

# **LIBERTIES RULE OF LAW REPORT 2022**

**HUNGARY**



## **Foreword**

This country report is part of the Liberties Rule of Law Report 2022, which is the third annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2022 Report was drafted by Liberties and its member and partner organisations and covers the situation in 2021. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2022 Report includes 17 country reports that follow a common structure mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-two member and partner organisations across the EU contributed to the compilation of these country reports.

Building on the country findings, the 2022 Report offers an overview of general trends on the rule of law in the EU and compiles a series of recommendations to national and EU policy makers, which suggest concrete actions the EU institutions and national governments need to take to address identified shortcomings.

**[Download the full Liberties Rule of Law Report 2022 here](#)**

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# Hungary

## About the authors



This report has been authored by the Hungarian Civil Liberties Union (HCLU). The Hungarian Civil Liberties Union is a human rights NGO. Since its founding in 1994, the organisation has been working to make everybody informed about their fundamental human rights and empowered to enforce them against undue interference by those in positions of public power. HCLU monitors legislation, pursues strategic litigation, provides free legal aid assistance in more than 2,500 cases per year, provides training and launches awareness-raising media campaigns to mobilise the public. It stands by citizens unable to defend themselves, assisting them in protecting their fundamental rights. They are present at courts, national and international conferences, universities, in the capital and the countryside.

## Key concerns

In the area of justice there were no significant changes. The criticised developments of previous years have further undermined the independence of the judiciary. As more senior

judicial positions are filled in this system, political influence becomes more manifest.

Similarly, in the area of corruption, opaque government spending and outsourcing of state assets to unaccountable organisations in 2021 create significant corruption risk. This, combined with shrinking public space and a systemic lack of action against high-level corruption, represents a significant step backwards.

Hungary is facing many serious challenges in the area of press freedom and pluralism and freedom of expression. The secret surveillance of journalists is a new emerging issue which makes it even more difficult for journalists to obtain reliable information.







The independent institutions that should limit the government's power are operating in a dysfunctional manner and the permanent special legal order (state of emergency) seriously threatens compliance with constitutional principles.

In addition, civil society organisations continue to face certain hurdles in carrying out their work. The repeal of the unlawful anti-NGO law was a step forward, but a new anti-NGO law has replaced it. The government continues to conduct a campaign against NGOs active in public life, using even legislative means.


The persistent failure to effectively address certain human rights issues also continues to

impact the national rule of law environment. As in previous years, fundamental rights are under serious threat. In the permanent special legal order established to allegedly respond to the public health crisis, rights can be severely restricted. In 2021, the government's campaign against the LGBTQI community opened a new chapter in the history of government-led hate campaigns.

### State of play

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

#### Legend (versus 2020)

- Regression: 
- No progress: 
- Progress: 

## Justice system

### Key recommendations

- The government should strengthen judicial self-governance by expanding the powers of the National Council of the Judiciary to counterbalance political influence on the judicial administration.

- The National Judicial Office should fill judicial and court management positions through regular tendering procedures in full respect of fairness and transparency requirements.

### Judicial independence

Although there were no changes to the legislation concerning the judiciary in 2021 and there were no significant personal changes, the developments of previous years have had an impact in practice this year, further undermining the independence of the judiciary.

The system of the appointment, selection, transfers, dismissal and retirement regime of judges and courts leaders remained substantially the same as they were in the previous years. The system for allocating cases has been similarly unchanged. The criticisms made in previous years remain valid. However, as more and more senior judicial positions are filled in this system, political influence in the judiciary is becoming more and more manifest. This can be seen, for example, in the decreasing expectations for independent and impartial judgments from the Kúria's (the Supreme Court) panels in politically sensitive cases, which overall shows a slow erosion of the independence of the judiciary. Although on the occasion of his appointment in 2019, the new President of the National Office for the Judiciary (NOJ) said that his priority was to end the tension between the National Judicial Council (the body tasked with safeguarding the independence of the judiciary) and

the NOJ, it has become clear that relations between these bodies have improved to a very limited extent.<sup>1</sup>

### ***Appointment and selection of judges, prosecutors and court presidents***

In 2021, the arbitrary administration of judicial appointments took another turn. A judgement declared unlawful the practice of arbitrarily annulling judicial appointments without any justification and any possibility of appeal, but the Kúria also ruled against this. The case is before the Constitutional Court, which will uphold the arbitrary practice until its decision.

The case has been ongoing since 2017, when, although a judge's application for a post at the Metropolitan Court was ranked first each time, the President of the National Office for the Judiciary (NOJ) repeatedly annulled it without giving any reason. In 2021, a final judgment was delivered that this practice was illegal. Still, on the motion of the NOJ, the Kúria also overturned this judgment and rejected all the applications of the judge seeking to enforce his rights.

The judgment<sup>2</sup> (which was later overturned by the Kúria) in the spring of 2021 laid down important safeguards against similar administrative arbitrariness in the appointment procedure for judicial posts, namely:

a) The judgment stated that there is a right of appeal even in the case of an invalid competition. Therefore, it is possible to appeal to the courts against a decision of the President of NOJ to annul a judicial vacancy. The annulment of applications is not merely a general administrative matter but an individual employer's measure affecting the legitimate interests of the applicants, against which the applicants must have a right of appeal to the courts.

b) The judgment also ruled that EU law protects the independence of judges in Hungary. One of the most forward-looking elements of the judgment was based on EU law regarding the right of persons applying for judicial posts to appeal against the annulment of their candidature. EU law requires the rule of law principles and effective judicial protection to be enforced in all member states. In doing so, the law obliges member states to give effect to the rights guaranteed in the EU Charter of Fundamental Rights, including the right to a judicial remedy. According to the judgment, given the primacy of EU law, Hungarian courts should ensure the right to a remedy in proceedings such as the present one, even if this is contradicted by domestic law.

c) The judgment also held that the annulment of competition could not be arbitrary.

1 Based on a statement made by a member of the National Judicial Council when he resigned from his position. [http://www.nepszava.hu/3141493\\_nemzetkozi-szervezetnel-folytatja-a-lemondott-biro](http://www.nepszava.hu/3141493_nemzetkozi-szervezetnel-folytatja-a-lemondott-biro)

2 Judgment no. Mf.V.30.054/2020/13/I. of the Regional Court of Appeal of Győr (Győri Ítéltábla).



It clarified that the annulment of a judicial vacancy is an employer's measure that must be duly justified, with details of the factual circumstances giving rise to it. This is the only way for the persons directly concerned, i.e., the candidates, to exercise their right to appeal.

d) The judgment also clarified that it does not matter if the post has already been filled. The court ruled that the transfer of a judge who has won a competition cannot be prevented by the fact that the position has already been filled in another way.

The court ordered the President of the NOJ to remedy the breach of rights and to act lawfully in response to the application of the judge concerned, who had been ranked first.

The NOJ brought an extraordinary appeal against that judgment. As a result, the Kúria set aside the final judgment and, in essence, upheld the judgment of the first instance, dismissing the application of the judge concerned. The Kúria<sup>3</sup> found that the decisions of the NOJ annulling the competition were lawful and duly reasoned, and that the petitioner's right to a legal remedy and a fair trial had been exhausted in that he had a legal opportunity to bring an action against the decisions against his employer, the Metropolitan Court of Budapest. The judge concerned has challenged

the Kúria's judgment, lodging a constitutional complaint<sup>4</sup> because it infringes the independence of the judiciary and the right to a judicial remedy. The Constitutional Court has not yet put the case on the agenda, nor has it ruled on its admissibility. The decision of the Kúria is currently in force.

### *Independence of the Bar association and lawyers*

It was revealed in the summer of 2021 that Hungarian lawyers, including the President of the Hungarian Bar Association, might have been the target of surveillance by the Pegasus spyware distributed by the Israeli company NSO.<sup>5</sup> Their telephone numbers appeared on the leaked list that includes the potential targets selected by the Hungarian operators of the Israeli cybersecurity company. According to all indications, the Hungarian operator was a Hungarian state body. In addition to the President of the Hungarian Bar Association, nine other Hungarian lawyers were identified among the potential targets, including defence lawyers working on criminal cases and lawyers dealing with civil law (business, real estate, compensation, etc.). Although there is no clear evidence that lawyers were targeted with Pegasus for political reasons, representatives of the profession have had several conflicts with the government in recent years. Several lawyers objected to measures that undermined

3 Judgment no. Mfv.X.10.049/2021/16. of the Kúria, 2 June, 2021.

4 Case no. IV/03595/2021 of the Constitutional Court.

5 Direkt36: President of the Hungarian Bar Association and several other lawyers targeted with Israeli spyware Pegasus. July 20. 2021. <https://telex.hu/direkt36/2021/07/20/pegasus-nso-surveillance-hungary-lawyers-bar-association-janos-banati>

the judiciary's independence and spoke out when the government attacked lawyers filing damages lawsuits against the state on behalf of convicts, labelling this process as "prison business". Due to the legally fortified institution of attorney-client privilege, the surveillance of lawyers is problematic. However, the rules of secret information gathering are so loose in Hungary that lawyers may become surveillance targets in a formally legal way. National security services, in particular, can monitor virtually anyone on a very large scale and with very little external control, even with intrusive spyware such as Pegasus. As of the beginning of 2022, Hungarian authorities have not finished any official investigation relating to this surveillance.

## ***Quality of justice***

### ***Accessibility of courts: legal aid system***

Since an amendment to the law in 2020, people living in disadvantaged conditions, extreme poverty or with disability have become even more vulnerable, as they can no longer appeal against administrative decisions in administrative cases - such as child removal or guardianship proceedings, or disability benefits - but can only challenge decisions by guardianship authorities and other administrative bodies in court. However, court proceedings are more costly and difficult for citizens to access than administrative proceedings. This problem persisted in 2021.

The amendment has made it extremely difficult for those who already had trouble in asserting their interests, especially those who cannot

access legal aid. These are the people who most need the help of public bodies to deal with their cases. Instead, the law has been amended on the grounds that removing the possibility of appeal will speed up final decisions. Another reasoning behind the amendment was that clients had hardly any appeals against decisions. However, this is contradicted by the experience of NGOs working with the affected people. In many cases, the correct decision was reached by appealing the administrative procedure at the second instance. The administrative appeal procedure is always shorter than an administrative court case, and it is much easier to draft an appeal than a court action. Not to mention that the fees for a judicial review are significantly higher. Although the client can ask for the costs to be covered, the application is complicated and challenging to complete without legal assistance.

