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# Non-Execution of Domestic and International Court Judgments in Hungary



**FRIEDRICH NAUMANN  
FOUNDATION** For Freedom.

Central Europe and the Baltic States



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# Executive summary



## Executive summary

The implementation of domestic and international court judgments is one of the cornerstones of the rule of law. Without it, the systems will crumble. This is all the more so when state agencies are the ones that defy compliance with the judgments handed down by their own domestic courts, or when states start to tear up the fabric of international agreements by not complying with the judgments of international courts. Non-compliance with court judgments is not only a sign of and, at the same time, a factor contributing to the deterioration of the rule of law, but also leads to human rights violations that are left without remedy and that are possibly even recurring. The unwillingness of state authorities to accept domestic court rulings is not only detrimental to the independence of the judiciary, but also creates a perception in the public that judgments can be disregarded, which undermines general trust in the force of fair adjudication.

The present paper aims at providing a snapshot of the state of execution of judgments by Hungary and by the Hungarian authorities by looking at judgments issued by domestic courts, Hungary's Constitutional Court, the European Court of Human Rights (ECtHR), and the Court of Justice of the European Union (CJEU).

As a warning signal of disrespect towards the rule of law, there are instances of state authorities manifestly resisting the execution of binding domestic court decisions imposing obligations on them. Judgments obliging state authorities or bodies to disclose public interest data are often not complied with, and it is hard to enforce these decisions. Not disclosing the data in defiance of a court decision is a criminal offence, but in practice, omissions never lead to indictments. In press rectification and personality rights lawsuits launched against the government-affiliated media, damages awarded by the courts are mostly paid, but rectifying statements and apologies are rarely issued. Enforcement is undermined by practical shortcomings of the procedure. In 2019, state agencies were granted the right to submit constitutional complaints to the (already packed) Constitutional Court, which allows politically sensitive cases to be channelled out of the ordinary court system. There have been worrying instances where specific court decisions triggered sudden and problematic legislative steps.

There are 12 judgments issued since 2012 in which the Constitutional Court declared that a legislative omission resulted in the violation of the Fundamental Law, but the Parliament has failed to remedy the situation to date, even though the deadline set by the Constitutional Court has already expired in most of these. Furthermore, it has been a systemic approach of the governing majority to overrule the Constitutional Court by including provisions into the constitution's text which had been previously found unconstitutional by the Constitutional Court, thereby removing them from its scope of review.

The picture is similarly bleak when it comes to the execution of regional court judgments. Hungary's record on the implementation of ECtHR judgments continues to be poor. 81% of the leading cases from the last 10 years are still pending execution. While just satisfaction is always paid, general measures that would be necessary to prevent similar rights violations are very often not taken. Non-executed judgments indicate systemic or

structural problems concerning for example the freedom of expression of judges, excessive length of court procedures, ill-treatment by official persons, discrimination and segregation of Roma children, or unchecked state surveillance. Public statements of Government and governing majority representatives have been implicitly signalling the unwillingness to execute certain judgments. Furthermore, the Government's approach towards the implementation of the judgments lacks transparency and inclusivity; there is no separate national structure whose explicit aim would be to bring together various actors to coordinate implementation. At the same time, there is low awareness of the implementation process among relevant professional groups.

As far as the CJEU is concerned, blatant disrespect of its judgments has not been characteristic of Hungary for years, but there were instances when delayed execution meant that the CJEU's judgment and the ensuing steps could not remedy any more the damage done. However, more recently, severe problems have emerged with regard to the execution of CJEU judgments as well, leading up to the point where the European Commission referred Hungary to the CJEU over its failure to comply with a CJEU judgment under Article 260 of the Treaty on the Functioning of the European Union in 2021.

1.

# The non-execution of domestic court decisions



# 1. The non-execution of domestic court decisions

## 1.1. The non-execution of court decisions by the state and media in various areas

The enforcement of final court judgments is a fundamental rule of law issue. If final judgments are not enforced, the decisions taken in the course of judicial proceedings will obviously have no practical significance, which will also directly result in the relevance of the justice system being called into question. Citizens will have a reason to use the law to seek redress for their grievances if and to the extent they believe that the law will be a suitable instrument for providing a remedy. A decision, i.e. a judgment establishing the grievance and imposing some kind of sanction is not enough if it has no effect in practice, or it has an effect too late.

There are, of course, instances where the failure to execute a decision voluntarily is not attributable to the losing party. If they ordered to pay a certain amount, but for reasons beyond their control they do not have sufficient resources to meet this obligation, enforcement fails. This can also raise serious problems, but there is nothing the state can do about it. However, there are cases where the time needed to obtain and enforce a judgment is essential, and enforcement should not in principle be a question of money, but in practice there are still problems with the execution.

One such type of cases are the press rectification lawsuits.<sup>1</sup> In a post-truth world, the only effective tool against the use of the media as a political tool, against political propaganda, is the administration of justice, and within that the press rectification lawsuits. If no final and enforceable judgment is reached within a short timeframe, if enforcement of final judgments is suspended afterwards, or if the enforcement procedure is complicated, costly and takes months, the enforcement of a final judgment can no longer achieve the purpose of press rectification lawsuits. If, for example, voters find out only after the elections that a lie has been spread about a political actor before the elections, they will have already voted on the basis of that lie in the elections.

The other type of lawsuits which are directly linked to democratic decision-making and thus to the legitimacy of the legislator are those concerning data of public interest.<sup>2</sup> If citizens – or the press that

<sup>1</sup> The rules of press rectification lawsuits are governed by Articles 495–501 of Act CXXX of 2016 on the Code of Civil Procedure.

<sup>2</sup> According to Article 31(1) of Act CXII of 2011 on the Right to Informational Self-determination and on the Freedom of Information, if the request for access to data of public interest is dismissed, or the time limit expires with no result the requesting party may turn to the court.



wishes to inform them – do not have access to data of public interest, the electorate will not have credible information on the basis of which to judge the functioning of the authorities. Timeliness is also of great importance here: if the time between an enforceable decision and its actual implementation can be as long as a government term, then the voters' decisions taken in democratic elections cannot be based on credible information.

It cannot be overlooked that a media group with billions in resources, or the state itself, has extraordinary power. If a procedure takes years, and entails heavy costs, then resorting to the justice system will not be a real means of compensating this extraordinary power. Almost no one can sue for a hundred defamatory articles because they do not have the resources to do so, just as there is no way to bring mass lawsuits against those who systematically refuse to disclose information of public interest. Moreover, the costs of the enforcement procedure, which have to be advanced by the party who won the case (legal representation has to be paid as a minimum, and enforcement costs shall be typically advanced), combined with the low (and thus not deterring) fines that can be imposed in enforcement proceedings, may lead to a systemic lack of voluntary execution, and so litigation and judicial enforcement will be at best only a partially effective means of enforcing final court judgments in a timely manner.

In the following sub-chapters, we present examples of non-execution of court judgments in the two areas mentioned above, where lawyers and NGOs report that there is a frequent failure on behalf of state authorities, institutions and various media outlets and media service providers to execute final court decisions. We also provide examples of how in recent years the non-execution of court decisions has become a problem in a third, politically sensitive area: in asylum cases. It shall be added that there are cases in other areas too where final judgments are not executed by state bodies: for example, in 2019 the NGO Streetlawyer Association reported on a case in which they had to launch enforcement proceedings against the Government Office of Budapest because, despite a final court decision to this effect, the government office failed to pay the damages and apologise to their client for excluding them from social assistance without a legal basis, causing a level of hunger and deprivation that resulted in a violation of their personality rights.<sup>3</sup>

The examples below should also be read in the light of the fact that when, for the present research, we asked lawyers what they considered to be the main and most common reason of why state authorities, institutions, media outlets and media service providers do not voluntarily execute final court decisions, it was a recurring answer that because they can do so without consequences: the sanction system of the enforcement procedure is inadequate and the courts do not even apply these inadequate sanctions. Those delaying enforcement are aware that there are limited means available to the aggrieved party. In addition, political influence and determination also came up in the responses, along with the statement that non-compliance is “worth it” for these actors: they rather accept that they infringe the law than the reputational damage that would go with complying with the judgment.

<sup>3</sup> <http://utcajogasz.hu/2019/05/09/vegrehajta-inditottunk-a-fovarosi-kormanyhivatal-ellen/>

It should also be noted in advance that there are no publicly available detailed statistics on the number of cases when decisions are not executed (with a view in particular to those instances where enforcement proceedings are not initiated), nor, for example, on the number of cases where it is a state authority or institution that does not execute the decision of a Hungarian court – this lack of data is itself a problem that needs to be addressed. Thus, presenting the issues below is based on information received from lawyers and NGO staff members, and published in the press.

### 1.1.1. Cases related to data of public interest and data accessible on public interest grounds

From an enforcement perspective, the first difficulty in cases involving public interest data and data accessible on public interest grounds, as reported by lawyers, is the lack of an effective and genuinely coercive enforcement tool. Enforcement is in fact only possible through a fine, since without the active involvement of the defendant, the data requester cannot access the data in the case of a public authority or institution. It is questionable, however, what deterrent effect a fine of up to 500 000 HUF (approx. 1,350 EUR) per instance that can be imposed in an enforcement proceedings can actually have, especially if the courts are reluctant to use the possibility of fines. For example, in an enforcement proceeding against the Ministry of Finance, the Ministry was fined only 200 000 HUF (approx. 540 EUR) in August 2021, even though the court had already issued a final decision in October 2019 that the Ministry had to provide the MP who had requested it with documents on the modification of the Paks nuclear plant loan agreement.<sup>4</sup>

It should also be pointed out that in Hungary, the misuse of data of public interest is a criminal offence: according to the Criminal Code, anyone who conceals data of public interest from the data requester in violation of the provisions of the law on the disclosure of data of public interest, or fails to comply with the obligation to provide information after a court has imposed a final and binding obligation to disclose data of public interest, is liable for a criminal offence punishable by imprisonment of up to two years.<sup>5</sup> However, the statistics show that in practice these cases do not reach the stage of indictment.

<sup>4</sup> See e.g.: <https://444.hu/2021/08/24/penzbirsagot-kapott-a-penzugyminiszterium-mert-nem-adjak-ki-a-paksi-hi-telszerzodes-modositasarol-szolo-dokumentumokat>.

<sup>5</sup> Act C of 2012 on the Criminal Code, Article 220(1)(a)

**TABLE 1 • Misuse of data of public interest (Criminal Code, Article 220) – outcome of procedures**

	Rejection of the report	Termination of the investigation	Indictment	Other
<b>2013</b>	10	26	—	—
<b>2014</b>	7	24	—	1
<b>2015</b>	7	28	—	1
<b>2016</b>	20	17	—	2
<b>2017</b>	14	15	—	1
<b>2018*</b>	19	5	—	—

Note: \* Up until 30 June 2018

Source: <https://bsr.bm.hu/Document>

The following examples illustrate how these criminal procedures tank.

- (i) In December 2016, Transparency International Hungary (TI) submitted a request for public interest information to the Economic Committee of the Parliament in the case of the so-called residency bonds. After the Committee failed to comply with the data request, TI turned to court, and the court ordered the Economic Committee, both at first and second instance, to disclose the data that were taken into account when granting the authorisation to distribute the Hungarian residency bonds.<sup>6</sup> As a result, the Economic Committee shared several documents with the organisation. However, after examining them, TI concluded that the documents provided were incomplete. In TI's view, there were two possible reasons for this: either the Economic Committee did not fully comply with the final judgment ordering the release of the data of public interest (thus committing the above-mentioned offence under the Criminal Code), or it provided all the data in its possession, which in turn implies that it carried out the procedure for the approval of authorisations to distribute residency bonds on the basis of incomplete data and documents. Based on all that, TI filed a criminal report against the Economic Committee of the Parliament in January 2018, but the prosecutor's office rejected the report.<sup>7</sup>
- (ii) Similarly, the criminal report did not lead to any results in the case of the so-called “tao” money either (this was a special tax scheme for companies to support sports teams). In 2016, TI filed a lawsuit against the Ministry of Human Resources and the Ministry of National Economy (NGM) / Ministry of Finance (PM) to release the requested data, but the ministries failed to do so despite a final court ruling that obliged them to do so. TI filed a complaint against the NGM/PM, but in September 2018 the police closed the investigation after the ministry claimed that it had not

<sup>6</sup> Metropolitan Court, 3 May 2017, 35.P.20.692/2017/10.; Metropolitan Regional Court, 5 October 2017, 2.Pf.20.776/2017/5/II

<sup>7</sup> Central Prosecution Office of Investigation, 6 March 2018, 1.Nyom.151/2018.

received the data requested by TI from the sports federations obliged to provide it, in violation of the law, and therefore could not release it. In other words, the ministry was exempted from criminal prosecution by admitting that the operation of the “tao” system was in breach of the law.<sup>8</sup>

- (iii) The case of the weekly Magyar Narancs and TI, in which the Hungarian National Holiday Foundation and Erzsébet Utalványforgalmazó Ltd. did not disclose the contracts for the so-called Erzsébet vouchers' advertisements published in a certain government-affiliated media portfolio despite the court's decision, also shows the practical deficiencies of the system. In January 2017, a final judgment was issued in the case, which ruled that the contracts should be disclosed, but this did not happen. Enforcement proceedings were launched against the data owner as a result, and TI also filed a criminal report in May 2017.<sup>9</sup> The data was later released, and the police closed the investigation for lack of criminality – so although the crime was committed, there were no consequences. A year later, the investigative journalism portal Átlátszó reported on a hauntingly similar case involving Erzsébet Utalványforgalmazó Ltd.: although the court ordered the company to release the data in a lawsuit launched by Átlátszó, it only released the data after Átlátszó had filed a criminal report, and then the police closed the investigation for lack of a criminal offence.<sup>10</sup>

Finally, it should also be mentioned that indirectly, it can also be considered as a failure to comply with a judgment when, despite the court having ruled that data of a certain type should be released, a subsequent request for the same data (but for another year, for example) is again refused by the same body or institution – a phenomenon also mentioned by some of the interviewees.

### 1.1.2. Press rectification and personality rights cases

Press rectification and personality rights cases have gained particular importance in recent years because both the public media and the pro-government media, which are more indirectly linked to the government and the governing party, regularly publish materials about opposition politicians, NGO workers, activists or even academics that contain false statements and violate the personality rights of the persons concerned, with the aim of discrediting them. According to figures published in the press on the basis of FOI requests submitted by the investigative journalism site Átlátszó, “in 2017, Fidesz media lost 53 rectification lawsuits, in 2018 – an election year – 109, and in 2019, 74. In 2020, 57 lawsuits were lost; in comparison, the critical press lost a total of 7 in the same year”.<sup>11</sup>

<sup>8</sup> <https://g7.hu/kozelet/20180926/a-nyomozok-sem-talaltak-a-kiperelt-iratokat-a-miniszteriumban/>

<sup>9</sup> See e.g.: <https://magyarnarancs.hu/belpol/vegrehajast-kert-a-transparency-magyarorszag-a-honapok-ota-titkolt-habony-millio-kiatt-106713>.

<sup>10</sup> See: <https://atlatszo.hu/kozugy/2018/08/21/ujabb-fordulat-az-erzsebet-utalvany-sztoriban-a-rendorseg-szerint-nem-buncselekmény-ami-nagyon-annak-tunik/>.

<sup>11</sup> Quote: <https://444.hu/2021/11/17/egymas-utan-mondjak-ki-a-birosagok-hogy-amit-a-kormany-media-csinal-annak-nincs-sok-koze-az-uj-sagirashoz>, see as well e.g.: <https://media1.hu/2021/02/19/a-kormany-sajto-57-a-kormany-fuggetlen-lapok-7-sajtopert-vesztettek-2020-ban-a-fovarosi-torvenyszeken/>.

As regards the execution of the judgments, several lawyers reported that while damages are paid by the media outlets and media service providers to the affected persons, “communications and apologies that involve loss of political prestige are often not published”,<sup>12</sup> rectifications are not published. This has been confirmed by press reports. For example, according to these reports, Péter Juhász, the former chairman of the party Együtt, won the press and personality rights lawsuits against television channel TV2 in vain after the channel launched a libel campaign against him: TV2 paid the damages but failed to issue press rectifications.<sup>13</sup> The lawyer of Gábor Vona, the former president of the party Jobbik, also said that “it is their experience that even final judgments are not always executed by the government propaganda media”.<sup>14</sup> Another example is that the director of the think-tank Eötvös Károly Institute had to launch an enforcement procedure against origo.hu, because the government-affiliated news site failed to comply with a court judgment ordering rectification in relation to false statements made about him and his family for seven months.<sup>15</sup> The same online portal also failed for example to rectify false statements about another news site, Media 1, for months (which also resulted in an enforcement procedure), failed to pay the damages awarded by the court after publishing false statements about an opposition mayor’s wife,<sup>16</sup> and failed to rectify statements about the current president of Jobbik in face of a court judgment.<sup>17</sup> Similar instances and the need to launch enforcement procedures have been reported in relation to a number of other government-affiliated or government-friendly media outlets, such as Magyar Idők,<sup>18</sup> Lokál, and Ripost.<sup>19</sup>

According to several lawyers, the reason why the damages are usually paid is that if they are not paid, that appears in the company register and can cause practical problems for the company – while at the same time the amounts to be paid are not of such a magnitude that payment would cause difficulties for the media outlets or media service providers.

As one of the lawyers interviewed put it, the fundamental problem is that neither the press lawsuits nor the enforcement procedure were “designed” for the situation that arises when a defamation or smear campaign is launched against someone in media outlets linked to the governing party or in the public media.

<sup>12</sup> <https://444.hu/2021/11/17/egymas-utan-mondjak-ki-a-birosagok-hogy-amit-a-kormany-media-csinal-an-nak-nincs-sok-koze-az-ujsagirashoz>

<sup>13</sup> *Ibid.*

<sup>14</sup> <https://atlatszo.hu/2018/06/12/perek-tucattait-inditottak-lejaratott-ellenzeki-partvezetok-a-fideszes-propaganda-gepezet-sajtotermekai-ellen/>

<sup>15</sup> See e.g.: <https://www.facebook.com/eotvoskarolyintezet/posts/3965793780123117>.

<sup>16</sup> See: <https://media1.hu/2021/05/25/a-media1-vegrehajtasi-eljarast-inditott-az-origo-ellen/>.

<sup>17</sup> See e.g.: <https://hang.hu/belfold/vegrehajtasi-eljarast-inditott-jakab-peter-az-origo-kiadoja-ellen-123191>.

<sup>18</sup> See: <https://24.hu/media/2017/08/10/siker-es-volt-az-origo-hu-kiadojaval-szembeni-vegrehajtas/>.

<sup>19</sup> See: <https://atlatszo.hu/kozpenz/2018/06/12/perek-tucattait-inditottak-lejaratott-ellenzeki-partvezetok-a-fideszes-propaganda-gepezet-sajtotermekai-ellen/>.

### 1.1.3. Non-execution of court decisions by the asylum authority

- (i) An illustrative example of how seriously non-compliance with court decisions can affect a person's situation in asylum cases is the case of Alexei Torubarov. Mr. Torubarov was subject to systematic and continuous persecution for his political views by the Putin regime for years before he fled to Hungary seeking asylum in 2013. Despite all obvious evidence he was not granted protection from the Hungarian asylum authority. He appealed against the rejection, the court ruled in his favour, but the authorities again rejected him.

