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**COMMISSION STAFF WORKING DOCUMENT**

**2021 Rule of Law Report  
Country Chapter on the rule of law situation in Hungary**

*Accompanying the*

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

**2021 Rule of Law Report  
The rule of law situation in the European Union**

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## ABSTRACT

As regards efficiency and quality, the Hungarian justice system performs well in terms of the length of proceedings and has a high level of digitalisation. The gradual increase of salaries of judges and prosecutors continues. However, as regards judicial independence, the justice system has been subject to new developments adding to existing concerns, expressed also in the context of the Article 7(1) TEU procedure initiated by the European Parliament. The new rules allowing for appointment of members of the Constitutional Court to the Supreme Court (*Kúria*) outside the normal procedure, have been put in practice, and enabled the election of the new *Kúria* President, whose position was also endowed with additional powers. This *Kúria* President was elected despite a negative opinion of the National Judicial Council. The recommendation to strengthen judicial independence, made in the context of the European Semester, remains unaddressed. This includes the need to formally reinforce the powers of the independent National Judicial Council to enable it to counter-balance the powers of the President of the National Office for the Judiciary.

The implementation of the anti-corruption strategy is ongoing but its scope remains limited. Shortcomings persist as regards political party financing, lobbying and ‘revolving doors’. Risks of clientelism, favouritism and nepotism in high-level public administration as well as risks arising from the link between businesses and political actors remain unaddressed. Independent control mechanisms remain insufficient for detecting corruption. Concerns remain regarding the lack of systematic checks and insufficient oversight of asset and interest declarations. New criminal law provisions aim to address foreign bribery and informal payments in healthcare. While the indictment rate for corruption cases is high, and some new high-level corruption cases were opened since 2020, the track record for investigations of allegations concerning high-level officials and their immediate circle remains limited.

Media pluralism remains at risk. Concerns persist with regard to the independence and effectiveness of the Media Authority, also in the light of the Media Council’s decisions leading to independent radio station *Klubrádió* being taken off air. While no media support schemes were established to counter the impact of the COVID-19 pandemic on news media outlets, significant amounts of state advertising have continued to permit the government to exert indirect political influence over the media. Access to public information was tightened through emergency measures introduced during the pandemic, making timely access to such information harder for independent media outlets. Independent media outlets and journalists continue to face obstruction and intimidation.

As regards the system of checks and balances, the transparency and quality of the legislative process remain a source of concern. An amendment to the constitution will limit the powers of Government as regards the ‘state of danger’ regime after July 2023. The Commissioner for Fundamental Rights has gained more competences, but its independence has been questioned by stakeholders. The Commission launched infringement proceedings to ensure the implementation of the Court of Justice judgment on the law on the transparency of foreign-funded civil society organisations. Subsequently, Parliament repealed the law and introduced new rules on legality checks for civil society. Pressure remains on civil society organisations critical towards the government, whilst concerns have been expressed about newly established private trusts receiving significant public funding, managed by board members close to the current government.

## I. JUSTICE SYSTEM

Hungary has a four-tier ordinary court system. 113 district courts operate at first instance, while 20 regional courts hear appeals against district court decisions and decide on 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 Fundamental Law tasks the President of the National Office for the Judiciary (NOJ), elected by Parliament, with the central administration of the courts. The National Judicial Council is an independent body, which, under 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 ordinary 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 autonomous self-governing public bodies<sup>1</sup>.

### Independence

**Perceived judicial independence continues to be average among the general public and low among companies.** The perceived independence of courts and judges by the general public continues to be average, dropping from 48% in 2020 to 40% in 2021. 32% of companies perceive judicial independence as ‘fairly or very good’<sup>2</sup>, an increase compared to the 26% in 2020. As regards the general public, there has been a negative trend in perceptions in the last five years (interrupted in 2020)<sup>3</sup>; as regards companies, after a significant drop in 2019, perception continued to improve<sup>4</sup>.

**The National Judicial Council continues to face challenges in counter-balancing the powers of the President of the National Office for the Judiciary as regards the management of the courts.** As indicated in the 2020 Rule of Law Report<sup>5</sup>, 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. The National Judicial Council

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<sup>1</sup> The Hungarian Bar Association is vested with the duties to represent the legal profession vis-à-vis the government, exercise a general oversight over the regional bar associations, determine certain rules pertaining to the legal profession by issuing by-laws and to review the decisions of the regional bar associations relative to disciplinary measures. (Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 22.)

<sup>2</sup> Figures 47 and 49, 2021 EU Justice Scoreboard. 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>3</sup> Figure 44, 2020 EU Justice Scoreboard; Figure 47, 2021 EU Justice Scoreboard.

<sup>4</sup> Figures 46 and 48, 2020 EU Justice Scoreboard; Figures 49, 2021 EU Justice Scoreboard.

<sup>5</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. 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, without the possibility of re-election. The NOJ President operates under the supervision of the National Judicial Council. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 2-3.

has no legal personality<sup>6</sup> and has no right to propose legislation or to be consulted on legislative proposals affecting the justice system<sup>7</sup>. New members and substitutes have been elected to the National Judicial Council<sup>8</sup>; it has an agreed budget, and the NOJ President has provided it with one additional staff member<sup>9</sup>. The current NOJ President cooperates better with the Council than his predecessor, but that cooperation is limited to the extent required by law<sup>10</sup>, and no legislative steps have been taken to address structural issues. The Council recommendations<sup>11</sup> in the context of the European Semester, to ‘strengthen judicial independence’ remain to be addressed. The NOJ President has repeatedly filled vacancies in higher courts, without a call for applications, with judges performing administrative tasks in the NOJ<sup>12</sup>.

**The President of the *Kúria*, the Supreme Court, has received additional powers in organising the functioning of that court.** As of 1 January 2021, new rules<sup>13</sup> entered into force, allowing the *Kúria* President to set up judicial panels composed of a presiding judge<sup>14</sup> and four judges<sup>15</sup> for certain groups of cases, following a non-binding opinion of the department concerned and of the judicial council of the *Kúria*. This further increased the administrative powers of the *Kúria* President, which include appointing presiding judges<sup>16</sup>, assigning judges and presiding judges to chambers<sup>17</sup>, appointing heads of department<sup>18</sup>, and

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<sup>6</sup> Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 9.

<sup>7</sup> Information received from the National Judicial Council in the context of the country visit to Hungary. The Council is not allowed to communicate through the courts’ website (Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 9.) beyond the publication of information required by law. When the NJC wanted to reach every judge via email (e.g. to consult them on the draft of the new code of ethics), a special email address was registered for the National Judicial Council in the official email system to directly communicate with the whole judiciary.

<sup>8</sup> Input from Hungary for the 2021 Rule of Law Report, p. 5.

<sup>9</sup> Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 9.

<sup>10</sup> Information received from the National Judicial Council in the context of the country visit to Hungary.

<sup>11</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 3.

<sup>12</sup> Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 7. Section 58(3) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges. See, e.g., Decisions 83.E/2020. (II. 21.) OBHE and 62.E/2021. (III. 12.) OBHE.

<sup>13</sup> Act CLXV of 2020 amended Section 10(2) of Act CLXI of 2011 as of 1 January 2021. The introduction of panels of five has to be indicated in the case allocation scheme (input from Hungary for the 2021 Rule of Law Report, p. 4.); the department composed of judges (*kollégium*) concerned gives a non-binding opinion on the introduction of panels of five (Section 10(2) of Act CLXI of 2011); the judicial council of the *Kúria* gives a non-binding opinion on the case allocation scheme (Section 151(1)(d) of Act CLXI of 2011). Also, Act CLXV of 2020 introduced Sections 118(6) and 127(2a) of Act CLXI of 2011, allowing the *Kúria* President to appoint a Vice-President to act as Secretary General *ad interim* and linking the term of office of the (deputy) Secretary General to that of the *Kúria* President.

<sup>14</sup> Presiding judges are appointed by the *Kúria* President (Section 128(3) of Act CLXI of 2011) following a non-binding opinion of the competent department (Sections 131(c) and 132(4) of Act CLXI of 2011). The presiding judge decides on the composition of the panel hearing a given case and appoints the judge-rapporteur.

<sup>15</sup> Normally, judicial panels hearing the cases (*eljáró tanács*) are composed of a presiding judge (*tanácselnök*) and two other judges belonging to the same chamber (*ítélkező tanács*). The number of judicial posts in the *Kúria* is not set by statute, but is determined by the NOJ President (See Section 76(4)(a) of Act CLXI of 2011). Currently, there are 114 posts (see Decision 14.SZ/2021. (II. 24.) OBHE), 24 of them are vacant. It is to be noted that the *Kúria* President decides on the appointment of *Kúria* judges; the President of the Republic only plays a formal role (Figure 54, 2021 EU Justice Scoreboard).

<sup>16</sup> Section 128(3) of Act CLXI of 2011.

<sup>17</sup> In a given chamber, there can be more than one presiding judge. In that case the *Kúria* President assigns one of them to perform administrative tasks. The chambers are organised in civil, criminal and administrative departments. The head of department distributes cases among the chambers following the case allocation

establishing the case allocation scheme among chambers<sup>19</sup>. The *Kúria* President also has important powers as regards the role of the *Kúria* in ensuring the uniform application of law by courts<sup>20</sup>. To that effect, the *Kúria* makes uniformity decisions which are binding on courts<sup>21</sup>. When a chamber wishes to deviate from the *Kúria*'s published case law, it must stay the proceedings and request a uniformity decision<sup>22</sup>. The uniformity panel can be chaired by the *Kúria* President or Vice President<sup>23</sup>; its six members are selected by the chair on an ad hoc basis from among judges of the given department. Moreover, the parties may lodge a uniformity complaint against a final decision of the *Kúria* if it deviates from the *Kúria*'s published case law<sup>24</sup>. The uniformity complaint panel is chaired by the *Kúria* President or Vice President; its eight members are selected by the chair based on an algorithm<sup>25</sup>. The uniformity complaint panel may quash final decisions handed down by the chambers in individual cases<sup>26</sup>. The *Kúria*'s judicial bodies (e.g. the judicial council or the departments),

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scheme. The municipal chamber reviews the legality of municipal decrees; its members are appointed by the *Kúria* President.

<sup>18</sup> The full court and the competent department give a non-binding opinion on the candidates (Sections 131(a) and (c) and 132(4) of Act CLXI of 2011).

<sup>19</sup> The *Kúria*'s judicial council and the departments give a non-binding opinion on the case allocation scheme (see Section 9(1) of Act CLXI of 2011). Since 1 January 2021, the *Kúria* President has modified the case allocation scheme nine times.

<sup>20</sup> Since 1 April 2020, lower level courts have been 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; Sections 346(5), 406(1), 409(3) and 424(3) of Act CXXX of 2016 on the Code of Civil Procedure. The Council of Bars and Law Societies of Europe notes that these rules were introduced without consulting the judiciary, that the availability and searchability of the precedents published by the *Kúria* is not up-to-date, with individual decisions being published in various publications, and that it is not clear whether only the ratio decidendi of decisions is to be followed or also obiter dicta. In its view, the new rules will reduce the judges' autonomy with regard to the interpretation of the law in the light of the circumstances of the concrete case. (Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 24.)

