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Response of the Hungarian Helsinki Committee to Service Request no. 14. – FRANET contributions to the Fundamental Rights Report 2024 / Threats to democratic values

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1. Major threats to democracy as reflected in national legal and political developments and the discourse at national level

Gaining a landslide victory in 2010 and using its constitutional supermajority, the Fidesz-KDNP government started to systematically and consciously undermine the system of checks and balances by weakening, eliminating or occupying those institutions and actors that can exercise any form of control over the executive branch of power. This process has been nearing its completion, leading the European Parliament to identify Hungary as a “hybrid regime of an electoral autocracy”.¹ The elimination of domestic checks and balances is clearly indicated by Hungary’s worsening performance in international rule of law,² media freedom³ and corruption⁴ indexes.

In 2022, the apparent regression of domestic checks and balances incentivized European institutions to take meaningful measures to stop the on-going rule of law backsliding in Hungary. In April 2022, for the first time in the history of the European Union, the European Commission triggered the bloc’s new rule of law conditionality mechanism against Hungary “for the protection of the Union budget against the consequences of breaches of the principles of the rule of law in Hungary”.⁵ Hungary has also been denied access to EU cohesion funds as a consequence of deficiencies in the independence of the judiciary and national legislation violating academic freedom, rights of asylum-seekers and members of sexual minorities, until the full implementation of the remedial measures agreed with the European Commission.⁶ In October 2022, the Parliamentary Assembly of the Council of Europe also voted to place Hungary under a full monitoring procedure because of “long-standing rule of law and democratic issues in the country that remain largely unaddressed”.⁷ Finally, Hungary has been subject to the procedure under Article 7(1) TEU since 2018 due to a clear risk of serious breach of the values referred to in Article 2 TEU.

¹ <https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=733295&l=en>

² <https://worldjusticeproject.org/rule-of-law-index/country/2022/Hungary/>

³ <https://rsf.org/en/country/hungary>

⁴ <https://www.transparency.org/en/cpi/2022/index/hun>

⁵ <https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/>

⁶ For more information, see: Amnesty International Hungary et al., *Assessment of compliance by Hungary with conditions to access European Union funds*, April 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/04/HU_EU_funds_assessment_Q1_2023.pdf, pp. 46-58.

⁷ <https://pace.coe.int/en/news/8848/pace-votes-to-begin-monitoring-of-hungary-over-rule-of-law-and-democracy-issues>

1.1. Legal and administrative constraints, harassment, intimidation, and reprisals against civil society organisations, human rights defenders (including SLAPPs – strategic lawsuits against public participation)

Stigmatization and securitization of independent NGOs

Human rights watchdogs, anti-corruption and environmental NGOs, especially those that have the knowledge and resources enabling them to take issues outside the borders of the country (within which the means of asserting rights are increasingly limited), can exercise a certain degree of control over the executive (e.g. by making complaints to international bodies, litigating before international judicial forums, or simply by providing information to the international community). For this reason, the attack on independent civil society is a logical step in the process of disabling all existing forms of control over the executive.

The trend of a shrinking civil space for independent human rights watchdog and anti-corruption NGOs is also shown by the downward trend of the CSO Sustainability Index,⁸ including in relation to legal environment, financial viability and advocacy. CIVICUS Monitor now ranks civil space in Hungary as “obstructed”.⁹

The legal and administrative attacks on independent civil society are coupled with the public stigmatization of independent NGOs engaged in areas deemed to be politically sensitive by the governing majority, such as the human rights of LGBTQI people, refugees, or the Roma minority. In this regard, the spirit of Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (hereafter referred to as LexNGO2017, prescribing extra registration for NGOs receiving foreign funding and the obligation to indicate the fact of such funding in all their communications¹⁰ – see in detail below) still continues to determine the Government’s approach to civil activities and serves as a justification for the ongoing vilification and stigmatization. In spite of the removal of the defamatory concept of “foreign funded NGO” introduced by that law in 2017, organized public attacks targeting NGOs in receipt of foreign support has continued into, and has in fact been intensified, in 2023.¹¹

The securitization of civil society is not only endorsed, but directly incentivized by senior government officials as it was explicitly expressed by Mr. Máté Kocsis, leader of the Fidesz faction in the Hungarian Parliament, at the hearing of Mr. Antal Rogán, the newly appointed minister for the supervision of national security services in the Committee of the Parliament on National Security, during the formation of the re-elected government in May 2022:

“[...] there are NGOs involved in Hungarian domestic politics that are funded from abroad and yet carry out their domestic political activities here, or there are media outlets that are clearly in the service of foreign countries. Identifying these, or at least being aware of them, will be essential if we are to talk about the defence of sovereignty.”

Later, in June 2022, in a short interview Mr. Kocsis elaborated on the issue:

“This is a suggestion that came up back in 2018 in connection with the “Stop Soros” legislation. And we are serious about it too – namely, that organisations which are being financed by

⁸ <https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2021-report.pdf>

⁹ <https://monitor.civicus.org/country/hungary/>

¹⁰ For more detail, see e.g.: Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *What is the Problem with the Hungarian Law on Foreign Funded NGOs?*, <https://helsinki.hu/wp-content/uploads/What-is-the-Problem-with-the-Law-on-Foreign-Funded-NGOs.pdf>

¹¹ <https://magyarnemzet.hu/english/2023/09/money-from-brussels-to-replace-funds-from-soros>, <https://magyarnemzet.hu/belfold/2023/04/washingtoni-dollarmilliokkal-is-kitomik-a-soros-altal-tamogatott-ngo-kat>

money from foreign governments and this is an important detail: using money received from another state to acquire political influence in Hungary which is not based on democratic legitimacy needs to be examined. This is a simple matter of protecting Hungary's sovereignty.”¹²

The rhetoric used by Mr. Kocsis is nothing new, it explicitly invokes the same narrative that was used in the organised public campaigns against NGOs constituting the consortium responsible for distributing the EEA/Norway Grants NGO Fund in 2014. Public intimidation of NGOs receiving foreign funding followed the same pattern in 2017, preceding the adoption of LexNGO2017, as well as in 2018, during the passing of the infamous “Stop Soros” legislation.¹³

However, the intimidation of civil society organisations has in fact been stepped up: in 2022, the National Information Centre (*Nemzeti Információs Központ*, NIK), the information fusion centre of the Hungarian national security system conducted an investigation into the financial management of political parties and actors in receipt of foreign funding from the U.S. Action for Democracy private fund during the 2022 general election campaign.¹⁴ The final report of the NIK was submitted to the Parliament as well as released from secrecy in three parts, in November 2022,¹⁵ January 2023¹⁶ and June 2023.¹⁷ The third part of the report, in addition to analysing the foreign funds received by opposition political actors, also covered the financing of independent NGOs, think-tanks and media in receipt of funding from the U.S. German Marshall Fund (GMF) and the National Endowment for Democracy (NED), on the sheer basis that GMF and NED can be “directly or indirectly” connected to certain official representatives or advisors of the Action for Democracy, and that both organisations (i.e. GMF and NED) provide support to independent NGOs, think-tanks and media in Hungary. This highly accidental and indirect relation (Hungarian NGOs are supported by donor organisations that are “directly or indirectly” connected to certain persons at the Action for Democracy) obviously does not provide an adequate basis for the NIK to investigate the finances of independent, non-political actors. However, the report is capable of questioning the independence of the concerned NGOs, think-tanks and media outlets, portraying them as posing a risk to national security and sovereignty, and also exerting a serious chilling effect on these organisations.