### ***Resources of the judiciary***

The government continued to increase the salaries of judges and prosecutors in 2021. Under the law adopted in 2021, the salary base for judges and prosecutors will increase by 13% in 2022. The salary increases, which was implemented in three steps from 2019, bring the salaries of judges and prosecutors to the same level. In total (over the three years), the salary increase is close to 60 percent.

### ***Digitalisation: Publicity of hearings during the pandemic***

The pandemic situation has posed challenges for the publicity of court hearings. The government has created a new situation for the



trial phases of court proceedings by adopting Government Decree 112/2021 (III. 6.) on the reintroduction of certain procedural measures during an emergency. In the case of administrative proceedings, no hearing is held during the period of the enhanced defence, so that in this type of proceedings the issue of the publicity of the hearing does not arise during the period of the enhanced defence. However, in criminal proceedings, hearings and (de jure) public sessions cannot be avoided, and in some cases can be held by telecommunication during the enhanced defence period. In civil proceedings the Decree also provides, as a general rule, for hearings to be held, as far as possible, by means of an electronic communications network or other means of electronic image and sound transmission. In criminal and civil proceedings, the question arises as to how the publicity of court hearings is ensured during the period of the strict defence if the hearing is held by means of an electronic communications network or other means of electronic image and sound transmission or telecommunications equipment. Whereas public access to the courtroom was previously ensured by the fact that anyone could enter the courtroom, the possibility for anyone to follow the proceedings is not ensured in the case of trials held in the online space.

## ***Fairness and efficiency of the justice system***

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### ***Length of proceedings***

By ratifying the European Convention on Human Rights, Hungary has committed itself to ensuring the right to a fair trial within a reasonable time under Article 6 and ensuring the right to an effective remedy for violations of this right under Article 13. This declaration appears in Article XXVIII of the Fundamental Law. Still, the European Court of Human Rights (ECtHR) has repeatedly indicated in recent decades that the Hungarian legal system does not provide a domestic remedy for the fulfilment of the requirement of Article 13 of the Convention, which the ECtHR considers effective and which would serve exhaustively to prevent the delay of court proceedings or to remedy the violation of rights caused by such proceedings. In its judgment in *Gazsó v. Hungary*, the ECtHR called on Hungary to establish a domestic remedy or a remedy consortium capable of addressing the structural deficiencies identified in the judgment in an appropriate manner, in accordance with the Convention principles laid down in the ECtHR case law.

Regarding the length of proceedings, the most important development in 2021 was the adoption of Act XCIV of 2021 by the Parliament. This Act contains provisions on the enforcement of pecuniary compensation for delay in civil proceedings. The Act introduces the compensation in the form of pecuniary (financial) satisfaction for the infringement of the fundamental right to have the civil proceedings

concluded within a reasonable time. The law will only enter into force on 1 January 2022.

This law only provides compensation in the form of pecuniary (monetary) satisfaction in cases of infringement of the fundamental right to have civil proceedings completed within a reasonable time. Administrative and criminal proceedings are not affected by this law.

## **Anti-corruption framework**

### **Key recommendations**

Levels of corruption are higher than ever. The government must stop taking advantage of the coronavirus pandemic to engage in corruption and must take the necessary legislative and non-legislative measures to ensure transparency in spending and to return assets used for public functions to public ownership.

### **Levels of corruption**

In Hungary, the dismantlement of the constitutional state and the elevation of corruption to public policy happens simultaneously, in strong correlation with one another, generally

under the guise of some mission carried out for the public good (currently: the actions against the crisis caused by the coronavirus).

### ***Opaque government spending and budget reallocations***

The pandemic provides many opportunities for opaque government spending and budget reallocations. In 2020, the government set up new funds as a response to the economic crisis caused by the pandemic because the measures related to the epidemic justify some unforeseen budgetary expenditure. This is undoubtedly true. However, once the funds were exhausted, the government reallocated more and more funds. In many cases, these funds were used for investments, improvements (or even salaries) that had already been included in the annual budget, so it seems as if they were spent twice. In all cases, the spending of the funds was decided outside the standard budgetary procedure, essentially on an ad hoc basis, in the form of government decisions. In many cases, it was impossible to determine, based on these government decisions, what specific measures were being financed by the expenditure and to what extent they were actually helping mitigate the epidemic's economic impact.

According to an article of the most acknowledged economic weekly newspaper, at most a quarter of the money spent from the Economic Protection Fund was (at least indirectly) used for economic protection.<sup>6</sup> A particular

6 A gazdaságvédelemre szánt pénzeknek legfeljebb a negyede mehetett válságkezelésre. 19 January, 2021., [https://hvg.hu/gazdasag/20210119\\_gazdasagvedelmi\\_alap\\_szamok](https://hvg.hu/gazdasag/20210119_gazdasagvedelmi_alap_szamok)

difficulty with the estimate was that it was almost impossible to determine to what extent the amounts sent contributed to this objective. In many cases, the measures were not necessarily intended to provide a wage or other support for jobs in existing businesses that had lost their market or were in difficulty, but to provide job creation benefits for new investment by the elite close to the government. Meanwhile, the government communicates every job rebate as a direct response to the COVID crisis. The primary beneficiaries of the transfers are partly investments by various pro-government actors and a number of sports-related facility developments. The reallocations to sports are interesting because they are transfers from the Economic Protection Fund, the emergency government reserve, and the Central Residual Settlement Fund.<sup>7</sup>

The new waves of the epidemic also hit the economy hard. As a result, in May 2021, the government had to make significant changes to the 2021 budget, for example, raising the deficit target from 2.9% to 7.5%. The overspending became so excessive that even the Hungarian National Bank spoke out against it.<sup>8</sup> The amendment of the budget was non-transparent: it did not include tables or numerics, derived justifications, or severe macroeconomic

forecasts.<sup>9</sup> Similarly to 2020, the government did not specifically use the increased room for manoeuvre to mitigate the epidemic's negative economic and social impact. In many cases, the funds were used to support additional investments by the clientele or for other purposes, such as sports or churches. This remained the case in 2021, as budget amendments largely swelled the budget of the completely opaque Economic Protection (now called Economic Recovery) Fund.<sup>10</sup> The government can reallocate it to a wide variety of purposes without the consent of Parliament, and therefore without a transparent debate. The budget for 2022 theoretically foresees a smaller deficit but introduces the Investment Fund, which could similarly serve clientele-building purposes, and is planned to remain part of the budget in the coming years.<sup>11</sup>

### ***Outsourcing of state assets***

This process continued in 2021 in even greater in volume than in 2020. The process can be described as a means of transferring power: after outsourcing public assets to a foundation, some public tasks are formally performed by bodies independent from the state. The bodies of these foundations have many people close to the present government or even members

7 19,7 milliárdot vesz ki a kormány a Gazdaságvédelmi Alapból. 15 December, 2020.

8 *Gyorsabb hiánycsökkentéssel a fenntartható felzárkózásért.* Press release of the Hungarian National Bank. 27 April, 2021.

9 Karsai Gábor: *A módosított magyar költségvetés tele van átláthatatlan és trükkös számításokkal.* G7, 6 May, 2021.

10 Karsai, *ibid.*

11 *Szórja a pénzt a kormány a 2022-es költségvetésben a nagy beruházásokra.* 5 May, 2021.

of the government. The transfer of public assets can be put into different categories: these include, first of all, the higher education institutions, and using this framework for asset transfers, which includes either transferring state universities to private foundations, or already existing private foundations, that can be linked to the government or Fidesz politicians (such as Mathias Corvinus Collegium),<sup>12</sup> receiving exceptionally substantial assets to perform public duties associated with higher education. The stated aim of the transformations was to make the foundations independent from the current government, but by requiring a qualified majority, these rules are unchangeable.

The outsourcing of universities into foundation maintenance was done in several waves; the last wave happened in early 2021. In January, many more prominent universities of the countryside (of Szeged, Pécs, and the University of Sciences of Debrecen) and the Semmelweis University of Budapest started to be organised under a public foundation. On April 27, 2021, the Parliament passed laws according to which most of Hungary's higher education will no longer belong to the government. Outside of Budapest, there are no universities left that a foundation or a church does not maintain. In addition, many more asset-manager foundations were created in the fields of culture, education or agriculture, their leadership and

oversight being handed to entities close to the government. The new pieces of legislation provided significant assets free of charge to these foundations.<sup>13</sup> At the same time, regulations related to the public trust funds were codified: the two-thirds parliamentary majority of the governing parties created the act that regulates the new legal institution.<sup>14</sup>

From the perspective of anti-corruption, the most worrying development is the fact that while the state provided (and can further provide) significant assets to public trust funds that will perform important public tasks (e.g., higher education, or in the case of university clinics, healthcare activities as well) the government's opportunity to enforce the sufficient level of performing these tasks will be limited. The boards of these foundations are unaccountable, their members cannot be removed, and the state can basically disclaim all of its founder's rights in favour of them. After the appointment of the first board, the state or the government will no longer have the right to revoke the board member, not even in case of not or not sufficiently performing the public task or misuse of the significant assets provided for the fund.

This is particularly problematic because the act, more or less, does not determine any rules about conflict of interest related to members of the board. Active Fidesz-party politicians and

12 *Magánkézben jobb helyen van a vagyon az államinál, mondta az államtitkár, majd átadta magának az állami vagyont.* 19 October, 2020.

13 *Megszavazta a parlament, hogy alapítványokba szervezzék ki a közvagyonot.* 27 April, 2021

14 See the content of the issue no 75 of 2021 of the Official Gazette (Magyar Közlöny), 30 April, 2021.

government members received several positions in the boards - according to some calculations, nearly 40 to 50 percent of the board positions are filled with members related to the Fidesz party or to the government directly. An additional 20 percent are related to the government in a less direct way,<sup>15</sup> which makes the government's statement (namely, that the reform is necessary to reduce the governmental dependency of higher education institutions and guarantee university autonomy)<sup>16</sup> unfounded. In this regard, independence and autonomy could be applied only if the government is different from the current one because the strong personal bonds can guarantee the influence of the current government.

