

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

Considering the contents of the draft report of Judith Sargentini on 'the situation in Hungary' and having followed the exchange of views about it in the Committee on Civil Liberties, Justice and Home Affairs on 12th April 2018, the Hungarian Government finds it necessary and justified to provide some background information reflecting on the main criticisms formulated by the report and in particular in the proposal for a Council decision annexed to the report.

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 Instead, she presented a list of references of several years old – and thus often outdated – reports of outsider organizations (United Nations, Council of Europe, Venice Commission and OSCE) and in many cases did not even mention relevant EU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

Moreover, the rapporteur did not refer at all to the information provided by the Hungarian Government - either regarding individual cases or specifically in connection with the report. The obviously intentional result gives a one-sided, distorted and politically biased picture of the situation in Hungary. This clearly shows that the rapporteur merely wanted to justify a predetermined premise against Hungary and thus the report is not driven by the concern for Hungarian democracy, but by party political interests.

The document altogether tries to magnify policy issues into systemic problems threatening the rule of law, and in the course of this endeavour extends way beyond the scope of Article 7 TEU and that of an investigation into the fulfilment of fundamental European values and the principles of rule of law. Considering that this is the first time that the European Parliament seeks to trigger Article 7 (1) TEU, it threatens with creating a very dangerous and unpredictable precedent if a Member State could be challenged based on vague and unfounded political accusations and it would weaken the unity of the EU by further widening the gap between citizens and EU institutions.

In this regard, citing a Commission Communication of 2003 is to be viewed as a vain attempt to explain away the politics-driven and legally volatile nature of the report. It is unquestionable and evident from the Treaties that only the Court of Justice of the European Union may interpret the provisions of the Treaties and that binding norms may only arise from legislation and not from unilateral soft law instruments. The communication in question is therefore nothing more than one opinion out of many, which does in no way extend the scope of Article 7 or justify the draft report's evident divergence from the Treaties.

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

Hungary firmly rejects that a difference of positions be presented as 'democracy debates' or Hungary be side-lined for having expressed own opinions, which happens to be different from that of the majority. The Hungarian government is fully aware of the fear of leftist-liberal European political forces that they may lose further votes in the 2019 EP elections. However, bashing Hungary and applying such a shameless double standard against its government will not substitute for public support; they only have their own defective policy-making to blame, which constantly ignores the will of European people in terms of the defining issues of the future of European integration.

The citizens of Hungary have clearly expressed their will in the Hungarian parliamentary elections of 8th April 2018: they want to live in a safe, economically viable and strong Member State of a strong European Union. With this strong democratic mandate we have every right to formulate our own position on crucial issues, even if it does not match that of the majority. It would contradict the very spirit of European cooperation and the principle of the equality of Member States to view a conflict of different positions as a matter of democracy and we reject to be held responsible for representing and implementing independent positions in certain issues. Supporting such narrow-minded political manoeuvres and threatening with Article 7 would mean questioning the fundamental principles of democracy and would seriously endanger the confidence of citizens in the EU, especially in a country, where the support for EU membership is exceptionally high, over 70%.

Finally, as regards fundamental European principles, we would like to highly recommend '*audiatur et altera pars*', i.e. 'let the other side be heard as well'. In this spirit, please find below an information sheet regarding the main issues and concerns listed in the proposal for a Council decision annexed to the draft report from Paragraph (6) to Paragraph (59). It will hopefully highlight that the measures challenged are fully in line with the values of the European Union and do not exceed the limits and confines of any applicable EU law.

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Constitution-making process in Hungary

(6) Since its adoption and entry into force in January 2012, the Constitution of Hungary (the "Fundamental Law") has been amended six times. The Venice Commission expressed its concern regarding the constitution-making process in Hungary on several occasions, both as regards the Fundamental Law and amendments thereto. The criticism focused on the lack of transparency of the process, the inadequate involvement of civil society, the absence of sincere consultation, the endangerment of the separation of powers and the weakening of the national system of checks and balances.

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

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

Competences of the Hungarian Constitutional Court

(7) The competences of the Hungarian Constitutional Court were restricted as a result of the constitutional reform, including with regard to budgetary matters, the abolition of the actio popularis, the possibility for the Court to refer to its case law prior to 1 January 2012 and the limitation on the Court's ability to review the constitutionality of any changes to the Fundamental Law apart from those of a procedural nature only. The Venice Commission expressed serious concerns about those limitations and about the procedure for the appointment of judges, and made

recommendations to the Hungarian authorities to ensure the necessary checks and balances in its Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted on 19 June 2012 and in its Opinion on the Fourth Amendment to the Fundamental Law of Hungary adopted on 17 June 2013.

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

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

Limitation of the constitutional complaint procedure

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

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

The annulment of constitutional court decisions issued before the entering into force of the Fundamental Law grants that the provisions of the New Constitution will be interpreted independently from the previous constitution. The Constitutional Court established in general terms the conditions to use the reasoning, the principles and the constitutional context from previous constitutional court decisions. The new rules on the composition of the Constitutional Court (election based on qualified majority and high level professional requirements) are high level guarantees of the independence of judges, as it does the reduction of the length of appointment from 12 to 9 years and the exclusion of their reappointment.

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

Delineation of single-member constituencies

(9) In its statement adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the 2018 parliamentary elections were characterised by a pervasive overlap between state and ruling party resources, undermining the ability of candidates to compete on an equal basis. Voters had a wide range of political options but intimidating and xenophobic rhetoric, media bias and opaque campaign financing constricted the space for genuine political debate, hindering the ability of voters to make a fully informed choice. It also expressed concerns about the delineation of single-member constituencies. Similar concerns were expressed in the Joint Opinion of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections.

The electoral districts were established taking into account the requirement of proportionality. The rule that electoral districts cannot exceed county borders and the borders of Budapest, as well as that they must form a block territory remained unchanged. Under the previous rules there were certain territories with 300% disproportionalities. In this context it must be emphasized that the decision of 2010 of the Constitutional Court, which annulled the previous legislation in force on the establishment of electoral districts, both individual and territorial. The Decision of the Parliamentary Assembly of the Council of Europe acknowledged that by this legislative amendment Hungary complied with the recommendations of the Venice Commission.

National consultation “Let’s stop Brussels”

(10) In recent years the Hungarian Government has extensively used national consultations. On 27 April 2017, the Commission pointed out that the national consultation “Let’s stop Brussels” contained several claims and allegations which were factually incorrect or highly misleading.

Nevertheless, the Hungarian Government subsequently continued to have recourse to similar consultations.

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

Independence of the judiciary and of other institutions

Centralised administration of courts / independence of judges and lawyers

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

First of all, it must be noted that the Venice Commission at its 16-17 March 2012 session has acknowledged the necessity of improving the efficiency of the previous judiciary system. Concerned bodies (including the European Commission) have identified several positive provisions in both acts referred to above, while also pointing out a few problematic elements that were addressed by the Hungarian Government, as also acknowledged by this report. As for the general independence of judges and lawyers as well as the independence of the judiciary, it must be pointed out that each year since 2013

the European Commission adopts its communication on the EU Justice Scoreboard which provides comparable data on the independence, quality and efficiency of national justice systems focusing mainly on civil, commercial and administrative cases. The figures of the last edition of the Scoreboard published on 11th April 2017 show that the Hungarian justice system performs above or well above the EU average, just like in previous years. As far as the independence of the justice system is concerned, the ranking does not illustrate significant discrepancies in the Hungarian system, especially regarding the guarantees of structural independence which are well-established in the Hungarian law. Furthermore, figures based on more updated data of own EU sources (Eurobarometer surveys) show an improving tendency in the perceived independence of courts and judges in Hungary.

Competences of the president of the National Judicial Office

(12) Since 2012, Hungary has taken positive steps to transfer certain functions from the president of the NJO to the NJC in order to create a better balance between these two organs. However, further progress is still required. GRECO, in its report adopted on 27 March 2015, called for minimising the potential risks of discretionary decisions by the president of the NJO. The president of the NJO is, inter alia, able to transfer and assign judges, and has a role in judicial discipline. The president of the NJO also makes a recommendation to the President of Hungary to appoint and remove heads of courts, including presidents and vice-presidents of the Courts of Appeal. GRECO welcomed the recently adopted Code of Ethics for Judges, but considered that it could be made more explicit and accompanied by in-service training.

