Information sheet of the Hungarian Government on the issues raised by the report on '*a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded*'

Considering the contents of the report of Judith Sargentini on 'the situation in Hungary' and having followed the vote in the Committee on Civil Liberties, Justice and Home Affairs on 25 June 2018, the Hungarian Government finds it necessary and justified to provide some background information reflecting on the main criticisms formulated by the report and in particular in the proposal for a Council decision annexed to the report.

First of all, it must be pointed out that the Hungarian Government finds the scope of the report highly questionable, especially in light of its purpose of triggering Article 7 (1) TEU. The rapporteur did clearly not rely on her own research into the relevant policy fields and draws very few to none own conclusions. Instead, she presented a list of references of several years old – and thus often outdated – reports of outsider organizations (United Nations, Council of Europe, Venice Commission and OSCE) and in many cases did not even mention relevant EU documents which are a lot more up-to-date than the ones she refers to and which would present a much more favourable picture of the situation in Hungary. Altogether, the drafting of the report resulted in a collection of all the available criticisms that have been formulated against the current Hungarian Government ever since 2010, regardless whether the cases have already been reassuringly concluded or the disputes are still ongoing. Consequently, the report covers both cases that have been closed several years ago as a result of the constructive debates between the European Commission and Hungary (such as the way of adoption of the Fundamental Law or the retirement of judges) and issues which are in no way relevant to the discussion about the rule of law or fundamental EU values (such as the provisions on the conflict of interests of MPs or the rate of unemployment benefits).

Moreover, the report did not at all make any reference concerning the information provided by the Hungarian Government - either regarding individual cases or specifically in connection with the report. The obviously intentional result gives a one-sided, distorted and politically biased picture of the situation in Hungary. Refusing the involvement of the Hungarian Government in the elaboration and negotiation phase of the draft report clearly shows the predetermined premise against Hungary and can only be qualified as lacking the principles of non-discrimination, the equality of Member States, evidence-based and non-partisan procedure.

The document altogether tries to magnify policy issues clearly falling into Member States' competences into systemic problems and thereby suggests a threat to the rule of law. Considering that this is the first time that the European Parliament seeks to trigger Article 7 (1) TEU, it threatens with creating a very dangerous and unpredictable

precedent if a Member State could be challenged based on vague and unfounded political accusations and it would weaken the unity of the EU by further widening the gap between citizens and EU institutions.

In this regard, citing a Commission Communication of 2003 on Article 7 is to be viewed as a vain attempt to explain away the politics-driven and legally volatile nature of the report. It is unquestionable and evident from the Treaties that only the Court of Justice of the European Union may interpret the provisions of the Treaties and that binding norms may only arise from legislation and not from unilateral soft law instruments. The communication in question therefore cannot be regarded as a legal basis for interpreting the Treaty.

Hungary has always been and will be ready to discuss the legality of any specific measure and respond to any concern that may arise. But the fact that the report is trying to underpin the most serious procedure against an EU Member State with referencing some vague and uninterpretable 'overall atmosphere in the country' and that the draft report has been leaked to the opposition press just a few days before the elections shows anything but neutrality and bona fide approach.

Hungary firmly rejects that representing positions in accordance with a country's own conviction could be presented as a 'democracy problem' or Hungary be discredited for having expressed her own opinions even if it may be different from the opinion of others..Such efforts undermine public confidence in the European institutions.

The citizens of Hungary have clearly expressed their will in the Hungarian parliamentary elections of 8th April 2018: they want to live in a safe, economically viable and strong Member State of a strong European Union. With this strong democratic mandate we have every right to formulate our own position on crucial issues, even if it does not match that of others or even that of the majority. It would contradict the very spirit of European cooperation and the principle of the equality of Member States to view the existence of different opinions as a matter of democracy deficit. Supporting such political manoeuvres would mean questioning the fundamental principles of democracy and would seriously endanger the confidence of citizens in the EU, especially in a country, where the support for EU membership is exceptionally high, over 70%.

Finally, as regards fundamental European principles, we would like to highly recommend '*audiatur et altera pars*', i.e. 'let the other side be heard as well'. In this spirit, please find below an information sheet regarding the main issues and concerns listed in the proposal for a Council decision annexed to the report from the Explanatory Statement throughout recitals (7) to (75). It will hopefully highlight that the measures challenged are fully in line with the Treaties and do not exceed the limits and confines of any applicable international or EU law.

Throughout this information sheet the following method is used: first the relevant text of the report is cited in italics, which is followed by the legal arguments of the Hungarian Government.

Contents

Explanatory Statement - Preparation of the report 7
Functioning of the constitutional system 11
Constitution-making process in Hungary 11
Competences of the Hungarian Constitutional Court 12
Limitation of the constitutional complaint procedure 13
Delineation of single-member constituencies 14
National consultation "Let's stop Brussels" 15
Independence of the judiciary and of other institutions and the rights of judges 16
Centralised administration of courts / independence of judges and lawyers 16
Competences of the president of the National Judicial Office 16
New system of administrative courts 17
Compulsory retirement of judges, prosecutors and notaries (C-286/12, Commission v. Hungary) 19
Violation of the right to a fair trial and the right to an effective remedy (Gazsó v. Hungary) 21
Violation of the right of access to a court and the freedom of expression (Baka v. Hungary) 22
The expiry of mandate of the Data Protection Supervisor 23
Criticisms concerning the prosecution service 24
Conflicts of interest and corruption 25
Conflicts of interest of members of the Hungarian Parliament 25
Limited monitoring of campaign spending 27
Withdrawal from the Open Government Partnership 27
The follow-up of the OLAF's recommendations and public procurement 28
Public procurement 29
Effective governance and corruption 30
Privacy and data protection 32
Violation of the respect for private life (Szabó and Vissy v. Hungary) 32
Legal framework on secret surveillance for national security purposes 32
Freedom of expression 33
Media legislation (disclosure of journalistic sources, sanctions and market concentration) 33
Election of the members of the Media Council 35
Act CXII of 2011 on Informational Self-Determination and Freedom of Information 36

Restrictions of freedoms of the media and association during the 8th April 2018 elections 38
Restrictions on freedom of opinion and expression 39
Academic freedom 40
Amendment of Act CCIV of 2011 on National Tertiary Education 40
Negotiations between the Hungarian Government and foreign higher education institutions 42
Disproportionate restrictions of Union and non-Union universities 43
Freedom of religion 43
Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary 43
Unconstitutional deregistration of recognised churches 45
Violation of the freedom of conscience and religion (Magyar Keresztény Mennonita Egyház and Others v. Hungary) 47
Freedom of association 48
Audits of NGOs which were beneficiaries of the Norwegian Civil Fund 48
The law on the Transparency of Organisations Receiving Support from Abroad 49
Disproportionate and unnecessary interference with the freedoms of association and expression 50
Legal proceedings regarding the law on the Transparency of Organisations Receiving Support from Abroad 51
The 'Stop-Soros' legislative package 53
Right to equal treatment 59
Uneven balance between the protection of families and women's rights 59
The protection of female victims of domestic violence 61
Working conditions for pregnant or breastfeeding workers 62
No explicit reference of sexual orientation and gender identity among the grounds of discrimination / restrictive definition of family 63
Inhuman treatment of persons with disabilities 64
Rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities 65
Racism and intolerance, anti-Gypsyism and anti-Semitism 65
Roma discrimination 67
Segregation of Roma children (Horváth and Kiss v. Hungary) 73
Segregated education of Roma children 73
Violation of the prohibition of discrimination (Balázs v. Hungary) 76

Forced evictions of Roma in Miskolc 77
Combatting anti-Semitism 78
Roma exclusion in education / Hate crimes and hate speech 82
Fundamental rights of migrants, asylum seekers and refugees 84
Amending asylum law in Hungary / abuses by border authorities 84
Detention of asylum seekers and migrants 87
The situation of unaccompanied minors 88
Violation of the applicants' right to liberty and security (Ilias and Ahmed v. Hungary) 93
Mandatory relocation of asylum seekers 95
Infringement procedure regarding Hungarian asylum legislation 95
Detention of asylum applicants 97
Economic and social rights 99
Criminalising homelessness 99
Non-compliance with the European Social Charter 101
Amendment of the Act on strikes 104
Rights of Children 106
Adequacy and coverage of social assistance and unemployment benefits 108

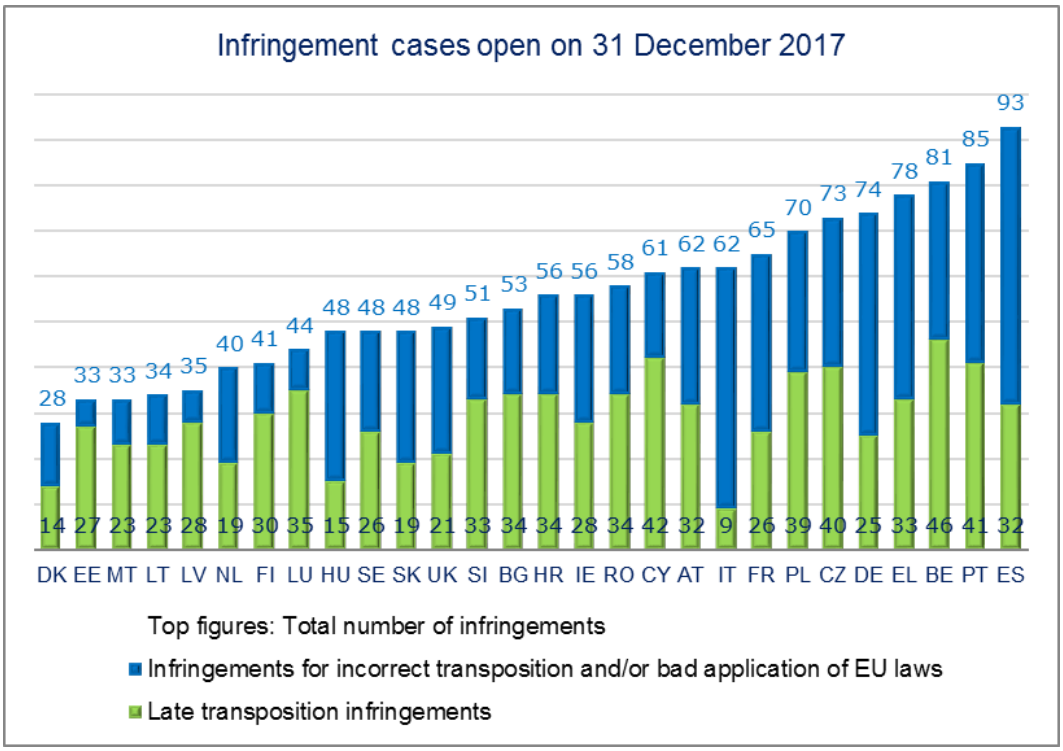
Explanatory Statement - Preparation of the report

"Explanatory Statement

The report also refers to cases that have been addressed by the Commission in infringement procedures. Although these infringement cases might have found closure, they are still part of this report as they have had an effect on the overall atmosphere in the country. Individual legislation might have been, by the letter, restored to respect European values, but materially damage has been done. The chilling effect on the freedoms in society of measures executed and afterwards rolled back or put forward but not (yet) implemented are an undeniable part of an Article 7 analysis.

As far as the infringement cases are concerned, every year, the European Commission draws up an annual report on its monitoring of the application of EU law. According to the 2017 Annual Report[1] adopted on 12 July 2018, Hungary has the ninth best result out of 28 Member States concerning the number of infringement cases open on 31 December 2017.

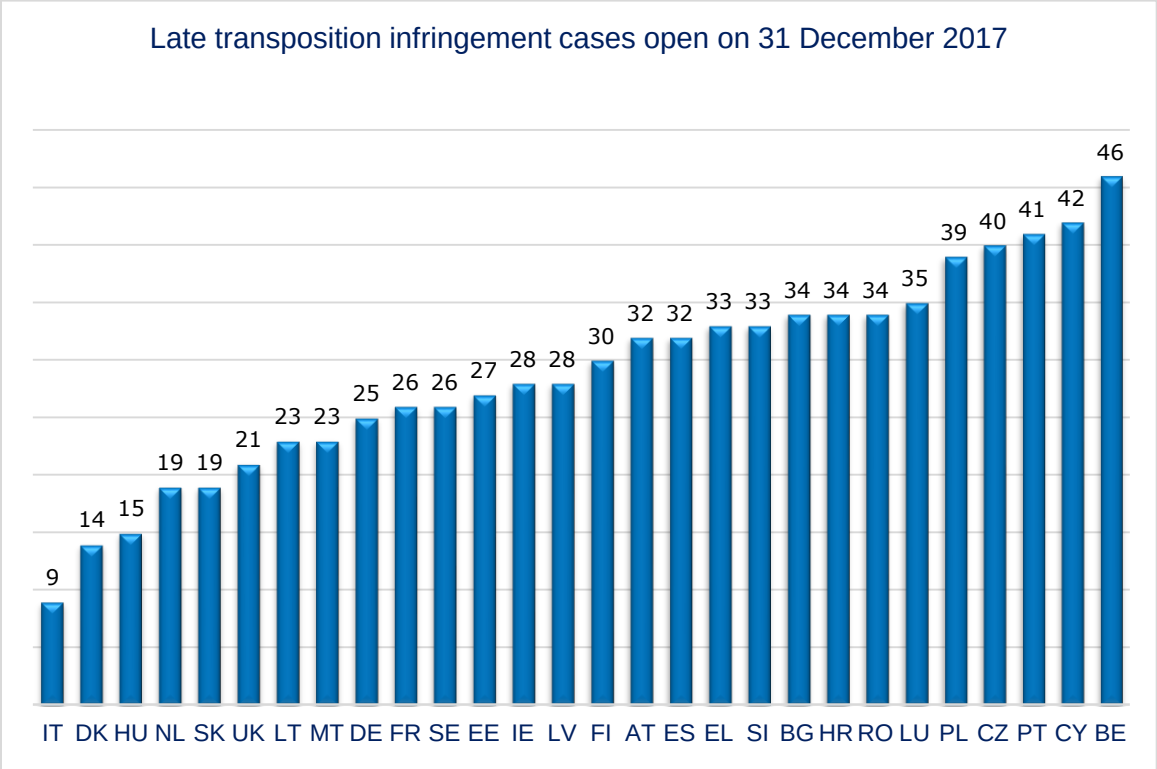
The following chart shows the number of open infringement cases by Member States at the end of 2017:



[1] https://ec.europa.eu/info/publications/2017-commission-report-and-factsheets-monitoring-application-eu-law_en

It should be also noted that regarding the number of late transposition infringement cases, Hungary is now in the top 3 of the Member States with the lowest transposition deficit. In addition, the 2017 Single Market Scoreboard confirmed that Hungary is the only Member State that managed to transpose 100 % of the 14 directives with a transposition date within the 6 months deadline before the cut-off date for calculation (1.6.2017–30.11.2017).

The following chart shows the number of late transposition infringement cases open at the end of 2017 by Member States:



In view of the above, Hungary's performance cannot be criticized regarding the number of infringement cases.

[…] The European Parliament is taking action to protect the rule of law in Europe. Over the years the European Parliament and the European Commission addressed many of its concerns as set out in this report, in different ways, with different actions and numerous exchanges with the Hungarian authorities. The European Parliament debated on multiple occasions with the Hungarian prime minister, ministers and other governmental officials. However no substantial changes have been made to safeguard the rule of law in Hungary. Therefore the rapporteur sees no other choice then to pursue an article 7(1) TEU procedure and submits a reasoned proposal inviting the Council to find that there is a clear risk of a serious breach of the rule of law and to make recommendations to Hungary to take actions. It is thus to be noted that this procedure addresses the Council as a whole and not as such the Member State under scrutiny, since the

means and possibilities in addressing the latter have been tried without success before moving to an article 7(1) procedure.

Carefully weighing all the above while trying to include others in this process is not done overnight. Rushing to a vote would not do justice to the process.

Part of the process is to organise hearings for the European citizens to understand what the situation is, convene thorough meetings with fellow shadow rapporteurs to which external experts from international and European organisations are invited, consult different stakeholders, visit the Member State under scrutiny and invite other committees of the Parliament to get involved and share their opinions following their expertise.

After being mandated by the plenary of the Parliament, your rapporteur took the task of conducting an in-depth analysis and followed this elaborate approach. We have talked and listened to representatives of the Commission, Fundamental Rights Agency, Council of Europe Commissioner for Human Rights, Venice Commission, Special Representative of the Secretary General of the Council of Europe on migration and refugees, Lanzarote Committee, the Hungarian government representatives, a variety of NGOs and academics in Brussels, Strasbourg and Budapest. In a fashion of transparency your rapporteur has attached to this report a list of organisations met in the course of this research. As there was no official delegation visit by the Committee on Civil Liberties, Justice and Home Affairs, your rapporteur undertook her own visit. For future proceedings it is strongly recommended to send a parliamentary delegation to the Member State concerned. One can hardly explain to authorities and citizens of the Member State under scrutiny that the Parliament judges a situation as a clear risk of serious breach of European values as enshrined in the Treaties, without having made the effort of a visit.…"

Hungary has serious concerns regarding the preparation of the report of Ms Judith Sargentini on the situation in Hungary. The Government recalls the factual situation and draws attention to the fact that in May 2017 the European Parliament instructed the Committee on Civil Liberties, Justice and Home Affairs to initiate proceedings and draw up a specific report. Since that date, the LIBE Committee and the rapporteur have not invited the Hungarian Government for public discussion and exchange of views in the Committee with the Honourable Members. We recall the fact that the representative of the Government has had the chance to participate at two LIBE debates on the specific request of the Government and not upon invitation. The representative of the Government has been provided two times, with 15 minutes to publicly present the Hungarian standpoint during the LIBE debates. The Hungarian Ambassador Extraordinary and Plenipotentiary Permanent Representative to the EU has been only invited to one shadows' meeting out of ten all held behind closed doors. This is why the Hungarian Government has produced the Information Sheet on the Hungarian Situation that has been sent to all of the LIBE Committee Members and Substitutes. That Information Sheet contained the facts and legally sound information on the issues raised by the draft report. The Hungarian Government has not received any reply or reaction

from the Rapporteur on the Information Sheet and on any other official background documents that have been provided. Furthermore, in June 2018, on behalf of the new Government, the Hungarian State Secretariat for EU Relations has offered a meeting to the Rapporteur besides several EP members targeting a deep understanding of the topics covered by the report. Judith Sargentini in her answer openly refused to set up a bilateral meeting with the representatives of the Hungarian Government by saying that she did not see the need for further bilateral meetings between the Hungarian authorities and herself. During the preparation of the report, instead of following clear and transparent procedure offering possibility to express the position of the interested party, the Rapporteur has made only a short personal visit to Hungary without informing the Hungarian Government about the exact goal and the agenda of her trip and without providing the official minutes of her meetings. In our view, the Rapporteur's approach encroaches upon the principle of loyal cooperation enshrined in Article 4(3) of the Treaty on the European Union. The Rapporteur's aim of triggering the Article 7 procedure for the first time in the history of the European Parliament without properly applying the principle of *'Audiatur et altera pars'* would create a very dangerous precedent undermining the trust of our citizens in the European Parliament. The guarantees of a fair and legal procedure should have been assured during the preparatory phase, including the due reflection on the official written contributions of the Hungarian authorities submitted to the LIBE Committee.

Functioning of the constitutional system

Constitution-making process in Hungary

(7) The Venice Commission expressed its concern regarding the constitution-making process in Hungary on several occasions, both as regards the Fundamental Law and amendments thereto. It welcomed the fact that the Fundamental Law establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles and acknowledged the efforts to establish a constitutional order in line with common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with binding international instruments. The criticism focused on the lack of transparency of the process, the inadequate involvement of civil society, the absence of sincere consultation, the endangerment of the separation of powers and the weakening of the national system of checks and balances.

It was generally welcomed by the Venice Commission that former communist countries adopt a new and modern Constitution to create a new framework for society, guaranteeing democracy, fundamental freedoms and the rule of law. In its opinion, the Venice Commission welcomed the fact that the Fundamental Law establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles. More generally, while it represents a major step for the current ruling coalition and for Hungary, the adoption of the new Constitution in April 2011 seemed to be only the beginning of a longer process of the establishment of a comprehensive and coherent new constitutional order. The Venice Commission welcomed the efforts to establish a constitutional order in line with the common European democratic values and standards, and to regulate fundamental rights and freedoms in compliance with binding international instruments, including the European Convention on Human Rights and the EU Charter of Fundamental Rights.

The political debate around the drafting of the new constitution was launched in June 2010 by the establishment of an ad hoc parliamentary committee for this purpose, composed of 45 members, representing all parliamentary parties. However, the opposition later on left this committee on the reason of its dissatisfaction concerning the limitation of the Constitutional Court's judicial control in the field of taxation. While never returning to this committee, the opposition continuously attacked the Fundamental Law for lacking democratic legitimacy, although it was voted by more than 2/3 of the members of the Hungarian Parliament on 18th April 2011, following 9 days of intense professional and political debate. The parliamentary debate on the draft constitution was preceded by the establishment of a national consultative body, set up in January 2011, followed by large scale public survey on the draft based on a questionnaire of 12 questions, and several public debates were organized on the values and aims of the

Fundamental Law, with the involvement of universities, churches and the civil society. Almost a million citizens expressed their opinion on the draft constitution.

Competences of the Hungarian Constitutional Court

(8) The competences of the Hungarian Constitutional Court were limited as a result of the constitutional reform, including with regard to budgetary matters, the abolition of the actio popularis, the possibility for the Court to refer to its case law prior to 1 January 2012 and the limitation on the Court's ability to review the constitutionality of any changes to the Fundamental Law apart from those of a procedural nature only. The Venice Commission expressed serious concerns about those limitations and about the procedure for the appointment of judges, and made recommendations to the Hungarian authorities to ensure the necessary checks and balances in its Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted on 19 June 2012 and in its Opinion on the Fourth Amendment to the Fundamental Law of Hungary adopted on 17 June 2013. In its opinions, the Venice Commission also identified a number of positive elements of the reforms, such as the provisions on budgetary guarantees, ruling out the re-election of judges and the attribution of the right to initiate proceedings for ex post review to the Commissioner for Fundamental Rights.

In a European comparison, the Hungarian Constitutional Court has a remarkable set of powers. Despite several professional legal arguments to the contrary, the Fundamental Law refrained from decentralization – e.g. by transferring the protection of fundamental rights to ordinary courts – and maintained the remarkably strong competences of the Constitutional Court. Contrary to the negative perception echoed in the report, the Constitutional Court even received new competencies under the Fundamental Law in terms of the scope of the right to initiate preliminary (ex ante) legality control of legislative drafts and by reinforcing its competence and gaining practical competences for subsequent (ex post) legality control, similar to the German model on constitutional control. Ex post constitutional control may be initiated by the Government, by one-fourth of the members of the Parliament or by the Ombudsman. Altogether the current competences of the Constitutional Court reflect a professional and political compromise (the abolition of the actio popularis was explicitly requested by the Constitutional Court itself) which strengthens the efficiency of constitutional control by shifting the focus from abstract constitutional review towards actual constitutional review.

Regarding the review of constitutional amendments, the new provision is in line with the former approach of the Constitutional Court. This case-law explicitly confirmed that the Court had no competence to review the substance of the amendments as the Court itself is subordinate to the constitution and cannot review the constitution itself in terms of its constitutional conformity. International examples confirm this approach. The provision did therefore not introduce a limitation of competences; on the contrary, it established clear rules for the exercise of the competence for review and so the control of the constitutional power is even more safeguarded.

It should be stated that the Venice Commission identified a number of positive elements of the reforms, such as provisions on budgetary guarantees, the fact that the Hungarian authorities have taken up the Commission's suggestion to rule out the re-election of Constitutional Court Judges; it appreciated that the Act provides for a time limit for the appointment of new judges in order to ensure continuity, functional immunity of the judges, as well as that there is a provision on the extension of the mandate of the incumbent member in case the Parliament fails to elect a new member to the Constitutional Court within the time-limit. Rules on the ex-post review of legal acts were warmly welcomed by the Venice Commission. Provisions on access to the Constitutional Court out of time in exceptional circumstances were also considered as positive elements. Although no statutory changes were made following the opinion of the Venice Commission on the possibility for the Constitutional Court to refer back to its case law, the Hungarian Constitutional Court, in a decision taken in 2013, stated that it was possible to refer back to the substance of its case law created under the former constitution and has indeed done so in a number of its recent decisions.

Limitation of the constitutional complaint procedure

(9) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the current constitutional complaint procedure affords more limited access to the Constitutional Court, does not provide for a time limit for the exercise of constitutional review and does not have a suspensive effect on challenged legislation. It also mentioned that the provisions of the new Constitutional Court Act weaken the security of tenure of judges and increase the influence of the government over the composition and operation of the Constitutional Court by changing the judicial appointments procedure, the number of judges in the Court and their retirement age. The Committee was also concerned about the limitation of the Constitutional Court's competence and powers to review legislation impinging on budgetary matters.

The provision of the Fundamental Law that limits the constitutional control of the state budget aims to assure the balance between the scope of economic stability as a basic objective of the Fundamental Law and the protection of fundamental rights. This measure – along with the establishment of the council in charge of budgetary control on state debts – may limit the room for action for future governing parties to adopt certain economic policy measures, but it does not put obstacles to effective protection of fundamental rights.

The annulment of constitutional court decisions issued before the entering into force of the Fundamental Law grants that the provisions of the New Constitution will be interpreted independently from the previous constitution. The Constitutional Court established in general terms the conditions to use the reasoning, the principles and the constitutional context from previous constitutional court decisions. The new rules on the composition of the Constitutional Court (election based on qualified majority and high

level professional requirements) are high level guarantees of the independence of judges, as it does the reduction of the length of appointment from 12 to 9 years and the exclusion of their reappointment.

The Constitutional Court itself supported the abolishment of the legal institution of actio popularis due to its high caseload. However, at the same time, the institution of constitutional control has been reinforced and the new legislation provides for more effective legal protection. The Venice Commission also acknowledged that the actio popularis is not a precondition for the rule of law to prevail in Hungary. Even according to the previous case law of the Constitutional Court it was not possible to ask for the annulment of constitutional provisions on reason of substance. (Only a very few constitutions allow in Europe for constitutional control of the Constitution itself, whereas the possibility of control on the substance is rare exception.)

Delineation of single-member constituencies

(10) In its preliminary findings and conclusions adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights stated that the technical administration of the elections was professional and transparent, fundamental rightsand freedoms were respected overall, but exercised in an adverse climate. The election administration fulfilled its mandate in a professional and transparent manner and enjoyed overall confidence among stakeholders. The campaign was animated but hostile and intimidating campaign rhetoric limited space for substantive debate and diminished voters' ability to make an informed choice. Public campaign funding and expenditure ceilings aim at securing equal opportunities for all candidates. However, the ability of contestants to compete on an equal basis was significantly compromised by the government's excessive spending on public information advertisements that amplified the ruling coalition's campaign message. It also expressed concerns about the delineation of single-member constituencies. Similar concerns were expressed in the Joint Opinion of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections, in which it was mentioned that the delimitation of constituencies has to be done in a transparent and professional manner through an impartial and non-partisan process, i.e. avoiding short-term political objectives (gerrymandering).

The electoral districts were established taking into account the requirement of proportionality. The rule that electoral districts cannot exceed county borders and the borders of Budapest, as well as that they must form a block territory remained unchanged. Under the previous rules there were certain territories with 300% disproportionalities. In this context it must be emphasized that the decision of 2010 of the Constitutional Court, which annulled the previous legislation in force on the establishment of electoral districts, both individual and territorial. The Joint Opinion of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections also identified it as

a positive element. The Decision of the Parliamentary Assembly of the Council of Europe acknowledged that by this legislative amendment Hungary complied with the recommendations of the Venice Commission.

The parliamentary elections in Hungary, which took place on 8 April 2018, saw a large surge in voter turnout, one of the largest in Hungarian history since the end of communism. The Report of the Head of the National Election Office states, that a total of 8 312 264 citizens have been enrolled as voters, out of which 7 933 815 possessed a Hungarian residence and 378 449 did not. Based on registration as a national minority member, 59 235 citizens could vote for a national minority list. Election turnout was 69.73% calculated on a basis of 5 796 268 voters. This result shows the strong legitimation of the Hungarian Parliament.

National consultation "Let's stop Brussels"

(11) In recent years the Hungarian Government has extensively used national consultations, expanding direct democracy at the national level. On 27 April 2017, the Commission pointed out that the national consultation "Let's stop Brussels" contained several claims and allegations which were factually incorrect or highly misleading. The Hungarian Government also conducted consultations entitled 'Migration and Terrorism' in May 2015 and against a so-called 'Soros Plan' in October 2017. Those consultations drew parallels between terrorism and migration, inducing hatred towards migrants, and targeted particularly the person of George Soros and the Union.