The background is that in 2015 the two-third government majority deprived the courts of the decades-long practice to grant protection themselves. For four years, courts could only quash the decision of the asylum authority, and order the authorities to conduct a new procedure. As a consequence, the asylum authority could have delivered the same rejection (even possibly citing the same arguments as earlier), against which the rejected applicant could have made an appeal, which could have been upheld by the courts, only to start the procedure all over again. These inconclusive and unproductive “ping pong games” were played for years by the asylum authority.

Mr. Torubarov happened to go through these games many times. Seeing his endless case, a judge grew tired of the authority's defiance after the third “round” and turned to the CJEU in September 2017. The judge asked whether the legislation in force since 2015, which deprived courts of reformatory powers in asylum cases, complied with EU law. Finally, in 2019 the CJEU ruled<sup>20</sup> that if the asylum authority – ignoring the court's ruling – makes the same decision as before without adding new, factual information, the court would have to disregard the restrictive domestic legislation, and grant protection on its own motion. Thus, the asylum authority can no longer override rulings for years on end. As a result, in September 2019 Alexei Torubarov was finally recognised as a refugee by a Hungarian court, six years after he applied for asylum.<sup>21</sup>

- (ii) Another example of refusing to execute a judgment in an asylum case relates to the new procedure to seek asylum that was set up by Hungary following the closure of the transit zones located on the Serbian border in 2020.<sup>22</sup> Under the new regime, apart from few very rare exceptions, nobody can ask for asylum in Hungary. Those wishing to enter the country must submit a so-called “statement of intent” to the Hungarian embassy in Belgrade or Kyiv. This form is then forwarded to the asylum authority (National Directorate General for Aliens Policing, NDGAP) which has 60 days to notify the relevant embassy whether or not it recommends to issue a special one-time entry permit for the purpose of seeking asylum. The procedure is heavily under-regulated in the relevant law.

<sup>20</sup> Case C-556/17, *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal*.

<sup>21</sup> <https://helsinki.hu/en/the-man-who-defeated-the-hungarian-asylum-system/>

<sup>22</sup> *Hungary de facto removes itself from the Common European Asylum System (CEAS). Information Update by the Hungarian Helsinki Committee (HHC)*, 12 August 2020, <https://helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>

In September 2021, the NDGAP pushed a young Afghan asylum-seeker to Serbia, after rejecting his asylum application as inadmissible, in light of the above-described new rules.<sup>23</sup> With the representation of the Hungarian Helsinki Committee (HHC), he initiated several lawsuits against the NDGAP and the police, requesting to be allowed back to Hungary. In October, the Metropolitan Court issued an interim measure, under the scope of which the applicant should have been allowed to return to Hungary.<sup>24</sup> Subsequently, the court upheld the interim measure's content in the final judgement overturning the NDGAP's inadmissibility decision, ordering the authority to facilitate his return to Hungary to be able to participate in the repeat procedure.<sup>25</sup> Despite the clear instruction and the explicit request of the applicant's legal representative, the NDGAP first remained silent on the issue, reopened the procedure formally only with a considerable delay, and has failed so far to take any steps to facilitate the applicant's return.

#### 1.1.4. Deficiencies regarding the enforcement procedure

Respect for court decisions and compliance with final court judgments, even as a result of lawful coercion, belong among the constitutional values related to the rule of law, and therefore court decisions must be enforced via judicial enforcement in the absence of voluntary compliance. The rules governing this non-trial procedure are laid down in Act LIII of 1994 on Judicial Enforcement (Act on Judicial Enforcement). Article 5(1) of the Act on Judicial Enforcement provides for the use of enforcement coercion, according to which in the course of judicial enforcement, the debtor, who is obliged to pay money or to perform other acts, must also be compelled by the state to fulfil their obligations. According to the concept of the Act on Judicial Enforcement, the compliance with the judgments and other obligations is voluntary, so state coercion is subsidiary, i.e. it can only be used if the debtor has failed to perform voluntarily.

The enforcement procedure, as indicated above, is a "costly and lengthy legal process which does not promise certain success".<sup>26</sup> As mentioned above, the fines that can be imposed in enforcement proceedings are low and the sanction regime has no deterrent or dissuasive effect. (Although, at the same time, there were lawyers who reported that sometimes the mere "threat" of the enforcement proceedings, i.e. the announcement of launching the proceedings, has an incentivizing effect, and compliance is achieved without the need to actually having to launch the enforcement proceedings.) This, combined with the potentially excessive length of enforcement proceedings, can easily lead to a situation where in the case of press rectification and personality rights lawsuits the person concerned and their lawyer decide that it is not worthwhile to launch an enforcement procedure. Many of the lawyers interviewed felt that enforcement proceedings are not only long, but also too complicated, cumbersome,

<sup>23</sup> See e.g.: <https://telex.hu/english/2021/09/30/english-refugee-afghanistan-taliban-hungarian-helsinki-committee>.

<sup>24</sup> 11.K.705.686/2021/5, 11 October 2021

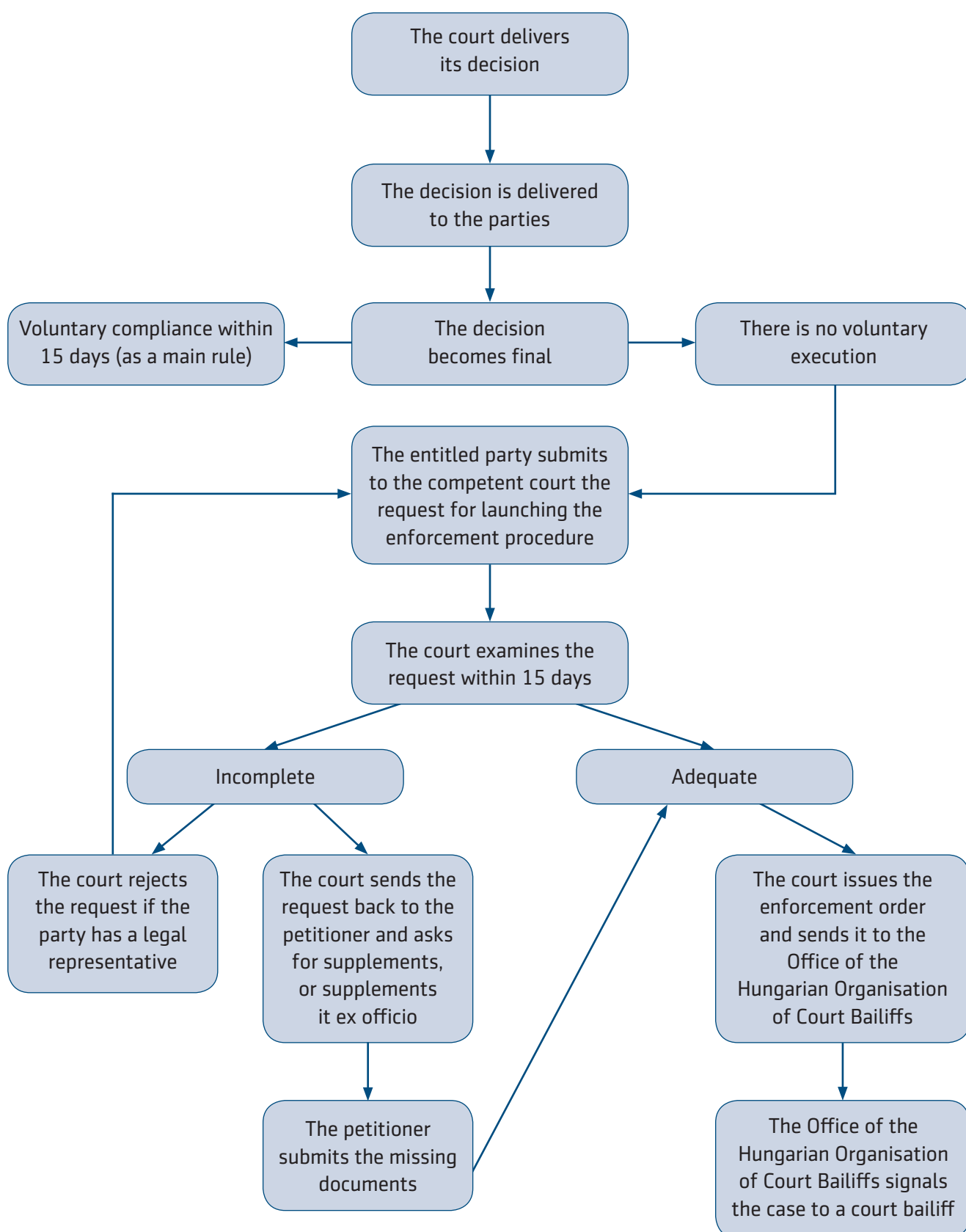
<sup>25</sup> 11.K.705.686/2021/22, 12 November 2021

<sup>26</sup> <https://444.hu/2021/11/17/egymas-utan-mondjak-ki-a-birosagok-hogy-amit-a-kormany-media-csinal-anak-nincs-sok-koze-az-ujsagiroshoz>

ponderous and bureaucratic – hence, some lawyers do not even undertake representation in enforcement proceedings. Several lawyers also raised the issue that there are proportionally few court bailiffs. Furthermore, there are a number of problems with the enforcement proceedings once they have been initiated that should be addressed to increase the efficiency of the proceedings, such as the following:

- In the case of the so-called irreversible obligations, i.e. obligations that are irreversible by nature if fulfilled, the Kúria (Hungary's supreme court) will automatically suspend enforcement in the event it receives an application for the review of the final decision. Such irreversible obligations include the press rectification, providing public apology in a personality rights lawsuit, or the removal of the content that causes the violation, but also the disclosure of the data of public interest. In such cases, it takes more than a year for the Kúria to reach a decision, and writing down the judgment takes another month, even in fast-tracked proceedings.
- In order to complete the enforcement request form in full, both in the case of a pecuniary claim and in the case of an enforcement proceedings aimed at the execution of a specific act, the person asking for enforcement shall obtain from the court which ruled in the case and record on the respective form a number of items of information which are otherwise available to the court. This, in addition to being unnecessary work, leads to a loss of time.
- Even in proceedings in which parties are exempt from advancing the costs or which are not subject to costs, the winning party is obliged to advance the enforcement costs or the statutory part of it. This is not only inconsistent, but also unfair to a person who has been litigating for years and whose personality rights have been violated. Meanwhile, the costs of enforcement proceedings are high, and there were lawyers who believed that in many cases private persons choose not to pursue enforcement because of that.
- The fees of the legal representative and its minimum rate, are regulated by Decree 12/1194. (IX. 8.) IM of the Ministry of Justice, which, in the absence of a fee agreement between the person asking for enforcement and their lawyer, sets the fees of the lawyer proceeding in enforcement proceedings at a level well below current market conditions. However, a remuneration included in the mandate contract is no guarantee either that the applicant will receive that from the debtor, since the legislator has provided the court the possibility to reduce the lawyer's fee in justified cases under Article 2(1) of the Ministry of Justice decree. If the court makes use of this possibility, it may well happen that the person asking for the enforcement shall bear part of the costs of the proceedings in the end.



**FIGURE 1** • *The enforcement procedure*

## 1.2. Using the Constitutional Court to avoid execution

On 17 December 2019, the Hungarian Parliament adopted Act CXXVII of 2019, a substantial omnibus act that contained several new rules regarding – among others – the judiciary (hereinafter: Omnibus Act). The Minister of Justice submitted the respective Bill to the Parliament in November without any prior public consultation, even though that would have been obligatory by law. The Omnibus Act contained numerous provisions that had a significant negative impact on judicial independence, however, in a much more covert and technical way than earlier attempts.<sup>27</sup> What is relevant for the purposes of the present paper is that the Omnibus Act, as of 20 December 2019, granted state/public authorities and bodies the right to submit constitutional complaints to the Constitutional Court. Under the current wording of the law, organisations may submit a constitutional complaint to the Constitutional Court if in their view their fundamental rights enshrined in the Fundamental Law have been violated or if their scope of competence has been unconstitutionally limited by an ordinary court decision.<sup>28</sup> In the case of “organisations exercising public authority”, it shall be examined whether they are entitled to the right they claim to have been violated;<sup>29</sup> and when stating a violation of their scope of competence, their complaint will be decided in merit only if the decision challenged results in a serious disturbance of their operations, or a competence enshrined in the Fundamental Law is violated.<sup>30</sup>

As a result of the Omnibus Act, constitutional complaints can be used not only to protect people’s rights against state powers, but also to provide constitutional protection to public authorities in their lawsuits vis-à-vis individuals. This enables the state to channel the review of unfavourable court decisions in cases important for the Government out of the ordinary court system, to the already packed Constitutional Court (see Chapter 2.2. about that). Thus, the Omnibus Act opens a way for politically sensitive court cases to be decided in a way that is favourable for the executive power.

It does not diminish the dangers posed by this new possibility that so far, public authorities have not been particularly successful in making use of this new type of constitutional complaint. As of the end of September 2021, the Constitutional Court reached a decision in 13 cases where a constitutional complaint was put forward by a public authority (see Annex 1 for the whole list of the cases). Local governments have been the most active, they put forward four of the complaints. Other complainants included, among others, two courts and a county police headquarters.

In nine cases, the Constitutional Court held the complaint inadmissible, and in two cases it decided that no violation occurred. The challenged court decisions were quashed by the Constitutional Court in

<sup>27</sup> For a detailed analysis of the Omnibus Act, see: Hungarian Helsinki Committee, *New law threatens judicial independence in Hungary – again*, January 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Act\\_CXXVII\\_of\\_2019\\_on\\_judiciary\\_analysis\\_2020Jan.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Act_CXXVII_of_2019_on_judiciary_analysis_2020Jan.pdf); Amnesty International Hungary, *Nothing ever disappears, it only changes*, <https://www.amnesty.hu/wp-content/uploads/2020/10/ANALYSIS.pdf>.

<sup>28</sup> Act CLI of 2011 on the Constitutional Court, Article 27(1)

<sup>29</sup> Act CLI of 2011 on the Constitutional Court, Article 27(3)

<sup>30</sup> Act CLI of 2011 on the Constitutional Court, Article 55(4a)

two cases, one brought by a regional water management directorate and one brought by the National Directorate General for Aliens Policing (NDGAP). Since the constitutional complaint submitted by the water management directorate concerned an administrative procedure conducted by another public authority and the ensuing court procedure, the Constitutional Court decided that for the purposes of the complaint procedure the directorate does not qualify as an “organisation exercising public authority”.<sup>31</sup> In the other case, the NDGAP submitted a constitutional complaint against the court decisions imposing a performance fine on it, after the NDGAP repeatedly failed to comply with the courts’ rulings and grant an applicant international protection in the new procedures ordered by the court. The Constitutional Court quashed the decisions imposing the performance fine because it found that the enforcement of the compliance was premature, given that a substantive final and binding decision has not been delivered yet in the main proceedings due to a suspension pending a preliminary ruling procedure. Accordingly, the Constitutional Court found that the court decisions challenged violated the petitioner’s right to a fair trial enshrined in the Fundamental Law, as having a closed main case with substantive force is the precondition for imposing a performance fine.<sup>32</sup>

According to information available to the Hungarian Helsinki Committee, the NDGAP continues to be active in submitting constitutional complaints under the new rules. The cases concerned relate to the new procedure to seek asylum (as referred to above in Chapter 1.1.3.), in which those wishing to enter the country must submit a statement of intent to the Hungarian embassy in Belgrade or Kyiv.<sup>33</sup> The HHC assisted asylum-seekers currently staying in Serbia, who had been rejected entry to Hungary by force of the new system, to challenge these rejections before the Metropolitan Court. The HHC argued that by force of the general rules on administrative proceedings,<sup>34</sup> taken in conjunction with the right to an effective remedy as enshrined even in the Fundamental Law, these rejections are *de facto* administrative decisions and shall be subject to judicial review. The courts accepted this reasoning, quashed the decisions and ordered the NDGAP to conduct a new procedure. The first such court decision<sup>35</sup> was followed by several more.

However, instead of complying with the judgment, the NDGAP submitted a constitutional complaint<sup>36</sup> against the first such decision, arguing that their right to a fair judicial procedure was violated. Simultaneously, the NDGAP requested the Metropolitan Court to order the suspensive effect of the

<sup>31</sup> Decision 16/2021. (V. 13.) AB of the Constitutional Court. See an English summary of the decision here: <https://bit.ly/3dSMs5U>.

<sup>32</sup> Decision 3328/2020 (VIII.5.) AB of the Constitutional Court. See an English summary of the decision here: <https://bit.ly/3E53Ezv>.

<sup>33</sup> *Hungary de facto removes itself from the Common European Asylum System (CEAS). Information Update by the Hungarian Helsinki Committee (HHC)*, 12 August 2020, <https://helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>

<sup>34</sup> As set forth by the General Principles of Act CL of 2016 on the General Rules of Administrative Proceedings and Act I of 2017 on the Code of Administrative Litigation.

<sup>35</sup> 48.K.701.184/2021/14., 23 April 2021

<sup>36</sup> <http://public.mkab.hu/dev/dontesek.nsf/0/7FB7F01A8EEDAC97C125879200602DD9?OpenDocument>

constitutional complaint to the execution of the judgment. This request was rejected, yet at the time of writing the NDGAP still refuses to conduct new procedures as instructed in similar cases, arguing that it will wait for the outcome of the constitutional complaint case – where no deadlines are applicable. This claim lacks a clear basis in law and is therefore arbitrary, aimed at prolonging the procedures in order to discourage others from taking legal action against the rejection decisions received through the embassy.

Another example of making use of the new form of the constitutional complaint by the state relates to the homophobic and transphobic referendum initiated by the Government in the summer of 2021. All five referendum questions proposed were validated by the National Election Commission. However, these decisions were challenged, and in October 2021, the Kúria ruled regarding one of the five questions, reading “Do you support making gender reassignment treatments available to underage children?”, that it cannot be the subject of a referendum.<sup>37</sup> As a reaction, the Government submitted a constitutional complaint<sup>38</sup> on the basis of the new provisions introduced in 2019, claiming that the Kúria’s decision violated its right to a fair trial. After the closing of the present paper’s manuscript, on 14 December 2021, the Constitutional Court granted the Government’s request, and so the question can be put to referendum.

### 1.3. Overruling the gist of certain judicial decisions via legislation

It relates to the issue of non-execution as well that there have been instances where specific court decisions triggered sudden and problematic legislative steps by the governing majority. Although it is well within the rights of a government and the governing majority to take legislative steps to enforce their envisaged policies, and even to ensure via legislative means that judicial decisions in general change with regard to a certain issue, in the authors’ view the legislative steps in the two examples below should still be considered problematic because of the circumstances in which they were adopted. The legislative steps presented below have been taken way too fast, as reactions to individual cases that received wide public attention, and this connection was very clear from the accompanying statements of government and government party representatives. The rapid adoption of these legislative measures makes it highly questionable whether they were driven by any kind of well-founded policy consideration, and their populist nature also signals that they were adopted as a reaction to the alleged public sentiment. This approach towards changing the law is dangerous not only because rapid changes carried out without an in-depth assessment of the possible consequences may easily disrupt the sensitive balance of larger systems, but also because it clearly conveys the message to courts that the Government and the governing majority have the power to basically overrule them instantly.

<sup>37</sup> See e.g.: <https://en.hatter.hu/news/hungarian-court-throws-out-transphobic-referendum-question>.

