



MINISTRY OF FOREIGN AFFAIRS AND TRADE

Please find below the Hungarian Government's response to the report by Dunja Mijatović, Commissioner for Human Rights of the Council of Europe, concerning her visit to Hungary from 4 to 8 February 2019. The report forms part of the reporting on the human rights situation in the member states of the Council of Europe that Ms. Mijatović has published since taking office on 3 April 2018.

During her visit, Ms. Mijatović met with representatives of the Hungarian government and of non-governmental organizations. Hungary acknowledges the significance of the visit of the Commissioner for Human Rights and the consistence of the dialogue held with the Hungarian officials as well as with the civil society on the occasion of her visit. The report contains several valid remarks and issues that were raised during the meeting between Ms. Mijatović and various interlocutors. However, there are some points that need further clarification or additional information.

The comments of the Hungarian Authorities include assessments of the Ministry of Interior, the Ministry of Justice, the Ministry of Human Capacities and the Prime Minister's Office. The structure of the present document follows that of the report of the Human Rights Commissioner, the enumeration of the relevant chapters, sub-chapters and paragraphs are indicated throughout the text.

1. Human Rights of Asylum Seekers and Refugees

In the outset, we would like to stress that Hungary fulfils all of its international obligations that deal with the safeguarding of human rights of asylum seekers and refugees.

With regard to Article XIV of the Fundamental Law of Hungary, it must be noted that the Law was modified, by which Hungary, among other Member States, raised the principle to the constitutional level that says that "a State has the right to determine the conditions according to which aliens are allowed to enter its territory". This practice can be identified in one of the Member States' Fundamental Law as well: the right of asylum may not be invoked by a person who enters the federal territory from a Member State of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection. This principle is accepted by international customary law and is proven by the practice of the states, and it is also set in the draft proposal of the United Nations International Law Commission on the rules of expulsion of aliens under international law. It evidently follows from the foregoing that the sovereignty of the State immanently incorporates the unalienable right of authorizing the entry of foreigners to the State's territory.

1.1 Inaccessibility of Refugee Protection

Article 31 (1) of the Geneva Convention protects only those who come directly from a territory where their lives or their freedom are at risk.

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

As regards effective remedy of asylum seekers, the absence of automatic suspensive effect and independent and rigorous scrutiny of the claim is only criticised vis-à-vis Hungary. The prescribed 3 days timeline guarantees enough time to prove their identity and that they arrived to Hungary through a country that is unsafe.

Furthermore, we would like to stress that since the infringement procedure concerning the new inadmissibility ground with reference to the EU Asylum Procedures Directive, the Asylum Qualifications Directive and the EU Charter of Fundamental Right is an ongoing case, we would refrain other institutions to pre-empt their results.

1.2 Forcible Removals and Ill-Treatment

One of the main task of the state is to protect its territory and punish those who commit offences/crimes. Forcible removals sanctions are set to protect the country from those foreign nationals who have entered Hungary illegally. Of course, if these people are able to prove their refugee status, non of these sanctions come into effect, they can enter Hungary legally.

Concerning paragraph 17 it must be noted that in the context of the removal, proper identification in many cases can not be carried out since the refugees leave their papers behind.

1.3 Detention of Asylum Seekers

In her report, the Commissioner for Human Rights mentions that the crisis measures introduced due to mass immigration introduced in 2015 are still in force, despite the fact that the number of applicants has been greatly reduced since the institution was introduced. In view of this, she proposes to end the crisis caused by mass immigration. However, due to the large number and geographical proximity of immigrants in Serbia, Bosnia and Herzegovina and North Macedonia, **maintaining a crisis situation** is absolutely justified. The report also mentions that legislation designed to deal with a crisis situation is contrary to EU and international law. We would like to point out that no forum has ruled in a final decision so far as that is incompatible with EU or international law.

According to the report, asylum seekers are only allowed to apply for asylum in the two transit zones, where entry is difficult. The report mentions, on the one hand, a drastic reduction in the number of applicants, but complains that only a small number of applicants can apply for asylum or protection in the two transit zones. Persons who indicate their intention to enter the transit zone by the Hungarian-Serbian border, the Hungarian authorities will let in to the zone, thus giving them the opportunity to submit asylum applications. In the case of unaccompanied minors under the age of 14, the asylum authority proceeds in accordance with the general rules and at the same time seeks the child protection authority for the appointment of a guardian.

Persons arrested on the territory of the country may also submit an application for asylum and it is therefore incorrect to state that they cannot do so ("... as they are unable to access the asylum procedure ..."). All asylum seekers may apply for recognition in the transit zone, so that Hungary does not violate any provisions of national or international law. The possibility of submitting an asylum application for all persons in the transit zone who indicate their intention to enter at the Hungarian-Serbian border is provided by the Hungarian authorities.

As regards the new grounds for inadmissibility, we find it incorrect to state in the report that this has led to the systematic rejection of applications and that there is no effective remedy in this respect. Decisions in court proceedings on the basis of actions against rejection decisions for that reason have in many cases overruled the authority's decision. The fact that judgments of the authority can be overturned, confirmed or annulled by the courts decision also mean that the courts assess all the circumstances of each case. Applicants have the possibility to submit an application for immediate protection. In all cases, the applicants have exercised their right, and in all such cases the courts have ordered immediate legal protection, and the asylum authority has not appealed against the order, although it would have been able to do so. In addition, the new ground for inadmissibility is in line with the provisions of the Fundamental Law of Hungary and the provisions of the Geneva Convention.

It is important to emphasize that, in accordance with the provisions of the Geneva Convention; an asylum seeker is required to apply for international protection in the first country considered safe for him or her and to cooperate with the asylum authority of that country in the case of an application. However, foreigners who go to Hungary do not fulfill any of these obligations. A large number of applicants openly undertake that their first journey from a safe country is motivated solely by economic reasons, the region's livelihood difficulties.

The report states that in the transit zone, those seeking recognition are considered to be detainees, which is not supported by any legal provisions or court judgments. It is therefore unjustified to refer in a consistent manner to persons seeking recognition in the transit zone as detainees. The report also mentions that there is no effective remedy against placement in a transit zone. Applicants enter the transit zone voluntarily, and they undertake to be placed in the transit zone for the duration of the asylum procedure.

According to the report, certain NGOs cannot enter transit zones. Pursuant to Article 8 (2) of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, Member States shall ensure that organizations and persons providing advice and assistance to applicants can effectively meet applicants at border crossing points at external borders, including transit zones. Member States may lay down rules on the presence of such organizations and persons in these areas and may, inter alia, require that entry at border crossing points may be subject to agreement with the authorities of the Member States. The meeting may be limited only if it is necessary, in accordance with national law, for the security, public order or administration of the border crossing point on the basis of objective factors, and does not limit or render impossible the meeting.

In accordance with the Directive, the asylum authority cooperates with members of the Charity Council and provides access to transit zones, where the Hungarian Red Cross and the Hungarian Reformed Charity Service are currently providing additional assistance. In addition to these domestic charities, UNHCR and IOM also have access to transit zones and assistance. The report draws attention to the fact that Hungary, under European and international human rights standards, has a duty to ensure that persons placed on the territory of the transit zone have

adequate accommodation and procedures. It also calls on the authorities to immediately lift such non-humane treatment. In this context, a distinction needs to be made between persons under asylum procedure and persons subject to alien policing procedures. For the latter, the asylum procedure has been definitively closed.

The report uses the term detention for the purpose of staying at a designated location in the transit zone. From the alien sector, the exit to Serbia is possible at any time voluntarily. Therefore, persons who are expelled do not have a legal disadvantage if they leave the transit zone. It is important to emphasize that minors are provided with care at the expense of the Hungarian State during the alien policing procedure.

The claim that the Hungarian authorities would have any obligation to provide catering after the final closure of the asylum procedure is not substantiated. Given that the transit zone can voluntarily left towards Serbia at any time and food can be bought in the transit zone at any time, the conditions for self-care are met, and the state must not be expected to provide additional care from the state budget.

According to the report, the environment in the transit zone is inadequate, especially for families and children. In the same paragraph, the report also mentions that the protection of minors against sexual exploitation in transit zones is inadequate. The police are responsible for the guarding of transit zones, and no complaints have been received because of sexual exploitation either by the authorities, from civil organizations present in the transit zone, or to the court. The Hungarian authorities, with human dignity in mind, are developing the most optimal placement for asylum seekers in transit zones. The Hungarian Authorities have an ongoing dialogue regarding the issue with the Lanzarote Committee concerning the implementation of its recommendations.

Under the National Public Education Act, non-Hungarian minors become eligible for pre-school care, and they are also subject to compulsory schooling in Hungary if they are refugees, sheltered or admitted. Non-Hungarian citizen staying in Hungary if they meet the conditions laid down by law, have access to kindergarten education, dormitories, pedagogical services, as well as school education and education until the completion of compulsory education and the completion of studies started before the age of eighteen with the same conditions as Hungarian citizens. Only minors aged 14 and over are placed in unaccompanied minors' section in the transit zone.

As of 4 September 2017, as in the Hungarian educational institutions, the education of school age children in transit zones has begun. In the case of Tompa Transit zone the teachers are provided by the Kiskőrös Education District, in the Rösztke Transit zone, by the Szeged Education District, while the educational materials were compiled by the experts of the Ministry of Human Capacities. Participation is compulsory for children aged between 6 and 16 years. At the same time, children aged 16 and over are also allowed to attend education. In order to facilitate participation in education, the asylum authority ensures the material conditions of education during the asylum procedure for those seeking the recognition under the Act on National Public Education. In the transit zones, education is provided by community spaces in the sectors. Equipment for children is available for education, as provided by the Asylum Authority, as well as stationery and magnetic drawing boards, among the tools requested by the trainers. In addition, 8 laptops and 8 projectors, 8 radio cd players, 5 laptops and 2 projectors in the Tompai Transit Zone serve education.

In transit zones twenty-four hours a day, there is a social service, which pays special attention to the care of persons requiring special treatment. Although social legislation does not include a taxable list of tasks to be carried out by social workers, the relevant internal measure includes the provision of social care by the social workers. Many leisure activities are organized for both adults and children. Sports equipment as well as outdoor games is also available for applicants. There is also a curriculum-related education for children in kindergarten and school system, where they are introduced to European and Hungarian culture. There is also a large-screen television, DVD player, and satellite broadcasting equipment that can be used primarily for receiving channels of origin of asylum seekers. The Wi-Fi service is provided in the zones, and their phones can be held by the occupants themselves, so contact is also provided. The Wi-Fi service can be used by the applicants with their own devices without restriction.

1.4 Treatment of Unaccompanied Minors under 14 Years

For families, unaccompanied minors, single women and single men, a separate sector has been developed in transit zones to ensure adequate protection for groups requiring special treatment. Consequently, the protection of children under the age of 18 from sexual exploitation and abuse is guaranteed in transit zones from the beginning of placement.

The asylum authority pays special attention to maintaining the unity of families, so that all members of the family are housed in one place in a residential sector. Social workers inform children about the risks of sexual abuse and exploitation as well as the assistance available, according to their age and maturity.

