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signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council  
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THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS 2020 Rule of Law Report The rule of  
law situation in the European Union

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EUROPEAN  
COMMISSION

Brussels, 30.9.2020  
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## COMMISSION STAFF WORKING DOCUMENT

### **2020 Rule of Law Report Country Chapter on the rule of law situation in Hungary**

*Accompanying the document*

### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

#### **2020 Rule of Law Report The rule of law situation in the European Union**

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## ABSTRACT

Over the past years, judicial independence in Hungary has been raised by EU institutions as a source of concern, including in the Article 7(1) TEU procedure initiated by the European Parliament. The call for strengthening judicial independence, made in the context of the European Semester, remains to be addressed. In particular, the independent National Judicial Council faces challenges in counter-balancing the powers of the President of the National Office for the Judiciary in charge of the management of the courts. Developments related to the Supreme Court (*Kúria*) also raise concerns, notably its decision to declare unlawful a request for preliminary ruling to the European Court of Justice. New rules allow for appointment to the Supreme Court of members of the Constitutional Court, elected by Parliament, outside the normal procedure, and lower the eligibility criteria for the Supreme Court President. As regards efficiency and quality, the justice system performs well in terms of the length of proceedings and has a high level of digitalisation.

The institutional anti-corruption framework is shared among different bodies. Deficient independent control mechanisms and tight interconnections between politics and certain national businesses are conducive to corruption. When serious allegations arise, there is a systematic lack of determined action to investigate and prosecute corruption cases involving high-level officials or their immediate circle. This has been raised in the European Semester and by GRECO in view of the lack of commitment to comply with its recommendations. The verification of assets and interests declarations may be improved as regards systematic checks and independent oversight. Whilst the regulation of lobbying remains incomplete, corruption prevention policies have focused on integrity in state administration and law-enforcement agencies. The shrinking possibilities of civic oversight in the context of restrictions to media freedom, a hostile environment for civil society organisations and constant new challenges in the application of the transparency and access to public information rules further weaken the anti-corruption framework.

The independence and effectiveness of the Media Council is at risk. Transparency of media ownership is not fully guaranteed. Media concentration via the creation of the Central European Press and Media Foundation (KESMA) conglomerate increased risks to media pluralism. Significant amounts of state advertising channelled to pro-government outlets have permitted the Government to exert indirect political influence over the media. Independent media outlets face systematic obstruction and intimidation, while a trend of economic take-over of such outlets raises additional concern.

The transparency and quality of the legislative process is a source of concern as the use of public consultations and impact assessments has diminished. The new possibility for public authorities to challenge final court decisions in the Constitutional Court raises questions of legal certainty. The weakening of independent institutions and the increased pressure on civil society further affect checks and balances. The Court of Justice found that the legislation on the transparency of foreign-funded civil society organisations is incompatible with EU law. Legislative measures required to execute the judgment are under preparation.

## **I. JUSTICE SYSTEM**

The structure of the Hungarian court system has been shaped by constitutional changes and regular judicial reforms introduced since 2011. The most recent reform was adopted in December 2019. Hungary has a four-tier court system. 113 district courts operate at first instance, while 20 regional courts hear appeals against district court decisions and certain cases at first instance. Five regional appeal courts decide on appeals against decisions of the regional courts. The main role of the Supreme Court (*Kúria*) is to guarantee the uniform application of the law. The President of the National Office for the Judiciary (NOJ) is an organ, provided for by the Fundamental Law and elected by Parliament, tasked with the central administration of the courts. The National Judicial Council is an independent body, which, according to the Fundamental Law, supervises the NOJ President and participates in the administration of the courts. Judges are appointed by the President of the Republic following a recommendation of the NOJ President based on a ranking of candidates established by the local judicial councils (composed of judges elected by their peers). The NOJ President cannot deviate from this ranking without the prior consent of the National Judicial Council. The Constitutional Court is not part of the court system, and reviews the constitutionality of laws and judicial decisions. The prosecution service is an independent institution vested with powers to investigate and prosecute crime. The Hungarian Bar Association and the regional bar associations are self-governing public bodies representing the interests of the legal profession, laying down and enforcing professional standards, including through disciplinary measures.

### **Independence**

**The National Judicial Council faces difficulties in counter-balancing the powers of the President of the National Office for the Judiciary; the election of a new President of the National Office for the Judiciary may open the way for reinforced cooperation.** The NOJ President is elected by Parliament<sup>1</sup> and is entrusted with extensive powers relating to the administration of the court system. The NOJ President operates under the supervision of the National Judicial Council<sup>2</sup>. However, the National Judicial Council is facing a series of structural limitations that prevent it from exercising effective oversight regarding the actions of the NOJ President. In particular, it has no right to be consulted on legislative proposals affecting the justice system<sup>3</sup>. It has a limited role as regards judicial appointments<sup>4</sup>, as well as

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<sup>1</sup> The NOJ President is nominated by the President of the Republic and elected by Parliament with a two thirds majority from among judges with at least five years' experience as a judge for a period of nine years, without the possibility of re-election (see Hungary's contribution to the Annual Rule of Law Report).

<sup>2</sup> The National Judicial Council is composed of the *Kúria* President *ex officio* and 14 judges-members (and 14 substitute members) elected by their peers for a period of six years (see Hungary's contribution to the Annual Rule of Law Report).

<sup>3</sup> In the legislative process the NOJ President represents the judiciary.

<sup>4</sup> Judicial applications are assessed on the basis of a points system established by Decree 7/2011 of 4 March 2011, issued by the Minister of Justice and based on Act CLXII of 2011, which contains an exhaustive list of criteria to be taken into consideration in determining the ranking of applicants. The Minister of Justice can define the number of points to be awarded for these criteria. The assessment system awards points based on an interview and certain elements of the application file. The local judicial councils (composed of judges elected by their peers) interview the applicants and rank them applying the points system. Following an amendment to the Decree, on which the National Judicial Council was not consulted and which entered into force on 1 November 2017, the role of the local judicial councils has been reduced by decreasing the number of points awarded by them.

the appointment of court presidents and other court managers<sup>5</sup>. Furthermore, the National Judicial Council has limited resources and depends on the NOJ President for budgetary disbursements<sup>6</sup>. The absence of effective control over the NOJ President increases the possibility of arbitrary decisions in the management of the judicial system<sup>7</sup>. In particular, the National Judicial Council criticised the previous NOJ President for having breached the law when annulling the procedures for selecting court presidents and discretionarily appointing *ad interim* court presidents without the approval of the National Judicial Council<sup>8</sup>. This situation led the National Judicial Council to formally request Parliament to remove the NOJ President<sup>9</sup>. The competent parliamentary committee examined that request and, in June 2019, Parliament rejected it. The limited powers of the National Judicial Council and the need to reinforce them were underlined by the Council of Europe<sup>10</sup>, the European Commission<sup>11</sup> and stakeholders<sup>12</sup>. On 9 July 2019, in the context of the European Semester, the Council addressed to Hungary a recommendation to ‘*strengthen judicial independence*’, noting that the National Judicial Council faces increasing difficulties in counter-balancing the powers of the NOJ President<sup>13</sup>. No legislative steps have been taken since then to address these structural issues. The National Judicial Council welcomed the election of a new NOJ President in December 2019, which may open the way for a reinforced cooperation with the National Judicial Council, while balancing of powers can be achieved with legal certainty only through a legislative reinforcement of the Council’s powers.

**Perceived judicial independence is average among the general public and very low among companies, although the latest data show improvement.** The level of independence of courts and judges is perceived as average (48% ‘*fairly or very good*’) by the general population<sup>14</sup>, but very low (26% ‘*fairly or very good*’) by companies<sup>15</sup>. However, in

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<sup>5</sup> Presidents and certain other managers of the regional courts and regional appeal courts are appointed by the NOJ President following a ranking based on a vote by the court concerned sitting as a full court by a secret ballot (the points system is not applicable). The NOJ President may deviate from the ranking but the appointment of a candidate who did not receive the majority of votes of the full court requires the prior consent of the National Judicial Council.

<sup>6</sup> The National Judicial Council determines its budget and makes an agreement thereon with the NOJ President. The budget of the National Judicial Council is defined separately within the budget of the NOJ. Although the National Judicial Council has its own budget, it lacks legal personality, does not control its own finances independently, lacks sufficient human resources in terms of staff (has only one staff member) and cannot decide to hire extra staff (European Network of Councils for the Judiciary’s contribution to the Annual Rule of Law Report).

<sup>7</sup> European Commission, 2019 Country Report Hungary, SWD(2019) 1016 final, p. 42.

<sup>8</sup> Resolutions 59/2018. (V.02.) OBT and 60/2018. (V. 02.) OBT.