<sup>38</sup> <http://public.mkab.hu/dev/dontesek.nsf/0/58C4C4BC8B4F2356C1258782005EDA9C?OpenDocument>

### 1.3.1. The “Lex Gyöngyöspata”

In September 2019, a second instance court decision was issued in a discrimination lawsuit, which granted non-pecuniary damages to over 60 Roma victims of educational segregation going on for over a decade in the elementary school of Gyöngyöspata.<sup>39</sup> The respondents requested an extraordinary review from the Kúria. While that review was still pending, high-ranking governing party politicians launched a concerted public campaign against the court judgment, questioning its justness and legitimacy. For example, the Prime Minister called the lawsuit a “provocation” and the judgment unjust, because the Roma plaintiffs “receive a significant amount of money without performing any work”.<sup>40</sup> In addition, the Ministry of Human Capacities, as well as the ruling party’s Member of Parliament representing the region kept insisting that the respondents of the lawsuit should be allowed to provide educational opportunities to the plaintiffs instead of the compensation payment.<sup>41</sup>

When on 12 May 2020 the Kúria upheld the second instance decision (including the granting of compensation), the governing party MP representing the region stated that a wrong and unjust judgment had been handed down.<sup>42</sup> The Prime Minister commented that it was unacceptable that the majority must feel like aliens in their own homeland. He stated that the judgment “is unjust as it is”, and that the Kúria cannot see the justice of Gyöngyöspata from its downtown Budapest offices, but he will find that justice for the town through amending laws to make sure that not another similar judgment could be made.<sup>43</sup>

Shortly thereafter, on 4 June 2020, the governing party MP for the region submitted a proposal to insert the following paragraph into Act CXCV of 2011 on National Public Education:

*“If the educational institution violates the inherent personal rights<sup>44</sup> of the child or pupil in relation to education, the Civil Code’s provisions regarding moral damages shall be applied with the difference that the moral damages shall be granted by the court in the form of educational or training services. The educational or training services granted by the court can be either provided or purchased by the violator.”*

<sup>39</sup> For more details, see: *Flash report – Second instance court decision on damages for segregation in education*, 30 September 2019, <https://www.equalitylaw.eu/downloads/4957-hungary-second-instance-court-decision-on-damages-for-segregation-in-education-pdf-86-kb>.

<sup>40</sup> For more details, see: *Flash report – Prime Minister calls damages granted to Roma pupils for decade-long segregation “unjust” during pending court case*, 7 February 2020, <https://www.equalitylaw.eu/downloads/5071-hungary-prime-minister-calls-damages-granted-to-roma-pupils-for-decade-long-segregation-unjust-during-pending-court-case-116-kb>; Hungarian Helsinki Committee, *Unfettered Freedom to Interfere – Ruling party politicians exerting undue influence on the judiciary in Hungary 2010–2020*, 29 July 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Hun\\_Gov\\_undue\\_influence\\_judiciary\\_29072020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Hun_Gov_undue_influence_judiciary_29072020.pdf), pp. 5–6.

<sup>41</sup> See e.g.: <https://magyarhaz.net.hu/belfold/ingyen-tanulhatnának-gyongyospata-romai-7680440/>.

<sup>42</sup> See e.g.: <https://24.hu/belfold/2020/05/12/gyongyospata-kuria-fidesz-horvath-laszlo/>.

<sup>43</sup> See: <https://miniszerelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-16/>.

<sup>44</sup> “Inherent personal rights” are rights that are inalienably attached to the human personality; they are to a great extent equivalent to fundamental rights and freedoms.

The explanatory memorandum attached explicitly referred to the Gyöngyöspata case.<sup>45</sup> The amendment (the “Lex Gyöngyöspata”), which was adopted on 3 July and entered into force on 22 July,<sup>46</sup> is highly problematic on several levels. Among other problems, it covers “violations regarding which the provision of additional educational or training services is completely meaningless” (e.g. harassment), and “oblige[s] the victims [...] to accept educational or training services from the institution that violated their rights in the first place”.<sup>47</sup> Furthermore, the amendment itself constitutes indirect discrimination based on ethnicity with regard to the victims of segregation, and puts “perpetrators of educational violations in a more advantaged situation than the perpetrators of any other fundamental rights violations, as they would be exempted from the ‘hard’ consequence of having to pay each concerned child pecuniary compensation”.<sup>48</sup> As a result, the amendment will “by all likelihood also reduce the degree of dissuasiveness of the current system of sanctions, thus breaching the requirement set forth by Articles 6 and 15 of the Racial Equality Directive”.<sup>49</sup> In addition, the amendment (and the public statements of officials preceding it) is capable of strengthening and validating the anti-Roma sentiments of the majority population.

The Gyöngyöspata case is a symptomatic one: it is also an example of how government officials breach the standards on freedom from undue external influence with regard to the courts,<sup>50</sup> and repeatedly use public statements to interfere with the competences of the judiciary.<sup>51</sup> These manifestations of criticism erode trust and confidence in the judiciary and the perception of independence, and can indirectly contribute to the chilling effect among judges. Furthermore, the Lex Gyöngyöspata is an example of how the ruling majority uses legislation not just to undermine the courts, but also to further their discriminative agenda affecting the most vulnerable groups of society.

<sup>45</sup> “It has been raised in relation to the [second instance court’s] judgment in the Gyöngyöspata segregation case [...] that in-kind compensation would be just and reasonable for similar violations. The amendment prescribes in relation to future violations caused by access to substandard education that the court shall grant the compensation for the damages in the form of educational services instead of pecuniary compensation to be paid for moral damages.”

<sup>46</sup> Act LXXXVII of 2020

<sup>47</sup> *Flash report – Draft Bill on mandatory in-kind compensation for segregation in education submitted*, 5 August 2020, <https://www.equalitylaw.eu/downloads/5197-hungary-draft-bill-on-mandatory-in-kind-compensation-for-segregation-in-education-submitted-97-kb>, p. 2.

<sup>48</sup> *Ibid.*, p. 3.

<sup>49</sup> *Ibid.*

<sup>50</sup> Cf. Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Sections 18 and 60; UN Basic Principles on the Independence of the Judiciary, Sections 2 and 4.

<sup>51</sup> For more details and examples, see: Hungarian Helsinki Committee, *Unfettered Freedom to Interfere – Ruling party politicians exerting undue influence on the judiciary in Hungary 2010–2020*, 29 July 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Hun\\_Gov\\_undue\\_influence\\_judiciary\\_29072020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Hun_Gov_undue_influence_judiciary_29072020.pdf)

### 1.3.2. Amending the rules of conditional release

In December 2019, a man who was just released conditionally from prison after being sentenced to imprisonment for attacking his wife, brutally killed two of his children before taking his own life in the city of Győr. Prompted by this single, albeit tragic case, but without any preliminary research or consultation, the Minister of Justice announced already in early January 2020 that her ministry wants to tighten the rules for releasing prisoners on parole who have taken another person's life or attempted to do so.<sup>52</sup> Accordingly, the Ministry of Justice submitted a Bill in June 2020 that made the conditions of conditional release stricter, and excluded the possibility of a conditional release by default in the case of certain crimes. The law<sup>53</sup> entered into force on 5 November 2020. As a consequence of the amendment and the government propaganda, judges deciding on conditional release might get more rigorous in general, and it can be predicted that a lower ratio of detainees will be conditionally released. These changes could contribute to prison overcrowding, and eliminate a previously available reintegration scheme for serious perpetrators.<sup>54</sup>

<sup>52</sup> See e.g.: <https://hungarytoday.hu/gyor-murder-justice-minister-rules/>.

<sup>53</sup> Act CVIII of 2020 on Amending Certain Acts of Parliament for the Enhanced Protection of Victims of Serious Violent Criminal Offences Against a Person, Committed to the Detriment of Family Members

<sup>54</sup> Analysis and recommendations on the amendments of the law by the HHC are available here in Hungarian: [https://www.helsinki.hu/wp-content/uploads/Magyar\\_Helsinki\\_Bizottsag\\_eszrevetelek\\_felteteles\\_eloterjesztes\\_200127.pdf](https://www.helsinki.hu/wp-content/uploads/Magyar_Helsinki_Bizottsag_eszrevetelek_felteteles_eloterjesztes_200127.pdf).

# 2.

## The non-execution of decisions by Hungary's Constitutional Court





## 2. The non-execution of decisions by Hungary's Constitutional Court

Since 2010, the governing majority has severely undermined constitutionality in Hungary, and has eliminated constitutional constraints. This has started with the ruling majority drafting and adopting a new, one-party constitution in 2011, and adopting several constitutional amendments without the support of any other political force. In addition to that, the Constitutional Court (CC), the guardian of the constitution, has been weakened, and its independence has been undermined. Not only has the governing majority curtailed its powers: by amending the previously existing consensual provisions for nominating Constitutional Court judges and raising their number, the ruling majority packed the Constitutional Court and has finally managed to shape it into a loyal body supportive of the governing majority's agenda. Another technique of the ruling majority for undermining the Constitutional Court was that they have systematically reintroduced into the constitution provisions of ordinary laws which had been previously found unconstitutional and annulled by the Constitutional Court, effectively overruling the Constitutional Court in the process. Finally, the governing majority has also been reluctant to execute Constitutional Court decisions establishing a legislative omission. In the present chapter, we flash out the latter two phenomena in more detail.

### 2.1. Non-execution of decisions establishing an unconstitutional omission

The Constitutional Court may, in its proceedings conducted in the exercise of its other competences (i.e. only *ex officio*), declare an omission on the part of the law-maker that results in violating the Fundamental Law. If the Constitutional Court establishes that such an unconstitutional omission occurred, it shall call upon the organ that committed the omission to perform its task and set a time-limit for that.<sup>55</sup> According to Act CLI of 2011 on the Constitutional Court, the following shall be considered as omissions of the law-maker's tasks:

- a) the law-maker fails to perform a task deriving from an international treaty,
- b) a legal regulation was not adopted in spite of the fact that the law-maker's task derives from explicit authorisation by a legal regulation, or
- c) the essential content of the legal regulation that can be derived from the Fundamental Law is incomplete.<sup>56</sup>

<sup>55</sup> Act CLI of 2011 on the Constitutional Court, Article 46(1)

<sup>56</sup> Act CLI of 2011 on the Constitutional Court, Article 46(2)

According to the Hungarian Parliament's website,<sup>57</sup> between 1 January 2012, the coming into force of the Fundamental Law, and 30 November 2021, the Constitutional Court issued 44 decisions establishing an unconstitutional omission to be addressed by the Parliament. According to its own assessment, the Parliament complied with its obligations flowing from 32 of those decisions. However, with regard to 12 decisions, the Parliament has failed to comply with its obligations so far, even though the deadline put forth by the Constitutional Court expired in 10 of them already, in some of them years ago. As shown by the table below, the non-executed decisions concern a large variety of issues and various chapters of the Fundamental Law, but a large part, namely eight of the non-executed decisions established unconstitutional omissions in relation to fundamental rights and freedoms (see the cases marked with an \*).

**TABLE 2 •** *Non-executed Constitutional Court decisions establishing an unconstitutional omission, issued between 1 January 2012 and 30 November 2021*

Number of CC decision	Description of the unconstitutional omission <sup>58</sup>	Deadline
11/2013. (V. 9.) AB	The Constitutional Court established that an omission on the part of the law-maker resulted in a situation of unconstitutionality in violation of Article B(1) of the Fundamental Law with respect to the fact that the law-maker did not adopt transitional provisions upon the entry into force of the amendment of Act XXXVII of 2009 on Forests and on the Protection and Management of Forests, and, as a result, the holders of rights of pecuniary value registered with respect to state-owned forests remained without any adequate security due to the declaration of real estates as unmarketable.	30 September 2013
25/2015. (VII. 21.) AB*	The law-maker did not ensure a fair balance between a restriction in the public interest and the full and effective use of the protected rights of the persons concerned with respect to the rights of usufruct and use, respectively, terminated under Article 108 of Act CCXII of 2013 on Certain Provisions and Transitional Rules Concerning Act CXXII of 2013 on Transactions in Agricultural and Forestry Land, and moreover, failed to provide an adequate compensation. Accordingly, the Constitutional Court declared an omission on the part of the law-maker that resulted in the violation of Articles XXVIII(1) and XIII(1) of the Fundamental Law.	1 December 2015

<sup>57</sup> See: <https://www.parlament.hu/web/guest/az-orszaggyules-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>. After the present chapter of the manuscript was closed, the Constitutional Court established an unconstitutional omission in another case in Decision 31/2021. (XII. 1.) AB.

<sup>58</sup> Descriptions are based on the summaries available on the Parliament's website.

Number of CC decision	Description of the unconstitutional omission	Deadline
27/2017. (X. 25.) AB	The Constitutional Court found that the Parliament's omission resulted in a violation of Article P(1) of the Fundamental Law because parallel to amending Article 28 of Act LXXXVII of 2010 on the National Land Fund by Article 1 of Act CVII of 2016, it failed to ensure the adoption of the appropriate provisions that could guarantee the long-term preservation of the assets of the National Land Fund protected by cardinal acts and would preclude the possibility that the application of acts passed by a simple-majority results in a loss of assets to a scale jeopardizing the aim and purpose of the National Land Fund, including the protection, maintenance and preservation for future generations of natural resources, in particular arable land, forests and the reserves of water, and biodiversity, in particular native plant and animal species.	31 May 2018
28/2017. (X. 25.) AB	The Constitutional Court found that the Parliament's omission resulted in the violation of the Fundamental Law by failing to provide the guarantees to ensure the effective application of the nature conservation aspects of the transfer and use of Natura 2000 designated areas falling outside the scope of nature conservation areas, for the purposes laid down in Article P(1) of the Fundamental Law.	30 June 2018
36/2017. (XII. 29.) AB*	The Constitutional Court found that there has been an omission resulting in a violation of the Fundamental Law due to the failure of the Parliament to establish the rules of procedure applicable for failures to observe the time-limits to adopt a decision laid down for the purposes of the procedure under Article 14/C of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities. The Constitutional Court called on the Parliament to lay down the statutory guarantees of adopting substantial decisions on the recognition as church within the reasonable time-limits as required by law.	31 March 2018
6/2018. (VI. 27.) AB*	The Constitutional Court found that it constitutes an omission resulting in a violation of Articles II and XV(2) of the Fundamental Law that the legislator failed to regulate procedures for name change of legally residing non-Hungarian citizens.	31 December 2018

Number of CC decision	Description of the unconstitutional omission	Deadline
22/2018. (XI. 20.) AB	The Constitutional Court found that there has been an omission on the part of the Parliament resulting in a violation of the Fundamental Law, because the Parliament failed to establish in Article 53/C of Act CLXXVII of 2013 on the Transitional and Authorizing Provisions Related to the Entry into Force of Act V of 2013 on the Civil Code the detailed rules of transfers of contract by means of a legal act as it would have been required by the principle of legal certainty derived from the rule of law under Article B(1) of the Fundamental Law.	31 March 2019
27/2019. (X. 22.) AB*	The Constitutional Court found an omission resulting in a violation of Article IX(1) of the Fundamental Law because the Parliament failed to adopt rules to guarantee the prevention of unjustifiable and disproportionate restrictions on political advertisement with respect to the consent required under Article 144(4)(b) of Act XXXVI of 2013 on Electoral Procedure. The legislative deficiency should be eliminated primarily to ensure that candidates, nominating organizations and other stakeholders participating in the elections may take part without any discrimination in the election campaign as a manifestation of a free discussion of public affairs in a context of rules on suffrage.	31 December 2019
7/2020. (V. 13.) AB*	The Constitutional Court established that there has been an omission on the part of the Parliament resulting in a violation of Articles VI(3) and 39(2) of the Fundamental Law, because the Parliament failed to grant efficient judicial protection for the party requesting data in cases of a non-fulfilment of the obligation to provide information under Article 27(3b) of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information.	31 December 2020
9/2021. (III. 17.) AB*	The Constitutional Court found that there has been an omission on the part of the law-maker resulting in the violation of Article XVI(1) of the Fundamental Law with respect to the obligation of the state to grant protection, as the law-maker failed to guarantee that the beginning of the school education for children who, following a school admittance test, prove obviously not admissible to school, may be postponed with a period of one pre-school year on recommendation from the pre-school or any other appropriate means even in cases when the parent fails to submit a request for the postponement of school education under Article 45(2) of Act CXC of 2011 on National Public Education or fails to submit such request in the required manner.	30 June 2021

Number of CC decision	Description of the unconstitutional omission	Deadline
9/2021. (III. 17.) AB* (continued)	The Constitutional Court found that there has been an omission on the part of the law-maker resulting in the violation of Article XVI(1) of the Fundamental Law, as the law-maker failed to provide the appropriate procedural guarantees with relation to certain procedures under Act CXC of 2011 on National Public Education to ensure that the final decision concluding the procedure and containing a decision on the merits of the request is taken in every case before the beginning of the (pre-)school year even if the parent brings administrative court proceedings challenging the decision of the organ competent for granting exemptions.	30 June 2021
19/2021. (V. 27.) AB*	The Constitutional Court concluded that there has been an omission on the part of the Parliament resulting in a violation of the Fundamental Law as the Parliament failed to regulate in Article 590(5) of Act XC of 2017 on the Code of Criminal Procedure the possible extension of review to those parts of the judgment which are not concerned by the appeal, in a manner consistent with the constitutional requirements under Article XXVIII(1) of the Fundamental Law. The Constitutional Court called on the Parliament to clarify and supplement the wording of the legislation in force.	31 January 2022
24/2021. (VII. 21.) AB*	In the view of the Constitutional Court, the fact that the wording of the contested statutory definition does not set out clearly which activities are covered by the activity of “psychotherapeutic practice” subject to a medical qualification, and thus the conduct qualifying as the criminal offence of “quackery” under Article 187(1)(b) of the Criminal Code is not sufficiently precise, because it is not clear which conduct is covered by the criminal prohibition, created a situation which is contrary to Article XXVIII(4) of the Fundamental Law. The Constitutional Court called on the legislator to clarify the conduct of the offence and to define the criminal law concept of the activity falling within the scope of psychotherapeutic practice.	31 March 2022

## 2.2. Overruling the Constitutional Court via constitutional amendments

While not addressing the unconstitutional omissions is a rather apparent case of non-execution, the current governing majority has been resorting to a much more novel way of disrespecting the Constitutional Court’s decisions as well since they entered into power in 2010: overriding them via constitutional amendments. It became a recurring practice for the governing majority to include provisions into the old Constitution (in force until the end of 2011) and the Fundamental Law (in force since

1 January 2012) which previously had been incorporated in the lower levels of the legal system (i.e. laws other than the constitution itself) but were found unconstitutional by the Constitutional Court (see the detailed list below). Since according to the Hungarian practice (which was later expressly incorporated in the Fundamental Law), the Constitutional Court may not review the constitutionality of constitutional amendments and is unable to declare the respective provisions of constitutional amendments unconstitutional, in this way the impugned rules were removed from the scope of constitutional review. This effectively meant the overruling of the Constitutional Court.

This had devastating consequences on many levels. The control exercised by the Constitutional Court has been weakened further, and repeatedly overruling its decisions contributed to dismantling the system of checks and balances. As put by the Venice Commission in 2013, “[r]eacting to Constitutional Court decisions by ‘constitutionalising’ provisions declared unconstitutional” earlier has become a “systematic approach” of the governing majority, which “threatens to deprive the Constitutional Court of its main function as the guardian of constitutionality and as a control organ in the democratic system of checks and balances”.<sup>59</sup> Furthermore, as shown by some of the examples listed below, many of these constitutional amendments resulted in unjustifiable restrictions on various human rights.