<sup>21</sup> Article 25(3) of the Fundamental Law. The uniformity procedure – which is initiated by one of the chambers, or the President, or (vice-) head of department of the *Kúria*, the president of a regional appeal court or the Prosecutor General – is different from the uniformity complaint procedure which is initiated by one of the parties to a case.

<sup>22</sup> Section 32(1)(b) and (2) of Act CLXI of 2011. Each department has its own uniformity panel.

<sup>23</sup> The *Kúria* Vice Presidents are appointed by the President of the Republic following a recommendation by the *Kúria* President (Section 128(1) of Act CLXI of 2011).

<sup>24</sup> Section 41/B of Act CLXI of 2011. As of 1 January 2021, an amendment to the rules specified the cases where the uniformity complaint had to be rejected, extended the scope of the judicial decisions that may be challenged through a uniformity complaint (while limiting them to those delivered after 1 July 2020), strengthened the parties' right of disposition in the proceedings (it entitled them to revoke their complaint), and allowed for the suspension of the court's proceedings and the making of a reference for a preliminary ruling to the CJEU. The law allows for the establishment of a uniformity complaint panel with more than nine members (which is also their minimum number). (Contribution from the *Kúria* President for the 2021 Rule of Law Report, pp. 9-10.)

<sup>25</sup> Section 41/A(1) of Act CLXI of 2011. As of 1 May 2021, the *Kúria* President amended the case allocation scheme to introduce an algorithm for the composition of the uniformity complaint panels.

<sup>26</sup> Section 41/D(1)(c) of Act CLXI of 2011. The Council of Bars and Law Societies of Europe notes that the new system of uniformity complaints may lead to confusion and decreased independence of judges while granting too much decision-making power to the *Kúria* (Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 24.).



which have a merely consultative role<sup>27</sup>, are unable to counter-balance the extensive powers of the *Kúria* President<sup>28</sup>.

**A new *Kúria* President was elected as of 1 January 2021 under the new special rules on judicial appointments.** It is recalled that in June 2020, the President of the Republic, appointed as of 1 July 2020 eight members of the Constitutional Court as *Kúria* judges upon their request<sup>29</sup>, six of which without experience as a judge in an ordinary court. As explained in the 2020 Rule of Law Report, following an amendment adopted in 2020, members of the Constitutional Court, having obtained the status of a judge, could request to be appointed to the *Kúria* after the termination of their service in the Constitutional Court<sup>30</sup>. On 5 October 2020, the President of the Republic recommended<sup>31</sup> that Parliament elects one of them to the post of *Kúria* President. After having heard the person concerned in line with the relevant legal provisions<sup>32</sup>, the National Judicial Council rejected his nomination almost unanimously<sup>33</sup>. After having terminated his membership in the Constitutional Court, on 19 October 2020, the nominee was elected by the National Assembly to the post of *Kúria* President as of 1 January 2021 for a period of nine years<sup>34</sup>. Also on 19 October, the then *Kúria* President assigned him to the *Kúria*, where he served as a presiding judge in one of the chambers until he took office as *Kúria* President. These developments confirm the concerns

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<sup>27</sup> As regards the appointment of court managers in the *Kúria*, if the *Kúria* President wishes to appoint a nominee without the consent of the judicial body concerned (expressed by majority of votes) he/she must ask for the consent of the National Judicial Council (Section 132(6) of Act CLXI of 2011).

<sup>28</sup> Information received from the Hungarian Helsinki Committee in the context of the country visit to Hungary. For instance, the judicial council and the department give an opinion on the case allocation scheme (Section 9(1) of Act CLXI of 2011).

<sup>29</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 (*kollégium*) and of an assessment and ranking of candidates by the *Kúria*'s judicial council composed of judges elected by their peers. Section 3(4a) of Act CLXII of 2011 allowing the judicial appointment of members of the Constitutional Court, elected by Parliament, without a call for applications was introduced by Act CXXVII of 2019 on the amendment of certain Acts in relation to the single-instance administrative procedures of district offices ('the omnibus legislation') (2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 5.). On 21 September 2020, the National Judicial Council called on the NOJ President to propose legislation removing Section 3(4a) of Act CLXII of 2011 (Decision 107/2020. (IX.21.) OBT). During the Council meeting of 9 September 2020, the NOJ President and the representative of the Ministry of Justice were of the opinion that the National Judicial Council has no competence in the matter.

<sup>30</sup> Section 88(3) of Act CLXII of 2011.

<sup>31</sup> <https://www.parlament.hu/irom41/13175/13175.pdf>

<sup>32</sup> Section 103(3)(a) of Act CLXI of 2011.

<sup>33</sup> Thirteen judges-members voted against. The one vote in favour was cast by the then *Kúria* President (*ex-officio* member of the National Judicial Council) (Contribution from the *Kúria* President for the 2021 Rule of Law Report, p. 4.). The Council recognised the personal qualities and preparedness of the nominee, his academic merits and the experience he gained in the field of justice, in a broader sense, as member of the Constitutional Court and deputy of the Prosecutor General, but explained the rejection by referring to the nominee's lack of courtroom experience and the fact that his candidacy was made possible by legislative amendments which the Council considered were contrary to the constitutional requirement of independence and impartiality of the head of the judicial system (Decision 120/2020. (X. 9.) OBT). The opinion of the National Judicial Council is not binding. The Government is of the opinion that this arrangement assures the involvement of the judicial bodies (Input from Hungary for the 2021 Rule of Law Report, p. 2.). It is recalled that as of 1 January 2020, Section 1 of Act XXIV of 2019 amended Section 114(1) of Act CLXI of 2011 in the sense that time served as a senior legal secretary at the Constitutional Court or at an international court can be taken into account when calculating the five years' 'experience as a judge' required for the post of the *Kúria* President.

<sup>34</sup> Input from Hungary for the 2021 Rule of Law Report, p. 12.

already flagged in the 2020 Rule of Law Report<sup>35</sup>, with an appointment to the top judicial post being decided without involvement of a judicial body, and not in line with European standards<sup>36</sup>. The UN Special Rapporteur on the independence of judges and lawyers characterised the election as an ‘attack to the independence of the judiciary and as an attempt to submit the judiciary to the will of the legislative branch, in violation of the principle of separation of powers’<sup>37</sup>. In the light of the administrative powers of the *Kúria* President and the key role of the *Kúria* in the justice system<sup>38</sup>, these developments raise serious concerns as regards judicial independence<sup>39</sup>.

**The practice of the President of the National Office for the Judiciary of annulling the procedures for selecting court presidents and appointing *ad interim* court presidents without the approval of the National Judicial Council continued.** The NOJ President has continued the practice of cancelling<sup>40</sup> – in a growing number of cases and often without sufficient explanations<sup>41</sup> – selection procedures for court presidents and other court managers<sup>42</sup>, even where there were suitable applicants supported by their peers<sup>43</sup>. This practice was criticised by the National Judicial Council already under the mandate of the

<sup>35</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 5-6.

<sup>36</sup> 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>37</sup> Letter of the UN Special Rapporteur on the independence of judges and lawyers dated 15 April 2021. Moreover, as underlined by the European Network of Councils for the Judiciary, the election to the post of *Kúria* President was made possible by *ad hominem* legislation (European Network of Councils for the Judiciary (2020)). Also to be recalled that the Committee of Ministers of the Council of Europe noted with concern the continuing absence of safeguards in connection with *ad hominem* constitutional-level measures terminating a judicial mandate, and Parliament’s competence, established in 2012 following the facts of the *Baka v. Hungary* judgment (Application No. 20261/12) of the European Court of Human Rights, to impeach the President of the *Kúria* without judicial review (1383rd meeting, 29 September – 1 October 2020).

<sup>38</sup> According to the Government, the key role of the *Kúria* in the Hungarian justice system is fully controlled by the Constitutional Court.

<sup>39</sup> According to the Court of Justice, Member States are required to ensure, in the light of the value of the rule of law, that any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary (see Case C-896/19, *Repubblika*, paras. 63 and 64).

<sup>40</sup> A call for applications is declared inconclusive if none of the applications is accepted by the appointing authority. In that case, a new call for applications is published. If the new procedure is also declared inconclusive, the position of a court president (manager) may be filled by a person selected by the appointing authority for a maximum of one year. (Input from Hungary for the 2021 Rule of Law Report, p. 2.) There is no judicial review available against the decision of the NOJ President to cancel selection procedures for court presidents and other court managers, and the National Judicial Council is not involved.

<sup>41</sup> In 2020, the NOJ President cancelled five selection procedures for court managers (court presidents, vice presidents, heads and vice-heads of division) where there was a candidate supported by the majority of the judicial body giving an opinion (Decisions 373.E/2020. (X. 1.) OBHE, 388.E/2020. (X. 19.) OBHE, 415.E/2020. (XI. 12.) OBHE, 443.E/2020. (XI. 30.) OBHE, 444.E/2020. (XI. 30.) OBHE. According to the Government, these decisions of the NOJ President were based on Section 133(1) of Act CLXI of 2011, had detailed reasoning, and were published in the official gazette and at the official website of the court. As a result, three *ad interim* court presidents were appointed. At its meeting of 5 May 2021, the National Judicial Council expressed concerns because of the absence of unified criteria for cancelling a selection procedure by the NOJ President.

<sup>42</sup> Presidents and certain other managers of the regional courts and regional appeal courts are appointed by the NOJ President following a vote by the court concerned sitting as a full court by a secret ballot. The NOJ President may appoint any candidate who received the majority of votes (a judge can support more candidates at the ballot), 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. Regional court presidents appoint district court presidents (Input from Hungary for the 2021 Rule of Law Report, p. 2.).

<sup>43</sup> Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 5.



previous NOJ President<sup>44</sup>. Over the last year, the selection of court presidents was repeatedly delayed due to the COVID-19 pandemic; as a result, vacant posts either remained empty or were filled by the NOJ President<sup>45</sup> on a temporary basis, or the mandate of court managers was extended by legislation. The court presidents exercise powers that are relevant to judges' career perspectives. Since judges' first appointment is limited to three years<sup>46</sup>, the continuation of their judicial career depends on an assessment of their suitability for judicial tenure, for which the court president is to evaluate their judicial activity<sup>47</sup>. If judges are found suitable, the court president requests the NOJ President to recommend that the President of the Republic appoint them for an unlimited period of time<sup>48</sup>. If found unsuitable, they have to leave the bench at the end of the initial appointment<sup>49</sup>. The results of the evaluation may be challenged before the service court<sup>50</sup>; the service court cannot grant interim relief to prevent an interruption of the judicial career during the review of the evaluation. Also, every three years, the court president and the NOJ President may reassign judges – without their consent – to another court for up to one year, although in practice they have not availed themselves of this possibility since 2012<sup>51</sup>. Concerns have been raised as regards the impact of this power on the irremovability of judges<sup>52</sup>.

**The gradual increase of salaries of judges and prosecutors continues.** The increase in judicial salaries noted by the 2020 Rule of Law Report continued as foreseen in the omnibus legislation of 2019<sup>53</sup>, and is expected to contribute to enhancing judicial independence. In the first phase, as of January 2020, salaries were increased on average by 32%<sup>54</sup>, and in the

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<sup>44</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 3.

<sup>45</sup> Contribution from the European Association of Judges for the 2021 Rule of Law Report, pp. 5-6.

