



Hungarian Helsinki Committee

INFORMATION NOTE ON CERTAIN RULE OF LAW DEVELOPMENTS IN HUNGARY BETWEEN MAY-JULY 2020

*Hungarian Helsinki Committee
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This Information Note, prepared by the Hungarian Helsinki Committee (HHC), provides an overview of developments undermining the rule of law in Hungary between May and July 2020. It partly serves as a follow-up to the contribution of Hungarian NGOs to the European Commission's first Rule of Law Report submitted in May.¹ The present Information Note only focuses on developments under the headings "Justice system" and "Other institutional issues related to checks and balances" of the stakeholder consultation survey launched in relation to the Rule of Law Report. Thus, it does not cover developments under the headings "Anti-corruption framework" and "Media pluralism", such as the case of the largest remaining independent Hungarian news portal *index.hu*, where in July virtually all journalists resigned after the editor-in-chief was dismissed amidst claims of political interference.² Therefore, the Information Note cannot be considered a full account of the rule of law and human rights situation in Hungary during the May-July 2020 period.

The Information Note covers the following recent rule of law developments in Hungary:

- As a reaction to a judgment by the Court of Justice of the European Union in May that condemned Hungary for the unlawful detention of asylum-seekers in transit zones on the border, Hungary adopted rules whereby it practically removed itself from the Common European Asylum System.
- As a reaction to a court judgment in a Roma education segregation case whereby the municipality and the state institution was obliged to pay damages to the segregated Roma pupils, the Parliament adopted a law that prevents courts from granting pecuniary compensation in similar cases. This amendment amounts to indirect discrimination based on ethnicity, and is in violation of EU law.
- The Parliament adopted a law that bans legal gender recognition, and so violates the rights of transgender people as enshrined in international human rights standards.
- Some of the decrees the Government issued during the state of danger declared due to the COVID-19 pandemic, making use of the *carte blanche* mandate it received through the Authorization Act, raised rule of law and/or human rights concerns, and some were even in breach of EU law.
- Although the state of danger was terminated, amendments introduced as of 18 June 2020 provided the Government with excessive powers that can be applied with a reference to an epidemic with significantly weakened constitutional safeguards. At the same time, it is not ensured that the Constitutional Court can carry out a constitutional review of the respective government decrees swiftly and effectively.
- The newest national consultation launched by the Government bashes the EU and the Court of Justice of the European Union.
- A parliamentary resolution adopted before EU budgetary talks called the Government to oppose rule of law conditionality and oppose the support for civil society organisations from EU funds.
- The Commissioner for Fundamental Rights (the national human rights institution of Hungary) has not stepped up or failed to act effectively against measures and steps violating the rights of Roma, asylum-seekers, migrants, transgender people and human rights defenders.

¹ *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report, May 2020*, https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf

² See e.g.: <https://www.theguardian.com/world/2020/jul/24/hungarian-journalists-resign-en-masse-after-claims-of-political-interference>, <https://www.hrw.org/news/2020/07/24/hungary-editors-sacking-blow-press-freedom>.

- In June 2020, the Court of Justice of the European Union condemned Hungary for introducing discriminatory and unjustified restrictions on foreign donations to civil society organisations, prompting controversial reactions from Hungarian government representatives.

1. JUSTICE SYSTEM: ENFORCEMENT OF JUDGMENTS³

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

On 14 May 2020, the **Court of Justice of the European Union (CJEU)** delivered its judgment in the **joint cases of C-924/19 PPU and C-925/19 PPU**,⁴ ruling among others that **the automatic and indefinite placement of asylum-seekers in the transit zones at the Hungarian-Serbian border qualifies as unlawful detention**. The Government first stated that it would explore avenues to request the Constitutional Court to overrule the CJEU's judgment.⁵ A week later, the Government announced that instead of turning to the Constitutional Court, it would shut down the transit zones and introduce a new asylum system.⁶

Using the *carte blanche* authorization it received through Act XII of 2020 on the Containment of the Coronavirus (*see Section 2.1. for more details*) the Government issued a **decree on 26 May 2020**⁷ that introduced a precondition to lodge an asylum application in Hungary. This means that at the core of the new asylum system is **a compulsory precondition for those seeking asylum in Hungary to first submit a "statement of intent" at the Hungarian embassy in Belgrade or Kyiv**. If the "statement of intent" is approved, the would-be asylum-seeker is provided with a special travel permit allowing him/her to travel to Hungary and submit an asylum application. This system is in breach of the Hungarian Fundamental Law,⁸ the EU asylum *acquis*,⁹ the Geneva Convention,¹⁰ as well as the European Convention on Human Rights and its Fourth Protocol.¹¹ **By restricting access to territory and the asylum procedure in a way that is incompatible with EU law, Hungary de facto removes itself from CEAS.**¹²

The new system also continues the practice of automatic and unlawful confinement of asylum applicants through the provision that foresees that upon registering the asylum application (following the arrival of the asylum-seeker to Hungary, after being granted a special one-time entry document as a result of

³ Cf. Question I. C. 17. of the European Commission's stakeholder consultation [survey](#), launched in relation to the European Commission's 2020 Annual Rule of Law Report.

⁴ For the case file, see: <https://bit.ly/3qrH9tz>. For a summary, see: <https://www.helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>.

⁵ "This is unacceptable and contrary to Hungary's Fundamental Law. Therefore, the government will also scrutinise this legal situation and its consequences from a constitutional point of view, the Justice Minister said." See the full statement of 15 May 2020 on the Government's official website: <https://www.kormany.hu/en/ministry-of-justice/news/hungarian-government-s-position-remains-unchanged-hungarian-legislation-and-practice-are-compatible-with-eu-law>.

⁶ "[The Government has] decided to abolish the transit zone in a physical sense as well. In the future, those seeking to enter Hungary will have to apply at consulates in neighbouring, secure countries." See the statement of 21 May 2020 of the Minister of the Prime Minister's Office on the Government's spokesperson's website: <http://abouthungary.hu/blog/gergely-qulyas-on-the-european-court-of-justices-new-ruling-on-immigration-its-dangerous-for-all-of-europe/>.

⁷ Government Decree 233/2020. (V. 26.). An unofficial English translation is available here: https://www.helsinki.hu/wp-content/uploads/Government-Decree-no.-233_2020-on-the-rules-of-the-asylum-procedure-during-the-state-of-danger.pdf.

⁸ Article XIV (2) of the Fundamental Law prohibits collective expulsion of third-country nationals, Article XIV (4) protects the right to seek asylum.

⁹ Article 67(2) of the Treaty on the Functioning of the European Union, Article 3(1) and 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (hereafter: rAPD), and Article 3(1) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast) (hereafter: rRCD). The rAPD clearly states that asylum applications can be lodged at borders and on the territory of Member States, as opposed to the new Hungarian system.

¹⁰ See the following UNHCR Position on the new system: <https://www.refworld.org/docid/5ef5c0614.html>.

