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DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO HUNGARY FROM 4 TO 8 FEBRUARY 2019

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SUMMARY

Commissioner Dunja Mijatović and her team visited Hungary from 4 to 8 February 2019. During the visit, the Commissioner held discussions with the Hungarian authorities, the judiciary, national human rights structures and civil society. This report focuses on several interconnected issues raised during the visit: the human rights of asylum seekers and refugees, human rights defenders and civil society, independence of the judiciary and gender equality and women's rights.

Human rights of asylum seekers and refugees

The Commissioner finds that the stance against immigration and asylum seekers adopted by the government since 2015 has resulted in a legislative framework which undermines the reception of asylum seekers and the integration of recognised refugees as prescribed by international human rights obligations. Under the "crisis situation due to mass immigration", decreed by the government in September 2015 and still in force despite a greatly diminished number of asylum seekers, special legislation applies in the treatment of asylum seekers in violation of European and international asylum law. The Commissioner calls on the government to repeal the decreed "crisis situation" which is not justified by the number of asylum seekers currently entering Hungary and the EU as reported by the European Asylum Support Office. The authorities should also review the legislation applicable under regular circumstances to bring it into line with Hungary's human rights obligations. In particular, she urges the authorities to refrain from using anti-migrant rhetoric and continuous campaigns which fan xenophobic attitudes.

The Commissioner observes that it is extremely difficult to access the refugee determination procedure in Hungary. All asylum seekers, with the exception of unaccompanied minors under 14 years, can only exercise their right to apply for international protection in two designated transit zones along the fenced Hungarian-Serbian border where very few persons are allowed to enter. Foreign nationals in an irregular situation, including asylum seekers, apprehended anywhere on Hungarian territory are forcibly removed towards the Serbian border and risk *refoulement* as they are unable to access asylum procedures or challenge their expulsion. The Commissioner urges the government to extend access to the international protection procedure and to ensure that the protection needs of all asylum seekers present on the territory can be assessed. She is deeply concerned about repeated reports of excessive use of violence by the police during forcible removals and calls on the authorities to carry out effective investigations into such allegations.

The Commissioner is concerned that the newly adopted and contested inadmissibility ground for asylum has resulted in practically systematic rejection of asylum applications and that the applicants cannot access an effective remedy to challenge the decisions. She urges the government to repeal the new inadmissibility ground and provide an effective remedy with suspensive effect on appeal. The Commissioner considers that the systematic detention of asylum seekers in the transit zones without a time limit and adequate legal basis raises serious issues about the arbitrary nature of the detention. She calls on the authorities to discontinue the practice and apply alternatives to detention and stresses that the detention of asylum-seeking children under 18 years is a child rights violation. The Commissioner is alarmed that many asylum seekers detained in the transit zones under an alien policing procedure have been deprived of food during their detention and calls on the authorities to put an immediate end to such inhumane treatment. There have been eight additional cases, followed by interim measures by the European Court of Human Rights, since the Commissioner's visit.

Human rights defenders and civil society

Since 2017, Hungary has adopted specific legislation imposing new restrictions on civil society activities, notably the 2017 Act on the transparency of organisations receiving foreign funding, the 2018 "Stop Soros" package and the 2018 Act on special immigration tax. The Commissioner stresses that the legislative measures have stigmatised and criminalised civil society activities which should be considered fully legitimate in a democratic society. They exercise a continuous chilling effect on NGOs. Some of the legal provisions are exceptionally vague, arbitrary and not implemented in practice. The Commissioner is particularly concerned that NGOs which help asylum seekers and migrants to claim their human rights have been targeted in a discriminatory way. The sanctions associated with the legislation have the potential to incur devastating consequences for the work of human rights defenders and NGOs in Hungary. Rather than serving a legitimate aim, the legislation appears to

target civil society organisations which are critical of the government. The Commissioner calls on the authorities to repeal the harmful legislation.

The Commissioner observes that civil society organisations have also been subject to intimidation, stigmatisation and smear campaigns. Intimidating statements have been made by the authorities as well. Human rights-based NGOs are rarely consulted by the authorities or granted government funding. The Commissioner urges the government to reverse its alarming course in relation to human rights defenders and NGOs which seriously affects the protection of human rights in the country. She calls on the authorities to refrain from taking any measures penalising and stigmatising defenders and civil society activists and to create an enabling environment conducive to their work in line with human rights standards. The government should recognise and support the critical and constructive role civil society plays in a pluralist democracy and draw on the valuable expertise of human rights defenders in public decision-making. The Commissioner also urges the authorities to ensure human rights defenders' opportunities to access public funding following transparent and non-discriminatory criteria.

Independence of the judiciary

The Commissioner notes that a series of reforms of the judiciary in Hungary during the 2010s have drawn concern about their effects on the independence of the judiciary. In the ordinary court system, questions about the effectiveness of the supervision exercised by the National Judicial Council over the President of the National Judicial Office have been raised by the recent anomalies observed in the relationship between these judicial institutions with reference to appointment procedures. The Commissioner stresses that it is essential for the rule of law that the checks and balances established for the exercise of the extensive powers of the President of the National Judicial Office be fully observed. She also expresses concern about the risk of politicisation of the judiciary in terms of its appearance of impartiality because of the central role of the Parliament in appointing the most senior judges and the interpretative guidance given to judges through legislative acts. The Commissioner recommends that the authorities consider further safeguards such as measures strengthening the collective role of the judiciary in appointments or a more consensual manner of nominating judges to the Constitutional Court.

Hungary is in the process of setting up a new separate system of administrative courts which will rule on cases related to the public administration. The Commissioner issued a statement on the topic on 14 December 2018 and remains concerned about the pivotal role of the Minister of Justice in establishing and running the future administrative court system and the consequently weak powers attributed to judicial self-governance. While welcoming the recent amendments made to the original legislation on the administrative courts in response to the Opinion of the Venice Commission, the Commissioner is not persuaded that the amendments are sufficient in addressing the serious concerns identified by the Venice Commission. She stresses that the powers of the Minister in terms of appointments should be counterbalanced with the effective exercise of judicial self-governance by the Personnel Council of the National Administrative Judicial Council. The need for such safeguards is also underscored by increasing recruitment of administrative judges from the public administration. Judicial self-governance should be strengthened when appointing judges during the transitional period as well.

Gender equality and women's rights

The Commissioner finds that Hungary is backsliding in gender equality and women's rights. It occupies, with 50.8 points out of 100, the second last place in the 2017 Gender Equality Index of the European Institute for Gender Equality and has gone down two positions since 2005. The political representation of women is strikingly low. In government policy, women's issues are closely associated with family affairs and the authorities have ceased implementing a specific strategy on gender equality. The Commissioner points out that although the government seeks to empower women through labour market participation, the notable focus of the newly adopted family protection action plan lies on women as bearers of many children. She stresses that this carries the risk of reinforcing gender stereotypes which are highly visible in public discourse and of instrumentalising women as a means of implementing the government's demographic and immigration policies. The Commissioner observes that women's rights organisations in Hungary face serious difficulties in continuing their activities to provide services, raise awareness, and advocate legislative and policy changes.

The Commissioner points out that the realisation of gender equality in Hungary will require rigorous and focused efforts to promote women's human rights. She welcomes the government's intention to prepare a new national strategy on gender equality. The strategy should identify and address the main issues related to gender equality and women's rights in close consultation with all stakeholders, including women's rights defenders. The Commissioner urges the authorities to address the overwhelmingly unequal representation of women in political

and public life through positive measures and to take determined action to eradicate gender stereotypes in educational materials. The authorities should condemn sexism and carry out awareness-raising initiatives questioning gender stereotypes.

The Commissioner observes that violence against women remains a serious problem in Hungary. She urges the authorities to ratify the Istanbul Convention which would form an essential step towards a comprehensive response to violence against women and girls. While welcoming the authorities' efforts to expand support services for victims of violence, the Commissioner points out that women's access to justice is compromised by the conditions attached to the penal measures against violence, low levels of reporting, and the lack of understanding by many judges and police officers of the realities of gender-based violence. The Commissioner urges the Hungarian authorities to strengthen training efforts about violence against women among the judiciary, prosecutors and the police. Broader awareness raising among the public is also necessary to change attitudes and encourage victims of violence to seek assistance and report violence without stigmatisation. The Commissioner encourages the authorities to include absence of consent explicitly in the definition of rape in the Criminal Code and to carry out systematic data collection on violence against women.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Hungary from 4 to 8 February 2019.[1] The visit focused on the following topics: the human rights of asylum seekers and refugees (chapter 1 of this report), human rights defenders and civil society (chapter 2), independence of the judiciary (chapter 3) and gender equality and women's rights (chapter 4).

2. During her visit, the Commissioner met with the Deputy Prime Minister and Minister of Interior, Sándor Pintér; the Minister of Justice, László Trócsányi; the Minister of State for International Affairs in the Ministry of Human Capacities, Orsolya Pacsay-Tomassich; and the Minister of State for EU Relations in the Prime Minister's Office, Judit Varga. She also met the President of the Curia, Péter Darák; the President of the Constitutional Court, Tamás Sulyok; the Commissioner for Fundamental Rights, László Székely; the President of the Equal Treatment Authority, Ágnes Honecz; the Head of the Hungarian Council of Europe Parliamentary Assembly Delegation, Zsolt Németh; and representatives of civil society.

3. The Commissioner made field visits to the Hungarian Interchurch Aid shelter for women victims of violence in Budapest and the home for unaccompanied children in the Károly István Children's Centre in Fót.

4. The Commissioner wishes to thank the Hungarian authorities in Strasbourg and Budapest for their assistance in organising and facilitating the visit and for providing her with additional information following the visit. She expresses her gratitude to all her interlocutors in Hungary for sharing with her their positions, knowledge and insights.[2]

1 HUMAN RIGHTS OF ASYLUM SEEKERS AND REFUGEES

5. Providing international protection to people fleeing persecution is a shared value and a principle of human rights and humanitarian law. It is enshrined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The right to seek and enjoy asylum and the protection from forcible return (*non-refoulement*) are also underpinned by human rights provisions on the right to life, the prohibition of torture and inhuman treatment, and the prohibition of collective expulsions of foreign nationals in the European Convention on Human Rights (ECHR, Articles 2 and 3 and Protocol no. 4). The common European asylum system developed by the EU on the basis of the 1951 Convention includes standards on the reception of asylum seekers, qualification for refugee status and common asylum procedures.[3]

6. Further to increased arrivals of asylum seekers and immigrants in 2015, the Hungarian government decreed a "crisis situation due to mass immigration" on 15 September 2015 which is still in force after regular extensions by the authorities, currently until 7 September 2019. The "crisis situation" has not been lifted even though the number of asylum applications has decreased from 177,135 in 2015 to 671 in 2018.[4] In 2018, overall asylum figures in EU countries returned to their 2014 level.[5] During the visit, the Hungarian authorities upheld their position by indicating that the current number of asylum applications continued to justify the maintenance of the "crisis situation".

7. The Fundamental Law of Hungary includes provisions on the right of refugees to asylum and protection from *refoulement* (Article XIV). However, the Seventh Amendment to the Hungarian Fundamental Law, adopted on 20 June 2018 by the Parliament, included a new provision in the beginning of Article XIV which states: "No alien population shall be settled in Hungary" (Article XIV (1)). The constitutional amendment also included a provision which denies asylum to a foreign national who "arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution" (Article XIV (4)).

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[1] During her visit, the Commissioner was accompanied by Claudia Lam, Deputy to the Director of her Office *a.i.*, and Lauri Sivonen, Adviser.
[2] This report was finalised on 25 April 2019.
[3] EU Directives 2013/33/EU, 2011/95/EU and 2013/32/EU.
[4] The figures on asylum in Hungary in this chapter have been provided by the Hungarian authorities unless noted otherwise.
[5] In 2018, EU+ countries (i.e. EU countries, Norway and Switzerland) recorded 634,700 asylum applications. The figure for 2014 was 641,000. EASO. EU+ asylum trends 2018 overview. 13 February 2019.

8. The Commissioner's predecessor raised concerns about access to the asylum procedure, the detention of asylum seekers, the risk of *refoulement* and xenophobic rhetoric in his ad hoc visit statement on 27 June 2015, and issued a statement on 8 March 2017 expressing dismay at the newly adopted legislation authorising automatic detention of all asylum seekers, including families with children and unaccompanied minors from the age of 14, for the entire length of the asylum procedure.

9. This chapter focuses on the following issues related to the human rights of asylum seekers and refugees in Hungary: inaccessibility of refugee protection; forcible removals and ill-treatment; detention of asylum seekers; treatment of unaccompanied minors under 14 years; and xenophobia and lack of integration measures.

1.1 INACCESSIBILITY OF REFUGEE PROTECTION

10. The Commissioner points out that currently, it is very difficult to access refugee protection in Hungary. Very few asylum seekers are able to exercise their right to apply for international protection. Since 2015, new laws and policies have come into effect restricting access to the territory and asylum procedures. In August and September 2015, legislation entered into force creating the legal basis for the construction of a fence on the Hungarian-Serbian border (Act CXXVII of 2015) together with legislative amendments criminalising irregular entry and damage to the fence (Act CXL of 2015). Serbia was also designated a safe third country by government decree (191/2015 (VII.21.)). The authorities informed the Commissioner that they considered all EU countries and candidate countries to EU membership as safe countries in this respect.