The Hungarian Government launched its so called 'National consultation' on 31st March 2017 to gather people's opinion with the aim of providing guidance for the Government in its European disputes regarding the issues that significantly affect the life of the Hungarian people; migration policy, energy prices, tax- and labour policies or the transparency of civil society organizations supported from abroad are all issues that fundamentally affect Hungary's sovereignty and the fact that 1.68 million shared their opinion proves that people find these issues important. The title of the consultation signals the intention to halt the transfer of national competences to Brussels, to stop the politics that is trying to extend beyond what is laid down in the Treaties. The Government aims to preserve the current division of competences between Member States and European institutions. This opportunity for the people to voice their opinions regarding these issues is a manifestation of the principle of democracy. It is important to highlight that Hungary is the only Member State of the EU which dared to openly ask its citizens on how to cope with the migration crisis. The European Commission labelled our Government anti-European because of this consultation but this accusation does not stand. Hungary is pro-European and is fighting for a strong Europe and would like to reform the politics of Brussels for us to live in a Europe that leads the world: we have to do away with terrorism, regain security and become again competitive in the global market.

Independence of the judiciary and of other institutions and the rights of judges

Centralised administration of courts / independence of judges and lawyers

(12) As a result of the extensive changes to the legal framework enacted in 2011, the president of the newly created National Judicial Office (NJO) was entrusted with extensive powers. The Venice Commission criticised those extensive powers in its Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted on 19 March 2012 and in its Opinion on the Cardinal Acts on the Judiciary, adopted on 15 October 2012. Similar concerns have been raised by the UN Special Rapporteur on the independence of judges and lawyers on 29 February 2012 and on 3 July 2013, as well as by the Group of States against Corruption (GRECO) in its report adopted on 27 March 2015. All those actors emphasised the need to enhance the role of the collective body, the National Judicial Council (NJC), as an oversight instance, because the president of the NJO, who is elected by the Hungarian Parliament, cannot be considered an organ of judicial self-government. Following international recommendations, the status of the president of the NJO was changed and the president's powers restricted in order to ensure a better balance between the president and the NJC.

First of all, it must be noted that the Venice Commission at its 16-17 March 2012 session has acknowledged the necessity of improving the efficiency of the previous judiciary system. Concerned bodies (including the European Commission) have identified several positive provisions in both acts referred to above, while also pointing out a few problematic elements that were addressed by the Hungarian Government, as also acknowledged by this report. As for the general independence of judges and lawyers as well as the independence of the judiciary, it must be pointed out that each year since 2013 the European Commission adopts its communication on the EU Justice Scoreboard which provides comparable data on the independence, quality and efficiency of national justice systems focusing mainly on civil, commercial and administrative cases. The figures of the last edition of the Scoreboard published on 27th May 2018 show that the Hungarian justice system performs above or well above the EU average, just like in previous years. As far as the independence of the justice system is concerned, the ranking does not illustrate significant discrepancies in the Hungarian system, especially regarding the guarantees of structural independence which are well-established in the Hungarian law.

Competences of the president of the National Judicial Office

(13) Since 2012, Hungary has taken positive steps to transfer certain functions from the president of the NJO to the NJC in order to create a better balance between these two organs. However, further progress is still required. GRECO, in its report adopted on 27 March 2015, called for minimising the potential risks of discretionary decisions by the president of the NJO. The president of the NJO is, inter alia, able to transfer and assign judges, and has a role in judicial

discipline. The president of the NJO also makes a recommendation to the President of Hungary to appoint and remove heads of courts, including presidents and vice-presidents of the Courts of Appeal. GRECO welcomed the recently adopted Code of Ethics for Judges, but considered that it could be made more explicit and accompanied by in-service training. GRECO also acknowledged the amendments that were made to the rules on judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the NJC received a stronger supervisory function in the selection process. On 2 May 2018, the NJC held a session where it unanimously adopted decisions concerning the practice of the president of the NJO with regard to declaring calls for applications to judicial positions and senior positions unsuccessful. The decisions found the president's practice unlawful.

As recognized by this report, several steps have been taken by the Hungarian Government to balance the competences of the National Judicial Council and the president of the National Judicial Office. It must be further highlighted that the referred GRECO report acknowledges particularly the amendments that were made concerning the rules of judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the National Judicial Council has received a stronger supervisory function in the selection process. It should therefore be noted that the National Judicial Council already has a decisive mandate in the appointing and promoting procedure of judges and it is not the president of the National Judicial Office who has the most important role in the process.

The assessment of applications to a judicial position is a complex procedure with many stakeholders. The rules of the process guarantee that whenever a candidate is appointed or promoted, elected bodies of judges have a decisive role. It is either a local judicial council determining the ranking of applicants or the National Judicial Council giving prior consent for the appointment of the second or third ranked candidate. Statistics show that the National Judicial Council regularly uses its 'right to veto' in practice (10% of the cases when the president of the National Judicial Office wanted to differ from the ranking of the local judicial councils). Therefore, the rules provide that the best suitable candidate wins the vacant position, as a result of the selection procedure. It should also be noted that, according to the Act CLXII of 2011 on the Legal Status and Remuneration of Judges, the selection procedure may be considered unsuccessful only on the basis of the objective criteria precisely set out in the Act which does not depend on any discretionary decision.

New system of administrative courts

(14) On 29 May 2018, the Hungarian Government presented a draft Seventh Amendment to the Fundamental Law (T/332), which was adopted on 20 June 2018. It introduced a new system of administrative courts.

The most important codes on legal procedures have been renewed during the previous governmental period. One of these, Act I of 2017 on the Code of Administrative Court Procedure entered into force on 1 January 2018. The most important achievement of the first separate code of administrative court procedure is the general clause, which enables the judicial review of all administrative actions with legal effects and is addressed to the citizens or companies, thus it widens the scope of judicial control.

The organizational separation of administrative and ordinary courts is justified, on the one hand, by the particular purpose of the administrative justice. A fair balance has to be created between private and public interests ensuring consistency between the basic right of the individual (subjective) and the legal protection based on public interest (objective). On the other hand, adjudication of administrative disputes requires special knowledge and a particular attitude of the judge in order to be able to protect the citizen from the superiority of power of the inevitably dominant authority. According to the code of administrative court procedure the judge shall take several procedural actions ex officio, contributing actively to the success of the procedure of taking evidence.

It is important to emphasise that legal scholarship, national historical traditions and also international examples justify the existence of the independently functioning administrative judiciary. The Hungarian Minister of Justice, László Trócsányi has been examining the topic as a university professor for over 30 years. Based on this experience the institutional structure, discontinued in 1949 by communist dictatorship, should be rebuilt in a professional manner, fit for the requirements of the 21st century. Multilevel administrative judiciary which is institutionally independent from ordinary courts and from the jurisdiction of the Supreme Court operates in Austria, Bulgaria, Finland, Germany, Greece, Lithuania, Luxembourg, Poland, Portugal and Sweden. In the Czech Republic, regional courts with general jurisdiction adjudicate at first instance, and only the Supreme Administrative Court is a specialized administrative court. In France, Belgium, and Italy, it is the Council of State, an organ functionally independent from ordinary courts that carries out the tasks of administrative judiciary.

International examples, especially the well-functioning systems in neighbouring countries prove us that independent administrative judiciary ensures better the self-restraint of executive power and provides more efficient control over actions of the administration. It can be concluded that the independent administrative judiciary constitutes an important element in the development of constitutional law. The proposal in this regard is not unprecedented in Hungary either, as professional and multi-party political discussions already started during the previous governmental cycle. The entering into force of the code of administrative court procedure brought about the repositioning and regionalisation of administrative jurisdiction, however, the independent organization of administrative judiciary could not be established due to the lack of the necessary two-thirds majority in Parliament.

It is an important development that the recently adopted 7th Amendment of the Fundamental Law has created constitutional framework for the legislative work necessary for establishing the institutionally independent administrative judicial system. The modification of Article 25 states that the judiciary system consists of ordinary and administrative courts. The supreme organ of administrative courts is the Supreme Administrative Court, while that of the ordinary courts it is still the Curia. The two highest judicial forums of equal legal status perform the tasks related to ensuring consistency of the application of the law of the respective judicial organisations.

In order to elaborate detailed regulation of the institutional reform and to prepare the complex legislative work, the Minister of Justice has established an expert committee with Prof. Dr. György Kiss (Member of the Hungarian Academy of Sciences) as its president. Members of the committee are mostly judges, delegates of the President of the Curia and of the National Office for the Judiciary, the President of the Association of Hungarian Administrative Judges, and distinguished legal scholars, among them professors of administrative and constitutional law. The Ministry of Justice counts on their outstanding professional knowledge and experience in the framework of a regular dialogue. Expressing their opinion is important throughout the complex codification procedure. During the first meeting session, organisational questions and the definition of the scope of material and territorial jurisdiction were discussed. Further issues on the agenda of the expert committee are the questions on legal status and administration.
The ultimate objective of the Ministry is to submit the draft law on the establishment of the Supreme Administrative Court to Parliament during its spring session at the latest. The new model, through the principles of judicial independence and of fair trial, shall ensure compliance with the requirements of the rule of law and at the same time enforce the internal characteristics of administrative law.

Compulsory retirement of judges, prosecutors and notaries (C-286/12, Commission v. Hungary)

(15) Following the judgment of the Court of Justice of the European Union (the "Court of Justice") of 6 November 2012 in Case C-286/12, Commission v. Hungary, which held that by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries when they reach the age of 62, Hungary failed to fulfil its obligations under Union law, the Hungarian Parliament adopted Act XX of 2013 which provided that the judicial retirement age is to be gradually reduced to 65 years of age over a ten year period and set out the criteria for reinstatement or compensation. According to the Act, there was a possibility for retired judges to return to their former posts at the same court under the same conditions as prior to the regulations on retirement, or if they were unwilling to return, they received a 12-month lump sum compensation for their lost remuneration and could file for further compensation before the court, but reinstatement to leading administrative positions was not guaranteed. Nevertheless, the Commission acknowledged the measures of Hungary to make its retirement law compatible

with Union law. In its report of October 2015, the International Bar Association's Human Rights Institute stated that a majority of the removed judges did not return to their original positions, partly because their previous positions had already been occupied. It also mentioned that the independence and impartiality of the Hungarian judiciary cannot be guaranteed and the rule of law remains weakened.

In 2012 a new law on retirement entered into force in Hungary, which reduced the age limit for compulsory retirement from 70 to 62 years with the aim of creating a unified, just and solidary pension system, instead of conserving individual privileges and additional rights towards certain professions. Later on, the Court of Justice of the European Union (CJEU) established that this law infringed the EU principle of non-discrimination. Hungary acknowledged the ruling of the CJEU and – also in line with the decision of the Hungarian Constitutional Court – amended the law which in case of judges, prosecutors and public notaries set a new age limit (65 years) for compulsory retirement by 1st January 2023. The Commission closed the infringement procedure against Hungary at the end of 2013. Following the ruling of the CJEU, the Commission continuously monitored the implementation of the new Hungarian law on retirement and on 20th November 2013 voiced its satisfaction with the measures taken by Hungary to make its retirement law compatible with the requirements of EU law. It is important to emphasize that the Commission was satisfied with the remedies implemented in Hungary concerning the affected judges, prosecutors and public notaries, including the right of reinstatement without judicial procedure, and the right to compensation. The ruling of the CJEU of 6th November 2012 did not question the reasons of the Hungarian Government in justification of the lower retirement age limits (balanced age structure, mobility of judges, etc.) merely established that the provision equals to discrimination based on age. In compliance with the ruling of the CJEU there are unified rules in effect applying for judges, prosecutors and public notaries which allow judges and prosecutors who have reached retirement age in the transition period to: a) to remain in office, b) take an administrative leave, c) to retire. The amendments introduced by Act XX of 2013 provided the possibility for retired judges to return to their former posts at the same court under the same conditions as prior to the regulations on retirement, or if they did not want to return, they received a 12-month lump sum compensation for their lost remuneration, and could file for further compensation before the court. The choice made by the judges cannot be evaluated against Hungary.

According to Article 232/J. paragraph (2) and (3) of Act XX of 2013 reinstatement to leading administrative positions was guaranteed. In the case of judges who had an indefinite term appointment to the position of President of Chamber before, if he chose to return, they had to be reinstated to their position. According to the Act, judges who had fixed term appointment could only be reinstated to their positions if those were not occupied at that time. Therefore only the reinstatement to the already occupied temporary positions could not have been guaranteed by the Act, since such a rule would

have breached the rights of the newly appointed judges. It must be underlined however, that under the provisions of the Act, in such cases judges could not suffer any damages, since the executive allowance had to be paid for the whole duration of the definite appointment. Consequently any statement of the report on the motivation of judges is inaccurate since these are lacking factual data.
It should be highlighted that independence and impartiality are requirements that apply to the decisional function of judges but not to the appointment of judges to leading administrative positions, which requirements therefore cannot be included in this context.

Violation of the right to a fair trial and the right to an effective remedy (Gazsó v. Hungary)

(16) In its judgment of 16 July 2015, Gazsó v. Hungary, the European Court of Human Rights (ECtHR) held that there had been a violation of the right to a fair trial and the right to an effective remedy. The ECtHR came to the conclusion that the violations originated in a practice which consisted in Hungary's recurrent failure to ensure that proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to claim redress for excessively long civil proceedings at a domestic level. The execution of that judgment is still pending. A new Code of Civil Procedure, adopted in 2016, provides for the acceleration of civil proceedings by introducing a double-phase procedure. Hungary has informed the Committee of Ministers of the Council of Europe that the new law creating an effective remedy for prolonged procedures will be adopted by October 2018.

In the case of Gazsó v. Hungary the Court noted the Government's Action Plan and welcomed its commitment to deal with the issue and encouraged to continue these efforts. The Court ruled that Hungary must introduce without delay and at the latest until 16 October 2016, a remedy or a combination of remedies in the national legal system in order to bring it into line with the requirements of the Convention.

A new Code of Civil Procedure adopted in 2016 provides for the acceleration of civil proceedings by introducing a double-phase procedure. In the new Code of Criminal Proceedings the enhanced rights of the defence during the investigation will contribute to the expediency and effectiveness of the proceedings. After the 'pre-arrest investigation' defence will have access to the case file. At the trial phase, a preparatory hearing will fix the scope of the case and in order to prevent prolonging tactics, new motion for evidence can be submitted thereafter only in exceptional circumstances. At the appeal stage, the reformatory power of the appeal court is strengthened.

Hungary has duly informed the Committee of Ministers of the Council of Europe that the completion of court proceedings within a reasonable period of time will be ensured by the new code of conduct, and the new law creating an effective remedy for prolonged procedures will be adopted by October 2018 based on the following principles: objective

liability, covering all types of judicial proceedings, out of court settlement procedure, (in lack of settlement a simplified judicial procedure), the swift determination of the claims and prompt payment of compensation and appropriate compensation.

Violation of the right of access to a court and the freedom of expression (Baka v. Hungary)

(17) In its judgment of 23 June 2016, Baka v. Hungary, the ECtHR held that there had been a violation of the right of access to a court and the freedom of expression of András Baka, who had been elected as President of the Supreme Court for a six-year term in June 2009, but ceased to have this position in accordance with the transitional provisions in the Fundamental Law, providing that the Curia would be the legal successor to the Supreme Court. The execution of that judgment is still pending. On 10 March 2017, the Committee of Ministers of the Council of Europe solicited to take measures to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard. The Hungarian Government noted that those measures are not related to the implementation of the judgment.

The European Court of Human Rights found a violation of the freedom of expression of the applicant, former President of the Hungarian Supreme Court, on account of the premature termination of his mandate on 1st January 2012 – i.e. three and a half years prior to its normal date of expiry – as a result of his criticisms of legislative reforms expressed publicly in his professional capacity. The Court also found a violation of the right of access to a court on account of the lack of any form of judicial review in this respect. In the course of the execution of the judgment, the Committee of Ministers indicated their expectation to consider — in addition to the payment of just satisfaction in the sum of EUR 100,000 — adopting further individual and general measures. The Government considers that such measures are not necessary or feasible. There is no need or possibility for the applicant's reinstatement in his former office because his original term of office had already expired before the judgment was delivered. In any event, the position of the President of the Kúria (Hungarian Supreme Court) is not vacant and his mandate will not expire until January 2021. At that time, the applicant will be eligible for re-election, the requirement of at least five years of domestic judicial service no longer being an impediment for him. As regards any financial consequences of the premature termination of the applicant's mandate, restitutio in integrum was provided by the just satisfaction awarded by the Court.

No further general measures were found necessary because the violation found by the Court resulted from a one-time constitutional reform of the Hungarian judicial system. As regards the general measures solicited by the Committee of Ministers' decision of 10th March 2017 the Government emphasises that those measures are not related to the implementation of the present judgment since the existence of those guarantees (as regards all Hungarian judges other than the president of the Supreme Court) has never been called into question by the Court. Quite the contrary, the basis for finding that the

Eskelinen-test[2] was not met in the present case was exactly that, regardless of the unique constitutional status of the President of the Supreme Court within the judiciary, other judges and court executives were not excluded from the right of access to a court in case of their dismissal. As the Grand Chamber found in its judgment: „the applicant, as the holder of the office in question in the period before the dispute arose, was not "expressly" excluded from the right of access to a court. On the contrary, domestic law expressly provided for the right to a court in those limited circumstances in which the dismissal of a court executive was permissible: the dismissed court executive was indeed entitled to contest his or her dismissal before the Civil Service Tribunal. In this respect, judicial protection was available under domestic law for cases of dismissal, in line with the international and Council of Europe standards on the independence of the judiciary and the procedural safeguards applicable in cases of removal of judges. Mr Baka currently works as a President of Chamber judge at the Curia.

As regards the prevention of a similar violation of premature termination of the office of the President of the Kúria under the law currently in force, the judgment in the present case does not require that rules governing such termination be adopted, it follows only that Hungary should refrain from such premature termination when the next major constitutional reform of the judicial system takes place.

The expiry of mandate of the Data Protection Supervisor

(18) On 29 September 2008, Mr András Jóri was appointed Data Protection Commissioner for a term of six years. However, with effect from 1 January 2012, the Hungarian Parliament decided to reform the data protection system and replace the Commissioner with a national authority for data protection and freedom of information. Mr Jóri had to vacate office before his full term had expired. On 8 April 2014, the Court of Justice held that the independence of supervisory authorities necessarily includes the obligation to allow them to serve their full term of office and that Hungary failed to fulfil its obligations under Directive 95/46/EC of the European Parliament and of the Council. Hungary amended the rules on the appointment of the Commissioner, presented an apology and paid the agreed sum of compensation.

Hungary amended the rules on the appointment of the president of the Hungarian National Authority for Data Protection and Freedom of Information, based on the suggestions of the European Commission within the infringement procedure initiated against Hungary. Hungary presented an apology by sending a ministerial letter to András Jóri within the deadline set in the agreement of June 2014, issued a public notice

[2] Case *Vilho Eskelinen & Ors v Finland* [2007] ECHR [GC] 63235/00 (19 April 2007) at the European Court of Human Rights. In a judgment the Court considered the scope of the right to a fair hearing in the context of civil proceedings, with particular reference to the acceptable length of proceedings and the necessity of an oral hearing. See further: https://www.hrlc.org.au/human-rights-case-summaries/vilho-eskelinen-ors-v-finland-2007-echr-gc-6323500-19-april-2007-2

to András Jóri and to the Hungarian Telegraphic Office (Hungarian news agency), as well as paid to András Jóri the agreed sum of compensation. The former Commissioner for Data Protection considered the material and moral compensation offered as fair and accepted it voluntarily, furthermore he declared that he had no more claims. In autumn 2014 the Commission accepted the above measures as implementation of the CJEU decision. Thus Hungary – by fulfilling the conditions of the agreement – brought to an end to the case concerning the premature ending of the term of the Data Protection Supervisor in a mutually satisfactory manner.

Criticisms concerning the prosecution service

(19) The Venice Commission identified several shortcomings in its Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted on 19 June 2012. In its report, adopted on 27 March 2015, GRECO urged the Hungarian authorities to take additional steps to prevent abuse and increase the independence of the prosecution service by, inter alia, removing the possibility for the Prosecutor General to be re-elected. In addition, GRECO called for disciplinary proceedings against ordinary prosecutors to be made more transparent and for decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications. According to the Hungarian Government, the 2017 GRECO Compliance Report acknowledged the progress made by Hungary concerning prosecutors (publication is not yet authorised by the Hungarian authorities, despite calls by GRECO Plenary Meetings). The Second Compliance Report is pending.

It must be highlighted that the Venice Commission also found numerous positive aspects of those acts. It had been concluded that the general principles for the operation of prosecutors were in line with applicable standards for prosecutors in a democratic society. It was highlighted that most of the issues identified did not stem from the revision of the Acts under the new Fundamental Law but were remnants from the overarching powers of the prosecution services left before the democratic transition in Hungary. The Venice Commission also stated that taken on their own, most issues raised in its opinion did not threaten the rule of law but the recommendations were made in order to propose ways to improve the prosecution service.

It must be highlighted that the 2017 GRECO Compliance Report (assessing the implementation of the 2015 recommendations) acknowledged that there has been progress concerning prosecutors. As far as the independence of the prosecution service is concerned, the 2015 GRECO report drew only a very limited number of recommendations – the compliance with which is yet to be assessed – and used the word 'potential' expressing that they refer only to theoretical and not factual situations, and recommends further steps merely in order to prevent such potential scenarios.

The disciplinary proceedings against ordinary prosecutors include appropriate guarantees, since there is a possibility of objection due to bias against the person from whom unbiased participation in the procedure cannot be expected, which is a proper guarantee for the objective, impartial conducting of the procedure and a transparent decision and judicial remedy is also granted. The prosecution service changed its practice following the GRECO evaluation in a way that based on the possibility provided by the Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career, the person who has the disciplinary power, shall appoint a disciplinary commissioner in each disciplinary procedure.

Regarding the legal criteria of moving cases from one prosecutor to another it must be pointed out that Order No. 12/2012 (VI. 8.) of the Prosecutor General was amended in 2015 in a way that the officer of the prosecution service who is entitled to assign the cases – according to the rules of the organization and operation of the prosecution service – shall assign the file from one case handler to another, and shall include the reason for moving the case in the file.

In this context it should be noted that the Commission in its 2018 Justice Scoreboard[3] claims that Hungary is among the Member States where the management power of the prosecution services belongs solely to the Prosecutor General. Unlike in other Member States, the executive does not have power to decide on a disciplinary measure regarding a prosecutor, the power to transfer prosecutors without their consent or the power to evaluate and promote a prosecutor. In Hungary neither the executive nor the parliament have the possibility to give general guidance on crime policy or instructions on prosecution in individual cases.

Conflicts of interest and corruption

Conflicts of interest of members of the Hungarian Parliament

(20) In its report adopted on 27 March 2015, GRECO called for the establishment of codes of conduct for members of the Hungarian Parliament (MPs) concerning guidance for cases of conflicts of interest. Furthermore, MPs should also be obliged to report conflicts of interest which arise in an ad hoc manner and this should be accompanied by a more robust obligation to submit asset declarations. This should also be accompanied by provisions that allow for sanctions for submitting inaccurate asset declarations. Moreover, asset declarations should be made public online to allow for genuine popular oversight. A standard electronic database should be put in place to allow for all declarations and modifications thereto to be accessible in a transparent manner.

[3] https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf page 49-50.

The law regulating the Hungarian Parliament, together with other pieces of legislation, establishes strict rules about conflict of interest for MPs. The goal of these regulations is to guarantee the independence of the legislative work and to avoid unwanted influencing and the concentration of positions and appointments. The rules created by the aforementioned law concerning conflict of interest, which have been in effect since the beginning of the 2014-18 parliamentary term, are stricter. The appointment of an MP is not compatible with any other national or local public administrative position or any business-related appointment. The MPs cannot do any income-providing activity and cannot accept remuneration for any other activity, with the exception of academic, research-related, artistic, revise-related or editorial work, any intellectual activity regulated by specific legislation or any activity carried out as a foster parent. The law regulating the Hungarian Parliament does not cover conflict of interest in terms of what positions or appointments are not allowed during parliamentary service but it rather presents the very limited list of the ones which are the possible ones. An MP can hold a high-level government position (prime minister, minister, state secretary). Following the 2014 local administrative elections, an MP can no longer become member of the local government, e.g. mayor. The law regulating the Hungarian Parliament established a tougher set of rules in the area of economic conflict of interest, too. It also strictly defines the cases when an MP becomes unworthy of holding their office, e.g. if they are banned from public affairs or they are serving a prison sentence. Furthermore, the law lists several other activities which are incompatible with holding the office of an MP: e.g. exerting influence in business-related matters using his parliamentary status or acquiring and utilizing confidential information without authorisation. In case an MP is found to have a conflict of interest, they have to clear themselves of it within a limited timeframe; failure to do so may lead to them being stripped of their parliamentary duty by the National Assembly.
In fact, the GRECO did not recommend the online publication of the asset declarations of the Members of Parliament due to the fact these asset declarations are already publicly available via the homepage of the Hungarian Parliament.

Hungary has in place a system of asset declarations in respect of an MP as well as their close family members. Act XXXVI of 2012 on the National Assembly (ANA) provides that each MP is to file an asset declaration in accordance with a precise form, which is attached to the law, within thirty days upon the establishment of their mandate and then every year by 31 January as well as within 30 days upon the termination of the mandate. If an MP does not follow this rule, s/he is not allowed to exercise her/his rights as a member and will not receive remuneration (Section 90(3) ANA). Furthermore, the members are obliged to attach a declaration on property of the same content as their own, in respect of family members (i.e. spouse or common law spouse and children living in a common household). The declarations of property are to be filed with the Committee on Immunity. It follows from Section 94 ANA that the declaration of assets of the MP is a public document, contrary to those relating to family members. The former

are to be published without delay on the website of the National Assembly, by the Committee on Immunity.

Limited monitoring of campaign spending

(21) In its preliminary findings and conclusions adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the limited monitoring of campaign spending and the absence of thorough reporting on sources of campaign funds until after the elections undercuts campaign finance transparency and the ability of voters to make an informed choice, contrary to OSCE commitments and international standards. The legislation in force opts for an ex-post monitoring and controlling mechanism. The State Audit Office has the competence to monitor and control whether the legal requirements have been met. The preliminary findings and conclusions did not include the official audit report of the State Audit Office concerning the 2018 parliamentary elections, as it had not been completed at the time.

The Act LXXXVII of 2013 on the Transparency of Political Campaign Financing maximizes the amount allowed to be spent for campaign activities, establishes strict rules on the use of such financing and on the monitoring of campaign spending. In order to strengthen transparency, the new law introduced the requirement that within 60 days starting from the date when the result of the elections became official, all candidates and nominating organizations must make public the amount they had spent for campaigning, including public and non-public sources, as well as the purposes for the spending.

The State Audit Office, as the enforcement authority for state aids, is the central authority for the new law as well, and has the competence to monitor and control whether the candidates and nominating organizations have complied with the legal requirements on maximizing the campaign spending. The State Audit Office will audit the use of campaign finances in case of those political parties which did not obtain at least 1 percent of the votes. In such a case the State Audit Office will proceed within one year from the date of the elections.

Withdrawal from the Open Government Partnership

(22) On 7 December 2016, the Open Government Partnership (OGP) Steering Committee received a letter from the Government of Hungary announcing its immediate withdrawal from the partnership, which voluntarily brings together 75 countries and hundreds of civil society organisations. The Government of Hungary had been under review by OGP since July 2015 for concerns raised by civil society organisations in particular regarding their space to operate in the country. Not all Member States are members of the OGP.

The Open Government Partnership is a multilateral initiative based on voluntary membership and therefore it is only up to the free decision of participating countries to join or to withdraw. Unfortunately, the organization has become a forum for the recession of a few countries, instead of discussing and exchanging good government practices. The opinions of international NGOs constantly criticizing Hungary have been widely accepted in the organization's reports but the government response has been completely neglected. The Hungarian Government therefore considered that there is no point in maintaining and financing our membership in an organization that has completely diverged from its original goals and principles.

It is worth highlighting that Hungary is not the only Member State not taking part in the Open Government Partnership: Austria, Belgium, Poland and Slovakia are staying out of it as well.