¹¹ Article 3 and Article 13 of the European Convention on Human Rights (hereafter: ECHR), Article 4 of Protocol 4 to the ECHR.

¹² See as well: *Hungary De Facto Removes Itself from the Common European Asylum System (CEAS) – Information Update by the Hungarian Helsinki Committee (HHC)*, 12 August 2020, <https://www.helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>.

their "statement of intent"), the asylum authority issues a decision on the placement of the applicant "in a closed facility".¹³ Similarly to the placement decisions issued in relation to the transit zones, no judicial remedy is available against the type of decision defined in the provisions (*végzés*) in relation to the automatic placement of applicants "in a closed facility".¹⁴ This automatic four-week detention does not even exclude unaccompanied minors under the age of 14, as was the case in the transit zones. Thus, **Hungary is also clearly at variance with a judgment of the CJEU.**

The decree referred to above remained in force until the Government terminated the state of danger on 17 June 2020.¹⁵ However, the provisions of the government decree on the new asylum system were copied into Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness (*see Section 2.2.*). This Act entered into force on 18 June, and although it stipulates that the new asylum system shall be in place until 31 December 2020,¹⁶ it can be prolonged indefinitely.

1.2. Law adopted after a court judgment in a Roma education segregation case constitutes discrimination and violates EU law

In September 2019, a second instance court decision was issued in a discrimination lawsuit, which **granted non-pecuniary damages to over 60 Roma victims of educational segregation** going on for over a decade in the elementary school of Gyöngyöspata.¹⁷ The respondents requested an extraordinary review from the Kúria (the Supreme Court). While that review was still pending, **high-ranking government party politicians launched a concerted public campaign against the court judgment, questioning its justness and legitimacy.** For example, the Prime Minister called the judgment a "provocation" and unjust, because the Roma plaintiffs "receive a significant amount of money without performing any work".¹⁸ In addition, the Ministry of Human Capacities, as well as the ruling party's MP representing the region kept insisting that the respondents of the lawsuit should be allowed to provide educational opportunities to the plaintiffs instead of the compensation payment.¹⁹

When on 12 May 2020 the Kúria upheld the second instance decision (including the granting of compensation), the governing party MP representing the region stated that a wrong and unjust judgment had been handed down which would upset social peace and punishes a whole town indiscriminately and excessively for the – alleged or actual – grievances of a minority.²⁰ The **Prime Minister** commented that it was unacceptable that the majority must feel like aliens in their own homeland. He stated that as someone who has a law degree he must say that the judgment "is unjust as it is", and that the Kúria cannot see the justice of Gyöngyöspata from its downtown Budapest offices, but he **will find that justice for the town through amending laws to make sure that not another similar judgment could be made.**²¹

Shortly thereafter, on 4 June 2020, the governing party MP for the region submitted an amending proposal to Bill T/10742 on the Amendment of Act CXC on National Public Education, proposing to insert the following paragraph:

¹³ Article 4(5) of Government Decree 233/2020. (V. 26.) and Article 270(5) of Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness

¹⁴ Article 4(5) of Government Decree 233/2020. (V. 26.) and Section 270 (5) of Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness

¹⁵ Government Decree 282/2020. (VI. 17.), which entered into force on 18 June 2020.

¹⁶ Transitional Act, Article 267

¹⁷ For more details, see: *Flash report – Second instance court decision on damages for segregation in education*, 30 September 2019, <https://www.equalitylaw.eu/downloads/4957-hungary-second-instance-court-decision-on-damages-for-segregation-in-education-pdf-86-kb>.

¹⁸ For more details, see: *Flash report – Prime Minister calls damages granted to Roma pupils for decade-long segregation "unjust" during pending court case*, 7 February 2020, <https://www.equalitylaw.eu/downloads/5071-hungary-prime-minister-calls-damages-granted-to-roma-pupils-for-decade-long-segregation-unjust-during-pending-court-case-116-kb>; Hungarian Helsinki Committee, *Unfettered Freedom to Interfere – Ruling party politicians exerting undue influence on the judiciary in Hungary 2010–2020*, 29 July 2020, https://www.helsinki.hu/wp-content/uploads/HHC_Hun_Gov_undue_influence_judiciary_29072020.pdf, pp. 5-6.

¹⁹ See e.g.: <https://magyarhaz.net.hu/belfold/ingyen-tanulhatnának-gyongyospata-romai-7680440/>.

²⁰ See e.g.: <https://24.hu/belfold/2020/05/12/gyongyospata-kuria-fidesz-horvath-laszlo/>.

²¹ See: <http://www.atv.hu/belfold/20200515-orban-viktor-kokemeny-enekiment-a-kurianak>.

"If the educational institution violates the inherent personal rights²² of the child or pupil in relation to education, the Civil Code's provisions regarding moral damages shall be applied with the difference that the moral damages shall be granted by the court in the form of educational or training services. The educational or training services granted by the court can be either provided or purchased by the violator."

The reasoning attached by the MP explicitly referred to the Gyöngyöspata case: "It has been raised in relation to the [second instance court's] judgment in the Gyöngyöspata segregation case [...] that in-kind compensation would be just and reasonable for similar violations. The amendment prescribes in relation to future violations caused by access to substandard education that **the court shall grant the compensation for the damages in the form of educational services instead of pecuniary compensation** to be paid for moral damages." The amendment (the "Lex Gyöngyöspata") was adopted on 3 July and entered into force on 22 July.²³

The amendment is highly problematic on several levels. Among other problems, the provision covers "violations regarding which the provision of additional educational or training services is completely meaningless" (e.g. harassment), and "oblige[s] the victims [...] to accept educational or training services from the institution that violated their rights in the first place".²⁴ Furthermore, **the amendment itself is a violation of the requirement of equal treatment as it constitutes indirect discrimination based on ethnicity with regard to the victims of segregation**, and puts "perpetrators of educational violations in a more advantaged situation than the perpetrators of any other fundamental rights violations, as they would be exempted from the 'hard' consequence of having to pay each concerned child pecuniary compensation".²⁵ As a result, the amendment **will "by all likelihood also reduce the degree of dissuasiveness of the current system of sanctions, thus breaching the requirement set forth by Articles 6 and 15 of the Racial Equality Directive"**.²⁶ In addition, the amendment (and the public statements of officials preceding it) is **capable of strengthening and validating the anti-Roma sentiments** of the majority population.

The Gyöngyöspata case is a **symptomatic** one: it is an example of how high-ranking government officials, **breaching the standards on freedom from undue external influence with regard to the courts**,²⁷ repeatedly use public statements and the media to interfere with the competences of the judiciary.²⁸ These manifestations of criticism **erode trust and confidence in the judiciary and the perception of independence**, and can indirectly contribute to the chilling effect among judges. Furthermore, the Lex Gyöngyöspata is an example of how the Government and the governing majority use legislation to undermine the respect for court decisions, and further their discriminative agenda affecting the most vulnerable groups of society.

