

**Information Note to the General Affairs Council of the European Union by the  
Hungarian Government on the Resolution on Hungary adopted by the European  
Parliament on 12<sup>th</sup> of September 2018**

I. Introduction

The European Parliament adopted its Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union (TEU), the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (hereafter referred to as reasoned proposal or Resolution, respectively).

**As a next step, the procedure continues in the Council of the European Union where it is up to the Council as a body to assess the issue at hand and decide if necessary.** In this phase and in order to respond to the invitation of the European Parliament, **Member States have to take their own position whether they see a clear risk of a serious breach by Hungary of the values of the Union,** as stipulated in Article 2 TEU.

As regards the **procedural aspects of the Resolution of the European Parliament,** the Hungarian Government's position is that the method of calculating the votes on the Resolution constitutes a manifest breach of the essential procedural rules and it is deemed to be **legally non-existent and void.** Therefore, the Hungarian Government has brought a legal procedure to the Court of Justice of the European Union seeking for the annulment of the Resolution. Thus, the validity of the Resolution is to be decided by the Court of Justice of the European Union. In its action Hungary pleads that the European Parliament has breached Article 354 (4) TFEU, as well as Article 178 (3) of its own Rules of Procedure by excluding abstentions when calculating the votes cast. If abstentions had been counted as votes cast, the Resolution would not have been adopted.

**Irrespective of the validity of the Resolution, it contains severe and serious allegations against Hungary which the Hungarian Government rejects.** The procedure and the decision of the European Parliament were politically motivated. Instead of perceptions, emotions and subjective assessments, the Council should base its decision on **facts, precise legal provisions and objective analysis.** This puts an enormous responsibility on the Council to re-establish confidence, fact based approach, exclude double standards, provide equality of Member States and give an appropriate application of the Treaty rules. It should also be carefully considered that by making unfounded allegations against a Member State/Member States or by referring to the breach of the values of the Union merely due to political /ideological motivation, the unity of the European Union is severely undermined and the confidence among Member States or between Member States and the European institutions is seriously damaged.

As regards the findings of the Resolution, **the Hungarian Government is of the view that they are unjustified.** They lack and deny basic facts, they are misleading and give false interpretation of the situation in Hungary. As a result, the Resolution draws unfounded conclusions by declaring that there is a clear risk of a serious breach by Hungary of the values of the Union.

**The motivation of the European Parliament was deeply political and should be considered in the context of party politics and ideological divisions** between different European political forces as to the future of Europe and diverging answers to the migration challenges less than one year before the May 2019 European Parliamentary elections. **The procedure in the Council, under Article 7(1) TEU, has a clear legal nature and should follow the facts, rules and the principles of the Treaties.**

It is clear from the wording of the TEU that following the triggering of the Article 7(1) procedure, the next step is the hearing of the Member State concerned. The aim of this Information Note is therefore to address and provide detailed replies to the false accusations of the European Parliament highlighting their unfounded nature.

**The Hungarian Government would like to provide all necessary information to the members of the Council** in order to clarify any issue raised by the Resolution. **Member States are therefore invited to share this set of information with interested partners as they deem it necessary.**

In the Annex to this Information Note, you will find **detailed comments of the Hungarian Government** on the reasoned proposal, including the relevant provisions of the Hungarian legislation, explanatory notes and facts on different questions raised.

This is the first time that the European Parliament initiated the Article 7(1) TEU procedure. As such, we expected an evidence-based, legally sound, detailed and impartial preparation with the possibility for the Hungarian Government to voice its official position even in a highly political investigation. Instead, what we experienced was that the European Parliament did not carry out its own research on a given policy field, it based its findings on the opinion of government critical NGOs and presented the report of different international organisations on a selective and distortive manner that resulted in an arbitrary compilation, called reasoned proposal.

We believe that it is important for all of you to know that **the European Parliament adopted its Resolution on Hungary offering limited possibility to the Hungarian Government to provide full information and to make clear its position on the issues raised during the preparatory process.** The representative of the Hungarian Government was provided only 1 x 10 minutes and 1 x 15 minutes to publicly present its points of view during the elaboration of the Resolution since it was assigned to the rapporteur in July 2017. Besides that the Hungarian Permanent Representative was invited only to one shadows' meeting out of ten all held behind closed doors. Moreover, the Hungarian Government has not received any reply or reaction from the Rapporteur to the official background documents and information sheet containing the comments of Hungary on the draft report which were sent to the Members of the LIBE Committee, nor were any of the remarks or comments taken on board at any stage. Instead of following the usual transparent practice, there was no official EP delegation or fact finding mission sent to Hungary. Ahead of the plenary vote, a representative of the Hungarian Government requested a bilateral meeting with the Rapporteur who refused it.

The Hungarian Government condemns this approach, in particular because the European Parliament refers to the rule of law but at the same time demonstrated a total lack of openness for engaging in a dialogue with the subject of the report, namely Hungary. The allegations and rule of law concerns of the reasoned proposal are related to our constitutional and legal system. The European Parliament was not interested, however, in studying these rules in detail and did not try to understand them taking into account the constitutional tradition of the Member State as provided by the TEU. This is a disappointing experience and we all should draw our conclusions.

You might also notice that the **reasoned proposal has a Christmas tree approach**. In its 77 paragraphs it mentions all kinds of issues ranging from very different policy areas regardless of their relations to the values of Article 2 TEU. By using attractive titles, the reasoned proposal gives such a false impression that there would be exceptionally serious problems in Hungary. However, when you study the different chapters and the „concerns”, you will find that a large part are closed or settled cases, many others are ongoing proceedings before national or the European courts, while the rest needs simply further clarification.

In fact, **the European Parliament scrutinised the developments only from 2010 onwards**. One cannot disregard the political motivation behind this. **In the reasoned proposal the European Parliament lists all kinds of critical voices over the last eight years against Hungary regardless** of the fact that most of them have become obsolete as these cases have been solved or closed in the meantime. In addition, the European Parliament does not provide any justification or explanation on how the different questions raised represent a clear risk of a serious breach by Hungary of the values of the Union. It is more like a compilation of concerns, allegations and perceptions by other European or international fora edited by the European Parliament – however it is not a reasoned proposal at all. **Article 7 TEU is a serious procedure, therefore it should not be used in an arbitrary way but strictly in compliance with the Treaties**. During the whole procedure in the Council, we must keep in mind that Article 7 calls for determining whether there is a clear risk of a serious breach by Hungary of the values on which the Union is founded and whether there is convincing evidence for such a statement.

**The Hungarian Government invites all Member States to consider the following crucial guiding principles and approaches during the procedure:**

- The present procedure is applied to Hungary. However, as this is the first such case upon the Resolution of the European Parliament, **the modalities and the approach to be applied now set a precedent for the future**. In this context, it is crucial and lies in the interest of the Union as a whole to clearly declare that any **procedure related to the rule of law must be strictly based on the principles of the rule of law**. As a basis of any procedure with legal (or even political) consequences, it is important to guarantee that the Member State subject to Article 7 TEU or to a related procedure has the right of defence, *i.e.* fair opportunity to clarify any aspect at any stage.
- It is also a **fact that the content and scope of the values of the Union and that of the rule of law is not based on a commonly agreed full body of legislation approved by the Member States**. Therefore, prudence and cautiousness is necessary when

making rule of law assessments and the procedural guarantees contained in the TEU must be strictly applied.

- **Hungary is strongly committed to the TEU in general and to the principles enshrined in Article 2, in particular.** Democracy, rule of law, market economy, respect for minorities are all values enshrined in the **Fundamental Law of Hungary** in accordance with the free will of the Hungarian people and not as a set of principles which need to be enforced by external powers. Despite the repeated criticism since 2010, free, democratic and general parliamentary elections resulted three times in an unprecedented majority for the governing coalition. This democratic legitimacy reached as a result of free, democratic and general parliamentary elections is by far the highest in Europe. This empowerment can only be based on the experience and judgement of the people, the rightness of which is difficult to question. Should there be a threat to democracy and the rule of law, it would be the Hungarian people first who would recognize and stand up against it.
- Since 2010, in-depth **structural reforms have been introduced in Hungary often having an effect on political and economic interests both domestically and abroad.** These legislative changes have **always been in the focus of attention in general** and also of the European institutions, in particular that of the European Commission. **No Member State has ever been subject to such a thorough scrutiny by the European Commission as Hungary was during the last eight years.** The European Commission raised many issues as a matter of concern between 2010-2014, but after detailed consultations between Hungary and the Commission all were settled. As a result of these consultations, in a number of cases the Hungarian legislation, including even the Fundamental Law of Hungary was modified. In other cases, the Commission accepted the clarification provided by the Hungarian Government and closed the case. In the remaining cases, the judgement of the Court of Justice of the European Union was requested, and the judgement was duly implemented. **It was confirmed that none of the issues raised by the Commission between 2010-2014 remained open.** These facts are crucial as **the reasoned proposal entirely disregards** them causing serious disturbance and misinterpretation of the basics.
- It is important to note, that **the issues raised concerning Hungary were not and are not 'per se' rule of law concerns.** It is unacceptable and misleading to conclude that merely due to the political and media attention, infringement cases can automatically be qualified as rule of law issues. **Rule of law is the basis of our democracies, our societies, therefore, we must use with great caution any allegation undermining its respect by any of our Member States.** As far as Hungary is concerned, **the European Commission, as the guardian of the Treaties, repeatedly confirmed both during and after the European Parliament's procedure that it did not deem it necessary to launch the Article 7 (1) procedure against Hungary.**
- When you study the concerns raised by the European Parliament and the comments of the Hungarian Government, please **consider the different statements, arguments taking into account the constitutional traditions common to the Member States, moreover the well-established case law** of the Court of Justice of the European Union that the internal organisation of Member States does not fall under EU law.

Just because something is modified in accordance with the relevant constitutional, legal provisions and is contested in the media by representatives of the opposition, it does not mean that it raises concerns of breaching the values of the European Union - even if some international organisations, NGOs or associations judge these modifications with critical voices. **Equality of Member States also means that the same regulation should be assessed against the same criteria.**

- **Besides the equality of Member States, other basic principles provided for by the Treaties shall also be strictly respected as enshrined in the well-established case law of the Court of Justice of the European Union.** According to Article 4(2) TEU, the Union must respect essential State functions, which undoubtedly include what might be defined as the State's internal self-organisation. Furthermore, the principle of conferral of powers laid down in Article 5(1) and (2) TEU has not conferred on the Union the power to intervene in the internal organisation of its Member States.
- We all belong to the same Union, but we have different constitutional traditions. Therefore, simply having different rules as regards our constitutional order, does not justify questioning each other's position on the basis of the values of the European Union. On the contrary, the Treaty itself calls for the respect of the Member States' constitutional traditions.
- As regards **the role of the European Parliament**, Hungary fully shares the legal opinion of the Council Legal Service. According to this legal assessment Article 7 TEU clearly stipulates the role of the European Parliament, whereby it only provides two possibilities to intervene: it can trigger the procedure; and at a later stage, it has to give its consent to possible future Council determination. Any further role of the European Parliament in this procedure would not be in line with the Treaties.

**It is the position and assessment of the Hungarian Government that none of the concerns, allegations of the reasoned proposal provides a serious threat of breaching the values as stipulated in Article 2 of the TEU.** Under such circumstances, it is important to follow the principles agreed with consensus by the Council in its conclusions from December 2014. Non-discrimination; equality of Member States; evidence-based and non-partisan approach must serve as guiding principles in this and all other similar procedures. Double standards must be excluded in order to avoid undermining public confidence in our common institutions. All concerns may be raised, but opportunity should be given to clarify allegations, including the possibility to convince the Members of the Council in a fair and transparent procedure.

The Hungarian Government stands ready to engage in a dialogue with members of the Council. It is ready and willing to clarify allegations and misunderstandings and provide facts in the procedure ahead of us. When discussing the Resolution in the Council, it should be taken into account that some Member States are under constant scrutiny because of their newly introduced legislation regardless of the content and their constitutional traditions, while in other Member States the same or equivalent rules are applied without any critical voice. This brings us to double standards. Political opinions and comments about some Member States' legal and constitutional provisions or changes are very much present in the media and in political statements. It would be important to analyse how that particular question under scrutiny is regulated in all

Member States be it from the western, eastern, southern or northern part of Europe, or whether it is a small, medium or big Member State. Equal approach, equal treatment would significantly strengthen our unity.

Finally, the general public in Hungary and in other Member States closely follows the process. **It is essential to maintain public support, as well as confidence in public institutions and in Member States' relations. Therefore, it is the responsibility of the Council to demonstrate that the Article 7 procedure is objective, transparent, that it provides the equality of the Member States, still focusing on unity and on mutual respect while being in line with the Treaties.**

**Hungary deems its accession to the European Union as a historical success. Therefore it is appalling that existing and legitimate political debates are framed as rule of law issues.**

*Throughout this Information Note the following method is used: The titles of the reasoned proposal are followed by a brief assessment of the Hungarian Government. Then the relevant text of the reasoned proposal is cited in italics, which is followed by the detailed legal arguments of the Hungarian Government.*

\*\*\*

**Annex:** Detailed Comments of the Hungarian Government addressed to the Members of the Council of the European Union on the Resolution adopted by the European Parliament of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded

## II. **Annex to the Information Note**

Detailed Comments of the Hungarian Government addressed to the Members of the Council of the European Union on the Resolution adopted by the European Parliament of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded

## Contents

<b>Functioning of the constitutional and electoral system</b> .....	<b>11</b>
Constitution-making process in Hungary .....	11
Competences of the Hungarian Constitutional Court .....	12
Delineation of single-member constituencies.....	15
National consultation “Let’s stop Brussels” .....	17
<b>Independence of the judiciary and of other institutions and the rights of judges</b> .....	<b>18</b>
Centralised administration of courts / independence of judges and lawyers .....	19
Competences of the president of the National Judicial Office .....	22
New system of administrative courts.....	23
Compulsory retirement of judges, prosecutors and notaries.....	25
Violation of the right to a fair trial (Gazsó v. Hungary) .....	27
Violation of the right of access to a court (Baka v. Hungary) .....	28
Criticisms concerning the prosecution service.....	32
<b>Corruption and conflicts of interest</b> .....	<b>34</b>
Conflicts of interest of members of the Hungarian Parliament.....	34
Limited monitoring of campaign spending.....	35
Withdrawal from the Open Government Partnership.....	37
The follow-up of the OLAF’s recommendations and public procurement.....	37
Public procurement.....	38
Effective governance and corruption .....	40
<b>Privacy and data protection</b> .....	<b>42</b>
Violation of the respect for private life (Szabó and Vissy v. Hungary).....	42
Legal framework on secret surveillance for national security purposes .....	43
<b>Freedom of expression</b> .....	<b>44</b>
Media legislation .....	44
Election of the members of the Media Council .....	48
Act CXII of 2011 on Informational Self-Determination and Freedom of Information .....	50
Freedom of the media and of association during the 8 <sup>th</sup> April 2018 elections.....	53
Restrictions on freedom of opinion and expression.....	54
Publication of a list of people allegedly working to “topple the government” and the denial of accreditation to several independent journalists.....	55
<b>Academic freedom</b> .....	<b>56</b>
Amendment of Act CCIV of 2011 on National Tertiary Education .....	56

Negotiations with foreign higher education institutions .....	57
Disproportionate restrictions of Union and non-Union universities.....	59
<b>Freedom of religion.....</b>	<b>60</b>
Right to Freedom of Conscience and the Legal Status of Religious Communities.....	60
Unconstitutional deregistration of recognised churches .....	62
Violation of the freedom of conscience and religion.....	64
<b>Freedom of association.....</b>	<b>65</b>
Audits of NGOs which were beneficiaries of the Norwegian Civil Fund .....	65
The law on the Transparency of Organisations Receiving Support from Abroad.....	67
Interference with the freedom of association and expression.....	68
Transparency of Organisations Receiving Support from Abroad.....	69
The ‘Stop-Soros’ legislative package.....	71
<b>Right to equal treatment .....</b>	<b>77</b>
Uneven balance between the protection of families and women’s rights.....	77
The protection of female victims of domestic violence.....	79
Working conditions for pregnant or breastfeeding workers .....	81
Restrictive definition of discrimination and family.....	82
Inhuman treatment of persons with disabilities .....	82
<b>Rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities .....</b>	<b>84</b>
Racism and intolerance, anti-Gypsyism and anti-Semitism.....	84
Roma discrimination.....	86
Segregation of Roma children (Horváth and Kiss v. Hungary) .....	92
Segregated education of Roma children .....	92
Violation of the prohibition of discrimination (Balázs v. Hungary) .....	95
Forced evictions of Roma in Miskolc.....	96
Combatting anti-Semitism .....	97
Roma exclusion in education / Hate crimes and hate speech .....	101
<b>Fundamental rights of migrants, asylum seekers and refugees .....</b>	<b>104</b>
Amending asylum law in Hungary / abuses by border authorities .....	104
Detention of asylum seekers and migrants .....	107
The situation of unaccompanied minors.....	109
Violation of the applicants’ right to liberty and security (Ilias and Ahmed v. Hungary)..	114
Mandatory relocation of asylum seekers .....	116

Infringement procedure regarding Hungarian asylum legislation.....	117
Detention of asylum applicants.....	118
<b>Economic and social rights .....</b>	<b>121</b>
Criminalising homelessness.....	121
Non-compliance with the European Social Charter.....	124
Amendment of the Act on strikes .....	127
Rights of Children .....	129
Adequacy and coverage of social assistance and unemployment benefits.....	130

## Functioning of the constitutional and electoral system

The functioning of the Hungarian constitutional system does not raise issues which would be in conflict with the fundamental values of the European Union. The Hungarian constitutional system operates under the Fundamental Law of Hungary, taking into consideration all necessary EU and international principles. Modifying certain details, reforming previous rules or adjusting them does not automatically make these new regulations contradictory to the values of the European Union. This is true even when it comes to modifying specific rulings of the Constitutional Court of Hungary. The concerns listed in the reasoned proposal stem from the fact of modification which does not affect Hungary's compliance with the fundamental values of the European Union. Several constitutional elements are also questioned by the reasoned proposal, which do not even exist in many Member States, or albeit they exist, in any case, to a lesser extent or with weaker competences or guarantees. In addition, the reasoned proposal does not convey the European Parliament's own findings, it merely refers to the research of other international fora. The allegation of the endangerment of the separation of powers and the weakening of the national system of checks and balances are not explained at all in the reasoned proposal of the European Parliament. These statements are politically biased. The constitutional tradition of each Member State should be respected. In this regard there are no commonly agreed European rules to follow. It is submitted that such general accusations undermine the trust between the Member States and its citizens and are highly detrimental to the integrity of the whole European Union.

### Constitution-making process in Hungary

*(7) The Venice Commission expressed its concern regarding the constitution-making process in Hungary on several occasions, both as regards the Fundamental Law and amendments thereto. It welcomed the fact that the Fundamental Law establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles and acknowledged the efforts to establish a constitutional order in line with common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with binding international instruments. The criticism focused on the lack of transparency of the process, the inadequate involvement of civil society, the absence of sincere consultation, the endangerment of the separation of powers and the weakening of the national system of checks and balances.*

It was generally welcomed by the Venice Commission that former communist countries adopt a new and modern Constitution to create a new framework for society, guaranteeing democracy, fundamental freedoms and the rule of law. From the 10 post-communist EU Member States, Hungary was the last one to accept a new constitution since the fall of communism. In its Opinion on the new Constitution of Hungary, the Venice Commission welcomed under point 142 that the Fundamental Law established a

constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles. More generally, while it represents a major step for the current ruling coalition and for Hungary, the adoption of the new Constitution in April 2011 seemed to be only the beginning of a longer process of the establishment of a comprehensive and coherent new constitutional order. The Venice Commission welcomed the efforts to establish a constitutional order in line with the common European democratic values and standards, and to regulate fundamental rights and freedoms in compliance with binding international instruments, including the European Convention on Human Rights and the EU Charter of Fundamental Rights.

The political debate around the drafting of the new constitution was launched in June 2010 by the establishment of an ad hoc parliamentary committee for this purpose, composed of 45 members, representing all parliamentary parties. Following professional and political debate in the Parliament, the Fundamental Law was voted by more than 2/3 of the members of the Hungarian Parliament on 18 April 2011. The parliamentary debate on the draft constitution was preceded by the establishment of a national consultative body, set up in January 2011, followed by large scale public survey on the draft based on a questionnaire of 12 questions, and several public debates were organized on the values and aims of the Fundamental Law, with the involvement of universities, churches and the civil society. Almost a million citizens expressed their opinion on the draft constitution.

### **Competences of the Hungarian Constitutional Court**

*(8) The competences of the Hungarian Constitutional Court were limited as a result of the constitutional reform, including with regard to budgetary matters, the abolition of the actio popularis, the possibility for the Court to refer to its case law prior to 1 January 2012 and the limitation on the Court's ability to review the constitutionality of any changes to the Fundamental Law apart from those of a procedural nature only. The Venice Commission expressed serious concerns about those limitations and about the procedure for the appointment of judges, and made recommendations to the Hungarian authorities to ensure the necessary checks and balances in its Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted on 19 June 2012 and in its Opinion on the Fourth Amendment to the Fundamental Law of Hungary adopted on 17 June 2013. In its opinions, the Venice Commission also identified a number of positive elements of the reforms, such as the provisions on budgetary guarantees, ruling out the re-election of judges and the attribution of the right to initiate proceedings for ex post review to the Commissioner for Fundamental Rights.*

*(9) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the current constitutional complaint procedure affords more limited access to the Constitutional Court, does not provide for a time limit for the exercise of constitutional review and does not have a suspensive effect on challenged legislation. It also mentioned that the provisions of the new Constitutional Court Act weaken the security of tenure of judges and*

*increase the influence of the government over the composition and operation of the Constitutional Court by changing the judicial appointments procedure, the number of judges in the Court and their retirement age. The Committee was also concerned about the limitation of the Constitutional Court's competence and powers to review legislation impinging on budgetary matters.*

In a European comparison, the Hungarian Constitutional Court has a remarkable set of powers. Despite several professional legal arguments to the contrary, the Fundamental Law refrained from decentralization – e.g. by transferring the protection of fundamental rights to ordinary courts – and maintained the remarkably strong competences of the Constitutional Court. Contrary to the negative perception echoed in the reasoned proposal, the Constitutional Court even received new competences under the Fundamental Law. These competences include ex-ante or ex-post constitutional review of any act. The ex-ante constitutional review may be initiated by the initiator of the Act, the Government, the Speaker of the National Assembly or the President of the Republic. The ex-post constitutional review may be based on the initiative of the Government, one quarter of the Members of the National Assembly, the President of the Kúria (the Supreme Court of Hungary, hereinafter referred to as: Kúria), the President of the Administrative High Court, the Prosecutor General or the Commissioner for Fundamental Rights.

Furthermore, the Constitutional Court has the right to review the conformity with the Fundamental Law of any law applicable in a particular case at the initiative of a judge. On the basis of a constitutional complaint the Constitutional Court may review the conformity with the Fundamental Law of any law applied in a particular case. Even more, the Constitutional Court may exercise ex-post review of conformity with the constitution of any judicial decisions and also ex-post review of conformity with international law over any approved legislation. The Fundamental Law adds also that besides the powers declared in the Fundamental Law, cardinal acts may confer further functions and powers on the Constitutional Court.

Altogether the current competences of the Constitutional Court reflect a professional and political compromise which strengthens the efficiency of the constitutional review by shifting the focus from abstract constitutional review towards a concrete constitutional review in a particular case. The abolition of the *actio popularis* was explicitly requested by the Constitutional Court itself due to its high workload caused by the abuse or misuse of this type of procedure. Moreover, in its Opinion on act CLI of 2011 on the Constitutional Court of Hungary, the Venice Commission also acknowledged that the *actio popularis* is not a precondition for the rule of law to prevail in Hungary.<sup>1</sup>

---

<sup>1</sup> CDL-AD(2011)001- adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)001-e)

The provision of the Fundamental Law that limits the constitutional control of the state budget aims to assure the balance between the scope of economic stability as a basic objective of the Fundamental Law and the protection of fundamental rights. This measure – along with the establishment of the Budget Council (a body in charge of budgetary control on state debts) – may limit the room for action for future governing parties to adopt certain economic policy measures, but it does not put obstacles to the effective protection of fundamental rights. As Article 37 (4) of the Fundamental Law states, the Constitutional Court - until the government debt exceeds half of the total gross domestic product - may review the Acts on the central budget, the implementation of the central budget, central taxes, duties and contributions, customs duties and the central conditions for local taxes for conformity with the Fundamental Law exclusively in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience and religion, or the rights related to Hungarian citizenship, and it may annul these Acts only for the violation of these rights. Furthermore, the Constitutional Court shall have the unrestricted right to annul Acts having the above subject matters as well, if the procedural requirements laid down in the Fundamental Law for making and promulgating those Acts have not been met.

Regarding the review of constitutional amendments, the new provision is in line with the former approach of the Constitutional Court. This case-law explicitly confirmed that the Court had no competence to review the substance of the amendments as the Court itself is subordinate to the constitution and cannot review the constitution itself in terms of its constitutional conformity. International examples confirm this approach. The assessment of the Venice Commission on the review of constitutional amendments by constitutional courts concludes that this is a rare feature of constitutional jurisdiction, and that “such a control cannot therefore be considered as a requirement of the rule of law”.<sup>2</sup> Therefore, the provision did not introduce a limitation of competences; on the contrary, it established clear rules for the exercise of the competence for the review whether procedural rules were respected and so the control of the constitutional power is even more safeguarded than before.

By way of repealing the rulings of the Constitutional Court delivered before the entry into force of the Fundamental Law, the National Assembly made it clear that the decisions adopted by the Constitutional Court on the basis of the former Constitution did not bind the Constitutional Court in its following decisions. This does not preclude, however, that the Constitutional Court may come to the same conclusions as before. Nor does this provision prevent the Constitutional Court from referring to its earlier decisions as they form part of the so-called historical constitution (constitutional traditions) of Hungary that is specifically recognised by the Fundamental Law as a

---

<sup>2</sup> Paragraph 49 of Opinion No. 679/2012 on the Revision of the Constitution of Belgium, CDL(2012)031.

source of interpretation. The Constitutional Court indeed has exactly continued to follow its former practice after the entry into force of the Fourth Amendment in a number of decisions (e.g. in Decision 10/2013. (IV. 25.) or 11/2013 (V.9.), where judges keep referring to earlier Constitutional Court decisions).

It should be stated that the Venice Commission identified a number of positive elements of the reforms, such as provisions on budgetary guarantees, the fact that the Hungarian authorities have taken up the Commission's suggestion to rule out the re-election of Constitutional Court Judges. It also appreciated that the Act provided for a time limit for the appointment of new judges in order to ensure continuity, functional immunity of the judges, as well as that there was a provision on the extension of the mandate of the incumbent member in case the National Assembly failed to elect a new member to the Constitutional Court within the provided time-limit. These provisions ensure that the ability of the Constitutional Court to act is not endangered, even if no new member is elected yet – as it nearly happened under the previous legislation. According to point 31 of the Opinion on act CLI of 2011 on the Constitutional Court of Hungary, rules on the ex-post constitutional review of legal acts were warmly welcomed by the Venice Commission. Point 53 of the same Opinion considered as positive elements the provisions which ensured an extensive possibility to approach the Constitutional Court evenly, especially under exceptional circumstances.

The rules on the composition of the Constitutional Court (election based on 2/3 majority of MPs and high level professional requirements) are high level guarantees of the independence of judges, and so is the length of term of office, which is currently 12 years, as well as the rules on the exclusion of their re-election.

It stems from the above that the role of the Constitutional Court as far as the system of checks and balances is concerned, has not changed with the reform.

### **Delineation of single-member constituencies**

*(10) In its report, adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights stated that the technical administration of the elections was professional and transparent, fundamental rights and freedoms were respected overall, but exercised in an adverse climate. The election administration fulfilled its mandate in a professional and transparent manner, enjoyed overall confidence among stakeholders and was generally perceived as impartial. The campaign was animated but hostile and intimidating campaign rhetoric limited space for substantive debate and diminished voters' ability to make an informed choice. Public campaign funding and expenditure ceilings aimed at securing equal opportunities for all candidates. However, the 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. With no reporting requirements until after the elections, voters were effectively deprived of information on*

*campaign financing, key to making an informed choice. It also expressed concerns about the delineation of single-member constituencies. Similar concerns were expressed in the Joint Opinion of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections, in which it was mentioned that the delimitation of constituencies has to be done in a transparent and professional manner through an impartial and non-partisan process, i.e. avoiding short-term political objectives (gerrymandering).*

The criticism on the delineation of single-member constituencies is unfounded and lacks the knowledge about the Hungarian election system. Hungary has a mixed electoral system which combines the benefits of non-proportional and proportional systems, providing a balanced and proportional electoral system. Hungary's electoral system is more proportional than some other EU Member States that have non-proportional electoral systems.

The new legislation on the electoral districts was accepted in April 2013.<sup>3</sup> The new regulation on the single constituencies was meant to reduce the number of the members of the Hungarian Parliament and to establish a more proportionate electoral system which had showed 300% disproportionalities at certain territories. The rule which states that the electoral districts cannot cross county borders and the borders of Budapest, and that they must form a block territory remained unchanged under the current legislation.

In this context it must be emphasized that Decision 193/2010 (XII. 8.) AB of the Constitutional Court<sup>4</sup> annulled the previous legislation on the establishment of electoral districts, both individual and territorial. Joint Opinion No. 662/2012 of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections also identified it as a positive element. The Decision of the Parliamentary Assembly of the Council of Europe acknowledged that by this legislative amendment Hungary complied with the recommendations of the Venice Commission.

The parliamentary elections in Hungary, which took place on 8 April 2018, saw a large surge in voter turnout, one of the largest in Hungarian history since the end of communism. The Report of the Head of the National Election Office states, that a total of 8 312 264 citizens have been enrolled as voters. Based on registration as a national minority member, 59 235 citizens could vote for a national minority list. Election turnout was 69.73% calculated on a basis of 5 796 268 voters. This result, on its own, demonstrates the strong legitimacy of the Hungarian Parliament. With such a high turnout, it is entirely misleading to state that "voters' ability to make an informed choice was diminished" as the reasoned proposal claims.

---

<sup>3</sup> 2013. évi XXXVI. törvény <https://net.jogtar.hu/jogszabaly?docid=A1300036.TV>

<sup>4</sup>[http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2010-3-008?fn=document-frameset.htm&f=templates\\$3.0](http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2010-3-008?fn=document-frameset.htm&f=templates$3.0)

As far as the reporting requirements on campaign financing are concerned, the Code of Good Practice in Electoral Matters by the Venice Commission does not make any specific regulatory proposals on the reporting deadline,<sup>5</sup> whereas the Guidelines on Political Party Regulation by the OSCE/ODIHR and the Venice Commission recommends reporting within a period of no more than 30 days after the elections. The Hungarian regulations are fully in line with these recommendations.<sup>6</sup>

### **National consultation “Let’s stop Brussels”**

*(11) In recent years the Hungarian Government has extensively used national consultations, expanding direct democracy at the national level. On 27 April 2017, the Commission pointed out that the national consultation “Let’s stop Brussels” contained several claims and allegations which were factually incorrect or highly misleading. The Hungarian Government also conducted consultations entitled ‘Migration and Terrorism’ in May 2015 and against a so-called ‘Soros Plan’ in October 2017. Those consultations drew parallels between terrorism and migration, inducing hatred towards migrants, and targeted particularly the person of George Soros and the Union.*

It should be highlighted that national consultations are a tool for the Hungarian Government to regularly survey Hungarian citizens’ opinion since 2010. During the last 8 years there were seven national consultations held with the participation of more than 2 million Hungarian citizens. According to the high participations and the results of these consultations, the Government concluded that Hungary is a) pro-European, b) is fighting for a strong Europe, while at the same time c) is urging to reform the politics of Brussels in order that we can live in a Europe that leads the world. In its so called ‘National consultation’ launched on 31 March 2017, the Hungarian Government gathered people’s opinion with the aim of providing guidance for what position to take in the discussion of the future of Europe as well as in its European disputes regarding the issues that significantly affect the life of the Hungarian people. Migration policy, energy prices, tax- and labour policies, or the transparency of civil society organizations supported from abroad are all issues that fundamentally affect Hungary’s sovereignty and the fact that 1.68 million shared their opinion proves that people find these issues important. The title of the consultation signals the intention to halt the transfer of national competences to Brussels, to stop the politics that is trying to extend beyond what is laid down in the Treaties. The Government aims to preserve the current division of competences between Member States and European institutions. This opportunity for the people to voice their opinions regarding these issues is a manifestation of the principle of democracy. It is important to highlight that Hungary is the only Member

---

<sup>5</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e)

<sup>6</sup> <https://www.osce.org/odihr/77812?download=true>

State of the EU which decided to openly ask its citizens on how to cope with the migration crisis. Furthermore, on 5 November 2018, the Hungarian Government launched a new consultation on family subsidies providing support for young couples and employment issues for women with children.

The Hungarian national consultations have always had an aim similar to that of the Council's Citizens' Consultation process and that of the online consultation of the European Commission on the future of Europe.

According to the EU Citizens' Consultation process, the participating Member States organise a variety of citizens' consultation activities and can decide on the modalities for the implementation of those activities at national level. Therefore, each Member State is able to discuss different themes that represent importance for its national debate. Hungary is of the opinion that it is important to take into account the different opinions and priorities of the different Member States. Member States need to have the freedom to organize consultations according to their specificities and be able to bring real results on issues that matter to people and certain challenges where solutions are needed.

**As a conclusion, the functioning of the Hungarian constitutional system does not raise issues that are in conflict with the fundamental values of the European Union. Therefore, it is not justified to mention the elements of recitals 7-11 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

#### **Independence of the judiciary and of other institutions and the rights of judges**

The Hungarian Government strongly rejects the accusations regarding the independence of the Hungarian judiciary. In recent years, the general accusations of the politicians of the institutions of the EU and of some Member States, claiming that "there is a problem" with the independence of the Hungarian judiciary, resulted in an enormous damage to Hungary and, last but not least, to the European Union, due to the loss of trust. As part of the judicial reform that began in 2011, the Hungarian Government has successfully conducted discussions with the Venice Commission and the European Commission on all issues and closed all remaining issues in a satisfactory manner. The European Parliament's reasoned proposal devoted a separate chapter to the independence of the judiciary and several closed issues are listed as ongoing and unresolved ones or as they would be a question of particular concern. The Hungarian Government notes that the mere fact that certain rules concern courts or judges cannot be interpreted that the issue would be a rule-of-law-related question. Therefore, the Hungarian Government regrets that the reasoned opinion treats those as such and seeks to link - in vain - the

modification of those rules to the alleged harm to the principle of the rule of law. This approach is false and misleading.