The follow-up of the OLAF's recommendations and public procurement

(23) Hungary benefits from Union funding amounting to 4,4 % of its GDP or more than half of public investment. The share of contracts awarded after public procurement procedures that received only a single bid remains high at 36 % in 2016. Hungary has the highest percentage in the Union of financial recommendations from OLAF regarding the Structural Funds and Agriculture for the 2013-2017 period. In 2016, OLAF concluded an investigation into a EUR 1,7 billion transport project in Hungary, in which several international specialist construction firms were the main players. The investigation revealed very serious irregularities as well as possible fraud and corruption in the execution of the project. In 2017, OLAF found "serious irregularities" and "conflicts of interest" during its investigation into 35 street-lightning contracts granted to the company at the time controlled by the Hungarian Prime-Minister's son-in-law. OLAF sent its final report with financial recommendations to the Commission's Directorate-General for Regional and Urban Policy to recover EUR 43,7 million and judicial recommendations to the General Prosecutor of Hungary. A cross-border investigation, concluded by OLAF in 2017, involved allegations related to the potential misuse of Union funds in 31 Research and Development projects. The investigation, which took place in Hungary, Latvia and Serbia, uncovered a subcontracting scheme used to artificially increase project costs and hide the fact that the final suppliers were linked companies. OLAF therefore concluded the investigation with a financial recommendation to the Commission to recover EUR 28,3 million and a judicial recommendation to the Hungarian judicial authorities. Hungary decided not to participate in the establishment of the European Public Prosecutor's Office responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union.

Regarding the follow-up of the OLAF's recommendations, it is important to highlight the following. As can be seen in the 2017 OLAF Report, in Hungary the indictment rate is 47% according to OLAF's figure on the actions taken by national judicial authorities

following its recommendations (issued between 1 January 2010 and December 2017), while the average in the EU Member States is 42%.

Furthermore, according to Article 11 of Regulation 883/2013 governing the work of the European Anti-Fraud Office[4], the national law of the Member State concerned shall be taken into account in the OLAF report. The reports shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall have the same evidentiary value as such reports. However, the judge has a full discretional power to evaluate the individual pieces of evidence. Therefore, the reports of OLAF as such constitute only one piece of material evidence, but they can still be relevant for the prosecution during the criminal procedure. It should be underlined that the national authorities still have to conduct the investigation in accordance with the respective national criminal procedural codes. In addition, another major factor influencing the indictment rate is the fact that by the time of the final OLAF report all supporting hard evidence that should be collected during the investigation for a successful prosecution is not available anymore.

Nevertheless, Hungary's performance regarding the indictment rate is still above the EU average.

Public procurement

In recent years, Hungary implemented a number of measures to improve public procurement practices. The new legal framework is strengthened, in particular, with the approval process of the Public Procurement Authority on the legality of the negotiated procedures without prior publication. The reasoned decisions of the Authority are published on the Authority's website (http://www.kozbeszerzes.hu/adatbazisok/tajekoztatok-hnt-dontesekrol). In addition, the 2017 amendment to the Public Procurement Act introduced an option to declare public procurement procedures unsuccessful when only one single bid is received.

Available data for 2017 and 2016 indicate that overall there was a noticeable decrease in single-bidder tenders and significant decrease in the negotiated procedures without prior publication. According to the statistical data of the Public Procurement Authority, the share of one-bidder contracts stood at 26,3% in 2017 (compared to 29,2% in 2016). As regards the negotiated procedures without prior publication, on the basis of the Single

[4] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999

Market Scoreboards, we can identify a constant decrease (14% in 2015, 9% in 2016 and 8% in 2017).

However, we would like to underline that the share of one-bidder procedures highly depends on the socio-economic situation and the structure of the market of the Member State concerned. For instance, the share of one-bidder procedures can be influenced also by the number of the large companies in the specific sector. The fact that the public procurement procedure ends with only one tenderer submitting a tender, in itself, does not entail corruption threats or distortion of competition. The tenderer is not aware of the number of other tenders submitted; therefore, the tenderer provides the bid in a competitive environment.

Furthermore, Hungary has made considerable efforts to put in place its e-procurement system before the deadline set in the public procurement directives (i.e. 18 October 2018). The system became fully operational as of 1 January 2018 and its use is mandatory for all contracting authorities as of mid-April 2018. The introduction of the e-procurement system is an important step towards further increasing transparency and competition in public procurement. Electronic public procurement supports tenderers at the submission of their tenders with uniform formal requirements, contributes to quicker procedures, decreases administrative burdens and is expected to bring a further drop in the number of single-bidder procedures and to strengthen competition.

So far, the e-procurement system is working very well, we have received numerous positive feedbacks, more than 700 procedures have been launched in the system without any significant issues (https://ekr.gov.hu, available also in English).

The development achieved concerning the transparency and competition in public procurement was recognised by the 2018 Country Report and the Country Specific Recommendations. Public procurement was one of three policy areas in the 2018 Country Report where "Some Progress" has been achieved which is the second best category on a scale of four in the framework of the European Semester. Furthermore, according to the 2018 Single Market Scoreboard, Hungary's overall performance in the field of public procurement in 2017 was average.

Effective governance and corruption

(24) According to the Seventh report on economic, social and territorial cohesion, government effectiveness in Hungary has diminished since 1996 and it is one of the Member States with the least effective governments in the Union. All Hungarian regions are well below the Union average in terms of quality of government. According to the EU Anti-corruption Report published by the Commission in 2014, corruption is perceived as widespread (89 %) in Hungary. According to the Global Competitiveness Report 2017-2018, published by the World Economic

Forum, the high level of corruption was one of the most problematic factors for doing business in Hungary.

The Hungarian Government takes firm measures to prevent corruption. Hungary has adopted several two-year National Anti- Corruption Programs; however, their implementation is still ongoing. The National Anti- Corruption Program of 2015-2016 mainly concentrated on public administration, while the Program of 2017-2018 draws up regulatory tasks for budgetary authorities, local governments, companies and police authorities. Furthermore, the Hungarian national legislation is also suitable to take effective steps against corruption, for example the regulation of corruption offences in the Criminal Code in force.

The Global Competitiveness Report mentioned by the report also reveals that the level of corruption in Slovakia, Poland, Greece, Bulgaria and Italy is higher, than in Hungary, therefore it would be worth observing the overall European context, and not just pick out the negative statistical data concerning Hungary.

In Hungary, public administration agencies have been working with integrity consultants since 2013. These consultants provide ethical advices to officials turning to them. Since November 2016, National Defence Agency, co-financed by the European Union, organizes trainings, workshops and conferences on topics relevant to the prevention of corruption with the participation of local government leaders, including political leaders.

Since the fall of the communist regime, in Hungary there have been continuous political aspirations for the implementation of targeted actions against corruption. To this end, government decisions were adopted and Hungary joined the major anti-corruption conventions (OECD – Convention on Combating Bribery of Foreign Public Officials, Council of Europe – Criminal Law Convention on Corruption, Civil Law Convention on Corruption, United Nations – Convention against Corruption, IACA – International Anti-Corruption Academy).

The Government also made significant efforts to reduce corruption in the field of public procurements. We have also presented this to the Commission during the 2017-2018 European Semester. In January 2017 the new Public Procurement Act entered into force, furthermore, electronic public procurements have been introduced as well. The number of appeal procedures decreased to 684, while the number of convictions decreased to 309, which is a 40% decrease compared to the previous years' data. At the same time, there is less and less single bid procedure in domestic public procurements.

In Hungary, 97% of corruption charges end in sanctions or prosecutions. It is worth mentioning, that the European Commission previously stated in connection with the

new regulation concerning the protection of whistle-blowers acting in the public interest, that with respect to 10 European countries no major legal harmonization is required due to their effective and detailed system. Hungary was among these 10 countries.

Privacy and data protection

Violation of the respect for private life (Szabó and Vissy v. Hungary)

(25) In its judgment of 12 January 2016, Szabó and Vissy v. Hungary, the ECtHR found that the right to respect for private life was violated on account of the insufficient legal guarantees against possible unlawful secret surveillance for national security purposes, including related to the use of telecommunications. The applicants did not allege that they had been subjected to any secret surveillance measures, therefore no further individual measure appeared necessary. The amendment of the relevant legislation is necessary as a general measure. Proposals for amendment of the Act on National Security Services are currently being discussed by the experts of the competent ministries of Hungary. The execution of this judgment is, therefore, still pending.

In the case cited, the Court found violation of the applicants' right to respect for their private lives on account of the insufficient legal guarantees against unlawful secret surveillance for national security purposes. It must be noted that the case did not concern actual measures of surveillance but the mere possibility of the application of such measures sufficed to establish the applicants' victim status within the meaning of the Convention. Furthermore, the violation found did not result from specific provisions introduced in 2011 but from the background regulation as in force since 1996 (Act CXXV of 1995 on National Security Services). In the course of the execution of the judgment, it is agreed that amendment of the relevant legislation is necessary as a general measure. However, examination of the requirements stemming from the judgment in terms of legislative amendments, which is currently underway, is expected to take some time because although the applicants only complained about the lack of judicial authorisation of secret surveillance for national security purposes, the Court's judgment has identified a wider range of problems of the relevant legislation while its findings concerning the applicants' original arguments remained ambiguous. Proposals for amendment of the Act on National Security Services are discussed by the experts of the competent ministries. Drafts criticised by Hungarian NGOs in their submissions to the Committee of Ministers have been withdrawn.

Legal framework on secret surveillance for national security purposes

(26) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that Hungary's legal framework on secret surveillance for national security purposes allows for mass interception of communications and contains insufficient safeguards against arbitrary interference with the right to privacy. It was also concerned at the lack of provisions to ensure effective remedies in cases of abuse, and notification to the person concerned as soon as

possible, without endangering the purpose of the restriction, after the termination of the surveillance measure.

The authorisation of secret information collection for national security purposes requires political consideration in relation to national security interests (violation of interests) therefore it is necessary to uphold the government's competence in licensing such activities, however, the decision of the competent minister is subject to a subsequent revision by the National Authority for Data Protection and Freedom of Information, an independent regulatory body not responsible to the government. In the case of surveillance of certain persons (media actors and the clergy subject to professional secrecy obligation), the prior consent of the Authority is required. The regulation creates the institutional framework for the independent, three-phase verification of the classified information collection, so that the Authority, in order to ensure the rightfulness of the process, has control powers over the prior authorization (related to ministerial authorization), during the classified information gathering process as well as after its completion.

The regulation, within the Act CXII of 2011 on Information Self-determination and Freedom of Information, illustrates the Authority's responsibilities for authorizing classified information gathering and its enforcement as well as the powers to investigate possible complaints on surveillance. It also determines the rules for investigating. By establishing the legal tool of complaints on observations, the regulation provides the possibility for those who find out that in connection with him/her, a public authority, empowered to carry out an information gathering activity subject to external authorization regulated in the Act on National Security, may ask for remedy and to have the complaint investigated by a public body independent from the executive branch of government.

Freedom of expression

Media legislation (disclosure of journalistic sources, sanctions and market concentration)

(27) On 22 June 2015 the Venice Commission adopted its Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, which called for several changes to the Press Act and the Media Act, in particular concerning the definition of "illegal media content", the disclosure of journalistic sources and sanctions on media outlets. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe's Commissioner for Human Rights in his opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. In his

statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. The Commissioner also mentioned the issues of concentration of media ownership and self-censorship and indicated that the legal framework criminalising defamation should be repealed.

The radical changes in information technology – the digitalization and the internet – called for a revision of Hungarian media regulations – dating back to 1995 and even 1986 – and the adoption of an effective, transparent, and up-to-date new regulation became inevitable by 2010. The so called 'Media Constitution' (Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of 2010 defines and protects the editorial and journalistic freedom of expression, namely that any person employed by media content providers shall have the right to professional sovereignty and independence from the owners or sponsors of the provider, as well as from any natural or legal person. Furthermore, the principle of transparency enshrined in the 'Media Constitution Act' obliges all bodies of the central and local governments to provide assistance to media content providers in discharging their information duties by means of making available the necessary information to media content providers in due time.

Compared to previous press legislation the new 'Media Constitution' allows journalists generally to hide their information sources in administrative and judicial procedures. In accordance with the former Press Act of 1986 (Stv.) the journalist could (and upon the request of the source had to) conceal the name of his/her source, however, this right did not apply to denying testimony in criminal procedures; instead, the Stv. referred the case for the former Criminal Procedure Act which, however, failed to regulate it. In contrast, the new 'Media Constitution' declares the general rule of protecting the source of information requiring that the public interest concerning making the information public had to be substantiated. In this case the affected person, with narrow exceptions, could deny revealing the identity of the source; however, the provision on verifying the public interest was annulled by the Constitutional Court. As a result, the Hungarian Parliament amended the rules taking into consideration the decision of the Hungarian Constitutional Court, as well as the recommendations of the Council of Europe. The new rules, effective as of July 2012, provided a more effective protection for information sources. On the one hand it made the term 'information source' more precise and removed the requirement on public interest from the text, on the other hand the 'exemption reason', (the possibility to deny testimony meant to reveal the identity of the source) shall subsist even following the termination of the 'journalist employment'.

As for financial penalties it must be highlighted that these sanctions may be imposed when media administration rules are violated. A serious monetary penalty may only be

levied in case of a recurring violation and the Media Council shall take into account the principles of graduation and proportionality. The amount of the penalty is also limited. There are regulations in place against decisions on penalties, too. The predecessor of the Media Council, the ORTT could impose penalties as well, however, this provision remained unchanged since 1996 resulting in a shrinking dissuasive effect of penalties. There are legal remedies against penalties as well.

The Hungarian Government further advocates a balanced and diverse media market thus enforcing plurality in the media landscape. This requirement is also anchored at the constitutional level, in the Fundamental Law. Act CLXXXV of 2010 on Media Services and on the Mass Media contains provisions aiming at preventing market concentration and regulates media service providers with significant powers of influence as envisaged by the Audiovisual Media Services Directive and it further protects the diversity of broadcasting. In this context, the public statements of the Council of Europe's Secretary General in early 2013 found that the fundamental problems of Hungarian media legislation had been resolved.

Election of the members of the Media Council

(28) In its Opinion of 22 June 2015 on Media Legislation, the Venice Commission acknowledged the efforts of the Hungarian government, over the years, to improve on the original text of the Media Acts, in line with comments from various observers, including the Council of Europe, and positively noted the willingness of the Hungarian authorities to continue the dialogue. Nevertheless, the Venice Commission insisted on the need to change the rules governing the election of the members of the Media Council to ensure fair representation of socially significant political and other groups and that the method of appointment and the position of the Chairperson of the Media Council or the President of the Media Authority should be revisited in order to reduce the concentration of powers and secure political neutrality; the Board of Trustees should also be reformed along those lines. The Venice Commission also recommended the decentralisation of the governance of public service media providers and that the National News Agency not be the exclusive provider of news for public service media providers. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe's Commissioner for Human Rights in his opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. In his statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014.

The Media Authority (responsible for telecommunication and frequency management) is an autonomous regulatory agency subordinated solely to law while its predecessor was

directed by the government and overseen by the competent Minister. Furthermore, the President of the Media Authority is currently appointed by the President of Hungary, while formerly it was appointed by the Prime Minister. Members of the Media Council (responsible for media contents and the freedom of press) are elected by a qualified majority of the Parliament for 9 years whereas members of its predecessor body were elected by simple majority for 4 years. Moreover, its members cannot by any means be instructed within their official capacity. Altogether, the high professional requirements, the long mandate of the members of the Media Council, as well as the prohibition of the re-election of the President and the members of the Media Council ensure independence from both the Government and the Parliament.

Act CXII of 2011 on Informational Self-Determination and Freedom of Information

(29) On 18 October 2012, the Venice Commission adopted its Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information of Hungary. Despite the overall positive assessment, the Venice Commission identified the need for further improvements. However, following subsequent amendments to that law, the right to access government information has been significantly restricted further. Those amendments were criticised in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in March 2016. It indicated that the amounts to be charged for direct costs appear to be entirely reasonable, but the charging for the time of public officials to answer requests is unacceptable. As was acknowledged by the Commission's 2018 country report, the Data Protection Commissioner and the courts, including the Constitutional Court, have taken a progressive position in transparency-related cases.

Hungary recognises the importance of access to public information as a means to provide for transparency in the government sector.

The proposed amendments aimed at strengthening the safeguards of fundamental rights in such a manner that it took into account the interest of data controllers as well. Experience from the administration revealed that specific provisions of the Freedom of Information Act fell short of the necessary flexibility and information requests from applicants put an overwhelming additional burden on data controllers that could prevent them from fulfilling their routine tasks as well as from satisfying information requests from applicants. The amendments aimed at determining the procedures and conditions where satisfying an information request would need additional human or material resources.

The OSCE report found that the charges set by the Hungarian law, for direct costs of information requests, appeared to be entirely reasonable and could be presumed to reflect real costs. They were certainly in line with regional comparative costs.

The costs of disclosure of information is strictly regulated in Act CXII of 2011 on Informational Self-Determination and Freedom of Information and in the Government Decree No. 301/2016 (IX. 30.) on the fee chargeable for compliance with requests for public information.

Section 29 subsection 3 of Act CXII of 2011 states that the body with public service functions controlling the data in question may charge a fee covering only the costs of disclosure of information, and shall communicate this amount to the requesting party in advance. Section 29 subsection 5 of the same act lays down that the fee can be charged only if compliance with a data request is likely to entail unreasonable hardship on the staff of the body with public service functions in carrying out its normal duties. The requesting party shall be notified within fifteen days from the date of receipt of his request if compliance with his request is likely to entail such an unreasonable hardship, as well as of the amount of the fee chargeable, and if there is any alternate solution available instead of making a copy. If compliance with the request is likely to entail unreasonable hardship, the amount of the fee chargeable shall be calculated based on the staff costs related to satisfying the data request.

Section 3 of the Government Decree No. 301/2016 states that the fee on the staff costs related to satisfying the data request shall be calculated only if the time required to satisfy data request exceeds 4 working hours. Staff costs only include the time required to trace, aggregate, systematize and copy the requested information, as well as when parts of the requested information should be reduced into an unrecognisable form. Staff costs related to satisfying the data request cannot exceed 4400 HUF's per hour (~14 EUR's per hour).

Section 31 subsection 1 of Act CXII of 2011 states that the requesting party may bring the case before the court for having the fee charged for compliance with the request reviewed. Section 52 subsection 1 also states that any person shall have the right to notify the National Authority for Data Protection and Freedom of Information and request an investigation alleging an infringement relating to his or her personal data or concerning the exercise of the rights of access to public information or information of public interest, or if there is imminent danger of such infringement.

In addition, it must be noted that Hungary is a party to the Council of Europe Convention on Access to Official Documents. Article 6 Para. 2 of the Convention states „[i]f a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused". Article 7 Para. 2 also states that „[a] fee may be charged to the applicant for a

copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published". This demonstrates that even the Convention allows for possible limitations as it also allows the Parties to charge fees for reproduction and delivery.

The Explanatory Report to the Convention says that Article 7 Para. 2 means that „[i]n the case of copies, the cost of access may be charged to the applicant, but also in accordance with the self-cost principle and be reasonable; the public authorities should not make any profit". The Hungarian Government adopted rules that are consistent with the Convention: staff costs can only be charged if the request entails unreasonable hardship on the staff of the body with public service functions in carrying out its normal duties, therefore these fees are reasonable and are also not serving the purpose of making any profit.

Restrictions of freedoms of the media and association during the 8th April 2018 elections

(30) In its preliminary findings and conclusions adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections stated that access to information as well as the freedoms of the media and association have been restricted, including by recent legal changes and that media coverage of the campaign was extensive, yet highly polarized and lacking critical analysis. The public broadcaster fulfilled its mandate to provide free airtime to contestants, but its newscasts and editorial output clearly favoured the ruling coalition, which is at odds with international standards. Most commercial broadcasters were partisan in their coverage, either for ruling or opposition parties. Online media provided a platform for pluralistic, issue-oriented political debate. It further noted that politicization of the ownership, coupled with a restrictive legal framework, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information. It also mentioned that the amendments introduced undue restrictions on access to information by broadening the definition of information not subject to disclosure and by increasing the fee for handling information requests.

In Hungary the regulatory environment on political advertising was reformed by two amendments to the Fundamental Law [Article IX(3)] in 2013 as well as the new Election Procedure Act and took its actual shape by taking fully into consideration the decision of the Hungarian Constitutional Court and the recommendations of the Venice Commission. Due to the modifications political advertisements can be published through any media service, provided that the publications take place without any consideration whatsoever. As a result, campaign advertising is limited to the extent only that such advertisements of candidates and their nominating organisations shall be published on equal rather than on market terms and without any consideration. Media service providers are not obliged to publish campaign advertisements; however, if they undertake to do so, they can do it only on the terms mentioned before. The Election

Procedure Act prescribes not only that the same amount of time shall be ensured to each nominating organisations with a national list for publishing the political advertisement but also ensures equal opportunities by setting daily time intervals and changing the order of appearance. The Hungarian regulation is similar to those applied in numerous European countries in line with the 2008 decision of the European Court of Human Rights in the 'TV Vest AS & Rogaland Pensjonistparti v. Norway' case. In the present campaign three commercial media service providers (RTL Klub, ATV, Class FM) published political advertisements.

In spite of the recent changes in the Hungarian media scenery, it is a fact that opposition media altogether reaches a considerably wider public: as for online media for example, the proportion of government-critical portals is around 80 percent. It can be safely stated that the ownership and political spectrum of the Hungarian media is more diverse, and the freedom of the press is more prevalent than in most Western European countries. Perhaps this was best demonstrated by the fact that a considerable part of Hungarian media were campaigning against the Fidesz-KDNP alliance ahead of the 8th April elections, often relying on foreign resources from other countries' media actors and political parties, echoing the unfounded accusations of the Hungarian opposition.

Restrictions on freedom of opinion and expression

(31) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about Hungary's media laws and practices that restrict freedom of opinion and expression. It was concerned that, following successive changes in the law, the current legislative framework does not fully ensure an uncensored and unhindered press. It noted with concern that the Media Council and the Media Authority lack sufficient independence to perform their functions and have overbroad regulatory and sanctioning powers.

The Hungarian Government is committed to promote and protect the freedom and pluralism of media, as well as to grant equal access to media contents for everyone, as reflected by the powerful legal and constitutional safeguards of media freedom in Hungary. The Fundamental Law stipulates that everyone shall have the right to freedom of expression and that Hungary recognizes and protects the freedom and diversity of the press.

There is no censorship of the internet. The government does not interfere with internet operations nor does it restrict bandwidth or the use of routers, switches or other devices. Under Hungarian law, internet or media services can only be suspended in an emergency or for defence purposes. Social Media sites, such as Facebook or Twitter as well as YouTube and international blog sites are freely accessible. Electronic content is not filtered and there is no censorship over blogs or text messages, nor is there any way to restrict their access.

In response to earlier worries about Hungary's 2010 media regulations, that generic terms and high fees could lead to self-censorship and could curtail Hungarian journalism, the report concluded that no online medium has been fined. Internet service providers are not responsible for content and not obliged to monitor it. According to Freedom House the existence of self-censorship is only proven by 'anecdotal' evidence.

Publication of a list of people allegedly working to "topple the government" and the denial of accreditation to several independent journalists

(32) On 13 April 2018, the OSCE Representative on Freedom of the Media strongly condemned the publication of a list of more than 200 people by a Hungarian media outlet which claimed that over 2 000 people, including those listed by name, are allegedly working to "topple the government". The list was published by the Hungarian magazine Figyelő on 11 April and includes many journalists and other citizens. On 7 May 2018, the OSCE Representative on Freedom of the Media expressed major concern over the denial of accreditation to several independent journalists, which prevented them from reporting from the inaugural meeting of Hungary's new parliament. It was further noted that such an event should not be used as a tool to curb the content of critical reporting and that such a practice sets a bad precedent for the new term of Hungary's parliament.

The Fundamental Law of Hungary stipulates that the freedom and diversity of the press shall be recognised and protected. The Government of Hungary is thus committed to ensure freedom of expression and editorial freedom, as a consequence the functioning and publications of privately owned media outlets fall outside of the competences of the Hungarian Government.

The accreditation of journalists to the inaugural meeting of Hungary's new parliament was accepted on the basis whether the journalist concerned respected the rules governing the press arrangements during the 2014-2018 parliamentary cycle. Journalists have access to a designated press area and the plenary hall, they can report on the activities of the parliament without restrictions, but basic behavioural rules have to be respected in order to ensure the dignity of the place. No serious conclusions can be drawn from one event.

Academic freedom

Amendment of Act CCIV of 2011 on National Tertiary Education

(33) On 6 October 2017, the Venice Commission adopted its Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. It concluded that introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, for foreign universities which are already established in Hungary and

have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. Those universities and their students are protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to, and freedom of, education. The Venice Commission recommended that the Hungarian authorities, in particular, ensure that new rules on requirement to have a work permit do not disproportionally affect academic freedom and are applied in a non-discriminatory and flexible manner, without jeopardising the quality and international character of education already provided by existing universities. The concerns about the Amendment of Act CCIV of 2011 on National Tertiary Education have also been shared by the UN Special Rapporteurs on the freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on cultural rights in their statement of 11 April 2017. In the concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of such constraints on the freedom of thought, expression and association, as well as academic freedom.

The Hungarian Act on National Higher Education entered into force in 2012, so its five-year systematic revision became due at the end of 2016. The revision is based on the findings of the Educational Authority and its main objective is to ensure that only high quality foreign higher education institutions may operate in Hungary. As a part of this, the Act requires that the operation of a foreign institution of higher education should be based on an international treaty.

It is important to point out that the nature and goal of the criticised legislative amendments (the signing of international agreements, requirement of actual operation) cannot be connected to freedom of either thought or expression, neither to artistic or academic freedom. The principle of legal certainty requires that the relevant Hungarian legislation applies to all institutions of higher education that seek to operate in the country. It is important to stress that the Venice Commission found that states have a large room for manoeuvre when it comes to regulating the operational conditions for institutions of higher education, as it is of national competence. The body also underlined that it is a legitimate goal to provide greater transparency in order to guarantee a quality education and to protect future students. It is worth noting that the Venice Commission also acknowledged that some states do not allow foreign universities to operate at all, furthermore, that Hungary has the right to create and review regulation concerning institutions of higher education operating within her territory.

The European Commission itself has also stated that it is not without precedent that Member States of the EU enact special legal requirements for institutions of higher education with headquarters in a foreign country. Sweden, the Czech Republic, Poland, the Netherlands and Greece, or multiple states of Germany have much stricter rules in many aspects than the new Hungarian law.

Negotiations between the Hungarian Government and foreign higher education institutions

(34) On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the new criteria to 1 January 2019 at the request of the institutions concerned and following the recommendation of the Presidency of the Hungarian Rectors' Conference. The Venice Commission has welcomed that prolongation. Negotiations between the Hungarian Government and foreign higher education institutions affected, in particular, the Central European University, are still ongoing, while the legal limbo for foreign universities remains, although the Central European University complied with the new requirements in due time.

The Hungarian Act on Higher Education makes the activity of foreign higher education institutions in Hungary subject to two conditions: a bilateral agreement in force between Hungary and the home country of the applicant institution regarding the cooperation in cross-border higher education and the actual higher education activity conducted by the applicant in its home country. Currently there are 22 foreign institutions operating in Hungary, 6 of which are headquartered in a non-EEA country (1 in Thailand, 1 in Malaysia, 1 in China and 3 in the United States). With only one exception, all the institutions concerned have treated the amendment as a technical one and the solution has been clear from the beginning; the Government of Hungary has already signed the necessary cooperation agreements regarding the operation of the McDaniel College of Maryland, the Heilongjiang University of China and the Mahachulalongkornrajavidyalaya University of Thailand. The relatively short time between the amendment and the actual signing of the agreements has shown that the new legislation does not impose impossible conditions on foreign higher education institutions. With the swift and smooth conclusion of the agreements our American, Chinese and Thai partners also demonstrated that the amendment does not at all jeopardize the freedom of higher education.

In order to conduct the necessary expert-level negotiations, the Hungarian Government has formed a working group. At the May 2017 session of this working group all the concerned foreign institutions requested the prolongation of the deadline set by the Higher Education Act. The same request was made by the Presidency of the Hungarian Rectors' Conference, in order to grant a longer time period for compliance. The Venice Commission has explicitly welcomed this position in its related opinion.

Fulfilling this request, and since the bilateral agreements were only finalized with two of the concerned institutions until that date – the McDaniel College of Maryland and the Heilongjiang University of China – the Hungarian Parliament decided to prolong the deadlines on 24th October 2017 upon the initiative of the Hungarian Government.

On 26 July 2018 a bilateral treaty was signed between the the Hungarian Government and the State of Indiana. As a result, Notre Dame University will cooperate with Hungary's Pázmány Péter University to offer courses in chemical and civil engineering, as well as, mechatronics. With this agreement signed, the number of non-EEA higher education institutions are increased to 7, which means that alltogeather 23 foreign higher education institutions are present in Hungary.