²² "Inherent personal rights" are rights that are inalienably attached to the human personality; they are to a great extent equivalent to fundamental rights and freedoms.

²³ Act LXXXVII of 2020

²⁴ *Flash report – Draft Bill on mandatory in-kind compensation for segregation in education submitted*, 5 August 2020, <https://www.equalitylaw.eu/downloads/5197-hungary-draft-bill-on-mandatory-in-kind-compensation-for-segregation-in-education-submitted-97-kb>, p. 2.

²⁵ *Ibid.*, p. 3.

²⁶ *Ibid.*

²⁷ Cf. Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states "Judges: independence, efficiency and responsibilities", Sections 18 and 60; UN Basic Principles on the Independence of the Judiciary, Sections 2 and 4.

²⁸ For more details and examples, see: Hungarian Helsinki Committee, *Unfettered Freedom to Interfere – Ruling party politicians exerting undue influence on the judiciary in Hungary 2010–2020*, 29 July 2020, https://www.helsinki.hu/wp-content/uploads/HHC_Hun_Gov_undue_influence_judiciary_29072020.pdf.

2. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES: THE PROCESS FOR PREPARING AND ENACTING LAWS²⁹

2.1. Government decrees and Acts of Parliament adopted during the state of danger

Act XII of 2020 on the Containment of the Coronavirus (hereafter: Authorization Act), adopted by the Parliament on 30 March 2020, provided the Government with a *carte blanche* mandate without any sunset clause to suspend the application of Acts of Parliament, derogate from the provisions of Acts, and take other extraordinary measures until the “state of danger” declared on 11 March by the Government is in place.³⁰ Between 30 March and the termination of the state of danger by the Government as of 18 June, **the Government adopted over 150 decrees applicable in the state of danger, partly using the powers granted by the Authorization Act.**³¹ Some of these violated fundamental rights and EU law.

According to the reasoning³² of the Authorization Act, granting excessive powers to the Government was necessary to ensure that the Government can adopt and extend the force of its special government decrees also if the Parliament will not be able to convene for epidemiological reasons. However, the **Hungarian Parliament not only remained operational, but has been quite active**, and adopted a number of laws and decisions in the period of the state of danger. **Some of these have no relationship whatsoever with the containment of COVID-19, but in turn have a negative effect on human rights.**

Below, we present examples of problematic laws issued by the Government or adopted by the Parliament during the state of danger.³³

2.1.1. Harsher rules on fearmongering under a special legal order

Article 10 of the Authorization Act amended, in a permanent manner, Act C of 2012 on the Criminal Code, and introduced stricter rules into the Criminal Code in relation to the criminal offence of fearmongering. According to the amendment, a “person who, during the period of special legal order and in front of a large audience, states or disseminates false or distorted facts in such a way that is capable of hindering or obstructing the efficiency of the protection efforts is guilty of a felony and shall be punishable by imprisonment for one to five years”. As far as the practice is concerned, Political Capital pointed out that this law **allowed the government “to depict actors who deviated from governmental communications – for instance, by publishing non-official healthcare data, experiences – as disseminators of fake news”**. As of the end of July, 134 criminal investigations had been launched into the offence of fearmongering, out of these, charges were pressed in six cases, and one person was convicted.³⁴ In at least two cases, “suspects” were taken to the police station under intimidating circumstances and questioned in relation to posting government-critical Facebook posts that clearly did not fall under the scope of the above criminal provisions. In both cases, the charges were eventually dropped after the prosecution’s intervention. However, these cases received wide media attention, and were suitable to contribute to a **chilling effect**, especially since the police uploaded a video of one of the concerned persons being escorted out of his home and into a police car, which got

²⁹ Cf. Question IV. A. 37. of the European Commission’s stakeholder consultation [survey](#), launched in relation to the European Commission’s 2020 Annual Rule of Law Report.

³⁰ In more detail, see: Hungarian Helsinki Committee, *Background note on Act XII of 2020 on the Containment of the Coronavirus*, 31 March 2020, https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf.

³¹ For a full list of these decrees, with an English summary of their contents, see the HHC’s COVID-19 Emergency Decrees Tracker here: <https://docs.google.com/spreadsheets/d/1t27aU5QYV0pj8PfaNxWuajyPhrwpbO6TxunRjPnrOhM/edit#gid=0>.

³² Available in Hungarian here: <https://www.parlament.hu/irom41/09790/09790.pdf>.

³³ For other accounts of developments in the state of danger in Hungary, see: Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, [http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_\(analysis\).pdf](http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf); Political Capital, *Nothing is more permanent than a temporary solution – the state of danger will come to an end in Hungary, but its impact remains*, 28 May 2020, https://www.politicalcapital.hu/pc-admin/source/documents/pc_flash_report_nothing_is_more_permanent_than_a_temporary_solution_20200528.pdf.

³⁴ See e.g.: <https://444.hu/2020/08/03/az-emberek-mar-azert-is-hatranynba-kerulhetnek-mert-szoba-allnak-velem>.

over 75,000 views on the police's YouTube channel before it was removed.³⁵ The chilling effect significantly impacts the work of journalists as well: they report that it has become completely uncertain what they might need to prove in court should they be charged with fearmongering, and "even with the guarantee of anonymity, sources do not easily agree to speak to journalists because they are afraid of retaliation".³⁶

2.1.2. Government decree suspending the GDPR and limiting freedom of information

The government took a range of steps under the state of danger that went against the requirement to ensure access to public interest data, and violated privacy rights.³⁷

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

Furthermore, the government decree provided the possibility for public bodies to extend the deadlines to respond to freedom of information request to 45+45 days (instead of the 15+15 days originally included in the law) if it was "probable" that responding to the freedom of information request within the original deadline would endanger the fulfilment of their public duties in connection with the state of danger.⁴⁰

2.1.3. Military supervision of private companies⁴¹

Under the pretext of the COVID-19 pandemic, the Government has developed a **new legal framework enabling the state to assume control over private companies in a non-transparent manner**. The new construction is based on a previously existing, but purely technical regulation – the legislation on "critical infrastructure" – and practically blurs the boundaries of state control, creating a quasi-preparatory phase for assuming state control that completely lacks constitutional guarantees. The adopted legislation is a striking **example of how an issue of public health can be converted into a matter of security and used to fortify political power over private actors**.

The scheme of this new measure unfolded step-by-step during the period of the state of danger. At first, using its unconstrained power to issue decrees that derogate from any Act of Parliament under the Authorization Act, the Government vested the Minister of Defence with uncontrolled powers to qualify any asset or company as "critical" in a proceeding that totally lacks transparency.⁴² Second, the law on "critical infrastructure"⁴³ was comprehensively amended, introducing the possibility of constant

³⁵ For English language reports on the two cases, see: <https://www.politico.eu/article/viktor-orban-critics-fall-foul-of-hungary-controversial-coronavirus-covid19-law/>.