<sup>46</sup> Section 23(1) of Act CLXII of 2011. Input from Hungary for the 2020 Rule of Law Report, p. 1.

<sup>47</sup> Section 24(2) and Chapter V of Act CLXII of 2011. The evaluation by the court president is based on an assessment conducted by the head of department or by a judge appointed by the head of department (Section 71(2) of Act CLXII of 2011).

<sup>48</sup> Sections 3(3)(c) and 24(3) of Act CLXII of 2011.

<sup>49</sup> Section 25(1) of Act CLXII of 2011.

<sup>50</sup> Sections 80 and 101 of Act CLXII of 2011. Members of the service courts are appointed by the National Judicial Council (Sections 102(1) and 145(2) of Act CLXII of 2011, Section 103(3)(g) of Act CLXI of 2011).

<sup>51</sup> Section 31(3) of Act CLXII of 2011. According to information provided by the Government in preparation of the 2021 Rule of Law Report.

<sup>52</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation xi, para. 27. According European standards, a judge should not be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system (see Committee of Ministers of the Council of Europe Recommendation CM/Rec(2010)12, para. 52).

<sup>53</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 6.

<sup>54</sup> Stakeholders reported that, as prescribed by law, the first phase of the programme disproportionately increased the salaries of court presidents and other court managers (Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 12, confirmed by information received from the National Judicial Council in the context of the country visit to Hungary). As of 1 January 2020, supplements related to court instances were raised from 10 to 20% for district court judges, from 20 to 40% for regional court judges, from 40 to 70% for regional appeal court judges, and from 60 to 120% for *Kúria* judges. As regards the supplements for judicial managers, a more significant increase was introduced. E.g. as of 1 January 2020, the salary supplement was raised for heads of department and the Secretary General of the *Kúria* from 60 to 200%, for the presidents of regional appeal courts and the President of the Budapest Regional Court from 60 to 150%, for vice-presidents of regional appeal courts and presidents of regional courts from 50 to 120%, for presiding judges in the *Kúria* from 45 to 120%. According to information provided by the Government, on district court level the average was 30%, as 29% for judges and 34% for court managers; on regional court level the average was 33%, as 33% for judges and 33% for court managers, as well.

second phase, as of January 2021, by 12%. A further increase of 13% is scheduled for 2022<sup>55</sup>. However, concerns persist<sup>56</sup> as regards the system of bonuses and the power of the authorities managing the courts to award bonuses to judges on a discretionary basis, without objective and transparent criteria<sup>57</sup>.

**Concerns persist as regards some elements of the organisation of the prosecution service.** As the 2020 Rule of Law Report noted, the prosecution service is organised in a strictly hierarchical structure. While the independence of the prosecution service is enshrined in law<sup>58</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. Whereas most recommendations of GRECO related to the prosecution service have been implemented, some remain unaddressed. This is the case as regards the recommendation to remove the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate<sup>59</sup>. It is also the case as regards GRECO's recommendation that situations in which a superior prosecutor takes over a case from a subordinate prosecutor be guided by strict criteria and that such decisions be justified in writing<sup>60</sup>. GRECO also recommended to enhance accountability and transparency of

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<sup>55</sup> Input from Hungary for the 2021 Rule of Law Report, p. 5.

<sup>56</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 7. According to information received from the Hungarian Helsinki Committee in the context of the country visit to Hungary, the legal rules on bonuses (Section 189 of Act CLXII of 2011) are very vague, leaving much room for arbitrariness; there is no statutory list or definition of the types and forms of bonuses that the NOJ President and other judicial leaders can distribute among judges, nor are there clear criteria as to what can serve as the basis of such decisions. The NOJ President refused to give detailed information to the National Judicial Council about the payment of bonuses because according to his interpretation of the law this topic is not part of the National Judicial Council's supervisory powers (information received from the National Judicial Council in the context of the country visit to Hungary).

<sup>57</sup> The average ratio of normative bonuses payable to all judges and court staff is determined by the NOJ President; court managers may decide to deviate from this average ratio, see Section 11(4) of Order 5/2013. (VI. 25.) OBH of the NOJ President (the decision is taken by the presidents of regional courts and regional appeal courts in respect of judges and court staff; the decision is taken by the NOJ President in respect of these court presidents and judges assigned to the NOJ; and by the *Kúria* President in respect of *Kúria* judges). Order 5/2013. (VI. 25.) OBH does not contain criteria for deviation from the average ratio in individual cases. Moreover, the managers may award further (non-normative) bonuses. 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 (Committee of Ministers of the Council of Europe Recommendation CM/Rec(2010)12, para. 55).

<sup>58</sup> Contribution from *Alapjogokért Központ* for the 2021 Rule of Law Report, p. 3. It is noted that there are no effective remedies against decisions of the prosecution service not to prosecute alleged criminal activity detrimental to the public interest, including corruption, fraud affecting the EU's financial interests and embezzlement of public funds (Substitute private prosecution is not available if the victim is the state or an organ vested with public power (Section 787(3)(d) of Act XC of 2017 on the Criminal Procedure Code).

<sup>59</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation xiv, para. 37.

<sup>60</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation xv, para. 42. Section 60/A of Directive 12/2012 (VI. 8.) of the Prosecutor General requires that the reason for the takeover be recorded in the file. According to the Government, the 2015 GRECO report used the word 'potential' to express that it referred only to hypothetical and not factual situations, and recommended further steps merely in order to prevent such potential scenarios; nevertheless, it is essential for the proper functioning of the prosecution service that the Prosecutor General's position is filled even during the transitional period, until the required majority is formed; this majority guarantees the independence of the Prosecutor General and protects the separation of powers. According to the Government, the basic guarantee against arbitrary decisions referred to in the GRECO Interim Compliance Report is provided by the Fundamental Law itself, which states in Article 29(1) that 'the Prosecutor General and the Prosecutor's Office are independent'. The Government points out that this independence of the prosecution service is expanded by Section 3(3) of Act CLXIII of 2011 on the Prosecution Service.

disciplinary proceedings against prosecutors; GRECO remains concerned that it is still the direct superior prosecutor who decides on the merits of the case, rather than an impartial body<sup>61</sup>. The full implementation of these recommendations would have a positive impact on the anti-corruption framework.

## Quality

**The digitalisation of the justice system is overall high.** Hungary continues to rank very high when it comes to digital solutions to initiate and follow proceedings in civil/commercial and administrative cases<sup>62</sup>, digital solutions to conduct and follow court proceedings in criminal cases<sup>63</sup>, and online access to published judgments by the general public<sup>64</sup>. Moreover, Hungary has very good results as regards the promotion of and incentives for using alternative dispute resolution methods<sup>65</sup>. However, there are concerns as regards the level of inclusiveness of the legal aid scheme<sup>66</sup>, and court fees in commercial cases remain high<sup>67</sup>. More training in communication could be made available for judges<sup>68</sup>.

**The operation of the courts was adapted during the COVID-19 pandemic.** Digital solutions (e.g. a remote hearing system) were already in place at the outbreak of the pandemic. The use of remote hearing (videoconference) tools during the pandemic has become widespread<sup>69</sup>, rendering certain court proceedings more efficient<sup>70</sup>. Certain court procedures have been simplified<sup>71</sup>. On 8 March 2021, the Government introduced changes to procedural laws, aimed at facilitating the operation of the justice system during the ‘state of danger’<sup>72</sup>.

## Efficiency

**The efficiency in civil and administrative cases remains high.** According to the 2021 EU Justice Scoreboard, Hungary performs very well as regards the estimated time needed to resolve administrative cases at first instance<sup>73</sup> and at all court instances<sup>74</sup>; the number of

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<sup>61</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation xvii, para. 52. GRECO welcomed the entry into force as of 1 January 2019 of the amendment to Section 88(1) of Act CLXIV of 2011, envisaging the mandatory involvement of a disciplinary commissioner to carry out the investigation.

<sup>62</sup> Figure 44, 2021 EU Justice Scoreboard.

<sup>63</sup> Figure 45, 2021 EU Justice Scoreboard.

<sup>64</sup> Figure 46, 2021 EU Justice Scoreboard.

<sup>65</sup> Figure 27, 2021 EU Justice Scoreboard.

<sup>66</sup> Figure 23, 2021 EU Justice Scoreboard.

<sup>67</sup> Figure 25, 2021 EU Justice Scoreboard.

<sup>68</sup> Figure 36, 2021 EU Justice Scoreboard.

<sup>69</sup> In 2019 courts had conducted 6 426 hearings via videoconference while this number in 2020 was 20 569. (Input from Hungary for the 2021 Rule of Law Report, p. 11.). The system of training with digital tools started slowly but has now become operational. (Contribution from the European Association of Judges for the 2021 Rule of Law Report, pp. 18 and 20.)

<sup>70</sup> Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 9.

<sup>71</sup> Ibid. For example, a special law permits cases to be dealt with by written process even in litigation where such procedure was not previously provided.

<sup>72</sup> Government Decree 112/2021 of 6 March 2021. This Decree became inapplicable as of 23 May 2021. As of 17 April 2021, Government Decree 182/2021 of 16 April 2021 amended Government Decree 112/2021; it allowed courts to hold hearings as of 20 April 2021.

<sup>73</sup> Figure 9, 2021 EU Justice Scoreboard.

<sup>74</sup> Figure 10, 2021 EU Justice Scoreboard.

pending administrative cases at first instance courts<sup>75</sup>; and the number of pending civil, commercial and administrative and other cases<sup>76</sup>. Hungary also performs well as regards the estimated time needed to resolve litigious civil and commercial cases at first instance<sup>77</sup> and the rate of resolving civil, commercial, administrative and other cases<sup>78</sup>. New procedural rules allow as of 9 July 2020 expedited proceedings in cases involving civil law claims of victims of crime<sup>79</sup>.

**Effective remedies in cases of excessively lengthy proceedings are being developed.** 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 as regards this matter<sup>80</sup>. On 15 June 2021, Parliament adopted a new law<sup>81</sup> introducing as of 2021 a compensatory remedy limited to excessively long civil proceedings.

## II. ANTI-CORRUPTION FRAMEWORK

The National Protective Service (NVSZ) under the oversight of the Ministry of Interior coordinates anti-corruption activities in Hungary and is also responsible for the prevention of crime within the police, law enforcement, and other government agencies. 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 its 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 control of financial management of public funds and auditing of political parties.

**The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector remains high.** In the 2020 Corruption Perceptions Index by Transparency International, Hungary scores 44/100 and ranks 19<sup>th</sup> in

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<sup>75</sup> Figure 16, 2021 EU Justice Scoreboard.

<sup>76</sup> Figure 14, 2021 EU Justice Scoreboard.

<sup>77</sup> Figure 7, 2021 EU Justice Scoreboard.

<sup>78</sup> Figure 11, 2021 EU Justice Scoreboard.

<sup>79</sup> Act LXX of 2020. The courts act with urgency, the general time limit for taking an action being maximum eight working days. If the court needs to hold a hearing, it is held primarily via an electronic communications network or other means capable of transmitting electronic images and sound. In appeal and review proceedings the parties may not request the holding of a hearing. (Contribution from the *Kúria* President for the 2021 Rule of Law Report, p. 9.)