As for the Central European University, it has signed an agreement with the Bard College of New York on 8th September 2017, in order to fulfil the requirement of conducting actual education activities in the State of New York. According to the agreement, CEU will start a bachelor level higher education activity in New York, for which the Bard College will grant the necessary infrastructure (campus). However, it is important to emphasize that by concluding this agreement after the start of the academic year in September 2017, the CEU still did not immediately fulfil the requirement in question, since the actual educational activities at the Brand College could only start in the spring semester of 2018. (Other higher education institutions can testify several decades of continuous higher education activity – such as the 150 years old McDaniel College – and have tens of thousands of graduates each year.) For this reason, in April 2018, the delegation of the Hungarian Government visited CEU's academic site at Bard College in the State of New York and conducted talks with CEU leadership.

Disproportionate restrictions of Union and non-Union universities

(35) On 7 December 2017, the Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that the Amendment of Act CCIV of 2011 on National Tertiary Education disproportionally restricts Union and non-Union universities in their operations and that the Act needs to be brought back in line with Union law. The Commission found that the new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (the "Charter") and the Union's legal obligations under international trade law.

It is to be highlighted that the infringement procedure is still pending and ultimately the European Court of Justice (ECJ) is competent to establish whether or not Hungary infringed EU law. It would contradict the basic legal and constitutional principles to prejudge the decision of the Court of Justice in advance.

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 of Hungary

(36) On 30 December 2011, the Hungarian Parliament adopted Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and

Religious Communities of Hungary, which entered into force on 1 January 2012. The Act reviewed the legal personality of many religious organisations and reduced the number of legally recognised churches in Hungary to 14. On 16 December 2011 the Council of Europe Commissioner for Human Rights shared his concerns about this Act in a letter sent to the Hungarian authorities. In February 2012, responding to international pressure, the Hungarian Parliament expanded the number of recognised churches to 31. On 19 March 2012 the Venice Commission adopted its Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, where it indicated that the Act sets a range of requirements that are excessive and based on arbitrary criteria with regard to the recognition of a church. Furthermore, it indicated that the Act has led to a deregistration process of hundreds of previously lawfully recognised churches and that the Act induces, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they are recognised or not.

The Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, which entered into force on 1st January 2012, created the obligation that those faith-based communities which did not qualify to gain the status of churches had to go through a procedure to be re-recognized as churches. Several of the communities concerned turned to the European Court of Human Rights for their status not being restored. The complainants argued that the Act was discriminative and violated freedom of religion. Adopting Act CCVI of 2011 was necessary to end the previous unfortunate and opaque situation widely referred to as 'church business'. The regulation recognizes 32 traditional churches, denominations and faith-based communities compared to the 232 recognized before the adoption of the Act, among which the "Eye of Heart Contemplative Order" or the "Message-societies" were held in exactly the same status as for example the Hungarian Catholic Church.

The Act, which entered into force on the 1st of January 2012, guaranteed the right to bodies earlier registered by the courts as churches to transform into religious associations, providing them legal continuity, whilst retaining their legal personality and preserving their property. According to the 2013 amendment, these communities have automatically received the status of organizations performing religious activity and they are entitled to use the term "church" in their names.

The Fundamental Law provides both the individual and collective freedom of religion, confirming the institutionalised recognition and organisation of churches. As the Fundamental Law explicitly recognises the rights of 'religious communities' that do not operate as churches, the status of a collective religious community and the basic freedoms stemming from the right of thought, conscience and religion are ensured in their entirety for these communities as well. The Constitutional Court decides on a case-by-case basis on the applicability of the criticized rules as declared in the decision 23/2015 of the Constitutional Court, and the compensation payment ordered by the

ECtHR will be performed, ensuring the compliance with international and constitutional standards.

The 2013 Report of the State Department of the United States of America on the freedom of religion, published on the 28th of July 2014, found that in Hungary the Fundamental Law and other legislation generally protect the freedom of religion, and according to the 2013 amendment, the differences between religious communities have decreased.

In Denmark, Finland, Greece, Malta and the United Kingdom there are 'national churches' (state religions) and in some Member States (United Kingdom, Malta) there is no separate legal category for other religious groups at all. This means that such communities may choose only other private law statuses, such as association or foundation. In France, there is a strict separation of church and state, as a result of which there is no distinct category in place for churches. The majority of Member States makes a clear difference between the legal status of historic churches and the status of other denominations and there are various legal forms for this distinction. In several Member States some churches are listed in the constitution, while others are subject to separate regulations or different 'sui generis' statuses provided for them. The Lithuanian system is almost identical with the Hungarian: official recognition is provided by the Parliament. The case-law of the ECtHR recognizes the right of states to create various legal categories for religious communities, the basic prerequisite of which is that some kind of a legal form shall be available without obstacles. I would like to draw attention to the fact that in 1568, the Hungarian national assembly of Torda (Transylvania) was the first in Europe to declare free practice of any Christian religion (Catholicism, Calvinism, Lutheranism, Unitarianism).

Unconstitutional deregistration of recognised churches

(37) In February 2013, Hungary's Constitutional Court ruled that the deregistration of recognised churches had been unconstitutional. Responding to the Constitutional Court's decision, the Hungarian Parliament amended the Fundamental Law in March 2013. In June and September 2013, the Hungarian Parliament amended Act CCVI of 2011 to create a two-tiered classification consisting of "religious communities" and "incorporated churches". In September 2013, the Hungarian Parliament also amended the Fundamental Law explicitly to grant itself the authority to select religious communities for "cooperation" with the state in the service of "public interest activities", giving itself a discretionary power to recognise a religious organisation with a two-thirds majority.

The provision objected by the report assures the state the possibility to grant to organizations conducting religious activities special status as 'church'. The Parliament may recognize religious communities that fulfil the requirements established in the relevant cardinal law, such as previous religious long-term activity, the extent of social support and the ability of the applicant organization to serve the community. The ability

of the entity to cooperate with the state authorities is also among the conditions of eligibility, for the very reason that the aim of legally recognizing a religious community as a 'church' is to ensure the efficiency of working for the benefit of the community.

According to Act No CCVI of 2011 on the freedom of conscience and freedom of religion and on the acknowledgement of religions and religious communities as churches, a religious community serves as an institutional framework for religious activities, which has two legal forms acknowledged by the Parliament, the 'church' and the 'organization conducting religious activity'. The religious community recognized by the Parliament as 'church' functions as a public law entity, whereas the 'organization conducting religious activity' is a private law association. It is open to all religious communities to make use of the legal possibility of being recognized as any of these two categories, if they comply with the conditions set by the law.

The rules of granting the status of a public law entity are more stringent than those on private law entities. The difference between the two categories is that private law organizations must fulfil less criteria, whereas 'churches' must comply with additional requirements besides the criteria set for the private entity organizations. Nevertheless, those organizations, which are not acknowledged as 'churches' by the Parliament, may still function as churches in the theological sense, whereas from a legal point of view these entities will be conducting their religious activities according to their own regulations and rules as special legal persons. It is important to stress that the difference in the legal status of the two forms on conducting religious activities does not infringe the right to freedom of religions under Article 9 and the prohibition on discrimination under Article 14 of the European Convention on Human Rights. These rights are granted by the Fundamental Law for both categories. Religious organizations that are not granted the status of 'churches' are independent organizations, meaning that they cannot be monitored or controlled by the state. The Fundamental Law makes it clear that *the principle of separation of state and church* equally applies to both categories of entities, regardless of the religion they represent. The difference between the legal statuses of the two categories was recognized by the Hungarian Constitutional Court as well, which established that there is no constitutional requirement to grant to all churches the same legal status and the state is not obliged to cooperate in the same way with all churches, subject that the difference in treatment is based on objective reasons.
The Fourth Amendment of the Fundamental Law was not related to the decision of the Constitutional Court on church law, rather it was a comprehensive amendment to the Fundamental Law consisting of 22 Articles, one of which, Article 4, applied to churches.

In Austria, the recognition of religious communities as 'churches' is decided at the ministerial level, but the Parliament may also decide by law in such matters. In Belgium, the competence to recognize religious communities as churches belongs to the Minister of Justice, who decides upon the proposal of the Parliament, which testifies the

recognition of the community as church by a federal law, which cannot be legally challenged. In Spain, traditional churches concluded an agreement with the State, whereas the recognition of other religious communities belongs to ministerial competence. Moreover, in some Member States the constitution proclaims which religion is the main religion of the country; such prioritized religion is the Evangelical Lutheran Church in Denmark and Finland, the Eastern Orthodox Church in Greece and the Roman Catholic Church in Malta.

Violation of the freedom of conscience and religion (Magyar Keresztény Mennonita Egyház and Others v. Hungary)

(38) In its judgment of 8 April 2014, Magyar Keresztény Mennonita Egyház and Others v. Hungary, the ECtHR ruled that Hungary had violated freedom of association, read in the light of freedom of conscience and religion. The Constitutional Court of Hungary found that certain rules governing the conditions of recognition as a church were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the European Convention on Human Rights. The relevant Act was accordingly submitted to the Hungarian Parliament in December 2015, but it did not obtain the necessary majority. The execution of that judgment is still pending.

The ECtHR found violation of the right to freedom of association read in the light of the right to freedom of religion of the applicant religious communities, which lost their status as registered churches following the entry into force in 2012 of the new Hungarian Church Act. The Court found that 'in removing the applicants' church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure whose justification as such is open to doubt, and finally, in treating the applicants differently from the incorporated churches not only with regard to the possibilities for cooperation but also with regard to entitlement to benefits for the purposes of faith-related activities, the authorities disregarded their duty of neutrality vis-à-vis the applicant communities'.

The judgment of the ECtHR found violations in respect of 16 religious communities. The Court obliged the parties, including Hungary, to carry out consultations on the amount of the compensation. Agreements were reached with nine communities, while in respect of seven further communities, the ECtHR defined the amount of compensation. Many of these communities claimed for an unreasonable amount of compensation, especially those which had wanted to gain the religious status in order to receive the state support. These claims were rejected by the ECtHR and the awarded compensations were more in lilne with the amount previously offered by the Hungarian Government.

On 6th July 2015, upon the motion of the Budapest Administrative and Labour Court submitted in the framework of the registration proceedings pending before it upon the request of the Budapest Autonóm Gyülekezet, the Constitutional Court found that

certain rules governing the conditions of recognition as a church (which have already been amended after the introduction of the present applications to the ECtHR) were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the Convention by 15 October 2015. The relevant Act was accordingly submitted to the Parliament in December 2015 but it did not obtain the support of the majority of two thirds of the members of the Parliament. The new rules have not yet been adopted; however, just satisfaction has been paid to the applicants either on the basis of friendly settlements or pursuant to Article 41 judgments of the Court (partial judgments of 28th June 2016 and 25th April 2017).

Freedom of association

Audits of NGOs which were beneficiaries of the Norwegian Civil Fund

(39) On 9 July 2014, the Council of Europe Commissioner for Human Rights indicated in his letter to the Hungarian authorities that he was concerned about the stigmatising rhetoric used by politicians questioning the legitimacy of NGO work in the context of audits which had been carried out by the Hungarian Government Control Office concerning NGOs which were operators and beneficiaries of the NGO Fund of the EEA/Norway Grants. The Hungarian Government signed an agreement with the Fund and, as a result, the payments of the grants continue to operate. On 8-16 February 2016, the UN Special Rapporteur on the situation of human rights defenders visited Hungary and indicated in his report that significant challenges stem from the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedoms of opinion and expression, and of peaceful assembly and of association, and that legislation pertaining to national security and migration may also have a restrictive impact on the civil society environment.

Hungary provides the fundamental human rights enshrined in international treaties and Hungary's Fundamental Law for all of its citizens, including human rights defenders. Their support level and playing field have not diminished: tens of thousands of organizations participate in tenders run by the Trust for National Cooperation, furthermore both the number of supported projects and the amount of funding available have shown an increase, compared to prior years.

It must be noted that regarding the investigations into the distribution of the Norway grants (Norwegian Civic Fund) that these funds are similar to EU resources and the investigations did not at all concern the activities of human rights defenders, but these were accountability measures regarding the financial operations of their organizations. The money managed by the Norway grants can be considered public money, therefore it is in the public's interest to find out whether the funds were utilized to benefit all Hungarian citizens: these grants by Norway are not donations but money paid in exchange for trade benefits that Hungary provides, specifically for Norwegian goods to be duty-free. The review report carried out by Ernst & Young earlier revealed several

misconducts about the distribution of the Norwegian Civic Support Fund. The investigation by the Government Control Office (GCO) had the sole purpose of finding out whether all 80 thousand civil organizations had equal conditions in competing for the Norwegian grants. The investigation by the GCO has concluded and found 61 misconducts in 63 projects under scrutiny, thus this investigation proved that the organizations responsible for the distribution have abused the trust of the Norwegian government. The Government of Norway has also launched an investigation into the allocation of its funds which, in itself, proves that they have also found something to disapprove.

The Government of Hungary has reformed the whole distribution mechanism of its development policy, and the review of the distribution mechanisms of the Norway grants was part of this process. The system, due to the reform, has become more transparent and has increased its accountability which are highly important factors in the allocation of public money. It was announced in December 2015 that the Government signed an agreement with the Norway grants, according to which no foreign government is able to allocate funds in the country without cooperating with and being monitored by the Government. The Government of Hungary has agreed to the GCO withdrawing its appeal and not initiating further investigations in this matter. The conclusion of this case shows that the Government is aiming at cooperation; the payments of the Norway grants continue to operate undisturbed, complying with the transparency criteria of the rule of law.

The law on the Transparency of Organisations Receiving Support from Abroad

(40) In April 2017 a draft law on the Transparency of Organisations Receiving Support from Abroad was introduced before the Hungarian Parliament with the stated purpose of introducing requirements related to the prevention of money laundering or terrorism. The Venice Commission acknowledged in 2013 that there may be various reasons for a state to restrict foreign funding, including the prevention of money-laundering and terrorist financing, but those legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. On 26 April 2017, the Council of Europe Commissioner for Human Rights addressed a letter to the Speaker of the Hungarian National Assembly noting that the draft law was introduced against the background of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labelled some NGOs as "foreign agents" based on the source of their funding and questioned their legitimacy; the term "foreign agents" was, however, absent from the draft. Similar concerns have been mentioned in the statement of 7 March 2017 of the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law, as well as in the Opinion of 24 April 2017 prepared by the Expert Council on NGO Law, and the statement of 15 May 2017 by the UN Special Rapporteurs on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression.

It must be underlined that Hungary recognises the vital contribution of non-governmental organisations to the promotion of common values and goals. These organizations also play an important role not only in the democratic control of the government and shaping public opinion but also in addressing certain social difficulties and fulfil other community policy needs. Therefore, the right to freedom of association as well as other relating fundamental rights, such as the freedom of assembly and freedom of expression, are guaranteed by the Fundamental Law of Hungary in line with the norms of the Council of Europe. The Act intended for enhancing the transparency of funding of non-governmental organizations. It neither affects the basic rights associated with the freedom of association, nor hampers the access of associations to resources on the grounds of the nationality or the country of origin. As noted in the joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, as well as the expert opinion of the Venice Commission on the issue, the freedom to seek, receive and use resources can be subject to requirements related to the prevention of money laundering or terrorism. These documents also underline that such resources may legitimately be subject to reporting and transparency requirements.

The term 'organisations supported from abroad' is purely factual and is not stigmatizing and does not include any negative value judgement. This way the legislation does not create any reputational burden for the organisations or their donors. The Parliamentary Assembly of the Council of Europe has also acknowledged in its Resolution 2162 (2017) that the Hungarian law did not include some of the controversial term 'foreign agent' or the specific and thus discriminatory reference to NGOs which defend human rights, and that it provided for a judicial rather than administrative review. Consequently, it can be acknowledged that the overall purpose of the Act is in line with relevant international guidelines, including those elaborated under the auspices of the Council of Europe.

Disproportionate and unnecessary interference with the freedoms of association and expression

(41) On 13 June 2017, the Hungarian Parliament adopted the draft law with several amendments. In its Opinion of 20 June 2017, the Venice Commission recognised that the term 'organisation receiving support from abroad' is neutral and descriptive, and some of those amendments represented an important improvement but at the same time some other concerns were not addressed and the amendments did not suffice to alleviate the concerns that the law would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination. In its concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of those requirements, which appeared to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary.

In Hungary more than 60 000 NGOs are operating without problems though less than 1% of them seek to exert political influence without any kind of democratic accountability. NGOs are playing an important role in shaping public opinion and perception; this is well mirrored in the Preamble of the Act acknowledging their role in contributing to societal self-organization. Therefore there is a substantial public interest for the entire society to see what interests they are representing. For this very reason the transparency of NGOs funded from abroad is an essential requirement from the aspect of rule of law. It must be highlighted that the Act does not prohibit funding from abroad and the operation of NGOs either; it merely makes foreign funding, in conformity with the principles of democracy, transparent thereby interfering in the slightest and mildest way. Also, non-governmental organisations are not persecuted for receiving financial assistance from abroad but they purely have to inform the public over a certain threshold. Hence the Act does not affect the substantial merits of freedom of association.

In its opinion on the Hungarian Draft Law on the Transparency of Organisations Receiving Support from Abroad (hereafter: the Act) the Venice Commission welcomed the fact that no new, separate register was established for organisations receiving foreign funding because, as the Commission stated, creating a separate register might strengthen the perception that the Act aims at stigmatising certain civil society organisations, based solely on their source of financing. The Hungarian Parliament, having taken into consideration the recommendations of the Commission, amended the original Draft Law and reduced the period of deregistration from three to one year. This improvement, among others, demonstrates the readiness and willingness of the Hungarian Parliament in addressing those concerns brought up in relation to the Act and thereby the claim of disproportionate and unnecessary interference fails to prevail. In its 2013 Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, the Venice Commission explicitly acknowledged that 'it is justified to require the utmost transparency in matters pertaining to foreign funding'. As a result, ensuring transparency is a legitimate aim and – unlike in Egypt – there is no restriction on receiving funding in the Hungarian case.

We would also like to refer to the fact that the intention of the Hungarian Government is not unprecedented. The Dutch Government is just about to introduce a similar bill aimed at establishing transparency on foreign funding; this initiative is interlinked with the measures designed to ensure the internal security of the country. The draft bill is expected to be submitted to the Parliament of the Netherlands in summer 2018.

Legal proceedings regarding the law on the Transparency of Organisations Receiving Support from Abroad

(42) On 7 December 2017, the Commission decided to start legal proceedings against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due

to provisions in the NGO Law which in the view of the Commission, indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission alleged that Hungary had violated the right to freedom of association and the rights to protection of private life and personal data enshrined in the Charter, read in conjunction with the Treaty provisions on the free movement of capital, defined in Article 26(2) and Articles 56 and 63 TFEU.

It is to be highlighted that the infringement procedure is still pending and ultimately the European Court of Justice (ECJ) is competent to establish whether or not Hungary infringed EU law. In this respect, since the final outcome of the process is still unknown for each party, any statement assuming the violation of EU law is a mere allegation which can adversely affect Hungary's political and legal interests. Moreover in the procedure the Commission did not see the circumstances set to call on the Hungarian Government to suspend the application of the Act.

The Hungarian Parliament adopted the Law with certain amendments, reflecting to the recommendations of the Venice Commission which has analysed the compatibility of the Draft Law with the applicable Council of Europe standards. 3 out of the 5 concerns raised were taken upon in the final version of the bill, namely 1) inclusion of the proportionality principle for sanctions, 2) limiting the obligations to the major sponsors and 3) applying a one-year period for the deregistration procedure instead of 3 years. The Venice Commission recognised that these amendments represent an important improvement.

In its responses to the Commission, in the course of the infringement procedure and the ongoing court procedure, the Hungarian Government highlighted that, according to the ECJ case law, a prior declaration or authorization may be deemed as a restriction to the free movement of capital. The ECJ previously held that while authorisation is not allowed, a prior declaration may be one of the proportionate measures which Member States are permitted to take since, unlike prior authorization, it does not entail suspension of the transaction in question but does still allow the national authorities to exercise effective supervision in order to prevent infringements of their laws and regulations.

Since the relevant Hungarian legislation calls for a report once the annual threshold is exceeded and yearly afterwards (together with the annual report), it applies an even softer tool, namely the posterior declaration. Such a rare obligation may not be seen as an administrative burden on organisations. Furthermore, a posterior declaration is conceptually not capable of restricting the movement of capital, as the latter has already taken place at the time of the declaration. It may be concluded that the provision may not qualify as a restriction to the free movement of capital. Even if the restrictive nature may

be established, the restrictions in question are necessary, proportionate and the least restrictive measures which are therefore compatible with EU law.

Regarding the justified aim of the legislation (which was called into question by the Commission without sound reasoning, referring to transparency as the legislator's 'alleged aim'), it must be highlighted that even the 'Venice Commission' agreed in its opinion that 'ensuring transparency is also a legitimate aim. The Commission considers that transparency may on the one hand reveal the possible illicit origin of the financing (whether it is a result of a criminal activity or not), but also keep the public informed of the (legitimate) sources of financing of NGOs. It is also an instrument to ensure the regularity of the procedures followed for the financing, thus enabling the authorities to react and that other NGOs possibly also apply for the funding. Transparency may therefore justify proportionate reporting and disclosure obligations imposed on the associations.'

The proportionality is supported by the fact that the NGOs are subject to the obligation of declaration only in case of individual transactions above HUF 500 000 (approx. EUR 1 600) if the foreign funding surpasses HUF 7.2 million per tax year, this equals to the double of the threshold set by the anti-money laundering legislation. As to the data protection concerns, those individuals who donate such amount are "entering public sphere" and are regarded as public players justifying that their name, amount of the donation and location data (country, city) become public.

In addition, it must be noted that the EU legislator recognizes and applies similar rules with a view to enhance transparency on the EU level. Regulation 1141/2014 contains several provisions on transparency requirements for European political parties and political foundations and on 28th September 2016 the Commission published its proposal for an Interinstitutional Agreement on a Mandatory Transparency Register, some provisions of which entail a more restrictive approach than the Hungarian law, by specifying prerequisites the various organisations must comply with and setting a lower threshold for reporting obligations on subsidies received.

The 'Stop-Soros' legislative package

(43) In February 2018, a legislative package consisting of three draft laws, (T/19776, T/19775, T/19774), was presented by the Hungarian Government. On 14 February 2018, the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law made a statement indicating that the package does not comply with the freedom of association, particularly for NGOs which deal with migrants. On 15 February 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. On 8 March 2018, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights

of migrants, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance warned that the bill would lead to undue restrictions on the freedom of association and the freedom of expression in Hungary. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that by alluding to the "survival of the nation" and protection of citizens and culture, and by linking the work of NGOs to an alleged international conspiracy, the legislative package would stigmatise NGOs and curb their ability to carry out their important activities in support of human rights and, in particular, the rights of refugees, asylum seekers and migrants. It was further concerned that imposing restrictions on foreign funding directed to NGOs might be used to apply illegitimate pressure on them and to unjustifiably interfere with their activities. One of the draft laws aimed to tax any NGO funds received from outside Hungary, including Union funding, at a rate of 25 %; the legislative package would also deprive NGOs of a legal remedy to appeal against arbitrary decisions. On 22 March 2018, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the draft legislative package.

The new Hungarian Parliament did not adopt the above mentioned legislative package.

(44) On 29 May 2018, the Hungarian Government presented a draft law amending certain laws relating to measures to combat illegal immigration (T/333). The draft is a revised version of the previous legislative package and proposes criminal penalties for 'facilitating illegal immigration'. The same day, the Office of the UN High Commissioner for Refugees called for the proposal to be withdrawn and expressed concern that those proposals, if passed, would deprive people who are forced to flee their homes of critical aid and services, and further inflame tense public discourse and rising xenophobic attitudes. On 1 June 2018, the the Council of Europe Commissioner for Human Rights expressed similar concerns. On 31 May 2018, the Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe confirmed the request for an opinion of the Venice Commission on the new proposal. The draft was adopted on 20 June 2018 before the delivery of the opinion of the Venice Commission. On 21 June 2018, the UN High Commissioner for Human Rights condemned the decision of the Hungarian Parliament. On 22 June 2018, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights indicated that the provision on criminal liability may chill protected organisational and expressive activity and infringes upon the right to freedom of association and expression and should, therefore, be repealed.

At the 2018 parliamentary elections, voters delivered another 2/3 majority to the governing parties and a strong mandate to take measures in order to safeguard Hungary's security and tighten regulations to counter illegal migration. With that mandate, on 20 June, Parliament adopted the STOP Soros legislative package. The package responds to a growing concern among Hungarian voters, and citizens throughout Europe, that security, both internal and external, must be a top priority. Considering that the lack of transparency in the non-governmental sector is not unique to our country and that many other Member States struggle with it, Hungary joins a

handful of countries that lead the way in creating reasonable regulations that protect citizens. The package puts forward a more rigorous response by declaring illegal immigration a threat to Hungary's national security. Anyone involved in aiding or abetting illegal migration will be committing a criminal offense. The comprehensive legislation includes amendments to the Police Act, the Penal Code, the Act on Asylum, the Act on the State Border and the Act on Misdemeanors. The penal code will now state that arranging asylum status for an illegal immigrant or enabling someone who has entered Hungary illegally to acquire residence rights will be deemed as facilitating unlawful immigration, a crime punishable by a custodial sentence of 5-90 days.

Committing such offences on a regular basis, providing financial support for illegal immigration or assisting illegal immigration in exchange for money constitute felonies, and as such are punishable by prison sentences of up to one year. Meanwhile, the new law equips the courts with tools to keep people who would engage in the aforementioned activities away from the 8-kilometer area inside the Hungarian border. Furthermore, according to this legal framework, Hungary will not accept asylum requests from people who apply from countries where they are no longer subject to persecution and are not in grave danger.

The objective of the adopted package is to close legal loopholes through which certain organizations were aiding illegal migration and human trafficking under the guise of humanitarian assistance. Though the package was passed prior to receiving the opinion of the Venice Commission, the government had already been fully briefed on the content of the opinion.

The Hungarian Parliament has recently adopted a tax on migration with the aim to cover the costs of the country's increased migration expenditure.

It should be highlighted that the European Commission has opened an infringement procedure with regard to this legislative package on 19 July 2018. The Commission found that the new Hungarian legislation raises concerns as regards its compatibility with EU law, more precisely with the asylum acquis, free movement rights of EU citizens and with the Charter of Fundamental Rights. The Hungarian authorities have to prepare the reply to the Commission's concerns by 20 September 2018.

As a Member State with a Schengen external border, Hungary has a particularly high burden and responsibility to stem illegal migration, and the Hungarian people are also right to expect the Hungarian Government to take all measures against illegal migration and the promotion of it. In recent years, it has been shown that organizing migration is an activity which seems to be legal but aims to weaken state sovereignty, public order and public security. The organizers consciously build on the fact that expulsion of people or their forced return to their home countries is carried out only in few cases even if

these persons are not granted the right for international protection in asylum procedures. Since their countries of origin do not cooperate in this regard even with economically and diplomatically strong European countries this task becomes extremely difficult.

The Hungarian Government considers democracy and sovereignty of people not only as theoretic principles but also applies them in its everyday practice as its guiding values. This responsible political behaviour is reflected in the decision of the Government to survey the voters' opinion on crucial topics, suh as illegal migration. Hungarian people expressed their position clearly: they rejected both illegal immigration and the mandatory relocation quotas and articulated their wish for an enhanced external border protection scheme.

The comprehensive aim of the legislation-package is to create an effective supervison over the civil society organisations intending to influence the migration policy of Hungary. Migration as a process must be interpreted in the context of national and public security, and Article 11 (2) of the European Convention on Human Rights provides the opportunity to restrict the right of association due to such reasons. This is the purpose of the legislation-package, which enables the courts to penalize the organisation of illegal migration. The regulation offers a complex solution, and at the same time, as it amends multiple laws, effectively controls the organizations wishing to exert influence over the Hungarian migration policy.

To achieve this, the State will have effective means to act against the organizers of illegal migration by establishing a criminal offence, strengthening the state border regime and extending police measures.

As a precondition of the legislation-package, the Fundamental Law was modified, by which Hungary, among others, raised the principle to the constitutional level that says that "a State has the right to determine the conditions according to which aliens are allowed to enter its territory". This principle is accepted by international customary law and is proven by the practice of the states, and it is also set in the draft proposal of the United Nations International Law Commission on the rules of expulsion of aliens under international law. It evidently follows from the foregoing that the sovereignty of the State immanently incorporates the unalienable right of authorizing the entry of foreigners to the State's territory.

The change in the nature of the organizing and fostering activities in connection with illegal immigration and the increased risk justified the extension of Act C of 2012 on the Criminal Code with a new criminal offence. According to the modified Act, the fostering and support of illegal immigration is a criminal offence, and it sanctions those who carry out organizing activities and not the illegal migrants. These organising activities aim to either:

a) enable the initiation of an asylum procedure in Hungary for a person not being persecuted or not being subject to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion in their country of origin, or in the country in which they have their residence or in the country through which they arrive from, or
b) enable that a person who illegally enters or resides in the territory of Hungary acquire a status for residence.

