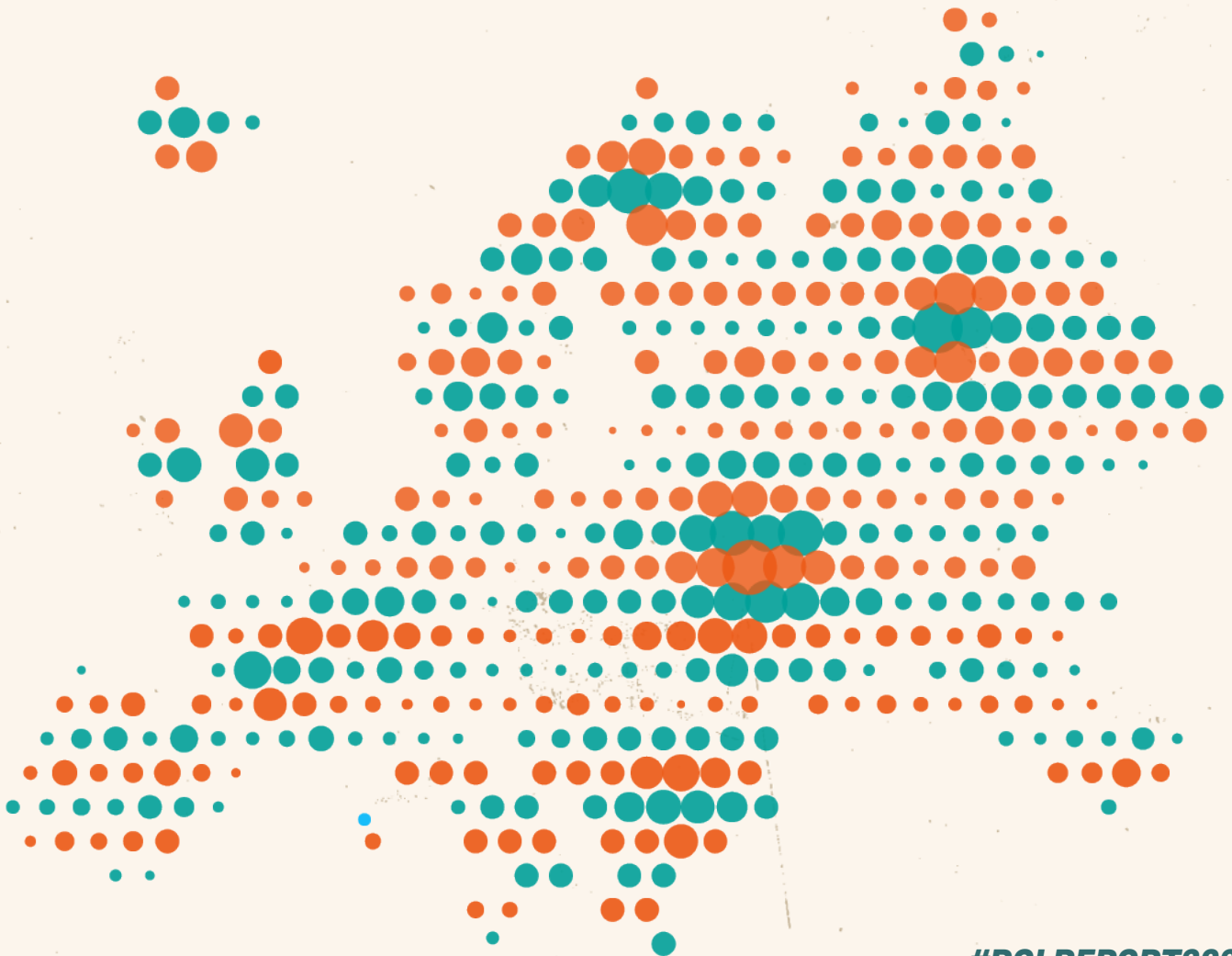


LIBERTIES

RULE OF LAW REPORT

2023

HUNGARY



#ROLREPORT2023

FOREWORD

This country report is part of the Liberties Rule of Law Report 2023, which is the fourth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2023 Report was drafted by Liberties and its member and partner organisations, it and covers the situation during 2022. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2023 Report includes 18 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Forty-five member and partner organisations across the EU contributed to the compilation of these country reports.

[Download the full Liberties Rule of Law Report 2023 here](#)

TABLE OF CONTENTS

About the authors	4
Key concerns	4
Anti-corruption framework	11
Media environment and freedom of expression and of information	14
Checks and balances	24
Enabling framework for civil society	26
Disregard of human rights obligations and other systemic issues affecting the rule of law framework	28
Fostering a rule of law culture	30
Contacts	32

HUNGARY

About the authors



The Hungarian Civil Liberties Union is a human rights NGO. Since its foundation in 1994, the organisation has been working to make everybody informed about their fundamental human rights and empowered to enforce them against undue interference by those in positions of public power. HCLU monitors legislation, pursues strategic litigation, provides free legal aid assistance in more than 2,500 cases per year, provides training and launches awareness-raising media campaigns to mobilise the public. It stands by citizens unable to defend themselves, assisting them in protecting their fundamental rights. They are present at courts, national and international conferences, universities, in the capital and the countryside.

Key concerns

Political pressure on judges, obstacles to the work of the Judicial Council, and reports of corruption and abuse of power involving judicial leaders have led to a deterioration of the justice system in 2022.

The European Commission's recommendations on the judiciary are completely the opposite of what actually happened in 2022. This is true both in terms of the strength of the role of the National Judicial Council and the exercise of the appointments and other administrative powers of the Curia, the Supreme Court of Hungary.

Although important changes have been made to the anti-corruption framework, there has been no reform regarding lobbying, nor has there been a comprehensive response to the revolving press phenomenon. While the rules on asset declarations have changed, effective monitoring and enforcement are questionable. Although there have been prosecutions in high-level corruption cases, the results are not yet visible.

Measures taken at the end of 2022 could help to improve the corruption situation in some areas. Never before have so many anti-corruption measures been adopted under the Fidesz government, although it is doubtful that they can bring about meaningful and systemic change.

Hungary continues to face serious challenges in the area of media freedom and pluralism and freedom of information. Although a law has been passed to facilitate access to information, other laws have undermined this. And the media situation remains largely unchanged in its propagandistic character; the takeover of

the Russian propaganda narrative has made this even more apparent.







There have been no improvements regarding the independence and efficiency of the media authority, public service media, or public advertising in line with the recommendations by the European Commission.

The perpetuation of a permanent special legal order, purportedly established to deal with the COVID-19 pandemic, and later with the war in Ukraine, continues to undermine the system of checks and balances and the separation of powers.




The level of hostility towards civil society organisations in 2022 was similar to the year before. There has been no substantive, positive change in the area of barriers affecting NGOs.

The permanent special legal order enables the government to disregard citizens' fundamental rights. The most important institution for the protection of fundamental rights, the ombudsman, has been downgraded by the Global Alliance of National Human Rights Institutions, mainly because of its inactivity.

State of play

-  Justice system
-  Anti-corruption framework
-  Media environment and freedom of expression and of information
-  Checks and balances
-  Enabling framework for civil society
-  Systemic human rights issues

Legend (versus 2022)

-  Regression
-  No progress
-  Progress

Justice system

Key recommendations

- The Curia and the National Judicial Office should fill judicial and court management positions through regular and fair tendering procedures.
- The government should strengthen judicial self-governance by expanding the powers of the National Council of the Judiciary to counterbalance political influence on the judicial administration.
- Reports concluding investigations of corruption of judicial leaders must be made public by the judicial bodies in order to restore confidence in the work of the courts.