### **Centralised administration of courts / independence of judges and lawyers**

*(12) As a result of the extensive changes to the legal framework enacted in 2011, the president of the newly created National Judicial Office (NJO) was entrusted with extensive powers. The Venice Commission criticised those extensive powers in its Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted on 19 March 2012 and in its Opinion on the Cardinal Acts on the Judiciary, adopted on 15 October 2012. Similar concerns have been raised by the UN Special Rapporteur on the independence of judges and lawyers on 29 February 2012 and on 3 July 2013, as well as by the Group of States against Corruption (GRECO) in its report adopted on 27 March 2015. All those actors emphasised the need to enhance the role of the collective body, the National Judicial Council (NJC), as an oversight instance, because the president of the NJO, who is elected by the Hungarian Parliament, cannot be considered an organ of judicial self-government. Following international recommendations, the status of the president of the NJO was changed and the president's powers restricted in order to ensure a better balance between the president and the NJC.*

First of all, it must be noted that the Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe with the objective to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. Currently, GRECO comprises of 49 member States (48 European States, including all the Member States of the European Union and the United States of America).

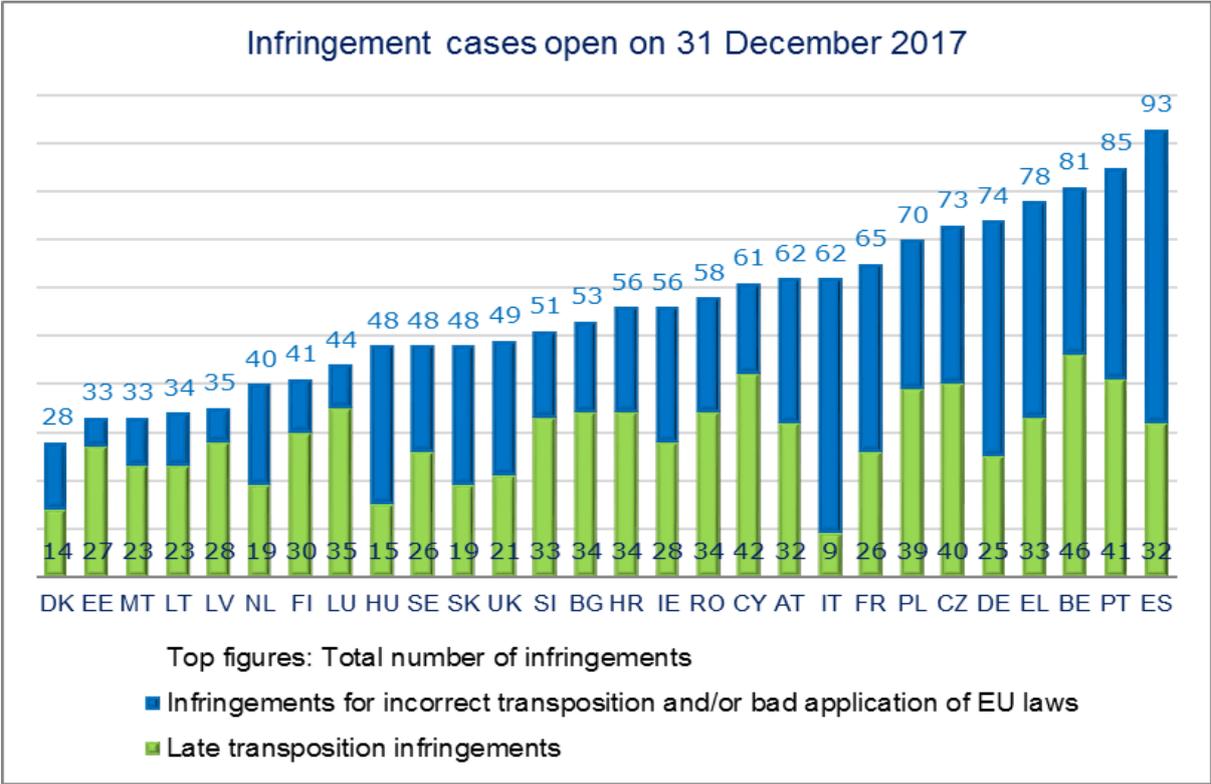
In the framework of its monitoring mechanism, GRECO might address recommendations to the member undergoing the evaluation in order to improve its domestic laws and practices to combat corruption which the country concerned could take into consideration. GRECO assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. Without questioning the importance of the organisation and the value of its recommendations, it should be highlighted that GRECO is formulating similar opinions on other Member States' legislation, as well. Despite repetitive calls from Member States and other international organisations, the European Union's accession to GRECO is still awaited.

As for the Hungarian legislation referred to above, it is important to note that the Venice Commission at its 16-17 March 2012 session has acknowledged the necessity of improving the efficiency of the previous judiciary system. Concerned bodies (including the European Commission) have identified several positive provisions in both acts

referred to above, while also pointing out a few problematic elements that were addressed by the Hungarian Government, as also acknowledged by the GRECO report. As for the general independence of judges and lawyers as well as the independence of the judiciary, it must be pointed out that each year since 2013 the European Commission adopts its communication on the EU Justice Scoreboard which provides comparable data on the independence, quality and efficiency of national justice systems focusing mainly on civil, commercial and administrative cases.

As far as the infringement cases are concerned, every year, the European Commission draws up an annual report on its monitoring of the application of EU law. According to the 2017 Annual Report<sup>7</sup> adopted on 12 July 2018, Hungary has the ninth best result out of 28 Member States concerning the number of infringement cases open on 31 December 2017.

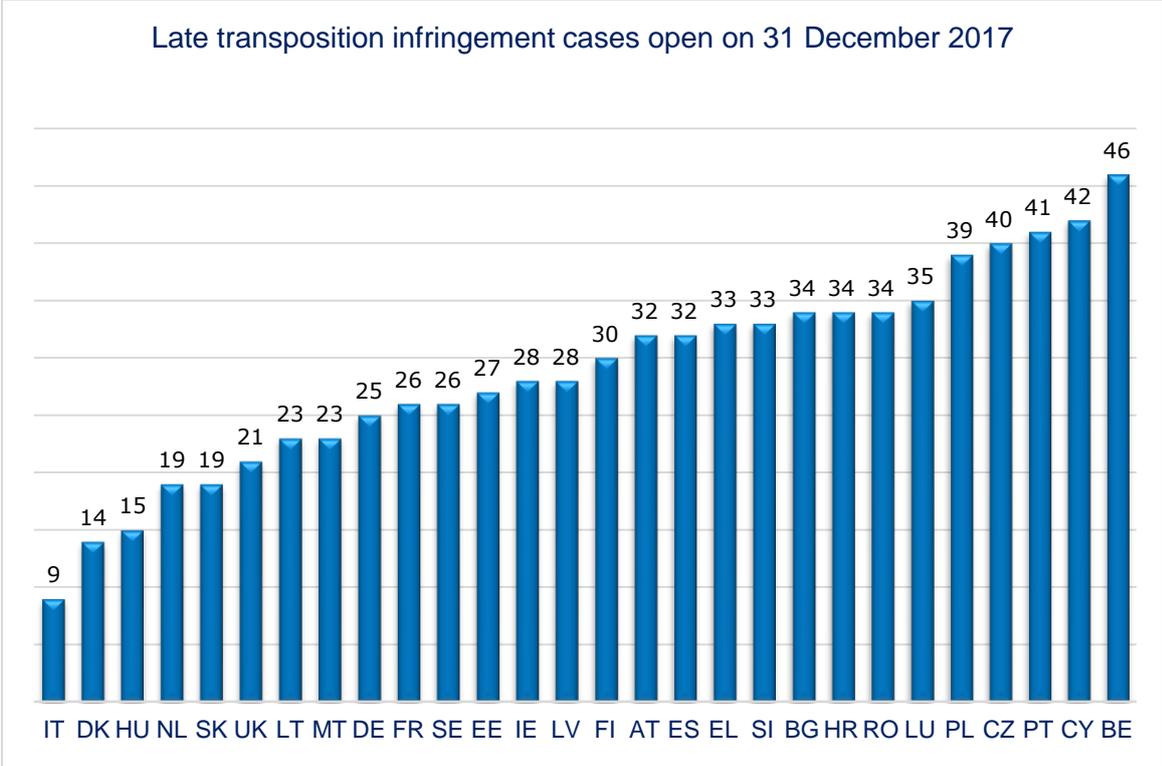
The following chart shows the number of open infringement cases by Member States at the end of 2017:



It should also be noted that regarding the number of ‘late-transposition’ infringement cases, Hungary is now in the top 3 of the Member States with the lowest transposition deficit. In addition, the 2017 Single Market Scoreboard<sup>8</sup> confirmed that Hungary is the

only Member State that managed to transpose 100% of the 14 directives with a transposition date within the 6 months deadline before the cut-off date for calculation (1.6.2017–30.11.2017).

The following chart shows the number of late transposition infringement cases open at the end of 2017 by Member States:



Furthermore, it should also be highlighted that according to the statistics Hungary is performing beyond the EU average when it comes to the length of an infringement procedure (31.3 months in HU, EU average is 39.8) and implementation of the infringement judgement of the Court of Justice of the European Union (17.7 months in Hungary, EU average is 23.6).

In view of the above, it is highly questionable to criticize Hungary’s performance in the context of infringement cases and their „effect on the overall atmosphere in the country”.

The figures of the last edition of the Scoreboard published on 27 May 2018<sup>9</sup> show that the Hungarian justice system performs above or well above the EU average, just like in previous years. As far as the independence of the justice system is concerned, the ranking does not illustrate significant discrepancies in the Hungarian system, especially

<sup>9</sup> COM(2018) 364 final, [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf)

regarding the guarantees of structural independence which are well-established under Hungarian law.

### **Competences of the president of the National Judicial Office**

*(13) Since 2012, Hungary has taken positive steps to transfer certain functions from the president of the NJO to the NJC in order to create a better balance between these two organs. However, further progress is still required. GRECO, in its report adopted on 27 March 2015, called for minimising the potential risks of discretionary decisions by the president of the NJO. The president of the NJO is, inter alia, able to transfer and assign judges, and has a role in judicial discipline. The president of the NJO also makes a recommendation to the President of Hungary to appoint and remove heads of courts, including presidents and vice-presidents of the Courts of Appeal. GRECO welcomed the recently adopted Code of Ethics for Judges, but considered that it could be made more explicit and accompanied by in-service training. GRECO also acknowledged the amendments that were made to the rules on judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the NJC received a stronger supervisory function in the selection process. On 2 May 2018, the NJC held a session where it unanimously adopted decisions concerning the practice of the president of the NJO with regard to declaring calls for applications to judicial positions and senior positions unsuccessful. The decisions found the president's practice unlawful.*

As recognized by the GRECO report, several steps have been taken by the Hungarian Government to balance the competences of the National Judicial Council and the president of the National Judicial Office. It must be further highlighted that the referred GRECO report particularly acknowledges the amendments that were made concerning the rules of judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the National Judicial Council has received a stronger supervisory function in the selection process. It should therefore be noted that the National Judicial Council already has a decisive mandate in the appointment and promotion procedure of judges and it is not the president of the National Judicial Office who has the most important role in the process.

The assessment of applications to a judicial position is a complex procedure with many stakeholders. The rules of the process guarantee that whenever a candidate is appointed or promoted, elected bodies of judges have a decisive role. It is either a local judicial council determining the ranking of applicants or the National Judicial Council giving prior consent to the appointment of the second or third ranked candidate. The National Judicial Council regularly uses its 'right to veto' in practice. Therefore, the rules provide that the best suitable candidate wins the vacant position, as a result of the selection procedure. It is also worth mentioning, that an unsuccessful applicant can file an appeal against the outcome of the selection process within a preclusive period of 15 days from the time of publication in the Magyar Közlöny (Hungarian Official Journal) of the decision. The complaint shall be submitted in writing to the president of the court

affected, and the president shall forward it to the President of the NJO within five working days, unless the notice of vacancy was published for a post at the Kúria. The President of the NJO, or the President of the Kúria where applicable, shall be indicated as the requested party. The President of the NJO, or the President of the Kúria shall forward the complaint within five working days to the competent Fővárosi Törvényszék (Budapest Metropolitan Court). The remedy against the decision is being dealt with in a specific procedure within the judicial system and can therefore be deemed independent from any other authority. It should also be noted that, according to the Act CLXII of 2011 on the Legal Status and Remuneration of Judges, the selection procedure may be considered unsuccessful only on the basis of the objective criteria precisely set out in the Act which do not depend on any discretionary decision. For example if no application is received or the president judge refused all applications because they were submitted late, or the applicant did not remedy the discrepancies indicated within the given short time limit. Both of the instruments cited above ensure the impartial assessment of the candidates and guarantee that the rules of the application process fulfil the recommendations set in the Decision 13/2013. (VI. 17.) of the Constitutional Court and by the Venice Commission.

### **New system of administrative courts**

*(14) On 29 May 2018, the Hungarian Government presented a draft Seventh Amendment to the Fundamental Law (T/332), which was adopted on 20 June 2018. It introduced a new system of administrative courts.*

The administrative court system has a longstanding historical precedent in the Hungarian system. Administrative courts were established in Act No. 26 of 1896 and originally referred to as the Hungarian Royal Administrative Court. The court was disbanded by Hungarian communists in 1949 as part of their effort to undermine the rule of law. After the regime change in 1990, Act No. 26 of 1991 attempted to revive the courts by extending legal regulations on the judiciary, administrative procedures and civil procedures “towards the full establishment of courts.” It was withdrawn by a previous socialist government without justification.

Furthermore, the current process has been underway for some time. Professional talks on bringing back the courts were already underway two years ago. The entry into force of the new Administrative Procedural Code on 1 January 2018 started the process of repositioning and regionalizing administrative procedures. The most important achievement of the first separate code of administrative court procedure is the general clause, which enables the judicial review of all administrative actions with legal effects and is addressed to the citizens or companies, thus it widens the scope of judicial control.

The organizational separation of administrative and ordinary courts is justified, on the one hand, by the particular purpose of the administrative justice. A fair balance has to be created between private and public interests ensuring consistency between the basic right of the individual (subjective) and the legal protection based on public interest (objective). On the other hand, adjudication of administrative disputes requires special knowledge and a particular attitude of the judge in order to be able to protect the citizen from the superiority of power of the inevitably dominant authority. According to the code of administrative court procedure the judge shall take several procedural actions ex officio, contributing actively to the success of the procedure of taking evidence.

It is important to emphasise that legal scholarship, national historical traditions and also international examples justify the existence of the independently functioning administrative judiciary. The Hungarian Minister of Justice, László Trócsányi has been examining the topic as a university professor for over 30 years<sup>10</sup>. Based on this experience the institutional structure, discontinued in 1949 by communist dictatorship, should be rebuilt in a professional manner, fit for the requirements of the 21<sup>st</sup> century. A multilevel administrative judiciary, institutionally independent from ordinary courts and from the jurisdiction of the Supreme Court, operates in Austria, Bulgaria, Finland, Germany, Greece, Lithuania, Luxembourg, Poland, Portugal and Sweden. In the Czech Republic, regional courts with general jurisdiction adjudicate at first instance, and only the Supreme Administrative Court is a specialized administrative court. In France, Belgium, and Italy, it is the Council of State, an organ functionally independent from ordinary courts that carries out the tasks of administrative judiciary.

International examples, especially the well-functioning systems in neighbouring countries prove us that independent administrative judiciary ensures better the self-restraint of executive power and provides more efficient control over actions of the administration. It can be concluded that the independent administrative judiciary constitutes an important element in the development of constitutional law.

It is an important development that the recently adopted Seventh Amendment of the Fundamental Law has created the constitutional framework for the legislative work necessary for establishing the institutionally independent administrative judicial system. The modification of Article 25 states that the judiciary system consists of ordinary and administrative courts. The supreme organ of administrative courts will be the Supreme Administrative Court, while that of the ordinary courts it is still the Kúria. The two highest judicial forums of equal legal status perform the tasks related to ensuring consistency of the application of the law of the respective judicial organisations.

---

<sup>10</sup> See e.g. Trócsányi László: Milyen közigazgatási bírászkodást? [What administrative justice?] (KJK 1992).

In order to elaborate on the detailed regulation of the institutional reform and to prepare the complex legislative work, the Minister of Justice has established an expert committee with Prof. Dr. György Kiss (Member of the Hungarian Academy of Sciences) as its president. Members of the committee are mostly judges, delegates of the President of the Kúria and of the National Office for the Judiciary, the President of the Association of Hungarian Administrative Judges, and distinguished legal scholars, among them professors of administrative and constitutional law. The Ministry of Justice counts on their outstanding professional knowledge and experience in the framework of a regular dialogue. Expressing their opinion is important throughout the complex codification procedure, which is still in progress.

Following a detailed professional consultation about the concept, the Ministry of Justice will submit the draft law on the establishment of the Supreme Administrative Court to Parliament by the end of October. Plans call for the administrative courts to have headquarters in Esztergom and courts in eight cities around the country. If approved, they would be ready to start work by 1 January 2020. The new model, through the principles of judicial independence and of fair trial, shall ensure compliance with the requirements of the rule of law and at the same time enforce the internal characteristics of administrative law.

### **Compulsory retirement of judges, prosecutors and notaries**

*(15) Following the judgment of the Court of Justice of the European Union (the “Court of Justice”) of 6 November 2012 in Case C-286/12, Commission v. Hungary, which held that by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries when they reach the age of 62, Hungary failed to fulfil its obligations under Union law, the Hungarian Parliament adopted Act XX of 2013 which provided that the judicial retirement age is to be gradually reduced to 65 years of age over a ten year period and set out the criteria for reinstatement or compensation. According to the Act, there was a possibility for retired judges to return to their former posts at the same court under the same conditions as prior to the regulations on retirement, or if they were unwilling to return, they received a 12-month lump sum compensation for their lost remuneration and could file for further compensation before the court, but reinstatement to leading administrative positions was not guaranteed. Nevertheless, the Commission acknowledged the measures of Hungary to make its retirement law compatible with Union law. In its report of October 2015, the International Bar Association’s Human Rights Institute stated that a majority of the removed judges did not return to their original positions, partly because their previous positions had already been occupied. It also mentioned that the independence and impartiality of the Hungarian judiciary cannot be guaranteed and the rule of law remains weakened.*

In 2012 Act CLXII of 2011 on retirement of judges, prosecutors and notaries entered into force in Hungary, which reduced the age limit for compulsory retirement from 70 to 62 years with the aim of creating a unified, just and solidary pension system, instead of

conserving individual privileges and additional rights towards certain professions. Later on, the Court of Justice of the European Union (CJEU) established that this law infringed the EU principle of non-discrimination. Hungary acknowledged the ruling of the CJEU and – also in line with the Decision 12/2018 (VII. 18.) AB of the Hungarian Constitutional Court – amended the law (Act XX of 2013) which in case of judges, prosecutors and public notaries set a new age limit (65 years) for compulsory retirement by 1 January 2023. The Commission closed the infringement procedure against Hungary at the end of 2013. Following the ruling of the CJEU, the Commission continuously monitored the implementation of the new Hungarian law on retirement and on 20 November 2013 voiced its satisfaction with the measures taken by Hungary to make its retirement law compatible with the requirements of EU law. It is important to emphasize that the Commission was satisfied with the remedies implemented in Hungary concerning the affected judges, prosecutors and public notaries, including the right of reinstatement without judicial procedure, and the right to compensation. The ruling of the CJEU of 6 November 2012 did not question the reasons of the Hungarian Government in justification of the lower retirement age limits (balanced age structure, mobility of judges, etc.) merely established that the provision amounts to discrimination based on age. In compliance with the ruling of the CJEU there are unified rules in effect for judges, prosecutors and public notaries which allow those who have reached retirement age in the transition period to: a) to remain in office, b) take an administrative leave, c) to retire. The amendments introduced by Act XX of 2013 provided the possibility for retired judges to return to their former posts at the same court under the same conditions as prior to the regulations on retirement, or if they did not want to return, they received a 12-month lump sum compensation for their lost remuneration, and could file for further compensation before the court. The choice made by the judges cannot be evaluated against Hungary.

According to Article 232/J. paragraph (2) and (3) of Act XX of 2013 reinstatement to leading administrative positions was guaranteed. In the case of judges who had an indefinite term appointment to the position of President of Chamber before, if they chose to return, they had to be reinstated to their position. According to the Act, judges who had fixed term appointment could only be reinstated to their positions if those were not occupied at that time. Therefore only the reinstatement to the already occupied temporary positions could not have been guaranteed by the Act, since such a rule would have breached the acquired rights of the newly appointed judges. It must be underlined however, that under the provisions of the Act, in such cases judges could not incur any damages, since the executive allowance had to be paid for the whole duration of the definite appointment. Consequently any statement of the report on the motivation of judges is inaccurate as not based on factual data. It should be highlighted that independence and impartiality are requirements that apply to the decisional function of judges but not to the appointment of judges to leading administrative positions, which requirements therefore cannot be included in this context.

**The independence of the Hungarian judiciary is beyond doubt. The general criticism is unfounded and false, hence there is no clear risk of a breach by Hungary of the values on which the Union is founded and there was no legal ground to start the Article 7(1) procedure.**

### **Violation of the right to a fair trial (Gazsó v. Hungary)**

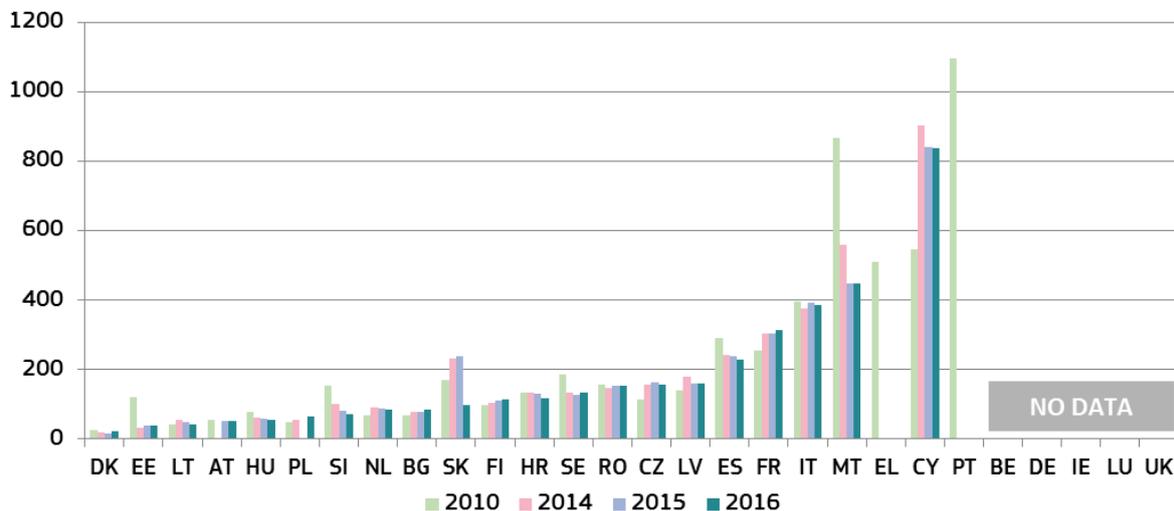
*(16) In its judgment of 16 July 2015, Gazsó v. Hungary, the European Court of Human Rights (ECtHR) held that there had been a violation of the right to a fair trial and the right to an effective remedy. The ECtHR came to the conclusion that the violations originated in a practice which consisted in Hungary's recurrent failure to ensure that proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to claim redress for excessively long civil proceedings at a domestic level. The execution of that judgment is still pending. A new Code of Civil Procedure, adopted in 2016, provides for the acceleration of civil proceedings by introducing a double-phase procedure. Hungary has informed the Committee of Ministers of the Council of Europe that the new law creating an effective remedy for prolonged procedures will be adopted by October 2018.*

In the case of *Gazsó v. Hungary* the Court noted the Government's Action Plan and welcomed its commitment to deal with the issue and encouraged to continue these efforts. The Court ruled that Hungary must introduce without delay and at the latest until 16 October 2016, a remedy or a combination of remedies in the national legal system in order to bring it into line with the requirements of the Convention.

A new Code of Civil Procedure adopted in 2016 provides for the acceleration of civil proceedings by introducing a double-phase procedure. In the new Code of Criminal Procedure, the enhanced rights of the defence during the investigation will contribute to the expediency and effectiveness of the proceedings. After the 'pre-arrest investigation' defence will have access to the case file. At the trial phase, a preparatory hearing will fix the scope of the case and in order to prevent prolonging tactics, new motion for evidence can be submitted thereafter only in exceptional circumstances. At the appeal stage, the reformatory power of the appeals court is strengthened.

Hungary has duly informed the Committee of Ministers of the Council of Europe that the completion of court proceedings within a reasonable time will be ensured by the new codes of procedure which entered into force in 2018, and a new bill creating an effective domestic remedy for prolonged procedures, which was submitted to the Parliament in October 2018 based on the following principles: objective liability, covering all types of judicial proceedings: out of court settlement procedure, (in lack thereof: a simplified judicial procedure) the swift determination of the claims, and prompt payment of an appropriate compensation.

It this context, it should be mentioned that according to the European Commission's 2018 Justice Scoreboard<sup>11</sup>, the Hungarian justice system is performing well, especially as far as the length of the procedures is concerned. The figure below shows the needed to resolve civil, commercial, administrative and other cases (1st instance/in days) (source: CEPEJ study):



### Violation of the right of access to a court (Baka v. Hungary)

(17) In its judgment of 23 June 2016, *Baka v. Hungary*, the ECtHR held that there had been a violation of the right of access to a court and the freedom of expression of András Baka, who had been elected as President of the Supreme Court for a six-year term in June 2009, but ceased to have this position in accordance with the transitional provisions in the Fundamental Law, providing that the Curia would be the legal successor to the Supreme Court. The execution of that judgment is still pending. On 10 March 2017, the Committee of Ministers of the Council of Europe solicited to take measures to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard. The Hungarian Government noted that those measures are not related to the implementation of the judgment.

In *Baka v. Hungary*, the European Court of Human Rights found a violation of the freedom of expression of the applicant, former President of the Hungarian Supreme Court, on account of the premature termination of his mandate on 1 January 2012 – i.e. three and a half years prior to its normal date of expiry – as a result of his criticisms of legislative reforms expressed publicly in his professional capacity. The Court also found a violation of the right of access to a court on account of the lack of any form of judicial review in this respect. In the course of the execution of the judgment, the Committee of Ministers indicated their expectation to consider – in addition to the payment of just

<sup>11</sup> [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf)

satisfaction in the sum of EUR 100,000 – adopting further individual and general measures.

The Hungarian Government considers that the measures adopted have fully remedied the consequences for the applicant of the violation found by the ECtHR in this case and that Hungary has thus complied with its obligations under Article 46, paragraph 1 of the Convention, no further measures are necessary. There is no need or possibility for the applicant's reinstatement in his former office because his original term of office had already expired before the judgment was delivered and this is not even required by the judgement of the Court, either. In any event, the position of the President of the Kúria is not vacant and his mandate will not expire until January 2021. At that time, the applicant will be eligible for re-election, the requirement of at least five years of domestic judicial service no longer being an impediment for him. As regards any financial consequences of the premature termination of the applicant's mandate, *in integrum restitutio* was provided by the just satisfaction awarded by the Court.

No further general measures were found necessary because the violation found by the Court resulted from a one-time constitutional reform of the Hungarian judicial system. As regards the general measures solicited by the Committee of Ministers' decision of 10 March 2017 the Government emphasises that those measures are not related to the implementation of the present judgment since the existence of those guarantees (as regards all Hungarian judges other than the president of the Supreme Court) have never been called into question by the Court. Quite the contrary, the basis for finding that the *Eskelinen-test*<sup>12</sup> was not met in the present case was exactly that, regardless of the unique constitutional status of the President of the Supreme Court within the judiciary, other judges and court executives were not excluded from the right of access to a court in case of their dismissal. As the Grand Chamber found in its judgment: „the applicant, as the holder of the office in question in the period before the dispute arose, was not “expressly” excluded from the right of access to a court. On the contrary, domestic law expressly provided for the right to a court in those limited circumstances in which the dismissal of a court executive was permissible: the dismissed court executive was indeed entitled to contest his or her dismissal before the Civil Service Tribunal. In this respect, judicial protection was available under domestic law for cases of dismissal, in line with the international and Council of Europe standards on the independence of the judiciary and the procedural safeguards applicable in cases of removal of judges. Mr Baka currently works as a President of Chamber judge at the Kúria as his judicial office has never been terminated (only his executive office).

---

<sup>12</sup> *Vilho Eskelinen & Ors v Finland* [2007] ECHR [GC] 63235/00 (19 April 2007) at the European Court of Human Rights, where the Court considered the scope of the right to a fair hearing in the context of civil proceedings, with particular reference to the acceptable length of proceedings and the necessity of an oral hearing. See further: [https://hudoc.echr.coe.int/eng#{"languageisocode":\["ENG"\],"appno":\["63235/00"\],"documentcollectionid2":\["GRANDCHAMBER"\],"itemid":\["001-80249"\]}](https://hudoc.echr.coe.int/eng#{)

As regards the prevention of a similar violation of premature termination of the office of the President of the Kúria under the law currently in force, the judgment in the present case does not require that rules governing such termination be adopted, it follows only that Hungary should refrain from such premature termination when the next major constitutional reform of the judicial system takes place.

The *Eskelinen-test* (see above) was not overruled in the Baka case, and contrary to the Chamber's judgment, the Grand Chamber's judgment did not even imply that the functions of the President of the Supreme Court were not related to the exercise of sovereign state powers closely enough to justify his exclusion from the right of access to court on account of his dismissal from his executive position being an issue of public law rather than that of civil law. Therefore, the President of the Kúria can be excluded from the right of access to court in accordance with Article 6 of the Convention as long as his exclusion is provided for "expressly" and prior to the actual dismissal. Whereas the Court's judgment indeed implied that it would not regard the exclusion of all judges from the right of access to court in respect of their dismissals from their judicial service to be in conformity with the second condition of the *Eskelinen-test* and thus with Article 6 (although such exclusion had been accepted in cases concerning disciplinary proceedings against judges in Turkey), the Court did not suggest that court executives cannot be excluded from access to court in respect of termination of their executive mandates.

Nevertheless, Hungarian law does not exclude all court executives from that right. Neither is the President of the Kúria excluded from the right of judges of access to the Service Tribunal in disputes concerning their judicial service. However, contrary to the provisions of Act no. LXVI of 1997 on the organisation and management of the judiciary as they were in force at the time of Mr. Baka's presidency of the Supreme Court which did not distinguish between various categories of court executives, Act no. CLXI of 2011 on the organisation and management of the judiciary as in force today does make that distinction and contains detailed provisions on the special status of the President of the Kúria as compared to other court executives. It makes it also clear that access to the Service Tribunal which is ensured to other court executives in disputes concerning their executive mandates is not available to the President of the Kúria in case of his dismissal by the Parliament (which had elected him) from his executive office (but not from the judicial service).

Access to a court (the Constitutional Court) is ensured even in respect of the premature termination of the mandate as President of the Kúria (without termination of his office as a judge) when this measure takes the form of an Act of Parliament. While the judicial remedy offered by a constitutional complaint was not available to Mr. Baka because his mandate was terminated by an amendment to the Fundamental Law (the review of which does not fall within the competence of the Constitutional Court), it was available

to and made use of by Mr. Erményi (see. *Erményi v. Hungary*, Appl. No. 22254/14; Chamber judgment of 22/11/2016), Vice-President of the Supreme Court appointed by Mr. Baka, whose executive mandate was terminated at the same time than Mr Baka's. However, in his case the ECtHR did not agree with the Constitutional Court's assessment [see decision no. 3076/2013. (III. 27.) AB of 19 March 2013] that the constitutional changes in the competences of the supreme judicial body had been of such a fundamental nature to justify his premature dismissal, corollary to that of the Supreme Court's President.

It follows that the only way to satisfy the requirements of the Convention (both Article 6 and 8) is to refrain from the premature termination of the mandate of President of the Kúria by the constitution-making power in the future whenever and whatever constitutional amendments are made to the functions of the Kúria.

The Government notes that the Committee of Ministers' call for general measures in execution of the Baka judgment is at odds with the general political perception underlying the treatment of this case by various international bodies that the measure complained of by the applicant constituted *ad hominem* legislation, that is, it was directed specifically against the applicant and only the applicant. The Government concludes with satisfaction that that allegation of a political nature no longer constitutes the basis for the consideration of the present case and hopes that the formerly tangible intention to keep this case on the political agenda will no longer prevent the Committee of Ministers from closing it since the legal requirements stemming from the two judgments at issue (identified by the Committee of Ministers as a group of cases) are clearly satisfied by Hungarian law as currently in force.

### **The expiry of mandate of the Parliamentary Commissioner for Data Protection and Freedom of Information**

*(18) On 29 September 2008, Mr András Jóri was appointed Data Protection Commissioner for a term of six years. However, with effect from 1 January 2012, the Hungarian Parliament decided to reform the data protection system and replace the Commissioner with a national authority for data protection and freedom of information. Mr Jóri had to vacate office before his full term had expired. On 8 April 2014, the Court of Justice held that the independence of supervisory authorities necessarily includes the obligation to allow them to serve their full term of office and that Hungary failed to fulfil its obligations under Directive 95/46/EC of the European Parliament and of the Council. Hungary amended the rules on the appointment of the Commissioner, presented an apology and paid the agreed sum of compensation.*

On 17 January 2012, the Commission has launched an infringement procedure against Hungary. The Court of Justice of the European Union found on 14 April 2014 that by prematurely bringing to an end the term served by the supervisory authority for the protection of personal data, Hungary has failed to fulfil its obligations under Directive

95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Following the findings of the judgement and taking into account the suggestions of the European Commission, Hungary amended the rules on the appointment of the president of the Hungarian National Authority for Data Protection and Freedom of Information, based on the suggestions of the European Commission as part of that infringement procedure. Hungary presented an apology by sending a ministerial letter to András Jóri within the deadline set in the agreement of June 2014, issued a public notice to András Jóri and to the Hungarian News Agency (MTI), as well as paid to András Jóri the agreed sum of compensation. The former Data Protection Commissioner considered the material and moral compensation offered as fair and accepted it voluntarily, furthermore he declared that he had no more claims. In autumn 2014 the Commission accepted the above measures as implementation of the CJEU decision and closed the infringement case on 16 October 2014. Thus Hungary – by implementing the judgement of the Court – brought an end to the case concerning the premature ending of the term of the Data Protection Commissioner in a mutually satisfactory manner.

### **Criticisms concerning the prosecution service**

*(19) The Venice Commission identified several shortcomings in its Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted on 19 June 2012. In its report, adopted on 27 March 2015, GRECO urged the Hungarian authorities to take additional steps to prevent abuse and increase the independence of the prosecution service by, inter alia, removing the possibility for the Prosecutor General to be re-elected. In addition, GRECO called for disciplinary proceedings against ordinary prosecutors to be made more transparent and for decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications. According to the Hungarian Government, the 2017 GRECO Compliance Report acknowledged the progress made by Hungary concerning prosecutors (publication is not yet authorised by the Hungarian authorities, despite calls by GRECO Plenary Meetings). The Second Compliance Report is pending.*

It must be highlighted that the Venice Commission also found numerous positive aspects of the Acts in question.<sup>13</sup> It had been concluded that the general principles for the operation of prosecutors were in line with applicable standards for prosecutors in a democratic society. It was highlighted that most of the issues identified did not stem from the revision of the Acts under the new Fundamental Law but were remnants from the overarching powers of the prosecution services left before the democratic transition in Hungary. The Venice Commission also stated that taken on their own, most issues

---

<sup>13</sup> Opinion No. 668/2012, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)008-e)

raised in its opinion did not threaten the rule of law, and that the recommendations were made in order to propose ways to improve the prosecution service.