According to the new criminal offence with the organizing behaviour, the perpetrator provides assistance to a person in order to obtain international protection in Hungary by deceiving the public authority or consenting to the obtainment of a residence permit for a person illegally entering or illegally staying in Hungary. The legislation is in line with Article 31 (1) of the Geneva Convention, which protects only those who come directly from a territory where their lives or their freedom are at risk. In this regard, it has to be highlighted that according to the statement of the Venice Commission, the criminalization of such behaviours which incite migrants to circumvent the legislation of a country on immigration is not contrary to the international standards of human rights, as it aspires to achieve the aim set out in Paragraph 2 of Article 11 of the European Convention on Human Rights.

The Venice Commission in its recommendation suggested that a criminal offense should not threaten the initiation of an asylum procedure with a sanction, if it is for a person who was not either prosecuted in their country of origin or was not directly persecuted there, either. This point of the recommendation is not acceptable, as according to the new criminal offence, the perpetrator supports or makes the illegal immigration of a person who has violated the Geneva Convention easier, thus, the threat of the legal consequences of the criminal offence is justified.

In order to ease the application of the new criminal offence, a definition is provided for the most typical organizing activities. The definition, however, only serves as an interpretative provision, the activities listed therein (such as disseminating information material with the purpose of helping illegal migration) do not constitute an exhaustive list. Ultimately the court decides on penalties, following the thorough examination of all the circumstances of the individual case.

According to the recommendation of the Venice Commission, the new criminal offence involves the possibility of prosecuting natural persons or organisations who lawfully provide support for asylum-seekers and foreign nationals. Although the law does not contain explicit exceptions, the concept of the organizational behaviour does not include representation, legal counselling, protection in asylum or criminal procedures, and, hence it does not impede civil society organizations with legally acceptable goals.

The crime is intentional, so it can only be committed deliberately. The offense is not an immaterial crime, so it is not necessary for a person to initiate an asylum procedure or to obtain the legal title necessary for their stay in Hungary to fulfill its conditions. The subsidiary characteristic of the crime is important and it can only be established if a more serious offense, such as smuggling of human beings, is not carried out by the perpetrator. It is an attenuating circumstance, if the perpetrator unveils the circumstances of the criminal act before being committed. In these cases, the penalty may be reduced without limitation and in cases deserving special consideration, it can be dismissed.

Pursuant to the new criminal offence, NGOs may not conduct organizing behaviour which are considered as criminal. If they nevertheless do, they commit the above criminal offense.

It is submitted that the new criminal offence is not applied to those who advocate for human rights and who exercise their right to a fair trial in official proceedings in a legal way.

The legislative package also amended the Act on the State Border and introduced a prohibition. According to this provision no one may stay within the 8 km range of the external state border or of the border sign specified in Point 2 of Article 2 of the Schengen Borders Code (hereinafter referred to as the territory defined by the Act on the State Border) if they are being prosecuted for committing a criminal offense related to border security and the state border regime, unless this person has a valid address of residence within this area. Therefore, if the investigating authority informs a person of their well-founded suspicion that that person is involved in such a criminal offense concerning the help and support of illegal immigration, then that person becomes a suspect, and they cannot, from that moment on, be in the territory defined by the Act on State Border.
The police is authorized for the supervision and for this reason, the police has to be provided with the adequate means of sanctioning when a person does not meet the obligations described above. By the amendment of Act II of 2012 on offences, the provisions on the breaching of the rules of "refusal of entry" and "interdiction" were supplemented with a new conduct which establishes that a person who breaches the provisions of stay set out by the Act on the State Border, commits an offence.

The Act XXXIV of 1994 on the Police (hereinafter: Rtv.) was amended in order to provide the full range of actions with a new measure, called "restraining from border". It assures that on the one hand no one who is under a criminal procedure for criminal offences related to border security and the state border regime may enter the territory defined by the Act on the State Border and on the other hand, that such a person may be removed from that territory by the police.

According to the new measure in Chapter V of the Rtv, the legal restrictions have to be necessary, proportionate and bound to the intended objective, hence the proportionality requirement of Section 15 is applicable. Section 15 provides that on the one hand, the measure selected must not cause any disadvantage, that is evidently unproportionate to the legitimate aim of the measure and on the other it prescribes that from the several possible and appropriate measures that one has to be chosen, which, while ensuring effectiveness, causes the least restriction, injury or damage to the person concerned. The right to appeal concerning the injunction of restraining from border is also provided. In case of violations of fundamental rights, the affected person may lodge a complaint to the Independent Police Complaints Board.

It should be highlighted that recently new ideas occurred both at Member States and at EU level. According to these ideas, in order to stem illegal migration and secondary movements, it is necessary to establish closed centres at the European Union's external borders and at the borders or on the territories of Member States. In these closed centres the competent authorities may examine the merits of individual cases and decide on the asylum applications, while avoiding that the asylum seekers leave these centres before the decisions are made. In our opinion, the abovementioned measures, both at Member States and at EU level show that the former criticisms against the Hungarian transit zones and applied procedures were not due to non-conformity with EU law, but rather from political bias and double standards.

Right to equal treatment

Uneven balance between the protection of families and women's rights

(45) On 17-27 May 2016, the UN Working Group on discrimination against women in law and in practice visited Hungary. In its report, the Working Group indicated that a conservative form of family, whose protection is guaranteed as essential to national survival, should not be put in an uneven balance with women's political, economic and social rights and the empowerment of women. The Working Group also pointed out that a woman's right to equality cannot be seen merely in the light of protection of vulnerable groups alongside children, the elderly and the disabled, as they are an integral part of all such groups. New school books still contain gender stereotypes, depicting women as primarily mothers and wives and, in some cases, depicting mothers as less intelligent than fathers. On the other hand, the Working Party acknowledged the efforts of the Hungarian Government to strengthen the reconciliation of work and family life by introducing generous provisions in the family support system and in relation to early childhood education and care. In its preliminary findings and conclusions adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections stated that women remain underrepresented in political life and there are no legal requirements to promote gender equality

in the electoral context. Although one major party placed a woman at the top of the national list and some parties addressed gender-related issues in their programmes, empowerment of women received scant attention as a campaign issue, including in the media.

The Hungarian Government rejects the artificial confrontation of families and women's rights. The Hungarian Government is committed to empower women to decide on their own lives and provide them the freedom of choice whether they wish to have children. Exactly for the sake of such a freedom it is necessary to build a family-friendly country and establish the necessary conditions. Family policy and women's rights policy are also inseparable due to the societal realities of Hungary: 77.68 % of all women between 25 and 59 years of age are mothers according to the latest Hungarian statistics of 2016. To this end, the government has taken a number of important and effective measures to create the proper balance between family and work in recent years. Representing its dedication to the reconciliation of work and family life, the Hungarian Government spent around 4.7 percent of GDP (5,6 billion € in 2017) on financial support for families, compared to an average of 2.5 percent among the 28 Member States of the European Union. In 2019 the budget for family policy measures will be increased to more than 2 000 billion HUF (approximately 6.2 billion €).

The Child Care Allowance Extra (GYED Extra) provides the free choice for women with dependent children and supports either those who decide to stay at home with their children or those who wish to work besides raising their children. As of 2016, beyond the age of 6 months of the child, employment becomes available along with the use of benefits. Between 2010 and 2017 the available seats in nurseries increased by around 43%. As of 2017, Hungary has introduced a new and more flexible nursery system that aligns better with local circumstances. From 2019 local governments should provide day-care provisions for small children living in settlements with a population less than 10 000 where the number of small children under the age of 3 exceeds 40, or if this number is less, but at least 5 parents with dependent children indicate their need.

The expansion of part-time employment opportunities, in the field of women's policy, is of paramount importance. If a mother with a dependent child needs a part-time employment then her employer shall ensure this opportunity for her up to the age of 3 of her child, or up to the age of 5 of the youngest child in case of a large family. The 'Family-friendly Workplace' tender is annually published as from 2011. In 2017 in the framework of the Family Friendly Workplace Award the Ministry of Human Capacities provided a funding of a total of 60 million HUF for workplaces for developing family-friendly work environments and supporting employees in striking the balance between work and family life. The objective of the 'Extending flexible employment in convergence regions' tender is to introduce flexible, family-friendly employment opportunities at workplaces for which a non-reimbursable subsidy of 3,1-15 million HUF was allocated. The purpose of the project 'Women in families and at work', published in

June 2017 is to improve the situation of women in the labour market as well as that of striking the balance between family life and work. The Government allocated a funding of 14 billion HUF for this project.

As regards gender stereotypes in schoolbooks it has to be pointed out that according to the OECD Employment, Labour and Social Affairs Committee (ELSA) Report in 2017 *(Report on the implementation of the OECD Gender Recommendations – Some Progress on Gender Equality But Much Left To Do)*, textbooks were revised in Hungary in 2013 for grade 1 to 8 to ensure that students are not exposed to stereotypes and to develop awareness of gender equality. Examples of new materials include: a revision of biology textbooks to illustrate the role of women in science by demonstrating the works of female scientists; the representation of women who were successful in their fields of work in a career section in the physics textbooks; and discussions of the gender equality issues and the historical background of the change in the traditional roles of women in history textbooks.

The protection of female victims of domestic violence

(46) In its concluding observations of 5 April 2018, the UN Human Rights Committee welcomed the signature of the Istanbul Convention but expressed regret that patriarchal stereotyped attitudes still prevail in Hungary with respect to the position of women in society, and noted with concern discriminatory comments made by political figures against women. It also noted that the Hungarian Criminal Code does not fully protect female victims of domestic violence. It expressed concern that women are underrepresented in decision-making positions in the public sector, particularly in Government ministries and the Hungarian Parliament. The Istanbul Convention has not yet been ratified.

The Hungarian Government denounces violence against women in any form or shape, and is dedicated to rid society of abuse: in accordance with this objective, Hungarian law provides strong protection for women against violence. Since its introduction on 1st July 2013 the legal definition of 'violence committed in a relationship' in the Criminal Code covers a broader range of actions to be considered as abuse and punishes these actions more severely than before. The Hungarian National Assembly adopted a regulation in 2003 concerning 'the creation of a national strategy to prevent and efficiently deal with issues of domestic violence' and as a result the legal instrument governing restraining orders entered into force on 1st July 2006. In order to further strengthen this protection, as of 1st January 2008 harassment constitutes a criminal act. The 30/2015. National Assembly resolution about the national strategy for efficient counter-measures against violence committed in a relationship recognizes the importance of the protection of fundamental human rights and strictly condemns any shape or form of violence committed in a relationship and declares dedication to eliminate abuse. According to this resolution violence committed in a relationship does not qualify as a private affair and strengthens the stance that such an act of violence 'is a crime which constitutes a serious

threat to marriage, family and the well-being of children'. In this resolution the National Assembly asked the Government to take efficient steps against violence committed in relationships in accordance with the aforementioned national strategy, for example with the provision of the necessary financial and human resources within budgetary limits.

The Hungarian Government has run several campaigns, public programs and tenders to help women who have suffered abuse. The Government, utilizing a development fund of 3 billion HUF, is continuously expanding the circle of services supporting victims and prevention programs targeting young audiences, as well as places emphasis on shaping the public opinion. The goal of the campaign titled 'Let it catch your attention!' is raising awareness and providing information for victims on where to turn to in need of help. The 'SafeShelter' program has created crisis-management clinics which add to the array of facilities providing help to the victims of violence committed in a relationship. One of the main activities of these clinics is to provide information as early as possible to the victims and potential victims about available aid measures and the rights of victims. Within the framework of the program called 'Development of crisis management services' the technical progress and advancement in human resources of the National Crisis Management and Information Line is being carried out, beside the academic and sensitivity training of the experts working in child-protecting alert systems. The 'Safety net for families' tender, administered by the Ministry of Human Capacities, provides the opportunity to carry out programs based on the methods developed in the pilot project targeting youngsters between the ages of 14 and 18 which has been running since 2012.

Preamble (46) lacks the necessary knowledge of Hungarian criminal law, since the Criminal Code has a comprehensive and complex protection for women from violence committed both within a relationship and outside thereof. Removing all forms of cohabitation would eliminate an additional element of the offence which would justify the creation of a separate criminal offence, since the trust or, as the case may be, defencelessness resulting from cohabitation or previous cohabitation make the victims more vulnerable to the offender's abuse. Also, this element is even an inherent part of the English term of this phenomenon. The criminal offence of domestic violence does not refer to sexual criminal offences, because they are already punishable more severly, and it even constitutes an aggravated case if they are committed against a relative, a person who is under the care, custody or supervision of or receives medical treatment from the perpetrator, or by abusing any other relationship of power of influence over the victim, or against a person under 12, 14, or 18 years of age, respectively.

Working conditions for pregnant or breastfeeding workers

(47) The Fundamental Law of Hungary sets forth mandatory provisions for the protection of parents' workplaces and for upholding the principle of equal treatment; consequently, there are special labour law rules for women and for mothers and fathers raising children. On 27 April

2017, the Commission issued a reasoned opinion calling on Hungary to correctly implement Directive 2006/54/EC of the European Parliament and of the Council, given that Hungarian law provides an exception to the prohibition of discrimination on the grounds of sex that is much broader than the exception provided by that Directive. On the same date, the Commission issued a reasoned opinion to Hungary for non-compliance with Directive 92/85/EEC of the Council that stated that employers have a duty to adapt working conditions for pregnant or breastfeeding workers to avoid a risk to their health or safety. The Hungarian Government has committed itself to amend the necessary provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, as well as Act I of 2012 on the Labour Code. Consequently, on 7 June 2018 the case was closed.

The safety of pregnant and nursing workers, also the equal treatment in the world of work is one of the top priorities of the Hungarian Government's employment policies.
Since 2010 one of the objectives of the Hungarian Government is to facilitate the creation of a family and work based society. This has been manifested in measures that help consolidating work and family life. There is special emphasis on flexible and atypical work in the Labour Code; this facilitates the employment of women. One example is that a parent may request her or his part-time employment until age three of their only child or until the age five of their children. By law, the employer has to comply with the parent's request. Pregnant women or women giving birth are entitled to 36 months of maternity leave, which is a long period compared to other Member States. For the protection of working women, the Labour Code has special rules prohibiting the termination of mothers' employment by the employer: the entire period of human reproduction procedure related medical treatments, pregnancy and the maternity leave are covered by this exception. Breastfeeding women are entitled to working time reductions. From the beginning of their pregnancy and until age three of their child irregular work-schedules cannot be arranged without the explicit consent of these workers. The same applies to their appointment for another location of work. During the mentioned period their weekly rest time must be scheduled regularly (i.e. no irregularity is allowed), and they cannot be ordered to work extra hours, stand-by or night work. The Workplace Protection Program took effect in 2014. Amongst others, it helps mothers to re-enter the labour market by providing tax benefits to their employers. The GYED EXTRA program directly helps mothers: after six months of giving birth they can re-enter the labour market and remain entitled to all other maternity benefits that they would receive if they remained at home nursing their children.
The closure of the infringement procedure duly demonstrates Hungary's commitment to provide for equal treatment in its employment policies.

No explicit reference of sexual orientation and gender identity among the grounds of discrimination / restrictive definition of family

(48) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the constitutional ban on discrimination does not explicitly list sexual orientation

and gender identity among the grounds of discrimination and that its restrictive definition of family could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples. The Committee was also concerned about acts of violence and the prevalence of negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, particularly in the employment and education sectors.

The Fundamental Law of Hungary contains an open list, which forbids discrimination based on 'any other circumstances'. For this reason, sexual orientation and gender identity fall under strict constitutional protection in Hungary, whereas the Hungarian Act on Equal Treatment explicitly forbids discrimination based on both grounds ever since 2004.

Inhuman treatment of persons with disabilities

(49) In its concluding observations of 5 April 2018, the UN Human Rights Committee also mentioned forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities, as well as reported violence and cruel, inhuman and degrading treatment and allegations of a high number of non-investigated deaths in closed institutions.

As far as forced institutionalization and forced treatment are concerned, we would like to underline that all social services, regardless of their nature are based on a voluntary legal agreement. Although our Social Act does retain the possibility to place mental patients in institutions by judicial decision, this provision can only be applied in favour of the patient and in defence of their social environment. The Hungarian legal system also recognizes involuntary treatment in mental institutions, in the case of violent crimes against persons or punishable criminal offences if the perpetrator cannot be prosecuted due to their mental condition, and there is reason to believe that they will commit a similar act, provided, that the same crime carries a penalty of imprisonment of at least one year. These measures are taken in the competent institution (IMEI) designated for this purpose. Similarly, social institutions providing personal care are used on a voluntary basis, on request. Legal prescriptions relating to the operation of the institutions are meant to ensure the rights of the care recipients living in the institutions.

With regards to the allegations concerning cruel, inhuman and degrading treatment and violent acts in social care institutions, it is submitted that the rights of the clients of any age using social services and institutions are protected in various ways, to remedy any infringement. According to legal regulations, clients have the right to turn to the head of the given institution with their complaints, they can contact the pressure group to be compulsorily established in residential social care institutions and foster homes. They have the possibility to inform the clients' rights or children's' rights representative in order to seek support in the protection of their rights. The role of the Commissioner for Fundamental Rights alongside the work of guardians and the trustees are also important

in this area. According to Act III of 1993 on social administration and social services (Social Act) and Act XXXI of 1997 on Child Protection and Custody Administration (Child Protection Act) maintainers are liable for monitoring the lawful operation of their institutions. According to the mentioned Acts the operation of social service providers and institutions must be monitored by the certification body. Government decree 369/213 on the registration and inspection of social, child welfare and child protection service providers, institutions, and networks appoints the Government Agency of Budapest and the county level government agencies as control bodies that regularly have to carry out control activities on their own motion, and act as a matter of urgency.
The above described legally binding rights protection instrument provides clients with comprehensive protection and guarantees the investigation and the termination of the violation of their rights.

As for the allegations concerning non-investigated cases of death in social institutions, the following facts are of importance. Given that the use of social services is based on a voluntary agreement, its treatment similar to penitentiary institutions in case of deaths is not justifiable. However, all these cases of death are investigated. According to Act CLIV of 1997 on Health, death is not considered natural when the circumstances of its occurrence make it dubious. During the investigation of the causes and circumstances of death, should suspicion of a criminal act arise, a medical autopsy must be ordered. In case of extraordinary deaths, an official administrative procedure and official autopsy must be ordered. The physician carrying out the autopsy must decide whether the cause of death was extraordinary. According to its internal regulations, in order to avoid professional malpractice, the maintainer of the social institution - General Directorate of Social Affairs and Child Protection – always expects institutions to compile an action plan. In case the internal investigation reveals circumstances indicating the suspicion of a crime, either the institution or the maintainer files a police report.
Therefore, cases of death occurred in social institutions must always be investigated; there are no non-investigated cases of death.

Rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities

Racism and intolerance, anti-Gypsyism and anti-Semitism

(50) In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe's Commissioner for Human Rights indicated that he was concerned about the deterioration of the situation as regards racism and intolerance in Hungary, with anti-Gypsyism being the most blatant form of intolerance, as illustrated by distinctively harsh, including violence targeting Roma people and paramilitary marches and patrolling in Roma-populated villages. He also pointed out that, despite positions taken by the Hungarian authorities to condemn anti-Semitic speech, anti-Semitism is a recurring problem, manifesting itself through hate speech and instances of violence against Jewish persons or property. In addition, he mentioned a

recrudescence of xenophobia targeting migrants, including asylum seekers and refugees, and of intolerance affecting other social groups such as LGBTI persons, the poor and homeless persons. The European Commission against Racism and Xenophobia (ECRI) mentioned similar concerns in its report on Hungary published on 9 June 2015.

Hungary is committed to combat racism, antigypsism and any incitement to hatred. Antigypsism and hate crimes are rooted in prejudices and stereotypes, and the majority of them are committed at the local level.

Our task is to change the attitude towards the Roma; our tools include legislation, such as strategies and various programmes that, either directly or indirectly, contribute to the achievement of this aim. Hungary's Fundamental Law emphasises the importance of social inclusion making an explicit reference to this issue. It also stresses that the freedom of speech shall not be exercised if it infringes upon the dignity of the Hungarian nation or any other national, religious community or communities of ethnic or racial origin. The Hungarian National Social Inclusion Strategy dedicates a separate chapter to the phenomenon of discrimination, inclusion and awareness raising. Accordingly, several measures have been taken in recent years to combat antigypsism and incitement to hatred.

It must also be pointed out that the Hungarian Act on Equal Opportunities provides an even stronger protection than the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, since it extends its rules to cover all grounds of discrimination. Probably the most important contribution to developing a non-discriminatory environment of Hungary is that as from 1st July 2013, Hungarian local governments can only receive financial support from public finances or EU funds, if they have an appropriate Equal Opportunities Program in effect.

As far as paramilitary marches are concerned, it was exactly the current Hungarian Government which initiated the amendment of the Penal Code in 2011 in order to prevent campaigns of extreme right paramilitary groups, by introducing the so called 'crime in uniform'. The amendment threatens the 'provocative unsocial behaviour' inducing fear in a member of a national, ethnic or religious community with three years of imprisonment.

Under the Socialist governments, a series of murders of Roma were committed in Hungary. The 'Hungarian Guard' held marches in Hungary, thus the European and Hungarian Roma were frightened. It was this Government that made it possible for the Roma to exchange their houses from Roma settlements to houses with gardens with the help of the 10 million HUF support of the Family Housing Support Program (CSOK). The number of Roma working in public employment programmes and attend training courses are 220 000.

The governing party FIDESZ was the first to send a Romani woman to the European Parliament: Lívia Járóka, who presently holds the office of the Vice-President of the European Parliament. Moreover, due to her efforts and the merit of Hungary, the European Roma Strategy was approved by the Council, which triggered off an exemplary and unprecedented inclusion program for the Roma. If it was not for the Hungarian Government such an initiative would have been unimaginable.

The new Criminal Code introduced some new elements regarding hate crimes, resulting in a stricter regulation as before. This includes for example that Incitement against a Community expressis verbis includes incitement to violence besides incitement to hatred, moreover, it includes not only certain group of populations as targets, but mentions members of the given groups as well.

Also, Violence against a Member of a Community criminalises the display of a conspicuously anti-social conduct, whereas the crime can even be established, if the target of the action is a subject (e.g. a vehicle parking on the street), and the action is only capable of resulting in an alarm in the members of the offended group.

As a measure against far-right organisations, the Criminal Code punishes Unlawful Organization of Public Safety Activities since 2011.

It can be said that a positive change is noticeable in the area of national criminal procedures, especially concerning the approach and decisions of the proceeding authorities. As a result, the courts have ordered special behavioural rules, such as visiting certain memorials or read specific books.

Roma discrimination

(51) In its Fourth Opinion on Hungary adopted on 25 February 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted that Roma continue to suffer systemic discrimination and inequality in all fields of life, including housing, employment, education, access to health and participation in social and political life. In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended the Hungarian authorities to make sustained and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by Roma, improve, in close consultation with Roma representatives, the living conditions, access to health services and employment of Roma, take effective measures to end practices that lead to the continued segregation of Roma children at school and redouble efforts to remedy shortcomings faced by Roma children in the field of education, ensure that Roma children have equal opportunities for access to all levels of quality education, and continue to take measures to prevent children from being wrongfully placed in special schools and classes. The Hungarian Government has taken several substantial measures to foster the inclusion of Roma. On 4 July 2012, it adopted the Job Protection Action Plan on 4 July

2012 to protect the employment of disadvantaged employees and foster the employment of the long-term unemployed. It also adopted the "Healthy Hungary 2014–2020" Healthcare Sectoral Strategy to reduce health inequalities. In 2014, it adopted a strategy for the period 2014-2020 for the treatment of slum-like housing in segregated settlements. Nevertheless, according to FRA's Fundamental Rights Report 2018, the percentage of young Roma with current main activity not in employment, education or training, has increased from 38 % in 2011 to 51 % in 2016.

The Hungarian Government is deeply committed to achieve the integration of Roma people. This is manifested, on the one hand, by the fact that this issue was put to the political agenda of the European Union as the initiative of the Hungarian Presidency of the European Union in the first half of 2011, by the adoption of the EU Framework Strategy on Roma inclusion, which was followed by the channelling of the Framework Strategy into the EU policies (e.g. the European Semester, and the use of the cohesion funds). However, the novelty introduced by the initiative lied not only in this but also in that it dealt with this issue not merely based on a human rights approach but also from the aspects of poverty and social inclusion, recognising thereby that a complex approach is required in order to find a genuine solution for the problems. On the other hand, the Government approved the implementation of the EU Framework Strategy in 2011 and then in 2014 it updated the Hungarian National Social Inclusion Strategy, and established a three-year action plan for its implementation by designating responsible persons, deadlines and available funds.

Since 2010 the Government has implemented several social, social inclusion, family policy, health policy and educational measures. We have achieved a great number of positive results, all of which prove that we are on the right path: in addition to the improvement of economic indicators, almost all of our indicators related to fight against poverty and unemployment have been constantly improving since 2013. The results of such measures have manifested themselves in a measurable and provable way and have grown steadily proving that they reached the target groups. The data on poverty obtained from the major central surveys conducted by the Central Statistical Office (CSO) shows data separately for the Roma population, which we consider a great achievement even at European level.

Perhaps the most promising result of the public policy interventions promoting social inclusion based on a changed approach is that we managed to raise a significant number of those living in extreme poverty from the social assistance care system that confine them to passivity. We managed to change this passive behaviour and "activated" them by involving them in the public work scheme and training programmes. These schemes are organised in a way that the establishment and restoration of their skills for conducting their life and for earning their income autonomously can be started. As a result of the measures which this government has taken in the last eight years, those in need were given an opportunity to build a positive vision. Moreover, they could

experience that there was a way out of the vicious circle of poverty and that they could participate in societal change.

Strengthening the role of public education and higher education in creating equal opportunities, as well as, that of inclusive education is supported by systematic measures (strengthening skills and key competences, operating an early warning system against early school leaving, increasing the salaries of teachers, career model for teachers, and training).

In order to promote the inclusion of children with disadvantages, we have several programmes in place ranging from the nursery school until the labour market (e.g. Sure Start Children's Homes, For the Road "Útravaló" scholarship programme, Tanoda complex educational programme, Arany János Talent Management Programme, mentoring programme for roma girls, etc). It is important to note, however, that the complex nature of the issue calls for a wider solution. This means that the abolishment of segregation is necessary, but not enough in itself. A complex set of actions is required to promote success in school and to support the child and their family from the birth until their employment.

The family policy measures, such as obligatory kindergarten attendance from the age of 3, increasing children day-care capacities, establishment and operation of a new, more flexible and more differentiated system of day-care, tax allowance for families, ensuring home creation support for housing purposes, disbursement of pecuniary child-care allowances after the parent's return to work (GYED extra), strengthening early childhood intervention, free–of-charge catering for children even during school holidays, have contributed to an increased integration of women with small children into the labour market, to managing balance between work and private life, and to the mitigation of regional inequalities.

In Hungary the social inclusion policy is based on the „nothing about them without them" principle. Therefore, the Hungarian Government has announced and implemented a broad partnership and cooperation emphasizing that social inclusion and the inclusion of Roma people is a national issue. Those implementing the social inclusion programmes include civil society organizations, churches, non-profit organizations, local self-governments, minority self-governments, social cooperatives. The Government operates five nationwide consultation forums (Social Inclusion and Roma Commitment Committee, Roma Coordination Council, "Let it be better for children!" evaluation committee, Anti-Segregation Round Table, Roma Thematic Meeting of the Human Rights Working Group), and there are conciliation mechanisms at county and local levels, too.

According to the Preamble of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities – in line with the New Fundamental Law – Hungary recognizes the nationalities living in its territory as part of the Hungarian political community and acknowledges them as a state-forming factor. All nationalities can form local, regional and national self-governments under the conditions set by the Act XXXVI of 2013 on the election procedure. The number of the Roma self-governments in Hungary is 1031.

As for the employment of Roma, the fundamental aim is to integrate unused social resources in the support of society, i.e. to reduce child deprivation, facilitate the inclusion of those living in persistent poverty including Roma, put an end to peripheral living conditions, make multiply disadvantaged people capable of entering the labour market and taking part in labour market instruments, and increase the local retaining power of settlements. Hungary has introduced and intends to introduce several measures to improve the employability of the long-term unemployed and to involve the inactive population. On 4th July 2012, the government adopted the Job Protection Action Plan, the primary aim of which was to preserve jobs and protect the employment of disadvantaged employees. To this end, it is increasing the competitiveness of employers utilizing a disadvantaged or otherwise less competitive workforce by reducing the costs of employment. The action plan reduces employers' burden (social security contribution and vocational training levy) to foster the employment of employees under 25 and above 55 years of age, career starters, the long-term unemployed, women returning from child home care allowance/child care fee and employees employed in unskilled jobs, and as a new element as of 1st July 2015, employees in the agricultural sector.