<sup>80</sup> In October 2018, the Government tabled in Parliament Bill T/2923. In June 2021, the Committee of Ministers of the Council of Europe noted with great concern the absence of sufficiently tangible progress, notably that no concrete plan has been provided regarding the establishment of compensatory remedies for administrative and criminal cases.

<sup>81</sup> Act XCIV of 2021.

the European Union and 69<sup>th</sup> globally<sup>82</sup>. This perception has significantly decreased<sup>83</sup> over the past five years<sup>84</sup>.

**Some revisions were introduced to criminal law legislation to address foreign bribery and informal payments in healthcare.** As reported in 2020 Rule of Law Report, the relevant anti-corruption offences are criminalised<sup>85</sup>. In response to a recommendation by the OECD<sup>86</sup>, an amendment to the Criminal Code came into force on 1 January 2021. This amendment modifies the definition of ‘foreign public official’ in order to clarify that it includes officials of foreign public enterprises. It also introduces stricter sentences for facilitation payments. Provisions on bribery were also amended to include undue advantage to healthcare professionals thus limiting the possibility of informal (‘gratitude’) payments in healthcare and making the promising or giving of undue advantages for the provision of health services a subsidiary crime<sup>87</sup>.

**The implementation of the National Anti-corruption Strategy for 2020-2022 and dedicated Action Plan is ongoing.** As reported in 2020 Rule of Law Report, the scope of the anti-corruption strategic framework is limited to fostering integrity in public administration. The Strategy<sup>88</sup>, adopted in June 2020 foresees actions such as: the introduction and development of electronic solutions for increasing transparency (e.g. automated decision-making system), monitoring integrity risks, integrity training for civil servants, and specialised anti-corruption training for law enforcement, judges and prosecutors. Other relevant areas, such as political party financing, asset disclosure, lobbying and ‘revolving-doors’ provisions are covered in specific instruments. However, since they are not covered by the Strategy, shortcomings are not addressed in a coordinated manner<sup>89</sup>. Similarly, risks related to clientelism, favouritism and nepotism in high-level public administration or those arising from the interface between businesses and political actors remain unaddressed<sup>90</sup>.

**Challenges remain as regards the investigation and prosecution of high-level corruption cases.** The legal framework ensures the conditions for efficient investigations and prosecutions and the police and the Prosecution Service report adequate levels of resources and specialisation to carry out their tasks. However, prosecutors highlight challenges in

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<sup>82</sup> Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>83</sup> In 2015 the score was 51, while, in 2020, the score is 44. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>84</sup> The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

<sup>85</sup> 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.

<sup>86</sup> OECD (2019), Implementing the OECD Anti Bribery Convention – Phase 4 Report: Hungary. See Act XLIII of 2020.

<sup>87</sup> Input from Hungary for the 2021 Rule of Law Report, p. 19.

<sup>88</sup> Government Decision 1328/2020 of 19 June 2020 on Mid-term National Anti-corruption Strategy for 2020-2022 and the accompanying action plan.

<sup>89</sup> See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11.

<sup>90</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11.



detecting corruption and obtaining evidence in such cases<sup>91</sup>. Criminal proceedings for corruption offenses are mainly initiated on the basis of the criminal investigation activities of the investigating authorities. The majority of the investigated cases are detected by the National Protective Service. Notifications from administrative authorities and possible irregularities signalled through preventive tools (e.g. asset declarations, whistleblower reporting channels, information from various registries) play a relatively smaller role in criminal investigations<sup>92</sup> and independent control mechanisms remain insufficient for detecting corruption. As reported last year, deficient independent control mechanisms and close interconnections between politics and certain national businesses are conducive to corruption. According to data from the prosecution service, the indictment rate for corruption cases investigated by the prosecution is overall very high (86.5%)<sup>93</sup>. Some new high-level cases involving politicians were opened since 2020<sup>94</sup>, however the track record of investigations of allegations concerning high-level officials and their immediate circle remains limited<sup>95</sup>, as noted in the 2020 Rule of Law Report<sup>96</sup>. The full implementation of the GRECO recommendations as regards the effective functioning of the prosecution would further strengthen the anti-corruption framework<sup>97</sup>.

**Integrity tests continue to be considered by the authorities as an effective deterrent to corrupt behaviour and have led to the opening of several criminal cases for petty corruption in the reporting period**<sup>98</sup>. As of 1 January 2021, a new amendment of the Police Act entered into force broadening the scope of staff that may be subject to integrity tests beyond the police<sup>99</sup>. Accordingly, all staff of budgetary organisations under the supervision of the Government and members of the Government can now be subject to integrity tests.

**Hungary has an extensive asset disclosure system, however, concerns remain regarding the lack of systematic checks and insufficient oversight of asset and interest declarations.** The system in place requires members of Parliament, government officials, and public officials to declare their assets and interests. However, concerns remain as regards the lack of systematic monitoring. Verification of asset declarations<sup>100</sup> occurs only upon notification of suspicions and is left to the employer of the public official or to the Parliamentary Committee on Immunity for the declarations of members of Parliament and

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<sup>91</sup> Information received from the prosecution service in the context of the country visit to Hungary.

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<sup>94</sup> Two cases concern a Deputy State Secretary accused of passive bribery and a senior official in the tax administration. Three further cases concern high-level persons with high-level positions in the private sector or international organisations (Information received from the prosecution service in the context of the country visit to Hungary).

<sup>95</sup> The Prosecutor General's Office noted that no separate statistics are kept on 'high-level corruption' cases as this is not a category defined in criminal law.

<sup>96</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 10.

<sup>97</sup> See page 8. GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation xiv, paras. 37 and 42.

<sup>98</sup> In 2020, 245 such tests were carried out by the National Protective Service, leading to criminal proceedings against nine persons. Input from Hungary for the 2021 Rule of Law Report, p. 13.

<sup>99</sup> See Section 7 of Act XXXIV of 1994 on Police.

<sup>100</sup> Declarations of assets – which are made public and are subject to verifications – do not cover fiduciary asset management arrangements (*bizalmi vagyonkezelői jogviszony*), trusts (*vagyonkezelő alapítvány*), private equity funds (*magántőkealap*) and life insurance policies. Declarations of interest – which are not made public and are not subject to verification – cover the status of trustee, trustee or beneficiary under a fiduciary relationship, as well as membership in a foundation, a foundation's management board and other key positions (Information received from the National Assembly in the context of the country visit to Hungary).

high-ranking government officials. The Committee reported that, in the past five years, out of 16 notifications submitted for verification, 15 were rejected as not substantiated. In the remaining case, the person concerned corrected his declaration of assets and liabilities and the procedure was not initiated<sup>101</sup>. As reported last year<sup>102</sup>, 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 possibility for independent verifications. Following an amendment of the relevant rules<sup>103</sup>, members of Parliament must declare to the Speaker any conflict of interest or incompatibility, following which they are subject to certain restrictions pending the resolution of the situation. However, declarations of interests and information about any follow-up are not publicly available. The issue of effective supervision, verification and enforcement of rules of conduct, conflicts of interests and asset declarations for members of Parliament was subject to recommendations by the Group of States against Corruption of the Council of Europe (GRECO), which have been partly implemented<sup>104</sup>.

**The regulation of lobbying continues to remain incomplete and lacks systematic enforcement<sup>105</sup>.** There is no mandatory registration of lobbyists and disclosure of contact reports. According to a 2013 Government Decree<sup>106</sup>, employees of state administration bodies may only meet interest representatives in relation to their work after informing their superiors, who may prohibit the meeting. Meetings with interest representatives have to be documented but there is no obligation to make the encounters public. GRECO has recommended a clear set of rules in the interaction with lobbyists as regards members of Parliament<sup>107</sup>.

**Clear rules as regards revolving doors and cooling-off periods continue to be lacking.** Although both the Labour Code<sup>108</sup> as well as specific legislation applicable to public officials<sup>109</sup> contain confidentiality clauses. In practice, these rules are not enforced, as the Government still needs to specify the sectors and positions where a clear time restriction applies for public officials to pursue business careers in the area in which they were active<sup>110</sup>.

**Party financing in Hungary remains a concern<sup>111</sup>.** The State Audit Office is charged with overseeing the accountability of the use of public funds and controls the legality of financial

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<sup>101</sup> Information received from the National Assembly in the context of the country visit to Hungary.

<sup>102</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 11.

<sup>103</sup> Act XXXVI of 2012 on the National Assembly, amended in December 2019.

<sup>104</sup> GRECO (2020), Fourth Evaluation Round – Second Interim Compliance Report on Hungary – Corruption prevention in respect of members of parliament, judges and prosecutors, p. 5.

<sup>105</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 11-12.

<sup>106</sup> Government Decree 50/2013 of 25 February 2013 on the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists.

<sup>107</sup> GRECO (2020), Fourth Evaluation Round – Second Interim Compliance Report on Hungary – Corruption prevention in respect of members of parliament, judges and prosecutors.

<sup>108</sup> Section 8(4) of Act I of 2012.

<sup>109</sup> Section 93(1)(g) of Act CXXV of 2018.

<sup>110</sup> The term of the restriction specified by law is the equivalent of the time spent on the job subject to the restriction, with a maximum of two years (Section 117(2) of Act CXXV of 2018). 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>111</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12.

management of political parties. As also noted by GRECO, while some measures have been taken to ensure that the financial registries of political parties are transparent and up-to-date, to clarify party income sources and campaign periods, as well as to ensure a more in-depth monitoring, overall concerns remains as regards the transparency of party financing<sup>112</sup>.

**A regulatory framework is in place for the protection of whistleblowers and further steps are needed to enhance protection in practice.** The Whistleblower Protection Act<sup>113</sup> provides anonymity for whistleblowers and enables the submission of complaints electronically. The public interest disclosures are investigated by the institutions concerned, and their answer containing the result of the investigation is to be uploaded to the electronic registry. Whistleblowers may not be held liable for their reporting unless they are found to have intentionally made a false report<sup>114</sup>. The Commissioner for Fundamental Rights, acts as reporting channel<sup>115</sup> and operates the electronic platform but has only limited formal competence as regards whistleblower complaints<sup>116</sup>. The OECD recognised the positive aspects of the regulatory framework, but raised concerns as regards the effectiveness of the protection of whistleblowers<sup>117</sup>.

**The narrowing of the scope of application of public procurement rules has heightened the risk of corruption.** A new law<sup>118</sup> adopted on 27 April 2021 repealed a specific requirement of the public procurement law<sup>119</sup>, thus taking trusts established by the state, as well as legal persons managed by them, out of the explicit scope of application of procurement rules in respect of procurements financed by European Union funds<sup>120</sup>. The same law also removes rules aimed at preventing conflict of interest, thereby allowing holders of public office to sit on the board of trustees of such trusts.

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<sup>112</sup> GRECO (2019), Third Evaluation Round - Second Addendum to the Second Compliance Report, para. 24.

<sup>113</sup> Act CLXV of 2013 on complaints and whistleblowing.

<sup>114</sup> Act CLXV of 2013 provides that public bodies and local government bodies are entitled to proceed in matters relating to reports by whistleblowers (Section 1(1) and (4)). Where it has become clear that the whistleblower reported untrue information of crucial importance in bad faith, and it gives rise to an indication that a crime or an infraction was committed, the personal data of the whistleblower shall be handed over to the body or person entitled to carry out proceedings. Where it is likely that the whistleblower caused unlawful damage or other harm to the rights of others, his or her personal data shall be handed over to the body or person entitled to initiate or carry out proceedings, upon the request thereof (Section 3(4)).