Judicial independence

In 2022, there were no substantive changes to the key policies and practices that undermined the independence of the judiciary. Thus, the appointment and selection of judges and court presidents, the transfers, dismissal and retirement regime of judges, court presidents, and the oversight of their promotion and practice remained substantially unchanged. Likewise, there have been no changes in the allocation of cases, but the status and powers of the National Judicial Council (hereinafter: NJC) remain problematic. This is not to say that the overall state of judicial independence has not deteriorated, as practices under these rules continue to erode it. The so-called super milestones set as a condition for payments from the EU Recovery Fund would go some way to restoring judicial independence, and therefore a positive change in the rules could be envisaged in the near future. What will be achieved and how the reforms will have a meaningful impact in practice will only become clear in 2023 and beyond.

Political pressure on judges

It would be difficult to measure whether and to what extent political pressure is exerted on the judges who adjudicate, so the best is to rely on the narratives of judges. However, judges rarely make such statements publicly, so very little reliable data is available. In 2022, in one of the most widely publicised statements,

a senior judge at the Budapest Metropolitan Court, and spokesperson of the NJC told the Observer that he and his colleagues on the bench “have been witnessing external and internal influence attempts” for several years.¹ He said that political overreach came from all sides of the political spectrum but his comments are an indictment of Orbán’s ruling Fidesz party, which has held a super-majority for much of its 12 years in power. One “clear internal influence attempt” he cited was a discussion among senior court officials and a prime suspect in a corruption case about firing the investigating judge or making life “uncomfortable” for them at work, according to redacted secret documents leaked to Hungarian media. The case centres on a Fidesz MP and former deputy justice minister who has been accused of accepting bribes – charges he denies. The lack of transparency in judicial appointments made by the president of the NOJ also raises concerns over nepotism, as relatively unqualified friends and family of well-connected politicians have taken senior posts in the court system. One former judge (who wished to remain anonymous) said the vast majority of cases proceeded fairly but politically sensitive matters would be heard in the Supreme Court by a “loyal panel of judges who will make decisions in favour of the government.”²

1 [Viktor Orbán’s grip on Hungary’s courts threatens rule of law, warns judge.](#)

2 Ibid.

Appointment practice and nepotism

Every year, the NJC reviews and gives its opinion on the appointment practice of the President of the Curia, the Supreme Court of Hungary. András Zs. Varga's performance was reviewed for the first time this year. According to the unanimous opinion of the NJC members, Mr Varga Zs's actions in 2021 did not comply with the law. The evidence shows that Mr Varga Zs. was willing to circumvent the legal framework in order to fill important judicial positions, such as Curia judges and court leaders, with people who are close to the ruling party, as well as those who contributed to putting him in office. According to the law, the President of the Curia must, when evaluating the candidature, either appoint the judge ranked first by the Judicial Council or, exceptionally, with the express consent of the NJC, he may propose the appointment of a judge ranked second or third. In 5 of the 11 applications published in 2021, he did not initiate the appointment (or transfer) of the first-ranked judge. He did not even once approach the NJC to seek its consent to deviate from the ranking. In one case, he declared the fourth-ranked candidate the winner, which the law does not allow even with the NJC's consent. Importantly, the NJC's right to consent is one of the powers that give it real control over judicial appointments. Failure to give consent

is in itself a serious breach of the law. In addition, András Zs. Varga has also introduced an unforeseeable element in the evaluation of the applications, which has led to the outcome of some applications being decided not on the basis of objective and transparent criteria, but rather on the basis of a system of criteria arbitrarily set up by him.³

In June 2022, the wife of the President of the Curia was appointed to a senior judicial job despite getting fewer votes than her rival in an election held by judges. Helga Mariann Kovács, who is married to András Zs Varga, was appointed to lead a judicial panel dealing with politically sensitive cases at the Budapest court of appeal, although she had fewer than half of the votes of her rival candidate. Defenders of the decision argued that a vote by the judges is only an expression of opinion and does not bind the decision-maker.⁴ The Curia argued that they had no role in selecting the person. The new order of case allocation also revealed that the panel of judges chaired by Helga Mariann Kovács would include Éva Kovács, the wife of the President of the Metropolitan Court of Appeal, who is also the sister of Zoltán Kovács, the Minister of State for International Communications and Relations in the Prime Minister's Office.

3 [Törvénybe ütköző bírói kinevezések a Kúrián](#) (Unlawful appointments at the Curia, Hungarian Helsinki Committee), 03.09.2022.

4 [A Kúria-elnök feleségét leszavazták, de a Fővárosi Ítéltábla elnöke szerint ettől még lehet tanácselnök](#) (The wife of the President of the Curia was voted down, but the President of the Metropolitan Court of Appeal says she can still be the President of the Council), 15.08.2022.

Smear campaigns against judges

In 2022, the statement in the Observer mentioned above led to the launch of smear campaigns by the government against judges in office and members of the NJC. In response to the statement in the Observer, Zsolt Bayer, a leading publicist for government propaganda, said: “Csaba Vasvári is a bastard who has no place on the bench. Get him out of there!”⁵ A few weeks later, the government-controlled press demanded the resignation of judges who met the new US Ambassador to Hungary during a presentation visit. The campaign was joined by the President of the Curia, who said the judges had broken the law by meeting the ambassador. Overall, the smear campaign was designed to undermine the legitimacy of the NJC, which stands for judicial independence, and to send a signal to all sitting judges of what they could expect if they stood up for judicial independence.

Operational difficulties of the National Judicial Council

One of the most important problems currently facing the independence of the judiciary is that the legal framework governing the organisation and functioning of the NJC does not give them sufficient powers to supervise the activities of the President of the National Office of the Judiciary (NOJ). The NJC is not a legal person and has no direct legislative authority or consultation rights on legislative proposals affecting the justice system. However, the fact

that the current President of the NOJ does not question the legitimacy of the NJC and that the election of the alternate members of the NJC has taken place so that the NJC is now fully operational is a significant improvement on the previous situation. The current President of the NOJ is cooperating with the NJC, albeit only to the minimum extent required by law. Unfortunately, even cooperation at the legal minimum does not provide the necessary checks and balances.

Moreover, the limits of the NJC’s powers are, in practice, determined by the personal interpretation of the law by the respective President of the NOJ. For example, when the NJC wishes to carry out substantive control activities and investigate secondment practices, or the way in which rewards have been granted to court managers and the NOJ, the necessary document inspection is not allowed by its President. This prevents the NJC from effectively exercising its right of supervision. The President of the NOJ regularly argues in such cases, for example, that the NJC does not have the power to do so under the current legislation. However, the result of this is that the supervised entity’s interpretation of the law is what decides what is and is not within the powers of the body, in regards to supervising it. There is no legal forum to which the NJC can appeal against negative decisions of the NOJ President, and these cases therefore end up in disputes without merit.

5 Kinek hol van helye? <https://badog.blogstar.hu/2022/08/20/kinek-hol-van-helye-/118428/>

For example, the President of the NOJ did not grant access to the files to the committee that was supposed to investigate the bonuses given to the judicial leaders appointed by the NOJ President. The President also refused to allow access to the files when investigating an extremely rampant practice of secondment that was significantly different from the original legislative intention. Nor did the President of the NOJ allow access to the file of the investigation launched against the head of the largest Hungarian court, Péter Tatár-Kis, the President of the Metropolitan Court.

The Code Ethics for Judges

In 2022, a debate emerged on the legitimacy of a code of ethics for judges. This dispute is an excellent example of the NJC's conflicts with the President of the Curia. On 2 March 2022, the NJC adopted the Code of Ethics for Judges as the first Code to be drafted by the NJC as a self-governing body of elected members of the judiciary. The Code is a result of a broad consultation process, and the NJC involved the entire judiciary in all processes, from the preparatory work on the Code, the drafting and commenting, until its adoption after the debate. The President of the Curia, the only non-elected member by the judges of the NJC, initiated a judicial review procedure before the Constitutional Court after his withdrawal from the process of drafting the Code (case no. II/01285/2022). The President

of the Curia criticised the fact that the NJC had drafted the Code without the proper authority, and the fact that the Code did not refer to the Fundamental Law. The motion has not yet been examined by the Constitutional Court.⁶

Quality of justice

Access to justice

Access to justice presents similar problems as expressed in the 2021 report. In many types of cases, the right of redress within the administration has been abolished, and can only be appealed immediately to the courts. This affects the ability of many disadvantaged people to enforce their rights, and still remains without any substantive change in this respect.⁷

Increased remuneration of judges and prosecutors

The increase in the salaries of judges and prosecutors, which was decided in 2019, was completed in 2022. The process brought the salaries of judges and prosecutors to the same level. In total (over the three years), the salary increase was close to 60 percent.