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

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

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

(13) Following the judgment of the Court of Justice of the European Union (the “Court of Justice”) of 6 November 2012 in Case C-286/12, Commission v. Hungary, which held that by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries when they reach the age of 62, Hungary failed to fulfil its obligations under Union law, the Hungarian Parliament adopted Act XX of 2013 which provided that the judicial retirement age is to be gradually reduced to 65 years of age over a ten year period and set out the criteria for reinstatement or compensation. In its report of October 2015, the International Bar Association’s Human Rights Institute stated that a majority of the removed judges did not return to their original positions.

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

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

(14) In its judgment of 16 July 2015, Gaszó v. Hungary, the European Court of Human Rights (ECtHR) held that there had been a violation of the right to a fair trial and the right to an effective remedy. The ECtHR came to the conclusion that the violations originated in a practice which consisted in Hungary’s recurrent failure to ensure that proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to

claim redress for excessively long civil proceedings at a domestic level. The execution of that judgment is still pending.

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

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

Hungary has duly informed the Committee of Ministers of the Council of Europe that the completion of court proceedings within a reasonable period of time will be ensured by the new code of conduct, and the new law creating an effective remedy for prolonged procedures will be adopted by October 2018 based on the following principles: objective liability, covering all types of judicial proceedings, out of court settlement procedure, (in lack of settlement a simplified judicial procedure), the swift determination of the claims and prompt payment of compensation and appropriate compensation.

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

(15) In its judgment of 23 June 2016, Baka v. Hungary, the ECtHR held that there had been a violation of the right of access to a court and the freedom of expression of András Baka, who had been elected as President of the Supreme Court for a six-year term in June 2009, but ceased to have this position in accordance with the transitional provisions in the Fundamental Law, providing that the Curia would be the legal successor to the Supreme Court. The execution of that judgment is still pending because the Hungarian Government denies the fact that there is a need to take measures to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard.

The European Court of Human Rights found a violation of the freedom of expression of the applicant, former President of the Hungarian Supreme Court, on account of the premature termination of his mandate on 1st January 2012 – i.e. three and a half years prior to its normal date of expiry – as a result of his criticisms of legislative reforms expressed publicly in his professional capacity. The Court also found a violation of the right of access to a court on account of the lack of any form of judicial review in this respect. In the course of the execution of the judgment, the Committee of Ministers indicated their expectation to consider – in addition to the payment of just satisfaction in the sum of EUR 100,000 – adopting further individual and general measures. The Government considers that such measures are not necessary or feasible. There is no need or possibility for the applicant's reinstatement in his former office because his original term of office had already expired

before the judgment was delivered. In any event, the position of the President of the Kúria (Hungarian Supreme Court) is not vacant and his mandate will not expire until January 2021. At that time, the applicant will be eligible for re-election, the requirement of at least five years of domestic judicial service no longer being an impediment for him. As regards any financial consequences of the premature termination of the applicant's mandate, restitutio in integrum was provided by the just satisfaction awarded by the Court.

No further general measures were found necessary because the violation found by the Court resulted from a one-time constitutional reform of the Hungarian judicial system. As regards the general measures solicited by the Committee of Ministers' decision of 10th March 2017 the Government emphasises that those measures are not related to the implementation of the present judgment since the existence of those guarantees (as regards all Hungarian judges other than the president of the Supreme Court) has never been called into question by the Court. Quite the contrary, the basis for finding that the Eskelinen-test was not met in the present case was exactly that, regardless of the unique constitutional status of the President of the Supreme Court within the judiciary, other judges and court executives were not excluded from the right of access to a court in case of their dismissal. As the Grand Chamber found in its judgment: „the applicant, as the holder of the office in question in the period before the dispute arose, was not “expressly” excluded from the right of access to a court. On the contrary, domestic law expressly provided for the right to a court in those limited circumstances in which the dismissal of a court executive was permissible: the dismissed court executive was indeed entitled to contest his or her dismissal before the Civil Service Tribunal. In this respect, judicial protection was available under domestic law for cases of dismissal, in line with the international and Council of Europe standards on the independence of the judiciary and the procedural safeguards applicable in cases of removal of judges. Mr Baka currently works as a President of Chamber judge at the Curia.

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

The expiry of mandate of the Data Protection Supervisor

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

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

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

Criticisms concerning the prosecution service

(17) The Venice Commission identified several shortcomings in its Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted on 19 June 2012. In its report, adopted on 27 March 2015, GRECO urged the Hungarian authorities to take additional steps to prevent abuse and increase the independence of the prosecution service by, inter alia, removing the possibility for the Prosecutor General to be re-elected. In addition, GRECO called for disciplinary proceedings against ordinary prosecutors to be made more transparent and for decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications.

It must be highlighted that the 2017 GRECO Compliance Report (assessing the implementation of the 2015 recommendations) acknowledged that there has been progress concerning prosecutors. Hungary will have to provide a report until 30th June 2018 on the progress in implementing the recommendations which means that there is an ongoing dialogue between the GRECO and Hungarian authorities. As far as the independence of the prosecution service is concerned, the 2015 GRECO report drew only a very limited number of recommendations – the compliance with which is yet to be assessed – and used the word ‘potential’ expressing that they refer only to theoretical and not factual situations, and recommends further steps merely in order to prevent such potential scenarios.

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

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

Conflicts of interest of members of the Hungarian Parliament

(18) In its report adopted on 27 March 2015, GRECO called for the establishment of codes of conduct for members of the Hungarian Parliament (MPs) concerning guidance for cases of conflicts of interest. Furthermore, MPs should also be obliged to report conflicts of interest in an ad hoc manner and this should be accompanied by a more robust obligation to submit asset declarations. This should also be accompanied by provisions that allow for sanctions for submitting inaccurate asset declarations.

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

Limited monitoring of campaign spending

(19) In its statement adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the limited monitoring of campaign spending and the absence of thorough reporting on sources of campaign funds undercuts campaign finance transparency and the ability of voters to make an informed choice, contrary to OSCE commitments and international standards.

The Act LXXXVII of 2013 on the Transparency of Political Campaign Financing maximizes the amount allowed to be spent for campaign activities, establishes strict rules on the use of such financing and on the monitoring of campaign spending. In order to strengthen transparency, the new law introduced the requirement that within 60 days starting from

the date when the result of the elections became official, all candidates and nominating organizations must make public the amount they had spent for campaigning, including public and non-public sources, as well as the purposes for the spending.

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

Withdrawal from the Open Government Partnership

(20) On 7 December 2016, the Open Government Partnership (OGP) Steering Committee received a letter from the Government of Hungary announcing its immediate withdrawal from the partnership. The Government of Hungary had been under review by OGP since July 2015 for concerns raised by civil society organisations regarding their space to operate in the country.

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

Privacy and data protection

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

(21) In its judgment of 12 January 2016, Szabó and Vissy v. Hungary, the ECtHR found that the right to respect for private life was violated on account of the insufficient legal guarantees against unlawful secret surveillance for national security purposes, including related to the use of telecommunications. The amendment of the relevant legislation is necessary as a general measure. The execution of this judgment is, therefore, still pending.

In the case cited, the Court found violation of the applicants' right to respect for their private lives on account of the insufficient legal guarantees against unlawful secret surveillance for national security purposes. It must be noted that the case did not concern actual measures of surveillance but the mere possibility of the application of such measures sufficed to establish the applicants' victim status within the meaning of the Convention. Furthermore, the violation found did not result from specific provisions introduced in 2011 but from the background regulation as in force since 1996 (Act CXXV of 1995 on National Security Services). In the course of the execution of the judgment, it is agreed that amendment of the relevant legislation is necessary as a general measure.

However, examination of the requirements stemming from the judgment in terms of legislative amendments, which is currently underway, is expected to take some time because although the applicants only complained about the lack of judicial authorisation of secret surveillance for national security purposes, the Court's judgment has identified a wider range of problems of the relevant legislation while its findings concerning the applicants' original arguments remained ambiguous. Proposals for amendment of the Act on National Security Services are discussed by the experts of the competent ministries. Drafts criticised by Hungarian NGOs in their submissions to the Committee of Ministers have been withdrawn.