³⁶ Hungarian Civil Liberties Union, *Research on the obstruction of the work of journalists during the coronavirus pandemic in Hungary*, 2020, https://tasz.hu/a/files/coronavirus_press_research.pdf, p. 5.

³⁷ For a detailed description of these measures, see: Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, [http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_\(analysis\).pdf](http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf), pp. 9-13.

³⁸ Blackstone Chambers, *Hungary and the Rule of Law: The law of the European Union and Hungary's Act XII of 2020 on the containment of coronavirus and Decrees issued thereunder – Opinion*, <https://www.blackstonechambers.com/news/legal-opinion-hungarian-covid-19-legislation/>, p. 17.

³⁹ *Ibid.*, p. 19.

⁴⁰ Government Decree 179/2020. (V. 4.), Article 2

⁴¹ For more details, see: Hungarian Helsinki Committee, *Update on Military Supervision of Private Companies under COVID-19 Pandemic in Hungary*, 26 June 2020, https://www.helsinki.hu/wp-content/uploads/HHC_Update_on_military_supervision_of_private_companies_under_COVID-19_26062020.pdf.

⁴² Government Decree 86/2020. (IV. 5.)

⁴³ Act CLXVI of 2012 on the Identification, Qualification and Protection of Critical Systems and Infrastructure

military supervision of companies, unconstrained access to secrets of any kind, and discretionary governmental powers to intervene in the operation of critical companies under special legal regimes. Third, Act LVIII on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness (*see Section 2.3. in detail*) vested the Government with unlimited powers to establish tasks for military forces in a state of danger or a state of medical crisis.

The toolbox developed **grants full power to the state to interfere with the activities of private companies**, and leaves the shareholders with practically no room for manoeuvring to protect their interests. The wide discretionary powers granted to the Government enable the discriminatory application of security measures and the manipulation of privately owned assets under the guise of fighting an epidemic.

2.1.4. Weakening local self-governments and opposition parties

The government “curbed the finances of the opposition”: it “halved state support for political parties”.⁴⁴ In addition, as presented in detail by Political Capital,⁴⁵ the Government targeted local self-governments, which “became actors potentially able to show political alternatives to the ruling party in the wake of the opposition’s victories in the 2019 municipal elections”.⁴⁶ As a part of that, local self-governments had to “extend their basic social services [...] due to the extra tasks conferred upon them” by the Government, but were not provided “with extra resources for it even though state payments did not even cover the costs of basic services before the pandemic”.⁴⁷ In addition, the Government “cut the funds of local self-governments referring to the pandemic”. Lastly, certain measures helped the Government “to specifically target opposition-led municipalities. For instance, the government can designate special economic zones in certain settlements, and the properties and local taxes from these zones are transferred to county-level bodies dominated by the ruling party. Another such opportunity is cutting central development funds from certain local self-governments referring to the epidemic, which predominantly affected opposition-led municipalities.”⁴⁸

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

After 11 Iranian students were placed under quarantine in a hospital ward as they were in a close contact with two Iranians who tested positive for COVID-19, on 9 March 2020, during the daily press conference of the epidemic task force, it was announced that “two of the Iranian nationals quarantined threw around chairs in the hospital ward and refused to cooperate with the medical staff”.⁴⁹ On 12 March, when foreign students who tested negative for COVID-19 were released from the hospital, 20 police officers surrounded Iranian students and served them with summons to the immigration authority. Students of other nationalities were allowed to leave freely.

The HHC represented one of the students. After the immigration hearing, she was immediately served with an expulsion decision and a three-year entry ban to the Schengen Area on the grounds that there is an ongoing investigation against her for violating the rules of quarantine, and thus she poses a security risk. The accusation referred to a time when she was not even in hospital and to a different ward than the one she was placed in. On 13 March, all Iranian students received the same expulsion decisions with verbatim copies of the reasoning. The expulsion order was appealed against by the HHC, but the court held that regardless of whether or not the HHC’s client is innocent, the court cannot overrule the statement of the police that claims that she poses a security risk, and upheld the expulsion

⁴⁴ Political Capital, *Nothing is more permanent than a temporary solution – the state of danger will come to an end in Hungary, but its impact remains*, 28 May 2020, https://www.politicalcapital.hu/pc-admin/source/documents/pc_flash_report_nothing_is_more_permanent_than_a_temporary_solution_20200528.pdf, p. 3.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ The English summary of the daily briefing is available on the Government’s official website:

<https://www.kormany.hu/en/ministry-of-interior/news/entry-ban-for-iranians-those-who-do-not-cooperate-can-be-deported>.

order of the immigration authority.⁵⁰ The HHC's client was deported on 16 April with 10 other Iranian students. In the following weeks, a total of 27 Iranian students were expelled and sent back to Iran based on the same reasoning, and some court judgments were also identical.⁵¹

On 5 April 2020, the Government issued Government Decree 85/2020 (IV. 5.), which **removed the right to request an interim measure to suspend the expulsion** until a court judgment is issued on the appeal against expulsion decisions issued on the basis of the violation of the rules on epidemic. This **renders appeals against an expulsion decision ineffective as the expulsion can be carried out even while an appeal is pending at court.** This clearly **violates EU law** and can amount to a breach of fundamental rights.⁵² Based on the Iranian cases described above, it can be concluded that the government decree depriving individuals expelled for being accused of violating the rules on epidemic of an effective remedy against the expulsion disproportionately punished foreigners whose guilt of such criminal offence has not been established.

2.1.6. Parliament prohibiting legal gender recognition

In a law adopted on 19 May 2019,⁵³ the Parliament prohibited legal gender recognition, in violation of the rights of transgender people. The new law prescribes that individuals' "sex by birth" (defined as "biological sex based on primary sex characteristics and chromosomes") shall be recorded in the national registry of births, marriages and deaths, and this cannot be changed later.⁵⁴ As explained by the LGBTQI organization Háttér Society, the prohibition of legal gender recognition "clearly violates international human rights norms, and the consistent case law of the European Court of Human Rights. It also contradicts the consistent practice of the Hungarian Constitutional Court, that ruled in 2005, 2007 and 2018 (in 2018 unanimously) that the legal gender and name change for transgender people are a fundamental human right."⁵⁵

Beyond Hungarian NGOs, several international human rights stakeholders⁵⁶ expressed their objection to the law as well, including the Council of Europe's Commissioner for Human Rights,⁵⁷ the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity,⁵⁸ the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the right to privacy and the Special Rapporteur on violence against women, its causes and consequences,⁵⁹ but to no avail.