One of the probable reasons for lifting the confidentiality of the reports is to prepare the ground the so-called “sovereignty protection bill”, which is envisaged by the governing party to be adopted in the course of the autumn legislative session of the Hungarian Parliament. According to Máté Kocsis, the bill aims at “annoying” (i.e. hampering the work of) “leftist journalists, fake NGOs and dollar politicians” who “want to gain political power by serving the interests of American Democrat billionaires or multinational companies from Brussels”.¹⁸

¹² <https://www.parlament.hu/documents/static/biz42/bizjvk42/NBB/2205181.pdf>, p. 12.

¹³ See e.g.: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, Transparency International Hungary, *Timeline of Governmental Attacks Against Hungarian Civil Society Organisations*, 17 November 2017, https://helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_short_17112017.pdf.

¹⁴ <https://english.atlatszo.hu/2022/11/25/leftist-propaganda-machinery-received-the-lions-share-of-us-democracy-support-in-the-run-up-to-this-years-elections/>

¹⁵ <https://www.parlament.hu/documents/129803/64121212/Elemz%C5%91-%C3%A9rt%C3%A9kel%C5%91+vizsg%C3%A1lat+id%C5%91szakos+jelent%C3%A9s+%2820221117%294.0.NBB.pdf/Od326c7d-e9c9-f120-1f52-24cc530a70ed?t=1669203382539>

¹⁶ https://www.parlament.hu/documents/129803/64121212/PPT_OGYNBB_20230120.pdf/28ec32f0-f281-49d9-44c3-5fdea88762e4?t=1674631807128

¹⁷ https://www.parlament.hu/documents/129803/64121212/%C3%96sszefoglal%C3%B3_jelent%C3%A9s_A_2022_%C3%A9vi_moi_ogyi_v%C3%A1laszt%C3%A1sok_k%C3%BCl_fef.pdf/3e4481b9-ceed-94d9-c95a-5cfa1bb15fc4?t=1687766968197, p. 38.

¹⁸ <https://telex.hu/english/2023/09/21/a-sovereignty-protection-bill-to-be-tabled-in-autumn-against-left-wing-journalists-pseudo-ngos-and-dollar-politicians-in-hungary>

The ability to seek, receive and use funding is inherent to the freedom of association and essential to the existence and effective, independent operations of any organisation. Labelling NGOs or mandating separate registration for NGOs that receive foreign funding will likely single out and therefore stigmatize NGOs that monitor the Government's performance in politically sensitive issues, such as human rights, corruption and environmental matters, especially because domestic funding has been practically unavailable to such civil society organisations.¹⁹

Legislative and administrative attacks on NGOs

As of 2017, a plethora of restrictive legal and administrative measures had been introduced targeting human rights watchdog NGOs. Several pieces of such legislation negatively affecting civil society are still in effect, although several are not or only partially implemented. The legal framework currently in force continues to violate the freedom of association and expression of human rights watchdog and anti-corruption NGOs and still has the potential to have a chilling effect on civil society actors and to create a hostile environment for the wider civil spectrum.

Criminalization of assistance to asylum seekers

In June 2018, the Hungarian Parliament adopted a legislative package under the name "Stop Soros",²⁰ which inserted Article 353/A into the Criminal Code ("Facilitating or supporting illegal immigration"). The provision rendered punishable anyone who engages in organizing activities in order to facilitate (a) the initiation of asylum proceedings in Hungary by persons who are not persecuted in their country of origin or in the country through which they arrived to Hungary, or whose reason to fear direct persecution is not well-founded, or (b) the initiation of a procedure aimed at acquiring a title of residence by persons entering or staying illegally in Hungary. The offence was punishable with confinement (for up to 90 days), or – if certain aggravating factors are in place – imprisonment for up to one year. A person providing material resources for this offence was also punishable with imprisonment for up to one year.

The law has been criticized by various international bodies, including the Council of Europe's constitutional advisory body, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, which concluded in a joint report that Article 353/A of the Criminal Code "infringes upon the right to freedom of association and expression and should be repealed", as "it criminalizes organizational activities which are not directly related to the materialization of the illegal migration" and "are fully legitimate including activities which support the State in the fulfilment of its obligations under international law".²¹

In November 2021, the Court of Justice of the European Union established that: "The introduction of such criminal penalties undeniably has a very significant deterrent effect, which may lead persons wishing to assist third-country nationals or stateless persons wishing to obtain refugee status in Hungary to refrain from participating in the assistance activities." The execution of the law therefore

¹⁹ See e.g.: Submission to the UN Universal Periodical Review on shrinking civil space by Amnesty International Hungary, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, Ökotárs – Hungarian Environmental Partnership Foundation and Power of Humanity Foundation, March 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/03/UPR_submission_3rdcycle_civilspace.pdf, pp. 1-2.

²⁰ <https://helsinki.hu/en/hungarian-government-marks-world-refugee-day-by-passing-law-to-jail-helpers/>

²¹ European Commission for Democracy through Law (Venice Commission) – OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Hungary – Joint Opinion on the Provisions of the So-Called "Stop Soros" Draft Legislative Package which Directly Affect NGOs (In particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration)*, CDL-AD(2018)013, 25 June 2018, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)013-e)

would result in the violation of the right to asylum set out in Article 18 of the Charter of Fundamental Rights of the EU.²²

On 7 December 2022, the Hungarian Parliament amended the law in a last-minute amendment that was introduced through a parliamentary supercommittee to an unrelated omnibus bill. The modification rewrote Article 353/A of the Criminal Code in a manner that upholds the chilling effect on providing assistance to asylum-seekers, and, through its overbroad wording, retains the possibility of arbitrarily persecuting helpers providing assistance to asylum seekers.²³

LexNGO2021

In the summer of 2017, building on the rhetoric that NGOs are paid by foreign powers to serve their interests under the disguise of doing human rights work, the Hungarian Parliament adopted a law on the transparency of foreign funded organisations (LexNGO2017).

The LexNGO2017 required that any foundation or association that received any type of foreign funding (including funding from natural persons, charities and the European Commission) over HUF 9 million (ca. EUR 23,000) per year, for any purpose whatsoever, must register with the court as a “foreign funded organisation.” The registration list was public and these NGOs were required to place the label of “foreign funded organisation” on their website and on all of their publications. Foreign funded NGOs were also obliged to inform the state authorities about each and every donor (including natural persons) who donated more than HUF 500,000 (ca. EUR 1,290) in the given year. Failure to register and to comply with other obligations imposed by the law would have ultimately resulted in the NGO’s dissolution through a simplified termination procedure by the court.²⁴

The law was not necessary to guarantee the transparency of the concerned NGOs funding structure, as under the previously existing laws, NGOs were already required to submit to the state authorities as a part of their annual report and publish their financial data, also indicating the sources of support.

On 18 June 2020, the Court of Justice of the European Union established that the LexNGO2017 “had introduced discriminatory and unjustified restrictions with regard to both the organisations at issue and the persons granting them such support”, thus breaching EU law.²⁵

In reaction to the judgment, the government repealed the law in May 2021. However, Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life (LexNGO2021) was adopted simultaneously, without any preliminary public consultation or direct discussions with NGOs.²⁶

LexNGO2021 and accompanying amendments made NGOs operating as an association or a foundation whose annual balance sheet total in a given year amounts to at least HUF 20 million (ca. EUR 51,400) subject to inspection/audit by the State Audit Office (*Állami Számvevőszék*, SAO).²⁷ The SAO shall audit

²² <https://curia.europa.eu/juris/document/document.jsf?text=&docid=249322&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=21965706>

²³ In more detail, see: *Criminalisation continues – Hungary fails to implement CJEU judgment*, 21 December 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/Criminalisation-continues.pdf>.