11. A legislative package (Act XX of 2017) with reference to the "crisis situation due to mass immigration" came into force on 28 March 2017. During the "crisis situation" special rules apply to third-country nationals irregularly entering or staying in Hungary and to those seeking asylum. Many regular provisions of the Asylum Act LXXX of 2007 are suspended. The submission of asylum applications is limited to the two border transit zones of Röszke and Tompa along the border with Serbia and the police are empowered to immediately escort third country nationals in an irregular situation apprehended anywhere on Hungarian territory to the external side of the border fence facing Serbia. The deadlines to seek judicial review against inadmissibility decisions and rejections of asylum applications decided in accelerated procedures are shortened to 3 days only.

12. On 20 June 2018, the Parliament adopted Act VI of 2018 on amending certain acts relating to measures to combat unlawful migration (in its draft form known as the "Stop Soros" package) and the Seventh Amendment to the Fundamental Law. As a result, a new inadmissibility ground, a hybrid of the concepts of safe third country and first country of asylum, has been applied since mid-August 2018 (Section 51(2) f) of the Asylum Act). An asylum application is considered inadmissible if the applicant arrived through a country where he/she was not exposed to persecution or to serious harm, or if an adequate level of protection was available in the country through which the applicant had arrived in Hungary.

13. The Commissioner notes that in the first place, the number of asylum seekers currently allowed to enter the transit zones to submit an application is extremely low. In 2018, the authorities usually admitted only around 20 asylum seekers per month in each transit zone.[6] The Commissioner observes that since Hungary regards Serbia as a safe third country[7] and as an asylum seeker can only submit an application in the transit zones along the Serbian border, the new inadmissibility ground has made it practically impossible to obtain refugee status in Hungary. The number of persons granted refugee status in Hungary in late 2018 after the implementation of the new inadmissibility ground was: two in September, zero in October, three in November, and one in December, followed by one in January 2019. The corresponding number of persons given subsidiary protection in 2018 was: two in September, one in October, four in November, three in December followed by one in January 2019.[8]

14. The Commissioner considers that asylum seekers in Hungary do not have access to effective judicial remedy on admissibility decisions which would meet adequate procedural safeguards. Asylum applicants have only three days to substantiate their claim against the initial presumption of inadmissibility by the asylum authorities and

[6] The notable exception was January 2018 when 88 applications were submitted in each transit zone. The total number of asylum applications submitted in Hungary in 2018 was 671.
[7] UNHCR has criticised the designation of Serbia as a safe third country by Hungary. See, UNHCR. Hungary As a Country of Asylum. May 2016.
[8] The total number of persons granted refugee status in Hungary in 2018 was 68 and the number of those granted subsidiary protection was 281.

three days to submit a court appeal against a rejection decision by the authorities. The Court must deliver a judgment within eight days. The judicial appeal does not have an automatic suspensive effect on the implementation of the combined rejection and expulsion decision although the applicant may request the reviewing administrative court to order such an effect according to Act I of 2017 on administrative judicial procedural rules. The Commissioner stresses that in line with European human rights standards, Hungary is obliged to guarantee the right to an effective remedy which should usually include an automatic suspensive effect and independent and rigorous scrutiny of the claim to ensure that an individual will not face treatment contrary to Articles 2 and 3 of the ECHR if he/she were to be expelled.[9]

15. In August 2018, the Budapest Administrative and Labour Court submitted a request for a preliminary ruling by the Court of Justice of the EU (CJEU) regarding the European law compatibility of the new inadmissibility ground and the eight-day timeframe given to courts to decide on appeals. On 19 July 2018, the European Commission launched an infringement procedure concerning the new inadmissibility ground, among other issues, with reference to the EU Asylum Procedures Directive, the Asylum Qualifications Directive and the EU Charter of Fundamental Rights.[10] Notwithstanding serious doubts about the legality of the new inadmissibility criteria, the Commissioner points out that the application of safe third country or safe country of asylum concepts should always be rebuttable, and that states should not use them to circumvent an individual assessment of the risks of return to such a country.

1.2 FORCIBLE REMOVALS AND ILL-TREATMENT

16. As noted above, under the "crisis situation" still in force, the police have the duty to escort third country nationals in an irregular situation apprehended anywhere in Hungary, including those wishing to apply for asylum, towards the external side of the border fence facing Serbia. In 2018, 3,951 persons without the right of stay in Hungary were escorted to the Hungarian-Serbian border from the 8-kilometre border zone alone. The figure for 2017 was 8,540. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has concluded that the foreign nationals who have entered Hungary irregularly and have been apprehended by the police are subject to *de facto* automatic forcible removal to Serbia with the exception of minors below the age of 14.[11] The authorities claim that the foreign nationals are not expelled as a few metres of Hungarian territory remain beyond the border fence.

17. The CPT has pointed out that in the context of the removal, there is no procedure in place for proper identification and registration and there are no legal remedies ensuring effective protection against the expulsion as such. It has also stressed that it is unrealistic that foreign nationals subject to removal are able to submit an asylum application in the transit zones as access to the zones is extremely limited.[12] The Special Representative of the Secretary General of the Council of Europe on migration and refugees has stated that migrants and refugees who have entered Hungary irregularly do not have a real opportunity to express their intention to seek asylum in Hungarian territory and to access the asylum procedure.[13]

18. The Commissioner observes that the removals restrict asylum seekers' access to asylum determination procedures and expose them to the risk of *refoulement*. The CPT has stressed that the forcible removals do not provide sufficient protection against *refoulement*, including chain *refoulement*, prohibited by the 1951 Refugee Convention (Article 33(1)) and Article 3 of the ECHR. Foreign nationals subject to removal should have access to a procedure which involves an individual assessment of the risk of ill-treatment following expulsion, on the basis of an objective and independent analysis of the human rights situation in the countries concerned. The CPT has recommended that the Hungarian authorities put an end to the practice of forcible removals to

[9] See, *Jabari* v. *Turkey*, no 40035/98, Judgment, 11 July 2000; *Diallo* v. *the Czech Republic*, no 20493/07, Judgment, 23 June 2011; and *De Souza Ribeiro v. France*, no 22689/07, Grand Chamber Judgment, 13 December 2012.
[10] European Commission press release. Migration and Asylum: Commission takes further steps in infringement procedures against Hungary. 19 July 2018; European Commission press release. Asylum: Commission takes next steps in infringement procedure against Hungary for criminalising activities in support of asylum applicants. 24 January 2019.
[11] CPT. Report on the visit to Hungary from 20 to 26 October 2017. 18 September 2018, CPT/Inf (2018)42.
[12] *Ibid*.
[13] Special Representative of the Secretary General on migration and refugees. Report of the fact-finding mission to Serbia and two transit zones in Hungary, 12-16 June 2017. 13 October 2017. SG/Inf(2017)33.

the Serbian side of the border and take the necessary steps to ensure that all foreign nationals arriving at the border or present on the territory of Hungary are protected against the risk of *refoulement*.[14]

19. The Commissioner also notes that the lack of proper identification of the persons removed and their inability to challenge the expulsion contravene the prohibition of collective expulsion under Protocol 4 of the ECHR (Article 4). The Commissioner stresses that the right to protection from collective expulsion must be respected regardless of whether an individual has submitted, or intends to submit, an asylum application.

20. The Commissioner is deeply concerned about repeated and consistent allegations, highlighted by UNHCR and the CPT, of excessive use of force and violence by the Hungarian police during forcible removals. Alleged ill-treatment by the police includes kicks, punches and baton blows to various parts of the body, also to individuals who are made to lie down on the ground, as well as of spraying pepper spray directly into the face. In addition, the allegations describe police officers releasing unmuzzled service dogs to bite people. Such reports were supported by medical evidence gathered by the CPT delegation's physician during the CPT visit to Hungary in 2017. In December 2018, the NGO Save the Children reported similar violence perpetrated by the Hungarian police against children. Violence against children was also reported to the Special Representative of the Secretary General of the Council of Europe on migration and refugees in 2017. In most cases investigations into the allegations have been closed due to insufficient information or lack of evidence.[15]

21. The CPT has recommended that the Hungarian authorities take steps to ensure that all police officers are given a clear and firm message, emanating from the highest political level, that any form of ill-treatment of detained persons as well as any tolerance of ill-treatment by superiors, is unacceptable and will be punished accordingly. In its concluding observations of 9 May 2018, the UN Human Rights Committee noted with concern reports that removals of foreign nationals in an irregular situation in Hungary had been applied indiscriminately and that individuals subjected to this measure had very limited opportunity to submit an asylum application or right to appeal. It also referred to 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.[16]

1.3 DETENTION OF ASYLUM SEEKERS

22. The Commissioner notes that during the "crisis situation", all asylum seekers are automatically placed in the transit zones until a final decision on their application is given.[17] Only unaccompanied children aged less than 14 years stay elsewhere (see the next section below). The asylum authority issues an interim decision to this effect designating the transit zone as a "place of accommodation" for the asylum seeker. No detention order is given and no effective legal remedy is available for asylum applicants to challenge their *de facto* detention before the court. The interim decision can only be challenged through an appeal on the subsequent asylum decision given by the asylum authority. There is no statutory time limit, nor any alternatives, to the confinement in the transit zones. The government contends that confinement in the transit zones is not detention as the asylum seekers are free to leave the transit zone towards the Serbian border at any time. The Commissioner stresses that while this is the case, the asylum proceedings of the individuals concerned are discontinued if they leave the transit zone depriving them of exercising their right to apply for asylum.

23. The Commissioner considers that the systematic confinement of asylum seekers in the transit zones without a time limit and effective access to remedy under an environment described by the CPT as "carceral" qualifies as detention and that Hungary lacks an adequate legal basis for the deprivation of liberty of asylum seekers under

[14] CPT. Report on the visit to Hungary from 20 to 26 October 2017. 18 September 2018, CPT/Inf (2018)42.
[15] UNHCR press release. UNHCR urges suspension of transfers of asylum seekers to Hungary under Dublin". 10 April 2017; CPT. Report on the visit to Hungary from 20 to 26 October 2017. 18 September 2018, CPT/Inf (2018)42. FRA. Migration: Key Fundamental Rights Concerns 1.11.2018-31.12.2018; Save the Children media release. Hundreds of children report police violence at EU borders. 24 December 2018; Special Representative of the Secretary General on migration and refugees. Report of the fact-finding mission to Serbia and two transit zones in Hungary, 12-16 June 2017. 13 October 2017. SG/Inf(2017)33.
[16] CPT. Report on the visit to Hungary from 20 to 26 October 2017. 18 September 2018, CPT/Inf (2018)42; UN Human Rights Committee. Concluding observations on the sixth periodic report of Hungary. 9 May 2018, CCPR/C/HUN/CO/6.
[17] On 1 February 2019, 83 people (including 43 children) were present in the Röszke transit zone and 89 people (including 51 children) in Tompa.

the "crisis situation".[18] The combination of these factors raises serious questions about due process and the arbitrary nature of the detention.

24. The Commissioner recalls that on 18 April 2018, the Grand Chamber of the European Court of Human Rights held an open hearing in the case of *Ilias and Ahmed v. Hungary*. It concerned the detention of two Bangladeshi asylum seekers in the transit zones for 23 days in 2015 and their removal from Hungary to Serbia. The hearing followed the Chamber's unanimous ruling of 14 March 2017, which is not final because of the case's referral to the Grand Chamber, stating that the *de facto* detention of the two asylum seekers in the transit zone had been unlawful, that there had been no effective remedies available to them to complain about their detention, and that the applicants would not have been able to leave the transit zone without forfeiting their asylum claims and running the risk of *refoulement*. This case and several other cases related to detention in the transit zones are still pending before the Court.[19]

25. In its concluding observations of 9 May 2018, the UN Human Rights Committee expressed concern that the automatic removal to transit zones of asylum applicants for the duration of their asylum procedure did not meet international legal standards because 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 claims that restrictions on personal liberty had been used as a general deterrent against unlawful entry rather than in response to an individualised determination of risk.[20]

26. The Commissioner observes that the UN Working Group on Arbitrary Detention was compelled to suspend its visit to Hungary in November 2018 after it had been denied access to the Röszke transit zone to follow up on its 2013 recommendations. Members of the Group pointed out that holding migrants in the transit zones constituted deprivation of liberty under international law and that they had received credible reports concerning the lack of safeguards against arbitrary detention in these facilities. During the visit, the Commissioner was informed that while non-governmental attorneys were able to access their clients in the transit zones after the signature of the power of attorney, other NGO staff were not able to access the area. In addition, the Commissioner notes the concern expressed by the CPT that after its 2017 visit to Hungary the authorities had refrained from entering into a meaningful dialogue with the CPT and had simply denied the delegation's findings.[21]

27. The Commissioner is alarmed that many asylum seekers, including repeat asylum applicants, detained in the transit zones under an alien policing procedure have been deprived of food during their detention. Such *de facto* detention takes place with reference to the Act II of 2007 on the entry and stay of third country nationals. The government decree on its implementation does not require the provision of food by the asylum authorities to those subject to an alien policing procedure in the transit zones. In August 2018, five applications were made to the European Court of Human Rights requesting urgent interim measures under Rule 39 of the Rules of Court to stop the deprivation of food. The requests were granted by the Court and the provision of food was resumed by the authorities. The Commissioner is deeply concerned that eight similar requests for urgent interim measures were again made and granted in February, March and April in 2019. She stresses that Hungary has an obligation under European and international human rights norms to treat all individuals detained in the transit zones humanely and with dignity.[22]

28. Children with families and unaccompanied children of and above 14 years of age are systematically detained in the transit zones for the entire duration of the asylum procedure during the "crisis situation". Unaccompanied

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[18] CPT. Report on the visit to Hungary from 20 to 26 October 2017. 18 September 2018, CPT/Inf (2018)42.

