, as in this way the CC is not any more in the position to declare these norms unconstitutional (examples include the authorisation of trainee judges to impose deprivation of liberty; retroactive taxation; and the withdrawal of pension from certain categories of people). These steps have led to a situation in which the Constitution has ceased to be an effective instrument in limiting the legislator's powers.

Another factor threatening a properly functioning system of checks and balances is the control Fidesz has gained over the state institutions through their appointed or elected leaders. The heads (and in some cases the full membership) of certain institutions have been removed and replaced before the official term of their office – mostly through the amendment of the related legal framework. This happened (or has been happening) to the National Election Committee, three parliamentary commissioners for human rights (including the Data Protection Ombudsman) and the National Radio and Television Body (which has been replaced by the Media Council seriously criticized by several international bodies). The same is happening at the moment to the President of the Supreme Court, whose mandate will come to an end on 1 January 2012, i.e. three years before the end of his original mandate. Constitutional Court judges have not been removed, but the procedure for their election (which previously required a certain consensus of parliamentary factions) has been changed in a way that they can now be elected without any support from opposition, and the number of judges has also been increased, leading to a situation in which seven CC judges (out of a body of fifteen) have been nominated and elected by Fidesz during the past one year.

Furthermore, persons who are not only undoubtedly loyal, but very closely linked to Fidesz have been elected to several positions that are crucial from the point of view of the proper functioning of the system of checks and balances. The following positions are filled by persons who were members of Fidesz parliamentary party group either in 2010-11 or sooner: the President of Republic, the Head of the State Audit Office, and one member of the CC, while another judge of the CC is a minister of the previous Orbán Government. The newly elected Head of the National Judicial Office (with sole competence to appoint all judges) is the wife Mr. József Szájer, founding member and MEP of the Fidesz. The Chief Public Prosecutor used to be a member of Fidesz in the 1990s and was a MP candidate at that time.

This is the context in which the measures you have inquired about shall be examined.

II. The mandatory retirement of judges older than 62

In general

In general, we regard the mandatory retirement of judges as a serious intrusion into the independent functioning of the judiciary. It cannot be left without comment that the constitutional provision prescribing the retirement was never supported by any public reasoning whatsoever. The original Bill of the Fundamental Law did not contain such a provision, and the reasons attached to the amending motion introducing this rule into the law, did not contain any explanation for the measure.

As a result of the rule, close to 300 senior judges will have to retire. This affects a significant number of the judges serving at higher courts and the **majority** of the leaders of the higher courts. The new judges to replace those retired will be appointed by the Head of the National Judicial Office, Ms. Tünde Handó, who – as it was mentioned above – is the wife of a Fidesz MEP. s. While Ms. Handó's professional qualities have not been questioned, we believe that the requirement of impartiality as elaborated in the case law of the European Court of Human Rights is to be applied here as well (although in an obviously different context): due to her very close contact to the ruling party, her election into the position fails to provide guarantees that are sufficient to exclude legitimate doubts about her impartiality, and this in itself poses a serious problem.

These doubts are strengthened by the fact that on 20 June 2011, the Parliament adopted Act LXXII of 2011,[1] which inserted – with effect from 28 June 2011 – Article 106 into Act LXVI of 1997 on the Organisation and Management of the Judiciary.[2] This Article states that before 1 January 2012 (i) no procedure for appointment into a leading judicial position may be started;[3] (ii) **not even the already submitted applications may be decided on**; and (iii) with the exception of the heads of judicial panels (who may be appointed for no more than 1 year) no leading judicial position may be filled in any other way either.[4] This means that Mr. Baka's legally guaranteed right to appoint judicial leaders was suspended for over six months. The end of the moratorium disturbingly coincides with the end of Mr. Baka's term as the President of the National Justice Council, and the start of Ms. Handó's term as the President of the National Judicial Office.

As to the merits of the Government's argumentation

1. The Government argues that the aim of the changing of the judiciary's mandatory retirement age was to "terminate discrimination against those working in other sectors" and to "introduce a sector-neutral regulation regarding the legal consequences of reaching retirement age in conformity with the general rules on retirement age". It needs to be pointed out that in several other fields, persons older than 62 may continue to exercise their respective legal professions (Constitutional Court judges, public notaries, bailiffs and law professors until reaching the age of 70, and attorneys at law without any limitation). The reduction of the mandatory retirement age has not terminated, but instead created discrimination – against judges and without any reasonable explanation as to why it is legitimate to apply detrimental differentiation against them on the basis of age (when in several other countries judges may serve much longer or even for life).