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

On 5 May 2020, the Parliament adopted Political Statement 2/2020. (V. 5.) on the Importance of the Protection of Children and Women and the Rejection of Joining the Istanbul Convention, which calls on the Government not to take further steps towards the recognition of the binding effect of the Istanbul Convention and to take the position before EU institutions that the EU should not join the Istanbul Convention either. According to the political statement, the reason for the rejection is that the Parliament

⁵⁰ The court interpreted the provisions of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals as prescribing that the opinion of the law enforcement agencies on existence of public security threat is binding, which is highly contested.

⁵¹ For more information on the case, see: Hungarian Helsinki Committee, *Submission of the Hungarian Helsinki Committee to the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance*, 12 June 2020, <https://www.helsinki.hu/wp-content/uploads/HHC-submission-to-SR-on-xenophobic-incidents-during-the-COVID-19-epidemic.pdf>, pp. 3-6.

⁵² An assessment of this government decree being in breach of EU law was prepared by the Blackstone Chambers (London) on 8 June 2020, and is available here: <https://www.blackstonechambers.com/news/legal-opinion-hungarian-covid-19-legislation/>, pp. 9-14.

⁵³ Act XXX of 2020 on the Amendment of Certain Laws Related to Public Administration and on Donating Property

⁵⁴ For more details, see: <https://en.hatter.hu/news/president-signs>; *Flash report – Amendment of the provisions on legal recognition of gender*, 30 June 2020, <https://www.equalitylaw.eu/downloads/5168-hungary-amendment-of-the-provisions-on-legal-recognition-of-gender-137-kb>.

⁵⁵ <https://en.hatter.hu/news/bill-ban-lgr>

⁵⁶ For a detailed list, see: <https://en.hatter.hu/news/bill-ban-lgr>.

⁵⁷ <https://www.facebook.com/CommissionerHR/posts/1512688642240374>

⁵⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25844>

⁵⁹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=25172>

“does not want to make either the notion of gender, or the Istanbul Convention’s gender ideology” a part of Hungarian law.⁶⁰

2.2. Transitional Act extends Government’s powers both in a special and an ordinary legal order

The state of danger was terminated by the Government as of 18 June 2020, and with that, the Authorization Act was repealed, along with the over 150 government decrees that were adopted during the state of danger. However, on the same day, Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness (hereafter: Transitional Act)⁶¹ came into force. The **Transitional Act fundamentally altered the legal framework regarding the “state of danger”** (*veszélyhelyzet*), a special legal order, **and the “state of medical crisis”** (*egészségügyi válsághelyzet*), and extended the Government powers in both scenarios.⁶²

2.2.1. Amending the rules of the state of danger

Under Article 53(2) of the Fundamental Law, in a state of danger (a form of special legal order), the Government may adopt decrees “as provided for by a cardinal Act”. Such a cardinal law had been in place already before the Authorization Act was adopted: it was Act CXXVIII of 2011 on Disaster Management and Amending Certain Related Acts of Parliament (hereafter: Disaster Management Act). By listing the areas in which the Government is authorized to issue decrees in a state of danger,⁶³ the Disaster Management Act drew clear boundaries as to what the Government may and may not do in a state of danger. Article 2(1) of the Authorization Act widened the scope of these potential areas in an excessively broad manner, and practically provided a *carte blanche* mandate for the Government. **The Transitional Act inserts this very provision of the Authorization Act practically verbatim into the Disaster Management Act, and so excessively widens the scope of the decrees the Government may issue during a state of danger.**⁶⁴ Accordingly, the Disaster Management Act currently sets out the following in Article 51/A(1):

*“During a state of danger declared in order to prevent a human epidemic causing mass disease outbreaks endangering life and property, to eliminate its consequences, and to protect the health and life of Hungarian citizens, **the Government may – in addition to the extraordinary measures and regulations set forth in Subchapters 21–24 [of the Disaster Management Act] – suspend the application of certain Acts of Parliament, derogate from the provisions of Acts and take other extraordinary measures by means of a decree, in order to guarantee for citizens the safety of life and health, personal safety, the safety of assets and legal certainty, as well as the stability of the national economy.**”*

As a joint NGO statement pointed out, this means that the Transitional Act “[does] away with an important safeguard in the Fundamental Law. The Fundamental Law wishes to maintain the balance of power between the branches of government by permitting the government to suspend and set aside laws, but only insofar and in such a manner as allowed by parliament in the Disaster Management Act. Now, under [the amendment] of the Disaster Management Act, the government may order any measures it deems necessary if the measures previously specified by parliament are

⁶⁰ See also: Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, [http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_\(analysis\).pdf](http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf), pp. 5-6.

⁶¹ For an unofficial English translation of certain selected provisions of the Transitional Act, see: https://www.helsinki.hu/wp-content/uploads/T-10748_excerpts_unofficial_translation_EN.pdf.

⁶² In detail, see: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Detailed analysis of the Transitional Act’s provisions on special legal order and the state of medical crisis, and on other provisions concerning fundamental rights and the rule of law*, 30 July 2020, https://www.helsinki.hu/wp-content/uploads/Transitional_Act_AIHU-EKINT-HCLU-HHC_30072020.pdf.

⁶³ In detail, see: Disaster Management Act, Article 45(1) and Articles 49–51. For a summary in English, see: Hungarian Helsinki Committee, *Background note on Act XII of 2020 on the Containment of the Coronavirus*, 31 March 2020, https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf, pp. 4-5.

⁶⁴ Article 353

inadequate. This renders futile the provision of the Fundamental Law that the government may only exercise powers under a special legal order in accordance with the provisions of cardinal laws – from now on, cardinal laws will no longer restrict this power and will permit anything that the government deems necessary in the given circumstances.”⁶⁵

Similarly to the Authorization Act, the Transitional Act adds a provision prescribing the application of the principles of necessity and proportionality when issuing decrees, and sets out that the Government may exercise the above powers for certain, albeit widely formulated purposes related to the state of danger.⁶⁶ However, this provision is overshadowed by the fact that according to Article 54(1) of the Fundamental Law, under a special legal order and so in a state of danger the exercise of fundamental rights, save certain rights, may be suspended or may be restricted beyond the extent specified in Article I(3), i.e. the general rules of the Fundamental Law on restricting fundamental rights.

An important difference between the Authorization Act and the new regime of the Disaster Management Act is the time period for which decrees remain in force:

- The **Authorization Act authorized the Government to extend the effect** of future, not-yet-adopted decrees without separate parliamentary approval **until the end of state of danger**. Thus, it removed the constitutional safeguard that government decrees adopted in a state of danger remain in force after an initial period of 15 days only with the Parliament’s support.⁶⁷
- The Transitional Act does not include such an authorization, and so **decrees adopted under the new provision of the Disaster Management Act will remain in force for 15 days, unless extended** by the Government **upon the decision of the Parliament**.

2.2.2. Amending the rules of the state of medical crisis

The Transitional Act has amended the rules on the state of medical crisis, regulated by Act CLIV of 1997 on Health Care (hereafter: Health Care Act), significantly widening the possibilities of adopting restrictive measures under such a state of medical crisis. **In parallel to terminating the state of danger, the Government declared that there is a state of medical crisis**, meaning that **since 18 June 2020, the extended powers of the Government apply** as described below.