This phenomenon is inextricably linked to the governing majority’s general approach towards the text of the old Constitution and the Fundamental Law. Between May 2010 and the entering into force of the Fundamental Law on 1 January 2012, the old Constitution was amended by the governing majority 12 times, and since 2012, the Fundamental Law has been amended nine times, always in line with the Government’s political interests. As the Venice Commission warned in 2013 in its opinion about the Fourth Amendment to the Fundamental Law: “[f]requent constitutional amendments are a worrying sign of an instrumental attitude towards the constitution”.<sup>60</sup> Thus, the amendments clearly show that the Fundamental Law, which was adopted without the support of any other political force, practically as the product of a single political party to begin with,<sup>61</sup> has been treated as a political tool of the Government. As a result, the Fundamental Law does not restrict the state’s power and does not effectively protect the rule of law and human rights. Instead, it is used by the Government as a tool to undermine the principles of the rule of law. The Fundamental Law is not able to serve as a stable basis of the legal system, since it is not the constitution that regulates the Government’s work, but it is the Government that adjusts the constitution to its needs.

<sup>59</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, 17 June 2013, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)012-e), § 144.

<sup>60</sup> *Ibid.*, § 136.

<sup>61</sup> See in more detail: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Comments on the Process of Framing the New Constitution of Hungary*, 10 March 2011, [http://helsinki.hu/wp-content/uploads/Comments\\_on\\_the\\_Process\\_of\\_Framing\\_the\\_New\\_Constitution\\_of\\_Hungary\\_EKI\\_HCLU\\_HHC.pdf](http://helsinki.hu/wp-content/uploads/Comments_on_the_Process_of_Framing_the_New_Constitution_of_Hungary_EKI_HCLU_HHC.pdf).

Overriding the Constitutional Court's decisions has also been an integral part of the general weakening of the institution. Since 2010, the governing majority has adopted a series of laws to undermine the independence of the Constitutional Court and weaken constitutional oversight over legislation.<sup>62</sup> This included for example the limiting of the Constitutional Court's powers in relation to laws on central budget and taxes, and so shielding potentially unconstitutional laws from constitutional review. The governing parties amended the previously existing consensual provisions for nominating Constitutional Court judges, ensuring that the Fidesz-KDNP having a two-third majority in Parliament can fill the vacancies without the support of the opposition, and raised the number of Constitutional Court justices. As a result, the ruling majority was able to pack the Constitutional Court e.g. with former governing party MPs, and shape it into a loyal body supportive of the governing majority's agenda.

An important point in this court-packing exercise was April 2013, when the justices appointed and elected only by the governing parties became the majority in the Constitutional Court, which turned out to be a breaking point in terms of the direction of the Constitutional Court's decisions.<sup>63</sup> This can partly be the reason why constitutional amendments overriding the Constitutional Court's decisions have been characteristic before that point in time, reaching their peak with the Fourth Amendment to the Fundamental Law in March 2013 as demonstrated below.

However, the governing majority started to use this technique already when the old Constitution was still in force:

- In 2008, the Constitutional Court found unconstitutional and quashed the rules allowing so-called trainee judges (i.e. court employees with bar exams but without judicial appointment) to decide in cases on the merits.<sup>64</sup> To override this decision, the Constitution was amended by the ruling majority in July 2010<sup>65</sup> in a way that it allows trainee judges to act as judges in cases set out by an Act of Parliament.<sup>66</sup> The amendment was necessary in order to enable trainee judges to proceed in petty offence cases; the constitutional amendment and the amendment of the Petty Offence Act<sup>67</sup> also setting out that trainee judges may decide on petty offence cases were adopted on the same day. The general reasoning of the constitutional amendment even stated that its goal was to address related "constitutional concerns", i.e. the Constitutional Court decision from 2008.
- The possibility of retroactive taxation was also included in the Constitution to "solve" constitutional problems. In 2010, the governing majority adopted an Act of Parliament<sup>68</sup> which introduced a special tax of 98% on certain revenues as of 1 January 2010, thus creating a tax obligation for

<sup>62</sup> On these developments see also: Kovács, K. – Scheppele, K. L., The fragility of an independent judiciary: Lessons from Hungary and Poland – and the European Union. *Communist and Post-Communist Studies*, 2018, 51(3), pp. 189–200.

<sup>63</sup> See e.g.: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Analysis of the performance of Hungary's "one-party elected" Constitutional Court judges between 2011 and 2014*, [https://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC\\_Analysing\\_CC\\_judges\\_performances\\_2015.pdf](https://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf).

<sup>64</sup> Decision 1/2008. (I. 11.) AB of the Constitutional Court

<sup>65</sup> Amendment of 22 July 2010 of Act XX of 1949 on the Constitution of the Republic of Hungary

<sup>66</sup> Act XX of 1949 on the Constitution of the Republic of Hungary, Article 46(3)

<sup>67</sup> Act LXIX of 1999 on Petty Offences

<sup>68</sup> Act XC of 2010 on the Adoption and Amendment of Certain Acts of Parliament on Economic and Fiscal Matters



the period preceding its promulgation and, consequently, violating the ban on retroactive legislation. The respective provisions of the Act were declared unconstitutional and were quashed by the Constitutional Court in October 2010.<sup>69</sup> On the day the Constitutional Court's decision was announced, the head of the parliamentary group of the governing party Fidesz declared that he will submit a Bill to the Parliament with the very same content as the quashed one, and will initiate the restriction of the powers of the Constitutional Court with respect to budgetary and tax matters.<sup>70</sup> The ensuing amendment of the Constitution of November 2010<sup>71</sup> restricted the Constitutional Court's powers and created the constitutional basis for retroactive taxation.

The Transitional Provisions of the Fundamental Law were also used to override the decisions of the Constitutional Court:

- Amendments of the Code of Criminal Procedure<sup>72</sup> adopted in July 2011 authorised prosecutors to press charges before a court other than the legally designated court upon the decision of the Chief Public Prosecutor, if it was deemed necessary for the sake of the speed of the proceedings in certain special cases. This provision of the Code of Criminal Procedure was abolished by the Constitutional Court on 19 December 2011.<sup>73</sup> As a reaction, the Parliament inserted this possibility into Article 11(4) of the Transitional Provisions of the Fundamental Law on 23 December 2011 – even extending the option to all criminal cases. (It has to be noted though that after the Constitutional Court quashed the Transitional Provisions on formal grounds,<sup>74</sup> and the Fourth Amendment to the Fundamental Law introduced rules of the Transitional Provisions into the Fundamental Law instead, this provision was left out.)

Finally, as presented in the table below,<sup>75</sup> several key articles of the Fourth Amendment to the Fundamental Law (which was adopted on 25 March 2013 and entered into force on 1 April 2013) either inserted provisions into the Fundamental Law which had previously been found unconstitutional by the Constitutional Court, or provisions which clearly contradicted Constitutional Court decisions delivered in 2012 and 2013. In fact, the Fourth Amendment introduced a series of provisions into the Fundamental Law which, taking into account the practice of the Constitutional Court as it stood at that point in time, violated fundamental rights and the principle of the rule of law.<sup>76</sup>

<sup>69</sup> Decision 184/2010. (X. 28.) AB of the Constitutional Court

<sup>70</sup> See e.g.: <https://www.origo.hu/itthon/20101026-alkotmanyellenes-a-98-szazalekos-kulonado.html>.

<sup>71</sup> Act CXIX of 2010 on the Amendment of Act XX of 1949 on the Constitution of the Republic of Hungary

<sup>72</sup> Act XIX of 1998 on the Code of Criminal Procedure

<sup>73</sup> Decision 166/2011. (XII. 20.) AB of the Constitutional Court

<sup>74</sup> Decision 45/2012. (XII. 29.) AB of the Constitutional Court

<sup>75</sup> Source: <https://helsinki.hu/wp-content/uploads/Constitutional-Court-vs-Fourth-Amendment.pdf>.

<sup>76</sup> For a detailed assessment of the Fourth Amendment, see: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Main concerns regarding the Fourth Amendment to the Fundamental Law of Hungary*, 13 March 2013, [https://helsinki.hu/wp-content/uploads/Main\\_concerns\\_regarding\\_the\\_4th\\_Amendment\\_to\\_the\\_Fundamental\\_Law\\_of\\_Hungary\\_13032013.pdf](https://helsinki.hu/wp-content/uploads/Main_concerns_regarding_the_4th_Amendment_to_the_Fundamental_Law_of_Hungary_13032013.pdf). For a one-page summary, see: [https://helsinki.hu/wp-content/uploads/Main-concerns-regarding-the-Fourth-Amendment-to-the-Fundamental-Law\\_SUMMARY.pdf](https://helsinki.hu/wp-content/uploads/Main-concerns-regarding-the-Fourth-Amendment-to-the-Fundamental-Law_SUMMARY.pdf).



**TABLE 3 • Provisions of the Fourth Amendment to the Fundamental Law overruling Constitutional Court decisions**

Constitutional Court decision	Quotation from the Constitutional Court decision	Article of the Fundamental Law	Text of the Fourth Amendment
<b>Declaring void Constitutional Court decisions adopted prior to the Fundamental Law</b>			
22/2012. (V. 11.) AB Reasoning [40]–[41]  reiterated by: 30/2012. (VI. 27.) AB 34/2012. (VII. 17.) AB 4/2013. (II. 21.) AB	“In the new cases the Constitutional Court may use the arguments included in its previous decision adopted before the Fundamental Law came into force in relation to the constitutional question ruled upon in the given decision, provided that this is possible on the basis of the concrete provisions and interpretation rules of the Fundamental Law, having the same or similar content as the provisions included in the previous Constitution. [...] The conclusions of the Constitutional Court pertaining to those basic values, human rights and freedoms, and constitutional institutions, which have not been altered in the Fundamental Law, remain valid.”	Closing and miscellaneous provisions, Point 5	“Decisions of the Constitutional Court delivered prior to the entering into force of the Fundamental Law become void. This provision does not concern the legal effects achieved by the preceding decisions.”
<b>Prohibiting the Constitutional Court from examining the substantive constitutionality of proposed amendments to the Fundamental Law</b>			
45/2012. (XII. 29.) AB Reasoning [118]	“In certain cases the Constitutional Court may also examine the undiminished predominance of the content-related constitutional requirements, guarantees and values of the democratic state based on the rule of law, and their inclusion in the constitution.”	Article 24(5)	“The Constitutional Court may only review the compliance of the Fundamental Law and an amendment to the Fundamental Law with the procedural requirements included in the Fundamental Law pertaining to the adoption and the promulgation of the Fundamental Law or its amendments.”

Constitutional Court decision	Quotation from the Constitutional Court decision	Article of the Fundamental Law	Text of the Fourth Amendment
<b>Narrowing the notion of family</b>			
43/2012. (XII. 20.) AB Reasoning [43]	“It does not follow from Article L) of the Fundamental Law that e.g. those in a partnership who take care of and raise each other’s children, different-sex couples who do not want a child or who cannot have a common child due to different reasons, [...] widows, [...] grandparents raising their grandchildren, [...] and many other forms of long-standing emotional and economic cohabitations, which are based on mutual care and fall within the wider, more dynamic, sociological notion of a family would not be covered by the state’s objective positive obligation [to provide constitutional protection for families].”	Article L) (1)	“Marriage and the parent-child relationships are the basis of the family.”

Constitutional Court decision	Quotation from the Constitutional Court decision	Article of the Fundamental Law	Text of the Fourth Amendment
<b>Banning political advertisements in the commercial media</b>			
1/2013. (I. 7.) AB Reasoning [93], [98] and [100]	“According to Article 151 (1) of the law, in the campaign period, political advertisements may be published exclusively in public media outlets. This provision bans this kind of political communication in every other media outlet [...], which results that the possibility of publishing political advertisements ceases exactly regarding in the media reaching society to the widest extent. Thus, the ban is a considerable restriction on political speech as performed in the course of the election campaign. [...] Article 151 (1) of the law does not serve the aim of balanced information, and even may lead to an opposite result. [...] Therefore, the CC rules that the ban of publishing political advertisements in the campaign in [non-public] media outlets is contrary to the Fundamental Law.”	Article IX(3)	“In order to guarantee adequate information necessary for the formation of a democratic public opinion and in order to guarantee equal opportunities, political advertisements may be published in the media exclusively free of charge. Before the election of Members of Parliament and Members of the European Parliament, in the campaign period, political advertisements may be published by and in the interest of those organisations nominating candidates which set up a national list of candidates for the general elections of Members of Parliament or setting up a list of candidates for the election of Members of the European Parliament – as defined in a cardinal act – exclusively via public media outlets, under equal conditions.” <sup>77</sup>

<sup>77</sup> Article IX(3) was later modified by the Fifth Amendment to the Fundamental Law (adopted in September 2013), but its impact remains the same. In more detail, see: Eötvös Károly Institute — Hungarian Civil Liberties Union — Hungarian Helsinki Committee, *Comments on the Fifth Amendment to the Fundamental Law of Hungary*, 18 September 2013, [https://helsinki.hu/wp-content/uploads/NGO\\_comments\\_on\\_the\\_5th\\_Amendment\\_to\\_the\\_Fundamental\\_Law\\_October2013.pdf](https://helsinki.hu/wp-content/uploads/NGO_comments_on_the_5th_Amendment_to_the_Fundamental_Law_October2013.pdf), pp. 2–3. For the current text of Article IX(3) in English, see: [https://njt.hu/translation/TheFundamentalLawofHungary\\_20201223\\_FINrev.pdf](https://njt.hu/translation/TheFundamentalLawofHungary_20201223_FINrev.pdf).

Constitutional Court decision	Quotation from the Constitutional Court decision	Article of the Fundamental Law	Text of the Fourth Amendment
<b>Providing a constitutional basis for criminalizing homelessness</b>			
38/2012. (XI. 14.) AB Reasoning [53]	“Homelessness is a social problem, which shall be dealt with by the state with the means of social administration and social maintenance instead of punishment. It is incompatible with the protection of human dignity as enshrined in Article II of the Fundamental Law to declare [homeless persons] dangerous to the society and punish [them].”	Article XXII(3)	“An Act of Parliament or local government decree may outlaw the use of certain public spaces for habitation in order to preserve the public order, public safety, public health and cultural values.” <sup>78</sup>
<b>Recognition of churches by the Parliament</b>			
6/2013. (III. 1.) AB Reasoning [205]	“Recognizing the status as a church by a parliamentary vote [...] may lead to decisions reached on political grounds. [...] Vesting this kind of a decision exclusively in the Parliament, being essentially of political character, is not in compliance with the requirements included in the Fundamental Law [...]”	Article VII	“Parliament may recognize, in a cardinal act, certain organizations that serve a religious mission as a church. With them the state collaborates for the public interest. Against the provisions of the cardinal act concerning the recognition of churches a constitutional complaint may be filed.” <sup>79</sup>

<sup>78</sup> This provision was further aggravated by the Seventh Amendment to the Fundamental Law (adopted in June 2018): as of 15 October 2018, Article XXII(3) of the Fundamental Law sets out that “using a public space as a habitual dwelling shall be prohibited”.

<sup>79</sup> Article VII was later modified by the Fifth Amendment to the Fundamental Law, but it remained problematic: it not only maintained the violations resulting from already adopted laws with respect to religious communities, but it openly declared the differentiation between religious communities by allowing the Parliament to grant a privileged status to certain religious communities. In more detail, see: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Comments on the Fifth Amendment to the Fundamental Law of Hungary*, 18 September 2013, [https://helsinki.hu/wp-content/uploads/NGO\\_comments\\_on\\_the\\_5th\\_Amendment\\_to\\_the\\_Fundamental\\_Law\\_October2013.pdf](https://helsinki.hu/wp-content/uploads/NGO_comments_on_the_5th_Amendment_to_the_Fundamental_Law_October2013.pdf), pp. 3–4. For the current text of Article VII in English, see: [https://njt.hu/translation/TheFundamentalLawofHungary\\_20201223\\_FINrev.pdf](https://njt.hu/translation/TheFundamentalLawofHungary_20201223_FINrev.pdf).

3.

# The non-implementation of European Court of Human Rights judgments



### 3. The non-implementation of European Court of Human Rights judgments

#### 3.1. Implementation in the light of numbers

Hungary's quantitative record on the implementation of judgments by the European Court of Human Rights (ECtHR) is poor. According to the database of the European Implementation Network (EIN), when it comes to Hungary, 81% of the so-called leading cases from the last 10 years are still pending execution. This is a very high percentage as compared to other Council of Europe countries: altogether, 47% of all the leading judgments handed down by the ECtHR in the last 10 years were pending implementation as of August 2021, and from among the 47 countries that are signatories to the European Convention on Human Rights (ECHR), the percentage of non-implemented leading judgments from the last 10 years is higher only in Finland (83% – but here, there are only 11 leading judgments pending overall), Russia (90%) and Azerbaijan (96%).<sup>80</sup>

The execution of the judgments issued by the ECtHR is supervised by the Committee of Ministers (CM) of the Council of Europe as per Article 46(2) of the ECHR. For the purposes of the supervision of their execution by the CM, judgments are classified as “leading”, “repetitive” or “isolated”. As summarised by EIN: “The key to the classification is the identification of the ‘leading cases’. These are cases revealing new and often structural and/or systemic problems that require new general measures. Cases not identified as ‘leading’ are either ‘repetitive’, because they give rise to problems already identified in a leading case, or ‘isolated’ because the violations found appear closely linked to specific circumstances, and do not usually require any general measures.

For the purposes of the judgment execution process, repetitive cases are grouped with their leading case and appear on CM agendas (and in its database) under that name. The general measures set out in the action plan for the leading case are deemed to apply to repetitive cases in the group, so that when the leading case is considered by the CM to have been implemented, the associated repetitive cases are also considered to have been implemented. [...] Cases which raise more than one issue may qualify as a leading case on one issue, and a repetitive case on another.”<sup>81</sup> An isolated case will appear as leading case in the CM database, but with no repetitive cases under it.

<sup>80</sup> See: <https://www.einnetwork.org/countries-overview>.

<sup>81</sup> European Implementation Network, *Implementation of Judgments of the European Court of Human Rights. A Handbook for NGOs, injured parties and their legal advisers*, 2018 (enriched version of January 2020), <https://bit.ly/3HY19LP>, p. 5.

According to the Council of Europe's own database, as of 2 December 2021, there are 57 leading judgments pending execution in the case of Hungary, and there are an additional 249 repetitive cases pending execution. (As a comparison, overall, there are 1,300 leading pending judgments.<sup>82</sup>) The problem the former number represents becomes apparent when we look at the number of closed Hungarian cases: since 2011, the supervision of the execution was closed with regard to 31 leading judgments, i.e. in the past 10 years only 31 leading judgments were considered as executed by the CM. Thus, there are more leading cases pending execution than the total number of leading cases executed in the past 10 years. When it comes to repetitive cases, statistics show that in the past 10 years, altogether 748 repetitive cases were closed.

Analysing the data regarding all the pending cases would exceed the limits of the present paper, and therefore, in this chapter we will only focus on data related to 55 pending leading cases as of 2 December 2021,<sup>83</sup> based on the data available in the HUDOC-EXEC database<sup>84</sup> and our own assessment. (All the pending leading cases are listed in Annex 2 of this paper, with a short description of the case and information on various aspects of their implementation.) There are 209 repetitive cases associated with these leading cases.

**FIGURE 2 • Number of cases pending execution and the number of closed cases**



Source: Council of Europe, <https://www.coe.int/en/web/execution/hungary>, 2 December 2021

<sup>82</sup> See: <https://www.einnetwork.org/countries-overview>.

<sup>83</sup> In this chapter, we will operate with the number 55 instead of 57 when it comes to leading cases, because the Council of Europe's HUDOC-EXEC database lists the *Hagyó v. Hungary* and the *Varga and Others v. Hungary* cases as separate leading cases, while they in fact are repetitive cases for the *István Gábor Kovács v. Hungary* leading case, and the *Hagyó v. Hungary* case is also a repetitive case for the *X.Y. v. Hungary* leading case. Also note that the supervision of 9 out of the 55 cases were closed after the manuscript was closed.