It must be highlighted that the 2017 GRECO Compliance Report (assessing the implementation of the 2015 recommendations) acknowledged that there has been progress concerning prosecutors. As far as the independence of the prosecution service is concerned, the 2015 GRECO report drew only a very limited number of recommendations – the compliance with which is yet to be assessed – and used the word ‘potential’ expressing that they refer only to theoretical and not factual situations, and recommends further steps merely in order to prevent such potential scenarios.

The disciplinary proceedings against ordinary prosecutors include appropriate guarantees, since there is a possibility of objection due to bias against the person from whom unbiased participation in the procedure cannot be expected, which is a proper guarantee for the objective, impartial conduct of the procedure and a transparent decision. In addition, judicial remedy is also granted. The prosecution service changed its practice following the GRECO evaluation in a way that based on the possibility provided by the Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career, the person who has the disciplinary power, shall appoint a disciplinary commissioner in each disciplinary procedure.

Regarding the legal criteria of moving cases from one prosecutor to another it must be pointed out that Order No. 12/2012 (VI. 8.) of the Prosecutor General was amended in 2015 in a way that the officer of the prosecution service who is entitled to assign the cases – according to the rules of the organization and operation of the prosecution service – shall assign the file from one case handler to another, and shall include the reason for moving the case in the file.

In this context it should be noted that the Commission in its 2018 Justice Scoreboard<sup>14</sup> claims that Hungary is among the Member States where the management power of the prosecution services belongs solely to the Prosecutor General. The executive does not have power to decide on a disciplinary measure regarding a prosecutor, the power to transfer prosecutors without their consent or the power to evaluate and promote a prosecutor. In Hungary neither the executive nor the parliament have the possibility to give general guidance on crime policy or instructions on prosecution in individual cases.

**The Fundamental Law of Hungary and the other pieces of legislation fully ensure the independence of the courts and judges in Hungary. Therefore, it is not justified to mention the elements of recitals 12-19 in a reasoned proposal requesting the Council**

---

<sup>14</sup> [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf) page 49-50.

**to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

### **Corruption and conflicts of interest**

The title of this chapter proves again a deeply biased approach of those who drafted the reasoned proposal. The title suggests as if there would be serious problems in this field in Hungary. The detailed text of the reasoned proposal, however, does not refer to any hard facts as regards corruption. The Hungarian rules eliminating the conflict of interest are strict and comprehensive even in a European comparison. Corruption as such is a serious allegation, which should be proved more seriously than only mentioning reports, perceptions and the general feelings about it. Corruption is a phenomenon against which all EU Member States are fighting. Drawing conclusions from one case picked up in the media is not the right way to assess any situation. Hungary is clearly committed against corruption which is stipulated in all the relevant legislation.

#### **Conflicts of interest of members of the Hungarian Parliament**

*(20) In its report adopted on 27 March 2015, GRECO called for the establishment of codes of conduct for members of the Hungarian Parliament (MPs) concerning guidance for cases of conflicts of interest. Furthermore, MPs should also be obliged to report conflicts of interest which arise in an ad hoc manner and this should be accompanied by a more robust obligation to submit asset declarations. This should also be accompanied by provisions that allow for sanctions for submitting inaccurate asset declarations. Moreover, asset declarations should be made public online to allow for genuine popular oversight. A standard electronic database should be put in place to allow for all declarations and modifications thereto to be accessible in a transparent manner.*

The Act XXXVI of 2012 on the National Assembly (hereinafter: ANA), together with other pieces of legislation, establishes strict rules about conflict of interest for MPs. The goal of these regulations is to guarantee the independence of the legislative work and to avoid unwanted influencing and the concentration of positions and appointments. The rules created by the ANA concerning conflict of interest, which have been in effect since the beginning of the 2014-18 parliamentary term, are stricter than the previous ones (also in force at the time of Hungary's accession to the EU). The MP status is not compatible with any other national or local public administrative position or any business-related appointment. The MPs cannot engage in any income-providing activity and cannot accept remuneration for any other activity, except academic, research-related, artistic, revise-related or editorial work, as well as any intellectual activity regulated by specific legislation or any activity carried out as a foster parent. The ANA does not cover conflict of interest in terms of what positions or appointments are not allowed during

parliamentary service but it rather presents the very limited list of the ones which are compatible. An MP can hold a high-level government position (prime minister, minister, state secretary). Following the 2014 local administrative elections, an MP can no longer become member of the local government, e.g. mayor. The ANA established a tougher set of rules in the area of economic conflict of interest, too. It also strictly defines the cases when an MP becomes unworthy of holding their office, e.g. if they are banned from public affairs or they are serving a prison sentence. Furthermore, the ANA lists several other activities which are incompatible with holding the office of an MP: e.g. exerting influence in business-related matters using his parliamentary status or acquiring and utilizing confidential information without authorisation. In case an MP is found to have a conflict of interest, they have to clear themselves of it within a limited timeframe; failure to do so may lead to them being stripped of their parliamentary duty by the National Assembly.

Hungary has in place a system of asset declarations in respect of an MP as well as their close family members (such obligation is in force for decades, it was introduced by Act LV of 1990, 19. §). The ANA provides that each MP is to file an asset declaration in accordance with a precise form, which is attached to the law, within thirty days upon the establishment of their mandate and then every year by 31 January as well as within 30 days upon the termination of the mandate. If an MP does not follow this rule, s/he is not allowed to exercise her/his rights as a member and will not receive remuneration (Section 90 (3) of the ANA). Furthermore, the members are obliged to attach a declaration on property of the same content as their own, in respect of family members (i.e. spouse or common law spouse and children living in a common household). The declarations of property are to be filed with the Committee on Immunity. It follows from Section 94 of the ANA that the declaration of assets of the MP is a public document, contrary to those relating to family members. The former are to be published without delay on the website of the National Assembly, by the Committee on Immunity. The rules concerning the conflict of interest and asset declarations of the MPs are one of the strictest in the European Union. In some other member countries for example, asset declarations may only relate to income or income and interest but do not cover property declarations as in the Hungarian case. Also in some states it is not compulsory to provide the asset declarations of relatives. Indeed, the GRECO did not recommend the online publication of the asset declarations of the Members of Parliament due to the fact these asset declarations are already publicly available via the homepage of the Hungarian Parliament.

### **Limited monitoring of campaign spending**

*(21) In its report adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the limited monitoring of campaign spending and the absence of thorough reporting on sources of campaign funds until*

*after the elections undercuts campaign finance transparency and the ability of voters to make an informed choice, contrary to international obligations and good practice. The State Audit Office has the competence to monitor and control whether the legal requirements have been met. The report did not include the official audit report of the State Audit Office concerning the 2018 parliamentary elections, as it had not been completed at the time.*

Contrary to some ambiguous statements by the above recital, the Hungarian rules on campaign financing are detailed and strict, and are corresponding or even exceeding the equivalent system of some other EU member states. The criticism of the OSCE would be more relevant in comparison with the criticism of the other Member States' respective provisions. Furthermore, the current regulatory environment is much more detailed and clearer than at the time of Hungary's accession to the EU.

In Hungary the Act LXXXVII of 2013 on the Transparency of Political Campaign Financing established clear rules and provided clear situation. Without going into all details here are some of the pillars of the Hungarian legislation on political campaign financing: (1) The Act maximizes the amount allowed to be spent for campaign activities, (2) It establishes strict rules on the use of such financing and on the monitoring of campaign spending. (3) Financial statements are to be submitted to the Treasury within 15 days after the individual results of the election together with copies of all accounting documents concerning the use of the amount of support. (4) The Treasury reviews the statement and supporting documents. (5) If a candidate or a party fails to submit a statement within the above mentioned deadline or submits one, which is not approved later in whole or in part by the Treasury, they shall pay double the amount of the support received. (6) In order to strengthen transparency, the Act introduced a requirement that within 60 days starting from the date when the result of the elections became official, (7) all candidates and nominating organizations must make public the amount they had spent for campaigning, including public and non-public sources, as well as the purposes for the spending. (About half of the Member States have a ceiling on party expenditures, whereas parties in the rest of the Member States are supposedly allowed to spend as much as they see fit. Public funding is often earmarked for specific campaign-related activities. Yet, in nine of the 28 Member States there are no strict rules about how the budget may be spent. In most Member States, political parties' financial statements have to be made publicly available. In three Member States, however, these statements are only available upon request.) (8) The State Audit Office has the competence to monitor and control whether the candidates and nominating organizations have complied with the legal requirements on maximizing the campaign spending. (9) The State Audit Office audits the use of campaign finances in case of those political parties which obtained at least one percent of the votes, according to the legislation, within one year from the date of the elections. The State Audit Office proceeds within one year from the date of the elections. A continuous reporting and

monitoring system throughout the campaign as suggested by the EP could be interpreted as being suitable for political influence.

### **Withdrawal from the Open Government Partnership**

*(22) On 7 December 2016, the Open Government Partnership (OGP) Steering Committee received a letter from the Government of Hungary announcing its immediate withdrawal from the partnership, which voluntarily brings together 75 countries and hundreds of civil society organisations. The Government of Hungary had been under review by OGP since July 2015 for concerns raised by civil society organisations in particular regarding their space to operate in the country. Not all Member States are members of the OGP.*

The Open Government Partnership is a multilateral initiative based on voluntary membership and therefore it is only up to the free decision of participating countries to join or to withdraw. The Hungarian Government therefore considered that there is no point in maintaining and financing our membership in an organization that has completely diverged from its original goals and principles. It is worth highlighting that Hungary is not the only Member State not taking part in the Open Government Partnership.

### **The follow-up of the OLAF's recommendations and public procurement**

*(23) Hungary benefits from Union funding amounting to 4,4 % of its GDP or more than half of public investment. The share of contracts awarded after public procurement procedures that received only a single bid remains high at 36 % in 2016. Hungary has the highest percentage in the Union of financial recommendations from OLAF regarding the Structural Funds and Agriculture for the 2013-2017 period. In 2016, OLAF concluded an investigation into a EUR 1,7 billion transport project in Hungary, in which several international specialist construction firms were the main players. The investigation revealed very serious irregularities as well as possible fraud and corruption in the execution of the project. In 2017, OLAF found "serious irregularities" and "conflicts of interest" during its investigation into 35 street-lighting contracts granted to the company at the time controlled by the Hungarian Prime-Minister's son-in-law. OLAF sent its final report with financial recommendations to the Commission's Directorate-General for Regional and Urban Policy to recover EUR 43,7 million and judicial recommendations to the General Prosecutor of Hungary. A cross-border investigation, concluded by OLAF in 2017, involved allegations related to the potential misuse of Union funds in 31 Research and Development projects. The investigation, which took place in Hungary, Latvia and Serbia, uncovered a subcontracting scheme used to artificially increase project costs and hide the fact that the final suppliers were linked companies. OLAF therefore concluded the investigation with a financial recommendation to the Commission to recover EUR 28,3 million and a judicial recommendation to the Hungarian judicial authorities. Hungary decided not to participate in the establishment of the European Public Prosecutor's Office responsible for investigating,*

*prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union.*

Regarding the follow-up of the OLAF's recommendations, it is important to highlight the following. As the 2017 OLAF Report shows, in Hungary the indictment rate is 47% according to OLAF's figure on the actions taken by national judicial authorities following its recommendations (issued between 1 January 2010 and December 2017), while the average in the EU Member States is 42%.

Furthermore, according to Article 11 of Regulation 883/2013 governing the work of the European Anti-Fraud Office<sup>15</sup>, the national law of the Member State concerned shall be taken into account in the OLAF report. The reports shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports. However, the judge has a full discretionary power to evaluate the individual pieces of evidence. Therefore, the reports of OLAF as such constitute only one piece of material evidence, but they can still be relevant for the prosecution during the criminal procedure. It should be underlined that the national authorities still have to conduct the investigation in accordance with the respective national criminal procedural codes. In addition, another major factor influencing the indictment rate is the fact that by the time of the final OLAF report all supporting hard evidence that should be collected during the investigation for a successful prosecution is not available anymore.

Nevertheless, Hungary's performance regarding the indictment rate is still above the EU average.

The reasoned proposal states that Hungary decided not to participate in the establishment of the European Public Prosecutor's Office (EPPO). According to the Treaties being part of the EPPO is upon the choice of the Member States. Hungary based on its constitutional traditions and rules has decided not to join the EPPO as it was also decided by other Member States. **Being part of the EPPO is not a prerequisite to comply with the values of the EU.**

## **Public procurement**

---

<sup>15</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999

In recent years, Hungary implemented a number of measures to improve public procurement practices. The new legal framework is strengthened, in particular, with the approval process of the Public Procurement Authority on the legality of the negotiated procedures without prior publication. The reasoned decisions of the Authority are published on its website.<sup>16</sup> In addition, the 2017 amendment to the Public Procurement Act introduced an option to declare public procurement procedures unsuccessful when only one single bid is received.

Available data for 2016 and 2017 indicate that overall there was a noticeable decrease in single-bidder tenders and significant decrease in the negotiated procedures without prior publication. According to the statistical data of the Public Procurement Authority, the share of one-bidder contracts stood at 26,3% in 2017 (compared to 29,2% in 2016). As regards the negotiated procedures without prior publication, on the basis of the Single Market Scoreboards, we can identify a constant decrease (14% in 2015, 9% in 2016 and 8% in 2017).

However, we would like to underline that the share of one-bidder procedures highly depends on the socio-economic situation and the structure of the market of the Member State concerned. For instance, the share of one-bidder procedures can be influenced also by the number of the large companies in the specific sector. The fact that the public procurement procedure ends with only one tenderer submitting a tender, in itself, does not entail corruption threats or distortion of competition. The tenderer is not aware of the number of other tenders submitted; therefore, the tenderer provides the bid in a competitive environment.

Furthermore, Hungary has made considerable efforts to put in place its e-procurement system before the deadline set in the public procurement directives (i.e. 18 October 2018). The system became fully operational as of 1 January 2018 and its use is mandatory for all contracting authorities as of mid-April 2018. The introduction of the e-procurement system is an important step towards further increasing transparency and competition in public procurement. Electronic public procurement supports tenderers at the submission of their tenders with uniform formal requirements, contributes to quicker procedures, decreases administrative burdens and is expected to bring a further drop in the number of single-bidder procedures and to strengthen competition.

So far, the e-procurement system is working very well, we have received numerous positive feedbacks, more than 900 procedures have been launched in the system without any significant issues (<https://ekr.gov.hu>, available also in English).

---

<sup>16</sup> <http://www.kozbeszerzes.hu/adatbazisok/tajekoztatok-hnt-dontesekrol>

The development achieved concerning the transparency and competition in public procurement was recognised by the 2018 Country Report and the Country Specific Recommendations. Public procurement was one of three policy areas in the 2018 Country Report where “Some Progress” has been achieved which is the second best category on a scale of four in the framework of the European Semester. Furthermore, according to the 2018 Single Market Scoreboard, Hungary’s overall performance in the field of public procurement in 2017 was average.

### **Effective governance and corruption**

*(24) According to the Seventh report on economic, social and territorial cohesion, government effectiveness in Hungary has diminished since 1996 and it is one of the Member States with the least effective governments in the Union. All Hungarian regions are well below the Union average in terms of quality of government. According to the EU Anti-corruption Report published by the Commission in 2014, corruption is perceived as widespread (89 %) in Hungary. According to the Global Competitiveness Report 2017-2018, published by the World Economic Forum, the high level of corruption was one of the most problematic factors for doing business in Hungary.*

The reasoned proposal refers to the EU Anti-corruption Report published by the Commission in 2014,<sup>17</sup> according to which the corruption was perceived as widespread (89%) in Hungary. However, it should also be noted that the EU Anti-corruption Report revealed that at European level, three quarters of respondents thought that corruption was widespread in their own country, and Hungary was not even in the top 10 of those Member States where respondents were most likely to think corruption was widespread.<sup>18</sup>

According to the Global Competitiveness Report 2017-2018,<sup>19</sup> also referred to in the reasoned proposal, the corruption is among the most problematic factors for doing business in Hungary (14.9 scores). However, it should also be noted, on the one hand, that there are other EU Member States, where this factor was even more problematic than in Hungary. Therefore, it would be worth observing the overall European context, and not just pick out the negative statistical data concerning one Member State. On the other hand, even if there are EU Member States with better scores, it should also be kept in mind the methodology used in the Global Competitiveness Report, which might negatively affect the comparability of the factual situation of corruption in the Member States. Respondents to the World Economic Forum's Executive Opinion Survey were

---

<sup>17</sup> COM(2014) 38 final; [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf)

<sup>18</sup> See EU Anti-Corruption Report 2014, COM(2014) 38 final (page 6) and the Special Eurobarometer 397 Survey (page 20, Table QB5)

<sup>19</sup> <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>

asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. This means that the factor of corruption was only one of the several factors of doing business. Consequently, it might happen that despite the factual corruption situations are the same in Member States 'A' and 'B', the competitiveness report shows a better result concerning corruption in Member State 'B', in case the other factors (tax rates, tax regulation, bureaucracy, etc.) are even more problematic for the business actors than in Member State 'A'.

The Hungarian Government takes firm measures to prevent corruption. Hungary has adopted several two-year National Anti-Corruption Programs; however, their implementation is still ongoing. The National Anti-Corruption Program of 2015-2016 mainly concentrated on public administration, while the Program of 2017-2018 draws up regulatory tasks for budgetary authorities, local governments, companies and police authorities. Furthermore, national legislation is also suitable to take effective steps against corruption, for example the regulation of corruption offences in the Criminal Code in force.

The Global Competitiveness Report mentioned by the report also reveals that the level of corruption is higher in several other Member States, than in Hungary, therefore it would be worth observing the overall European context, and not just pick out the negative statistical data concerning Hungary.

In Hungary, public administration agencies have been working with integrity consultants since 2013. These consultants provide ethical advices to officials turning to them. Since November 2016, National Defence Agency, co-financed by the European Union, organizes trainings, workshops and conferences on topics relevant to the prevention of corruption with the participation of local government leaders, including political leaders.

Since the fall of the communist regime, there have been continuous political aspirations for the implementation of targeted actions against corruption in Hungary. To this end, government decisions were adopted and Hungary joined the major anti-corruption conventions (OECD - Convention on Combating Bribery of Foreign Public Officials, Council of Europe - Criminal Law Convention on Corruption, Civil Law Convention on Corruption, United Nations - Convention against Corruption, IACA - International Anti-Corruption Academy).

The Government also made significant efforts to reduce corruption in the field of public procurements. We have also presented this to the Commission during the 2017-2018 European Semester. In January 2017 the new Public Procurement Act entered into force, furthermore, electronic public procurements have been introduced as well. The number of appeal procedures decreased to 684, while the number of convictions decreased to 309,

which is a 40% decrease compared to the previous years' data. At the same time, there are less and less single bid procedures in domestic public procurements.

In Hungary, 97% of corruption charges end in sanctions or prosecutions. It is worth mentioning, that the European Commission previously stated in connection with the new regulation concerning the protection of whistle-blowers acting in the public interest, that with respect to 10 European countries no major legal harmonization is required due to their effective and detailed system. Hungary was among these 10 countries.

**The rules concerning the conflict of interest and asset declarations of the members of the Hungarian National Assembly are one of the strictest in the European Union. Furthermore, the Hungarian Government takes firm measures to prevent corruption and national legislation is also suitable to take effective steps against corruption. Therefore, it is not justified to mention the elements of recitals 20-24 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

#### **Privacy and data protection**

Within this context, it should be emphasised that the reconciliation of data protection and national/public security requirements is a global challenge and a key issue all across the EU as well. Besides, the Hungarian legal norms called into question by the European Court of Human Rights and the UN Human Rights Committee were in force already at the time of Hungary's accession to the EU, and they cannot be regarded at all as reasons for launching an Article 7(1) procedure. The competent Hungarian authorities are currently working on the solution to bring the Hungarian law in line with the judgement of the European Court of Human Rights and with the recommendation of the UN Human Rights Committee.

#### **Violation of the respect for private life (Szabó and Vissy v. Hungary)**

*(25) In its judgment of 12 January 2016, Szabó and Vissy v. Hungary, the ECtHR found that the right to respect for private life was violated on account of the insufficient legal guarantees against possible unlawful secret surveillance for national security purposes, including related to the use of telecommunications. The applicants did not allege that they had been subjected to any secret surveillance measures, therefore no further individual measure appeared necessary. The amendment of the relevant legislation is necessary as a general measure. Proposals for amendment of the Act on National Security Services are currently being discussed by the experts of the competent ministries of Hungary. The execution of this judgment is, therefore, still pending.*

Referring to the judgment of the ECtHR of 12 January 2016 in the case "Szabó and Vissy v. Hungary", the European Parliament raised an important and sensitive question

discussed in many countries, namely the balance between two equally important constitutional principles, *i.e.* the respect of private life and the protection of national/public security. It is a relevant issue to be solved, however, it does not qualify as a basis requesting the Council to launch an Article 7(1) TEU, procedure.

The execution of the judgment of the ECtHR is in the pipeline in terms of legislative amendments. Proposals for amendment of the Act on National Security Services are discussed by the experts of the competent ministries. This legislation dates back to 1995 and needs detailed revision and consideration in order to comply with the judgment and also the needs of modern times.

It should be stressed that in the case cited, the judgment did not concern actual measures of surveillance but the mere possibility of the application of such measures sufficed to establish the applicants' victim status within the meaning of the Convention.

Furthermore, the violation found did not result from specific provisions introduced in 2011 but from the background regulation as in force since 1996 (Act CXXV of 1995 on National Security Services, which was already in force at the time of Hungary's accession to the EU). In the course of the execution of the judgment, it is agreed that amendment of the relevant legislation is necessary as a general measure. However, examination of the requirements stemming from the judgment in terms of legislative amendments, which is currently underway, is expected to take some time because although the applicants only complained about the lack of judicial authorisation of secret surveillance for national security purposes, the Court's judgment has identified additional problems of the relevant legislation while its findings concerning the applicants' original arguments remained ambiguous. Proposals for the amendment of the Act on National Security Services were discussed by the experts of the competent ministries and the further elaboration of those is in progress.

### **Legal framework on secret surveillance for national security purposes**

*(26) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that Hungary's legal framework on secret surveillance for national security purposes allows for mass interception of communications and contains insufficient safeguards against arbitrary interference with the right to privacy. It was also concerned at the lack of provisions to ensure effective remedies in cases of abuse, and notification to the person concerned as soon as possible, without endangering the purpose of the restriction, after the termination of the surveillance measure.*

Any national security related issue requires great cautiousness and an integrated approach. The national security related legislation is under the competence of the Member States. However, any criticism against them should be considered carefully and with great attention. The Hungarian rules in this regard are integrated and provide the adequate level of protection from all aspects.

However, it is currently being examined whether the proposals for the amendment of the Act on National Security Services mentioned under recital (25) could include more precise rules in order to address the above mentioned concerns of the UN Human Rights Committee. The proposals were discussed by the experts of the competent ministries and the further elaboration of those is in progress.

**The Hungarian regulation is currently being examined to create an institutional framework for an independent verification of the collection of classified information. Therefore, it is not justified to mention the elements of recitals 25-26 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

### **Freedom of expression**

The accusations raised by the reasoned proposal with regard to the freedom of expression in Hungary are completely unfounded or based on subjective perceptions. The Fundamental Law stipulates that everyone shall have the right to freedom of expression and that Hungary recognizes and protects the freedom and diversity of the press. The Fundamental Law ensures also the diversity and the balanced functioning of the media market. The Hungarian Government is committed to ensure these rights. The radical changes in information technology – the digitalization and the internet – called for a revision of Hungarian media regulations – dating back to 1995 and even 1986 – and the adoption of an effective, transparent, and up-to-date new regulation became inevitable by 2010. In 2010, the main focus and intention of the Hungarian legislator was to create – in line with the general principle of technology neutrality – a time worthy, modern structure and definition base for future Hungarian media regulation, representing and seeking “a minimal common European regulatory approach”. The Hungarian legislator took into consideration the recommendations of the Council of Europe and of other bodies several times and did amendments in their sense. A number of issues raised by the reasoned proposal have been closed with the satisfaction of both parties. The Hungarian Government is committed to ensure freedom of expression and editorial freedom, as a consequence the functioning and publications of privately owned media outlets and the developments on the media market fall outside of the competences of the Hungarian Government.

### **Media legislation**

*(27) On 22 June 2015 the Venice Commission adopted its Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, which called*

*for several changes to the Press Act and the Media Act, in particular concerning the definition of "illegal media content", the disclosure of journalistic sources and sanctions on media outlets. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe's Commissioner for Human Rights in his opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. In his statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. The Commissioner also mentioned the issues of concentration of media ownership and self-censorship and indicated that the legal framework criminalising defamation should be repealed.*

The radical changes in information technology – the digitalization and the internet – called for a revision of Hungarian media regulations – dating back to 1995 and even 1986 – and the adoption of an effective, transparent, and up-to-date new regulation became inevitable by 2010.

In 2010, the main focus and intention of the Hungarian legislator was to create – in line with the general principle of technology neutrality – a time worthy, modern structure and definition base for future Hungarian media regulation, representing and seeking "a minimal common European regulatory approach". Provisions of the Audio-visual Media Services Directive were adequately implemented, and advanced regulatory concepts were introduced such as the then European novelty of "co-regulation" into the field of media regulation.

The so called 'Media Constitution' (Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of 2010 defines and protects the editorial and journalistic freedom of expression, namely that any person employed by media content providers shall have the right to professional sovereignty and independence from the owners or sponsors of the provider, as well as from any natural or legal person. Furthermore, the principle of transparency enshrined in the 'Media Constitution' obliges all bodies of the central and local governments to provide assistance to media content providers in discharging their information duties by means of making available the necessary information to media content providers in due time. It must be pointed out that the criticized term "illegal media content" does not exist in the legislation mentioned by the reasoned proposal. Some of the obscure terms originally used in the Venice Commission's report (such as public morals) cannot be the subject of official proceedings, and the rest is based on almost two decades of administrative and judicial practices, being easily recognizable by the market players and the law enforcement practitioners. The concerned service provider may, however, submit a

constitutional complaint if they consider that the Court's interpretation violates the freedom of the press.

The criticisms of the Venice Commission on the rules of protecting the source of information, focused on the fact that the provisions guaranteeing such a protection [Act CIV on the Freedom of the Press of 2010, 6.§. (2)] refers explicitly to criminal cases. This statement is inaccurate, as the general rules of the Act are detailed in each code of procedural law (civil, criminal, administrative and offence), and the missing provision is contained in Section 174 (2) of the Act on Criminal Procedures. In addition to the general rules, Article 6 (2) of the Media Act lays down the exceptional cases when the journalist may be obliged to disclose their source (surrender of information). Only a) a court, b) in order to investigate a criminal offence, c) in cases that are specified by law and d) in the case of exceptionally justified circumstances, may require the journalist to do so. The exact content of the scope of section 6 (2) of the Act, and in particular of the mentioned "*exceptionally justified case*", is determined by Section 174 (2) of the Act on Criminal Procedures. These are conjunctive requirements and the fact that the information cannot be provided by any other means shall always be defined as a result of careful and detailed investigation.

Compared to previous press legislation the new 'Media Constitution' allows journalists generally to hide their information sources in administrative and judicial procedures. In accordance with the former Press Act of 1986 (Stv.) the journalists could (and upon the request of the source had to) conceal the name of their source, however, this right did not apply to denying testimony in criminal procedures; instead, the Stv. referred the case for the former Criminal Procedure Act which, however, failed to regulate it. In contrast, the new 'Media Constitution' declares the general rule of protecting the source of information requiring that the public interest concerning making the information public had to be substantiated. In this case, the affected person, with narrow exceptions, could deny revealing the identity of the source; however, the provision on verifying the public interest was annulled by the Decision 165/2011. (XII. 20.) AB Constitutional Court. As a result, the Hungarian Parliament amended the rules taking into consideration the decision of the Hungarian Constitutional Court, as well as the recommendations of the Council of Europe. The new rules, effective as of July 2012, provided a more effective protection for information sources. On the one hand it made the term 'information source' more precise and removed the requirement on public interest from the text, on the other hand the 'exemption reason', (the possibility to deny testimony meant to reveal the identity of the source) shall subsist even following the termination of the journalist's employment.

Therefore, it is to be stressed that the Hungarian legislation fulfils all the requirements of the Recommendation adopted by the Council of Europe, as the following wording was implemented verbatim: "*disclosure may be ordered only where reasonable alternative measures*

*to the disclosure do not exist or have been exhausted, and where the legitimate interest in the disclosure clearly outweighs the public interest."*

As for financial penalties it must be highlighted that these sanctions may be imposed when media administration rules are violated. The legal consequences that can be applied under the Media Act form a differentiated sanction system in accordance with the framework of general administrative law and constitutional principles. The law takes into account the constitutional and legal requirements of administrative law, and takes into account the practice of the former Media Authority and the wide variety of potential violations. The legal consequences and the principles set out therein make it clear that the Media Act establishes objective, clear and predictable rules along the principles of proportionality, gradual and equal treatment which, while complying with the requirements of the rule of law and legal certainty, focus on encouraging voluntary compliance. A serious monetary penalty may only be levied in case of a recurring violation and the Media Council shall take into account the principles of graduation and proportionality. The amount of the penalty is also limited. As a result of the gradual approach and the requirement of proportionality, the imposition of unfair penalties for the "first" infringement is subject to the least restrictive sanction which is already capable of achieving the desired effect. When determining the level of sanction when "first" sanctioning, it is therefore essential to be proportionate, effective and take into account the "increasability" of the sanction. There are regulations in place against decisions on penalties, too. The predecessor of the Media Council, the ORTT could impose penalties as well, however, this provision remained unchanged since 1996 resulting in a shrinking dissuasive effect of penalties.

In case of repeated infringements, it is possible to aggravate the sanction. The importance of the gradual approach is thus the expression of the repeated progression and the predictability of the sanction in the application of repeated penalties, possibly with other sanctions and measures. (Of course, when applying sanctions for the "first" time, consideration should be given to the fact that it may be further exacerbated.) Certain legal disadvantages are explicitly the *ultima ratio* of media law administration, such as the case, when the Media Council cancels the media service from its register.

There are legal remedies against penalties as well. It is worth highlighting that the sanction system of the Hungarian media legislation is not abnormally strict or oppressive. For example, in other Member States it is not uncommon to threaten media legislation offenders with a criminal offence and the possibility of imposing high fines is especially common, as well.

Therefore, arguing that the sanctioning system results in a so-called self-sensorship is unfounded, both factually and legally.

The Hungarian Government further advocates a balanced and diverse media market thus enforcing plurality in the media landscape. The media legislation in force explicitly contains provisions for the prevention of media concentration, which rules promote the

creation of a diverse media market by preventing the emergence of information monopolies. The current media regulation has created a two-pillar system of tools to effectively secure the prevention of a dominant position and the pluralism of the media market. On the one hand, in order to prevent the creation of a monopoly of information, it imposes restrictions on the acquisition of property: against media service providers with average annual audience proportion in the media market, against any holder of the media service provider and against any person or undertaking with a qualifying share in any media provider. On the other hand, it imposes additional obligations on media service providers reaching a certain level of audience that can guarantee the maintenance of the media market, the facilitation of objective and pluralistic information, along with access to information. This requirement of media concentration prevention is also anchored at the constitutional level, in the Fundamental Law, under Article IX. Act CLXXXV of 2010 on Media Services and on the Mass Media contains provisions aiming at preventing market concentration and regulates media service providers with significant powers of influence as envisaged by the Audio-visual Media Services Directive and it further protects the diversity of broadcasting. In this context, 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.

Defamation in Hungary is regulated under the Criminal Code. It is, therefore, a criminal law category that does not exist solely in Hungary but traditionally it is also the part of the legal system in many Member States – laid down either in the criminal or in the civil code. If there is a lack of consistency between a particular judicial decision and the Fundamental Law, a constitutional complaint may be filed with the Constitutional Court. In Hungary, political statements received extensive protection, which also means that in a public affairs debate, criticism and value judgements concerning the exerciser of public authority or public politics cannot, in principle, be the basis of legal responsibility. The limits of the freedom of expression are only exceeded by those statements that violate the constitutionally protected domain of human dignity.

The Venice Commission in its Opinion on Media Legislation acknowledged the efforts of the Hungarian government, over the years, to improve the original text of the two Acts, in line with comments received from various observers including the Council of Europe, and positively noted the willingness of the Hungarian authorities to continue the dialogue. The Venice Commission required the revision of these issues mostly in order to change the public perception of media freedom.

### **Election of the members of the Media Council**

*(28) In its Opinion of 22 June 2015 on Media Legislation, the Venice Commission acknowledged the efforts of the Hungarian government, over the years, to improve on the original text of the Media Acts, in line with comments from various observers, including the Council of Europe, and*

*positively noted the willingness of the Hungarian authorities to continue the dialogue. Nevertheless, the Venice Commission insisted on the need to change the rules governing the election of the members of the Media Council to ensure fair representation of socially significant political and other groups and that the method of appointment and the position of the Chairperson of the Media Council or the President of the Media Authority should be revisited in order to reduce the concentration of powers and secure political neutrality; the Board of Trustees should also be reformed along those lines. The Venice Commission also recommended the decentralisation of the governance of public service media providers and that the National News Agency not be the exclusive provider of news for public service media providers. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe's Commissioner for Human Rights in his opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. In his statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014.*

The Media Authority (responsible for telecommunication and frequency management) is an autonomous regulatory body subordinated solely to law while its predecessor was directed by the government and overseen by the competent Minister. Furthermore, the President of the Media Authority is currently appointed by the President of Hungary, while formerly it was appointed by the Prime Minister. Members of the Media Council (responsible for media contents and the freedom of press) are elected by a qualified (two-thirds) majority of the Parliament for 9 years whereas members of its predecessor body were elected by simple majority for 4 years. Moreover, its members cannot by any means be instructed within their official capacity. Altogether, the high professional requirements, the long mandate of the members of the Media Council, as well as the prohibition of the re-election of the President and the members of the Media Council ensure independence from both the Government and the Parliament.

The Media Act has numerous provisions to ensure plurality, multi-party consensus and the election of non-political candidates. Consequently, the Media Act excludes political party representatives/officers/employees, or any person who is engaged in political activities to be a member of the Media Council. The Media Act also states that the Media Council and its members are only subject to the law and they cannot be instructed in their activities. The members' mandate is free, they are subject to strict rules of conflicts of interest and as an essential element of independence, they cannot be called back.

The Media Act provides full access to judicial remedies. Thus, the nomination and selection procedure may not be suitable for exercising decisive influence on the contents of media services and press products by one or more parties, the Government or the National Assembly (see Legislative Decree 46/2007. (VI.27.) AB).

The rules of the Media Authority's presidential election presume that the Prime Minister and the two-thirds majority of the MPs agree on the President of the Media Authority, which is a premise of a broad consensus.