[19] *Ilias and Ahmed v. Hungary*, no. 47287/15, Judgment, 14 March 2017, referred to the Grand Chamber on 18 September 2017.

[20] UN Human Rights Committee. Concluding observations on the sixth periodic report of Hungary. 9 May 2018, CCPR/C/HUN/CO/6.

[21] UN OHCHR press release. UN human rights experts suspend Hungary visit after access denied. 15 November 2018; CPT. Report on the visit to Hungary from 20 to 26 October 2017. 18 September 2018, CPT/Inf (2018)42.

[22] *S.A. and Others v. Hungary*, no. 37915/18; *E.M. v. Hungary*, no. 39552/18; *M.R. v. Hungary*, no 37859/18; *Q.M. v. Hungary 37915/18*; *H.T. v. Hungary*, no. 38900/18; *Azeez and Others v. Hungary*, no. 8622/19; *Haji Hassan and Others v. Hungary*, no. 9484/19; *Lali and Others v. Hungary*, no. 13899/19; *Omar and Others v. Hungary*, no. 15654/19; *Arab and Others v. Hungary*, no. 16008/19; *Sultani v. Hungary*, no. 17089/19; *M.D.A. and Others v. Hungary*, no. 16217/19; *Padzahr v. Hungary*, no. 18581/19.

children detained in the transit zones are appointed with a temporary guardian to represent them during the asylum procedure. Under regular circumstances, the Asylum Act prohibits the detention of unaccompanied minors, and families with children can only be detained as a last resort for up to 30 days. The Commissioner stresses that the UN Committee on the Rights of the Child has found that the detention of asylum-seeking or migrant children under 18 years of age because of their or their parents' immigration status constitutes a child rights violation and contravenes the principle of the best interests of the child under the Convention on the Rights of the Child.[23]

29. The CPT has pointed out that the highly carceral environment of the transit zones with omnipresent rolls of razor blade wire cannot be considered adequate for the accommodation of asylum seekers and even less so for the accommodation of families and children. It has also expressed concern about the quality of age assessments which are performed in the transit zones. In July 2017, a delegation of the Council of Europe Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee) visited the transit zones and issued a call to treat all persons under the age of 18 years as children, 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.[24]

1.4 TREATMENT OF UNACCOMPANIED MINORS UNDER 14 YEARS

30. Asylum-seeking unaccompanied minors under 14 years of age are accommodated in the Károly István Children's Centre in Fót, near Budapest. Some older unaccompanied minors who have been granted refugee status also stay in the facility. The home for unaccompanied children is one of three units at the centre and it operates under the Hungarian child protection system. The home has 34 places which can be supplemented by additional 96 places during the "crisis situation". During the Commissioner's visit to the home, nine unaccompanied minors were present. 38 children were counted absent after having left the facility without authorisation. Missing children are reported to the police and many of them are identified in other countries. In 2018, 90 children, most of them boys, had stayed in the home. 19 of them had been reunited with their families abroad.

31. The facility is situated in a leafy environment north of Budapest and operates an open-gate policy. A legal guardian is appointed to each unaccompanied child under 14 with an obligation of two meetings per month. The Commissioner met with the children staying in the home and discussed its functioning with the staff. She was impressed by their professionalism and the use of positive approaches in the reception and personal development of vulnerable young refugees. A multi-lingual team provides social assistance and inter-cultural mediation in the home. Health care and psycho-social support is available. The children go to different schools in Budapest using public transport. They can receive guests in the home. Although children often leave the home after a short stay, many of them have also chosen to remain in Hungary. Young adults who continue their studies in Hungary are allowed to stay in the centre until the age of 24. 30 children have received Hungarian citizenship on their majority.

32. The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) visited the home in December 2017 and noted the commendable efforts made to reduce the disappearance of unaccompanied children by increasing the number of family reunifications. GRETA urged the Hungarian authorities to take further steps to prevent disappearances by continuing to facilitate family reunification and by training staff, legal guardians and foster families about the protection of the best interests of the child.[25]

33. The Commissioner notes that Károly István Children's Centre is expected to close as part of a modernisation plan towards smaller, family-type facilities in the child protection system. During the visit the authorities

[23] Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. 16 November 2017. CMW/C/GC/4-CRC/C/GC/23.

[24] CPT. Report on the visit to Hungary from 20 to 26 October 2017. 18 September 2018, CPT/Inf (2018)42; Lanzarote Committee. Special report further to a visit to transit zones at the Serbian/Hungarian Border (5-7 July 2017). 30 January 2018, T-ES(2017)11_en final.

[25] GRETA. Report on Hungary. 27 April 2018. GRETA(2018)13.

informed the Commissioner that because the number of unaccompanied minors entering Hungary was unpredictable, an appropriate solution for replacing the current facility had not yet been found.

1.5 XENOPHOBIA AND LACK OF INTEGRATION MEASURES

34. The Commissioner is deeply concerned that the anti-immigrant stance adopted by the Hungarian government, reflected in constitutional and secondary legislation and the continuation of the "crisis situation due to mass immigration", is fuelling xenophobic attitudes, fear and hatred among the population. Recent surveys have demonstrated strong prejudice against refugees among Hungarians. 2016 research by the PEW Research Centre put Hungary on top of the surveyed European countries in negative attitudes towards refugees. This was also the case for unfavourable views of Muslims. Most recent asylum seekers in Hungary have come from majority-Muslim countries. According to a 2017 survey carried out by the social research institute Tárki, 60% of the population would allow no asylum seekers to enter Hungary.[26]

35. The Commissioner observes that the government's anti-immigrant rhetoric is also shaped around the distorted and manipulated image of the philanthropist George Soros as a "globalist" supporter of immigration. He has been subject to successive government-funded smear campaigns on billboards and media in Hungary. The Federation of Hungarian Jewish Congregations has pointed out that such campaigns against Soros have the potential to ignite antisemitism.[27]

36. The Commissioner points out that xenophobic rhetoric and attitudes also have a harmful effect on the integration of recognised refugees in Hungary. In addition, the government has discontinued support previously provided for the integration of refugees. Amendments to the Asylum Act which entered into force on 1 June 2016 terminated the integration support scheme introduced in 2013 and reduced the maximum stay in open reception facilities following recognition from 60 to 30 days. The eligibility period for free basic health care services was halved to 6 months. As a consequence, beneficiaries of international protection can face serious hardship upon leaving the reception facility although the authorities confirmed that refugees are eligible to mainstream social services and assistance in Hungary. Civil society organisations have stepped in to provide some assistance to refugees. However, calls for the EU funds previously made available to NGOs through the EU Asylum, Migration and Integration Fund were no longer opened to them by the authorities in 2018 resulting in the termination of the services provided at the end of June 2018. The Commissioner notes that the recent legislative measures affecting NGOs working on immigration issues have also had a chilling effect on their activities (see the following chapter on human rights defenders and civil society).

1.6 CONCLUSIONS AND RECOMMENDATIONS

37. The Commissioner observes that the notably negative stance against immigration and asylum seekers adopted by the Hungarian government since 2015 has resulted in a legislative framework which has undermined the reception and protection of asylum seekers and the integration of recognised refugees. Under the "crisis situation due to mass immigration", decreed by the government in September 2015 and still in force despite greatly diminished asylum numbers in Hungary and the European Union as a whole, extraordinary legislation and rules apply in the treatment of asylum seekers in violation of European and international law and human rights norms. The situation has already engendered many cases taken before the European Court of Human Rights and the CJEU which are still pending. The Commissioner urges the Hungarian government to repeal the decreed "crisis situation" and review the legislation applicable under regular circumstances to bring it into line with Hungary's human rights obligations.

38. The Commissioner stresses that people fleeing persecution or serious harm have the right to access individual determination of their international protection status. She urges the government to extend access for people seeking asylum in Hungary and discontinue the use of transit zones for this purpose. The authorities should ensure that all asylum seekers arriving at the border or present on the territory, including those in an irregular

[26] Pew Research Center. Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs. July 2016; Heinrich Böll Stiftung and Political Capital. Refugees, Asylum and Migration Issues in Hungary. 2017, pp. 15-16; and FRA. Periodic data collection on the migration situation in the EU, July and November 2018 Highlights.

[27] See, for example, Reuters. Hungarian Jews ask PM Orban to end 'bad dream' of anti-Semitism. 6 July 2017; and Reuters. Hungary's anti-Soros posters recall 'Europe's darkest hours': Soros' spokesman. 11 July 2017. Some of the campaign posters vilifying Soros have also had antisemitic writing scribbled on them by the public. BBC news. Hungary vilifies financier Soros with crude poster campaign. 10 July 2017.

situation, are protected against *refoulement* and have access to an individual and objective assessment of their protection needs.

39. The Commissioner is deeply concerned about repeated and consistent reports of excessive use of force and violence by the Hungarian police during forcible removals of foreign nationals. She calls on the Hungarian authorities to carry out effective investigations into allegations of ill-treatment and to remind police officers that the ill-treatment and tolerance of ill-treatment of detained persons are unacceptable and punishable.

40. The Commissioner notes that the implementation of the newly adopted and contested inadmissibility ground for asylum has resulted in practically systematic rejection of asylum applications by the asylum authorities. This does not satisfy the conditions for an individual and objective determination of protection needs. Furthermore, she is concerned that the applicants cannot access an effective remedy to challenge asylum decisions under the extremely accelerated procedure. The Commissioner urges the government to discontinue the application of the new inadmissibility ground and to ensure that an individual and objective assessment of the risks of return to the countries concerned is always made. She also calls on the authorities to cease implementing the extremely accelerated appeals procedure for asylum decisions and to establish an effective remedy to challenge rejection decisions with suspensive effect.

41. The Commissioner considers that the systematic detention of asylum seekers in the transit zones where they are subject to detention without a time limit, adequate legal basis and effective access to remedy raises serious issues about due process and the arbitrary nature of the detention. She urges the Hungarian authorities to stop the automatic detention of asylum seekers in the transit zones and ensure that alternatives to detention are established and made accessible.[28] The Commissioner stresses that the detention of asylum-seeking children under 18 years of age is not in their best interests under the UN Convention on the Rights of the Child. She calls on the authorities not to detain asylum-seeking children of any age and instead use reception or care facilities appropriate for children which also ensure family unity.

42. The Commissioner notes that asylum-seeking unaccompanied minors under 14 years are currently accommodated in the Károly István Children's Centre in Fót where she paid a visit. She encourages the authorities to build on and expand the use of the positive approaches applied by the staff in the children's home in the reception and personal development of vulnerable young refugees and to ensure continuity of standards in the possible future home. The Commissioner points out that all unaccompanied minors regardless of their age should benefit from accommodation and treatment adapted to their age and needs.

43. The Commissioner is alarmed that many asylum seekers and repeat applicants detained in the transit zones under an alien policing procedure have been deprived of food during their detention. The Commissioner calls on the authorities to stop such inhumane treatment immediately and to extend the benefit of the already issued interim measures under Rule 39 of the Rules of the European Court of Human Rights to all persons in a similar situation.

44. The Commissioner is deeply concerned that the anti-immigrant stance of the Hungarian government is fuelling xenophobic attitudes, fear and hatred among the population. The high level of xenophobic prejudice identified among the population in Hungary also has a harmful effect on the integration of recognised refugees in Hungary. The Commissioner calls on the government to refrain from using anti-immigrant rhetoric and campaigns which fan xenophobic prejudice. She also urges the authorities to facilitate the integration of beneficiaries of international protection and to provide support to their integration programmes and services aimed at improving their access to housing, health services, education and employment.

[28] Detailed guidance on alternatives to detention is provided in Council of Europe Steering Committee for Human Rights. Analysis of the legal and practical aspects of effective alternatives to detention in the context of migration. 26 January 2018. CDDH(2017)R88add2.