<sup>115</sup> Other reporting channels are the Employer Channel and the Internal Control System of public bodies.

<sup>116</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 12. 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.

<sup>117</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Hungary-Phase-4-Report-ENG.pdf>.

<sup>118</sup> Act VIII of 2021 amending higher-education and certain related laws.

<sup>119</sup> Section 5(3) of Act CXLIII of 2015 on public procurement, defining the entities required to apply public procurement rules: 'In respect of procurements financed by European Union funds trusts established by the State shall apply the provisions of this Act, as well as legal persons maintained by such trusts [...]'

<sup>120</sup> Public-interest trusts performing public duties and legal persons maintained by them are not expressly covered by Section 5(1) of Act CXLIII of 2015 on public procurement. They may fall under Section 5(2) but in respect of procurements financed by European Union funds that provision does not cover all situations that were covered by the former Section 5(3), repealed by Act VIII of 2021.

**A number of OLAF investigations were completed with the support of the Hungarian AFCOS (anti-fraud coordination service).** In recent years, the number of indictments following OLAF's judicial recommendations was higher in Hungary than the EU average. However, despite repeated requests, the Hungarian authorities have not yet communicated an authority in charge to provide assistance to OLAF during its on-the-spot checks if an economic operator subject to control refuses to cooperate. It is further noted in the field of shared management, that the Hungarian authorities frequently withdraw projects from EU funding when OLAF issues a financial recommendation, or sometimes when the authorities become aware that an OLAF investigation has been opened. Furthermore, it appears that amounts due are not systematically recovered from the economic operator who committed the irregularity or fraud<sup>121</sup>. In such cases, the EU subsidy is simply replaced by national funds, with a negative impact on the deterrent effect of an OLAF investigation and higher risks for the national budget. During the period 2016-2020, Hungary had 32 OLAF investigations closed with a financial recommendation in the two main areas of shared management<sup>122</sup>.

**The authorities acknowledged that the COVID-19 pandemic may increase corruption risks, but no specific measures were deemed to be necessary**<sup>123</sup>. Stakeholders pointed to concerns in the area of public procurement, where derogations from procurement rules and direct awards, coupled with deficiencies in access to information increase the risk of corruption and raised questions as regards the purchase of medical equipment through intermediary companies<sup>124</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

Hungary's Fundamental Law<sup>125</sup> and sectoral legislation – in particular the Media Act<sup>126</sup> and the Freedom of the Press Act<sup>127</sup> – provide the legal framework for the protection of media freedom and pluralism. The Freedom of the Press Act stipulates that freedom of the press embodies independence from the State and from any 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>128</sup>. The Media Act establishes the National Media and Info-communications Authority (the Media Authority), whose decision-making body is the Media Council<sup>129</sup>. Legislation was adopted in 2019 to align Hungarian legislation with the AVMS Directive<sup>130</sup>.

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<sup>121</sup> Information from OLAF in preparation of this rule of law report.

<sup>122</sup> The OLAF Report 2020. 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.

<sup>123</sup> Input from Hungary for the 2021 Rule of Law Report, p.17.

<sup>124</sup> Information received in the context of the country visit to Hungary. See also contribution from K-Monitor and Transparency International Hungary for the 2021 Rule of Law Report, pp. 12-13.

<sup>125</sup> Article IX(2) 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>126</sup> Act CLXXXV of 2010 on Media Services and on the Mass Media as amended by Act LXIII of 2019.

<sup>127</sup> Act CIV of 2010 on the Freedom of the Press.

<sup>128</sup> Act CXII of 2011 on the Right to Informational Self-determination and on Freedom of Information.

<sup>129</sup> Between 2020 and 2021, Hungary fell three more places in the Reporters without Borders World Press Freedom Index, now registering at 92<sup>nd</sup> position worldwide and 26<sup>th</sup> position in the EU.

<sup>130</sup> Directive (EU) 2018/1808 of 14 November 2018.



**Concerns persist as regards the independence and effectiveness of the Media Council and the Media Authority.** Act LXIII of 2019, transposing the revised Audiovisual Media Services Directive, strengthened certain provisions relating to the resources and operational transparency of the Authority<sup>131</sup>. The Authority has budgetary autonomy and reports annually to the Parliament. It employs a staff of 650 persons<sup>132</sup>. The decision-making body of the Media Authority, the Media Council, is composed of a President<sup>133</sup> and four members elected by Parliament. While the rules on nomination – which have remained unchanged since last year’s report – favour political consensus in the appointment of the members of the Media Council<sup>134</sup>, in practice they have led to the governing party nominating all members. Certain decisions of the Media Council have added to the concerns regarding its effective independence<sup>135</sup>. The 2021 Media Pluralism Monitor confirms its previous assessment that while the Media Law formally guarantees the independence of the Media Authority, the appointment procedures do not provide adequate legal safeguards for independence, once more registering medium risk for Hungary in terms of the independence and effectiveness of the Media Authority<sup>136</sup>.

**Media pluralism has further deteriorated in Hungary.** After the establishment of the ‘KESMA’<sup>137</sup> media conglomerate in November 2018, there has been, to date, no attempt by the Media Authority to examine its impact on the plurality and diversity of the Hungarian media market. According to stakeholders, while a broad range of media outlets continue to operate in Hungary, the diversity of the media market is negatively affected by the concentration of ownership in the hands of a few pro-government businesspersons and the resulting lack of editorial independence<sup>138</sup>. Hungarian and European media freedom

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<sup>131</sup> The Media Act 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>132</sup> Information received from the National Media and Info-communications Authority in the context of the country visit to Hungary.

<sup>133</sup> The President of the Media Authority is automatically nominated for the position of the President of the Media Council.

<sup>134</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>135</sup> Stakeholders observed that the Media Authority distributed radio frequencies to pro-government stations in non-transparent procedures (Contribution from the European Federation of Journalists for the 2021 Rule of Law Report, p. 35) and showed bias in the approval of the media market mergers (contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor, Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 34). The decisions of the Media Authority may be subject to judicial review.

<sup>136</sup> Media Pluralism Monitor 2021, report on Hungary, pp. 11-12.

<sup>137</sup> Central European Press and Media Foundation. An ad-hoc report by the Centre for Media Pluralism and Media Freedom concluded in 2019 that the establishment of KESMA would exacerbate the overall risks to media pluralism in Hungary (2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 14). On 25 June 2020, the Constitutional Court confirmed the constitutionality of the Government Decree classifying as of national strategic importance the intention to extend the Central European Press and Media Foundation (Decision 16/2020. (VII. 8.) AB).

<sup>138</sup> According to the International Press Institute, content coordination of pro- government media, especially via the KESMA foundation, has led to a dominance of the state narrative particularly in rural areas (contribution



organisations, as well as civil society, have voiced concerns<sup>139</sup> with regard to the Media Council's refusal to renew the broadcasting license of independent radio station, *Klubrádió*, based on the station's alleged failure to comply with certain administrative obligations. This has resulted in the radio being taken off air. On 17 June 2021, the *Kúria* upheld the Media Council's decision. On 9 June 2021, the Commission launched an infringement procedure against Hungary with regard to this case<sup>140</sup>. The 2021 Media Pluralism Monitor confirms the previous year's high risk score with regard to news media concentration in the light of the creation and operation of the KESMA, and because of the economic takeover of the independent news media site *Index.hu* by pro-government interests<sup>141</sup>.

**Transparency of media ownership is still not fully guaranteed.** The current legal framework contains transparency rules on media ownership only in specific cases<sup>142</sup>, and there are currently no plans to amend it. While some ownership data is available from national registers<sup>143</sup>, only basic information on company ownership is freely accessible from the company register<sup>144</sup>. The 2021 Media Pluralism Monitor continues to rate transparency of media ownership at high risk<sup>145</sup>.

**The allocation of state advertising continues to permit the Government to exert indirect political influence over the media.** As reported last year, there is no legislation regulating the distribution of state advertising. The Media Pluralism Monitor 2021 highlights that the state is the largest advertiser in Hungary spending approximately one third of the total advertising revenue of the market<sup>146</sup>. The data reveals that in 2020 the Hungarian state increased its spending on advertising by 13.8% over 2019, with 85% of that revenue going to

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from the International Press Institute for the 2021 Rule of Law Report, p. 3). Information received in the context of the country visit to Hungary corroborated this assessment.

<sup>139</sup> Contribution from the European Federation of Journalists for the 2021 Rule of Law Report, pp. 37-38; contribution from the International Press Institute for the 2021 Rule of Law Report, p. 2; contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor, Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 35; European Centre for Press and Media Freedom statement of 15 March 2021.

<sup>140</sup> The Commission considers that the Media Council's decisions to reject *Klubrádió*'s application are based on questionable grounds, are disproportionate and non-transparent in breach of EU telecoms rules, set out in the European Electronic Communications Code (Directive (EU) 2018/1972).

<sup>141</sup> 2021 Media Pluralism Monitor report on Hungary, p. 17 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 14. In March 2020, a pro-government investor gained control over the company generating the revenue of *Index.hu*; in August 2020, the editor-in-chief was removed, leading to the mass resignation of 90 journalists, who described the dismissal of their editor-in-chief as 'an overt attempt to apply pressure' (contribution from the International Press Institute for the 2021 Rule of Law Report, p. 3; see also contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor, Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 39). Subsequently, the former *Index.hu* crew launched an independent news portal, *Telex*, financed privately through crowd funding. According to the Government, the dismissal of the editor-in-chief of *Index.hu* is a question belonging to the field of labour law; the employer (a business organization, market actor) has the right to terminate the legal relationship with the employee based on the conditions and reasons stipulated by law; in connection with the specific decision of an employer, the Government does not have any competence.

<sup>142</sup> Linear media service providers must notify the Media Authority about their (or their parent company's) direct or indirect ownership in media service providers. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 14.

<sup>143</sup> Information received from the Government in the context of the country visit to Hungary.

<sup>144</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 14.

<sup>145</sup> Media Pluralism Monitor 2021, report on Hungary, p. 13.

<sup>146</sup> Media Pluralism Monitor 2021, report on Hungary, p. 18.

pro-government media companies<sup>147</sup>. This state of affairs permits control over both pro-government as well as certain independent outlets leading the Media Pluralism Monitor 2021 to consider editorial independence being at the highest risk (92%) in the country<sup>148</sup>. While no media support schemes were established to counter the impact of the COVID-19 pandemic on news media outlets, the Media Authority exempted commercial linear media service providers from paying the quarterly media service provision fee for the first half of 2021.

**Access to public information was tightened through emergency measures introduced during the COVID-19 pandemic.** The rules of the Freedom of Information Act have not been changed; they provide 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>149</sup>. The statutory deadline for handling such requests is 15 days, which can be extended by 15 days<sup>150</sup>. However, during the pandemic, the Government issued a decree<sup>151</sup> allowing public authorities to delay giving access to public documents by up to 90 days in case such provision of information was seen as ‘jeopardising the public institution’s fulfilment of its duty related to the state of emergency’. On 13 April 2021, the Constitutional Court ruled that while the new provisions are in line with the Fundamental Law, derogations from the normal deadlines must be limited to the cases where handling the request would impede the holder of public information to perform tasks related to countering the pandemic and need to be duly justified in writing<sup>152</sup>. Stakeholders pointed out that in practice this derogation was often abused by the authorities, with a major impact for independent journalists in particular, who reportedly could not obtain timely access to data on public spending or vaccinations<sup>153</sup>. This further aggravated the situation of independent media outlets that have difficulties to access information in a timely manner<sup>154</sup>. The deficiencies in

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<sup>147</sup> Ibid., p. 18.