<sup>9</sup> Resolution 34/2019. (V.08.) OBT. English translation available at <https://orszagosbiroitanacs.hu/?mdocs-file=1150>.

<sup>10</sup> GRECO (2019), Hungary: Insufficient progress and lack of transparency hamper fight against corruption; Commissioner for Human Rights of the Council of Europe (2019) Dunja Mijatović report following her visit to Hungary from 4 to 8 February 2019.

<sup>11</sup> European Commission, 2019 Country Report Hungary, SWD(2019) 1016 final, pp. 41-42.

<sup>12</sup> E.g. European Association of Judges (2019), Report on the fact-finding mission of the EAJ to Hungary.

<sup>13</sup> Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary. This issue was also addressed in recital 27 of Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary.

<sup>14</sup> 2020 EU Justice Scoreboard, Figure 44. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>15</sup> 2020 EU Justice Scoreboard, Figures 46 and 48. Main reasons among companies for the perceived lack of independence according to Eurobarometer: the status and position of judges do not sufficiently guarantee

2020 the negative trend observed for a number of years has turned, with both indicators improving<sup>16</sup>.

**The *Kúria* has declared unlawful an order for preliminary reference to the European Court of Justice.** Upon a motion by the Prosecutor General, the *Kúria* issued a judgment<sup>17</sup> on 10 September 2019, in which it held a preliminary reference by a District Court judge to the Court of Justice to be unlawful, considering the questions irrelevant for the case at hand. The *Kúria* judgment was of a declaratory nature and did not annul the decision to refer the case to the Court of Justice<sup>18</sup>. Nevertheless, in October 2019, the *ad interim* president of the Budapest Regional Court (*Fővárosi Törvényszék*), referring explicitly to the judgment of the *Kúria*, initiated disciplinary proceedings against the judge who issued the preliminary reference. In November 2019, the court president withdrew his motion. The fact that the *Kúria* can, in the context of an extraordinary judicial remedy, review the necessity of preliminary references could interfere with the possibility of national courts to refer questions of interpretation of Union law to the Court of Justice and that disciplinary proceedings could be initiated<sup>19</sup>, could discourage individual judges from making requests for a preliminary ruling<sup>20</sup>.

**Judges and lawyers are subject to negative narratives in the media<sup>21</sup>.** In several press statements made since January 2020, the Government and pro-government media outlets have criticised certain judicial decisions, including those releasing convicts on parole, awarding compensation to Roma children segregated in schools<sup>22</sup> and to inmates complaining

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their independence (17%), interference or pressure from economic or other specific interests (18%), interference or pressure from government and politicians (19%) (2020 EU Justice Scoreboard, Figure 47).

<sup>16</sup> Eurobarometer data (Figures 44 and 46, 2020 EU Justice Scoreboard); according to the World Economic Forum that trend continued among businesses (2020 EU Justice Scoreboard, Figure 48). According to a recent survey covering 19 EU Member States, the overall perception (5.2/10) of independence of judges by lawyers is very low. (Independence and Accountability of the Judiciary – ENCJ/CCBE (2020) Survey among lawyers on the independence of judges, 2018-2019, Figures 7, 9, 15, 16, 17).

<sup>17</sup> Bt.III.838/2019/11. Sections 667 to 669 of Act XC of 2017 on the Code of Criminal Procedure allow the *Kúria* to review in criminal cases the legality of final judicial decisions, including those ordering the submission of questions for a preliminary ruling to the Court of Justice.

<sup>18</sup> Case C-564/19 – IS, pending.

<sup>19</sup> According to the Act CLXII of 2011, the court president or the appointing authority have the right to request the opening of disciplinary proceedings. The NOJ President may request the opening of disciplinary proceedings only against court managers he/she has appointed and against judges assigned to the NOJ. The designated disciplinary panel of the service court (*‘szolgálati bíróság’*) decides whether to open disciplinary proceedings, refuse to open disciplinary proceedings, or order a preliminary hearing. The president and members of the service court are appointed by the National Judicial Council. The rules of procedure of the service court comprise the composition of the competent panels and the rules on case allocation. The rules of procedure adopted by the service court are approved and published by the National Judicial Council. An elected judge member of the National Judicial Council may be subjected to disciplinary proceedings upon the consent of National Judicial Council (see Hungary’s contribution to the Annual Rule of Law Report).

<sup>20</sup> This effect could be amplified by the fact that as of 1 April 2020, lower level courts are required by law to explain why they do not follow the interpretation of legal provisions given by the *Kúria* in its published decisions. Such deviation is a ground for an extraordinary remedy before the *Kúria*. See e.g. Sections 561(3)(g), 648(d), 649(6), 652(1) of Act XC of 2017 on the Code of Criminal Procedure.

<sup>21</sup> A survey conducted among judges in 2019 found that 40 % of them had experienced a lack of respect for their independence by the Government and the media. European Network of Councils for the Judiciary, Contribution to the online stakeholder consultation for the 2020 Rule of Law Report. The survey covered 21 EU Member States. (European Network of Councils for the Judiciary, Independence and Accountability of the Judiciary – ENCJ (2020) Survey on the independence of judges, 2019, Figures 43 and 45.)

<sup>22</sup> Act LXXXVII of 2020, adopted by the Hungarian Parliament on 3 July 2020, amended Act CXC of 2011 on National Public Education in the sense that in case of segregation in school, the courts may award moral

about their detention conditions<sup>23</sup>. In February 2020, the Government announced its intention to organise a ‘national consultation’<sup>24</sup> on these justice-related issues. The bar association<sup>25</sup>, the association of judges<sup>26</sup> and other stakeholders<sup>27</sup> expressed concerns over the Government’s narrative, arguing that it could undermine public trust and confidence in the justice system. Eventually, the consultation was abandoned. In September 2019, in the context of the execution of the European Court of Human Rights judgment *Baka v. Hungary*<sup>28</sup>, the Committee of Ministers of the Council of Europe has voiced concerns over the ‘chilling effect’ on the freedom of expression of judges and court presidents<sup>29</sup>.

**New special rules on judicial appointments to the *Kúria* have been introduced.** The number of judicial posts in the *Kúria* is not set by statute, but is determined by the NOJ President<sup>30</sup>. Under the normal procedure, judges are appointed to the *Kúria* by its President, following a call for applications, on the basis of an opinion of the *Kúria*’s competent department and of an assessment and ranking of candidates by the *Kúria*’s judicial council<sup>31</sup>. An ‘omnibus’ legislation introduced in December 2019<sup>32</sup> allows members of the Constitutional Court, who are elected by Parliament, to request to be appointed as a judge<sup>33</sup> without an application procedure. Having obtained the status of a judge, members of the Constitutional Court can request to be appointed to the *Kúria* after the termination of their

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damages in the form of educational or training services only, thereby excluding the possibility of awarding monetary damages.

<sup>23</sup> As a follow-up to the pilot judgment of the European Court of Human Rights of 10 March 2015, *Varga and others v. Hungary*.

<sup>24</sup> The ‘national consultation’ is a tool consisting of letters sent directly to every Hungarian household ‘on behalf of the Government of Hungary’, accompanied by questionnaires allowing the citizens to submit answers to sets of questions formulated by the Government and supported by a countrywide billboard and media campaign.

<sup>25</sup> Statement of the Presidium of the Hungarian Bar Association (21 January 2020).

<sup>26</sup> Statement of the Hungarian Association of Judges (*MABIE*) (10 March 2020).

<sup>27</sup> E.g. statement by Eötvös Károly Policy Institute (21 February 2020).

<sup>28</sup> Application No. 20261/12. The case concerned the premature removal of the former President of the Supreme Court prompted by his views and criticisms on a planned major reform of the judicial system. The Grand Chamber found that ‘*the premature termination of the applicant’s mandate undoubtedly had a “chilling effect” in that it must have discouraged not only him but also other judges and court presidents in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary*’ (para. 173).

<sup>29</sup> Decision of 25 September 2019 of the Committee of Ministers of the Council of Europe, CM/Del/Dec(2019)1355/H46-11. According to the Hungarian Government, no further cases have been communicated to the Government by the European Court of Human Rights where the applicants would have raised allegations related to their freedom of expression in the context of their independence as a judge.

<sup>30</sup> See Section 76(4)(a) of Act CLXI of 2011. Currently, there are 113 posts (see Decision 41.SZ/2020. (III. 24.) OBHE), 82 posts are occupied by judges of the *Kúria*, three posts are occupied by judges seconded to the *Kúria*. *Kúria* judges are assigned to departments (*kollégium*): Criminal Department (17 judges), Administrative Department (25 judges) and Civil Department (40 judges). The number of judges assigned to the various departments is not fixed. Due to the retirement of judges, in 2020 there will be three vacancies in the Civil Department and five vacancies in the Criminal Department; in 2021 there will be one vacancy in the Civil Department, two vacancies in the Criminal Department and two vacancies in the Administrative Department.