2 HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY

45. Human rights defenders and NGOs play a critical role in a democratic society in making national authorities accountable for the implementation of human rights. Defenders assist victims of human rights violations and help them gain access to means of redress and remedies. They are an essential resource for improving people's lives and the peaceful functioning of society. Civil society organisations should be able to pursue their public watchdog function in an environment conducive to their work, without undue interference in their internal functioning.

46. The specific international and European standards in this area, also applicable in Hungary, include the 1998 UN Declaration on human rights defenders, the Council of Europe Committee of Ministers Recommendation (CM/Rec(2007)14) on the legal status of non-governmental organisations in Europe, the 2008 Committee of Ministers Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, and the Committee of Ministers Recommendation (CM/Rec(2018)11) on the need to strengthen the protection and promotion of civil society space in Europe. According to the case-law of the European Court of Human Rights on the role of NGOs in a democratic society, when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press.[29]

47. Concerns about narrowing space for the legitimate activities of human rights defenders and civil society in Hungary have been expressed by international human rights monitors for several years already. In 2014, the Commissioner's predecessor criticised the additional administrative requirements and audits of NGOs, related to their funding from the Norwegian Civil Fund, carried out by the Hungarian Government Control Office. He urged the Hungarian authorities to refrain from any stigmatising statements and to ensure an enabling environment for NGOs.[30] In 2017, the UN Special Rapporteur on the situation of human rights defenders noted that human rights defenders in Hungary faced "enormous pressure due to public criticism, stigmatization in the media, unwarranted inspections and a reduction in State funding". The Rapporteur urged the government to widen and strengthen civil society space.[31] In his 2014 report on Hungary, the Commissioner's predecessor also expressed concern about limited space for media freedom and pluralism which remains an issue in the current context.[32]

48. Since 2017, Hungary has adopted specific legislation which imposes new restrictions on civil society activities, notably the 2017 Act on the transparency of organisations receiving foreign funding, the 2018 "Stop Soros" package and the 2018 Act on special immigration tax. Academic freedom has been affected by the 2017 amendment to the Act on national tertiary education. In addition to reviewing the legislative framework and its effects, the Commissioner will also highlight issues related to intimidation and stigmatisation, and the lack of government consultation and funding in the following sections of this chapter.

2.1 LEGISLATION RESTRICTING CIVIL SOCIETY SPACE

2.1.1 2017 ACT ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING FOREIGN FUNDING

49. The Commissioner perceives a continuity between the administrative requirements, audits and investigations of NGOs carried out previously by the authorities in relation to the funding received from Norwegian Civil Fund and the Act LXXVI of 2017 on the transparency of organisations receiving foreign funding, adopted by the Parliament on 13 June 2017. Under the act, associations and foundations annually receiving money or other assets from abroad in the amount of 7.2 million forints (around 23 000 euros) have the obligation to register with the regional court as an "organisation receiving foreign funding" and label themselves as such on their websites and on any press products and publications. The act does not apply to sports, religious or ethnic minority associations. This act continues to be in force and about 140 civil society organisations are currently

[29] See, for example, *Vides Aizsardzības Klubs v. Latvia*, no 57829/00, Judgment, 27 May 2004.
[30] Letter by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, to the Minister of the Prime Minister's Office of Hungary, 9 July 2014.
[31] UN Special Rapporteur on the situation of human rights defenders. Report on his mission to Hungary. 19 January 2017. A/HRC/34/52/Add.2, pp. 11 and 13.
[32] Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Hungary from 1 to 4 July 2014. 16 December 2014. CommDH(2014)21.

registered under the procedure. However, it appears that the punitive measures against non-compliance ranging from fines to the dissolution of an NGO are not applied.

50. The Commissioner considers legislation of this type stigmatising and discriminatory for NGOs and human rights defenders pursuing lawful activities. The act also introduced unnecessary administrative requirements. In his letter of 26 April 2017 to the Speaker of the Hungarian Parliament, the Commissioner's predecessor urged the Parliament to reject the draft act. He also regretted the apparent absence of any meaningful public consultation or debate preceding the introduction of the draft act to the Parliament.

51. In its June 2017 Opinion, the Venice Commission concluded that although the Parliament had made some useful amendments to the final act in comparison with the draft analysed, it remained concerned that the act would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination. It considered that the broad and even increased exceptions to the application of the act, coupled with the negative rhetoric that continued to surround the issue, cast doubts on the stated aim of ensuring transparency. Moreover, the obligation to publish the information that the association is foreign-funded on all press products was clearly disproportionate and unnecessary in a democratic society.[33]

52. On 7 December 2017, the EU Commission initiated an infringement procedure in the Court of Justice of the EU (CJEU) against Hungary regarding the act. The Commission contends that Hungary violates the right to freedom of association and the rights to protection of private life and personal data enshrined in the EU Charter of Fundamental Rights, read in conjunction with the EU Treaty provisions on the free movement of capital. The infringement procedure has not yet been concluded.[34] The act has also been challenged by NGOs before the Hungarian Constitutional Court. The case is still pending.

2.1.2 "STOP SOROS" LEGISLATIVE PACKAGE

53. On 20 June 2018, the Hungarian Parliament adopted the Act VI of 2018, known in its draft form as the "Stop Soros" package. It included wide-ranging amendments to Hungarian legislation, for example, on the police, free movement of persons, asylum, and the criminal code. It entered into force on 1 July 2018. The general reasoning of the act describes the purpose of the act as preventing Hungary from becoming a migrant country.

54. The amendment to the Criminal Code (Section 353/A) introduced a criminal offence of "supporting and facilitating illegal migration". It criminalises anyone who engages in or provides material resources for organising activities to facilitate asylum applications for persons who are not persecuted or do not have a well-founded reason to fear direct persecution. Such activities include, *inter alia*, the preparation or distribution of information materials and building or operating a network to facilitate asylum applications. Organisational activities assisting persons entering or staying illegally in Hungary to gain a residence permit are also criminalised.

55. Individuals may be sentenced to up to one year in prison if the offence is committed for financial gain, support is provided to more than one person or when the offence takes place in the border zone. Otherwise the penalty is custodial arrest from 5 to 90 days. An association can be fined, and a court can bar it from conducting specific activities or even dissolve it in accordance with the Act CIV of 2001 on measures applicable to legal persons under criminal law.

56. NGOs have pointed out that the criminal code provision criminalises assistance to asylum seekers to exercise their legal right to submit an asylum application and that in practice it is aimed against the legitimate work of civil society organisations.[35] During the visit, the authorities maintained their position regarding the necessity of the penal law provision and stressed that the demonstration of criminal intent was required under it.

57. The Commissioner recalls her statement of 1 June 2018 on the draft legislative package which called on the Hungarian authorities to drop the Bill and expressed concern that the new provisions would result in further

[33] Venice Commission. Opinion on the Draft Law on the transparency of organisations receiving support from abroad of Hungary. 20 June 2017. CDL-AD(2017)015. See also, Venice Commission. Report on funding of associations. 18 March 2019. CDL-AD(2019)002.
[34] European Commission press release. Infringements – European Commission refers Hungary to the Court of Justice for its NGO Law. 7 December 2017.
[35] See, for example, Open Society Foundations. Legal Analysis of Hungary's anti-NGO Bill. July 2018.

arbitrary restrictions to the indispensable work of human rights NGOs and defenders and leave migrants without the essential services provided by such NGOs. By impeding the work of NGOs which provide vital legal assistance and information about asylum procedures, the new provisions can thwart the realisation of the right to seek asylum. Measures of this kind are also likely to incite xenophobia against migrants and mistrust of those committed to helping them. The Commissioner stressed that the Hungarian authorities should refrain from taking any measures penalising, stigmatising or putting at any disadvantage NGOs working in the field of migration and restore an enabling environment conducive to the work of human rights defenders.

58. In May 2018, UNHCR also criticised the draft law by pointing out that it targeted those who, in a purely humanitarian role, helped people who are seeking asylum.[36] On the adoption of the act in June 2018, the UN High Commissioner for Human Rights highlighted the xenophobic nature of the legislation and pointed out that it threatened the safety and human rights of migrants and refugees as well as the vital work of NGOs and human rights defenders providing protection and assistance to them.[37]

59. In their Joint Opinion adopted in June 2018, the Venice Commission and OSCE/ODIHR concluded that as such, the criminal provision could result in further arbitrary restrictions to and prohibition through heavy sanctions of the indispensable work of human rights NGOs and leave migrants without essential services provided by such NGOs. Organisations that carry out informational activities, support individual cases, and provide aid on the border of Hungary may be at risk of prosecution even if they acted in good faith in line with international law. The Opinion recommended the repeal of Section 353A of the Criminal Code.[38] The EU Commission is pursuing the first stages of an infringement procedure against Hungary regarding the legislation.[39]

60. Civil society organisations submitted applications about the criminal code provision to the Hungarian Constitutional Court. In a ruling of 25 February 2019, the Constitutional Court upheld the constitutionality of Section 353A but noted that activities aimed only at diminishing the suffering of those in need and treating them humanely and the provision of humanitarian aid could not be penalised under the legislation. The Court also stated that the offence can only be committed with full awareness of the irregular status of the persons assisted and that the current lack of case-law related to the provision made it impossible to determine whether the legislation was sufficiently precise. The legislation was not deemed to violate freedom of expression as the Court held that it simply prohibited expression aimed at inciting others to commit illegal acts.[40] The Commissioner is not yet aware of individual cases of prosecution implementing Section 353/A of the Criminal Code.

2.1.3 SPECIAL IMMIGRATION TAX

61. On 20 July 2018, the Hungarian Parliament adopted Section 253 on the Special Immigration Tax of Act XLI of 2018. It came into force on 25 August 2018. Section 253 imposes a 25% tax on (1) financial support to an immigration-supporting activity carried out in Hungary or (2) on the financial support to the operations of an organisation with a seat in Hungary that carries out immigration supporting activity. It encompasses all funding, regardless of whether the origin is foreign or domestic. An immigration-supporting activity is defined broadly as "any programme, action or activity that, either directly or indirectly, aims at promoting immigration." Immigration-supporting activity is realised through a) carrying out of media campaigns and media seminars and participating in such activities; b) organising education; c) building and operating networks, or d) propaganda activities that portray immigration in a positive light. The free movement of nationals of EU and the European Economic Area (EEA) countries is not covered by the definition of immigration of this legal provision.

62. The primary taxable entity is the funder. The funder is obliged to declare to the organisation carrying out the immigration supporting activity that it has paid the tax. If the funder fails to pay the tax, the recipient organisation is liable. For the funder, the tax base is the amount of the grant. For the recipient, this is the costs

[36] UNHCR press release. UNHCR urges Hungary to withdraw draft law impacting refugees. 29 May 2018.
[37] OHCHR press release. New Hungary legislation 'shameful and blatantly xenophobic' – Zeid. 21 June 2018.
[38] Venice Commission and OSCE/ODIHR. Joint Opinion on the provisions of the so-called "Stop Soros" draft legislative package which directly affect NGOs (in particular Draft Article 353A of the Criminal Code on facilitating illegal migration). 25 June 2018. CDL-AD(2018)013.
[39] European Commission press release. Asylum: Commission takes next steps in infringement procedure against Hungary for criminalising activities in support of asylum applicants. 24 January 2019.
[40] Constitutional Court Decisions no. 3/2019. III.7. 25 February 2019; no. 3049/2019. III.14. 5 March 2019; and no. 3050/2019. III.14. 5 March 2019.

of performing the immigration supporting activity. The penalty for failure to pay the tax is 50% of the tax deficiency. It could be increased to 200% if an organisation fails to declare income that may be subject to the tax in accordance with Act CL of 2017 on the Rules of Taxation.

63. The stated purpose of the tax is that it fulfils the principle of burden-sharing so that those organisations which contribute to immigration growth should also contribute to cover the resulting costs. The revenue from the tax is to be exclusively used for performing border protection tasks. NGOs claim that the predominant aim of the special tax is in fact to dismantle civil society and deter NGOs from working on migration and deter donors from funding NGOs in this area.[41]

64. The Commissioner notes that the legislation on special immigration tax and the preceding amendment of the Criminal Code (Section 353/A) are closely related and pursue similar aims in targeting legitimate civil society activities related to immigration. In their Joint Opinion of December 2018, the Venice Commission and OSCE/ODIHR concluded that the special tax on immigration should be repealed as it constituted unjustified interference with the rights to freedom of expression and of association of the NGOs affected. The imposition of the special tax has a chilling effect on the exercise of fundamental rights and on individuals and organisations who defend these rights or support their defence financially. It deters potential donors from supporting NGOs and puts more hardship on civil society engaged in legitimate human rights activities. The Joint Opinion stressed that taxation should not be used to discourage the exercise of the freedoms of expression and association, as guaranteed by European and international human rights norms. It pointed out that the new reporting obligations could create an environment of "excessive state monitoring" that is not conducive to freedom of association. Section 253 is also too vaguely worded to ensure legal certainty on tax liability.[42]

65. The Commissioner observes that the special immigration tax has already affected civil society activities. In August 2018, the Central European University announced that in view of Section 253, it would discontinue its Open Learning Initiative which sought to prepare refugees for entry into university education as well as its EU-funded Marie Curie Research Grant on migration policy in Central and Southern Europe. The Hungarian tax authorities have invited some NGOs to a consultation on the special immigration tax although no tax audits or sanctions have been imposed so far.