<sup>84</sup> The full list of the cases examined in this chapter is available in the HUDOC-EXEC database here: <https://bit.ly/3s8mhAB>.

From the 55 leading cases, 12 are under “enhanced supervision”, most of them due to the fact that they concern a major structural and/or complex problem in the Hungarian legal system. (There is one case, the *Tonello v. Hungary* case within the *Shaw v. Hungary* group of cases, which was originally “examined under the enhanced supervision procedure in respect of the urgent individual measures required, as [...] the whereabouts of the abducted child remain unknown”.<sup>85</sup>) The percentage approximates the general proportions throughout the Council of Europe countries: according to EIN’s calculations, “of the approximately 1,250 leading cases pending in October 2019, roughly one quarter (some 300) were subject to enhanced supervision”.<sup>86</sup>

In January 2011, the CM introduced a new twin-track supervision system aimed at increasing the efficiency and transparency of the supervision process. “The system provides for classification of cases to be reviewed under ‘standard supervision’ and ‘enhanced supervision’. The difference between the two is as follows: for cases under enhanced supervision, the CM plays an active role in monitoring implementation, in particular, through reviewing cases at the quarterly CM Human Rights meetings [...]; on the other hand, for cases under standard supervision, the review function is largely carried out by the DEJ [the Department for the Execution of Judgments of the ECtHR<sup>87</sup>], the CM limiting its role to ensuring that adequate action plans/reports have been presented and verifying the adequacy of the measures announced and/or taken at the appropriate time.

The criteria for allocating new cases to the ‘enhanced supervision’ category are as follows:

- Cases requiring urgent individual measures;
- Pilot judgments;
- Judgments otherwise disclosing major structural and/or complex problems as identified by the ECtHR and/or by the CM;
- Interstate cases.

The classification decision is taken at the first presentation of the case to the CM on the basis of advice by the DEJ. The CM may also decide at any time during the supervision process to transfer a case from the standard to the enhanced procedure [...]. Similarly, a case under enhanced supervision may be transferred to standard supervision [...].”<sup>88</sup>

<sup>85</sup> See: <https://hudoc.exec.coe.int/eng?i=004-10523>.

<sup>86</sup> European Implementation Network, *Implementation of Judgments of the European Court of Human Rights. A Handbook for NGOs, injured parties and their legal advisers*, 2018 (enriched version of January 2020), <https://bit.ly/3HY19IP>, p. 6.

<sup>87</sup> “The DEJ (consisting of lawyers and other specialist advisers) works closely with the member states to determine the specific actions required to give full effect to the ECtHR’s judgments and provides advice to the CM in respect of implementation in individual cases. The DEJ forms a part of the Directorate General of Human Rights and Rule of Law (DG1).” (*Ibid.*, p. 3.)

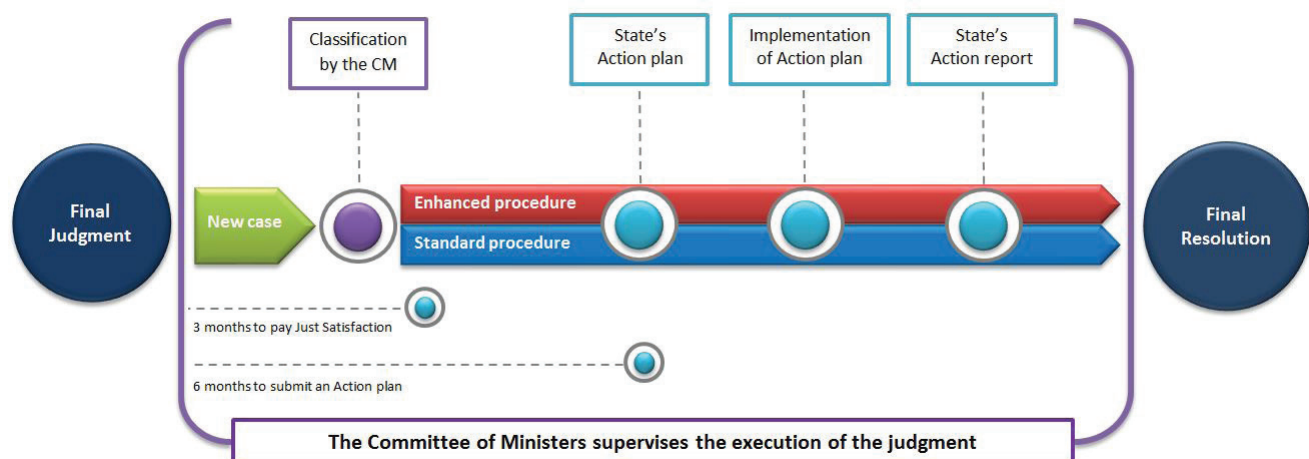
<sup>88</sup> European Implementation Network, *Implementation of Judgments of the European Court of Human Rights. A Handbook for NGOs, injured parties and their legal advisers*, 2018 (enriched version of January 2020), <https://bit.ly/3HY19IP>, p. 6.



Another illustrative piece of data is that according to EIN's calculations, the average time Hungarian leading cases have been pending was 6 years and 3 months in August 2021 – this equals the Council of Europe average.<sup>89</sup> Several Hungarian cases have been pending for a considerable time. For example, there are three leading cases where the judgment (or, when it is a group of cases, the first judgment) became final already in 2009.

At the time of writing, at least one action plan or action report was submitted in 50 of the 55 leading cases. From the five cases where the Government has not submitted an action plan or report so far, in four the Government missed the 6-month deadline for submitting an action plan. While in two of these cases the judgments became final in 2021, so the delay is not yet considerable, no action plan has been submitted in a case where the judgment became final in 2017 (*Szanyi v. Hungary*) and in a case where the judgment became final in 2013 (*Prizzia v. Hungary*). It is also characteristic that the Hungarian Government is generally late with submitting the first action plans, sometimes only with weeks or months, but sometimes with years: from the 55 leading cases, the first action plan/report was submitted on time in only six cases. Also, the Government seems to have a clear tendency to ask for case closure. In 35 of the 55 leading cases analysed, it only submitted an action report and no action plan, and the overall number of action reports (66) is also much higher than that of the submitted action plans (38 – with nine of those submitted in the *István Gábor Kovács v. Hungary* case and six of them submitted in the *Horváth and Kiss v. Hungary* case).

**FIGURE 3 • The Committee of Ministers' supervision of the execution**



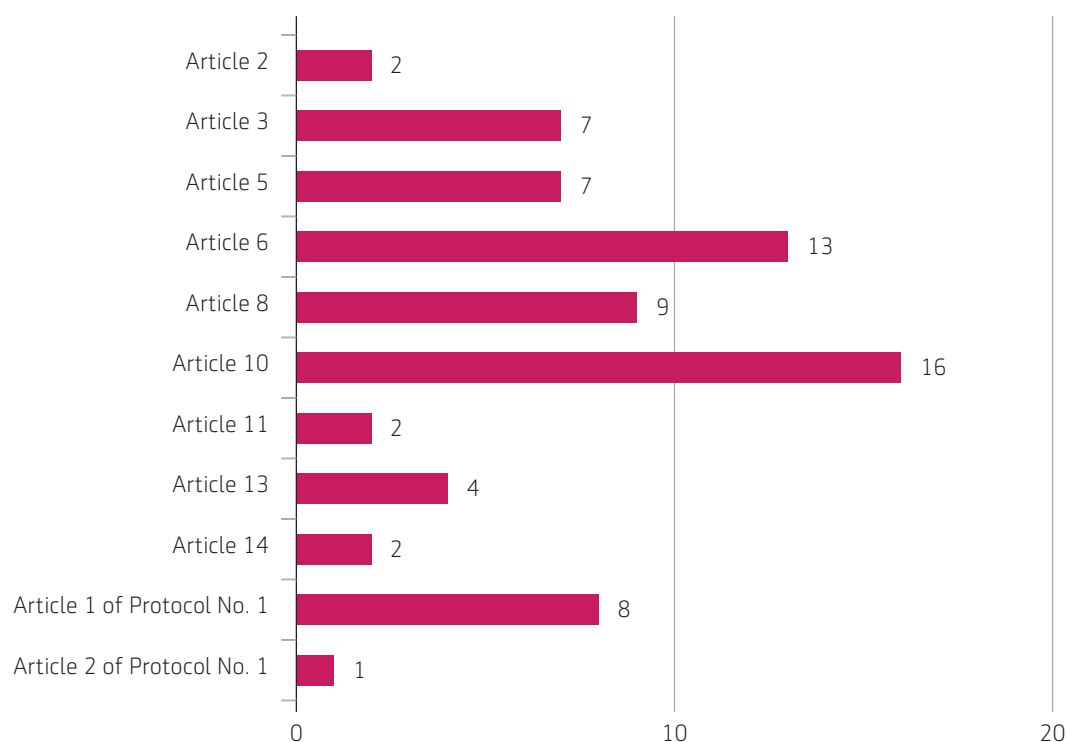
Source: Council of Europe, <https://www.coe.int/en/web/execution/the-supervision-process>

<sup>89</sup> See: <https://www.einnetwork.org/countries-overview> and <https://www.einnetwork.org/hungary-echr>.

Just satisfaction was paid in all of the cases where a just satisfaction was awarded to the applicants, and at the time of writing, information about the payment was awaited in relation to only two recent, 2021 judgments. (If we look not only at the leading but also at other cases, Hungary has paid 23,609,729 EUR to applicants since 2011 as just satisfaction.<sup>90</sup>)

Assessing from a quantitative perspective the rights violations these leading cases cover shows that the violation of the freedom of expression (Article 10 of the ECHR) and the right to a fair trial (Article 6 of the ECHR) were most frequently established in the judgments by the ECtHR that later on became leading cases. (When looking at the diagram below showing the exact numbers, it shall be kept in mind that in many cases, the ECtHR established the violation of more than one article of the ECHR in its judgment.)

**FIGURE 4 •** *Number of pending leading cases violating the various articles of the European Convention on Human Rights*



It is also interesting to examine the CM's activities in terms of these leading cases – while keeping in mind of course that a bulk of the supervision is carried out by the Department for the Execution of Judgments of the ECtHR, so a lack of visible activity by the CM does not mean in any way that the case is not supervised actively. Throughout the years, the CM issued one or more decisions in 11 out of the

<sup>90</sup> See: <https://www.coe.int/en/web/execution/the-supervision-process>.

55 leading cases. Nine of these cases are under enhanced supervision, but CM decisions were issued in two cases under standard supervision as well: in *Kaluczka v. Hungary*, which centres on domestic violence and the violation of the applicant's right to private life on account of the authorities' failure to fulfil their positive obligation to protect her from her violent former common-law partner, and in *R.R. and Others v. Hungary*,<sup>91</sup> in which the ECtHR established the violation of the right to life on account of the applicants' exclusion from the witness protection programme.

The CM has issued the most decisions (15) in the *Gazsó v. Hungary* case, which is a pilot judgment concerning the excessive length of proceedings, with over 100 repetitive cases. This is the only Hungarian case where the CM had to resort to issuing an interim resolution – three times already.

The CM may, under Rule 16 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements<sup>92</sup> (hereafter: CM Rules) adopt an interim resolution instead of a decision, e.g. to express concern and/or to make suggestions with respect to the execution. An interim resolution may be aimed at putting “increased pressure on a state to provide information on progress achieved”, and it is in general “a weightier procedural instrument than the decisions adopted routinely at the CM Human Rights meetings”.<sup>93</sup>

The data on the involvement of other national and international actors may also serve with some lessons. Since 2006, it is possible for NGOs to submit communications to the CM with regard to the execution of judgments under Rule 9(2) of the CM Rules. So far, NGOs have made use of that possibility and submitted communications in 12 of the leading cases pending execution (in eight cases under enhanced supervision, and in four cases under standard supervision). Altogether 37 communications have been submitted so far in these cases, but the number of communications per case varies widely: in some cases, only one communication has been submitted so far, while in the *István Gábor Kovács v. Hungary* group of cases (concerning prison overcrowding) 10 communications have been submitted to date. Only a handful of NGOs are active in this field: seven domestic NGOs<sup>94</sup> and five NGOs working regionally<sup>95</sup> have submitted communications individually or jointly.

<sup>91</sup> Application no. 19400/11, Judgment of 4 December 2012 – not to be confused with the other *R.R. and Others v. Hungary* case in which the judgment was handed down on 2 March 2021.

<sup>92</sup> Available at: <https://rm.coe.int/16806eebf0>.

<sup>93</sup> European Implementation Network, *Implementation of Judgments of the European Court of Human Rights. A Handbook for NGOs, injured parties and their legal advisers*, 2018 (enriched version of January 2020), <https://bit.ly/3HY19lP>, p. 12.

<sup>94</sup> Amnesty International Hungary, Chance for Children Foundation (CFCF), Eötvös Károly Institute (EKINT), Háttér Society, Hungarian Civil Liberties Union (HCLU), Hungarian Helsinki Committee (HHC), Working Group Against Hate Crimes

<sup>95</sup> AIRE Centre, Dutch Council for Refugees, European Council on Refugees and Exiles (ECRE), European Roma Rights Centre (ERRC), Roma Education Fund

Rule 9(1) of the CM Rules also allows for communications from applicants and their representatives, and not just with regard to payment of the just satisfaction, but also to the taking of individual measures. This possibility was resorted to in only four cases, and in one of those, the applicants were at the same time staff members of an NGO and submitted the communication also in that capacity, while in another case the attorney submitting the communication under Rule 9(1) was at the same time the co-chair and staff attorney of an NGO.

Analysing in detail whether more Rule 9(1) communications would be warranted in the individual cases exceeds the limits of this paper, but nevertheless, it can be concluded based on the above fact and the authors' own experience that there seems to be a rather low awareness among attorneys about the execution process. Similarly, the rather low number of NGOs involved in the supervision process signals that there is not enough awareness and willingness to engage among civil society actors either. While the root causes of this limited involvement may differ with regard to these two groups, the task is the same: the reasons behind this low involvement should be explored further, and involvement in the supervision process should be facilitated via awareness-raising activities, trainings, etc. Furthermore, in certain areas the engagement of specialized NGOs with the process should be further facilitated.

Finally, it has to be highlighted that even though Rule 9(2) of the CM Rules allows also national institutions for the promotion and protection of human rights to submit communications, Hungary's Ombudsperson (the Commissioner for Fundamental Rights) has not made use of this possibility so far in its capacity of Hungary's national human rights institution.

### 3.2. Examples of non-implementation and implementation

Naturally, it is not all about the numbers. The quantitative data presented above are definitely signalling trends and pointing towards problematic areas, but we have to look at the cases individually as well in order to get a more precise picture of the nature of the violations and of the general measures that should be taken by Hungary to prevent violations similar to those found by the ECtHR, "whether through changes of legislation, case law or through other kinds of measures".<sup>96</sup> To provide a rough overview in that regard, below, we briefly summarise the state of the execution of the general measures in the 12 leading cases under enhanced supervision (in the order of the ECHR articles violated). All of the cases indicate systemic or structural problems.

***Gubacsi v. Hungary***.<sup>97</sup> This group of cases concerns violations of the right to life and the prohibition of torture and inhuman or degrading treatment (Articles 2 and 3 of the ECHR) by police officers and/or the lack of adequate investigations in this respect. However, as also shown by the variety of legislative and practical issues raised in the CM's last decision from December 2021, Hungary has been failing to address systemic deficiencies with regard to preventing, investigating and sanctioning ill-treatment by

<sup>96</sup> See: <https://www.coe.int/en/web/execution/the-supervision-process>.

<sup>97</sup> Application no. 44686/07, Judgment of 28 June 2011

the police. It shall be noted that this case was originally under standard supervision, and was transferred to enhanced procedure by the CM due to the “complex and long-standing nature of the problems raised” in 2018, and in its December 2021 decision the CM warned that if no “tangible progress” is achieved soon, it will consider issuing an interim resolution in the case.

***István Gábor Kovács v. Hungary***.<sup>98</sup> This group of cases (which includes the pilot judgment issued in the *Varga and Others v. Hungary*<sup>99</sup> case in 2015) concerns the inhuman and/or degrading treatment of the applicants due to their poor conditions of detention, resulting mainly from a structural problem of overcrowding in Hungarian prisons (violations of Article 3), and lack of effective preventive and compensatory remedies in this respect (violations of Article 13 read in conjunction with Article 3). As a result of the pilot judgment, Hungary introduced a compensatory remedy and significantly reduced overcrowding by building new prisons. However, as also shown by the latest CM decision from 2021, there are outstanding issues e.g. around the underuse of alternative sanctions, visitations, and the practical implementation of the compensatory remedy scheme.<sup>100</sup>

***László Magyar v. Hungary***.<sup>101</sup> This group of cases concerns violations of the prohibition of torture and inhuman or degrading treatment or punishment on account of the applicants’ life sentences without eligibility for release on parole (“whole life sentences”) in combination with the lack of an adequate review mechanism of these sentences, in violation of Article 3. After the first judgment in the group was handed down, a mandatory clemency procedure was introduced, but this still does not comply with ECHR standards, as confirmed by the ECtHR in a 2016 judgment.<sup>102</sup>

***Ilias and Ahmed v. Hungary***.<sup>103</sup> This case concerns the authorities’ failure to comply with their procedural obligation under Article 3 to assess the risks of ill-treatment before removing the two asylum-seeking applicants to Serbia, including that there was an insufficient basis for the Government’s decision to establish a general presumption concerning Serbia as a “safe third country”. Hungary has so far failed to implement the judgment: as shown by the latest decision of the CM from December 2021, it has not taken any steps towards conducting the necessary reassessment of the legislative presumption of “safe third country” in respect of Serbia, and continued the practice of forced removals without orderly procedure.<sup>104</sup>

<sup>98</sup> Application no. 15707/10, Judgment of 17 January 2012

<sup>99</sup> Application no. 14097/12, Judgment of 10 March 2015

<sup>100</sup> For further information, see the Hungarian Helsinki Committee’s communications submitted to the CM throughout 2021 here: <https://helsinki.hu/en/update-by-the-hhc-on-the-execution-of-the-european-court-of-human-rights-judgment-in-the-varga-and-others-v-hungary-case/>.

<sup>101</sup> Application no. 73593/10, Judgment of 20 May 2014

<sup>102</sup> For further information, see the Hungarian Helsinki Committee’s communication submitted to the CM in 2016: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)646E](http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E).

<sup>103</sup> Application no. 47287/15, Judgment of 21 November 2019

<sup>104</sup> For more details, see the Hungarian Helsinki Committee’s communications submitted to the CM in 2021 here: <https://helsinki.hu/en/submission-by-the-hhc-on-the-execution-of-the-european-court-of-human-rights-judgment-in-the-ilias-and-ahmed-v-hungary-case/>.

***R.R. and Others v. Hungary.***<sup>105</sup> The ECtHR established the violation of Article 3, Article 5(1) and Article 5(4) of the ECHR in this case due to the ill-treatment of the applicants on account of the conditions of their detention in the “transit zone” on the Hungarian-Serbian border, and the unlawfulness of the detention and lack of judicial review in this respect. The judgment became final only in July 2021, no action plan has been submitted yet. In the meantime, the transit zones where the ill-treatment happened were closed, but the legal basis of their existence has not been removed.