Legal framework on secret surveillance for national security purposes

(22) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that Hungary's legal framework on secret surveillance for national security purposes allows for mass interception of communications and contains insufficient safeguards against arbitrary interference with the right to privacy. It was also concerned at the lack of provisions to ensure effective remedies in cases of abuse, and notification to the person concerned as soon as possible, without endangering the purpose of the restriction, after the termination of the surveillance measure.

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

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

Freedom of expression

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

(23) On 22 June 2015 the Venice Commission adopted its Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, which called for several changes to the Press Act and the Media Act, in particular concerning the definition of “illegal media content”, the disclosure of journalistic sources and sanctions on media outlets. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe’s Commissioner for Human Rights in his opinion on Hungary’s media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. Those concerns had been shared by the Council of Europe’s Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. The Commissioner also mentioned the issues of concentration of media ownership and self-censorship and indicated that the legal framework criminalising defamation should be repealed.

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

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

As for financial penalties it must be highlighted that these sanctions may be imposed when media administration rules are violated. A serious monetary penalty may only be levied in case of a recurring violation and the Media Council shall take into account the principles of graduation and proportionality. The amount of the penalty is also limited. There are regulations in place against decisions on penalties, too. The predecessor of the Media Council, the ORTT could impose penalties as well, however, this provision remained unchanged since 1996 resulting in a shrinking dissuasive effect of penalties. There are legal remedies against penalties as well.

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

Election of the members of the Media Council

(24) In its Opinion of 22 June 2015 on Media Legislation, the Venice Commission insisted on the need to change the rules governing the election of the members of the Media Council to ensure fair representation of socially significant political and other groups and that the method of appointment and the position of the Chairperson of the Media Council or the President of the Media Authority should be revisited in order to reduce the concentration of powers and secure political neutrality; the Board of Trustees should also be reformed along those lines. The Venice Commission also recommended the decentralisation of the governance of public service media providers and that the National News Agency not be the exclusive provider of news for public service media providers. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe's Commissioner for Human Rights in his opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. Those concerns had also been shared by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014.

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

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

(25) On 18 October 2012, the Venice Commission adopted its Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information of Hungary. Despite the overall positive assessment, the Venice Commission identified the need for further improvements. However, following subsequent amendments to that law, the right to access government information has been significantly restricted further. Those amendments were criticised in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in March 2016.

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

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

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

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

(26) In its statement adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections concluded that access to information as well as the freedoms of the media and association have been restricted, including by recent legal changes and that media coverage of the campaign was extensive, yet highly polarized and lacking critical analysis. It further noted that politicization of the ownership, coupled with a restrictive legal framework, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information.

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

same amount of time shall be ensured to each nominating organisations with a national list for publishing the political advertisement but also ensures equal opportunities by setting daily time intervals and changing the order of appearance. The Hungarian regulation is similar to those applied in numerous European countries in line with the 2008 decision of the European Court of Human Rights in the 'TV Vest AS & Rogaland Pensjonistparti v. Norway' case. In the present campaign three commercial media service providers (RTL Klub, ATV, Class FM) published political advertisements.

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

Restrictions on freedom of opinion and expression

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

The Hungarian Government is committed to promote and protect the freedom and pluralism of media, as well as to grant equal access to media contents for everyone, as reflected by the powerful legal and constitutional safeguards of media freedom in Hungary. The Fundamental Law stipulates that everyone shall have the right to freedom of expression and that Hungary recognizes and protects the freedom and diversity of the press. As confirmed by the independent international media watch organisation Freedom House in its report of 2nd October 2012 Hungary is a free country and despite the monopole situation of Hungarian News Agency MTI, the situation of the Hungarian media is diverse.

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

In response to earlier worries about Hungary's 2010 media regulations, that generic terms and high fees could lead to self-censorship and could curtail Hungarian journalism, the report concluded that no online medium has been fined. Internet service providers are not

responsible for content and not obliged to monitor it. According to Freedom House the existence of self-censorship is only proven by 'anecdotal' evidence.

Academic freedom

Amendment of Act CCIV of 2011 on National Tertiary Education

(28) On 6 October 2017, the Venice Commission adopted its Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. It concluded that introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, for foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. Those universities and their students are protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to, and freedom of, education. The Venice Commission recommended that the Hungarian authorities, in particular, ensure that new rules on requirement to have a work permit do not disproportionately affect academic freedom and are applied in a non-discriminatory and flexible manner, without jeopardising the quality and international character of education already provided by existing universities. The concerns about the Amendment of Act CCIV of 2011 on National Tertiary Education have also been shared by the UN Special Rapporteurs on the freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on cultural rights in their statement of 11 April 2017. In the concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of such constraints on the freedom of thought, expression and association, as well as academic freedom.

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

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

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

Negotiations between the Hungarian Government and foreign higher education institutions

(29) On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the new criteria to 1 January 2019. Negotiations between the Hungarian Government and foreign higher education institutions affected, in particular, the Central European University, are still ongoing, while the legal limbo for foreign universities remains.

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

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

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

As for the Central European University, it has signed an agreement with the Bard College of New York on 8th September 2017, in order to fulfil the requirement of conducting actual education activities in the State of New York. According to the agreement, CEU will start a bachelor level higher education activity in New York, for which the Bard College will grant the necessary infrastructure (campus). However, it is important to emphasize that

by concluding this agreement after the start of the academic year in September 2017, the CEU still did not immediately fulfil the requirement in question, since the actual educational activities at the Brand College could only start in the spring semester of 2018. (Other higher education institutions can testify several decades of continuous higher education activity – such as the 150 years old McDaniel College – and have tens of thousands of graduates each year.) For this reason, the Hungarian Ministry of Foreign Affairs and Trade proposed a high level visit to New York in spring 2018.

Disproportionate restrictions of Union and non-Union universities

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

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

Freedom of religion

Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary

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

The Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, which entered into force on 1st January 2012, created the obligation that those faith-based communities which did not qualify to gain the status of churches had to go through a procedure to be re-recognized as churches. Several of the status-stripped communities

turned to the European Court of Human Rights for their status not being restored. The complainants argued that the Act was discriminative and violated freedom of religion. Adopting Act CCVI of 2011 was necessary to end the previous unfortunate and opaque situation widely referred to as 'church business'. The regulation recognizes 27 traditional churches, denominations and faith-based communities compared to the 232 recognized before the adoption of the Act, among which the "Eye of Heart Contemplative Order" or the "Message-societies" were held in exactly the same status as for example the Hungarian Catholic Church.

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

In Denmark, Finland, Greece, Malta and the United Kingdom there are 'national churches' (state religions) and in some Member States (United Kingdom, Malta) there is no separate legal category for other religious groups at all. This means that such communities may choose only other private law statuses, such as association or foundation. In France, there is a strict separation of church and state, as a result of which there is no distinct category in place for churches. The majority of Member States makes a clear difference between the legal status of historic churches and the status of other denominations and there are various legal forms for this distinction. In several Member States some churches are listed in the constitution, while others are subject to separate regulations or different 'sui generis' statuses provided for them. The Lithuanian system is almost identical with the Hungarian: official recognition is provided by the Parliament. The case-law of the ECtHR recognizes the right of states to create various legal categories for religious communities, the basic prerequisite of which is that some kind of a legal form shall be available without obstacles. I would like to draw attention to the fact that in 1558, the Hungarian national assembly of Torda (Transylvania) was the first in Europe to declare free practice of any Christian religion (Catholicism, Calvinism, Lutheranism, Unitarianism).

Unconstitutional deregistration of recognised churches

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

The provision objected by the draft report assures the state the possibility to grant to organizations conducting religious activities special status as 'church'. The Parliament

may recognize religious communities that fulfil the requirements established in the relevant cardinal law, such as previous religious long-term activity, the extent of social support and the ability of the applicant organization to serve the community. The ability of the entity to cooperate with the state authorities is also among the conditions of eligibility, for the very reason that the aim of legally recognizing a religious community as a 'church' is to ensure the efficiency of working for the benefit of the community.

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

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

In Austria, the recognition of religious communities as 'churches' is decided at the ministerial level, but the Parliament may also decide by law in such matters. In Belgium, the competence to recognize religious communities as churches belongs to the Minister of Justice, who decides upon the proposal of the Parliament, which testifies the recognition of the community as church by a law, which cannot be legally challenged. In Spain, traditional churches concluded an agreement with the State, whereas the recognition of other religious communities belongs to ministerial competence. Moreover, in some Member States the constitution proclaims which religion is the main religion of the country; such prioritized religion is the Evangelical Lutheran Church in Denmark and Finland, the Eastern Orthodox Church in Greece and the Roman Catholic Church in Malta.