Different types of risk emerge when it comes to the plan regarding the Hungarian campus of the Chinese Fudan University. Under the plan, the Hungarian government would bring one of the most prominent Chinese universities to Hungary in the framework of a large-scale investment, and the Hungarian business partner should pay the costs. According to the proposal of the competent ministry, this would happen by using Chinese loans, Chinese materials, and the contribution of Chinese companies. During the consultations related to the plan, the affected municipalities' recommendations (led by the opposition) were not taken into consideration,<sup>17</sup> and only the

large-scale protest of citizens convinced the government to delay the project to 2022, after the elections. Contrary to this, the bill that establishes the public trust fund to maintain the Fudan University and provides it with valuable real estates in Budapest was already adopted by the government majority of the Parliament.

The establishment of a new state authority is also related to the outsourcing of the state. This regulatory body, the Supervision Authority for Regulated Activities is entitled to issue decrees within its own competence. The new body will also take competencies from the Ministry of Finance and from the Ministry of Justice. By the second half of 2021, this authority supervises the following activities: tobacco trade, the gambling market, activities of the bailiffs and liquidators. Furthermore, the authority deals with concession issues. The prime minister appoints the newly established authority's president for nine years, which strongly suggests that the aim of establishing the authority is to limit the margin of a subsequent government which might be different from the current one,<sup>18</sup> and to create an informal network suitable to replace the formal, regulated structures with a kind of "deep-state".<sup>19</sup>

Furthermore, another government plan attracted a lot of attention. In June 2021, a

15 *Egyetemi modellváltás: íme az újabb kuratóriumi tagok névsora.* 27 April, 2021.

16 *Elfogadták az alaptörvény kilencedik módosítását.* 15 December, 2020.

17 *Ennél értékesebb telket nehéz lett volna felajánlani Kínának,* 7 June, 2021.

18 Schiffer András: *Magyarország kiszervezése.* 6 April, 2021.

19 *Perverz privatizáció zajlik a mélyben: adjátok vissza az országunkat!* 14 April, 2021.

tender was issued for a concession agreement to maintain and partly develop the highway system of Hungary for the next 35 years. However, publishing the founding documentation was refused.

### **Framework to prevent corruption**

#### **General transparency of public decision-making: access to public interest data**

Under the state of emergency, the process for requesting public interest data allows for the legally binding response deadline to be increased to 45 days by the data provider, three times the original one (which could be extended once by 45 days), if the request for the public interest data would negatively impact the entity's ability to carry out its public activities related to the pandemic. Public authorities widely use this possibility, even when this has no relevant epidemiological reason. In their decision made in April 2021, the Constitutional Court stated that the possibility of the considerable deadline extension was not against the Fundamental Law. Still, they declared that the data controller must specify the exact reason for the extension, and it is not sufficient to refer to this regulation in a general way.

#### **Rules on preventing conflict of interests in the public sector**

According to a decree issued under the state of emergency, the member of the government

responsible for emergency prevention and an appointee of them may, in certain cases, grant exemptions from the general public funding rules for procurements related to the coronavirus. In especially urgent cases, calling a partner directly to bid is even possible. The reason for the modification was to minimise the bureaucratic impediments to procurements related to health care and others directly linked to the pandemic. Thanks to these eased rules, hundreds of billions of forints' worth of procurements may have taken place without any real competition, with a total lack of transparency. The general public was not informed about the identity of the person eligible to grant exemptions in case of certain procurements.

The public procurement of the COVID vaccines also shows irregularities. The Russian Sputnik V and the Chinese Sinopharm vaccines were both authorised in Hungary. The contract for the Russian vaccine contained provisions unfavourable to the Hungarian side in certain elements.<sup>20</sup> Specific purchase prices also came to light for eastern vaccines: according to this, one dose of the Sinopharm vaccine costs 31.5 euros (HUF 11,352), while one dose of the Sputnik V serum costs 8.5 euros (HUF 3,063). It is worth comparing this data with the price of vaccines from the joint procurement of the EU, which became known in December 2020: the cheapest of the vaccines bound for Hungary is AstraZeneca, of which one dose is 1.78 euros (HUF 641), followed by the one-dose Johnson & Johnson vaccine, which costs 8.50 dollars (HUF 2,526), the Pfizer-Biontech

<sup>20</sup> *Orosz vakcinaszereződés: teljesen egyoldalú szerződést írt alá a kormány.* 11 March, 2021.



vaccine at 12 euros (HUF 4,325) per dose, and the Moderna serum at 18 dollars (HUF 5,348). From the contracts made public, it has also come to light that the government entered a contract with an intermediary company with a questionable background<sup>21</sup> in the interest of obtaining the Chinese vaccines; this company is also associated with a company that profited from the ventilator acquisitions back in 2020. In addition, the use of an intermediary company seems unnecessary regarding this specific transaction. The company has not seen such tasks in the past, and the revenue from the acquisition of the Chinese vaccine significantly exceeds revenue produced throughout its existence up to now.<sup>22</sup>

It is important to note that Gergely Gulyás, Minister of the Prime Minister's Office, published the contracts of the acquisition of the Russian and Chinese vaccines on his Facebook page, which cannot be considered an official communication platform. In the past months, it has become more and more common that certain members of the government use Facebook to share official information via the social media platform.<sup>23</sup> Meanwhile, on official government platforms important information and documentation is shared late and is difficult to access. This is done most likely with the intention of directing citizens to the personal communication platforms of pro-government politicians, where they can be informed more

frequently and directly about the governing party's political messages.

### ***Measures in place to ensure protection and encourage reporting of corruption***

The governing parties undermined parliamentary work in many cases where the opposition took the initiative. A good example of this was when the MPs of the governing parties were not present at an extraordinary parliamentary meeting, convened on the initiative of opposition representatives, on 1 February 2021. When initiating the convening of the meeting, the opposition announced that it wished to create committees of inquiry to examine the pandemic control and the government's economic protection measures. Then, in a form operating beyond parliamentary frameworks, the six opposition parties brought about the committee of inquiry, which began its operation on February 12. László Kövér, the Speaker of the House - despite the fact that the committee acted in conformity with legislations - felt it necessary to announce that the committee had no parliamentary licence and is a "pretence of a committee operating without legal basis", which would be suitable for the deception of the public; furthermore, he noted that they cannot use the title of parliamentary committee of inquiry either.

21 *Színjáték lehetett a kínai vakcinát beszerző, zavaros hátterű magyar cég tulajdonosváltása*. 13 March, 2021.

22 *Összeér a kínai vakcinabiznisz és a botrányos lélegeztetőgép-beszerzés*, 12 March, 2021.

23 *Orbán Viktor bejelentése a várható legújabb védelmi intézkedésekről*, 9 November, 2020.

## **Investigation and prosecution of corruption**

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### **Legislation and policy measures**

One of the few steps recently taken against corruption is an action against gratuities. Criminal law amendments and other provisions that were introduced in parallel with the increase in doctors' salaries divide citizens. Despite this, it seems the government is committed to countering the phenomenon of gratuities, and a fifty-person department has been set up within the State Department of Civil Defence to deal with the matter. These officials may, even covertly, investigate physicians to ascertain that they do not in fact accept gratuities.

A small positive step is that the government amended the Criminal Code in accordance with the OECD recommendation, which means that in the future, persons working for foreign public organisations and state or local government companies will be considered foreign officials.

However, the government and state institutions did not take substantive steps to address the corruption risks posed by the pandemic,

although they have drawn attention to their existence.

### **Legal consequences of high-level corruption**

In recent years, due to resistance from prosecutors, there have been no legal consequences for high-level corruption in Hungary. The reasons behind this, according to the findings of international organisations (such as the Council of Europe's Venice Commission and GRECO Group reports),<sup>24</sup> are the lack of necessary prosecutorial and law enforcement measures and procedures, the failure to prosecute when proceedings are initiated, and the lack of accountability of the prosecutor general. In this respect, no systemic changes occurred in 2021. Two cases, however, should be highlighted, which paint a more nuanced picture. The first case is significant - for the purposes of the present analysis - because, in applying EU law, the Court of Justice of the European Union took into account the fact that a corruption case had no legal consequences in Hungary.<sup>25</sup> The case arose from a request for access to an OLAF report, which has been refused by OLAF. The applicant wanted to find out what abuses OLAF had identified in relation to an EU-funded street lighting project, which, instead of improving

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24 *Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted by the Venice Commission at its 91st Plenary Session* (Venice, 15-16 June 2012), CDL-AD(2012)008-e, *Corruption prevention in respect of members of parliament, judges and prosecutors*. Evaluation Report, Hungary. Adopted by GRECO at its 67th Plenary Meeting (Strasbourg, 23-27 March 2015), Greco Eval IV Rep (2014) 10E.

25 Homoki v Commission case, T-517/19.

the street lighting infrastructure, had further reduced the visibility of the streets. OLAF investigated the case, which revealed “serious irregularities” and “conflicts of interest” in the tender for the project, which was won by a company co-owned by István Tiborcz, the son-in-law of the Hungarian Prime Minister. A year later, the Hungarian authorities found no irregularities, and Hungarian taxpayers ended up having to pay the HUF 13 billion (€36.3 million) cost of the project. OLAF refused access to the report on the grounds that OLAF reports should only be made available to the authorities of the countries concerned, and only they can then decide whether to make them public; disclosure would jeopardise the effective conduct of national proceedings. However, the Court’s judgment considered the fact that there was no prosecution in Hungary; the Hungarian authorities established the absence of an infringement following an investigation by the Pest County Prosecutor’s Office. The Court, therefore, held that the grounds for refusing access did not apply and that the document should be made available to the applicant NGO.