***Gazsó v. Hungary.***<sup>106</sup> The CM has been supervising the execution of ECtHR judgments concerning the excessive length of judicial proceedings in Hungary since 2003.<sup>107</sup> In 2015, the ECtHR delivered a pilot judgment in the *Gazsó* case, and requested Hungary to introduce, by October 2016, an effective domestic remedy or combination of remedies capable of addressing the issue. It took 14 CM decisions and three interim resolutions for this to yield a partial, but important result: as of January 2022, a pecuniary satisfaction will be introduced for excessively long proceedings, but only in civil law cases.<sup>108</sup>

***Szabó and Vissy v. Hungary.***<sup>109</sup> This case concerns the violation of the applicants’ right to respect for private and family life and for correspondence (Article 8) on account of the Hungarian legislation on secret surveillance measures, which did not provide for safeguards sufficiently precise, effective and comprehensive on the ordering, execution and potential redressing of such measures. The general measures to implement the judgment have not been adopted to date.

***Rana v. Hungary.***<sup>110</sup> The case concerns the authorities’ refusal in 2016 to change the transgender refugee applicant’s name and sex marker from “female” to “male” due to a gap in the relevant legislation, which did not allow for the recognition of gender reassignment and access to the name-changing procedure for lawfully settled third country nationals (violation of Article 8). The individual measures adopted in the case “did not remedy the violation of the applicant’s rights, as the applicant still has to live with official documents that do not reflect his gender identity and appearance”, and “the Hungarian Government’s reasoning for delaying the adoption of general measures is unfounded”.<sup>111</sup> Furthermore, in 2020, the Parliament adopted a law that banned legal gender recognition entirely.<sup>112</sup>

<sup>105</sup> Application no. 36037/17, Judgment of 2 March 2021 – not to be confused with the other *R.R. and Others v. Hungary* case, in which the judgment was handed down on 4 December 2012.

<sup>106</sup> Application no. 48322/12, Judgment of 16 July 2015

<sup>107</sup> See the already closed *Tímár v. Hungary* (Application no. 36186/97, Judgment of 25 February 2003) case.

<sup>108</sup> The financial remedy system was introduced by Act XCIV of 2021.

<sup>109</sup> Application no. 37138/14, Judgment of 12 January 2016

<sup>110</sup> Application no. 40888/17, Judgment of 16 July 2020

<sup>111</sup> Rule 9(2) communication by the Háttér Society concerning the implementation of the *Rana v. Hungary* judgment, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)816E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)816E)

<sup>112</sup> See e.g.: <https://en.hatter.hu/news/bill-ban-lgr>.

**Baka v. Hungary:**<sup>113</sup> The ECtHR found in this judgment that the premature termination of the applicant's mandate as the President of the Supreme Court through *ad hominem* legislative measures was prompted by the views and criticisms that he had publicly expressed in his professional capacity about certain legislative steps threatening judicial independence. This violated not only Mr. Baka's right of access to a court (Article 6) and freedom of expression (Article 10), but exerted a chilling effect also on other judges. To date, the Hungarian authorities have not only failed to take any measures to implement the judgment, but have further deepened the chilling effect on the freedom of expression of judges, and have continued to undermine the independence of the judiciary in general.<sup>114</sup>

**Shaw v. Hungary:**<sup>115</sup> This group of cases concerns violations of the applicants' right to respect for their family life (Article 8) on account of the authorities' failure to effectively address the issues arising from their children's wrongful removals by the applicants' former spouses. This case was originally under enhanced supervision because in one of the cases in the group, *Tonello v. Hungary*, urgent individual measures have been required, as the whereabouts of the abducted child remain unknown. However, in 2020, the CM decided that the long-standing nature of the issues and the recurring patterns which led to the finding of violations, in combination with the lack of tangible results in *Tonello* indicated the existence of a complex problem, and so decided to transfer the *Shaw* group to the enhanced supervision procedure under that indicator as well. In its December 2021 decision, the CM further warned that if no tangible progress is achieved by December next year, it will consider issuing an interim resolution in the case.

**C.A. Zrt. and T.R. v. Hungary:**<sup>116</sup> The case concerns the violation of the applicants' property rights (Article 1 of Protocol No. 1) due to the enactment of a law which terminated *ipso iure* their usufruct rights over agricultural lands. The law was found to be in breach of Hungary's Fundamental Law as well by the Constitutional Court in 2015, which concluded that the failure to enact a compensatory scheme amounted to an unconstitutional omission. The Constitutional Court called on the legislator to put an end to that omission by 1 December 2015 at the latest. However, to date, the legislator has not addressed this omission.<sup>117</sup>

**Horváth and Kiss v. Hungary:**<sup>118</sup> In this judgment, the ECtHR established a violation of Article 2 of Protocol No. 1 (right to education) read in conjunction with Article 14 (prohibition of discrimination) due to the discriminatory misplacement and overrepresentation of Roma children in special schools for children with mental disabilities, due to their systematic misdiagnosis. As also shown by the latest

<sup>113</sup> Application no. 20261/12, Judgment of 23 June 2016

<sup>114</sup> For further information, see the joint communication submitted by Amnesty International Hungary and the Hungarian Helsinki Committee to the CM in 2021 here: <https://helsinki.hu/en/hungary-has-not-lifted-a-hand-to-implement-the-baka-v-hungary-judgment/>.

<sup>115</sup> Application no. 6457/09, Judgment of 26 July 2011

<sup>116</sup> Application no. 11599/14, Judgment of 1 September 2020

<sup>117</sup> See the summary of Decision 25/2015. (VII. 21.) AB of the Constitutional Court in Chapter 2.1. of the present paper.

<sup>118</sup> Application no. 11146/11, Judgment 29 January 2013



CM decision in the case from 2021, although some steps have been taken, the case is far from being implemented when it comes to the general measures.

Although the above list of leading cases under enhanced supervision naturally does not provide a full picture of the status of implementation of judgments by Hungary, it does indicate that in the past years, the Hungarian authorities have been more willing to take meaningful legislative steps at the end in cases where the persisting nature of the violations resulted in a high number of applications and in high amounts to be paid as just satisfactions, namely in the *Gazsó* and the *István Gábor Kovács* groups of cases. For example, Hungary had to pay altogether 1,868,000,000 HUF (approx. 5,068,009 EUR) in just satisfaction between November 1992 and May 2018 to applicants whose rights have been violated due to the excessive length of proceedings.<sup>119</sup> With regard to prison overcrowding, it added to the financial pressure on Hungary that in the pilot judgment *Varga and Others v. Hungary*, the ECtHR decided not to adjourn the examination of similar cases pending the implementation of the pilot judgment, but to continue processing all conditions of detention cases in the usual manner, in order remind Hungary on a regular basis of its obligation resulting from the pilot judgment.<sup>120</sup>

It has to be emphasized that in the authors' view, there are pending cases under standard supervision which also concern systemic or structural issues. Examples include the *Karácsony and Others v. Hungary* group of cases on the violation of the freedom of expression of opposition Members of the Parliament. Here, execution is insufficient, because despite some recently introduced procedural safeguards, parliamentary disciplinary proceedings can be and still are systematically used to significantly restrict the freedom of expression of opposition MPs in an arbitrary, discriminatory manner, and the severity of the sanctions against MPs has escalated significantly.<sup>121</sup> Another example is the *Patyi and Others v. Hungary* group of cases, centring around the police unlawfully preventing demonstrations by applying unjustified traffic bans or introducing security measures, in violation of Article 11 of the ECHR. As the analysis of the law and the practice shows, to this date, Hungary has failed to resolve the structural deficiencies that have led to the violations.<sup>122</sup>

Another issue to be raised is how interim measures issued by the ECtHR are executed by Hungary, and there is a negative example to be quoted in that regard as well. Following legal changes that entered into force in March 2017 prescribing the automatic, indefinite *de facto* detention of all asylum-seekers (with the exception of unaccompanied children under the age of 14) in transit zones, the Hungarian Helsinki Committee requested nine interim measures from the ECtHR in eight cases that

<sup>119</sup> See: <https://arsboni.hu/strasbourgi-karterites-helyett-magyar-elegtetel/>.

<sup>120</sup> *Varga and Others v. Hungary* (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, Judgment of 10 March 2015), § 116.

<sup>121</sup> For further information, see the joint communication submitted by the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee in 2021 here: [https://helsinki.hu/en/wp-content/uploads/sites/2/2021/11/HCLU\\_HHC\\_Karacsony\\_v\\_Hungary\\_Rule\\_9\\_communication\\_12112021.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2021/11/HCLU_HHC_Karacsony_v_Hungary_Rule_9_communication_12112021.pdf).

<sup>122</sup> For further information, see the joint communication submitted by the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee in 2020 here: <https://helsinki.hu/en/the-hungarian-assembly-law-needs-stronger-guarantees/>.



concerned extremely vulnerable applicants. All of these requests were granted by the ECtHR, calling on the Hungarian Government to ensure that the environment where the applicants are placed complies with the requirements of Article 3 of the ECHR. In none of these cases did the authorities alter the environment where the applicants were placed, let alone transfer the applicants to other facilities. The ECtHR delivered its judgment in the first such case in 2021 and found that the applicants' placement in the transit zone was in breach of Article 3.<sup>123</sup>

By virtue of Rule 39 of the Rules of the Court,<sup>124</sup> the ECtHR “may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings”. Interim measures are binding on the states. Interim measures “are only applied in exceptional cases”, and the ECtHR “will only issue an interim measure against a Member State where, having reviewed all the relevant information, it considers that the applicant faces a real risk of serious, irreversible harm if the measure is not applied”.<sup>125</sup>

The bleak picture presented above is somewhat balanced by past examples where the implementation of ECtHR judgments brought about structural change. However, all of these examples are at least 10 years old.

**Csüllög v. Hungary.**<sup>126</sup> The ECtHR established in the case that Hungary had violated the prohibition on inhuman and degrading treatment (Article 3) because of the cumulative effects on the applicant of being detained in a special security unit, with the Hungarian law making it possible to place a detainee into a special security cell or unit in an arbitrary manner, i.e. without giving any reasons for the measure and not ensuring the right to appeal (violation of Article 3 and of Article 13 read in conjunction with Article 3). As a result, in 2011 the Parliament adopted an amendment<sup>127</sup> ensuring the right to appeal against decisions on placement to a special security cell or unit and setting out the obligation to provide reasons for the decision. (However, the Parliament only remedied the problems raised under Article 13 of the ECHR, thus no steps have been taken to improve the material conditions and security practices that also played an important role in the ECtHR's decision that a violation under Article 3 occurred in the said case.)

<sup>123</sup> See leading judgment *R.R. and Others v. Hungary* (Application no. 36037/17, Judgment of 2 March 2021), §§ 51–65.

<sup>124</sup> Available at: [https://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](https://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>125</sup> See: Rules of Court – Practice directions: Requests for interim measures, [https://www.echr.coe.int/Documents/PD\\_interim\\_measures\\_ENG.pdf](https://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf), p. 1.

<sup>126</sup> Application no. 30042/08, Judgment of 7 June 2011

<sup>127</sup> Act CL of 2011 on the Amendment of Certain Acts of Parliament Related to Criminal Law

***Ternovszky v. Hungary***.<sup>128</sup> The ECtHR found a violation of Article 8 (right to respect for private and family life) in the case of an applicant who wished to give birth at home instead of delivering her baby in a hospital, but the Hungarian law in force at the time prevented health professionals from assisting home births, and the lack of comprehensive legislation and the prosecutions taken against health professionals dissuaded them from assisting those who wished to give birth at home. After the judgment, in 2011, the Government adopted a decree<sup>129</sup> on the professional rules, conditions and grounds for refusal for giving birth outside a health institution, thus filling the legislative gap. (It has to be noted though that the legislation was criticised for the lack of a transitory period and for conceptual and practical shortcomings.)

***Daróczy v. Hungary***.<sup>130</sup> A woman filed an application with the ECtHR because it turned out after the death of her husband that under the relevant legal provisions, she could not have used her married name in the format she had used it for more than 50 years. Accordingly, her name was changed by the authorities after her husband's death, and there was no legal possibility to change it back to the "original". The ECtHR concluded that this amounted to a violation of Article 8. After the decision was publicised, it turned out that there are further persons in the same situation, and this led to amending the law<sup>131</sup> in a way that spouses in the same situation may get back their "old" names, used for years or even decades. The reasoning of the amendment cited the decision of the ECtHR almost word by word.

### 3.3. Public statements about the execution of European Court of Human Rights judgments

In light of the above track-record, it is rather controversial when Government representatives are making statements such as that Hungary is an "active stakeholder in the process aimed at improving the execution of judgments" by the ECtHR, and that complying with criteria set by the ECtHR is an "important aspect in the legislative process", as stated by the Minister of Justice in November 2021 at a conference. It is important to note the implicit criticism expressed by the Minister at the same event: she also stated that it is an important precondition of executing the ECtHR judgments that they are of "adequate quality", are clear and consistent, and do not exceed the obligations flowing from the international treaties signed by the state.<sup>132</sup> Earlier this year, on the occasion of Hungary taking over the chairmanship of the CM, the Minister of Justice stated that Hungary executes the ECtHR's judgments,

<sup>128</sup> Application no. 67545/09, Judgment of 14 December 2010

<sup>129</sup> Decree 35/2011. (III. 21.) on the Professional Rules, Conditions and Grounds for Refusal for Giving Birth Outside a Health Institution

<sup>130</sup> Application no. 44378/05, Judgment of 1 July 2008

<sup>131</sup> Law-Decree 17 of 1982 on Registers, Marriage Procedure and Bearing a Name, amended by Act XXI of 2009

<sup>132</sup> <https://kormany.hu/hirek/varga-judit-a-hazai-jogalkalmazok-megfeleloen-tudjak-merlegelni-a-strasbourggi-szem-pontrendszer>

but added that she deems it important for the ECtHR's procedures to only cover the facts related to the rights enshrined in the ECHR and that they are free from any kind of influence.<sup>133</sup>

Beyond such general, slightly veiled critical statements, the ECtHR and its judgments have also been criticized publicly many times by government and governing majority representatives in the domestic arena, implicitly signalling the lack of willingness to execute the judgments as well. In a few instances, execution was covered by these statements more explicitly, as demonstrated by the examples below.

One of the cases that generated strong public statements by governing majority representatives in terms of its execution was the *Fratanoló v. Hungary*<sup>134</sup> case from 2011, in which the ECtHR concluded that the automatic criminal sanctioning by the Hungarian law of using (e.g. wearing) a five-point red star was in breach of Article 10 of the ECHR. As an initial reaction to the decision, László Kövér, the then (and current) Speaker of the Parliament stated in an interview that “a few idiots in Strasbourg, who have no idea about what has happened in this country for 50 years [...] think that it is a part of the freedoms to demonstrate [wearing] a red star”.<sup>135</sup> As an official reaction, upon the initiative of the Minister of Justice and Public Administration and Deputy Prime Minister, the Hungarian Parliament adopted Parliamentary Resolution 58/2012. (VII. 10.) OGY in July 2012, which stated that the Parliament “does not agree” with the judgment in the *Fratanoló* case and refuses to amend the criticised provisions of the Criminal Code. (The originally proposed text stated that the Parliament “does not agree with executing” the judgment.) Furthermore, the resolution set out that just satisfaction should be paid from the budgetary support of all the parties in the future in all cases where Hungary is condemned for sanctioning the use of totalitarian symbols. Parliamentary resolutions are not legally binding but carry strong political implications, which is also shown by the fact that the new Criminal Code of 2012, adopted after the *Fratanoló* judgment was handed down, continues to provide for the sanctioning of the use of totalitarian symbols, including the five-pointed red star (but it has been added that displaying these is a criminal offence only when done in a manner capable of disturbing public peace, thus it is not punishable without taking into account the context any more).<sup>136</sup>

In 2015, the *László Magyar v. Hungary* case prompted revealing statements by government representatives as well. As explained above, after the judgment in the case, Hungary introduced a so-called “mandatory clemency procedure” for whole lifers, providing for a discretionary pardon decision by the President of the Republic after 40 years of detention for the first time. This new mechanism does not only continue to fall short of ECHR standards, but it was soon made clear by a government representative that it is considered a mere façade: at a press conference in July 2015, held on whole

<sup>133</sup> <https://kormany.hu/hirek/varga-judit-magyarország-számára-kiemelten-fontos-a-nemzetek-hagyományainak-tiszteletben-tartása>

<sup>134</sup> Application no. 29459/10, Judgment of 3 November 2011

<sup>135</sup> See for example: [http://index.hu/belfold/2011/11/04/kover\\_nehany\\_idiota\\_dontott\\_strasbourgban\\_a\\_voros\\_csillag\\_engedelyezesrol/](http://index.hu/belfold/2011/11/04/kover_nehany_idiota_dontott_strasbourgban_a_voros_csillag_engedelyezesrol/).

<sup>136</sup> Act C of 2012 on the Criminal Code, Article 335

life sentence (including the new clemency opportunity), one of the state secretaries of the Ministry of Justice said that the Government “has trust” in the independent institutions, in the President of the Republic and the judiciary, and trusts that although they would have the possibility to do so, “they will never release murderers who killed children, old and helpless persons, innocent victims”.<sup>137</sup>

The chamber judgment in the *Ilias and Ahmed v. Hungary* case generated particularly heavy backlash from the government and the governing majority, tying into the governmental attacks against NGOs and the hate campaign against “migrants” and Hungarian-born American financier George Soros who is accused by Hungarian government propaganda of trying to undermine European and Christian values by facilitating mass immigration from primarily Muslim countries. In addition to the numerous statements attacking the ECtHR in general over the judgment, such as the one by the head of the Prime Minister’s Office on the ECtHR being a pressure tool which intends to make Hungary give up the protection of its borders and to let immigrants in,<sup>138</sup> or the Prime Minister talking about “migrant business” in relation to the ECtHR judgment,<sup>139</sup> some of the ensuing public statements also explicitly addressed the actual execution of the judgment. For example, on 31 March 2017, the parliamentary group of the governing party Fidesz announced that it calls upon the Government to deny paying the Hungarian Helsinki Committee the legal costs and to the victims the just satisfaction awarded in the case.<sup>140</sup>

A March 2020 law that suspended the execution of final and binding court decisions granting compensation to detainees for inhuman and degrading prison conditions<sup>141</sup> was also preceded by public statements that concerned the execution of ECtHR judgments. Although the domestic compensation system was created by the current governing parties as a result of the *Varga and Others*<sup>142</sup> pilot judgment requiring Hungary to remedy prison overcrowding and inhuman detention conditions, the Prime Minister for example interpreted the application of it as “prison business”, an “abuse of rights”, stated that he had instructed the Ministry of Justice “not to pay a penny” to inmates on this basis, and criticized “European” courts and judges.<sup>143</sup>

<sup>137</sup> See: [http://hvg.hu/itthon/20150719\\_Repassy\\_a\\_kormany\\_kitart\\_a\\_tenyleges\\_elet](http://hvg.hu/itthon/20150719_Repassy_a_kormany_kitart_a_tenyleges_elet).

<sup>138</sup> See e.g.: [http://hvg.hu/itthon/20170330\\_Kormanyinfo\\_CEUtol\\_Orbanig\\_percrol\\_percre](http://hvg.hu/itthon/20170330_Kormanyinfo_CEUtol_Orbanig_percrol_percre), <https://2015-2019.kormany.hu/hu/miniszterelnokseg/video/kormanyinfo-83-komoly-nyomasgyakorlasra-szomit-a-kormany>.

<sup>139</sup> The full interview of 31 March 2017 is available here in English: <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-kossuth-radios-programme-180-minutes/>.

<sup>140</sup> See e.g.: <https://444.hu/2017/03/31/a-fidesz-felszolitotta-a-kormanyt-hogy-ne-fizessek-ki-a-helsinki-bizottsagnak-amit-az-europai-birosag-megitelt-a-szamukra>.