<sup>148</sup> Ibid., p. 17.

<sup>149</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). Specific legislation limiting access to documents and public information remain in force (e.g. Section 5 of Act VII of 2015 related to the development of the Paks Nuclear Plant and Section 2(3) of Act XXIX of 2020 related to the implementation of the Budapest-Belgrade railway connection project.

<sup>150</sup> Section 29(1) and (2) of Act CXII of 2011.

<sup>151</sup> Government Decree 521/2020 of 25 November 2020. Under these rules the request could be fulfilled by the public service body within 45 days (contrary to the general rule of 15 days) after the receipt of the request, if it was probable that the fulfilment of the request in the 15-day time limit would endanger the performance of state of danger related public tasks performed by the data controller public body. The already extended deadline could also be extended for no more than another 45 days if these conditions still applied.

<sup>152</sup> Decision 15/2021. (V. 13.) AB.

<sup>153</sup> According to the European Federation of Journalists, the Government used the Covid-19 pandemic to exert further control over access to information by limiting access to press conferences, only responding to pro-government media inquiries and placing a ban on local health sector representatives from talking to the media but channelling all pandemic related questions through a central ‘operative unit’ (contribution from the European Federation of Journalists for the 2021 Rule of Law Report, p. 39). This assessment was corroborated by information received in the context of the country visit to Hungary.

<sup>154</sup> According to the European Federation of Journalists, independent media outlets are not granted interviews by public officials and are frequently excluded from public events (contribution from the European Federation of Journalists for the 2021 Rule of Law Report, p. 38). Research by the Hungarian Civil Liberties Union has revealed systemic obstruction of the work of the independent media by the Government in the form of ignoring press inquiries, open rejection, physical restrictions applied to journalists, discreditation, stigmatisation, and intimidation of their sources (contribution from K-Monitor and Transparency International Hungary for the 2021 Rule of Law Report, p. 18; contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor,

access to public information reported last year<sup>155</sup>, including as regards the charging of fees<sup>156</sup>, continue to be an issue also for the prevention of corruption. As the Ninth Amendment to the Fundamental Law gave a restrictive definition of ‘public funds’<sup>157</sup>, questions have been raised by stakeholders as regards possible consequences on restricting access to public information related to public companies and public-interest trusts<sup>158</sup>.

**Journalists and media outlets continued to face diverse threats in Hungary.** According to stakeholders, journalists working for independent media are subject to negative narratives by pro-government media<sup>159</sup> and by government representatives<sup>160</sup>. Stakeholders report that

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Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 43; Contribution from Civil Liberties Union for Europe for the 2021 Rule of Law Report, p. 40).

<sup>155</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 15.

<sup>156</sup> Government Decree 301/2016 of 30 September 2016 allows 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 (e.g. time – exceeding 4 hours – required for finding, organising, copying and sanitising the documents requested). 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). See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 15. The Government notes that it is not mandatory to charge a fee for the additional work on the part of the public authority. Another issue is related to the length of court proceedings in access to public information cases; stakeholder report that on average, this may expand to a year and a half (contribution from K-Monitor and Transparency International Hungary for the 2021 Rule of Law Report, p. 6).

<sup>157</sup> According to the Venice Commission Opinion of 2 July 2021, one effect of the amendment may be that the inner workings of the newly established foundations and their revenue and expenditure could be considered as ‘private’ and therefore shielded from civil society and media scrutiny, as they are not subject to freedom of information requests by the citizens and the media, thus undermining the state’s transparency and freedom of information (Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020 (CDL(2021)028), para. 70). The Venice Commission clarified that the new definition does not dismiss private entities managing public funds from their duties of accountability, which are clearly set out in Article 39 (2) of the Fundamental Law. Nonetheless, the publicity of these funds, and the corresponding guarantees of transparency, may become more uncertain after a second transfer of such ‘public money’ to another entity.

<sup>158</sup> See, e.g. contribution from K-Monitor and Transparency International Hungary for the 2021 Rule of Law Report, p. 18; contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor, Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 43; Contribution from Civil Liberties Union for Europe for the 2021 Rule of Law Report, p. 4. Article 39(3) of the Fundamental Law defines ‘public funds’ as ‘revenues, expenditures and claims of the State’. The impact of this amendment on access to public information, in particular as regards public companies and public-interest trusts is yet to be seen. The Fundamental Law requires that data relating to public funds and national assets be considered data of public interest (Article 39(2)). The comprehensive legal definition of ‘public information’ (Section 3, point 5, of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information) has not been amended. According to the Government, the amendment to the Fundamental Law does not have an impact on the access to public information controlled by entities that perform public tasks, for example by public-interest trusts. However, in the application of the law, courts are required to interpret the text of laws in accordance with the Fundamental Law (Article 28 of the Fundamental Law). This amendment has already affected the case-law on the judicial enforcement of freedom of information: on 11 January 2021, the Székesfehérvár Regional Court (judgment 26.P.20.281/2020/9), confirmed by the Győr Regional Appeal Court (judgment Pf.III.20.050/2021/3) on 29 April 2021, found that, for the purposes of the definition given in Article 39(3) of the Fundamental Law, the investment and construction works carried out by the defendant company and financed from EU funds, are not covered by the terms ‘revenues, expenditures and claims of the State’, therefore do not qualify as ‘public funds’, and consequently data related to them do not fall under the notion of ‘public information’.

<sup>159</sup> Contributions from the European Federation of Journalists and the International Press Institute for the 2021 Rule of Law Report, p. 37 and p. 7, respectively.

female journalists are in a more difficult situation; some also reporting gender-based online harassment<sup>161</sup>. Courts continued to order interim relief banning the dissemination of magazines<sup>162</sup>. Since October 2020, the Council of Europe’s Platform to promote the protection of journalism and the safety of journalists published five further alerts concerning Hungary. These concerned, respectively: the dismissal of the former editor of online news portal *Index.hu* prior to its takeover; instructions issued by the Ministry of Foreign Affairs and Trade for embassies in EU Member States to provide information with regard to professional trips undertaken by Hungarian journalists; an injunction issued by a civil court preventing a weekly newspaper from publishing an article on a company and its owners on data protection grounds; the police interrogation of two journalists who published articles about a public figure and the above-mentioned refusal by the Hungarian Media Council to renew *Klubrádió*’s radio licence<sup>163</sup>. In 2021, the Platform published one alert concerning what the Platform called a ‘tirade of insults’ directed against an Austrian journalist by the Hungarian public broadcaster.

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

Hungary is a parliamentary republic with a unicameral Parliament (National Assembly). Parliament –among others– adopts and amends<sup>164</sup> the Fundamental Law of Hungary, legislates<sup>165</sup>, elects the Prime Minister, and elects – by a two-thirds majority – the top rank public officials<sup>166</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, and entrusted with guaranteeing the respect of the constitutional order, including the Constitutional Court, the State Audit Office and the Ombudsperson (‘Commissioner for Fundamental Rights’). In addition to the Government, the President of

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<sup>160</sup> Contribution from the European Federation of Journalists for the 2021 Rule of Law Report, p. 37.

<sup>161</sup> Ibid.

<sup>162</sup> The Committee to Protect Journalists reported that a court in Budapest issued a preliminary injunction order, invoking data protection rules, concerning both the 29 September and the 15 October 2020 issues of *Magyar Narancs*, thus omitting part of an article by investigative journalist Ákos Keller-Alánt (contribution from the Committee to Protect Journalists for the 2021 Rule of Law Report, p. 6). As reported last year, in January 2020, an interim relief was ordered by a court banning the dissemination of *Forbes Hungary* business magazine invoking data protection rules (2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, footnote 116).

<sup>163</sup> Hungary has replied to the first and last of the listed complaints stating that the *Index.hu* case is a matter of labour law and that the *Klubrádió* decision was taken by the independent Media Council.

<sup>164</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>165</sup> The Fundamental Law provides for the adoption of 33 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>166</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 Republic and every parliamentary committee, any member of Parliament may table a bill<sup>167</sup>.

**Frequent and sudden changes of the legislation continue to undermine the predictability of the regulatory environment<sup>168</sup>.** Stakeholders reported that the pace of legislation has accelerated even further compared to previous years. According to stakeholders, consultations, if any, are purely formal<sup>169</sup>. This raises questions as regards legal certainty and the quality of legislation. The short periods of time between the adoption and the entry into force of frequently changing rules do not always allow for the adequate preparation of their application.

**During the reporting period, the Government declared a new ‘state of danger’ in response to the COVID-19 pandemic.** On 18 June 2020, the Government terminated the first ‘state of danger’<sup>170</sup>. In accordance with the current constitutional rules, the duration of the new ‘state of danger’ introduced on 4 November 2020 is not predefined, and the Government has discretionary power to maintain it or to terminate it<sup>171</sup>. Emergency measures (Government decrees) adopted under this regime may set aside any law and remain in force for 15 days unless their extension is authorised by Parliament. On 10 November 2020, Parliament authorised<sup>172</sup> the Government to extend the applicability of emergency measures by 90 days<sup>173</sup>. On 8 February 2021, the Government terminated<sup>174</sup> the ‘state of danger’, and on the same day declared<sup>175</sup> it again. This way, emergency measures could remain in force

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<sup>167</sup> Article 6(1) of the Fundamental Law. In 2020, 15 Bills tabled by members (14 from the majority, 1 from the opposition) were passed into law (information received from the National Assembly in the context of the country visit to Hungary).

<sup>168</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 17.

<sup>169</sup> Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 23; Contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor, Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 46. The Government is of the view that the constitutional review of the laws extends to the assessment of formal criteria of legal certainty as well: if the requirement of adequate preparation to the application were not complied with, the Constitutional Court would declare the norm unconstitutional.

<sup>170</sup> On 11 March 2020, the Government declared a ‘state of danger’ in line with Article 53(2) of the Fundamental Law. On 30 March 2020, Parliament passed a new law 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. As of 18 June 2020, the Government terminated the ‘state of danger’ and declared a ‘state of public health emergency’ until 18 December 2020 (see 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 17-18). Subsequently, the Government extended the ‘state of public health emergency’ until 18 June 2021. The applicable rules are laid down in Chapter XIV of Act CLIV of 1997 on Health Care. It is noted that, in accordance with Chapter IX/A of Act LXXX of 2007 on the Right of Asylum, the Government has maintained since 10 March 2016 a state of crisis due to mass immigration. (Information received from the National Assembly in the context of the country visit to Hungary.)

<sup>171</sup> Article 54(3) of the Fundamental Law. The detailed rules applicable to the emergency measures are determined by Act CXXVIII of 2011 on Disaster Management, as amended. Section 51/A of this Act is essentially the same as Section 2 of Act XII of March 2020 (see 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 17).

<sup>172</sup> Act CIX of 2020 on the containment of the second wave of the coronavirus pandemic.