6 For our detailed position on the motion in Hungarian, see the [amicus curiae submission](#) of the HCLU, the Hungarian Helsinki Committee, the Eötvös Károly Policy Institute and the Amnesty International Hungary.

7 See the Hungarian chapter of Liberties' report on 2021.

Fairness and efficiency of the justice system

Length of proceedings

From 1 January 2022, a new law allows litigants to obtain monetary compensation from the court in the event of an unreasonably long court proceeding.⁸ The law was adopted in response to the ECtHR's frequent condemnations of lengthy civil proceedings. Case statistics for 2022 are not yet available, so it is not yet possible to judge whether the law has lived up to its expectations.

A separate amendment to the law was introduced to speed up freedom of information litigation as part of the response to the EU's requirements under the rule of law mechanism. The amendments to speed up trials were indeed timely. Litigation on data requests to ensure public access to data of public interest usually takes many months, if not years, to reach a final judgment. In many cases this has rendered the litigation pointless. The amendment has added procedural rules which will speed up the process. Specific procedural deadlines, set in days, and rules on the procedural steps to be taken were laid down. These rules should indeed reduce the potential for time delays in proceedings in cases starting in 2023. However, the amendment also included a rule with a slowing effect: holders of trade secrets may now intervene in a lawsuit in order to ensure that the data controller wins, which

is hardly conducive to a timely conclusion of public litigation or to the widest possible exercise of freedom of information.⁹

Corruption of the judiciary

One of the most important Hungarian corruption cases of 2022 concerned abuses between former Deputy Minister for Justice Pál Völner and the President of the Hungarian Association of Judicial Officers, György Schadl, which has reached some high-ranked court leaders. According to the investigation documents in the case, which have been presented to the press, Mr Schadl previously approached the President of the NOJ with a request to remove a judge from the bench. Instead of refusing the request, the President of the NOJ arranged a personal meeting with the President of the Metropolitan Court, Péter Tatár-Kis, who said that he "could not fire the judge, but could revoke his mandate as head of the team or make him feel uncomfortable at work." What makes the case particularly worrying is the fact that the President of the NOJ has kept the results of the internal investigation a secret. It is therefore feared that if they fail to clarify themselves, suspicions of impermissible entanglements will not only cast a shadow over their future careers, but could tarnish the entire judiciary. The report is currently the subject of a public disclosure lawsuit initiated by Transparency International. The case has been suspended by the court of first

8 See also the Hungarian chapter of Liberties' 2021 Rule of Law Report.

9 <https://tasz.hu/allaspontunk-az-informacioszabadsag-szabalyozasanak-2022-oszi-modositasarol>

instance and is currently awaiting a decision by the data protection authority.¹⁰

Anti-corruption framework

Key recommendations

- The Hungarian government needs to undergo a fundamental change of mindset: it should internalise anti-corruption goals, rather than externalising them as a condition for access to financial resources. Furthermore, to achieve these goals, it should not undertake only sporadic anti-corruption measures, but should bring the entire organisation of the state and the exercise of power itself in line with these goals.

The so-called conditionality mechanism, the access of Hungary to the Structural Funds and the Recovery Fund, have in recent months brought particular attention to corruption in Hungary and its links to the rule of law. Many Hungarian experts, European decision-makers and EU Member States have assessed the situation in recent months, and as a result of intensive consultations, the Hungarian state has taken a large number of anti-corruption measures, drafted or amended legislation and started to implement it. Just a month ago,

decisions were taken on the adequacy and sufficiency of the Hungarian package of measures. Similar decisions are expected in the near future, while the Hungarian government is planning to take further measures to make available resources that are not yet available. The Hungarian anti-corruption framework is currently changing on an almost daily basis. Its evaluation, both as a whole and of its individual elements, is carried out on a daily basis too, both in Hungary and by the various EU institutions. The effects of 2022 events on the anti-corruption framework are all well known to the Commission, and could not be summarised in this report for reasons of limited space. Their assessment would be more superficial than the significance of these events would warrant. This is why, unlike other parts of this report, the following section focuses less on the specifics, such as the actions of the Hungarian state and their evaluation, and more on the context in a much shorter length than usual, and a more abstract analysis of the approach of the EU institutions and the Hungarian government.

Levels of corruption

Hungary has already been identified by several domestic, European, and international organisations as having systemic corruption problems that are not primarily a problem at the level of everyday life, but at the highest levels of state decision-making. In Hungary, corruption is not a problem that can be eliminated

10 https://hvg.hu/itthon/20221110_Peterfalvin_mulik_a_VolnerSchadlugyet_erinto_titkositott_OBHjelentesek_nyilvanosaga

by individual measures, but a regularly used public policy instrument, an integral part of the system itself. The Prime Minister and the governing party use public funds as a matter of course to maintain and strengthen their own power, and regularly provide public funds to political and economic actors sympathetic to their cause, which therefore also helps them to maintain their power. Some individuals and families close to the government are getting rich at a dizzying rate. Corruption is at the heart of the political and economic system in Hungary, and the laws, the legal status and composition of state institutions, the law enforcement practices of institutions, and the economic set-up are all aligned with it, all of which serve to ensure that the level of corruption can be held or even elevated without disruption. Public opinion is also becoming accustomed to, rather than objecting to, or even assisting in, this staggering level of public corruption.

Framework to prevent corruption

Under pressure from the European Union, the Hungarian state has adopted a number of anti-corruption laws and will adopt more in the near future. It is questionable how well these can be used to improve the situation in a deeply corrupt country like Hungary.

Even under the rule of law, legal guarantees are not always sufficient to solve social problems such as corruption. This is the case even when the state, at least in its public governance activities, is operating in accordance with the rule of law and when it is motivated by a sincere desire to eliminate corruption as a

systemic problem. But in a country where the rule of law and the fight against corruption are not the basis of government work, but is instead an externally imposed, anti-systemic expectation, legal guarantees designed to meet external constraints are most certainly not fit for their publicly stated purpose. In this context, it is highly revealing that the titles of the laws adopted in late 2022 state that they are being passed “to reach an agreement with the European Commission” and not to reduce corruption.

The anti-corruption laws adopted in the autumn of 2022 are a necessary but far from sufficient condition for any meaningful change in this respect, and for a significant reduction in the staggering levels of corruption criticised by the European Commission. The online Official Gazette of Hungary has no page limits, and as seen in recent years, its pages can take anything. Changing certain specific legal rules in a legal system that has been lacking guarantees regarding the rule of law for at least a decade is like dressing a reoffending criminal in new clothes and expecting him to become a law-abiding citizen. These specific legal norms that appear to be anti-corruption guarantees will remain just decorative elements of the legal system unless there is a fundamental change in the whole public and political system itself. Otherwise, the enforcement of anti-corruption norms will also be at the government’s beck and call. An independent and impartial judiciary, with independent and impartial judges, including on the Constitutional Court, is an indispensable condition for the enforcement of the rule of law. The conditions also include a prosecutor’s office that does not bow

to political will and a public legal aid service that is genuinely accessible to citizens, as well as the smooth and fearless functioning of civil society organisations and active citizens working for the rule of law. Independent authorities, which protect the fundamental rights of citizens and the rule of law in the abstract, must be genuinely independent and have the resources to operate. Moreover, public bodies must operate transparently and the press must be able to inform citizens freely from government influence on public affairs. Currently, none of these conditions are met, and the laws adopted do not promote or address these issues at all.

If there is a serious deficiency in any one of these areas, the measures presented by the Hungarian government to the European Commission are not a real barrier to the unscrupulous abuse of power. Their adoption legitimises sham measures.