<sup>31</sup> Ranking is based on the points system. The *Kúria* President may not appoint the candidate ranked second or third without the prior consent of the National Judicial Council.

<sup>32</sup> Act CXXVII of 2019 on the amendment of certain Acts in relation to the single-instance administrative procedures of district offices.

<sup>33</sup> They have to meet the general eligibility criteria related to citizenship, legal capacity, law degree, bar examination, at least 1 year of professional experience, aptitude test, no criminal record, asset declaration (Section 4 of Act CLXII of 2011). By decisions dated 26 June 2020 (published on 3 July 2020), the President of the Republic, upon their request, appointed eight members of the Constitutional Court as judges.

mandate, without the need to follow the normal appointment procedure. As a result, in practice, the election by Parliament to the Constitutional Court, which does not entail the involvement of a body drawn in substantial part from the judiciary, can in itself lead to the appointment as a judge of the *Kúria* if requested by the judge concerned<sup>34</sup>. These legislative changes have de facto increased the role of Parliament in judicial appointments to the *Kúria*. Moreover, the *Kúria* President is elected by Parliament following a proposal from the President of the Republic, from among judges – not necessarily of the *Kúria* – with at least five years' experience as a judge<sup>35</sup>. As of 1 January 2020, rules on selecting the *Kúria* President were also amended<sup>36</sup> allowing time served as a senior legal secretary<sup>37</sup> at the Constitutional Court or at an international court to be taken into account when calculating the 'experience as a judge'. This widening of the eligibility criteria increases the pool of candidates that could potentially be elected as *Kúria* President, increasing the discretion of the President of the Republic in this regard.

**The 'omnibus' legislation introduced structural changes to the existing court system seeking to make administrative justice work faster and more predictably.** District-court level administrative and labour courts have been abolished. As of 1 April 2020, administrative cases at first instance are heard by eight designated regional courts, and all requests for ordinary or extraordinary remedies are determined by the *Kúria*. The envisaged establishment of a separate administrative court system has been abandoned<sup>38</sup>.

**Judicial salaries have been increased since January 2020 and a system of bonuses is in place.** Under the 'omnibus' legislation, judicial salaries will be raised by 60% over a period of 3 years. The increased remuneration of judges is a positive development as salaries of Hungarian judges were amongst the lowest in the EU<sup>39</sup>. Such an increase contributes to

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<sup>34</sup> According to the Council of Europe Recommendation, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice (Committee of Ministers of the Council of Europe Recommendation CM/Rec(2010)12, para. 47). See also Court of Justice case C-585/18, C-624/18 and C-625/18, *A.K.*, para. 134.

<sup>35</sup> There is no call for applications. The President of the Republic proposes a candidate. The National Judicial Council gives a non-binding opinion, following a personal interview. Parliament votes with two-thirds majority. The next president is due to be elected in 2020 under the new rules. The *Kúria* President may be removed from office – without the involvement of the judiciary – by Parliament upon a proposal by the President of the Republic, without the possibility of judicial review (Sections 74, 115 and 116(1) of Act CLXI of 2011).

<sup>36</sup> Section 1 of Act XXIV of 2019.

<sup>37</sup> A senior legal secretary (*főtanácsadó* in Hungarian, *référéndaire* in French) is a civil servant employed by the Office of the Constitutional Court and assigned to the cabinet of a member of the Constitutional Court, tasked with the drafting of decisions.

<sup>38</sup> In December 2018, the Hungarian Parliament – implementing the Seventh Amendment (28 June 2018) to the Fundamental Law – adopted two laws (Acts CXXX and CXXXI of 2018) establishing an administrative court system. Concerns as regards their compliance with the requirements of judicial independence were raised by numerous actors including the Venice Commission (Opinion CDL-AD(2019)004) and the Commissioner for Human Rights of the Council of Europe (2018), Commissioner calls on Hungary's President to return to the Parliament the legislative package on administrative courts (statement of 14 December 2018). The planned reform was first fine-tuned (Act XXIV of 2019, adopted on 1 April 2019), then stayed (Act LXI of 2019, adopted on 2 July 2019). Act CXXX of 2018 on administrative courts has not entered into force but has not been repealed either. On 12 December 2019, the Eighth Amendment to the Fundamental Law removed provisions stipulating the setting up of a separate administrative court system.

<sup>39</sup> Council of Europe (2018), European judicial systems - Efficiency and quality of justice, Table 3.20.

enhancing judicial independence<sup>40</sup>. However, concerns<sup>41</sup> have been raised as regards the possibility for the authorities managing the courts to award bonuses<sup>42</sup> to judges on a discretionary basis, without objective and transparent criteria<sup>43</sup>. According to the Council of Europe, systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges<sup>44</sup>. The impact of such a system on judicial independence is the subject-matter of a preliminary question referred to the Court of Justice<sup>45</sup>.

**While a number of aspects related to the organisation of the prosecution service have been addressed, some elements still raise concerns.** In November 2019, the Prosecutor General was re-elected by Parliament with a two-thirds majority, for a period of nine years<sup>46</sup>. The prosecution service is organised in a strictly hierarchical structure<sup>47</sup>. While the independence of the prosecution service is enshrined in law<sup>48</sup>, certain elements of the legal framework led GRECO to issue recommendations to review the rules for appointment of the Prosecutor General in order to safeguard the office from political influence<sup>49</sup>. GRECO also recommended introducing strict criteria to guide and justify decisions to remove cases from subordinate prosecutors, and called for the review of how disciplinary proceedings<sup>50</sup> are

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<sup>40</sup> In accordance with the case-law of the Court of Justice, the receipt by members of the judiciary of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence, see in particular judgment of the Court of Justice of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, para. 27, and judgment of the Court of Justice of 7 February 2019, *Carlos Escribano Vindel*, C-49/18, para. 66.

<sup>41</sup> E.g. contributions of Amnesty International Hungary, Hungarian Civil Liberties Union and Hungarian Helsinki Committee to the Annual Rule of Law Report.

<sup>42</sup> Beyond the basic salary and allowances, judges may receive rewards and bonuses. The NOJ President and the regional court presidents appointed by him have a wide margin of appreciation to confer on judges extra tasks entailing various rewards (Article 10 of Annex 2 to Directive 5/2013 (VI. 25.) OBH). The scheme of rewards is capable of significantly increasing the income of certain judges, who may accumulate rewards due for various tasks. Moreover, the NOJ President determines the average ratio of normative bonuses (*'normatív jutalom'*) to be paid from the unspent budget appropriation. The head of the budgetary entity (including the president of the regional court) may differentiate between employees (including judges working at a district court that belongs to the given regional court) (see Article 11 of Annex 2 to Directive 5/2013 (VI. 25.) OBH). Regional court presidents have the discretionary power to give higher bonuses to some judges whilst decreasing or denying such bonuses to other judges.

<sup>43</sup> On these criteria, see Venice Commission Report CDL-AD(2010)004, paras. 46 and 51; Venice Commission Opinion CDL-AD(2019)004, para. 80.

<sup>44</sup> Committee of Ministers of the Council of Europe Recommendation CM/Rec(2010)12, para. 55.

<sup>45</sup> Case C-564/19 – IS, pending.

<sup>46</sup> The Prosecutor General is nominated by the President of the Republic and elected by Parliament, from among prosecutors.

<sup>47</sup> The Prosecutor General can give instructions to prosecutors in individual cases, with no safeguards in place (Figure 55, 2020 EU Justice Scoreboard). The prosecutor concerned may request the Prosecutor General to provide a written confirmation of the instruction in an individual case. The prosecutor can explicitly deny the instruction, if it would constitute a criminal or an administrative offence or would put the prosecutor in danger, and if the prosecutor does not agree with the instruction, he/she can request the transfer of the case to another prosecutor and such a request cannot be rejected (Section 53 Act CLXIV of 2011).

<sup>48</sup> Act CLXIII of 2011 on the Prosecution Service of Hungary.

<sup>49</sup> GRECO Fourth Evaluation Round – Evaluation Report, para. 177; GRECO Fourth Evaluation Round – Interim Compliance Report, para. 20. A minority blocking the election in Parliament of a successor can maintain the Prosecutor General in office after the expiry of their mandate.