2.1.4 AMENDMENT TO ACT ON NATIONAL TERTIARY EDUCATION

66. The Hungarian Parliament adopted Act XXV of 2017 amending the Act CCIV of 2011 on national tertiary education on 4 April 2017. It restricted academic freedom by creating a new requirement for universities accredited abroad to have a campus in the country of foreign accreditation and further criteria on an international agreement to be concluded with the Hungarian authorities on operations, the name of the institution, work permits of teaching staff and conditions on delivering programmes and degrees through a Hungarian university. The requirements apply to universities which originate from outside the European Economic Area.

67. In its Opinion on the legislation, the Venice Commission pointed out that the more stringent rules for foreign universities, coupled with strict deadlines and severe legal consequences, appeared highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. It stressed that the universities and their students were protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to and freedom of education. It recommended that the Hungarian authorities exempt the six universities concerned, including the Central European University (CEU), already operating in Hungary from the new requirements.[43]

68. On 7 December 2017, the EU Commission referred Hungary to the CJEU regarding the legislation within the framework of an infringement procedure. It considers that the Act is not compatible with the freedom for higher education institutions to provide services and establish themselves anywhere in the EU. The Commission

[41] See, for example, Open Society Foundations. Legal Analysis: Hungary's Special Tax on Migration-Related Activities. November 2018.
[42] Venice Commission and OSCE/ODIHR. Hungary - Joint Opinion on section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax. 17 December 2018. CDL-AD(2018)035.
[43] Venice Commission. Hungary - Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. 9 October 2017. CDL-AD(2017)022.

contends that the legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the EU Charter of Fundamental Rights and the EU's legal obligations under international trade law. The case is still pending.[44]

69. The Commissioner notes that the CEU sought to fulfil the new requirements and adopted a co-operation agreement with the State of New York-based Bard College in October 2017. However, the Hungarian authorities have so far not signed an agreement with the authorities of the State of New York regarding CEU's operations in Hungary. On 3 December 2018, the CEU's rector announced that for the academic year 2019-20, new students in the United States accredited degree programmes would be admitted to the CEU's new campus in Vienna.[45]

70. The Commissioner expresses concern at further measures restricting academic freedom. The Hungarian government withdrew accreditations and funding from programmes on gender studies in October 2018. This affected the Hungarian gender studies programmes at the CEU and the Eötvös Loránd University of Sciences.

2.2 INTIMIDATION AND STIGMATISATION

71. The Commissioner observes that civil society organisations defending human rights have been subject to continuous public criticism by senior politicians of the ruling coalition and stigmatisation in the media for several years already. Such intimidating rhetoric has also originated from the highest level of government. On 10 February 2017, the Prime Minister stressed in a section of his annual state of the nation address referring to NGOs that "we will also need to take up the struggle against international organisations' increasingly strong activists".[46] During campaigning for the 2018 parliamentary elections, the Prime Minister made veiled threats against thousands of civil society activists, whom he labelled as "an army of mercenaries".[47]

72. International organisations and NGOs have documented recent smear campaigns against civil society. On 12 April 2018, the weekly magazine *Figyelő* published an article "The Speculator's People", which consisted of a list of about 200 persons who allegedly worked for so-called "Soros organisations". Those listed included many academics of the CEU and members of human rights and anti-corruption NGOs including the Hungarian Helsinki Committee, Amnesty International Hungary, Hungarian Civil Liberties Union, Transparency International Hungary and K-Monitor, and staff of NGOs working with Roma and immigrants.[48] The philanthropist George Soros himself has been subject to successive government-funded smear campaigns on billboards and media in Hungary. The Open Society Foundations, founded by Soros, closed their Budapest office in August 2018 and relocated to Berlin.

73. During the summer of 2018, there was a targeted campaign of putting stickers on the doors of NGOs reading 'organisation supporting illegal migration', carried out by the government coalition partner KDNP (Christian Democrats) and Fidelitas (the youth wing of Fidesz party). Amnesty International received such a sticker on 12 June, Menedék, an NGO working on refugee integration, on 14 June and the Hungarian Helsinki Committee on 27 June 2018.[49] The international disability rights NGO Validity, based in Budapest, has reported that the authorities discredited its work and intimidated its staff after it published a report in May 2017 which identified serious human rights issues at the Topház social care institution in Hungary.[50]

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[44] European Commission. Press release. Commission refers Hungary to the Court of Justice of the EU over the Higher Education Law. 7 December 2017.
[45] CEU news release. CEU Forced Out of Budapest: To Launch U.S. Degree Programs in Vienna in September 2019. 3 December 2018.
[46] Prime Minister Victor Orbán's State of the Nation Address. 10 February 2017 (published on 14 February 2017).
[47] OSCE/ODIHR. Hungary - Parliamentary Elections - 8 April 2018, ODIHR Limited Election Observation Mission Final Report. 27 June 2018, p. 14.
[48] OSCE/ODIHR. Hungary - Parliamentary Elections - 8 April 2018, ODIHR Limited Election Observation Mission Final Report. 27 June 2018; Hungarian Helsinki Committee, Amnesty International, Hungarian Civil Liberties Union. Orban's Government Heads towards Arbitrary Rule, n.d.
[49] Human Rights Council. Cooperation with the United Nations, its representatives and mechanisms in the field of human rights. Report of the Secretary General. 13 August 2018. A/HRC/39/41; Hungarian Helsinki Committee, Amnesty International, Hungarian Civil Liberties Union. Orban's Government Heads towards Arbitrary Rule, n.d.
[50] Public communication of 21 June 2017 submitted by the UN Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders. UA HUN 3/2017; Human Rights Council. Cooperation with the United

74. The UN Special Rapporteur on the situation of human rights defenders has pointed out that human rights defenders who criticise the government or raise human rights concerns in Hungary are intimidated and portrayed as "political" or "foreign agents". He has expressed concern about the continued stigmatisation of human rights defenders and about the chilling effect of the inflammatory language used by senior government officials on the public perception of the value of civil society. Some groups of defenders face particularly serious challenges, including the defenders of the human rights of women, asylum seekers, LGBTI people and Roma, and those defending environmental causes. The Special Rapporteur has stressed that human rights defenders working on the rights of asylum seekers face acute risks of threats to their person and their families due to the increased politicisation and stigmatisation of their work.[51]

2.3 LACK OF GOVERNMENT CONSULTATION AND FUNDING

75. In 2012, the Hungarian government set up an inter-ministerial Human Rights Working Group to monitor the implementation of the recommendations of the first cycle of the UN universal periodic review on Hungary. Subsequently, the group's mandate was extended to cover Hungary's human rights obligations under European and international standards more broadly. The Working Group also established a Human Rights Roundtable under which 11 thematic working groups operate composed of representatives of government agencies, civil society organisations, representative associations and professional bodies. The thematic working groups provide an opportunity for a dialogue between government agencies and civil society on the implementation of Hungary's human rights obligations.

76. NGO representatives informed the Commissioner that the Human Rights Roundtable had provided useful opportunities for information exchange in the context of the UN universal periodic review. However, it had not evolved into an effective consultative mechanism on the preparation of national policy and legislation on human rights relevant issues. The UN Special Rapporteur on the situation of human rights defenders has pointed out that despite the establishment of the roundtable, the scope and quality of the dialogue between civil society and decision makers has been steadily shrinking in Hungary, especially when it entails an exchange and debate of dissenting views.[52]

77. The UN Human Rights Committee has expressed concern about the reported lack of transparency, insufficient consultation and excessive speed applied in the legislative process in Hungary. It has called on Hungary to strengthen its legislative process to guarantee a transparent, inclusive and participatory process that involves opposition politicians, civil society, other relevant stakeholders and the general public, and to provide adequate opportunities and time for the meaningful review and proper debate of legislative proposals and amendments.[53]

78. The Commissioner notes that transparent governance also requires access to information of public interest. Human rights defenders', NGOs' and investigative journalists' access to information was weakened by the 2015 amendment to the Act on freedom of information (Act CXII of 2011) which allowed government agencies that possess public interest data to charge the requesting party the labour costs associated with completing a request for information, the amount of which is determined by the agency concerned. Civil society representatives informed the Commissioner that their freedom of information requests were often not granted by the authorities and that they had to apply to courts to enforce such requests in addition to paying substantial fees for obtaining information.

79. Human rights NGOs in Hungary also face funding impediments and rarely receive funding from the government. The Commissioner observes that the legislation on the foreign funding of NGOs, the "Stop Soros" package and the special immigration tax constitute new hurdles for the sustainable funding of civil society organisations. Previously, the UN Special Rapporteur on the situation of human rights defenders had already pointed out that several organisations have closed their offices, discontinued programmes or laid off staff, owing to insufficient

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Nations, its representatives and mechanisms in the field of human rights. Report of the Secretary General. 13 August 2018. A/HRC/39/41.

[51] UN Special Rapporteur on the situation of human rights defenders. Report on his mission to Hungary. 19 January 2017. A/HRC/34/52/Add.2.

[52] UN Special Rapporteur on the situation of human rights defenders. Report on his mission to Hungary. 19 January 2017. A/HRC/34/52/Add.2.

[53] UN Human Rights Committee. Concluding observations on the sixth periodic report of Hungary. 9 May 2018. CCPR/C/HUN/CO/6.

or unsustainable funding. Some NGOs providing community or social services have seen their contracts discontinued or interrupted after having published information or testimonies perceived as hostile to the government. The Special Rapporteur has observed that since the access to European Union funding is channelled through government-controlled agencies, the discontinuation of funding can be used as a tool to silence dissent or encourage self-censorship.[54] The Commissioner was informed by civil society representatives that EU Asylum, Migration and Integration Fund's calls in Hungary related to integration services previously provided by NGOs had been withdrawn by the authorities in 2018. The EU funding for the NGOs to carry out the services ran out at the end of June 2018.

2.4 CONCLUSIONS AND RECOMMENDATIONS

80. The Commissioner highlights the cumulative effects on the legitimate activities of human rights defenders and NGOs brought about by a range of measures which have narrowed down civil society space in Hungary over a period of several years already. Civil society organisations defending human rights have been subject to unnecessarily restrictive legislation, intimidation, stigmatisation, unjustified investigations and funding obstacles. NGOs are not regularly consulted in decision-making by the public authorities. The exercise of academic freedom has also been affected by these developments.

81. The Commissioner stresses that the recent legislative measures have stigmatised and criminalised civil society activities which should be considered fully legitimate and indispensable in a democratic society. She is particularly concerned that NGOs which work in the field of migration and help asylum seekers to claim their human rights have been targeted in a clearly discriminatory manner. This does not only impede the exercise of the freedoms of association and expression by NGOs but can also deprive asylum seekers and recognised refugees of their access to information and essential services. The Commissioner underscores that measures of this kind affect the right to seek asylum as such and are also likely to have a broader effect in fanning xenophobia among the population.

82. The Commissioner points out that many of the legislative measures, including criminalisation, are exceptionally vague, arbitrary and not yet implemented in practice. She notes the ruling of the Hungarian Constitutional Court on the constitutionality of the criminal offence of "supporting and facilitating illegal migration" which gave a degree of interpretative guidance for the criminal code provision. Nevertheless, the Court stated that the lack of case-law related to the provision made it very difficult to determine whether the legislation was sufficiently precise. In the Commissioner's opinion, the legislative measure lacks legal certainty to qualify as a penal provision. The legislation on special immigration tax is also too vaguely worded in terms of the activities covered to ensure legal certainty. Together with the Act on the transparency of organisations receiving foreign funding, the special immigration tax constitutes an important impediment to NGOs' and even universities' access to funding opportunities.

83. The Commissioner underlines that the recent legislative measures exercise a continuous chilling effect on the legitimate work of NGOs even though some of the provisions are not actively implemented. The serious sanctions associated with the legislation have the potential to incur devastating consequences for the work of human rights defenders and NGOs in Hungary. Many civil society organisations are already obliged to spend a great deal of effort in defending themselves and challenging the legislation before the courts which diminishes their capacity to carry out their regular activities. Some NGOs have already ceased their activities or have relocated abroad. The Commissioner considers that the legislative measures are not proportionate and necessary in a democratic society. Rather than serving a legitimate aim, the legislation appears to target civil society organisations which are critical of the government, especially in view of the intimidating statements made by the authorities against civil society members. The Commissioner calls on the Hungarian government and the Parliament to repeal the legislation on the transparency of organisations receiving foreign funding, the criminal provision on supporting and facilitating illegal migration, and the special immigration tax.

84. The Commissioner urges the government to reverse its alarming course in relation to human rights defenders and NGOs which seriously affects the protection of human rights in the country. The authorities should refrain from taking any measures penalising and stigmatising defenders and civil society activists and the government

[54] European Union Agency for Fundamental Rights. Challenges facing civil society organisations working on human rights in the EU. 2017, p. 30; UN Special Rapporteur on the situation of human rights defenders. Report on his mission to Hungary. 19 January 2017. A/HRC/34/52/Add.2.

should speedily restore an enabling environment conducive to their work in line with European and international standards. The authorities should recognise and support the critical and constructive role civil society plays in a pluralist democracy. State institutions and officials must refrain from engaging in smear campaigns, negative portrayals and labelling of human rights defenders. They should also take steps to counter such negative activities by third parties. OSCE/ODIHR 2014 Guidelines on the Protection of Human Rights Defenders and 2015 Venice Commission and OSCE/ODIHR Joint Guidelines on Freedom of Association provide detailed guidance for creating an enabling environment conducive to the work of human rights defenders and NGOs.[55]

85. The Commissioner urges the Hungarian authorities to draw on the views, information and valuable expertise of civil society organisations in public decision-making. Human rights defenders and NGOs should be given unhindered access to public information and be included in timely and transparent public consultations in the preparation of policy and legislation. The Commissioner stresses that meaningful consultations require adequate time for preparation and subsequent dialogue. Civil society organisations should always be consulted about legislation and rules that concern their status, financing and operation. The Committee of Ministers 2017 Guidelines for civil participation in political decision making give detailed guidance for engaging with civil society in public decision making.[56]

86. The Commissioner observes that human rights NGOs in Hungary are rarely funded by the government and that they also face serious obstacles in obtaining other types of funding. However, in view of their important role in promoting human rights in a democratic society and their non-profit status, she urges the government to ensure human rights defenders' opportunities to access public funding following transparent and non-discriminatory criteria. This also applies to EU funding channelled through public agencies. The Commissioner points out that positive measures for facilitating funding to defenders of women's rights and those of especially vulnerable groups are legitimate. She also stresses the importance of preserving academic freedom.

3 INDEPENDENCE OF THE JUDICIARY

87. The independence of the judiciary underpins the rule of law and is essential to the functioning of democracy and observance of human rights. The separation of powers is the foundation of the rule of law and ensures that the executive, the legislature or the judiciary cannot exercise absolute authority over the state. An independent and impartial justice system not only guarantees the implementation of the right to a fair trial but also acts as a fundamental check and balance against executive and legislative powers. The effectiveness of the judiciary requires that it enjoy public confidence. Judicial independence and impartiality must exist in fact and be secured by law. There is a diversity of legal systems, constitutional positions and approaches to the separation of powers and means of ensuring the independence of the judiciary in the member states of the Council of Europe. The Venice Commission has stressed that if a power is given to one state body, other powers need to be able to effectively control the exercise of this power. The more power an institution has, the tighter control mechanisms need to be constructed.[57]

88. The ECHR (Article 6) requires a fair hearing by an independent and impartial tribunal in the determination of civil rights and obligations and of criminal charges. According to the European Court of Human Rights, independence of the judiciary refers to the necessary individual and institutional independence that are required for impartial decision making. The former is concerned with the judge's impartiality and the latter with defining relations with other bodies, in particular other state powers.[58] Judges should not only be free from undue influences outside the judiciary, but also from instructions or pressures from fellow judges and their superiors. Specific Council of Europe standards in this area include the Committee of Ministers' 2010 Recommendation (CM/Rec(2010) 12) on judges: independence, efficiency and responsibilities; the 2001

[55] OSCE/ODIHR. Guidelines on the Protection of Human Rights Defenders. 2014; Venice Commission and OSCE/ODIHR. Joint Guidelines on Freedom of Association. 17 December 2014. CDL-AD(2014)046.
[56] Council of Europe Committee of Ministers. Guidelines for civil participation in political decision making. 27 September 2017. CM(2017)83-final.
[57] Venice Commission. Opinion on the Fourth Amendment to the Fundamental Law of Hungary. 17 June 2013. CDL-AD(2013)012.
[58] See, for example, *Findlay v. the United Kingdom*, no. 22107/93, Judgment, 25 February 1997.

Consultative Council of European Judges Opinion no. 1 concerning the independence of the judiciary and the irremovability of judges and its 2007 Opinion no. 10 on the Council of the Judiciary at the service of society. The Venice Commission has issued a large number of opinions on the question.[59]

89. The Commissioner observes that reforms of the judiciary in Hungary have been the subject of a series of Venice Commission opinions since 2011 drawing attention to the risks and dangers posed by them in terms of the independence of the judiciary, judicial institutions and individual judges.[60] The Council of Europe Group of States against Corruption (GRECO) has also voiced criticism in this area.[61] The European Parliament raised the independence of the judiciary as part of broader concern for the rule of law situation in Hungary in its resolution of 12 September 2018 calling on the EU Council to initiate a breach of the rule of law procedure against Hungary with reference to Articles 2 and 7(1) of the Treaty of the European Union.[62] The Commissioner notes that Hungary is now in the process of setting up a new separate system of administrative courts which raises issues about the separation of powers. In this chapter, the Commissioner outlines the background and several current concerns related to the courts' independence and then addresses the question of the independence of the future administrative courts.

3.1 BACKGROUND

90. The Commissioner notes that the Hungarian judicial system has undergone many changes since the early 2010s through the 2011 Fundamental Law and subsequent constitutional and legal amendments. In 2012, the National Council of Justice, which had been responsible for the central administration of courts, was replaced by two separate bodies: the National Judicial Council (NJC) and the President of the National Judicial Office (NJO). Both the Curia (*Kúria*, previously the "Supreme Court") and the Constitutional Court, which is not a part of the ordinary court system, have been subject to reforms.

91. On 12 January 2012, the former Commissioner Thomas Hammarberg expressed concern in a statement about decisions taken to limit the powers of the Constitutional Court and stressed that every democracy needed a system of checks and balances and institutions which provide effective control on executive powers. He also observed steps taken in Hungary which might undermine the independence of the judiciary with reference to the lowering of the retirement age for judges, the powers of the President of the NJO in the appointment of judges, and the termination of the mandate of the President of the Supreme Court before the end of the regular term.

92. The European Commission subsequently launched an infringement procedure against Hungary over the forced early retirement of judges and the measure was found incompatible with EU law by the CJEU with reference to the prohibition of discrimination at the workplace on grounds of age. In its 2016 judgment in the case of *Baka v. Hungary*, the European Court of Human Rights held that there had been a violation of the right of access to a court and the freedom of expression of the former President of the Supreme Court whose mandate had been terminated through transitional provisions of the Fundamental Law.[63]

93. The 2013 Fourth Amendment to the Fundamental Law barred the Constitutional Court from referring to its rulings delivered prior to the entry into force of the 2011 Fundamental Law and limited the Constitutional Court's power to review the Fundamental Law or amendments thereto to a review of procedural requirements rather than substance. It also institutionalised the limitation on the Constitutional Court's authority to review

[59] See Venice Commission. Report on the independence of the judicial system. Part I: the independence of judges. 16 March 2010. CDL-AD(2010)004. Venice Commission has given benchmarks for assessing the independence and impartiality of the judiciary and individual judges in its Rule of Law Checklist. 18 March 2016. CDL-AD (2016)007.
[60] For an overview, see Venice Commission. Hungary. Opinion on the Law on administrative courts and on the Law on the entry into force of the Law on administrative courts and certain transitional rules. 19 March 2019. CD-AD(2019)004.
[61] GRECO. Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report. Hungary. 22 July 2015. Greco Eval IV Rep (2014) 10E.
[62] European Parliament resolution of 12 September 2018 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 (2017/2131(INL)). The issues of concern highlighted in the resolution also included, among others: functioning of the constitutional system, freedoms of expressions and association, academic freedom, right to equal treatment and the fundamental rights of migrants, asylum seekers and refugees.
[63] *Baka v. Hungary*, no 20261/12, Grand Chamber Judgment, 23 June 2016; Court of Justice of the European Union, European Commission v. Hungary, C-286/12, Judgment, 6 November 2012.

financial legislation unless such provisions violated certain fundamental rights. A number of provisions which were contained in cardinal laws and transitional provisions related to previous constitutional amendments, but subsequently annulled by the Constitutional Court, were reintroduced by the Parliament at constitutional level. In its 2013 Opinion, the Venice Commission observed that the "limitation of the role of the Constitutional Court leads to a risk that it may negatively affect all three pillars of the Council of Europe: the separation of powers as an essential tenet of democracy, the protection of human rights and the rule of law".[64]

94. The Commissioner observes that the respective powers held by the President of the NJO and the NJC have been subject to considerable international monitoring and legislative changes in Hungary. The Venice Commission and GRECO have pointed out that the central administration of the judiciary in Hungary is unique as it vests in one single person, the President of the NJO, extensive powers to manage the judiciary. Following a dialogue between the Council of Europe and its Venice Commission and the Hungarian authorities, the powers initially exclusively given to the NJO President have been reduced in some areas by developing the participatory and supervisory functions of the collective self-regulatory body, NJC, through the amendments of 2 July 2012 to the Cardinal Acts related to the judiciary (Acts CLXI and CLXII of 2011). In addition, the Fifth Amendment to the Fundamental Law in 2013 annulled the power of the NJO President to transfer cases to a different court and introduced constitutional recognition to the supervisory function of the NJC. However, the pivotal position of the NJO President in the judiciary remains an issue for the independence of the judiciary in Hungary.[65]

3.2 THE RESPECTIVE POWERS OF THE PRESIDENT OF THE NATIONAL JUDICIAL OFFICE AND THE NATIONAL JUDICIAL COUNCIL

95. The President of the NJO performs the central responsibilities of the administration of ordinary courts. He/she hands down decisions, regulations and recommendations in matters relating to the budget and its distribution, efficiency of the judiciary, appointment and promotion of judges, the format of evaluations, promotions of judges and their training.

96. The NJC exercises a supervisory function in respect of the powers of the NJO President. It is involved in central administration and budget, the appointment, promotion and mobility procedures of judges and in the development of training. The NJC is composed of 15 full members. The President of the Curia is an *ex officio* member of the NJC, whereas its other 14 members are judges elected by their peers. The meetings of the NJC may also be attended in a consultative capacity by the President of the NJO, the Minister of Justice, the Prosecutor General, the President of the Bar Association, the President of the Notary Public Association and any expert invited by them or the President of the NJC. The sessions of the NJC are also open to judges. The NJC is administratively dependent on the President of the NJO as its members are employees of the court system and because the President of the NJO ensures the operational conditions of the NJC.

97. The President of the NJO has a central role in appointing and promoting judges in accordance with the Act CLXI of 2011 on the organisation and administration of courts and the Act CLXII of 2011 on the legal status and remuneration of judges . Ordinary judges in Hungary are appointed by the President of the Republic, following a proposal from the President of the NJO. A panel of judges ranks the candidates but the NJO President is not bound by this ranking. However, if the NJO President wishes to propose a candidate ranked second or third, he/she has to provide reasons for this and obtain the consent of the NJC. The NJO President also has the power to declare a call for applications unsuccessful. The President of the NJO appoints the presidents and vice-presidents of regional courts and regional courts of appeal.

98. GRECO has stressed that further steps could be taken to better balance the powers within the judiciary in favour of a stronger collective approach. It has recommended that the powers of the President of the NJO to intervene in the process of appointing and promoting candidates for judicial positions be reviewed in favour of a procedure where the NJC is given a stronger role. The Venice Commission has recommended that the possibility for the NJO President to declare the procedure unsuccessful should be removed and that the candidate ranked

[64] Venice Commission. Opinion on the Fourth Amendment to the Fundamental Law of Hungary. 17 June 2013. CDL-AD(2013)012.

[65] GRECO. Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report. Hungary. 22 July 2015. Greco Eval IV Rep (2014) 10E; Venice Commission. Opinion on the Fourth Amendment to the Fundamental Law of Hungary. 17 June 2013. CDL-AD(2013)012; Venice Commission. Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary. 15 October 2012. CDL-AD(2012)020.

first should be proposed to the President of the Republic when the NJC does not agree to the change of ranking by the NJO President. The Venice Commission has also recommended that the composition of the NJC could be made more pluralistic by including "users of the judicial system" such as advocates, representatives of civil society and academia as full members. The International Bar Association has recommended that the NJC or a genuinely pluralistic body with a majority of judges and lawyers makes the final decision on the selection, appointment and promotion of judges.[66]

99. GRECO and the Venice Commission have also expressed concern about the powers of the President of the NJO to make temporary transfers of judges under the Act CLXII of 2011. The NJO President can order a judge to move positions for up to a year during every three years with a view to ensuring an even distribution of the workload between judges and courts. The Venice Commission has observed that this criterion is too broad and recommended that it should not be possible to transfer a judge so often. The irremovability of judges is an important aspect of their independence and a threat to move a judge from one court to another may be used to exercise pressure on judges. Although such transfers do not appear to be carried out currently without the consent of the judge concerned, GRECO has recommended that the power of the President of the NJO to re-assign ordinary judges without their consent be reduced to a minimum in time and only for precise reasons of a temporary character.[67]

100. During her visit, the Commissioner was informed about the tense relationship between the NJO President and the NJC. In spring 2018, the NJC had prepared a report which criticised the NJO President's practice of appointing and promoting judges for its lack of transparency and adequate reasoning in writing, especially when she had declared an appointment process unsuccessful. The NJC had requested the NJO President to rectify her practice in May 2018. Subsequently, the NJO President had initiated disciplinary measures against some members of the NJC although that required the consent of the NJC in accordance with the Act CLXI of 2011. Several members of the NJC also resigned in 2018. In October 2018, the European Association of Judges expressed concern about "failures or anomalies" in the functioning of the relationship between the President of the NJO and the NJC.[68]

3.3 RISK OF POLITICISATION

101. The unicameral Parliament plays a central role in the most senior judicial appointments in Hungary. It elects the 15 judges of the Constitutional Court including its President, the President of the Curia, the President of the future Supreme Administrative Court and the President of the NJO at two-thirds majority. The Commissioner points out that the fact that the governing coalition has enjoyed two-thirds majority in the Parliament repeatedly presents a risk for the appearance of independence and impartiality of the judiciary. It would therefore be useful to consider further safeguards to ensure that the checks and balances of a democratic society are maintained.