It would also be important to change the mindset of the European Union institutions to achieve meaningful results. In the Hungarian situation, the problem is systemic, and therefore the solution can only be found at the systemic level. Identifying isolated problems or taking one measure at a time is not the answer. Although the Hungarian state can eliminate some of the problems identified by taking the required measures, it is doubtful whether this will affect the system as a whole. Indeed, taking a measure may prevent abuses from continuing in the same way as before, but, as the system is at its core an enabler, it is very easy to create another avenue for abuse. It follows that, while it is important for the EU

to identify the measures that the Hungarian state is required to take, it is also important to address them not only from the point of view of the institutions, procedures and powers, but also from the point of view of the results. In other words, examining and discussing the means per se is only half the job, and unfortunately very easy to circumvent. In this case, the fulfilment of the required measures does not prove that the objectives have been achieved. This would probably only be the case if both the Hungarian state and the EU had a mutual interest in achieving the anti-corruption goals. In this case, the measures taken (as a kind of indicator) would help to show where Hungary is on the road to achieving the objectives. The situation is fundamentally different: the Hungarian government does not want to achieve these goals, in fact it is explicitly opposed to doing so, and even disputes that the problems exist at all. Thus, as each indicator is met (also on the basis of decades of experience so far), it creates a situation where other measures must replace those that have just been taken. Concentrating only on the expected measures is therefore inappropriate in this situation for the EU to achieve its objective.

Investigation and prosecution of corruption

In Hungary, despite the level and volume of corruption, prosecutions of corruption offences are not common when high-ranking officials are exposed. In this light, what happened at the turn of 2021 and 2022 is particularly surprising. In one of the most serious government corruption scandals in recent years, Pál Völner, the now-resigned Deputy Minister

for Justice, was suspected of accepting bribes in the range of 10 million HUF in a series of abuses involving the Hungarian Chamber of Court Executives, which totalled hundreds of millions of HUFs. Investigations have been launched against a number of players, and the President of the Hungarian Chamber of Court Executors has been in pre-trial detention for more than a year (but is still the head of the organisation)¹¹ while the former deputy minister is still free. He was allowed to practise as a lawyer for months after his resignation, but has been barred from practising since October 2022 after he was charged by the prosecutor, and therefore suspended by the Bar Association (under a legal obligation).¹² The judicial phase of the criminal proceedings has not yet started.

Media environment and freedom of expression and of information 🟡

Key recommendations

- Parliament should restore the independence of the media authority by amending the law and creating a new media authority to replace the current one, so that it can fulfil its constitutional function of enabling a pluralist media system and fundamental rights.

To this end, it is essential that the leadership of the authority is selected on the basis of merit and not political affiliations, and that the composition of the body is not determined solely by a single centre of power.

- Parliament should limit the legal possibility to monitor journalists in order to protect journalistic sources, and provide journalists with better guarantees than at present to ensure that they have access to relevant information.
- A much more transparent and pluralistic media system, enforced by an independent media authority, should ensure that press freedom prevails and the near monopoly of government propaganda is disrupted.

Media and telecommunications authorities and bodies

The Media Council has existed in essentially the same form since 2010. It has regulatory functions, it decides on frequency tenders, selects public service media operators and carries out media monitoring. Parliament elects its president and members for a nine-year term. Since 2010, the Council has been composed exclusively of members nominated and elected

11 https://hvg.hu/itthon/20221011_Schadl_vegrahajto_borton_elnok

12 https://hvg.hu/itthon/20221108_Mar_nem_dolgozhat_ugyvedkent_Volner_Pal_a_korrupcioval_vadolt_volt_al-lamtitkar

by the governing majority, as the governing party's two-thirds majority in Parliament did not approve any opposition candidates. The Media Council cannot, therefore, be considered independent by any standards.

The Media Council has a long history of making decisions favourable to the media interests of people close to the government while remaining silent, despite numerous moves to restrict the Hungarian media market severely and to shut down media critical of the government.

The Media Council is also unable to effectively scrutinise the compliance of state media with the standards of public service. A striking example of this is the way in which the Council assessed the presentation of news and fake news in the state media about Russian war aggression against Ukraine. Although the state media news programmes clearly adopted Putin's propaganda messages (see the section on public service media below), the Media Council's view is that it is not the activities of the public media (which it considers objective) but criticism of the activities of the public media that can be used to mislead and to inflame public opinion.¹³ According to the HCLU and Political Capital, Hungarian public media channels use Russian propaganda as a source, while at other times they broadcast

Russian disinformation messages without criticism.¹⁴ A complaint was lodged with the media authority about this, but no results were obtained.¹⁵

Pluralism and concentration

The current ruling party – which has held more than two-thirds of the seats in Parliament since 2010, with only minor interruptions, and therefore virtually unlimited power – has always treated the media as a crucially important factor of power. In their view, their electoral defeats before 2010 were largely due to their failure to put the media at their service. The almost unlimited power they gained in 2010 was therefore used from the outset to create their own media backyard. The media authority has been transformed into a body dominated exclusively by the ruling party. Many new media has been created, while others have been taken over through dubious business manoeuvres. Critical media have been closed down or starved by state advertising policy or have not had their frequency rights renewed, the public service media has been put at their service, and the originally independent newsrooms have been brought under central control. The culmination of this was the media concentration in KESMA in 2018, resulting in a significant part of the press being under its control. More recently, however, less attention

13 https://nmhh.hu/cikk/227280/A_tajekoztatas_kolcsonos_feლოსsegerol_a_Mediatanacs_kozlemenye

14 https://www.politicalcapital.hu/pc-admin/source/documents/TASZ-PC_EC-complaint-PublicBroadcast_Russia_War.pdf; https://www.politicalcapital.hu/pc-admin/source/documents/WEB_Kozmedia_Orosz_haboru_tajekoztatas_20220316.xlsx

15 <https://tasz.hu/a/files/Kozmedia-orosz-haboru-kozerdeku-bejelentes.docx>

and money has been devoted to traditional media, with a focus instead on the dissemination of propaganda messages on social media. This has also meant that a significant proportion of media outlets have been downsized or cut. This process is still ongoing.¹⁶ This phenomenon is also important because no one imposes the same standards of content and quality on propaganda in social media, as was still the case with the traditional (written and electronic) media. In this sense, there is no need to bother with corrective statements, for example, which are very common in the government-controlled traditional press.

Although the ruling party's dominance in communication remains significant, data suggests that it may not be as far-reaching as many perceive, and the notion that voters are reached only by government propaganda is wrong. In terms of reach of the news programmes, the pro-government lead is only slight: RTL Klub's news programme is the most watched with 37% of the audience, followed by TV2's clearly pro-government *Tények* with 31%. State media news programmes are watched regularly by 19%, ATV news programmes, which are more likely to be in the opposition (although there is some uncertainty about

this recently), by 11%, and HírTV news programmes, which are part of the government media portfolio, by 5%.¹⁷

In the 2022 election campaign, TV2's reporters and newsreaders (as in 2018)¹⁸ repeatedly urged people to vote in favour of Viktor Orbán. In 2018, the National Election Commission (NEC) imposed a fine of 11,000 EUR (3,450,000 HUF) on TV2. The case of 2022 is therefore significant: the management of TV2 had to realistically expect that the Election Commission would impose a fine again, and yet a pro-Fidesz campaign video was shot anyway. The expected fine was, therefore, not a sufficient enough deterrent to prevent TV2 from infringing the rules and to ensure that it complied with electoral procedure. This time, the video was shown on *tenyek.hu*, the channel's news website. According to the Media Act, employees of a media service provider who regularly contribute to news and political information programmes as presenters, newsreaders, or correspondents are not allowed to add opinions or evaluative commentaries - except for news commentaries - to political news in any programme published by the media service provider.¹⁹ According to the NEC, however, *tenyek.hu* is an internet press

16 <https://telex.hu/english/2022/08/15/old-fashioned-government-media-is-being-gobbled-up-by-facebook-propaganda>

17 Zubor Zalán: Nem azért nyert a Fidesz, mert csak az ő médiája jut el az emberekhez - a kormánypárti médiafőlény igazi arca. *atlatszo.hu*, 2022.május17. És: REPUBLIKONINTÉZET: Médiafogyasztás Magyarországon Televíziós csatornák, hírportálok, közösségimédia <http://republikon.hu/media/98833/republikon-mediafogyasztas-21-06-28.pdf>

18 Herczeg Márk: 3,45 millióra bírságotlák a TV2-t, amiért a műsorvezetői nyíltan Orbánnak kampányoltak. *444.hu*, 2018.április10.