<sup>173</sup> After the expiry of the 90 days, on 8 February 2021, Act CIX of 2020 became inapplicable, implying the end of a parliamentary authorisation to extend the applicability of the emergency measures.

<sup>174</sup> Government Decree 26/2021 of 29 January 2021.

<sup>175</sup> Government Decree 27/2021 of 29 January 2021. This Decree reintroduced – without publishing – certain emergency measures (Government Decrees) issued under the previous ‘state of danger’ (they had become inapplicable with the termination of the ‘state of danger’, in accordance with Article 53(4) of the Fundamental Law).



without parliamentary approval for a period of 15 days<sup>176</sup>. On 22 February 2021, Parliament authorised the Government to extend the applicability of emergency measures by 90 days<sup>177</sup>. On 18 May 2021, Parliament further extended the authorisation until ‘the 15th day following the opening day of the Autumn Session in 2021’<sup>178</sup>. Concerns<sup>179</sup> over the current rules on the ‘state of danger’ and emergency measures remain. Despite a country-specific recommendation in the context of the 2020 European Semester<sup>180</sup>, interference with business activities and the stability of the regulatory environment continued, and some emergency measures raise questions as regards their necessity and proportionality<sup>181</sup>. The Constitutional Court continued to review the constitutionality of certain emergency measures<sup>182</sup>.

**An amendment to the Constitution will limit the powers of Government as regards the ‘state of danger’ regime.** On 15 December 2020, the Ninth Amendment to the Fundamental Law was adopted by Parliament. There was no prior stakeholder consultation<sup>183</sup>. It significantly changes the rules concerning the special legal order regime (including ‘the state of danger’) as of 1 July 2023. It reduces the types of special legal orders from six to three: state of war, state of emergency and state of danger<sup>184</sup>. The amendment does not affect the

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<sup>176</sup> The National Assembly is of the view that this technique did not encroach on its prerogatives and that these decrees were in line with the provisions of both the Fundamental Law and the relevant laws (information received from the National Assembly in the context of the country visit to Hungary).

<sup>177</sup> Act I of 2021 on the containment of the coronavirus pandemic.

<sup>178</sup> Act XL of 2021 amending Act I of 2021 on the containment of the coronavirus pandemic. To be noted that the Autumn Session of Parliament is between 1 September and 15 December; the date of the opening day is unknown at this stage.

<sup>179</sup> The emergency powers granted appeared extensive, in light of the combined effect of broadly defined powers and the absence of a clear time limit (see 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 17).

<sup>180</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>181</sup> For instance, on 7 April 2021, an Austrian insurance company announced that it had received a decision of the Hungarian Ministry of Interior blocking the intended acquisition of the Hungarian subsidiaries of a Dutch insurance company relying on Government Decree 532/2020 of 28 November 2020 – an emergency measure issued under the ‘state of danger’ regime – that deviates from the provisions of Act LVII of 2018 in as much as it provides that such transactions between EEA investors need to be declared to the minister appointed by the Government who needs to take note of the declaration.

<sup>182</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 18. Most of the cases were closed without a decision on the merits (Orders IV/74/2021, IV/200/2021, IV/02069/2020, IV/00295/2021, 3237/2021. (VI. 4.), 3238/2021. (VI. 4.), 3206/2021. (V. 19.), 3178/2021. (IV. 30.), 3159/2021. (IV. 22.), 3413/2020. (XI. 26.), 3388/2020. (X. 22.), 3326/2020. (VIII. 5.)). The Constitutional Court found the emergency measures related to the general ban on assembly during the state of danger (case IV/288/2021) and the assignment of a special economic zone in the City of Göd (Decision 8/2021. (III. 2.) AB) to be constitutional, but set a constitutional requirement for their application. As regards the emergency measure disabling municipalities from obtaining income from motor vehicle taxes during the state of danger, the Constitutional Court dismissed the application filed by one fourth of members of Parliament (Decision 3234/2020. (VII. 1.) AB). The Constitutional Court also reviewed Government Decree 521/2020 of 25 November 2020 extending the delay applicable access to public documents requests (see above, p. 18).

<sup>183</sup> The Venice Commission noted with concern that the amendments were adopted during a state of emergency, without any public consultation, and the explanatory memorandum consists of only three pages; the Venice Commission stressed that this speed and the lack of meaningful public consultations are particularly worrisome when they concern constitutional amendments and it recalls its previous warning against an ‘instrumental attitude’ of Hungary’s governing majority towards the Fundamental Law, which should not be seen as a political instrument (Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020 (CDL(2021)028), paras. 83 and 84).

<sup>184</sup> The circumstances for declaring a state of war (the present state of national crisis) and a state of emergency will be expanded, taking into account the requirements of the changing security environment (for example, a cyberattack that does not constitute an act of violence or an attack in the form of environmental pollution),

current rule providing that under a special legal order, the application of the Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted<sup>185</sup>. In case of state of danger, Parliament will primarily have control over the maintenance of the special legal order<sup>186</sup>. The Government will be able to declare a ‘state of danger’ for a period of 30 days, and will be able to extend it only following an authorisation by Parliament. These new rules will increase oversight by Parliament<sup>187</sup>.

**The powers of the Commissioner for Fundamental Rights were extended, while questions were raised about its independence.** On 20 November 2020, the Council of Europe Commissioner of Human Rights expressed concerns about the merger of the Equal Treatment Authority and the Office of the Commissioner for Fundamental Rights, recalling that doubts remained about the appointment process of the incumbent and the adequacy of the institution’s efforts to address all human rights issues and speak out in a manner that promotes and protects all human rights<sup>188</sup>. The national human rights institution was accredited with ‘A’ status in October 2014. In October 2018, the UN Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI), decided to defer its decision on its re-accreditation. The SCA is reviewing the Commissioner for Fundamental Rights<sup>189</sup>. As of January 2021, new legislation<sup>190</sup> integrated the Equal Treatment Authority in the Office of the Commissioner for Fundamental Rights. In the performance of its duties specified in the Equal Treatment Act<sup>191</sup>, the Office of the Commissioner for Fundamental Rights acts as an administrative authority<sup>192</sup>. The Commissioner may also initiate the review of laws by the Constitutional Court<sup>193</sup>. According to EU law<sup>194</sup>, equality bodies ‘may form

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and Parliament will be the only organ entitled to declare them. (Input from Hungary for the 2021 Rule of Law Report, p. 27.) The Venice Commission highlighted that the impact of several provisions is difficult to assess without knowing the legislative changes that may be adopted following such provisions. It concluded that the Ninth Amendment mainly leaves the specification of most details to Cardinal Acts, which could eventually raise some serious questions regarding the scope of the powers of the State during states of exception (Opinion on the constitutional amendments adopted by the Hungarian Parliament in December 2020 (CDL(2021)028), recommendation f).

<sup>185</sup> Article 54 of the Fundamental Law. According to the new Section 48/A of Act CLI of 2011 on the Constitutional Court, the meetings of the Constitutional Court may also be held by electronic means, based on the decision of its President. The new Section 68/A of the same Act stipulates that at a time of special legal order a) the President and the Secretary-General shall ensure the continuous functioning of the Constitutional Court and shall take the necessary organisational, operative, administrative and decision-preparing measures, and b) the President may authorise a derogation from the rules of procedure of the Constitutional Court. (Input from Hungary for the 2021 Rule of Law Report, pp. 26-27.)

<sup>186</sup> Input from Hungary for the 2021 Rule of Law Report, p. 27.

<sup>187</sup> The new Article 56(1) of the Fundamental Law will allow the President of the Republic to authorise the Government to extend the ‘state of danger’ if the Parliament is prevented from taking these decisions.

<sup>188</sup> Council of Europe Commissioner for Human Rights, Dunja Mijatović statement of 20 November 2020. The merger was not preceded by public consultation (Contribution from Ökotárs - Hungarian Environmental Partnership Foundation for the 2021 Rule of Law Report, p. 17).

<sup>189</sup> Contribution from the European Network of National Human Rights Institutions for the 2021 Rule of Law Report, p. 194.

<sup>190</sup> Act CXXXVII of 2020 amending certain laws with a view to securing a more efficient application of the requirement of equal treatment (adopted on 1 December 2020). The constitutional framework and the basic safeguards of independence in case of the Commissioner have remained unchanged.

<sup>191</sup> Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.

<sup>192</sup> Input from Hungary for the 2021 Rule of Law Report, p. 28.

<sup>193</sup> Input from Hungary for the 2021 Rule of Law Report, p. 27. The rules regarding the posterior review of laws was significantly changed by the Fundamental Law. Until 31 December 2011, anyone without legal interest could submit a petition seeking the constitutional review of a legal norm. According to the new rules, applicable from 1 January 2012, such procedure may only be initiated by the Government, one-quarter of the members of Parliament, the *Kúria* President, the Prosecutor General and the Commissioner for Fundamental

part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights'. According to the relevant legal framework, the Commissioner for Fundamental Rights shall be independent, subordinated only to Acts and may not be given instructions regarding its activities. In this regards, the Government maintains that the executive does not have any influence on how the Commissioner performs his or her activities. However, stakeholders have expressed concerns as regards the independent and effective functioning of the Commissioner<sup>195</sup>.

**Concerns have been expressed about the role of the Constitutional Court in reviewing final court decisions.** As noted in the 2020 Rule of Law Report, following a legislative amendment, 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. Over the past year, public authorities have challenged before the Constitutional Court some final judgments affecting them, handed down by ordinary courts. This possibility of review raises questions in particular as regards legal certainty<sup>196</sup>. Moreover, although it is not part of the court system, the Constitutional Court hearing constitutional complaints is nonetheless adjudicating on the merits of the case and

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Rights. The incumbent Commissioner has not exercised this power, including for instance, as regards Act LXXIX of 2021 on 'taking stricter action against paedophile offenders and amending certain laws to protect children'. The Government is of the view that following the abolition of the *actio popularis* for the posterior review of laws, the introduction of the 'real' constitutional complaint against judicial decisions ensures an efficient protection for fundamental rights.

<sup>194</sup> Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000; Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004; Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006; Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010.

<sup>195</sup> E.g. contribution from *Háttér Society* for the 2021 Rule of Law Report, p. 10; Contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor, Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 52. See also Commission Recommendation (EU) 2018/951 on standards for equality bodies, OJ L 167, 4.7.2018, p. 28.

<sup>196</sup> See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 18. Under Article 24(2)d) of the Fundamental Law and in accordance with Section 27 of Act CLI of 2011 on the Constitutional Court, a person or organisation affected in concrete cases may turn to the Constitutional Court against the judicial decision that was contrary to the Fundamental Law if the decision, violates their rights laid down in the Fundamental Law, and the possibilities for legal remedy have already been exhausted (constitutional complaint). When the Constitutional Court establishes that the judicial decision is contrary to the Fundamental Law, it annuls the decision. The European Court of Human Rights considers the constitutional complaint an effective judicial remedy to be exhausted (see decisions of the European Court of Human Rights of 12 March 2019, *Szalontay v. Hungary*, 71327/13; of 12 November 2019, *Geréb v. Hungary*, 25520/13; and of 12 November 2019, *Takács v. Hungary*, 73665/17). Since 2012, 90% of the cases heard by the Constitutional Court have been constitutional complaints (information received from the *Kúria* President in the context of the country visit to Hungary). Since the entry into force on 20 December 2019 of the amendment allowing entities exercising public power to challenge a final judicial decision, 7 constitutional complaints have been lodged by such entities. In 2020, private persons filed 412 constitutional complaints against a judicial decision. (Information received from the Office of the Constitutional Court in the context of the country visit to Hungary.) Between 2012 and 2020, the Constitutional Court quashed 117 judicial decisions (including 47 *Kúria* decisions) (contribution from the *Kúria* President for the 2021 Rule of Law Report, p. 10.)

has been characterised as ‘a court of fourth instance’<sup>197</sup>, acting in the same manner as ordinary appellate courts<sup>198</sup>. In this context, it is recalled that members of the Constitutional Court are elected by Parliament voting with a two-thirds majority<sup>199</sup>, on the basis of broad eligibility criteria<sup>200</sup>.