The objective of the public employment scheme is to provide a transition between benefits and the open labour market; moreover, it promotes catching up to a significant degree. Long-term unemployment can be terminated only with a multi-phase support process that includes training and employment as well. Its efficiency depends, among others, on the nature of the socio-economic disadvantages of the given settlement or district. However, it is to be noted that it can serve only as a temporary solution. For this reason, in the coming period bigger emphasis will be laid on the measures that promote exit from the public employment scheme, support economic recovery and enhance mobility. As of 1st January 2016, a new incentive system was introduced for individuals involved in the public employment scheme. The targeted job search allowances encourage people involved in the public employment scheme to find a job in the private sector in such a way that if they find a job before the term of the legal relationship with the public employment scheme expires, they receive job search allowances. The public employment scheme is becoming more targeted as a result of an EU-funded project aiming at offering training opportunities and training-related mentoring services. In 2014, 376 004 persons participated in the programme; according to the estimations, 20% of them were Roma. 13% of the participants found employment on the primary labour market within 180 days after leaving the public employment scheme. This is due, among

others, to the fact that approx. 94% of the participants received training within the framework of the programme, acquiring a basic knowledge in various professions.

Targeted measures were taken in order to strengthen the employment of Roma women: the 'Growing Chances' programme assists the employment of Roma women in social and childcare institutions and supports them in obtaining qualifications. More than 1000 Roma women had participated in the programme before 2016, and another 1000 people are still joining the programmes.

The "Healthy Hungary 2014–2020" Healthcare Sectoral Strategy designated the reduction of inequalities and, within that, the reduction of health inequalities, as a fundamental interest of Hungarian society, which requires complex interventions working in synergy as well as specific programmes, adequate resources and a longer timescale. A number of public healthcare measures were taken to combat the health inequality of the Roma population and to improve their health status. In the field of the development of primary care, 4 practice communities were set up with the participation of 24 primary care practices in the North Great-Plain and Northern Hungary regions in the framework of the Swiss-Hungarian Cooperation Programme. The objective of the programme is to develop and test a model of primary care that focuses on prevention and the care of patients with chronic diseases, is oriented at the community and involves local communities (in particular the Roma population) in close cooperation with local and ethnic local governments, local health-care and social services and medical faculties, and also to formulate recommendations (based on experience) for national health-care policy. Enhancing the quality and equality of access to primary healthcare services for the Roma population living in the areas of the practice community are priorities of this programme; local Roma communities are involved (Roma mother-child health programme; training Roma health guardians; training Roma health representatives). In the framework of the programme, the health status of 20 000 adults (40% of whom are Roma) was surveyed.

Regarding housing, in 2014 the government adopted a political strategy for the period from 2014 to 2020 that lays down the foundations of the treatment of slum-like housing in segregated settlements. The general objective is to eliminate slum-like areas that are often hardly suitable for the housing of people and, in certain cases, to rehabilitate slum-like areas, connecting them to the urban tissue. The main objective of the strategy is to present and institutionalise a set of tools for hindering the re-establishment of slums, degrading parts of settlements and settlements – collectively, housing marginalisation and the spatial concentration thereof, – in order to stop segregation and lagging processes, and to eliminate current living situations in slums; in order to eliminate slum-like housing long-term. With the use of EU funding, Hungary committed itself to include one in every seven segregated areas in rehabilitation programmes. To this end, a map of segregated area was compiled, which shows the territorial concentration of

disadvantaged population (based on academic qualification and income status rather than on ethnicity). According the map data, EU-funded developments are being implemented in 197 segregated areas.

The results of the Government's initiatives launched in recent years can already be measured by data. According to the data published by the Central Statistical Office (CSO)5 the rate of those at risk of poverty or social exclusion was 25.6% in 2016, which signifies a decrease of 9.2 percentage points as compared to the peak in 2012, while it represents a decrease of 0.7 percentage points as compared to the data of 2015. In the case of the Roma population, the rate of those at risk of poverty or social exclusion amounted to 75.6% in 2016, a value lower by 7.2 percentage points as compared to the data of 2015. Among Roma, an improvement has been achieved in all the three dimensions of poverty (people living in households with very low work intensity, those living in severely material deprivation and relative income poverty) the rate of those living in a household with a very low work intensity has dropped to the largest extent, by 10.7 percentage points, which can mainly be attributed to the introduction of the active employment policy measures.

The results are apparent even in international comparison, they are highlighted both by the communication of the European Commission published on 30 August 2017 and by a survey of the European Union Agency for Fundamental Rights (FRA)6 conducted in 2016. According to the survey of the FRA, in Spain (98%), Greece (96%) and Croatia (93%) it is true for almost all the Roma that took part in the survey that their income is lower than the national poverty threshold. In contrast with that, from among the countries involved in the analysis, the Czech Republic (58%), then Romania (70%) and Hungary (75%) achieved the best indicators. On the Roma's own admission, they have the highest employment rate in Greece (43%), then follows Hungary (36%) and Portugal (34%). In the field of education, the FRA survey points out that from among the countries involved in the survey only Spain (95%) and Hungary (91%) have attained a result near to the target for participation in early childhood education in the Education and Training 2020 Strategic Framework. From among children subject to school attendance obligation, almost everyone participates in education in Spain (99%), the Czech Republic (98%) and Hungary (98%), while this rate attains only 77% in Romania and 69% in Greece.

The Commission's Communication pointed out that at European level the results achieved in the field of education did not manifest themselves in employment, however, in some Member States, such as Portugal and Hungary, the employment rate of Roma

[5] Source: Standard of living of households, CSO, 2016. In contrast with Eurostat, the CSO marks the data not with the year of the data surveying, but with the reference year of the data survey. I.e. The data published by CSO for 2016 are shown in the tables of Eurostat for the year 2017.

[6] EU-MIDIS II – Second European Union Minorities and Discrimination Survey, the Roma

has increased, while the changes are either more moderate or negative elsewhere. It indicates, however, that the gap existing between the employment of women and men in some Member States, poses a challenge. However, the self-appraisal of Roma has improved in general as far as their own health condition is concerned, the greatest extent of improvement can be observed in Romania, Bulgaria, Hungary, Portugal and Greece.

Segregation of Roma children (Horváth and Kiss v. Hungary)

(52) In its judgement of 29 January 2013, Horváth and Kiss v. Hungary, the ECtHR found that the relevant Hungarian legislation as applied in practice lacked adequate safeguards and resulted in the over-representation and segregation of Roma children in special schools due to the systematic misdiagnosis of mental disability, which amounted to a violation of the right to education free from discrimination. The execution of that judgment is still pending.

It must be highlighted that, according to the findings of the ECtHR, the unjustified redirecting of Roma pupils into special education institutions has a long tradition throughout Europe. The Court condemned in similar cases numerous Member States (Czech Republic, Greece, Croatia and Slovakia). The Commission has launched infringement proceedings concerning the ban of racial or ethnical discrimination at schools not only against Hungary but also against the Czech Republic and Slovakia. In the procedure Hungary cooperates with the Commission, the demanded legal amendments took place as a whole which was acknowledged by the Commission as well. Continuous consultations are in place for resolving practical issues in this regard, the Hungarian Government has taken several steps to solve these questions, also including fulfilling the decision of the ECtHR. The Commission is also aware that this is an extraordinarily complex and sensitive topic in the society meaning that you cannot expect quick and tangible results therefore one cannot anticipate perceivable effects from day to day. The purpose is to get an improving tendency.

Segregated education of Roma children

(53) On 26 May 2016, the Commission sent a letter of formal notice to the Hungarian authorities in relation to both Hungarian legislation and administrative practices which result in Roma children being disproportionately over-represented in special schools for mentally disabled children and subject to a considerable degree of segregated education in mainstream schools, thus hampering social inclusion. The Hungarian Government actively engaged in dialogue with the Commission. The Hungarian Inclusion Strategy focuses on promoting inclusive education, reducing segregation, breaking the intergenerational transmission of disadvantages, and establishing an inclusive school environment. Furthermore, the Act on National Public Education was complemented with additional guarantees as of January 2017, and the Hungarian Government initiated official audits in 2011-2015, followed by actions by government offices.

As the report highlights, in the course of the ongoing infringement procedure, from the very beginning the Hungarian Government actively conducted dialogues with the Commission. During these dialogues impartial, evidence-based and cooperative approach was ensured on both sides and as a result thereof the Hungarian Government by virtue of the principle of sincere cooperation amended its legislation and took actions in order to ensure compliance with its legal obligations.

In 2017 the Commission acknowledged that with the adaption of the legislative changes the Commission's critics with regards to the legal environment have been addressed.

The Hungarian National Social Inclusion Strategy accepted in 2011 treats the reduction of segregation as a priority objective. Special attention is paid to integration in kindergartens and schools. Accordingly, in the field of education and training, particular areas of intervention are the promotion of integrated education, the reduction of segregation, the breaking of the cycle of intergenerational transmission of disadvantages, the establishment of an inclusive school environment. Roma children's access to quality education is facilitated by the application of legal, financing and institutional measures and by a number of governmental actions.

As to the operation of educational institutions by the state, we carried out regional development to improve access to quality education based on integrated education. We simplified the structure of operation, and gave more power to heads of school. In the frames of these measures, the former Klebelsberg Institution Maintenance Centre was replaced in January 2017 by school district centres, which operate as state operators and as independent budget organisations. Instead of the single national centre, 59 school district centres were set up. This way the decision-making was moved closer to the people concerned. In addition, the Klebelsberg Centre as a medium-level administrative body stepped in between school district centres and the Minister responsible for education.

Each school district centre employs an anti-segregation expert, who will assist the state in organising local meetings and roundtable discussions and in detecting and signalling problems. As of November 2017, the anti-segregation working group is the permanent working group of the school district council.

As a result of an amendment in legal regulations[7], the head of the anti-segregation working group prepares an annual report to the Minister for education and to the president of the Klebelsberg Centre, which ensures government monitoring. The competent minister, therefore, is informed on the status of segregation at the level of the

[7] [7] Government Decree 134/2016 of 6 October on organisations involved in the performance of state public education tasks as operators, and on the Klebelsberg Centre.

school district centres. In addition, based on the evaluations provided by the Klebelsberg Centre, the Minister is able to monitor the development of anti-segregation processes, and these evaluations contribute to its responsible political decisions.

The regulation of the school districts facilitates the elimination of the undesired effects of the free selection of schools and the prevention of segregation. In order to regulate unlawful segregation, the Act on National Public Education was extended with additional guarantee elements: as of January 2017, the school district centre received a competence of approval in the designation of the borders of districts. If the competent school district centre does not agree with the decision of the authority performing tasks of public education on the borders of the district, or does not express its approval within the stipulated deadline, the Minister for education shall determine the district borders of school enrolment.

It is worth highlighting, that the Government submitted a proposal for the amendment of the Act on Equal Treatment and the Promotion of Equal Opportunities and the Act on National Public Education. The amendment came into force in July 2017 and provides stronger guarantees than before to prevent the unlawful segregation of disadvantaged children, including Roma children: religious education can only be provided on the basis of ethnicity or nationality, if national minority education is also provided.

In the framework of desegregation measures, we initiated official audits between 2011 and 2015, which were followed by actions of the government offices. Following that, a so-called segregation index based survey was conducted: based on the index, we examined schools and selected the ones that would participate in the flagship project titled "Support to institutions affected by early school leaving" to be implemented until 2020 from EU funds, with a budget of HUF 12.9 billion. The call for proposal was published in October 2016. The project covers 300 schools (locations of performing public education institution tasks), and implements complex desegregation institution development and the development of pedagogical services. The selection of the institutions was based on the assessment with the segregation index, and we involved those institutions against which court proceedings were initiated because of segregation, too.

The Hungarian Government is convinced that it committed itself to a continuous dialogue with the Commission which finally resulted in the alignment of the legislative framework guaranteeing equal access to quality education for the Roma children which the Commission endorsed to be in line with the EU law.

Nonetheless on the basis of the on-going dialogue between the Commission and the Hungarian Government, the Commission plans a three-day field visit in September, 2018 to Hungary to gain an overview and practical expirience on the measures adopted by

Hungary. The Commission will visit schools and local goverments in Miskolc, Nyíregyháza, Budapest and Kaposvár, as well as consult different state and civil organisations and church representatives, etc.

Violation of the prohibition of discrimination (Balázs v. Hungary)

(54) In its judgement of 20 October 2015, Balázs v. Hungary, the ECtHR held that there had been a violation of the prohibition of discrimination in the context of a failure to consider the alleged anti-Roma motive of an attack. In its judgment of 12 April 2016, R.B. v. Hungary, and in its judgment of 17 January 2017, Király and Dömötör v. Hungary, the ECtHR held that that there had been a violation of the right to private life on account of inadequate investigations into the allegations of racially motived abuse. In its judgment of 31 October 2017, M.F. v. Hungary, the ECtHR held that there was a violation of the prohibition of discrimination in conjunction with the prohibition of inhuman or degrading treatment as the authorities had failed to investigate possible racist motives behind the incident in question. The execution of those judgments is still pending. Following the Balázs v. Hungary and R.B. v. Hungary judgments, however, the modification of the fact pattern of the crime of 'inciting violence or hatred against the community' in the Penal Code entered into force on 28 October 2016 with the purpose of implementing Council Framework Decision 2008/913/JHA8. In 2011 the Penal Code had been amended in order to prevent campaigns of extreme right paramilitary groups, by introducing the so-called 'crime in uniform', punishing any provocative unsocial behaviour inducing fear in a member of a national, ethnic or religious community with three years of imprisonment.

It is important to note that in the cases referred, the judgements had been formulated before amending Paragraph 332 of the Penal Code with the purpose of implementing Council Framework Decision 2008/913/JHA. The modification of the fact pattern of the crime of 'inciting violence or hatred against the community' entered into force on 28th October 2016, according to which 'any person who before the public at large incites violence or hatred against a) the Hungarian nation, b) any national, ethnic, racial or religious group or any member thereof, or c) certain societal groups, or the members thereof, in particular on the grounds of disability, gender identity or sexual orientation, is guilty of a felony punishable by imprisonment up to three years'.

The proposal for a law pronouncing the Rome Statute of the International Criminal Court (ICC) and the Kampala amendments concerning Article 8 of said Statute is still in the process of being adopted by the Hungarian Parliament. The Commission was notified about the proposed modifications in the legislation. The Director General of the Commission's Directorate-General for Justice and Consumers notified Hungary that said

[8] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55).

modifications will align national legislation with the provisions of Council Framework Decision 2008/913/JHA. See also the notes on preamble (50).

Forced evictions of Roma in Miskolc

(55) On 29 June - 1 July 2015, the OSCE Office for Democratic Institutions and Human Rights conducted a field assessment visit to Hungary, following reports about the actions taken by the local government of the city of Miskolc concerning forced evictions of Roma. The local authorities adopted a model of anti-Roma measures, even before the change of the local decree of 2014, and public figures in the city often made anti-Roma statements. It was reported that in February 2013, the Mayor of Miskolc said he wanted to clean the city of "anti-social, perverted Roma" who allegedly illegally benefited from the Nest programme (Fészekrakó programme) for housing benefits and people living in social flats with rent and maintenance fees. His words marked the beginning of a series of evictions and during that month, fifty apartments were removed from 273 apartments in the appropriate category - also to clean up the land for the renovation of a stadium. Based on the appeal of the government office in charge, the Supreme Court annulled the relevant provisions in its decision of 28 April 2015. The Commissioner for Fundamental Rights and the Deputy-Commissioner for the Rights of National Minorities issued a joint opinion on 5 June 2015 about the fundamental rights violations against the Roma in Miskolc, the recommendations of which the local government failed to adopt. The Equal Treatment Authority of Hungary also carried out an investigation and rendered a decision in July 2015, calling on the local government to cease all evictions and to develop an action plan on how to offer housing in accordance with human dignity. On 26 January 2016 the Council of Europe Commissioner for Human Rights sent letters to the governments of Albania, Bulgaria, France, Hungary, Italy, Serbia and Sweden concerning forced evictions of Roma. The letter addressed to the Hungarian authorities expressed concerns about the treatment of Roma in Miskolc. The action plan was adopted on 21 April 2016 and in the meantime a social housing agency was also established. In its decision of 14 October 2016, the Equal Treatment Authority found that the municipality fulfilled its obligations. Nevertheless, ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary published on 15 May 2018 that, despite some positive developments to improve the housing conditions of Roma, its recommendation had not been implemented.

The Municipality of Miskolc decided to demolish the neighbourhood called "Numbered Streets," where a large part of the inhabitants are Roma. The Municipality amended its local housing decree on 12th May 2014, offering financial compensation (a maximum of about EUR 4750 – 6 300) for those tenants who are willing to terminate their indefinite contract only if they buy a new property outside of the city which cannot be resold within 5 years.

Based on the appeal of the government office in charge, the Supreme Court annulled the relevant articles in its decision of April 28th 2015.

Nonetheless, the Commission as mentioned in recital (54) above, plans a three-day field visit in September, 2018 to Hungary and in the framework of this visit it plans to meet the representatives of Miskolc's local government to check whether the housing issue in Lyukóvölgy and the "Numbered streets" is settled satisfactorily.

Combatting anti-Semitism

(56) In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended that the Hungarian authorities continue to improve the dialogue with the Jewish community, making it sustainable, and to give combatting anti-Semitism in public spaces the highest priority, to make sustained efforts to prevent, identify, investigate, prosecute and sanction effectively all racially and ethnically motivated or anti-Semitic acts, including acts of vandalism and hate speech, and to consider amending the law so as to ensure the widest possible legal protection against racist crime.

The Hungarian government considers the peaceful cohabitation of Jews and Christians a value to be protected, with Europe's third largest Jewish community and the world's second largest synagogue both located in Budapest. Fortunately, anti-Semitic voices both in the public and in politics are marginalized. Prime Minister Viktor Orbán has several times declared a 'zero tolerance policy' against anti-Semitism and any incident has been promptly followed by high-level official condemnations. The Hungarian Government has declared zero-tolerance against anti-Semitism and the Jewish community can always rely on the Government's support and protection. In this spirit, the Orbán-government is currently preparing, including by substantial financial assistance, for the 2019 European Maccabi Games to be held in Budapest and has so far:

- enacted the National Holocaust Remembrance Day in 2000,
- established the Holocaust Documentation Centre and Memorial Collection in 2002,
- ordered that the life annuity of Holocaust survivors shall be raised by 50% in 2012,
- on the 70th anniversary of the deportation of Hungarian Jews, established the Hungarian Holocaust – 2014 Memorial Committee in 2013,
- Holocaust Memorial Year in 2014.

It was largely due to the Hungarian Government's firm stance against anti-Semitism that by the unanimous decision of 31 countries, Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016 with a high international recognition of Jewish and non-Jewish organisations and personalities. IHRA is the sole international organisation that is dealing with the remembrance, education and research of the Holocaust and the era that led to it. It has 31 members (including 25 EU Member States), 9 observer countries and several international partners (eg. the UN, OSCE ODIHR etc.).

As a result of the Chairmanship's year-long endeavours and lobbying in EU institutions, EU and IHRA member states, the EU's new data protection draft legislation (GDPR) was amended in line with IHRA commitments. Now the text of the EU's General Data Protection Regulation (GDPR) includes a specific reference to the Holocaust, which ensures researchers free access to Holocaust-related materials throughout the European Union thereby making sure that the Holocaust does not get forgotten – which was not the case with the original text. This achievement was commended by governments, experts and Jewish organizations from all over the world as a unique success in the past 15 years' history of IHRA in safeguarding the free access to documents bearing on the Holocaust. This issue showed the core of international cooperation and solidarity which the IHRA community proved to be apt and ready for, when an essential element of Holocaust research was at risk.

We managed to adopt and apply all major IHRA-standards in Holocaust-related education, remembrance and research, and international standards in the fight against Antisemitism. We believe education can contribute the most to establishing a way of thinking that prevents people from acting and speaking with hatred against groups of people different from them. In Hungary, a consultation mechanism with the education experts of the Jewish communities on how to include the Holocaust in curricula was elaborated and put into practice. It is worth noting that a Hungarian University, the Catholic University Péter Pázmány in Budapest introduced Holocaust studies as a mandatory subject for students aiming at a diploma.

Within the framework of the Hungarian Holocaust Memorial Year program of 2014 the reconstruction of synagogues (Kőszeg, Szabadka, Miskolc, Szeged, Budapest-Rumbach Sebestyén street) started in 2014 which is continued within a comprehensive restoration program of 2014-2019. In 2015 EUR 14.5 million is allocated for this project. In the framework of this program in the city of Subotica/ Szabadka on March 26, 2018 Prime Minister Orbán and the President of Serbia Aleksandar Vučić jointly inaugurated the city's newly renovated synagogue.

Restoration of Jewish cemeteries: in 2014 the Government tasked with the elaboration of a comprehensive program for the restoration of Jewish cemeteries with the involvement of local students, schools, local self-governments, civil organizations, public service and churches. The government allocated EUR 3.3 million for this project, which is a multi-year program.

Antisemitism is not only on the rise across Europe but new forms of it gained ground: besides traditional, comparatively less violent radical right-wing Antisemitism (prevalent in Central and Eastern Europe), two new forms emerged and reinforced: radical left-wing Antisemitism mainly in Western Europe based on anti-Israeli/pro-Palestinian attitudes and radical Muslim Antisemitism rooted in anti-Israeli and anti-

Jewish attitudes. This latter tends to turn into mostly violent, often murderous attacks on Jews in Western Europe, while in Hungary Jewish life experiencing a renaissance and Jews live in peace and safety.

According to the Action and Protection Foundation's (Tett és Védelem Alapítvány) report (January-June 2017) the number of anti-Semitic actions in Hungary decreased compared the number of the previous years. During the first half of 2017 the Foundation identified 18 anti-Semitic hate crimes, while in 2016 there were 23, in 2015's first half there were 26 hate crimes action. It is also worth examining domestic data in an international comparison. For example, in Great Britain, figures are extremely high: the number of anti-Semitic hate crimes in the same period was 557 in 2016 and 767 in 2017, which means that forty-two times more cases occurred in the island than in Hungary.

Hungarian laws and legal norms identify the following five offenses related to hatred or incitement of hatred including anti-Semitic or Holocaust denying, denigrating acts: (1) violating the dignity of a member of a national, religious etc. community, as well as the dignity of a community itself (being also an aggravating circumstance if it serves a motive for another crime), (2) the denial, gelatinization or belittling in public of crimes committed by totalitarian (Nazi and Communist) regimes, punishable with up to 3 years of imprisonment (3) the use of totalitarian symbols in public, (4) establishing and running paramilitary groups or institutions, and (5) hate speech by MPs in the Parliament additionally sanctioned by the House Rules. Moreover, the rules of the Criminal Code have been tightened regarding "uniformed crime".

Some examples on court rulings and other official proceedings in Anti-Semitic (mostly criminal) cases with decisions of punishment (either on probation or to be implemented):

1. On 7 December 2012 the first court decision entered into effect for Holocaust denial. The Budapest Central Court sentenced a man of 42 to 18 months in prison, on three years' probation. In addition 3 times per year during 3 years of the probation period, he has to visit the Budapest Holocaust Memorial Centre in Pave Street and has to submit an account of his experiences. The perpetrator was arrested in 2011 at a rally in Budapest for he was holding up a banner with the words in Hebrew: "The Shoah did not happen".
2. In January 2015, a Hungarian court ordered an article on the far-right website Kuruc.info to be blocked because it (including its comments) contained text denying, belittling or distorting the crimes committed by the National-Socialist regimes. This was the first time that a Hungarian court ruled to block the Internet content. The article appeared there in June 2013 and questioned the atrocities against Jews in Auschwitz claiming that 'such things never ever happened'. Following its appearance on the site, a police investigation was launched to find the author of the article. The police however was unable to identify the author or the person responsible for publishing the article. Therefore the Budapest Chief Prosecutor's

Office addressed the court to order the article to be made unavailable at long last. The US-based server where the site is registered refused to voluntarily make it unavailable or to delete it from its database. Then the Ministry of Justice through legal assistance requested the competent US court to enforce the Hungarian court's ruling which however also proved futile. In June 2015, the same legal proceedings were carried out with the same result regarding a sub-page of the above website for it was delivering anti-Semitic and Holocaust denying content. Meanwhile an amendment to the criminal code was introduced which ought to enable the courts to make websites operated from abroad, such as the US-registered Kuruc.info, unavailable from Hungary.

3. 26 March 2015: a court in Debrecen sentenced a member of the Jobbik Party's local organization and member of the local municipal council to a punishment fee of 3000 USD or 300 days imprisonment who publicly denigrated the Holocaust in a WWII-commemoration speech in January 2015. The indicted person publicly apologized for his offense before the local Jewish community later in August.
4. 5 January 2016: a man was punished by a court in Esztergom with a 2600 EUR fee or 400 day imprisonment for committing by a Facebook posting the denial, relativization or denigration of the crimes of the National-Socialist regimes.

The leaders of the local Jewish community admitted that Jewish life in Hungary is experiencing a renaissance. During his 19th July 2017 visit to Hungary, Israeli Prime Minister Benjamin Netanyahu said that it was important that in his statement the Hungarian Prime Minister had spoken openly about the crimes committed against the Jews by previous Hungarian Governments. He thanked Mr. Orbán for speaking out against those who question Israel's legitimacy.

We would like to remind of the fact that Israeli Prime Minister Benjamin Netanyahu was the first foreign leader to congratulate Viktor Orbán on his re-election the 9th April. Moreover he stated that 'Budapest is at the forefront of the states that are opposed to anti-Jewish policy'. Additionally, on 13th April 2018, Rabbi Israel Eichler, Head of the Israeli-Hungarian Friendship Association of the Israeli Parliament, sent greetings to Mr. Orbán congratulating him for his victory at the 8th April re-election, as well as for the great election campaign. The rabbi also appraised the efforts of Mr Orbán in fighting against the anti-Semitism in Hungary and Europe.

(57) The Hungarian Government ordered that the life annuity of Holocaust survivors was to be raised by 50 % in 2012, established the Hungarian Holocaust – 2014 Memorial Committee in 2013, declared 2014 to be the Holocaust Memorial Year, launched renovation and restoration programmes of several Hungarian synagogues and Jewish cemeteries and is currently preparing for the 2019 European Maccabi Games to be held in Budapest. Hungarian legal provisions identify several offences related to hatred or incitement of hatred, including anti-Semitic or Holocaust-denying or denigrating acts. Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016. Nevertheless, in a speech

held on 15 March 2018 in Budapest, the Prime Minister of Hungary used polemic attacks including clearly anti-Semitic stereotypes against George Soros that could have been assessed as punishable.

The Hungarian Prime Minister's speech held on 15 March 2018 in Budapest, in fact, did not contain any, either direct or indirect, references at all to the Jewish roots of George Soros, and cannot be considered as a rhetorical manifestation of antisemitism even within the broad antisemitism concept of the IHRA working definition.

Roma exclusion in education / Hate crimes and hate speech

(58) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about reports that the Roma community continues to suffer from widespread discrimination and exclusion, unemployment, housing and educational segregation. It is particularly concerned that, notwithstanding the Public Education Act, segregation in schools, especially church and private schools, remains prevalent and the number of Roma children placed in schools for children with mild disabilities remains disproportionately high. It also mentioned concerns about the prevalence of hate crimes and about hate speech in political discourse, the media and on the internet targeting minorities, in particular Roma, muslims, migrants and refugees, including in the context of government-sponsored campaigns. The Committee expressed its concern over the prevalence of anti-Semitic stereotypes. The Committee also noted with concern allegations that the number of registered hate crimes is extremely low because the police often fail to investigate and prosecute credible claims of hate crimes and criminal hate speech. Finally, the Committee was concerned about reports of the persistent practice of racial profiling of Roma by the police.

The Hungarian National Social Inclusion Strategy accepted in 2011 treats the reduction of segregation as a priority objective. Accordingly, in the area of education and training, particular areas of intervention are the promotion of integrated education, the reduction of segregation, the breaking of the cycle of intergenerational transmission of disadvantages, the establishment of an inclusive school environment. Special attention is paid to integration in kindergartens and schools. Therefore Roma children's access to quality education is facilitated by the application of legal, financing and institutional measures and by a number of government actions. It is important to note, however, that because of the complex nature of the problem, we have to look for a solution in a wider context, too. This means that the termination of the practice of segregation is necessary, but not enough in itself.