²⁴ Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Short Analysis of the Proposed Hungarian Bill on Foreign Funded Non-Governmental Organizations*, 11 April 2017, <https://www.helsinki.hu/wp-content/uploads/NGO-Bill-HU-short-analysis-0411-final.pdf>

²⁵ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

²⁶ <https://helsinki.hu/en/repealing-the-lex-ngo-important-step-but-more-is-needed/>

²⁷ For more details, see: Hungarian Helsinki Committee, *LexNGO 2021 – a look into Hungary’s second anti-NGO law on its first anniversary*, 12 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_LexNGO2021_info_note.pdf.

these NGOs from the aspect of lawfulness, and shall disclose its conclusions in a public report, the content of which cannot be challenged before the court even if it contains unfounded conclusions or factual statements. In addition, the audit may impose excessive administrative burden on targeted NGOs, and can extend to all documents and data, including sensitive information (such as documents otherwise falling under attorney-client privilege), which may be acceptable when the SAO inspects authorities exercising public power, but not when it audits NGOs. The regulation is also discriminatory, as – without any meaningful justification – it exempts certain entities whose activities are also capable of influencing public life, including religious associations, minority organisations and trade unions. Finally, the LexNGO2021 violates the constitutional provisions pertaining to the mandate of the SAO, given that under the Fundamental Law (the constitution) the SAO is mandated to audit the administration of public finances and the use of funds from public finances.

In May 2022, coinciding with the deadline to submit their annual reports, 3,252 NGOs falling under the scope of LexNGO2021 received an order from the SAO to submit internal financial rules and guidelines through the agency’s online platform with a deadline of less than two weeks. In spite of the occasional malfunctioning of the online platform, affected NGOs complied with the request. In its summary report, published in December 2022, the State Audit Office found that out of the 3,252 audited organisations “219 NGOs did not comply with one or more provisions of the Accounting Act”.²⁸ However, the names of the organisations that were not operating properly were not disclosed, which made the report capable of shedding a bad light on the activities of the prudently managed organisations too.

Special immigration tax

On 20 July 2018, a month after the adoption of the “Stop Soros” package, a further piece of legislation targeting NGOs providing assistance to immigrants or asylum seekers in Hungary was passed.²⁹ Article 253 of this law provides for the special tax on immigration, a 25% tax that is imposed on financial support provided for any “immigration supporting activity” in Hungary or for the operations of any Hungarian organisation “that carries out activities to promote migration”. “Immigration supporting activity” is “any program, action or activity that is directly or indirectly aimed at promoting immigration” and is realized by (i) carrying out media campaigns, media seminars and participating in such activities, (ii) organizing education, (iii) building and operating networks or (iv) propaganda activities that portray immigration in a positive light. The primary taxable entity is the funder (only legal persons), who is obliged to declare and pay 25% of the support provided to the organisation performing immigration supporting activities, and also notify the grantee of this fact. If the funder does not comply with this obligation, the grantee must pay the 25% tax. Potential sanctions for failure to comply with the obligation to declare and pay this tax include a fine up to 200% of the tax deficiency and probably even imprisonment (up to 10 years depending on the concerned amount) for tax fraud.

This law was criticized by international bodies, including the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, which concluded that “the special tax on immigration constitutes an unjustified interference with the rights to freedom of expression and of association of the NGOs affected. The imposition of this special tax will have a chilling effect on the exercise of fundamental rights and on individuals and organisations who defend these rights or support their defence financially. It will deter potential donors from supporting these NGOs and put more hardship

²⁸ <https://www.asz.hu/dokumentumok/22062.pdf>, p. 12.

²⁹ Act XLI of 2018 on the Amendment of Certain Tax Laws and Other Related Laws and the Special Tax on Immigration

on civil society engaged in legitimate human rights' activities. For all these reasons, the provision as examined in the present opinion should be repealed."³⁰

Despite these criticisms, the provisions stipulating the 25% punitive tax on activities that are regarded as "supporting" immigration have remained unchanged and in effect up to this date.

1.2. Threats to (the independence of) the fundamental rights institutional landscape (NHRIs, equality bodies, data protection authorities and similar bodies), incl. closure of fundamental rights bodies, legal changes, budget cuts and harassment

In the past decade, the role of independent institutions as checks on and balances vis-a-vis executive political power has been systematically undermined through restructuring as well as re-staffing these institutions. The ruling majority has gained control over state institutions through their appointed or elected leaders. Independent institutions have been restructured in such a way as to deprive them, in law or in practice, of their capacity to exercise control over the executive effectively. This applies to the institutions tasked with the protection of fundamental rights as well.

1.2.1. Constitutional Court

The Constitutional Court's independence has been severely undermined in recent years. As part of this process, the governing parties changed the long-established consensus-based process for nominating Constitutional Court justices to ensure that the governing parties, having a two-thirds majority in the Parliament, can fill the vacancies on the bench without the support of the opposition, and increased the size of the court from 11 to 15 judges.³¹ As a result, the governing parties were able to pack the Constitutional Court with loyal justices, including their former MPs, and have transformed it into a loyal body that is supportive of the Government's agenda, which regularly rules in favour of the Government in politically sensitive cases.³²

1.2.2. The Commissioner for Fundamental Rights and the abolished Equal Treatment Authority

In 2019, the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA) deferred the review of Hungary's NHRI, the Commissioner for Fundamental Rights (CFR) to provide the CFR an opportunity to refute the doubts that it does "not demonstrate adequate efforts in addressing all human rights issues".³³ However, the CFR failed to do so. As a result, confirming

³⁰ European Commission for Democracy through Law (Venice Commission) – OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Hungary – Joint Opinion on Section 253 on the Special Immigration Tax of Act XLI of 20 July 2018 Amending Certain Tax Laws and Other Related Laws and on the Immigration Tax*, CDL-AD(2018)035, 17 December 2018, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)035-e)

³¹ See in detail: *Stating the Obvious – Rebutting the Hungarian Government's response to the Reasoned Proposal in the Article 7 procedure against Hungary (A reaction paper by NGOs)*, 18 October 2019, https://www.helsinki.hu/wp-content/uploads/NGO_rebuttal_of_Article_7_Hun_gov_info_note_18102019.pdf, p. 5. For an overview of the weakening of the constitutional oversight of legislation, see also the joint submission of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee to Hungary's 3rd Universal Periodic Review, March 2021, https://helsinki.hu/wp-content/uploads/2021/03/AIHU_EKINT_HHC_UPR2021_Hungary_RoL_web.pdf, pp. 2-4.

³² For recent examples, see: *Contribution of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CS0_contribution_EC_RoL_Report_2023.pdf, pp. 58-59.

³³ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 14–18 October 2019, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20October%202019%20English.pdf>, pp. 23–26.

the concerns of Hungarian NGOs,³⁴ in June 2021, the SCA concluded that “the CFR has not effectively engaged on [...] all human rights issues, including in relation to vulnerable groups such as ethnic minorities, LGBTI, refugees and migrants as well as constitutional court cases deemed political and institutional, media pluralism, civic space and judicial independence. The [...] CFR has not spoken out in a manner that promotes protection of all human rights. The failure to do so demonstrates a lack of sufficient independence. Therefore, [...] the CFR is operating in a way that has seriously compromised its compliance with the Paris Principles.”³⁵ For these reasons, the SCA recommended that the CFR be downgraded to B status.

The downgrading became final in March 2022.³⁶ In its March 2022 report, the SCA concluded,³⁷ confirming once again the concerns of Hungarian civil society organisations,³⁸ that the CFR has not substantiated that it is “fulfilling its mandate to effectively promote and protect all human rights”, that it is “effectively carrying out its mandate in relation to vulnerable groups such as ethnic minorities, LGBTQI people, human rights defenders, refugees and migrants, or related to important human rights issues such as media pluralism, civic space and judicial independence”, or its “engagement with the constitutional court and international human rights mechanisms in relation to cases deemed political and institutional”. The SCA emphasized that the failure to do so “evidences a lack of independence”, and concluded that the CFR is acting in a way that “seriously compromises its compliance with the Paris Principles”. The concern raised earlier that the CFR’s selection and appointment process is not sufficiently broad and transparent has not been addressed either. The deficiencies pointed out by the SCA as a reason for the downgrading continue to exist.