19 12. §

product, and therefore this section of the Media Act does not apply to it. The Curia rejected the request for review for lack of involvement of the applicant because “the statements made in the video were not about the applicant, nor were they specifically addressed to the applicant”.²⁰ The Curia’s decision is both worrying in terms of balanced and factual information in the media and the right to electoral redress.

Transparency of media ownership

In terms of political influence in media ownership, considering the continuous market-distorting effect of politics, concentration of ownership, the politically driven advertising market, and the lack of transparency in this area, it can be concluded that the findings of the 2021 report remain valid. There have been no significant changes in either positive or negative directions in 2022. What is significant, however, is that the governing party is increasingly shifting the focus of its communication from traditional to social media. Therefore, the importance of traditional media for government propaganda is diminishing.

Public service media

For many years now, the public (in fact, state) media have not even tried to create the impression that they are not a politically biased

media. This was evident in 2022 in the way it conducted itself during the election campaign, in its coverage of the Russian war against Ukraine, in the way it has been documented as producing media content commissioned by state leaders, and in its attitude to objective reporting.

The electoral campaign of 2022

A recurring issue throughout the campaign was the dysfunctional operation of the public service media, which, while providing mandatory airtime to nationally listed candidate organisations to present their programmes in line with their legal obligations,²¹ failed to meet their legal requirements in other aspects. This was particularly striking in relation to the regular presentation of the government’s narrative and the stage given to its politicians, compared to the minimum air time given to the programmes and candidates of the other parties running in the elections. As an example, the six-party opposition candidate for Prime Minister only had five minutes of airtime to present his party alliance’s programme on the M1 news channel, while the speech of the current Prime Minister was broadcasted nine times²² on the same channel on the very same day – within a 24 hour period on 15 March, a national holiday. It is also true that the six-party opposition did not make use of the

20 Kvk.VI.39.407/2022/4.

21 Ve. 147/A.§

22 Szalay Dániel: Kiderült, hányszor ismételte meg 24 óra alatt Orbán Viktor beszédét az állami M1. media1.hu, 2022.március17.

political advertising time allocated to them by law for the presentation of their programme.²³

War reporting and Russian propaganda

The 2022 election campaign was largely dominated by the issue of the Russian military aggression against Ukraine. The state media repeatedly failed to meet the requirements of factuality and objectivity in their information programmes on the Russian war, which is a systematic violation of the relevant legal rules of public service information. On 24 February, the day the Russian-Ukrainian war broke out, M1 was still referring to the invasion of Ukraine as a “military operation.” In one programme, the head of the department of the state media dealing with foreign affairs repeated Putin’s narrative of special military operations and genocide in the breakaway territories. It was also in this programme that a poll conducted “a few months ago” showed that 75 percent of the Russian public would support a military conflict against Ukraine.²⁴ A security analyst, often featured in the government media, said on the day the war broke out that

the Ukrainian leadership was fooling around, and that Moscow could not tolerate Ukraine acquiring nuclear weapons. Another expert, speaking on public media’s radio, described Viktor Orbán’s narrative that the opposition wants war and the government wants peace.²⁵ This narrative was the main message of the election campaign. It is noticeable that the pro-Kremlin and anti-Ukrainian narrative is often told by not the reporters themselves, but the regularly invited experts and opinion leaders.²⁶ Dissenting experts are not invited, nor is this position otherwise countered. (Zoltán Lomnici, one of these experts, was accidentally revealed in 2019 to be an expert for the public media, who was given the text by the reporter who was preparing the material.)²⁷

Articles penned by public figures

Although the public media should serve the objective and pluralistic information of the Hungarian public, and the media law states that the independence of the public media is “an indispensable condition for the proper functioning of the democratic social order”,²⁸

23 Diószegi-Horváth Dóra: Több mint egy órányi lehetőséget hagyott ki az ellenzék, hogy ingyen reklámozhassa magát a közmédiában, lakmusz.hu, 2022. április 14.

24 <https://hirado.hu/kulfold/cikk/2022/02/24/szakerto-az-orosz-lakossag-haromnegyede-tamogatja-putyin-lepe-seit#>

25 The list of the most controversial statements was compiled by Political Capital: https://www.politicalcapital.hu/hireink.php?article_read=1&article_id=2978#:~:text=kifog%C3%A1solt%20h%C3%ADrad%C3%A1sok%20list%C3%A1ja,-itt%20%C3%A9rh%C5%91%20el,-

26 https://politicalcapital.hu/hireink.php?article_id=2954&article_read=1&fbclid=IwAR2CU1nWL-hEOzqOKz7Qomfqv7QgLQl13rxtf81_0mCvDjgWAnZ8N7jwRhco&utm_source=pocket_mylist

27 <https://24.hu/belfold/2019/01/14/kozmedia-propaganda-mtva-ifj-lomnici-zoltan>

28 Act CLXXXV of 2010 on media services and mass media (Media law) 6. §.

internal documents leaked in 2022 show the contrary. The national news agency, which is part of the public media, is subject to daily interference by the government, which distorts its news to suit its own political interests. The interests of government communication are pursued in several ways. Reports on Viktor Orbán's programmes are meticulously planned in advance, determining what he will be asked and what the emphasis should be. National news agency correspondents are often instructed via phone by ministry press officers on how to write a piece, sometimes even dictating the headlines. Government departments' press releases have to be published practically verbatim, as do those of Opus Global, Lőrinc Mészáros's stock exchange holding. In the National News Agency's collection of public press events, most of the programmes of pro-government politicians are deliberately omitted, so that the non-friendly press cannot report on them.²⁹

Obligation to provide objective information

For years, the propaganda media have been trying to destroy the credibility of organisations critical of the government by telling lies. As recently as 2018, a pro-government organisation lied about an NGO at a press conference in front of the NGO's office. The state media were involved in the dissemination of these lies, and the Curia ruled that this was not in line with its legal obligations. According to the

Curia, the public media should have checked before publishing the recording whether it contained any false statements that could be offensive to the Shelter Association. In 2022, the pro-government state media appealed to the Constitutional Court arguing that, as the press, it is not its duty to provide objective information: it does not have to check the truth of what is said at a press conference or counter it with a statement by the person concerned. They may even present facts that are manifestly untrue, if they are not stated by them but by the person holding the press conference. They argue that expecting them to check sources and question the other party would in effect introduce censorship into the system. In a 2022 decision, the Constitutional Court stressed that "information on matters affecting communities must always present opposing views, thereby enabling the public to make informed choices on the issue under discussion." According to the Constitutional Court, the exercise of freedom of the press does not in itself extend to the publication of false information, and indeed one of the main responsibilities of journalists is to verify the authenticity of the news and information they publish.³⁰

Online media

In the past year, there has been a major rationalisation of the traditional media dominated by the governing party. At the same

29 This is detailed in a report published by the investigative news portal Direkt36: [Leaked documents show how Orbán's circle dictates the news at Hungary's state news agency.](#)