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

(33) In its judgment of 8 April 2014, Magyar Keresztény Mennonita Egyház and Others v. Hungary, the ECtHR ruled that Hungary had violated freedom of association, read in the light of freedom of conscience and religion. The execution of that judgment is still pending.

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

On 6th July 2015, upon the motion of the Budapest Administrative and Labour Court submitted in the framework of the registration proceedings pending before it upon the request of the Budapest Autonóm Gyülekezet, the Constitutional Court found that certain rules governing the conditions of recognition as a church (which have already been amended after the introduction of the present applications to the ECtHR) were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the Convention by 15 October 2015. The relevant Act was accordingly submitted to the Parliament in December 2015 but it did not obtain the support of the majority of two thirds of the members of the Parliament. The new rules have not yet been adopted; however, just satisfaction has been paid to the applicants either on the basis of friendly settlements or pursuant to Article 41 judgments of the Court (partial judgments of 28th June 2016 and 25th April 2017).

Freedom of association

Audits of NGOs which were beneficiaries of the Norwegian Civil Fund

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

Hungary provides the fundamental human rights enshrined in international treaties and Hungary’s Fundamental Law for all of its citizens, including human rights defenders.

Their support level and playing field have not diminished: tens of thousands of organizations participate in tenders run by the Trust for National Cooperation, furthermore both the number of supported projects and the amount of funding available have shown an increase, compared to prior years.

It must be noted that regarding the investigations into the distribution of the Norway grants (Norwegian Civic Fund) that these funds are similar to EU resources and the investigations did not at all concern the activities of human rights defenders, but these were accountability measures regarding the financial operations of their organizations. The money managed by the Norway grants can be considered public money, therefore it is in the public's interest to find out whether the funds were utilized to benefit all Hungarian citizens: these grants by Norway are not donations but money paid in exchange for trade benefits that Hungary provides, specifically for Norwegian goods to be duty-free. The review report carried out by Ernst & Young earlier revealed several misconducts about the distribution of the Norwegian Civic Support Fund. The investigation by the Government Control Office (GCO) had the sole purpose of finding out whether all 80 thousand civil organizations had equal conditions in competing for the Norwegian grants. The investigation by the GCO has concluded and found 61 misconducts in 63 projects under scrutiny, thus this investigation proved that the organizations responsible for the distribution have abused the trust of the Norwegian government. The Government of Norway has also launched an investigation into the allocation of its funds which, in itself, proves that they have also found something to disapprove.

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

The law on the Transparency of Organisations Receiving Support from Abroad

(35) In April 2017 a draft law on the Transparency of Organisations Receiving Support from Abroad was introduced before the Hungarian Parliament. On 26 April 2017, the Council of Europe Commissioner for Human Rights addressed a letter to the Speaker of the Hungarian National Assembly noting that the draft law was introduced against the background of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labelled some NGOs as "foreign agents" based on the source of their funding and questioned their legitimacy. Similar concerns have been mentioned in the statement of 7 March 2017 of the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law, as well as in the Opinion of 24 April 2017 prepared by the Expert Council on NGO Law, and the

statement of 15 May 2017 by the UN Special Rapporteurs on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression.

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

The term ‘organisations supported from abroad’ is purely factual and is not stigmatizing and does not include any negative value judgement. This way the legislation does not create any reputational burden for the organisations or their donors. The Venice Commission in its opinion on the Draft Law found that the term ‘organisation receiving support from abroad’ objectively appeared to be more neutral and descriptive, compared in particular to the label of ‘foreign agent’. The Parliamentary Assembly of the Council of Europe has also acknowledged in its resolution 2162 (2017) that the Hungarian law did not include some of the controversial term ‘foreign agent’ or the specific and thus discriminatory reference to NGOs which defend human rights, and that it provided for a judicial rather than administrative review. Consequently, it can be acknowledged that the overall purpose of the Act is in line with relevant international guidelines, including those elaborated under the auspices of the Council of Europe.

Disproportionate and unnecessary interference with the freedoms of association and expression

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

In Hungary more than 60.000 NGOs are operating without problems though less than 1% of them seek to exert political influence without any kind of democratic accountability. NGOs are playing an important role in shaping public opinion and perception; this is well mirrored in the Preamble of the Act acknowledging their role in contributing to societal

self-organization. Therefore there is a substantial public interest for the entire society to see what interests they are representing. For this very reason the transparency of NGOs funded from abroad is an essential requirement from the aspect of rule of law. It must be highlighted that the Act does not prohibit funding from abroad and the operation of NGOs either; it merely makes foreign funding, in conformity with the principles of democracy, transparent thereby interfering in the slightest and mildest way. Also, non-governmental organisations are not persecuted for receiving financial assistance from abroad but they purely have to inform the public over a certain threshold. Hence the Act does not affect the substantial merits of freedom of association.

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

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

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

(37) On 7 December 2017, the Commission decided to start legal proceedings against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions in the NGO Law which indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission concluded that Hungary had violated the right to freedom of association and the rights to protection of private life and personal data enshrined in the Charter, read in conjunction with the Treaty provisions on the free movement of capital.

It is to be highlighted that the infringement procedure is still pending and ultimately the European Court of Justice (ECJ) is competent to establish whether or not Hungary infringed EU law. In this respect, since the final outcome of the process is still unknown for each party, any statement assuming the violation of EU law is a mere allegation which

can adversely affect Hungary's political and legal interests. Moreover in the procedure the Commission did not see the circumstances set to call on the Hungarian Government to suspend the application of the Act. That's why we would urge the LIBE committee as well as the rapporteur to refrain from exercising prejudice on an ongoing court procedure.

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

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

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

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

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

regarded as public players justifying that their name, amount of the donation and location data (country, city) become public.

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

The ‘Stop-Soros’ legislative package

(38) In February 2018, a legislative package consisting of three draft laws, also known as the “Stop-Soros Package” (T/19776, T/19775, T/19774), was presented by the Hungarian Government. On 14 February 2018, the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law made a statement indicating that the package does not comply with the freedom of association, particularly for NGOs which deal with migrants. On 15 February 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that by alluding to the “survival of the nation” and protection of citizens and culture, and by linking the work of NGOs to an alleged international conspiracy, the legislative package would stigmatise NGOs and curb their ability to carry out their important activities in support of human rights and, in particular, the rights of refugees, asylum seekers and migrants. It was further concerned that imposing restrictions on foreign funding directed to NGOs might be used to apply illegitimate pressure on them and to unjustifiably interfere with their activities.

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

The Draft Law package foresees to expose those activities and associations funded from abroad that, circumventing the Hungarian law and order, intend to foster illegal immigration and thereby seeking to alter the composition of the population in Hungary. The overall objective of the legislation is to establish the effective control of the society over organisations wishing to exert influence the migration policy of Hungary. The package also intends to enhance the social responsibility of organisations supporting illegal immigration by imposing levies on them. This revenue will feed into the border protection measures of Hungary. The third purpose of the package is to ensure the security and safety of the citizens, to protect the law and order, the sovereignty and independence of the country as well as preventing the disruption of smooth operation of public authorities.

For the above reasons the Government adopted three legislative bills which aim at i) establishing the societal responsibility of civil organisations supporting migration thereby strengthening the transparency thereof; ii) imposing an immigration levy amounting to as much as 25% of their funding originating from abroad on the above organisations as well as iii) creating the injunction of staying away from the vicinity of the state border on people who might jeopardize national security. The purpose of the above proposals is to prevent Hungary from becoming an 'immigration country' and to deter those people or associations who are determined to achieve this goal. Besides, the Hungarian Government wants to address the demographic challenges Hungary is facing with appropriate family supporting programmes instead of importing populations with differing religious and cultural backgrounds. It must be emphasized that the legislative package will be adopted by the new Parliament to be formed on 8th May 2018 and so will be subject to further amendments.

Right to equal treatment

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

(39) On 17-27 May 2016, the UN Working Group on discrimination against women in law and in practice visited Hungary. In its report, the Working Group indicated that a conservative form of family, whose protection is guaranteed as essential to national survival, should not be put in an uneven balance with women's political, economic and social rights and the empowerment of women. The Working Group also pointed out that a woman's right to equality cannot be seen merely in the light of protection of vulnerable groups alongside children, the elderly and the disabled, as they are an integral part of all such groups.