We believe that the reduction of the mandatory retirement age for prosecutors and the prospective changes that are now discussed with regard to the mandatory retirement of public notaries and bailiffs (and that are also referred to by the Government's reply) are not

1 2011. évi LXXII. törvény egyes jogállási törvényeknek az Alaptörvénnyel összefüggő módosításáról

2 1997. évi LXVI. törvény a bíróságok szervezetéről és igazgatásáról

3 The system is that candidates shall submit an application for a leading judicial position, and the decision is based ont he application.

4 106. § (1) A 2012. január 1-jéig terjedő időszakban bírósági vezetői tisztségre pályázat nem írható ki, a már kiírt pályázat nem bírálható el, továbbá bírósági vezető nem nevezhető ki és - a (2) bekezdésben foglalt kivétellel - bírósági vezetői tisztség egyéb módon sem tölthető be.

(2) Ha a tanácselnök tisztsége a 2012. január 1-jéig terjedő időszakban szűnik meg, a tanácselnöki tisztség legfeljebb 1 évre megbízás útján betölthető.

motivated by a well thought-out reform concept, but by the realisation that the reduction of the mandatory retirement age for judges will be unexplainable unless similar changes take place in at least some of the similar professions. This belief is substantiated by an interview given by the Head of the Fidesz Parliamentary faction, János Lázár who said that the idea that the same mandatory retirement age shall be set for prosecutors came only after the President of the Supreme Court pointed out the discriminatory nature of lowering the age limit for judges but not for prosecutors.[5]

In addition, the argument of introducing a "sector-neutral regulation" intentionally neglects the differentiation between the pensionable age and the mandatory retirement age. In other sectors (including the ones listed above) people may decide to continue to work after turning 62 (i.e. reaching the pensionable age), judges may not. Based on the decision of their employers, even civil servants may work after they have reached the age of 62 (or the actual pensionable age), although they are also appointed like judges (and so are university professors), therefore the nature of the legal relationship of judges cannot account for the differential treatment either.

2. The response of the Government claims that "the aim of the measure was to shape a balanced age structure which makes it possible that retirements be equally distributed in time as 10% of the judges will reach the upper age limit at almost the same time". This explanation fully defies logic, as the sudden decrease of the mandatory retirement age creates the same problem (the simultaneous retirement of a large proportion of the judiciary) with the difference that this will happen within a few months instead of a couple of years from now (which would have provided sufficient time for the legislation to handle the situation).

3. The Government's response argues that the measure has eased the tensions stemming from the difficulties of young professionals to get a job in the judicial sector. We are firmly convinced that these types of labour market considerations are entirely irrelevant in the management of judiciary. Moreover, this argument is professionally unfounded: the Government's response does not provide substantive arguments as to why it would be better to have more young judges in a system where (i) professional experience is of utmost importance, where (ii) judges are not old in international comparison, and where (iii) research shows that in the absence of sufficient professional experience young criminal judges are more inclined to rely on the prosecution than their older colleagues. As opposed to the Government's argument that the younger the judges are the better their performance is (which statement is not substantiated with any scientific research), research results published in 2011 by a former judge show that the opposite is true.[6]

4. The Government mentions the steps taken to recruit new judges. While it should in itself be alarming that "the average period of applications for posts of judge will be shortened [...] from the previous 4 to 5 months to 2 to 3 months", we must emphasise that – as opposed to what the Government claims – "the necessary guarantees" are not going to be kept with. The Government refers to Act CXXXI of 2011, i.e. the law that contains the transitional rules for filling judicial positions. Some provisions of this law are completely contrary to the

5 "*Lázár János arról is beszélt, hogy arra, hogy az ügyészekre is vonatkozzon a 62 éves nyugdíjkorhatár, Baka András hívta fel a figyelmet, s végül az ő levele nyomán építették ezt is az alkotmányba*" See: http://hvg.hu/itthon/20110419_birok_lazar_janos

6 Mátyás Bencze: Elvek és gyakorlat (Principles and Practices), Budapest, 2011, p. 171.

requirements that a procedure for the appointment of judges shall comply with. For instance, under Article 4 Paragraph (2) the judicial council making a decision on the ranking of the applicants **shall not take into consideration the results of the job suitability examination or the absence thereof** ("*A bírói tanács a rangsor kialakítása során nem veszi figyelembe a pályaalkalmassági vizsgálat eredményét, sem annak esetleges hiányát*.")