30 3350/2022. (VII. 25.) AB

time, pro-government content has started to spread like wildfire, first to Facebook, then to Instagram, and more recently to TikTok, which are being pushed with a lot of money in order to achieve greater reach. Hungarian internet users are constantly coming across pro-government propaganda on YouTube and Facebook. To a lesser extent, this comes from the government itself or the party, so it is known what is being seen and who is funding it. But there are more and more actors about whom it is difficult to say at first glance exactly who they are and why they are 100% conveying pro-government messages. The best known brand of the project is the Megafon Centre, which runs social media infomercials, and which spends virtually unlimited advertising money on these platforms, spending more than a billion forints in the first three months of 2022 on Facebook alone.³¹ What's interesting is that leading government politicians regularly claim how Facebook is biased in a "liberal direction" and that Christian, conservative, right-wing opinions are generally restricted on social media. Megafon's influencers also regularly complain about Facebook's moderation practices. Paradoxically, it is this platform that has become the most effective tool of government propaganda in this country.³²

According to the Freedom of the Net 2021 report from Freedom House, Hungary's freedom index declined for the third year in a row, and the status of internet freedom of the country declined from Free to Partly Free. The reason behind the last decline reflects the events related to the anomalies experienced during the opposition primary elections in September and October 2021, when cyberattacks from unknown sources plagued electronic voting systems and independent news outlets.³³

Public trust in media

Trust in various media platforms and outlets is highly dependent on the audience's political views. According to the Reuters Institute's Digital News Report 2022,³⁴ the overall trust in news is extremely low, at 27% (-3% from the previous year). At the same time, 47% have trust in media they regularly use. Only 11% pay for online news. Only 15% think that media are independent from undue political or government influence, and also from undue business or commercial influence. The two independent outlets, HVG and RTL Klub, are again the most trusted brands, with the independent online brands Telex and 24.hu slightly ahead of the more widely used index. State-funded broadcaster MTV is one of the

31 <https://telex.hu/belfold/2022/03/28/ujabb-alomhatart-ertunk-el-egymilliard-forint-felett-a-megafon-face-bookos-reklamkoltese>

32 <https://telex.hu/english/2022/08/15/old-fashioned-government-media-is-being-gobbled-up-by-facebook-propaganda>

33 <https://freedomhouse.org/sites/default/files/2022-10/FOTN2022Digital.pdf>

34 <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/hungary>

least trusted brands, with less than a third of respondents trusting their news.

Safety and protection of journalists and other media activists

The GDPR continues to be misused by those with economic and political power, as well as by the data protection authority, to prevent factual articles from appearing in public affairs. The court cases mentioned in last year's report are still pending.

The Pegasus cases, which were partly used to target journalists for surveillance and were reported on in detail in last year's report, remain inconclusive, with a number of court and administrative proceedings pending. The most important lesson remains that Hungarian law does not provide the necessary guarantees for the protection of journalistic sources in the field of secret surveillance. In early 2022, the Data Protection Authority finally issued its report on the case, which concluded that the secret services were fully compliant with the laws specifically imposed on them.³⁵ The authority only examined whether the surveillance carried out by Pegasus complied with the law and whether the legal basis for the surveillance was always fully in place – even though the infringement lies precisely in the

fact that the regulation of the surveillance is impartial, and its order is the responsibility of the politically committed Minister of Justice. In a genuine, substantive investigation, the authority could not have ignored the fact that the Hungarian legislation has already been ruled by the ECtHR to be systematically unlawful. Nor could a real investigation have dealt with the fact that journalists (and other groups particularly sensitive to surveillance) are not subject by law to special rules that impose stricter limits on surveillance than anyone else. Indeed, in the case of journalists, it would be particularly important that an independent body authorises surveillance, as their sources could easily come to light, thus jeopardising the protection of said sources, which is a fundamental condition of press freedom. This aspect is not even mentioned in the report. The authority's misrepresentation of its role was most clearly demonstrated by the fact that it considers it necessary to prosecute those who exposed the Pegasus scandal. It would sanction those who had drawn attention to the abusive surveillance, rather than taking action against the abuse itself. It wants to punish journalistic sources in a case that is precisely about the lack of protection of journalistic sources.³⁶

In 2022, there was also a smear campaign against journalists, together with the defamation of independent NGO staff. Fake job

35 <https://www.naih.hu/adatvedelmi-jelentesek/file/486-jelentes-a-nemzeti-adatvedelmi-es-informacioszabadsag-hatosag-hivatalbol-inditott-vizsgalatanak-megallapitasai-a-pegasus-kemszoftver-magyarorszagon-torteno-alkalmazasaval-osszefuggesben>

36 <https://ataszjelenti.444.hu/2022/01/31/peterfalvi-pegasus-jelentes-csak-arra-bizonyitek-hogy-nem-tudja-megvedeni-az-embereket-a-rendszerszintu-jogsertesektol>

advertisements were published, followed by online interviews with candidates, where manipulative questions and a few bogus interviews were conducted. In these, manipulative questions and a few convoluted sentences were used to create a situation where those involved were proving the government propaganda's long-rumoured claims about the interconnections between independent NGOs, the independent press, and the foreign media's hostility to the Hungarian government. Propaganda videos leaked under cloudy circumstances swept across pro-government media, with the content being picked up by government communications executives.³⁷

Freedom of expression and of information

Despite the fact that in the 1990s Hungary was among the leaders of Eastern European countries in terms of freedom of information regulation and practice, in recent decades this edge has not only disappeared, but has been reversed. In Hungary, access to public data is currently very difficult, and the functioning of public authorities is difficult for the press and the public to control.

Deadlines for responses

Throughout 2022, a special legal order was in force, during which it became very difficult to get data of public interest. The time limit for responding to requests for public interest

information under this special legal order was subject to a special government rule. Public bodies performing public functions had to respond to requests for public interest information (only to respond, not to fulfil them) within 45 days, which may be extended by a further 45 days. This time limit is in stark contrast to the 15-day time limit (which may be extended by 15 days in justified cases) under the Freedom of Information Act. Furthermore, public bodies were allowed to claim that responding to the request for information in a shorter time would jeopardise their specific tasks and workflow due to the emergency. This has led to the arbitrary practice whereby data controllers routinely used the possibility of an extension without any substantive consequences, without even fulfilling the constitutional requirement set out by the Constitutional Court that the extension must be factually justified. This provision, which significantly extended the deadline for responses, was in force until 31 December 2022.

Challenging enforcement of the law

In litigation for access to data of public interest, the delaying actions of data controllers often render litigation completely pointless. Data controllers may change their reasons for refusing access at any time during the litigation, and they tend to exhaust all remedial mechanisms even in clear situations where their only point is to delay the proceedings. Experiences show that public sector bodies do

37 <https://atlatszo.hu/kozugy/2022/02/06/mutatjuk-kik-es-hogyan-csinaltak-az-ujsgirokat-lejarato-interjukat-a-fidesz-kampanyhoz/>

not necessarily disclose data even after a final judgment. The current legal environment does not provide effective enforcement mechanisms in case a public sector body does not execute a judgment requiring it to disclose data.

Amendment of the freedom of information rules

In order to reach an agreement with the European Union, at the end of 2022 Parliament amended the rules on the guarantees of freedom of information as part of the fulfilment of the conditions set out in the rule of law mechanism. These amendments were partly in response to real problems and are likely to be effective solutions to them. Indeed, changing the procedural rules for litigation for the access of public data may be able to speed up proceedings from 2023. Furthermore, the amendment also removes the possibility for public bodies to make the disclosure of public interest information subject to the payment of arbitrary and high fees. In these areas, the legislation is likely to contribute to better access to data of public interest. However, the amendment also contained some pseudo-measures. One such measure is the creation of the Central Public Information Register, which adds nothing of substance to the current rules on disclosure, and leaves the obligation to disclose data legally unenforceable. The amendment leaves many problems untouched. Overall, although the amendment

contains some forward-looking elements, it is not capable of improving the poor state of freedom of information on a systemic level.³⁸ It is striking that not only was there no public or professional debate prior to the amendment, but the results of the research carried out by the National Authority for Data Protection and Freedom of Information, with 100% EU funding (circa HUF 1 billion), on the subject “Mapping the domestic practice of freedom of information and increasing its effectiveness”³⁹ were not even used for the amendment.