The Hungarian Government rejects the artificial confrontation of families and women's rights. The Hungarian Government is committed to empower women to decide on their own lives and provide them the freedom of choice whether they wish to have children. Exactly for the sake of such a freedom it is necessary to build a family-friendly country and establish the necessary conditions. Family policy and women's rights policy are also inseparable due to the societal realities of Hungary: 77.68 % of all women between 25 and 59 years of age are mothers according to the latest Hungarian statistics of 2016. To this end, the government has taken a number of important and effective measures to create the proper balance between family and work in recent years.

The Child Care Allowance Extra (GYED Extra) provides the free choice for women with dependent children and supports those who decide to stay at home with their children or those who wish to work besides raising their children. As of 2016, beyond the age of 6 months of the child, employment becomes available along with the use of benefits. Between 2010 and 2016 the available seats in nurseries increased by around 23%. As of 2017, Hungary has introduced a new and more flexible nursery system that aligns better with local circumstances. From 2018 local governments shall provide day-care provisions for small children living in settlements with a population less than 10.000 where the number of small children under the age of 3 exceeds 40, or if this number is less, but at least 5 parents with dependent children indicate their need.

The expansion of part-time employment opportunities, in the field of women's policy, is of paramount importance. If a mother with a dependent child needs a part-time employment then her employer shall ensure this opportunity for her up to the age of 3 of her child, or up to the age of 5 of the youngest child in case of a large family. The 'Family-friendly Workplace' tender is annually published as from 2011. In 2017 the Ministry of Human Capacities provided a funding of 5 million HUF / workplace for the purpose of developing family-friendly work environments and to support employees in striking the balance between work and family life. The objective of the 'Extending flexible employment in convergence regions' tender is to introduce flexible, family-friendly employment opportunities at workplaces for which a non-reimbursable subsidy of 3,1-15 million HUF was allocated. The purpose of the project 'Women in families and at work', published in June 2017 is to improve the situation of women in the labour market as well as that of striking the balance between family life and work. The Government allocated a funding of 14 billion HUF for this project.

The protection of female victims of domestic violence

(40) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed regret that patriarchal stereotyped attitudes still prevail in Hungary with respect to the position of women in society, and noted with concern discriminatory comments made by political figures against women. It also noted that the Hungarian Criminal Code does not fully protect female victims of domestic violence.

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

The Hungarian Government has run several campaigns, public programs and tenders to help women who have suffered abuse. The Government, utilizing a development fund of 3 billion HUF, is continuously expanding the circle of services supporting victims and prevention programs targeting young audiences, as well as places emphasis on shaping the public opinion. The goal of the campaign titled 'Let it catch your attention!' is raising

awareness and providing information for victims on where to turn to in need of help. The 'SafeShelter' program has created crisis-management clinics which add to the array of facilities providing help to the victims of violence committed in a relationship. One of the main activities of these clinics is to provide information as early as possible to the victims and potential victims about available aid measures and the rights of victims. Within the framework of the program called 'Development of crisis management services' the technical progress and advancement in human resources of the National Crisis Management and Information Line is being carried out, beside the academic and sensitivity training of the experts working in child-protecting alert systems. The 'Safety net for families' tender, administered by the Ministry of Human Capacities, provides the opportunity to carry out programs based on the methods developed in the pilot project targeting youngsters between the ages of 14 and 18 which has been running since 2012.

Working conditions for pregnant or breastfeeding workers

(41) On 27 April 2017, the Commission issued a reasoned opinion calling on Hungary to correctly implement Directive 2006/54/EC of the European Parliament and of the Council, given that Hungarian law provides an exception to the prohibition of discrimination on the grounds of sex that is much broader than the exception provided by that Directive. On the same date, the Commission issued a reasoned opinion to Hungary for non-compliance with Directive 92/85/EEC of the Council that stated that employers have a duty to adapt working conditions for pregnant or breastfeeding workers to avoid a risk to their health or safety.

The safety of pregnant and nursing workers, also the equal treatment in the world of work is one of the top priorities of the Hungarian Government's employment policies. Hungary's Fundamental Law sets forth mandatory provisions for the protection of parents' workplaces and for upholding the principle of equal treatment too. Consequently, there are special labour law rules for women and for mothers and fathers raising children.

Since 2010 one of the objectives of the Hungarian Government is to facilitate the creation of a family and work based society. This has been manifesting in measures that help consolidating work and family life. There is special emphasis on flexible and atypical work in the Labour Code; this facilitates the employment of women. One example is that a parent may request her or his part-time employment until age three of their only child or until the age five of their children. By law, the employer has to comply with the parent's request. Pregnant women or women giving birth are entitled to 24 months of maternity leave, which is a long period compared to other Member States. For the protection of working women, the Labour Code has special rules prohibiting the termination of mothers' employment by the employer: the entire period of human reproduction procedure related medical treatments, pregnancy and the maternity leave are covered by this exception. Breastfeeding women are entitled to working time reductions. From the beginning of their pregnancy and until age three of their child irregular work-schedules cannot be arranged without the explicit consent of these workers. The same applies to their appointment for another location of work. During the mentioned period their weekly rest time must be scheduled regularly (i.e. no irregularity is allowed), and they cannot be ordered to work extra hours, stand-by or night work. The Workplace Protection Program took effect in 2014. Amongst others, it helps mothers to re-enter the labour market by providing tax benefits to their employers. The GYED EXTRA program directly helps mothers: after six months of giving birth they can re-enter the labour market and remain

entitled to all other maternity benefits that they would receive if they remained at home nursing their children.

As for the infringement procedure referred to by the draft report, the Hungarian Government has committed itself to amend certain provisions of the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities and the Act I of 2012 on the Labour Code. These commitments have already been accomplished, the former in May 2017, the latter in November 2017. The Commission has been informed of the new legislation accordingly. At this point, the Hungarian Government expects the closure of the case as the amendments resolved all the disputed issues in question. Therefore taking into consideration in the context of reflecting on the situation in Hungary seems superfluous.

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

(42) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the constitutional ban on discrimination does not explicitly list sexual orientation and gender identity among the grounds of discrimination and that its restrictive definition of family could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples. The Committee was also concerned about acts of violence and the prevalence of negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, particularly in the employment and education sectors. It also mentioned forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities, as well as reported violence and cruel, inhuman and degrading treatment and allegations of a high number of non-investigated deaths in closed institutions.

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

Rights of persons belonging to minorities, including Roma and Jews

Racism and intolerance, anti-Gypsyism and anti-Semitism

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

Commission against Racism and Xenophobia mentioned similar concerns in its report on Hungary published on 9 June 2015.

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

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

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

The Hungarian Government and Viktor Orbán were the first to send a Romani woman to the European Parliament: Lívía Járóka, who presently holds the office of the Vice-President of the European Parliament, thanks to Hungarians. Moreover, due to her efforts and the merit of Hungary, the European Roma Strategy was submitted to the Commission and to the Council, which triggered off an exemplary and unprecedented inclusion program for the Roma. If it was not for the Hungarian Government such an initiative would have been unimaginable.

Roma discrimination

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

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

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

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

found employment on the primary labour market within 180 days after leaving the public employment scheme. This is due, among others, to the fact that approx. 94% of the participants received training within the framework of the programme, acquiring a basic knowledge in various professions.

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

Regarding housing, in 2014 the government adopted a political strategy for the period from 2014 to 2020 that lays down the foundations of the treatment of slum-like housing in segregated settlements. The general objective is to eliminate slum-like areas that are often hardly suitable for the housing of people and, in certain cases, to rehabilitate slum-like areas, connecting them to the urban tissue. The main objective of the strategy is to present and institutionalise a set of tools for hindering the re-establishment of slums, degrading parts of settlements and settlements – collectively, housing marginalisation and the spatial concentration thereof, – in order to stop segregation and lagging processes, and to eliminate current living situations in slums; in order to eliminate slum-like housing long-term. With the use of EU funding, Hungary committed itself to include one in every seven segregated areas in rehabilitation programmes. To this end, a map of segregated area was compiled, which shows the territorial concentration of disadvantaged population (based on academic qualification and income status rather than on ethnicity). According the map data, EU-funded developments are being implemented in 197 segregated areas.