102. The Commissioner is concerned that courts and individual judges may come under harmful criticism by members of the government or the legislature. For example, on 5 May 2018, with reference to a Curia decision upholding the National Election Committee's invalidation of several thousand absentee ballots during the parliamentary elections, the Prime Minister stated: "with its decision, the Curia has taken a mandate away from our electors. The Curia has clearly and grossly interfered in the elections. Studying the ruling of the Constitutional Court it is evident that the Curia has not risen to the challenge of its task intellectually".[69] The Commissioner points out that, while preserving freedom of expression, members of the executive and the

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[66] GRECO. Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report. Hungary. 22 July 2015. Greco Eval IV Rep (2014) 10E; Venice Commission. Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary.15 October 2012. CDL-AD(2012)020; International Bar Association. Still under threat: the independence of the judiciary and the rule of law in Hungary. October 2015.

[67] GRECO. Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report. Hungary. 22 July 2015. Greco Eval IV Rep (2014) 10E; Venice Commission. Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary. 15 October 2012. CDL-AD(2012)020; Venice Commission. 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. 19 March 2012. CDL-AD(2012)001.

[68] European Association of Judges Working Group. Resolution on Hungary. 15 October 2018.

[69] "Curia has grossly interfered in elections". Press statement of 5 May 2018 reproduced on the Prime Minister's web portal on 7 May 2018.

legislature have a duty to avoid criticism of the courts, judges and judgments that would undermine the independence of or public confidence in the judiciary in accordance with the Committee of Ministers' Recommendation CM/Rec(2010)12 (item 18). It is particularly important to avoid targeting individual judges.

103. The Commissioner observes that there is a risk that interpretative guidance in legislation can be used in a political manner to limit the independence of judges in their interpretation of the law. The 2018 Seventh Amendment to the Fundamental Law modified Article 28 of the Constitution on legal interpretation by introducing an additional provision which establishes the preamble of the legal regulation and the reasoning attached to it as the primary source for establishing the aim of a piece of legislation. The preamble and reasoning in legislative acts can be closer to political statements rather than legal texts.[70]

3.4 FUTURE ADMINISTRATIVE COURT SYSTEM

3.4.1 BACKGROUND

104. The 2018 Seventh Amendment to the Fundamental Law created the basis for a separate system of administrative courts including a new Supreme Administrative Court. The Supreme Administrative Court (SAC) will be the final domestic forum for all legal disputes about decisions taken by Hungary's public administration and will take over the powers of the Curia in administrative cases. On 12 December 2018, the Hungarian Parliament adopted the detailed legislative package establishing the system of administrative courts (Act CXXX of 2018 on administrative courts and a separate Act CXXXI of 2018 on the entry into force of the Act on administrative courts and certain transitional rules). The government argues that the new system of administrative justice serves the aims of restoring the separate system already in existence until 1949 and of bringing the Hungarian system in line with European practice. The current administrative and employment courts operate within the existing court system with the Curia as the highest court.

105. Following an Opinion of the Venice Commission requested by the Minister of Justice of Hungary and adopted by the Commission on 15-16 March 2019, the original legislation on administrative courts was amended by the Parliament on 1 April 2019 through the Act XXIV of 2019 on further guarantees ensuring the independence of administrative courts. In its Opinion, the Venice Commission welcomed the draft amendments submitted to the Parliament on 12 March 2019 and noted that if they were adopted some of the criticism of the Commission would be moot.[71] The new administrative courts are expected to be operational on 1 January 2020. Under the transitional rules, the Parliament will elect with two-thirds majority the first President of the Supreme Administrative Court for a mandate of nine years on a proposal put forward by the President of the Republic by 15 June 2019.

106. The Commissioner points out that the system of administrative justice is an essential safeguard for individuals against human rights violations perpetrated by the state. The new courts' precise material jurisdiction will be specified in a separate act but it is expected to cover cases of public interest including elections, asylum, administrative decisions taken by the police and also peaceful assembly, economic matters, disputes in the area of taxation, the issuing of building permits and planning permission, the media and market competition.[72] It is not clear whether freedom of information requests will form part of the jurisdiction.

107. The reform will establish a parallel system of administrative courts with the ordinary courts system. It will include regional administrative courts and the Supreme Administrative Court with their own internal judicial bodies (all-judges conference, administrative judicial councils and adjudicating panels). The National Administrative Judicial Council (NAJC) will be the consultative, advisory and decision-making body of the administrative judges. However, the administrative court system will not have a body directly comparable with the President of the NJO. The Minister of Justice will assume most tasks for the central administration of the administrative court system. The Minister has a central role in the appointment of judges, court leaders and presidents, in shaping the new court system during the transitional period in 2019, and in exercising budgetary

[70] For example, the general reasoning section of Act VI of 2018 states: "In order to protect Hungary, an action plan is needed, this is the Stop Soros Act package" followed by the purpose of the package as preventing Hungary from becoming an immigrant country.
[71] Venice Commission. Hungary. Opinion on the Law on administrative courts and on the Law on the entry into force of the Law on administrative courts and certain transitional rules. 19 March 2019. CDL-AD(2019)004.
[72] *Ibid*.

authority and internal supervision. The President of the SAC will hold many powers in relation to SAC judges and judges of other administrative courts.

108. On 14 December 2019, the Commissioner issued a statement calling on the President of Hungary to return to the Parliament the original legislative package on administrative courts to enable its fully informed review. She expressed concern at the strong powers the reform of the judiciary conferred on the Minister of Justice and at the limited public consultation in the process of adopting the legislation. The Commissioner also noted that it was regrettable that the Hungarian Government and the Parliament had not waited for the Venice Commission to issue its Opinion on the legislation before adopting the legislation. During her visit, the authorities stressed that the legislation could still be modified in the light of the awaited opinion of the Venice Commission.

109. The Commissioner observes that both the original legislation adopted in on 12 December 2018 and the Act XXIV of 2019 on further guarantees ensuring the independence of administrative courts were adopted without meaningful public consultation. The consultation process for the original legislation and the parliamentary procedure were very quick. The bills were published on a government website on 25 October 2018 with a consultation deadline of 30 October. No impact assessment was made despite a legal requirement to do so (Act CXXXI of 2010). The bills were submitted to the Parliament on 6 November 2018. During the visit the authorities pointed out that although the public consultation period had been short extensive consultations had taken place with academic experts and judges. The draft Act XXIV of 2019 (Bill T/5241) was submitted to the Parliament on 12 March 2019, before the formal adoption of the Opinion of the Venice Commission, by members of the Parliament rather than the government and thereby without the requirement for a mandatory public consultation.

110. In this section, the Commissioner will highlight the major issues related to the external and internal independence of the future administrative court system in the light of the Opinion of the Venice Commission and the subsequent legislative amendments adopted by the Parliament.

3.4.2 APPOINTMENTS AND PROMOTIONS

111. The Commissioner notes that the Minister of Justice has a pivotal role in the appointment and promotion of administrative judges. The Minister decides whether a vacant judge's position will be opened in the court concerned or whether it is reallocated to another administrative court. The personnel council of the court concerned will interview applicants and then send the application with their opinion to the NAJC. The NAJC personnel council interviews the eligible candidates and ranks them according to a generally used scoring system. The application files of those candidates who have received a ranking of at least 85 per cent of the highest given ranking are submitted to the Minister who may also interview the candidates. The Minister is not bound by the ranking established by the NAJC personnel council but is required to provide a written justification for a modification. The Minister assigns the successful applicant directly if he/she is already a judge. For non-judge applicants, the formal appointment is made by the President of the Republic on the proposal of the Minister.

112. The Minister can declare an application procedure unsuccessful through a reasoned decision. The Minister also has the final say about the appointments of administrative court presidents and vice-presidents as well as judges in the SAC. Furthermore, the Minister has the power to transfer judges to another administrative court with the consent of the presidents of the courts concerned.

113. In its Opinion on the original legislation, the Venice Commission pointed out that the Acts contained no explicit and effective means of controlling the use of the Minister's power to appoint administrative judges. It was particularly regrettable that the Minister's powers were much wider than the powers of the President of the NJO in the ordinary court system. In that system the President of the NJO must follow criteria and principles established by the NJC when he/she amends the ranking of candidates for a judge's position and the NJC must agree to the amendment in each case. Appointment decisions can also be appealed to an administrative court, a labour tribunal or a disciplinary tribunal. Accordingly, the Venice Commission recommended that the recruitment procedure be amended by providing criteria, established by the Personnel Council of the NAJC, for the Minister to change the ranking of candidates and by introducing a requirement of consent from the NAJC for that change and, at the very least, by providing a judicial remedy enabling candidates to challenge the Minister's decision. The Venice Commission made similar remarks and recommendations about the

appointment of court leaders and SAC judges. It also called for stricter legal supervision of the conditions in which the Minister may declare a recruitment procedure unsuccessful.[73]

114. The Commissioner notes that subsequent amendments to the legislation introduced an appeal mechanism about judicial appointments. However, its effectiveness can be questioned as it is unclear whether the procedure could result in a new appointment procedure beyond the establishment of unlawful activity by the Minister. Some of the issues related to the appeal mechanism were already acknowledged by the Minister before the adoption of the amendments to the original legislation.[74] The amended legislation does not strengthen the role of the NAJC Personnel Council in the appointment process and only identifies some general categories of reasons, rather than precise criteria, which the Minister may apply in a written justification for changing the ranking of candidates. There are no changes concerning the conditions for declaring a call for application unsuccessful.

115. In its Opinion, the Venice Commission pointed out that the election of the SAC President by the Parliament had a political dimension and that efforts were needed to minimise the risk of politicisation. The Venice Commission stressed that it was important to strictly circumscribe the conditions of eligibility to the office, among which the question of experience was paramount. It recommended that the eligibility requirements for the SAC President should include at least five years' experience as a judge as was already the case for the President of the Curia. The Commissioner observes that while the legislation was amended on this issue, the interpretation of what may constitute "judicial work" under the provision appears to be quite wide.

3.4.3 TRANSITION PERIOD

116. The Commissioner notes that the Minister of Justice has a key position in making judicial appointments and shaping the administrative court system during the on-going transitional period until January 2020. The Minister will be free to deviate from the ranking of applicants performed by an *ad hoc* evaluation committee, chaired by the President-elect of the Supreme Administrative Court and consisting of four randomly selected judges and four other members that are nominated by the Parliamentary Committee for Justice, the Chief Prosecutor, the Minister responsible for public administration and the President of the Bar Association. The transitional provisions stipulate that all current administrative judges in the ordinary court system may continue to serve in the new administrative court system. However, as the maximum number of judicial positions is not determined, the Minister has the power to appoint new judges, also to the positions on the SAC. After consulting the President-elect of the SAC, the Minister will determine the initial number of administrative judge positions for each court.

117. The Venice Commission has noted that it is possible that a high number of current administrative judges, perhaps around half of them, might not apply for a transfer to the new court system.[75] The Commissioner observes that this would result in a wide influx of new judges to the administrative court system who are likely to come from the civil service and lack experience of working as a judge. An increasing number of administrative judges in Hungary are recruited from public administration after the introduction of a new points system for evaluating applications to judges' positions in 2017.[76] It is planned that half of the new judges will be appointed during the transition period in 2019 and another half in 2020.

118. After consulting the evaluation committee and interviewing the candidates, the Minister will appoint the first administrative court presidents and vice-presidents and heads of division for an interim period of up to one year. The Minister can also make discretionary appointments of titular senior judges with increased salaries.