The above development made the merging of Hungary’s equality body, the Equal Treatment Authority into the CFR’s Office all the more problematic.³⁹ The Equal Treatment Authority was one of the few remaining rights protection institutions that was willing to hand down important decisions regarding human rights violations in politically particularly sensitive cases and sanction state authorities for violating the rights of vulnerable groups, such as the Roma or the LGBTQI community.⁴⁰ However, as a result of hasty legislation introduced without any meaningful public consultation, the Equal Treatment Authority was abolished and merged into the CFR’s Office as of January 2021.

In its October 2021 opinion, the Venice Commission raised various concerns regarding this merger.⁴¹ It noted with regret “that no Director General for Equality Treatment [DGET, within the CFR’s Office] has

³⁴ Hungarian Helsinki Committee, *Assessment of the Activities and Independence of the Commissioner for Fundamental Rights of Hungary in Light of the Requirements Set for National Human Rights Institutions*, September 2019, https://helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_2014-2019_HHC.pdf

³⁵ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14-24 June 2021, <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>, pp. 12-15.

³⁶ <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRI.pdf>, p. 13.

³⁷ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)*, 14-25 March 2022, https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf, pp. 43-47.

³⁸ For more information, see: Hungarian Helsinki Committee, *Shadow report to the GANHRI Sub-Committee on Accreditation on the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, 18 February 2021, https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf.

³⁹ For more details, see: *Contributions of Hungarian NGOs to the European Commission’s Rule of Law Report*, March 2021, https://helsinki.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf, p. 52.; *Country report – Non-discrimination – Hungary*, 2021, <https://www.equalitylaw.eu/downloads/5732-hungary-country-report-non-discrimination-2022-1-63-mb>, pp. 100-115.

⁴⁰ For concrete examples, see: https://helsinki.hu/wp-content/uploads/Equal-Treatment-Authority_Civilizacio-statement_26112020.pdf.

⁴¹ European Commission for Democracy through Law (Venice Commission), *Opinion on the Amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as Adopted by*

been appointed to-date, 9 months after the merger”, although without a DGET “it is hard to imagine the promotion and visibility of equality mandate as required by ECRI General Policy Recommendation No 2”.⁴² For that reason, the Venice Commission encouraged the authorities “to ensure a timely appointment of DGET and his/her Deputy in accordance with clear and transparent criteria defined by law”.⁴³ However, based on the information provided by the CFR’s website, still no DGET or Deputy seem to have been appointed.

The Venice Commission was of the view that “the new system of protection against discrimination is overall more complicated and thus has the potential to be less effective than the previous one”⁴⁴ and that this is a risk “that may undermine the effectiveness of the work in the field of promoting equality and combating discrimination”.⁴⁵ This conclusion is supported by a drop in the number of discrimination complaints after the merger. According to Háttér Society, the Equal Treatment Authority received 868 cases in 2019, whereas “in the first 6 months of 2021, [the Directorate within the CFR’s Office] received only 156 complaints”.⁴⁶ According to the CFR’s annual report, in 2021 the Directorate dealt with altogether 462 cases, but this number also includes pending complaints from previous years.⁴⁷

The Equal Treatment Authority was not the only independent institution merged into the CFR’s Office: the same happened to the Independent Law Enforcement Complaints Board in 2020, and in November 2022, the CFR’s Office was designated by Act L of 2022 as Hungary’s independent mechanism established under Article 33 of the UN Convention on the Rights of Persons with Disabilities (CRPD) to promote, protect and monitor implementation of the CRPD.

There has thus been a trend to merge all specialised human right protection institutions into the CFR’s Office, which is highly problematic due to not only the lack of functional independence of the Office, which has led to its downgrading as Hungary’s NHRI, but also due to the inevitably decreased institutional focus and resources these topics can receive in a large organisation with multiple mandates.

1.3. Institutional issues linked to checks and balances (lack of parliamentary oversight, lack of implementation of final court decisions by executive, etc.)

1.3.1. The Government’s excessive regulatory powers under the state of danger

the Hungarian Parliament in December 2020, CDL-AD(2021)034, 18 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)034-e).

⁴² Ibid., para. 44. Further information on staffing issues and other problems around the merger can be found here: Háttér Society, *Information on the Abolishment of the Equal Treatment Authority in Hungary: a Briefing Written for the Experts of the Venice Commission on 15 September 2021*, <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-eta.pdf>.

⁴³ European Commission for Democracy through Law (Venice Commission), *Opinion on the Amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as Adopted by the Hungarian Parliament in December 2020*, CDL-AD(2021)034, 18 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)034-e), para. 44.

⁴⁴ Ibid., para. 40.

⁴⁵ Ibid., para. 59.

⁴⁶ For more details, see: Háttér Society, *Information on the Abolishment of the Equal Treatment Authority in Hungary: a Briefing Written for the Experts of the Venice Commission on 15 September 2021*, <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-venicecommission-eta.pdf>, p. 6.

⁴⁷ *Beszámoló az alapvető jogok biztosának és helyetteseinek tevékenységéről – 2021 [Report on the Activities of the Commissioner for Fundamental Rights of Hungary and his Deputies – 2021]*, <https://bit.ly/3QskMax>, p. 97.

The Hungarian government continues to have excessive emergency regulatory powers, and continues to use its mandate to issue emergency decrees extensively and in an abusive manner.⁴⁸ The Government first acquired excessive emergency powers with a view to the pandemic in the spring of 2020: it declared a “state of danger” (*veszélyhelyzet*), a special legal order regime, while the governing majority transformed the legislative framework in a way that the Government had a *carte blanche* mandate to override any Act of Parliament via emergency government decrees once a state of danger was declared. The Government has been maintaining a “rule by decree” system ever since, with only a few months of intermission, most recently using the war in Ukraine as a pretext for keeping its excessive regulatory powers. The constitutional and statutory framework governing the various special legal order regimes was amended as of 1 November 2022, and these amendments cemented the very problematic practices developed during the pandemic in relation to the state of danger. The state of danger declared with a reference to the war in Ukraine is currently extended until 25 November 2023.

The current constitutional and statutory framework

Provisions of the 9th Amendment to the Fundamental Law and accompanying laws that entered into force on 1 November 2022 transformed the framework for special legal order regimes, including the state of danger.⁴⁹ Thus, since 1 November 2022, the state of danger has been based on a new constitutional and statutory wording, but these changes mainly mean that problematic practices developed during the pandemic have been cemented by the legislator into the Hungarian legal system.

According to the current wording of Article 51(1) of the Fundamental Law, the Government may declare a state of danger in the event of an armed conflict, war situation or humanitarian catastrophe in a neighbouring country, or a serious incident endangering life and property, in particular a natural disaster or industrial accident, and in order to eliminate the consequences thereof. The Government can declare the state of danger initially for 30 days, and following that the Parliament can authorize (with a two-thirds majority of the MPs present) the Government to extend it.⁵⁰ Statutory rules add that this authorization can be given for a maximum of 180 days per occasion,⁵¹ but there is no limit set out as to how many times this can be repeated.

Under Article 53(1) of the Fundamental Law, during the period of a special legal order, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act of Parliament, suspend the application of certain Acts of Parliament, derogate from the provisions of Acts of Parliament and take other extraordinary measures.

