Hungary:
Illiberal Highlights of 2020

1 December 2020

HUNGARIAN HELSINKI COMMITTEE

Contents

INTRODUCTION

Since winning the elections in 2010, the populist, right-wing Fidesz-KDNP government has been using its constitutional supermajority to systematically and consciously undermine the rule of law and disrupt the system of checks and balances in Hungary by weakening, eliminating or occupying institutions and actors that can exercise any form of control over the executive branch of power. In 10 years, an "illiberal state" has been built in the middle of Europe, despite the countless warnings and requests by international and regional human rights bodies, numerous infringement procedures, or the procedure launched against Hungary under Article 7(1) of the TEU.

The last hearing by the General Affairs Council of the European Union in the Article 7(1) procedure against Hungary was held on 10 December 2019, almost a year ago. Ahead of that hearing, a wide coalition of Hungarian non-governmental organisations (NGOs), the Hungarian Helsinki Committee (HHC) among them, prepared a reaction paper[1] to the Hungarian Government's Information Note.[2] This Information Note was submitted by the Government to the General Affairs Council as a response to the European Parliament's Resolution, adopted on 12 September 2018 and submitted in the framework of the procedure under Article 7(1) TEU against Hungary[3] (hereafter: Reasoned Proposal). In our reaction paper, we not only collated and rebutted the most significant false or misleading statements of the Government's Information Note, but also covered the most important new developments in the area of rule of law and human rights in Hungary since the adoption of the Reasoned Proposal.

Now, a year later, we have new developments to cover, and these are not positive ones. In 2020, the Hungarian Government and the governing majority have continued to build their "illiberal state", and have continued to erode the rule of law in Hungary in almost every area the Reasoned Proposal covered. This happened amidst the country also suffering from the global pandemic caused by COVID-19, and oftentimes under the cover of the COVID-19 response.

This paper presents the "illiberal highlights" that took place in Hungary in 2020. It should not be considered a full account of the rule of law and human rights developments of this year. Instead, it follows the structure of the Reasoned Proposal, and focuses on the issues highlighted therein. Our aim is to show that the Hungarian Government has not halted its efforts to dismantle the rule of law, and continuing the Article 7(1) procedure against Hungary is more important than ever.

1. FUNCTIONING OF THE CONSTITUTIONAL AND ELECTORAL SYSTEM

1.1. Excessive executive powers granted to the Government

In 2020, the COVID-19 pandemic prompted countries to resort to emergency laws. An emergency regime was introduced in Hungary as well. However, the ruling majority adopted a regime that granted excessive regulatory powers to the Government and was at odds with international standards.

On 11 March 2020, the Hungarian Government declared a state of danger (*veszélyhelyzet*), a special legal order included in the Fundamental Law (the constitution of Hungary). On 30 March, the Parliament went on to adopt Act XII of 2020 on the Containment of the Coronavirus (hereafter: **Authorisation Act**), which **provided the Government with a *carte blanche* mandate without any sunset clause** to suspend the application of Acts of Parliament, derogate from the provisions of Acts, and take other extraordinary measures until the state of danger declared by the Government is in place. Beyond the lack of a sunset clause, the main problem was that the Authorisation Act eliminated a substantive guarantee included in Fundamental Law. According to the concept outlined in the Fundamental Law,

[1] *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, pp. 29-30.
[2] Available at: https://2015-2019.kormany.hu/download/c/ce/a1000/Information%20note%20Article%207_20190911.pdf#!DocumentBrowse.
[3] Available at: https://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.pdf.

special government decrees adopted during a state of danger can remain in effect after an initial period of 15 days only with Parliament's support given in full knowledge of the contents of the decrees. However, the Authorisation Act authorised the Government to extend the force of future, not-yet-adopted special decrees – the content of which was of course unknown.[4]

Between 30 March 2020 and the termination of the first state of danger by the Government as of 18 June, the **Government adopted over 150 decrees** applicable in the state of danger, partly using the powers granted by the Authorisation Act.[5] Some of these **violated fundamental rights and EU law**, for example the decree suspending provisions of the GDPR (*see Chapter 4.*), or the decree removing the right to suspend expulsion during an appeal (*see Chapter 10.1.*). Parallel to that, the Hungarian Parliament not only remained operational, but was quite active, and adopted a number of laws and decisions in the period of the state of danger. Some of these had no relationship whatsoever with the containment of COVID-19, but in turn had a negative effect on human rights.[6]

The first state of danger was terminated by the Government as of 18 June 2020, and with that, the Authorisation Act was repealed, along with the special government decrees adopted. However, on the same day, Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness (hereafter: Transitional Act)[7] came into force. The **Transitional Act fundamentally altered the legal framework regarding the "state of danger" and the "state of medical crisis"** (*egészségügyi válsághelyzet*), and **provided the Government with excessive powers** that can be applied with a reference to an epidemic **with significantly weakened constitutional safeguards**. A state of medical crisis was ordered instantly, as of 18 June. As far as the regulatory framework for the state of danger is concerned, the Authorisation Act's stipulation that provided a *carte blanche* mandate to the Government by excessively widening the scope of the decrees the Government may issue during the state of danger was copied practically verbatim into the Disaster Management Act[8] which details what the Government can do in a state of danger.[9]

This new provision of the Disaster Management Act became automatically applicable when the Government declared a state of danger for the second time on 3 November 2020. The declaration of the state of danger was followed by the adoption of Act CIX of 2020 on the Containment of the Second Wave of the Coronavirus Pandemic (hereafter: Second Authorisation Act) by the Parliament on 10 November. The **Second Authorisation Act** differs from the original Authorisation Act in that it does contain a sunset clause: it authorises the Government to extend the force of governmental decrees adopted during the state of danger for 90 days from its promulgation, that is, until 8 February 2021. However, it also does away with the substantive restriction of the Fundamental Law when it **authorises the Government to extend the force of future, not-yet-adopted special decree**s.

---

[4] In more detail, see: Hungarian Helsinki Committee, *Background note on Act XII of 2020 on the Containment of the Coronavirus,* 31 March 2020, https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf.

[5] For a full list of these decrees, with an English summary of their contents, see the HHC's COVID-19 Emergency Decrees Tracker here: https://docs.google.com/spreadsheets/d/1t27aU5QYW0pj8PfaNxWuajyPhrwpbO6TxunRjPnrOhM/edit#gid=0.

[6] For accounts of developments in the state of danger in Hungary, see: Hungarian Helsinki Committee, Hungarian Helsinki Committee, *Information Note on Certain Rule of Law Developments in Hungary between May-July 2020*, 13 August 2020, https://www.helsinki.hu/wp-content/uploads/HHC_Rule_of_Law_update_May-July2020.pdf, pp. 5-11; Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf; Political Capital, *Nothing is more permanent than a temporary solution – the state of danger will come to an end in Hungary, but its impact remains,* 28 May 2020, https://www.politicalcapital.hu/pc-admin/source/documents/pc_flash_report_nothing_is_more_permanent_than_a_temporary_solution_20200528.pdf.