New barriers to data accessibility

Since 2020, partly due to the significant risk of corruption and partly because the epidemic has had a significant impact on everyday life, there has been a lot of interest in data related to the management of the COVID epidemic. However, the data was very difficult to access, even after successful litigation, when they were often not disclosed by the public bodies obliged to do so. In 2022, the government, using its extraordinary power in the special legal order, introduced new restrictions on the accessibility of such data. Data controlled by the “Operative Board”, which plays a central role in epidemiological control, was classified ex lege as “data supporting future decision-making” (whether or not it is such), thus creating a legal basis for refusing requests for access to them.⁴⁰ Court proceedings are currently under way to establish the illegality of

38 <https://hclu.hu/en/position-freedom-of-information-act-hungary-2022>

39 KÖFOP-2.2.6-VEKOP-18-2019-0000

40 Government Decree 356/2022 (IX. 19.)

these rules, but in the current institutional and legal context the outcome is highly doubtful.

Checks and balances –

Key recommendations

- The government must stop making the special legal order permanent and stop abusing the legislative power granted by it.
- Independent bodies must operate in accordance with their constitutional mandate and the constitutional principle of separation of powers. Instead of supporting the government's interests, it must limit and counterbalance its powers.

Process for preparing and enacting laws

2022 was the second year in a row that the country was under a state of emergency for the entire year (all 365 days). At the beginning of 2022, the country was under a state of emergency due to the COVID-19 pandemic, which was replaced by a state of emergency due to the Russian aggression against Ukraine. This required an amendment to the Constitution, which was accepted without any obstacles. All of this makes it safe to say that in Hungary, the special legal order has become the new

norm and the temporary situation has become permanent.⁴¹ In this situation, the system of checks and balances and a separation of powers are not actual requirements.

While under an official State of Danger, the government has more room for manoeuvre than usual, because it can deviate from acts of Parliament by decree, and it can also restrict or suspend the exercise of fundamental rights to a greater extent than is generally acceptable. The State of Danger is a special legal order, which means two things. Firstly, it is a legal order. It is not a state outside the law, and the government cannot act without limits, but rather within the limits set by the Fundamental Law. On the other hand, it is special. The State of Danger should not be the “new normal”, and it should not become the normal framework for the exercise of public power. With the end of the pandemic, when many of the restrictions were lifted, the government decided to maintain the special legal order in order to preserve the government's ability to act – although the government already has almost unlimited power with a two-thirds parliamentary majority.

The question arises why the government needs this special power. First, the State of Danger is convenient for the government. Even with the currently available and extremely limited room to manoeuvre of the opposition, there are debates in Parliament — and no legislation without parliamentary debates. But as long as the emergency remains, it is enough

41 [Are Orban's Covid powers now the 'new normal' in Hungary?](#) By SANJAY SETHI AND EMESE PÁSZTOR

to convene a cabinet meeting and the next day the adopted decree can be promulgated; there is no need for “unnecessary” rounds in Parliament.

Secondly, the State of Danger means safety for the government. During an emergency, there is the potential for the government to freely restrict almost any fundamental right. For example, if a suspected corruption case around the Operative Board comes to light, access to data can be restricted in a day, as happened. In the event of an anti-government protest forming, a total ban on assembly can be reimposed at any time during an emergency, so the government can decide when it is convenient for people to protest. Teachers’ right to strike was essentially ended by a decree when the teachers’ walkout was organised. A state of emergency puts the government in a position where it can respond to any political situation with an immediate restriction of fundamental rights.

Thirdly, 2022 was an election year. In the election campaign, the declared State of Danger presented voters with the image of a government that is doing what it needs to do, while the opposition is arguing and creating confusion. The Prime Minister issues an order, and the promulgation of a decree via Facebook (which has become a practice in recent years) is a way of constantly communicating to the electorate that the government is in control, even when, in its own estimation, there is no situation to control.

Finally, there is nothing special for the government in this constitutionally special situation.

Usually, government decrees are passed in front of a camera. Now, government meetings are neither minuted nor audio-recorded, and there is no mandatory public consultation. In the emergency situation, the legal situation coincides with reality: both the legislative and executive powers belong to the government, and Parliament no longer has to be involved in the exercise of these powers as a decorative ornament.

Independent authorities

In Hungary, there is no change in the fact that there can be no truly independent authorities in a system in which the rules of status and competence, the appointment and removal of leaders, and the financial and technical resources are all dependent on a government having a two-thirds majority in Parliament. On paper, there is a constitutional court, an ombudsman, a data protection authority and many other institutions that exist in constitutional states and are seen as guarantees of constitutionality and fundamental rights, and the rules governing their status appear to include guarantees of independence. However, since the members or leaders are put in their positions by the will of the governing parties (there is virtually never any need to negotiate with the opposition or other branches of power independent of the government about the persons), or the guarantees can be removed at any time, they do not act as real limits on the power of the government. In 2022, an excellent example of this was the way the data protection authority closed its investigation into the Pegasus surveillance case - see the section on the safety of journalists.

The only institution that shows signs of functioning independently, and correspondingly has conflicts, is the National Judicial Council (NJC), whose members are not mandated by the government's grace. However, lacking the resources and powers to carry out their functions, this body also finds it difficult or impossible to fulfil their constitutional role.

Accessibility and judicial review of administrative decisions

The problem of judicial review of administrative decisions, which was reported last year, remains that it is primarily able to provide redress for procedural problems, but less so for substantive infringements. Administrative courts are less suitable for redressing substantive violations. This is supported by the fact that judicial review can lead to a mainly cassatory result. The possibility of the court reversing a decision found to be unlawful is exceptional.

Enabling framework for civil society –

Key recommendations

- The law allowing audits that harass NGOs should be repealed by the National Assembly, and the procedures launched by the State Audit Office should be terminated.

Regulatory framework, attacks, and harassment

After the European Court of Justice ruled in 2020 that a law that labelled certain NGOs as foreign-funded organisations was unlawful, the government passed a new law in 2021 to cover NGOs “capable of influencing public life.” This law gave the State Audit Office (SAO) audit powers as a new actor (for a critique of this, see last year's report). A month after the 2022 elections, the SAO saw time to apply the new law: it started auditing NGOs that could influence public life. Although the first control steps were not followed by others, it was a clear sign that the Hungarian state was still not giving up on harassing critical NGOs.

In May 2022, the SAO sent out electronic letters to CSOs about launching the audits. It was not exactly known how many CSOs received this notification, and it was not even clear whether all “non-governmental organisations engaged in activities capable of impacting public life” (i.e., whose annual balance sheet total in a given year amounts to at least 20 million HUF) received it or not. But all of the CSO partners of the author of the present report, whose annual balance total is above 20 million HUF, received the letter, regardless whether or not they receive public funds, and it is known that at least one GONGO, the Civil Union Public Benefit Foundation (CÖF, the organisation that organises huge pro-government rallies) whose total balance is far above 20 million HUF, and who receives almost only public funds indirectly, hasn't received

the letter, according to a journalist who just asked them.⁴²

According to the data received from other CSOs, all of them had to upload the same set of documents, primarily on the organisation's own internal regulations, accounting, financial management and other regulations on the accounting policy, the internal regulation on the inventory of assets and resources, regulations for assets and liabilities, on financial management and the rules of handling invoices. The SAO letter stated that the list of the requested documents may be extended to include additional documents if they are needed to carry out the SAO's task. There was no information at that stage about how the audit was intended to be continued. The submission of these documents faces technical difficulties; it took almost a workday to upload them to the servers of the SAO for most of the organisations.⁴³

Surprisingly, some days later, the SAO issued a press statement in which the SAO tried to clarify its position:

“So this is not yet an audit by the SAO itself. We are now in the preparatory phase of the audit, which will support the head of the audited organisation in reviewing whether

the fund is compliant. On the basis of these documents, the SAO will prepare an assessment and provide feedback to the leaders of the organisations providing the data, as a kind of mirror of what is in order and what is missing. After all this supporting preparation, the actual audit will be launched, based on the 2021 report. Those concerned will be notified separately and will have the opportunity to make improvements either immediately or as part of an action plan, while the audit is still in progress.”⁴⁴

Since this statement was published, no information about the continuation of these processes has become available.