Therefore, there is a complex set of actions to promote success in school is required, to support the child and its family from the child's birth to the start of his/her employment. Each centre of school district employs an anti-segregation expert, who will assist the state in organising local meetings and roundtable discussions and in detecting and signalling problems. The head of the anti-segregation working group produces a report

to the minister for education and to the president of the Klebelsberg Centre with annual frequency. This way the tools required for monitoring by the Government have been established. The regulation of the districts of admittance to primary schools facilitates the elimination of the undesired effects of the free selection of schools and the prevention of segregation. In order to regulate unlawful segregation, the Act on National Public Education was extended with additional guarantee elements: As of January 2017, the centre of school district received a competence of approval in the definition of the borders of districts. In the framework of desegregation measures, we initiated official audits in 2011-2015, which were followed by actions by government offices. Following that, a so-called segregation index based survey was conducted: based on the index, we examined schools and selected the ones that would participate in the priority tender titled "Support to institutions affected by early school leaving" to be implemented until 2020 from EU funds, with a limit amount of HUF 12.9 billion. The tender invitation was published in October 2016. The project covers 300 schools (locations of performing public education institution tasks), and involves the development of complex desegregation institution development and pedagogical services. The selection of the institutions was based on the assessment with the segregation index, and we involved institutions affected in court proceedings initiated because of segregation, too. Based on the provisions of the Act on Equal Treatment, in Hungary, each local government has to work out a so-called Local Programme for the Equality of Chances (HEP), in which they analyse the situation of disadvantaged groups, including the Roma, and determine an action plan to treat the detected problems in the area of education, too. The production and the regular revision of the HEP is a pre-condition of access to EU and budgetary resources.

With regard to hate speech and hate crimes, it must be pointed out that the Hungarian Penal Code strictly punishes inciting violence or hatred against a member of a community (see Paragraph 47). The Hungarian Parliament has amended the Hungarian Penal Code in order to make the public denial of Holocaust a crime. The following crimes are now also punishable by law: (1) violence against a member of a community; (2) incitement against a community; (3) publicly denying the crimes of National Socialist and Communist regimes; and (4) using symbols of totalitarian regimes.

By reason of the 4th Amendment of the Hungarian Constitution the 'freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community' and the right of individuals belonging to various communities to bring a civil law action (but not criminal law action) before the court because of hate speech is permitted. This legislative change has been hailed as a historic step by many – in particular by Jewish – communities, as it makes the fight against hate speech more efficient. This provision has already proved to be useful in this sense when a group of far-right bikers planned to stage a demonstration in Budapest, scheduled for 21st April 2013, the day of the 'March

of the Living' with the slogan of 'Give Gas!'. Based on the mentioned Amendment of the Hungarian Constitution the Court banned the motorcade in order to prevent any disruption during the commemoration.

The Hungarian Government has further established a Working Group Against Hate Crime providing training for police officers and helping victims to cooperate with the police and report incidents. A professional forum has further been established for exchanging good practices related to the investigation of hate crimes.

(59) In a case regarding the village of Gyöngyöspata, where the local police was imposing fines solely on Roma for minor traffic offences, the first instance judgment found that the practice constituted harassment and direct discrimination against the Roma even if the individual measures were lawful. The second instance court and the Supreme Court ruled that the Hungarian Civil Liberties Union (HCLU), which had submitted an actio popularis claim, could not substantiate discrimination. The case was brought before the ECtHR.

Since it is a pending case, it would be premature to comment on it, however, Hungary maintains that the law and order should be maintained even for minor offences.

Freedom of expression

(60) In accordance with the Fourth Amendment of the Fundamental Law, the 'freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community'. The Hungarian Penal Code punishes inciting violence or hatred against a member of a community. The Government has established a Working Group Against Hate Crime providing training for police officers and helping victims to cooperate with the police and report incidents.

It is to be greeted that the report acknowledges the efforts of the Government, therefore the criticisms on freedom of expression should have been completely deleted from the report.

Fundamental rights of migrants, asylum seekers and refugees

Amending asylum law in Hungary / abuses by border authorities

(61) On 3 July 2015, the UN High Commissioner for Refugees expressed concerns about the fast-track procedure for amending asylum law. On 17 September 2015, the UN High Commissioner for Human Rights expressed his opinion that Hungary violated international law by its treatment of refugees and migrants. On 27 November 2015, the Council of Europe Commissioner for Human Rights made a statement that Hungary's response to the refugee challenge falls short on human rights. On 21 December 2015, the UN High Commissioner for Refugees, the Council of

Europe and the OSCE Office for Democratic Institutions and Human Rights urged Hungary to refrain from policies and practices that promote intolerance and fear and fuel xenophobia against refugees and migrants. On 6 June 2016, the UN High Commissioner for Refugees expressed concerns about the increasing number of allegations of abuse in Hungary against asylum-seekers and migrants by border authorities, and the broader restrictive border and legislative measures, including access to asylum procedures. On 10 April 2017, the Office of the UN High Commissioner for Refugees called for an immediate suspension of Dublin transfers to Hungary. In 2017, out of 3 397 applications for international protection filed in Hungary, 2 880 applications were rejected, which amounted to a rejection rate of 69,1 %. In 2015, out of 480 judicial appeals relating to applications for international protection, there were 40 positive decisions, i.e. 9 %. In 2016, there were 775 appeals, 5 of which resulted in positive decisions, i.e. 1 %, while there were no appeals in 2017.

We would like to stress that a new approach is being developed in asylum policy, both at EU and at Member States level, which instead of the existing mandatory allocation, focuses on the cooperation with third countries and the protection of external borders - in line with the views Hungary has been permanently expressing.

Suffice is to mention in this regard the adoption of a new Asylum Agreement by the German Grand Coalition on 5 July 2018. According to this Agreement, and in accordance with the Geneva Convention, the right for asylum does not include the right to decide freely on the country in which asylum is sought. Therefore, in the future, at the German-Austrian border persons who have already lodged an application for asylum in a Member State of the European Union will be returned directly to the Member State concerned, if an agreement has been made with that Member State or the parctice of that Member State results in taking them back. A basic principle of the Agreement of the Grand Coalition is that the border procedure will be carried out in the existing facilities located in the proximity of the German-Austrian border and in the transit zone of the Munich Airport, within a period of 48 hours.

In September 2015, under the authorisation of the Asylum Act, the Hungarian Government declared crisis situation due to mass immigration at first time. The rationale behind introducing this crisis situation, and the subsequent law enforcement measures, was that from 2015 on huge masses of third country nationals entered, or wanted to enter, the territory of Hungary illegally bringing about an imminent danger to public order and security in Hungary.

We wish to point to the very nature of the crisis situation due to mass immigration as a special (interim) situation. The Government shall be authorised, by the Act on Asylum, to declare the crisis situation due to mass immigration by a government decree. During this crisis situation, and apart from the ordinary rules of asylum procedures, exceptional regulations apply. Pursuant to the effective Government Decree of 41/2016 (III. 9.) on declaring a state of crisis caused by mass migration to the entire territory of Hungary

and on the rules in connection with the declaration, continuation and termination of the state of crisis, the crisis situation lasts till 7th September 2018, unless it will be extended depending on the then relevant immigration situation.

As for the fast-track procedure is concerned, the EU law (Asylum Procedure Directive) empowers Member States to conduct examination procedures, in accordance with the basic principles and guarantees, in an accelerated way. We wish to emphasize, though, that each application for international protection is examined thoroughly and on individual basis, even in the course of accelerated procedures.

As to the alleged ill-treatment of asylum seekers by Hungarian border authorities we firmly deny this presumption. The right to act, the obligations and the regime of border police officers to fulfil the duties in service are meticulously specified in the Act XXXIV of 1994 on the Police (hereinafter: Rtv) . According to this law, police officers must not recourse to torture, inhuman or degrading treatment and shall always act with due respect for human dignity. During carrying out their measures, proportionality and the graduated approach is always applied. Reports on alleged ill-treatments are mostly based on subjective resources stemming from illegal migrants and NGOs assisting them. The one-sided nature of these sources, give rise to doubts concerning their factual credibility and reliability. In addition, no court cases have been reported so far where Hungarian border police officers have been indicted on charges of abusing asylum seekers affirming the position of the Hungarian Government that these accusations are completely ungrounded.

With regard to the data, we would like to call the attention to the fact that these are not the official data provided by the Immigration and Asylum Office (hereinafter referred to as BMH). According to the data of the BMH, 409 judicial appeals were lodged in 2015, and in almost half of the cases (48%) the decision of the BMH was approved, while 30% of the cases were terminated. 12% of the challenged decisions were repealed and only in 10% of the cases changed the Court the decision of the BMH, which resulted in the applicant's recognition as a refugee or a beneficiary of international protection. In 2016, out of the 724 judicial appeals, in 342 cases (47,2 %) the Court approved the decision of the BMH, 216 cases (29,83 %) were terminated and in 153 cases (21,13%), the Court repealed the decision of the BMH. In 2017, out of the 437 judicial appeals, the Court approved the decision of the BMH in 160 cases (37%), in 168 cases (38%) the Court repealed the decision of the BMH, 95 cases (22%) were terminated and in 14 cases refusal without the order of a summoning took place.

In 2017, a total number of 3,397 asylum applications were registered by the competent authority in the transit zones, from which 1,291 persons received international protection, thus, the recognition rate of asylum seekers was 35%, reaching the European average. The total number of positive decisions (counting all of the categories of

protection) in the cases of the asylum applications lodged until 15 July 2018 reached the recognition rate of 70%, which is far above the EU average (40%) and higher than the recognition rates of most of the Member States.

(62) The Fundamental Rights Officer of the European Border and Coast Guard Agency visited Hungary in October 2016 and March 2017, owing to the Officer's concern that the Agency might be operating under conditions which do not commit to the respect, protection and fulfilment of the rights of persons crossing the Hungarian-Serbian border, that may put the Agency in situations that de facto violate the Charter of Fundamental Rights of the European Union. The Fundamental Rights Officer concluded in March 2017 that the risk of shared responsibility of the Agency in the violation of fundamental rights in accordance with Article 34 of the European Border and Coast Guard Regulation remains very high.

The facts collected by the Report of the Fundamental Rights Officer showed that only three atrocities were reported in 2016 and none of them involved members of the European Border and Coast Guard Agency (Frontex). Regarding the Report, we note that its content was not approved by the Executive Director of Frontex, who did not agree with a significant part of the Report of the Fundamental Rights Officer and emphasized that its allegations are not proven and also cannot be connected to Frontex. Moreover, at the 62nd Frontex Management Board Meeting the representatives of many countries sided with Hungary. In the framework of the Frontex Joint Operations in Hungary, 338 guest officers in 2016, 348 in 2017 and 97 in 2018 were deployed at the Hungarian borders from the following Member States: Denmark, Spain, Lithuania, the Czech Republic, Austria, Slovenia, Italy, the Netherlands, Romania, Germany, Finland, Bulgaria, Latvia, France, Slovakia, Sweden, Estonia, Poland and Portugal. Moreover, professionals from Moldova, Ukraine, Serbia, Belarus, Georgia, Albania, Kosovo and Macedonia were also present as observers during these operations. None of these guest officers reported cases of allegations like the ones Hungary was accused of.

Detention of asylum seekers and migrants

(63) On 3 July 2014, the UN Working Group on Arbitrary Detention indicated that the situation of asylum seekers and migrants in irregular situations needs robust improvements and attention to ensure against arbitrary deprivation of liberty. Similar concerns about detention, in particular of unaccompanied minors, have been shared by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. On 21-27 October 2015 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Hungary and indicated in its report a considerable number of foreign nationals' (including unaccompanied minors) claims that they had been subjected to physical ill-treatment by police officers and armed guards working in immigration or asylum detention facilities. On 7 March 2017, the UN High Commissioner for Refugees expressed his concerns about a new law voted in the Hungarian Parliament envisaging

the mandatory detention of all asylum seekers, including children, for the entire length of the asylum procedure. On 8 March 2017, the Council of Europe Commissioner for Human Rights issued a statement similarly expressing his concern about that law. On 31 March 2017, the UN Subcommittee on the Prevention of Torture urged Hungary to address immediately the excessive use of detention and explore alternatives.

According to the Reception Directive, detention is restricting the applicant's stay to a specific place where the applicant is deprived of his or her freedom of movement. It is also a conceptual element of detention that the individual may only object to the measure by means of a legal remedy and may not withdraw from the decision of the competent authority until it is effective, that is, they cannot leave freely. Consequently, as the facility is not closed, detention in the Hungarian practice is conceptually impossible since applicants can leave the transit zone any time and, that being said, the applicant is not deprived of his or her freedom of movement.

According to the Reception Directive, Member States may designate such areas not only based on considerations of public interest and public order, but also to ensure the availability of applicants during the procedure. Restricting these areas to the transit zones has been applied due to the crisis caused by mass immigration, and this measure is also permitted by Article 72 TFEU in addition to the Reception Directive.

The situation of unaccompanied minors

(65) On 12-16 June 2017, the Special Representative of the Secretary General of the Council of Europe on migration and refugees visited Serbia and two transit zones in Hungary. In his report, the Special Representative stated that violent pushbacks of migrants and refugees from Hungary to Serbia raise concerns under Articles 2 (the right to life) and 3 (prohibition of torture) of the European Convention on Human Rights (ECHR). The Special Representative also noted that the restrictive practices of admission of asylum seekers into the transit zones of Röszke and Tompa often make asylum-seekers look for illegal ways of crossing the border, having to resort to smugglers and traffickers with all the risks that this entails. He indicated that the asylum procedures, which are conducted in the transit zones, lack adequate safeguards to protect asylum seekers against refoulement to countries where they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The Special Representative concluded that it is necessary that the Hungarian legislation and practices are brought in line with the requirements of the ECHR. The Special Representative made several recommendations, including a call on the Hungarian authorities to take the necessary measures, including by reviewing the relevant legislative framework and changing relevant practices, to ensure that all foreign nationals arriving at the border or who are on Hungarian territory are not deterred from making an application for international protection. On 5-7 July 2017 a delegation of the Council of Europe Lanzarote Committee (Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse) also visited two transit zones and made a number of recommendations, including a call to treat all persons under the age of 18

years of age as children without discrimination on the ground of their age, to ensure that all children under Hungarian jurisdiction are protected against sexual exploitation and abuse, and to systematically place them in mainstream child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them by adults and adolescents in the transit zones. On 18-20 December 2017, a delegation of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) visited Hungary, including two transit zones, and concluded that a transit zone, which is effectively a place of deprivation of liberty, cannot be considered as appropriate and safe accommodation for victims of trafficking. It called on the Hungarian authorities to adopt a legal framework for the identification of victims of human trafficking among third-country nationals who were not legally resident and to step up its procedures for identifying victims of such trafficking among asylum seekers and irregular migrants. As of 1 January 2018, additional regulations were introduced favouring minors in general and unaccompanied minors in specific; among others a specific curriculum was developed for minor asylum seekers. ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary, published on 15 May 2018, that while acknowledging that Hungary has faced enormous challenges following the massive arrivals of migrants and refugees, it is appalled at the measures taken in response and the serious deterioration in the situation since its fifth report. The authorities should, as a matter of urgency, end detention in transit zones, particularly for families with children and all unaccompanied minors.

In the course of establishing the transit zones, Hungary paid special attention to the needs of different age and social groups. Besides separated placement, the safety of children is also secured by the 24/7 presence of a social worker in the separate accommodation facilities for both families and unaccompanied minors. In addition, continuous security service and CCTV video surveillance system operate in the transit zones to ensure the prevention of any kind of violence, sexual exploitation or abuse.

Experts of the authorities immediately start identifying potential victims of sexual exploitation and abuse. If the medical staff carrying out the examination experiences signs of previous sexual exploitation or the applicant makes such a report, both the medical staff and the asylum authority can take the necessary action.

Hungary has so far completed the training of 120 administrators for the successful identification of victims of human trafficking (partially sexual exploitation) and to increase the awareness of those who are more likely to be in contact with such persons during their day-to-day work. Moreover, the staff of the Immigration Office must participate in this training as well, in order to carry out more effectively their duties set out by Government Decree No. 354/2012. (XII.13) on the identification order of victims of trafficking in human beings. In addition, a summary of relevant knowledge has been prepared and handed out for the staff. The Office started cooperation with the IOM in order to provide special training for the personnel of the transit zones on the rights of the child, particularly who are affected by the migration crisis, and also trafficking in human beings.

As of 2011, police personnel serving in the transit zone have participated in psychological, tactical and intercultural training that greatly contributes to the recognition and proper handling of vulnerable persons and their situations. The constantly provided adequate briefing of the officials carrying out their duties in the transit zone contains the requirements of performing tasks in a multicultural environment and the instructions for appropriate behaviour in such an environment.Unaccompanied children between the age of 14 and 18 are also placed in transit zones during a mass immigration crisis during the process. Five meals a day for those between the age of 14 and 18, as well as their clothing, health care, education, and religious practice are also provided in transit zones. Children receive half a litre of milk or equivalent dairy products and fruits. Their supervision is provided by social workers who are present 24 hours a day. Children under the age of 14 are placed in special care institutions inside the country where they get five meals a day.

In the case of minors between the ages of 14 and 18, the best interest of the child is to provide them the possibility to be able to fully exercise their rights during the asylum procedure. Given that minors between 14 and 18 years of age have legal and procedural capacity in the asylum procedure, they may exercise their rights and shall fulfill their obligations on their own. Due to their age, however, involvement of a legal representative or, in the case of an unaccompanied minor, appointment of a guardian provides further procedural guarantees in accordance with national law.

In our view, the separation of unaccompanied minors under the age of 14 from those between the ages of 14 and 18 and the placement of the latter group in the transit zone protects them against sexual exploitation and abuse, which children on route and children who can leave the open child protection institutions already on their own (between 14 to 18 years of age) are more exposed to.

In the framework of the child protection professional service, and under the Child Protection Act, unaccompanied minors are also provided with full home care in accordance with the UN Convention on the Rights of the Child. This provision includes, among other things, the provision of access to basic health care, special care, education, development, psychological support, access to useful and cultural leisure time, in addition to providing accommodation, meals, pocket money and clothing at the same level as for children of Hungarian nationality, but taking cultural and religious differences into account, for example concerning meals.

According to the statutory provision, the Károlyi István Children's Centre (hereinafter referred to as Children's Centre), which provides home-care services for children, provides psychosocial and psychotherapeutic assistance on a number of occasions a

week, provided by the institution's clinical psychologists and by psychiatrists and psychologists regularly provided by NGOs.

During children's reception at the Children's Centre the status of the child is assessed in order to identify whether they need assistance and also the children themselves can indicate if they need any special care.

The requirements of the Asylum Procedures Directive are fully implemented in the Hungarian system since special guarantees apply for unaccompanied minors requiring special treatment: minors of 14 to 18 years of age are placed in a special block for minors, and their legal representation and the secondment of ad hoc guardians is further ensured. In addition, unaccompanied minors can continuously rely on the presence of social workers.

In addition, unaccompanied minors in transit zones can continuously rely on the presence of social workers and psychological and psychiatric professional services and counseling. With the support of the Asylum, Migration and Integration Fund, the Hungarian State provides special services to unaccompanied minors, in the framework of a project (e.g. games related to children's leisure time, tools to keep them occupied, interpretation services in multiple languages, especially for everyday communication). The tender for the continuation of the above project is currently under evaluation, but the above services are also provided during this period.

Hungarian law fully provides that a minor applicant may use his or her mother tongue or the language he or she understands in an oral and written manner during the asylum procedure. In addition, the asylum authority must inform the applicant in writing of the procedural rights, obligations and legal consequences of the breach of the obligation, at the same time as the application is filed. The guarantee of the information is that the information and its acknowledgment must be recorded, but also that the representative of the UNHCR may participate in the asylum procedure. As from 1st January 2018, additional regulations were introduced by Hungary favouring minors in general and unaccompanied minors in specific. Among others, the asylum interviewer of minors must have the necessary knowledge and training for interviewing minors, meaning that the interviewer must have the quality of inspiring confidence and provide a child-friendly atmosphere, finding the perfect, professional interpreter who has relevant practice in communicating with children.

The access to education is also provided for minor asylum-seekers, carried out by Hungarian educational authorities under the guidance of the Ministry of Human Capacities. A specific curriculum was developed for the minor asylum seekers staying in the transit zones, and as of the beginning of September 2017, education is provided

according to this curriculum for minors aged between 6 and 16 years, and if the child wishes, even up to their 18 years of age, by competent and specially trained teachers.

We believe that the procedure in the transit zone is in accordance with the Qualification Directive. As the Asylum Procedures Directive allows the possibility for Member States to carry out the procedures in facilities set up along the borders or in facilities of their choice, neither the responsibility of Hungary nor unlawfulness can be established in this respect. It is all the more so, since the Directive allows for a Member State to receive asylum applications only in specific places. With regard to the non-refoulement principle, it should be pointed out that, in case of a possible chain refoulement, the applicants would be returned by Serbia to another safe EU candidate country, so that the non-refoulement principle is applied and respected in all cases when such procedures are carried out.

During the placement in the transit zones, the belonging to ethnic, national, religious and other groups is maximally taken into consideration. We note that the transit zones criticized by court judgements in 2015 and 2016 differ from the ones which function currently. Following several changes made in relation to the transit zones in 2017, especially concerning the reception conditions, at present such violation of rights could not be determined.

If an applicant suffers any kind of atrocitiy in the transit zones due to cultural differences or their belonging to a certain social group, then the responsible authority acts without delay in order to protect the rights of the applicant from violation. A separate sector is established for families and minors, while the placement of single men is carried out with regard to their religious, cultural and national diversity. Special conditions apply for persons with special needs during the period of the asylum detention. This includes members of all kinds of minority groups, including LGBT people.

We refuse the use of expressions such as „closed facility" and place of „detention" regarding transit zones. Any asylum seeker is free to leave the transit zone in the direction of Serbia at any time, even without withdrawing their applications. For this reason, we do not agree with the conclusion that the transit zone „is effectively a place of deprivation of liberty". Concerning GRETA's recommendation on the assistance of third-country national victims of trafficking, we would like to inform you that Hungary's next national counter-trafficking strategy is currently under development, and we will make sure to consider the recommendations proposed by GRETA, as well as the US State Department's TIP Office. It should also be mentioned that since 1 January 2013 special rules apply in Hungary for the identification of victims of human trafficking laid down by government regulation 354/2012. (XII.13). According to this regulation the police, the labour authority, the aliens police and the asylum authority inter alia shall perform tasks associated with the identification of victims of trafficking in human beings.

Hungary has been fulfilling its legal obligations under the Treaty, protecting the external Schengen borders of the European Union. As a Member State with an external border, we must also comply with our obligations to register data pursuant to primary EU legislation. Therefore, we are positive that the measures taken were necessary and proportionate given that since 2015 mass immigration has seriously affected the country's internal security. It should also be emphasized that Article 72 TFEU provides that, in such cases, actions may be taken by way of derogation from EU law, in respect of which Hungary has taken appropriate measures to safeguard its own and the EU's internal security.

Violation of the applicants' right to liberty and security (Ilias and Ahmed v. Hungary)

(66) In its judgment of 14 March 2017, Ilias and Ahmed v. Hungary, the ECtHR found that there had been a violation of the applicants' right to liberty and security. The ECtHR also found that there had been a violation of the prohibition of inhuman or degrading treatment in respect of the applicants' expulsion to Serbia, as well as a violation of the right to an effective remedy in respect of the conditions of detention at the Röszke transit zone. The case is currently pending before the Grand Chamber of the ECtHR.

The Court found violation of rights of two Bangladeshi nationals who requested asylum in September 2015 in Hungary who were accommodated in the Röszke Transit Zone during the asylum proceedings (23 days) which they were not allowed to leave in the direction of Hungary and whose asylum application was declared inadmissible because Serbia was found to be a safe third country for them. The Court found that the applicants had been deprived of their liberty in violation of Article 5 of the Convention (without appropriate legal ground and without judicial review) and that their refoulement to Serbia placing them at the risk of chain-refoulement to Greece and the irregularities of the asylum-proceedings resulted in a violation of Article 3. The Court also found that the material conditions of reception in the Röszke Transit Zone were not in violation of Article 3 but a lack of domestic remedy in respect of these complaints was in breach of Article 13.

On 18th September 2017 a Panel of five judges of the Court accepted the Government's request that the case be referred to the Grand Chamber. The Government argued that the case raised serious issues of general importance affecting the interpretation and application of the Convention and the legal order of several High Contracting Parties, and posing serious social challenges. The Government presented in their Memorial submitted to the Grand Chamber that global migration is currently based on a purported right to asylum-shopping encouraged by an implicit recognition of that right by the jurisprudence of the Court contrary to the explicitly reiterated principles in the Court's jurisprudence recognising the States' right to control the entry and stay of aliens on their territory.

The Chamber's interpretation of Article 3 and 5 of the Convention was based on the implicit recognition of the right to asylum-shopping whereas the Grand Chamber should clarify that no such right is recognised by international law, including the Convention and should interpret the requirements of Articles 3 and 5 accordingly. The applicants were not deprived of their personal liberty during their stay in the Röszke Transit Zone; therefore, Article 5 of the Convention is not applicable in their case. They entered the transit zone of their own, free will and were free to leave any time in the direction of Serbia.

In contrast to the case of Amuur v. France (no. 19776/92, judgment of 25th June 1996), the applicants' return to Serbia did not require negotiations between the Hungarian and Serbian authorities and there are no financial and/or practical obstacles for any asylum applicants to leave the border transit zones towards Serbia. Furthermore, in finding that the applicants' confinement in the transit zone amounted to a de facto deprivation of liberty, the Chamber has failed to distinguish the present case from the case of Riad and Idiab v. Belgium (nos. 29787/03 and 29810/03, § 68, 24th January 2008) in which the applicants were confined in the transit zone not upon their arrival in the country but more than one month later, after decisions had been given ordering their release. The applicants in that case were placed in the transit zone by the will and the actions of the authorities, while in the present case no Hungarian authority compelled the applicants to enter the transit zone.

Third Party submissions were presented by Bulgaria, Poland and the Russian Federation, as well as the UNHCR, NGOs and scholars of international law. The Grand Chamber held a hearing on 18 April 2018 and it will deliver its judgment within 1 year.

(67) On 14 March 2018, Ahmed H., a Syrian resident in Cyprus who had tried to help his family flee Syria and cross the Serbian-Hungarian border in September 2015, was sentenced by a Hungarian court to 7 years' imprisonment and 10 years expulsion from the country on the basis of charges of 'terrorist acts', raising the issue of proper application of the laws against terrorism in Hungary, as well as the right to a fair trial.

It is important to highlight the fact that the judgment in question is not final yet, it was delivered by a court of first instance as a result of retrial, which was ordered by the court of second instance. It is also important that Ahmed H. was charged not only with committing 'terrorist acts' but also with the 'illegal crossing of the border fence by participating in civil disturbance'. The first criminal act is punishable by imprisonment from ten to twenty years, while the latter criminal act is punishable by imprisonment from one to five years. Furthermore, it is unclear why the report states that the case raised the issue of the right to a fair trial, as there is no information that would support any concerns regarding the proceedings of the courts dealing with the case.

Mandatory relocation of asylum seekers

(68) In its judgment of 6 September 2017 in Case C-643/15 and C-647/15, the Court of Justice of the European Union dismissed in their entirety the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers in accordance with Council Decision (EU) 2015/1601. However, since that judgment, Hungary has not complied with the Decision. On 7 December 2017, the Commission decided to refer the Czech Republic, Hungary and Poland to the Court of Justice of the European Union for non-compliance with their legal obligations on relocation.

Regarding this point, we still uphold the position that had already been declared during the infringement procedures and before the Court of Justice of the European Union.
According to Article 13(2) of Council Decision (EU) 2015/1601, it ceased to apply on 26 September 2017 as expressly reiterated by the Court of Justice in its jusdgment in Case C-643/15 and C-647/15. The Hungarian goverment, together with the goverments of the other Member States under procedure, therefore deems that the action of the Commission has become devoid of purpose and it should be rejected as inadmissible.

Infringement procedure regarding Hungarian asylum legislation

(69) On 7 December 2017, the Commission decided to move forward on the infringement procedure against Hungary concerning its asylum legislation by sending a reasoned opinion. The Commission considers that the Hungarian legislation does not comply with Union law, in particular Directives 2013/32/EU1, 2008/115/EC2 and 2013/33/EU3 of the European Parliament and of the Council and several provisions of the Charter.

It should be highlighted that the Hungarian Government is in continuous dialogue with the Commission in all EU Pilot and infringement procedures in order to take into account the Commission's concerns to the fullest extent. This open and constant dialogue takes place in the pending 2015/2201 infringement procedure as well, launched by the Commission in 2015.

By launching this infringement procedure the Commission assumed that certain rules governing the border management and asylum procedures are not in conformity with the Asylum Procedures Directive 2013/32/EU and with Directive 2010/64/EU therefore it raised five questions to the Hungarian Government. As a result of the Hungarian Government's argumentation the Commission accepted two answers (concerning the right to personal hearing of the applicant in court procedures and the right to translation) to be satisfactory out of the five questions.