<sup>50</sup> GRECO Fourth Evaluation Round – Evaluation Report, paras. 190 and 216; GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 24 and 34. GRECO recommended (recommendation xvii) that disciplinary proceedings in respect of prosecutors 'be handled outside the immediate hierarchical structure of the Prosecution Service'. To meet GRECO's recommendations, as of January 2019 an amendment introduced the position of a disciplinary commissioner tasked with the examination of supposed breaches. Yet the superior prosecutor remains involved in disciplinary processes. The Prosecutor General decides on

handled. While most GRECO recommendations have been addressed<sup>51</sup>, the full implementation of the outstanding recommendations would also have a positive impact on the anti-corruption framework.

## Quality

**The digitalisation of the justice system is overall high.** Hungary ranks very high when it comes to the availability of electronic means<sup>52</sup>, as regards online access to published judgments by the general public<sup>53</sup>. It also ranks high as regards arrangements for producing machine-readable judicial decisions, although judgments are not modelled according a standard that would enable their machine readability<sup>54</sup>. Moreover, Hungary has very good results as regards the promotion of and incentives for using alternative dispute resolution methods<sup>55</sup>. However, court fees remain high<sup>56</sup>, and there are concerns as regards the level of inclusiveness of the legal aid scheme<sup>57</sup>. Government measures in response to the COVID-19 pandemic had an impact on the functioning of the courts. On 14 March 2020, following a proposal by the NOJ President, the *Kúria* President and the Prosecutor General, the Government ordered by Decree that the functioning of Hungarian courts be suspended, apart from certain urgent cases, for an undefined period of time<sup>58</sup>. However, on 30 March 2020, that Decree became ineffective<sup>59</sup>. On 31 March 2020, the Government introduced changes to the procedural laws, aimed at facilitating the operation of the justice system during the ‘state of danger’<sup>60</sup>.

## Efficiency

**The efficiency in civil and administrative cases is high.** According to the 2020 EU Justice Scoreboard, Hungary performs very well as regards the estimated time needed to resolve administrative cases at first instance and the number of pending administrative cases at first instance courts<sup>61</sup>. Hungary also performs well as regards the estimated time needed to resolve

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measures to revoke a distinction, to demote by paygrade or by rank or to dismiss. The Head of Unit (superior prosecutor) may adopt lighter measures (reprimand, censure) regarding a prosecutor under their supervision. Decisions on disciplinary measures are open to appeal before a labour court (Figure 53, 2020 EU Justice Scoreboard).

<sup>51</sup> According to the Second Interim Compliance Report of the GRECO, as regards recommendations relating to the prosecutions service, one recommendation (xvi) remains not implemented and three recommendations have been partially implemented (xiv, xv and xvii). As regards recommendation xiv), the Hungarian authorities reconsidered the possibility to re-elect the Prosecutor General; GRECO was satisfied that the first part of recommendation xiv) had been duly addressed (GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 19-22). Also, recommendation xv) was partly implemented with the introduction of rules prescribing that a brief reason for the removal of a criminal or administrative case from a prosecutor must be indicated in the case file (GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 23-26). As regards recommendation xvii), see footnote 50.

<sup>52</sup> Figure 27, 2020 EU Justice Scoreboard.

<sup>53</sup> Figure 28, 2020 EU Justice Scoreboard.

<sup>54</sup> Figure 29, 2020 EU Justice Scoreboard.

<sup>55</sup> Figure 30, 2020 EU Justice Scoreboard.

<sup>56</sup> Figure 25, 2020 EU Justice Scoreboard.

<sup>57</sup> A person with an income half of the poverty threshold may not be eligible for legal aid. Figure 23, 2020 EU Justice Scoreboard.

<sup>58</sup> Government Decree 45/2020 of 14 March 2020.

<sup>59</sup> In accordance with Article 53(3) of the Fundamental Law.

<sup>60</sup> Government Decree 74/2020 of 31 March 2020. That Decree became ineffective on 18 June 2020, in accordance with Article 53(4) of the Fundamental Law.

<sup>61</sup> Figures 8 and 15, 2020 EU Justice Scoreboard.

litigious civil and commercial cases<sup>62</sup>. The new Codes of Civil Procedure<sup>63</sup>, of Administrative Court Procedure<sup>64</sup> and of Criminal Procedure<sup>65</sup> entered into force in 2018. These new rules could facilitate the hearing of civil and criminal cases and judicial review of administrative decisions within a reasonable time<sup>66</sup>.

**Effective remedies in cases of excessively lengthy proceedings are still lacking.** The execution of the European Court of Human Rights judgment *Gazsó v. Hungary*, is still ongoing and Hungary remains under enhanced supervision of the Committee of Ministers of the Council of Europe<sup>67</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

The competence to prevent, investigate and prosecute corruption is shared among different specialised authorities. The coordination of anti-corruption activities in Hungary is carried out by the National Protective Service (*NVSZ*) under the oversight of the Ministry of Interior. The investigation and prosecution of corruption in the public sector fall under the exclusive competence of the Investigation Division of the Central Chief Prosecution Office of Investigation and five regional offices. The prosecution service is supported by the investigative forces of the police and the National Protective Service. The State Audit Office has competences for the financial management of public funds and auditing of political parties.

**In the latest Corruption Perceptions Index by Transparency International, the country scores 44/100 and ranks 19<sup>th</sup> in the EU and 70<sup>th</sup> globally<sup>68</sup>.** Amongst Hungarian respondents, 87% believe that corruption is widespread (EU average 71%) and 32% believe that corruption affects their daily life (EU average 26%)<sup>69</sup>. 80% of companies perceive corruption as widespread (EU average 63%) and 48% of companies believe that corruption is a problem when doing business (EU average 37%). 39% of people consider that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%) while 19% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%)<sup>70</sup>.

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<sup>62</sup> Figure 7, 2020 EU Justice Scoreboard.

<sup>63</sup> Act CXXX of 2016. It is expected to accelerate civil proceedings by introducing a double-phase procedure before first-instance courts, composed of a trial phase preceded by a preparatory phase aimed at clarifying the scope of the case and fixing the claims of the parties.

<sup>64</sup> Act I of 2017. The most important provisions which are expected to contribute to the timely conclusion of administrative proceedings are the ones relating to default judgments in cases when the administrative authorities fail to observe time-limits for their decisions.

<sup>65</sup> Act XC of 2017. At the trial phase, a preparatory hearing is held to fix the scope of the case and, in order to prevent delaying tactics, subsequently new motions for taking evidence can only be submitted in exceptional circumstances.

<sup>66</sup> Input from Hungary for the 2020 Rule of Law Report.

<sup>67</sup> In October 2018, the Government tabled in Parliament Bill T/2923. In September 2020, the Committee of Ministers of the Council of Europe adopted a third interim resolution '*noting with profound disappointment that, despite their own undertakings and the Committee's urgings already expressed in two interim resolutions and a number of decisions, most recently in March 2020, the authorities have not submitted any kind of information that would allow the Committee to consider that progress has been made.*'. See Interim Resolution CM/ResDH(2020)180.

<sup>68</sup> Transparency International (2019), Corruption Perceptions Index.

<sup>69</sup> Special Eurobarometer 502 (2020).

<sup>70</sup> Flash Eurobarometer 482 (2019).

**The criminal anti-corruption legal framework is largely in place.** The Criminal Code includes the relevant definitions of corruption and related offences and criminalises different forms of bribery and trading in influence, embezzlement, misappropriation of public funds and abuse of public authority. In April 2020, a draft law was tabled in Parliament aimed at addressing the recommendations made by the OECD Working Group on Bribery<sup>71</sup>, namely to amend the definition of ‘foreign public official’ in order to clarify that it includes officials of foreign public enterprises.

**Anti-corruption competences are shared among different bodies.** The National Protective Service under the Ministry of Interior is in charge of coordinating anti-corruption policies. As of February 2019, following a reform of the Code of Criminal Procedure, criminal investigation and prosecution of corruption in the public sector fall under the exclusive competence of the Investigation Division of the Central Chief Prosecution Office and five regional offices. The Division investigates complex corruption cases committed by or involving persons enjoying immunity, foreign public officials, the President of the Republic, the Prime Minister, members of the Government, and high-ranking officials of the public security authorities. The prosecution service is supported by the investigative forces of the police and the National Protective Service. The State Audit Office also plays a role in the implementation of anti-corruption policies, notably through its control functions on finances of state institutions and political party financing. The State Audit Office also carries out regular national integrity surveys.

**While there is prosecution of high-level corruption in some cases, it remains very limited.** In its 2018 Annual Report, the Prosecutor General’s Office published corruption crime statistics for 2016-2018. According to the figures, the number of registered proceedings in corruption-related crimes has increased: 984 for 2016, 1123 for 2017 and 2046 for 2018. However, the number of convicted persons has remained almost the same: 250 in 2018, 254 in 2017 and 351 in 2016<sup>72</sup>. According to the Prosecutor General’s Office, most corruption-related cases involve public officials, typically tax and customs officials<sup>73</sup>. The fact that there had been no determined action to prosecute corruption involving high-level officials or their immediate circle has also been addressed in the context of the European Semester<sup>74</sup>. While the prosecution service has launched a limited number of corruption-related investigations against members of Parliament from the ruling party, there has been no prosecution of high-level government officials in recent years.