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

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

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

Segregated education of Roma children

(46) On 26 May 2016, the Commission sent a letter of formal notice to the Hungarian authorities in relation to both Hungarian legislation and administrative practices which result in Roma children being disproportionately over-represented in special schools for mentally disabled children and subject to a considerable degree of segregated education in mainstream schools.

The infringement procedure on the segregation of Roma in education had been launched in May 2016. In the infringement procedure the Commission called on Hungary to ensure that Roma children enjoy access to quality education on the same terms as all other children and urged the government to bring its national laws on equal treatment as well as on education in line with the Racial Equality Directive (Council Directive 2000/43/EC) prohibiting discrimination on grounds of racial or ethnic origin in education. The Commission raised concerns to certain measures of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, which had been actually adopted before the accession of Hungary to the European Union. The text in itself was not contrary to the Directive, however the Hungarian High Court gave an interpretation that went against the requirements of the Directive.

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

In its response in September 2016, the Hungarian Government made a commitment to amend/ repeal certain provisions of the relevant legislation and thus sent the draft texts to the Commission. The proposed amendments aim to avoid any misinterpretation of the legislative requirements and by this to ensure that the education based on philosophical or religious beliefs may not result in illegal racial segregation. After further consultations Commissioner Věra Jourová confirmed that proposed amendments were adequate to remedy the Commission's concerns. As a result, the Hungarian Parliament adopted the legislative changes, thus the two Acts as amended entered into force on the 1st July 2017.

The amendment of the ministerial decrees was achieved in October 2017 which contained provisions on the independent parental declaration without interference or influence and the establishment of an anti-segregation working group.

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

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

(47) In its judgement of 20 October 2015, Balázs v. Hungary, the ECtHR held that there had been a violation of the prohibition of discrimination in the context of a failure to consider the alleged anti-Roma motive of an attack. In its judgment of 12 April 2016, R.B. v. Hungary, the ECtHR held that that there had been a violation of the right to private life on account of inadequate investigations into the allegations of racially motivated abuse. The execution of both judgments is still pending.

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

The proposal for a law pronouncing the Rome Statute of the International Criminal Court (ICC) and the Kampala amendments concerning Article 8 of said Statute is still in the process of being adopted by the Hungarian Parliament. The Commission was notified about the proposed modifications in the legislation. The Director General of the Commission’s Directorate-General for Justice and Consumers notified Hungary that said modifications will align national legislation with the provisions of Council Framework Decision 2008/913/JHA.

Forced evictions of Roma in Miskolc

(48) On 29 June - 1 July 2015, the OSCE Office for Democratic Institutions and Human Rights conducted a field assessment visit to Hungary, following reports about the actions taken by the local government of the city of Miskolc concerning forced evictions of Roma. On 26 January 2016 the Council of Europe Commissioner for Human Rights sent a letter to the Hungarian authorities expressing concerns about the treatment of Roma in Miskolc.

The Municipality of Miskolc decided to demolish the neighbourhood called “Numbered Streets,” where a large part of the inhabitants are Roma. The Municipality amended its local housing decree on 12th May 2014, offering financial compensation (a maximum of about € 4750 - 6300) for those tenants who are willing to terminate their indefinite contract only if they buy a new property outside of the city which cannot be resold within 5 years.

Based on the appeal of the government office in charge, the Supreme Court annulled the relevant articles in its decision of April 28th 2015. The Equal Treatment Authority (ETA) also carried out an investigation and rendered a decision in July 2015, calling on the local government to cease all evictions and to develop an action plan on how to offer housing in accordance with human dignity. The action plan was adopted on 21st April 2016 containing detailed provisions on the short, medium and longer terms measures, deadlines, financial sources, authorities and intermediate bodies in charge. Meanwhile, a social housing agency was established and started its operation. In its decision of 14th October 2016, the ETA found that the municipality fulfilled its obligations set in its previous decree, and the implementation of the action plan is adequate.

Combatting anti-Semitism

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

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

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

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

As a result of the Chairmanship's year-long endeavours and lobbying in EU institutions, EU and IHRA member states, the EU's new data protection draft legislation (GDPR) was

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

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

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

Restoration of Jewish cemeteries: in 2014 the Government tasked with the elaboration of a comprehensive program for the restoration of Jewish cemeteries with the involvement of local students, schools, local self-governments, civil organizations, public service and churches. The government allocated EUR 3,3 million for this project, which is a multi-year program.

Antisemitism is not only on the rise across Europe but new forms of it gained ground: besides traditional, comparatively less violent radical right-wing Antisemitism (prevalent in Central and Eastern Europe), two new forms emerged and reinforced: radical left-wing Antisemitism mainly in Western Europe based on anti-Israeli/pro-Palestinian attitudes and radical Muslim Antisemitism rooted in anti-Israeli and anti-Jewish attitudes. This latter tends to turn into mostly violent, often murderous attacks on Jews in Western Europe, while in Hungary Jewish life experiencing a renaissance and Jews live in peace and safety.

According to the Action and Protection Foundation's (Tett és Védelem Alapítvány) report (January-June 2017) the number of anti-Semitic actions in Hungary decreased compared the number of the previous years. During the first half of 2017 the Foundation identified 18 anti-Semitic hate crimes, while in 2016 there were 23, in 2015's first half there were 26

hate crimes action. It is also worth examining domestic data in an international comparison. For example, in Great Britain, figures are extremely high: the number of anti-Semitic hate crimes in the same period was 557 in 2016 and 767 in 2017, which means that forty-two times more cases occurred in the island than in Hungary.

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

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

1. On 7 December 2012 the first court decision entered into effect for Holocaust denial. The Budapest Central Court sentenced a man of 42 to 18 months in prison, on three years' probation. In addition 3 times per year during 3 years of the probation period, he has to visit the Budapest Holocaust Memorial Centre in Pave Street and has to submit an account of his experiences. The perpetrator was arrested in 2011 at a rally in Budapest for he was holding up a banner with the words in Hebrew: "The Shoah did not happen".
2. In January 2015, a Hungarian court ordered an article on the far-right website Kuruc.info to be blocked because it (including its comments) contained text denying, belittling or distorting the crimes committed by the National-Socialist regimes. This was the first time that a Hungarian court ruled to block the Internet content. The article appeared there in June 2013 and questioned the atrocities against Jews in Auschwitz claiming that 'such things never ever happened'. Following its appearance on the site, a police investigation was launched to find the author of the article. The police however was unable to identify the author or the person responsible for publishing the article. Therefore the Budapest Chief Prosecutor's Office addressed the court to order the article to be made unavailable at long last. The US-based server where the site is registered refused to voluntarily make it unavailable or to delete it from its database. Then the Ministry of Justice through legal assistance requested the competent US court to enforce the Hungarian court's ruling which however also proved futile. In June 2015, the same legal proceedings were carried out with the same result regarding a sub-page of the above website for it was delivering anti-Semitic and Holocaust denying content. Meanwhile an amendment to the criminal code was introduced which ought to enable the courts to make websites operated from abroad, such as the US-registered Kuruc.info, unavailable from Hungary.
3. 26 March 2015: a court in Debrecen sentenced a member of the Jobbik Party's local organization and member of the local municipal council to a punishment fee of 3000,- USD or 300 days imprisonment who publicly denigrated the Holocaust in a WWII-commemoration speech in January 2015. The indicted person publicly apologized for his offense before the local Jewish community later in August.

4. 5 January 2016: a man was punished by a court in Esztergom with a 2600,-EUR fee or 400 day imprisonment for committing by a Facebook posting the denial, relativization or denigration of the crimes of the National-Socialist regimes.

After his 19th July 2017 visit to Hungary, Israeli Prime Minister Benjamin Netanyahu highlighted the fact that Jewish life in Hungary is experiencing a renaissance. The Government wants “the creative energies of Hungary’s Jewish community to be free to expand and develop”, he said, adding that he expects the flourishing of Hungarian Jewish culture to enrich Hungary and the nation’s culture. ‘Hungary has Europe’s second largest Jewish community, and it is part of the Hungarian nation’, he stated. Mr. Netanyahu said that it was important that in his statement the Hungarian Prime Minister had spoken openly about the crimes committed against the Jews by previous Hungarian Governments. He thanked Mr. Orbán for speaking out against those who question Israel’s legitimacy.

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

Roma exclusion in education / Hate crimes and hate speech

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

The Hungarian Inclusion Strategy accepted in 2011 treats the reduction of segregation as a priority objective. Accordingly, in the area of education and training, particular areas of intervention are the promotion of integrated education, the reduction of segregation, the breaking of the cycle of intergenerational transmission of disadvantages, the establishment of an inclusive school environment. Special attention is paid to integration in kindergartens and schools. Therefore Roma children's access to quality education is facilitated by the application of legal, financing and institutional measures and by a number of government actions. It is important to note, however, that because of the complex nature of the problem, we have to look for a solution in a wider context, too. This

means that the termination of the practice of segregation is necessary, but not enough in itself.

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

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

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

for 21st April 2013, the day of the 'March of the Living' with the slogan of 'Give Gas!'. Based on the mentioned Amendment of the Hungarian Constitution the Court banned the motorcade in order to prevent any disruption during the commemoration.

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

Fundamental rights of migrants, asylum seekers and refugees

Amending asylum law in Hungary / abuses by border authorities

(51) On 3 July 2015, the UN High Commissioner for Refugees expressed concerns about the fast-track procedure for amending asylum law. On 17 September 2015, the UN High Commissioner for Human Rights expressed his opinion that Hungary violated international law by its treatment of refugees and migrants. On 27 November 2015, the Council of Europe Commissioner for Human Rights made a statement that Hungary's response to the refugee challenge falls short on human rights. On 21 December 2015, the UN High Commissioner for Refugees, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights urged Hungary to refrain from policies and practices that promote intolerance and fear and fuel xenophobia against refugees and migrants. On 6 June 2016, the UN High Commissioner for Refugees expressed concerns about the increasing number of allegations of abuse in Hungary against asylum-seekers and migrants by border authorities, and the broader restrictive border and legislative measures, including access to asylum procedures.

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

We wish to point to the very nature of the crisis situation due to mass immigration as a special (interim) situation. The Government shall be authorised, by the Act on Asylum, to declare the crisis situation due to mass immigration by a government decree. During this crisis situation, and apart from the ordinary rules of asylum procedures, exceptional regulations apply. Pursuant to the effective Government Decree of 41/2016 the crisis situation lasts till 7th September 2018, unless it will be extended depending on the then relevant immigration situation.

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

As to the alleged ill-treatment of asylum seekers by Hungarian border authorities we firmly deny this presumption. General safeguards for the conduct of border police officers are meticulously specified in the Hungarian Act on Police. According to the law police officers must not recourse to torture, inhuman or degrading treatment and shall always act with due respect for human dignity. This requirement implies refraining from illegal actions, too. Reports on alleged ill-treatments are mostly based on subjective resources stemming from illegal migrants and NGOs assisting them, thus, giving rise to doubts concerning their factual credibility and reliability. In addition, so far no court cases have been reported where Hungarian border police officers have been indicted on charges of abusing asylum seekers affirming the position of the Hungarian Government that these accusations are completely unjustified and fall from the sky.

Detention of asylum seekers and migrants

(52) On 3 July 2014, the UN Working Group on Arbitrary Detention indicated that the situation of asylum seekers and migrants in irregular situations needs robust improvements and attention to ensure against arbitrary deprivation of liberty. Similar concerns about detention, in particular of unaccompanied minors, have been shared by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. On 21-27 October 2015 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Hungary and indicated in its report a considerable number of foreign nationals' (including unaccompanied minors) claims that they had been subjected to physical ill-treatment by police officers and armed guards working in immigration or asylum detention facilities. On 7 March 2017, the UN High Commissioner for Refugees expressed his concerns about a new law voted in the Hungarian Parliament envisaging the mandatory detention of all asylum seekers, including children, for the entire length of the asylum procedure. On 8 March 2017, the Council of Europe Commissioner for Human Rights issued a statement similarly expressing his concern about that law. On 31 March 2017, the UN Subcommittee on the Prevention of Torture urged Hungary to address immediately the excessive use of detention.

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

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

The situation of unaccompanied minors

(53) On 12-16 June 2017, the Special Representative of the Secretary General of the Council of Europe on migration and refugees visited Serbia and two transit zones in Hungary. In his report, the Special Representative made several recommendations, including a call on the Hungarian authorities to take the necessary measures, including by reviewing the relevant legislative framework and changing relevant practices, to ensure that all foreign nationals arriving at the border or who are on Hungarian territory are not deterred from making an application for international protection. On 5-7 July a delegation of the Council of Europe Lanzarote Committee (Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse) also visited two transit zones and made a number of recommendations, including a call to treat all persons under the age of 18 years of age as children without discrimination on the ground of their age, to ensure that all children under Hungarian jurisdiction are protected against sexual exploitation and abuse, and to systematically place them in mainstream child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them by adults and adolescents in the transit zones.

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

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

Hungary has so far completed the training of 120 administrators for the successful identification of victims of human trafficking (partially sexual exploitation) and to increase the awareness of those who are more likely to be in contact with such persons during their day-to-day work. Moreover, the staff of the Immigration Office must participate in this training as well. In addition, a summary of relevant knowledge has been prepared and handed out for the staff. The Office started cooperation with the IOM in order to provide special training for the personnel of the transit zones on the rights of the child, particularly who are affected by the migration crisis, and also trafficking in human beings.

As of 2011, police personnel serving in the transit zone have participated in psychological, tactical and intercultural training that greatly contributes to the recognition and proper handling of vulnerable persons and their situations. The briefing of the personnel contains the requirements of performing tasks in a multicultural environment and the instructions for appropriate behaviour in such an environment.

Unaccompanied children between the age of 14 and 18 are also placed in transit zones during a mass immigration crisis during the process. Three meals a day for those between the age of 14 and 18, as well as their clothing, health care, education, and religious practice are also provided in transit zones. Children receive half a litre of milk or equivalent dairy products and fruits. Their supervision is provided by social workers who are present 24 hours a day.

Children under the age of 14 are placed in special care institutions inside the country where they get five meals a day.

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

Hungarian law fully provides that a minor applicant may use his or her mother tongue or the language he or she understands in an oral and written manner during the asylum procedure. In addition, the asylum authority must inform the applicant in writing of the procedural rights, obligations and legal consequences of the breach of the obligation, at the same time as the application is filed. The guarantee of the information is that the information and its acknowledgment must be recorded, but also that the representative of the UNHCR may participate in the asylum procedure.

As from 1st January 2018, additional regulations were introduced by Hungary favouring minors in general and unaccompanied minors in specific. Among others, the asylum interviewer of minors must have the necessary knowledge and training for interviewing minors, meaning that the interviewer must have the quality of inspiring confidence and provide a child-friendly atmosphere, finding the perfect, professional interpreter who has relevant practice in communicating with children.

The access to education is also provided for minor asylum-seekers, carried out by Hungarian educational authorities under the guidance of the Ministry of Human Capacities. A specific curriculum was developed for the minor asylum seekers staying in the transit zones, and as of the beginning of September 2017, education is provided according to this curriculum for minors aged between 6 and 16 years, and if the child wishes, even up to their 18 years of age, by competent and specially trained teachers.

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

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

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

asylum-proceedings resulted in a violation of Article 3. The Court also found that the material conditions of reception in the Rösztke Transit Zone were not in violation of Article 3 but a lack of domestic remedy in respect of these complaints was in breach of Article 13.

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

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

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

Third Party submissions were presented by Bulgaria, Poland and the Russian Federation, as well as the UNHCR, NGOs and scholars of international law. The hearing before the Grand Chamber took place on 18th April 2018.

Infringement procedure regarding Hungarian asylum legislation

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

It should be highlighted that the Hungarian Government is in continuous dialogue with the Commission in all EU Pilot and infringement procedures in order to take into account

the Commission's concerns to the fullest extent. This open and constant dialogue takes place in the pending 2015/2201 infringement procedure as well, launched by the Commission in 2015.

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

The Commission awaited 16 months after the first phase of the Article 258 TFEU procedure and only went on to continue the procedure when Hungary, as a consequence of the crisis situation caused by mass immigration, introduced several changes in the rules applicable for border management and for asylum procedures. In its additional formal notice sent in May 2017 the Commission raised eight new questions extending the scope of the infringement procedure to the Reception Conditions Directive 2013/33/EU and to the Returns Directive 2008/115/EC as well as to Articles of the Charter on Fundamental Rights. The Hungarian Government kept the Commission updated as regards the steps being taken in the meantime and as a result of the continuous dialogue the Commission accepted the Government's position in four further questions and did not continue the procedure in this respect. As regards the remaining disputed issues the Hungarian Government firmly believes that the rules are in conformity with the applicable EU law.

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

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

It must be highlighted that crisis situation caused by mass immigration is such a circumstance in which Article 72 of TFEU entitles Member States 'to exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security', therefore the Hungarian Government believes that the measures challenged by the Commission in its infringement procedure do not exceed the limits and confines of any applicable secondary law nor the exercise of the responsibilities empowered by Article 72 of TFEU.

Detention of asylum applicants

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

In accordance with the provisions of the 1951 Geneva Refugee Convention refugees have duties towards the country in which they find themselves, which require in particular conforming to its laws and regulations, as well as to the measures taken for the maintenance of public order.

Staying in the transit zone is based on the own decision of the entering persons, following their prior and full information, and free of any official constraint. As they are free to decide whether to enter the transit zone, it is also up to their own decision whether to leave. The only restriction in this regard is that they cannot enter the territory of Hungary and thus that of the Schengen zone until their request has been judged in their favour. Applicants therefore volunteer – based on the information they receive at the entry into the transit zone – to wait in the area determined by the asylum authority, and therefore decide themselves on such a restriction of their freedom of movement. Both the Asylum

Procedure Directive and the Reception Directive allows Member States to provide that applicants are required to report to the competent authorities or to appear in front of them in person and they may decide on their place of residence.

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

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

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

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

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

Criminalising homelessness

(57) In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe's Commissioner for Human Rights indicated his concern at measures taken to prohibit rough sleeping and the construction of huts and shacks, which have widely been described as criminalising homelessness in practice. The Commissioner urged the Hungarian authorities to investigate reported cases of forced evictions without alternative solutions and of children being taken away from their families on the grounds of poor socio-economic conditions. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about state and local legislation, based on the Fourth Amendment to the Fundamental Law, which designates many public areas as out-of-bounds for "sleeping rough" and effectively punishes homelessness.

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

The Fundamental Law declares the provision of possibilities for a dignified living as a goal of the state. To reach this goal, the state shall assist, to the biggest feasible extent possible, in the efforts to avoid and diminish homelessness, as well as the efforts to provide basic liveable conditions. In accordance with this, the state and the local governments seek to provide accommodation for everyone without shelter. The Fundamental Law aims to establish a balance between residing in a public area, exercising the right of freedom of movement and the protection of the areas of prioritised public interest which need to be guaranteed by the state. Therefore, in connection with the provision of possibilities for a dignified living, for the sake of the order, safety and health of the public as well as the protection of cultural values, residing in a public area can be deemed unacceptable, thus illegal. It is a warranty rule that qualifying residing in a public area as illegal can only happen if it is hindering the realization of the established goals; furthermore, the qualification can only apply to specific areas of public property which are defined by law or by regulation issued by the local government. Whether the legislation which aims to clarify the declarations of the Fundamental Law is complying with constitutional principles (proportionality, exclusion of arbitrary application of the law, requirements of legislation by delegated act, etc.) is to be assessed by the Constitutional Court or the Curia in regular procedures, instances of which have already taken place.

It is worth pointing out that Europe-wide the prohibition of residing in public areas is not unique to Hungary; additionally, it is a common internationally accepted practice that homeless people are not allowed in certain public areas. For example in Belgium it is forbidden by law to pitch a tent in inhabited or urban areas for the purpose of residing in them and similar restrictive measure are in use in the Czech Republic as well.

Non-compliance with the European Social Charter

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

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

In Hungary Act XCIII of 1993 on Labour Safety lays down the detailed rules on establishing the personnel, material and organizational conditions for occupational safety and occupational health in the interest of protecting the health and ability to work of persons in organized employment and consequently improving their working conditions, thereby preventing accidents at work and occupational diseases. The Act also defines the responsibilities, rights and obligations of the State, employers and employees in this regard. In order to ensure that all persons working benefit from the right to health and safety at work, the Labour Safety Act states (Section 84 Paragraph 1) that the occupational safety and health authority shall be empowered to hold inspections at any workplaces, without a special permit. Regarding the atypical forms of employment, especially in the case of teleworking, the Labour Safety Act stipulates (Section 86/A Paragraph 7) that the occupational safety and health board shall conduct the inspection only on workdays, between 8 a.m. and 8 p.m., which guarantees respect for private and family life and home. The occupational safety and health administration shall notify the employer and the employee at least three working days in advance concerning the inspection. The employer shall obtain the employee's consent for admission into the designated work place for this purpose before the commencement of the inspection.

The Fundamental Law of Hungary provides that "Hungary shall endeavour to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance laid down in the relevant legislation in the case of maternity, illness or disability, or if he or she becomes a widow(er) or orphan, or loses employment due to circumstances beyond his or her control."

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

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

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

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

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

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

As of January 2012, the then existing disability pension for those who were below retirement age, the regular social annuity and temporary invalidity annuity were transformed into health insurance benefits (benefits for persons with changed working capacity), whereas disability pensions for those who were above retirement age were transformed into old-age pensions. The aim of the reform was not the reduction of expenditures or to limit inflow into disability benefit but to create –in place of the former passive pension system - a unified, transparent system of benefits related to changed working capacity, where the emphasis is put on the remaining capabilities and

rehabilitation, taking into account medical, employment and social aspects as well. All these measures contribute to end benefit dependency and to ensure equal opportunities, create prospects for valuable work, self-sustainability and raise living standards. The amount of benefit is based on former income of a person entitled to benefits for persons with reduced working capacity and is adjusted to the state of health, including the level of remaining work ability. According to this, persons who have a better health status and are more likely to find employment in the labour market may find lower benefits than those whose health condition are lower or have fewer opportunities for rehabilitation. The sum of the benefit is higher when the primary function of the benefit is replacing income. In cases where the main function of the benefit is support for labour market integration, strengthening and completing existing skills, the amount of cash benefits are lower. The benefits are regularly increased. Annual adjustments of benefits are made in January according to the predicted increase in consumer prices (inflation). Regarding the vulnerability of the target group, it is important in procedures related to benefits for persons with changed working capacity to inspect continuously measures capable to strengthen social safety, however the evaluation of the reform affecting the entire supply system will be realized subsequently in relevant EU financed project.

Adequacy and coverage of social assistance and unemployment benefits

(59) In its Recommendation of 11 July 2017 on the 2017 National Reform Programme of Hungary and delivering a Council opinion on the 2017 Convergence Programme of Hungary, the Council indicated that the adequacy and coverage of social assistance and unemployment benefits is limited, that the duration of unemployment benefits is still the lowest in the Union at 3 months, below the average time required by jobseekers to find employment, and that the 2015 social assistance reform streamlined the benefits system but does not seem to have guaranteed a uniform and minimally adequate living standard for those in need.

A key general priority for the Hungarian Government is increasing economic growth and employment, in addition to strengthening competitiveness. We believe that sustainable economic growth contributes to the achievement of social well-being. The increase of well-being and emergence from poverty and social exclusion and the prevention of their reproduction are primarily enabled by employment, activation and enduring labour market integration. The Hungarian Government has set the establishment of a work-based society as an objective; which means that the primary source of living of the working age population should be income earned from work instead of social assistance.

It is a positive development that for the first time the European Commission has recognized that in the framework of public employment substantial steps have been taken to encourage a transition to the primary labour market, furthermore public employment has a significant role in social policy as well. We don't agree with the assessment which states that the following its 2015 reform, the social benefits system still can't provide those in need with their basic necessities. In our opinion the relevant services of the system guarantee a minimal income for people in their active years. Public employment plays an important role in social policy especially in the most disadvantaged areas of the country. Hungary has implemented crucial acts to diminish the trap-like effect of the dependence on welfare in these areas, for example, the public employment program is devoted to achieving this as well.

The modifications of Act III of 1993 about social administration and social services which entered into force on 1st March 2015 lead to a more transparent welfare system, and to the municipalities getting a chance to create a system of provisions which better corresponds to the local needs - they can determine the types and checklists for the services under their jurisdiction, therefore, they can regulate further forms of care tailored to the need of the local population.