The cardinal law referred to here is (as of 1 November 2022) Act XCIII of 2021 on the Coordination of Defence and Security Activities, which includes a similar *carte blanche* mandate in terms of the scope and subject matter of the emergency government decrees as the one created during the pandemic. It sets out that the purpose of the government decrees shall be “to guarantee for citizens the safety of life and health, personal safety, the safety of assets, and legal certainty, as well as the stability of the national economy”.⁵² Subsequently, it lists the regulatory subjects in relation which the Government

⁴⁸ For a comprehensive overview, see: Hungarian Helsinki Committee, *Government gains excessive powers from forever renewable state of danger*, 24 February 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC_Hungary_state_of_danger_24022023.pdf.

⁴⁹ A detailed analysis of the changes, covering also the special order regimes beyond the state of danger, is available here: Gábor Mészáros: *Exceptional Governmental Measures without Constitutional Restraints*, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/Meszáros_special_legal_order_02112022.pdf.

⁵⁰ Fundamental Law, Article 51(2)-(4)

⁵¹ Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 82/A

⁵² Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 80(1)

may exercise its emergency regulatory powers.⁵³ However, this list is not only overly broadly framed, but its last point makes the Government's possibilities in terms of taking extraordinary measures virtually unlimited, since it sets out that the Government may also exercise its extraordinary powers in any other regulatory areas that are directly related to the prevention, management, elimination, and the prevention or remedying of the harmful effects of an event giving rise to a state of war, state of emergency or state of danger.⁵⁴ This makes the list of potential regulatory subjects practically open-ended and therefore the new statutory rules are too general and thus not capable of imposing any meaningful limit on the extraordinary powers of the Government.

In addition, under Article 52 of the Fundamental Law, during the period of special legal order, the exercise of fundamental rights, except for the right to life, the ban on torture and the right to a fair criminal trial may be suspended, or may be restricted beyond the extent permissible under ordinary circumstances.

Under the new rules, the emergency decrees issued by the Government automatically remain in force until the termination of the state of danger – thus, the earlier constitutional rule that emergency government decrees need the approval of the Parliament to stay in force after an initial 15-day period is no longer applicable. This means that the regular and automatic parliamentary oversight over individual emergency decrees has been completely eliminated, cementing the framework created in the past years via the so-called "Authorization Acts".⁵⁵ This also deprives opposition MPs from the opportunity to take the floor in the Parliament and debate publicly and in a timely manner whether it is justified to adopt or maintain certain decrees with a reference to the state of danger.⁵⁶

As of 1 November 2022, the Government declared a new state of danger under these new rules, with a reference to the war on Ukraine,⁵⁷ and subsequently the Government extended the state of danger with an additional 180 days⁵⁸ based on the Parliament's authorization.⁵⁹ This authorization by the governing parliamentary majority was given again for another 180 days in May 2023, and on the basis of that, the Government extended the state of danger until 25 November 2023.⁶⁰

It shall be stressed that the new legal framework continues to not include any provisions that would facilitate the swift and effective constitutional review of government decrees adopted in a state of

⁵³ Such as personal liberty and living conditions, economic and supply security, restrictions with a security purpose affecting communities and the provision of information to the population, the functioning of the state and local governments, the protection or restoration of lawful order, public order and public security, or national defence and mobilisation. See: Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 80(2).

⁵⁴ Act XCIII of 2021 on the Coordination of Defence and Security Activities, Article 80(2)(g)

⁵⁵ See e.g.: Hungarian Helsinki Committee, *Overview of Hungary's Emergency Regimes Introduced due to the COVID-19 Pandemic. Update of 1 June 2022*, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_Hungary_emergency_measures_overview_01062022.pdf.

⁵⁶ For more on why the power to rule by decree has significance if there is a parliamentary supermajority, see: Hungarian Helsinki Committee, *Hungary's Fourth Authorization Act: Completing the Efforts to Grant the Government Excessive Regulatory Powers Once Again*, 9 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/06/HHC_HU_4th_Authorization_Act_09062022.pdf, p. 3.

⁵⁷ Government Decree 424/2022. (X. 28.) on Declaring a State of Danger Due to the Armed Conflict and Humanitarian Catastrophe in the Territory of Ukraine, and in Order to Eliminate and Manage the Consequences of these in Hungary and on Certain State of Danger Rules

⁵⁸ Government Decree 479/2022. (XI. 28.) on Extending the State of Danger Declared Due to the Armed Conflict and Humanitarian Catastrophe in the Territory of Ukraine, and in Order to Eliminate and Manage the Consequences of these in Hungary

⁵⁹ Act XLII of 2022 on Eliminating and Managing the Consequences in Hungary of an Armed Conflict and Humanitarian Catastrophe in a Neighbouring Country

⁶⁰ Government Decree 167/2023. (V. 11.) on Amending Government Decree 424/2022. (X. 28.) on Declaring a State of Danger Due to the Armed Conflict and Humanitarian Catastrophe in the Territory of Ukraine, and in Order to Eliminate and Manage the Consequences of these in Hungary and on Certain State of Danger Rules

danger, such as a provision prescribing a short deadline for the Constitutional Court to decide on complaints regarding emergency decrees. This severely undermines the effectiveness of the constitutional review of the special legal order decrees, as demonstrated by the fact that the Constitutional Court refused to decide on the constitutionality of at least three emergency decrees on the basis that by the time it got down to adjudicating the respective petitions, the decrees had not been in force any more.⁶¹

Excessive and inappropriate use of state of danger decrees

As also pointed out by the European Commission's 2023 Rule of Law Report, "[l]egal certainty has been undermined by [...] the extensive and prolonged use of the Government's emergency powers".⁶² According to the statistics of a legal service provider,⁶³ for example in 2022, 42% of all government decrees (267 out of 637) were adopted as emergency decrees, either with a reference to the pandemic or the war. As a comparison: in 2020, at the height of the pandemic, fewer, 257 such government decrees were issued. Also, a good portion of these decrees, 82 out of the 267 were issued in November-December 2022, when the war's focus shifted to further East.

While a good part of the emergency decrees issued during the state of danger declared due to COVID-19 were indeed related to the pandemic, the Government repeatedly used its authorization to adopt decrees to "regulate matters unrelated to the COVID-19 pandemic",⁶⁴ and several emergency decrees issued in this period raised rule of law and human rights concerns. The practice of regularly adopting decrees for purposes not related to the cause of the state of danger continued also during the state of danger declared due to the war, an example being the curbing of the teachers' right to strike amidst an ongoing legal dispute between the trade unions and the Government in February 2022.⁶⁵

1.3.2. Lack of implementation of domestic and European court decisions

Non-execution of domestic court decisions

The concern included in the European Commission's 2022 Rule of Law Report that there are "cases where state bodies refuse to execute decisions of the domestic courts; several of these concern access to documents"⁶⁶ continues to be valid, and court decisions issued e.g. in press rectification and personality rights lawsuits launched against government-affiliated media are often not executed either (or only after repeated sanctions are imposed on the media outlets by the courts overseeing the execution of judgments).

⁶¹ This happened, for instance, in relation to the new labour law legislation [Decision no. 3326/2020. (VIII. 5.) AB], the rules on designating special economic zones [Decision no. 3388/2020. (X. 22.) AB] and to the extended, 45-day deadline for fulfilling freedom of information requests [Decision no. 3413/2020. (XI. 26.) AB].

⁶² European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, pp. 1 and 31-32.

⁶³ See: <https://www.wolterskluwer.com/hu-hu/news/2022-jogalkotasi-statisztika>.

⁶⁴ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 25.

⁶⁵ For further examples from 2022 and 2023, see: Hungarian Helsinki Committee, *Government gains excessive powers from forever renewable state of danger*, 24 February 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC_Hungary_state_of_danger_24022023.pdf, pp. 6-7.

⁶⁶ European Commission, *2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 29.