This hasty method of appointing new judges in order to fill the gap created by the mass retirement of senior judges proves that the transitional time allowed by the law is insufficient – not only for the individual judges concerned, but also for the justice system as whole.

Another provision of Act CXXXI that raises serious suspicions as to the Government's hidden intentions behind the reduction of the mandatory retirement age is Article 9, which amends Act LXVII of 1997 on the Legal Status and Remuneration of Judges. The inserted provision runs as follows: "If the service relationship of a judge who has reached the pensionable age pertaining to him/her or will reach this age by 31 December 2012 terminates, no procedure may be initiated for the fulfilment of his/her position before 1 January 2012" ("*Ha annak a bírónak szűnik meg a szolgálati viszonya, aki a rá irányadó öregségi nyugdíjkorhatárt betöltötte vagy 2012. december 31-ig tölti be, az így megüresedő bírói álláshelyre 2012. január 1-jéig pályázat nem írható ki"*).

This telling provision gives us the impression that the Government's main concern is not the equal distribution of retirements, nor is it to provide opportunities for young professionals, but to make sure that the new judges replacing those who have to retire before their planned schedule would be appointed at a time when the person who has a decisive influence on the management of the judiciary, will be someone who is loyal to them.

5. It also needs to be highlighted that the replacement of judges will not in itself "ensure the timeliness of passing judicial decisions". Under the provisions of the Code of Criminal procedure for example the proceeding shall be fully restarted if a new judge takes over the case (this means that all the already interrogated defendants and witnesses shall be heard again and all other procedural acts shall be repeated). Therefore, the new judges cannot take up the cases where the retired judges "left" them. These proceedings will therefore be significantly longer, although the Government's explanation for some of the most severely criticised legal amendments (e.g. those amendments of the Code of Criminal Procedure that were declared unconstitutional by the CC on 19 December 2011)[7] has been the will to accelerate the course of justice.

III. The President of the new National Judicial Office

The Hungarian system of the administration of courts and the operation of the National Council of Justice (*Országos Igazságszolgáltatási Tanács*, NCJ) has been widely criticized in the past years. Among other things, it was claimed that the operation of the judiciary and courts had become non-transparent. One of the most frequently recurring criticism was that judges elected to the NCJ presidents of county courts, thus county court leaders monitored

7 These measures include the denial of access to a defence counsel in the first 48 hours of detention, the prolongation of detention without a judicial decision from 72 to 120 hours in certain cases, etc. (see Decision No. 166/2011. (XII. 20.) of the CC).

their own courts, which obviously weakened the efficiency of the control. Thus the system of court administration definitely had to be reformed. However, these problems have not been addressed by the new rules. Instead, the administration of courts has become fully centralised, and even though the system set up is presented as a new model, only the mechanism of decision-making has been transformed: collective decision-making has been replaced with a one-person decision-making mechanism.[8]

As a result of the new rules, the President of the National Judicial Office (*Országos Bírósági Hivatal,* NJO) will administer courts in a non-transparent way, without any control. The President of the NJO will perform all the current tasks of the NCJ alone: she will decide on the appointment of judges and in basically all organisational and personal matters related to courts, will issue administrative regulations, recommendations and decisions, and will control the activities of court leaders. In addition, the President's mandate will be automatically prolonged if no new President is elected by the Parliament, thus may be kept in office for an indefinite period of time.[9] It is true the President of the NJO is "an individual coming from within the court system",[10] but the appearance of independence is undermined by the above mentioned fact that the currently elected President of the NJO, Tünde Handó, is the wife of MEP József Szájer, founding member, former MP, deputy chair and faction leader of the Fidesz.

At the same time, the National Council of Judges (*Országos Bírói Tanács*) will not have any substantial power: it may only comment on the measures of the President and make suggestions (which can be disregarded without any consequence),[11] thus it may not perform any real control over the President, as opposed to what is suggested by the Government's response.

The new system of appointing judges also threatens judicial independence. (Judicial independence as such is for that matter not set out by the new Fundamental Law of Hungary.) Judges, with the exception of the judges of the Curia, will be appointed by the President of the NJO,[12] who is not bound by the recommendation of the council of judges assessing applications for judicial positions and may also appoint the applicant ranked as second or third by the judicial council.[13] (The President of the NJO shall only inform the National Council of Judges about the reasons for overruling the ranking[14] – this is how the National Council of Judges "participates in the application proceedings".[15])

The question arises: why is the President of the NJO deemed more competent to decide over applications from a professional aspect than the council of judges hearing the applicant in person? The pretence of judicial independence is further undermined by the provisions setting out that the President of the NJO may appoint another court to proceed in a given case, if the