Regarding public offices and mandates, the extended office term is a step towards the independence from the Government and the National Assembly. From the point of view of the functioning of the state and the society, the Media Council carries out important tasks. In order to distance themselves from the Government and the National Assembly, the President and its members receive their mandate for a period beyond parliamentary terms.

There are several forms of transparent and democratic elections. As outlined in paragraph 13 of the Explanatory Memorandum of the Council of Europe's Recommendation REC (2000) 23: "*The Recommendation stipulates that members of regulatory authorities for the broadcasting sector should be appointed in a democratic and transparent manner. The term "democratic" should be understood in its wider sense, given that the members of regulatory bodies are sometimes elected, sometimes nominated by public authorities (president, government or parliament) or by non-governmental organisations.*"

The six members of the Board of Trustees of the Public Service Foundation are elected by the Hungarian National Assembly according to a method that three members are appointed by the governing party and other three by the opposition, which ensures the political plurality of the Board. The Board cannot interfere in the content of the public service media, or limit in any way the editorial responsibility, as it is also stated in Article 91. § (1) d) of the Media Act accordingly: „The Public Service Foundation shall exercise the founders' and shareholders' rights in respect of the public media service providers, as defined by the provisions of the Civil Code applicable to business associations. However, it is not entitled: [...] to define the programme flow structure of a public media service provider, as well as the content of its programme flow, services or programmes.”

The Media Act foresees a separate body, the Public Service Board for guaranteeing the social control over the public service media. The members of this body are appointed by churches, municipalities, national and ethnic minorities to represent wide a range of social values.

### **Act CXII of 2011 on Informational Self-Determination and Freedom of Information**

*(29) On 18 October 2012, the Venice Commission adopted its Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information of Hungary. Despite the overall positive assessment, the Venice Commission identified the need for further improvements. However, following subsequent amendments to that law, the right to access government information has been significantly restricted further. Those amendments were criticised in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in*

*March 2016. It indicated that the amounts to be charged for direct costs appear to be entirely reasonable, but the charging for the time of public officials to answer requests is unacceptable. As was acknowledged by the Commission's 2018 country report, the Data Protection Commissioner and the courts, including the Constitutional Court, have taken a progressive position in transparency-related cases.*

Hungary recognises the importance of access to public information as a means to provide for transparency in the government sector. (The Fundamental Law ensures the right to access and disseminate data of public interest.)

The amendment of Act CXII of 2011 on Informational Self-Determination and Freedom of Information aimed at strengthening the safeguards of fundamental rights in such a manner that it took into account the interest of data controllers as well. Experience from the administration revealed that specific provisions of the Freedom of Information Act fell short of the necessary flexibility and information requests from applicants put an overwhelming additional burden on data controllers that could prevent them from fulfilling their routine tasks as well as from satisfying information requests from applicants. The amendments aimed at determining the procedures and conditions where satisfying an information request would need additional human or material resources.

The OSCE report found that the charges set by the Hungarian law, for direct costs of information requests, appeared to be entirely reasonable and could be presumed to reflect real costs. They were certainly in line with regional comparative costs.

The costs of disclosure of information are strictly regulated in Act CXII of 2011 on Informational Self-Determination and Freedom of Information and in Government Decree No. 301/2016 (IX. 30.) on the fee chargeable for compliance with requests for public information.

Section 29 subsection 3 of Act CXII of 2011 states that the body with public service functions controlling the data in question may charge a fee covering only the costs of disclosure of information, and shall communicate this amount to the requesting party in advance. Section 29 subsection 5 of the same act lays down that the fee can be charged only if compliance with a data request is likely to entail unreasonable hardship on the staff of the body with public service functions in carrying out its normal duties. The requesting party shall be notified within fifteen days from the date of receipt of his request if compliance with his request is likely to entail such an unreasonable hardship, as well as of the amount of the fee chargeable, and if there is any alternate solution available instead of making a copy. If compliance with the request is likely to entail unreasonable hardship, the amount of the fee chargeable shall be calculated based on the staff costs related to satisfying the data request.

Section 3 of Government Decree No. 301/2016 states that the fee on the staff costs related to satisfying the data request shall be calculated only if the time required to satisfy the data request exceeds 4 working hours. Staff costs only include the time required to trace, aggregate, systematize and copy the requested information, as well as when parts of the requested information should be reduced into an unrecognisable form. Staff costs related to satisfying the data request cannot exceed 4400 HUF's per hour (~14 EUR's per hour).

Section 31 subsection 1 of Act CXII of 2011 states that the requesting party may bring the case before the court for having the fee charged for compliance with the request reviewed. Section 52 subsection 1 also states that any person shall have the right to notify the National Authority for Data Protection and Freedom of Information and request an investigation alleging an infringement relating to his or her personal data or concerning the exercise of the rights of access to public information or information of public interest, or if there is imminent danger of such infringement.

In addition, it must be noted that Hungary is a party to the Council of Europe Convention on Access to Official Documents. Article 6 Para. 2 of the Convention states „[i]f a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused”. Article 7 Para. 2 also states that „[a] fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published”. This demonstrates that even the Convention allows for possible limitations as it also allows the Parties to charge fees for reproduction and delivery.

The Explanatory Report to the Convention says that Article 7 Para. 2 means that „[i]n the case of copies, the cost of access may be charged to the applicant, but also in accordance with the self-cost principle and be reasonable; the public authorities should not make any profit”. Hungary adopted rules that are consistent with the Convention, so the rules in force are in order and the issues raised in the reasoned proposal have been resolved. Staff costs can only be charged if the request entails unreasonable hardship on the staff of the body with public service functions in carrying out its normal duties, therefore these fees are reasonable and are also not serving the purpose of making any profit.

## **Freedom of the media and of association during the 8<sup>th</sup> April 2018 elections**

(30) *In its report, adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections stated that access to information as well as the freedoms of the media and association have been restricted, including by recent legal changes<sup>20</sup> and that media coverage of the campaign was extensive, yet highly polarized and lacking critical analysis due to the politicisation of media ownership and influx of the government's publicity campaigns. The public broadcaster fulfilled its mandate to provide free airtime to contestants, but its newscasts and editorial output clearly favoured the ruling coalition, contrary to international standards. Most commercial broadcasters were partisan in their coverage, siding either with the ruling or opposition parties. Online media provided a platform for pluralistic, issue-oriented political debate. It further noted that politicisation of the ownership, coupled with a restrictive legal framework and absence of an independent media regulatory body, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information. It also mentioned that the amendments introduced undue restrictions on access to information by broadening the definition of information not subject to disclosure and by increasing the fee for handling information requests.*

As far as the independence of the media regulatory body is concerned, please refer to the comments to recital (28) above.

In Hungary the regulatory environment on political advertising was reformed by two amendments to the Fundamental Law [Article IX(3)] in 2013 as well as the new Election Procedure Act and took its actual shape by taking fully into consideration the Decision 1/2013 (I. 7.) AB of the Hungarian Constitutional Court and the recommendations of the Venice Commission. Due to the amendments political advertisements can be published through any media service, free of charge in an unbiased manner without any modification. Media service providers are not obliged to publish campaign advertisements; however, if they undertake to do so, they can do it only on the terms mentioned before. The Election Procedure Act prescribes not only that the same amount of time shall be ensured to each nominating organisations with a national list for publishing the political advertisement but also ensures equal opportunities by setting daily time intervals and changing the order of appearance. The Hungarian regulation is similar to those applied in numerous European countries in line with the 2008 decision of the European Court of Human Rights in the 'TV Vest AS & Rogaland Pensjonistparti v. Norway' case. In the present campaign three commercial media service providers (RTL Klub, ATV, Class FM) published political advertisements.

---

<sup>20</sup> According to the ODIHR Limited Election Observation Mission Final Report (Warsaw, 27 June 2018), the legislation in question: (1) Act on Freedom of Information; (2) Act on Election Procedures, (3) Act on Campaign Finance. Source: <https://www.osce.org/odihr/elections/hungary/385959?download=true>

As far as the allegation of a „chilling effect“ is concerned, it is not supported by any facts whatsoever, hence it is difficult to make legal counter arguments.

### **Restrictions on freedom of opinion and expression**

*(31) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about Hungary's media laws and practices that restrict freedom of opinion and expression. It was concerned that, following successive changes in the law, the current legislative framework does not fully ensure an uncensored and unhindered press. It noted with concern that the Media Council and the Media Authority lack sufficient independence to perform their functions and have overbroad regulatory and sanctioning powers.*

The Hungarian Government is committed to promote and protect the freedom and pluralism of media, as well as to grant equal access to media contents for everyone, as reflected by the powerful legal and constitutional safeguards of media freedom in Hungary. The Fundamental Law stipulates that everyone shall have the right to freedom of expression and that Hungary recognizes and protects the freedom and diversity of the press.

There is no censorship of the internet. The government does not interfere with internet operations nor does it restrict bandwidth or the use of routers, switches or other devices. Under Hungarian law, internet or media services can only be suspended in an emergency or for defence purposes. Social Media sites, such as Facebook or Twitter as well as YouTube and international blog sites are freely accessible. Electronic content is not filtered and there is no censorship over blogs or text messages, nor is there any way to restrict their access.

In response to earlier worries about Hungary's 2010 media regulations, that generic terms and high fees could lead to self-censorship and could curtail Hungarian journalism, the report concluded that no online medium has been fined. Internet service providers are not responsible for content and not obliged to monitor it. According to the Freedom House report, the existence of self-censorship is only proven by word of mouth.

As far as the independence of the media regulatory body is concerned, please refer to the comments to recital (28) above.

In addition to what has been said in the comments to recital (27), it is submitted that sanctions and fines imposed by the Media Council can be suspended by a court order. As the case law shows, the courts granted the suspension every time it has been asked for, and the fines – as any other sanctions in the field – are only due when the decision becomes legally binding.

## **Publication of a list of people allegedly working to “topple the government” and the denial of accreditation to several independent journalists**

*(32) On 13 April 2018, the OSCE Representative on Freedom of the Media strongly condemned the publication of a list of more than 200 people by a Hungarian media outlet which claimed that over 2 000 people, including those listed by name, are allegedly working to “topple the government”. The list was published by the Hungarian magazine Figyelő on 11 April and includes many journalists and other citizens. On 7 May 2018, the OSCE Representative on Freedom of the Media expressed major concern over the denial of accreditation to several independent journalists, which prevented them from reporting from the inaugural meeting of Hungary’s new parliament. It was further noted that such an event should not be used as a tool to curb the content of critical reporting and that such a practice sets a bad precedent for the new term of Hungary’s parliament.*

The Fundamental Law of Hungary stipulates that the freedom and diversity of the press shall be recognised and protected. The Government of Hungary is thus committed to ensure freedom of expression and editorial freedom, as a consequence the functioning and publications of privately owned media outlets fall outside of the competences of the Hungarian Government.

The accreditation of journalists to the inaugural session of Hungary’s new parliament was accepted on the basis whether the journalist concerned respected the rules governing the press arrangements during the 2014-2018 parliamentary term. The Code of conduct for the press on the premises of the National Assembly is laid down in the Order 9/2013 of the Speaker of the National Assembly. Accordingly journalists have access to a designated press area and the plenary hall, they can report on the activities of the parliament without restrictions, but basic behavioural rules have to be respected in order to ensure the dignity of the place. These rules are similar to the Code of conduct for the journalists on European Commission premises, according to which “Journalists shall have due regard to the dignity, privacy and integrity of all individuals, Commissioners, Commission staff, visitors and any other individuals present on Commission premises as well as to the integrity of the Commission’s property and equipment. Any violation may lead to the measures laid out in Commission Decision 2015/443.” Compared to Commission rules, Order 9/2013 is stricter only in cases such as: alcohol, drugs and the display of totalitarian symbols. It is to be noted that no serious conclusions can be drawn from a one-off event, mentioned in the European Parliament’s reasoned proposal.

**Hungary recognises the importance of access to public information as a means to provide transparency in the governmental sector and the Fundamental Law ensures the right to access and disseminate data of public interest. Therefore, it is not justified to mention the elements of recitals 27-32 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the**

**existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

### **Academic freedom**

The clarification of the rules of the operation of foreign universities in Hungary was merely misinterpreted, the academic freedom is not restricted in Hungary. The Hungarian Act on National Higher Education entered into force in 2012, so its five-year systematic revision became due at the end of 2016. The systematic revision was implemented by the Hungarian Educational Authority and based on the findings of the revision, the amendment of the National Higher Education Act was necessary. The objective of the amendment of the National Higher Education Act was to ensure that only high quality foreign higher education institutions may operate in Hungary.

#### **Amendment of Act CCIV of 2011 on National Tertiary Education**

*(33) On 6 October 2017, the Venice Commission adopted its Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. It concluded that introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, for foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. Those universities and their students are protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to, and freedom of, education. The Venice Commission recommended that the Hungarian authorities, in particular, ensure that new rules on requirement to have a work permit do not disproportionately affect academic freedom and are applied in a non-discriminatory and flexible manner, without jeopardising the quality and international character of education already provided by existing universities. The concerns about the Amendment of Act CCIV of 2011 on National Tertiary Education have also been shared by the UN Special Rapporteurs on the freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on cultural rights in their statement of 11 April 2017. In the concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of such constraints on the freedom of thought, expression and association, as well as academic freedom.*

It is submitted that the academic freedom is not restricted in Hungary, the clarification of the rules of operation of foreign universities in Hungary was merely misinterpreted. The Hungarian Act on National Higher Education entered into force in 2012, so its five-year systematic revision became due at the end of 2016. The revision is based on the findings of the Educational Authority and its main objective is to ensure that only high quality foreign higher education institutions may operate in Hungary. Consequently, the Act requires that the operation of a foreign institution of higher education should be based on an international treaty.

Based on this revision, one of the aims of the modification of the Act on National Higher Education was to provide equal level playing field for the operation of the foreign universities. As regards the detailed provisions of the relevant Hungarian legislation see our comment under recital (34) of the reasoned proposal. The nature and goal of the criticised legislative amendments are not connected neither to freedom of thought or expression, nor to artistic or academic freedom. According to the legislation, on the territory of Hungary a foreign higher education institution may pursue a qualification if the following requirements are fulfilled: a preliminary agreement between the Contracting Parties (central governments), requirement of actual operation and recognition of the diploma issued, the operation being authorized by the Educational Authority and fulfilment of the requirements regarding the provisions of the name of the institution.

The recital of the reasoned proposal focuses on the negative elements of the Venice Commission's opinion. The Venice Commission also found that states have a large room for manoeuvre when it comes to regulating the operational conditions for institutions of higher education, as it is of national competence. The body also underlined that it is a legitimate goal to provide greater transparency in order to guarantee a quality education and to protect future students. The Venice Commission also acknowledged that some states do not allow foreign universities to operate at all, furthermore, that Hungary has the right to create and review regulation concerning institutions of higher education operating within its territory.

The European Commission itself has also stated that it is not without precedent that Member States of the EU enact special legal requirements for institutions of higher education with headquarters in a foreign country. Many Member States of the EU have much stricter rules in many aspects than the new Hungarian law.

### **Negotiations with foreign higher education institutions**

*(34) On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the new criteria to 1 January 2019 at the request of the institutions concerned and following the recommendation of the Presidency of the Hungarian Rectors' Conference. The Venice Commission has welcomed that prolongation. Negotiations between the Hungarian Government and foreign higher education institutions affected, in particular, the Central European University, are still ongoing, while the legal limbo for foreign universities remains, although the Central European University complied with the new requirements in due time.*

According to the Hungarian Act on Higher Education, the activity of foreign higher education institutions in Hungary is subject to two main conditions: a bilateral agreement in force between Hungary and the home country of the applicant institution

regarding the cooperation in cross-border higher education and the genuine higher education activity conducted by the applicant in its home country. Currently<sup>21</sup> there are 21 foreign institutions operating in Hungary, 6 of which are headquartered in a non-EEA country (1 in Thailand, 1 in Malaysia, 1 in China and 3 in the United States). With only one exception, all the institutions concerned have treated the amendment as a technical one and the solution has been clear from the beginning; the Government of Hungary has already signed the necessary cooperation agreements regarding the operation of the McDaniel College of Maryland, the Heilongjiang University of China and the Mahachulalongkornrajavidyalaya University of Thailand. The relatively short time between the amendment and the actual signing of the agreements has shown that the new legislation does not impose impossible conditions on foreign higher education institutions. With the swift and smooth conclusion of the negotiations our American, Chinese and Thai partners also demonstrated that the amendment does not at all jeopardize the freedom of higher education or create any obstacle to their activities in Hungary.

In order to conduct the necessary expert-level negotiations, the Hungarian Government has formed a working group. At the May 2017 session of this working group all the concerned foreign institutions requested the prolongation of the deadline set by the Higher Education Act. The same request was made by the Presidency of the Hungarian Rectors' Conference, in order to grant a longer time period for compliance. The Venice Commission has explicitly welcomed this position in its related opinion.

Fulfilling this request, and since the bilateral agreements were only finalized with two of the concerned institutions until that date – the McDaniel College of Maryland and the Heilongjiang University of China – the Hungarian Parliament decided to prolong the deadlines on 24 October 2017 upon the initiative of the Hungarian Government.

On 26 July 2018 a bilateral treaty was signed between the Hungarian Government and the State of Indiana. As a result, Notre Dame University will cooperate with Hungary's Pázmány Péter University to offer courses in chemical and civil engineering, as well as, mechatronics. With this agreement signed, the number of non-EEA higher education institutions will increase to seven.

As regards the Central European University, it is important to note that the name in English actually covers two institutions that operate together: the Közép-európai Egyetem (KEE) and the Central European University (CEU). Közép-európai Egyetem (KEE = Hungarian translation of the name "Central European University" as abbreviated) is a „public benefit purpose entity”, thus a privately-operated Hungarian

---

<sup>21</sup>[https://www.oktatas.hu/felsooktatas/kozerdeku\\_adatok/felsooktatasi\\_adatok\\_kozzetetele/felsooktatasi\\_intezmenyek/engedellyel\\_mukodo\\_kulfoldi\\_intezmenyek](https://www.oktatas.hu/felsooktatas/kozerdeku_adatok/felsooktatasi_adatok_kozzetetele/felsooktatasi_intezmenyek/engedellyel_mukodo_kulfoldi_intezmenyek)

higher education institution recognised by the Hungarian state and the Act on National Higher Education. The amendment of the National Higher Education Act related to the establishment and operation of foreign higher education institutions in Hungary never concerned this institution. The Central European University, New York (CEU) exists as an entity jointly operated with the Közép-európai Egyetem (KEE), and is a foreign higher education institution according to the Act on National Higher Education.

It must be pointed out that the Hungarian “Közép-európai Egyetem” – unlike its American counterpart – issues Hungarian diplomas under the Bologna System, in line with EU standards of quality assurance. In case the Hungarian diploma is issued in English and the institution’s name is also translated into English, it is confusing and unclear which institution issued the diploma. One of the aims of the amendment of the National Higher Education Act - regulating amongst others that higher education institutions should not bear the same name as other higher education institutions - was meant to remedy such shortcomings. It should be highlighted that the Central European University did not carry out education activity in the US, only in Budapest while issuing an American diploma.

The Central European University has signed an agreement with the Bard College of New York on 8 September 2017, in order to fulfil the requirement of conducting actual education activities in the State of New York. According to the agreement, CEU will start a bachelor level higher education activity in New York, for which the Bard College will grant the necessary infrastructure (campus). However, it is important to emphasize that by concluding this agreement after the start of the academic year in September 2017, the CEU still did not immediately fulfil the requirement in question, since the actual educational activities at the Bard College could have only started in the spring semester of 2018.

The CEU has admitted students to the Academic Year 2018-2019 and guaranteed that all students who successfully complete their academic requirements will be able to graduate with a CEU degree.

### **Disproportionate restrictions of Union and non-Union universities**

*(35) On 7 December 2017, the Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that the Amendment of Act CCIV of 2011 on National Tertiary Education disproportionately restricts Union and non-Union universities in their operations and that the Act needs to be brought back in line with Union law. The Commission found that the new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (the “Charter”) and the Union’s legal obligations under international trade law.*

It is to be highlighted that the infringement procedure is still pending and ultimately the Court of Justice of the EU (CJEU) is competent to establish whether or not Hungary infringed EU law.

*(36) On 9 August 2018, it became public that the Hungarian government plans to withdraw the Masters programme of Gender Studies at the public Eötvös Loránd University (ELTE) and to refuse the recognition of the MA in Gender Studies from the private Central European University. The European Parliament points out that a misinterpretation of the concept of gender has dominated the public discourse in Hungary and deplors this wilful misinterpretation of the terms 'gender' and 'gender equality'. The European Parliament condemns the attacks on free teaching and research, in particular on gender studies, the aim of which is to analyse power relationships, discrimination and gender relations in society and find solutions to forms of inequality and which has become the target of defamation campaigns. The European Parliament calls for the fundamental democratic principle of educational freedom to be fully restored and safeguarded.*

In every Member State of the European Union the right of accreditation of academic programmes falls exclusively within the competence of the state. In the future, no state-funded and accredited social gender studies programme will be launched in Hungary. However, such ongoing higher education programmes may continue for their full duration. This decision in no way restricts the freedom of academic research as the topic can continue to be researched to scientific standards within other academic fields and can also continue to be taught at universities which are operated by foundations.

**It cannot be overemphasized that the principle of legal certainty requires that the relevant Hungarian legislation be applicable to all institutions of higher education that seek to operate in the country. Therefore, it is not justified to mention the elements of recitals 33-36 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

## Freedom of religion

The aim of the Hungarian Legislator by adopting a new legislation on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary was to make a clear distinction between the legal status of historic (traditional) churches and the status of other religious communities in order to effectively handle previous practices often leading to abuses. The difference of treatment is based on objective reasons. Further to the judgement of the European Court of Human Rights and of the Constitutional Court of Hungary, a new amendment to the Church Act is under preparation.

### **Right to Freedom of Conscience and the Legal Status of Religious Communities**

*(37) On 30 December 2011, the Hungarian Parliament adopted Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and*

*Religious Communities of Hungary, which entered into force on 1 January 2012. The Act reviewed the legal personality of many religious organisations and reduced the number of legally recognised churches in Hungary to 14. On 16 December 2011 the Council of Europe Commissioner for Human Rights shared his concerns about this Act in a letter sent to the Hungarian authorities. In February 2012, responding to international pressure, the Hungarian Parliament expanded the number of recognised churches to 31. On 19 March 2012 the Venice Commission adopted its Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, where it indicated that the Act sets a range of requirements that are excessive and based on arbitrary criteria with regard to the recognition of a church. Furthermore, it indicated that the Act has led to a deregistration process of hundreds of previously lawfully recognised churches and that the Act induces, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they are recognised or not.*

The Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, which entered into force on 1 January 2012, created the obligation that those faith-based communities which did not qualify to gain the status of churches had to go through a procedure to be re-recognized as churches. Several of the communities concerned turned to the European Court of Human Rights for their status not being restored. The complainants argued that the Act was discriminative and violated freedom of religion. Adopting Act CCVI of 2011 was necessary to end the previous unfortunate and opaque situation widely referred to as ‘church business’. The regulation recognizes 32 traditional churches, denominations and faith-based communities compared to the some 200 recognized ones before the adoption of the Act, among which 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.

The Act, which entered into force on the 1 of January 2012, guaranteed the right to bodies earlier registered by the courts as churches to transform into religious associations, providing them legal continuity, whilst retaining their legal personality and preserving their property. According to the 2013 amendment, these communities have automatically received the status of organizations performing religious activity and they are entitled to use the term “church” in their names.

The Fundamental Law provides both the individual and collective freedom of religion, confirming the institutionalised recognition and organisation of churches. As the Fundamental Law explicitly recognises the rights of ‘religious communities’ that do not operate as churches, the status of a collective religious community and the basic freedoms stemming from the right of thought, conscience and religion are ensured in their entirety for these communities as well. The Constitutional Court decides on a case-by-case basis on the applicability of the criticized rules as declared in the decision 23/2015 (VII. 7.) of the Constitutional Court.

The 2013 Report of the State Department of the United States of America on the freedom of religion, published on the 28 July 2014, found that in Hungary the Fundamental Law and other legislation generally protect the freedom of religion, and according to the 2013 amendment, the differences between religious communities have decreased.

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. This means that such communities may choose only other private law statuses, such as association or foundation. There are examples in the EU for a strict separation of church and state, as a result of which there is no distinct category in place for churches. The majority of Member States clearly distinguishes between the legal status of historic (traditional) churches and the status of other denominations and there are various legal forms for this distinction. In several Member States some churches are listed in the constitution, while others are subject to separate regulations or different '*sui generis*' statuses provided for them. The system of at least one EU Member State is almost identical with the Hungarian one: official recognition is provided by the Parliament. The case-law of the ECtHR recognizes the right of states to create various legal categories for religious communities, the basic prerequisite of which is that some kind of a legal form shall be available without obstacles. It is also worth mentioning that that in 1568, the Hungarian National Assembly of Torda (Transylvania) was one of the first in Europe to declare free practice of any Christian religion (Catholicism, Calvinism, Lutheranism, Unitarianism).

### **Unconstitutional deregistration of recognised churches**

*(38) In February 2013, Hungary's Constitutional Court ruled that the deregistration of recognised churches had been unconstitutional. Responding to the Constitutional Court's decision, the Hungarian Parliament amended the Fundamental Law in March 2013. In June and September 2013, the Hungarian Parliament amended Act CCVI of 2011 to create a two-tiered classification consisting of "religious communities" and "incorporated churches". In September 2013, the Hungarian Parliament also amended the Fundamental Law explicitly to grant itself the authority to select religious communities for "cooperation" with the state in the service of "public interest activities", giving itself a discretionary power to recognise a religious organisation with a two-thirds majority.*

The provision objected to by the report assures the state the possibility to grant to organizations conducting religious activities special status as 'established churches'. The Parliament may recognize religious communities that fulfil the requirements established in the relevant cardinal law, such as previous long-term religious activity, the extent of social support and the ability of the applicant organization to serve the community. The ability of the entity to cooperate with the state authorities is also among the conditions of

eligibility, for the very reason that the aim of legally recognizing a religious community as a 'church' is to ensure the efficiency of working for the benefit of the community.

According to Act No CCVI of 2011 on the freedom of conscience and freedom of religion and on the acknowledgement of religions and religious communities as churches, a religious community serves as an institutional framework for religious activities, which has two legal forms acknowledged by the Parliament, the 'established church' and the 'organization conducting religious activity'. The religious community recognized by the Parliament as 'established church' functions as a public law entity, whereas the 'organization conducting religious activity' is a private law association. It is open to all religious communities to make use of the legal possibility of being recognized as any of these two categories, if they comply with the conditions set by the law.

The rules of granting the status of a public law entity are more stringent than those on private law entities. The difference between the two categories is that private law organizations must fulfil less criteria, whereas 'established churches' must comply with additional requirements besides the criteria set for the private entity organizations. Nevertheless, those organizations, which are not acknowledged as 'established churches' by the Parliament, may still function as churches in the theological sense, whereas from a legal point of view these entities will be conducting their religious activities according to their own regulations and rules as special legal persons. It is important to stress that the difference in the legal status of the two forms on conducting religious activities does 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. These rights are granted by the Fundamental Law for both categories. Religious organizations that are not granted the status of 'established churches' are independent organizations, meaning that they cannot be monitored or controlled by the state. The Fundamental Law makes it clear that *the principle of separation of state and church* equally applies to both categories of entities, regardless of the religion they represent. The difference between the legal statuses of the two categories was recognized by Decision No. 17/2017. (VII.18.) of the Hungarian Constitutional Court as well, which established that there is no constitutional requirement to grant to all churches the same legal status and the state is not obliged to cooperate in the same way with all churches, on the condition that the difference in treatment is based on objective reasons.

The Fourth Amendment of the Fundamental Law was not related to the decision of the Constitutional Court on church law, rather it was a comprehensive amendment to the Fundamental Law consisting of 22 Articles, one of which, Article 4, applied to churches.

In one EU Member State the recognition of religious communities as 'churches' is decided at the ministerial level, but the Parliament may also decide by law in such matters. In another Member State, the competence to recognize religious communities as

churches belongs to the Minister of Justice, who decides upon the proposal of the Parliament, which testifies the recognition of the community as church by a federal law, which cannot be legally challenged. In another EU Member State, traditional churches concluded an agreement with the State, whereas the recognition of other religious communities belongs to ministerial competence. Moreover, in some Member States the constitution proclaims which religion is the main religion of the country; such prioritized religion in some Member States is for example the Evangelical Lutheran Church, the Eastern Orthodox Church and the Roman Catholic Church.

### **Violation of the freedom of conscience and religion**

*(39) In its judgment of 8 April 2014, Magyar Keresztény Mennonita Egyház and Others v. Hungary, the ECtHR ruled that Hungary had violated freedom of association, read in the light of freedom of conscience and religion. The Constitutional Court of Hungary found that certain rules governing the conditions of recognition as a church were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the European Convention on Human Rights. The relevant Act was accordingly submitted to the Hungarian Parliament in December 2015, but it did not obtain the necessary majority. The execution of that judgment is still pending.*

The ECtHR found violation of the right to freedom of association read in light of the right to freedom of religion of the applicant religious communities, which lost their status as registered churches following the entry into force in 2012 of the new Hungarian Church Act. The Court found that ‘in removing the applicants’ church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure whose justification as such is open to doubt, and finally, in treating the applicants differently from the incorporated churches not only with regard to the possibilities for cooperation but also with regard to entitlement to benefits for the purposes of faith-related activities, the authorities disregarded their duty of neutrality vis-à-vis the applicant communities’.

The judgment of the ECtHR found violations in respect of 16 religious communities. The Court obliged the parties, including Hungary, to carry out consultations on the amount of the compensation. Agreements were reached with nine communities, while in respect of seven further communities, the ECtHR defined the amount of compensation. Many of these communities claimed for an unreasonable amount of compensation, especially those which had wanted to gain the religious status in order to receive the state support. These claims were rejected by the ECtHR and the awarded compensations were more in line with the amount previously offered by the Hungarian Government. Applicants pay the Government a fair compensation on the basis of external court agreements or court judgments (28 June 2016 and partial judgments of 25 April 2017).

On 6 July 2015, upon the motion of the Budapest Administrative and Labour Court submitted in the framework of the registration proceedings pending before it upon the request of the Budapest Autonóm Gyülekezet, the Constitutional Court found that certain rules governing the conditions of recognition as a church (which have already been amended after the introduction of the applications to the ECtHR) were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the Convention by 15 October 2015. The relevant Act was accordingly submitted to the Parliament in December 2015 but it did not obtain the support of the necessary qualified (two-thirds) majority. The new rules have not yet been adopted.

A new amendment to the Church Act is currently under preparation, which provides the court lighter condition with church registration than it is provided in the ordinary legal status of the churches.

**The Fundamental Law of Hungary provides both the individual and collective freedom of religion, confirming the institutionalised recognition and the organisation of churches. Therefore, it is not justified to mention the elements of recitals 37-39 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

#### Freedom of association

The right to freedom of association is guaranteed by the Fundamental Law of Hungary in line with the international standards. Hungary recognises the vital contribution of non-governmental organisations to the promotion of common values and goals. The law on the Transparency of Organisations receiving Support from Abroad intended to enhance the transparency and accountability of funding of non-governmental organisations which was recognized as a legitimate aim by the Venice Commission. An annual posterior declaration does not restrict the movement of capital, as the latter has already taken place at the time of the declaration. Existing and proposed EU law measures contain similar or more restrictive transparency requirements. Draft laws mentioned in recital (44) were not adopted. The legislation package on combating illegal immigration responds to a growing concern of citizens and aims to combat organizational activities that support illegal immigration.

#### **Audits of NGOs which were beneficiaries of the Norwegian Civil Fund**

*(40) On 9 July 2014, the Council of Europe Commissioner for Human Rights indicated in his letter to the Hungarian authorities that he was concerned about the stigmatising rhetoric used by politicians questioning the legitimacy of NGO work in the context of audits which had been carried out by the Hungarian Government Control Office concerning NGOs which were operators and beneficiaries of the NGO Fund of the EEA/Norway Grants. The Hungarian Government signed an agreement with the Fund and, as a result, the payments of the grants*

*continue to operate. On 8-16 February 2016, the UN Special Rapporteur on the situation of human rights defenders visited Hungary and indicated in his report that significant challenges stem from the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedoms of opinion and expression, and of peaceful assembly and of association, and that legislation pertaining to national security and migration may also have a restrictive impact on the civil society environment.*

Hungary provides the fundamental human rights enshrined in international treaties and Hungary's Fundamental Law to all its citizens, including human rights defenders. Their support level and playing field have not diminished: tens of thousands of organizations participate in tenders run by the Trust for National Cooperation, furthermore both the number of supported projects and the amount of funding available have shown an increase, compared to prior years.

It must be noted that regarding the investigations into the distribution of the Norway grants (Norwegian Civic Fund) that these funds are similar to EU resources and the investigations did not at all concern the activities of human rights defenders, but these were accountability measures regarding the financial operations of their organizations. The money managed by the Norway grants can be considered public money, therefore it is in the public's interest to find out whether the funds were utilized to benefit all Hungarian citizens according to the applicable rules. The review report carried out by Ernst & Young earlier revealed several misconducts about the distribution of the Norwegian Civic Support Fund. The investigation by the Government Control Office (GCO) had the sole purpose of finding out whether all 60 thousand civil organizations had equal conditions in competing for the Norwegian grants. The investigation by the GCO has concluded and found 61 misconducts in 63 projects under scrutiny, thus this investigation proved that the organizations responsible for the distribution have failed to respect the rules. The Government of Norway has also launched an investigation into the allocation of its funds which, in itself, proves that they have also found something to disapprove.

The Government of Hungary has reformed the whole distribution mechanism of its national development policy, and the review of the distribution mechanisms of the Norway grants was part of this process. The system, due to the reform, has become more transparent and has increased its accountability which are highly important factors in the allocation of public money. In December 2015 the Government signed an agreement with the Norway grants. In parallel, the GCO withdrew its appeal and did not initiate further investigations in this matter. The conclusion of this case shows that the Government is aiming at cooperation; the payments of the Norway grants continue to operate undisturbed, complying with the transparency criteria of the rule of law, as well as with the common rules set out by Norway and Hungary.