Unlike the state of danger, the state of medical crisis is not one of the special legal orders provided for by the Fundamental Law, but a stand-alone regime **ordered under ordinary legal order** when certain epidemiological and public health scenarios described in the Health Care Act occur. The Government may declare a state of medical crisis upon the motion of the responsible Minister, which motion shall be based on the proposal of the Chief Medical Officer.⁶⁸ Thus, **ordering (as well as terminating) the state of medical crisis is up to the Government’s decision**. The state of medical crisis **may initially be ordered for a period of six months, but it may be extended practically indefinitely** after that if the preconditions for a state of medical crisis still prevail.⁶⁹ This framework raises two issues with regard to the government decrees adopted under a state of medical crisis:

- **Government decrees** adopted under a state of medical crisis **will stay in force as long as the Government wishes**, i.e. there is no guarantee that they will lapse after a certain period of time, unlike in the case of the decrees adopted in a state of danger;

⁶⁵ Amnesty International Hungary – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Never-Ending Story? Rapid analysis of the Bills T/10747 and T/10748*, 27 May 2020, https://www.helsinki.hu/wp-content/uploads/Never-Ending_Story_HHC-AI-HCLU_rapid_reaction_27052020.pdf

⁶⁶ Article 51/A(2) sets out the following: “The Government shall exercise its powers conferred under paragraph (1) to the extent necessary and proportionate to the objective pursued, so as to prevent, control and eliminate the human epidemic, and to prevent and avert the harmful effects thereof.”

⁶⁷ Article 53 of the Fundamental Law sets out the following: “(2) In a state of danger, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures. (3) The decrees of the Government referred to in paragraph (2) shall remain in force for 15 days, unless the Government, on the basis of authorization by the Parliament, extends those decrees.”

⁶⁸ Transitional Act, Article 313

⁶⁹ Transitional Act, Article 314

- **Parliamentary approval is not needed to keep the decrees adopted under a state of medical crisis in force**, unlike in the case of the decrees adopted in a state of danger.

The Transitional Act lists the measures the Government may take via decrees in a state of medical crisis.⁷⁰ A part of these measures (e.g. restricting or prohibiting the operation of institutions and events) were included in the Health Care Act and could be ordered if there was an epidemic already before the Transitional Act.⁷¹ Due to their abstract formulation, these rules allowed for a wide restriction of fundamental rights, potentially effecting citizens' freedom of action and their freedom of movement, and, because of the not adequately clear wording of the law, even their freedom of assembly. Thus, the danger of restricting certain freedoms was already inherent in the original text of the Health Care Act before the coming into force of the Transitional Act, but **the Transitional Act has widened the scope of measures that can be ordered in a state of medical crisis**. Firstly, the new list of possible measures includes measures that were adopted this spring in government decrees, and which raised fundamental rights concerns, e.g. that the Government will have the power to establish the order of accessing health care services, or maintaining the so-called hospital commander system, which subordinates hospitals to law enforcement agencies. Furthermore, the Transitional Act **leaves the scope of the potential measures to be introduced via government decrees open** when prescribing that in a state of medical crisis the Government may order "epidemiological measures that are provided for by an Act of Parliament" and may adopt "other provisions specified by an Act of Parliament".⁷²

Thus, as a result of the amendments included in the Transitional Act, **a similar situation may occur in a state of medical crisis as the one created by the repealed Authorization Act, where the Government has discretion for a non-specified period of time to adopt measures via decrees that regulate the fundamental aspects of life of and significantly restrict individual freedoms**. However, there are two important distinctions between the decrees adopted in the framework of a state of danger and the decrees adopted under a state of medical crisis:

- Decrees adopted under a state of medical crisis cannot, in principle, suspend the application of or derogate from the provisions of Acts of Parliament;
- Since the state of medical crisis is not a special legal order, the rule in Article 54(1) of the Fundamental Law that allows restricting fundamental rights beyond the extent allowed by the Fundamental Law in ordinary circumstances does not apply to decrees adopted under a state of medical crisis.⁷³

2.2.3. Further provisions of the Transitional Act

Among the further provisions of the Transitional Act, there are rules that are to be welcomed and seem to be indeed transitional and necessary. However, at the same time, the Transitional Act also **contains provisions that "endanger the exercise of fundamental rights, or give rise to severe constitutional concerns for other reasons"**, such as the following ones:

- "certain provisions pertaining to the operation of the Constitutional Court;
- the unclear wording in relation to exercising the right to freedom of assembly;
- several provisions affecting data protection and the freedom of information;
- the discriminatory nature of fines imposed for violating the rules of home quarantine;
- the extension of the rights of the Military Forces;
- maintaining state control over a private company;
- certain labour law rules;
- some of the changes pertaining to the criminal procedure and the penitentiary system; and
- the transformation of the asylum system".⁷⁴

⁷⁰ Transitional Act, Article 318

⁷¹ Health Care Act, Article 74

⁷² See Article 318 of the Transitional Act, introducing Article 232/D (1) to the Health Care Act.

⁷³ In addition, according to the Transitional Act, Article 232/D (2) of the Health Care Act will also explicitly set out that the Government may issue decrees in a state of medical crisis "to the extent necessary and proportionate to the objective pursued, so as to prevent, control and eliminate [the epidemiological and public health scenarios as detailed by the Health Care Act as a basis for a state of medical crisis], and to prevent and avert the harmful effects thereof".

⁷⁴ In detail, see: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Detailed analysis of the Transitional Act's provisions on special legal order and the state of medical crisis, and on*

2.3. Newest national consultation bashes the EU and the CJEU

The Government launched a new “national consultation” in the spring “on the coronavirus and restarting the economy”, which is still ongoing at the time of writing this Information Note. Originally, it was envisaged that the national consultation would include questions related to the Gyöngyöspata case (see *Section 1.2. in more detail*)⁷⁵ and on compensations paid to detainees for inhuman detention conditions (referred to as “prison business” by government representatives),⁷⁶ but in the end, no such questions were included in the consultation.⁷⁷ Instead, certain questions of the national consultation **attack the EU and the CJEU in relation to immigration matters**, and specifically the CJEU judgment on transit zones, by posing the following manipulative questions:

*"12. According to a **European Court of Justice** ruling, it is illegal to have immigrants wait in the transit zone on the Hungarian border. The decision **found that migrants should be allowed entry into our country during the epidemic**. This ruling coincides with **George Soros's old plan on migration**, which proposed that one million immigrants must be allowed entry annually and at any cost.*

Do you agree that the government should continue to stand up against immigration and maintain strict protection of Hungary's borders? Yes/No

*13. **Brussels is preparing an offensive against the immigration-related regulations of the Hungarian constitution**. They want to force us to amend the Fundamental Law's articles that prevent migration.*