**Corruption prevention policies in Hungary have focused on integrity in state administration and law-enforcement agencies.** Following the expiry of the previous anti-corruption programme in 2018, in June 2020, the Government adopted<sup>75</sup> a new programme covering a two-year period (2020-2022). The strategy maintains the focus of previous strategic programmes on integrity in the public administration and contains actions related to strengthening e-administration and automated decision-making to prevent corruption. Furthermore, the strategy aims at increasing the efficiency of investigations, assessing

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<sup>71</sup> OECD (2019).

<sup>72</sup> Prosecutor General’s Office (2019).

<sup>73</sup> European Commission, 2020 Country Report Hungary, SWD(2020) 516 final, pp. 45-46.

<sup>74</sup> Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary, recital 16; European Commission, 2019 Country Report Hungary, SWD(2019) 1016 final, p. 44.

<sup>75</sup> Government Decision 1328/2020 of 19 June 2020 on Mid-term National Anti-corruption Strategy for 2020-2022 and the accompanying action plan.

corruption risks and evaluating the legal framework as well as establishing internal controls in public administration and strengthening integrity measures. The integrity framework gives a central role to internal integrity advisors<sup>76</sup> in public authorities. However, the strategic anti-corruption framework does not include actions in other areas relevant for corruption prevention, such as political party financing, asset disclosure, or regulation of lobbying and ‘revolving doors’. It also does not address risks related to clientelism, favouritism and nepotism in high-level public administration or those arising from the interface between businesses and political actors. According to the State Audit Office’s 2019 integrity survey, the highest level of risk of corruption was calculated for government bodies (50%), local administrative bodies (51%) and higher education (50%). During the period 2015-2019, Hungary had the highest number of OLAF investigations (43) closed with a financial recommendation among Member States<sup>77</sup>.

**The verification of assets and interests declarations may be improved as regards systematic checks and independent oversight.** Hungary has an extensive asset disclosure system. The system in place requires members of Parliament, government officials, and public officials to declare their assets and interests. Asset and interest declarations of government members, as well as senior civil servants and parliamentarians are available on the Internet<sup>78</sup>. Nevertheless, verifications are not systematic but based on notifications of suspicions. Verification is left to the employer of the public official, or to the Parliamentary Committee of Immunity and Credentials Verifications for the declarations of members of Parliament and high-ranking government officials. Suspicions of unjustified increase in wealth may lead to a verification procedure conducted by the National Tax and Customs Authority. However, the Tax Authority can start such proceedings only if investigative authorities have also opened criminal inquiries, which restricts the room for independent verifications. The issue of effective supervision and enforcement of rules of conduct, conflict of interests and asset declarations for members of Parliament was subject to recommendations by GRECO, the implementation of which is pending<sup>79</sup>.

**Regulation of lobbying in Hungary is incomplete and there are no rules in place to effectively regulate ‘revolving doors’.** The 2010 dedicated lobbying legislation has been revised<sup>80</sup>, making it mandatory for public officials to disclose contacts with lobbyists. Public officials are obliged to inform their superior in writing if a certain meeting with lobbyists

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<sup>76</sup> As a result of the integrity control systems introduced by a Government Decree in 2013, all public institutions need to designate such an advisor. A dedicated university programme has been established with the National University for Public Service (*NKE*) providing training and qualifications for becoming integrity advisors.

<sup>77</sup> Financial recommendations are addressed by OLAF to the EU institutions or national authorities providing or managing EU funds to seek the recovery of the defrauded EU funds to the EU budget. OLAF’s financial recommendations in the two main areas of shared management (European Structural and Investment Funds and agriculture) from 2015-2019 amounted to 3.93% of the total payments to Hungary for the years 2015-2019 (the highest of any Member State, with the EU-27 average at 0.36%). The financial impact of the irregularities detected by Hungary itself was 1.41%. (The OLAF Report 2019, Table 6). The indictment rate based on OLAF recommendations is 47% in Hungary, which is above the EU average (The OLAF Report 2019, Table 7).

<sup>78</sup> Act No. XLIII of 2010 on central Government organs and on the standing of the members of Government and State secretaries.

<sup>79</sup> GRECO Fourth Evaluation Round – Evaluation Report. In December 2019, Parliament amended Act XXXVI of 2012 regulating the functioning of Parliament and the status of its members as of 1 February 2020 aiming to implement GRECO recommendations (see Hungary’s contribution to the Annual Rule of Law Report).

<sup>80</sup> Government Decree 50/2013 of 25 February 2013.

carries risks for the organisation's integrity. The superior may prohibit the meeting or may make it conditional upon the presence of a third person. However, the applicable Decree regulates only certain aspects of meetings between government officials and lobbyists. In particular, it does not provide for the mandatory registration of lobbyists or the obligation to disclose or report contacts with lobbyists to an independent control body, nor does it require civil servants to ask permission and report back on such contacts. GRECO noted the need to improve integrity standards and adopt a code of conduct for members of Parliament and to ensure an effective supervision and enforcement of rules of conduct and conflicts of interest<sup>81</sup>. Hungary lacks specific regulation as regards the prevention of 'revolving doors'. Although both the Labour Code<sup>82</sup> and a special Act<sup>83</sup> on public officials contain confidentiality clauses, they do not specify any cooling off period<sup>84</sup>.

**Hungary has specific legislation in place to protect whistle-blowers.** The Whistle-blowers Protection Act<sup>85</sup> provides anonymity for whistle-blowers and enables the submission of complaints electronically, using a designated reporting channel, which is operated by the Ombudsman ('Commissioner for Fundamental Rights') (see section on Other Institutional Issues related to Checks and Balances below). However, the Ombudsman has only limited competence in relation to reports submitted to their office. In practice, the primary task of the Ombudsman is to forward the reports to competent authorities. These reports are not automatically transmitted to law enforcement authorities, and an administrative investigation is carried out instead first by the integrity advisor of the institution concerned. Integrity advisors report directly to their head of institution. Either upon request or *ex officio*, the Ombudsman may, however, examine whether those authorities have followed up appropriately on the reports. The public interest disclosures are investigated by the institutions concerned, and their answer containing the result of the investigation is uploaded to an electronic registry.

**Party financing in Hungary remains a concern.** GRECO noted that while the registries of political parties are transparent, the sources of party income and the length of election campaign periods lack clarity. Also as regards political parties receiving state subsidies, there is a need to have monitoring mechanisms in place<sup>86</sup>.

### **III. MEDIA PLURALISM**

Protection of media freedom and pluralism in Hungary<sup>87</sup> is provided for in the Fundamental Law<sup>88</sup>, as well as in sectoral legislation (the Media Act<sup>89</sup> and the Freedom of the Press Act<sup>90</sup>). The Freedom of the Press Act, stipulates that freedom of the press embodies independence

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<sup>81</sup> GRECO Fourth Evaluation Round – Interim Compliance Report, para 39.

<sup>82</sup> Section 8(4) of Act I of 2012.

<sup>83</sup> Section 93(1)(g) of Act CXXV of 2018.

<sup>84</sup> Section 117(1) of Act CXXV of 2018 provides that the Government must determine the sectors and positions where a government official may not be employed after the termination of his/her public service. That provision remains to be implemented.

<sup>85</sup> Act CLXV of 2013.

<sup>86</sup> GRECO Third Evaluation Round - Second Addendum to the Second Compliance Report, para. 24.

<sup>87</sup> Between 2019 and 2020, Hungary fell two places in the Reporters without Borders World Press Freedom Index, now registering at 89<sup>th</sup> position worldwide.

<sup>88</sup> Article IX (2) of the Fundamental Law stipulates that: '*Hungary shall recognise and protect the freedom and diversity of the press and shall ensure the conditions for the free dissemination of information necessary for the formation of democratic public opinion*'.

<sup>89</sup> Act CLXXXV of 2010 on Media Services and on the Mass Media.

<sup>90</sup> Act CIV of 2010 on the Freedom of the Press.

from the State and from any and all organisations and interest groups. The right to access public information is recognised by the Fundamental Law and finds expression in the Freedom of Information Act<sup>91</sup>. The Media Act establishes the National Media and Info-communications Authority (the Media Authority), whose decision-making body is the Media Council<sup>92</sup>.