## **The law on the Transparency of Organisations Receiving Support from Abroad**

*(41) In April 2017 a draft law on the Transparency of Organisations Receiving Support from Abroad was introduced before the Hungarian Parliament with the stated purpose of introducing requirements related to the prevention of money laundering or terrorism. The Venice Commission acknowledged in 2013 that there may be various reasons for a state to restrict foreign funding, including the prevention of money-laundering and terrorist financing, but those legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. On 26 April 2017, the Council of Europe Commissioner for Human Rights addressed a letter to the Speaker of the Hungarian National Assembly noting that the draft law was introduced against the background of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labelled some NGOs as “foreign agents” based on the source of their funding and questioned their legitimacy; the term “foreign agents” was, however, absent from the draft. Similar concerns have been mentioned in the statement of 7 March 2017 of the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law, as well as in the Opinion of 24 April 2017 prepared by the Expert Council on NGO Law, and the statement of 15 May 2017 by the UN Special Rapporteurs on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression.*

It must be underlined that Hungary recognises the vital contribution of non-governmental organisations to the promotion of common values and goals (over 60 000 non-governmental organisations are operating in Hungary). These organizations also play an important role not only in the democratic control of the government and shaping public opinion but also in addressing certain social difficulties and fulfil other community policy needs. Therefore, the right to freedom of association as well as other relating fundamental rights, such as the freedom of assembly and freedom of expression, are guaranteed by the Fundamental Law of Hungary in line with the norms of the Council of Europe. The Act intended to enhance the transparency of funding of non-governmental organizations. It neither affects the basic rights associated with the freedom of association, nor hampers the access of associations to resources on the grounds of the nationality or the country of origin. As noted in the joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, as well as the expert opinion of the Venice Commission on the issue, the freedom to seek, receive and use resources can be subject to requirements related to the prevention of money laundering or terrorism. These documents also underline that such resources may legitimately be subject to reporting and transparency requirements.

The term ‘organisations supported from abroad’ is purely factual, is not stigmatising and does not include any negative value judgement. This way the legislation does not create any reputational burden for the organisations or their donors. The Parliamentary Assembly of the Council of Europe has also acknowledged in its Resolution 2162 (2017) that the Hungarian law did not include some of the controversial terms ‘foreign agent’ or

the specific and thus discriminatory reference to NGOs which defend human rights, and that it provided for a judicial rather than administrative review. Consequently, it can be acknowledged that the overall purpose of the Act is in line with relevant international guidelines, including those elaborated under the auspices of the Council of Europe. It is to be highlighted that the infringement procedure is still pending and ultimately the CJEU is competent to establish whether or not Hungary infringed EU law.

As to the financing of NGOs is concerned, it should be noted that Hungary was the first Central-European country that introduced in 1996 a specific mechanism to support the activity of NGOs.<sup>22</sup> Individual taxpayers – natural persons – may designate one percent of their income taxes paid to a qualified non-profit organization and another one percent to a church. Experience shows that this is an important source of financing for many NGOs: in 2018, 8.3 billion HUF was offered to 27 000 NGO-s by 1.79 million Hungarian taxpayers. The amount of the donations exceeded the sum of the previous year's 7.8 billion HUF.

### **Interference with the freedom of association and expression**

*(42) On 13 June 2017, the Hungarian Parliament adopted the draft law with several amendments. In its Opinion of 20 June 2017, the Venice Commission recognised that the term 'organisation receiving support from abroad' is neutral and descriptive, and some of those amendments represented an important improvement but at the same time some other concerns were not addressed and the amendments did not suffice to alleviate the concerns that the law would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination. In its concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of those requirements, which appeared to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary.*

In Hungary more than 60 000 NGOs are operating without problems though less than 1% of them seek to exert political influence without any kind of democratic accountability. NGOs are playing an important role in shaping public opinion and perception; this is well mirrored in the Preamble of the Act acknowledging their role in contributing to societal self-organization. Therefore, there is a substantial public interest for the entire society to see what interests they represent. For this very reason the transparency of NGOs funded from abroad is an essential requirement from the aspect of rule of law. It must be highlighted that the Act does not prohibit funding from abroad and the operation of NGOs either; it merely makes their funding, transparent, in conformity with the established principles of democracy. Also, non-governmental

---

<sup>22</sup> Act CXXVI of 1996 on the Use of a Specified Portion of the Personal Income Tax

organisations are not persecuted for receiving financial assistance from abroad but they purely have to inform the public over a certain threshold sum. Hence the Act does not adversely affect the essential content of freedom of association.

In its opinion on the Hungarian Draft Law on the Transparency of Organisations Receiving Support from Abroad (hereafter: the Act) the Venice Commission welcomed the fact that no new, separate register was established for organisations receiving foreign funding because, as the Commission stated, creating a separate register might strengthen the perception that the Act aims at stigmatising certain civil society organisations, based solely on their source of financing. The Hungarian Parliament, having taken into consideration the recommendations of the Commission, amended the original Draft Law and reduced the period of deregistration from three to one year. This improvement, among others, demonstrates the readiness and willingness of the Hungarian Parliament to concerns brought up in relation to the Act and thereby the claim of disproportionate and unnecessary interference is overruled. In its 2013 Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, the Venice Commission explicitly acknowledged that 'it is justified to require the utmost transparency in matters pertaining to foreign funding'. As a result, ensuring transparency is a legitimate aim and - unlike in Egypt - there is no restriction on receiving funding in the Hungarian case.

### **Transparency of Organisations Receiving Support from Abroad**

*(43) On 7 December 2017, the Commission decided to start legal proceedings against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions in the NGO Law which in the view of the Commission, indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission alleged that Hungary had violated the right to freedom of association and the rights to protection of private life and personal data enshrined in the Charter, read in conjunction with the Treaty provisions on the free movement of capital, defined in Article 26(2) and Articles 56 and 63 TFEU.*

It is to be highlighted that the relevant infringement procedure is still pending and ultimately the Court of Justice of the EU is competent to establish whether or not Hungary infringed EU law. In this respect, since the final outcome of the process is still unknown for each party, any statement assuming the violation of EU law is a mere allegation which can adversely affect Hungary's political and legal interests. Moreover, the Commission did not feel under the same circumstances that it would be necessary to call on the Hungarian Government to suspend the application of the Act.

The Hungarian Parliament adopted the Act with certain amendments, reflecting to the recommendations of the Venice Commission which has analysed the compatibility of the bill with the applicable Council of Europe standards. Three out of the five concerns raised were taken up in the final version of the bill, namely 1) inclusion of the

proportionality principle for sanctions, 2) limiting the obligations to the major sponsors and 3) applying a one-year period for the deregistration procedure instead of 3 years. The Venice Commission recognised that these amendments represent an important improvement.

In its responses to the Commission, in the course of the infringement procedure and the ongoing court procedure, the Hungarian Government highlighted that, according to CJEU case law, a prior declaration or authorization may be deemed as a restriction to the free movement of capital. The CJEU previously held that while authorisation is not allowed, a prior declaration may be one of the proportionate measures which Member States are permitted to take since, unlike prior authorization, it does not entail suspension of the transaction in question but does still allow the national authorities to exercise effective supervision to prevent infringements of their laws and regulations.

Since the relevant Hungarian legislation calls for a report once the annual threshold is exceeded and yearly after that (together with the annual report), it applies an even softer tool, namely posterior declaration. Such a rare obligation may not be seen as an administrative burden on organisations. Furthermore, a posterior declaration is conceptually not capable of restricting the movement of capital, as the latter has already taken place at the time of the declaration. It may thus be concluded that the provision does not qualify as a restriction to the free movement of capital. Even if the restrictive nature may be established, the restrictions in question are necessary, proportionate and the least restrictive measures which are therefore compatible with EU law.

Regarding the justified aim of the legislation (which was called into question by the Commission without sound reasoning, referring to transparency as the legislator's 'alleged aim'), it must be highlighted that even the 'Venice Commission' agreed in its Opinion No. 889/2017 that 'ensuring transparency is also a legitimate aim. The Commission considers that transparency may on the one hand reveal the possible illicit origin of the financing (whether it is a result of a criminal activity or not), but also keep the public informed of the (legitimate) sources of financing of NGOs. It is also an instrument to ensure the regularity of the procedures followed for the financing, thus enabling the authorities to react and that other NGOs possibly also apply for the funding. Transparency may therefore justify proportionate reporting and disclosure obligations imposed on the associations.'

The proportionality is supported by the fact that the NGOs are subject to the obligation of declaration only in case of individual transactions above HUF 500 000 (approx. EUR 1 600) if the foreign funding surpasses HUF 7.2 million (approx. EUR 23 000) per tax year, which amounts to the double of the threshold set by the anti-money laundering legislation. As to the data protection concerns, those individuals who donate such

amount are “entering public sphere” and are regarded as public players justifying that their name, amount of the donation and location data (country, city) become public.

In addition, it must be noted that the EU legislator recognizes and applies similar rules with a view to enhance transparency on the EU level. Regulation 1141/2014 contains several provisions on transparency requirements for European political parties and political foundations and on 28 September 2016 the Commission published its proposal for an Interinstitutional Agreement on a Mandatory Transparency Register, some provisions of which entail a more restrictive approach than the Hungarian law, by specifying prerequisites the various organisations must comply with and setting a lower threshold for reporting obligations on subsidies received.

### **The ‘Stop-Soros’ legislative package**

*(44) In February 2018, a legislative package consisting of three draft laws, (T/19776, T/19775, T/19774), was presented by the Hungarian Government. On 14 February 2018, the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law made a statement indicating that the package does not comply with the freedom of association, particularly for NGOs which deal with migrants. On 15 February 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. On 8 March 2018, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance warned that the bill would lead to undue restrictions on the freedom of association and the freedom of expression in Hungary. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that by alluding to the “survival of the nation” and protection of citizens and culture, and by linking the work of NGOs to an alleged international conspiracy, the legislative package would stigmatise NGOs and curb their ability to carry out their important activities in support of human rights and, in particular, the rights of refugees, asylum seekers and migrants. It was further concerned that imposing restrictions on foreign funding directed to NGOs might be used to apply illegitimate pressure on them and to unjustifiably interfere with their activities. One of the draft laws aimed to tax any NGO funds received from outside Hungary, including Union funding, at a rate of 25 %; the legislative package would also deprive NGOs of a legal remedy to appeal against arbitrary decisions. On 22 March 2018, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the draft legislative package.*

The new Hungarian Parliament did not adopt the above mentioned legislative package.

*(45) On 29 May 2018, the Hungarian Government presented a draft law amending certain laws relating to measures to combat illegal immigration (T/333). The draft is a revised version of the*

*previous legislative package and proposes criminal penalties for 'facilitating illegal immigration'. The same day, the Office of the UN High Commissioner for Refugees called for the proposal to be withdrawn and expressed concern that those proposals, if passed, would deprive people who are forced to flee their homes of critical aid and services, and further inflame tense public discourse and rising xenophobic attitudes. On 1 June 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. On 31 May 2018, the Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe confirmed the request for an opinion of the Venice Commission on the new proposal. The draft was adopted on 20 June 2018 before the delivery of the opinion of the Venice Commission. On 21 June 2018, the UN High Commissioner for Human Rights condemned the decision of the Hungarian Parliament. On 22 June 2018, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights indicated that the provision on criminal liability may chill protected organisational and expressive activity and infringes upon the right to freedom of association and expression and should, therefore, be repealed. On 19 July 2018, the Commission sent a letter of formal notice to Hungary concerning new legislation that criminalises activities that support asylum and residence applications and further restricts the right to request asylum.*

At the 2018 parliamentary elections, voters delivered another two-thirds majority to the governing parties and a strong mandate to take measures in order to safeguard Hungary's security and tighten regulations to counter illegal migration. With that mandate, on 20 June, Parliament adopted the STOP Soros legislative package (Act VI of 2018 on amending certain acts with respect to measures combating illegal migration). The package responds to a growing concern among Hungarian voters, and citizens throughout Europe, that security, both internal and external, must be a top priority. Considering that the lack of transparency in the non-governmental sector is not unique to our country and that many other Member States struggle with it, Hungary joins a handful of countries that lead the way in creating reasonable regulations that protect citizens. The package puts forward a more rigorous response by declaring illegal immigration a threat to Hungary's national security. Anyone involved in the organization of aiding or abetting illegal migration will be committing a criminal offence. The comprehensive legislation includes amendments to the Police Act, the Criminal Code, the Act on Asylum, the Act on the State Border and the Act on Misdemeanours. According to Article 353/A. of the Criminal Code any person who is engaged in the pursuit of organizational activities:

- a) with a view to initiating an asylum procedure in Hungary on behalf of a person who is not subject to persecution on the basis of race or nationality, his/her alliance with a specific social group, religious and/or political conviction, or whose fear of being subject to direct persecution is unfounded in his or her native country or the country of his or her habitual residence, or the country through which he or she travelled in transit; or
- b) with a view to obtain the right of residence for a person who entered or resides in the territory of Hungary illegally, insofar as the act did not result in a more serious criminal offence, is guilty of misdemeanour punishable with custodial arrest of 5-90 days (hereinafter referred to as: organizational activity aiding illegal immigration.)

Committing such an offence (i.e. organizational activity aiding illegal immigration) on a regular basis, or by rendering help to more people or assisting illegal immigration in exchange for money, constitute a more severe offence, and as such is punishable by prison sentences of up to one year. . Meanwhile, the new law equips the police with tools to keep people against whom there is an ongoing criminal procedure for the aforementioned activities away from the 8-kilometer area inside the Hungarian border. Furthermore, according to the amendment of the Act on Asylum, Hungary may not accept asylum requests from people who apply from countries where they are no longer subject to persecution and are not in grave danger (a similar provision exists in one of the Member States' Fundamental Law).

As to the premature adoption of the law, it is submitted that the Government had already been fully informed of the content of the opinion of the Venice Commission concerning the package.

It should be highlighted that the European Commission has opened an infringement procedure with regard to this legislative package on 19 July 2018. The Commission found that the new Hungarian legislation raises concerns as regards its compatibility with EU law, more precisely with the asylum acquis, free movement rights of EU citizens and with the Charter of Fundamental Rights. The Hungarian authorities have sent their reply to the Commission's concerns on 19 September 2018. The Hungarian Government explained in details why the Commission's argumentation is not well-founded.

As a Member State with a Schengen external border, Hungary has a particularly high burden and responsibility to stem illegal migration, and the Hungarian people are also right to expect the Hungarian Government to take all measures against illegal migration and the promotion of it. In recent years, it has been shown that organizing migration is an activity which seems to be legal but weakens state sovereignty, and the activity of smugglers and certain NGOs threaten the public order and public security. The organizers consciously build on the fact that expulsion of people or their forced return to their home countries is carried out only in few cases even if these persons are not granted the right for international protection in asylum procedures. Since their countries of origin do not cooperate in this regard even with economically and diplomatically strong European countries this task becomes extremely difficult.

The Hungarian Government considers democracy and sovereignty of people not only as theoretic principles but also applies them in its everyday practice as its guiding values. This is reflected in the decision of the Government to survey the voters' opinion on illegal migration as well, whereby Hungarian people rejected both illegal immigration and the mandatory relocation quotas and articulated their wish for an enhanced external border protection scheme.

The comprehensive aim of the legislative package is to combat organizational activities the aim of which is aiding illegal immigration. This aim is identical to what is defined in Preamble (1) and (2) of Council Directive 2002/90/EC on defining the facilitation of unauthorised entry, transit and residence: '(1) One of the objectives of the European Union is the gradual creation of an area of freedom, security and justice, which means, inter alia, that *illegal immigration must be combated*. (2) Consequently, *measures should be taken to combat the aiding of illegal immigration* both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings.' This is the purpose of the legislation-package, which enables the courts to penalize the organisation of illegal migration. The regulation offers a complex solution, and to achieve this, the State will have effective means to act against the organizers of illegal migration by establishing a criminal offence, strengthening the state border regime and extending the scope of relevant police measures.

As a precondition of the legislative package, the Fundamental Law was modified, by which Hungary, among other Member States, raised the principle to the constitutional level that says that "a State has the right to determine the conditions according to which aliens are allowed to enter its territory". This practice can be identified in one of the Member States' Fundamental Law as well: the right of asylum may not be invoked by a person who enters the federal territory from a Member State of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection. This principle is accepted by international customary law and is proven by the practice of the states, and it is also set in the draft proposal of the United Nations International Law Commission on the rules of expulsion of aliens under international law. It evidently follows from the foregoing that the sovereignty of the State immanently incorporates the unalienable right of authorizing the entry of foreigners to the State's territory.

According to the new criminal offence, the perpetrator organizes assistance to a person, whom they know at the time of the perpetration that the person concerned is not entitled for asylum, in order to obtain international protection in Hungary or consenting to the acquisition of a residence permit for a person illegally entering or illegally staying in Hungary. The legislation is in line with Article 31 (1) of the Geneva Convention, which protects only those who come directly from a territory where their lives or their freedom are at risk. In this regard, it has to be highlighted that according to the statement of the Venice Commission, the criminalization of such behaviours which incite migrants to circumvent the legislation of a country on immigration is not contrary to the international standards of human rights, as it aspires to achieve the aim set out in Paragraph 2 of Article 11 of the European Convention on Human Rights.

The Venice Commission in its recommendation suggested that a criminal offence should not threaten the initiation of an asylum procedure with a sanction, if it is for a person who was not either prosecuted in their country of origin or was not directly persecuted there, either. This point of the recommendation is not acceptable, as according to the new criminal offence, the perpetrator supports or makes the illegal immigration of a person who has violated the Geneva Convention easier, thus, the threat of the legal consequences of the criminal offence is justified.

In order to clarify the application of the new criminal offence, a definition is provided for the most typical organizing activities. Ultimately the court decides on penalties, following the thorough examination of all the circumstances of the individual case.

According to the recommendation of the Venice Commission, the new criminal offence involves the possibility of prosecuting natural persons or organisations who lawfully provide support for asylum-seekers and foreign nationals. Although the law does not contain explicit exceptions, the concept of the organizational behaviour does not include representation, legal counselling, protection in asylum or criminal procedures, and, hence it does not impede civil society organizations with legitimate goals, especially the UNHCR which has a privileged status in Hungary.

According to the disposition, this crime can only be committed intentionally. The offence is an immaterial crime, the fact that the asylum application is refused by the authority is not a condition for the criminal offence to be founded. The subsidiary characteristic of the crime is important and it can only be established if a more serious offence, such as smuggling of human beings, is not carried out by the perpetrator. It is a mitigating circumstance, if the perpetrator unveils the circumstances of the criminal act before being committed. In these cases, the penalty may be reduced without limitation and in cases deserving special consideration, it can be dismissed.

It is submitted that the new criminal offence is not applied to those who advocate for human rights and who exercise their right to a fair trial in official proceedings in a legal way.

The legislative package also amended the Act on the State Border and introduced a prohibition. According to this provision no one may stay within the 8 km range of the external state border or of the border sign specified in Point 2 of Article 2 of the Schengen Borders Code (hereinafter referred to as the territory defined by the Act on the State Border) if they are being prosecuted for committing a criminal offence related to border security and the state border regime, unless this person has an at least 5-year valid address of residence within this area. Therefore, if the investigating authority informs a person of their well-founded suspicion that that person is involved in such a criminal offence (i.e. organizational activity aiding illegal immigration), then that person

becomes a suspect, and they cannot, from that moment on, be in the territory defined by the Act on State Border.

Act XXXIV of 1994 on the Police (hereinafter: Rtv.) was amended in order to provide the full range of actions with a new measure, called “restraining from border”. It assures that on the one hand no one who is subject to a criminal procedure for criminal offences related to border security and the state border regime may enter the territory defined by the Act on the State Border and on the other hand, that such a person may be removed from that territory by the police.

According to the new measure in Chapter V of the Rtv, the legal restrictions have to be necessary, proportionate and bound to the intended objective, hence the proportionality requirement of Section 15 is applicable. Section 15 provides that on the one hand, the measure selected must not cause any disadvantage, that is evidently disproportionate to the legitimate aim of the measure and on the other it prescribes that from the several possible and appropriate measures that one has to be chosen, which, while ensuring effectiveness, causes the least restriction, injury or damage to the person concerned. The right to appeal concerning the injunction of restraining from border is also provided. In case of violations of fundamental rights, the affected person may lodge a complaint to the Independent Police Complaints Board.

It should be highlighted that recently new ideas occurred both at Member States and at EU level. According to these ideas, in order to stem illegal migration and secondary movement, it is necessary to establish closed centres at the European Union's external borders and at the borders or on the territories of Member States. In these closed centres the competent authorities may examine the merits of individual cases and decide on the asylum applications, while avoiding that the asylum seekers leave these centres before the decisions are made. In our opinion, the abovementioned measures, both at Member States and at EU level show that the former criticisms against the Hungarian transit zones and applied procedures were not due to non-conformity with EU law.

**Hungary guarantees the fundamental human rights enshrined both in international treaties and in its Fundamental Law for all of its citizens, including human rights defenders. Furthermore, the Act on NGOs does not prohibit funding from abroad and does not aggravate the operation of NGOs, it merely makes foreign founding transparent. Therefore, it is not justified to mention the elements of recitals 40-45 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

## Right to equal treatment

The Government rejects the artificial confrontation of families and women's rights. We have several programs to support employees in striking the balance between work and family life. The Government spends 4.7% of the GDP (EUR 3 billion) on financial support for families, compared to an EU average of 2.5%. In 2019 the budget will be increased to EUR 6.2 billion. Hungarian law also provides strong protection for women against violence, the Criminal Code punishes these actions more severely than before. As regards the working conditions for pregnant workers, the safety of pregnant and nursing workers, equal treatment also in the world of employment is one of the top priorities of the Hungarian Government's employment policies.

### **Uneven balance between the protection of families and women's rights**

*(46) On 17-27 May 2016, the UN Working Group on discrimination against women in law and in practice visited Hungary. In its report, the Working Group indicated that a conservative form of family, whose protection is guaranteed as essential to national survival, should not be put in an uneven balance with women's political, economic and social rights and the empowerment of women. The Working Group also pointed out that a woman's right to equality cannot be seen merely in the light of protection of vulnerable groups alongside children, the elderly and the disabled, as they are an integral part of all such groups. New school books still contain gender stereotypes, depicting women as primarily mothers and wives and, in some cases, depicting mothers as less intelligent than fathers. On the other hand, the Working Party acknowledged the efforts of the Hungarian Government to strengthen the reconciliation of work and family life by introducing generous provisions in the family support system and in relation to early childhood education and care. In its report adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections stated that women are underrepresented in political life and there are no legal requirements to promote gender equality in elections. Although one major party placed a woman at the top of the national list and some parties addressed gender-related issues in their programmes, empowerment of women received scant attention as a campaign issue, including in the media.*

The Hungarian Government rejects the artificial confrontation of families and women's rights. The Hungarian Government is committed to empower women to decide on their own lives and provide them the freedom of choice whether they wish to have children. In November, the Government launched the next Citizens' Consultation on the protection of families. Topics feature possible measures to support young married couples and providing women raising kids with more flexible employment options. Exactly for the sake of such a freedom it is necessary to build a family-friendly country and establish the necessary conditions. Family policy and women's rights policy are also inseparable due to the societal realities of Hungary: 77.68 % of all women between 25 and 59 years of age are mothers according to the latest Hungarian statistics of 2016.

Furthermore, 91% of women between 40 and 45 years of age – at the end of the fertile life period – have given birth to one or more children. Thus, it is not the government's issue to regard women as primarily mothers, for it is a fact that almost each of them voluntarily chooses to be a mother.

To this end, the Government has taken a number of important and effective measures to create the proper balance between family and work in recent years. These efforts should be considered as quite a strong evidence against the reasoned proposal's statements regarding the Hungarian government's alleged prejudices about 'emancipated' women. Representing its dedication to the reconciliation of work and family life, the Hungarian Government spent around 4.7 percent of GDP (6 billion EUR in 2018) on financial support for families, compared to an average of 2.5 percent among the 28 Member States of the European Union. In 2019 the budget for family policy measures will be increased to more than 2 000 billion HUF (approximately 6.2 billion EUR).

The Extra Child Care Allowance (GYED Extra) provides the free choice for women with dependent children and supports either those who decide to stay at home with their children or those who wish to work besides raising their children. As of 2016, beyond the age of 6 months of the child, employment becomes available along with the use of benefits. Between 2010 and October 2018 the number of placements available in nurseries increased by around 50%. As of 2017, Hungary has introduced a new and more flexible nursery system that aligns better with local circumstances. From 2019 local governments should provide day-care provisions for small children living in settlements with a population over 10 000, and also in settlements with a population where the number of small children under the age of 3 exceeds 40, or if this number is less, but at least 5 parents with dependent children indicate their need.

The expansion of part-time employment opportunities, in the field of women's policy, is of paramount importance. If a mother with a dependent child needs a part-time employment then her employer shall ensure this opportunity for her up to the age of 3 of her child, or up to the age of 5 of the youngest child in case of a large family. The 'Family-friendly Workplace' tender is annually published as from 2011. In 2018 in the framework of the Family Friendly Workplace Award the Ministry of Human Capacities provided a funding of a total of 240 000 EUR for workplaces for developing family-friendly work environments and supporting employees in striking the balance between work and family life. The objective of the 'Extending flexible employment in convergence regions' tender is to introduce flexible, family-friendly employment opportunities at workplaces for which a non-reimbursable subsidy of 10 000 to 48 000 EUR was allocated. The purpose of the project 'Women in families and at work', published in June 2017 is to improve the situation of women in the labour market as well as that of striking the balance between family life and work. 71 Family and Career Points will open or had already opened their doors in 2018 with the aim of providing flexible

working possibilities for women on the spot. The Government allocated a funding of 14 billion HUF (approx. 44 800 000 EUR) for this project.

As regards gender stereotypes in schoolbooks it has to be pointed out that according to the OECD Employment, Labour and Social Affairs Committee (ELSA) Report in 2017 (*Report on the implementation of the OECD Gender Recommendations – Some Progress on Gender Equality But Much Left To Do*), textbooks were revised in Hungary in 2013 for grade 1 to 8 to ensure that students are not exposed to stereotypes and to develop awareness of gender equality. Based on the 2017 OECD data, the Economist ranked Hungary 9<sup>th</sup> in its Glass-ceiling index<sup>23</sup>, which is above OECD average.

Examples of new materials include: a revision of biology textbooks to illustrate the role of women in science by demonstrating the works of female scientists; the representation of women who were successful in their fields of work in a career section in the physics textbooks; and discussions of the gender equality issues and the historical background of the change in the traditional roles of women in history textbooks.

An innovative and internationally unique institute opened in Budapest in May 2018: the first Single Parents' Centre, offering a wide range of services and programmes for single parents and their children.

### **The protection of female victims of domestic violence**

*(47) In its concluding observations of 5 April 2018, the UN Human Rights Committee welcomed the signature of the Istanbul Convention but expressed regret that patriarchal stereotyped attitudes still prevail in Hungary with respect to the position of women in society, and noted with concern discriminatory comments made by political figures against women. It also noted that the Hungarian Criminal Code does not fully protect female victims of domestic violence. It expressed concern that women are underrepresented in decision-making positions in the public sector, particularly in Government ministries and the Hungarian Parliament. The Istanbul Convention has not yet been ratified.*

The Hungarian Government denounces violence against women in any form or shape, and is dedicated to rid society of abuse: in accordance with this objective, Hungarian law provides strong protection for women against violence. Since its introduction on 1 July 2013 the legal definition of 'violence committed in a relationship' in the Criminal Code covers a broader range of actions to be considered as abuse and punishes these actions more severely than before. The Hungarian National Assembly adopted a regulation in 2003 concerning 'the creation of a national strategy to prevent and efficiently deal with

---

<sup>23</sup> The glass-ceiling index is published by the Economist, is a yearly assessment of places where women have the best and worst differentiation in equal treatment at work, in countries part of the OECD. (<http://business-review.eu/news/the-economists-top-best-and-worst-countries-to-be-a-working-woman-158494>)

issues of domestic violence' and as a result the legal instrument governing restraining orders entered into force on 1 July 2006. In order to further strengthen this protection, as of 1 January 2008 harassment constitutes a criminal act. Compared to 2010, the annual funding for the area was increased by more than five times, and the number of places was raised threefold. There are seven crisis management ambulances across the country to assist victims of related violence. National Assembly Resolution 30/2015 on the national strategy for efficient counter-measures against violence committed in a relationship recognizes the importance of the protection of fundamental human rights and strictly condemns any shape or form of violence committed in a relationship and declares dedication to eliminate abuse. According to this resolution violence committed in a relationship does not qualify as a private affair and strengthens the stance that such an act of violence 'is a crime which constitutes a serious threat to marriage, family and the well-being of children'. In this resolution the National Assembly asked the Government to take efficient steps against violence committed in relationships in accordance with the aforementioned national strategy, for example with the provision of the necessary financial and human resources within budgetary limits.

The Hungarian Government has run several campaigns, public programs and tenders to help women who have suffered abuse. The Government, utilizing a development fund of 9.7 million EUR, is continuously expanding the circle of services supporting victims and prevention programs targeting young audiences, as well as places emphasis on shaping the public opinion. The goal of the campaign titled 'Let it catch your attention!' is raising awareness and providing information for victims on where to turn to in need of help. The 'Safe Shelter' program has created crisis-management clinics which add to the array of facilities providing help to the victims of violence committed in a relationship. One of the main activities of these clinics is to provide information as early as possible to the victims and potential victims about available aid measures and the rights of victims. Within the framework of the program called 'Development of crisis management services' the technical progress and advancement in human resources of the National Crisis Management and Information Line is being carried out, beside the academic and sensitivity training of the experts working in child-protect on warning systems. The 'Safety net for families' tender, administered by the Ministry of Human Capacities, provides the opportunity to carry out programs based on the methods developed in the pilot project targeting youngsters between the ages of 14 and 18 which has been running since 2012.

Recital (47) lacks the necessary knowledge of Hungarian criminal law, since the Criminal Code has a comprehensive and complex protection for women from violence committed both within a relationship and outside thereof. Removing all forms of cohabitation would eliminate an additional element of the offence which would justify the creation of a separate criminal offence, since the trust or, as the case may be, defencelessness resulting from cohabitation or previous cohabitation make the victims more vulnerable

to the offender's abuse. Also, this element is even an inherent part of the English term of this phenomenon. The criminal offence of domestic violence does not refer to sexual criminal offences, because they are already punishable more severely, and it even constitutes an aggravated case if they are committed against a relative, a person who is under the care, custody or supervision of or receives medical treatment from the perpetrator, or by abusing any other relationship of power of influence over the victim, or against a person under 12, 14, or 18 years of age, respectively.

### **Working conditions for pregnant or breastfeeding workers**

*(48) The Fundamental Law of Hungary sets forth mandatory provisions for the protection of parents' workplaces and for upholding the principle of equal treatment; consequently, there are special labour law rules for women and for mothers and fathers raising children. On 27 April 2017, the Commission issued a reasoned opinion calling on Hungary to correctly implement Directive 2006/54/EC of the European Parliament and of the Council, given that Hungarian law provides an exception to the prohibition of discrimination on the grounds of sex that is much broader than the exception provided by that Directive. On the same date, the Commission issued a reasoned opinion to Hungary for non-compliance with Directive 92/85/EEC of the Council that stated that employers have a duty to adapt working conditions for pregnant or breastfeeding workers to avoid a risk to their health or safety. The Hungarian Government has committed itself to amend the necessary provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, as well as Act I of 2012 on the Labour Code. Consequently, on 7 June 2018 the case was closed.*

The safety of pregnant and nursing workers, also the equal treatment in the world of work is one of the top priorities of the Hungarian Government's employment policies. Since 2010 one of the objectives of the Hungarian Government is to facilitate the creation of a family and work based society. This has been manifested in measures that help consolidating work and family life. There is special emphasis on flexible and atypical work in the Labour Code; this facilitates the employment of women. One example is that a parent may request her or his part-time employment until age three of their only child or until the age five of their children. By law, the employer has to comply with the parent's request. Pregnant women or women giving birth are entitled to 36 months of maternity leave, which is a long period compared to other Member States. For the protection of working women, the Labour Code has special rules prohibiting the termination of mothers' employment by the employer: the entire period of human reproduction procedure related medical treatments, pregnancy and the maternity leave are covered by this exception. Breastfeeding women are entitled to working time reductions. From the beginning of their pregnancy and until age three of their child irregular work-schedules cannot be arranged without the explicit consent of these workers. The same applies to their appointment for another location of work. During the mentioned period their weekly rest time must be scheduled regularly (i.e. no irregularity is allowed), and they cannot be ordered to work extra hours, stand-by or night work. The

Workplace Protection Program took effect in 2014. Among others, it helps mothers to re-enter the labour market by providing tax benefits to their employers. The GYED EXTRA program directly helps mothers: after six months of giving birth they can re-enter the labour market and remain entitled to all other maternity benefits that they would receive if they remained at home nursing their children. In Hungary 96 per cent of infants younger than six months are breastfed, which is one of the highest rate according to WHO statistics (2015).

The closure of the relevant infringement procedure duly demonstrates Hungary's commitment to provide for equal treatment in its employment policies.

### **Restrictive definition of discrimination and family**

*(49) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the constitutional ban on discrimination does not explicitly list sexual orientation and gender identity among the grounds of discrimination and that its restrictive definition of family could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples. The Committee was also concerned 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.*

The Fundamental Law of Hungary contains an open list, which forbids discrimination on the widest possible grounds, as the text uses the expression: discrimination based on 'any other circumstances'. For this reason, sexual orientation and gender identity fall under strict constitutional protection in Hungary, whereas the Hungarian Act on Equal Treatment explicitly forbids discrimination based on both grounds ever since 2004. The Act XXIX of 2009 on Registered Partnership gives extended rights to unmarried couples.

### **Inhuman treatment of persons with disabilities**

*(50) In its concluding observations of 5 April 2018, the UN Human Rights Committee also mentioned forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities, as well as reported violence and cruel, inhuman and degrading treatment and allegations of a high number of non-investigated deaths in closed institutions.*

As far as forced institutionalization and forced treatment are concerned, we would like to underline that all social services, regardless of their nature are based on a voluntary legal agreement. Although our Social Act does retain the possibility to place mental patients in institutions by judicial decision, this provision can only be applied in favour of the patient and in defence of their social environment. The Hungarian legal system also recognizes involuntary treatment in mental institutions, in the case of violent crimes against persons or punishable criminal offences if the perpetrator cannot be prosecuted

due to their mental condition, and there is reason to believe that they will commit a similar act, provided, that the same crime carries a penalty of imprisonment of at least one year. These measures are taken in the competent institution (IMEI) designated for this purpose. Similarly, social institutions providing personal care are used on a voluntary basis, on request. Legal prescriptions relating to the operation of the institutions are meant to ensure the rights of the care recipients living in the institutions.

With regard to the allegations concerning cruel, inhuman and degrading treatment and violent acts in social care institutions, it is submitted that the rights of the clients of any age using social services and institutions are protected in various ways, to remedy any infringement. According to legal regulations, clients have the right to turn to the head of the given institution with their complaints, they can contact the pressure group to be compulsorily established in residential social care institutions and foster homes. They have the possibility to inform the clients' rights or children's rights representative in order to seek support in the protection of their rights. The role of the Commissioner for Fundamental Rights alongside the work of guardians and the trustees are also important in this area. According to Act III of 1993 on social administration and social services (Social Act) and Act XXXI of 1997 on Child Protection and Custody Administration (Child Protection Act) maintainers are liable for monitoring the lawful operation of their institutions. According to the mentioned Acts the operation of social service providers and institutions must be monitored by the certification body. Government decree 369/2013 on the registration and inspection of social, child welfare and child protection service providers, institutions, and networks appoints the Government Agency of Budapest and the county level government agencies as control bodies that shall regularly carry out control activities on their own motion, and act as a matter of urgency.