Attacks and harassment, online safety

In February 2022, a series of actions made by secret services to discredit journalists, NGO workers and other professionals were made public. It was very similar to the Black Cube operation to discredit NGOs just before the 2018 elections.⁴⁵ In this case, in 2020/2021, unknown individuals approached several professionals with fake job offers and requests for advice. During online job interviews with them, these unknown persons introduced themselves using fictitious names, asked the

42 <https://444.hu/2022/05/30/az-asz-meg-a-serult-gyerekekkel-foglalkozo-civileket-is-vizsgalja-a-kozelet-be-folyasolasa-miatt-de-a-cof-ot-nem>

43 See for example the experiences of DrugReporter: <https://drogriporter.444.hu/2022/05/27/7-oranyi-meditativ-zene-az-asz-civil-vizgalatahoz>

44 <https://www.asz.hu/hu/sajtokozlomenyek/mindent-a-civil-szervezetek-ellenorzeserol>

45 https://index.hu/kulfold/2018/07/12/kormany_black_cube_megbizo/

victims of the smear campaign guided questions, and recorded the conversation. The recordings were edited, sometimes mistranslated, and presented in an inappropriate way. These recordings were useful for articles in the government mouthpiece Magyar Nemzet and for Fidesz's election campaign. In the background of the story emerged an alleged Middle Eastern billionaire and his representatives, who through the fraudulent job advertisements came into contact with several Hungarian or Hungarian-related professionals in the course of their work. Magyar Nemzet, the journal close to the Hungarian government, twisted the interviewees' words and took them out of context to write discrediting articles that fit into the Orbán government's "Soros campaign." The Magyar Nemzet articles, based on the recordings, were published in the pro-government press at an astonishing rate, and were immediately shared by other friendly Hungarian and foreign portals, newspapers, blogs with shady backgrounds, political influencers and some members of the government. The Hungarian state media also participated in the dissemination of the defamatory articles.⁴⁶

Disregard of human rights obligations and other systemic issues affecting the rule of law framework ⬇

Key recommendations

- The misuse of special powers granted by the special legal order to restrict fundamental rights should be stopped.
- The Ombudsman should fulfil his role and discharge the duties deriving from his function as a defender of rights.

Systemic human rights violations

The maintaining of the special legal order, which is becoming permanent, as described in the chapter on checks and balances, relativises fundamental rights and in fact makes them irrelevant. In a non-exceptional legal order, fundamental rights could only be restricted by law, and the extent of the restriction could only be strictly necessary to achieve a specific legitimate aim (which could be the exercise of another fundamental right or the protection of a constitutional value), proportionate to the aim pursued and while respecting the essential content of the fundamental right. However, in

46 The most detailed coverage of what happened was provided by the investigative portal Átlátszó: <https://atlatszo.hu/tag/lejarato-kampany/> and https://atlatszo.hu/kozugy/2022/03/24/___trashed-9/

Hungary – with some interruptions – a special legal order has been in force since 2020, under which the exercise of fundamental rights (with the exception of some fundamental rights) may be suspended or restricted beyond the limits of necessity and proportionality, and this may be done by a decree issued by the government.

There have been a number of examples of fundamental rights being curtailed by order in recent years. For example, in early 2023 the government, under its special legal order powers, promulgated an order under which teachers can be dismissed by extraordinary dismissal (with immediate effect and without severance pay) not within 15 days of becoming aware of the circumstances giving rise to the dismissal (as anyone else could be in Hungary), but rather at any time up to 1 August in the academic year.⁴⁷ The decree (according to its explanatory memorandum) is not even secretly a reaction of the government to the strikes and civil disobedience actions, which protested against its education policy and the measure that has emptied teachers' right to strike. The government is thus making the possibility of sanctions for protesting much more flexible, making the existential insecurity of protesting teachers much more burdensome, and at the same time making its own situation easier by not having to find other teachers to replace those who have been dismissed, which is otherwise used as a disproportionate sanction. The government has done this on the grounds of nothing other than the state of emergency because of the war in Ukraine.

Such decrees obviously make political expression more burdensome, far beyond the bounds of proportionality. Fundamental rights therefore do not limit the power of the government, because similar decrees can be issued at any time in the special legal order that has now become permanent in Hungary.

In the meantime, the most important institution for the protection of fundamental rights is not functioning properly in Hungary: the Commissioner for Fundamental Rights remains invisible to the public, and he does not speak out against government measures that violate fundamental rights. The decision by the Global Alliance of National Human Rights Institutions to reclassify the Hungarian human rights state institution from category "A" to "B" formally removed it from the prestigious club of ombudsmen that can be taken seriously in 2022. The reasons include the failure of Kozma Ákos, the Commissioner for Fundamental Rights, and his office to adequately address a range of human rights issues, including violations against vulnerable ethnic minorities, LGBT+ people, refugees and migrants. It has failed to protect civilians, press freedom and the independence of the judiciary. It has not referred politically sensitive issues to the Constitutional Court.

47 Government Decree 4/2023.

Fostering a rule of law culture

Efforts by state authorities

There are no honest initiatives by state authorities to foster a rule of law culture in Hungary. The requirement of the rule of law in the narrative of the state authorities is an external constraint, currently imposed on the Hungarian state by the European Union, which blackmails it by withholding development and the recovery funds, as well as other EU financial resources. And civilians and other professionals defending the rule of law have in fact been portrayed for many years as actors working against Hungarian interests.

Contribution of civil society and other non-governmental actors

There are two very important events from 2022 to highlight in this section.

In 2022, Hungary witnessed the rise of an unprecedented civil coalition to monitor and promote the fairness of the elections. Although Hungarian electoral rules do not allow for civil observers to monitor the work of the ballot counting committees, tens of thousands of people took advantage of the fact that opposition candidates and parties were unable to provide sufficient numbers of ballot counting delegates, to participate in the

voting process in their free time away from their homes, and thus exercise control over the process.⁴⁸ Civilians could only do this as party delegates, within the limits of Hungarian law, and accepted to even become delegates of a party they did not like. The activists had previously attended training sessions to learn how to recognise the most important abuses and how to take action against them. In addition to the civilian work in the polling stations, hundreds of volunteers outside the polling stations monitored, documented and reported voter manipulation, vote buying, chain voting, and organised the transfers of voters. Their work was supported by lawyers on the ground, who also ran a legal helpline available throughout the election day to assist those who had been extorted, threatened, bribed and those who had witnessed such incidents.⁴⁹ This kind and level of civic activism around elections had never been seen before 2022.

The other case also concerned not just the election, but also the referendum held on the same date. The Hungarian government, in order to stir up homophobic and transphobic sentiments, initiated a referendum to retroactively justify the legitimacy of its homophobic propaganda law adopted in 2021. This referendum was later – after the amendment of the laws preventing it – scheduled for the day of the parliamentary elections. A campaign to invalidate the referendum was launched, organised by Amnesty International Hungary and the Háltér Society, with the participation of 12

48 See <https://szamoljukegyutt.hu/> and <https://www.20k.hu/>.

49 See in detail: <https://www.cka.hu/tiszta-szavazas-osszegzese/> The HCLU participated in this coalition.

other NGOs. According to the campaign, the only answer to an invalid question is an invalid answer. Never before had such a successful campaign been carried out by NGOs: they managed to ensure that the referendum was invalid by casting 1.7 million invalid votes against approximately 3.8 million valid votes. This means that their message, against the government's unlimited communication resources, managed to reach and convince almost a third of the citizens who voted.⁵⁰

50 <https://vtr.valasztas.hu/nepszavazas2022>; <https://hatter.hu/hirek/elbukott-a-nepszavazas-vissza-kell-vonni-a-propagandatorvenyt>

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The HCLU is a Hungarian human rights watchdog working independently of political parties, the state or any of its institutions. The HCLU's aim is to promote the case of fundamental rights and principles laid down by the Constitution of the Republic of Hungary and by international conventions.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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