8 Act CLXI of 2011 on the Organisation and Administration of Courts, Article 65.
9 Act CLXI of 2011 on the Organisation and Administration of Courts, Article 70 (4).
10 See: Annex I of the Government's response, p. 6.
11 Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103.
12 Act CLXI of 2011 on the Organisation and Administration of Courts, Article 76 (5).
13 Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 18 (3).
14 Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 18 (4).
15 See: Annex I of the Government's response, p. 8.

initial court's extraordinary and disproportionate caseload results in a situation by which the case will not be concluded in reasonable time.[16]

Even though the changes above are at least in principle aimed at increasing the efficiency of courts and at speeding up court procedures, no statistical data were taken into account, and no impact assessment was carried out regarding the caseload of courts before the drafting of the new regulations.

The transparency of the judiciary has also been decreased by the new regulation: decisions of the President of the NJO and minutes of the National Council of Judges' sittings will not be available for the public, but only for judges.[17] (Accordingly, the "public nature" of the President's activities, as stated by the Government's response,[18] will not be a means of control over her.)

Further comments to the response of the Deputy Prime Minister

- Contrary to the Government's statement,[19] the fact that the NCJ convened once a month did not cause difficulties that would have required the present set up. The problems arising from the fact that court leaders were among NCJ members could have been addressed by amending the proportion of judges and external members of the NCJ[20] in a reasonable way. Consequently, substituting the NCJ with a single person was not inevitably necessitated by this deficiency of the previous system.
- As to the consultation between the President of the NJO and the National Council of Judges on the appointment of judges into leading positions, we do not agree that it is "practically binding",[21] since nothing ensures that the President of the NJO will take into account the opinion of the National Council of Judges (no consequences are attached by the law to her failure to do so).

IV. The transformation of the Hungarian Supreme Court into Curia

It should be stressed that no "essential modifications of tasks and competences"[22] have taken place in terms of the transformation of the Supreme Court into the Curia. The main tasks of the Curia remain the same, its new tasks (the overview of the law-making activities of local governments) are as new to András Baka as they would be to any judge irrespective of the time spent in judicial service, so these changes do not explain why András Baka is no longer suitable to serve as the head of the highest judicial body, and why he had to be replaced. Much more fundamental changes have taken place in the system of the Parliamentary

16 Act CLXI of 2011 on the Organisation and Administration of Courts, Article 62 (1).
17 Act CLXI of 2011 on the Organisation and Administration of Courts, Article 77 and 108 (2).
18 See: Annex I of the Government's response, p. 7.
19 See: Annex I of the Government's response, p. 6.
20 The NCJ consists of the following members: the President of the Supreme Court, nine judges, the Minister responsible for justice matters, the Minister responsible for public finances, the Chief Public Prosecutor, the president of the Hungarian Bar Association, and two MPs appointed by the parliamentary committee for justice matters and the parliamentary committee for financial matters.
21 See: Annex I of the Government's response, p. 6.
22 See: Annex I of the Government's response, p. 13.

Commissioners (Ombudspersons),[23] but it did not prevent the governing majority from keeping the former Parliamentary Commissioner for Civil Rights Máté Szabó in office as the newly established Commissioner for Fundamental Rights.

If we also take into consideration that all other judicial leaders (with the exception of Mr. Baka's vice-president) remain in office, it is hard not to suspect political motives behind the untimely termination of the Supreme Court President's mandate. It is well-known that his relationship with the governing majority has been characterised by conflicts: earlier this year, his right to appoint judges into leading positions was suspended (see Section II above); he challenged the modification on the Criminal Procedure Code before the Constitutional Court, and he had conflicts with the governing majority when the retirement age for judges was decreased or when the parliamentary majority adopted the so-called „nullification law". He has also severely criticised the planned institutional changes regarding the administration of courts, claiming that there are no checks over the President of the NJO and that the proposed modifications do not increase the efficiency of the court system.