The above described legally binding rights protection instrument provides clients with comprehensive protection and guarantees the investigation and the termination of the violation of their rights.

As for the allegations concerning non-investigated cases of death in social institutions, the following facts are of importance. Given that the use of social services is based on a voluntary agreement, its treatment similar to penitentiary institutions in case of deaths is not justifiable. However, all these cases of death are investigated. According to Act CLIV of 1997 on Health, death is not considered natural when the circumstances of its occurrence call it into question. During the investigation of the causes and circumstances of death, should suspicion of a criminal act arise, a medical autopsy must be ordered. In case of extraordinary deaths, an official administrative procedure and official autopsy must be ordered. The physician carrying out the autopsy must decide whether the cause of death was extraordinary. According to its internal regulations, in order to avoid professional malpractice, the maintainer of the social institution - General Directorate of Social Affairs and Child Protection - always expects institutions to compile an action plan. In case the internal investigation reveals circumstances indicating the suspicion of a crime, either the institution or the maintainer files a police report.

Therefore, cases of death occurred in social institutions must always be investigated; there are no non-investigated cases of death.

**The Hungarian Government is committed to encourage women to decide on their own lives and the Hungarian law provides strong protection for women. Therefore, it is not justified to mention the elements of recitals 46-50 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

**Rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities**

Hungary is strongly committed to combat racism, anti-Gypsyism and any incitement to hatred. Anti-Gypsyism and hate crimes are rooted in prejudices and stereotypes, and the majority of them are committed at the local level. Zero tolerance in case of any form of racism is provided by the Hungarian legislation and repeated univocally in the highest political statements.

**Racism and intolerance, anti-Gypsyism and anti-Semitism**

*(51) In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe's Commissioner for Human Rights indicated that he was concerned about the deterioration of the situation as regards racism and intolerance in Hungary, with anti-Gypsyism being the most blatant form of intolerance, as illustrated by distinctively harsh, including violence targeting Roma people and paramilitary marches and patrolling in Roma-populated villages. He also pointed out that, despite positions taken by the Hungarian authorities to condemn anti-Semitic speech, anti-Semitism is a recurring problem, manifesting itself through hate speech and instances of violence against Jewish persons or property. In addition, he mentioned a recrudescence of xenophobia targeting migrants, including asylum seekers and refugees, and of intolerance affecting other social groups such as LGBTI persons, the poor and homeless persons. The European Commission against Racism and Xenophobia (ECRI) mentioned similar concerns in its report on Hungary published on 9 June 2015.*

Hungary is committed to combat racism, anti-Gypsyism and any incitement to hatred. Anti-Gypsyism and hate crimes are rooted in prejudices and stereotypes, and the majority of them are committed at the local level.

Our task is to change the attitude towards the Roma; our tools include legislation, such as strategies and various programmes that, either directly or indirectly, contribute to achieve this aim. Hungary's Fundamental Law emphasises the importance of social inclusion making an explicit reference to this issue. It also stresses that the freedom of speech shall not be exercised if it infringes upon the dignity of the Hungarian nation or

any other national, religious community or communities of ethnic or racial origin. The Hungarian National Social Inclusion Strategy dedicates a separate chapter to the phenomenon of discrimination, inclusion and awareness raising. Accordingly, several measures have been taken in recent years to combat anti-Gypsyism and incitement to hatred.

It must also be pointed out that the 2003 Act on Equal Treatment provides an even stronger protection than the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, since it extends its rules to cover all grounds of discrimination. Probably the most important contribution to developing a non-discriminatory environment in Hungary is that as from 1 July 2013, Hungarian local governments can only receive financial support from public finances or EU funds, if they have an appropriate Local Equal Opportunity Program (HEP) in effect.

As far as paramilitary marches are concerned, the Hungarian Government initiated the amendment of the Criminal Code in 2011 in order to prevent campaigns of extreme right paramilitary groups, by introducing the so called 'crime in uniform'. The amendment threatens the 'provocative unsocial behaviour' inducing fear in a member of a national, ethnic or religious community with three years of imprisonment.

Under the Socialist governments, a series of murders of Roma were committed in Hungary. The 'Hungarian Guard' held marches, thus the European and Hungarian Roma were frightened. The current Government made it possible for the Roma to change their houses from Roma settlements to houses with gardens with the help of the 10 million HUF support of the Family Housing Support Program (CSOK). The number of Roma working in public employment programmes and attending training courses are 220 000.

The governing party FIDESZ was the first to send a Romani woman to the European Parliament: Lívía Járóka, who presently holds the office of the Vice-President of the European Parliament. Moreover, due to her efforts and the merit of Hungary, the EU Framework for National Roma Integration Strategies up to 2020 (hereafter EU Roma Framework) was approved by the Council, which triggered an exemplary and unprecedented inclusion program for the Roma on the European level.

The new Criminal Code introduced some new elements regarding hate crimes, resulting in a stricter regulation as before. This includes for example that Incitement against a Community *expressis verbis* includes incitement to violence besides incitement to hatred, moreover, it includes not only certain group of populations as targets, but mentions members of the given groups as well.

Also, Violence against a Member of a Community criminalises the display of a conspicuously anti-social conduct, whereas the crime can even be established, if the target of the action is a subject (e.g. a vehicle parking on the street), and the action is only capable of resulting in an alarm in the members of the offended group.

As a measure against far-right organisations, the Criminal Code punishes Unlawful Organization of Public Safety Activities since 2011.

It can be said that a positive change is noticeable in the area of national criminal procedures, especially concerning the approach and decisions of the proceeding authorities. As a result, the courts have imposed special behavioural rules as sanctions, such as visiting certain memorials or read specific books.

### **Roma discrimination**

*(52) In its Fourth Opinion on Hungary adopted on 25 February 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted that Roma continue to suffer systemic discrimination and inequality in all fields of life, including housing, employment, education, access to health and participation in social and political life. In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended the Hungarian authorities to make sustained and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by Roma, improve, in close consultation with Roma representatives, the living conditions, access to health services and employment of Roma, take effective measures to end practices that lead to the continued segregation of Roma children at school and redouble efforts to remedy shortcomings faced by Roma children in the field of education, ensure that Roma children have equal opportunities for access to all levels of quality education, and continue to take measures to prevent children from being wrongfully placed in special schools and classes. The Hungarian Government has taken several substantial measures to foster the inclusion of Roma. On 4 July 2012, it adopted the Job Protection Action Plan on 4 July 2012 to protect the employment of disadvantaged employees and foster the employment of the long-term unemployed. It also adopted the "Healthy Hungary 2014–2020" Healthcare Sectoral Strategy to reduce health inequalities. In 2014, it adopted a strategy for the period 2014–2020 for the treatment of slum-like housing in segregated settlements. Nevertheless, according to FRA's Fundamental Rights Report 2018, the percentage of young Roma with current main activity not in employment, education or training, has increased from 38 % in 2011 to 51 % in 2016.*

The Hungarian Government is deeply committed to achieve the integration of Roma people.

This is manifested, on the one hand, by the fact that this issue was put to the political agenda of the European Union as the initiative of the Hungarian Presidency of the European Union in the first half of 2011, by the adoption of the EU Framework Strategy on Roma inclusion, which was followed by the channelling of the Framework Strategy

into the EU policies (e.g. the European Semester, and the use of the cohesion funds). However, the novelty introduced by the initiative lied not only in this but also in that it dealt with this issue not merely based on a human rights approach but also from the aspects of poverty and social inclusion, recognising thereby that a complex approach is required in order to find a genuine solution for the problems. On the other hand, in order to implement the EU Roma Framework the Government adopted the Hungarian National Social Inclusion Strategy in 2011 and then updated in 2014. Three-year action plans were prepared for its implementation by designating responsible ministers, deadlines and available funds.

Since 2010 the Government has implemented several social, social inclusion, family policy, health policy and educational measures. We have achieved a great number of positive results, all of which prove that we are on the right path: in addition to the improvement of economic indicators, almost all of our indicators related to fight against poverty and unemployment have been constantly improving since 2013. The results of such measures have manifested themselves in a measurable and provable way and have grown steadily proving that they reached the target groups. The data on poverty obtained from the major central surveys conducted by the Central Statistical Office (CSO) shows data separately for the Roma population, which we consider a great achievement even at European level. The employment rate among the Roma minority has risen by 20% since 2013, in parallel the unemployment rate has decreased by 20%. At the same time the number of Roma households with no employed inhabitant has decreased by 25%, and the number of Roma children living in these households has decreased by the same rate.

Perhaps the most promising result of the public policy interventions promoting social inclusion based on a changed approach is that we managed to raise a significant number of those living in extreme poverty from the social assistance care system that confine them to passivity. We managed to change this passive behaviour and “activated” them by involving them in the public work scheme and training programmes. These schemes are organised in a way that the establishment and restoration of their skills for conducting their life and for earning their income autonomously can be started. As a result of the measures which this government has taken in the last eight years, those in need were given an opportunity to build a positive vision. Moreover, they could experience that there was a way out of the vicious circle of poverty and that they could participate in societal change.

Strengthening the role of public education and higher education in creating equal opportunities, as well as, that of inclusive education is supported by systematic measures (strengthening skills and key competences, operating an early warning system against early school leaving, increasing the salaries of teachers, career model for teachers, and training).

In order to promote the inclusion of children with disadvantages, we have several programmes in place ranging from the nursery school until the labour market (e.g. Sure Start Children's Homes, For the Road "Útravaló" scholarship programme, Tanoda complex educational programme, Arany János Talent Management Programme, mentoring programme for Roma girls, etc.). It is important to note, however, that the complex nature of the issue calls for a wider solution. This means that the abolishment of segregation is necessary, but not enough in itself. A complex set of actions is required to promote success in school and to support the child and his or her family from birth until employment.

The family policy measures, such as obligatory kindergarten attendance from the age of 3, increasing children day-care capacities, establishment and operation of a new, more flexible and more differentiated system of day-care, tax allowance for families, ensuring home creation support for housing purposes, disbursement of pecuniary child-care allowances after the parent's return to work (GYED EXTRA), strengthening early childhood intervention, free-of-charge catering for children even during school holidays, have contributed to an increased integration of women with small children into the labour market, to managing balance between work and private life, and to the mitigation of regional inequalities.

In Hungary the social inclusion policy is based on the "nothing about them without them" principle. Therefore, the Hungarian Government has announced and implemented a broad partnership and cooperation emphasizing that social inclusion and the inclusion of Roma people is a national issue. Those implementing the social inclusion programmes include civil society organizations, churches, non-profit organizations, local self-governments, minority self-governments, social cooperatives. The Government operates five nationwide consultation forums (Social Inclusion and Roma Commitment Committee, Roma Coordination Council, "Let it be better for children!" evaluation committee, Anti-Segregation Round Table, Roma Thematic Meeting of the Human Rights Working Group), and there are conciliation mechanisms at county and local levels, too.

According to the Act CLXXIX of 2011 on the Rights of Nationalities – in line with the New Fundamental Law – Hungary recognizes the nationalities living in its territory as part of the Hungarian political community and acknowledges them as a state-forming factor. All nationalities can form local, regional and national self-governments under the conditions set by the Act XXXVI of 2013 on the election procedure. The number of the local Roma self-governments in Hungary is 1031.

As for the employment of Roma, the fundamental aim is to integrate unused social resources in the support of society, i.e. to reduce child deprivation, facilitate the inclusion

of those living in persistent poverty including Roma, put an end to peripheral living conditions, make multiply disadvantaged people capable of entering the labour market and taking part in labour market instruments, and increase the local retaining power of settlements. Hungary has introduced and intends to introduce several measures to improve the employability of the long-term unemployed and to involve the inactive population into the labour market. On 4 July 2012, the Government adopted the Job Protection Action Plan, the primary aim of which was to preserve jobs and protect the employment of disadvantaged employees. To this end, it is increasing the competitiveness of employers utilizing a disadvantaged or otherwise less competitive workforce by reducing the costs of employment. The action plan reduces employers' burden (social security contribution and vocational training levy) to foster the employment of employees under 25 and above 55 years of age, career starters, the long-term unemployed, women returning from child home care allowance/child care fee and employees employed in unskilled jobs, and as a new element as of 1 July 2015, employees in the agricultural sector.

The objective of the public employment scheme is to provide a transition between benefits and the open labour market; moreover, it promotes catching up to a significant degree. Long-term unemployment can be terminated only with a multi-phase support process that includes training and employment as well. Its efficiency depends, among others, on the nature of the socio-economic disadvantages of the given settlement or district. However, it is to be noted that it can serve only as a temporary solution. For this reason, in the coming period bigger emphasis will be laid on the measures that promote exit from the public employment scheme, support economic recovery and enhance mobility. As of 1 January 2016, a new incentive system was introduced for individuals involved in the public employment scheme. The targeted job search allowances encourage people involved in the public employment scheme to find a job in the private sector in such a way that if they find a job before the term of the legal relationship with the public employment scheme expires, they receive job search allowances. The public employment scheme is becoming more targeted as a result of an EU-funded project aiming at offering training opportunities and training-related mentoring services. In 2014, 376 004 persons participated in the programme; according to the estimations, 20% of them were Roma. 13% of the participants found employment on the primary labour market within 180 days after leaving the public employment scheme. This is due, among others, to the fact that approx. 94% of the participants received training within the framework of the programme, acquiring a basic knowledge in various professions.

Targeted measures were taken in order to strengthen the employment of Roma women: the 'Growing Chances' programme assists the employment of Roma women in social and childcare institutions and supports them in obtaining qualifications. More than 1000 Roma women had participated in the programme before 2016, and another 1000 people are still joining the programmes.

The “Healthy Hungary 2014–2020” Healthcare Sectoral Strategy designated the reduction of inequalities and, within that, the reduction of health inequalities, as a fundamental interest of Hungarian society, which requires complex interventions working in synergy as well as specific programmes, adequate resources and a longer timescale. A number of public healthcare measures were taken to combat the health inequality of the Roma population and to improve their health status. In the field of the development of primary care, 4 practice communities were set up with the participation of 24 primary care practices in the North Great-Plain and Northern Hungary regions in the framework of the Swiss-Hungarian Cooperation Programme. The objective of the programme is to develop and test a model of primary care that focuses on prevention and the care of patients with chronic diseases, is oriented at the community and involves local communities (in particular the Roma population) in close cooperation with local and ethnic local governments, local health-care and social services and medical faculties, and also to formulate recommendations (based on experience) for national health-care policy. Enhancing the quality and equality of access to primary healthcare services for the Roma population living in the areas of the practice community are priorities of this programme; local Roma communities are involved (Roma mother-child health programme; training Roma health guardians; training Roma health representatives). In the framework of the programme, the health status of 20 000 adults (40% of whom are Roma) were surveyed.

Regarding housing, in 2014 the Government adopted a policy strategy for the period from 2014 to 2020 that lays down the foundations of the treatment of slum-like housing in segregated settlements. The general objective is to eliminate slum-like areas that are often hardly suitable for the housing of people and, in certain cases, to rehabilitate slum-like areas, connecting them to the urban tissue. The main objective of the strategy is to present and institutionalise a set of tools for hindering the re-establishment of slums, degrading parts of settlements and settlements – collectively, housing marginalisation and the spatial concentration thereof, – in order to stop segregation and lagging processes, and to eliminate current living situations in slums; in order to eliminate slum-like housing long-term. With the use of EU funding, Hungary committed itself to involve one in every seven segregated areas in rehabilitation programmes. A map of segregated areas was compiled, which shows the territorial concentration of disadvantaged population (based on academic qualification and income status rather than on ethnicity). According to the map data, EU-funded developments are being implemented in 197 segregated areas.

The results of the Government’s initiatives launched in recent years can already be measured by data. According to the data published by the Central Statistical Office

(CSO)<sup>24</sup> the rate of those at risk of poverty or social exclusion was 25.6% in 2016, which signifies a decrease of 9.2 percentage points as compared to the peak in 2012, while it represents a decrease of 0.7 percentage points as compared to the data of 2015. In the case of the Roma population, the rate of those at risk of poverty or social exclusion amounted to 75.6% in 2016, a value lower by 7.2 percentage points as compared to the data of 2015. Among Roma, an improvement has been achieved in all the three dimensions of poverty (people living in households with very low work intensity, those living in severely material deprivation and relative income poverty) the rate of those living in a household with a very low work intensity has dropped to the largest extent, by 10.7 percentage points, which can mainly be attributed to the introduction of the active employment policy measures.

The results are apparent even in international comparison, they are highlighted both by the communication of the European Commission published on 30 August 2017 and by a survey of the European Union Agency for Fundamental Rights (FRA)<sup>25</sup> conducted in 2016. According to the survey of the FRA, in three Member States who took part in the survey it is true for almost all the Roma that their income is lower than the national poverty threshold. In contrast to that, from among the countries involved in the analysis, Hungary was among the top three with the best indicators. On the Roma's own admission, Hungary scored second on the highest employment. In the field of education, the FRA survey points out that from among the countries involved only Hungary and another Member State have attained a result near to the target for participation in early childhood education in the Education and Training 2020 Strategic Framework. From among children subject to school attendance obligation, Hungary with its 98% index is second among the Member States, while there are others with a rate of only 69%. It is worth noting that in Hungary, 91% of Roma children attend kindergarten, which is around the participation rate of non-Roma children, being the highest in the region.<sup>26</sup>

The Commission's Communication pointed out that at European level the results achieved in the field of education did not manifest themselves in employment, however, in some Member States, such as Hungary, the employment rate of Roma has increased, while the changes are either more moderate or negative elsewhere. It indicates, however, that the gap existing between the employment of women and men in some Member States, poses a challenge. However, the self-appraisal of Roma has improved in general as far as their own health condition is concerned, the greatest extent of improvement can be observed among others in Hungary.

---

<sup>24</sup> Source: Standard of living of households, CSO, 2016. In contrast to Eurostat, the CSO marks the data with the reference year of the data survey instead of the actual year when the data survey was done. I.e. The data published by CSO for 2016 are shown in the tables of Eurostat for the year 2017.

<sup>25</sup> EU-MIDIS II – Second European Union Minorities and Discrimination Survey, the Roma

<sup>26</sup> EU-MIDIS II, European Union Agency for Fundamental Rights, 2016

## **Segregation of Roma children (Horváth and Kiss v. Hungary)**

*(53) In its judgement of 29 January 2013, Horváth and Kiss v. Hungary, the ECtHR found that the relevant Hungarian legislation as applied in practice lacked adequate safeguards and resulted in the over-representation and segregation of Roma children in special schools due to the systematic misdiagnosis of mental disability, which amounted to a violation of the right to education free from discrimination. The execution of that judgment is still pending.*

It must be highlighted that, according to the findings of the ECtHR, the unjustified redirecting of Roma pupils into special education institutions has a long tradition throughout Europe. The Court condemned numerous Member States in similar cases. In the EU, Hungary was the third Member State, against which the Commission has launched an infringement proceeding concerning the ban of racial or ethnical discrimination of Roma children at schools. Similar procedures have been initiated against two other Member States. In the procedure Hungary cooperates with the Commission, the demanded legal amendments took place as a whole which was acknowledged by the Commission as well. Continuous consultations are in place for resolving practical issues in this regard, the Hungarian Government has taken several steps to solve these questions, also including fulfilling the decision of the ECtHR. The Commission is also aware that this is an extraordinarily complex and sensitive topic in the society meaning that quick and tangible results cannot be expected, therefore one cannot anticipate perceivable effects from day to day. The purpose is to get an improving tendency. The Government had a discussion of this topic with the representatives of the Council of Europe's Department of the Execution of the Court's judgments at their visit in Budapest, on 10-11 October 2018.

It is the normal procedure for every ECtHR judgment that the Committee of Ministers of the Council of Europe supervises the enforcement. The single fact that the supervision is ongoing cannot be interpreted in a way that there is a clear risk of a serious breach by Hungary of the values as stipulated in Article 7(1) of the TEU.

## **Segregated education of Roma children**

*(54) On 26 May 2016, the Commission sent a letter of formal notice to the Hungarian authorities in relation to both Hungarian legislation and administrative practices which result in Roma children being disproportionately over-represented in special schools for mentally disabled children and subject to a considerable degree of segregated education in mainstream schools, thus hampering social inclusion. The Hungarian Government actively engaged in dialogue with the Commission. The Hungarian Inclusion Strategy focuses on promoting inclusive education, reducing segregation, breaking the intergenerational transmission of disadvantages, and establishing an inclusive school environment. Furthermore, the Act on National Public Education was complemented with additional guarantees as of January 2017, and the Hungarian Government initiated official audits in 2011-2015, followed by actions by government offices.*

As the report highlights, in the course of the ongoing infringement procedure, from the very beginning the Hungarian Government actively conducted dialogues with the Commission. During these dialogues impartial, evidence-based and cooperative approach was ensured on both sides and as a result thereof Hungary by virtue of the principle of sincere cooperation amended its legislation and took actions in order to ensure compliance with its legal obligations.

In 2017 the Commission acknowledged that with the adaption of the legislative changes the Commission's criticisms with regard to the legal environment have been addressed.

The Hungarian National Social Inclusion Strategy accepted in 2011 treats the reduction of segregation as a priority objective. Special attention is paid to integration in kindergartens and schools. Accordingly, in the field of education and training, particular focus is put on the promotion of integrated education, the reduction of segregation, the breaking of the cycle of intergenerational transmission of disadvantages and the establishment of an inclusive school environment. Roma children's access to quality education is facilitated by the application of legal, financing and institutional measures and by a number of governmental actions.

As to the operation of educational institutions by the state, we carried out regional development to improve access to quality education based on integrated education. We simplified the structure of operation, and gave more power to heads of school. In the frames of these measures, the former Klebelsberg Institution Maintenance Centre was replaced in January 2017 by school district centres, which operate as state operators and as independent budget organisations. Instead of the single national centre, 59 school district centres were set up. This way the decision-making was moved closer to the people concerned. In addition, the Klebelsberg Centre as a medium-level administrative body stepped in between school district centres and the Minister responsible for education.

Each school district centre employs an anti-segregation expert, who will assist the state in organising local meetings and roundtable discussions and in detecting and signalling problems. As of November 2017, the anti-segregation working group is the permanent working group of the school district council.

As a result of an amendment in legal regulations<sup>27</sup>, the head of the anti-segregation working group prepares an annual report to the Minister for Education and to the president of the Klebelsberg Centre, which ensures government monitoring. The

---

<sup>27</sup> Government Decree 134/2016 of 6 October on organisations involved in the performance of state public education tasks as operators, and on the Klebelsberg Centre.

competent minister, therefore, is informed on the status of segregation at the level of the school district centres. In addition, based on the evaluations provided by the Klebelsberg Centre, the Minister is able to monitor the development of anti-segregation processes, and these evaluations contribute to its responsible political decisions.

The regulation of the school districts facilitates the elimination of the undesired effects of the free selection of schools and the prevention of segregation. In order to regulate unlawful segregation, the Act on National Public Education was extended with additional guarantee elements: as of January 2017, the school district centre received a competence of approval in the designation of the borders of districts. If the competent school district centre does not agree with the decision of the authority performing tasks of public education on the borders of the district, or does not express its approval within the stipulated deadline, the Minister for education shall determine the district borders of school enrolment.

It is worth highlighting that the Government submitted a proposal for the amendment of the Act on Equal Treatment and the Promotion of Equal Opportunities and the Act on National Public Education. The amendment came into force in July 2017 and provides stronger guarantees than before to prevent the unlawful segregation of disadvantaged children, including Roma: religious education can only be provided on the basis of ethnicity or nationality, if national minority education is also provided.

In the framework of desegregation measures, we initiated official audits between 2011 and 2015, which were followed by actions of the government offices. Following that, a so-called segregation index based survey was conducted: based on the index, we examined schools and selected the ones that would participate in the flagship project titled "Support to institutions affected by early school leaving" to be implemented until 2020 from EU funds, with a budget of HUF 12.9 billion. The call for proposal was published in October 2016. The project covers 300 schools (locations of performing public education institution tasks), and implements complex desegregation institution development and the development of pedagogical services. The selection of the institutions was based on the assessment with the segregation index, and we involved those institutions against which court proceedings were initiated because of segregation, too.

The Hungarian Government is convinced that it committed itself to a continuous dialogue with the Commission which finally resulted in the alignment of the legislative framework guaranteeing equal access to quality education for the Roma children which the Commission endorsed to be in line with the EU law.

Nonetheless on the basis of the on-going dialogue between the Commission and the Hungarian Government, the Commission had a three-day field visit in September 2018

to Hungary to gain an overview and practical experience on the measures adopted by Hungary. The Commission visited schools and met local stakeholders from Miskolc, Nyíregyháza, Budapest and Kaposvár, as well as consulted different state and civil organisations and church representatives. The dialogue continues between the Hungarian Government and the Commission on the basis of the field visit as the Commission itself is aware of the complexity of the issue. The Commission thanked the Hungarian Government of its openness, constructivity and cooperation showed in the course of amending the alleged legislation.

### **Violation of the prohibition of discrimination (Balázs v. Hungary)**

*(55) In its judgement of 20 October 2015, Balázs v. Hungary, the ECtHR held that there had been a violation of the prohibition of discrimination in the context of a failure to consider the alleged anti-Roma motive of an attack. In its judgment of 12 April 2016, R.B. v. Hungary, and in its judgment of 17 January 2017, Király and Dömötör v. Hungary, the ECtHR held that that there had been a violation of the right to private life on account of inadequate investigations into the allegations of racially motivated abuse. In its judgment of 31 October 2017, M.F. v. Hungary, the ECtHR held that there was a violation of the prohibition of discrimination in conjunction with the prohibition of inhuman or degrading treatment as the authorities had failed to investigate possible racist motives behind the incident in question. The execution of those judgments is still pending. Following the Balázs v. Hungary and R.B. v. Hungary judgments, however, the modification of the fact pattern of the crime of ‘inciting violence or hatred against the community’ in the Penal Code entered into force on 28 October 2016 with the purpose of implementing Council Framework Decision 2008/913/JHA28. In 2011 the Penal Code had been amended in order to prevent campaigns of extreme right paramilitary groups, by introducing the so-called ‘crime in uniform’, punishing any provocative unsocial behaviour inducing fear in a member of a national, ethnic or religious community with three years of imprisonment.*

It is important to note that in the cases referred, the judgments had been formulated before amending Paragraph 332 of the Criminal Code with the purpose of implementing Council Framework Decision 2008/913/JHA. The modification of the facts of the crime of ‘inciting violence or hatred against the community’ entered into force on 28 October 2016, according to which ‘any person who before the public at large incites violence or hatred against a) the Hungarian nation, b) any national, ethnic, racial or religious group or any member thereof, or c) certain societal groups, or the members thereof, in particular on the grounds of disability, gender identity or sexual orientation, is guilty of a felony punishable by imprisonment up to three years’.

---

<sup>28</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55).

As mentioned before, it is the normal procedure for every ECtHR judgements that the Committee of Ministers of the Council of Europe supervises the enforcement. The single fact that the supervision is ongoing cannot be interpreted in a way that there is a clear risk of a serious breach by Hungary of the values as stipulated in Article 7(1) of the TEU.

### **Forced evictions of Roma in Miskolc**

*(56) On 29 June - 1 July 2015, the OSCE Office for Democratic Institutions and Human Rights conducted a field assessment visit to Hungary, following reports about the actions taken by the local government of the city of Miskolc concerning forced evictions of Roma. The local authorities adopted a model of anti-Roma measures, even before the change of the local decree of 2014, and public figures in the city often made anti-Roma statements. It was reported that in February 2013, the Mayor of Miskolc said he wanted to clean the city of “anti-social, perverted Roma” who allegedly illegally benefited from the Nest programme (Fészekrakó programme) for housing benefits and people living in social flats with rent and maintenance fees. His words marked the beginning of a series of evictions and during that month, fifty apartments were removed from 273 apartments in the appropriate category - also to clean up the land for the renovation of a stadium. Based on the appeal of the government office in charge, the Supreme Court annulled the relevant provisions in its decision of 28 April 2015. The Commissioner for Fundamental Rights and the Deputy-Commissioner for the Rights of National Minorities issued a joint opinion on 5 June 2015 about the fundamental rights violations against the Roma in Miskolc, the recommendations of which the local government failed to adopt. The Equal Treatment Authority of Hungary also carried out an investigation and rendered a decision in July 2015, calling on the local government to cease all evictions and to develop an action plan on how to offer housing in accordance with human dignity. On 26 January 2016 the Council of Europe Commissioner for Human Rights sent letters to the governments of Albania, Bulgaria, France, Hungary, Italy, Serbia and Sweden concerning forced evictions of Roma. The letter addressed to the Hungarian authorities expressed concerns about the treatment of Roma in Miskolc. The action plan was adopted on 21 April 2016 and in the meantime a social housing agency was also established. In its decision of 14 October 2016, the Equal Treatment Authority found that the municipality fulfilled its obligations. Nevertheless, ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary published on 15 May 2018 that, despite some positive developments to improve the housing conditions of Roma, its recommendation had not been implemented.*

The Municipality of Miskolc decided to demolish the neighbourhood called “Numbered Streets,” where a large part of the inhabitants are Roma. The Municipality amended its local housing decree on 12<sup>th</sup> May 2014, offering financial compensation (a maximum of about EUR 4750 – 6 300) for those tenants who are willing to terminate their indefinite contract only if they buy a new property outside of the city which cannot be resold within 5 years.

Based on the appeal of the government office in charge, the Kúria annulled the relevant articles in its decision of 28 April 2015.

Nonetheless, the Commission as mentioned in recital (55) above, had a three-day field visit in September, 2018 to Hungary and in the framework of this visit they met – inter alia – the representatives of Miskolc’s local government to check whether the housing issue in the ‘Numbered streets’ is settled satisfactorily. Presumably the Pilot case concerning the ‘Numbered streets’ may be closed soon upon the experience the Commission had during the field visit.

### **Combating anti-Semitism**

*(57) In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended that the Hungarian authorities continue to improve the dialogue with the Jewish community, making it sustainable, and to give combatting anti-Semitism in public spaces the highest priority, to make sustained efforts to prevent, identify, investigate, prosecute and sanction effectively all racially and ethnically motivated or anti-Semitic acts, including acts of vandalism and hate speech, and to consider amending the law so as to ensure the widest possible legal protection against racist crime.*

The Hungarian government considers the freedom of religion to all a value to be protected. It is important to highlight that Budapest has Europe’s third largest Jewish community and the world’s second largest synagogue. Fortunately, anti-Semitic voices both in the public and in politics are marginalized. Prime Minister Viktor Orbán has several times declared a ‘zero tolerance policy’ against anti-Semitism and any incident has been promptly followed by high-level official condemnations. The Hungarian Government has declared zero-tolerance against anti-Semitism and the Jewish community can always rely on the Government’s support and protection. In this spirit, the Orbán government is currently preparing, including by substantial financial assistance, for the 2019 European Maccabi Games to be held in Budapest and has so far:

- enacted the National Holocaust Remembrance Day in 2000,
- established the Holocaust Documentation Centre and Memorial Collection in 2002,
- ordered that the life annuity of Holocaust survivors shall be raised by 50% in 2012,
- on the 70<sup>th</sup> anniversary of the deportation of Hungarian Jews, established the Hungarian Holocaust – 2014 Memorial Committee in 2013,
- Holocaust Memorial Year in 2014.
- Israeli-Hungarian, ministries of justice conference on the eradication of hate speech online in 2016.

It was largely due to the Hungarian Government’s firm stance against anti-Semitism that by the unanimous decision of 31 countries, Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016 with a high international recognition of Jewish and non-Jewish organisations and personalities. IHRA is the sole international organisation that is dealing with the remembrance,

education and research of the Holocaust and the era that led to it. It has 31 members (including 25 EU Member States), 9 observer countries and several international partners (e.g. the UN, OSCE ODIHR etc.).

As a result of the Chairmanship's year-long endeavours and lobbying in EU institutions, EU and IHRA member states, the EU's new data protection draft legislation (GDPR) was amended in line with IHRA commitments. Now the text of the EU's General Data Protection Regulation (GDPR) includes a specific reference to the Holocaust, which ensures researchers free access to Holocaust-related materials throughout the European Union thereby making sure that the Holocaust does not get forgotten – which was not the case with the original text. This achievement was commended by governments, experts and Jewish organizations from all over the world as a unique success in the past 15 years' history of IHRA in safeguarding the free access to documents bearing on the Holocaust. This issue showed the core of international cooperation and solidarity which the IHRA community proved to be apt and ready for, when an essential element of Holocaust research was at risk.

We managed to adopt and apply all major IHRA-standards in Holocaust-related education, remembrance and research, and international standards in the fight against Antisemitism. We believe education can contribute the most to establishing a way of thinking that prevents people from acting and speaking with hatred against groups of people different from them. In Hungary, a consultation mechanism with the education experts of the Jewish communities on how to include the Holocaust in curricula was elaborated and put into practice. It is worth noting that a Hungarian university, the Pázmány Péter Catholic University in Budapest introduced Holocaust studies as a mandatory subject for students aiming at a diploma.

Within the framework of the Hungarian Holocaust Memorial Year program of 2014 the reconstruction of synagogues (Kőszeg, Szabadka, Miskolc, Szeged, Budapest-Rumbach Sebestyén Street) started in 2014 which is continued within a comprehensive restoration program of 2014-2019. In 2015 EUR 14.5 million is allocated for this project. In the framework of this program in the city of Subotica/Szabadka on March 26, 2018 Prime Minister Orbán and the President of Serbia Aleksandar Vučić jointly inaugurated the city's newly renovated synagogue.

Restoration of Jewish cemeteries: in 2014 the Government tasked with the elaboration of a comprehensive program for the restoration of Jewish cemeteries with the involvement of local students, schools, local self-governments, civil organizations, public service and churches. The government allocated EUR 3.3 million for this project, which is a multi-year program.

Anti-Semitism is not only on the rise across Europe but a new trend can be detected over the last few years that taking new shapes and forms of violent Anti-Semitism, often resulting in murderous attacks against Jews.

According to the Action and Protection Foundation's (Tett és Védelem Alapítvány) report (January-June 2017) the number of anti-Semitic actions in Hungary decreased compared to previous years' numbers. During the first half of 2017 the Foundation identified 18 anti-Semitic hate crimes, while in 2016 there were 23, in 2015's first half there were 26 hate crimes action. Furthermore, according to a report of the European Union Fundamental Rights Agency (FRA), Hungary is amongst the countries with lower risk of anti-Semitism.

Hungarian laws and legal norms identify the following five offences related to hatred or incitement of hatred including anti-Semitic or Holocaust denying, denigrating acts: (1) violating the dignity of a member of a national, religious etc. community, as well as the dignity of a community itself (being also an aggravating circumstance if it serves a motive for another crime), (2) the denial, gelatinization or belittling in public of crimes committed by totalitarian (Nazi and Communist) regimes, punishable with up to 3 years of imprisonment (3) the use of totalitarian symbols in public, (4) establishing and running paramilitary groups or institutions, and (5) hate speech by MPs in the Parliament additionally sanctioned by the Rules of Procedure. Moreover, the rules of the Criminal Code have been tightened regarding "uniformed crime".