**Civil society organisations critical towards the Government remain under pressure.** Following the Court of Justice’s ruling in the infringement action brought against Hungary by the Commission<sup>201</sup>, on 18 May 2021, Parliament adopted a new law<sup>202</sup> repealing the Act on the transparency of foreign-funded civil society organisations which breached EU law. The same law introduced new rules requiring the State Audit Office to carry out legality checks on the accounts of civil society organisations with an annual balance sheet total exceeding a certain amount<sup>203</sup>. Infringement proceedings are currently ongoing<sup>204</sup> in relation to legislation<sup>205</sup> that criminalises the organisation of assistance offered by persons on behalf of national, international and non-governmental organisations to people wishing to apply for asylum. Another law introducing a special 25% immigration tax applicable to financial support to organisations carrying out ‘activities facilitating immigration’, which also raised concerns<sup>206</sup>, continues to apply. The Government and pro-government media continue to use hostile rhetoric against civil society organisations that take a critical stance towards the

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<sup>197</sup> Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 23. The CCBE noted that the Constitutional Court increasingly acts as a court of fourth instance, reviewing the merits of judgments by the ordinary courts. According to the CCBE, this amounts to unnecessary intervention of the Constitutional Court in the functioning of the ordinary courts, questioning their judicial discretion and independence.

<sup>198</sup> Contribution from the *Kúria* President for the 2021 Rule of Law Report, p. 2. According to the Government, members of the Constitutional Court practice *de facto* judicial activity (input from Hungary for the 2021 Rule of Law Report, p. 12.).

<sup>199</sup> Parliament elects the President of the Constitutional Court, as well (Contribution from *Századvég* for the 2021 Rule of Law Report, p. 6).

<sup>200</sup> Any Hungarian citizen who has no criminal record and has the right to stand as a candidate in parliamentary elections is eligible to become a Member of the Constitutional Court, if he/she: a) has a law degree; b) has reached 45 years, but not 70 years of age; and c) is a theoretical lawyer of outstanding knowledge (university professor or doctor of the Hungarian Academy of Sciences) or has at least twenty years of professional work experience in the field of law. Having been a member of Government or a leading official in any political party or having held a position of a leading state official in the four years prior to election shall disqualify persons from becoming Members of the Constitutional Court. (Input from Hungary for the 2021 Rule of Law Report, p. 1.)

<sup>201</sup> Judgment of the Court of Justice of 18 June 2020, *Commission v. Hungary*, C-78/18.

<sup>202</sup> Act XLIX of 2021 on the transparency of civil society organisations carrying out an activity capable of influencing public debate and on the amendment of certain related laws.

<sup>203</sup> Under the already existing rules (Sections 28 to 30 of Act CLXXV of 2011 on freedom of association, public-benefit status, and activities of and support for civil society organisations, and Sections 39 and 40 of Act CLXXXI of 2011 on the court registration of civil society organisations and related procedural rules), all civil society organisations are required to prepare their annual accounting report regarding their assets, operations, finances and revenues. They are also required to report on their public-benefit activities, and the donations received under the scheme allowing citizens to offer 1% of their personal income tax to civil society. (Contribution from *Alapjogokért Központ* for the 2021 Rule of Law Report, p. 21.) On 1 July 2021, a new Government Decree (379/2021 of 30 June 2021) entered into force, requiring civil society organisations to include in the report on their public-benefit activities the names of their donors. On 17 July 2021, Government Decree 437/2021 of 16 July 2021 repealed these provisions.

<sup>204</sup> Case C-821/19, pending, in which Advocate General Rantos delivered an Opinion on 25 February 2021.

<sup>205</sup> This legislation was labelled ‘Stop-Soros’ by the Government. <https://www.parlament.hu/irom41/00333/00333.pdf>

<sup>206</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 19 which reported on criticism voiced in the Venice Commission and OSCE ODIHR Joint Opinion (CDL-AD(2018)035).



Government<sup>207</sup>. Civic space in Hungary is rated as ‘obstructed’<sup>208</sup>. According to the Government, the National Cooperation Fund and the 1% personal income tax donation scheme are financing tools designed to support the operation and activities of civil society organisations<sup>209</sup>. Nonetheless, according to stakeholders, the civil society organisations continue to be underfinanced<sup>210</sup>, in particular if they are critical towards the government<sup>211</sup>. The Ninth Amendment to the Fundamental Law (15 December 2020) introduced a qualified majority in Parliament for amending the rules on public-interest trusts performing public duties<sup>212</sup>. A new law<sup>213</sup> adopted on 27 April 2021 has created a legal framework for the functioning of such trusts<sup>214</sup>. The boards of trustees<sup>215</sup> include current Ministers and State secretaries. Some stakeholders have expressed concerns<sup>216</sup> about public assets being donated to such private entities, also taking into account the composition of the boards of trustees<sup>217</sup>. These developments take place against the background of the legal uncertainty noted above<sup>218</sup> as regards the applicability to such trusts of rules on public procurement and on access to public information. The Venice Commission acknowledged that the new definition does not dismiss private entities managing public funds from their duties of accountability, but it

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<sup>207</sup> Contribution from Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties Union, K-Monitor, Mérték Media Monitor, Political Capital and Transparency International Hungary for the 2021 Rule of Law Report, p. 57.

<sup>208</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>209</sup> Input from Hungary for the 2021 Rule of Law Report, p. 28.

<sup>210</sup> According to the European Civic Forum, while civil society organisations were at the forefront of providing support to social groups most affected by the crisis stemming from the coronavirus pandemic (by providing food aid, supporting digital education, disseminating information and legal aid, among others), the Government opened no additional funding sources to civil society (contribution from the European Civic Forum for the 2021 Rule of Law Report, p. 38).

<sup>211</sup> Certain stakeholders note that democratic civil society in the country has been economically drained due to lack of access to the increasingly politicised public funding (contribution from the European Civic Forum for the 2021 Rule of Law Report, p. 39).

<sup>212</sup> Article 38(6) of the Fundamental Law.

<sup>213</sup> Act IX of 2021 on public-interest trusts performing public duty. According to the Government, the aim of the legislation is to prevent such trusts from being constantly exposed to political debates, and to guarantee the fulfilment of their tasks.

<sup>214</sup> The law lists 33 trusts, endowed with significant public assets and in charge of the operation of various higher education and other cultural establishments, each of them founded by a Minister following authorisation by Parliament through specific legislation. E.g. the Mathias Corvinus Collegium, with a State secretary on its board of trustees, has received at least HUF 500 billion (EUR 1.4 billion), a sum equivalent to the aggregate annual budget of the entire higher education sector in Hungary, in various assets including real property, equity and cash (Contribution from K-Monitor and Transparency International Hungary for the 2021 Rule of Law Report, p. 13). See Act XXVI of 2020 on supporting the talent management programme of the Mathias Corvinus Collegium and the teaching activity of the Maecenas Universitatis Corvini Foundation; Section 6 and Annex 2 of Act CVI of 2020 on certain trusts and transfer of assets to these trusts.

<sup>215</sup> Public-interest trusts are managed by a board of trustees of at least five natural persons, appointed for an unlimited period of time. After the transfer of the rights of the founder from the Minister to the board of trustees, only the board will be able to remove and appoint board members. The board may amend the statutes of the trust. The new law allows the founder to give up any form of control over the board of trustees, making its members autonomous and irremovable.

<sup>216</sup> Information received from the Hungarian Helsinki Committee in the context of the country visit to Hungary, referring to the creation of a ‘shadow state’.

<sup>217</sup> Contribution from K-Monitor and Transparency International Hungary for the 2021 Rule of Law Report, p. 13.

<sup>218</sup> See the anti-corruption framework section (page 14) and the media pluralism section (page 19) on these topics.



warned against the risk of removing public funds and public tasks from democratic control, also taking into account the new definition of public funds<sup>219</sup>.

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<sup>219</sup> Opinion on the constitutional amendments adopted by the Hungarian Parliament in December 2020 (CDL(2021)028), paras. 66 and 70.

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

\* *The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.*

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Committee to Protect Journalists (2021), *Contribution from the Committee to Protect Journalists for the 2021 Rule of Law Report.*

Council of Bars and Law Societies of Europe (2021), *Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report.*

Council of Europe Commissioner for Human Rights (2020), *Council of Europe Commissioner for Human Rights, Dunja Mijatović, statement of 20 November 2020 (<https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in->).*

European Association of Judges (2021), *Contribution from the European Association of Judges for the 2021 Rule of Law Report.*

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Kúria President (2021), *Contribution from the Kúria President for the 2021 Rule of Law Report*.

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Ökotárs - Hungarian Environmental Partnership Foundation (2021), *Contribution from Ökotárs - Hungarian Environmental Partnership Foundation for the 2021 Rule of Law Report*.

Századvég (2021), *Contribution from Századvég for the 2021 Rule of Law Report*.

UN Special Rapporteur on the independence of judges and lawyers (2021), *Letter of the UN Special Rapporteur on the independence of judges and lawyers dated 15 April 2021*.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26371>

Venice Commission (2021), *Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020 (CDL(2021)028)*.

## Annex II: Country visit to Hungary

The Commission services held virtual meetings in April 2021 with:

- *Alapjogokért Központ*
- Amnesty International Hungary
- Corruption Research Center Budapest
- Editors-in-Chief's Forum (*Főszerkesztők Fóruma*)
- ELTE Media and Communication Department
- Eötvös Károly Policy Institute
- Hungarian Bar Association
- Hungarian Civil Liberties Union (*TASZ*)
- Hungarian Helsinki Committee
- Hungarian Association of Judges (*MABIE*)
- K-Monitor
- *Kúria* (Supreme Court)
- Mathias Corvinus Collegium
- Mérték Media Monitor
- Ministry of Interior
- Ministry of Justice
- National Association of Hungarian Journalists (*MÚOSZ*)
- National Authority for Data Protection and Freedom of Information
- National Judicial Council
- National Media and Infocommunications Authority
- National Office for the Judiciary
- *Nézőpont*
- Office of the Commissioner for Fundamental Rights
- Office of the Constitutional Court
- *Országgyűlés* (National Assembly) Committee on Legislation
- *Országgyűlés* (National Assembly) Committee on Immunity
- Prosecution Service of Hungary
- Procurement Authority
- State Audit Office (*Számvevőszék*)
- *Századvég*
- Transparency International Hungary

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- 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
- European Federation of Journalists
- European Partnership for Democracy

- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU