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The progress of the Assembly's monitoring procedure (January-December 2017) and the periodic review of the honouring of obligations by Estonia, Greece, Hungary and Ireland

Periodic review: Hungary

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe
(Monitoring Committee)

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Summary

All member States of the Council of Europe that are not under a monitoring procedure *sensu stricto*, or engaged in a post-monitoring dialogue, are the subject of a regular periodic review by the Monitoring Committee of the honouring of their membership obligations to the Council of Europe. In this report, the committee presents the periodic review on Hungary. The committee concluded that Hungary is generally fulfilling its membership obligations to the Council of Europe and, overall, its democratic institutions function in line with the standards of the Council of Europe. However, a number of concerns were raised, and recommendations made in that respect, that deserve the prompt attention of the authorities.

1. See also Doc. 14450 [Part 1](#), [Part 2](#), [Part 3](#) and [Part 5](#).



Contents	Page
Explanatory memorandum by Mr Cezar Florin Preda, rapporteur	3
1. Introduction	3
2. Background	3
2.1. Political context	3
2.2. Relations with neighbouring countries and the European Union	4
2.3. Relations with the Parliamentary Assembly	5
3. Democracy	6
3.1. Local democracy	6
3.2. Constitutional reform	6
3.3. Elections	7
3.4. Populism	7
3.5. Freedom of the media and freedom of expression	8
3.6. Civic space	10
4. Human rights and fundamental freedoms	14
4.1. Detention facilities, prevention of torture and other ill-treatment	14
4.2. Fight against intolerance and racism, discrimination and hate speech	15
4.3. Women's rights, trafficking in human beings, children's rights	20
4.4. Minority languages	21
5. Rule of law	21
5.1. Checks and balances	21
5.2. Anti-terrorism and surveillance	21
5.3. Fight against corruption	22
5.4. Fight against money laundering	23
5.5. Independence and effectiveness of the judiciary/criminal justice system	23
5.6. Constitutional Court	25
6. Conclusions and recommendations	25
Appendix	27

Explanatory memorandum by Mr Cezar Florin Preda, rapporteur

1. Introduction

1. Hungary is a landlocked central European country bordering Austria, Croatia, Romania, Serbia, the Slovak Republic, Slovenia, and Ukraine. It enjoys a strategic location at the confluence of the main land routes between western Europe and the Balkan Peninsula, as well as between Ukraine and the Mediterranean basin.

2. Hungary played an important part in accelerating the collapse of communism across eastern Europe when it opened its border with Austria in 1989, allowing tens of thousands of East Germans as well as other citizens from Warsaw Pact countries to escape to the West.² It held its first multiparty elections in 1990.

3. Hungary became the 24th member State of the Council of Europe on 6 November 1990, committing itself to respecting the obligations incumbent upon every member State under Article 3 of the Statute of the Council of Europe (ETS No. 1) with regard to pluralist democracy, the rule of law and human rights. As at 17 August 2017, Hungary had ratified 87 Council of Europe treaties and signed 19 additional treaties without ratification. It was the first former communist country to ratify the European Convention on Human Rights (ETS No. 5, “the Convention”) in 1992.

4. In recent years, developments in Hungary have raised concern and led the Assembly to intensify its discussions regarding respect for the Council of Europe standards and honouring of membership obligations by the country. Between January 2011 and June 2015, the Assembly discussed the possibility of a closer scrutiny of the commitments of Hungary vis-à-vis its membership of the Council of Europe. In 2013, the Assembly decided not to open the monitoring procedure in respect of Hungary and, in 2015, it decided to conclude the “special examination” of these matters.³ In its [Resolution 2162 \(2017\)](#) “The alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the Central European University”, the Assembly agreed that recent developments in Hungary merited its close attention as well as the mobilisation of Council of Europe expertise to help the Hungarian authorities ensure compliance with relevant Council of Europe and international standards in the field of freedom of association and expression, and resolved to continue to closely follow developments in Hungary.

5. This periodic report was drafted in line with [Resolution 2018 \(2014\)](#) on the progress of the Assembly's monitoring procedure (October 2013–September 2014) and the explanatory memorandum approved by the committee on 17 March 2015. It is based on, *inter alia*, the most recent findings of the Council of Europe monitoring mechanisms, the reports of the Assembly and the Council of Europe Commissioner for Human Rights and, when relevant, reports prepared by other international and civil society organisations.

6. This report is not an exhaustive research on the country but an analysis of the country's developments with regard to Council of Europe standards. I decided to focus on major issues, based on geopolitical, political and social developments as well as recent reports by the monitoring bodies. A number of specific human rights questions are thereby under review.

7. I would like to thank the Hungarian delegation to the Parliamentary Assembly and the authorities, for their co-operation, and express my appreciation for the thorough comments provided. Developments that have taken place since the preliminary review was discussed in the Monitoring Committee in September 2017 have been reflected in this report.

2. Background

2.1. Political context

8. Hungary is a multiparty parliamentary democracy. The unicameral National Assembly (“Országgyűlés”) is composed of 199 seats⁴ and elects the president (the head of State) every five years. Since 2012, the Head of State is János Áder, who was re-elected in March 2017. Following each election, the President proposes the candidate for Prime Minister from the majority party or coalition in parliament, to be elected by parliament by a simple majority. In the 2014 parliamentary elections, the centre-right Fidesz-KDNP (Christian Democratic

2. BBC, [Hungary profile](#) – Overview, 7 January 2016.

3. For more information, see the chapter, *infra*, on “Relations with the Parliamentary Assembly”.

4. 106 members are directly elected in single-member constituencies by simple majority vote and 93 members are directly elected in a single nationwide constituency by party list proportional representation vote.

People's Party) alliance retained its two-thirds majority in parliament, receiving 45% of proportional votes but winning 91% of the country's single-member districts that are allocated through a first-past-the-post system.⁵ The governing coalition lost its two-thirds majority in parliament in March 2015. Viktor Orbán, the Fidesz party leader, who was Prime Minister between 1998 and 2002, has been the Prime Minister since 2010.

9. The *per capita* income in Hungary is among the lowest in the Organisation for Economic Co-operation and Development (OECD), even though the economy has expanded steadily since 2012.⁶ The public debt to gross domestic product (GDP) ratio has been declining since 2011. According to 2015 figures, the government debt is at 97% of GDP while the household debt is 50.7% of disposable income. However, the exposure to foreign currency denominated loans was sharply reduced through a new law that required banks to convert those loans into domestic currency.⁷

10. While support for the ruling coalition remains high, there have been several large-scale demonstrations in Budapest against the government's moves regarding the Central European University⁸ and the draft bill on non-governmental organisations (NGOs), indicating a rising discontent.

11. Possibilities of participation of representatives of national minorities in the legislative process have been significantly improved: since the 2014 elections, all the 13 recognised minorities⁹ are represented in the National Assembly by elected nationality advocates who act as full members of the parliament, excluding the right to vote.¹⁰ This is because none of the minority electoral lists gathered the necessary number of votes required to obtain a seat.¹¹

2.2. Relations with neighbouring countries and the European Union

12. Hungary is a member of the Visegrád Group and became a full member of the European Union on 1 May 2004. It held the Presidency of the Council of the European Union for the first time between January and June 2011, and of the Visegrád Group as well as the Central European Initiative between July 2013 and June 2014. From July 2017 to June 2018, Hungary holds the rotating Presidency of the Visegrad Group.

13. While the authorities have publicly expressed their unquestionable commitment to Europe,¹² there are many indications that the Hungarian Government is pursuing an increasingly national sovereignist policy. Together with other countries in the Visegrád group, Hungary has continued to oppose some European policies, such as the refugee quota system.¹³

14. Hungary's ambiguous attitude to its European affiliation seems apparent from the fact that on the one hand it stresses its membership of a community of values while, on the other hand, it declares itself to be an "illiberal democracy", although the Prime Minister considered that "illiberal democracy" and belonging to the European Union were not incompatible. Furthermore, in a speech in February 2017, Viktor Orbán stated that countering the "diktat of Brussels" is one of the three main tasks for the State in 2017.¹⁴ The recently adopted laws with regard to foreign universities and civil society organisations that receive foreign funds are symptomatic of this ambiguity.

15. On 7 December 2017, the European Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that its Higher Education Law, as amended on 4 April 2017, disproportionately restricts European Union and non-EU universities in their operations and needs to be brought back into line with EU law.¹⁵ On the same day, the European Commission referred Hungary to the

5. For more information, see Doc. 13229 "Request for the opening of a monitoring procedure in respect of Hungary", 10 June 2013, paragraph 16; www.bbc.com/news/world-europe-31576491.

6. OECD, Economic Surveys Hungary: www.oecd.org/eco/surveys/hungary-2016-OECD-economic-survey-overview.pdf.

7. Ibid.

8. The new law foresees the review of some 28 foreign universities operating in the country, including the Central European University.

9. Cardinal Act CLXXIX on the Rights of Nationalities was adopted in December 2011 and establishes the following list of list of recognised groups: Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbians, Slovaks, Slovenians and Ukrainians.

10. Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Hungary](#), adopted on 25 February 2016, ACFC/OP/IV(2016)003, 12 September 2016, p. 5.

11. Ibid., p. 6.

12. Visegrád Group's input to the EU Summit on 25 March 2017, celebrating the 60th anniversary of the Rome Treaty: [Visegrád Group Wants "a Better Europe"](#).

13. "EU quota plan forced through against eastern European states' wishes", Matthew Holehouse, 23 September 2015.

14. Andrzej Sadecki, "The anti-Soros campaign in Hungary", 5 April 2017.

Court of Justice of the European Union for its law on foreign-funded NGOs. This is the third step in the infringement procedure, following the letter of formal notice sent by the Commission on 14 July and the reasoned opinion issued on 4 October 2017.¹⁶ The Commission also decided¹⁷ to continue pursuing a dialogue with the Hungarian authorities on other outstanding concerns, including in the field of asylum.¹⁸ The European Commission also considered that the national consultation “Let’s stop Brussels” launched in April 2017 contained several claims and allegations which were “factually incorrect or highly misleading”, but no procedure has been opened in this regard.¹⁹

16. The European Parliament adopted a resolution on 17 May 2017²⁰ considering that the situation in Hungary justifies the triggering of the procedure which may result in sanctions against Hungary, in view of the serious deterioration of the rule of law and democracy. The resolution calls for the launching of Article 7(1) of the Treaty on European Union.

2.3. Relations with the Parliamentary Assembly

17. In January 2011, a motion for a resolution on “Serious setbacks in the fields of the rule of law and human rights in Hungary” (Doc. 12490), which contained a request to open a monitoring procedure in respect of Hungary, was signed by 24 members of the Assembly.

18. The Assembly adopted [Resolution 1941 \(2013\)](#) on the request for the opening of a monitoring procedure in respect of Hungary in June 2013. “The Assembly note[d] that the new Hungarian Parliament, for the first time in the history of free and democratic Hungary, amended the former constitution – inherited from the one-party system – into a new and modern Fundamental Law through a democratic procedure, after intensive debates in the parliament and with contributions from Hungarian civil society.” The Assembly stressed that “a constitutional framework should be based on broadly accepted values in society. The Assembly note[d] that several provisions [were] a concern to a part of Hungarian society. These provisions however [were] based on traditional European values, [were] noted in the constitutions of many other European countries and [were] adopted by a democratic two-thirds majority in the Hungarian Parliament. This affect[ed] the democratic legitimacy and social acceptability of the constitutional framework, which [was] a matter for concern”. According to the Assembly, “the assessments of the constitution and several cardinal [i.e. organic] laws by the Venice Commission and Council of Europe experts raise a number of questions with regard to the compatibility of certain provisions with European norms and standards, including with the case law of the European Court of Human Rights”. It expressed its concern about the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary, embodied, *inter alia*, in the curtailing of powers and competences of the Constitutional Court. According to the authorities,²¹ following the opinion of the European Commission for Democracy through Law (Venice Commission), the authorities accordingly amended the Fundamental Law.

19. The Assembly recalled that the reason for the constant changing of the Constitution²² was the narrow party political interests, noting the attempt of the ruling coalition to use its unique two-thirds majority to push through reforms in contravention of democratic principles. The Assembly regretted the adoption of the Fourth Amendment to the Constitution, which contained a number of provisions previously declared unconstitutional by the Constitutional Court of Hungary and/or at variance with European principles and norms.

20. While pointing out that each of the concerns outlined was inherently serious in terms of democracy, the rule of law and respect for human rights taken separately, the Assembly stated that what was striking was the “sheer accumulation of reforms that aim to establish political control of most key institutions while in parallel weakening the system of checks and balances”. In conclusion, it “however decid[ed] not to open a monitoring procedure in respect of Hungary but resolv[ed] to closely follow the situation in Hungary and to take stock of the progress achieved in the implementation of th[e] resolution”. In addition, the Assembly called on the

15. http://europa.eu/rapid/press-release_MEMO-17-4767_en.htm.

16. *Ibid.*

17. *Ibid.*

18. All these procedures will be described below in the related chapters.

19. http://europa.eu/rapid/press-release_MEX-17-1116_en.htm; “FACTS MATTER European Commission responds to Hungarian National Consultation”, 26 April 2017.

20. European Parliament [resolution](#) on the situation in Hungary, 17 May 2017.

21. Comments provided by the Hungarian Delegation on the preliminary draft report.

22. The Fundamental Law was changed six times between 2011 and October 2017. In their comments, the Hungarian authorities state that the changes to the Fundamental Law were carried out following the recommendations of the Venice Commission.

Hungarian authorities to continue the constructive dialogue with the Venice Commission and to take specific measures regarding the Act on Freedom of Religion and the Status of Churches, the Act on Elections of Members of the Parliament, the Act on the Constitutional Court, and Media Legislation.

21. In June 2015, the Assembly adopted [Resolution 2064 \(2015\)](#) on the situation in Hungary following the adoption of Assembly [Resolution 1941 \(2013\)](#), evaluating a series of new laws in Hungary, including on the status of churches, elections, the Constitutional Court, the judiciary and the media, to see whether they were in line with Council of Europe standards. The Assembly welcomed, the progress made and the ongoing co-operation with the Secretary General of the Council of Europe, and encouraged the authorities to continue their dialogue with the Council of Europe in order to resolve a number of outstanding issues, namely in the fields of religion, media freedom, racist and extremist organisations, and the wide scope of cardinal laws, as well as the requirement of qualified majorities for future legislative changes.

3. Democracy

22. In 2017, Freedom House²³ highlighted that “[t]here is no more important theatre for the defence of democracy than Central Europe”. Although Hungary is not an isolated case – central and eastern European countries saw their largest decline in democracy scores since the 2008 economic crisis – it has now the lowest democratic score in the central European region. According to the Hungarian authorities,²⁴ the Government of Hungary has strong democratic legitimacy, having been elected with 52% of the popular vote in 2010 and 48% of the popular vote in 2014.

3.1. Local democracy

23. The City of Budapest is home to around one fifth of Hungarian residents, it is divided into 23 districts; there are 19 counties (the regional level in Council of Europe terms) and 3 100 municipalities throughout the country. An original system of representation of ethnic and linguistic minorities foresees that the 13 national minorities living in Hungary may establish local and national self-governing bodies.

24. The Congress of Local and Regional Authorities of the Council of Europe adopted on 29 October 2013, Recommendation 341 (2013) on local democracy in Hungary. It welcomed the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) in June 2010, the very active participation in the formation of Euro regions and in transfrontier co-operation. In this respect it regretted that the third Additional Protocol to the European Outline Convention on Trans-frontier Cooperation (ETS No. 159) had not yet been signed by Hungary.

25. The Congress expressed its concern about recent reforms that had weakened the legal framework for local self-government in Hungary, including, *inter alia*, the recentralisation of powers and competences, the lack of an effective legal remedy for local authorities to protect their interests, and the strong dependence on government grants. It was recommended that Hungarian authorities take steps to guarantee, in law and in practice, the implementation of the principle of self-government and the financial autonomy of local and regional authorities as set out in the Charter, to clearly define the competences of local and regional authorities and to put in place an effective consultation procedure.²⁵

3.2. Constitutional reform

26. The constitutional reform process was described in detail in [Doc. 13229](#) and many of the issues mentioned in that report remain valid. As indicated in the above-mentioned reports by the Assembly, the extensive constitutional reform departed from certain standards associated with constitutionalism and the rule of law. As a result, the constitutional regime now entrenches the political preferences of the ruling party through constitutional engineering, and has gradually eroded a number of constitutional checks on political power.²⁶ The authorities disagree with this analysis,²⁷ and argue that these provisions are based on traditional European values; are noted in the Constitutions of many other European countries; and were

23. “[Nations in Transit 2017: The False Promise of Populism](#)”, Daniel Hegedüs, Freedom House, 3 April 2017, p. 3.

24. Comments provided by the Hungarian Delegation on the preliminary draft report.

25. According to the Hungarian authorities, greater central authority was organised for economic and budgetary reasons in order to solve the debt situation of local governments: in 2013, the central government took over financial responsibility for the local governments’ remaining debt.

26. “[Can you tell when an illiberal democracy is in the making? An appeal to comparative constitutional scholarship from Hungary](#)”, Renáta Uitz, in *International Journal of Constitutional Law*, Vol. 13, No. 1, January 2015, pp. 280 and 281.

27. Comments provided by the Hungarian Delegation on the preliminary draft report

adopted by a democratic two-thirds majority in the Hungarian Parliament. They stress that as a result of the 2010 elections, one party alliance gained a more than two-thirds majority in the Hungarian Parliament, which represents, according to common European standards, sufficient legitimacy for amending the constitution. They thus claim that the Hungarian Parliament amended the former Constitution – inherited from the one-party system – in order to adopt a new and modern Fundamental Law through a democratic procedure, after intensive debates in the parliament and with Contributions from Hungarian civil society. The Venice Commission has however expressed its concern regarding the constitution-making process in Hungary on several occasions.²⁸ It focused on the lack of transparency of the process, the inadequate involvement of civil society, and criticised the absence of sincere consultation, underlining the fact that the consensus among political forces and within civil society required for the legitimacy of a Constitution was absent.²⁹

3.3. Elections

27. The election observation mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) concluded³⁰ that the 2014 parliamentary elections were efficiently administered and offered voters a diverse choice following an inclusive candidate registration process, although the main governing party enjoyed an undue advantage because of restrictive campaign regulations, biased media coverage, and campaign activities that blurred the separation between political party and the State.

28. The legal framework for these elections has been substantially amended in recent years. According to the OSCE/ODIHR, while some changes were positive, a number of key amendments negatively affected the electoral process, including the removal of important checks and balances. The Venice Commission and the OSCE/ODIHR recognised the positive change brought about by the redrawing of the electoral constituencies, as required by the Hungarian Constitutional Court, to have a better balance in terms of numbers of voters per constituency. According to the Hungarian authorities,³¹ the new election district boundaries were necessary due to changes in the demographic situation in Hungary. However, the Assembly³² and OSCE/ODIHR recommendations on the need for an independent and impartial body to deal with the drawing up of electoral districts on the basis of clear legal criteria were not met.³³ The OSCE/ODIHR³⁴ and the Assembly found that the manner in which the new electoral district boundaries were drawn up lacked transparency, independence and inclusiveness. Moreover, there were widespread allegations of gerrymandering.³⁵ The OSCE/ODIHR recommended the inclusion of provisions for periodic reviews of constituency boundaries by an independent commission and flexibility in adjusting them. However, since the election district boundaries are defined by a cardinal law, contrary to the Assembly's recommendation, such regular revisions are difficult if not impossible to achieve.³⁶ The Assembly has called for a wide consensus between all political parties on the compensation formula.³⁷ Reportedly such consensus was not achieved for the previous elections.³⁸

3.4. Populism

29. Prime Minister Orbán stated³⁹ that liberal democracy in Hungary could not guarantee a government that could serve national interests, protect public property, and avoid increasing levels of debt. He therefore mentioned the term “illiberal State” – a State that should respect the values of “Christianity, freedom and

28. [Opinion](#) on three legal questions arising in the process of drafting the New Constitution of Hungary – adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011), CDL-AD (2011)001, paragraphs 16-19.

29. [Opinion](#) on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session, Venice, 14-15 June 2013, CDL-AD(2013)012, paragraphs 135-137.

30. www.osce.org/odihr/elections/hungary/121375.

31. Comments provided by the Hungarian Delegation on the preliminary draft report.

32. Reports on the “Situation in Hungary following the adoption of Assembly [Resolution 1941 \(2013\)](#)”, [Doc. 13806](#), 8 June 2015, and on the “Request for the opening of a monitoring procedure in respect of Hungary”, [Doc. 13229](#), 10 June 2013, chapter 4.1.

33. [Doc. 13806](#), *ibid.*, paragraph 27.

34. www.osce.org/odihr/elections/hungary/121375.

35. *Ibid.*, p. 7.

36. [Doc. 13806](#), *op. cit.*, paragraph 28.

37. The compensation formula is a system that transfers unused votes from the majoritarian contests to the proportional contest provided that the 5% threshold was met as well as the surplus of votes of the winning candidate, www.osce.org/odihr/elections/hungary/121098?download=true, pp. 6 and 7.

38. For the 2014 parliamentary elections, the change in the compensation formula resulted in six additional seats being allocated to Fidesz-KDNP.

39. For the full text of the speech, in English, delivered in Romania on 26 July 2014, see <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592>.

human rights", as well as balance the rights of individuals with the rights and interests of the wider community, the nation, embracing what he called a "work-fare" State, as opposed, in his view, to a liberal and welfare State. In his view, this conception of the illiberal State was not incompatible with remaining in the European Union, but questions could be raised – and have been raised – as to whether such an illiberal State is compatible with the Council of Europe's membership commitments.⁴⁰

30. The Council of Europe has paid close attention to the issue of populism, especially given its impact on politics, including in the last annual report⁴¹ by the Secretary General of the Council of Europe, which is dedicated to this topical issue. The Human Rights Commissioner, Mr Nils Muižnieks, has also warned of a resurgence of populism on the European continent,⁴² which he sees as a revolt against "politics as usual" by mainstream parties, a "broad rejection of globalisation and the inequality, insecurity and sense of powerlessness it has engendered" compounded with an anti-elitist ethos.

3.5. Freedom of the media and freedom of expression

31. In his last report on Hungary, the Commissioner for Human Rights welcomed a series of amendments to the controversial media package that was adopted in 2010, with the aim of bringing Hungary's media legislation into line with European standards. He noted that the Hungarian media suffer from an inadequate legal framework and political pressures. This in turn has led to self-censorship – given the possibility of fines or dismissal – and a lack of critical reporting.⁴³

32. Hungary's ratings regarding media freedom have declined in recent years. It was ranked 71 (out of 180 countries) in the 2017 World Press Freedom Index⁴⁴ published by Reporters without Borders, having fallen 52 places in six years. The independent media rating by Freedom House⁴⁵ declined from 3.75 to 4.25 (from 1, the highest, to 7, the lowest) in 2017, and it has a "partly free" Freedom of the Press status.⁴⁶ It enjoyed the status of a "free" country in the ranking by Freedom of the Net 2016.⁴⁷

33. Both Freedom House and Reporters Without Borders point out that the decline in press freedom is mostly due to the strong political intervention in the Hungarian media market, where several acquisitions were reportedly financed with the help of State-controlled banks. As an example, in October 2016, the liberal and influential daily newspaper *Népszabadság* suspended publication shortly after it was sold to an entrepreneur reportedly close to the government.⁴⁸

34. In January 2016, the European Court of Human Rights⁴⁹ found that Hungary's internet and telecommunication surveillance practices were in breach of the right to respect for private and family life (Article 8 of the Convention). It also found that public officials continued to use defamation and libel charges against citizens for comments on social networks which might have a chilling effect on freedom of expression. I therefore join the Human Rights Commissioner in calling for the decriminalisation of defamation in Hungary, since it might prevent the expression of critical or satirical views.

35. The Assembly, in its [Resolution 2141 \(2017\)](#) on attacks against journalists and media freedom in Europe, called on the Hungarian authorities, *inter alia*, to reconsider the advertisement tax, which created a discriminatory tax on the publication of advertisements in the media in Hungary; to ensure that public advertising contracts are concluded with all media in a fair and transparent manner; and to strengthen the transparency of media ownership, especially if the entrepreneur has been awarded public contracts.

40. The view of the Hungarian Government is that the Prime Minister's words were taken out of context, and that successful countries should necessarily have a strong and efficient State in order to protect their citizens, cater for their needs and deliver prosperity for society.

41. State of Democracy, Human Rights and The Rule of Law, "Populism – How strong are Europe's checks and balances?", Report by the Secretary General of the Council of Europe, 2017.

42. "Populism? Human Rights Regression and the Role of the Ombudsman", International Ombudsman Institute (IOI) Europe Conference, 3-4 April 2017, Barcelona, [Keynote speech](#) by Nils Muižnieks.

43. [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Hungary from 1 to 4 July 2014, CommDH(2014)21, 16 December 2014.

44. <https://rsf.org/en/hungary>.

45. "Nations in Transit 2017: The False Promise of Populism", [chapter on Hungary](#), op. cit., p. 3.

46. Freedom House, Freedom of the Press 2017, [Hungary Profile](#).

47. Freedom House, [Freedom on the Net 2016](#), [Hungary Country Profile](#).

48. Amnesty International, Annual report 2016/17, [chapter on Hungary](#).

49. *Szabó and Vissy v. Hungary*, Application No. 37138/14, judgment of 12 January 2016, [execution](#) of the judgment under enhanced supervision.

36. In its [Resolution 2035 \(2015\)](#) on the protection of the safety of journalists and of media freedom in Europe, the Assembly urged the Hungarian Parliament to pursue further reforms of its legislation in order to improve the independence of the media regulatory authorities, the State news agency and the public service broadcasters; to increase transparency and pluralism in the private media; and to combat racist expressions against ethnic minorities. The Assembly also called for implementation of the recommendations in Opinion 798/2015⁵⁰ of the Venice Commission on media legislation in Hungary.

37. Article IX of the Hungarian Fundamental Law foresees the right to freedom of speech. Article X(5) states that this right cannot be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. This raised concerns from the Venice Commission⁵¹ because it could also be applied to curtail criticism of the Hungarian institutions and office holders, which could be incompatible with the condition that a limitation of that right has to be necessary in a democratic society. Moreover, political party advertising is only allowed in public and private media if it is free of charge, which has raised concerns in terms of limiting access to information, since private media may not be willing to broadcast free advertising.⁵² This seems to be confirmed by the fact that, as mentioned by the Commissioner for Human Rights in his report of December 2014,⁵³ during the 2014 parliamentary elections, none of Hungary's private media outlets broadcasted any political advertisements, which – combined with a significant amount of government advertising – undermined the equal and unimpeded access of contestants to the media.⁵⁴

38. In May 2017, the National Assembly of Hungary adopted a law raising the country's advertising tax from 5.3% to 7.5%, which raises worries about possible pressure on the remaining independent media in the country.⁵⁵

39. Hungary was the first country in the post-Soviet area to adopt an act on freedom of information. This law provided for robust freedom of information oversight institutions, headed by a parliamentary Ombudsperson.⁵⁶ According to civil society, the right to access government information has been significantly restricted, following the 2013 amendment of the Law on Freedom of Information. These amendments gave State institutions with data management responsibilities very broad, if not excessive, latitude to reject requests for public information without proper justification.⁵⁷ According to the authorities,⁵⁸ if requests are rejected without proper justification there is a possibility of judicial review.