In this context it is difficult to brush away the suspicion that the new requirement of five years "service relationship as a judge" in the case of the President of the Curia has been codified as an excuse for dismissing András Baka, since he has not served for five years as a judge in Hungary, and his 17-year long experience as a judge of the European Court of Human Rights cannot be taken into consideration in terms of the new law. The "professional association" referred to by the Government's response is not an official association of judges, but a simple non-governmental organisation (Magyar Bírói Egyesület, Hungarian Association of Judges),[24] the views of which are easily disregarded by the Government if its opinions do not coincide with the Governmental stance. (For instance, the Association raised its voice against the law authorising the Chief Public Prosecutor to press charges before a court other than the legally designated court if he deems it necessary for the sake of the speed of the proceeding, but the Government neglected the objections and the law – later quashed by the CC – was passed.[25] It also needs to be mentioned in this regard that after the CC had abolished the provision on 19 December 2011, the Parliament inserted it into the Fundamental Law on 23 December 2011, so the CC will no longer be able to decide on the constitutionality of this piece of legislation. This episode illustrates how important the opinion of the Association and the CC is for the ruling majority, when it is in contrast with its own views.)

V. The Data Protection Supervisor

The Fundamental Law and Act CXII of 2011 on the Right to Informational Self-determination and the Freedom of Information (Freedom of Information Act) have abolished the position of Parliamentary Commissioner for Data Protection (hereafter: Data Protection Commissioner) and established a formally independent administrative body to perform the tasks of the Commissioner. The Freedom of Information Act is in contradiction with the requirement of

[23] E.g. the Ombudsman will serve as the National preventive Mechanism under the UN Optional Protocol to the Convention Against Torture; although with deputies, but practically one ombudsman will be primarily responsible for all areas, including those that have until now been under separate Ombudspersons (environmental protection, the rights of national and ethnic minorities); etc.

[24] http://www.mabie.hu

[25] See for example: http://hvg.hu/itthon/20111227_fidesz_buntetoeljaras_alkotmany

the complete independence of the Hungarian Data Protection Commissioner, inasmuch as it abolishes this institution and thereby terminates his office.

This legislative intention follows firstly from Article 85 Paragraph (1) of the Act that repeals Act LXIII of 1992 on the Protection of Personal Data and the Accessibility of Information of Public Interest. According to Article 73 Paragraph (2), the repeal is effective as of 1 January 2012. Article 75 Paragraph (1) of the Act declares that in cases pending on the basis of a petition that was submitted to the Data Protection Commissioner before 1 January 2012, a newly established authority shall take over the procedure. Equally, Article 75 Paragraph (2) of the Act orders the transfer of all personal data from the Data Protection Commissioner to the new authority. Finally, under Article 74 of the Act, the Prime Minister shall propose the first president of the new authority by 15 November 2011, and the President of the Republic shall appoint the first president with effect from 1 January 2012. These provisions are in clear contradiction with the requirement of the independence of the Data Protection Commissioner, since his term of office would end only 2014. As elaborated in our letter sent to the European Commission on the issue,[26] this clearly violates EU laws and is not compatible with relevant judicial standards.

As already detailed that letter, we again emphasize that an administrative agency does not enjoy the same independent status as the Commissioner, who had the status of an ombudsman. Clearly, the authority is likely to be reluctant to enforce freedom of information rules and clash with fellow governmental agencies. As a part of the executive and due to its dependence on the Prime Minister, the new authority is likely to become insignificant.

As opposed to what is stated in the Government's response, we believe that the reason for not providing interim measures and the motivation behind the removal of the current Commissioner before the end of his term is the open and permanent conflict during the past year between the Data Protection Commissioner, Mr. András Jóri on the one hand and the Government and the Fidesz on the other.[27]

It is also a clearly false argument that by keeping the ombudsman the Government would have run the risk of not complying with EU law. The Government's response does not mention even a single legal argument to substantiate this stance.

As to the Annex II on the comparative status of powers of the old and the new data protection bodies, we wish to point out that nothing would have prevented the legislator to vest the Data Protection Commissioner with the powers deemed necessary by the Government for the effective carrying out of data protection tasks stemming from EU requirements. Therefore, the differences in the powers do not offer a plausible explanation for the Government's measures.

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[26] See: http://tasz.hu/files/tasz/imce/2010/beadvany_angol.pdf

27 The conflicts concerned first the illegal publication of data on people on social benefits (resolution of the data protection ombudsman Nr ABI-3241-11/2010/K; confirmed also by the court judgments Nr. 22.K.35.696/2010/4.), where the chief whip of the government party, the mayor of the town committing the named offence (in)famously declared that he is not going to obey the law because he thinks it is a bad law in contradiction with the people's sense of justice (Hungarian Parliament, Committee for Human Rights, Minorities and Religious Matters, 27 July 2010). New conflicts arose later about the government's public opinion polls which made it possible to build up a state-run database on the political sympathies of those who answered. The latter conflict is still continuing.