The other case is significant because of its exceptional nature. The case, which came to light in December 2021, is the first one in which a high-ranking government official was prosecuted in Hungary for corruption. On the morning of 7 December, the chief prosecutor’s office had requested the waiver of the immunity of Member of Parliament Pál Völner, secretary of state in the Ministry for Justice. The chief prosecutor’s statement revealed that Völner - who was also the ministerial commissioner responsible for the

Hungarian Court Bailiffs Chamber since August 2019 - is accused of having illegally received regular bribes from the president of the branch of bailiffs over a sustained period of time. Völner’s immunity has been waived, but (as of the date of this report) he has not been arrested or remanded in custody. Nevertheless, such a high-ranking politician has never been found in such an unpleasant situation in the government of Viktor Orbán. It is not clear how this exceptional case could have occurred.

According to the weekly newspaper HVG, the ruling parties have tried to do everything possible to keep the details of the embarrassing case in secret for as long as possible, preferably until the election. Still, as the investigations into the bribing bailiffs progressed, it was no longer possible to keep secret the case of the bribed secretary of state.

## **Media environment and freedom of expression and of information** 🟡

### **Key recommendations**

- The National Assembly should elect a Media Council with a composition that ensures the authority’s independence from the government; restrictions on media investment and campaign spending and enforcement of these limits are needed to restore a pluralistic media system.

- Parliament should limit the legal possibility to monitor journalists in order to protect journalistic sources.
- The government should inform the public and the press about public affairs, both proactively and on request, while respecting the fundamental standards of freedom of information.

## **Media and telecommunications authorities and bodies**

### ***Independence, enforcement powers and adequacy of resources of media and telecommunications authorities and bodies***

The Media Council has been existing in essentially the same form since 2010. It has regulatory functions, it decides on frequency tenders, selects public service media operators and carries out media monitoring. Parliament elects its president and members for a nine-year term. Since 2010, the Council has been composed exclusively of members nominated and elected by the governing majority, as the governing party's two-thirds majority in Parliament did not approve any opposition candidates. The Media Council cannot therefore be considered independent by any standards.

The nine-year-long mandate of the president of the media authority was due to expire in August of 2022, after the elections, but the president announced her resignation on 15

October 2021. This created an opportunity for the government majority to appoint someone loyal to Fidesz to lead the authority for another nine years, regardless of the outcome of the upcoming elections. As the elections approach, Fidesz is blatantly entrenching its party people at the head of formally independent authorities, including the media authority. As expected, the Parliament has elected the new president, András Koltay, a Fidesz nominee.

## **Pluralism and concentration**

### ***Levels of market concentration***

Media concentration has been a long-standing process in Hungary, as a result of which the media market cannot be considered pluralistic. After 2015, the two-thirds majority government significantly transformed the media environment, and this process is still ongoing. In Hungary, state-owned banks provide billions of HUF in loans to pro-government entrepreneurs, who then place media companies at the service of Fidesz. Government circles have taken over several influential press outlets critical of the government: Origó, Figyelő, TV2 and Index have become pro-government through the ownership circle, while Népszabadság, for example, has ceased to exist following the change of ownership. The Cabinet Office of the Prime Minister (Miniszterelnöki Kabinetiroda) decides on advertising spending by public bodies at the ministerial level. Pro-government laypeople have bought up and grouped in one hand the entire provincial newspaper market, which are visibly edited centrally. Hundreds of

commercial media outlets, worth tens of billions of dollars, were taken over by a clearly politically captured foundation (KESMA). Today, there is almost no government-independent radio left in Hungary. As a result, the government directly or indirectly controls at least 50% of the Hungarian media market. This figure doesn't include the press that agrees with the government, but refers solely to the media companies that the government controls through owners dependent on it.<sup>26</sup>

Nevertheless, there exists a free press in Hungary that is independent of the government. However, the government always confuses this with the opposition. It pretends that there should be a pro-government and opposition press parallel to government and opposition parties. In doing so, naturally, it destroys the credibility of the independent press and tries to blunt the edge of criticism. It also alienates its own voters from the non-government press. Finally, it uses this narrative to legitimise the existence of a media owned by pro-government circles.

### ***Transparency of media ownership***

According to a study published by Mérték Media Monitor 2021,<sup>27</sup> it is clear that politics has taken hold of the media market; the role of political investors and the market-distorting influence of the state have increased

significantly. In recent years, several foreign investors have withdrawn from the Hungarian market and have been replaced by domestic investors. At the same time, the ownership structure has become very concentrated, with pro-political, and in particular pro-governmental, owners becoming dominant. Political considerations dominate the allocation of public advertising expenditure. Independent media are struggling to survive. Partly due to global trends (the rise of digital platforms) and partly due to the market-distorting influence of the state, independent media companies are sharing an ever-shrinking advertising pie. In recent years, many media outlets have been asking audiences to contribute, and users' willingness to pay has been increasing, but competition for these revenues is growing.

The Mérték study also highlights that a specific feature of the Hungarian market is the emergence of the so-called grey zone. This includes media companies that appear to be independent at first sight because their owners are not necessarily considered to be close to the government, but are in fact at the mercy of the state, for example, through state advertising, and are therefore not independent in essence. It is also important to bear in mind that political pressure is not always exerted directly on the editorial board and the media company, but on other companies in the same corporate group as the publisher, or on companies with

26 Attila Bátorfy: *The Past Ten Years of the Hungarian Media*. Átlátszó; Attila Bátorfy, Krisztián Szabó: *Monitoring Media Pluralism in the Digital Era*. Country report: Hungary. Eötvös Loránd University, Media Department.

27 *Four Shades of Censorship. State Intervention in the Central Eastern European Media Markets*. Mérték Média Monitor. 2021 June.

which the media company has other business links (influence through the media ecosystem).

### **Public service media**

In Hungary, public service media (or rather: state media) does not fulfil their role of impartial and independent broadcasting, and the government has literally taken it over. This is greatly facilitated by the fact that the organisational structure of state media (which operates in the dual structure of MTVA - Media Services Support and Asset Management Fund and Duna Media Service Non-profit Ltd.) is opaque, its responsibilities are unclear, spending is not transparent, and the operation of the institutions is almost impossible to monitor. MTVA's CEO is appointed by the Media Council, which is composed exclusively of Fidesz members. State media is heavily overfunded; the budget allocated to MTVA is increasing spectacularly year on year; in 2021, it received HUF 117.7 billion from the central state budget. In addition to public television channels and radio stations, the national news agency is also part of the state media. The state media also enjoys a kind of news monopoly through the latter. It provides news free of charge to other players in the media market, making other news agencies uncompetitive. The political pressure is apparent and institutionalised<sup>28</sup> and the editors are politically biased: the editorial policy is clearly

pro-government. As a result, the public service media are primarily engaged in political communication rather than information.<sup>29</sup>

A lawsuit, which started in 2018 and took a new turn in 2021, says a lot about the state media's vision of its own role, and on public service. In 2018, a government-linked youth organisation told lies about the Menedék Association at a press conference in front of its office. The state media were involved in disseminating these statements, which were ruled unlawful by the Kúria. According to the judgment, the public service media should have checked before publishing the footage whether it contained any false statements that could be offensive to the Menedék Association. The state media completely failed to do so, thus infringing the rights of the Menedék and misinforming its audience. The state media challenged the judgment in a constitutional complaint<sup>30</sup> to the Constitutional Court. It argued that, as a media outlet, it is not its duty to provide objective information: they do not have to verify the truth of what is said at a press conference. They can even spread information that is manifestly untrue if it is not stated by the media but by the person holding the press conference. They argue that expecting them to check sources and question the other party would constitute censorship. In its constitutional complaint, the state media pretend that there is no difference between the responsibility of the press, which

28 *„... a maffiában lehet hasonló, gondolom” – ilyen a köztévé belülről.* 10 November 2020; *Kézivezérlés a közmédiában, következmények nélkül,* 27 December, 2020.

29 Four Shades of Censorship, *ibid.*

30 *Constitutional complaint*, available at the website of the Constitutional Court.



operates independently of the state, and that of the public media. The case is pending before the Constitutional Court.<sup>31</sup>

## Online media

### Impact on media of online content regulation rules

In January 2021, the Minister of Justice announced<sup>32</sup> that the Ministry of Justice would begin work early this year to prepare legislation to regulate social media operation (which in Hungary primarily means Facebook). According to her post (published on Facebook), the government would seek to prevent social media companies from banning users arbitrarily and without remedies.<sup>33</sup> Otherwise, the objectives and the content of the planned regulation have never been made clear by the government, and since then it seems that it has abandoned the need for regulation. In April 2021, the minister stated that Hungary would wait “for Brussel’s rule and then create the national one accordingly,” implying that the government will follow the

EU-level Digital Services and Digital Markets Acts.<sup>34</sup> Facebook has nevertheless been subject to attempts by the domestic authorities to be regulated: the Hungarian Competition Authority (Gazdasági Versenyhivatal) previously imposed a 1,2 billion HUF consumer protection fine on it, which was annulled by the Kúria in 2021. According to the ruling, Facebook’s advertising as a free social media does not constitute misleading consumers.<sup>35</sup>

According to the Freedom of the Net 2021 report of Freedom House, Hungary’s internet is still free; however, its freedom index declined for the second year in a row. The reason behind the last decline reflects reports that the government deployed spyware technology to target journalists and lawyers.<sup>36</sup>

### Public trust in media

Trust in various media platforms and outlets is highly dependent on the audience’s political views. According to the Reuters Institute’s Digital News Report 2021,<sup>37</sup> Hungary, with a highly polarised public, has one of the lowest

31 Case no IV/3900/2021. Disclaimer: HCLU provides legal representation to the Menedék Association in this case.

32 Törvényjavaslat készül a technológia cégek szabályozásáról, Kormány.hu, 2021.01.26.

33 Judit Varga: “After consulting with the heads of the involved state institutions, the Ministry of Justice will propose a law to the Parliament this spring about the regulation of the great tech companies’ Hungarian operation,” January 26, 2021, <https://www.facebook.com/VargaJuditMinisterofJustice/photos/a.2025259724159640/4072305249455067/>

34 *Hungary to hold off from regulating big tech ahead of EU-wide rules*. 14 April, 2021.

35 Judgment no Kfv.II.37.243/2021/11., Kúria.

36 *Freedom of the Net 2021*, Report on Hungary, Freedom House.