Do you agree that the Hungarian government must insist on its anti-immigration rules even at the price of an open conflict with Brussels? Yes/No⁷⁸

2.4. Parliamentary resolution before EU budgetary talks opposes rule of law conditionality and support for civil society organisations

On 14 July 2020, the Parliament adopted, almost exclusively with the votes of MPs of the governing parties, Parliamentary Resolution 25/2020. (VII. 14.) OGY on the European Union's Economic Measures Related to the Economic Effects of the Coronavirus. The resolution calls upon the Government to proceed in the European Council in the course of adopting the Next Generation EU instrument and the Multiannual Financial Framework (MFF) in line with the following “principles”:

- *"Member States in an equivalent situation shall be treated the same;*
- *the citizens of wealthier Member States shall not receive more support than the citizens of poorer countries;*
- *the ongoing so-called 'Article 7 procedures' shall be closed before the adoption of the Next Generation EU instrument and the MFF;*
- *political parties and organisations disguised as civil society organisations that carry out political activities cannot be supported from EU funds;*
- *linking the funds to political and ideological conditions – referring to the 'rule of law' – is unacceptable”.*

other provisions concerning fundamental rights and the rule of law, 30 July 2020, https://www.helsinki.hu/wp-content/uploads/Transitional_Act_AIHU-EKINT-HCLU-HHC_30072020.pdf, pp. 6-14. As far as the transformation of the asylum system is concerned, see Section 1.1. of this Information Note.

⁷⁵ In February 2020, the governing party MP representing the region of Gyöngyöspata announced that the Government had decided to pose two questions in the national consultation regarding the Gyöngyöspata case: (i) whether the claim for compensation can be considered as just, and (ii) if the claim for compensation can be considered as just, how should the government provide reparation for the damages. The MP also added that the Government prefers in-kind compensation, and expressed that “as is known, the Roma have launched the action for damages at the initiative of a foreign-funded organization”. (See: <https://www.facebook.com/120370174702378/posts/3518017078270987/?vh=e&d=n>.)

⁷⁶ See e.g.: <https://www.kormany.hu/hu/miniszterelnoki-kabinetiroda/parlamenti-allamtitkar/hirek/nemzeti-konzultacioidit-marcusban-a-kormany>.

⁷⁷ For an English translation of all the questions, see: <http://abouthungary.hu/news-in-brief/heres-the-latest-national-consultation-questionnaire-in-english/>.

⁷⁸ <http://abouthungary.hu/news-in-brief/heres-the-latest-national-consultation-questionnaire-in-english/>, highlights by the HHC

3. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES: REGIME FOR CONSTITUTIONAL REVIEW OF LAWS⁷⁹

In a special legal order, and hence in a state of danger, due to the Government's special mandate, **constitutional oversight performed by the Constitutional Court must be strengthened**. Therefore, jurisdictional and procedural preconditions should have been put in place in parallel to adopting the Authorization Act to ensure that the Constitutional Court is able to swiftly and effectively assess whether special legal order decrees are constitutional.⁸⁰ (For example, the Parliament could have set out a deadline for the Constitutional Court to adjudicate related cases, or could have extended the scope of persons eligible to initiate the procedure of the Constitutional Court in relation to these government decrees.) However, **the Authorization Act did not include any such guarantee**.

The above considerations apply to the amended forms of state of danger and state of medical crisis as introduced by the Transitional Act as well (*see Section 2.2. in more detail*). However, **the Transitional Act does not include any provisions that would facilitate the swift and effective constitutional review of government decrees adopted in a state of danger or in a state of medical crisis**.

Similarly to the Authorization Act, the Transitional Act also sets out that during a period of special legal order, the President of the Constitutional Court may permit derogation from the rules of procedure of the Constitutional Court.⁸¹ However, the Transitional Act fails to set forth any limitation in this regard, which gives rise to concerns especially in light of the fact that in an order⁸² issued on 31 March 2020 on the basis of the Authorization Act, **the President of the Constitutional Court derogated from the ordinary rules of procedure in a way that restricted the space for debate** among Constitutional Court justices, and **made it possible for the Constitutional Court to reject constitutional complaints with even shorter reasoning than before**.⁸³ The Transitional Act allows the President of the Constitutional Court to issue such or a similar order again in a future state of danger.

4. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES: INDEPENDENT AUTHORITIES⁸⁴

In October 2019, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions deferred the review of the **Commissioner for Fundamental Rights'** (the Ombudsperson's) status as a national human rights institution,⁸⁵ because the Commissioner's selection process "is not sufficiently broad and transparent", and because the Commissioner as a National Human Rights Institution **had "not demonstrate[d] adequate efforts in addressing all human rights issues**, nor has it spoken out in a manner that promotes and protects all human rights". It can be derived from the SCA's report that deficiencies and lack of action have been detected in following thematic areas:

- the rights of vulnerable ethnic minorities, including the Roma, migrants, refugees and asylum-seekers;

⁷⁹ Cf. Question IV. A. 38. of the European Commission's stakeholder consultation [survey](#), launched in relation to the European Commission's 2020 Annual Rule of Law Report.

⁸⁰ See as well: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee: *Unlimited power is not the panacea – Assessment of the proposed law to extend the state of emergency and its constitutional preconditions*, 22 March 2020, <https://www.helsinki.hu/en/unlimited-power-is-not-the-panacea/>

⁸¹ Transitional Act, Article 356

⁸² The order is available here in English: <https://hunconcourt.hu/announcement/the-state-of-danger-affects-the-operation-and-the-responsibility-of-the-constitutional-court-as-well>.

⁸³ See in more detail in Hungarian here:

https://helsinkifigyelo.blog.hu/2020/04/20/vita_es_indokolas_nelkuli_elutasitasokat_tett_lehetove_az_alkotmanybirosag_elnoke.

⁸⁴ Cf. Question IV. B. 39. of the European Commission's stakeholder consultation [survey](#), launched in relation to the European Commission's 2020 Annual Rule of Law Report.

⁸⁵ Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 14–18 October 2019,

<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20October%202019%20English.pdf>, pp. 23–26.

- the situation of human rights defenders, with special regard to Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (*see Section 5.*); and
- the lack of petitions to the Constitutional Court.