Some examples on court rulings and other official proceedings in Anti-Semitic (mostly criminal) cases with decisions of punishment (either on probation or to be implemented):

1. On 7 December 2012 the first court decision entered into effect for Holocaust denial. The Budapest Central Court sentenced a man of 42 to 18 months in prison, on three years' probation. In addition, three times per year during the three years of the probation period, he has to visit the Budapest Holocaust Memorial Centre in Páva Street and has to submit an account of his experiences. The perpetrator was arrested in 2011 at a rally in Budapest for he was holding up a banner with the words in Hebrew: "The Shoah did not happen".
2. In January 2015, a Hungarian court ordered an article on the far-right website Kuruc.info to be blocked because it (including its comments) contained text denying, belittling or distorting the crimes committed by the National-Socialist regimes. This was the first time that a Hungarian court ruled to block the Internet content. The article appeared there in June 2013 and questioned the atrocities against Jews in Auschwitz claiming that 'such things never ever happened'. Following its appearance on the site, a police investigation was launched to find the author of the article. The police however was unable to identify the author or the person responsible for publishing the article. Therefore the Budapest Chief Prosecutor's Office addressed the court to order the article to be made unavailable at long last. The

US-based server where the site is registered refused to voluntarily make it unavailable or to delete it from its database. Then the Ministry of Justice through legal assistance requested the competent US court to enforce the Hungarian court's ruling which however also proved futile. In June 2015, the same legal proceedings were carried out with the same result regarding a sub-page of the above website for it was delivering anti-Semitic and Holocaust denying content. Meanwhile an amendment to the criminal code was introduced which ought to enable the courts to make websites operated from abroad, such as the US-registered Kuruc.info, unavailable from Hungary.

3. 26 March 2015: a court in Debrecen sentenced a member of the Jobbik Party's local organization and member of the local municipal council to a punishment fee of 3000 USD or 300 days imprisonment who publicly denigrated the Holocaust in a WWII-commemoration speech in January 2015. The indicted person publicly apologized for his offence before the local Jewish community later in August.
4. 5 January 2016: a man was punished by a court in Esztergom with a 2600 EUR fee or 400 days imprisonment for committing by a Facebook posting the denial, relativisation or denigration of the crimes of the National-Socialist regimes.

The leaders of the local Jewish community acknowledged that Jewish life in Hungary is experiencing a renaissance. During his 19<sup>th</sup> July 2017 visit to Hungary, Israeli Prime Minister Benjamin Netanyahu said that it was important that in his statement the Hungarian Prime Minister had spoken openly about the crimes committed against the Jews by previous Hungarian governments. He thanked Prime Minister Orbán for speaking out against those who question Israel's legitimacy. He also stated that 'Budapest is at the forefront of the states that are opposed to anti-Jewish policy'.<sup>29</sup> Additionally, on 13<sup>th</sup> April 2018, Rabbi Israel Eichler, Head of the Israeli-Hungarian Friendship Association of the Israeli Parliament, sent greetings to Mr. Orbán congratulating him for his victory at the 8 April re-election, as well as for the great election campaign. The rabbi also appraised the efforts of Mr Orbán in fighting against the anti-Semitism in Hungary and Europe.

*(58) The Hungarian Government ordered that the life annuity of Holocaust survivors was to be raised by 50 % in 2012, established the Hungarian Holocaust – 2014 Memorial Committee in 2013, declared 2014 to be the Holocaust Memorial Year, launched renovation and restoration programmes of several Hungarian synagogues and Jewish cemeteries and is currently preparing for the 2019 European Maccabi Games to be held in Budapest. Hungarian legal provisions identify several offences related to hatred or incitement of hatred, including anti-Semitic or Holocaust-denying or denigrating acts. Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016. Nevertheless, in a speech held on 15 March 2018 in Budapest, the Prime Minister of Hungary used polemic attacks*

---

<sup>29</sup> <https://www.politico.eu/article/eu-hungary-sanctions-witchhunt-budapest-viktor-orban/>

*including clearly anti-Semitic stereotypes against George Soros that could have been assessed as punishable.*

The Hungarian Prime Minister's speech held on 15 March 2018 in Budapest, in fact, did not contain any, either direct or indirect, references at all to the Jewish roots of George Soros, and cannot be considered as a rhetorical manifestation of antisemitism even within the broad antisemitism concept of the IHRA working definition.

### **Roma exclusion in education / Hate crimes and hate speech**

*(59) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about reports that the Roma community continues to suffer from widespread discrimination and exclusion, unemployment, housing and educational segregation. It is particularly concerned that, notwithstanding the Public Education Act, segregation in schools, especially church and private schools, remains prevalent and the number of Roma children placed in schools for children with mild disabilities remains disproportionately high. It also mentioned concerns about the prevalence of hate crimes and about hate speech in political discourse, the media and on the internet targeting minorities, in particular Roma, Muslims, migrants and refugees, including in the context of government-sponsored campaigns. The Committee expressed its concern over the prevalence of anti-Semitic stereotypes. The Committee also noted with concern allegations that the number of registered hate crimes is extremely low because the police often fail to investigate and prosecute credible claims of hate crimes and criminal hate speech. Finally, the Committee was concerned about reports of the persistent practice of racial profiling of Roma by the police.*

The Hungarian National Social Inclusion Strategy accepted in 2011 treats the reduction of segregation as a priority objective. Accordingly, in the area of education and training, particular areas of intervention are the promotion of integrated education, the reduction of segregation, the breaking of the cycle of intergenerational transmission of disadvantages, the establishment of an inclusive school environment. Special attention is paid to integration in kindergartens and schools. Therefore Roma children's access to quality education is facilitated by the application of legal, financing and institutional measures and by a number of government actions. It is important to note, however, that because of the complex nature of the problem, we have to look for a solution in a wider context, too. This means that the termination of the practice of segregation is necessary, but not enough in itself.

Therefore, there is a complex set of actions to promote success in school is required, to support the child and its family from the child's birth to the start of his/her employment. Each centre of school district employs an anti-segregation expert, who will assist the state in organising local meetings and roundtable discussions and in detecting and signalling problems. The head of the anti-segregation working group produces a report to the minister for education and to the president of the Klebelsberg Centre with annual

frequency. This way the tools required for monitoring by the Government have been established. The regulation of the districts of admittance to primary schools facilitates the elimination of the undesired effects of the free selection of schools and the prevention of segregation. In order to regulate unlawful segregation, the Act on National Public Education was extended with additional guarantee elements: As of January 2017, the centre of school district received a competence of approval in the definition of the borders of districts. In the framework of desegregation measures, we initiated official audits in 2011-2015, which were followed by actions by government offices. Following that, a so-called segregation index based survey was conducted: based on the index, we examined schools and selected the ones that would participate in the priority tender titled "Support to institutions affected by early school leaving" to be implemented until 2020 from EU funds, with a limit amount of HUF 12.9 billion. The tender invitation was published in October 2016. The project covers 300 schools (locations of performing public education institution tasks), and involves the development of complex desegregation institution development and pedagogical services. The selection of the institutions was based on the assessment with the segregation index, and we involved institutions affected in court proceedings initiated because of segregation, too. Based on the provisions of the Act on Equal Treatment, in Hungary, each local government has to prepare a so-called Local Equal Opportunity Program (HEP), in which they analyse the situation of disadvantaged groups, including the Roma, and determine an action plan to treat the detected problems in the area of education, too. The production and the regular revision of the HEP is a pre-condition of access to EU and budgetary resources.

With regard to hate speech and hate crimes, it must be pointed out that the Hungarian Penal Code strictly punishes inciting violence or hatred against a member of a community (see recital 51). In 2013, the Hungarian Parliament has amended the Hungarian Penal Code in order to make the public denial of Holocaust or the crimes of the communist regimes a crime. The following crimes are now also punishable by law: (1) violence against a member of a community; (2) incitement against a community; (3) publicly denying the crimes of National Socialist and Communist regimes; and (4) using symbols of totalitarian regimes.

By reason of the Fourth Amendment of the Fundamental Law the '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' and the right of individuals belonging to various communities to bring a civil law action (but not criminal law action) before the court because of hate speech is permitted. This legislative change has been hailed as a historic step by many – in particular by Jewish – communities, as it makes the fight against hate speech more efficient. This provision has already proved to be useful in this sense when a group of far-right bikers planned to stage a demonstration in Budapest, scheduled for 21 April 2013, the day of the 'March of the Living' with the

slogan of 'Give Gas!'. Based on the mentioned Amendment, the trial court banned the motorcade in order to prevent any disruption during the commemoration.

The Hungarian Government has further established a Working Group Against Hate Crime providing training for police officers and helping victims to cooperate with the police and report incidents. A professional forum has further been established for exchanging good practices related to the investigation of hate crimes. This forum includes law enforcement personnel as well as representatives of various non-governmental organisations working in the field of legal protection. The forum is convened by the National Police on a regular basis. The comprehensive and effective work of the members of the forum has produced useful tools with which hate crime could be better countered and acted against.

*(60) In a case regarding the village of Gyöngyöspata, where the local police was imposing fines solely on Roma for minor traffic offences, the first instance judgment found that the practice constituted harassment and direct discrimination against the Roma even if the individual measures were lawful. The second instance court and the Supreme Court ruled that the Hungarian Civil Liberties Union (HCLU), which had submitted an actio popularis claim, could not substantiate discrimination. The case was brought before the ECtHR.*

Since it is a pending case, it would be premature to comment on it, however, Hungary maintains that the law and order should be maintained even for minor offences.

### **Freedom of expression**

*(61) In accordance with the Fourth Amendment of the Fundamental Law, the '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'. The Hungarian Penal Code punishes inciting violence or hatred against a member of a community. The Government has established a Working Group Against Hate Crime providing training for police officers and helping victims to cooperate with the police and report incidents.*

It is to be greeted that the report acknowledges the efforts of the Government, therefore the criticisms on freedom of expression should have been completely deleted from the report.

**Zero tolerance in case of any form of racism is provided by the Hungarian legislation and repeated univocally at the highest political levels. Therefore, it is not justified to mention the elements of recitals 51-61 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

## Fundamental rights of migrants, asylum seekers and refugees

During the EP debate, the Members of the European Parliament who supported the reasoned proposal have consistently denied that the initiation of the Article 7 procedure would be due to the Hungarian Government's migration policy, however, it is worth examining the extent to which the final text still deals with migration policy steps and events. The truth is, however, that in the reasoned proposal, critics of all the possible international organizations and actors who are active in this field have been collected. The political context in this respect should not be put aside, since these international organizations and actors, partly because of their function and status, are those who support migration, and are of the view that migration shall not be stopped but treated within Europe, which, by definition, is opposed to the position of the Hungarian Government.

The Hungarian Government is of the firm opinion that none of the elements listed in this chapter by the European Parliament justifies to request the procedure under Article 7 (1) TEU from the Council. The Hungarian Government asks the Member States to consider Hungary's arguments below and to give their consent on the basis of Hungarian legislation, measures and steps and the provisions of the Treaties, that there is no basis for the procedure under Article 7 (1) TEU.

### **Amending asylum law in Hungary / abuses by border authorities**

*(62) On 3 July 2015, the UN High Commissioner for Refugees expressed concerns about the fast-track procedure for amending asylum law. On 17 September 2015, the UN High Commissioner for Human Rights expressed his opinion that Hungary violated international law by its treatment of refugees and migrants. On 27 November 2015, the Council of Europe Commissioner for Human Rights made a statement that Hungary's response to the refugee challenge falls short on human rights. On 21 December 2015, the UN High Commissioner for Refugees, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights urged Hungary to refrain from policies and practices that promote intolerance and fear and fuel xenophobia against refugees and migrants. On 6 June 2016, the UN High Commissioner for Refugees expressed concerns about the increasing number of allegations of abuse in Hungary against asylum-seekers and migrants by border authorities, and the broader restrictive border and legislative measures, including access to asylum procedures. On 10 April 2017, the Office of the UN High Commissioner for Refugees called for an immediate suspension of Dublin transfers to Hungary. In 2017, out of 3 397 applications for international protection filed in Hungary, 2 880 applications were rejected, which amounted to a rejection rate of 69,1 %. In 2015, out of 480 judicial appeals relating to applications for international protection, there were 40 positive decisions, i.e. 9 %. In 2016, there were 775 appeals, 5 of which resulted in positive decisions, i.e. 1 %, while there were no appeals in 2017.*

It should be pointed out that Hungary has always ensured the requirements of international conventions. Regarding the impartiality of the reasoned proposal, a significant part of the European Parliament's findings are unilateral. All the arguments suggested by the European Parliament in this section have been altered and influenced by the developments since 2015. We would like to stress that a new approach is being developed in asylum policy, both at EU and at Member States level, which instead of the existing mandatory allocation, focuses on the cooperation with third countries and the protection of external borders - in line with the views Hungary has been permanently expressing. The concept of controlled centres is presently being developed by the Member States in line with the Conclusions of the European Council adopted on 28 June 2018. The ideas raised so far regarding such controlled centres show many similarities with the Hungarian transit zones given the fact that the main aim of the controlled centres would be not to let any asylum seeker enter the territory of the EU before examining whether the asylum-seeker is eligible for international protection. According to the position of France, until the positive result of such examination, no asylum-seeker should be allowed to enter the territory of the EU.

Suffice is to mention in this regard the adoption of a new Asylum Agreement by the German Grand Coalition on 5 July 2018. According to this Agreement, and in accordance with the Geneva Convention, the right for asylum does not include the right to decide freely on the country in which asylum is sought. Therefore, at the German-Austrian border persons who have already lodged an application for asylum in a Member State of the European Union will be returned directly to the Member State concerned, if an agreement has been made with that Member State or the practice of that Member State results in taking them back. A basic principle of the Agreement of the Grand Coalition is that the border procedure will be carried out in the existing facilities located in the proximity of the German-Austrian border and in the transit zone of the Munich Airport, within a period of 48 hours.

In September 2015, under the authorisation of the Asylum Act, the Hungarian Government declared a crisis situation due to mass immigration for the first time. The rationale behind introducing this crisis situation, and the subsequent law enforcement measures, was that from 2015 on huge masses of third country nationals entered, or wanted to enter, the territory of Hungary illegally bringing about an imminent danger to public order and security.

We wish to point to the very nature of the crisis situation due to mass immigration as a special (interim) situation. The Government is authorised, by the Act on Asylum, to declare the crisis situation due to mass immigration by a government decree. During this crisis situation, and apart from the ordinary rules of asylum procedures, exceptional regulations apply. Pursuant to the effective Government Decree of 41/2016 (III. 9.) on declaring a state of crisis caused by mass migration to the entire territory of Hungary

and on the rules in connection with the declaration, continuation and termination of the state of crisis, the crisis situation lasts till 7 March 2019, unless it will be extended depending on the then relevant immigration situation.

As far as the fast-track procedure is concerned, the EU law (Asylum Procedure Directive) empowers Member States to conduct examination procedures, in accordance with the basic principles and guarantees, in an accelerated way. We wish to emphasize, though, that each application for international protection is examined thoroughly and on individual basis, even in the course of accelerated procedures. Throughout the accelerated procedure, the asylum authorities examine the merits of applications and the application of the procedure is determined in accordance with Paragraph 8 of Article 31 of the Asylum Procedures Directive.

As for the alleged ill-treatment of asylum seekers by Hungarian border authorities we firmly deny this presumption. The right to act, the obligations and the regime of border police officers to fulfil the duties in service are meticulously specified in the Act XXXIV of 1994 on the Police (hereinafter: Rtv). According to this law, police officers must not recourse to torture, inhuman or degrading treatment and shall always act with due respect for human dignity. During carrying out their measures, proportionality and the graduated approach are always applied. Reports on alleged ill-treatments are mostly based on subjective resources stemming from illegally staying migrants and NGOs assisting them. The one-sided nature of these sources gives rise to doubts concerning their factual credibility and reliability. In addition, no court cases have been reported so far where Hungarian border police officers have been indicted on charges of abusing asylum seekers affirming the position of the Hungarian Government that these accusations are completely unfounded.

*(63) The Fundamental Rights Officer of the European Border and Coast Guard Agency visited Hungary in October 2016 and March 2017, owing to the Officer's concern that the Agency might be operating under conditions which do not commit to the respect, protection and fulfilment of the rights of persons crossing the Hungarian-Serbian border, that may put the Agency in situations that de facto violate the Charter of Fundamental Rights of the European Union. The Fundamental Rights Officer concluded in March 2017 that the risk of shared responsibility of the Agency in the violation of fundamental rights in accordance with Article 34 of the European Border and Coast Guard Regulation remains very high.*

The facts collected by the Report of the Fundamental Rights Officer showed that only three atrocities were reported in 2016 and none of them involved members of the European Border and Coast Guard Agency (Frontex). Regarding the Report, we note that its content was not approved by the Executive Director of Frontex, who did not agree with a significant part of the Report of the Fundamental Rights Officer and emphasized that its allegations are not proven and also cannot be connected to Frontex. Moreover, at

the 62<sup>nd</sup> Frontex Management Board Meeting the representatives of many countries agreed with Hungary. In the framework of the Frontex Joint Operations in Hungary, 348 guest officers in 2016, 307 in 2017 and 181 in 2018 (till 26 October) were deployed at the Hungarian borders from the following Member States: Denmark, Spain, Lithuania, the Czech Republic, Austria, Slovenia, Italy, the Netherlands, Romania, Germany, Finland, Bulgaria, Latvia, France, Slovakia, Sweden, Estonia, Poland and Portugal. Moreover, professionals from Moldova, Ukraine, Serbia, Belarus, Georgia, Albania, Kosovo and Macedonia were also present as observers during these operations. None of these guest officers reported cases of allegations like the ones Hungary was accused of.

### **Detention of asylum seekers and migrants**

*(64) On 3 July 2014, the UN Working Group on Arbitrary Detention indicated that the situation of asylum seekers and migrants in irregular situations needs robust improvements and attention to ensure against arbitrary deprivation of liberty. Similar concerns about detention, in particular of unaccompanied minors, have been shared by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. On 21-27 October 2015 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Hungary and indicated in its report a considerable number of foreign nationals' (including unaccompanied minors) claims that they had been subjected to physical ill-treatment by police officers and armed guards working in immigration or asylum detention facilities. On 7 March 2017, the UN High Commissioner for Refugees expressed his concerns about a new law voted in the Hungarian Parliament envisaging the mandatory detention of all asylum seekers, including children, for the entire length of the asylum procedure. On 8 March 2017, the Council of Europe Commissioner for Human Rights issued a statement similarly expressing his concern about that law. On 31 March 2017, the UN Subcommittee on the Prevention of Torture urged Hungary to address immediately the excessive use of detention and explore alternatives.*

In its June 2018 Conclusions the European Council reconfirmed that a precondition for a functioning EU policy relies on a comprehensive approach to migration including a more effective control of the EU's external borders. The European Council also emphasized its determination to continue and reinforce its policy to prevent a return to the uncontrolled flows of 2015 and to further stem illegal migration on all existing and emerging routes. It is therefore our common duty and responsibility to protect our external borders and effectively stem the flows of illegal migration. The direction of the new initiatives at EU level follow the practice of Hungary already introduced in 2015.

According to the Reception Condition Directive, detention is restricting the applicant's stay to a specific place where the applicant is deprived of his or her freedom of movement. It is also a conceptual element of detention that the individual may only object to the measure by means of a legal remedy and may not withdraw from the decision of the competent authority until it is effective, that is, they cannot leave freely.

Consequently, as the transit zone facility is not closed, detention in the Hungarian practice is conceptually impossible since applicants can leave the transit zone any time and, that being said, the applicants are not deprived of their freedom of movement. The Hungarian practice, however, applies the detention of asylum-seekers under certain circumstances.

According to the Reception Condition Directive, Member States may designate areas of stay for the asylum procedure not only based on considerations of public interest and public order, but also to ensure the availability of applicants during the procedure. Restricting these areas to the transit zones has been applied due to the crisis caused by mass immigration, and this measure is also permitted by Article 72 TFEU in addition to the Reception Condition Directive. According to the Hungarian legislation, the asylum detention of unaccompanied minor asylum-seekers is not possible, thus, Hungary rejects the relevant part of statement of the Council of Europe Commissioner for Human Rights.

Based on the above mentioned, it is incorrect to mention that the Hungarian legislation foresees the mandatory detention of asylum applicants, including children.

*(65) In its judgment of 5 July 2016, O.M. v. Hungary, the ECtHR held that there had been a violation of the right to liberty and security in the form of detention that verged on arbitrariness. In particular, the authorities failed to exercise care when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons. The execution of that judgment is still pending.*

The O.M. v. Hungary (no. 9912/15) case dates back to June 2014, when O.M had arrived in Hungary, where he was apprehended and subsequently applied for asylum. On 25 June 2014, the Office of Immigration and Nationality ordered for the applicant to be detained, referring to the fact that his identity and nationality had not yet been clarified and to the risk of absconding. The necessity of determining an illegally arriving migrant's identity is of crucial interest, regardless of the vulnerability of the third-country national. The crucial importance of this requirement was reinforced by experiencing uncontrolled flows arriving in 2015, when people involved in terrorist activities also made use of this. Consequently, the simple fact of vulnerability should not exempt a migrant from cooperating with the authorities in order to clarify his/her identity, and therefore restriction of movement should be allowed, while the special needs of vulnerable persons should be respected.

It is important to highlight that the Hungarian authorities are in a constant dialogue with the Council of Europe regarding this issue and in general the execution of ECtHR judgments. However, it must be born in mind that the ECtHR 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 finding that in the absence of a specific and concrete legal obligation which the applicant failed to satisfy, Article 5 § 1 (b) of the Convention cannot convincingly serve as a legal basis for his asylum detention (irrespective of his being LGBT or not). Otherwise the Court should have taken into account that the applicant's LGBT status does not pertain to the issue of grounds for his detention but to the issue of circumstances of his detention (under Article 3 of the ECHR) in respect of which the applicant had not complained either to the Hungarian authorities or to the Court.

The decision in this one particular case does not mean that systematic flaws exist in the practice of Hungary.

### **The situation of unaccompanied minors**

*(66) On 12-16 June 2017, the Special Representative of the Secretary General of the Council of Europe on migration and refugees visited Serbia and two transit zones in Hungary. In his report, the Special Representative stated that violent pushbacks of migrants and refugees from Hungary to Serbia raise concerns under Articles 2 (the right to life) and 3 (prohibition of torture) of the European Convention on Human Rights (ECHR). The Special Representative also noted that the restrictive practices of admission of asylum seekers into the transit zones of Röszke and Tompa often make asylum-seekers look for illegal ways of crossing the border, having to resort to smugglers and traffickers with all the risks that this entails. He indicated that the asylum procedures, which are conducted in the transit zones, lack adequate safeguards to protect asylum seekers against refoulement to countries where they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The Special Representative concluded that it is necessary that the Hungarian legislation and practices are brought in line with the requirements of the ECHR. The Special Representative made several recommendations, including a call on the Hungarian authorities to take the necessary measures, including by reviewing the relevant legislative framework and changing relevant practices, to ensure that all foreign nationals arriving at the border or who are on Hungarian territory are not deterred from making an application for international protection. On 5-7 July 2017 a delegation of the Council of Europe Lanzarote Committee (Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse) also visited two transit zones and made a number of recommendations, including a call to treat all persons under the age of 18 years of age as children without discrimination on the ground of their age, to ensure that all children under Hungarian jurisdiction are protected against sexual exploitation and abuse, and to systematically place them in mainstream child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them by adults and adolescents in the transit zones. On 18-20 December 2017, a delegation of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) visited Hungary, including two transit zones, and concluded that a transit zone, which is effectively a place of deprivation of liberty, cannot be considered as appropriate and safe accommodation for victims of trafficking. It called on the Hungarian authorities to adopt a legal framework for the identification of victims of human*

*trafficking among third-country nationals who were not legally resident and to step up its procedures for identifying victims of such trafficking among asylum seekers and irregular migrants. As of 1 January 2018, additional regulations were introduced favouring minors in general and unaccompanied minors in specific; among others a specific curriculum was developed for minor asylum seekers. ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary, published on 15 May 2018, that while acknowledging that Hungary has faced enormous challenges following the massive arrivals of migrants and refugees, it is appalled at the measures taken in response and the serious deterioration in the situation since its fifth report. The authorities should, as a matter of urgency, end detention in transit zones, particularly for families with children and all unaccompanied minors.*

First, it should be stated that this recital of the reasoned proposal raises many and very complex issues. It should be also noted that the time these concerns refer to was when Hungary faced enormous challenges following massive arrivals of migrants and refugees. In 2015, Hungary was the second European Union country, behind Greece, to apprehend irregular migrants at its external borders with 411,515 recorded crossings. For example, during the months of June, July, and August 2015, the average number of registered arrivals in Hungary increased by 447% to 1,500 person/day. The comments on the concerns raised in this recital will be long as they require factual explanation of the situations.

In the course of establishing the transit zones, Hungary paid special attention to the needs of different age and social groups. Besides separated placement, the safety of children is also secured by the 24/7 presence of a social worker in the separate accommodation facilities for both families and unaccompanied minors. In addition, continuous security service and CCTV video surveillance system operate in the transit zones to ensure the prevention of any kind of violence, sexual exploitation or abuse. The CCTV video surveillance system monitors, however, only the community areas. Regarding the visit of the Lanzarote Committee, it is important to stress that the delegation did not identify any sign proving that migrant children placed in the transit zones were victims of sexual exploitation or abuse.

Experts of the authorities immediately start identifying potential victims of sexual exploitation and abuse. If the medical staff carrying out the examination experiences signs of previous sexual exploitation or the applicant makes such a report, both the medical staff and the asylum authority can take the necessary action.

Hungary has so far completed the training of 120 administrators for the successful identification of victims of human trafficking (partially sexual exploitation) and to increase the awareness of those who are more likely to be in contact with such persons during their day-to-day work. Moreover, Immigration and Asylum Office (BMH staff must participate in this training as well, in order to carry out more effectively their duties set out by Government Decree No. 354/2012. (XII.13) on the identification order of

victims of trafficking in human beings. In addition, a summary of relevant knowledge has been prepared and handed out for the staff. The BMH started cooperation with the International Organization for Migration (IOM) in order to provide special training for the personnel of the transit zones on the rights of the child, particularly who are affected by the migration crisis, and also trafficking in human beings.

Police personnel serving in the transit zone have participated in psychological, tactical and intercultural training that greatly contributes to the recognition and proper handling of vulnerable persons and their situations. The constantly provided adequate briefing of the officials carrying out their duties in the transit zone contains the requirements of performing tasks in a multicultural environment and the instructions for appropriate behaviour in such an environment. Unaccompanied minors between the age of 14 and 18 are also placed in the transit zones during a mass immigration crisis for the time of the asylum procedure. Five meals a day for those between the age of 14 and 18, as well as their clothing, health care, education, and religious practice are also provided in the transit zones. Children receive half a litre of milk or equivalent dairy products and fruits per day. Their supervision is provided by social workers who are present 24 hours a day. Unaccompanied minors under the age of 14 are placed in special care institutions inside the country where they get five meals a day.

In September 2018, a social worker from each of the transit zones of Röske and Tompa and an employee of the Litigation Unit of the Immigration and Asylum Office took part in the training of the IOM on health related issues concerning refugees. This was the first part of the IOM's project, within the framework of which the training of the social workers of the Immigration and Asylum Office can take place in 2019.

In the case of minors between the ages of 14 and 18, the best interest of the child is to provide them the possibility to be able to fully exercise their rights during the asylum procedure. Given that minors between 14 and 18 years of age have legal and procedural capacity in the asylum procedure, they may exercise their rights and shall fulfil their obligations on their own. Due to their age, however, involvement of a legal representative or, in the case of an unaccompanied minor, appointment of a guardian provides further procedural guarantees in accordance with national law.

In our view, the separation of unaccompanied minors under the age of 14 from those between the ages of 14 and 18 and the placement of the latter group in the transit zone protects them against sexual exploitation and abuse. The children who are the most exposed to exploitation are the children on route and those who can leave the open child protection facilities on their own (between 14 to 18 years of age).

In the framework of the child protection professional service, and under the Child Protection Act, unaccompanied minors are also provided with full home care in

accordance with the UN Convention on the Rights of the Child. This provision includes, among other things, the provision of access to basic health care, special care, education, development, psychological support, access to useful and cultural leisure time, in addition to providing accommodation, meals, pocket money and clothing at the same level as for children of Hungarian nationality, but taking cultural and religious differences into account, for example concerning meals.

According to the statutory provisions, the Károlyi István Children's Centre (hereinafter referred to as Children's Centre), which provides home-care services for children, provided psychosocial and psychotherapeutic assistance on a number of occasions a week, provided by the institution's clinical psychologists and by psychiatrists and psychologists regularly provided by charitable organisations.

During children's reception at the Children's Centre the status of the child is assessed in order to identify whether they need assistance and also the children themselves can indicate if they need any special care.

The requirements of the Asylum Procedures Directive are fully implemented in the Hungarian system since special guarantees apply to unaccompanied minors requiring special treatment: minors of 14 to 18 years of age are placed in a special block for minors, and their legal representation and the secondment of ad hoc guardians is further ensured.

In addition, unaccompanied minors in transit zones can continuously rely on the presence of social workers and psychological and psychiatric professional services and counselling. With the support of the Asylum, Migration and Integration Fund, the Hungarian State provides special services to unaccompanied minors, in the framework of a project (e.g. games related to children's leisure time, tools to keep them occupied, interpretation services in multiple languages, especially for everyday communication).

Hungarian law fully provides that a minor applicant may use his or her mother tongue or the language he or she understands in an oral and written manner during the asylum procedure. In addition, the asylum authority must inform the applicant in writing of the procedural rights, obligations and legal consequences of the breach of the obligation, at the same time as the application is filed. The guarantee of the information is that the information and its acknowledgment must be recorded, but also that the representative of the UNHCR may participate in the asylum procedure. As from 1 January 2018, additional regulations were introduced by Hungary favouring minors in general and unaccompanied minors in specific. Among others, the asylum interviewer of minors must have the necessary knowledge and training for interviewing minors, meaning that the interviewer must have the quality of inspiring confidence and provide a child-

friendly atmosphere, finding the perfect, professional interpreter who has relevant practice in communicating with children.

The access to education is also provided for minor asylum-seekers of mandatory school age according to Act CXC of 2011 on national public education, carried out by Hungarian educational authorities under the guidance of the Ministry of Human Capacities. A specific curriculum was developed for the minor asylum seekers staying in the transit zones, and as of the beginning of September 2017, education is provided according to this curriculum for minors aged between 6 and 16 years, and if the child wishes, even up to their 18 years of age, by competent and specially trained teachers.

The procedure in the transit zone is in accordance with the Qualification Directive. As regards procedural provisions, the Asylum Procedures Directive allows the possibility for Member States to carry out the procedures in facilities set up along the borders or in facilities of their choice. The need for effectively stemming illegal migration requires that those eligible for asylum and those who are not should be divided before entering the territory of the EU, therefore the Hungarian practice proves to be the only efficient procedural approach to tackling the problem. With regard to the non-refoulement principle, it should be pointed out that in case of a possible chain refoulement, the applicants would be returned by Serbia to another safe EU candidate country, so that the non-refoulement principle is applied and respected in all cases when such procedures are carried out.

During the placement in the transit zones, the belonging to ethnic, national, religious and other groups is maximally taken into consideration. We note that the transit zones criticized by court judgements in 2015 and 2016 differ from the ones which function currently. Following several changes made in relation to the transit zones in 2017, especially concerning the reception conditions, at present such violation of rights could not be determined.

If an applicant suffers any kind of atrocity in the transit zones due to cultural differences or their belonging to a certain social group, then the responsible authority acts without delay in order to protect the rights of the applicant from violation. A separate sector is established for families and minors, while the placement of single men is carried out with regard to their religious, cultural and national diversity. Special conditions apply for persons with special needs during the period of the asylum detention. This includes members of all kinds of minority groups, including LGBT people.

We refuse the use of expressions such as „closed facility” and place of „detention” regarding transit zones. Any asylum seeker is free to leave the transit zone in the direction of Serbia at any time, even without withdrawing their applications. For this reason, we do not agree with the conclusion that the transit zone „is effectively a place of

deprivation of liberty". Concerning GRETA's recommendation on the assistance of third-country national victims of trafficking, we would like to inform you that Hungary's next national counter-trafficking strategy is currently under development, and we will make sure to consider the recommendations proposed by GRETA, as well as the US State Department's TIP Office. It should also be mentioned that since 1 January 2013 special rules apply in Hungary to the identification of victims of human trafficking laid down by Government Regulation 354/2012. (XII.13). According to this regulation the police, the labour authority, the aliens police and the asylum authority *inter alia* shall perform tasks associated with the identification of victims of trafficking in human beings.

Hungary has been fulfilling its legal obligations under the Treaty, protecting the external Schengen borders of the European Union. As a Member State with an external border, we must also comply with our obligations to register data pursuant to primary EU legislation. Therefore, we are positive that the measures taken were necessary and proportionate given that since 2015 mass immigration has seriously affected the country's internal security. It should also be emphasized that Article 72 TFEU provides that, in such cases, actions may be taken by way of derogation from EU law, in respect of which Hungary has taken appropriate measures to safeguard its own and the EU's internal security.

*(67) In mid-August 2018, the immigration authorities stopped giving food to adult asylum seekers who were challenging inadmissibility decisions in court. Several asylum seekers had to seek interim measures from the ECtHR to start receiving meals. The ECtHR granted interim measures in two cases on 10 August 2018 and in a third case on 16 August 2018 and ordered the provision of food to the applicants. The Hungarian authorities have complied with the rulings.*

Further to the European Commission's request for information regarding this issue, Hungary confirmed in its reply letter of 28 September 2018 that food is automatically provided to all people residing in the transit zones until the final examination of their asylum application and they also have access to food after the final negative decisions are made with regard to their asylum requests.

### **Violation of the applicants' right to liberty and security (Ilias and Ahmed v. Hungary)**

*(68) In its judgment of 14 March 2017, Ilias and Ahmed v. Hungary, the ECtHR found that there had been a violation of the applicants' right to liberty and security. The ECtHR also found that there had been a violation of the prohibition of inhuman or degrading treatment in respect of the applicants' expulsion to Serbia, as well as a violation of the right to an effective remedy in respect of the conditions of detention at the Röszke transit zone. The case is currently pending before the Grand Chamber of the ECtHR.*

The ECtHR found violation of rights of two Bangladeshi nationals who requested asylum in September 2015 in Hungary who were accommodated in the Röszke Transit

Zone during the asylum proceedings (23 days) which they were not allowed to leave in the direction of Hungary and whose asylum application was declared inadmissible because Serbia was found to be a safe third country for them. The Court found that the applicants had been deprived of their liberty in violation of Article 5 of the Convention (without appropriate legal ground and without judicial review) and that their refoulement to Serbia placing them at the risk of chain-refoulement to Greece and the irregularities of the asylum-proceedings resulted in a violation of Article 3. The Court also found that the material conditions of reception in the Rösztke Transit Zone were not in violation of Article 3 but a lack of domestic remedy in respect of these complaints was in breach of Article 13.