According to a 2021 study by the Hungarian Helsinki Committee, one of the systemic problems contributing to this is the lack of effective and genuinely coercive enforcement tools.⁶⁷ As reported by lawyers, the enforcement (bailiff) proceedings is a “costly and lengthy legal process which does not promise certain success”.⁶⁸ The sanction regime has no deterrent/dissuasive effect, the issue of excessively lengthy enforcement proceedings has not been addressed, and numerous practical problems limit its accessibility. In freedom of information cases it is also a problem that enforcement is only possible in practice through imposing a fine, but the maximum amount of fines is too low (HUF 500,000 per instance, ca. EUR 1,290).⁶⁹ Criminal procedures launched for non-compliance with the obligation to disclose data in violation of a court decision very rarely lead to indictments: in 2018–2020, charges were filed in only 3 out of 59 cases.⁷⁰ Criminal procedures have been reported to be discontinued solely on the basis that the alleged perpetrator eventually disclosed the data requested after the criminal procedure had been launched, although with the denial to disclose data, the offence is already completed and neither the Criminal Code, nor the rules of the criminal procedure allow for the discontinuation of the proceedings on the basis of compliance (this could only be taken into account by the court when imposing a sanction on the perpetrators).⁷¹

Decisions of the Constitutional Court are not always implemented either. At the time of issuing the European Commission’s 2023 Rule of Law Report, the “number of decisions in which the Constitutional Court declared that a legislative omission resulted in the violation of the Fundamental Law, but Parliament has failed to remedy the situation to date, [was] 13. The court-set deadline for implementing these decisions has expired in 10 cases, the oldest one in 2013.”⁷²

Non-implementation of European court judgments

As pointed out by the European Commission’s 2023 Rule of Law Report as well, the “ineffective implementation by state authorities of the judgments of European courts remains a source of concern”.⁷³

Hungary’s record of implementing European Court of Human Rights (ECtHR) judgments remains poor. On 1 January 2023, Hungary had 43 leading judgments of the ECtHR pending implementation, and the rate of leading judgments from the past 10 years that remain pending was at 76%. The latter is an increase compared to 71% in 2022, and it is the worst (highest) rate in the EU, where the average rate is around 40%. The average time that the judgments have been pending implementation is over 6 years and 8 months, compared to the EU average of 5 years and 1 month, the Hungarian average being the

⁶⁷ Hungarian Helsinki Committee, *Non-Execution of Domestic and International Court Judgments in Hungary*, December 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf, pp. 10-13 and 15-16.

⁶⁸ <https://444.hu/2021/11/17/egymas-utan-mondjak-ki-a-birosagok-hogy-amit-a-kormany-media-csinal-annak-nincs-sok-koze-az-uj-sagira-shoz>

⁶⁹ Act LIII of 1994 on Judicial Enforcement, Article 174(c)

⁷⁰ Source of data: response of the Chief Prosecutor’s Office of 26 July 2022 to the Hungarian Helsinki Committee’s freedom of information request (LFIIGA//419-3/2022).

⁷¹ For a detailed analysis of the issue and how it amounts to the non-implementation of a related judgment by the European Court of Human Rights, see the communication of the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee, submitted to the Committee of Ministers of the Council of Europe in July 2022 in relation to the *Kenedi v. Hungary* case: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/08/HCLU-HHC_Rule_9_Kenedi_072022.pdf.

⁷² European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 35. The full and up to date list of the respective Constitutional Court decisions is available here: <https://www.parlament.hu/az-orszaggyules-donteseire-vonatkozo-alkotmanybirosagi-hatarozatok>.

⁷³ European Commission, *2023 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf, p. 1.

second longest in the EU.⁷⁴ Pending leading cases concern crucial issues, including unchecked secret surveillance,⁷⁵ freedom of expression of judges,⁷⁶ excessive length of judicial proceedings,⁷⁷ whole life imprisonment,⁷⁸ police ill-treatment,⁷⁹ and discrimination of Roma children in education.⁸⁰ There is still no separate national structure to bring together various actors to coordinate the implementation of ECtHR judgments; meaningful parliamentary oversight is lacking.⁸¹

In the past few years, severe problems have emerged with regard to the execution of the judgments of the Court of Justice of the European Union (CJEU) as well, amounting to non-compliance. A recent study by the Hungarian Helsinki Committee shows that, as of October 2022, Hungary has not (or only partially) implemented 9 out of the 13 CJEU judgments issued in the field of asylum and migration.⁸² Non-executed CJEU judgments include for example the following:

- In December 2020, the CJEU ruled in Case C-808/18 that by prescribing the removal of unlawfully staying third-country nationals to the Serbian side of the border fence, without undertaking any identification or individualised procedure and without allowing them to make an asylum application, Hungary violated EU law. However, no steps have been taken by Hungary to remedy the situation and execute this judgment. Collective expulsions, or push-backs, continue. According to official police data, in 2022 alone, over 158,000 such measures took place. As a result of this blatant instance of non-implementation, in 2021 the EC referred Hungary back to the CJEU, requesting the Court to impose fines for not implementing the judgment. This is unprecedented in Hungary's history as an EU Member State.⁸³
- In November 2021, the CJEU found in Case C-821/19 that the so-called "Stop Soros" law that criminalised assistance to asylum-seekers was in breach of EU law. As a result, in December 2022, the original legal provisions were amended, but – as also explained above – this amendment has failed to implement the CJEU's judgment, since the law continues to criminalise the so-called "facilitation and support of illegal immigration" and continues to have a deterring effect on the provision of legal assistance to asylum-seekers.⁸⁴

⁷⁴ For more details, see: Democracy Reporting International – European Implementation Network, *Justice Delayed and Justice Denied: Non-Implementation of European Courts Judgments and the Rule of Law*, 2023, https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/64a29f5698963750a81c90f7/1688379227726/Justice+Delayed+and+Justice+Denied_Final%282%29.pdf.

⁷⁵ *Szabó and Vissy v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10745>.

⁷⁶ *Baka v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10859>

⁷⁷ *Gazsó v. Hungary* group of cases, <http://hudoc.exec.coe.int/eng?i=004-10875>

⁷⁸ *László Magyar v. Hungary* group of cases, <https://hudoc.exec.coe.int/eng?i=004-10897>

⁷⁹ *Gubacsi v. Hungary* group of cases, <https://hudoc.exec.coe.int/eng?i=004-10515>

⁸⁰ *Horváth and Kiss v. Hungary*, <http://hudoc.exec.coe.int/eng?i=004-10905>

⁸¹ For a detailed description of the issue, see: Hungarian Helsinki Committee, *Non-Execution of Domestic and International Court Judgments in Hungary*, December 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf, pp. 50-54.

⁸² Hungarian Helsinki Committee, *Implementing judgments in the field of asylum and migration on odd days*, 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Implementing-judgments-in-the-field-of-asylum-and-migration-on-odd-days.pdf>, with special regard to pp. 42-43.

⁸³ In more detail, see e.g.: Amnesty International Hungary et al., *Assessment of compliance by Hungary with conditions to access European Union funds*, April 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/04/HU_EU_funds_assessment_Q1_2023.pdf, p. 54.

⁸⁴ In more detail, see: *Criminalisation continues – Hungary fails to implement CJEU judgment*, 21 December 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/Criminalisation-continues.pdf>.