**Whilst the Media Authority has adequate resources, the independence and effectiveness of the Media Council is at risk.** The Media Council is composed of a President<sup>93</sup> and four members elected by Parliament. The rules on nomination are designed to favour political consensus in the appointment of the members of the Media Council<sup>94</sup>. The 2020 Media Pluralism Monitor points to the fact that in practice these rules have not prevented the governing party from nominating all five members of the Media Council. The Monitor registers medium risk (53%) in terms of the independence and effectiveness of the Media Council.

**The Editors-in-Chief's Forum Hungary (*Főszerkesztők Fóruma*) is an industry NGO established in 2012.** It gathers editors of all major electronic, print and online media in Hungary on a voluntary basis. Its main objectives include strengthening ethics in journalism education, preparing guidelines, fostering best practices in ethical journalism and increasing trust in media and formulating media self-regulation procedures. In 2015, the Forum laid down the ethical standards and values of journalism such as impartiality, thoroughness, rules for obtaining and handling information. It seeks to promote quality journalism in particular through prizes for journalists.

**The plurality of the media market is at high risk in Hungary.** By virtue of a Government Decree<sup>95</sup>, the merger of more than 470 government-friendly media outlets through the creation of the 'KESMA'<sup>96</sup> media conglomerate in November 2018 was exempted from scrutiny by Competition Authority<sup>97</sup> and the Media Authority<sup>98</sup> by declaring it '*a merger of strategic national importance*' thereby preventing the authorities from scrutinising it. By decision dated 25 June 2020, the Constitutional Court rejected an application lodged by a quarter of the members of Parliament challenging the Government Decree. The Constitutional Court found that it rests solely and exclusively within the prerogative of the Government to determine matters of 'strategic national importance', and that nothing in the

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<sup>91</sup> Act CXII of 2011 on the Right to Informational Self-determination and on Freedom of Information.

<sup>92</sup> The Media Act clearly lays down the objectives of the Authority, stipulating that it is '*an autonomous regulatory agency subordinated solely to the law*' (Section 109) and that the Media Council is '*an independent body of the Authority reporting to Parliament subject only to Hungarian law*' (Section 123).

<sup>93</sup> The President of the Media Council concurrently occupies the post of President of the Media Authority.

<sup>94</sup> Following Venice Commission recommendations (Opinion CDL-AD(2015)015), the provisions of the Media Act relating to the appointment and dismissal of the chairperson and members of the Media Council were amended accordingly. Section 124 of the Media Act requires a unanimous decision of the ad-hoc parliamentary committee in charge of nominating candidates. (The President of the Media Authority is an *ex-officio* candidate.) The nomination committee is composed of one Member from each political group; their voting power reflects the size of the political group they represent. If the nomination committee is unable to present four nominees within the prescribed time limit, it may nominate candidates with at least two-thirds of the weighted votes.

<sup>95</sup> Government Decree 229/2018 of 5 December 2018.

<sup>96</sup> Central European Press and Media Foundation.

<sup>97</sup> By judgment of 29 January 2020, the Budapest Regional Court ruled that the approval of the merger was unlawful due to the fact that the Competition Authority had not conducted any substantive scrutiny of the merger and ordered the latter to conduct such scrutiny.

<sup>98</sup> In accordance with Section 24/A of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices.

merger could be read as necessarily threatening media pluralism in the country. An *ad-hoc* report<sup>99</sup> of the Centre for Media Pluralism and Media Freedom concluded that ‘*the establishment of KESMA via the merger of more than 470 [...] different media outlets will exacerbate the overall risk(s)*’ to media pluralism in Hungary across several key indicators analysed by the Media Pluralism Monitor, including journalists’ working conditions, horizontal and cross-media ownership concentration and the allocation of state advertising. Specifically, analysing these developments from the prism of media authority independence from political and/or economic influence and governmental ability to override the Media Authority, the report found that ‘*the total exclusion of scrutiny by the Hungarian media authority of an important operation such as KESMA [...] represents an additional element of risk*’ to media pluralism in Hungary. Serious concerns have been voiced by Hungarian and European media freedom organisations<sup>100</sup> as well as civil society following the dismissal, on 22 July 2020, of the editor-in-chief and the ensuing resignation of almost all journalists<sup>101</sup> of Hungary’s most-widely read independent news media site, *Index.hu*. The concerns were also pointing to the fact that *Index.hu* might follow a pattern of economic takeover of the remaining independent news media sites by pro-government businesspersons, as previously observed in the case of news media outlet *Origo*.

**Transparency of media ownership is not regulated in sector-specific legislation .** Linear media service providers must notify the Media Authority about their (or their parent company’s) direct or indirect ownership in media service providers<sup>102</sup>. The Media Act contains detailed rules for the prevention of media market concentration. However, the 2020 Media Pluralism Monitor considers the situation with regard to transparency of media ownership as one presenting high risk (75%).

**State advertising allows the Government to exert indirect political influence over the media.** According to the Media Pluralism Monitor, and as argued by key stakeholders<sup>103</sup>, the highest risk to media freedom and pluralism in Hungary is in the area of political independence (82%). The Media Pluralism Monitor finds that although *direct* political influence and control is not widespread, it is common knowledge that *indirect* influence is exerted over the media. The KESMA conglomerate referred to above is considered a culmination of this process in terms of pro-government media. This has been exacerbated by the absence of legislation and transparency in the distribution of state advertising, leading the 2020 Media Pluralism Monitor to score this indicator at the highest possible risk level (97%). The 2020 Media Pluralism Monitor highlights the fact that in 2019, the share of state advertising that went to pro-government outlets in the newspaper market was 75%, in the television market 95%, in the online news market 90% and in the radio market 90%.

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<sup>99</sup> Centre for Media Pluralism and Media Freedom (2019).

<sup>100</sup> <https://europeanjournalists.org/blog/2020/07/28/hungary-media-freedom-crackdown-our-letter-to-eu-leaders/>

<sup>101</sup> In a statement dated 24 July 2020, the journalists described the dismissal of their editor-in-chief as ‘an overt attempt to apply pressure’. *Index.hu* (24 July 2020), Editorial board of *Index* and more than 70 staff members resign.

<sup>102</sup> Section 42 of the Media Act. Basic information on company ownership is freely accessible on a Ministry of Justice website. Owners of any company are obliged to register their companies in the general National System of Company Information and Company Registration and their published titles with the Media Authority.

<sup>103</sup> International Press Institute (IPI), Article 19, the Committee to Protect Journalists (CPJ), the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), Free Press Unlimited (FPU) and Reporters without Borders (RSF): Conclusions of the joint international press freedom mission to Hungary (3 December 2019).

**Public access to information is hindered.** Classifying this area at ‘low risk’, the 2020 Media Pluralism Monitor points out that, while the applicable legislation is clear and courts<sup>104</sup> tilt towards granting access to journalists and the general public, court judgments overturning negative decisions of public bodies are often unenforceable in practice<sup>105</sup>. In 2016, the United Nations Special Rapporteur on human rights defenders recommended that Hungary review the legal provisions related to freedom of information and data protection in order to guarantee free and uncontrolled access to public interest information<sup>106</sup>. This issue was also raised by a country-specific recommendation in the context of the 2020 European Semester<sup>107</sup>. The Freedom of Information Act provides that any ‘organ performing public duties’ must provide access to data of public interest under its control if so requested subject to the exceptions stipulated in that Act<sup>108</sup>. While the Freedom of Information Act has been relatively stable, piecemeal changes to other sectoral laws have continued, corroding the overall transparency and access-to-information framework<sup>109</sup>. In 2013, Hungary amended<sup>110</sup> the Freedom of Information Act in order to prevent ‘abusive’ information requests. In 2016, the Government issued a Decree<sup>111</sup> which empowers public institutions to require the reimbursement of the costs incurred by the requests of access to public information in case replying to the request would entail additional work on the part of the public authority. With regard to journalists’ direct access to public events, the 2020 Media Pluralism Monitor reports that barring journalists’ access to certain public events is an increasing phenomenon.

**Independent media outlets face systemic obstruction and intimidation.** *Mérték Media Monitor* reported that based on revenue, pro-government media controls about 80% of the news media market and coverage of political content<sup>112</sup>. The small market share occupied by independent media is complemented by systemic obstruction and intimidation of independent journalists and media outlets. Research conducted by the Hungarian Civil Liberties Union (*TASZ*) in 2019 and during the COVID-19 pandemic in 2020 points to ‘systemic obstruction of the work of the independent media’ by, *inter alia*, ignoring press inquiries, limiting physical access of journalists and the discrediting, stigmatisation and intimidation of sources<sup>113</sup>. There have been no reports of physical attacks on journalists and other media professionals. In Hungary, imprisonment is among the envisaged sanctions for

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<sup>104</sup> Between 2013 and 2016, in over 70% of the 500 court cases regarding access to information, the courts ruled in favour of the data requestors (*Kúria*, 2018).