<sup>141</sup> Act IV of 2020 on Urgent Actions to Stop the Abuse of Compensation Claims Due to Prison Overcrowding. For more information, see e.g.: Csaba Györy, *Fighting Prison Overcrowding with Penal Populism – First Victim: the Rule of Law. New Hungarian Law “Suspends” the Execution of Final Court Rulings*, 12 March 2020, <https://verfassungsblog.de/fighting-prison-overcrowding-with-penal-populism-first-victim-the-rule-of-law/>.

<sup>142</sup> Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, Judgment of 10 March 2015

<sup>143</sup> For more details about the related public statements, see the Hungarian Helsinki Committee’s Rule 9(2) communication of 20 January 2020 here: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)76E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)76E), pp. 3–4.

Another example for such public statements is an interview given by the State Secretary of the Ministry of Justice in September 2020 upon the Rule 9(2) communication two NGOs submitted in the *Patyi and Others v. Hungary* group of cases concerning freedom of assembly. In the interview, the State Secretary accused the ECtHR and the Court of Justice of the European Union of being biased, and stated that “it is as if NGOs were moving the world out there, so it is questionable what decisions will be delivered. In any case, experience in recent years has shown that objectivity is not the main criterion in either Strasbourg or Brussels.”<sup>144</sup>

### 3.4. Hungary’s approach towards execution: lack of transparency and inclusivity

In the Ministry of Justice, the tasks related to representing the Hungarian Government in the procedures before the ECtHR are carried out by the Human Rights Department.<sup>145</sup> This covers the representation of the Government in the supervision process of the execution of judgments as well; there is no separate department whose task would be to coordinate the tasks flowing from the implementation of ECtHR judgments. According to the information provided by the Ministry of Justice on 2 December 2021, there are only four staff members in the Ministry who work on implementation issues, and these are the same staff members who represent Hungary in the procedures before the ECtHR.<sup>146</sup> This number is very low, further capacities should be added in the authors’ view to be able to make implementation meaningful and efficient.

According to the information provided by the Ministry of Justice, no separate procedure was established for preparing action plans and action reports; the Ministry of Justice involves other ministries and state authorities into preparing these documents, presumably at its discretion. Thus, there is no separate national structure whose explicit aim would be to bring together various actors beyond the Ministry of Justice to discuss and coordinate the general measures necessary to implement the judgments.

Based on a Parliamentary Resolution adopted in 2007,<sup>147</sup> the Minister of Justice shall inform the Parliament’s respective committee once every year about the implementation of the ECtHR judgments by national authorities and about the activities of the Office of the Agent for the Government. In principle, this should be considered a good practice, but the records of the relevant committee meetings

<sup>144</sup> See: <https://www.magyarhirlap.hu/belfold/20200907-erosen-kormanyfuggo-alcivil-erzekenyseg>.

<sup>145</sup> Government Resolution 2004/1994. (I. 21.) on Actions Necessary in Relation to the Coming Into Force of the European Convention on Human Rights; Organisational and Operational Rules of the Ministry of Justice (available at: <https://2015-2019.kormany.hu/download/4/59/d1000/IMSZMSZ.pdf>), Annex 2, Section 1.3.0.2., Point 2(a)

<sup>146</sup> Response of the Ministry of Justice to the Hungarian Helsinki Committee’s FOI request, 2 December 2021, V/203/3/2021.

<sup>147</sup> Parliamentary Resolution 23/2007. (III. 20.) OGY on the Implementation of the Judgments of the European Court of Human Rights and the Activities of the Office of the Agent for the Government.

(currently of the Justice Committee) from the last two parliamentary cycle (2014–2018<sup>148</sup> and 2018–2022<sup>149</sup>) show that the practice leaves much to be desired. The reports put together for the MPs by the Ministry of Justice ahead of these meetings are not made available to the public, and it varies greatly how much emphasis is put on execution issues in the Ministry's oral presentation: for example, in 2019 and 2020, the Ministry's initial presentation at the committee meeting did not cover execution issues at all. As compared to the previous parliamentary cycle, the respective meetings seem to be shorter in the current cycle (based on the page numbers of the records). Also, opposition MPs are less and less active: while up until 2018, there were always multiple opposition MPs who asked or commented on issues related to the execution of ECtHR judgments at the meetings, only one MP asked related questions in 2019, the issue of execution did not come up in the MPs' questions or comments in 2020, and in 2021, not one question or comment was put forward by (opposition or governing party) MPs at the respective meeting regarding the topic. These trends indicate the lack and the deterioration of the meaningfulness of parliamentary oversight.

Based on the information above, it would be necessary to rethink and reorganise national structures tasked with implementing the judgments and with supervising that process. In addition, transparency and inclusivity throughout the implementation process should be ensured. These steps would be beneficial because they would enhance the efficiency of planning and implementation: "[w]hen relevant government actors [...] are joined at the negotiation table by expertise from civil society, academia and professional groups, this can improve the quality of action plans, as well as promote government action to advance the reform process."<sup>150</sup> One example for such an efficient national structure is the Czech Expert Committee for the execution of judgments of the ECtHR and the implementation of the ECHR, "which was set up by the Czech Government Agent in 2015. The Committee includes representatives from civil society and academia, as well as ministries, Parliament, the Ombudsman's Office, the Bar Association and the highest judicial authorities. Since the Committee has been set up, the supervision of several [ECtHR] judgments has been ended. [...] Currently, there are only 2 leading judgments against the Czech Republic still pending implementation – the country has one of the best implementation records in Europe."<sup>151</sup>

<sup>148</sup> The meetings' records are available here:

2017: <https://www.parlament.hu/documents/static/biz40/bizjv40/IUB/1703281.pdf> (pp. 7–23),  
 2016: <https://www.parlament.hu/documents/static/biz40/bizjv40/IUB/1603221.pdf> (pp. 8–23),  
 2015: <https://www.parlament.hu/documents/static/biz40/bizjv40/IUB/1503301.pdf> (pp. 19–30, covering both 2013 and 2014).

<sup>149</sup> The meetings' records are available here:

2021: <https://www.parlament.hu/documents/static/biz41/bizjv41/IUB/2109131.pdf> (pp. 5–6),  
 2020: <https://www.parlament.hu/documents/static/biz41/bizjv41/IUB/2005041.pdf> (pp. 5–8),  
 2019: <https://www.parlament.hu/documents/static/biz41/bizjv41/IUB/1907021.pdf> (pp. 6–9),  
 2018: <https://www.parlament.hu/documents/static/biz41/bizjv41/IUB/1807041.pdf> (pp. 12–22).

<sup>150</sup> European Implementation Network, *Holding Governments to Account for their Record in Implementing Judgments of the European Court of Human Rights*, 2021, <https://bit.ly/3o3k1rz>, p. 12.

<sup>151</sup> *Ibid.*

# 4.

Deficiencies regarding  
the implementation of  
judgments by  
the Court of Justice  
of the European Union





## 4. Deficiencies regarding the implementation of judgments by the Court of Justice of the European Union

Up until the end of November 2021, altogether 14 judgments have been handed down by the Court of Justice of the European Union (CJEU) in relation to Hungary. Blatant disrespect of these judgments has been not characteristic of Hungary for years, but there were instances when delayed execution meant that the CJEU's judgment and the ensuing steps could not remedy any more the damage done. However, more recently, severe problems have emerged with regard to the execution of CJEU judgments by Hungary, leading up to the point where the European Commission referred Hungary to the CJEU over its failure to comply with a CJEU judgment under Article 260 of the Treaty on the Functioning of the European Union (TFEU) – see more on that below. In this chapter, we present in more detail three judgments the (non-)execution of which demonstrate a variety of methods the Hungarian government has been using to subdue the effect of CJEU judgments on the Hungarian legal environment.

### 4.1. The forced early retirement of judges

In 2012, as one of the first steps aimed at undermining the independence of the judiciary, new laws lowered the mandatory retirement age of judges from 70 to 62, affecting 229 judges who had to retire as of 30 June 2012.<sup>152</sup> In November 2012, the CJEU concluded in Case C-286/12 that by adopting a national scheme requiring compulsory retirement of judges (and prosecutors and notaries) when they reach the age of 62 – which gives rise to a difference in treatment on grounds of age which is not proportionate as regards the objectives pursued – Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

In response to the judgment declaring that the Hungarian law had violated EU norms on equal treatment in employment, the Parliament passed Act XX of 2013,<sup>153</sup> which set out, among others, that mandatory retirement age will be reduced gradually, and which allowed the judges already forced to retire to request their reinstatement. However, the judges could only reclaim their judicial administrative leadership positions if those had not been filled in the meantime. (At this point in time only few vacant positions may have been left, as at the time of adopting Act XX of 2013 almost a year had

<sup>152</sup> Source: <https://web.archive.org/web/20130728050053/http://birosag.hu/media/aktualis/nyilatkozatot-tettek-2012-ben-felmentett-birak>.

<sup>153</sup> Act XX of 2013 on Legal Amendments Concerning the Upper Age Limit to be Applied in Certain Justice-Related Legal Relationships



passed since the first wave of judges has been dismissed.) Out of the 229 judges who were unlawfully dismissed, 92 were judicial leaders. Of these, 55 were so-called chamber presidents, 17 of whom chose to return, and so were reinstated to their former positions because in their case the law allowed them to do so. Out of the 37 judges who had “real” administrative leadership positions earlier, eventually only four were reinstated. Thus, as an ultimate result of the law that was found to be in breach of the EU non-discrimination acquis, close to 90% of the most experienced judicial administrative leaders over the age of 62 were removed from the system.<sup>154</sup>

Furthermore, Act XX of 2013 made it a general rule that if a judicial leader is dismissed unlawfully, and their reinstatement is subsequently ordered by the court deciding on the unlawfulness of the dismissal, they can only be reinstated into their leadership position if that has not been filled by someone else in the meantime. This is an important loophole in the system, as it makes it possible to replace court leaders at the price of the state only having to pay compensation, and even that at a later stage.

Thus, the CJEU’s judgment was formally executed, but in a way that did not remedy the totality of the violation, and the systemic effect of the violation remained.

## 4.2. Delayed abolition of the Lex NGO

On 18 June 2020, the CJEU issued a judgment in Case C78/18, in the infringement procedure launched about Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (hereinafter: Lex NGO). The CJEU found that by adopting the provisions of the Lex NGO, “which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union”. Thus, the CJEU confirmed that the Lex NGO amounted to unjustified interference with the respect for private life, protection of personal data and freedom of association. The CJEU also held that the restrictive measures introduced by Hungary were “likely to create a general climate of mistrust and stigmatisation of the associations and foundations concerned in Hungary”.

After the judgment, the Minister of Justice stated<sup>155</sup> that the Lex NGO’s objective was to ensure the transparency of NGOs, and the CJEU’s decision “has confirmed the legitimacy of that objective”. The Minister also stated that “[t]he government’s position remains that the obligations of registration

<sup>154</sup> Sources: National Judicial Office, 8 May 2013, <https://web.archive.org/web/20130728050053/http://birosag.hu/media/aktualis/nyilatkozatot-tettek-2012-ben-felmentett-birak>; response nr. 14.026-/2013.OBH of the National Judicial Office of 5 December 2013 to the Hungarian Helsinki Committee’s FOI request.

<sup>155</sup> See: <https://2015-2019.kormany.hu/en/ministry-of-justice/news/we-are-committed-to-transparency-of-non-governmental-organisations>.

and publication required under the Hungarian legislation have not made the funding or operation of organisations any more cumbersome”, and that the CJEU’s decision “does not cite a single specific item of data or evidence that would prove the contrary”. In a radio interview<sup>156</sup> on 19 June 2020, the Prime Minister said in relation to the judgment that there was “liberal imperialism” in Western Europe, international courts “are often undoubtedly part of this network”, and that “after seeing the identities of the Hungarians who are also involved in such international rulings, especially those on human rights issues, we can very easily find a link with Soros’s international network”. The Prime Minister stated that the CJEU “didn’t dare to say that the transparency of NGOs isn’t a high priority; they simply said that fewer restrictions should be placed on them when ensuring this transparency. [...] This can be done. So it won’t be difficult to comply with this judgment. [...] [E]very Hungarian person will know about every forint that has come here from abroad and has been sent here for political purposes [...]”.

However, the Lex NGO remained in effect for a considerable time after the judgment was handed down, and it was even applied to the detriment of NGOs. In August 2020, a government-established public foundation rejected an NGO’s EU grant application over non-compliance with the Lex NGO.<sup>157</sup> What is more, in September, signing a statement that the applicant complies with the Lex NGO became an expressly stipulated precondition of applying to the foundation, and they removed this requirement only in February 2021.<sup>158</sup> When asked about this, the Government stated that it approved of the application of the Lex NGO, even if it was found to be in breach of EU law, since as long as it was not amended it remained in force and to be applicable in Hungary.<sup>159</sup> On 18 January 2021, the EC announced that it was sending a letter of formal notice to Hungary for failing to comply with the CJEU’s ruling.<sup>160</sup>

In April 2021, the governing majority finally repealed the Lex NGO, thereby complying with the judgment – with a 10-month delay. NGOs welcomed the long overdue step, but also warned that repealing the Lex NGO will not be enough, a shift is needed in the Government’s attitude towards civil society.<sup>161</sup> It was also raised that the new rules<sup>162</sup> introduced by the Government instead of the Lex NGO, including the placement of NGOs under the scrutiny of the State Audit Office, still give rise to concerns.

<sup>156</sup> For a full text of the interview in English, see: <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-19/>.

<sup>157</sup> See e.g.: <https://autocracyanalyst.net/hungarian-ngo-foreign-agent-law/>, and all related correspondence between the affected organisation, the public foundation, and the European Commission at: <https://www.emberseg.hu/en/advocacy-issues/>.

<sup>158</sup> See the dedicated website of the public foundation with the list of required documents : <https://bit.ly/3m8XyYZ>, and the information on removing this requirement as shared by an affected NGO: <https://www.emberseg.hu/2021/02/24/mar-nem-feltetele-az-erasmus-palyazatoknak-a-jogserto-nyilatkozat/>.

<sup>159</sup> See the statement of the Ministry in charge of supervising the public foundation: [https://nepszava.hu/3097050\\_lex-soros-a-kormany-tesz-a-tiltasra](https://nepszava.hu/3097050_lex-soros-a-kormany-tesz-a-tiltasra).

<sup>160</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_21\\_441](https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441).

<sup>161</sup> See e.g.: <https://helsinki.hu/en/repealing-the-lex-ngo-important-step-but-more-is-needed/>.

<sup>162</sup> Act XLIX of 2021 on the Transparency of Civil Society Organisations Carrying out Activities Suitable to Influence Public Life and the Amendment of Certain Acts of Parliament Related to That

Not long afterwards, in June 2021, the Government issued a decree<sup>163</sup> prescribing that NGOs have to publish the names of all of their individual supporters, no matter how small the donated amount is. The decree, which was criticized publicly by several NGOs,<sup>164</sup> went against the above-mentioned judgment of the CJEU. In the end, this decree turned out to be short-lived, and was abolished by the Government in July.<sup>165</sup>

In sum, the CJEU judgment was executed, but with considerable delay, and pressure points embedded in the law remained that can be used against certain NGOs in an arbitrary manner. A peculiarity of the case is that the impugned legislation was only applied in practice by a government agency after the CJEU found it to be in breach of EU law. Also, even though it is not directly connected to the execution of the judgment of course, it has to be emphasized that verbal attacks by government and governing party representatives against human rights NGOs continue.

### 4.3. Push-backs continue despite CJEU judgment

On 17 December 2020, the CJEU delivered its judgment in the case C-808/18, that, among others, found that the Hungarian legislation (and practice) regarding push-backs violate the EU's Return Directive and the Charter of Fundamental Rights thus breaching EU law.<sup>166</sup> However, push-backs (collective expulsions) have continued to take place even after the judgment was delivered. Since the legalisation of collective expulsions in July 2016, up until 30 November 2021, 119,478 such measures have been carried out by law enforcement agencies, and 64,635 since the judgment was delivered.<sup>167</sup>

Due to Hungary's non-compliance with the judgment, the EU's Border and Coast Guard Agency, Frontex, moved to suspend its operations in Hungary in January 2021, the first time in the Agency's history.<sup>168</sup> Also, on 9 June 2021, the European Commission sent a letter of formal notice to Hungary for failing to comply with the CJEU judgment.<sup>169</sup> Finally, on 12 November 2021, the European Commission has decided to refer Hungary to the CJEU due to the continued non-compliance with the CJEU's judgment, and requested that the CJEU impose financial sanctions on Hungary for its failure to comply with the CJEU ruling in the form of a lump sum and a daily penalty payment.<sup>170</sup>

<sup>163</sup> Government Decree 379/2021. (VI. 30.), unofficial English translation: [https://helsinki.hu/en/wp-content/uploads/sites/2/2021/07/Gov\\_Decree\\_379\\_2021\\_and\\_related\\_provisions.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2021/07/Gov_Decree_379_2021_and_related_provisions.pdf)

<sup>164</sup> See e.g.: <https://helsinki.hu/miert-akarja-korlatolni-az-allam-hogy-mindenki-a-maga-modjan-aldozza-sajat-penzet-a-kozjora/>.

<sup>165</sup> Via Government Decree 437/2021. (VII. 16.).

<sup>166</sup> See the Hungarian Helsinki Committee's summary of the judgment: <https://www.helsinki.hu/en/hungarys-legalisation-of-push-backs-in-breach-of-eu-law-according-to-the-court-of-justice-of-the-european-union/>.

<sup>167</sup> See the statistics on the Police's website: <http://www.police.hu/hirek-es-informaciok/hatarinfo/illegalis-migracio-alakulasa>.

<sup>168</sup> <https://www.euronews.com/2021/01/28/eu-migration-chief-welcomes-frontex-suspension-of-operations-in-hungary>

<sup>169</sup> See the European Commission's statement here: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_21\\_2743](https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743).

<sup>170</sup> See the European Commission's statement here: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_5801](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801).

Furthermore, Hungary not only continues to defy the CJEU in this case, but it also looks for ways to do so with the help of Hungary's Constitutional Court: in February 2021, the Minister of Justice filed a motion requesting the Constitutional Court to assess the compatibility of the judgment with the Fundamental Law and to rule that the judgment of the CJEU cannot be enforced in Hungary.<sup>171</sup> However, the Constitutional Court chose not to give the green light to the Government to disregard this specific CJEU judgment: it ruled in December 2021 that the abstract interpretation of the Fundamental Law the Minister's motion called for cannot be aimed at reviewing the judgment of the CJEU, nor the primacy of EU law. At the same time, the judgment includes a series of highly problematic statements regarding the primacy of EU law, the protection of Hungary's "constitutional identity", and the joint exercise of shared competences by the EU and Member States.<sup>172</sup>

<sup>171</sup> See the submission on the Constitutional Court's website here: <https://bit.ly/3yAbBM3>.

<sup>172</sup> The Constitutional Court's decision and its related statement is available here in English: <http://http://hunconcourt.hu/kozlemeny/decision-of-the-constitutional-court-on-the-interpretation-of-the-provisions-of-the-fundamental-law-allowing-the-joint-exercise-of-powers>.