The asylum authorities' social workers also fill out a questionnaire with asylum seekers which is specifically designed to detect victims of trafficking in human beings. The questionnaire also includes questions about sexual abuse and exploitation. If the results of the questionnaire appear to be justified or if the victim of trafficking in human beings is asking for help from a social worker, the social worker indicates this to a psychologist or psychiatrist in the transit zone.

1.6 Conclusion and Recommendations

The priority for Hungary is to address the causes of migration at its root and to fully protect the external borders. Cooperation with third countries focuses on return, readmission and reintegration, disruption of human trafficking networks and local economic, security and social problems. Hungary also supports third countries in capacity building in the field of border protection.

Hungary's firm position is that protection should be provided to those fleeing persecution. At the same time, the current migration crisis has shown that asylum abuse is a major burden for the asylum and migration system. With this in mind, Hungary is strongly opposed to abuses in order to concentrate all the necessary resources on those who really need protection.

In accordance with Article 2 of the Return Directive, Hungary does not apply the Return Directive to third-country nationals who have been refused entry in accordance with Article 13 of the Schengen Borders Code or who have been refused entry by a competent authority at the external border of a Member State, have been caught or arrested for illegal crossing by sea or air, and who have not subsequently been granted the right to reside in that Member State.

On this basis, the police are obliged to act in accordance with the State Border Act, i.e. in such cases; no repatriation will take place in accordance with the provisions of the Return Directive,

as they apply expulsion measures. When the police carry out the transfer, it fulfils its obligation under the Schengen Borders Code. On this basis, Member States are obliged to impose sanctions in the event of unauthorized crossing of external borders outside or at the official opening hours of the border crossing points, which should be effective, proportionate and dissuasive.

General guarantees for police action, including the requirement of proportionality, are laid down in the Police Act. According to this, police action should not cause any disadvantage which is clearly not proportionate to the legitimate aim of the measure.

Foreigners in police custody typically regard the use of coercive measures as abuse. However, existing camera recordings show that the use of police measures and coercive measures are lawful, professional and justified; nevertheless, they are perceived as being abuse by the police. The preliminary report does not disclose facts or data relating to alleged abuses that may be directly related to natural persons, and on the basis of which individual cases may be investigated.

It should be pointed out that allegations of abuses committed by the police force serving at the Serbian-Hungarian state border are always transmitted to the competent prosecuting authorities to investigate them, ensuring that they are properly investigated independently of the Police. It is worth pointing out to the previous experience, which was already detailed before: those persons claiming police offenses do not exercise their right to lodge an official complaint, do not state exactly where and when they were subjected to the measures and the possible use of the coercive measures.

The report refers to the findings of the UN Human Rights Committee on 9 May 2018, in which the Committee is concerned about the Hungarian authorities' proceedings against asylum seekers. The Committee (and hence indirectly the Commissioner for Human Rights), taking over the reports of civil organizations, criticizes the Hungarian authorities for the physical abuse of asylum seekers, which is also resulted in death in one instance. It should be pointed out in connection with the referred fatal case that an illegal border crossing occurred when a group of illegal migrants tried to cross a river constituting the Hungarian border, one of them drowned in the water despite the efforts of the Hungarian Police. Other members of the migrant group were rescued. No signs of abuse or external injury were found on the body. In all cases, the police use coercive measures in compliance with the law, and reports in this regard are always investigated.

The Police fulfils its obligations under the Fundamental Law and the Police Act or the Schengen Borders Code by preventing persons who do not meet the conditions for crossing the border to cross the border of Hungary, and at the same time the border of the European Union. The provisions of the Fundamental Law and the Police Act, as well as the observance of international law and EU standards are a basic duty of all Hungarian policemen, while the basic norms are the cornerstone of police basic training. Appropriate attention is paid to the respect of human rights by police forces, in particular with regard to the enforcement of the rights of detainees, the training and orientation of the staff in this regard is continuous. Complaints reach the bodies responsible for action, and the grievances are fully investigated. Investigating and evaluating submissions is a multilevel process, and we provide remedies against decisions.

2. Human Rights Defenders and Civil Society

2.1.4 Amendment to Act on National Tertiary Education

The adoption of Act XXV of 2017 amending the Act CCIV of 2011 on national tertiary education can be hardly connected to NGOs. The requirements set out in the law are dealing with genuine education activity, a condition that all other foreign universities could comply with except for the CEU. CEU established a co-operation the State of New York-based Bard College, however genuine education activity was not carried out by the CEU at Bard College. (*Paragraph 69 of the report.*)

The decision of the Hungarian government to withdraw accreditations and funding from programmes on gender studies in October 2018 did not affect the ongoing programmes, there are still students – both in the CEU and the Eötvös Loránd University of Sciences – finishing their gender studies. (*Paragraph 70 of the report.*)

2.3 Lack of Government Consultation and Funding

In *paragraph 75 and 76*, the Commissioner refers to the activities of the Human Rights Working Group and the Human Rights Roundtable. Regrettably, the Commissioner – despite the invitation of the Government – did not participate in the meeting of Thematic Working Group Responsible for Roma Affairs, thus she can refer only to secondary sources in her report on the activities of the Human Rights Working Group.

The Roundtable is a forum for policy dialogue between the Government and civil society, it is not responsible for conducting legislative preparatory activities. Nevertheless – in contradiction of the Commissioner’s statement in paragraph 50 of the Report – State Secretary Pál Völner (Ministry of Justice), **the chairman of the Human Rights Working Group initiated a meeting with NGOs to discuss the main provisions of the Draft Act on the transparency of organizations receiving support from abroad**, which was held on 20 April 2017. The report of the meeting was also sent to the Members of Parliament who introduced the Act. Besides members of the Thematic Working Group Responsible for Other Civil and Political Rights, representatives of additional NGOs were invited to the meeting (Hungarian Civil Liberties Union, Hungarian Helsinki Committee and Transparency International Hungary) in order to allow an open and comprehensive dialogue with civil society.

As far as public consultation is concerned in general, Act CXXXI of 2010 on public participation in the drafting of legislation contains detailed rules for the consultation with the public applicable to legislative drafts. All draft bills, governmental decrees and ministerial decrees drafted by ministries are to be published on the Government’s webpage prior to their submission to Parliament. Public consultations are to be carried out within the framework of general or direct consultations. While general consultations are mandatory, direct consultations are optional. General consultation is carried out in a way that anyone (natural or legal persons, human rights defenders, NGOs, business companies etc.), using the e-mail address published on the webpage, may express an opinion on the draft or concept subject to public consultation. The minister responsible for drafting shall consider the opinions received and prepare a general summary of them and – in the case of rejected opinions – a standardised explanation of the reasons for rejection, which is to be published on the webpage along with the list of those offering their opinions.

In several paragraphs the Commissioner refers to the report of the UN special rapporteur on the situation of human rights defenders. The government submitted a comprehensive response (available at: <https://undocs.org/A/HRC/34/52/Add.4>) to the report as it contains significant factual and legal inaccuracies concerning the situation of human rights defenders in Hungary. The Government considers that the report is unbalanced, it draws unsubstantiated and controversial conclusions and carries out a political assessment instead of a legal one.

3. Independence of the Judiciary

3.1 Background

Concluded procedures

The Commissioner's report makes reference to a number of international procedures without mentioning that they have already been closed because a mutually satisfactory solution has been found to the legal dispute or Hungary has fully complied with the relevant court decisions or recommendations.

The infringement procedure launched by the European Commission relating to the retirement age of judges concerned the alignment of the retirement age of judges with other professions. The Court of Justice of the European Union (CJEU) has found in essence that the new rules were introduced without appropriate transitional measures. **The CJEU has not found any breach of the principle of independence of the judiciary.**¹ After the judgment the Hungarian government has closely cooperated with the Commission to elaborate a regulation that ensured a gradual approximation of the retirement age of judges with that of other professions. The Commission has accepted the solution proposed and has formally closed the procedure on 20th November, 2013. Consequently, the **applications submitted by about 100 Hungarian judges in the same subject matter were declared inadmissible by the European Court of Human Rights** (see *J.B. and Others v. Hungary*(dec.)) on 27 November 2018. (*Paragraph 92 of the report.*)

The **Baka case** concerned the termination of the mandate of the President of the Supreme Court in the context of the reform of the judiciary in 2012. Due to a provision in the new legislation, proposed by a representative association of judges, Mr Baka was not eligible for election as President of the Kúria (successor of the Supreme Court) because he had not had five years of experience in domestic judicial service. His position as a judge at the supreme judicial forum was not affected, where he is currently serving as President of a judicial panel. The European Court of Human Rights awarded EUR 70,000 to Mr Baka in compensation for his loss of salary and non-pecuniary damage. This amount, together with costs and expenses awarded by the Court (EUR 30,000), was paid by the Government in time. The Government considers that thereby the judgment has been fully complied with. (*Paragraph 92 of the report.*)

Taking into account the **recommendations of the Venice Commission**, the National Assembly has amended the Act CLXI of 2011 on the Organization and Administration of the Courts and the Act CLXII of 2011 on the Legal Status and Remuneration of Judges several times.

Reform of the Constitutional Court (Paragraph 92 of the report.)

The Constitutional Court's current competences reflect a change in the approach to the protection of fundamental rights. The most important change has been the abolition of *actio popularis* and in parallel, the reform of constitutional complaint.

Before the adoption of the Fundamental Law the core competence of the Court was the *ex post* review of the conformity of legislation with the Constitution, as anyone with or without a direct legal interest was entitled to submit a petition requesting the constitutional review of a legal norm.

¹ Commission v. Hungary, C-286/12, Judgement, 6 November 2012

Abolition of the general right to file a motion without a direct legal interest was proposed by the Constitutional Court to rationalise its caseload. At the same time, constitutional judges urged the extension of the scope of constitutional complaint. The Constitutional Court can now be seized, if either the judicial decision made regarding the merits of the case or other decision terminating the judicial proceedings or the law applied in the particular case violates the complainant's rights laid down in the Fundamental Law.

The constitutional review now focuses more intensively on subjective human rights protection – which, however, does not have a negative impact on the efficiency of the protection provided by the Constitutional Court. The Venice Commission examined the modification of the regulation on the Constitutional Court and on the whole, it formed a positive opinion in relation to the changes.

As far as taxation and budgetary matters are concerned, Article 37 Paragraph (4) of **the Fundamental Law does not exclude the constitutional review of laws related to the central budget or taxation**. In fact, it only introduces a limitation of the Constitutional Court's competence: „As long as the level of state debt exceeds half of the Gross Domestic Product, the Constitutional Court may, within its competence pursuant to points b) to e) of paragraph (2) of Article 24, review the Acts on the central budget, on the implementation of the budget, on central taxes, on duties and on contributions, on customs duties, and on the central conditions for local taxes as to their conformity with the Fundamental Law exclusively in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience and religion, or in connection with the rights related to Hungarian citizenship, and it may only annul these Acts for the violation of these rights. The Constitutional Court shall have the right to annul without restriction Acts governing the above matters, if the formalities and procedures laid down by the Fundamental Law concerning the adoption and publication of those laws are not satisfied.”

The provision intends to establish a balance between the constitutional protection of fundamental rights and economic stability. As it is apparent from the wording of the Fundamental Law, the provision is limited both as regards its temporal scope (it applies only as long as the state debt is over the limit) and the aspects of constitutional review (the most essential human rights aspects can still be challenged at the Constitutional Court, and there have been cases, where a revision has been initiated on the basis of these rights). Furthermore, it only applies to the procedures of the Constitutional Court set out in Article 24 Paragraph (2) points b)-e): there is no restriction at all on the powers of the Constitutional Court under the Fundamental Law in respect of *a priori* norm reviews and the verification of compliance of domestic legislation with international agreements.

3.3 Risk of Politicisation

Freedom of political speech and judicial independence

The Government of Hungary shares the view of the President of the Curia that the judicial system needs feedback on its activities, and according to the Fundamental Law of Hungary **everyone has the right to freedom of expression, including opinions in connection with the judicial activity of the Curia, even if expressed by the Prime Minister.**² The statement was

²<https://www.youtube.com/watch?v=npMIRZLAOuI&ga=2.212565843.693311274.1557732917-1306074252.1370421549>

made by the President of the Curia in connection with the criticism highlighted in the Commissioner's report in *paragraph 102*.

3.4 Future Administrative Court System

In Hungary, the ordinary and administrative court system operated separately between 1896 and 1949. The Administrative Court was eliminated by the Communist dictatorship because it was too active and efficient in maintaining the rule of law. At the same time judicial review of administrative acts was also abolished.

With the gradual reestablishment of judicial review for administrative acts from 1989, the idea of a separate system of administrative courts has resurfaced and has been supported by broad agreement among legal scholars for the past 30 years. However due to the lack of qualified majority in Parliament none of the governments were able to adjust the relevant legislation until 2010. Since 2014, the Ministry of Justice has been committed to establishing a separate system of administrative jurisdiction. As a first step towards this goal, the Ministry of Justice elaborated Hungary's first **Code on Administrative Court Procedure** that significantly broadened the scope of administrative acts subject to judicial review by introducing a general clause allowing for revision.

With the adoption of the **Seventh Amendment to the Fundamental Law** in 2018, the National Assembly laid the foundations for a separate system of administrative courts. In parallel, the preparation of the legislation was commenced in a completely transparent working process with the assistance of an **expert committee** including judges, legal scholars and representatives of the Curia, the National Office for the Judiciary as well as the Association of Hungarian Administrative Judges. The Acts have been elaborated after a thorough examination of international standards and national laws of the EU Member States.

Committed to a genuine constitutional dialogue, **the Ministry of Justice requested an opinion from the Venice Commission** when submitting the legislative proposals to the National Assembly. The date of entry into force of the Act on administrative courts and all the deadlines related to the establishment of the institutions had been set in a way that allowed the due consideration of the opinion of the Venice Commission.

On 4 March 2019, the Venice Commission communicated to the Ministry of Justice its draft opinion that contained several observations and recommendations. On 12 March 2019, in the spirit of constructive dialogue and in view of the Venice Commission's recommendations, a draft bill proposing amendments to the adopted laws was tabled to the Hungarian National Assembly.

In conformity with the observations of the Venice Commission, the draft bill on the amendments outlines specific criteria that the minister shall take into consideration in the appointment procedures of judges and court leaders and introduces a legal remedy allowing candidates to challenge the ministerial decision in front of the disciplinary court. It also reinforces the judicial majority of the personnel council as part of the National Administrative Judicial Council (NAJC) by adding two additional judge members. The new bill also prescribes as a requirement for the appointment of the President of the Supreme Administrative Court (SAC President) that the candidate shall have at least five years of judicial experience, and it also clarifies that it is the NAJC that decides on an initiative to launch of disciplinary action in case a court leader or a member of the NAJC is suspected of a breach of discipline. The amended draft renders optional the invitation of the minister to the meetings of the NAJC; introduces a legal remedy for administrative courts judges in front of the disciplinary court against the

decisions of the SAC President to guarantee an even higher level of judicial independence, and reinforces the judicial majority in the evaluation committee functioning during the transitional period.

During their meeting of 15 March 2019, the rapporteurs of the draft opinion, with a view to the clear engagement of the Hungarian government to respect the essence of the recommendations by the Venice Commission, welcomed the approach of the Hungarian Government.

In its opinion published on 18 March 2019, the Venice Commission “sees no reason to oppose the sovereign decision of the Hungarian legislature to create **a distinct administrative court system, which is perfectly compatible with European standards.**” The Venice Commission also made it clear that it **had not “ruled out systems with a decision-making process within the sphere of a minister for justice** accountable to Parliament provided that effective guarantees are in place to avoid such systems negatively affecting judicial independence.”

The Venice Commission concluded that “**having administrative judges from more diverse professional backgrounds is a positive point.** In particular, the possibility of appointing people having worked in the administrative authorities or at the bar as an administrative court judge is a guarantee of effectiveness.”

In addition, it “welcomes that draft amendments to both laws have been supported by the Ministry of Justice in the light of the draft opinion and submitted to Parliament” and the President of the Venice Commission took the position that the amendments “would make a considerable part of criticism moot.”

The bill on further guarantees of the independence of administrative courts adopted by the National Assembly on 1 April 2019 was signed by the President of the Republic and, on 8 April 2019, promulgated in the Official Journal (Magyar Közlöny) as Act No. XXIV of 2019.

The Hungarian Government remained in close contact with the Venice Commission after the adoption of the amending legislation. **The Venice Commission welcomed the fact that the amendments were made in accordance with the recommendations of the Venice Commission.**

In an exchange of letters, the Minister of Justice clarified the only two remaining issues flagged up by the President of the Venice Commission. **The Minister of Justice confirmed that additionally introduced guarantees in the application process for judicial posts in the administrative court system (legal remedies, criteria for the hearing conducted by the Minister, scope of the requirement to justify ministerial decisions) are also applicable during the transitional period.** According to Section 9 (7) of Act CXXXI of 2018 on the entry into force of the Act on administrative courts and certain transitional rules “in questions not regulated in this Act, the Act on administrative courts (Act CXXX of 2018) shall apply to the application procedure.” This equally applies to provisions amended by Act XXIV of 2019 as communicated to all prospective applicants through the government public information website established specifically for the application process.

As regards competences of the President of the Supreme Administrative Court (SAC), the system for the administration of administrative courts enshrined in the Act on administrative courts is based on the cooperation and balance of power among judicial bodies (judges’ self-governing bodies), court leaders and the Minister of Justice. It conforms to the requirement that, in the administration of courts, an unchecked accumulation of power in the hands of another

branch of government to the detriment of judges must be avoided. Autonomous competences of the SAC President are related to the training of judges and budgetary planning in the latter area legislative guarantees were explicitly recognised by the Venice Commission.

The legislative amendments introduced an additional legal remedy against administrative decisions of the SAC President that allegedly have an adverse effect on judicial independence thus creating a further guarantee against abuse of power.

With a sound legislative framework in place, the Ministry of Justice is now focusing on the operational aspects of the establishment of the new administrative jurisdiction in cooperation and consultation with all stakeholders to ensure that it may start its activities as of 1 January 2020. Judicial independence has been a paramount consideration from the very beginning of the legislative process, and this principle will continue to guide preparations in the transitional period.

3.5 Conclusions and Recommendations

Effective supervision by the NJC over the NOJ President (Paragraph 128 of the report.)

The legislation in force provides the possibility for the NJC to effectively counter balance the powers of the President of the NJO. This is acknowledged by the Venice Commission in its opinion of March 2019 (Opinion no. 943/2018, Point 20-21.): a number of pivotal elements of the Hungarian judicial system and powers of the NJO's President *'had been transferred to the National Judicial Council. Furthermore, the amendments resulted in the improved accountability of the President of the NJO. Accordingly, the Hungarian legislation provides: that the NJC shall determine the principles to be applied by the President of the NJO when appointing judges if deviating from the ranking; that the President will have to seek the consent of the NJC to a change in the ranking in the appointment of judges; that the President must obtain the approval of the NJC to appoint the presidents and vice-presidents of courts when the candidate has not obtained the approval of the reviewing board; that judges may appeal against a decision of the NJO not to appoint them before the administrative court and the labour tribunal or the disciplinary tribunal; that the powers of the NJC have been considerably broadened; that unsuccessful candidates can submit an objection against the appointment of the successful candidate; and that heads of court who did not receive the approval of the reviewing board can only be appointed with the consent of the NJC.'*

Interpretative guidance to judges (Paragraph 129 of the report.)

Courts are bound by the law only. The amendment of Article 28 of the Fundamental Law does not adversely affect the independence of the judiciary; it **promotes a form of legal interpretation and does not exclude others**. The justification submitted together with a draft bill to the National Assembly has always been one of the generally recognised sources used in the teleological interpretation of the law. The justification of the draft bill does not have additional legal content, as it merely serves the purpose of revealing the meaning already enshrined in the normative text. The justification does not and cannot alter the meaning of the law.

Nomination of judges to the Constitutional Court (Paragraph 129, 130 of the report.)

According to the Fundamental Law, the fifteen members of the Constitutional Court are elected by the National Assembly with qualified majority (the vote of two-thirds of all representatives) for a term of twelve years. Under Act CLI of 2011 on the Constitutional Court, Members of the Constitutional Court are proposed by a Nominating Committee, made up of at least nine and at

most fifteen members, appointed by the parliamentary groups of the parties represented in the National Assembly. The Committee must include at least one member from each of the parliamentary groups. Members of the Constitutional Court shall be elected by the National Assembly after obtaining the opinion of its standing committee dealing with constitutional matters.

Hungarian citizens who have no criminal record and have the right to stand as a candidate in parliamentary elections are eligible to become a Member of the Constitutional Court, if they have a law degree, have reached 45 years of age, but have not reached 70 years of age; and are legal scholars of outstanding knowledge (university professor or doctor of the Hungarian Academy of Sciences) or have at least twenty years of professional work experience in the field of law. These conditions ensure that members of the Constitutional Court are elected from among the most excellent Hungarian lawyers, excluding “politicized” appointments.

The legal framework aims at a consensual nomination of the members of the Court. In the latest election round, four judges were nominated by the Nominating Committee with the participation of representatives of the governing parties (Fidesz, KDNP) and one opposition party (LMP) and were elected by the National Assembly. The remaining opposition groups withdrew from the nomination process on their own accord.

Addressing concerns of the Venice Commission (Paragraph 131, 132 of the report.)

Since all questions highlighted by the Venice Commission as regards the future administrative courts are adequately dealt with through the further guarantees adopted by the National Assembly based on recommendations by the former, **the constitutional dialogue between the Hungarian Government and the Venice Commission has been successfully concluded.** Hungary considers that the most appropriate judge of the question whether the concerns identified by the Venice Commission’s opinion have been sufficiently addressed is the Venice Commission itself.

Establishment of the number of judicial posts in the administrative court system (Paragraph 133 of the report.)

The legislation in force³ provides detailed rules about the determination of the number of administrative court judges: “*taking the number of judge positions previously determined for the specialised field of administrative law, the previous caseload data, and the rules on administrative procedures and administrative actions into consideration, after obtaining the opinion of the President-elect of the Supreme Administrative Court, the Minister shall determine the preliminary number of administrative judge positions for each court.*” The Minister shall, by 15 July 2019, announce a call for applications for judge positions not exceeding one half of the number of vacant administrative judge positions for each administrative court.

Accordingly, the preliminary number of administrative court judges will be determined only after the President of the Supreme Administrative Court is elected. His opinion ensures the participation of the judicial organisation in this decision. The preliminary number of administrative court judges will be determined before 15 July 2019, as the call for applications

³ Act CXXXI of 2018 on the entry into force of the Act on administrative courts and certain transitional rules, Section 9

for the vacant positions shall be announced by then. A call for applications can be announced only for one half of the number of vacant administrative judge positions during the year 2019.

This way, the necessary number of administrative court judges can be ensured for the proper functioning of administrative courts in the initial period, while keeping the number of calls for application in the transitory period at a low level.

As the opinion of the Venice Commission contains, “[t]he Minister was aiming for a total of 300 judges over the next two years, with 40 newly appointed judges in 2019 and 40 more in 2020”.⁴ **Until the legal deadline, 162 judges requested their transfer to the new administrative courts.⁵ This is a clear sign of trust in the new system and provides a solid basis for the preparations.**

Remedy to challenge judicial appointments (Paragraph 134 of the report.)

The legislation in force⁶ also provides a remedy procedure for applicants to judicial posts in line with international standards (cf. *Konkurrentenklage* in German law). The procedure can be initiated by an applicant whose application has been submitted to the Minister of Justice by the Personnel Council of the National Administrative Judicial Council. The remedy procedure may be triggered in three cases:

- a) with respect to the successful applicant, the legal conditions for the appointment of a judge are not met,
- b) the successful applicant does not meet the conditions specified in the call for application,
- c) the Minister has not fulfilled his obligation to give reasons or his reasoning does not comply with the legal requirements.

If the disciplinary court finds that any of the circumstances specified above and claimed by the applicant lodging the objection apply, it shall communicate its order to the applicant lodging the objection as well as to the Minister and the President of the Republic. This model is essentially the same as the regulation currently applicable to judges in general.⁷

Unsuccessful calls for application for administrative judicial posts (Paragraph 134 of the report.)

According to the relevant legislation,⁸ the Minister of Justice may only declare calls for application unsuccessful in cases designated by law. In most situations the Minister may do

⁴ CDL-AD(2019)004-e. Hungary - Opinion on the law on administrative courts and the law on the entry into force of the law on administrative courts and certain transitional rules, adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019) footnote 33.

⁵ In total, 245 judges were eligible to make a declaration of transfer, including judges who exclusively or alternatively deal with labour disputes. An overwhelming majority (85%) of senior judges (Curia or Budapest-Capital Regional Court) requested their transfer to the administrative court system. Most of the administrative judges who decided not to request their transfer did so because of geographic considerations as they currently work in a city that is not designated as the seat of an administrative tribunal.

⁶ Act CXXX of 2018 on administrative courts as amended by Act XXIV of 2019 on further guarantees ensuring the independence of the administrative courts, Section 72/A

⁷ Act CLXII of 2011 on the legal status of judges, Section 21

⁸ Act CXXX of 2018 on administrative courts, Section 72

so exclusively at the reasoned request of the Personnel Council of NAJC. The cases where no such request is required are when:

- a circumstance arose after the announcement of the call for applications, due to which the position is to be filled according to an Act without the announcement of a call for application (e.g. reinstatement of an unlawfully removed judge);
- during the assessment of the applications, the participants in the assessment procedure committed a serious procedural irregularity that cannot be remedied (in which case the involvement of the participants in the decision of the Minister cannot be realistically required by law).

Composition and presidency of NAJC (Paragraph 134 of the report.)

As far as the composition of NAJC is concerned, the legislative intention has been to ensure the **majority of judges** in the body while **balancing powers and avoiding the risk of corporatism** in decisions related to the careers of judges. Following the recommendations of the Venice Commission the number of judges has been increased in the Personnel Council of NAJC and the automatic right of the Minister of Justice to attend has been replaced by optional participation subject to an invitation by the President of NAJC.

The NAJC is chaired by the SAC President. A similar solution exists in a number of European countries as regards ordinary courts (e.g. France and Spain). The rationale behind the solution is to provide **continuity and consistency** in the activities and external representation of NAJC, and to **enhance the standing and prestige of NAJC** vis-à-vis external stakeholders.

4. Gender equality and women's rights

The report refers to the Gender Equality Index of the European Institute for Gender Equality and the low point of Hungary (*paragraph 136*). When referring to the EIGE Index, it is worth mentioning that by unfolding the index score and looking at the 6 domains carefully, it can be seen that out of the 6 domains, **there is an increase in case of 4 domains**. Compared to 2005 (Work, Money, Power, Health), there is 1 domain (Knowledge) where no change can be seen and in case of the Time domain a decrease can be found (there is a decrease in most of the EU member states (12 countries) in case of this domain). It is clear that the modest index score of Hungary comes from the low score of the Power domain. **Our other scores are among the best ones in some cases, but mostly they show close correlation with the scores of post-Soviet countries**. The score of the Work domain of Hungary is above the EU average (HU: 42.6; EU average: 39.6). In the Health domain Hungary has the best performance among post-Soviet countries (except Czech Republic). In the Money domain it is worth mentioning that among EU countries the gender pay gap between women and men without children is the lowest in our country and in the Knowledge domain Hungary is in the middle field, close to the EU average.

When mentioning the EIGE Index, it is also important to look at the results of the **OECD**. In their report: **'The Pursuit of Gender Equality – An Uphill Battle'** numerous positive conclusions can be found on the situation of Hungary regarding for example the employment of women with small children, the establishment of Women's Dignity Subcommittee of the parliament, the gender pay gap among managers, parental leave as well as nursery development.