37 *Reuters Institute Digital News Report 2021*, pp. 84-85.

news trust scores in their global survey. The most trusted news sources continue to be HVG and RTL-Klub, while the trust index of public media is low. The majority of Hungarian respondents read the news on their mobile phones, but only 14% of them pay for some kind of online news service. The responses of Hungarians show that trust in news in Hungary is low by international standards, at 30 percent. (In contrast, 65 percent of people in Finland, which leads the list, trust the news.)

### ***Safety and protection of journalists and other media activists***

#### ***Lawsuits and prosecutions against journalists: SLAPPs***

The phenomenon of SLAPP lawsuits continues to be a problem in Hungary, mainly through the misuse of the GDPR. The National Authority for Data Protection and Freedom of Information supports this activity. The lawsuits filed in recent years against editorial offices for inclusion in the list of the wealthiest Hungarians and for press reports on the unauthorised use of state subsidies are still ongoing. The data protection authority's interpretation of the GDPR undermines timely journalistic reporting and can be expected to result in a severe chilling effect.<sup>38</sup> The use of the GDPR

to force content removal is an emerging issue in Hungary.

#### ***Confidentiality and protection of journalistic sources***

In July 2021, it became public that the spyware of the Israeli company NSO could have been used in Hungary against a number of targets, including independent journalists, not only for its original purpose (fight against terrorism and organised crime), but also for political purposes.<sup>39</sup>

Zoltán Varga, the owner of Central Media Group, one of the largest privately owned, independent newspaper publishers, was affected. Varga had previously repeatedly said that the government had pressured him to sell his media companies. Shortly after the elections, Varga hosted a group of seven people. After the visit, the phone numbers of all the guests were added to the Pegasus target list. Two journalists from Direkt36, Szabolcs Panyi and András Szabó, who investigated the Pegasus case from the Hungarian side, were also involved. Dávid Dercsényi, a former journalist for hv.g.hu, was also under surveillance. It turned out that the phone of Brigitta Csikász, a crime journalist, was hacked several times in 2019. Dániel Németh, a photojournalist, working for several newsrooms, was also affected.

38 *GDPR Weaponized – Summary of Cases and Strategies where Data Protection is Used to Undermine Freedom of Press in Hungary*, 23 November, 2020, Disclaimer: The HCLU provides legal representation to the media outlets concerned.

39 All the articles of Direkt36 on Pegasus can be found here: <https://www.direkt36.hu/en/tag/pegasus/>

He typically photographs the hidden luxury lifestyles of pro-government figures and documents the use of private planes and yachts. Another Hungarian photographer who may have been targeted by the software was working with a US journalist who was covering the affairs of the Russian-run International Investment Bank, which was moving to Budapest. Another target was György Pető, a former RTL Klub journalist, who later became a pilot. As a long-time colleague he is well known to many journalists, who often ask him for professional help not only on more general aviation issues, but also when they write about the flights of Viktor Orbán, Lőrinc Mészáros and other people close to the government. In addition to journalists, politicians, lawyers, a chief security guard for the President of the Republic, and some private individuals have also been observed.

Since the information was made public, the government has essentially failed to respond to questions raised. When asked about the use of Pegasus, pro-government politicians have consistently replied that all surveillance performed in Hungary after 2010 was lawful; only an independent investigation could determine whether this was the case, but Fidesz does not consider it necessary to launch such an investigation. The first meeting of the National Security Committee of the Parliament could not be held because of a lack of quorum, as the government party MPs did not show up. Later, the committee was quorate, and the Minister of the Interior and

the State Secretary for the Ministry for Justice, who authorised the surveillance, were present. According to opposition MPs nothing of substance was said, but the meeting minutes were classified until 2050. The prosecutor's office has opened an investigation into the suspected crime of unauthorised collection of secret information, and the journalists involved have been questioned as witnesses. The National Authority for Data Protection and Freedom of Information (NAIH) has also started an investigation into the case, but no news on the outcome is available as of January 2022.

The use of Pegasus was first acknowledged on 4 November by Fidesz MP Lajos Kósa, who also pointed out that Hungarian authorities use several similar devices. A week later, Gergely Gulyás, Minister of the Prime Minister's Office, also acknowledged the use of Pegasus, saying that some of the information about wiretapping published in the press was true.

There are at least three severe problems with the Hungarian rules on secret surveillance for national security purposes. First, the legal conditions for covert surveillance are extremely vague. Second, the existence of the requirements is determined by a person (the Minister for Justice) who cannot be expected to make an objective decision that appropriately considers the interests that are contrary to the surveillance. Third, there is no effective legal remedy against unlawful surveillance in Hungary. For all these reasons, the ECtHR condemned Hungary in 2016,<sup>40</sup>

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40 See the judgment of the case of Szabó and Vissy v Hungary.

but the Hungarian state has not implemented the judgment since then. With regard to the press, it is essential to underline that there are no rules in Hungarian law that would allow the surveillance of certain professions, such as journalists, only under stricter conditions. The possibility of surveillance thus directly affects the freedom of journalists to communicate freely with their sources.

### *Difficulties in access to information*

The findings of the studies conducted in 2019 and 2020 on the Hungarian government's practice of information quarantine of the independent press were confirmed by a new study completed in 2021.<sup>41</sup>

Independent media providing daily news are the most affected by the restriction of available information. Public authorities (ministries, municipalities, professional organisations) hardly provide any meaningful information to the press. Public bodies only answer the questions they want to put to the press, either in a press conference or in writing. Some members of the critical press are never invited or allowed to attend government press conferences. The independent press is only allowed to ask the Prime Minister once a year at a press conference. Other sources of information are also restricted. Potential interviewees are intimidated. Those who leak information

to the independent press, especially health workers, teachers, professional organisations, and other professionals involved in the fight against the epidemic, are threatened with retribution. The discrediting of the independent media has intensified and become organised, with the independent press being accused of being politically motivated.

### *Freedom of expression and of information*

#### *Censorship and self-censorship, including online*

Self-censorship is a severe problem in Hungary, which has been significantly worsened by the Pegasus scandal and the homo- and transphobic propaganda law. Those in employment with the state rarely dare to speak to the press, and the secret surveillance of journalists has not helped this situation. And the greatest danger of the latter is that it encourages people, including representatives of culture and the arts, to remain silent for fear of possible dangers and consequences. This is precisely what the law does.

According to the Reporters Without Borders (RSF) international journalists' organisation's Press Freedom Index, Hungary was among the world's top ten countries in 2006,<sup>42</sup> ranked at number ten, and was still 23rd in 2010.<sup>43</sup>

41 The HCLU study on state obstruction of the press, summarising the experiences of the period March 2020 to January 2021, is available here: [https://tasz.hu/a/files/tasz\\_sajtokutatas\\_3.pdf](https://tasz.hu/a/files/tasz_sajtokutatas_3.pdf)

42 [Worldwide Press Freedom Index 2006](#).

43 [World Press Freedom Index 2010](#).

Since then, however, the situation has deteriorated year on year, with Hungary now ranking 92nd, and last among EU countries.<sup>44</sup>

### ***Restrictions on access to information***

The information of greatest public interest in 2011 would have been the data related to the coronavirus epidemic and the vaccine, as these directly impacted every person's life. However, the government provides very little information on these. There is no available, up-to-date data on the infection rates and death rates in each town. Trends can only be followed because online portals produce time-series charts from daily data. One of the best examples of the deficiencies of government communication is the case of the vaccination plan, only one excerpt of which was available for the public. The government did not make this plan public even though it is available in its full length in several countries,<sup>45</sup> but in the field of proactive and on-demand government communication, we can also see countless examples of solutions in our region that are more progressive and aim to enable transparency significantly more.

Lack of information also heavily affected the press. After journalists were refused several times to report from hospitals treating people with coronavirus, independent news portals published an open letter asking the decision-makers to cease the above-mentioned practice:

“Only those working in the health sector know better than you how the life-endangering effect of the coronavirus is most visible inside hospitals. However, under the present regulations doctors and nurses cannot speak about this publicly. At the same time the press is not allowed into hospitals, and so is unable to cover what is happening inside.

Why is this a problem? The importance of showing the work being done inside hospitals during the pandemic has been recognised in many countries. (...) It is especially noteworthy that so far the only reports that have given us Hungarians a true picture in Hungarian about how a Covid ward operates have been about hospitals in Odorheiu Secuiesc (Székelyudvarhely) in Romania and Dunajská Streda (Dunaszerdahely) in Slovakia. In Hungary, any editor who wants to report in a responsible manner befitting broader social interest about the pandemic and the workload that hospitals face runs up against a brick wall.

The lack of information has serious consequences. Since the government and the pandemic commission prevent reports being made about the true state of affairs inside our hospitals, many people continue to play down the dangers of the pandemic and do not follow the necessary precautions. This in turn leads to more

44 [World Press Freedom Index 2021](#), Hungary.

45 *Lehet másként is – Van, ahol nyilvános az oltási terv, mutatunk néhányat*, 6 January, 2021., <https://www.szabadeuropa.hu/a/oltasi-tervek-europaban/31036421.html>

coronavirus cases and to the worsening of the pandemic.”<sup>46</sup>

On the day of publishing the letter, government spokesperson Kovács Zoltán reacted to the initiative with the following words:

“Hospitals are meant for healing, not for footage-making. The Operative Staff informs the public on a daily basis. Left-wing portals spread fake news and discredit the Hungarian healthcare system. Hungarian hospitals, doctors and nurses perform in an outstanding way carrying out incredible efforts.”<sup>47</sup>

Information practices have not changed since then. Instead of up-to-date information, the government’s corona virus information page publishes propaganda messages. For example, the article titled “National consultation - No LGBTQ propaganda in nursery and school”.<sup>48</sup> Requests for access to data of public interest also face difficulties. Offices take advantage of the fact that the time limit for responding to requests under the special legal regime has been extended to 45+45 days in some cases. Many offices do not even reply and usually one must go to court to obtain the information. This is how epidemic data can be made public, often several months in advance, such as the

vaccination plan, which was made public a year after its introduction.<sup>49</sup>

## Checks and balances

### Key recommendations

- The government should stop abusing the special legal order: such order should be declared only for the most necessary time. The government should eliminate the situation where the de jure temporary state of emergency becomes de facto permanent.
- It must be ensured that the Constitutional Court, the Ombudsman, the Data Protection Authority and other independent bodies act in accordance with their constitutional functions: not as a legitimization of public authority, but as a limit to the power of the government in order to protect the rights of the individuals.