40. The European Court of Human Rights found a violation of the right to freedom of expression (Article 10 of the Convention) of a Hungarian NGO as a result of the authorities' refusal to provide this organisation with information relating to the work of *ex officio* defence counsel.⁵⁹ The case is pending execution before the Committee of Ministers. The authorities informed the rapporteur that a new criminal procedure code has been adopted in this respect.⁶⁰

41. An amendment to the Act on Freedom of Information was adopted in 2015 imposing restrictions on access to public information. It enables State bodies to charge an *ex ante* refund to those requesting information for the "labour input costs associated with completing the information request". Hungarian NGOs have reported that this has caused difficulties for their work when seeking access to information relevant to their work.⁶¹

50. [Opinion](#) No. 798/2015 on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues Of Mass Media) of Hungary, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015), CDL-AD(2015)015.

51. [CDL-AD\(2013\)012](#).

52. The authorities stress that this requirement only applies to the period of election campaign in order to promote equal opportunity and to comply with international standards, as well as the requirements of the Hungarian Constitutional Court.

53. [https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH\(2014\)21](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2014)21).

54. www.osce.org/odihr/elections/hungary/121098?download=true.

55. Lily Bayer, "Hungary passes bill targeting Soros-funded university", 4 April 2017.

56. [Submission](#) by Transparency International Hungary, Transparency International, the global coalition against corruption And K-Monitor Watchdog for Public funds to the UN Universal Periodic Review 25th Session of the Universal Periodic Review Working Group April-May 2016, submitted on 21 September 2015, p. 7.

57. *Ibid.*

58. Comments provided by the Hungarian Delegation on the preliminary draft report.

59. Case of [Magyar Helsinki Bizottság v. Hungary](#) (application no. 18030/11).

60. Comments provided by the Hungarian Delegation on the preliminary draft report

61. [Submission](#) by Transparency International Hungary, op. cit., p. 7, and Assembly report "How to prevent inappropriate restrictions on NGO activities in Europe?", [Doc. 13940](#) (rapporteur: Mr Yves Cruchten, Luxembourg, SOC), paragraph 62.

42. According to the authorities,⁶² there is a vibrant opposition media voice in Hungary constantly pressuring and criticising the government as well as scrutinising its practices. These media outlets are published via the internet as well as in printed form. They are provided with access to government sources for information and ample commercial financial funding opportunities.

43. It is important that Hungary revises its laws and practices to promote transparency and accountability and allow for better access to information.

3.6. Civic space

44. The Human Rights Commissioner pointed to a growing trend in several European countries of backsliding in the area of freedom of association, especially with regard to human rights organisations and defenders.⁶³ This seems also to be the case in Hungary as witnessed by the systematic inspections of NGOs that received funding from the NGO Fund in 2014, the negative official rhetoric about NGOs funded by the Open Society Foundations, and the amendment to the Act on National Tertiary Education.

45. Freedom House's civil society rating of Hungary declined due to an "increasingly hostile political atmosphere, and allegations of surveillance and outsourced physical violence against watchdog NGOs and other civil society representatives".⁶⁴

46. According to the Ministry of Justice, more than 81 000 NGOs are registered in Hungary.⁶⁵ As mentioned in my colleague, Mr Yves Cruchten's report,⁶⁶ the Hungarian legislation imposes no restriction on the legislative or political activity of NGOs. The definition of what constitutes a "political activity" is fairly precise and raises no problems of interpretation. NGOs are generally free to engage in any form of political activity. Furthermore, the legal and institutional framework guarantees the capacity of NGOs to take part in decision-making processes through a wide range of advocacy, campaigning and lobbying activities.⁶⁷ However, some recent developments are a cause for concern. Since 2013, a communication campaign against NGOs by State representatives and some media started and a list of NGOs considered problematic was compiled by the government.⁶⁸ In 2014, the Commissioner for Human Rights⁶⁹ and United Nations Special Rapporteurs⁷⁰ wrote to the Hungarian authorities raising a series of issues regarding the difficulties NGOs are facing in Hungary, including their continuing stigmatisation.

47. Moreover, Hungarian NGOs complained to my colleague, Mr Cruchten, during his fact-finding visit to Hungary in November 2015, about smear campaigns in the media, verbal attacks from government officials and selective domestic funding for NGOs that are considered to be close to the authorities.

48. Regrettably, despite repeated international⁷¹ and domestic⁷² recommendations against the stigmatisation of human rights defenders, several NGOs have been labelled as foreign agents in the media by government officials.⁷³

62. Comments provided by the Hungarian Delegation on the preliminary draft report.

63. Commissioner for Human Rights of the Council of Europe, Human Rights Comment; ["The Shrinking Space for Human Rights Organisations"](#).

64. "Nations in Transit 2017: The False Promise of Populism", [chapter on Hungary](#), op. cit., p. 3.

65. [Doc. 13940](#), op. cit., paragraph 53.

66. *Ibid.*, paragraph 54

67. *Ibid.*

68. The list was provided by the Prime Minister's Office on the request of a journalist. See the related article in Hungarian at: <http://444.hu/2014/05/30/itt-a-kormany-listaja-a-szervezetekrol-akik-miatt-nekimentek-a-norveg-alapnak/>.

The indicated NGOs are the following: Transparency International Hungary, K-Monitor, Asimov Foundation, Hungarian Civil Liberties Union, Roma Press Center, Krétakör Foundation, NANE Women's Rights Association, Foundation for Democratic Youth, Hungarian Women's Lobby, Labrisz Lesbian Association, PATENT – People Opposing Patriarchy, LiFE – Association of Young Liberals, Szivárvány Misszió Foundation (<http://budapestpride.hu/>). See ["Promotion and protection of women's rights in Hungary Submission to the UN Universal Periodic Review of Hungary"](#), September 2015, Second cycle, 25th Working Group session of the Human Rights Council.

69. <https://www.coe.int/en/web/commissioner/-/commissioner-expresses-concern-over-ngos-in-hungary>.

70. [Letter](#) sent by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders on 16 July 2014 to the Hungarian authorities, p. 2.

71. [Letter](#) sent by the Commissioner for Human Rights to the Minister of the Prime Minister's Office, Mr János Lázár, 9 July 2014.

72. ["Short Analysis of the Proposed Hungarian Bill on Foreign Funded Non-Governmental Organizations"](#), Hungarian Helsinki Committee, and Hungarian Civil Liberties Union, 11 April 2017, p. 1.

73. Expert Council on NGO [Law Regulating Political Activities of Non-Governmental Organisations](#).

3.6.1. The Law on the transparency of organisations receiving foreign funds

49. The controversial bill on “The Transparency of Organisations Receiving Foreign Funds”⁷⁴ (hereinafter: “NGO bill”), tabled by Fidesz parliamentarians on 7 April 2017, has elicited considerable attention at both international and national level, including in our Assembly. According to the bill, associations and foundations receiving annual foreign funding of over 7.2 million forints (about €24 000) have the obligation to register with the regional court as “organisations receiving support from abroad” and label themselves as such on their websites as well as on any press products and other publications. The bill also regulates the procedure for registration and provides for sanctions for organisations which do not fulfil these obligations.⁷⁵

50. I would like to reiterate the Assembly’s position that States should refrain from imposing burdensome administrative requirements on NGOs and any interference in the right to freedom of association can only be acceptable if it complies with the necessity and proportionality requirements as outlined in Article 10.2 of the European Convention on Human Rights, and must not create undue discrimination.⁷⁶ Similarly, sanctions should only be imposed as a last resort and only in cases of serious misconduct by an NGO.⁷⁷ In an exchange of letters⁷⁸ with Mr László Kövér, Speaker of the National Assembly of Hungary, concerning the proposed draft law on foreign-funded NGOs, the Commissioner for Human Rights urged the members of the National Assembly to reject the proposed draft law.

51. On 16 and 17 June 2017, the Venice Commission adopted an opinion on the draft law on the transparency of organisations receiving support from abroad.⁷⁹ In this opinion, the Venice Commission expressed the view that the law, passed on 13 June 2017, only partly satisfies the main recommendations of its preliminary opinion.⁸⁰ The Venice Commission praises the removal of provision in the law for the automatic sanction of “dissolution” for non-respect by an association of obligations imposed by the law, notably the failure to report foreign funding beyond a certain annual threshold. It acknowledges that the aim of ensuring transparency of civil society organisations in order to prevent undue foreign political influence, money laundering and terrorism-financing is, in principle, legitimate. However, the Venice Commission stresses that this legitimate aim may not be used to stigmatise NGOs or restrict their ability to carry out their activities. This effect would go beyond the legitimate aim of transparency. The broad exceptions to the application of the law, notably the recently added exception for national minority organisations, coupled with the negative rhetoric that continues to surround this matter, cast doubt on the genuine aim pursued by the law. The obligation to mention foreign funding on all press products of an NGO has been maintained, which is clearly disproportionate and unnecessary in a democratic society, according to the opinion. The Venice Commission also regrets that no public consultations were held prior to the final adoption of the law.⁸¹ For these reasons, the Venice Commission considers that the amendments adopted by parliament are not sufficient to alleviate the concerns that the law causes disproportionate and unnecessary interference with freedom of expression and association, the right to privacy and non-discrimination.

52. On 13 July 2017, the European Commission launched an infringement procedure against Hungary, in view of its law on foreign-funded NGOs, for failing to fulfil its obligations on the free movement of capital,⁸² on the right to freedom of association and the right to protection of private life and personal data. Following the letter of [formal notice](#) sent by the Commission on 14 July 2017 and the [reasoned opinion](#) issued on 4 October 2017, the European Commission referred Hungary to the Court of Justice of the European Union for its law on foreign-funded NGOs on 7 December 2017.^{83 84}

74. For a version in English of the draft bill, see www.helsinki.hu/wp-content/uploads/14967_NGO_bill_20170407_with_reasoning.pdf.

75. The reference to the dissolution as an automatic sanction was removed in the adopted text and a reference to the proportionality of the sanctions was added, as recommended by the Venice Commission.

76. “Remarks of First Vice-President Frans Timmermans after the College discussion on legal issues relating to Hungary”: http://europa.eu/rapid/press-release_SPEECH-17-966_en.htm.

77. Commissioner for Human Rights, Human Rights Comment, “[The Shrinking Space for Human Rights Organisations](#)”.

78. Letter from the Commissioner for Human Rights, Nils Muižnieks, to Mr László Kövér, Speaker of the National Assembly of Hungary, concerning the proposed draft law on foreign-funded NGOs, 26 April 2017, [CommDH\(2017\)14](#) and [reply](#) to the letter by the Speaker of the National Assembly of Hungary, 5 May 2017.

79. [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)015-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)015-e).

80. [www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2017\)002-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2017)002-e).

81. In their comments provided on the preliminary draft report, the authorities stress that the rules applicable to the legislative process in Hungary do not require an obligatory public consultation when the draft is submitted by members of parliament.

82. Due to provisions in the NGO Law which indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations.

83. http://europa.eu/rapid/press-release_MEMO-17-4767_en.htm

84. http://europa.eu/rapid/press-release_IP-17-3663_en.htm.

53. At the same time, the Hungarian Parliament approved an amendment to the Act on National Tertiary Education, by which it imposed additional requirements on higher education institutions operating in Hungary. The requirements apply to all foreign higher education institutions including those established in a European Economic Area (EEA) country.⁸⁵ Under the new regulations, a foreign university may only operate in Hungary if:⁸⁶ there is an international agreement concluded between the Government of Hungary and the government of the country where the university has its seat;⁸⁷ it is recognised by the State of seat as an institution of tertiary education and has a campus in the State of origin; its name is not misleading or confusing and should be different from other higher education institutions' names. Furthermore, the law alters the conditions enabling foreign universities to deliver educational programmes and corresponding degrees (recognised by the foreign State) through a Hungarian university.⁸⁸ According to the authorities,⁸⁹ the aim of the amendment was to address shortcomings exposed during the review of higher education institutions and to apply the same set of standards to these institutions. Some 24 foreign universities are operating in Hungary. As noted by the Venice Commission in its opinion on the law, "formally, the Law applies to all 24 universities, although most of its provisions do not concern universities based in EEA countries, which in practice means that only 6 universities, having their registered address in non-EEA countries, are affected by the recent amendments. ... The Law is worded in a neutral way and does not refer to any particular higher education institution. ... It is undisputed that the new provisions directly hit the Central European University (CEU)".^{90 91} This law thus mainly affects the CEU that was founded by George Soros and that is a symbol of liberalism ("open society"). This legislative move has met with strong resistance in⁹² and outside Hungary.⁹³

54. On 27 April 2017, the Assembly held an urgent debate on the "Alarming developments in Hungary: new NGO law restricting civil society and closure of international university", adopting [Resolution 2162 \(2017\)](#). In this resolution, it expressed concern about the draft legislation on NGOs foreign funding. While agreeing that NGOs must be transparent about their sources of funds, the Assembly rejected the allegations that civil society organisations serve foreign interest groups, rather than the public interest, and may endanger the national security and sovereignty of a country simply because they receive foreign funding over a certain yearly threshold. The Assembly noted that the Hungarian draft law does not include the controversial term "foreign agent" or the specific and thus discriminatory reference to NGOs which defend human rights, and that it provides for a judicial, rather than administrative, review. The Assembly expressed concerns about a number of issues that the Hungarian draft law raised with respect to the freedoms of association and expression, as well as the right to privacy, in particular as regards: the lack of public consultation prior to its submission to parliament; the obligation for NGOs receiving foreign funding to indicate this on all the material they publish or distribute; the obligation for NGOs to submit detailed personal data on foreign donors, including private individuals; the gravity of the sanctions provided in the draft, including ultimately the dissolution of the association for non-compliance with administrative obligations; the scope of application of the draft law, which applies to certain associations and excludes others, such as sports and religious organisations. The Assembly also regretted the overall accusatory and labelling rhetoric by Hungarian public officials surrounding the drawing up and discussion of the draft law, which raises doubts about the real aims of the proposed legislation.

55. The Assembly was all the more concerned by the vote in the Hungarian Parliament on amendments to the Act on National Tertiary Education which could, according to the Central European University, founded in 1991 and operating in Budapest, lead to the termination of its activities. It called on the Hungarian

85. all academic staff coming from outside the EEA will have to require work permits.

86. [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)022-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)022-e).

87. institutions of tertiary education based in another EEA State are exempted from this requirement.

88. Under the modified legal framework, this will no longer be possible for foreign universities based in non-EEA OECD countries.

89. Comments provided by the Hungarian Delegation on the preliminary draft report.

90. The institution is based outside the EEA with its legal seat in a federal State member of the OECD (the United States); it does not have a campus in its country of origin; it employs non-EU academic staff; and its Hungarian partner bears the name of the Hungarian translation of "Central European University" (Közép-európai Egyetem, KEE).

91. Renáta Úitz, "The Return of the Sovereign: A Look at the Rule of Law in Hungary – and in Europe", 5 April 2017.

92. On 9 April 2017, circa 70 000 persons rallied in support of the CEU – and not less than 17 Nobel Prize laureates amongst 900 scholars "Hongrie: importante manifestation de soutien à l'université Soros à Budapest", *Le Monde*, 9 April 2017.

93. Remarks of First Vice-President Frans Timmermans after the College discussion on legal issues relating to Hungary; "Hungary's Proposed Legislation Impacting Central European University (CEU)", U.S. Department of State, 31 March 2017; "Hungarian Parliament urged by UN expert to reconsider new law targeting Central European University", 11 April 2017.

Government to suspend the implementation of the amended Act on National Tertiary Education pending the opinion of the Venice Commission, and to engage in a dialogue with civil society, as well as the Council of Europe and other intergovernmental organisations in this respect.

56. On 26 April 2017, the European Commission decided to take legal action on the Act amending the Hungarian National Higher Education Act, based on its conclusion that “the law is not compatible with the fundamental internal market freedoms, notably the freedom to provide services and the freedom of establishment but also with the right of academic freedom, the right to education and the freedom to conduct a business, as provided by the Charter of Fundamental Rights of the European Union”. In its Resolution of 17 May 2017, the European Parliament called for the launching of Article 7(1), and urged the Hungarian Government to repeal laws tightening rules against non-governmental organisations, and to reach an agreement with the US authorities, making it possible for the Central European University to remain in Budapest as a free institution. On 13 July 2017, the European Commission launched the second step of the infringement process, by sending Hungary a reasoned opinion on the grounds that the law as amended is not compatible with the EU norms, to which the authorities replied within a month. On 4 October 2017, the European Commission sent a complementary reasoned opinion to Hungary on the Hungarian Higher Education Law calling for additional clarifications. On 7 December 2017, the European Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that its Higher Education Law, as amended on 4 April 2017, disproportionately restricts EU and non-EU universities in their operations and needs to be brought back into line with EU law.⁹⁴

57. In February 2017, Viktor Orbán reportedly stated that combating the “Soros empire”⁹⁵ is one of the three main tasks for the State in 2017.⁹⁶ This objective has materialised, *inter alia*, in new amendments to the Act on National tertiary Education and to the Law on the transparency of organisations receiving foreign funds.

58. On 10 April 2017 – despite international pressure (the European Union,⁹⁷ the US Department of State,⁹⁸ the United Nations⁹⁹) and pressure from national organisations which who signed a petition in defence of the university – the Hungarian President, János Áder, signed¹⁰⁰ the amendment to the Act on National tertiary Education, which could force the Central European University to close down or to move out of Hungary. The authorities recall¹⁰¹ that the deadline has been extended until 1 January 2019 to allow the institutions concerned to meet the necessary conditions set by the law.

59. In an opinion adopted in October 2017,¹⁰² the Venice Commission noted that in general the regulations of Hungary’s higher education law are in line with usual European practice but criticised the fact that many requirements of the law are overly stringent or even unjustified if applied to already existing universities. The Venice Commission does acknowledge the right of a State to regulate foreign universities on its territory, especially in the absence of unified European norms or models in the field, and that it is up to the Hungarian authorities to assess when and whether this framework needs to be updated and adapted to new challenges. But while the new regulatory framework introduced by the law may be applied legitimately to foreign universities which are not yet active in Hungary, it is not the same case for those already existing. The Venice Commission considers that the law was adopted under an excessively expedited process that did not allow for a transparent and inclusive legislative procedure that would have offered appropriate opportunities for consultations with all concerned parties, and which would have been beneficial to the law’s democratic legitimacy.

94. http://europa.eu/rapid/press-release_MEMO-17-4767_en.htm.

95. The same wording was again used in November 2017 in his speeches – see for example <https://www.youtube.com/watch?v=GdukS5Ac2wM>.

96. The other two main tasks were countering migration and the “diktat of Brussels”, see Andrzej Sadecki, “The anti-Soros campaign in Hungary”, 5 April 2017.

97. Remarks of First Vice-President Frans Timmermans after the College discussion on legal issues relating to Hungary.

98. “Hungary’s Proposed Legislation Impacting Central European University (CEU)”, U.S. Department of State, 31 March 2017.

99. “Hungarian Parliament urged by UN expert to reconsider new law targeting Central European University”, 11 April 2017.

100. “Hungarian president signs university law, ignoring protests”, EU Observer.

101. Comments provided by the Hungarian Delegation on the preliminary draft report.

102. [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)022-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)022-e).

60. On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the law's criteria to 1 January 2019. Negotiations between the Hungarian Government and foreign higher education institutions are still ongoing. While welcoming the extension of the deadline, the rapporteur calls for the prompt implementation of the Venice Commission's recommendations.

4. Human rights and fundamental freedoms

4.1. Detention facilities, prevention of torture and other ill-treatment

61. According to the latest Council of Europe Annual Penal Statistics (SPACE) Prison Populations Survey 2015, published in March 2017,¹⁰³ Hungary is one of the countries that had the most overcrowded penal institutions in 2015. According to the government,¹⁰⁴ several measures were taken to tackle the problem of overcrowding in prisons, such as increasing the capacity of penal institutions, expanding the scope of application of reintegration custody and introducing a preventive and compensatory legal remedies policy.

62. Overcrowding is also confirmed by the pilot judgment of 10 March 2015 (*Varga and Others v. Hungary*¹⁰⁵), and in the group of cases *Istvan Gabor Kovacs v. Hungary*.¹⁰⁶ They all concern inhuman and/or degrading treatment due to the applicants' poor detention conditions (both pretrial and post-conviction) as a result of overcrowding (violations of Article 3), and lack of effective preventive and compensatory remedies in this respect (violations of Article 13 read in conjunction with Article 3). This group of cases is under enhanced supervision by the Committee of Ministers,¹⁰⁷ which welcomed the efforts already made by the authorities to address the causes. The Committee of Ministers called for the intensification of alternative non-custodial measures and to minimise the recourse to pretrial detention.¹⁰⁸ On 23 November 2017, in the case of *Domján v. Hungary*,¹⁰⁹ the European Court of Human Rights took note of a new law ("the 2016 Act") which had entered into force in Hungary on 1 January 2017 following the Court's pilot judgement in the case of *Varga and Others v. Hungary*, in which it had found a widespread problem resulting from a malfunctioning of the Hungarian penitentiary system. The Court was satisfied that the 2016 Act had provided a combination of remedies, both preventive and compensatory in nature, guaranteeing in principle genuine redress for Convention violations originating in prison overcrowding and other unsuitable conditions of detention in Hungary. In its last report, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) called on the authorities to lower the number of people sent to prison, expressing its concern about the lack of effective action to combat overcrowding.¹¹⁰

63. In the case *László Magyar v. Hungary*¹¹¹ the Strasbourg Court found that the applicant's life sentence without eligibility for parole amounted to a violation of Article 3 (prohibition of torture, inhuman or degrading treatment), and, given the excessive length of the criminal proceedings, a breach of Article 6 (right to a fair trial). With regard to the violation of Article 3, the Court found that this amounted to a systemic problem. The Court therefore ordered a reform of the system of review of whole life sentences. Subsequently, on 18 November 2014, the Hungarian Parliament adopted legislation introducing a mandatory pardon for prisoners serving life sentences after the prisoner had served 40 years of their sentence.¹¹² The Court already had the opportunity to assess the conformity of the amended rules with Article 3 of the Convention in the case of *T.P. and A.T. v. Hungary*.¹¹³ The Court found that the sentences remained inhuman and degrading as life prisoners had no hope of release, and that the system could not be regarded as providing the prospect of release or a possibility of review, and was therefore still in breach of Article 3.

103. It had a high prison population of 180.8 inmates per 100 000 inhabitants, way above the Council of Europe average of 134.7, with an 11.4% increase for the period 2005-2015, even if there was a decrease of 2.3% between 2014 and 2015. The density in Hungarian prisons is of 129.4 inmates per 100 places (above the Council of Europe average of 90.2). The average length of imprisonment in 2014 was of 7.1 months for a Council of Europe average of 11.1. See: http://wp.unil.ch/space/files/2017/04/SPACE_I_2015_FinalReport_161215_REV170425.pdf.

104. Comments provided by the Hungarian Delegation on the preliminary draft report

105. *Varga and Others v. Hungary*, Applications Nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13), judgment of 10 March 2015.

106. <http://hudoc.exec.coe.int/eng?i=004-10809>

107. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168070974d>.

108. The Hungarian Helsinki Committee states that, in 2013, the length of the pretrial detention became unlimited in certain cases, which raises serious concerns in the light of the case law of the European Court of Human Rights. See https://www.upr-info.org/sites/default/files/document/hungary/session_25_-_may_2016/hhc_upr25_hun_e_main.pdf.

109. Application No. 5433/17, decision of 23 November 2017.

110. Council of Europe contribution for the 25th UPR session regarding Hungary, 21 September 2015.

111. *László Magyar v. Hungary*, Application No. 73593/10, judgment of 20 May 2014.

112. <http://hudoc.exec.coe.int/eng?i=004-10897>.

64. In a welcome development, Hungary ratified the Optional Protocol on the Convention against Torture, and established a National Preventive Mechanism in the Office of the Commissioner for Fundamental Rights, which became operational in 2015. However, this institution has reported that it is hindered in its task by lack of adequate funding.¹¹⁴

4.2. Fight against intolerance and racism, discrimination and hate speech

65. On 4 November 2000, Hungary signed Protocol No. 12 to the European Convention on Human Rights (ETS No. 177), but has not yet ratified it.

66. The Council of Europe European Commission against Racism and Intolerance (ECRI), in its last country report,¹¹⁵ praised Hungary for progress made with regard to the issue of equal treatment, including the establishment of an effective Equal Treatment Authority.¹¹⁶ Progress was also noted in the improvement of non-discrimination legislation. With regard to hate speech in political discourse, it was welcomed that parliamentarians can now be fined and/or excluded from proceedings for expressions offending the dignity of any national, ethnic, racial or religious community.

67. However, a number of concerns remain. Although the Advisory Committee on the Framework Convention for National Minorities ("the Advisory Committee"), in its most recent opinion,¹¹⁷ considers that there is an overall respectful attitude prevailing between the majority and most minority groups, it also considers that xenophobic and intolerant attitudes persist within Hungarian society, in particular against the Roma. Roma people suffer systemic discrimination and inequality in all fields of life, including housing, employment, education and access to health, and participation in social and political life. In its Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Hungary of July 2017, the Committee of Ministers makes recommendations for immediate action in this regard.¹¹⁸ In their comments,¹¹⁹ the authorities claim that, following the result of the National Social Inclusion Strategy, a significant improvement could be seen among Roma populations. They refer to European Union and State-funded education, training and employment, settlements and other programmes that aim to help Roma and other vulnerable groups.

68. In the leading case *Horváth and Kiss v. Hungary* of 2013,¹²⁰ which is under enhanced supervision by the Committee of Ministers, the European Court of Human Rights found that the relevant Hungarian legislation, as applied in practice, lacked adequate safeguards and resulted in the over-representation and segregation of Roma children in special schools due to the systematic misdiagnosis of mental disability, which amounted to discrimination on the ground of the Roma origin of the applicants (violation of the right to education, Article 2 of Protocol No. 1, as read in conjunction with the prohibition of discrimination, Article 14).

69. The Advisory Committee¹²¹ and the Human Rights Commissioner¹²² consider that the problem Roma face in education also extends to a system of Roma-only schools, reflecting housing segregation, special schools (and not only classes), and that in the past few years, and despite the desegregation efforts, segregated settings have (re-)opened. In 2016 the European Commission initiated infringement proceedings¹²³ against Hungary for discrimination against Roma in education.¹²⁴

70. Roma also face severe obstacles to access housing, while those facing extreme poverty live in the streets. Approximately 130 000 Roma live in segregated settlements, where basic infrastructure is often lacking. Roma also face discrimination when trying to access social housing.¹²⁵ In this context, the Advisory

113. *T.P. and A.T. v. Hungary*, Applications Nos. 37871/14 and 73986/14, judgment of 6 March 2017.

114. *NHRI Report*, Universal Periodic Review on Human Rights in Hungary, 2nd cycle, April/May 2016.

115. *ECRI report on Hungary*, Fifth Monitoring Cycle, adopted on 19 March 2015, CRI(2015)19, 9 June 2015.

116. In line with the principles set out in ECRI's General Policy Recommendations Nos. 2 and 7.

117. Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Hungary*, op. cit.

118. Resolution *CM/ResCMN(2017)5* on the implementation of the Framework Convention for the Protection of National Minorities by Hungary, adopted by the Committee of Ministers on 5 July 2017.

119. Comments provided by the Hungarian Delegation on the preliminary draft report

120. *Horváth and Kiss v. Hungary*, Application No. 11146/11, judgment of 29 January 2013.

121. Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Hungary*, op. cit., p. 2.

122. *Report* by Nils Muižnieks, CommDH(2014)21, op. cit., paragraph 107.

123. Amnesty International, Annual report 2016/17, *chapter on Hungary*.

124. The authorities state that the Hungarian legislator has addressed these concerns by amending the act on equal treatment as well as the act on public education.

125. *Report* by Nils Muižnieks, CommDH(2014)21, op. cit., paragraphs 105 and 106.

Committee stated that Jobbik mayors and Jobbik-dominated town councils have introduced municipal security services which tightened the rules for social housing attribution and implemented strict surveillance of anybody offered public work.¹²⁶ According to the authorities,¹²⁷ a Social Housing Agency was established with 30 flats for rent, and the Hungarian Charity Service of the Order of Malta started its work in Miskolc to assist each family in finding proper housing and to manage the Social Housing Agency.

71. The Human Rights Commissioner sent a letter to the authorities on 26 January 2016¹²⁸ raising his concerns about, *inter alia*, planned evictions of several Roma families in Miskolc.¹²⁹ In this regard, ECRI¹³⁰ issued an interim follow-up recommendation strongly recommending that the central government take action when local authorities attempt to force Roma out of social housing or evict them from their homes or subject them to directly or indirectly discriminatory rules in respect of housing. An interim follow-up by ECRI is expected no later than June 2017.

72. Regrettably, hate speech by mainstream politicians is often not, or not sufficiently, publicly condemned,¹³¹ as recommended by the Committee of Ministers [Recommendation No. R \(97\) 20 on “hate speech”](#). In this context, the Human Rights Commissioner¹³² and ECRI¹³³ recommended that leaders from the entire political spectrum take a firm and public stance against different forms of hate speech.

73. Certain media outlet reports are blatantly racist. For instance, conservative media often depicts Roma as biologically different with an innate capacity for crime.¹³⁴ The authorities have taken action against such trends and the Assembly, in its [Resolution 2141 \(2017\)](#) on attacks against journalists and media freedom in Europe, welcomed the progress in combating racist and xenophobic expression in the media and the constructive dialogue between Hungary and the European Commission on this issue.

74. While commending the progress in legislation and practice to combat hate crimes and hate speech by Hungary, the Commissioner¹³⁵ urged the Hungarian authorities to address shortcomings, including by better investigating the possible racial motivation of offences. Moreover, the Advisory Committee of the Framework Convention on National Minorities¹³⁶ and ECRI have recommended changes to the Criminal Code in this regard.

4.2.1. Extremist organisations

75. An issue of concern is the existence of extremist organisations, including paramilitary groups that carry out acts of intimidation against Roma, and their links with the parliamentary party, the Movement for a Better Hungary – *Jobbik Magyarországért Mozgalom* (Jobbik).¹³⁷ Following the 2014 parliamentary elections, Jobbik secured 20.54% of the votes and currently holds 23 of the 199 seats, representing 11.56% of the parliament;¹³⁸ it is now the country's third largest party in parliament. In the October 2014 local elections, Jobbik came second in 18 out of 19 counties.

76. The Hungarian Guard Association was created in 2007 by 10 members of Jobbik, including its leader, Mr Vona. The Guard was a paramilitary group that paraded in a military-like formation in villages with large Roma populations in uniforms and using flags reminiscent of the former Hungarian Nazi movement (Arrow Cross), responsible for the mass extermination of Roma in Hungary. The Guard was dissolved by court order

126. Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Hungary](#), op. cit., paragraph 79.

127. Comments provided by the Hungarian Delegation on the preliminary draft report.

128. [Letter](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, to Mr Zoltán Balog, Minister of Human Capacities of Hungary, 26 January 2016.

129. Amnesty International, Annual report 2016/17, [chapter on Hungary](#).

130. [ECRI report on Hungary](#), Fifth Monitoring Cycle, adopted on 19 March 2015, CRI(2015)19, 9 June 2015, paragraph 92 and p. 35.

131. [Report](#) by Nils Muižnieks, CommDH(2014)21, op. cit., paragraph 88.

132. Ibid., paragraph 91.

133. [ECRI report on Hungary](#), Fifth Monitoring Cycle, op. cit., p. 10.

134. Ibid., paragraph 33.

135. [Report](#) by Nils Muižnieks, CommDH(2014)21, op. cit.

136. Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Hungary](#), op. cit.

137. Jobbik was established as a political party in 2013 and participated in the elections in 2016. For more detailed information, European Union Agency for Fundamental Rights (FRA) (2013a), “[Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#)”, pp. 39-42.

138. For more information, see [ECRI report on Hungary](#), Fifth Monitoring Cycle, op. cit., paragraph 26; and “[Parliamentary groups of parties and independent members of Parliament \(headcount in the constituent sitting and in the end of cycle\)](#)”.

in 2009.¹³⁹ In the case *Vona v. Hungary*, the European Court of Human Rights confirmed unanimously that this decision was not in breach of the right to freedom of association (Article 11 of the Convention).¹⁴⁰ A number of other extremist groups still remain active in Hungary.¹⁴¹ Following the dissolution of the Hungarian Guard, the new Hungarian Guard, a copycat of the previous group, was almost immediately formed.¹⁴² Nevertheless, the public prosecutor cannot initiate the dissolution of associations that do not have the status of legal entities, which limits their ability to deal with loosely organised groups that engage in extremist and racist activities.¹⁴³

77. Furthermore, reports of intimidation of human rights defenders by extreme right-wing groups online and offline, are also worrying. I support ECRI¹⁴⁴ in its call for Hungary to ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), which could provide assistance for combating online hate speech. Moreover, I commend the Media Authority for setting up an internet hate-speech hotline, although I am aware of the difficulties its work entails, especially the time required for a court decision to remove offending content, which often makes it ineffective.¹⁴⁵

78. In a welcome development, the new Criminal Code that entered into force in 2013 enabled the police to better prevent paramilitary groups from engaging in racist violence and from patrolling areas inhabited by Roma. Nevertheless, the authorities still face difficulties in tackling certain extremist groups such as the New Hungarian Guard.

4.2.2. Migrants, asylum seekers and refugees

79. As a result of its geographical location, Hungary has seen a surge in asylum applications, from refugees fleeing war and persecution.¹⁴⁶ The peak of this mass arrival of asylum seekers, refugees and migrants took place in 2015 with around 400 000 people arriving in Hungary, which presented unprecedented challenges for the country.

80. According to the Hungarian Office of Immigration and Nationality (OIN), out of the 176 637 persons who applied for asylum by 24 November 2015, 37% were Syrians and 26% were Afghans.

81. As a reaction to the “mass migration crisis”, in July 2015, the Hungarian Parliament approved a fast-track procedure, a list of safe countries of origin and safe third countries,¹⁴⁷ despite concerns expressed by civil society and the Office of the United Nations High Commissioner for Refugees (UNHCR).¹⁴⁸ The vast majority of asylum seekers initially arrived in Hungary through Serbia, which is considered to be a safe third country of transit, and therefore a country to which asylum seekers could be returned, in contradiction with the

139. By decision of the Budapest Metropolitan Court in July 2009 for violating Act II of 1989 on the Right of Association, see FRA (2013a), “[Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#)”, p. 42.

140. The Court considered unanimously that no breach of the right to freedom of association (Article 11 of the Convention) had occurred given the fact that, *inter alia*, the organisation of a series of rallies allegedly to keep “Gypsy criminality” at bay by means of military parading could be regarded as implementing a policy of racial segregation, v. *Vona v. Hungary*, Application No. 35943/10, judgment of 9 July 2013, paragraph 69, and [Report](#) by Nils Muižnieks, CommDH(2014)21, op. cit., paragraph 87.

141. [Report](#) by Nils Muižnieks, CommDH(2014)21, op. cit., paragraph 80; and Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Hungary](#), op. cit., paragraphs 11 and 80.

142. FRA (2013a), “[Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#)”, p. 40.

143. *Ibid.*, p. 42.

144. [ECRI report on Hungary](#), Fifth Monitoring Cycle, op. cit., paragraph 35.

145. Advisory Committee on The Framework Convention for the Protection of National Minorities, [Fourth Opinion on Hungary](#), op. cit., paragraph 102.

146. Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36.3 of the European Convention on Human Rights. Applications Nos. 44825/15 and 44944/15, *S.O. v. Austria* and *A.A. v. Austria*, [CommDH\(2016\)3](#), 17 December 2015, paragraphs 9-10.

147. By December 2015, the list of both safe country of origin and safe third countries consisted of the following countries: EU member States; candidate States to the European Union (except for Turkey): Albania, “the former Yugoslav Republic of Macedonia”, Montenegro, Serbia; member States of the EEA: Iceland, Liechtenstein, Norway; those States of the United States not applying the death penalty; Switzerland; Bosnia and Herzegovina; Kosovo*; Canada; Australia; and New-Zealand.

*Throughout this text, all references to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

148. “[UNHCR urges Hungary not to amend asylum system in haste](#)”, UNHCR, 3 July 2015.

positions of the UNHCR¹⁴⁹ and the Kúria (the Supreme Court of Hungary).¹⁵⁰ As a consequence, “quasi-automatic rejections”¹⁵¹ of asylum seekers followed, since the asylum applications would mostly be decided on the grounds of inadmissibility and not on merit and without adequate judicial overview.¹⁵² The Hungarian authorities¹⁵³ recall that the EU legislation provide the EU member States with the possibility to decide about the list of safe third countries on an ad hoc basis and to change the evidence provisions applied in the asylum procedure. The Human Rights Commissioner,¹⁵⁴ in a third party intervention before the European Court of Human Rights in December 2015, considered that the Hungarian asylum law and practice were not in compliance with Hungary’s international and European human rights commitments.

82. In September 2015, the Hungarian authorities built a barbed wire fence at the Serbian and Croatian borders and created transfer zones. Hungary has a very high rejection rate of asylum requests. In 2016¹⁵⁵ alone it was 91.54%.¹⁵⁶ The Commissioner¹⁵⁷ expressed his concern about asylum requests via the border procedure, and called for this procedure to be replaced by a fully human rights-compliant system, especially now that the application rates are low, but they are still almost never examined on the merits. Similarly, the CPT¹⁵⁸ expressed doubts about the existence of appropriate safeguards in terms of allowing a foreign national to present his/her asylum application and whether it involved an individual assessment of the risk of ill-treatment in case of removal. According to the Hungarian authorities,¹⁵⁹ each asylum application is examined thoroughly and individually, on a case by case basis.

83. According to Amnesty International,¹⁶⁰ “the Hungarian authorities have criminalised ‘illegal entry’ through the border fence, and created “transit zones” for asylum seekers at the border”.¹⁶¹ Amnesty International recalled that criminalisation and detention of refugees and asylum seekers are in breach of the 1951 Refugee Convention.¹⁶² In the opinion of Hungary,¹⁶³ the asylum seekers are not detained since they can freely leave Hungary in the direction of Serbia.

84. On 7 March 2017, amendments to the Hungarian asylum law were introduced. On 17 May 2017, the European Commission decided to move forward on the infringement procedure against Hungary concerning its asylum legislation, following on from the infringement procedure initiated by the Commission in December 2015. The Commission considers that of the five issues identified already in 2015, three remain to be addressed, in particular in the area of asylum procedures. In addition, the Commission outlined new incompatibilities in the Hungarian asylum law, as modified by the recent amendments of 2017 in the areas of asylum procedures, rules on return and reception conditions.¹⁶⁴ According to the European Commission, Hungarian law does not allow for applications to be submitted outside of special transit zones at the borders, and restricts access to these zones, thus failing to provide an effective access to asylum procedures within its territory. The reduced time for appeals violates the fundamental right to an effective remedy. The Commission is concerned that Hungary returns migrants (including asylum seekers) who cross the border irregularly to Serbia without following the procedures and conditions of EU law on return and asylum. Finally, the Commission believes that the systematic and indefinite confinement of asylum seekers, including minors over 14, in closed facilities in the transit zone without respecting the necessary procedural safeguards, such as the

149. “Serbia as a country of asylum. Observations on the situation of asylum seekers and beneficiaries of international protection in Serbia”, UNHCR, August 2012, www.refworld.org/docid/50471f7e2.html.

150. “Opinion No. 2/2012 (Xii.10) KMK. of the Supreme Court Of Hungary (Kúria) on certain questions related to the application of the Safe Third Country Concept”, 10 December 2012.

151. “No Country for Refugees – New asylum rules deny protection to refugees and lead to unprecedented human rights violations in Hungary”, Hungarian Helsinki Commission, Information Note 18, September 2015.

152. According to the authorities, in 2015, 2 917 applications out of 177 135 applications were rejected.

153. Comments provided by the Hungarian Delegation on the preliminary draft report.

154. Third party intervention by the Commissioner for Human Rights under Article 36.3 of the European Convention on Human Rights, op. cit.

155. www.asylumineurope.org/reports/country/hungary/statistics.

156. The authorities assert that most of the applicants leave the country before the process is completed.

157. Nils Muižnieks, Commissioner for Human Rights of the Council of Europe “Hungary’s response to refugee challenge falls short on human rights”, 27 November 2015.

158. CPT, Ad hoc visit in October 2015, report in November 2016, [CPT/Inf\(2016\)27](http://cpt.int/Inf(2016)27).

159. Comments provided by the Hungarian Delegation on the preliminary draft report.

160. Amnesty International [submission](#) for the UN Universal Periodic Review of Hungary, 25th Session, April/May 2016, published in September 2015.

161. Amendments of: the Asylum Law LXXX/2007; Act C/2012 on the Criminal Code; Act XIX/1998 on Criminal Procedure

162. Article 31 of the 1951 UN Convention on Refugees forbids the imposition of penalties on refugees on account of their illegal entry or presence in the territory of a State.

163. Comments provided by the Hungarian Delegation on the preliminary draft report.

164. http://europa.eu/rapid/press-release_MEMO-17-1280_en.htm;

http://europa.eu/rapid/press-release_IP-17-1285_en.htm.

right to appeal, amounts to systematic detention, in breach of the EU law on reception conditions and the Charter of Fundamental Rights of the European Union. On 7 December 2017, the European Commission decided to move forward on the infringement procedure against Hungary concerning its asylum legislation by sending a reasoned opinion.¹⁶⁵ In the view of the Hungarian authorities,¹⁶⁶ access to transit zones and asylum procedures are not restricted. They state that the competence to set the appeals deadlines belongs to the national authorities and that no concrete EU rules exist in this regard. According to them, minors under the age of 14 are taken to special childcare institutions

85. It should be noted that in 2015 the Commissioner¹⁶⁷ already called on the authorities to improve detention conditions, identify systematically special needs of vulnerable persons and put in place an effective judicial review of asylum detention, in line with the European Convention on Human Rights.

86. The UNHCR urged the suspension of transfers of asylum seekers to Hungary under Dublin III on 10 April 2017¹⁶⁸ until the Hungarian authorities had brought their practices and policies into line with European and international law. Consequently, Germany suspended until further notice any return of asylum seekers to Hungary under Dublin III.¹⁶⁹

87. On 17 March 2017, the European Court of Human Rights found that in the case *Ilias and Ahmed v. Hungary*,¹⁷⁰ concerning the border-zone detention for 23 days of two Bangladeshi asylum seekers and their subsequent expulsion to Serbia, there was a violation of Article 5, paragraphs 1 and 4 (right to liberty and security) considering that the confinement in the transit zone amounted to detention but without a formal and reasoned decision and without appropriate judicial review. The Court also found that there was a violation of Article 13 (right to an effective remedy) concerning the lack of an effective remedy through which they could have complained about their conditions of detention. There was also a violation of Article 3 (prohibition of inhuman or degrading treatment) taking into consideration the applicants' expulsion to Serbia insofar as they didn't enjoy effective guarantees to protect them from exposure to a real risk of being subjected to inhuman or degrading treatment. On 18 September 2017, the Grand Chamber panel of five judges decided to refer the case to the Grand Chamber of the European Court of Human Rights.

88. On 14 March 2017, the European Court issued an interim measure¹⁷¹ (Rule 39) halting temporarily the transfer of eight unaccompanied refugee children and a high-risk pregnant Ugandan woman to transit zones and requested the Hungarian authorities to provide information about whether these zones are prepared to meet the special needs of vulnerable asylum seekers. The Hungarian authorities¹⁷² stated that the Immigration and Asylum Office of Hungary has never initiated the transfer of the above-mentioned children and the high-risk pregnant woman.

89. Concerning allegations that force¹⁷³ had been used to repel refugees and migrants at the border, Amnesty International¹⁷⁴ called on the authorities to ensure that any allegations of excessive use of force must be promptly investigated in an independent and impartial manner. In addition, it called on the authorities to refrain from using the military in policing the border operations, except where strictly necessary and proportionate.

90. Following its ad hoc visit to Hungary in 2015, the CPT¹⁷⁵ recommended that a clear message be delivered to all police officers and all armed guards working in immigration or asylum detention facilities that any form of ill-treatment of persons deprived of their liberty is unacceptable and will be punished accordingly. The CPT carried out another ad hoc visit to Hungary from 20 to 26 October 2017 to assess the situation of foreign nationals detained under aliens legislation. The report of the visit is not yet published

165. http://europa.eu/rapid/press-release_MEMO-17-4767_en.htm.

166. Comments provided by the Hungarian Delegation on the preliminary draft report.

167. Nils Muižnieks, Commissioner for Human Rights of the Council of Europe "Hungary's response to refugee challenge falls short on human rights", 27 November 2015.

168. www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html.

169. www.lemonde.fr/europe/article/2017/04/11/l-allemande-suspend-les-renvois-de-migrants-vers-la-hongrie-jusqu-a-nouvel-ordre_5109572_3214.html#xtor=AL-32280270.

170. *Ilias and Ahmed v. Hungary*, Application No. 47287/15, judgment of 14 March 2017.

171. Justin Spike, "Strasbourg court temporarily halts transfer of 8 unaccompanied refugee children to transit zones", 28 March 2017.

172. Comments provided by the Hungarian Delegation on the preliminary draft report.

173. "A Dangerous 'Game', The pushback of migrants, including refugees, at Europe's borders", April 2017.

174. https://www.upr-info.org/sites/default/files/document/hungary/session_25_-_may_2016/ai_upr25_hun_e_main.pdf.

175. CPT, Ad hoc visit in October 2015, report in November 2016, CPT/Inf(2016)27.

91. The Commissioner¹⁷⁶ highlighted that in addition to the necessary review of recent changes in legislation governing migration, immigrants, refugees and asylum seekers, all political forces should refrain from using rhetoric linking migrants to social problems or security risks, which hinders the integration of the migrants. The Hungarian Prime Minister's statements on the danger for Hungary's culture posed by the arrival of Muslim migrants are worrying in this regard.¹⁷⁷

92. On 13 June 2017, the European Commission initiated an infringement procedure against Hungary (as well as against Poland and the Czech Republic) for refusing to relocate any refugees to their country in the framework of the EU solidarity plan. On 26 July 2017, the European Commission sent a reasoned opinion to Hungary for non-compliance with its legal obligations.¹⁷⁸ On 7 December 2017, the European Commission decided to refer Hungary (as well as the Czech Republic and Poland) to the Court of Justice of the European Union for non-compliance with the legal obligations on relocation.¹⁷⁹

4.3. Women's rights, trafficking in human beings, children's rights

93. Hungary signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention") in 2014, but has not yet ratified it. The Agency for Fundamental Rights 2014 "Violence against women: an EU-wide survey"¹⁸⁰ showed that since the age of 15, 28% of women in Hungary have experienced physical and/or sexual violence and 42% of women have experienced some form of sexual harassment.

94. Despite improvements in the criminal law, the legal provision regarding "relationship violence" does not cover all kinds of intimate partnerships and all forms of violence, e.g. stalking. Moreover, the legal definition of rape is not based on the lack of consent, and many of the offences regarding domestic and sexual violence still require the victim's active involvement in the criminal procedures as a prerequisite. There are shortcomings on the implementation of restraining orders and NGOs have reported that there is no systematic and accessible data collection on the number of investigations, prosecutions and convictions in cases of violence against women or restraining orders issued.¹⁸¹

95. The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) was ratified by Hungary in 2013. In May 2015, the Group of Experts on Action against Trafficking in Human Beings (GRETA) issued the first evaluation report¹⁸² concerning Hungary. While commending Hungary's efforts to fight human trafficking, it highlighted existing challenges such as enhancing the detection of possible victims of human trafficking amongst asylum seekers and irregular migrants, as well as victims of labour exploitation. The report noted in particular that there is no specific framework for the identification and provision of assistance to child victims and identified a pattern of unaccompanied foreign children who had gone missing from childcare centres. GRETA therefore recommended that the effectiveness of investigations and the prosecution of trafficking cases needed improvement.

96. I welcome the ratification, in 2015, of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "Lanzarote Convention"). However, the United Nations Committee on the Rights of the Child noted the absence of mechanisms to identify and monitor children at risk of becoming victims under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography. The same Committee also regretted that the prohibition on the use of corporal punishment against children was not implemented in the family and schools. The Committee called on Hungary to reinstate the juvenile courts with specially trained judges and to raise the age of criminal responsibility to 14 years, even for the most serious crimes.

176. Nils Muižnieks, Commissioner for Human Rights of the Council of Europe "[Hungary's response to refugee challenge falls short on human rights](#)", 27 November 2015.

177. Third party intervention by the Commissioner for Human Rights under Article 36.3 of the European Convention on Human Rights, op. cit., paragraph 31.

178. europa.eu/rapid/press-release_IP-17-2103_en.pdf.

179. http://europa.eu/rapid/press-release_MEMO-17-4767_en.htm.

180. <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>.

181. "[Promotion and protection of women's rights in Hungary – Submission to the UN Universal Periodic Review of Hungary](#)", September 2015, Second cycle, 25th Working Group session, Human Rights Council, p. 5.

182. [Report](#) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary, First evaluation round, GRETA(2015)11, 29 May 2015.

4.4. Minority languages

97. Hungary ratified the European Charter for Regional or Minority Languages (ETS No. 148) in 1995. The Committee of Experts on the Charter adopted its last evaluation report¹⁸³ in March 2016. The report commended Hungary for strengthening minority language policies, which had led to additional funding for the rich linguistic diversity of the country, but noted that gaps remain. It also referred to the detailed and complex legislation regulating national minority policies and the use of all 14 minority languages.¹⁸⁴ On 14 December 2016, the Committee of Ministers adopted Recommendation CM/RecChL(2016)5¹⁸⁵ on the application of the European Charter for Regional or Minority Languages by Hungary. It made a number of recommendations concerning education of minority languages, and the use of minority languages in the administration and the media.

5. Rule of law

98. The European Court of Human Rights dealt with 1 225 applications concerning Hungary in 2016, of which 1 125 were declared inadmissible or struck out. It delivered 41 judgments, 40 of which found at least one violation of the European Convention on Human Rights.¹⁸⁶

99. Hungary is eighth in the list of member States of the Council of Europe with the highest number of unenforced Court judgments.¹⁸⁷ It has a series of cases under enhanced supervision, including on inhuman and/or degrading conditions of detention resulting mainly from a structural problem of overcrowding,¹⁸⁸ life sentences without eligibility for parole and excessive length of proceedings, abuse in legislation on secret surveillance and the systematic placement of Roma children in special schools for children with mental disabilities.¹⁸⁹

5.1. Checks and balances

100. The Hungarian Constitution provides for an elaborate system of checks and balances. However, the appointment of persons on the basis of party affiliation to positions in State institutions have reportedly limited the autonomy and political independence of these institutions and weakened their control function over the executive. These concerns have been compounded by the fact that in a number of cases the mandates of key positions, such as the President of the Supreme Court and the former Data Protection and Freedom of Information Parliamentary Ombudsperson, were ended before their term was finished, ostensibly as part of the implementation of the reforms initiated by the government.¹⁹⁰ In the case of *Baka v. Hungary*,¹⁹¹ the Court held that the premature termination of the President of the Supreme Court's mandate constituted a violation of Article 6.1 (right of access to a court) of the European Convention on Human Rights, and of Article 10 (freedom of expression)

5.2. Anti-terrorism and surveillance

101. The European Court of Human Rights assessed the Hungarian legislation on secret anti-terrorist surveillance introduced in 2011 in the context of the case of *Szabó and Vissy v. Hungary*.

102. It found that the Law on Police violated Article 8 (right to respect for private and family life, the home and correspondence) since it enabled the executive to intercept any communications for extended periods of time without adequate safeguards, such as supporting evidence, including of strict necessity, adequate judicial oversight and effective remedies, let alone of a judicial level, against unlawful surveillance measures.

183. [ECRML\(2016\)6](#).

184. The following languages have been given special protection under the European Charter: Armenian, Beás, Bulgarian, Croatian, German, Greek, Polish, Romani, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian.

185. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d8837>.

186. www.echr.coe.int/Documents/CP_Hungary_ENG.pdf.

187. <https://pace.coe.int/documents/19838/1085720/20150623-ImplementationJudgements8-EN.pdf/67c5cb2a-3032-4183-9f3e-45c668257ede>.

188. According to the authorities, applications relating to overcrowding constituted a significant part of unenforced Court Judgments. They recall that in the meantime, new legislative measures have effectively settled this issue, as recognised by the European Court of Human Rights in its decision in *Domján v. Hungary* on 23 November 2017.

189. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168070974d>.

190. Joint submission by Transparency International Hungary, Transparency International, the global coalition against corruption and K-Monitor Watchdog for Public funds to the UN Universal Periodic Review 25th Session of the UPR Working Group, 21 September 2015, p. 3.

191. Grand Chamber judgment in the case of *Baka v. Hungary*, Application No. 20261/12.

103. This case is under enhanced supervision by the Committee of Ministers and the Hungarian authorities submitted an action plan in February 2017. The government has acknowledged that legislative amendments are necessary as the Court's judgment identified a wide range of problems with regard to the legal framework for secret surveillance measures. An examination of the requirements and possible solutions is currently underway. The government announced that it would submit an updated action plan by the end of 2017.

104. In June 2016, parliament adopted the "Sixth Amendment" to the Fundamental Law introducing a broadly worded definition of a state of emergency on the grounds of a "terror threat situation". Amnesty International expressed its concern that this definition does not meet international standards as it would allow the government to introduce wide-ranging powers without judicial or full parliamentary oversight, and a much wider use of firearms by security forces than permitted under international law.¹⁹²

5.3. Fight against corruption

105. According to the Transparency International Corruptions Perception Index 2016, Hungary scored 48. This index indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). The country shows a slight decline in its score which reached 51 in 2015, 54 in 2014 and 2013, and 55 in 2012. It ranks 57 out of 176 countries. According to the US State Department, there were numerous reports of corruption during 2016.¹⁹³

106. Transparency International and K-Monitor reported that the country was heading towards "managed democracy", and pointed to the risk of political influence over independent institutions, businesses and civil society. A number of examples show the close relationship between government and leading business groups in Hungary, where privileges are granted to certain economic actors by legal means, including in tobacco retail concessions, and in savings co-operatives (a first wave of nationalisation is followed by a second wave of concessions or re-privatisation to an entrepreneur allegedly close to the government).¹⁹⁴

107. The Group of States Against Corruption (GRECO), in its Fourth Evaluation Report of September 2013, commended Hungary for abiding by all recommendations concerning the criminalisation of corruption, following legal amendments to the Criminal Code and the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191)¹⁹⁵ in February 2015. However, it was concerned that the legislative process in practice, and especially as far as the 2010-2012 reforms were concerned, was not always guided by sufficient levels of transparency and consultation. Therefore, third party involvement was not perceived as being sufficiently transparent.

108. GRECO called for the establishment of codes of conduct for MPs concerning guidance for cases of conflict of interests. Furthermore, MPs should also be obliged to report conflicts of interest in an ad hoc manner, and this should be compounded with a more robust obligation to submit asset declarations.¹⁹⁶ This should be accompanied by provisions that allow for sanctions for submitting inaccurate asset declarations.

109. With regard to transparency of party funding, GRECO regretted in its report that the situation had not progressed in recent years.¹⁹⁷ However, positive developments concerned the State Audit Office which had been given an increase of staff in charge of monitoring election campaign accounts and the steps towards a more robust and efficient monitoring.¹⁹⁸ However, NGOs have expressed concern regarding the functioning of such a State body.¹⁹⁹

192. Amnesty International, Annual report 2016/17, [chapter on Hungary](#).

193. [US Department of State Country Reports on Human Rights Practices for 2016](#), Hungary, section 4. Corruption and Lack of Transparency in Government.

194. "[Building Crony Capitalism; Opening The Door To Rent Seeking](#)", September 2014, and Transparency International comprehensive assessment on the Hungarian lobby landscape, [Lifting the Lid on Lobbying](#), 2014.

195. Third evaluation round: compliance report on Hungary: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of political party funding" adopted by GRECO at its 56th plenary meeting, Strasbourg, 20-22 June 2012, published in September 2013, [GRECO RC-III\(2012\)3E](#).

196. GRECO, [Fourth evaluation round](#): Corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Hungary, adopted by GRECO at its 67th plenary meeting, Strasbourg, 23-27 March 2015, published in July 2015.

197. The Second Addendum to the Second Compliance Report was still confidential at the time of drafting

198. Third evaluation round: compliance report on Hungary: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of political party funding", op. cit.

199. At least until 2014, this State body had never addressed questionable transactions in the accounts. Parallel NGO assessment of the 2014 national elections' campaign spending showed that funding from undisclosed sources was extensively used to promote the campaigns of the governing parties, and their expenses exceeded four times the amount foreseen by the law. See "[FREE BUT NOT FAIR ELECTIONS](#)", Hungary Factsheet 4, September 2014, paragraph 6.

110. More recently, the OSCE/ODIHR noted that, while new campaign finance legislation, adopted in 2013, was a step forward, certain areas remain unregulated, including third-party campaigning (e.g. NGOs actively involved in the election campaign) and absence of obligation of repayment for political parties that receive public funds if they do not obtain a minimum threshold of votes. Financial incomes and expenditures of electoral contestants are not reported or disclosed during the campaign and there are no limits to private donations, contrary to OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulations.²⁰⁰

111. The authorities²⁰¹ stress that despite the remaining shortcomings, Hungary has taken serious steps towards fighting corruption: since 2010, the government has established a National Co-operation Programme promoting and restoring public confidence in the State and its institutions, and in 2011 the National Protection Service became a key institution in the National Programme of Anti-corruption. They state that in the last few years, further steps have been taken to implement the recommendation of the GRECO and OECD Working Group on Bribery. An amendment to the legislation regulating campaign financing was adopted 14 November 2017 introducing obligatory repayment of public funds for parties not obtaining a minimum threshold of 1 %.

5.4. Fight against money laundering

112. In its 2016 report,²⁰² the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) welcomed the increase in the number of investigations and prosecutions for money laundering in Hungary. However, it considered that although Hungary is aware of many money laundering threats and vulnerabilities, more detailed analysis of these are needed through updating the country's national risk assessment. Moreover, a national anti-money laundering/combating the financing of terrorism strategy has not yet been adopted. Prosecutions for money laundering are not proportionate to the risks and threats in Hungary, and they should address all types of money laundering, including structured money laundering schemes. It also considered that up to now Hungary had not demonstrated an effective and successful application of its seizure/confiscation rules, and that the potential of the Asset Recovery Office in supporting investigations should be further exploited to this end.

113. MONEYVAL praised the quality of the work of the Hungarian Financial Intelligence Unit, which had demonstrated its effectiveness to a large extent. However, other competent authorities had not made appropriate use of the investigations made into financial intelligence, money laundering and terrorism. Hungary was called to remove the remaining legal impediments on full criminalisation of the financing of terrorism, including foreign terrorist fighters. Furthermore, MONEYVAL suggested establishing law-enforcement sections specialising in countering the financing of terrorism.

5.5. Independence and effectiveness of the judiciary/criminal justice system

114. The membership obligations of the Council of Europe demand, *inter alia*, respect for democratic principles, particularly checks and balances, and judicial independence as part of the rule of law.²⁰³ Independence means that the judiciary is not only free from external but also from internal pressure.

115. As a result of the extensive changes to the legal framework enacted in 2011, the administration of courts became centralised and the president of the newly created National Judicial Office (NJO) was entrusted with extensive powers²⁰⁴ to the detriment of a restructured autonomous judicial body.²⁰⁵ International counterparts, including the Venice Commission,²⁰⁶ the United Nations Special Rapporteur on the independence of judges and lawyers²⁰⁷ and GRECO²⁰⁸ have all criticised these extensive powers, in particular the lack of appropriate accountability, and emphasised the need to enhance the role of the collective

200. OSCE/ODIHR Limited Election Observation Mission [Final Report](#), Hungary, Parliamentary Elections, 6 April 2014, published on 11 July 2014, pp. 13-15.

201. Comments provided by the Hungarian Delegation on the preliminary draft report

202. "Anti-money laundering and counter-terrorist financing measures: Hungary: Fifth Round Mutual Evaluation Report", adopted by MONEYVAL at its 51st Plenary Session, Strasbourg, 29 September 2016, [MONEYVAL\(2016\)13](#).

203. [Report on the Rule of Law](#), adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011), CDL-AD(2011)003rev, paragraph 55 *apud* Opinion on the Fourth amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session, Venice, 14-15 June 2013, [CDL-AD\(2013\)012](#), paragraph 12.

204. [Disrupting The System Of Checks and Balances; Weakening Independent Institutions](#); Hungary Factsheet 2, September 2014.

205. "Still under threat: the independence of the Judiciary and the Rule of Law in Hungary", October 2015, p. 8.

206. CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), paragraph 118.

body, the National Judicial Council (NJC), as a control instance. The president of the NJO, who is elected by the parliament, cannot be considered an organ of judicial self-government. Following international recommendations, including from the Venice Commission, the status of the president of the NJO was changed and his/her powers restricted in order to ensure a better balance between the president and the NJO.²⁰⁹

116. A fundamental concern regarding the powers of the president of the National Judicial Office by the Venice Commission was the transfer of cases from one court to another. This possibility was annulled by the Fifth Amendment to the Fundamental Law, which was adopted on 16 September 2013,²¹⁰ in the framework of the dialogue with the Secretary General of the Council of Europe. This fifth constitutional amendment introduced constitutional recognition of the supervisory function of the NJC.

117. Since 2012, Hungary has taken positive steps to transfer certain functions from the president of the NJO to the NJC in order to create a better balance between these two organs.²¹¹ However, further progress is still required. The NJC can veto a decision taken by the president of the NJO relating to a judicial appointment, and retains a key role in the selection, appointment and termination of judicial positions.²¹² GRECO in its 2015 report called for minimising the potential risks of discretionary decisions by the president of the NJO. The president of the NJO is, *inter alia*, able to transfer and assign judges, and has a role in judicial discipline. It is also the president of the NJO who makes a recommendation to the President of Hungary to appoint and remove heads of courts, including presidents and vice-presidents of the Courts of Appeal.²¹³ GRECO welcomed the recently adopted Code of Ethics for Judges, although considering that it could be made more explicit and followed by in-service training.²¹⁴

118. In the case of *Baka v. Hungary*,²¹⁵ which is subject to enhanced supervision by the Committee of Ministers of the Council of Europe, the Court had found a violation of Article 6.1 of the Convention due to the lack of any form of judicial review as regards the premature termination of the mandate of the President of the Supreme Court on 1 January 2012 – i.e. three and a half years before its normal date of expiry. In addition, it also found a violation of Article 10 (freedom of expression) as the termination was prompted by the views and criticisms of legislative reforms affecting the judiciary that the applicant had publicly expressed in his professional capacity. Recognising, *inter alia*, the “chilling effect” of the violations in the above-mentioned case, the Committee of Ministers²¹⁶ requested the Hungarian authorities to provide information by September 2017 on the practical measures undertaken to lift such effect, to provide an effective right to review by a judicial authority of any measure leading to the removal or dismissal of a judge, and the measures taken or envisaged to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard.

119. The Hungarian prosecution service is built on a strict hierarchical structure, allowing superior prosecutors to instruct subordinate prosecutors, to overrule their decisions and to redistribute or take over cases. Such a system requires adequate checks and balances in order to prevent the potential for malpractice and corruption. In its report, GRECO urged the authorities to take additional steps to prevent abuse and increase the independence of the prosecution service, *inter alia* by removing the possibility for the Prosecutor General to be re-elected. It should be noted that a minority in parliament could block the election of a new Prosecutor General, which would result in the incumbent remaining in office after the expiry of his/her

207. Communications of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, 14 May 2012 (UN Doc UA G/SO 214 (3-3-16) HUN 1/2012) and 3 July 2013 (UN Doc AL G/SO 214 (3-3-16) HUN 3/2013).

208. GRECO, *Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Hungary*, op. cit.

209. *Disrupting The System Of Checks and Balances; Weakening Independent Institutions*, op. cit.

210. International Bar Association's Human Rights Institute (IBAHRI), “*Still under threat: the independence of the judiciary and the rule of law in Hungary*”, October 2015, p. 16.

211. Assembly report on “The situation in Hungary following the adoption of *Resolution 1941 (2013)*”, Doc. 13806 (rapporteur: Mr Robert Walter, United Kingdom, EC), p. 41.

212. The PNJO can deviate from the list of judges presented by the panel of judges and propose to the President of Hungary the second or third candidate on the list to fill the post. Although the NJC can veto the decision of the president of the NJO to deviate from the ranking, the choice of the President of Hungary is final. See IBAHRI, “*Still under threat: the independence of the judiciary and the rule of law in Hungary*”, October 2015, pp. 24 and 25.

213. IBAHRI, Stakeholder submission to the UN Human Rights Council's UPR, 25th Session, p. 4.

214. GRECO, *Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Hungary*, op. cit.

215. For more detailed information, Assembly Doc. 13229 “Request for the opening of a monitoring procedure in respect of Hungary”, chapter 4.3.3, “The dismissal of the President of the Supreme Court”, p. 24.

216. CM/Del/Dec(2017)1280/H46-15, 1280th meeting, 7-10 March 2017 (DH); H46-15 *Baka v. Hungary* (Application No. 20261/12); https://search.coe.int/cm/pages/result_details.aspx?ObjectId=09000016806faaa5.

mandate. In addition, GRECO called for disciplinary proceedings against ordinary prosecutors to be made more transparent and for decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications.²¹⁷

5.6. Constitutional Court

120. The Constitutional Court has continued to play an important institutional role, including in controlling the power of the different branches of power. In this context, the President has often used his power of requesting the constitutional review of laws by the Constitutional Court. Previous Assembly resolutions²¹⁸ have highlighted the shortcomings introduced by reforms of the Constitutional Court. This included restrictions on its competences with regard to taxation and budgetary matters, abolishing the system of *actio popularis*,²¹⁹ repealing the court's case law prior to 1 January 2012, and the limitation to review the constitutionality of fundamental or respective amendments from a strictly procedural point of view. The authorities²²⁰ note that this rule applies only until the overall State debt exceeds 50 % of gross domestic product and together with strict safeguards. The Venice Commission, in its Opinion on the fourth amendment to the fundamental law of Hungary of June 2013,²²¹ nevertheless expresses serious concern about the limitation of the competence of the Constitutional Court to review legislation.

121. In its [Resolution 2064 \(2015\)](#), the Assembly stated that the limitation of the jurisdiction of the court on economic matters remains in force. I reiterate the Assembly's recommendation to lift such restrictions and to ensure that the Constitutional Court can play its role as a fully-fledged guardian of the Constitution within a proper system of checks and balances.

122. Until now, the Assembly's recommendations in [Resolution 1941 \(2013\)](#) to introduce a legal requirement that Constitutional Court judges should have previously been judges, as well as the introduction of a "cooling-down" period for members of parliament before they are eligible to become Constitutional Court judges, have not been implemented. In 2015, the Hungarian authorities indicated that they would further examine this issue and I request the authorities to share with me the results of their assessment. Finally, I wish to note that the new appointment system of Constitutional Court judges on the basis of the political factions' parliamentary representation – even if there is no longer a qualified majority of only one party – does not seem to keep at bay the possible politicisation of the Constitutional Court.

6. Conclusions and recommendations

123. While Hungary in many aspects is globally honouring its membership obligations to the Council of Europe, a number of concerns exist that have led the Assembly to intensify its discussions regarding respect for Council of Europe standards. While the authorities have repeatedly reiterated their unquestionable commitment to Europe and its community of values, there are concerns about the way the Hungarian Government is acting towards building an "illiberal democracy" and pursuing an increasingly national sovereignist policy. Some of the recent reforms implemented are symptomatic of this ambiguity and the accumulation of such reforms have raised questions with regard to attempts to establish political control of most key institutions while in parallel weakening the system of checks and balances.

124. The rapporteur welcomes the amendment of the electoral legal framework in recent years which contributed to the rather efficient administration of the 2014 elections and a diverse choice offered to voters, but he encourages the authorities to implement the outstanding recommendations of the OSCE/ODIHR, in particular as regards the restoration of checks and balances and the separation between political party and State.

125. The rapporteur regrets that Hungary's ratings regarding media freedom have declined in recent years and deplores the strong political intervention in the Hungarian media market; he calls for the decriminalisation of defamation and increased transparency and accountability regarding the right to access to information.

217. GRECO, [Fourth evaluation round](#): Corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Hungary, op. cit.

218. [Resolution 1941 \(2013\)](#), op. cit., and [Resolution 2064 \(2015\)](#), op. cit.

219. *Actio popularis* is a system whereby individuals, NGOs, or even foreigners have the right to request an *ex post* review of the constitutionality of an act or its implementation, even without being directly affected by it.

220. Comments provided by the Hungarian Delegation on the preliminary draft report.

221. [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)012-e).

126. As highlighted in the Assembly [Resolution 2162 \(2017\)](#), the rapporteur is concerned by the recent developments showing an increasing stigmatisation of NGOs and in particular by the recently adopted law on the transparency of organisations receiving foreign funding which causes disproportionate and unnecessary interference with freedom of expression and association and calls for amendments to the law in order to comply with European standards.

127. Similarly, he is concerned about the amendment to the Act on National Tertiary Education which could force the central European university to close down or move out of Hungary and calls for the review of the legislation in compliance with the Venice Commission's recommendations.

128. While welcoming the combination of remedies, both preventive and compensatory in nature, guaranteeing in principle genuine redress for violations of the European Convention on Human Rights originating in prison overcrowding and other unsuitable conditions of detention, the rapporteur remains concerned about prison overcrowding which remains a major concern. The authorities should pursue their efforts to intensify the alternative non-custodial measures and to minimise the recourse to l'Espace économique européen detention.

129. The rapporteur welcomes the authorities' efforts regarding the minority language policy; while welcoming the improvement of the non-discrimination legislation, he is nevertheless concerned by the xenophobic and intolerant attitudes within Hungarian society, in particular towards Roma, and the rhetoric used by political forces against migrants.

130. The rapporteur regrets that hate speech by mainstream politicians is not sufficiently publicly condemned. While commending the progress in legislation and practice to combat hate crime and hate speech, he urges the authorities to address shortcomings and implement recommendations of the Commissioner for Human rights, ECRI and the Expert Committee on the Framework Convention for the Protection of National Minorities in this regard. He calls for Hungary to ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

131. While acknowledging the unprecedented challenge for the country deriving from the migration crisis since 2015, the rapporteur notes with concern that asylum law and practice are considered non-compliant with European and international standards. Criminalisation of "illegal entry" through the border fence and related border offences and the creation of "transit zones" for asylum seekers at the border are highly questionable and the rapporteur is concerned about the conditions of detention of refugees and asylum seekers. He is also worried by the allegations that force is used at the border and calls on the authorities to ensure that any allegation of excessive use of force is promptly investigated in an independent and impartial manner. He urges the authorities to establish a fully human rights-compliant asylum system.

132. The rapporteur welcomes the measures taken to fight corruption and encourages the authorities to further implement the GRECO recommendations regarding, in particular, codes of conducts for MPs and transparency of party funding.

133. In the field of the judiciary, the rapporteur takes note of the positive steps taken to enhance the role of the National Judicial Council as a control instance and calls for measures to minimise the risk of discretionary decisions by the President of the National Judicial Office and for increasing the independence of the prosecution service.

134. Based on the above, the rapporteur is worried about the accumulation of reforms that aim to establish political control of most key institutions while in parallel weakening the system of checks and balances. He is also concerned by a number of human rights issues mentioned above. He nevertheless welcomes the readiness of the authorities to continue their dialogue with the Council of Europe in order to address the outstanding issues. He considers it important for the Monitoring Committee to closely follow developments in the country in this regard.

135. The committee will evaluate the implementation of these recommendations on the occasion of its next periodic evaluation cycle of member States that are not under a monitoring procedure *stricto sensu* or engaged in a post-monitoring dialogue.

Appendix

1. Council of Europe conventions signed and/or ratified between 1 October 2013 and 21 November 2017 by Hungary

No.	Title		
127	Convention on Mutual Administrative Assistance in Tax Matters		
	Signature: 12/11/2013	Ratification: 07/11/2014	Entry into force: 01/03/2015
191	Additional Protocol to the Criminal Law Convention on Corruption		
	Signature: 15/05/2003	Ratification: 27/02/2015	Entry into force: 01/06/2015
201	Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse		
	Signature: 29/11/2010	Ratification: 03/08/2015	Entry into force: 01/12/2015
208	Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters		
	Signature: 12/11/2013	Ratification: 07/11/2014	Entry into force: 01/03/2015
210	Council of Europe Convention on preventing and combating violence against women and domestic violence		
	Signature: 14/03/2014		
211	Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health		
	Signature: 26/09/2013	Ratification: 09/01/2014	Entry into force: 01/01/2016
213	Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms		
	Signature: 09/07/2015	Ratification: 30/11/2015	
215	Council of Europe Convention on the Manipulation of Sports Competitions		
	Signature: 29/11/2016		

2. Recent findings of Council of Europe monitoring mechanisms and other bodies as at 21 November 2017

European Court of Human Rights	European Convention on Human Rights (ETS No. 005) ratified in 1992 Protocol No. 1 (ETS No. 009) ratified in 1992 Protocol No. 2 (ETS No. 044) ratified in 1992 Protocol No. 6 (ETS No. 114) ratified in 1992 Protocol No. 12 (ETS No. 177) signed in 2000 Protocol No. 13 (ETS No. 187) ratified in 2003 Protocol No. 14 (CETS No. 194) ratified in 2005 Out of a total of 79,750 applications pending before a judicial formation on 31 December 2016, 8,962 concerned Hungary. Resolutions adopted by the Committee of Ministers: 10 in 2013, 3 in 2014, 7 in 2015, 4 in 2016 and 2 in 2017. See Press country profile Hungary
Congress of Local and Regional Authorities	European Charter on Local Self-Government (ETS No. 122) ratified in 1994 Report and Recommendation on local and regional democracy in Hungary adopted in October 2013: CG(25)7FINAL and Recommendation 341 (2013)

Group of States against Corruption (GRECO)	Civil Law Convention on Corruption (ETS No. 174) ratified in 2003 Criminal Law Convention on Corruption (ETS No. 173) ratified in 2000, Additional Protocol (ETS No. 191) ratified in 2015 <i>Third evaluation round: compliance report on Hungary: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding",</i> adopted by GRECO at its 56th plenary meeting, Strasbourg, 20-22 June 2012, published in September 2013, GRECO RC-III(2012)3E <i>Third evaluation round: second compliance report on Hungary: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding",</i> adopted by GRECO at its 64th plenary meeting, Strasbourg, 16-20 June 2014, published in March 2015, Greco RC-III(2014)10E <i>Third evaluation round: addendum to the second compliance report on Hungary: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding",</i> adopted by GRECO at its 69th plenary meeting, Strasbourg, 12-16 October 2015, published in November 2015, Greco RC-III(2015)11E <i>Third evaluation round: second addendum to the second compliance report on Hungary: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding",</i> adopted by GRECO at its 75th plenary meeting, Strasbourg, 20-24 March 2017 (confidential) <i>Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Hungary,</i> adopted by GRECO at its 67th plenary meeting, Strasbourg, 23-27 March 2015, published in July 2015, Greco Eval IV Rep(2014)10E
Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) ratified in 2000 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) ratified in 2009 3rd Regular follow-up progress report: 4th round mutual evaluation of Hungary, adopted at MONEYVAL's 42nd plenary meeting, Strasbourg, 16-20 September 2013 <i>Anti-money laundering and counter-terrorist financing measures: Hungary: Fifth Round Mutual Evaluation Report</i>, adopted by the MONEYVAL Committee at its 51st Plenary Session, Strasbourg, 29 September 2016, MONEYVAL(2016)13
Commissioner for Human Rights	<i>Letter to the Minister of the Prime Minister's Office, Mr János Lázár</i>, 9 July 2014, CommDH(2014)16 and <i>Reply of Mr János Lázár, Minister of the Prime Minister's Office</i>, 21 July 2014 <i>Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Hungary from 1 to 4 July 2014</i>, 16 December 2014, CommDH(2014)21 and <i>Comments of the Hungarian Authorities on the report on the visit to Hungary</i> Visit to the country in November 2015 <i>Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36 of the European Convention on Human Rights. Applications No. 44825/15 and No. 44944/15, S.O. v. Austria and A.A. v. Austria</i>, CommDH(2016)3 / 17 December 2015 Letter to the Minister of Human Capacities of Hungary (26 January 2016) and Reply from the Hungarian authorities (12 February 2016) <i>Statement: Commissioner concerned about Hungary's new law allowing automatic detention of asylum seekers</i>, Strasbourg, 8 March 2017 <i>Letter from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to Mr László Kövér, Speaker of the National Assembly of Hungary, concerning the proposed draft law on foreign-funded NGOs</i>, 26 April 2017, CommDH(2017)14 and Reply to the letter by the Speaker of the National Assembly of Hungary, 5 May 2017
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	Convention (ETS No. 126), Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) ratified in 1993 Publication of the last report: November 2016, CPT/Inf(2016)27 Last country visit: October 2017
Group of Experts on Action against Trafficking in Human Beings (GRETA) and Committee of the Parties	Convention (CETS No. 197) ratified in 2013 1st Evaluation Round: . GRETA's Report and Government's Comments published in May 2015, GRETA(2015)11 . Recommendation CP(2015)3 of the Committee of the Parties adopted in June 2015 . Government's Reply to the Committee of the Parties' Recommendation received in June 2017, CP(2017)22

Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and Committee of the Parties	Convention on preventing and combating violence against women and domestic violence (CETS No. 210) signed in 2014 but not ratified
European Commission against Racism and Intolerance (ECRI)	5 th report on Hungary adopted in March 2015, published in June 2015, CRI(2015)19
Venice Commission	<i>Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary</i>, adopted by the Venice Commission at its 103rd Plenary Session, Venice, 19-20 June 2015, CDL-AD(2015)015 <i>Hungary – Preliminary Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad</i>, 2 June 2017, CDL-PI(2017)002 <i>Hungary – Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad</i>, adopted by the Venice Commission at its 111th Plenary Session, Venice, 16-17 June 2017, CDL-AD(2017)015 <i>Hungary – Preliminary Opinion on Act XXV of 4 April 2017 on the amendment of Act CCIV of 2011 on Tertiary Education</i>, 11 August 2017, CDL-PI(2017)005 <i>Hungary – Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education</i>, endorsed by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017), CDL-AD(2017)022

Other Treaties:

Framework Convention for the Protection of National Minorities	Convention (ETS No. 157) ratified in 1995 4th cycle: . 4th State Report received in March 2015, ACFC/SR/IV(2015)002 . Advisory Committee delegation visit in December 2015 . Opinion adopted in February 2016, published in September 2016, ACFC/OP/IV(2016)003 . Government comments received in September 2016, GVT/COM/IV(2016)004 . Resolution adopted in July 2017, CM/ResCMN(2017)5
European Charter for Regional or Minority Languages	Convention (ETS No. 148) ratified in 1995 6th monitoring cycle: . State Periodical Report submitted in March 2015, MIN-LANG(2015)PR4 . Committee of Experts' evaluation report adopted in March 2016, ECRML(2016)6 . Committee of Ministers' Recommendation adopted in December 2016, CM/RecChL(2016)5
European Social Charter	European Social Charter of 1961 (ETS No. 35) ratified in 1999 European Social Charter (revised) (ETS No. 163) ratified in 2009 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed in 2004 but not ratified See Country factsheet Hungary