[7] For an unofficial English translation of certain selected provisions of the Transitional Act, see: https://www.helsinki.hu/wp-content/uploads/T-10748_excerpts_unofficial_translation_EN.pdf.

[8] Act CXXVIII of 2011 on Disaster Management and Amending Certain Related Acts of Parliament

[9] See in more detail: Hungarian Helsinki Committee, *Explanatory Note for Bills T/10747 and T/10748 as Adopted by the Hungarian Parliament,* 17 June 2020, https://www.helsinki.hu/wp-content/uploads/HHC_explanatory_note_Bills_T10747_and_T10748_after_adoption.pdf; *Detailed analysis of the Transitional Act's provisions on special legal order and the state of medical crisis, and on other provisions concerning fundamental rights and the rule of law,* 30 July 2020, https://www.helsinki.hu/wp-content/uploads/Transitional_Act_AIHU-EKINT-HCLU-HHC_30072020.pdf.

Finally, it has to be highlighted that **neither the authorisation acts, nor the Transitional Act include any provisions that would facilitate the swift and effective constitutional review of government decrees** adopted in a state of danger or in a state of medical crisis (such as a provision prescribing a short deadline for the Constitutional Court to decide on complaints regarding emergency decrees). In addition to that, on 31 March 2020, the President of the Constitutional Court issued an order on the basis of the Authorisation Act that derogated from the ordinary rules of procedure in a way that restricted the space for debate among Constitutional Court justices, and made it possible to reject constitutional complaints with even shorter reasoning than before.[10]

1.2. The 9th Amendment to the Fundamental Law

The current governing majority has frequently amended both the old and the new constitutions, sometimes in a way that overrode Constitutional Court decisions. This demonstrates the governing majority's **"instrumental attitude" towards the Fundamental Law**.[11] Following this pattern, on 10 November 2020, the same day when the Second Authorisation Act was adopted and the same night when millions of Hungarians were waiting for the Government to publish its decrees applicable from the next day on extensive new curfew rules announced due to the pandemic, the Government submitted a bill on the proposed 9th Amendment to the Fundamental Law. Certain provisions of the proposed 9th Amendment, which was submitted **without any prior public consultation**, restructure the framework of special legal orders, while others humiliate the LGBTQI community and provide a constitutional basis for curtailing their rights *(see Chapter 8.)*; restrict the notion of public funds and so undermine the state's transparency and the freedom of information; and ensure that public funds channelled into public trust funds might be practically untouchable for future governments (*see Chapter 3.*). Thus, the proposed 9th Amendment shows once again that the ruling majority **treats the Fundamental Law as a political tool of the Government**.[12]

1.3. Shrinking election space for opposition parties

Hungary's general election system underwent a reform in 2011. Currently, a one-round system applies in which 106 Members of Parliament out of the 199 MPs are elected in single-member constituencies, while the other 93 seats are filled from party lists (the latter with a proportional formula).[13] During the said reform, rules were amended in favour of the governing party: gerrymandering[14] and introducing a system of "winner compensation" (which brought extra mandates for the governing party)[15] resulted in the election system becoming extremely disproportionate.[16] Furthermore, Hungary's distorted media landscape and deficient campaigning rules undermine the fairness of elections.[17]

On 10 November 2020, parallel with the 9th Amendment to the Fundamental Law, the Government submitted a bill without any prior public consultation that would amend election rules against the above landscape. Bill T/13679 **would raise the required minimum number of candidates in single-member constituencies** from the current 27 to 50 out of 106 **for a party to be able to have a party list**, which in turn is the requirement for the collection of compensation votes. Later on, a further

[10] The order is available here in English: https://hunconcourt.hu/announcement/the-state-of-danger-affects-the-operation-and-the-responsibility-of-the-constitutional-court-as-well.
[11] 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, para. 136.
[12] See also: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf.
[13] For a more detailed description of the election system, see e.g.: http://www.valasztasirendszer.hu/wp-content/uploads/PC_ElectoralSystem_120106.pdf.
[14] For more information, see: Political Capital – Friedrich Ebert Stiftung, *Halfway into the Hungarian electoral reform,* 19 April 2012, http://www.valasztasirendszer.hu/wp-content/uploads/PC-FES_ConferencePaper_HalfwayIntoTheHungarianElectoralReform_120417.pdf.
[15] For more details, see: Political Capital, *Flash Report: The Winner Takes it All*, 18 February 2014, http://www.valasztasirendszer.hu/wp-content/uploads/pc_flash_report_20140218_TheWinnerTakesItAll.pdf.
[16] See e.g.: https://budapestbeacon.com/electoral-rules-rig-results-of-hungarian-elections-warns-princetons-kim-lane-scheppele/.
[17] See e.g. the OSCE/ODIHR Limited Election Observation Mission's conclusions on the 2018 general elections: https://www.osce.org/files/f/documents/0/0/377410.pdf.

amendment to the bill was approved that would raise the minimum number of candidates even higher, to 71, in at least 14 out of the 19 counties and the capital. These new rules, already applicable at the next general elections in the spring of 2022, would require extended cooperation from opposition parties and that they have joint candidates and a joint party list, which would also have financial implications. Thus, the bill would **further shrink the options and possibilities of opposition parties, and is capable of undercutting the opposition's chances** in the elections. Bill T/13679 claims that it aims to purge sham parties[18] from the elections, but there are rules that could achieve that same goal without limiting the possibilities for the opposition, such as the elimination of the Fidesz-introduced system in which one citizen can give a recommendation (which is a precondition for running) to not only one but to multiple candidates.[19]

2. INDEPENDENCE OF THE JUDICIARY AND OF OTHER INSTITUTIONS

2.1. Continued erosion of the independence of the judiciary

On 17 December 2019, just days after the last hearing by the General Affairs Council in the Article 7(1) procedure against Hungary, the Hungarian Parliament adopted Act CXXVII of 2019, a substantial omnibus act that contained several new rules regarding – among others – the judiciary (hereafter: 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.

Even though domestic and international stakeholders have put forth a long list of recommendations along the years on how to restore the independence of the judiciary in Hungary, the Omnibus Act does nothing of the sort. It **does not contain any remedies for the structural deficiencies that created the constitutional crisis[20] within the system of judicial administration**, between the President of the National Judicial Office[21] (NJO, elected by the Parliament) and the National Judicial Council[22] (NJC, the judicial self-governing body). Instead, it contains provisions that have a **significant negative impact on judicial independence**, however, in a much more covert and technical way than earlier attempts.[23]

(1) The Omnibus Act **granted state/public authorities the right to submit constitutional complaints to the Constitutional Court**. This means that 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. 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.

(2) The Omnibus Act allows for the **appointment of Constitutional Court justices as "ordinary" judges** if they request so, without the otherwise required application procedure and any involvement

[18] For more on the phenomena of "sham parties", see: Political Capital – Transparency International Hungary, *Sham Parties Could Drain Billions of Forints from Public Money,* 18 November 2013, https://transparency.hu/en/news/ujabb-visszaelesi-lehetoseg-a-kampanyfinanszirozasban/.