The **research of the World Bank Group in 2019** stated that the Hungarian business enterprise environment is suitable for women, considering that based on the points of **Women, Business and the Law index our country is in the leading group with 93.75 points** (out of 100),

preceding the USA (83.75 points), China (76.25 points), as well as Russia (73.13 points). The index used 8 indicators (freedom of movement, employment, salaries, marriage, having children, enterprises, ownership and retirement) to examine, whether based on law there are equal rights ensured for women and men during their lifetime in the world of occupation, and also what kind of impact do these rights have on their economic results.

The Hungarian Government supports the strategic principle of gender equality between men and women. At the same time, as the Fundamental Law also specifies the protection of families, **the issue of gender equality for women and men is substantially approached from the perspective of family, especially since the gap is not primarily coming from the biological sex of women or men, but the fact that because of raising children,** women are disadvantaged on the labour market and in many other areas. The challenges in the lives of women come especially when they become mothers and the aim of the Government with handling women's policy and family policy close to each other is to ease the 'multiple burden' on women.

The Hungarian Government aims to find solutions to the real problems of women in Hungary and takes measures according to their needs. It is also reflected in the 2018-survey of the Friedrich-Ebert-Stiftung Foundation according to which women find major problem in returning to the labour market after giving birth and the reconciliation of work and family life. The measures of the Hungarian Government since 2010 among others address these difficulties also.

To the issue of supporting human rights based women's organizations (*paragraph 137*) it need to be made clear that more women's rights organizations receive Government funding since 2010 based on their profile and programmes.

4.1 Legal, institutional and policy framework

Regarding multiple discrimination (*paragraph 139*) in general it is crucial emphasizing that the Equal Treatment Authority examines the claims separately according to the discrimination on different grounds and whether they are in connection with each other in case of multiple discrimination. The Authority pays special attention on the cases of multiple discrimination when determining sanctions. *In paragraph 145 of the report it is stated* that the Government's family policy sends a mixed message to women: idealized role to stay at home with children and work as a matter of economic necessity. This statement is not right in this sense, because one of the main goals of the Government's family policy is to **give the freedom of decision to women and not to force them either to stay at home for a longer period or to return to the labour market** right after giving birth. Several measures support this freedom of decision with making it possible to receive family benefits beside employment and allowances for employers to employ mothers part-time or in a flexible employment.

4.2 Political representation, employment and gender stereotypes

Regarding the political representation of women (*paragraph 146*) it is worth mentioning that in Hungary, traditionally there are more women in leadership positions at local levels than in the parliament. The aim of the Government is to motivate women and train them skills (such as in case of the current Women's Public Leadership Training Program) so that the increase of women's participation in the parliament can be achieved based on their own excellent qualities without the forcing character of quotas.

It should be emphasized regarding gender equality in education (*paragraph 150*) that the **National Core Curriculum lays down the requirements for the respect of human rights as well as for the basic knowledge of equality between women and men** and that of antidiscrimination. In the history subject the social situation, the lifestyle of women and men as well as the issue of emancipation and equality are included in the curriculum in the classes of 9-12. It is a crucial aim of the subject of civic education that students can understand the importance of equal opportunities, social justice as well as make them able to recognize the negative effects and social dangers of stereotypes, prejudice and discrimination.

According to the results of an OECD survey about the progress on gender equality in education **textbooks were revised in 2013 for grade 1 to 8 to ensure that students are not exposed to stereotypes and develop awareness of gender equality**. Examples of new materials include: a revision of biology textbooks to illustrate the role of women in science by demonstrating the works of female scientists; the representation of women who were successful in their fields of work in a career section in the physics textbooks; and discussions of the gender equality issues and the historical background of the change in the traditional roles of women in history textbooks.

4.3 Violence against women

The victims of acts of violence among relatives are mainly women and children, and the perpetrators - more than 80% - are men. Children and juveniles living in affected families are constantly exposed to parents' quarrels, bickering, and increased psychic and physical violence. The Police are conducting activities related to domestic violence on the basis of Act No. C of 2012 on the Criminal Code and the relevant statutory provisions.

Violence between relatives means dignity, life, sexual self-determination and serious and immediate threat to the physical and mental health of the abused. On the basis of the facts found during the on-site action, the police officer is obliged to carry out the evidence procedure *ex officio* or on the basis of a notification. On the spot, the police officer orders the temporary preventive restraining by a decision if it is reasonable to infer from all the circumstances of the case to commit violence between relatives. It is done the same way if there is a suspicion of an offense related to violence among relatives, or a suspicion of an offense, but there is no justification for applying criminal or non-criminal coercive measures. All relevant circumstances of the case should be considered when assessing the act in question. Often the police arriving at notification are faced with the fact that the abuser is already leaving or have left the site, so that objective judgment or decision-making is also difficult.

Exploring and understanding the process of violence between relatives is hampered by shame and intimidation, and the fact that the victim cannot leave the family because it is financially dependent on it. On the other hand, the use of a restraining order means that the abuser does not endanger the life, physical and mental integrity of the person living in his immediate surroundings, the mental, emotional, and spiritual development of the child. There is a difficulty in collecting data in a particular case or witnessing the fact that there is a high degree of closeness in the immediate residential environment of the family affected by domestic violence.

Police personnel are involved in basic training every year. In addition, police officers have been involved in sensitizing trainings several times, financed from foundation resources, with the primary goal of changing the approach through a deeper understanding of the problem and the transfer of theoretical knowledge.

In conclusion, it can be concluded that the reduction in the number of temporary restraining orders is due to the reasons mentioned above, and not to the possible negative attitude of the police.

Hungary expresses its appreciation to the work of the Commissioner for Human Rights and wishes to continue the constructive cooperation with the Commissioner.