The Commission awaited 16 months after the first phase of the Article 258 TFEU procedure and only went on to continue the procedure when Hungary, as a consequence

of the crisis situation caused by mass immigration, introduced several changes in the rules applicable for border management and for asylum procedures. In its additional formal notice sent in May 2017 the Commission raised eight new questions extending the scope of the infringement procedure to the Reception Conditions Directive 2013/33/EU and to the Returns Directive 2008/115/EC as well as to Articles of the Charter on Fundamental Rights. The Hungarian Government kept the Commission updated as regards the steps being taken in the meantime and as a result of the continuous dialogue the Commission accepted the Government's position in four further questions and did not continue the procedure in this respect. As regards the remaining disputed issues repeated in the reasoned opinion, the Hungarian Government firmly believes that the rules are in conformity with the applicable EU law. Even so, the Commission referred Hungary to the Court of Justice of the EU on the 19th July 2018 for failure to fully comply with these directives.

As to the condition which requires Member States to allow applicants to stay on its territory until a refusal decision comes into force (Asylum Procedures Directive), the Hungarian Government demonstrated in detail that this provision fully applies in Hungary. It means that each and every applicant is allowed to stay (remain) in the territory of Hungary until the remedy procedure is over or if no remedy procedure is launched until the deadline for that expires.

The remaining issues in the infringement procedure relate to the measures introduced as the consequence of the mass immigration situation which forced the Hungarian Government to tighten the applicable rules though still within the confines of all the relevant directives. For instance, according to the Asylum Procedures Directive the application for international protection can be lodged personally and at the place determined by the Member State. In Hungary the place for lodging an application are the transit zones. Upon entering the transit zone every person is registered immediately after the application is made although the Directive requires three working days. Moreover, they cannot be considered to be in detention since everyone who wishes to do so can leave the transit zone, only the entrance into the Schengen zone is not permitted until the necessary procedures are not finished. The rules on detention set out in the Reception Conditions Directive are adequately implemented and are applied by the Hungarian authorities only in circumstances when the terms and conditions for ordering such detention are given.

It must be highlighted that crisis situation caused by mass immigration is such a circumstance in which Article 72 of TFEU entitles Member States 'to exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security', therefore the Hungarian Government believes that the measures challenged by the Commission in its infringement procedure do not exceed the limits and confines of any applicable

secondary law nor the exercise of the responsibilities empowered by Article 72 of TFEU. Despite the recent tendency of the European migration policy and the Commission's suggestions to certain Member States to accelerate their asylum procedure, the infringement case has been referred to the Court of Justice of the EU.

Detention of asylum applicants

(70) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the Hungarian law adopted in March 2017, which allows for the automatic removal to transit zones of all asylum applicants for the duration of their asylum procedure, with the exception of unaccompanied children identified as being below the age of 14, does not meet the legal standards as a result of the lengthy and indefinite period of confinement allowed, the absence of any legal requirement to promptly examine the specific conditions of each affected individual, and the lack of procedural safeguards to meaningfully challenge removal to the transit zones. The Committee was particularly concerned about reports of the extensive use of automatic immigration detention in holding facilities inside Hungary and was concerned that restrictions on personal liberty have been used as a general deterrent against unlawful entry rather than in response to an individualised determination of risk. In addition, the Committee was concerned about allegations of poor conditions in some holding facilities. It noted with concern the push-back law, which was first introduced in June 2016, enabling summary expulsion by the police of anyone who crosses the border irregularly and was detained on Hungarian territory within 8 kilometres of the border, which was subsequently extended to the entire territory of Hungary, and decree 191/2015 designating Serbia as a "safe third country" allowing for push-backs at Hungary's border with Serbia. The Committee noted with concern reports that push-backs have been applied indiscriminately and that individuals subjected to this measure have very limited opportunity to submit an asylum application or right to appeal. It also noted with concern reports of collective and violent expulsions, including allegations of heavy beatings, attacks by police dogs and shootings with rubber bullets, resulting in severe injuries and, at least in one case, in the loss of life of an asylum seeker. It was also concerned about reports that the age assessment of child asylum seekers and unaccompanied minors conducted in the transit zones is inadequate, relies heavily on visual examination by an expert and is inaccurate and about reports alleging the lack of adequate access by such asylum seekers to education, social and psychological services and legal aid. According to the new proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU the medical age assessment will be a measure of a last resort.

In accordance with the provisions of the 1951 Geneva Refugee Convention refugees have duties towards the country in which they find themselves, which require in particular conforming to its laws and regulations, as well as to the measures taken for the maintenance of public order. The asylum applicants enter the transit zones after being fully informed, voluntarily and of their own free will, without any official constraint.

Staying in the transit zone is based on the own decision of the entering persons, following their prior and full information, and free of any official constraint. As they are free to decide whether to enter the transit zone, it is also up to their own decision whether to leave. The only restriction in this regard is that they cannot enter the territory of Hungary and thus that of the Schengen zone until their request has been judged in their favour. Applicants therefore volunteer – based on the information they receive at the entry into the transit zone – to wait in the area determined by the asylum authority, and therefore decide themselves on such a restriction of their freedom of movement. Both the Asylum Procedure Directive and the Reception Directive allows Member States to provide that applicants are required to report to the competent authorities or to appear in front of them in person and they may decide on their place of residence.

The term 'transit zone', in the current mass migration crisis situation – which pursuant to the effective government decree will last until 7th September 2018 – defines the location of the procedure rather than the type of the procedure, that is to say, asylum procedures in the transit zones are equally full value 'in merit' procedures. Hungarian legislation follows the logic of the Asylum Procedure Directive; according to these provisions Member States may require that applications for international protection be lodged at a designated location. Consequently, Hungary may require that applications be lodged only in transit zones making the fight against people smuggling even more effective, as well as complying with its obligations on the protection of external borders.

In a mass migration crisis situation Article 72 of the TFEU permits Member States to exercise their powers as regards maintaining public order and internal security. In case of a mass migration crisis situation all applications are examined in their merits as well rather than assessing only admissibility or on the possibility of accelerated procedures. Furthermore, Hungary fulfils her obligations stemming from the Schengen Border Code. Hungary, making use of the possibility as enshrined in the Return Directive, escorts asylum seekers, intercepted in the course of illegal border crossing, back to the Hungarian side of the state border. In case of those persons, seized inside the country but in connection with illegal border crossing, Hungary exercises its rights in line with Article 72 of TFEU with a view to maintain law and order.

In 2015 the Hungarian Government deemed it necessary to establish a national list of safe countries of origin and safe third countries. Therefore, a government decree currently specifies the list of safe countries of origin and safe third countries. The insertion of Serbia onto this list is fully in line with international and EU standards: Serbia is a candidate country for the EU, its accession to the European Union is underway. European Commission has not expressed doubts that Serbia should be regarded as a safe third country. It would be nonsense if a candidate country would not qualify as a safe third country. Additionally, there is still no EU list determining safe third countries exist; therefore, Member States can freely decide in this area.

Reports on alleged ill-treatments are mostly based on subjective resources originating from illegal migrants and NGOs supporting them, thus, these accounts give rise to doubts concerning their factual reliability. In addition, so far no court cases have been reported where Hungarian border police officers have been indicted on charges of abusing asylum seekers confirming the position of the Government of Hungary that these accusations are completely unjustified.

As for the age assessment of children there are medical staffs in the transit zones that are capable of determining the age of the applicants with scientific methods rather than merely by visual examination.

Economic and social rights

Criminalising homelessness

(71) On 15 February 2012 and 11 December 2012, the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on the right to adequate housing called on Hungary to reconsider legislation allowing local authorities to punish homelessness and to uphold the Constitutional Court's decision decriminalising homelessness. In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe's Commissioner for Human Rights indicated his concern at measures taken to prohibit rough sleeping and the construction of huts and shacks, which have widely been described as criminalising homelessness in practice. The Commissioner urged the Hungarian authorities to investigate reported cases of forced evictions without alternative solutions and of children being taken away from their families on the grounds of poor socio-economic conditions. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about state and local legislation, based on the Fourth Amendment to the Fundamental Law, which designates many public areas as out-of-bounds for "sleeping rough" and effectively punishes homelessness. On 20 June 2018, the Hungarian Parliament adopted the Seventh amendment to the Fundamental law which forbids habitual residence in a public space. The same day, the UN Special Rapporteur on the right to adequate housing called Hungary's move to make homelessness a crime cruel and incompatible with international human rights law.

Hungary refuses the statement that it would criminalize homelessness: for the first time since the political transition of 1989, the Fundamental Law of Hungary includes a provision which encourages taking care of people without shelter. To list some of the Government's actions in this regard: new care-providing stations have been opened; the capacity of shelters in Budapest has been increasing; humiliation of vulnerable person(s) has been qualified as a crime in the new penal code; furthermore, in recent years the total amount of funds available in tenders for institutions that provide care for homeless people reached 1 billion HUF.

The Fundamental Law declares the provision of possibilities for a dignified living as a goal of the state. To reach this goal, the state shall assist, to the biggest feasible extent possible, in the efforts to avoid and diminish homelessness, as well as the efforts to provide basic liveable conditions. In accordance with this, the state and the local governments seek to provide accommodation for everyone without shelter.

Initially attention must be drawn to the fact that the State ensures the preservation of human dignity as well as conditions required to preserve human dignity by various means.

According to the 42/2000 (IX.8.) AB decision of the Constitutional Court of Hungary one aspect of this obligation of the State is that it shall establish, maintain and operate a social security system and social security institutions in order to ensure a minimum level of benefits that is required to secure a minimum livelihood. As it is highlighted in the decision of the Constitutional Court one of the fundamental constitutional criteria for establishing national social security system and institutions is the protection of human life and dignity.

In order to protect the right to human life and dignity the State shall secure the basic preconditions of human existence. Accordingly, in case of homelessness, the State shall be obliged to provide support and shelter for those in need in situations where human life is directly threatened. The obligation of providing shelter does not correspond to guaranteeing the "right to have a place of residence". Thus, the State shall only be responsible for securing a shelter if homelessness directly threatens human life. Therefore, only in the case of such an extreme situation is the State obliged to take care of those who themselves cannot provide for the fundamental preconditions of human life.
As held by the Constitutional Court, "the legislature enjoys relatively great liberty in determining the methods and degrees by which it enforces constitutionally-mandated State goals and social rights. A violation of the Constitution may arise only in borderline cases when the enforcement of a State goal or the realisation of a protected institution or right are clearly rendered impossible by either interference by the State or, more frequently, by its omission. Apart from this minimum requirement, there are no constitutional criteria – except for the violation of another fundamental right – to determine whether or not legislation serving a State goal or a social right is constitutional."

In light of the above the modification of Article XXII of the Fundamental Law of Hungary does not change the concept that Hungary shall strive to ensure decent housing conditions and access to public services for everyone.

The Fourth Amendment of the Fundamental Law extended the scope of Article XXII by stating that in order to ensure decent living conditions, the State and municipal governments shall strive to ensure accommodation for homeless people.

Whereas the Seventh Amendment of the Fundamental Law has introduced the following: "The State and local governments shall also contribute to creating decent housing conditions and to safeguarding the use of public spaces for public purposes by striving to ensure accommodation for all persons without a dwelling."

This paragraph clarifies that besides ensuring the conditions for adequate housing, the State does not support the improper use of public spaces, such as the use of public spaces for habitual residence. According to the reasoning of the Seventh Amendment using public spaces as habitual residence infringes the proper use of public spaces. Public spaces according to their functions serve public purposes, while the use of public spaces for habitual residence does not constitute a public purpose. The protection of public spaces guarantees that everyone shall enjoy the use of public spaces according to their function with no interruption in exercising ones fundamental rights (e.g.: right to peaceful assembly). In order to express this legislative aim paragraph (3) of Article XXII of the Seventh Amendment introduced the prohibition of using public spaces for habitual residence. Considering that currently the number of available shelter beds is sufficient to provide accommodation to those in need, a prohibition of habitual residence in public spaces could be realistically adopted. A ban on sleeping rough is not without precedent in Europe. Several other EU Member States have already passed certain regulations on the issue. Such behaviour, for example, is sanctioned on a constitutional level in Cyprus and Malta. On top of this, there are many other countries (Austria, Belgium, Estonia etc.) where the question appears indirectly in the constitution.
The Seventh Amendment will be entering into force as of 15. October 2018.

Non-compliance with the European Social Charter

(72) The 2017 Conclusions of the European Committee of Social Rights stated that Hungary is not in compliance with the European Social Charter on the grounds that self-employed and domestic workers, as well as other categories of workers, are not protected by occupational health and safety regulations, that measures taken to reduce the maternal mortality have been insufficient, that the minimum amount of old-age pensions is inadequate, that the minimum amount of jobseeker's aid is inadequate, that the maximum duration of payment of jobseeker's allowance is too short and that the minimum amount of rehabilitation and invalidity benefits, in certain cases, is inadequate. The Committee also concluded that Hungary is not in conformity with the European Social Charter on the grounds that the level of social assistance paid to a single person without resources, including elderly persons, is not adequate, equal access to social services is not guaranteed for lawfully resident nationals of all States Parties and it has not been established that there is an adequate supply of housing for vulnerable families. With regard to trade union rights, the Committee has stated that the right of workers to paid leave is not

sufficiently secured, that no promotion measures have been taken to encourage the conclusion of collective agreements, while the protection of workers by such agreements is clearly weak in Hungary and in the civil service the right to call a strike is reserved to those unions which are parties to the agreement concluded with the government; the criteria used to determine public servants who are denied the right to strike go beyond the scope of the Charter; public service unions can only call a strike with the approval of the majority of the staff concerned.

Hungary is committed to further developing the existing social standards in order to increase the well-being of Hungarian people. The assessment that the Governments' actions since 2010 are successful is supported by the fact that Hungary has performed at or above the level of EU-average in 8 out of the 12 indicators of the renewed Social Scoreboard, published by European Commission.

In Hungary Act XCIII of 1993 on Labour Safety lays down the detailed rules on establishing the personnel, material and organizational conditions for occupational safety and occupational health in the interest of protecting the health and ability to work of persons in organized employment and consequently improving their working conditions, thereby preventing accidents at work and occupational diseases. The Act also defines the responsibilities, rights and obligations of the State, employers and employees is this regard. In order to ensure that all persons working benefit from the right to health and safety at work, the Labour Safety Act states (Section 84 Paragraph 1) that the occupational safety and health authority shall be empowered to hold inspections at any workplaces, without a special permit. Regarding the atypical forms of employment, especially in the case of teleworking, the Labour Safety Act stipulates (Section 86/A Paragraph 7) that the occupational safety and health board shall conduct the inspection only on workdays, between 8 a.m. and 8 p.m., which guarantees respect for private and family life and home. The occupational safety and health administration shall notify the employer and the employee at least three working days in advance concerning the inspection. The employer shall obtain the employee's consent for admission into the designated work place for this purpose before the commencement of the inspection.
The Fundamental Law of Hungary provides that "Hungary shall endeavour to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance laid down in the relevant legislation in the case of maternity, illness or disability, or if he or she becomes a widow(er) or orphan, or loses employment due to circumstances beyond his or her control."

Hungary shall advocate the livelihood of the elderly persons by maintaining a single compulsory pension system based on social solidarity, and by authorizing the operation of social institutions established on a voluntary basis (Article XIX (1) - (2) of the Fundamental Law).

Hungary shall provide social security to those in need through a system of social institutions and measures. The nature and extent of the social measures are set out in the Act III of 1993 on social administration and social services, which intends to meet the objective to determine the forms and organisation of certain social benefits provided by the state in order to establish and maintain social security, the conditions for eligibility for the social benefits and the guarantees of the enforcement thereof.

A separate act, namely, Act IV of 1991 on Job Assistance and Unemployment Benefits provides for the benefits of unemployed persons and the promotion of employment. The priority duties of the state include promoting the freedom of work and profession, promoting the provision of support for job seekers and preventing and mitigating the negative consequences of unemployment. Reflecting the Hungarian Government's employment policy, the act governing the rights and obligations of the participants of the labour market defines the most important obligations of the state bodies in the field of employment policy, regulates the most common forms of support promoting employment, the job search service system, the eligibility criteria and the extent of the specific services, and the rules of their termination and recovery. The Unemployment Act also regulates the National Employment Fund that provides for the funding of supports and benefits, and the procedural rules of awarding supports and benefits.

At its election in 2010, the Government of Hungary defined as its objective to create one million new taxable jobs till 2020. In order to achieve this it is essential for the rate of employees in the population to increase at a considerable rate; for the Hungarian labour market to belong to one of the most flexible ones in Europe; and for the enterprises to create as many new high quality jobs as possible, thus employing the greatest possible number of employees. This purpose was served by reforming the labour law by the adoption of the new Labour Code at the end of 2011.

Ten years ago the employment rate was at a remarkably low level, and from the point of view of the economy it was also rather unfavourable that almost one and a half million people of active employment age stayed away from the labour market.

The Government of Hungary considers the maintenance and increase in the number of jobs and the expansion of employment as the primary task in the world of work. This government policy is linked to the relatively short duration of job-search support, as we also want to encourage active job search and improve labour market prospects for those who lose their job. This policy proved to be successful as the number of unemployed is gradually decreasing and the increase in the number of vacancies creates good employment opportunities for those who are still unemployed today.

As of January 2012, the then existing disability pension for those who were below retirement age, the regular social annuity and temporary invalidity annuity were

transformed into health insurance benefits (benefits for persons with changed working capacity), whereas disability pensions for those who were above retirement age were transformed into old-age pensions. The aim of the reform was not the reduction of expenditures or to limit inflow into disability benefit but to create –in place of the former passive pension system - a unified, transparent system of benefits related to changed working capacity, where the emphasis is put on the remaining capabilities and rehabilitation, taking into account medical, employment and social aspects as well. All these measures contribute to end benefit dependency and to ensure equal opportunities, create prospects for valuable work, self-sustainability and raise living standards. The amount of benefit is based on former income of a person entitled to benefits for persons with reduced working capacity and is adjusted to the state of health, including the level of remaining work ability. According to this, persons who have a better health status and are more likely to find employment in the labour market may find lower benefits than those whose health condition are lower or have fewer opportunities for rehabilitation. The sum of the benefit is higher when the primary function of the benefit is replacing income. In cases where the main function of the benefit is support for labour market integration, strengthening and completing existing skills, the amount of cash benefits are lower. The benefits are regularly increased. Annual adjustments of benefits are made in January according to the predicted increase in consumer prices (inflation). Regarding the vulnerability of the target group, it is important in procedures related to benefits for persons with changed working capacity to inspect continuously measures capable to strengthen social safety, however the evaluation of the reform affecting the entire supply system will be realized subsequently in relevant EU financed project.

Amendment of the Act on strikes

(73) Since December 2010, strikes in Hungary were made illegal in principle when the government of Victor Orban passed an amendment to the so-called Act on strikes. The changes mean that strikes will, in principle, be allowed in companies associated with governmental administration through public service contracts. The amendment does not apply to professional groups that simply do not have such a right, such as train drivers, police officers, medical personnel and air traffic controllers. The problem lies somewhere else, mainly in the percentage of employees who must take part in the strike referendum, to make it important -up to 70 %. Then the decision on the legality of strikes will be taken by a labour court that is completely subordinate to the state. In 2011, nine applications for strike permits were submitted. In seven cases they were rejected without giving a reason; two of them were processed, but it proved impossible to issue a decision.

The statements of the report in connection with the Hungarian strike legislation are improper. First of all, it is not true that strike is prohibited to those unions which are parties to the agreements concluded with the government, and second of all it is not correct that the professional groups do not have the right to strike, and lasltly the statistic of strike permits in 2011 is taken out of context which is highly misleading.

Pursuant to Act VII of 1989 on strike (Strike Act), strike shall not be held at judicial bodies, the Hungarian Defence Forces or law enforcement agencies. At state administration bodies, the right to strike may be exercised while complying with the particular rules set out in the agreement between the Government and the relevant trade unions, but the members of the professional personnel at the National Tax and Customs Administration of Hungary shall not be entitled to exercise the right to strike.

The strike agreement (Agreement) concluded with respect to public administration has been in force since 1994. Pursuant to the agreement, trade unions concerned, national advocacy groups of local governments, civil servants of public administrative bodies and local governments may exercise their rights provided by the Strike Act while complying with the particular rules set out in the Agreement. On the basis of the restrictions declared in the Agreement participation in strike is forbidden for civil servants exercising employer's rights which concern fundamentally the existence of the public service relationship. The reason for this is that civil servants exercising employer's rights which concern the existence of the public service relationship play a fundamental role in the operation of the public administrative body and in taking lawful public administrative decisions; therefore, the increased protection of public interest justifies the exclusion from the exercise of right to strike. The trade unions and national federations of local governments being signatory parties to the Agreement have also agreed with this restriction.

Only the trade unions being signatories of the Agreement or joining thereto and their operating bodies shall be entitled to the right to initiate a strike. Trade unions not having signed the Agreement are not entitled to the right to initiate a strike, because the Agreement settles important rules of procedure relating to the commencement and execution of a strike. The Agreement declares the open nature of the Agreement, that is, trade unions and interest representations of local governments operating in the field of public administration may join the Agreement any time.
An additional restriction is that the right to commencement of a strike may only be exercised with the authorisation of the majority of civil servants; such authorisation may not only be obtained by signatures, but by a joint declaration made at the work forum organised by the trade union. However, participation in giving a collective authorisation does not mean participation in the strike. The Agreement prescribes the authorisation of the majority of civil servants as a condition, because due to the particular working order of public administration and the public interest in the stability of the state mechanism, a strike of the minority would also hinder the work of those who do not wish to join the strike. The threshold was not set by the Government; it was accepted by the trade unions as well when signing the strike agreement, therefore, the restriction may not be deemed unjustified.

Pursuant to Section 4 § (2) of the Strike Act by those employers, that fundamentally affect the population – so in particular the public transport, the area of

telecommunication, electricity, water, gas and other energy service organ – the strike shall not obstruct their satisfactory service. Public services satisfy elemental and massive needs, the absence of them cause major disadvantage, and threat to life in particular cases. Consequently, the users of the public service shall be supplied with proper or satisfactory services. The public service is obligated to supply these services. The Commissioner for Fundamental Rights – based on the Constitutional Court's practice of fundamental rights – clarified in his reports: the state's obligation of institutional protection includes the grant of the public services during the strike. To fulfill this requirement the restriction of strike may be constitutional. It is possible – and this is the responsibility of the legislator – to find a moderate solution which ensures the requirement of public services and does not jeopardise the right to strike either.
The rules of Act CLXXVIII of 2010 on the amendment of the Strike Act are in compliance with the constitutional requirement of the treatment of fundamental right collision. The amendments do not make strikes impossible; they contribute to the exercise of strike. Existing regulation makes the former, often improper, abusive practice of strikes less possible.

Based on most of the international documents related to strike it is clear that in such cases strike could be reasonably restricted, but the solutions protecting the collective rights' shall not make the strike impossible. Therefore, it is possible to set up an external decision-making forum, if this forum fulfills two essential requirements: it shall be impartial in the debate, and the procedural conditions shall not make the strike impossible In compliance with international requirements, it is the independent and impartial Hungarian court's responsibility to decide in the case of a fundamental right collision. The independence and the impartiality of the Hungarian court are guaranteed, since the Government, has no impact on the court's decision.

The Hungarian Central Statistical Office (KSH) publishes annually strike related statistical data based on the reports of economic organizations. The data approved in June 2017 suggest that 21 strikes were notified between 2010 and 2016 and approx. 45 000 people took part in these strikes causing 408 200 lost working hours.

Concerning the number of strikes it is important to note that a new institution, the Labour Advisory and Disputes Settlement Body (MTVSZ) has an important role in collective labour disputes. MTVSZ members are nationally recognised acedemics and practitioners, who cooperate independently in labour disputes.

Rights of Children

(74) The UN Committee on the Rights of Children's report on 'Concluding observations on the combined third, fourth and fifth periodic reports of Hungary', published in 14 October 2014, voiced concerns over an increasing number of cases where children are being taken away from their family based on poor socio economic condition. Parents may lose their child due to

unemployment, lack of social housing and lack of space in temporary housing institutions. Based on a study by the European Roma Right Centre, this practice disproportionately affects Roma families and children.

According to Act XXXI of 1997 on the Protection of Children and Guardianship Administration (Child Protection Act), the child should be separated from the parents or other relatives exclusively for their own sake, in legally described cases and manner. Therefore, the child must not be separated from their family solely for financial reasons, it would be a clear violation of the law. Should the first instance guardian authority decide to do so, the client may file an appeal, and then a review of the second instance decision can be initiated at the court by referring to an infringement of law. Based on the information available, no change in the decision of the first instance authority of guardianship was made because the child was removed from the family only because of a threat on financial reasons. The court did not, in any case, annul the decision of the guardianship authority for the reason that it was contrary to the Child Protection Act.

The Child Protection Act guarantees that the temporary placement and the placement of the child should also be reviewed at a defined date which also serves the purpose of the child.

The Ministry of Human Capacities as the supervisory body of the metropolitan and county government departments acting in the field of child protection and guardianship duties, initiates supervisory measure on the basis of petitions and the comprehensive and objective control of the metropolitan and county government offices, and will take the necessary measures if it detects any violation of law. In addition, it establishes a system of child protection in the preparation of its legislative tasks and in the design and implementation of developments affecting this system to promote the best interests of children, promoting the rights of the child to both protection and the right to be brought up in a family.

It is important to note that the decision-making process of the guardianship authority is extremely complex and the existing legislation lays out a number of procedural safeguards to ensure that such incidents do not occur. It is of the utmost importance that the guardianship authority, taking the current Child Protection Act into consideration, if the child should be removed from the family, they can be only placed in the system of child protection if there is no parent and other relative who is suitable to raise the child. The family placement under Civil Code also precedes the placement at the foster parent or in the children's home.

Removing a child from a family is therefore the ultimate tool to protect them, with respecting graduation, if they cannot be raised in the family environment despite the assistance. The child's upbringing in their own family is also supported by special benefits, services and measures specified in the law. In cases where a child is removed

from their family, he/she is already at risk of being vulnerable and not primarily based on the income situation and the poverty of his/her parents, but the child's abuse or neglect. When removing children from a family, financial endures with other problems – parents' lifestyle, which leads to neglect of their children, keeping minimal conditions which, in the case of ineffective family care (e.g. if hygiene rules are not respected to the health of their children being compromised or if they do not feed them properly, etc.), may indeed lead to the child being removed.
Therefore, in each case, taking the uniqueness of these cases into consideration, it is also possible to draw conclusions from the available information, taking into consideration the sequence of events and the cause and effect relationships. It is merely an examination of whether there are any material reasons for the grounds for removal, but it is not enough to judge individual cases or characterize tendencies.

Adequacy and coverage of social assistance and unemployment benefits

(75) In its Recommendation of 23 May 2018 for a Council Recommendation on the 2018 National Reform Programme of Hungary and delivering a Council opinion on the 2018 Convergence Programme of Hungary, the Commission indicated that the proportion of people at risk of poverty and social exclusion has decreased to 26,3 % in 2016 but remains above the Union average; children in general are more exposed to poverty than other age groups. The level of minimum income benefits is below 50 % of the poverty threshold for a single household, making it among the lowest in the Union. The adequacy of unemployment benefits is very low: the maximum duration of 3 months ranks as the shortest in the Union and represents only around a quarter of the average time required by job seekers to find employment. In addition, the levels of payment are among the lowest in the Union. The Commission recommended that the adequacy and coverage of social assistance and unemployment benefits be improved.

A key general priority for the Hungarian Government is increasing economic growth and employment, in addition to strengthening competitiveness. We believe that sustainable economic growth contributes to the achievement of social well-being. The Hungarian Government has set the establishment of a work-based society as an objective; meaning that the primary source of living of the working age population should be earned from work instead of social assistance. One of the decisive aspects of employment policy measures is the enforcement of the "work instead of aid" principle, which has resulted in a fundamental transformation of the social support system of Hungary. The main feature of the changes is that the emphasis on passive care (and social assistance) has shifted to the support of employment. The proportion of passive expenditure has fallen from 0.7% of the GDP to 0.2%, while the active employment aid has increased from 0.3% to 0.8% of GDP, and this is one of the highest number in the EU.

It is a positive development that for the first time the European Commission recognized that in the framework of public employment substantial steps have been taken to encourage a transition to the primary labour market, furthermore public employment

has a significant role in social policy as well. Public employment plays an important role in social policy especially in the most disadvantageous areas. Hungary has implemented crucial acts to diminish the trap-like effect of the dependence on welfare in these areas.

Since 2010 several measures have been taken in order to reduce the number of people living at risk of poverty and social exclusion. As a result the number of people living at risk of poverty and social exclusion has decreased by 9.2% and the number of children to 43.9% in 2013 to 31.6% in 2017, which is one of the highest in comparison with other Member States.