[19] For more details, see: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf, pp. 6-7; *Band aid for rule of law wounds – actionable recommendations for legislative amendments improving the system of checks and balances in Hungary*, 30 November 2020, https://www.helsinki.hu/wp-content/uploads/Hungary_potential_amendments_improving_RoL_30112020.pdf, p. 4.

[20] See e.g.: https://www.helsinki.hu/en/constitutional-crisis-in-the-judiciary-july2019/.

[21] According to the Fundamental Law, the "central responsibilities of the administration of the ordinary courts shall be performed" by the President of the National Judicial Office (also referred to as National Office for the Judiciary), who is elected by the Parliament without the involvement of any judicial body.

[22] The National Judicial Council is a judicial self-governing body comprised of judges elected by their peers and vested with the task of controlling how the President of the NJO exercises his/her rights. According to the Fundamental Law, the NJC shall "supervise the central administration of the ordinary courts".

[23] 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; Amnesty International Hungary, *Nothing ever disappears, it only changes,* https://www.amnesty.hu/wp-content/uploads/2020/10/ANALYSIS.pdf.

of judicial self-governing bodies and judges. In addition, justices are transferred automatically to the Kúria (Hungary's supreme court) after their mandate as constitutional justices comes to an end. Since constitutional justices are **nominated and elected by one political party in the Parliament** (without any involvement by the opposition), the new rule results that persons who are practically **political appointees can be parachuted into the highest judicial positions**. Political considerations can override professional qualities, and the ruling majority can gradually increase the number of loyal judges at the Kúria. This means an – albeit indirect – interference into judicial independence by another branch of power, the legislature. This kind of dilution of the Kúria's body of judges with political appointees is not a theoretical possibility as shown by the fact that in the summer of 2020, **eight constitutional justices were granted judicial appointment, one of whom,** András Zs. Varga **became the Kúria's president** in October 2020.

Thus, András Zs. Varga, who has never served as a judge within the ordinary court system and never presided over a trial,[24] was parachuted to the top of Hungary's ordinary judicial system as a one-party political appointee. In addition to that, he was **elected in complete disregard for the manifest objection of the judicial self-governing body**, the NJC, where 13 out of the 14 members opposed his nomination. The NJC reminded of the total lack of his experience as a judge and judicial leader, and raised concerns regarding his impartiality and independence from other branches.

The election of Mr Varga is not only a clear message to the judiciary that the ruling majority is not willing to respect their independence, but raises concerns also because of the **excessive powers held by the President of the Kúria within the whole judicial system**, and especially within the top tier. As President of the Kúria, Mr Varga has (i) administrative powers that permit him to determine judicial careers within the Kúria (e.g. appointment, evaluation, promotion and relocation of justices); (ii) managerial powers that authorise him amongst others to exercise employer's rights over Kúria justices (e.g. the right to initiate disciplinary proceedings); (iii) a right to establish the case allocation scheme of the Kúria and allow derogations from it; and (iv) jurisprudential powers that empower him to play a decisive role in the unification of the jurisprudence of lower tier courts and shape the mandatory interpretation of the law (see below). Each of these powers have a strong impact on the internal independence of the judiciary, and their effect is multiplied by the fact that they are unified in one hand. Taking into account the above functions, it is evident that, if he does not keep his distance from the executive branch, Mr Varga may act as a transmission belt of the executive within the judiciary.[25]

(4) The above developments are especially problematic due to the **new semi-precedent system** also introduced by the Omnibus Act. The new rules make it an express obligation for lower level courts to either follow the published judgments of the Kúria (precedential judgments) or to give express reasons for departing from the interpretations appearing in them. If the lower level court deviates from a precedential judgment, its decision could be subject to review. This **increases the Kúria's weight** within the judicial system even further, and so its composition will have an even larger significance in the long run than currently.

Furthermore, as of 1 July 2020, an **additional level of judicial review** was inserted in the system. The new procedure, called **"complaint for the unification of jurisprudence"**, is claimed to be designed to guarantee the uniform application of the law and may be initiated before the Kúria in case a final and binding court decision deviates from a precedential judgment of the Kúria. If a complaint is lodged and the Kúria establishes a deviation from its precedential jurisprudence, the final and binding court resolution can be quashed. The Kúria may also establish the mandatory interpretation of the law as a result of the procedure. While the aim of the new procedure is in line with the constitutional requirement of the unity of law, the rules governing the procedure **grant a key role to the President of the Kúria in the process**. The President of the Kúria is entitled to appoint judges who can

[24] It shall be added that the nomination of Mr Varga as President of the Kúria could go forward despite his lack of judicial experience because as of 1 January 2020, the rules governing the eligibility criteria for the position of the President of the Kúria (which requires candidates to have at least five years of judicial practice) were amended as well, allowing experience as member of the Constitutional Court to be considered as time served as judge (see Article1 of Act XXIV of 2019on Further Safeguards Guaranteeing the Independence of Administrative Courts).

[25] For more details, see: Hungarian Helsinki Committee, *The New President of the Kúria: a Potential Transmission Belt of the Executive within the Hungarian Judiciary*, 22 October 2020, https://www.helsinki.hu/wp-content/uploads/The_New_President_of_the_Kuria_20201022.pdf.

participate in unification procedures, can become head of the unification panel and select the members of the panel. These rights provide the President of the Kúria a privileged role both in the adjudication of individual cases and in shaping the mandatory interpretation of the law, which makes the election of András Zs. Varga as President of the Kúria even more problematic.

(5) The Omnibus Act also **restricted access to justice in administrative cases** when it prescribed that in cases launched after 1 March 2020, it is no longer possible to submit an appeal against first instance administrative decisions: instead, they have to be challenged before the court instantly. First instance judicial reviews are conducted only by 8 designated county courts out of the 20, and so some of them have to cover 3 counties. This way, in many instances courts where the cases are tried are far away from where the parties live, and since writing a court submission is much more difficult than drafting an administrative appeal, there is a much higher chance that parties will have to hire an attorney. Thus, **obtaining a remedy costs more time, money and other resources**, **affecting negatively especially indigent or low-income persons**. According to its explanatory memorandum, the Omnibus Act aimed to speed up administrative cases, but no impact studies were provided on how it aims to achieve that, and it is more likely to slow down these cases instead.[26]

Finally, the Omnibus Act **deepened the deficiencies of the case allocation system** within the courts, which already suffered from serious deficiencies with respect to guarantees against undue intervention. For example, the process of case allocation is neither computerized, nor automated but reliant on direct human intervention, carried out by judicial leaders under specific case allocation schemes. The right to establish the case allocation scheme lies exclusively in the hands of court presidents, without effective control of judicial self-governing bodies.[27] The recent amendment removed the safeguard clause prescribing a fixed one-year term as temporal scope of schemes, therefore the **court presidents' right to modify schemes has become unlimited in time, and modifications can be carried out without any transparent and objectively justifiable reason**.

2.2. An inactive Ombudsperson and an abolished equality body

In October 2019, the Global Alliance of National Human Rights Institutions deferred the review of the Commissioner for Fundamental Rights' (the Ombudsperson's) status as a national human rights institution, among others because the Commissioner had "not demonstrate[d] adequate efforts in addressing all human rights issues, nor has it spoken out in a manner that promotes and protects all human rights".[28] In September 2019, a new Ombudsperson took office, but unfortunately, he has also repeatedly failed to act or to act adequately in politically sensitive or high-profile cases:

- The Ombudsperson has failed to take adequate steps when governing party politicians launched a concerted campaign against a court judgment that awarded compensation payments for **school segregation** to **Roma pupils** in Gyöngyöspata (*see Chapter 9.*). The Ombudsperson's Office announced on 23 January 2020 that they launched an investigation into the issue,[29] but the conclusions of this examination have not been published to date. The Ombudsperson has not stepped up in any way against the clearly unconstitutional Lex Gyöngyöspata (i.e. the law excluding pecuniary compensation for segregation) either, even when 24 NGOs asked him to do so.[30]
- In early 2020, the governing party launched a political campaign against compensations for prison overcrowding, aimed at **discrediting** (e.g. through the use of the term "prison business") **detainees launching compensation procedures for inadequate detention conditions,**

[26] In more detail, 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, pp. 7–8.
[27] For further information about the case allocation system in general, see: Szonja Navratil, *Practice of the case allocation system in Hungary,* https://www.helsinki.hu/wp-content/uploads/Practice-of-the-case-allocation-system-in-Hungary-Szonja-Navratil.pdf.
[28] 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.
[29] http://www.ajbh.hu/kozlemenyek/-/content/qzyKPkTyQAvM/szalayne-sandor-erzsebet-nemzetisegi-ombudsmanhelyettes-kozlemenye-a-gyongyospatai-iskolai-szegregacio-miatt-megitelt-karteritesek-vegrehajtasaval-kap
[30] See: https://www.helsinki.hu/lepjen-fel-az-ombudsman-a-keszulo-jogi-getto-ellen/.

their legal counsels, and detainees' rights advocates, including the HHC.[31] Even though the statements by government and governing party representatives were capable of creating a hostile environment towards detainees, attacked attorneys simply for applying the law, and targeted a human rights NGO once again, the Ombudsperson remained silent regarding the issue.

- Despite the recurring requests from the HHC, the new Ombudsperson has failed to take any steps with regard to any of the **rights violations affecting asylum-seekers and migrants** signalled, ranging from violent pushbacks and collective expulsion on the Serbian-Hungarian border to deficiencies in the situation of migrant children.
- The Ombudsperson has failed to step up against the **law that prohibited legal gender recognition** (*see Chapter 8.)*. He has remained silent and inactive despite NGOs and over 13,000 signatories from Hungary asking him to request a review from the Constitutional Court.[32]

The Ombudsperson's above performance gives rise to concerns also because a bill submitted to the Parliament on 10 November 2020 by the Parliamentary Committee of Justice Affairs **envisages the abolishing Hungary's equality body, the Equal Treatment Authority, and transferring its tasks and competences to the Ombudsperson as of 1 January 2021**. Bill T/1363, submitted without any prior public consultation, was not foreshadowed by any public debate or criticism of the Equal Treatment Authority, which is a well-functioning rights protection body, and has been operating to the satisfaction of many civil society organisations defending the right to equal treatment of protected groups. Furthermore, in contrast to the Ombudsperson, the Equal Treatment Authority has issued important decisions regarding human rights violations that can be regarded as politically particularly sensitive in Hungary today, such as rights violations affecting the Roma[33] or the LGBTQI community.[34]

NGOs warned that integrating the Equal Treatment Authority's tasks into an office with a much wider mandate would inevitably mean the "downgrading" of the requirement of equal treatment, and it is almost certain that it will result in a **decrease in the level of protection**. The takeover would bring along a range of practical issues as well: it is not clear how adequate human resources at the Ombudsperson's Office will be secured for the new tasks in such a short timeframe, and pending procedures will have to be suspended in January 2021 because of the hasty takeover. Furthermore, the quasi-judicial functions of the Equal Treatment Authority and the Ombudsperson's methods (e.g. issuing non-binding recommendations) differ significantly and are difficult to reconcile. Because of the above reasons, abolishing the Equal Treatment Authority is not only **unnecessary and unjustified**, but may also weaken the level of human rights protection in Hungary.[35]

3. CORRUPTION AND CONFLICTS OF INTEREST

3.1. Restricting the notion of public funds

The proposed 9th Amendment to the Fundamental Law would restrict the notion of public funds by inserting into the constitution that public funds are *"the revenues, expenditures and receivables of the State"*. Most probably, this is **a reaction to a series of cases in which entities using funds originating from the state budget attempted to refuse freedom of information requests** regarding how the funds had been spent on the basis that those funds "had lost their public nature". However, the Hungarian courts repeatedly rejected this argument and obliged them to disclose the requested information.

[31] See e.g.: Csaba Győry, *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/. For the latest developments, see: https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2020_06_29.pdf.
[32] See: https://www.amnesty.hu/mar-tobb-mint-100-ezren-kerik-kozma-akost-hogy-vegezze-a-munkajat/.
[33] See e.g.: https://www.equalitylaw.eu/downloads/3786-hungary-court-upholds-equal-treatment-authority-s-decision-on-failure-to-adequately-plan-and-prepare-the-winding-up-of-segregated-roma-neighbourhood-pdf-66-kb.
[34] See e.g.: https://www.equalitylaw.eu/downloads/5086-hungary-budapest-mayor-s-office-unblocks-access-to-lgbtqi-websites-79-kb.
[35] See: https://www.helsinki.hu/wp-content/uploads/Equal-Treatment-Authority_Civilizacio-statement_26112020.pdf.

Those laws that the different courts relied upon for their rulings on the above-mentioned cases have so far remained untouched. Therefore, it needs to be seen whether (i) the constitutional amendment might change the jurisprudence, and/or (ii) the constitutional amendment will serve as a basis for amending these lower ranking norms. In any case, the proposed amendment is **capable of undermining the state's transparency and freedom of information**, and it gives rise to suspicions that the justification offered for it in the bill's explanatory memorandum is false.[36]

3.2. Cementing public trust funds

The proposed 9th Amendment to the Fundamental Law aims to insert an additional paragraph into Article 38 of the Fundamental Law, stipulating that *"the establishment, operation and termination of public trust funds performing a public task as well as the performance of such public tasks by the public trust fund shall be regulated in a cardinal law"* (i.e. an Act of Parliament that can only be passed or amended by two-thirds majority of the MP's who are present during the vote).

Since public trust funds were introduced into the Hungarian law in 2019, several have been established and endowed by the Government; according to critics often with the purpose of **channelling public assets into private hands**. Public trust funds have also been **used as the institutional framework for recasting the management of universities**: several universities have been transferred to such funds in the past couple of months, enabling the Government to appoint boards with loyal members and thus decreasing the independence of institutions of higher education*. (See the example of the University of Theatre and Film Arts in Chapter 6.)* Until now, the Acts of Parliament on public trust funds have been subject to a simple majority. Against the above background, making them subject to cardinal laws seems to serve the purpose of making sure that in the case of an electoral victory for the opposition that falls short of gaining a qualified majority, the transferred assets cannot be reclaimed and the reorganisation of the management of universities cannot be reversed.[37]

4. PRIVACY AND DATA PROTECTION

The Government took a range of steps during the state of danger that violated privacy rights.[38] One example for this was Government Decree 179/2020. (V. 4.), which **suspended** Articles 15-22 of the **GDPR** in relation to personal data that are processed "in order to prevent, identify and detect coronavirus cases, as well as prevent its spread, including the organization of the coordinated performance of tasks by the public bodies in relation to this". Therefore, the decree was "(i) inconsistent with the GDPR, and thus **contrary to EU law**; and [was] (ii) likely to give rise to breaches of the Charter [of Fundamental Rights of the EU]".[39] In addition, the decree postponed the start date of time limits for procedures under Articles 77-79 of the GDPR, which was "inconsistent with the GDPR, and thus contrary to EU law; and […] any delays in the progression or determination of legal proceedings initiated under Articles 78 and/or 79 GDPR may give rise to breaches of those provisions and of the Charter".[40]

[36] The memorandum claims that the need for the amendment stems from the diverging case law of "constitutional bodies" and it is aimed at unifying the jurisprudence. However, the jurisprudence has been sufficiently consistent in not allowing the meaning of the term "public fund" to be narrowed down. For more details, see: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf, p. 5.

[37] For more details, see: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf, p. 6.

[38] For a detailed description of these measures, see: Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf, pp. 9-13.

[39] Blackstone Chambers, *Hungary and the Rule of Law: The law of the European Union and Hungary's Act XII of 2020 on the containment of coronavirus and Decrees issued thereunder – Opinion*, https://www.blackstonechambers.com/news/legal-opinion-hungarian-covid-19-legislation/, p. 17.

[40] *Ibid.,* p. 19.

5. FREEDOM OF EXPRESSION

5.1. Continued shrinking of independent media outlets

The year 2020 brought along a major negative development in the already very much distorted Hungarian media landscape: **amidst claims of political interference, virtually all of its journalists left index.hu, which was the largest remaining independent Hungarian news portal**. The independence of index.hu was in danger for years because of its financing and ownership structure. In March 2020, a businessman close to the governing party (who was also responsible for the purchase and takeover of another independent online news outlet years ago) bought a 50% share in the company that controlled the revenue streams and advertising of index.hu. Finally, in July, the editor-in-chief was dismissed by the management, after he publicly voiced concerns about the management's plans on reorganizing the operation of the site. As a reaction to his dismissal, virtually all journalists resigned due to what was seen as political interference in the editorial work.[41] In November 2020, another purchase by the same businessman was announced, which, due to the ownership structure, sealed the takeover of index.hu, making it undoubtedly part of the government-linked media empire.[42]

Another detrimental development was that in September 2020, the National Media and Info-communications Authority decided **not to renew the radio frequency license of independent Klubrádió**. The Authority claimed that the reason for its decision was that Klubrádió had repeatedly violated applicable legal provisions, but the radio station has contested these statements. Klubrádió will have its frequency until 14 February 2021, and in the meantime, a tender will be issued, where Klubrádió will also be able to apply.[43] However, it gives rise to severe concerns that the radio frequency tenders are decided on by the Media Council, a politically homogeneous authority, and over the past few years, "the radio frequency tenders issued by the Media Council and its frequency award practices have fundamentally reshaped the pre-2010 map of the radio market".[44] Furthermore, decisions in awarding frequencies are almost impossible to contest at courts as tender applications are never made public, leaving those wishing to contest the result without supporting evidence.

5.2. Harsher rules on fearmongering under a special legal order

The Authorisation Act amended, in a permanent manner, Act C of 2012 on the Criminal Code, and introduced stricter rules in relation to the criminal offence of fearmongering. According to the amendment, a *"person who, during the period of special legal order and in front of a large audience, states or disseminates false or distorted facts in such a way that is capable of hindering or obstructing the efficiency of the protection efforts is guilty of a felony and shall be punishable by imprisonment for one to five years".* This amendment **allowed the government "to depict actors who deviated from governmental communications** – for instance, by publishing non-official healthcare data, experiences – **as disseminators of fake news**".[45] As of the end of July, 134 related criminal investigations had been launched, out of these, charges were pressed in six cases, and one person was convicted.[46] In at least two cases, "suspects" were taken to the police station under intimidating circumstances and questioned in relation to posting government-critical Facebook posts that clearly did not fell under the scope of the above criminal provisions. In both cases, the charges were eventually dropped after the prosecution's intervention. However, these cases received wide media attention, and were suitable to contribute to a **chilling effect**.[47] The chilling effect significantly **impacted the work**

[41] See e.g.: https://www.theguardian.com/world/2020/jul/24/hungarian-journalists-resign-en-masse-after-claims-of-political-interference, https://www.hrw.org/news/2020/07/24/hungary-editors-sacking-blow-press-freedom.
[42] See e.g.: https://444.hu/2020/11/23/vege-a-szinjateknak-az-index-hivatalosan-is-a-kormany-lapja-lett.
[43] See e.g.: https://hungarytoday.hu/national-media-and-info-communications-authority-revoke-frequency-license-of-klubradio/.
[44] *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. 17.
[45] Political Capital, *Nothing is more permanent than a temporary solution – the state of danger will come to an end in Hungary, but its impact remains*, 28 May 2020, https://www.politicalcapital.hu/pc-admin/source/documents/pc_flash_report_nothing_is_more_permanent_than_a_temporary_solution_20200528.pdf, p. 4.
[46] See e.g.: https://444.hu/2020/08/03/az-emberek-mar-azert-is-hatranyba-kerulhetnek-mert-szoba-allnak-velem.
[47] See e.g.: https://www.politico.eu/article/viktor-orban-critics-fall-foul-of-hungary-controversial-coronavirus-covid19-law/.

of journalists as well: they reported that it had become completely uncertain what they might need to prove in court should they be charged with fearmongering, and "even with the guarantee of anonymity, sources do not easily agree to speak to journalists because they are afraid of retaliation".[48]

5.3. Extending the deadlines for freedom of information requests

The Government took a range of steps during the state of danger that went against the requirement to ensure access to public interest data.[49] For example, Government Decree 179/2020. (V. 4.) provided the possibility for public bodies to extend the deadlines to respond to freedom of information (FOI) request to 45+45 days (instead of the 15+15 days originally included in the law) if it was "probable" that responding to the FOI request within the original deadline would endanger the fulfilment of their public duties in connection with the state of danger.[50] This amendment significantly weakened the right of submitting FOI requests, since many public interest date will not be relevant any more or will be very outdated 1.5 months after the submission of a request. The rule was reintroduced during the second wave of the pandemic in November, by Government Decree 521/2020. (XI. 25.).

6. ACADEMIC FREEDOM

6.1. Violating the autonomy of the University of Theatre and Film Arts

As the latest chapter of the systemic undermining of academic freedom, the University of Theatre and Film Arts (SZFE) was **privatized in a way that undermines its autonomy**. The privatization happened with an unduly accelerated timeline, and in a similar manner as the recasting of the institutional framework of several other universities lately: by transferring the governance of the university to a public trust fund *(see also Chapter 3.2.).* In absence of adequate safeguards, this model enables the Government to appoint boards with loyal members and thus decrease the independence of higher education institutions. This is what happened in the case of SZFE as well: in the summer of 2020, the **Government appointed a board of trustees to the university unilaterally**, without taking into consideration the university's recommendations. The **new board of trustees issued a bylaw unilaterally that severely restricted the rights of the senate, practically removing all substantial elements of university autonomy**. These steps prompted the resignation of the university's senate, a strike by the teachers, and a two-months long occupation of SZFE buildings and protests by the students.[51] Teachers and students ensured that education remained ongoing despite the obstacles brought by the board of trustees and the newly appointed chancellor. In the meantime, certain trustees strongly criticized university teachers and education at SZFE in public, and demonstrated a hostile approach towards the university community in general, citing "ideological" differences, and the lack of "national and Christian" values at SZFE. At the end of October, the board of trustees formally suspended the education, but the university community refused to comply with the decision of the board of trustees they deem illegitimate. The suspension of the education by the board of trustees was declared unlawful by the Commissioner for Educational Rights as well.[52]

At the time of writing, the situation remains unresolved. The Government has failed to take any steps to remedy the situation. Instead, it used its emergency powers to issue a government decree that allowed the university board of trustees to render semesters invalid. Government Decree 522/2020. (XI. 25.) was instantly used by the SZFE board of trustees to carry out their earlier threats against SZFE students, and the autumn semester was invalidated.[53]

---

[48] Hungarian Civil Liberties Union*, Research on the obstruction of the work of journalists during the coronavirus pandemic in Hungary,* 2020, https://tasz.hu/a/files/coronavirus_press_research.pdf, p. 5.
[49] For a detailed description of these measures, see: Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf, pp. 9-13.
[50] Government Decree 179/2020. (V. 4.), Article 2
[51] See e.g.: https://cz.boell.org/en/2020/09/14/free-country-free-university-students-hungarys-university-theatre-and-film-arts-protest, https://insighthungary.444.hu/2020/09/03/students-occupy-top-arts-university-after-leadership-resigns-over-autonomy-fears.
[52] See e.g.: https://444.hu/2020/11/27/oktatasi-ombudsman-jogserto-hogy-az-szfe-kuratoriuma-felfuggesztette-az-oktatast.
[53] See: https://szfe.hu/hirek/tajekoztato-2/.

6.2. CJEU judgment: Lex CEU violates EU law

In October 2020, the Court of Justice of the European Union (CJEU) ruled about the compatibility with EU law of the Hungarian act referred to as "Lex CEU" after the renowned Central European University, founded by George Soros. Lex CEU, introduced in 2017, imposed restrictions on foreign universities, including requiring them to provide courses in their countries of origin as well as in Hungary. It also mandated that foreign universities could only operate in Hungary if a bilateral treaty existed between Hungary and their home country. In its judgment issued on 6 October 2020, the **CJEU ruled that the conditions introduced by Hungary in Lex CEU** for foreign higher education institutions to carry out their activities in its territory **were incompatible with EU law**.[54] However, by the time of the issuing of the judgment, **the US branch of CEU had already been forced out of Hungary** by the Government with the help of the Lex CEU.[55]

7. FREEDOM OF ASSOCIATION

On 18 June 2020, the **CJEU** issued a **judgment**[56] in the infringement procedure launched about Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (hereafter: **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 amounts 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[57] 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 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[58] 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". He went on to say the following: "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 […]."

At the time of writing, the **Lex NGO remains in effect**. In fact, after the CJEU judgment was handed down, a government-established public foundation **rejected an NGO's EU grant application over**

[54] For the CJEU's press release about the judgment in Case C-66/18, see: https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf.
[55] For a timeline of the events, see: https://www.ceu.edu/istandwithceu/timeline-events.
[56] *European Commission v. Hungary*, Case C-78/18, JUDGMENT OF THE COURT (Grand Chamber), 18 June 2020, ECLI identifier: ECLI:EU:C:2020:476
[57] See: https://www.kormany.hu/en/ministry-of-justice/news/we-are-committed-to-transparency-of-non-governmental-organisations.
[58] 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/.

non-compliance with the Lex NGO in August.[59] What is more, in September, signing a statement that the applicant complies with the provisions of the law became an expressly stipulated precondition to making an application to the public foundation.[60] The government stated it approved the application of the Lex NGO,[61] even if it was found to be in breach of EU law, since as long as the law was not amended it remained in force and to be applicable. The HHC called on the European Commission to take action in accordance with the Treaties and take back Hungary to the CJEU.[62]

8. RIGHT TO EQUAL TREATMENT: RIGHTS OF WOMEN AND LGBTQI PERSONS

8.1. Parliament calls on the Government to reject the Istanbul Convention

On 5 May 2020, the Parliament adopted Political Statement 2/2020. (V. 5.) on the Importance of the Protection of Children and Women and the Rejection of Joining the Istanbul Convention, which calls on the Government not to take further steps towards the recognition of the binding effect of the Istanbul Convention, and to take the position that the EU should not join the Istanbul Convention either. According to the statement, the reason for the rejection is that the Parliament "does not want to make either the notion of gender, or the Istanbul Convention's gender ideology" a part of Hungarian law.[63]

8.2. Prohibiting legal gender recognition

In a law adopted on 19 May 2020,[64] the Parliament prohibited legal gender recognition, in **violation of the rights of transgender people**. The new law prescribes that individuals' "sex by birth" (defined as "biological sex based on primary sex characteristics and chromosomes") shall be recorded in the national registry of births, marriages and deaths, and this cannot be changed later.[65] The prohibition of legal gender recognition "**violates international human rights norms**, and the consistent case law of the European Court of Human Rights. It also **contradicts the consistent practice of the Hungarian Constitutional Court**, that ruled in 2005, 2007 and 2018 […] that the legal gender and name change for transgender people are a fundamental human right."[66] Beyond Hungarian NGOs, several international human rights stakeholders[67] expressed their objection to the law, such as the Council of Europe's Commissioner for Human Rights[68] and UN special mechanisms,[69] but to no avail.

8.3. Anti-LGBTQI statements in the constitution; blocking adoptions by LGBTQI people

In recent years, the Hungarian LGBTQI community has been the target of homophobic and transphobic political statements by governing party politicians, including the Prime Minister. The latest such attacks centred around *Wonderland Belongs to Everyone*, a children's book with fairy tales featuring various vulnerable groups (LGBTQI, Roma, persons with disabilities). After the book was published in September 2020, the publisher was quickly verbally attacked by various extreme right-wing decision-makers and public figures, and an extreme right-wing MP shredded a copy of the book at a press conference. Soon,

[59] 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/.
[60] See the list of required materials, including *„Nyilatkozat külföldről támogatott szervezetek átláthatóságáról"* [Statement on the transparency of organisations funded from abroad], on the dedicated website of the public foundation.
[61] See the statement of the ministry in charge of supervising the public foundation: https://nepszava.hu/3097050_lex-soros-a-kormany-tesz-a-tiltasra.
[62] See: https://www.euractiv.com/section/justice-home-affairs/opinion/a-warning-to-the-guardians/.
[63] See also: Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf, pp. 5-6.
[64] Act XXX of 2020 on the Amendment of Certain Laws Related to Public Administration and on Donating Property
[65] For more details, see: https://en.hatter.hu/news/president-signs; *Flash report – Amendment of the provisions on legal recognition of gender*, 30 June 2020, https://www.equalitylaw.eu/downloads/5168-hungary-amendment-of-the-provisions-on-legal-recognition-of-gender-137-kb.
[66] https://en.hatter.hu/news/bill-ban-lgr
[67] For a detailed list, see: https://en.hatter.hu/news/bill-ban-lgr.
[68] https://www.facebook.com/CommissionerHR/posts/1512688642240374
[69] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25844, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25172

the governing party followed course, heavily contributing to the homophobic hate campaign against the book. For example, on 4 October, the Prime Minister made a distinction between "Hungarians" and "homosexuals" in a radio interview, and stated: "*As regards homosexuality, Hungary is a patient, tolerant country. But there is a red line that must not be crossed, and this is how I would sum up my opinion: 'Leave our children alone*.'"[70]

Articles 1 and 3 of the proposed 9th Amendment to the Fundamental Law, submitted to the Parliament on 10 November 2020, clearly tie into these attacks, and **make the Fundamental Law the conveyor of the governing majority's homophobic and transphobic propaganda**.

Firstly, the 9th Amendment would add the following to Article L) of the Fundamental Law, which already excludes the marriage of same-sex couples and restricts the notion of family: "*The mother is female, the father is male.*" [71] In itself, this new declaration would have little legal consequence. However, another bill, submitted also on 10 November, establishes that **only married couples will be allowed to adopt children**. Any exceptions can only be granted on a case-by-case basis by the Minister responsible for family policies.[72] Thus, same-sex couples, single persons and non-married opposite-sex couples will be practically excluded from adoption. This follows a ministerial decree from October 2020, which already made it excessively hard for single persons or non-married couples to adopt: it says that they can only adopt a child if no married couple in the whole country wants to adopt the said child[73] (whereas previously single persons became eligible to adopt a child if no married couple wished to adopt that child within the same county[74]).

Secondly, the 9th Amendment would add the following to Article XVI (1) of the Fundamental Law: *"Hungary shall protect the **right of children to their identity in line with their sex by birth**, and shall ensure an **upbringing in accordance with the values based on our homeland's constitutional identity and Christian culture**."* This new provision would further stigmatise transgender people. For example, it would make it difficult to hold LGBTQI sensitisation sessions in schools or, for that matter, to provide any kind of education that is not in line with "Christian culture" – a severely problematic situation in a secular country.[75]

9. RIGHTS OF PERSONS BELONGING TO MINORITIES: RIGHTS OF ROMA PERSONS

COVID-19 and its economic consequences had a particularly detrimental effect on the Roma in Hungary, given that they are overrepresented among those living in deep poverty, many of them do not have adequate living conditions, they are affected by the risk of job loss and unemployment to a significantly greater extent than the majority society, because digital learning poses a difficulty to Roma children living in poverty, etc.[76] However, instead of focusing on remedying these immense difficulties, government party politicians chose to fuel anti-Roma sentiments around the Gyöngyöspata case.

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.[77] 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 judgment a

[70] For the full interview in English, see: http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-sunday-news/.
[71] The current text of Article L) (1) reads as follows: *"Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children."*
[72] Articles 99–103 of Bill T/13648
[73] Decree 35/2020. (X. 5.) EMMI of the Minister of Human Capacities, Article 4(5)
[74] Hungary consists of 19 counties and the capital.
[75] See also: https://hatter.hu/hirek/jarvanykezeles-helyett-hadjarat-az-lmbtqi-emberek-ellen.
[76] See e.g.: https://nyitottakvagyunk.hu/en/2020/06/09/covid-impact-report-2020/, pp. 12-15.
[77] 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.

"provocation" and unjust, because the Roma plaintiffs "receive a significant amount of money without performing any work".[78] In addition, the Ministry of Human Capacities, as well as the ruling party's MP 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.[79]

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.[80] 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**.[81]

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

> *"If the educational institution violates the inherent personal rights[82] 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."*

The explanatory memorandum attached explicitly referred to the Gyöngyöspata case.[83] The amendment (the "Lex Gyöngyöspata"), which was adopted on 3 July and entered into force on 22 July,[84] 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".[85] 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".[86] 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**".[87] 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.

---

[78] 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, pp. 5-6.

[79] See e.g.: https://magyarnemzet.hu/belfold/ingyen-tanulhatnanak-gyongyospata-romai-7680440/.

[80] See e.g.: https://24.hu/belfold/2020/05/12/gyongyospata-kuria-fidesz-horvath-laszlo/.

[81] See: http://www.atv.hu/belfold/20200515-orban-viktor-kokemenyen-nekiment-a-kurianak.

[82] "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.

[83] "*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.*"

[84] Act LXXXVII of 2020

[85] *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.

[86] *Ibid.,* p. 3.

[87] *Ibid.*

The Gyöngyöspata case is a symptomatic one: it is an example of how government officials **breach the standards on freedom from undue external influence with regard to the courts**,[88] and repeatedly use public statements to interfere with the competences of the judiciary.[89] 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 to undermine the courts, and further their discriminative agenda** affecting the most vulnerable groups of society.

10. FUNDAMENTAL RIGHTS OF MIGRANTS, ASYLUM SEEKERS AND REFUGEES

10.1. Collective expulsion of Iranian students & the decree removing the right to suspend the expulsion during an appeal

In March, after 11 Iranian students were placed under quarantine in a hospital ward, it was announced during the daily press conference of the epidemic task force that "two of the Iranian nationals quarantined threw around chairs in the hospital ward and refused to cooperate with the medical staff".[90] When foreign students who tested negative for COVID-19 were released from the hospital, police officers surrounded Iranian students and served them with summons to the immigration authority.

The HHC represented one of the students. After the immigration hearing, she was immediately served with an expulsion decision and a three-year entry ban to the Schengen Area on the grounds that there is an ongoing investigation against her for violating the rules of quarantine, and thus she poses a security risk. The accusation referred to a time (as the time of perpetrating the offence) when she was not yet in the hospital and to a different ward than the one she was placed in. Later, all Iranian students received identical expulsion decisions with the same reasoning. The expulsion order was appealed against by the HHC, but the court held that regardless of whether or not the HHC's client is innocent, the court cannot overrule the police statement claiming that she poses a security risk, and upheld the expulsion order of the immigration authority.[91] The HHC's client was deported on 16 April with 10 other Iranian students. In the following weeks, a total of 27 Iranian students were expelled and sent back to Iran based on the same reasoning.[92]

On 5 April 2020, the Government issued Government Decree 85/2020 (IV. 5.), which removed the right to request an interim measure to suspend the expulsion until a court judgment is issued on the appeal against expulsion decisions based on the violation of epidemiological rules. This **rendered appeals against an expulsion decision ineffective as the expulsion could be carried out even while an appeal was pending at court**, which clearly **violated EU law**.[93] Based on the Iranian cases described above, it can be concluded that the government decree disproportionately punished foreigners whose guilt of the criminal offence of violating epidemiological rules has not been established.

Consequently, the HHC also lodged a formal complaint with the European Commission. On 21 September 2020, the Commission responded with intending to close the case: "The Commission is deeply concerned that the right to an effective remedy during the period of application of the Expulsion

[88] Cf. Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states *"Judges: independence, efficiency and responsibilities",* Sections 18 and 60; UN Basic Principles on the Independence of the Judiciary, Sections 2 and 4.
[89] 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.
[90] The English summary of the daily briefing is available on the Government's official website: https://www.kormany.hu/en/ministry-of-interior/news/entry-ban-for-iranians-those-who-do-not-cooperate-can-be-deported.
[91] The court interpreted the provisions of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals as prescribing that the opinion of the law enforcement agencies on existence of public security threat is binding, which is highly contested.
[92] For more information on the case, see: Hungarian Helsinki Committee, *Submission of the Hungarian Helsinki Committee to the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance, 12* June 2020, https://www.helsinki.hu/wp-content/uploads/HHC-submission-to-SR-on-xenophobic-incidents-during-the-COVID-19-epidemic.pdf, pp. 3-6.
[93] An assessment of this government decree being in breach of EU law, prepared by the Blackstone Chambers (London), is available here: https://www.blackstonechambers.com/news/legal-opinion-hungarian-covid-19-legislation/, pp. 9-14.

Decree was undermined and has strong doubts regarding the conformity of the already repealed Hungarian measure with applicable EU law. However, as the Expulsion Decree is no longer in force and addressees of return and expulsion decisions may request suspension of the enforcement of those decisions, these likely breaches of EU law have been remedied."

10.2. Hungary practically removes itself from the Common European Asylum System as a reaction to a CJEU judgment

On 14 May 2020, the **CJEU** in two joined urgent cases where the HHC provided legal representation, issued a judgment ruling among others that **the automatic and indefinite placement of asylum-seekers in the transit zones** at the Hungarian-Serbian border **qualifies as unlawful detention**.[94] The Government first stated that it would explore avenues to request the Constitutional Court to overrule the CJEU's judgment,[95] but a week later it announced that it would shut down the transit zones and introduce a new asylum system instead.[96]

Using the *carte blanche* authorisation it received through the Authorisation Act, the Government issued a decree on 26 May 2020[97] that introduced a precondition to lodge an asylum application in Hungary. At the core of the new asylum system is **a compulsory precondition for those seeking asylum in Hungary to first submit a "statement of intent" at the Hungarian embassy in Belgrade or Kyiv**. If the "statement of intent" is approved, the would-be asylum-seeker is provided with a special travel permit allowing him/her to travel to Hungary and then submit an asylum application. This system is in breach of the Fundamental Law,[98] the EU asylum *acquis,*[99] the Geneva Convention,[100] as well as the European Convention on Human Rights.[101] **By restricting access to territory and the asylum procedure in a way that is incompatible with EU law, Hungary de facto removes itself from the Common European Asylum System**.[102] The above government decree remained in force until the Government terminated the state of danger on 17 June 2020. However, the provisions of the decree were copied into the Transitional Act, which entered into force on 18 June. Although the Transitional Act stipulates that the new asylum system shall be in place until 31 December 2020,[103] it can be prolonged indefinitely. According to the HHC's knowledge, the Government intends to extend the force of the provisions until at least 30 June 2021.

The new system also continues the practice of the automatic and unlawful confinement of asylum applicants through the provision that foresees that upon registering the asylum application (following the arrival of the asylum-seeker to Hungary, after being granted a special one-time entry document as a result of their "statement of intent"), the asylum authority issues a decision on the placement of the applicant "in a closed facility".[104] Similarly to the placement decisions issued in relation to the transit zones, no judicial remedy is available against the type of decision defined in the provisions in relation

[94] Joint cases C-924/19 PPU and C-925/19 PPU. For the case file, see: https://bit.ly/3qrH9tz. For a summary, see: https://www.helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/.
[95] See the full statement on the Government's website: https://www.kormany.hu/en/ministry-of-justice/news/hungarian-government-s-position-remains-unchanged-hungarian-legislation-and-practice-are-compatible-with-eu-law.
[96] See the statement of 21 May 2020 of the Minister of the Prime Minister's Office here: http://abouthungary.hu/blog/gergely-gulyas-on-the-european-court-of-justices-new-ruling-on-immigration-its-dangerous-for-all-of-europe/.
[97] Government Decree 233/2020. (V. 26.). An unofficial English translation is available here: https://www.helsinki.hu/wp-content/uploads/Government-Decree-no.-233_2020-on-the-rules-of-the-asylum-procedure-during-the-state-of-danger.pdf.
[98] Article XIV (2) of the Fundamental Law prohibits collective expulsion of third-country nationals, Article XIV (4) protects the right to seek asylum.
[99] Article 67(2) of the Treaty on the Functioning of the European Union, Article 3(1) and 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (hereafter: rAPD), and Article 3(1) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast) (hereafter: rRCD). The rAPD clearly states that asylum applications can be lodged at borders and on the territory of Member States, as opposed to the new Hungarian system.
[100] See the following UNHCR Position on the new system: https://www.refworld.org/docid/5ef5c0614.html.
[101] Articles 3 and 13 of the European Convention on Human Rights (hereafter: ECHR), Article 4 of Protocol 4 to the ECHR
[102] See as well: *Hungary De Facto Removes Itself from the Common European Asylum System (CEAS) – Information Update by the Hungarian Helsinki Committee (HHC),* 12 August 2020, https://www.helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf.
[103] Transitional Act, Article 267
[104] Article 4(5) of Government Decree 233/2020. (V. 26.) and Article 270(5) of Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness

to the automatic placement of applicants "in a closed facility".[105] This automatic four-week detention does not even exclude unaccompanied minors under the age of 14, as was the case in the transit zones. Thus, **Hungary is also clearly at variance with the very judgment of the CJEU in response to which it introduced the new system.**

The CJEU's judgment was also used by the Government for propaganda purposes: certain questions of the "national consultation" conducted by the Government in 2020 attacked the European Union and the CJEU in relation to immigration matters, and specifically the CJEU judgment on transit zones, by posing manipulative questions.[106]

[105] *Ibid.*
[106] For an English translation of all the questions, see: http://abouthungary.hu/news-in-brief/heres-the-latest-national-consultation-questionnaire-in-english/.