2. Legislative and policy measures in 2023 having an impact on the freedom of assembly/association/expression of civil society actors

2.1. In January 2023, residents expressed at public hearings their strong feelings against and fears from battery factories planned to be opened in their towns (e.g. in Debrecen⁸⁵ and Nyíregyháza⁸⁶). Later on, in April 2023, the Government issued a decree⁸⁷ using its emergency powers under the “state of danger” declared due to the war in Ukraine (see above), which opened the possibility of not holding personal public hearings in administrative authorities’ procedures, and by local governments. In addition, on 18 September 2023, the Government submitted to the Parliament Bill T/5249⁸⁸ on further simplifying the state’s administration which would amend the relevant laws with effect from 1 January 2024 and allow local governments, nationality self-governments and administrative authorities to hold public hearings without the personal attendance of the relevant parties, and even only via publishing materials on their websites. The emergency government decree and the bill significantly narrow the possibilities of citizens and civil society to express their opinions about, to participate in, and to be informed about acts of the authorities effecting their everyday lives.

2.2. In late 2021, teachers’ unions began organising a strike to protest, among others, heavy centralisation, shrinking autonomy, low wages and growing workload in public education. After the Government emptied out their right to strike via regulatory measures, as meaningful strike action was no longer possible, teachers turned to civil disobedience, resulting in retaliatory dismissals throughout the autumn of 2022.⁸⁹ Crackdown on dissenting teachers continued in 2023: in addition to the dismissals, the Government reacted to the civil disobedience by adopting Government Decree 4/2023. (I. 12.) on Certain State of Danger Rules Affecting Public Education Institutions as an emergency decree (based on the state danger, see above) on 12 January 2023, which entered into force the next day, and changed the rules of how employers can dismiss employees of public education institutions for violating labour obligations. The decree extended the deadline of extraordinary dismissal from 15 days (to be counted from the alleged violation of the labour obligations) to long months: it set out that in the case of public service employees and non-teaching staff working in public education institutions, employers can exercise extraordinary dismissal/immediate termination of employment until 1 August of the academic year in question, or, in case the employer learns about the violation of the labour obligation between 1 August and the end of the academic year, until 1 August of the following academic year.⁹⁰ The decree could also be applied retroactively: it could be applied if the employer was informed of a violation of a labour obligation before the decree entered into force, provided that at the time of the decree’s entering into force less than 15 days have passed since the employer was informed about the violation of the obligation.

⁸⁵ https://hvg.hu/gazdasag/20230110_debrecen_akkumulatorgyar_kozmeghallgatas

⁸⁶ https://nepszava.hu/3183558_botranyba-fulladt-a-nyiregyhazara-tervezett-akkumulatorgyar-kapcsan-meghirdetett-kozmeghallgatas

⁸⁷ Government Decree 146/2023. (IV. 27.) on Establishing Rules on the Operation of Certain Organisations During the State of Danger and Certain Administrative Procedures Rules

⁸⁸ Available at: <https://tinyurl.com/2p97zzkr>.

⁸⁹ For a comprehensive overview, see: Hungarian Helsinki Committee, *Curtailing the rights of teachers in Hungary – How the Government used legal tools to crack down on teachers asking for improvements in the public education system*, 23 March 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/HHC_Hungary_teachers_23032023.pdf.

⁹⁰ “Extraordinary dismissal” in the law on the status of civil service employees and “immediate termination of employment” in the Labour Code are measures the employer can take in reaction to very severe violations of labour obligations, where the employee is dismissed with immediate effect, without a period of notice or severance payment. These are to be distinguished from “ordinary” dismissal, where a period of notice applies and the employee is entitled to severance payment.

As pointed out by the Democratic Union of Educators (*Pedagógusok Demokratikus Szakszervezete*),⁹¹ the result of the legal amendment was that employers can allow teachers participating in civil disobedience to work until the end of the academic year and can dismiss them afterwards, even for something that happened months before. Since it is left to the employer's discretion whether to resort to extraordinary dismissal or immediate termination of employment, and if yes, at which point in time, the possibility of the dismissal hangs like the sword of Damocles over teachers participating in civil disobedience, leaving them in a state of uncertainty, and in this way the decree exacerbates their vulnerability that is inherent in the asymmetrical nature of the relationship between employer and employee.

This considerably increases pressure on teachers who participate in civil disobedience. It is telling in this regard that the Government's reasoning attached to the decree explicitly says that "in some public education institutions, politically motivated and unlawfully organised cessations of work have become a phenomenon that violates children's right to education", and that the decree "gives employers more leeway to ensure the smooth operation of public education institutions and the education of children"⁹² – clearly showing that the decree targets teachers who participate in civil disobedience.

Even though the reasoning heavily refers to the rights of children and the state's obligation to protect them, the fact that the decree actually allows employers to keep not only teachers who are protesting through civil disobedience but also those who commit serious misconducts on staff for months shows that the real aim is not the protection of children but to undermine the effectiveness of teachers' protests. At the same time, as pointed out by the Union of Educators (*Pedagógusok Szakszervezete*), the decree is an implicit admittance by the Government that there is a huge shortage of teachers in the country.⁹³

2.3. Since the beginning of 2022, the teachers' unions have been playing again an important role in organising the movement for the betterment of the public education system. The Government has only reacted so far with negligence or reprisal,⁹⁴ by amending teachers' strike rules by an emergency decree⁹⁵ in the middle of a lawsuit⁹⁶ on the details of the strike and later cementing the restrictions on statutory level,⁹⁷ by accusing⁹⁸ the unions of campaigning for the opposition parties at the national elections in 2022, by firing⁹⁹ teachers because of civil disobedience which they turned to after the Government emptied their right to strike, by denying¹⁰⁰ the existence of lawful civil disobedience, by not including the teachers' organisations in the law-making process in a meaningful way, and by

⁹¹ <http://www.pdsz.hu/cikk/38056>

⁹² The reasoning is available here: <https://njt.hu/jogszabaly/2023-4-K3-22>.

⁹³ See e.g.: <https://444.hu/2023/01/13/psz-a-kormany-rendelete-elismeri-oriasi-a-pedagogushiany>.

⁹⁴ For a comprehensive overview, see: Hungarian Helsinki Committee, *Curtailling the rights of teachers in Hungary – How the Government used legal tools to crack down on teachers asking for improvements in the public education system*, 23 March 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/HHC_Hungary_teachers_23032023.pdf.

⁹⁵ Government Decree 36/2022. (II. 11.) on Certain State of Danger Rules Affecting Public Education Institutions

⁹⁶ See e.g.: <https://helsinkifyelo.444.hu/2022/03/05/o-io-cio-acio-felulkodifikacio-avagy-a-kormany-hogyan-vette-el-a-sztraikjogot-a-tanaroktol>.

⁹⁷ Act V of 2022 on Regulatory Issues Related to the Termination of the State of Danger

⁹⁸ See e.g.: <https://kormany.hu/hirek/a-kormany-az-oroszag-biztonsagat-es-a-gazdasagot-is-megvedi>, <https://kormany.hu/hirek/a-kormany-fellep-a-szankcios-inflacio-ellen>.

⁹⁹ See in detail: <https://telex.hu/english/2022/10/03/protesters-demand-reinstatement-of-fired-teachers-in-budapest> and <https://telex.hu/english/2022/11/30/8-more-hungarian-high-school-teachers-fired-for-civil-disobedience>.

¹⁰⁰ Cf. a letter by the Ministry of Interior to teachers' unions from August 2022, available at: <https://cdn.kormany.hu/uploads/sheets/c/cb/cb7/cb7caafbb2b8b4e99e97c36bd7efb8c.pdf>.

submitting to the Parliament the so-called Status Act.¹⁰¹ The teachers' struggle attracted solidarity of other public sphere workers' unions¹⁰² and trade unions.¹⁰³

With this as context, on 18 September 2023, the Government submitted Bill T/5249¹⁰⁴ to the Parliament on further simplifying the state's administration (see also under 2.1.). The bill would ban from 1 January 2024 the union check-off system in case of public administration workers. Currently,¹⁰⁵ the employer is obliged upon the request of the employee to deduct the union membership fee from the salary of the employee and to transfer it to the union free of charge. The amendment will pose the financial and timely costs of transferring the fees at the workers, and the unions will most probably lose members and financial resources, because it is less likely that their members will individually transfer the fees on time. This will hinder the unions' right to organise their activities. The amendment may also be understood as a message to discourage public administration workers from entering into unions or openly exercising their right to association, because of what happened previously regarding the public education movement (and the Chamber of Doctors, see below), and the Government shutting out the unions from any meaningful discussion and policy-making.