<sup>105</sup> The indicator on access to Government information is 4 on a scale of 10 (SGI, 2019).

<sup>106</sup> End of mission statement by Special Rapporteur on the situation of human rights defenders, Visit to Hungary 8 - 16 February 2016.

<sup>107</sup> Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary, recital 32.

<sup>108</sup> Proactive disclosure of data also remains a challenge, with 70% of municipalities failing to publish the minimum required information on their website (Budapest Institute, Corruption Research Center Budapest (2019)).

<sup>109</sup> European Commission, 2020 Country Report Hungary, SWD(2020) 516 final, p. 46. One example is an amendment to the law on foreign representations (Act LIX of 2019) introducing restrictions on access to foreign investment data. This continues a trend started in 2012, which contributes to increased uncertainty about the interpretation of the access to information legislation. On 19 May 2020, the Parliament adopted Act XXIX of 2020; its Section 2(3) limits – for a period of 10 years – public access all contracts and other documents related to the implementation of the Budapest-Belgrade railway connection project.

<sup>110</sup> Act XCI of 2013 (‘Lex Átlátszó’).

<sup>111</sup> Government Decree 301/2016 of 30 September 2016. Out of the 300 complaints addressed by the National Authority for Data Protection and Freedom of Information in 2018, about 10% concerned the unjustified application of fees (National Authority for Data Protection and Freedom of Information (2019)).

<sup>112</sup> *Mérték Media Monitor* (2019).

<sup>113</sup> Hungarian Civil Liberties Union (*TASZ*) (2020).

defamation<sup>114</sup>. In 2019, the Council of Europe’s Platform to promote the protection of journalism and the safety of journalists published two alerts concerning Hungary on restrictions to activities of journalists in Parliament<sup>115</sup> and a smear campaign against two *Index.hu* reporters in pro-governmental media, far-right media and by means of posters, widely considered to be anti-Semitic, which appeared in Budapest. In the same year, a weekly pro-government magazine published a list of more than 200 individuals, among which several journalists, that were labelled ‘mercenaries’ of George Soros. In 2020, the Platform published four alerts concerning the ban of the dissemination of Forbes Hungary business magazine<sup>116</sup>, Government instructions to Hungarian State media staff to request permission before writing on a number of issues, a campaign of legal and other threats and intimidation against cartoonist Gábor Pápai, following the publication of an allegedly blasphemous cartoon and the Bill (which became law<sup>117</sup> on 30 March 2020) which introduced the offence of spreading ‘false information’ on COVID-19 and sanctions of up to five years in prison<sup>118</sup>. Hungary provided detailed replies to several of these alerts. As to the criminalisation of stating or spreading false information related to the pandemic, the European Commission has stated that this raises concerns as regards legal certainty and may have a chilling effect on freedom of expression<sup>119</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Hungary is a parliamentary republic with a unicameral Parliament (National Assembly). Parliament – *inter alia* – adopts and amends<sup>120</sup> the Fundamental Law of Hungary, legislates<sup>121</sup>, elects the Prime Minister, and elects – by a two-thirds majority – the most important public officials<sup>122</sup> of the country. The President of the Republic is elected by Parliament. There are a number of institutions tasked with counter-balancing the powers of the legislature and the executive, including the Constitutional Court, the State Audit Office and the Ombudsman (‘Commissioner for Fundamental Rights’). Not only the Government,

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<sup>114</sup> Centre for Media Pluralism and Media Freedom (2019), Decriminalisation of Defamation.

<sup>115</sup> On 21 October 2019, the Speaker of Parliament introduced rules which restrict the freedom of movement and activities of journalists working in both the Parliament building and the offices of Parliament.

<sup>116</sup> In January 2020, an interim relief was ordered by a court banning the dissemination of Forbes Hungary business magazine invoking data protection rules.

<sup>117</sup> Act XII of 2020.

<sup>118</sup> E.g. International Press Institute (2020), Hungary seeks power to jail journalists for ‘false’ COVID-19 coverage, 23 March 2020, Human Rights Watch, Hungary’s Orban Uses Pandemic to Seize Unlimited Power, 23 March 2020.

<sup>119</sup> Commission statement in the European Parliament plenary debate on emergency legislation in Hungary and its impact on the Rule of Law and fundamental rights (14 May 2020). Section 337(2) of the Criminal Code is still in force; with the termination of the ‘state of danger’ on 18 June 2020, the crime defined therein can no longer be committed.

<sup>120</sup> A two-thirds majority of all the members is required to adopt or amend the Fundamental Law (Article S(2) of the Fundamental Law).

<sup>121</sup> The Fundamental Law provides for the adoption of 32 cardinal laws implementing some of its provisions and containing detailed rules on the functioning of key institutions or on the exercise of certain fundamental rights. Cardinal laws may be adopted or amended by a two-thirds majority of the members of Parliament present (Article T(4) of the Fundamental Law). The Venice Commission has criticised Hungary for using cardinal acts beyond what is strictly necessary, and even in respect of detailed legislation, which has been considered questionable from a democratic perspective as it makes it difficult to introduce reforms in the future (Opinion CDL-AD(2012)009, para. 47). The Government argues that a high level of political consensus is needed to regulate the most important aspects of fundamental rights and the organisation of the State.

<sup>122</sup> The President of the Republic, the members and President of the Constitutional Court, the *Kúria* President, the Prosecutor General, the NOJ President, the Commissioner and Deputy Commissioners for Fundamental Rights, the President of the State Audit Office, the President of the National Bank of Hungary.

the President of the Republic and every parliamentary committee, but any member of Parliament may table a bill<sup>123</sup>.

**The use of public consultations and impact assessments has diminished.** Hungarian legislation provides for the mandatory use of public consultation, as well as *ex ante* and *ex post* impact assessments<sup>124</sup>. In practice, the consultation and impact assessments are rather formal or symbolic<sup>125</sup>. Concerns relating to the involvement of the social partners and to the quality and predictability of policy-making have been raised in the context of the European Semester<sup>126</sup>. Consultations and impact assessments have been recurrently bypassed by applying special legislative procedures, such as via urgent procedures or individual member's bills, since the consultation and impact assessment requirements apply only to bills proposed by the Government<sup>127</sup>.

**On 11 March 2020, a 'state of danger'<sup>128</sup> was declared by the Government<sup>129</sup> in response to the COVID-19 pandemic.** Its duration was not predefined and the Government had discretionary power to maintain it or to terminate it<sup>130</sup>. On 30 March 2020, Parliament passed a new law<sup>131</sup> that allowed the Government to set aside any law by decree. The emergency powers granted appeared extensive, in light of the combined effect of broadly defined powers and the absence of a clear time limit. Certain emergency measures using those powers raised questions as regards their necessity and proportionality and interfered with business activities and the stability of the regulatory environment<sup>132</sup>. This issue was also addressed by a country-specific recommendation in the context of the 2020 European Semester<sup>133</sup>, where the Council recommended that Hungary *'ensure that any emergency measures be strictly proportionate, limited in time and in line with European and international standards and do not interfere with business activities and the stability of the regulatory environment'*. As of 18 June 2020, the Government terminated the 'state of danger'<sup>134</sup> and declared a 'state of public health

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<sup>123</sup> Article 6(1) of the Fundamental Law.

<sup>124</sup> Act CXXX of 2010 on Law-making, Act CXXXI of 2010 on Public Participation in Developing Legislation and the Minister of Justice Decree 24/2011 of 9 August 2011 on ex-ante and ex-post regulatory impact assessment.

<sup>125</sup> European Commission, 2020 Country Report Hungary, SWD(2020) 516 final, p. 29. The main tripartite body for social dialogue is the Permanent Consultation Forum of the Private Sector and the Government ('VKF'). Members of the Forum are selected by the Government and do not include some of the traditional trade unions and employers' organisations.

<sup>126</sup> Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary, recital 28.

<sup>127</sup> See Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary, recital 28. In 2019, only very few documents were published on the Government's designated website (National Authority for Data Protection and Freedom of Information (2019), p. 129.).

<sup>128</sup> Article 53(1) of the Fundamental Law.

<sup>129</sup> Government Decree 40/2020 of 11 March 2020.

<sup>130</sup> Article 54(3) of the Fundamental Law.

<sup>131</sup> Act XII of 2020 implementing Article 53(2) of the Fundamental Law that allows the Government to set aside laws by decree. The new Act provided that the extraordinary powers of the Government may only be exercised insofar as those are necessary and proportionate to the purpose of preventing, tackling and eliminating the COVID-19 outbreak and preventing and combating its detrimental effects.

<sup>132</sup> Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary, recital 27. See also the Venice Commission Report CDL-AD(2020)014, in particular paras. 6-16.

<sup>133</sup> Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary.