With regard to the argument that Mr. Jóri himself declared in an interview that he did not wish to become the head of the new authority, we wish to point out that in the interview Mr. Jóri gave his arguments for this stance. He mentioned that he had been given **a one-day** (!) deadline to comment on the draft law, which clearly shows that the Government did not treat him as a partner in the process, making it also obvious that he was not a potential candidate for the new position.[28] Furthermore, Mr. Jóri voiced the strong criticism that the new data protection authority would not be sufficiently independent. In addition, it is obvious from the interview (both from the questions and the answers) that he had never been approached by the Government with the question whether he wished to carry on as the head of the new authority, nor were his concerns listened to. It can be said that his removal was a decided matter long before the Prime Minister made his recommendation to President.[29] Therefore, his position cannot sufficiently explain the measures of the Government.

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[28] Q: Az ön véleményét kikérték az adatvédelmet érintő változásoknál? (Was your opinion asked in relation to the changes concerning data protection?) A: Az alkotmány előkészítésével foglalkozó Salamon-bizottság a sok állami tisztségviselő között anno engem is megkeresett. Az akkor írt részletes állásfoglalásomra azután semmilyen válasz nem érkezett, miután pedig másokhoz [a parlamenti bizottságtól a Fidesz és a KDNP háromtagú szövegező testületéhez] került az alkotmányozás, ők már nem is tárgyaltak velem. A pozíciómat felváltó adatvédelmi hivatal létrehozásáról is szóló mostani törvényjavaslatot megküldték nekem ugyan - ezt elő is írja egy uniós irányelv - de egynapos határidővel. (The Salamon-Committee responsible for the preparation of the Constitution approached me among several state officials. The detailed material we wrote then was left without any response, and after the process of writing the constitution had been taken over by others [a three-member wording committee set up by Fidesz and KDNP], they no longer consulted me. The draft bill about the data protection office to replace my position was sent to me for commenting – this is required by an EU Directive –, but I was given a one-day deadline. See: http://www.origo.hu/itthon/20110708-interju-jori-andras-adatvedelmi-biztossal.html

[29] Q: Január elején még volt olyan kormányzati elképzelés, hogy az ugyancsak megszüntetendő kisebbségi és a zöldombudsmanhoz, Kállai Ernőhöz és Fülöp Sándorhoz hasonlóan mandátuma lejártáig ön is folytathatná a munkáját az új pozícióban. Az átmeneti rendelkezések közé végül csak kettejük neve került be. Miért került ki a kedvezményezett körből? (At the beginning of January, there were Governmental plans according to which – similarly to the Minorities Ombudsman Ernő Kállai and the green Ombudsman Sándor Fülöp – you could have continued your work in the new position until your original term of office is over. Finally, only the two of them are mentioned in the transitional provisions. Why did you fall out of this circle?) A: Ezt nem tudom, de számomra ennél aggályosabb, hogy ahogy az imént is említettem, semmilyen jogutódlást nem említ a tervezet, a felálló szervezet egy új hivatal lesz, mindenféle jogfolytonosság nélkül [...]. (I don't know this, but I'm more worried about the fact that – as I pointed out before – the draft does not mention any succession, the authority will be a completely new entity without any continuity).

Dear Vice-President Reding,

We hope that you will find the above summary useful in your work of measuring the Hungarian developments against the norms of the European Union.

If you need more detailed information on the matters raised above, we will be happy to provide you with it in any form of your convenience.

Budapest, 29 December 2011

On behalf of the signatories:

András Kádár
Co-chair
Hungarian Helsinki Committee

The **Hungarian Helsinki Committee** (HHC) monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantees the consistent implementation of human rights norms and the proper functioning of the rule of law. Contact details // Postal address: 1242 Budapest, PO. Box 317., Tel/fax: + 36 1 321 4141, 21 4327, e-mail: helsinki@helsinki.hu, website: www.helsinki.hu

Balázs Dénes
Executive Director
Hungarian Civil Liberties Union

The **Hungarian Civil Liberties Union** (HCLU) is a law reform and legal defence public interest NGO in Hungary, working independently of political parties, the state or any if its institutions. HCLU's aim is to promote the case of fundamental rights and principles laid down by the Constitution of the Republic of Hungary and by international conventions.

László Majtényi
Chair
Eötvös Károly Policy Institute

The **Eötvös Károly Policy Institute** (EKINT) wishes to contribute to raising professional and general public awareness and to shaping the political agenda in issues with an impact on the quality of relations between citizens and public power. The Institute is deeply committed to the liberal interpretation of constitutionality, constitutional democracy, and individual rights.