2.4. The Parliament adopted a bill on 28 February 2023, within one day from its submission with an emergency motion, that abolished the mandatory membership in the Hungarian Chamber of Doctors.¹⁰⁶ There was no public consultation on the amendment. The accelerated procedure followed the 25 February statement of the chancellor minister, falsely accusing the Chamber that they would threaten doctors in the primary care by expelling them from the Chamber and therefore withdrawing their permits if they signed their contracts under the reform of the on-call system. The Chamber criticised the Government for the unprofessional reform, and did encourage doctors not to sign the contracts, but there were no threats, and the new contracts were not taken well by the doctors anyway. The Chamber have criticised the Government for flaws in the public healthcare system and advocated for a meaningful reform, for its inclusion in decision-making, and for salary raises for medical workers. The Government, using the false accusations, emptied the powers of the Chamber, the main advocacy organisation of doctors, and narrowed the medical professionals' independence.

The bill also amended the ethical procedures: until the adoption of the bill, the Chamber conducted the ethical procedures, but the amendment gave this power to another authority, the Medical Research Council,¹⁰⁷ which is the Minister of Interior's advisory council (the Minister of Interior is responsible for healthcare). According to the new rules, the Government would provide the details of the new ethical procedures in a decree, but the decree followed the bill only months later, which means in practice that civilians were left without the possibility to raise their complaints and concerns against ethical infringements in the public healthcare system. The decree¹⁰⁸ finally entered into force on 1 September.

2.5. On 23 May 2023, the Parliament adopted a bill proposed by the Government amending Act XXXVI of 2013 on the Electoral Procedure, which entered into force on 27 May 2023. The amendment bans

¹⁰¹ Act LII of 2023 on the New Career Path of Teachers. See also: <https://www.csee-etuice.org/en/news/member-organisations/5248-hungary-passes-controversial-education-law-despite-protest-from-education-trade-unions>.

¹⁰² See e.g. the solidarity statement of the Trade Union of Hungarian Civil Servants and Public Employees (*Magyar Köztisztviselők, Közalkalmazottak és Közszolgálati Dolgozók Szakszervezete*, MKKSZ): <https://pedagogusok.hu/sztrajk/wp-content/uploads/2022/01/Szolidaritasi-nyilatkozat-MKKSZ-a-pedagogusokert-1.pdf>.

¹⁰³ See e.g. the statement of the Hungarian Trade Union Confederation (*Magyar Szakszervezeti Szövetség*, MASZSZ): <http://szakszervezet.net/hirek/90/MASZSZ,%20korm%C3%A1ny,%20pedag%C3%B3gusok>.

¹⁰⁴ Available at: <https://tinyurl.com/2p97zzkr>.

¹⁰⁵ Act XXIX of 1991 on the Voluntary Nature of Paying Membership Fees in Employee Representation Bodies, Article 1

¹⁰⁶ Act I of 2023 on Amending Act XCVII of 2006 on Professional Chambers in the Healthcare Sector and Act CLIV of 1997 on Healthcare

¹⁰⁷ <https://ett.okfo.gov.hu/en/secretariat/>

¹⁰⁸ Government Decree 318/2023. (VII. 17.) on the Rules of Ethical Procedures against Doctors, Dentists and Other Healthcare Professionals Who Have Completed Higher Professional Education in the Field of Medicine

by-elections of single mandate constituency representatives, mayors, municipality representatives, and nationality self-government representatives in the period between the elections and 1 April of the preceding year.¹⁰⁹ In these periods, the mandates are filled with the former representative's party if the party had a candidate list at the previous election, or if the given party did not have a list or the representative was independent, the mandate is filled with the next candidate from the total list of candidates of the previous election. This means in practice that in the case of the nationality self-governments and municipalities, there will be no by-elections held for 13-14 months¹¹⁰ before the elections. In the case of the national elections, this period will mean around 12 months. The amendment restricts people's fundamental right to exercise their power through their elected representatives. The respective dates used to be 1 January and 1 December before the amendment, and there does not seem to be a competing fundamental right which would justify further restrictions.

The draft of the amendment was put up for public consultation,¹¹¹ but the opinions were not taken into consideration. What is more, the above mentioned problematic provision was included in the bill only after the public consultation was closed and the bill was submitted to the Parliament, upon the request of the Legislative Committee of the Parliament.¹¹²

2.6. As mentioned above under 1.1., on 21 September 2023, the head of the parliamentary group of the governing party Fidesz, Mr. Kocsis, announced at a press conference held during the kick-off meeting of the group that they will submit a "sovereignty protection" bill to the Parliament in the autumn. According to him, the bill aims to "annoy leftist journalists, fake NGOs and dollar politicians".¹¹³ He claimed that the adoption of the bill would entail, among others, amendments to the Criminal Code and the Fundamental Law. Quoting Prime Minister Orbán, he highlighted that Hungary's economic, cultural and political sovereignty is under attack mainly from "Brussels" (i.e. the EU) through, among others, the financing of fake NGOs, activists, leftist parties' events and the media by the European Commission. The text of the bill is not yet available.

This bill, if it will reflect indeed what Mr. Kocsis claimed to be its foreseeable content, would fit into the series of attacks against civil society that began in 2014 with the defamation and police raid against Ökotárs Foundation and the EEA/Norway Grants and later came to include, among others, the infamous Russian-style LexNGO2017 on foreign funded organisations, the 2018 "Stop Soros package", as well as LexNGO2021 (see in detail under 1.1.).¹¹⁴ Although at the time of the present report, no analysable legal text is available publicly, and fundamental changes to party financing has been a consistent demand of relevant civil society actors to ensure transparency, equal opportunities and competition,¹¹⁵ Mr. Kocsis's presentation suggests that the planned changes would generally affect the freedom of assembly/association/expression of civil society actors.

¹⁰⁹ Act XXIV of 2023 on Amending the Election Procedure Rules in Relation to Electronic Administration, Article 66 Subsections 2-3.

¹¹⁰ Due to an amendment of July 2022, the municipality and nationality self-government elections will be held from 2024 on simultaneously with the European Parliamentary elections, while earlier they used to be held in Octobers.

¹¹¹ <https://kormany.hu/dokumentumtar/a-valasztasi-eljarasi-szabalyoknak-az-modositasarol-szolo-torveny>

¹¹² Available at: <https://tinyurl.com/3ew2rthv>.

¹¹³ See the reporting from the press conference at

https://hvg.hu/itthon/20230921_Szuverenitasi_torvenycsomag_kormany_frakcioules_Kocsis_Mate.

¹¹⁴ For a timeline of these attacks, see: <https://helsinki.hu/en/timeline-of-governmental-attacks-against-ngos/>.

¹¹⁵ See e.g. the joint report of K-Monitor, Political Capital, and Transparency International on the campaign spending of participating parties at the 2022 parliamentary elections at: https://politicalcapital.hu/pc-admin/source/documents/Kozteruleti_Kampanykoltesek_2022marcius.pdf, K-Monitor's recommendations of February 2022 on election and campaign financing reforms: <https://k.blog.hu/2022/02/12/part-es-kampanyfinansirozas> or Transparency International Hungary's proposals tabled in 2016: <https://transparency.hu/wp-content/uploads/2016/02/Kampanykod.pdf> and in 2014: <https://tinyurl.com/bdcv84s8>.