On 18 September 2017 a Panel of five judges of the ECtHR accepted the Government's request that the case be referred to the Grand Chamber. The Government argued that the case raised serious issues of general importance affecting the interpretation and application of the Convention and the legal order of several High Contracting Parties, and posing serious social challenges. The Government presented in their Memorial submitted on 15 December 2017 to the Grand Chamber that global migration is currently based on a purported right to asylum-shopping encouraged by an implicit recognition of that right by the jurisprudence of the Court contrary to the explicitly reiterated principles in the Court's jurisprudence recognising the States' right to control the entry and stay of aliens on their territory.

The Chamber's interpretation of Article 3 and 5 of the Convention was based on the implicit recognition of the right to asylum-shopping whereas the Grand Chamber should clarify that no such right is recognised by international law, including the Convention and should interpret the requirements of Articles 3 and 5 accordingly. The applicants were not deprived of their personal liberty during their stay in the Rösztke Transit Zone; therefore, Article 5 of the Convention is not applicable in their case. They entered the transit zone of their own, free will and were free to leave any time in the direction of Serbia.

In contrast to the case of *Amuur v. France* (no. 19776/92, judgment of 25 June 1996), the applicants' return to Serbia did not require negotiations between the Hungarian and Serbian authorities and there are no financial and/or practical obstacles for any asylum applicants to leave the border transit zones towards Serbia. Furthermore, in finding that the applicants' confinement in the transit zone amounted to a *de facto* deprivation of liberty, the Chamber has failed to distinguish the present case from the case of *Riad and Idiab v. Belgium* (nos. 29787/03 and 29810/03, § 68, 24<sup>th</sup> January 2008) in which the applicants were confined in the transit zone not upon their arrival in the country but more than one month later, after decisions had been given ordering their release. The applicants in that case were placed in the transit zone by the will and the actions of the

authorities, while in the present case no Hungarian authority compelled the applicants to enter the transit zone.

Third Party submissions were presented by Bulgaria, Poland and the Russian Federation, as well as the UNHCR, NGOs and scholars of international law. The Grand Chamber held a hearing on 18 April 2018 and it will deliver its judgment within 1 year.

*(69) On 14 March 2018, Ahmed H., a Syrian resident in Cyprus who had tried to help his family flee Syria and cross the Serbian-Hungarian border in September 2015, was sentenced by a Hungarian court to 7 years' imprisonment and 10 years expulsion from the country on the basis of charges of 'terrorist acts', raising the issue of proper application of the laws against terrorism in Hungary, as well as the right to a fair trial.*

It is important to highlight the fact that at the time of the reasoned proposal the judgment in question was not final yet, it was delivered by a court of first instance as a result of retrial, which was ordered by the court of second instance. It is also important that Ahmed H. was charged not only with committing 'terrorist acts' but also with the 'illegal crossing of the border fence by participating in civil disturbance'. The first criminal act is punishable by imprisonment from ten to twenty years, while the latter criminal act is punishable by imprisonment from one to five years. Furthermore, it is unclear why the reasoned proposal states that the case raised the issue of the right to a fair trial, as there is no information that would support any concerns regarding the proceedings of the courts dealing with the case. Even more so, Ahmed H. could practice his right to appeal and as a result, on 20 September 2018 the Regional Court of Appeals of Szeged sentenced him to five years' imprisonment, therefore reducing the length of imprisonment compared to the sentence of the court of first instance. The court of second instance in its sentence stated that Ahmed H. carried out a terrorist act, since he was using force for trying to make a state body, the police, open the border.

### **Mandatory relocation of asylum seekers**

*(70) In its judgment of 6 September 2017 in Case C-643/15 and C-647/15, the Court of Justice of the European Union dismissed in their entirety the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers in accordance with Council Decision (EU) 2015/1601. However, since that judgment, Hungary has not complied with the Decision. On 7 December 2017, the Commission decided to refer the Czech Republic, Hungary and Poland to the Court of Justice of the European Union for non-compliance with their legal obligations on relocation.*

Regarding this point, we still uphold the position that had already been declared during the infringement procedures and before the Court of Justice of the European Union.

According to Article 13(2) of Council Decision (EU) 2015/1601, it ceased to apply on 26 September 2017 as expressly reiterated by the CJEU in its judgement in Case C-643/15

and C-647/15. The Hungarian Government, together with the governments of the other Member States under review (the Czech Republic, Poland, Hungary), therefore deems that the action of the Commission has become devoid of purpose and it should be rejected as inadmissible.

### **Infringement procedure regarding Hungarian asylum legislation**

*(71) On 7 December 2017, the Commission decided to move forward on the infringement procedure against Hungary concerning its asylum legislation by sending a reasoned opinion. The Commission considers that the Hungarian legislation does not comply with Union law, in particular Directives 2013/32/EU, 2008/115/EC and 2013/33/EU of the European Parliament and of the Council and several provisions of the Charter. On 19 July 2018, the Commission decided to refer Hungary to the Court of Justice for noncompliance of its asylum and return legislation with Union law*

It should be highlighted that the Hungarian Government is in continuous dialogue with the Commission in all EU Pilot and infringement procedures in order to take into account the Commission's concerns to the fullest extent. This open and constant dialogue takes place in the pending 2015/2201 infringement procedure as well, launched by the Commission in 2015.

By launching this infringement procedure the Commission assumed that certain rules governing the border management and asylum procedures are not in conformity with the Asylum Procedures Directive and with Directive 2010/64/EU therefore it raised five questions to the Hungarian Government. As a result of the Hungarian Government's argumentation the Commission accepted two answers (concerning the right to personal hearing of the applicant in court procedures and the right to translation) to be satisfactory out of the five questions.

The Commission awaited 16 months after the first phase of the Article 258 TFEU procedure and only went on to continue the procedure when Hungary, as a consequence of the crisis situation caused by mass immigration, introduced several changes in the rules applicable for border management and for asylum procedures. In its additional formal notice sent in May 2017 the Commission raised eight new questions extending the scope of the infringement procedure to the Reception Conditions Directive and to the Return Directive as well as to Articles of the EU Charter of Fundamental Rights. The Hungarian Government kept the Commission updated as regards the steps being taken in the meantime and as a result of the continuous dialogue the Commission accepted the Government's position in four further questions and did not continue the procedure in this respect. As regards the remaining disputed issues repeated in the reasoned opinion, the Hungarian Government firmly believes that the rules are in conformity with the applicable EU law. Even so, the Commission referred Hungary to the Court of Justice of the EU on 19 July 2018 for failure to fully comply with these directives.

As to the condition which requires Member States to allow applicants to stay on their territory until a refusal decision enters into force (Asylum Procedures Directive), the Hungarian Government demonstrated in detail that this provision fully applies in Hungary. It means that each and every applicant is allowed to stay (remain) in the transit zone until the remedy procedure is over or if no remedy procedure is launched until the deadline for that expires.

The remaining issues in the infringement procedure relate to the measures introduced as the consequence of the mass immigration situation which forced the Hungarian Government to tighten the applicable rules though still within the confines of all the relevant directives. For instance, according to the Asylum Procedures Directive the application for international protection can be lodged personally and at the place determined by the Member State. In Hungary the place for lodging an application are the transit zones. Upon entering the transit zone every person is registered immediately after the application is made although the Directive requires three working days.

It must be highlighted that the crisis situation caused by mass immigration is such a circumstance in which Article 72 of TFEU entitles Member States 'to exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security', therefore the Hungarian Government believes that the measures challenged by the Commission in its infringement procedure do not exceed the limits and confines of any applicable secondary law nor the exercise of the responsibilities empowered by Article 72 of TFEU. Despite the recent tendency of the European migration policy and the Commission's suggestions to certain Member States to accelerate their asylum procedure, the infringement case has been referred to the Court of Justice of the EU.

### **Detention of asylum applicants**

*(72) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the Hungarian law adopted in March 2017, which allows for the automatic removal to transit zones of all asylum applicants for the duration of their asylum procedure, with the exception of unaccompanied children identified as being below the age of 14, does not meet the legal standards as a result of the lengthy and indefinite period of confinement allowed, the absence of any legal requirement to promptly examine the specific conditions of each affected individual, and the lack of procedural safeguards to meaningfully challenge removal to the transit zones. The Committee was particularly concerned about reports of the extensive use of automatic immigration detention in holding facilities inside Hungary and was concerned that restrictions on personal liberty have been used as a general deterrent against unlawful entry rather than in response to an individualised determination of risk. In addition, the Committee was concerned about allegations of poor conditions in some holding facilities. It noted with concern the push-back law, which was first introduced in June 2016, enabling summary expulsion by the police of*

*anyone who crosses the border irregularly and was detained on Hungarian territory within 8 kilometres of the border, which was subsequently extended to the entire territory of Hungary, and decree 191/2015 designating Serbia as a “safe third country” allowing for push-backs at Hungary’s border with Serbia. The Committee noted with concern reports that push-backs have been applied indiscriminately and that individuals subjected to this measure have very limited opportunity to submit an asylum application or right to appeal. It also noted with concern reports of collective and violent expulsions, including allegations of heavy beatings, attacks by police dogs and shootings with rubber bullets, resulting in severe injuries and, at least in one case, in the loss of life of an asylum seeker. It was also concerned about reports that the age assessment of child asylum seekers and unaccompanied minors conducted in the transit zones is inadequate, relies heavily on visual examination by an expert and is inaccurate and about reports alleging the lack of adequate access by such asylum seekers to education, social and psychological services and legal aid. According to the new proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU the medical age assessment will be a measure of a last resort.*

In accordance with the provisions of the 1951 Geneva Refugee Convention refugees have duties towards the country in which they find themselves, which require in particular conforming to its laws and regulations, as well as to the measures taken for the maintenance of public order. The asylum applicants enter the transit zones after being fully informed, voluntarily and of their own free will, without any official constraint.

Staying in the transit zone is based on the own decision of the entering persons, following their prior and full information, and free of any official constraint. As they are free to decide whether to enter the transit zone, it is also up to their own decision whether and when to leave. The only restriction in this regard is that they cannot enter the territory of Hungary and thus that of the Schengen zone until their request has been decided in their favour. Applicants therefore volunteer – based on the information they receive at the entry into the transit zone – to wait in the area determined by the asylum authority. Both the Asylum Procedures Directive and the Reception Conditions Directive allows Member States to provide that applicants are required to report to the competent authorities or to appear in front of them in person and they may decide on their place of residence.

The term ‘transit zone’, in the current mass migration crisis situation – which pursuant to the effective government decree will last until 7 March 2019 – defines the location of the procedure rather than the type of the procedure, that is to say, asylum procedures in the transit zones are equally full value procedures on the merits of the cases. Hungarian legislation follows the logic of the Asylum Procedure Directive; according to these provisions Member States may require that applications for international protection be lodged at a designated location. Consequently, Hungary may require that applications be lodged only in transit zones making the fight against human smuggling even more effective, as well as complying with its obligations on the protection of external borders.

Moreover, they cannot be considered to be in detention since everyone who wishes to do so can leave the transit zone, only the entrance into the Schengen zone is not permitted until the necessary procedures are not finished. The rules on detention set out in the Reception Conditions Directive are adequately implemented and are applied by the Hungarian authorities only in circumstances when the terms and conditions for ordering such detention are given.

In a mass migration crisis situation Article 72 of the TFEU permits Member States to exercise their powers as regards maintaining public order and internal security. In case of a mass migration crisis situation all applications are examined on their merits as well rather than assessing only admissibility or on the possibility of accelerated procedures. Furthermore, Hungary fulfils its obligations stemming from the Schengen Border Code. Hungary, making use of the possibility as enshrined in the Return Directive, escorts asylum seekers, intercepted in the course of illegal border crossing, back to the Hungarian side of the state border. In case of persons captured inside the country but in connection with illegal border crossing, Hungary exercises its rights in line with Article 72 of TFEU with a view to maintain law and order.

In 2015 the Hungarian Government deemed it necessary to establish a national list of safe countries of origin and safe third countries. Therefore, Decree 191/2015 currently specifies the list of safe countries of origin and safe third countries. The insertion of Serbia onto this list is fully in line with international and EU standards: Serbia is a candidate country for the EU, its accession to the European Union is underway. European Commission has not expressed doubts that Serbia should be regarded as a safe third country. It would be nonsense if a candidate country would not qualify as a safe third country. Additionally, there is still no EU list determining safe third countries; therefore, Member States can decide in this area on their own, in accordance with EU-law.

Reports on alleged ill-treatments are mostly based on subjective resources originating from illegal migrants and NGOs supporting them, thus, these accounts give rise to doubts concerning their factual reliability. In addition, so far no court cases have been reported where Hungarian border police officers have been indicted on charges of abusing asylum seekers confirming the position of the Hungarian Government that these accusations are completely unjustified.

As for the age assessment of children there are medical staffs in the transit zones that are capable of determining the age of the applicants with scientific methods rather than merely by visual examination.

**It should be emphasised that merely on the grounds that Hungary does not share the mainstream immigration policy in Europe and joins instead a growing group of Member States that prefers strict border controls over the “open door policy”, it is completely inappropriate and false to propose the initiation of the Article 7 procedure. Hungary believes that European democracy demands that the admission of refugees be dependent on the decision of the Member States alone. Therefore, it is not justified to mention the elements of recitals 62-72 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

### **Economic and social rights**

Increasing economic growth and employment, as well as strengthening competitiveness are key priorities of the Government. In order to reach this goal, the Government has introduced numerous initiatives, and has set the establishment of a work-based society. The success of these actions is underpinned by the fact that Hungary has performed at or above the level of EU-average in 8 out of the 12 indicators of the renewed Social Scoreboard. The current 3.8% unemployment rate of Hungary scores among the lowest in the EU. Nevertheless, the Government is committed to further develop existing social standards in order to increase the well-being of the Hungarian people. We refuse the statement on criminalization of homelessness. Several measures have been taken in order to provide proper care combined with social services for homeless people. In recent years, the total amount of funds available in tenders for institutions that provide care for homeless people reached 1 billion HUF. The reasoned proposal also mentions the rights of children in case of separation from their families. According to the Child Protection Act, the child must not be separated from their family solely for financial reasons. Removing children from a family is the ultimate tool to protect them, and the children’s upbringing in their own family is also supported by benefits, services and measures specified in the law. The statements of the report in connection with the Hungarian strike legislation are improper and highly misleading, the referred strike agreement concluded with respect to public administration has been in force since 1994. The Hungarian practice is in full compliance with those international requirements.

### **Criminalising homelessness**

*(73) On 15 February 2012 and 11 December 2012, the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on the right to adequate housing called on Hungary to reconsider legislation allowing local authorities to punish homelessness and to uphold the Constitutional Court’s decision decriminalising homelessness. In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe’s Commissioner for Human Rights indicated his concern at measures taken to prohibit rough sleeping and the construction of huts and shacks, which have widely been described as*

*criminalising homelessness in practice. The Commissioner urged the Hungarian authorities to investigate reported cases of forced evictions without alternative solutions and of children being taken away from their families on the grounds of poor socio-economic conditions. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about state and local legislation, based on the Fourth Amendment to the Fundamental Law, which designates many public areas as out-of-bounds for “sleeping rough” and effectively punishes homelessness. On 20 June 2018, the Hungarian Parliament adopted the Seventh amendment to the Fundamental law which forbids habitual residence in a public space. The same day, the UN Special Rapporteur on the right to adequate housing called Hungary’s move to make homelessness a crime cruel and incompatible with international human rights law.*

Hungary refuses the statement that it would criminalize homelessness: for the first time since the political transition of 1989, the Fundamental Law of Hungary includes a provision which encourages taking care of people without shelter. To list some of the Government’s actions in this regard: new care-providing stations have been opened; the capacity of shelters in Budapest has been increasing; humiliation of vulnerable person(s) has been qualified as a crime in the new penal code; furthermore, in recent years the total amount of funds available in tenders for institutions that provide care for homeless people reached 1 billion HUF.

The Fundamental Law declares the provision of possibilities for a dignified living as a goal of the state. To reach this goal, the state shall assist, to the biggest feasible extent possible, in the efforts to avoid and diminish homelessness, as well as the efforts to provide basic liveable conditions. In accordance with this, the state and the local governments seek to provide accommodation for everyone without shelter.

Initially attention must be drawn to the fact that the State ensures the preservation of human dignity as well as conditions required to preserve human dignity by various means.

According to Decision 42/2000 (IX.8.) AB, the Constitutional Court of Hungary one aspect of this obligation of the State in that it shall establish, maintain and operate a social security system and social security institutions in order to ensure a minimum level of benefits that is required to secure a minimum livelihood. As it is highlighted in the Decision, one of the fundamental constitutional criteria for establishing national social security system and institutions is the protection of human life and dignity.

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. The obligation of providing shelter does not correspond to guaranteeing the “right to have a place of residence”. Thus, the State shall only be responsible for securing a shelter if homelessness directly threatens human life.

Therefore, only in the case of such an extreme situation is the State obliged to take care of those who themselves cannot provide for the fundamental preconditions of human life. As held by the Constitutional Court, “the legislature enjoys relatively great liberty in determining the methods and degrees by which it enforces constitutionally-mandated State goals and social rights. A violation of the Constitution may arise only in borderline cases when the enforcement of a State goal or the realisation of a protected institution or right are clearly rendered impossible by either interference by the State or, more frequently, by its omission. Apart from this minimum requirement, there are no constitutional criteria – except for the violation of another fundamental right – to determine whether or not legislation serving a State goal or a social right is constitutional.”

In light of the above the modification of Article XXII of the Fundamental Law of Hungary does not change the concept that Hungary shall strive to ensure decent housing conditions and access to public services for everyone.

The Fourth Amendment of the Fundamental Law extended the scope of Article XXII by stating that in order to ensure decent living conditions, the State and municipal governments shall strive to ensure accommodation for homeless people.

Whereas the Seventh Amendment of the Fundamental Law has introduced the following: “The State and local governments shall also contribute to creating decent housing conditions and to safeguarding the use of public spaces for public purposes by striving to ensure accommodation for all persons without a dwelling.”

This paragraph clarifies that besides ensuring the conditions for adequate housing, the State does not support the improper use of public spaces, such as the use of public spaces for habitual residence. According to the reasoning of the Seventh Amendment using public spaces as habitual residence infringes the proper use of public spaces. Public spaces according to their functions serve public purposes, while the use of public spaces for habitual residence does not constitute a public purpose. The protection of public spaces guarantees that everyone shall enjoy the use of public spaces according to their function with no interruption in exercising ones fundamental rights (e.g.: right to peaceful assembly). In order to express this legislative aim paragraph (3) of Article XXII of the Seventh Amendment introduced the prohibition of using public spaces for habitual residence. Considering that currently the number of available shelter beds is sufficient to provide accommodation to those in need, a prohibition of habitual residence in public spaces could be realistically adopted. A ban on sleeping rough is not without precedent in Europe. Several other EU Member States have already passed certain regulations on the issue.

The Seventh Amendment entered into force as of 15 October 2018.

This measure not only restores public order but also protects the homeless. It aims to provide proper care at homeless shelters for these people and prevent them from freezing on the streets during winter. At these homeless shelters there are more than enough places available with beds, heated rooms, warm food, bathing and washing facilities and health service awaiting everyone in need. Getting in contact with the social provision system is the only chance for the homeless to be successfully reintegrated into the society.

### **Non-compliance with the European Social Charter**

*(74) The 2017 Conclusions of the European Committee of Social Rights stated that Hungary is not in compliance with the European Social Charter on the grounds that self-employed and domestic workers, as well as other categories of workers, are not protected by occupational health and safety regulations, that measures taken to reduce the maternal mortality have been insufficient, that the minimum amount of old-age pensions is inadequate, that the minimum amount of jobseeker's aid is inadequate, that the maximum duration of payment of jobseeker's allowance is too short and that the minimum amount of rehabilitation and invalidity benefits, in certain cases, is inadequate. The Committee also concluded that Hungary is not in conformity with the European Social Charter on the grounds that the level of social assistance paid to a single person without resources, including elderly persons, is not adequate, equal access to social services is not guaranteed for lawfully resident nationals of all States Parties and it has not been established that there is an adequate supply of housing for vulnerable families. With regard to trade union rights, the Committee has stated that the right of workers to paid leave is not sufficiently secured, that no promotion measures have been taken to encourage the conclusion of collective agreements, while the protection of workers by such agreements is clearly weak in Hungary and in the civil service the right to call a strike is reserved to those unions which are parties to the agreement concluded with the government; the criteria used to determine public servants who are denied the right to strike go beyond the scope of the Charter; public service unions can only call a strike with the approval of the majority of the staff concerned.*

The Hungarian Government is committed to further developing the existing social standards in order to increase the well-being of Hungarian people and as a result of that, has gained the citizen's trust to govern for the third term. The current Government has introduced numerous initiatives for further improving Hungary's economic growth, competitiveness, social security and the citizens' well-being. The results of the national elections ensured that the Government has managed to find the right solutions for the citizens' problems.

The assessment that the Governments' actions since 2010 are successful is supported by the fact that Hungary has performed at or above the level of EU-average in 8 out of the 12 indicators of the renewed Social Scoreboard, published by the European Commission.

In Hungary, Act XCIII of 1993 on Labour Safety lays down the detailed rules on establishing the personnel, material and organizational conditions for occupational safety and occupational health in the interest of protecting the health and ability to work of persons in organized employment and consequently improving their working conditions, thereby preventing accidents at work and occupational diseases. The Act also defines the responsibilities, rights and obligations of the State, employers and employees in this regard. In order to ensure that all persons working benefit from the right to health and safety at work, the Labour Safety Act states (Section 84 Paragraph 1) that the occupational safety and health authority shall be empowered to hold inspections at any workplaces, without a special permit. Regarding the atypical forms of employment, especially in the case of teleworking, the Labour Safety Act stipulates (Section 86/A Paragraph 7) that the occupational safety and health board shall conduct the inspection only on workdays, between 8 a.m. and 8 p.m., which guarantees respect for private and family life and home. The occupational safety and health administration shall notify the employer and the employee at least three working days in advance concerning the inspection. The employer shall obtain the employee's consent for admission into the designated work place for this purpose before the commencement of the inspection.

The Fundamental Law of Hungary provides that "Hungary shall endeavour to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance laid down in the relevant legislation in the case of maternity, illness or disability, or if he or she becomes a widow(er) or orphan, or loses employment due to circumstances beyond his or her control."

Hungary shall advocate the livelihood of the elderly persons by maintaining a single compulsory pension system based on social solidarity, and by authorizing the operation of social institutions established on a voluntary basis (Article XIX (1) - (2) of the Fundamental Law).

Hungary shall provide social security to those in need through a system of social institutions and measures. The nature and extent of the social measures are set out in the Act III of 1993 on social administration and social services, which intends to meet the objective to determine the forms and organisation of certain social benefits provided by the state in order to establish and maintain social security, the conditions for eligibility for the social benefits and the guarantees of the enforcement thereof.

A separate act, namely, Act IV of 1991 on Job Assistance and Unemployment Benefits provides for the benefits of unemployed persons and the promotion of employment. The priority duties of the state include promoting the freedom of work and profession, promoting the provision of support for job seekers and preventing and mitigating the negative consequences of unemployment. Reflecting the Hungarian Government's employment policy, the act governing the rights and obligations of the participants of the

labour market defines the most important obligations of the state bodies in the field of employment policy, regulates the most common forms of support promoting employment, the job search service system, the eligibility criteria and the extent of the specific services, and the rules of their termination and recovery. The Unemployment Act also regulates the National Employment Fund that provides for the funding of supports and benefits, and the procedural rules of awarding supports and benefits.

At its election in 2010, the Government of Hungary defined as its objective to create one million new taxable jobs till 2020. In order to achieve this it is essential for the rate of employees in the population to increase at a considerable rate; for the Hungarian labour market to belong to one of the most flexible ones in Europe; and for the enterprises to create as many new high quality jobs as possible, thus employing the greatest possible number of employees. This purpose was served by reforming the labour law by the adoption of the new Labour Code at the end of 2011.

In 2010 the employment rate was at a remarkably low level,<sup>30</sup> and from the point of view of the economy it was also rather unfavourable that almost one and a half million people of active employment age stayed away from the labour market.

The Government of Hungary considers the maintenance and increase in the number of jobs and the expansion of employment as the primary task in the world of work. This government policy is linked to the relatively short duration of job-search support, as we also want to encourage active job search and improve labour market prospects for those who lose their job. This policy proved to be successful as the number of unemployed is gradually decreasing<sup>31</sup> and the increase in the number of vacancies creates good employment opportunities for those who are still unemployed today.

As of January 2012, the disability pension for those who were below retirement age, the regular social annuity and temporary invalidity annuity were transformed into health insurance benefits (benefits for persons with changed working capacity), whereas disability pensions for those who were above retirement age were transformed into old-age pensions. The aim of the reform was not the reduction of expenditures or to limit inflow into disability benefit but to create –in place of the former passive pension system - a unified, transparent system of benefits related to changed working capacity, where the emphasis is put on the remaining capabilities and rehabilitation, taking into account medical, employment and social aspects as well. All these measures contribute to end benefit dependency and to ensure equal opportunities, create prospects for valuable work, self-sustainability and raise living standards. The amount of benefit is based on former income of a person entitled to benefits for persons with reduced working capacity

---

<sup>30</sup>474,800 unemployed people in 2010  
<http://www.ksh.hu/docs/hun/xftp/idoszaki/munkerohelyz/munkerohelyz10.pdf>

<sup>31</sup> 178000 people in 2018 <http://www.ksh.hu/docs/hun/xftp/idoszaki/munkerohelyz/munkerohelyz10.pdf>

and is adjusted to the state of health, including the level of remaining work ability. According to this, persons who have a better health status and are more likely to find employment in the labour market may find lower benefits than those whose health condition are lower or have fewer opportunities for rehabilitation. The sum of the benefit is higher when the primary function of the benefit is replacing income. In cases where the main function of the benefit is support for labour market integration, strengthening and completing existing skills, the amount of cash benefits are lower. The benefits are regularly increased. Annual adjustments of benefits are made in January according to the predicted increase in consumer prices (inflation). Regarding the vulnerability of the target group, it is important in procedures related to benefits for persons with changed working capacity to inspect continuously measures capable to strengthen social safety, however the evaluation of the reform affecting the entire supply system will be realized subsequently in relevant EU financed project.

### **Amendment of the Act on strikes**

*(75) Since December 2010, strikes in Hungary were made illegal in principle when the government of Victor Orban passed an amendment to the so-called Act on strikes. The changes mean that strikes will, in principle, be allowed in companies associated with governmental administration through public service contracts. The amendment does not apply to professional groups that simply do not have such a right, such as train drivers, police officers, medical personnel and air traffic controllers. The problem lies somewhere else, mainly in the percentage of employees who must take part in the strike referendum, to make it important -up to 70 %. Then the decision on the legality of strikes will be taken by a labour court that is completely subordinate to the state. In 2011, nine applications for strike permits were submitted. In seven cases they were rejected without giving a reason; two of them were processed, but it proved impossible to issue a decision.*

The statements of the report in connection with the Hungarian strike legislation are improper. First of all, it is not true that strike is prohibited to those unions which are parties to the agreements concluded with the government, and second of all it is not correct that the professional groups do not have the right to strike, and lastly, the statistics of strike permits in 2011 is taken out of context which is highly misleading.

Pursuant to Act VII of 1989 on strike (Strike Act), strike shall not be held at judicial bodies, the Hungarian Defence Forces or law enforcement agencies. At state administration bodies, the right to strike may be exercised while complying with the particular rules set out in the agreement between the Government and the relevant trade unions, but the members of the professional personnel at the National Tax and Customs Administration of Hungary shall not be entitled to exercise the right to strike.

The strike agreement (Agreement) concluded with respect to public administration has been in force since 1994. Pursuant to the agreement, trade unions concerned, national

advocacy groups of local governments, civil servants of public administrative bodies and local governments may exercise their rights provided by the Strike Act while complying with the particular rules set out in the Agreement. On the basis of the restrictions declared in the Agreement participation in strike is forbidden for civil servants exercising employer's rights which concern fundamentally the existence of the public service relationship. The reason for this is that civil servants exercising employer's rights which concern the existence of the public service relationship play a fundamental role in the operation of the public administrative body and in taking lawful public administrative decisions; therefore, the increased protection of public interest justifies the exclusion from the exercise of right to strike. The trade unions and national federations of local governments being signatory parties to the Agreement have also agreed with this restriction.

Only the trade unions being signatories of the Agreement or joining thereto and their operating bodies shall be entitled to the right to initiate a strike. Trade unions not having signed the Agreement are not entitled to the right to initiate a strike, because the Agreement settles important rules of procedure relating to the commencement and execution of a strike. The Agreement declares the open nature of the Agreement, that is, trade unions and interest representations of local governments operating in the field of public administration may join the Agreement any time.

Based on most of the international documents related to strike it is clear that in such cases strike could be reasonably restricted, but the solutions protecting the collective rights' shall not make the strike impossible. Therefore, it is possible to set up an external decision-making forum, if this forum fulfils two essential requirements: it shall be impartial in the debate, and the procedural conditions shall not make the strike impossible. In compliance with international requirements, it is the independent and impartial Hungarian court's responsibility to decide in the case of a fundamental right collision. The independence and the impartiality of the Hungarian court are guaranteed, since the Government, has no impact on the court's decision.

The Hungarian Central Statistical Office (KSH) publishes annually strike related statistical data based on the reports of economic organizations. The data approved in June 2017 suggest that 21 strikes were notified between 2010 and 2016 and approx. 45 000 people took part in these strikes causing 408 200 lost working hours.

Concerning the number of strikes it is important to note that a new institution, the Labour Advisory and Disputes Settlement Body (MTVSZ) has an important role in collective labour disputes. MTVSZ members are nationally recognised academics and practitioners, who cooperate independently in labour disputes. According to the strike statistics of the European Trade Union Institute between 2010 and 2017, seven EU Member States had less average days not worked due to industrial action than Hungary.

## **Rights of Children**

(76) *The UN Committee on the Rights of Children's report on 'Concluding observations on the combined third, fourth and fifth periodic reports of Hungary', published in 14 October 2014, voiced concerns over an increasing number of cases where children are being taken away from their family based on poor socio economic condition. Parents may lose their child due to unemployment, lack of social housing and lack of space in temporary housing institutions. Based on a study by the European Roma Right Centre, this practice disproportionately affects Roma families and children.*

According to Act XXXI of 1997 on the Protection of Children and Guardianship Administration (Child Protection Act), the child could be separated from the parents or other relatives exclusively for their own sake, in legally described cases and manner. Therefore, the child must not be separated from their family solely for financial reasons; it would be a clear violation of the law. Should the first instance guardian authority decide to do so, the client may file an appeal, and then a review of the second instance decision can be initiated at the court by referring to an infringement of law. Based on the information available, no change in the decision of the first instance authority of guardianship was made because the child was removed from the family only because of a threat on financial reasons. The court did not, in any case, annul the decision of the guardianship authority for the reason that it was contrary to the Child Protection Act.

The Child Protection Act guarantees that the temporary placement and the placement of the child should also be reviewed at a defined date which also serves the purpose of the child.

The Ministry of Human Capacities as the supervisory body of the metropolitan and county government departments acting in the field of child protection and guardianship duties, initiates supervisory measure on the basis of petitions and the comprehensive and objective control of the metropolitan and county government offices, and will take the necessary measures if it detects any violation of law. In addition, it establishes a system of child protection in the preparation of its legislative tasks and in the design and implementation of developments affecting this system to promote the best interests of children, promoting the rights of the child to both protection and the right to be brought up in a family.

It is important to note that the decision-making process of the guardianship authority is extremely complex and the existing legislation lays out a number of procedural safeguards to ensure that such incidents do not occur. It is of utmost importance that the guardianship authority, taking the current Child Protection Act into consideration, if the child should be removed from the family, they can be only placed in the system of child protection if there is no parent and other relative who is suitable to raise the child. The

family placement under Civil Code also precedes the placement at the foster parent or in the children's home.

Removing children from a family is therefore the ultimate tool to protect them, with respecting graduation, if they cannot be raised in the family environment despite the assistance. The child's upbringing in his/her own family is also supported by special benefits, services and measures specified in the law. In cases where a child is removed from his/her family, he/she is already at risk of being vulnerable and not primarily based on the income situation and the poverty of the parents, but because of abuse or negligence. When removing children from a family, financial endures together with other problems – e.g. the parents' lifestyle causing the neglect of their children, keeping minimal conditions causing ineffective family care (e.g. if hygiene rules are not respected to the health of their children being compromised or if they do not feed them properly, etc.) – may indeed lead to the decision that the child is finally removed.

Therefore, in each case, the uniqueness of these cases has to be taken into consideration. It is merely an examination of whether there are any material reasons for the grounds for removal, but it is not enough to judge individual cases or characterize tendencies.

#### **Adequacy and coverage of social assistance and unemployment benefits**

*(77) In its Recommendation of 23 May 2018 for a Council Recommendation on the 2018 National Reform Programme of Hungary and delivering a Council opinion on the 2018 Convergence Programme of Hungary, the Commission indicated that the proportion of people at risk of poverty and social exclusion has decreased to 26,3 % in 2016 but remains above the Union average; children in general are more exposed to poverty than other age groups. The level of minimum income benefits is below 50 % of the poverty threshold for a single household, making it among the lowest in the Union. The adequacy of unemployment benefits is very low: the maximum duration of 3 months ranks as the shortest in the Union and represents only around a quarter of the average time required by job seekers to find employment. In addition, the levels of payment are among the lowest in the Union. The Commission recommended that the adequacy and coverage of social assistance and unemployment benefits be improved.*

A key general priority of the Hungarian Government is increasing economic growth and employment, in addition to strengthening competitiveness. We believe that sustainable economic growth contributes to the achievement of social well-being. The Hungarian Government has set the establishment of a work-based society as an objective; meaning that the primary source of living of the working age population should be earned from work instead of social assistance. One of the decisive aspects of employment policy measures is the enforcement of the "work instead of social assistance" principle, which has resulted in a fundamental transformation of the social security system of Hungary. The main feature of the changes is that the emphasis on passive care (and social assistance) has shifted to the support of employment. The proportion of passive

expenditure has fallen from 0.7% of the GDP to 0.2%, while the benefit supporting active employment has increased from 0.3% to 0.8% of GDP, and this is one of the highest number in the EU.

It is a positive development that for the first time the European Commission recognized that in the framework of public employment substantial steps have been taken to encourage a transition to the primary labour market, furthermore public employment has a significant role in social policy as well. Public employment plays an important role in social policy especially in the most disadvantageous areas. Hungary has implemented crucial acts to diminish the trap-like effect of the dependence on social benefits in these areas.

Since 2010 several measures have been taken in order to reduce the number of people living at risk of poverty and social exclusion. As a result the number of people living at risk of poverty and social exclusion has decreased by 9.2% and the number of children from 43.9% (in 2013) to 31.6% (in 2017), which is one of the highest reduction in comparison with other Member States.

**The Hungarian Government is committed to further developing the existing social standards in order to increase the well-being of Hungarian people and as a result of that, has gained the citizen's trust to govern for the third term. Therefore and since economic and social policies are exclusive Member State competences, it is not justified to mention the elements of recitals 73-77 in a reasoned proposal requesting the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.**

\*\*\*