In September 2019, a new Commissioner took office, but unfortunately, **the track record of the new Commissioner** in the areas listed above **leaves much to be desired** as well. Below, we bring examples of human rights violations where action would have been needed, but the new Ombudsperson failed to act, or failed to act adequately:

- It was announced on 23 January 2020 that the Ombudsperson's office launched an examination⁸⁶ in relation to the execution of the court judgment awarding compensation payments for **school segregation to Roma pupils** in Gyöngyöspata (*see Section 1.2. for more details*). However, **the conclusions of this examination have not been published to date**, and the Commissioner has failed to make any other public statements in this regard, in spite of the case being discussed widely, and governing party politicians launching a concerted campaign against the judgment. He **has not made any public statements when the Lex Gyöngyöspata** (i.e. the amendment prescribing in relation to future similar violations that the court shall grant the compensation for the damages in the form of educational services instead of pecuniary compensation) **was submitted and adopted**. Even though the Lex Gyöngyöspata is clearly unconstitutional (since it constitutes indirect discrimination itself), the Ombudsperson – to our knowledge – **has not petitioned the Constitutional Court** for a constitutional review. In June, 24 NGOs asked him to object to the Lex Gyöngyöspata in the course of the parliamentary debate, and challenge the law before the Constitutional Court once it is adopted,⁸⁷ but the Ombudsperson have failed to do so, nor has he responded to the NGO's letter to date.
- The Ombudsperson issued a statement⁸⁸ in March 2020 regarding the situation of vulnerable groups in light of the coronavirus pandemic, "particularly of the elderly, the Roma, the sick, persons with disabilities, homeless people, and other financially indigent persons", and stated that the Ombudsperson's office "continuously analyses" the effect the pandemic has on everybody, with special attention to members of vulnerable groups. However, the Ombudsperson has not disclosed the exact topics of his investigations to date, and has not published any conclusions.
- In the spring, the **hostile Government rhetoric aimed at discrediting** (e.g. through the use of the term "prison business") **detainees launching compensation procedures for inadequate detention conditions, their legal counsels and detainees' rights advocates** in general, including the HHC, has continued.⁸⁹ Even though the statements by government and governing party representatives were capable of creating a hostile environment towards detainees, attacked attorneys simply for applying the law, and targeted a human rights NGO once again, the Ombudsperson remained silent regarding the issue.
- Despite the recurring requests from the HHC, the new Ombudsperson has **failed to take any steps** (launching an investigation, petitioning the Constitutional Court, etc.) **with regard to any of the rights violations affecting asylum-seekers and migrants** signalled by the HHC, ranging from violent pushbacks and collective expulsion on the Serbian-Hungarian border to deficiencies in the situation of migrant children.
- The Ombudsperson has **failed to speak up publicly against the law that prohibited legal gender recognition, violating the rights of transgender people** (*see Section 2.1.6.*) and **has failed to submit a request for constitutional review** to the Constitutional Court. He has remained silent and inactive despite NGOs and over 13,000 signatories from Hungary asking him to turn to the Constitutional Court.⁹⁰

⁸⁶ <http://www.ajbh.hu/kozlemenyek/-/content/qzykPkTyQAvM/szalayne-sandor-erzsebet-nemzetisegi-ombudsmanhelyettes-kozlemenye-a-gyongyospatai-iskolai-szegregacio-miatt-megitelt-karteritesek-vegrehajtasaval-kap>

⁸⁷ See: <https://www.helsinki.hu/lepien-fel-az-ombudsman-a-keszulo-jogi-getto-ellen/>.

⁸⁸ <http://www.ajbh.hu/kozlemenyek/-/content/qzykPkTyQAvM/az-alapveto-jogok-biztosanak-es-helyetteseinek-kozlemen-1>

⁸⁹ For the latest developments, see: https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2020_06_29.pdf.

⁹⁰ See: <https://www.amnesty.hu/news/2728/itt-az-ido-az-ombudsmannak-az-ab-hoz-kell-fordulnia>, <https://www.amnesty.hu/news/2731/mar-tobb-mint-10-ezren-kerik-az-ombudsmantol-hogy-vegezze-a-munkajat>, <https://www.amnesty.hu/news/2740/mar-tobb-mint-100-ezren-kerik-kozma-akost-hogy-vegezze-a-munkajat>.

5. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES: THE ENABLING FRAMEWORK FOR CIVIL SOCIETY ⁹¹

On 18 June 2020, the **CJEU** issued a **judgment**⁹² in the infringement procedure launched by the European Commission about Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (hereafter: **Lex NGO**). The CJEU found that by adopting the provisions of the Lex NGO, “which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations, **Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations**, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union”. Thus, the CJEU confirmed that the Lex NGO amounts to **unjustified interference with the respect for private life, protection of personal data and freedom of association**. The CJEU held that the restrictive measures introduced by Hungary are “**likely to create a general climate of mistrust and stigmatisation** of the associations and foundations concerned in Hungary”.

After the judgment, the **Minister of Justice** communicated in a press release⁹³ that the Hungarian Government “is committed to ensuring the transparency of non-governmental organisations [...]. This is the objective of the Hungarian legislation about the transparency of organisations funded from abroad, and the [CJEU’s] decision [...] has confirmed the legitimacy of that objective [...]”. The Minister stated that the government will provide the means necessary for the transparency of NGOs “also with due regard to the [CJEU]’s judgment”. However, the Minister of Justice also added that “[**t**]he **government’s position remains that the obligations of registration and publication required under the Hungarian legislation have not made the funding or operation of organisations any more cumbersome**”, and that **the CJEU’s decision “does not cite a single specific item of data or evidence that would prove the contrary”**.

In a radio interview⁹⁴ on 19 June 2020, responding to a question regarding the judgment, the **Prime Minister** said that there is “liberal imperialism” in Western Europe, **international courts** “are often undoubtedly part of this network”, and that “after seeing the identities of the Hungarians who are also involved in such international rulings, especially those on human rights issues, we can very easily find a **link with Soros’s international network** – which forms the Western European headquarters for this liberal imperialism”. The Prime Minister stated that the CJEU “didn’t dare to say that the transparency of NGOs isn’t a high priority; they simply said that fewer restrictions should be placed on them when ensuring this transparency”. He went on to say the following: “This can be done. So it won’t be difficult to comply with this judgment. [...] [E]very Hungarian person will know about every forint that has come here from abroad and has been sent here for political purposes, because they have the right to know this information.”

At the time of issuing this Information Note, the **Lex NGO remains in effect**, and there is no indication that the Government aims to repeal it. Adopting a new law on civil society organisations is **not included in the Government’s legislative agenda for the Parliament’s autumn 2020 session**,⁹⁵ and there is no official information available yet as to the envisaged content of any amendment or new law in this regard.

⁹¹ Cf. Question IV. D. of the European Commission’s stakeholder consultation [survey](#), launched in relation to the European Commission’s 2020 Annual Rule of Law Report.

⁹² *European Commission v. Hungary*, Case C-78/18, JUDGMENT OF THE COURT (Grand Chamber), 18 June 2020, ECLI identifier: ECLI:EU:C:2020:476

⁹³ See: <https://www.kormany.hu/en/ministry-of-justice/news/we-are-committed-to-transparency-of-non-governmental-organisations>.

⁹⁴ For a full text of the interview in English, see: <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-19/>.

⁹⁵ See: https://www.parlament.hu/documents/10181/721095/Tvalk_program_2020_%C5%91sz.pdf/bea220f0-55fa-9607-0c48-7271c511cccd?t=1592289343256.