46 [Freedom of information can save lives – open letter from 28 editorial offices](#). 1 April, 2021.

47 [https://hvg.hu/itthon/20210331\\_kovacs\\_zoltan\\_egeszsegugy\\_operativ\\_torzs\\_koronavirus\\_jarvany](https://hvg.hu/itthon/20210331_kovacs_zoltan_egeszsegugy_operativ_torzs_koronavirus_jarvany)

48 Instead of up-to-date information, the government’s corona virus information page publishes propaganda messages. For example, the article entitled: [National consultation - No LGBTQ propaganda in nursery and school](#). 7 October, 2021.

49 [Megszereztük az oltási tervet, amit majd' egy éve próbál titkolni a kormány](#). 11 November, 2021.



## ***Process for preparing and enacting laws***

### ***Transparency and quality of the legislative process***

In recent years, compared to the previous decade, new phenomena have been observed in Hungary in terms of legislative transparency. In the past decade, many laws were adopted in increasingly shorter timeframes. Important bills were not submitted by the government but by MPs, thus avoiding the need for public consultation and ensuring transparency in the legislative process. In 2021, the Parliament adopted significantly fewer laws than before: 40% fewer laws compared to 2013 and 27% fewer compared to 2017. The number of laws adopted on the proposal of governing party MPs has also decreased significantly, from 64 proposals in 2013 and 37 in 2017 to only 9 proposals in 2021.<sup>50</sup> However, this does not mean that the legislative process has become more transparent. The change is due to a significant shift in the ratio of legislation to decree-making. There is no obligation of transparency in the case of decrees of the government, which are not preceded by a public debate, only the result (the promulgated decree) is public.

### ***Special legal order***

In Hungary, a special legal order was in force for the whole of 2021 (all 365 days of the year). The current state of emergency (state of danger) has been in force since 4 November 2020

(it was lifted by the government on 8 February 2021, but re-declared at the same moment, for technical reasons). Parliament has repeatedly authorised the government to extend the state of emergency, most recently until 1 June 2022, and there is, of course, no legal obstacle to further extensions. Under the special legal order, the government can issue decrees on legislative matters, suspend the application of certain laws, derogate from statutory provisions and take other extraordinary measures. The government has made use of this possibility in a significant number of cases. While in 2021 the Parliament adopted 151 laws, the government adopted 832 decrees, 113 of which were decrees adopted on the basis of special emergency powers, which may therefore contain rules that derogate from the provisions of the laws. (For comparison, in 2013, there were 565 government decrees for 254 laws passed, and in 2017 there were 532 government decrees for 208 laws passed, which of course could not be contrary to the provisions of the laws.) The proportions of law-making and decree-making have therefore changed significantly, with the government making new rules during the state of emergency, without consultation or transparent procedures, that significantly affect everyday life. This shift is not surprising since the essence of the special legal order is government by decree. However, the fact that the conceptually temporary special legal order has been in place for such a long period (at least 19 months, as far as we know at present), with the potential for significant deviation from the ordinary legal order, poses a significant risk to

50 [Összehasonlító statisztikai adatok. 2013, 2017, 2021. évek. Országgyűlés Hivatala, 2021.](#)

the rule of law. The next parliamentary elections will also be held under the special legal order.

### ***Constitutional review of laws***

There has also been a significant decline in the constitutional control of legislation. While in 2013 the Constitutional Court issued 53 decisions declaring a law or legislative provision to be unconstitutional, in 2017 there were 10 such decisions, and in 2021 only 7.<sup>51</sup> This represents a drop of 87% compared to 2013. (2013 was the year in which the Constitutional Court was not dominated entirely by the so-called one-party constitutional judges, appointed under the new procedure established by the two-thirds majority, which allows for appointment with the support of the governing party only.)

### ***Independent authorities***

Independent institutions do not exist in Hungary. While there are apparently such institutions, whose statute laws contain a number of guarantees of independence, the two-thirds majority of the ruling party in Parliament turns all those guarantees off. In the Hungarian constitutional system, no state

institution can be independent of a government with a two-thirds majority in Parliament. This was the case in 2021, as it was in the past.

### ***The equal treatment body***

On 1 January 2021 the Equal Treatment Authority ceased to exist, and its powers were transferred to the Ombudsman. Consequently, there is no independent body specifically dealing with equal treatment in Hungary anymore. Following the merger, a significant part of the professional staff left, and no Director-General has been appointed to head the department dealing with the promotion of equal treatment in the form of an authority. The change, although not considered a priori a mistake, was considered, in the Hungarian context, risky for the protection of equal treatment by the Venice Commission of the Council of Europe.<sup>52</sup>

### ***The Ombudsman***

The work of the Commissioner for Fundamental Rights has been almost invisible in 2021, despite the challenges posed by the special legal order and the epidemic to the protection of human rights. The Ombudsman intervened in very few high-profile cases of human rights

51 See the statistics available on the website of the Constitutional Court. [https://alkotmanybirosag.hu/uploads/2017/08/ab\\_ugyforgalom\\_2013\\_december\\_31\\_jav\\_2014.pdf](https://alkotmanybirosag.hu/uploads/2017/08/ab_ugyforgalom_2013_december_31_jav_2014.pdf), [https://alkotmanybirosag.hu/uploads/2017/12/2017\\_12\\_31\\_ab\\_ugyforgalom\\_korr.pdf](https://alkotmanybirosag.hu/uploads/2017/12/2017_12_31_ab_ugyforgalom_korr.pdf), [https://alkotmanybirosag.hu/uploads/2021/10/2021\\_09\\_30\\_ab\\_ugyforgalom.pdf](https://alkotmanybirosag.hu/uploads/2021/10/2021_09_30_ab_ugyforgalom.pdf)

52 Opinion on the amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as adopted by the Hungarian parliament in December 2020, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October

abuses that affected or concerned a significant proportion of Hungarian citizens in 2021. He has not spoken out on compulsory vaccination, homophobic legislation or national security surveillance of journalists. The institution has been so inactive in recent years that it is as if it did not exist.

At the end of 2021, the HCLU collected all their submissions to which the Ombudsman had not responded for years. Invariably, these submissions drew the attention of the Ombudsman to systemic violations of fundamental rights of persons in a seriously vulnerable situation that could not be remedied by other means. There is no more effective means of redress than the Ombudsman in the Hungarian legal system. However, the Ombudsman has left these complaints unanswered, thereby contributing to the fact that these fundamental rights violations remain unaddressed. He sends a message to all citizens affected by the fundamental rights violations described in the petitions that the Ombudsman considers that their grievance is not even worthy of any kind of reply. As the mere fact that a catalogue of fundamental rights declares them does not constitute a guarantee of fundamental rights, the institution of the Ombudsman does not function as a guarantor of fundamental rights simply by existing, if it ignores the petitions that draw its attention to violations of fundamental rights. The office certainly responds to many petitions, even on the merits, but

from the perspective of one of the most active Hungarian civil society organisations defending fundamental rights, it does not appear that the Ombudsman is an effective redress forum in Hungary. This is confirmed by the collected petitions, for which HCLU has indicated in detail how many months or years it has been waiting for the Ombudsman's reply. The longest unanswered referral has not been answered for 11 years.

Not unrelated to this, in 2021 the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation recommended the withdrawal of the "A" status of national human rights institutions from the Commissioner for Fundamental Rights. According to their report, one of the reasons for downgrading the Ombudsman to "B" status is that he has failed to adequately address a range of human rights concerns, including violations affecting vulnerable ethnic minorities, LGBTI people, refugees and migrants, and has not referred certain politically sensitive issues to the Constitutional Court. This also shows the lack of independence of the Ombudsman.<sup>53</sup>

### ***The Data Protection and Freedom of Information Authority***

The most telling sign of the DPA's lack of independence is the way it handled the Pegasus case, which could potentially result

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2021), CDL-AD(2021)034-e [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)034-e)

53 See [Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation \(SCA\) 14-24 June 2021, pages 12-15.](#)

in a finding that government bodies are liable for the abuse of their powers. The fact that the Hungarian government might use a spyware, which was originally used to control terrorists and organised crime figures, also to secretly monitor investigative journalists, activists, opposition politicians and lawyers came to light on 18 July 2021. Although the data protection authority received several complaints about the wiretapping scandal, it only started to deal with the case after 3 August, because Attila Péterfalvi, the chairman of the National Authority for Data Protection and Freedom of Information, was on his summer holidays.<sup>54</sup> Péterfalvi first promised to close the investigation by the beginning of November,<sup>55</sup> then asked for 1-2 weeks more, and later said he did not see the end in sight.<sup>56</sup> In December he said that he could not close the investigation because of the lack of cooperation from Amnesty International Hungary, and he had still not published the results of his investigation at the beginning of 2022.

### ***The Media Authority***

The governing parties have ensured that the media authority, which they fully control, will remain firmly in their control in the unlikely event they lose the 2022 elections. Almost a year before the end of her term of office, the authority's president, Mónika Karas, resigned.

Her appointment would have expired in September 2022 - after next spring's parliamentary elections. Her early resignation paved the way for the current governing majority to decide on a successor, cementing a nine-year term for the new head of the media authority, which has a budget of over HUF 40 billion this year, and the Media Council, which controls the operations of media service providers and, in principle, prevents market concentration. After her resignation, Mónika Karas was appointed President of the State Audit Office, and on 3 December 2021, a two-thirds majority in Parliament appointed András Koltay, one of the developers of the much-criticised media law, as President of the Media Authority for a nine-year term.

### ***Accessibility and judicial review of administrative decisions***

#### ***Transparency of administrative decisions and sanctions***

The most pressing problem at present with regard to judicial review of administrative decisions is that this (essentially legal) review has recently taken the place of administrative appeals. In a significant number of administrative cases, the possibility of appealing against decisions has disappeared from the legal system, and the only possibility for clients to

54 [Az adatvédelmi hatóság elnöke szabadságon van, majd két hét múlva dönt arról, indít-e vizsgálatot.](#) 20 July, 2021.

55 [Péterfalvi Attila november elejére jár a Pegasus-ügy végére,](#) 23 September, 2021.

56 [Itthon: Már le akarta zárni, most mégsem látja a Pegasus-vizsgálat végét Péterfalvi,](#) 9 November, 2021, [https://hvg.hu/itthon/20211109\\_Peterfalvi\\_Pegasusvizsgalat\\_hol\\_a\\_vege](https://hvg.hu/itthon/20211109_Peterfalvi_Pegasusvizsgalat_hol_a_vege)

challenge the decisions is to do it before a court on the grounds that the decision is unlawful. This has in essence led to a reduction in the right to remedy, firstly because a judicial remedy is less accessible to citizens than administrative remedies, and secondly because judicial review of administrative decisions can only be brought against decisions that are contrary to the law, whereas the legal basis for an appeal before an administrative authority (i.e., the second instance authority) was broader. Recent experience has shown that judicial review of administrative decisions is most effective in formal/procedural defects cases, while administrative courts are less suitable for redressing substantive violations. This is supported by the fact that judicial review can lead to a mainly cassatory result. The possibility of the court reversing a decision found to be unlawful is exceptional.

#### ***Implementation by the public administration and state institutions of final court decisions***

The amendment to the Constitutional Court Act in 2019, which allows public bodies to bring constitutional complaints against judicial decisions for violation of their “fundamental rights”, has an impact primarily on judgments in the area of judicial review of administrative decisions. The Constitutional Court has already admitted constitutional complaints of public bodies several times on the grounds that a court had violated their fundamental right to a fair trial in the course of judicial review of

their decisions. In 2021, this also happened at the government’s request: the court annulled a court ruling that found a government decision unlawful on the basis of a citizens’ petition because the court had violated a fundamental right of the government.<sup>57</sup> The amendment and the subsequent Constitutional Court practice create a constitutionally difficult situation: in the context of judicial control of public administration, which should ultimately ensure the protection of citizens’ rights, the Constitutional Court is defending the fundamental rights of the authorities and the government.

## ***Enabling framework for civil society*** —

### **Key recommendations**

- The discrediting of NGOs that criticise the government’s actions must stop, and Parliament must repeal the law on NGOs that can influence public life. If the legislator fails to do so, it will be up to the Constitutional Court to annul the offending law.
- The CJEU’s ruling on the ‘Stop Soros’ law must be enforced: the law must be repealed by Parliament.

57 Decision of the Constitutional Court in case IV/03991/2021.

## *Regulatory framework*

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The Hungarian legal system is not generally hostile to NGOs; the establishment and administration of organisations have been simplified a lot in recent years. However, the government is hostile to organisations that carry out watchdog activities or seek to promote civic activity, and the consequences of this can be found in the legal system. For years it has been trying to control these organs by various means, but so far without success. In 2021, the following should be highlighted in this regard.

After a delay of about a year, the Parliament has repealed the anti-NGO law on transparency of foreign-funded organisations, copying the Russian and Israeli model. The law violated the EU law in several respects. With the repeal of the law, proceedings under the law were terminated, and the designation “foreign-funded organisation” had to be removed from the register of NGOs. In doing so, the Hungarian state has complied with the European Court of Justice’s judgment of summer 2020 in a dispute between the European Commission and the Hungarian state.

The Parliament was obliged to do so under the terms of the court ruling. In fact, that is all it should have done. But the Hungarian government felt it necessary to replace the rules of the offending law with new rules that could stigmatise NGOs.

The new anti-NGO law, which replaced the old one, also revamped the government’s approach of suspecting problematic organisations of

serving foreign interests. The new law no longer refers to terrorism or money laundering. Instead, it pretends that being capable of influencing public life is suspicious, therefore requiring close state control.

The scope of the Act on Civil Society Organizations Engaging in Activities Capable of Influencing Public Life covers foundations and associations whose balance sheet total for the previous year exceeds HUF 20 million. In other words, if the net assets of an organisation exceed this amount, its activities are considered capable of influencing public life. Therefore, the law establishes a presumption: an organisation with assets of more than 20 million is engaged in an activity capable of influencing public discourse.

The law gives the State Audit Office the task of carrying out a legal audit of associations and foundations that carry out activities that are likely to influence public discourse. However, the constitutional function of the State Audit Office, as defined in the Fundamental Law, is to be the financial and economic audit body of the Parliament. The role of the SAO is therefore a special parliamentary control, to promote the lawful, expedient and efficient management of public funds by those who have access to them. The Fundamental Law also defines the activities of the SAO in concrete terms: it monitors the implementation of the central budget, the management of public finances, the use of resources from public finances and the management of national assets. It is clear from this that the SAO’s constitutional function is not to control the activities of organisations established under the right of association, which



may have no connection whatsoever with the state budget and national property. The fact that the SAO is required to carry out an activity other than that for which it is constitutionally mandated is in itself unconstitutional because it exceeds its powers. It also leads to a violation of the autonomy of associations since it interferes in the life of organisations through an illegitimate power of control that cannot be derived from the constitutional function of the institution. The SAO's audit plan for 2022 already includes the audit of NGOs under the new law.<sup>58</sup>

Several organisations have challenged the law before the Constitutional Court, arguing that the law interferes with the autonomy of associations established under the right of association, the privacy of citizens who are involved in public affairs, and the freedom of expression and thus the democratic public as a whole.

Furthermore, the homo- and transphobic propaganda law adopted in the summer of 2021, in its part concerning public education, severely restricted teachers from inviting NGOs working on sexual culture, gender, sexual orientation, sexual development, the harmful effects of drug abuse, the dangers of the internet and other physical and mental health issues to their schools. According to the law, only an employee of the institution, a school doctor, a public body with an agreement, or a person or organisation registered by a minister may hold such a session. The ministerial registration could be a way for the government to filter the

NGOs on the basis of its worldview. At the beginning of 2022, this register has not yet been created, so no one can legally be invited to such lessons in schools. Anyone who holds such a session without being authorised to do so will be subject to infringement proceedings by the authorities. The legal consequences of the offence may be a warning, a fine, community service, but the law also provides for the possibility of a detention order.

## ***Attacks and harassment***

### ***Smear campaigns***

In 2021 (also in the context of the new anti-NGO law mentioned above), the government rhetoric that participation in public affairs is not an activity for NGOs continued. Indeed, 'good NGOs' do not engage in such activities, according to the government. This rhetoric is not new: for years now, government politicians have been voicing the view that public activity is the prerogative of those who contest elections (in some cases only the winners) and that everyone else should refrain from it or else they are engaging in suspicious activities that should be controlled by the state.

### ***Control and surveillance***

In the Pegasus case, since the summer of 2021 there has been no evidence that NGOs or their leaders have been monitored with this spyware. However, this cannot be ruled out under Hungary's highly permissive rules on secret

58 ELLENŐRZÉSI TERV, 2022, Állami Számvevőszék.

surveillance. Court proceedings in relation to surveillance cases involving NGO leaders that have been made public in previous years are still ongoing, none of which were successful in 2021.

In November 2021, the CJEU found that the 2018 ‘Stop Soros’ Law, which the Hungarian Parliament had passed in June 2018, breaches EU law. It threatens those who help or give legal assistance to asylum-seekers, commission information leaflets for them, or conduct human rights border monitoring with one year in prison. The law also allows imposing criminal sanctions on entire organisations. The law served nothing but the political aim of intending to intimidate civil society with criminal sanctions, amid an already vile propaganda campaign targeting migrants and civil society organisations. The Hungarian government has not yet implemented the CJEU ruling, and the law is still in force.

## **Disregard of human rights obligations and other systemic issues affecting the rule of law framework** 🟡

### **Key recommendations**

- The government should refrain from attacking and smearing LGBTQI people in general and especially in the context of the

upcoming election in 2022; the government should reverse regressive legislation which directly attacks and discriminates against LGBTQI people.

- The permanent state of emergency should be lifted, and the pandemic should be managed under the normal legal framework.
- The Hungarian government must do much more than it is currently doing to address the systemic violations revealed by the ECtHR judgments: the judgments should be implemented.

### **Systemic human rights violations**

#### ***Widespread human rights violations and persistent protection failures***

It has been a long-standing practice of the Hungarian government to incite voters against a select group of society. It conducts a campaign against them, using both the legislative and executive branches of government. In 2021 the group of LGBTQI people became the “public enemy”. In 2021, what happens in this context shows best how the Hungarian state interprets human rights and how it disrespects them:

### *The unresolved situation of trans people*

It is worth remembering that in May 2020, the National Assembly amended the law on the register of births and stated that the registered gender cannot be changed. This is still the case, but there are still obstacles in the processing of gender change applications (previously submitted) pending at the time of the amendment - for years, trans people in Hungary have been unable to change their gender in their documents. The main obstacle to this is not the law but the resistance of the state administration, which, presumably because they want to comply with the new political trend, is unwilling to apply the law before the amendment to the law to applications submitted earlier. The public authorities are completely ignoring that they have been making many people's daily lives very difficult to bear for years.

### *Smear campaigns against LGBTI+ people and their rights defenders*

Politicians and public officials close to the government have increasingly conflated LGBTI+ people with paedophiles. Homosexuality and bisexuality were portrayed as a danger to children. As a result of the government's campaign, some members of society (typically those who had previously held anti-gay views) now feel empowered to enforce these

views, even violently. According to the Háttér Society, which runs a legal aid service for LGBTIQ people, the number of homophobic and transphobic atrocities in Hungary increased in 2021.<sup>59</sup>

The conflation of paedophilia and homosexuality can be seen in a law adopted in the summer of 2021. A bill aimed initially at severely punishing paedophilia has been amended during the legislative process with new provisions that (following the Russian model) severely restrict freedom of expression and children's rights, banning LGBTIQ-themed educational programmes in schools and social advertising.<sup>60</sup>

The law also prohibits not only the promotion but also the mere display of homosexuality and gender reassignment to persons under the age of 18. Thus, it is prohibited to make available to under-18s any content that depicts a deviation from the self-identity of the sex of birth or that "promotes or displays" homosexuality. And only an organisation registered with a public body can provide sex education in schools.

Not only has the European Commission launched an infringement procedure because of the law, but the Council of Europe's Venice Commission has also found that the propaganda law, which the government has claimed

59 *Több a homofób gyűlöletbűncselekmény a propagandatörvény elfogadása óta.* 19 July 2021.

60 Act LXXIX of 2021 amending certain Acts for the protection of children.

is to protect children, is incompatible with international human rights standards.<sup>61</sup>

Public authorities act according to the government narrative. Media or books displaying LGBTQI content have to face administrative proceedings. For example, an authority ordered the Labrisz Lesbian Association to print disclaimers in their book that contains stories that promote respect of people from all backgrounds and sexual orientations. The disclaimer should state that the book contains “behaviour inconsistent with traditional gender roles”.<sup>62</sup> In another case, a fine was imposed on a bookshop for selling a children’s book featuring rainbow families together with other children’s books.<sup>63</sup> The Media Authority launched a legal proceeding against RTL for broadcasting an advertisement that raised awareness about LGBTQI families.<sup>64</sup>

The government also initiated a planned national referendum in 2022 on LGBTQI issues as a part of its anti-LGBTQI campaign, and in connection with the above-mentioned homo- and transphobic propaganda law. The proposed questions cannot be considered as real questions. Some questions (such as those

relating to the promotion of gender reassignment to children) relate to non-existent problems, while others (such as the one relating to the unrestricted broadcasting of pornographic content in the media) may have a legally unenforceable result. On the other hand, the proposed questions are suitable for keeping the government’s homo- and transphobic campaign on the agenda. The proposed questions are the following:

1. Do you support that children shall encounter sexual educational content that shows different sexual orientations without parental consent?
2. Do you support that sex reassignment procedures shall be promoted to children?
3. Do you support that sex reassignment procedures shall be made available for children?
4. Do you support that media programmes which influence children’s development shall be aired without restrictions?

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61 [Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children](#), adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021), CDL-AD(2021)050-e.

62 Hungary’s government orders disclaimers on books with gay content. 19 January, 2021, <https://www.reuters.com/article/us-hungary-lgbt-books-idUSKBN29O2AT>

63 *Hungary fines bookshop chain over picture book depicting LGBT families*. 8 July, 2021,

64 Telex: *Eljárást indított a Médiatanács az RTL ellen, mert leadtak egy szivárványcsaládkról szóló társadalmi hirdetést*. 4 March, 2021, The advertisement can be seen here: <https://www.youtube.com/watch?v=wXLuhRgihog>

5. Do you support that media programmes which portray sex change shall be available for children?

The referendum is supposed to be held on the same day as the next parliamentary elections, therefore the electoral campaign will probably be interlinked with the government's campaign related to the referendum.

Impunity and lack of accountability for human rights violations

#### *The permanent state of emergency*

In Hungary, a special legal order was in force for the whole of 2021 (all 365 days of the year). The current state of emergency (state of danger) has been in force since 4 November 2020 (it was lifted by the government on 8 February 2021, but re-declared at the same moment, for technical reasons). Parliament has repeatedly authorised the government to extend the state of emergency, most recently until 1 June 2022, and there is, of course, no legal obstacle to further extensions. With regard to fundamental rights, the special legal order means that fundamental rights can be restricted to a greater extent than under the ordinary legal order. The Fundamental Law does not allow for derogations from the restrictions that can be justified under the ordinary legal order for certain fundamental rights (the right to human dignity, the prohibition of torture, guarantees

in criminal proceedings), but allows for the suspension of the exercise of rights and the possibility of restrictions beyond the limits allowed by proportionality for all other rights. In this case, the guarantee of proportionality is expressed in the conceptually definite temporality of the measure, but since the special legal order is almost permanent, this guarantee is not applied at all.

#### *Withdrawal of the "A" status of the Ombudsman*

The Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation recommended the withdrawal of the "A" status of national human rights institutions from the Commissioner for Fundamental Rights in 2021. According to their report, one of the reasons for downgrading the Ombudsman to "B" status is that he has failed to adequately address a range of human rights concerns, including violations affecting vulnerable ethnic minorities, LGBTI people, refugees and migrants, and has not referred certain politically sensitive issues to the Constitutional Court. This also shows the lack of independence of the Ombudsman.<sup>65</sup>

#### *Implementation of ECtHR judgments*

Hungary is doing very poorly at implementing the judgments of the European Court of Human Rights. According to the European Implementation Network's statistics (closed

65 See Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) 14-24 June 2021, pages 12-15. <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>

on 10 August 2021), the implementation of 81% of the leading judgments handed down by the ECtHR in the last 10 years against Hungary are still pending. Out of the 47 countries under the ECtHR's jurisdiction, only Azerbaijan, Finland and Russia perform worse than Hungary.<sup>66</sup>

### ***Other systemic issues***

#### ***Implementation of judgments of the Court of Justice of the European Union and respect of the primacy of EU law***

On 9 October 2021, the Hungarian government welcomed the decision of the Polish Constitutional Court on the relationship between national law and EU law in a government resolution.<sup>67</sup> According to it, the decision of the Polish Constitutional Court was triggered by the bad practice of the European Union institutions, which disregards the principle of the transfer of powers and, by means of a stealthy extension of powers without amending the Treaties, seeks to take away from the member states powers which they have never transferred to the European Union. The resolution stated that the EU institutions must respect the national identities of the member states, which are an integral part of their fundamental political and constitutional order. Alongside the EU institutions,

national law enforcement bodies, in particular constitutional courts and tribunals, have the right to examine the scope and limits of EU competencies.

Nevertheless, in December 2021 the Hungarian Constitutional Court published a less radical ruling on the government's motion to interpret the Fundamental Law. In relation to the judgment of the Court of Justice of the European Union on the status of foreign nationals illegally residing in the territory of the Hungarian state (C-808/18), it held that if the exercise of shared competence with the European Union is incomplete, Hungary is entitled, in accordance with the presumption of sovereignty retained, to exercise non-exclusive EU competence until the institutions of the Union take the measures necessary to ensure the effective exercise of shared competence. If the lack of effective exercise of shared competence leads to consequences that may infringe the right of persons living on the territory of Hungary to their identity, the Hungarian state is obliged to ensure the protection of that right as part of its duty to protect the institutions. However, the Constitutional Court did not examine whether, in the specific case, there was a lack of joint exercise of powers. The Constitutional Court also stressed in its decision that abstract constitutional interpretation cannot be the subject of a review of a

66 For the statistics, see <https://www.einnetwork.org/countries-overview> and <https://www.einnetwork.org/hungary-echr>

67 Government Resolution No 1712/2021 (X. 9.) on the Hungarian position to be taken in relation to the decision of the Constitutional Court of the Republic of Poland regarding the relationship between national law and European Union law.



CJEU judgment and that it did not address the question of the primacy of EU law in this case. The Constitutional Court's decision can be interpreted in different ways; in the government's interpretation, the Constitutional Court expressly allowed the government to contradict the judgments of the CJEU.

## **Fostering a rule of law culture**

### ***Efforts by state authorities***

The governing Fidesz party has been in power since 2010. Throughout its governance, it has regularly and seriously violated the requirements on the rule of law, basic rights, and democratic values set out in the documents of the European Union. In Spring 2022, parliamentary elections will take place in Hungary. The current government party lost important strongholds at the 2019 local elections and now faces the consequences of the coronavirus pandemic. Years 2020 and 2021 became an extended campaign and preparation period for the government, including a potential election defeat. The preparation includes a diverse set of tools, including establishing an information monopoly, restricting the space of their political opponents, and strengthening their own clientele. As a preparation for a worst-case scenario, the government started to extensively outsource its powers and a great share of valuable assets.

The concept of the rule of law in the government's narrative mostly means compliance with formal rules, especially rules enacted by Hungarian legislation, and is very often referred to by government politicians as an elusive and indefinable concept that is primarily an attack on Hungary's sovereignty. The Hungarian government usually rejects the European Commission's findings on the rule of law in Hungary. After the publication of the 2021 Rule of Law Report, the government adopted a resolution<sup>68</sup> stating that Hungary has an effective anti-corruption crackdown, an independent prosecution and constitutional court, and well-functioning checks and balances on government power.

### ***Contribution of civil society and other non-governmental actors***

In the second half of 2021, an interesting public discourse emerged among lawyers and other intellectuals on whether, and if so, how and with what limits, the rule of law can be restored in Hungary if the current opposition wins the next elections. The debate was particularly sharp on whether constitutionalism can be restored without a constitutional majority in parliament. The debate has resulted in clashes concerning the form and content of the rule of law, as well as theoretical and practical considerations. As the debate was (and still is) conducted in the independent press, it received wide publicity and contributed significantly to the broader public awareness of the rule of law issue, its arguments and counterarguments.

68 Government Resolution no. 1527/2021. (VIII. 2.) on the European Commission's Rule of Law Report 2021.

It was also interesting to see how the public authorities reacted to this debate of intellectuals: the President of the Constitutional Court, in an open letter,<sup>69</sup> concluded that a process of overthrowing the constitutional order was underway. He called on the President of the Republic, the Prime Minister and the Speaker of the Parliament to ensure the functioning of the Constitutional Court “by appropriate and effective measures”. A day later, the President of Kúria sent an open letter<sup>70</sup> of support to the President of the Constitutional Court. The Prosecutor’s Office also responded to the letter, stating that “the Prosecutor General and the Prosecutor’s Office will fulfil their obligations under the Constitution and other legislation in all circumstances”. According to a member of the Constitutional Court, justice Béla Pokol, there is a risk of a coup d’état, which could justify the dissolution of the political parties concerned.<sup>71</sup>

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69 [Open letter from the President of the Constitutional Court](#), 14 December, 2021.

70 [Open Letter from the President of the Kúria](#), 15 December 2021.

71 [Kreatív módszerekkel bővül a kormány ellenzékét gáncsoló eszköztára](#). 5 January, 2022.

## **Contacts**

### ***Társaság a Szabadságjogokért (TASZ)*** *Hungarian Civil Liberties Union (HCLU)*

The HCLU is a Hungarian human rights watchdog working independently of political parties, the state or any of its institutions. The HCLU's aim is to promote the case of fundamental rights and principles laid down by the Constitution of the Republic of Hungary and by international conventions.

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### ***The Civil Liberties Union for Europe***

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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