# Annexes



# Annex 1 – List of Constitutional Court decisions based on constitutional complaints by organisations exercising public authority

**TABLE A1** (last updated on 30 September 2021)

Number of CC decision	Authority/body submitting the constitutional complaint	What right/principle was violated in the view of the petitioner?	The CC's decision
3274/2021. (VII. 7.) AB	Municipality of District XV of Budapest	right to a fair trial presumption of innocence	inadmissible
3272/2021. (VII. 7.) AB	Municipality of Olasz	legal certainty	inadmissible
16/2021. (V. 13.) AB	Water Management Directorate of North-Transdanubia	right to property right to a fair procedure by the authorities right to a fair judicial procedure state's obligation to respect, protect and recognize fundamental rights	quashing the judicial decision
3176/2021. (IV. 30.) AB	Győr-Moson-Sopron County Government Office	principle of the separation of powers right to a fair judicial procedure right of access to a court	inadmissible
3027/2021. (I. 28.) AB	Békés County Police Headquarters	right to a fair trial	inadmissible
3441/2020. (XII. 9.) AB	Budapest City Archives	freedom of scientific research	inadmissible
3328/2020. (VIII. 5.) AB	Immigration and Asylum Office / National Directorate General for Aliens Policing	right to a fair trial	quashing the judicial decision

# NON-EXECUTION OF DOMESTIC AND INTERNATIONAL COURT JUDGMENTS IN HUNGARY

Number of CC decision	Authority/body submitting the constitutional complaint	What right/principle was violated in the view of the petitioner?	The CC's decision
3303/2020. (VII. 24.) AB	Metropolitan Regional Court	rule of law judicial independence right to remedy obligation to provide reasons for decisions	no violation
3287/2020. (VII. 17.) AB	Water Management Directorate of North-Transdanubia	managing national assets responsibly interpreting laws in accordance with common sense right to property right to a fair procedure by the authorities	inadmissible
3281/2020. (VII. 9.) AB	Pest County Government Office	protection of the environment as the obligation of the state right to a healthy environment provisions on participating in the EU principle of non-regression	inadmissible
3221/2020. (VI. 19.) AB	Municipality of Esztergom	legal certainty legal clarity right to remedy right to a fair trial	inadmissible
3155/2020. (V. 15.) AB	Szeged Tribunal	right to a fair judicial procedure rule of law the Fundamental Law is the foundation of the legal system of Hungary principle of balanced, transparent and sustainable budget management	inadmissible
3030/2020. (II. 24.) AB	Municipality of District VI of Budapest	equality before the law	no violation

## Annex 2 – List of pending leading cases before the Committee of Ministers with regard to Hungary

The source for this table is the list of pending leading cases available in the HUDOC-EXEC database on 2 December 2021.<sup>173</sup> Cases are presented in the order listed by HUDOC-EXEC. Cases marked with an \* were closed after the manuscript of the present paper was closed.

**TABLE A2**

Name of leading case	Description of the case <sup>174</sup>	Articles of ECHR violated	Is the case under standard or enhanced procedure?	Date the judgment became final	Date of first action plan/report	Was/is the first action plan/report late?	Was a Rule 9(1) communication submitted?	Was a Rule 9(2) communication submitted?	If yes, by whom?	Was a CM decision / interim resolution issued in the case?
<i>R.R. and Others v. Hungary</i>	Ill-treatment of the applicants on account of the conditions of their detention in a “transit zone”, unlawfulness of the detention and lack of judicial review in this respect.	Article 3, Article 5(1) and 5(4)	enhanced	05/07/2021	[not yet received]	N/A	no	no		no
<i>Vig v. Hungary</i>	Violation of the right to respect for private life due to the lack of adequate legal safeguards against arbitrary police intervention.	Article 8	standard	14/04/2021	[not yet received]	yes	no	no		no
<i>Kosurnyikov and Others v. Hungary</i>	Violation of the right to protection of property on account of the excessive duration of the attachment of the applicants’ bank accounts.	Article 1 of Protocol No. 1	standard	21/01/2021	[not yet received]	yes	no	no		no

<sup>173</sup> Available at: <https://bit.ly/3s8mhAB>.

<sup>174</sup> Based on the summaries available in HUDOC-EXEC.



## NON-EXECUTION OF DOMESTIC AND INTERNATIONAL COURT JUDGMENTS IN HUNGARY

Name of leading case	Description of the case	Articles of ECHR violated	Is the case under standard or enhanced procedure?	Date the judgment became final	Date of first action plan/report	Was/is the first action plan/report late?	Was a Rule 9(1) communication submitted?	Was a Rule 9(2) communication submitted?	If yes, by whom?	Was a CM decision / interim resolution issued in the case?
<i>Mándli and Others v. Hungary</i>	Lack of adequate safeguards regarding the suspension of journalists' accreditation to Parliament for having conducted interviews and video recordings with MPs outside designated areas.	Article 10	standard	12/10/2020	31/08/2021	yes	no	no		no
<i>C.A. Zrt. and T.R. v. Hungary</i> (+ 3 repetitive cases)	Removal of long-term usufruct rights over agricultural land without compensation.	Article 1 of Protocol No. 1	enhanced	01/09/2020	18/06/2021	yes	no	no		no
<i>Sudita Keita v. Hungary</i>	Protracted difficulties of a stateless person in regularising his situation.	Article 8	standard	12/08/2020	17/05/2021	yes	no	no		no
<i>ATV Zrt. v. Hungary</i>	Violation of the right to freedom of expression of a television channel, that was prohibited from describing a political party as "far-right" due to a statutory ban on the communication of any "opinion" by a newsreader.	Article 10	standard	28/07/2020	06/05/2021	yes	no	no		no
<i>Rana v. Hungary</i>	Lack of legislation governing gender reassignment and name-changing procedure of lawfully settled third country nationals.	Article 8	enhanced	16/07/2020	23/03/2021	yes	no	yes	NGO: Háttér Society (1)	no
<i>Kiss Menczel v. Hungary</i>	Inability to examine absent witness, whose deposition carried decisive weight in the applicant's conviction.	Article 6(1) and 6(3)(d)	standard	09/06/2020	11/03/2021	yes	no	no		no
<i>Szurovecz v. Hungary</i>	Refusal of a journalist's access to a reception centre for asylum-seekers.	Article 10	standard	24/02/2020	15/12/2020	yes	no	no		no

## NON-EXECUTION OF DOMESTIC AND INTERNATIONAL COURT JUDGMENTS IN HUNGARY

Name of leading case	Description of the case	Articles of ECHR violated	Is the case under standard or enhanced procedure?	Date the judgment became final	Date of first action plan/report	Was/is the first action plan/report late?	Was a Rule 9(1) communication submitted?	Was a Rule 9(2) communication submitted?	If yes, by whom?	Was a CM decision / interim resolution issued in the case?
<i>Herbai v. Hungary</i>	Violation of freedom of expression on account of dismissal from private company for publication to external website on work's subjects.	Article 10	standard	05/02/2020	15/01/2021	yes	no	no		no
<i>Magyar Kétfarkú Kutya Párt v. Hungary</i>	Insufficiently foreseeable legal basis for a fine imposed on a political party for making available a mobile application allowing voters to share anonymous photographs of their ballot papers.	Article 10	standard	20/01/2020	04/02/2021	yes	no	no		no
<i>Ilias and Ahmed v. Hungary</i>	Authorities' failure to discharge procedural obligation under Article 3 to assess the risks of ill-treatment before expelling asylum-seeking applicants to a "safe third country".	Article 3	enhanced	21/11/2019	20/10/2020	yes	no	yes	NGOs: HHC (2), AIRE Centre, the Dutch Council for Refugees and ECRE jointly (1)	yes (2 decisions)
<i>Könyv-Tár Kft. and Others v. Hungary</i>	Violation of the right to protection of property due to loss of clientele following the creation of a state monopoly in the schoolbook distribution market.	Article 1 of Protocol No. 1	standard	18/03/2019	15/05/2020	yes	no	no		no
<i>Scheszták v. Hungary*</i>	Unfair civil proceedings – lack of adversarial proceedings before the Supreme Court.	Article 6(1)	standard	21/02/2018	11/01/2019	yes	no	no		no

# NON-EXECUTION OF DOMESTIC AND INTERNATIONAL COURT JUDGMENTS IN HUNGARY

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<i>Barcza and Others v. Hungary</i> (+ 3 repetitive cases)	Violation of the right to protection of property due to the authorities' failure to decide on expropriation for an excessively lengthy period of time.	Article 1 of Protocol No. 1	standard	11/01/2017	06/10/2017	yes	no	no		no
<i>Szanyi v. Hungary</i>	Violation of the right to freedom of expression on account of the lack of adequate procedural safeguards as regards an internal disciplinary measure against a Member of Parliament and on account of the ban of his interpellation.	Article 10	standard	06/03/2017	[not yet received]	yes	no	no		no
<i>Hunguest Zrt. v. Hungary*</i>	Excessive length of civil proceedings and violation of the right to protection of property due to applicant's inability to use its financial means blocked until the end of these proceedings on a trust account without yielding any interest.	Article 1 of Protocol No. 1, Article 6	standard	30/11/2016	02/08/2017	yes	no	no		no
<i>Béláné Nagy v. Hungary</i> (+ 2 repetitive cases)	Violation of the right to protection of property on account of the loss of disability benefits due to newly introduced eligibility criteria.	Article 1 of Protocol No. 1	standard	13/12/2016	02/08/2017	yes	no	no		no
<i>Magyar Helsinki Bizottság v. Hungary</i>	Violation of the right of a non-governmental organisation to receive certain information on public defenders from the authorities.	Article 10	standard	08/11/2016	12/09/2017	yes	no	no		no

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<i>Patyi and Others v. Hungary</i> (+ 10 repetitive cases)	Violations of the right to freedom of assembly due to bans on demonstrations that were either unjustified or devoid of a legal basis.	Article 11	standard	07/01/2009	29/04/2020	yes	no	yes	NGOs: HCLU and HHC jointly (2)	no
<i>Somogyi v. Hungary</i>	Unlawful deprivation of liberty due to a mistake made by Hungarian courts ruling on the conditions in which the applicant had to serve a sentence issued by an Italian court and lack of any compensation in this regard.	Article 5(1)(a) and 5(5)	standard	11/04/2011	30/11/2011	yes	no	no		no
<i>Sándor Lajos Kiss v. Hungary</i> (+ 2 repetitive cases)	Violation of the right to hold a public hearing, since the appeal courts held hearings in camera.	Article 6(1) read in conjunction with Article 6(3)(c)	standard	29/12/2009	22/08/2011	yes	no	no		no
<i>Rózsa v. Hungary</i> *	No access to court due to the restriction on capacity to take legal proceedings.	Article 6(1)	standard	28/07/2009	17/08/2012	yes	no	no		no
<i>Csánics v. Hungary</i> (+ 1 repetitive case)*	Violation of the right to freedom of expression due to the civil court orders to rectify certain assertions made during an interview at a trade union demonstration.	Article 10	standard	20/04/2009	21/06/2012	yes	no	no		no

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<i>Gubacsi v. Hungary</i> (+ 13 repetitive cases)	Violations of the right to life and the prohibition of torture and inhuman or degrading treatment by police officers and/or the lack of adequate investigations in this respect.	Article 2, Article 3	enhanced	28/09/2011	12/07/2013	yes	no	yes	NGO: HHC (6)	yes (3 decisions)
<i>Pákozdi v. Hungary*</i>	Unfair hearing on account of the appeal court's failure to hold a public hearing.	Article 6(1)	standard	23/03/2015	04/01/2016	yes	no	no		no
<i>Fáber v. Hungary*</i>	Violation of the right to freedom of expression on account of the applicant being arrested and fined for the regulatory offence of disobeying police instructions.	Article 10	standard	24/10/2012	16/05/2013	yes	no	no		no
<i>Shaw v. Hungary</i>	Violation of the right to respect for family life on account of the Hungarian authorities' failure to ensure the return of a child from Hungary to France.	Article 8	enhanced	26/10/2011	07/09/2015	yes	yes (1)	no		yes (4 decisions)
<i>R.R. and Others v. Hungary*</i>	Violation of the right to life on account of the applicants' exclusion from the witness protection programme.	Article 2	standard	29/04/2013	15/01/2015	yes	no	no		yes (4 decisions)
<i>K.M.C. v. Hungary</i> (+ 1 repetitive case)	Violation of the applicants' right of access to court due to the lack of a legal obligation for the government to give reasons for their dismissal making it impossible for them to bring any meaningful legal action.	Article 6(1)	standard	19/11/2012	22/04/2013	no	no	no		no

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<i>Z.H. v. Hungary</i>	Inhuman and degrading treatment on account of the detention on remand of the applicant (who is deaf and dumb, suffering from an intellectual disability, illiterate and unable to avail himself of the official sign language) without the requisite measures taken within a reasonable time.	Article 3, Article 5(2)	standard	08/02/2013	26/09/2019	yes	no	no		no
<i>Balázs v. Hungary</i> (+ 3 repetitive cases)	Failure of the authorities to carry out effective investigations into the question of possible racial motives behind the ill-treatment inflicted on the Roma applicants, and into offences committed in the context of anti-Roma demonstrations.	Article 8, Article 14 read in conjunction with Article 3	standard	14/03/2016	02/08/2017	yes	no	yes	NGOs: HCLU (1), Working Group Against Hate Crimes (2)	no
<i>Prizzia v. Hungary</i> (+ 2 repetitive cases)	Violation of the applicants' right to respect for family life due to the authorities' failure to enforce contact rights with their children.	Article 8	standard	11/09/2013	[not yet received]	yes	no	no		no
<i>Magyar Tartalom-szolgáltatók Egyesülete and Index.hu Zrt. v. Hungary</i> (+ 1 repetitive case)	Violation of the right to freedom of expression of Internet portals due to their objective liability for third party comments and defamatory content behind a hyperlink.	Article 10	standard	02/05/2016	04/01/2017	yes	no	no		no

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<i>Lokpo and Touré v. Hungary</i> (+ 2 repetitive cases)	Violation of the right to liberty and security of two asylum-seekers whose detention was prolonged automatically merely because the refugee authority had not initiated their release.	Article 5(1)(f)	standard	08/03/2012	16/02/2017	yes	no	no		no
<i>Uj v. Hungary</i>	Violation of the right to freedom of expression on account of conviction for harshly criticizing, in a national daily newspaper, the quality of a well-known variety of Hungarian wine produced by a state-owned company.	Article 10	standard	19/10/2011	28/06/2012	yes	no	no		no
<i>Szabó and Vissy v. Hungary</i>	Absence of sufficient guarantees against abuse in legislation on secret surveillance.	Article 8	enhanced	06/06/2016	17/02/2017	yes	yes (but it was a Rule 9(2) at the same time)	yes	NGOs: HCLU (1), EKINT (1)	yes (1 decision)
<i>István Gábor Kovács v. Hungary</i> (+ 20 repetitive cases, including the pilot judgment <i>Varga and Others v. Hungary</i> )	Overcrowding and poor material conditions of detention, lack of effective remedies and other deficiencies in the protection of prisoners' rights.	Article 3, Article 13 read in conjunction with Article 3, Article 8, Article 13 read in conjunction with Article 8	enhanced	17/04/2012	25/03/2015	yes	no	yes	NGO: HHC (10)	yes (6 decisions)

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<i>Baka v. Hungary</i>	Lack of access to a court as regards the premature termination of the applicant's mandate as President of the Supreme Court, which also led to a violation of his right to freedom of expression.	Article 6(1), Article 10	enhanced	23/06/2016	14/12/2016	no	no	yes	NGOs: HHC (1), HHC and Amnesty International Hungary jointly (2)	yes (4 decisions)
<i>Gazsó v. Hungary</i> (+ 108 repetitive cases, pilot judgment)	Excessive length of judicial proceedings and lack of an effective remedy in this respect.	Article 6(1), Article 13 read in conjunction with Article 6(1)	enhanced	16/10/2015	15/08/2017	yes	no	no		yes (15 decisions and 3 interim resolutions)
<i>Nabil and Others v. Hungary</i> (+ 2 repetitive cases)	Violation of the right to liberty and security of three asylum seekers on account of the courts' failure to duly assess all the conditions under the domestic law for the prolongation of their detention.	Article 5(1)	standard	22/12/2015	13/09/2016	yes	no	no		no
<i>László Magyar v. Hungary</i> (+ 2 repetitive cases)	Life sentence without parole in combination with the lack of an adequate review mechanism of this sentence.	Article 3, Article 6(1)	enhanced	13/10/2014	27/04/2015	yes	no	yes	NGO: HHC (1)	yes (1 decision)



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<i>Horváth and Kiss v. Hungary</i>	Discriminatory assignment of children of Roma origin to schools for children with mental disabilities during their primary education.	Article 2 of Protocol No. 1 read in conjunction with Article 14	enhanced	29/04/2013	14/10/2013	no	no	yes	NGOs: CFCF and ERRC jointly (2), ERRC (1), Roma Education Fund (1)	yes (5 decisions)
<i>Magyar Keresztény Mennonita Egyház and Others v. Hungary</i>	Violation of the right to freedom of association and freedom of religion, since the applicant religious communities lost their status as registered churches following the entry into force of the new Church Act.	Article 11 read in the light of Article 9	standard	08/09/2014	17/07/2015	yes	yes (2)	yes	NGO: HCLU (2)	no
<i>Karácsony and Others v. Hungary</i> (+ 1 repetitive case)	Violation of the right to freedom of expression on account of the lack of adequate procedural safeguards as regards internal disciplinary measures against Members of Parliament.	Article 10	standard	17/05/2016	04/01/2017	yes	no	yes	NGOs: HCLU and HHC jointly (1)	no
<i>Vékony v. Hungary</i> (+ 3 repetitive cases)	Violation of the right to protection of property due to the removal of tobacco retail license.	Article 1 of Protocol No. 1	standard	01/06/2015	11/11/2015	no	no	no		no
<i>Panyik v. Hungary</i>	Lack of impartial tribunal in respect of civil action on appeal, since the presiding judge declared himself biased in a previous case.	Article 6(1)	standard	12/10/2011	21/06/2012	yes	no	no		no

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<i>Kalucza v. Hungary</i>	Violation of the right to private life on account of the authorities' failure to fulfill their positive obligation to protect from violent former common-law partner with whom she shared an apartment.	Article 8	standard	24/07/2012	03/05/2013	yes	no	no		yes (2 decisions)
<i>Ungváry and Irodalom Kft. v. Hungary*</i>	Violation of the right to freedom of expression due to conviction of defamation for stating that a judge of the Constitutional Court had collaborated with the state security services during the Communist era.	Article 10	standard	03/03/2014	11/11/2014	yes	no	no		no
<i>Matúz v. Hungary*</i>	Violation of the right to freedom of expression due to dismissal from state television company for having published book which included internal documents of the employer.	Article 10	standard	21/01/2015	07/09/2015	yes	no	no		no
<i>Plesó v. Hungary</i>	Violation of the right to liberty and security due to compulsory confinement to psychiatric hospital without the domestic courts having assessed all the relevant factors.	Article 5(1)(e)	standard	02/01/2013	02/07/2013	no	no	no		no

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<i>Kenedi v. Hungary</i>	Excessive length of enforcement proceedings in respect of judgment authorising access to documents concerning the Hungarian secret services for the purpose of historical research. Violation of the right to freedom of expression on account of the authorities' continued resistance to grant access to these documents and lack of an effective remedy in this respect.	Article 6(1), Article 10, Article 13 read in conjunction with Article 10	standard	26/08/2009	13/04/2012	yes	no	no		no
<i>Metalco Bt. v. Hungary</i>	Unlawful interference with the applicant company's right to protection of property due to the continued seizure of its asset by the tax authority. Violation of the principle of equality of arms due to mechanical application of rules of evidence.	Article 6, Article 1 of Protocol No. 1	standard	20/06/2011	04/12/2013	yes	no	no		no