<sup>134</sup> Government Decree 282/2020 of 17 June 2020. The concrete measures taken by the Government lasted until the termination of the 'state of danger'.

emergency’ until 18 December 2020<sup>135</sup>. The applicability of some of the emergency measures were extended beyond the ‘state of danger’<sup>136</sup>. Certain emergency measures have been challenged before the Constitutional Court<sup>137</sup>. In July 2020, the Constitutional Court dismissed<sup>138</sup> a motion to review an emergency measure<sup>139</sup> issued during the ‘state of danger’, invoking the exclusion of its competence in taxation and budgetary matters<sup>140</sup>.

**New rules on the constitutional complaint procedure were introduced by the ‘omnibus’ legislation in December 2019.** As a result of this legislative reform, administrative authorities may challenge before the Constitutional Court a judicial decision that has already become final, if it violates their rights and curtails their powers under the Fundamental Law<sup>141</sup>. Such a procedural arrangement raises questions as regards the principle of legal certainty<sup>142</sup>.

**While the Commissioner for Fundamental Rights was accredited with ‘A’ status, its re-accreditation was deferred.** In October 2019, the UN Sub-Committee on Accreditation (‘SCA’) considered that the information provided as regards the steps taken to respond to a number of recommendations and concerns was insufficient<sup>143</sup>. The SCA was of the view that the selection process<sup>144</sup> is not sufficiently broad and transparent<sup>145</sup> and that the information provided by the Commissioner did not demonstrate adequate efforts in addressing all human rights issues, nor had it spoken out in a manner that promotes and protects all human rights. This was raised in particular as regards the position taken by the Commissioner on the ‘Foreign Funded Organisations Act’ (see below). The SCA also recommended advocating for adequate funding. As of May 2020, a new law on the status and remuneration of the Commissioner’s staff<sup>146</sup> provides for a 30% average pay rise. Moreover, in 2020, the

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<sup>135</sup> Government Decree 283/2020 of 17 June 2020.

<sup>136</sup> Act LVIII of 2020. For instance, Section 162 extended until 15 August 2020 the latest the Government control over the publicly traded KARTONPACK Nyrt ordered by Government Decree 128/2020 of 17 April 2020.

<sup>137</sup> E.g. Government Decrees 135 and 136/2020 of 17 April 2020 containing rules on special economic zones and appointing such a zone in the City of Göd, and Government Decree 179/2020 of 4 May 2020 suspending the application of certain provisions of the GDPR; these cases are pending before the Constitutional Court. On 14 July 2020, the Constitutional Court rejected the motion challenging Government Decree 47/2020 of 18 March 2020 allowing employers and employees to agree on departing from provisions of the Labour Code (Order II/887/2020); the Constitutional Court argued that the Government Decree is no longer applicable.

<sup>138</sup> Decision 3234/2020. (VII. 1.) AB.

<sup>139</sup> Government Decree 92/2020 of 6 April 2020 removing vehicle registration tax revenue from the municipalities.

<sup>140</sup> Article 37(4) of the Fundamental Law. That limitation gave rise to concerns expressed by the Venice Commission (Opinion CDL-AD(2012)009, para 38).

<sup>141</sup> Section 27 of Act CLI of 2011. The possibility for public authorities to challenge a final judicial decision before the Constitutional Court was first recognised in Decision 23/2018. (XII. 28.) AB of the Constitutional Court quashing a judgment of the *Kúria* which had found unlawful a decision of the Hungarian National Bank acting as a financial supervisor authority.

<sup>142</sup> See also Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 16; Venice Commission Report CDL-AD(2010)004, para. 67; Opinion CDL-AD(2017)031, para. 54.

<sup>143</sup> United Nations (2019). For instance, in 2016, the United Nations Special Rapporteur on human rights defenders recommended that Hungary strengthen the role and independence of the Commissioner and reinforce the financial autonomy of his office; consult the Commissioner on legislative processes and ensure adequate implementation of his recommendations.

<sup>144</sup> Act CXI of 2011.

<sup>145</sup> The SCA noted that the selection process does not require the advertisement of vacancies; establish clear and uniform merit criteria on which candidates are assessed; specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.

<sup>146</sup> Act CVII of 2019.

Commissioner took over the responsibilities of the Independent Police Complaints Board<sup>147</sup>. Concerns have been raised as regards the independence of a number of institutions and their capacity to function as counter-weight to the Government's powers<sup>148</sup>.

**Civil society remains under pressure, especially when taking a critical stance towards the Government.** In June 2020, the Court of Justice found that the Hungarian legislation<sup>149</sup> on the transparency of foreign-funded civil society organisations, adopted in June 2017, is incompatible with free movement of capital as well as with the right to freedom of association and the rights to protection of private life and personal data enshrined in the Charter of Fundamental Rights<sup>150</sup>. Legislative measures required to execute the Court of Justice judgment are under preparation. In November 2019, the Commission referred Hungary to the Court of Justice<sup>151</sup> in relation to a piece of legislation<sup>152</sup> (labelled 'Stop Soros' by the Government) that criminalised the organisation of assistance offered by any person on behalf of national, international and non-governmental organisations to people wishing to apply for asylum. In June 2018, the Venice Commission and the OSCE ODIHR published a Joint Opinion, concluding that the provisions examined infringe upon the right to freedom of association and expression and should be repealed<sup>153</sup>. Another law, introducing a special 25% immigration tax applicable to financial support to organisations carrying out 'activities facilitating immigration', was criticised by the Venice Commission and OSCE ODIHR<sup>154</sup>. Moreover, hostile rhetoric used by the Government and pro-government media hinders constructive cooperation with civil society organisations. Civic space in Hungary is rated 'obstructed'<sup>155</sup>. It is important that the applicable legal framework and the political and public environment take account of Council of Europe recommendations relating to protection and promotion of civil society space<sup>156</sup>.

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<sup>147</sup> Section 145 of Act CIX of 2019.

<sup>148</sup> Transparency International contribution for the 2020 Rule of Law Report.

<sup>149</sup> Act LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad. Under that law, civil organisations receiving donations from abroad have to register with the Hungarian courts as an 'organisation in receipt of support from abroad' where the amount of the donations sent to them from other Member States or from third countries over the course of a year exceeds a set threshold. When registering, they must also indicate, inter alia, the name of the donors whose support reached or exceeded the sum of HUF 500 000 (approximately €1 400) and the exact amount of the support. That information is then published on a freely accessible public electronic platform. Furthermore, the civil organisations concerned must state, on their homepage and in all their publications, that they are an 'organisation in receipt of support from abroad'.

<sup>150</sup> Judgment of the Court of Justice of 18 June 2020, *Commission v. Hungary*, C-78/18.

<sup>151</sup> Case of the Court of Justice C-821/19, pending.

<sup>152</sup> Act VI of 2018. Subsequently, the Constitutional Court emphasised in its decision No. 3/2019. (III. 7.) AB that the wording of the criminal offence under Section 353/A of the Criminal Code does not refer to the prohibition of the activities of the humanitarian organisations.

<sup>153</sup> Venice Commission and OSCE ODIHR Joint Opinion (CDL-AD(2018)013).

<sup>154</sup> 'the special tax on immigration constitutes an unjustified interference with the rights to freedom of expression and of association of the NGOs affected. The imposition of this special tax will have a chilling effect on the exercise of fundamental rights and on individuals and organisations who defend these rights or support their defence financially. It will deter potential donors from supporting these NGOs and put more hardship on civil society engaged in legitimate human rights' activities.' Venice Commission and OSCE ODIHR Joint Opinion (CDL-AD(2018)035).

<sup>155</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. The 'obstructed' rating is typically given to countries where civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights.

<sup>156</sup> Recommendation CM/Rec(2018)11 of the Committee of Ministers of the Council of Europe.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Hungary in the context of the 2020 Rule of Law Report.

## Annex II: Country visit to Hungary

The Commission services held virtual meetings in June 2020 with:

- Amnesty International Hungary
- Committee on Legislation of the National Assembly
- Corruption Research Center Budapest
- Editors-in-Chief's Forum (*Főszerkesztők Fóruma*)
- Eötvös Károly Policy Institute
- Hungarian Bar Association
- Hungarian Civil Liberties Union
- Hungarian Helsinki Committee
- K-Monitor
- Mérték Media Monitor
- Ministry of Interior
- Ministry of Justice
- National Authority for Data Protection and Freedom of Information
- National Judicial Council
- National Media and Infocommunications Authority
- National Office for the Judiciary
- Office of the Commissioner for Fundamental Rights
- Office of the Constitutional Court
- Prosecution Service of Hungary
- State Audit Office
- Supreme Court (*Kúria*)
- Transparency International Hungary

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU