Selected recommendations for Hungary in the Article 7(1) TEU procedure

May 2023

Contents:

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- Amnesty International Hungary | www.amnesty.hu (Chapters 3., 10. and 11.)
- Háttér Society | www.hatter.hu (Chapter 11.)
- Hungarian Civil Liberties Union | www.tasz.hu (Chapters 2., 6., 8. and 14.2.)
- Hungarian Helsinki Committee | www.helsinki.hu (Chapters 1., 3., 4., 9., 12. and 13.)
- K-Monitor | www.k-monitor.hu (Chapter 5.)
- Mertek Media Monitor | www.mertek.eu (Chapter 7.)
- Streetlawyer Association | www.utcajogasz.hu (Chapter 14.1.)
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Introduction

The procedure under Article 7(1) of the Treaty of the European Union was initiated by the European Parliament in relation to Hungary in 2018, in order to determine whether there is a clear risk of a serious breach by Hungary of the values the European Union is founded on. Since then, only a couple of hearings have been conducted in relation to Hungary under this procedure, and even though the rule of law and democratic backsliding of the country has continued, no recommendations have been put forth by the Council.

In the meantime, the EU started to use other tools in its toolbox to address undesirable tendencies in Hungary that undermine mutual trust between Member States. Under the conditionality mechanism, aimed at protecting the EU budget, Hungary has to adopt 17 anti-corruption measures to unfreeze certain EU funds. Similarly, when approving the country's Recovery and Resilience Plan, the Council defined numerous milestones with a rule of law connection, including 27 "super milestones" that require anti-corruption measures and changes to the judicial system. A number of commitments made by the Hungarian government in the framework of these procedures indeed serve to strengthen the country's anti-corruption framework and enhance transparency, and to restore the independence of the judiciary. However, civil society organisations are of the view that Hungary is yet to comply with all the conditions to access EU funds. Several anti-corruption milestones and measures have not been yet implemented or have been complied with only partially. The judicial reform package adopted to comply with the super milestones brought important changes, but compliance remains deficient, and certain factors can pose an inherent risk to the functioning of the new legal framework. Many of the recommendations put forth by the European Commission in its 2022 Rule of Law Report remain non-implemented as well.

Changes to the anti-corruption framework and to the judicial system happen in an environment that is characterized by a dismantled system of checks and balances and a distorted media landscape, where the Government continues to have excessive regulatory powers and where legal certainty is lacking, where the non-execution of both domestic and international court judgments is a recurring issue, and where various vulnerable groups face rights violations without independent institutions being capable or willing to protect their rights. Several important areas of concern that are not addressed by the above outlined mechanisms and milestones are in fact covered by the Article 7(1) TEU procedure. Therefore, it is important to raise, scrutinise and address them in the framework of the Article 7 procedure.

The present document collates potential recommendations by independent Hungarian human rights and anti-corruption organisations that should be put forth to Hungary in the framework of the procedure under Article 7(1) TEU to address outstanding problems. This list is not exhaustive, but rather represents the most important steps in the view of civil society organisations that should be taken by the Government and governing majority to start restoring respect for EU values in Hungary.

1. The system of checks and balances and the independence of institutions of human rights protection

The system of checks and balances has been dismantled in Hungary by weakening independent institutions. The government and the ruling majority gained control over state institutions via legislative steps and/or by appointing or electing new, loyal leaders. As a result, these institutions have been deprived, by law or in practice, of their capacity to effectively exercise control over the executive. Below, we focus on institutions of human rights protection which lost their independence.

2.1. The Constitutional Court

The governing coalition changed the long-established consensus-based process for nominating justices to the Constitutional Court (CC) to ensure that the governing parties, having a two-thirds majority in the Parliament, could fill vacancies on the bench on their own, without support from the opposition parties. The size of the CC was also increased. As a result, the governing parties were able to pack the CC with loyal justices, including their former MPs, and have transformed it into a body that is supportive of the Government's agenda. As a result, the CC has been repeatedly ruling in favour of the incumbent parties in politically sensitive cases.

Recommendations:

- The rules for nominating and electing CC justices should be changed to a primarily consensus-based process between governing and opposition parties. CC justices should be nominated e.g. either by a parliamentary committee composed on the basis of the principle of parity, to which governing and opposition parties can delegate an equal number of members; or by an expert committee established by said parliamentary committee. The parliamentary majority requirement for electing CC justices should be raised to a four-fifth supermajority from the current two-thirds majority requirement.
- The president of the CC should be elected by the justices themselves instead of the Parliament.
- In addition to existing conflict of interest rules, the law should prescribe a four-year cooling-off period also for former Members of Parliament before being eligible as CC justices.

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

In 2022, the Commissioner for Fundamental Rights (CFR) was downgraded by GANHRI from an A to a B status as Hungary's national human rights institution, since it failed to effectively carry out its mandate in relation to vulnerable groups such as ethnic minorities, LGBTQI people, human rights defenders, refugees and migrants, or human rights issues such as media pluralism, civic space and judicial independence, evidencing a lack of independence. In addition, the CFR's selection and appointment process was considered not sufficiently broad and transparent.

This made the merging of Hungary's equality body, the Equal Treatment Authority into the CFR's Office as of 2021 all the more problematic, given that in contrast to the CFR, the Equal Treatment Authority had issued important and progressive decisions regarding rights violations affecting e.g. Roma or LGBTQI people. Since the merger, the number of relevant cases and decisions decreased significantly, reinforcing concerns of civil society and the Venice Commission that the merger has the potential to undermine the effectiveness of enforcing the principle of equal treatment.

Recommendations:

- Establish a sufficiently broad and transparent selection process for the CFR, in line with the recommendations of GANHRI, and include civil society organisations in the selection process.
- Re-establish the Equal Treatment Authority, and include civil society organisations in the selection of the president of the Equal Treatment Authority.

2. The functioning of the electoral system

The Hungarian electoral system and environment is unable to provide a level playing field. The governing majority changes the relevant law on a regular basis without any consultation, in a partisan way. The openly biased public service media, and the misuse of state resources (including funds and databases) results in an extreme overlap between the state, the Government and the governing parties, which gives the governing parties an unjustified advantage during the campaign. Electoral clientelism and discrimination between voters with and without a Hungarian residence is also present, as well as a notable difference between the number of voters in several constituencies (malapportionment), resulting in the infringement of equal suffrage. Access to remedies is limited and the burden of proof related to abuses and misuses is extremely high. The minority voting system infringes the European Convention on Human Rights for multiple reasons.

Recommendations:

- The legislator must immediately review the boundaries of the individual constituencies in order to eliminate the unlawful difference between the number of voters in each constituency.
- The legislator should abolish the unlawful discrimination between voters with a Hungarian address and voters without a Hungarian address as regards the way of casting their vote.
- The legislator must amend the rules on the minority voting system for parliamentary elections, resulting in conformity with the European Convention on Human Rights in all its elements based on the recent decision of the European Court of Human Rights (ECtHR).
- The legislator must eliminate the possibility of judicially restricting the right to vote of people under care and create a framework for the immediate review of such decisions in the case of people under care who have already been excluded from exercising the right to vote.
- The legislator must ensure that the law provides equal opportunities for all nominating organisations to campaign, enforcing the principle of equal opportunities between candidates and nominating organisations under the Act on Electoral Procedure.
- The legislator must re-regulate campaigning so that the Government can only communicate with citizens in the form of public information activities during campaign periods when it is most necessary.
- The law enforcers must effectively sanction the use of sources and databases obtained by the Government (via its position of public authority) for campaign purposes, or when it otherwise abuses its position of public authority to gain an advantage in the campaign in elections and referendums, so that the principle of equal opportunities between candidates and nominating organisations under the Act on Electoral Procedure is enforced.
- The legislator must revise the rules of remedies, in order to ensure the participation of every voter in every stage of the remedy, furthermore, the burden of proof must be also rationalized.

The procedure of the electoral committees must be altered in order to create the framework of the meaningful debate among the members of the committee.

- The legislator must ensure the possibility of a broad political, professional and social debate when amending the rules of elections and use the results of the debate in the legislative process, thus creating a consensual electoral system.

3. The independence of the judiciary and the rights of judges

Judicial independence in Hungary has been under serious threat for over a decade now. That is why four super milestones were set to Hungary by EU institutions under the Recovery and Resilience Plan that are aimed at strengthening judicial independence. To meet these, on 3 May 2023 the Hungarian Parliament passed a judicial reform package amending various laws concerning the judiciary. However, the reform did not address all concerns and much has to be done to fully restore the independence of the judiciary. Remaining concerns *inter alia* include the insufficient protection of National Judicial Council (NJC) members, non-transparent case allocation and not merit-based judicial appointments, the potentially endless term of the Kúria President, limited freedom of expression of judges and excessive secondments.

Recommendations:

Further strengthening of the National Judicial Council

- Introduce a new rule of conflict of interest to prevent court leaders directly appointed by the National Office for the Judiciary (NOJ) President and their relatives becoming members of the NJC.
- Include strong safeguards to ensure that new and missing NJC members and substitutes can be elected by the judge-delegates fairly, without any delay, in compliance with the law and without any external interference. The NOJ President should not be involved, in any form, in the process.
- Protect the members of the NJC against intimidation, attacks on their reputation by the media and politicians, as well as retaliatory administrative and other measures.

The Kúria's powers and the tenure of its President

- Withdraw the provisions that impose the obligation on individual judges to provide reasons for a decision that departs from the non-binding jurisprudence published by the Kúria.
- Withdraw the provision based on which until a 2/3 majority in the Parliament elects the new President of the Kúria, the incumbent President stays in their position, effectively allowing that a 1/3 minority of MPs keep the President in office for an indefinite period of time.

Case allocation

- Introduce new and effective measures to ensure that case allocation at lower courts is transparent for both judges and clients, and introduce an automatic case allocation as a general rule that minimizes the potential influence of court leaders, guarantees the right of consent for judicial bodies to adopt the case allocation policy, and limits and prescribes the objective cases if and when the case allocation policies may be amended or be circumvented.
- Amend the law in a way that cases at the Kúria are assigned to permanent chambers chaired by a single presiding judge.

Judicial appointments, secondments and tenure

- Prescribe clear criteria for declaring a judicial or a court leadership application proceeding unsuccessful. If the NOJ President declares a judicial or a court leadership application procedure unsuccessful, the law shall prescribe a deadline for the NOJ President to publish a new call as soon as possible.
- Adopt rules to eliminate loopholes through which administrative leaders, the NOJ President or the Kúria President can block or circumvent an ordinary application procedure and also refrain from judicial appointments by ad hominem legislation.
- Reinstate the court leaders into their court leadership positions if their tenure was unlawfully terminated.
- Reduce the time and frequency when judges may be seconded against their will to a minimum in time and prescribe clear conditions when the secondment can take place.

Chilling effect and freedom of expression of judges

- Take effective measures to eliminate the chilling effect amongst judges including adopting guarantees and safeguards protecting judges' freedom of expression and other rights from undue interference. Implement the *Baka v. Hungary* judgment of the ECtHR without further delay.
- Amend the law to ensure that expressing opinion related to the laws or the legal system, the rule of law, the judiciary and judicial independence, and defending human rights is not a "political activity".

References for preliminary rulings to the Court of Justice of the European Union

- Exclude the applicability of the binding precedential decision of the Kúria, which declares that a preliminary reference may be unlawful under certain circumstances and that is still a material obstacle restricting judges to refer questions to the Court of Justice of the European Union (CJEU).

4. Law-making

4.1. Public consultation

As pointed out also by the 2022 European Semester's Country Specific Recommendation, "Hungary scores low in "social dialogue, stakeholder engagement in developing primary law, consultation with social partners, civil society, and the use of evidence-based instruments". The transparency and quality of the legislative process and the efficiency of public consultations in practice remain a source of concern despite the amendments to the rules of public consultation that were adopted in 2022 with the aim of complying with milestones set under the Recovery and Resilience Plan. Laws adopted in breach of the rules on public consultation can still become/remain part of the legal system.

Recommendations:

- Prescribe that Bills submitted by the Government can be put on the Parliament's agenda only if they include an adequate and duly reasoned documentation of the consultation process (including an impact assessment, a summary of the consultation process, as well as a summary

of rejected suggestions received, with the reasoning for the rejection), or a reasoning on why in the Government's view consultation was not needed (or allowed) under the law.

- Prescribe that the omission of obligatory public consultation or the failure to provide detailed reasoning for not conducting public consultation constitutes sufficient reason for the annulment of laws (both decrees and Acts of Parliament) on procedural grounds by the Constitutional Court.
- It should be added to the provision of Act CXXXI of 2010 on Public Participation in Preparing of Laws that prescribes a consultation period of minimum eight days for draft laws that the consultation period established must be adequate to the length and complexity of the law.
- Repeal Government Decree 146/2023. (IV. 27.) that allows local governments to hold statutory public hearings without the in-person participation of citizens.

4.2. State of danger

The Government continues to possess excessive regulatory powers due to a limitlessly renewable state of danger, and has been using its mandate to issue emergency decrees that can override Acts of Parliament in an abusive manner, i.e. for purposes not related to the ground for the state of danger.

Recommendations:

- The Government should refrain from abusing the extremely wide-ranging authorisation it received during the state of danger by issuing decrees that are not related to the war in Ukraine.
- Provisions providing the Government a *carte blanche* mandate in terms of issuing emergency decrees in a state of danger should be revised: the excessively wide scope of the potential content of the emergency decrees should be restricted.
- It should be re-introduced as a requirement into the Fundamental Law that emergency government decrees can remain in force after an initial period only with the Parliament's approval. The wording of the law should make it clear that the Parliament has to approve the individual decrees, and so cannot give the Government an open-ended authorization to issue and keep in force emergency decrees of yet unknown content.
- The Parliament should be able to authorize the Government to extend the state of danger for a maximum of 90 days per occasion instead of 180 days.
- Prescribe that the Constitutional Court shall review emergency decrees brought before it within a short and fixed deadline, to ensure timely constitutional review. The possibility of *actio popularis* constitutional review requests should be re-introduced for emergency decrees.

5. Corruption and conflicts of interest

The fact that Hungary ranked as the last among European Union member states according to Transparency International's 2022 Corruption Perceptions Index indicates that the Hungarian government's anti-corruption performance is lamentably poor, which, among other factors, contributed to the triggering of the conditionality mechanism by the European Commission in relation to Hungary, and to defining numerous anti-corruption milestones set under the country's Recovery and Resilience Plan. A number of commitments made by the Government in the framework of these procedures serve to strengthen the country's anti-corruption framework and enhance transparency. However, Hungary is yet to comply with all the conditions to access EU funds, and

several required anti-corruption milestones and measures have not been yet realized or have only been complied with partially.

The present paper serves to go beyond measuring the Government's anti-corruption performance against commitments made under the conditionality mechanism and the milestones – instead, it aims to illustrate how corruption risks in Hungary impact fundamental values and principles on which the European Union is founded. To this end, we highlight three obvious manifestations of government malpractice, which clearly and directly threaten the essence of the rule of law.

5.1. Public interest asset management foundations

Although they have the legal standing of civil law foundations, public interest asset management foundations are tasked and increasingly endowed to provide public services in the areas of higher education, healthcare, and the management of public assets of outstanding value. By 2022, the Government has transferred most universities and significant amounts of national assets to public interest asset management foundations. Boards and supervisory boards of these foundations are mainly filled with government loyalists appointed by the present Government for life, which clearly contradicts the principle of separation of powers, as any future Parliament will be deprived of the possibility to oversee the functions of these foundations or to hold the members of the boards accountable. At the same time continuous state funding that secures the operation of the foundations is granted by law. The Parliament's budgetary control functions vis-á-vis the foundations will also be entirely disabled. The introduction of the legal concept of public interest asset management foundations and the establishment of altogether 35 such entities was not driven by the aim to increase the autonomy of the higher education sector but to irrevocably outsource this sector and the management of substantial amounts of public funds to government-close actors.

Recommendation:

- The regulation enabling public interest asset management foundations ought to be revoked, the foundations themselves ought to be wound up and dismantled, and their assets ought to be reconsolidated to the state's books.

5.2. Irregularities of campaign finance

Opacity of election campaign finance has been one of the most serious corruption risks in Hungary since the political transition in 1990, and it remains unresolved to date. During the three national parliamentary elections held since 2014, all of which resulted in a landslide victory of the governing Fidesz-party with a constitutional majority, the overlap between state and party, third party engagement in campaigns and the abuse of public administration or government capacities have been pervasive on the Government's behalf. These and other forms of irregularities have been evidenced by the final report of OSCE's Election Observation Missions in 2022, in 2018, and in 2014. The State Audit Office, Hungary's highest budgetary control body charged with the oversight of political finances denies its jurisdiction to scrutinise political parties' reports and to measure these against real political expenditures. Lack of effective oversight and the authorities' reluctance to adequately react clearly benefit the governing party and contribute to a political landscape where elections are free but not fair.

Recommendations:

In order to expand transparency of party's revenues and expenditure and to assure equal opportunities in campaign finance

- control and oversight of parties' expenditure ought to be tightened by, *inter alia*,
    - redefining the template for financial statements to be submitted by political parties,
    - compelling the State Audit Office to automatically and *ex officio* compare financial statements by parties with real expenditure;
- regulatory loopholes and enforcement gaps enabling third party campaigning and the emergence of the "sham party" phenomenon, as well as the circumvention of spending limits ought to be closed;
- a system of public and transparent campaign invoices ought to be introduced and political parties ought to be compelled to do all payments through by using this platform;
- a new set of regulations on party expenditure and on campaign funding ought to be adopted to comprehensively cover all elections, including national and European parliamentary elections and local (municipal) elections, as well as by-elections.

5.3. Granting impunity by the selective enforcement of anti-corruption regulations

The lack of a reliable anti-corruption framework enabled state capture and allowed for the executive branch of government to pack independent institutions and influence their performance. Law enforcement agencies and the prosecution service, which belong to the most seriously captured institutions, exhibit clear signs of bias towards the governing elite, which manifests, among other things, in the granting of impunity to perpetrators of high-level corruption. The most irritating incidents of impunity are documented in the second volume of Transparency International Hungary's Black Book on corruption and state capture in Hungary, published in 2022.

Most recently, the case related to an EU funded project called "Bridge to the Word of Labour" illustrates how prosecution of high-level corruption is hindered. In this case the criminal process was terminated in 2022 after seven years of investigation into supposed subsidy fraud in lack of evidence of a criminal conduct. The prosecution service approved this decision, albeit both the EU's anti-fraud office OLAF and Hungary's Human Resources Ministry uncovered signs of serious misconduct, and the European Commission ordered the repayment of the entire project budget, which exceeded HUF 1.5 billion (almost EUR 4 million).

The case of Ms Margit Veres serves as an example of how impunity extends to an incident of corruption resulting in conviction. Former town clerk in Balmazújváros Ms Margit Veres, a convict of felony bribery who received a 5 year term to serve for having taken bribes in the amount of HUF 5 million (ca. EUR 12,700) aiming to arrange for state subsidies to an entrepreneur was pardoned by the President of the Republic in 2022 in response to her pardon petition. However, a pardon petition does not interrupt or delay the enforcement of criminal sanctions, therefore the Ministry of Justice must have granted a deferral to Ms Margit Veres so that she did not need to go into prison.

Recommendations:

In order to help introduce a system of checks and balances within the prosecution service

- the respective regulation and governance structure of the prosecution service ought to be revised;
- the selection and appointment of the leadership of the prosecution service, including the Prosecutor General and its deputies ought to be depoliticised;
- GRECO's recommendation relating to prevention of corruption vis-á-vis prosecutors ought to be fully adhered to.

6. Privacy and data protection; freedom of information

In the 1990s, Hungary was at the forefront of ensuring informational rights, notably data protection and freedom of information. At present, however, these two fundamental rights are exercised with far more limitations, their guarantees and enforceability are far below the expected level, and therefore they are not respected as they should be. Under the rules of secret state surveillance, almost anyone can be surveilled in a way that complies with the law, and there is no effective control over national security services. The Government uses citizens' personal data in violation of the principle of purpose limitation as if there were no data protection regulation. Public interest information is often almost automatically withheld by public bodies when requested so that the requesters (mainly journalists) usually have to enforce their rights in court. But the information is perishable, and such time delays make it pointless to obtain the data. The 2022 Freedom of Information Act amendment has yet to solve all these problems.

Recommendations:

Privacy and data protection

- The legislator should immediately implement the ECtHR's *Szabó and Vissy* and *Hüttl* decisions and establish the necessary safeguards over secret surveillance for national security purposes.
- The legislator should immediately implement the CJEU's Digital Rights Ireland (C-293/12) ruling and end the mandatory retention of telecommunications metadata.
- Guarantees should be established to ensure the independence of the National Authority for Data Protection and Freedom of Information.
- All political actors, as well as the Government, must put an immediate end to the widespread abuse of voters' data during election campaigns; the handling of voters' data must be made transparent.
- The Government must abort "Project Dragonfly", an initiative to channel the live video streams of about 35,000 surveillance cameras in a centralised database without delay.

Freedom of information

Guarantees must be put in place to ensure that freedom of information can be effectively enforced.

- Public bodies should be open to journalists seeking information about public affairs, even if they are critical with the Government.
- It should be possible to sanction bad faith in the disclosure of public data by public bodies. The head of the public body that withheld the information should be held liable for any breach of the rules on the publication of information of public interest. In serious cases proceedings should be launched under the section of the Criminal Code on the concealment of data of public interest. Public interest litigation should be possible to enforce the publication.
- Public bodies should not be allowed to change the grounds for non-disclosure in litigation concerning data of public interest.
- The enforceability of judgments in freedom of information cases must be ensured. For example, the person in charge of the public body should have personal legal responsibility for complying with the judgments that order the disclosure of data, and administrative and criminal sanctions should be strengthened.

- The Central Public Information Register should be restructured so that it provides a truly transparent overview of the use of public funds. The database should be searchable and include substantive data, not just metadata.

7. Media freedom

The problems of the Hungarian media system have attracted widespread criticism in Europe in recent years, yet there has been no improvement and the Hungarian government has not taken steps to improve media freedom. The public service media function as a propaganda machine, the Media Council is composed exclusively of pro-government members, ownership concentration is high, pro-government owners receive substantial state aid in the form of state advertising and independent media are increasingly excluded from information.

Recommendations:

- Rethinking the election and functioning of the Media Council: opposition parties should be given the opportunity to delegate members, members should serve no more than 4 years (instead of the current 9 years) and decision-making should be much more transparent.
- The organisational structure, responsibilities and funding of public service media need to be rethought. The statutory public service media have a minimum budget and no substantive activities are carried out in that organisation. The organisation where programmes are produced with a high budget is not legally a public media, there is no independent control over it. This dichotomy must be eliminated in order for public media to operate transparently. This would also clarify the lines of responsibility, so that it would become clear who is responsible for the Russian propaganda that is broadcast on a daily basis by the Hungarian public service media.
- State advertising spending must be made transparent, and it must not be possible to conceal public advertising spending data behind a framework public procurement contract. It would be useful to introduce normative rules on public advertising expenditure, so that no media company's advertising revenues are dominated by the state.
- It must be ensured that the heads and staff of state institutions are free to make statements without fear of reprisals, even if they make comments critical of the Government.
- Ensure that state institutions respond to journalists' requests, provide them with the information they need and that political considerations do not play a role in press accreditation of events and activities.

8. Freedom of religion

Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (Church Act) is far from the principles of religious equality before the law and the neutrality of the state. The ECtHR ruled in 2014 that the Church Act violated freedom of religion, but the execution of the judgment is still pending, and the amendment of the Church Act in 2018 failed to fix the human rights violations that were identified by the ECtHR. The current version of the Church Act retains the arbitrary definition of religion and religious activity, and discriminates between churches in terms of legal status in an unjustified,

though less spectacular, manner. The law maintains inequalities by determining distinct statuses for churches, retains the arbitrary commitment of the state towards certain favoured churches, and ensures unduly extended privileges and benefits for the churches patronized by the Government, not only with regard to the possibilities for cooperation with the state but also with regard to entitlement to benefits for the purposes of faith-related activities. While no religious community is prevented from obtaining a legal status as a "religious association" in a procedure conducted by the court in accordance to objective and factual criteria, and the "registered" and "incorporated" church statuses depend on the length of operation and the amount of social support, the "established" church status can be reached by a conclusion of a comprehensive agreement between an incorporated church and the Government, which shall be recognized by a special legislative act in the Parliament. No current established church had to comply with the requirements that the Church Act imposed on the lower statuses in 2018, and by the comprehensive agreements the Government may allocate unlimited amount of sources in a technically uncontrolled way to the established churches, either for faith-related activities (building churches, organizing religious congresses) or for conducting activities of public interest (education, health care, social care, fosterage, building and maintaining sport facilities).

Recommendations:

- The Fundamental Law must provide, to the fullest extent possible, the legal equality of churches, neutrality of the state, separation of state and church, and sector-neutral financing.
- The Church Act must
    - ensure full and equal respect for the freedom of conscience and religion of every person, and for the self-determination of conscience-based communities organized by citizens;
    - ensure the equality of the status of religious communities and their equality before the law, without providing any privileges to any churches over others or vis-á-vis civil organisations engaged in similar activities, not only with regard to the benefits for the purposes of faith-related activities but also with regard to the possibilities for cooperation in public education and in political decision-making processes, to the taxation, and to the support of charitable activities exercised by them;
    - control the ways the Government may allocate unlimited amount of sources to the established churches; and
    - comply with the provisions of the European Convention on Human Rights and satisfy the requirements set by the ECtHR.

9. Freedom of association and shrinking civic space

The Government made no efforts towards implementing the European Commission's recommendation made in the 2022 Rule of Law Report to "remove obstacles affecting civil society organisations" (CSOs). Laws violating the rights of and exerting a chilling effect on CSOs are still in force: (i) Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life and accompanying amendments violate the rights of certain CSOs by making them subject of audits by the State Audit Office without adequate justification and legal safeguards, which cannot be reconciled with the constitutional mandate of the State Audit Office. (ii) Even though the original legal provisions introduced by the "Stop Soros" package were amended,

Hungarian law continues to criminalise the "facilitation and support of illegal immigration" and continues to have a deterring effect on the provision of legal assistance to asylum-seekers, failing to implement the judgment of the Court of Justice of the European Union in Case C-821/19 that found the original provisions in breach of EU law. (iii) The provision of Act XLI of 2018 that prescribes a special 25% immigration tax on donors if they provide funds for activities "facilitating" immigration also remains in effect.

Smear campaigns against human rights and anti-corruption CSOs by government representatives and pro-government media have also continued; the hostile narrative regarding these CSOs remained. The distribution of public funding to civil society continues to be non-transparent and politically biased, with independent CSOs rarely having a chance to secure a grant.

Recommendations:

- Repeal Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life, making certain CSOs subject to audit by the State Audit Office.
- Implement the judgment of the Court of Justice of the European Union in Case C-821/19 and repeal in its entirety Section 353/A of the Criminal Code that continues to criminalise the "facilitation and support of illegal immigration".
- Repeal Section 253 of Act XLI of 2018 that prescribes a special 25% immigration tax on donors if they provide funds for activities "facilitating" immigration.
- Guarantee access to funding for independent civil society and ensure that funding processes are open, transparent and inclusive. Ensure that there is funding transparency and equal access for all CSOs to state funding.
- The Government and governing party representatives should refrain from making statements that are capable of exerting a chilling effect on civil society.

10. The rights of women

The Hungarian government reinforces the narrative that women's primary task is to take care of children and perform unpaid reproductive work. This is also pointed out by the second highest index of gender stereotypes in the EU and the CEDAW 2023 party report, in which women's rights are interpreted exclusively from the perspective of motherhood. Hungary is among the last ones in the EIGE Gender Equality Index, especially in the category of power – 86% of the Members of Parliament are men – which reflects the prevailing gender stereotypes in the political discourse. The consequences of these are indicated by the stable horizontal and vertical segregation in the labour market, as well as the gender pay gap that has remained at 17-18% for more than 10 years. Discrimination is tangible across the society, in education, in family relations, in the social sector, by constraining women's reproductive rights and in relation to violence against women and girls.

Recommendations:

Gender stereotypes

- Develop a comprehensive strategy and program to promote gender equality and eliminate gender-based stereotypes, at all levels and arenas of society, including the media, labour market, and education.

Political decision-making

- Encourage a higher representation of women in the Parliament in accordance with the European Union's 2020-25 Gender Equality Strategy and the CEDAW General Recommendation.

Labour market

- Implement Directive 2023/970 on equal pay for work of equal value between women and men without delay, principles contained in Article 157 of the TFEU and in Directive 2006/54/EC and Directive 2000/78/EC.
- Implement Directive 2022/2381 and establish a minimum quota of 40% for the participation of women as non-executive directors on company boards.
- Support fathers' greater involvement in child caring and give incentives to companies for flexible working arrangement in line with the Directive on work-life balance for parents and carers.
- Support the reintegration of women into the labour market after having children and provide them meaningful opportunities for professional development.

Social sector

- Repeal the amendment of the Act on the Social Security System which prescribes that primarily the individuals are responsible for their own social security, secondly caregiving tasks are the responsibility of the family – in most cases the female relatives –, and the state only intervenes as a last resort.
- Provide an absence fee for those who take the annually available maximum of 5 days of carers' leave in accordance with the Directive on work-life balance for parents and carers.
- Increase the amount of the care fee for family members performing caregiving duties.

Reproductive rights

- Repeal the amendment that makes it mandatory for women seeking an abortion to listen to the "fetal heartbeat" before their abortion.
- Provide the medicinal form of abortion in addition to the invasive surgical procedure.
- Ensure adequate, safe and respectful sexual and reproductive health services and access to reliable information.

Violence against women and girls

- Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).
- Strengthen victim protection and victim support services and provide comprehensive training for those professionals who work with victims.
- Prioritize criminal proceedings over mediation and reconciliation in cases involving violence against women and girls and repeal provisions on mandatory mediation in cases of child custody and visitation rights.

Education

- Strengthen the prevention of gender stereotypes and violence against women, provide broad sexual education and emphasize the importance of gender equality in all areas of society.

11. The rights of LGBTQI persons

The human rights situation of LGBTQI people has significantly deteriorated in the past three years, and the dismantling of legal guarantees changed pace in 2020: restrictive laws further curtailing the rights of LGBTQI persons have been passed and the anti-LGBTQI political discourse strengthened. In May 2020, the amendment to the Act on the Civil Registry introduced the concept of "sex at birth" that may not be amended, making it impossible to obtain legal gender recognition. Parallel with the Ninth Amendment to the Fundamental Law containing anti-LGBTQI provisions, in the fall of 2020 the legal framework for adoption was also changed with the explicit aim to restrict adoption by LGBTQI persons. Adoption is now limited to married couples as a general rule, individual adoption is merely an exception conditioned on the approval of the responsible member of the Government. In June 2021, the Parliament passed the so-called "Child Protection" Act that bans the display and promotion of homosexuality and gender diversity for minors. The infringement procedure launched on account of the law is pending before the Court of Justice of the European Union. The existing safeguards for the protection of LGBTQI rights remain under- or non-enforced in Hungary: the anti-LGBTQI rhetoric of the ruling majority has resulted in a rise of hate crimes and other reported hate-motivated incidents.

Recommendations:

- Repeal the current ban on legal gender recognition, and develop a quick, transparent and accessible procedure based on personal autonomy and self-identification.
- Revoke the anti-LGBTQI provisions of the so-called "Child Protection" Act, and refrain from interpreting other child protection provisions in an arbitrary and discriminatory manner.
- Strengthen efforts to fight sexist, homophobic and transphobic hate speech by amending relevant provisions of the Fundamental Law and the Civil Code, and by condemning such statements, especially if made by public officials.
- Duly investigate hate crime and improve quality and access to victim support and legal aid services for victims of hate crimes by training professionals, and providing public funding to services tailored to the needs of hate crime victims.
- Ensure that textbooks and other educational materials used in public education cover sexual orientation and gender identity in an objective manner, and promote tolerance and respect for LGBTQI persons.
- Ensure equal treatment to same-sex relations by removing discriminatory differences between registered partnership and marriage, and provide legal recognition to same-sex parenting. Revoke all discriminatory laws to include LGBTQI people's access to adopt children, whether they are single, engaging in second parent adoption or going down the joint adoption route.
- Take concrete measures to prevent and prohibit discrimination against LGBTQI people, and specifically same-sex couples and their children in the fields of employment, education, healthcare and access to social benefits.
- Ensure that intersex children's right to physical integrity and bodily autonomy is effectively protected and that medically unnecessary sex-"normalizing" surgery and other treatments are prohibited until the child is able to participate in the decision making and give an informed consent.
- Ensure an enabling environment for LGBTQI CSOs by avoiding stigmatizing statements and providing appropriate funding for their work.

- Ensure complying promptly and fully with all relevant CJEU judgments as well as all relevant ECtHR judgments in cases where the execution is still pending.

12. The rights of persons belonging to the Roma minority

In Hungary, the discrimination of the Roma is widespread in all areas of life, including employment, healthcare, the provision of services, education, or housing. They face extreme poverty, and many of them live in segregated neighbourhoods that lack proper infrastructure. Ethnic profiling of Roma people with regard to ID checks has been demonstrated by research, while individual cases show the same with regard to petty offences. Segregation of Roma children in schools has been a serious issue for decades. In 2016, the European Commission launched an infringement procedure against Hungary over the segregation of Roma children in special education. In 2013, the ECtHR ruled in the *Horváth and Kiss v. Hungary* case that the discriminatory misplacement and overrepresentation of Roma children in special schools for children with mental disabilities, due to their systematic misdiagnosis, violated the right to education and the prohibition of discrimination, but the execution of this judgment is still pending. In the recent segregation case *Szolcsán v. Hungary*, the ECtHR proceeded to explicitly set out that Hungary must "develop a policy against segregation in education and take steps to eliminate it", echoing earlier recommendations by actors such as ECRI. Compensation for school segregation and other forms of discrimination and fundamental rights violations in education is not ensured: as a reaction to a court judgment in the Gyöngyöspata case whereby a municipality and a state body was obliged to pay damages to the segregated Roma pupils, the Parliament adopted a law that prevents courts from granting pecuniary compensation in similar cases. This amendment amounts to indirect discrimination based on ethnicity, and is in violation of EU law.

The biased attitude of the general public towards Roma people has been enhanced in the past years by anti-Roma statements of high-level government representatives. This attitude also affected the reception of Romani refugees fleeing the war in Ukraine, who had to face additional difficulties and hardships during their reception in Hungary. The practice of investigating and prosecuting hate crimes committed against Roma people and other minorities continues to suffer from deficiencies.

Recommendations:

- Effective steps should be taken to counter the discrimination of Roma people in various areas, including employment, healthcare, the provision of services, education and housing.
- Develop a policy against segregation in education and take steps to eliminate it. The relevant ECtHR judgments in the *Szolcsán* and the *Horváth and Kiss* cases should be executed in an adequate and timely manner.
- Repeal the legal provisions excluding pecuniary compensation in the case of segregation (or any other violation of the inherent personal rights of pupils) in relation to education.
- Measures should be taken to combat ethnic profiling by the police affecting the Roma.
- The access of Romani refugees fleeing from Ukraine to protection, appropriate reception and services that they would be entitled to by the temporary protection status or their refugee background needs to be facilitated.
- Measures should be taken to facilitate the prevention of hate crimes, and to ensure the full implementation of hate crime legislation by the police and the prosecution service.

13. The fundamental rights of migrants, asylum seekers and refugees

Hungary's de facto secession from the Common European Asylum System is demonstrated by the long-standing non-compliance with EU law concerning the rights of asylum seekers and procedural standards set out in the common asylum *acquis*. In December 2020, in an infringement procedure, the CJEU found in Case c-808/18 that the extrajudicial collective expulsion regime legalized in Hungary in 2016 is incompatible with EU law and violates the human rights of asylum seekers enshrined in the Charter of Fundamental Rights of the EU. Despite the ruling, the legal framework which provides for the removal of third-country nationals staying irregularly in the territory of Hungary without observing certain procedures and safeguards laid down in the Return Directive is still in force, which in 2022 resulted in 158,565 push-backs carried out by the Hungarian Police. As a consequence of the Government's refusal to implement the decision, the European Commission decided to refer Hungary to the CJEU for the second time in November 2021. Moreover, in 2020 Hungary put a pre-screening system in place as part of the general asylum procedure. Accordingly, a compulsory precondition was introduced for those wishing to seek asylum in Hungary to first submit a "statement of intent" at the Hungarian embassy in Belgrade or Kyiv. Depending on the approval of the "statement of intent", the would-be asylum-seeker is issued with a special travel permit allowing them to travel to Hungary and submit an asylum application there. This so-called "embassy system" deprives people fleeing from accessing the asylum procedure, and paired with the systemic push-backs, the current Hungarian legal system is designed to keep people away.

The systemic shortcomings of the general asylum system in Hungary, coupled with the gaps in the national implementation of the Council Decision on the introduction of a common EU temporary protection regime, leave third-country nationals fleeing the war in Ukraine in a dangerous limbo without any adequate international protection in Hungary. The Hungarian transposition of the Temporary Protection Directive excludes third-country nationals other than Ukrainians who resided legally in Ukraine before 24 February 2022, including those who cannot return in safe or durable conditions to their country of origin. Nor has there been any other adequate protection under Hungarian law provided for third-country nationals fleeing Ukraine which is in contradiction with the Council Decision. Thus, those fleeing Ukraine who resided in the country before the start of the war, but not clearly falling under the personal scope of temporary protection according to the Hungarian transposition, are provided with a temporary residence certificate valid for 30 days after registration by the Police, which does not grant access e.g. to education, to health care apart from emergency care, or the right to work.

Recommendations:

- Terminate the legalization of extrajudicial collective expulsion of asylum seekers (push-backs) in accordance with the judgment of the CJEU in Case-808/18.
- Provide access to the asylum system in accordance with the Asylum Procedures Directive by repealing the externalized pre-screening as part of the asylum procedure at the Hungarian embassy in Belgrade or Kyiv.
- Transpose the Temporary Protection Directive properly by including third-country nationals fleeing the war in Ukraine in the personal scope of temporary protection status or providing access to the asylum procedure for non-Ukrainians residing in Ukraine before 24 February 2022 who cannot return to their country of origin due to fear of persecution or serious harm.

14. Economic and social rights

14.1. Social security and housing

Article XIX(1) and (2) of the Fundamental Law defines social security for the needy purely as a state objective. The legislator may also lay down a condition of merit, because social benefits may be granted "in accordance with the activity of the beneficiaries which is useful to the community". The recent amendment of the Act on the Social Security System makes it clear that the state's caregiving obligation is only to those who cannot rely on anyone else (e.g. relatives, local governments, charities) for help. However, the threshold amount of eligibility for state benefits is still set by a government decree rather than by an Act of Parliament. The amount has remained the same since 2008 at HUF 28,500.

Article XXII(3) of the Fundamental Law and provisions of the Misdemeanor Act criminalizing homelessness are still in force. Non-violent forms of begging are still punishable by a fine or community service. Both forms of poverty can lead to confinement. A complaint challenging the law penalizing begging is currently pending before the Constitutional Court.

The law governing evictions and debt collection raises several rule of law concerns as it is outdated, unclear and violates the debtor's right to property and fair trial. Complaints challenging auction rules allowing bailiffs to auction off debtors' assets for up to 1%, and speedy eviction procedure rules are pending before the Constitutional Court. In addition, the legislation gives bailiffs a wide discretion, which is a breeding ground for arbitrariness and abuse of power. Rule of law concerns are underpinned by the corruption scandal that broke out earlier this year affecting the deputy minister of justice and the head of National Chamber of Judicial Enforcement. It has been made clear that court decisions are implemented by bailiffs whose integrity is questionable.

Recommendations:

- Social benefits should be set to take account of changes in the cost of the subsistence.
- Homelessness and non-violent forms of begging should be decriminalized to comply with the ECtHR's judgment in the *Lăcătuş v. Switzerland* case.
- Right to a fair trial and the right to property should be respected by rules on evictions and debt collections.
- Judicial enforcement as an integral part of the justice system should be staffed by persons of high integrity, and whose powers should be clearly defined by law.

14.2. Right to strike

Hungary had deficiencies in the right-to-strike legislation since the transition. The shortcomings of written law have not been remedied by court rulings or relevant case law either. The Act on Strike (Act VII of 1989), therefore, lacks important elements of regulation. One of these is the lack of identifying industries that constitute essential services – fields where strikers have to provide a minimum level of service. The Act on Strike contains an illustrative list that is coming short of services like healthcare. In certain areas, however, further acts were adopted, defining a specific sector as an industry constituting essential services and defining the minimum level of services themselves in the written law. The sectors include public transport and – most recently, as a reaction to impending strikes – air traffic control and education. (The latter is explicitly not regarded as per se essential service by the ILO.)

The ILO's Committee on the Freedom of Association (CFA) have safeguarded the entitlement to strike by reading it into the provisions of ILO Convention No. 87 and generated substantial principles in its case law covering the scope and meaning of the right. These principles have been transferred to the European arena through rulings of the ECtHR and through national legislation. The CFA recognises the significance of essential services where strikes can be prohibited or significantly restricted. However, it interprets the scope of these services in a very narrow way. According to the CFA's position, the minimum level of services must meet two conditions: a) they must constitute a minimum in a strict sense (the employer's operations are limited to those activities which are strictly necessary to meet the basic needs of the public) and b) workers' organisations must be given the opportunity to participate – alongside the employer and the public authorities – in determining the level of this service. The bargaining on the minimum level of services shall be part of the collective bargaining itself.

The Hungarian regulation does not comply with any of the above requirements. The minimum level of services in air traffic control and education substantially restricts, and in the case of the education sector, practically eliminates the right to strike, compromising its function of putting pressure on the employer, by defining a too high level of minimum services. Besides, the regulations (both of them issued originally as emergency decrees, abusing the Government's powers under the state of danger) were adopted without consulting workers' organisations, giving up the principle of tripartite consultation.

Recommendations:

- The legislator should immediately amend the regulation clarifying the list of industries constituting essential services.
- The legislator should immediately review existing regulations on the minimum level of services in air traffic control and education.
- The legislator should establish consultative mechanisms inviting workers' organisations to define the minimum level of services.