119. The Venice Commission has stressed that the initial recruitment is crucial for the robust safeguards to ensure efficient, independent and impartial operation of the new courts. The key questions about the initial criteria for any amendment of the ranking by the Minister and the consent of the evaluation committee to, or judicial

[73] *Ibid*.
[74] Venice Commission. Hungary. Opinion on the Law on administrative courts and on the Law on the entry into force of the Law on administrative courts and certain transitional rules. 19 March 2019. CDL-AD(2019)004, p. 14.
[75] Venice Commission. Hungary. Opinion on the Law on administrative courts and on the Law on the entry into force of the Law on administrative courts and certain transitional rules. 19 March 2019. CDL-AD(2019)004, footnote 33.
[76] EU Commission. Commission Staff Working Document. Country Report on Hungary 2019. 2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011. 27 February 2019. SWD(2019) 1016 final, p. 42.

review of, the Minister's decisions in the recruitment procedure also apply to the transition period. The Venice Commission has noted that it raises questions that the evaluation committee, which exercises an advisory role in the recruitment procedure during the transitional period, will not include peer-elected judges. In its opinion, the selection of judges to the evaluation committee by drawing of lots confers less legitimacy than an election among future administrative judges already known. The Venice Commission has also expressed concern at the Minister's power to appoint the first presidents and vice-presidents of the new courts. It has recommended that the recruitment procedure of judges during the transition period, together with the appointment system for court leaders, be reviewed in order to provide for initial criteria or principles for any amendment of the ranking by the Minister as well as judicial review of decisions taken by the Minister in this connection.[77]

120. The Commissioner observes that the amended legislation increased the number of judges drawn by lots in the evaluation committee to six instead of four to form a majority. However, the appointment procedures or the composition of the evaluation committee have not been modified otherwise and no possibility for appeals has been introduced for appointments made during the transition period in 2019.

3.4.4 JUDICIAL SELF-GOVERNANCE

121. The NAJC will have 11 members presided by the President of the SAC. The other ten members are elected for six years by the all-judges conferences of the different administrative courts. The Minister of Justice and presidents of the regional administrative courts may also attend meetings which are open to administrative judges. According to the original legislation of December 2018, the Personnel Council of the NAJC, involved in judicial appointments, is presided by the President of the SAC and has eight members with three-year mandates: four members elected by the NAJC among its members, and four non-judge members with legal experience invited by the Committee of Justice of the Parliament, the Prosecutor General, the Minister responsible for the organisation of public administration and the president of the Hungarian Bar Association. Only members can attend the meetings of the Personnel Council and its decisions require a two-thirds majority.

122. The Commissioner points out that the preponderant position of the Minister of Justice has resulted in weak judicial self-governance in the future administrative court system. The NAJC will have very limited powers over the judicial organisation and administration, even when compared with its counterpart in the ordinary court system, the NJC. Most powers are vested with the Minister and to some extent the President of the SAC. The NAJC has primarily an advisory and processing role in the appointment procedure: the rankings of the Personnel Council can be disregarded by the Minister. Its consent is only required to authorise the third successive term of office of a court president or vice-president. On the budget, the NAJC provides an opinion but its consent is only required for the modification of the budget of administrative courts during the fiscal year. Under the original legislation, the members of the NAJC are also vulnerable to disciplinary proceedings as the NAJC's authorisation is not required to start such a proceeding even though it would bar membership in the NAJC.

123. The Venice Commission has observed that given its very limited and above all advisory powers, the NAJC does not appear to provide an effective counterbalance to the Minister of Justice. It has recommended that the NAJC and its Personnel Council be given a more effective and influential role in decision-making, including on appointments. The Venice Commission has also pointed out that the composition of the Personnel Council could be improved by bolstering the number of its members who are peer-elected judges. The Committee of Ministers' Recommendation CM/Rec(2010)12 requires that not less than half of the members of judicial councils should be judges chosen by their peers (item 27). Under the original legislation, only four members out of nine are peer-elected judges. The Venice Commission has also questioned the Minister's automatic right to attend the meetings of the NAJC.[78]

124. The Commissioner notes that the independence of judges in their judicial decision-making activity is an important aspect of internal independence of judges. An overly hierarchical organisation of the judiciary poses a risk in this respect. The President of the SAC, who is elected by the Parliament, will have an extensive combination of powers within the entire administrative court system. The President convenes and chairs the NAJC with a casting vote and presides over its personnel council and the evaluation committee during the transitional period. In fact, he/she plays a role in the appointment of all judges. The President can participate

[77] Venice Commission. Hungary. Opinion on the Law on administrative courts and on the Law on the entry into force of the Law on administrative courts and certain transitional rules. 19 March 2019. CDL-AD(2019)004.
[78] *Ibid*.

in the meetings of administrative judicial councils of every administrative court and appoints two of their members when they act as personnel councils. He/she also has important responsibilities in determining the budget of administrative courts and draws up the provisional case assignment plan for the administrative courts during the transitional period.

125. The Venice Commission has observed that the combined powers of the President of the SAC may raise questions when viewed together with the broad powers of the Minister of Justice, with whom the President acts on many issues. It has pointed out that it would be useful to consider means of counterbalancing the powers of the SAC President through more substantial involvement of judges and different bodies composed of them, including the NAJC. The Venice Commission has also envisaged the need for judicial oversight of the President's decisions when they affect a person's rights or interests.[79]

126. The Commissioner notes that the subsequent legislative amendments increased the number of peer-elected judges in the Personnel Council of the NAJC from four to six to become a majority. The participation of the Minister in the meetings of the NAJC was made subject to invitation. The amendments also introduced a special appeal mechanism about certain decisions of the SAC President and made disciplinary measures towards the members of the NAJC conditional to the consent of the NAJC.

3.5 CONCLUSIONS AND RECOMMENDATIONS

127. The Commissioner observes that a series of reforms of the judiciary in Hungary during the 2010s have drawn concern about their effects on the powers and independence of the judiciary. The reforms have affected the Constitutional Court, ordinary courts and administrative courts.

128. The Commissioner points out that in the ordinary court system, the role of the President of the NJO remains pivotal. In addition, questions about the effectiveness of the supervision exercised by the NJC over the President of the NJO have been raised by the recent anomalies observed in the relationship between these judicial institutions. The Commissioner stresses that it is essential for the observance of the rule of law that the checks and balances established for the exercise of the extensive powers of the NJO President are fully observed. The statutory role of the NJC in the appointment process of judges and court leaders should be fully respected and calls for applications should only be declared unsuccessful in exceptional cases with full transparency ensured. In the Commissioner's opinion, the recommendations issued by GRECO and the Venice Commission on strengthening the collective approach in the appointment process remain pertinent today.

129. The Commissioner expresses concern about the risk of politicisation of the judiciary in Hungary. The central role of the Parliament in appointing the most senior judges, frequently with a two-thirds majority enjoyed by the governing coalition, and the strict interpretative guidance given to judges in the legislation adopted by the Parliament present challenges to the appearance of independence and impartiality of the judiciary and individual judges. The Commissioner recommends that the authorities consider further safeguards for the maintenance of checks and balances such as measures to strengthen the collective role of the judiciary in the appointment procedure or a more consensual manner of nominating judges to the Constitutional Court in the Parliament.

130. The Commissioner recalls the Committee of Ministers' Recommendation CM/Rec(2010)12 which states that when the head of state, the government or the legislative power have the constitutional authority to take decisions on the selection of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations which the appointing authority follows in practice (item 47).

131. The Commissioner remains concerned about the preponderant role of the Minister of Justice in establishing and running the future administrative court system and the consequently weak powers attributed to judicial self-governance. The Minister will exercise decisive authority in the appointment of administrative judges and court leaders and is in a position to shape the administrative court system during the transitional period. While welcoming the amendments made to the original legislation in response to the Opinion of the Venice Commission on the Acts CXXX and CXXXI of 2018, the Commissioner is not persuaded that they address sufficiently the serious concerns identified by the Venice Commission.

[79] *Ibid*.

132. The Commissioner also expresses concern about the speed and the lack of meaningful public consultation in the adoption of the legislation on the administrative courts and its subsequent amendments. The Commissioner stresses that legislation of this level of importance calls for a particularly high level of transparency and involvement of the public.

133. The Commissioner urges the Hungarian authorities to give thorough consideration to the Opinion of the Venice Commission and apply the principles enshrined in the Committee of Ministers' Recommendation CM/Rec(2010)12 in view of completing the legislation on administrative courts in close consultation with stakeholders.[80] She stresses that the broad powers of the Minister of Justice should be counterbalanced with safeguards which ensure the effective exercise of collective judicial self-governance by the personnel council of the NAJC in the procedures for appointing judges and court leaders. The need for such safeguards is also underscored by the fact that an increasing number of administrative judges are likely to be recruited from the public administration.

134. The Commissioner observes that judicial self-governance should also be strengthened when appointing judges during the transitional period with due consideration given to the possibility of including peer-elected judges to the evaluation committee and increasing its supervisory authority. It is essential that applicants to judges' positions during the transition period and beyond have access to an effective judicial remedy to challenge decisions on appointments which can result in a new appointment procedure. The NAJC should be involved in the preparation of objective and transparent conditions for declaring a call for applications unsuccessful. The Commissioner points out that the internal independence of judges in the regional administrative courts can be further strengthened by the more substantial and autonomous involvement of internal judicial bodies in the courts' activities. The authorities should also reconsider the *ex officio* position of the President of the SAC as the chair of the NAJC, its Personnel Council, and the evaluation committee during the transition period in light of the recommendation by the UN Rapporteur on the Independence of Judges and Lawyers that the chair of a judicial council should be elected by the council itself among its judge members.[81]

4 GENDER EQUALITY AND WOMEN'S RIGHTS

135. Gender equality is a fundamental value of democracy and a basic principle of human rights. The Council of Europe Gender Equality Strategy 2018-2023 points out that gender equality entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility and participation, in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. Key specific human rights standards in this area include the 2007 Committee of Ministers Recommendation Rec(2007)17 on gender equality standards and mechanisms; the 1979 Convention on the Elimination of All Forms of Discrimination against Women; and the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Hungary has signed but not yet ratified the Istanbul Convention. It has transposed the EU equal treatment *acquis* at the national level.[82]

136. The Commissioner observes that Hungary is backsliding in gender equality and women's rights. It occupies, with 50.8 points out of 100, the second last place out of the 28 EU countries in the composite Gender Equality Index 2017 of the European Institute for Gender Equality (EIGE). Hungary has lost 1.6 points since 2010 and gone down two positions since 2005. EIGE has identified room for improvement especially in the domains of "power" and "time".

137. The Commissioner notes that the constraints of narrowing civil society space described above (Chapter on human rights defenders and civil society) have also affected NGOs defending women's rights. They have been subject to smear campaigns, stigmatisation, lack of meaningful consultation by the authorities, and audits related to their past funding from the Norwegian Civil Fund. The EU Fundamental Rights Agency has pointed out that between 2011 and 2016 organisations involved in litigation and advocacy in the fields of domestic violence, women's rights and gender equality in Hungary did not receive any direct government funding other

[80] Further guidance on the implementation of the Committee of Ministers Recommendation can be found in the 2016 Council of Europe plan of action on strengthening judicial independence and impartiality. CM(2016)36 final.
[81] Report of the UN Special Rapporteur on the independence of judges and lawyers. 2 May 2018. A/HRC/38/38.
[82] European network of legal experts in gender equality and non-discrimination. Country report. Gender equality. Hungary. 2018.

than the possible 1% contributions from personal income tax.[83] The Commissioner observes that human rights-based women's organisations in Hungary operate under high pressure and face serious difficulties in continuing their activities to provide services, raise awareness, and advocate legislative and policy changes.

138. In this chapter the Commissioner will focus on the legal, institutional and policy framework; political representation, employment and gender stereotypes; and violence against women.

4.1 LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK

139. Equality between women and men is enshrined in the non-discrimination provision (Article XV) of the Fundamental Law which states that "Women and men shall have equal rights". Sex is also among the specifically prohibited grounds of discrimination in the Article. A general provision on equal pay can be found in the Labour Code (Act I of 2012) which is also referred to in the equal treatment legislation (see below), although equal pay is no longer a constitutional principle. There is no specific law on gender equality but the general equal treatment legislation, Act CXXV of 2003 on equal treatment and promotion of equal opportunities, prohibits discrimination on 20 grounds, including sex, family status, motherhood (pregnancy) or fatherhood, and gender identity. The Equal Treatment Act covers both direct and indirect discrimination. Harassment, instruction to discriminate and victimisation are defined and outlawed. Positive action is authorised but multiple discrimination is not referred to in the legislation. The material scope includes the public sector and also the private sector in most cases. Remedies for discrimination include the civil courts, labour courts, and the Equal Treatment Authority, among others.

140. The Equal Treatment Authority is an autonomous public administrative body with the overall responsibility to ensure compliance with the Equal Treatment Act. The Authority's primary responsibility is to investigate complaints of alleged discrimination with the help of a nationwide network of equal treatment consultants. It can conduct *ex officio* investigations and initiate court cases. During the visit, the Commissioner learned that the Authority's case law on gender equality has focused on equal pay, intersectional discrimination, and motherhood and pregnancy. The Authority also carries out monitoring and awareness raising activities.

141. In the state administration, questions related to women's rights and gender equality are associated with family affairs. A women's policy unit functions under the auspices of the Minister of State for Family, Youth and International Affairs in the Ministry of Human Capacities. The Commissioner notes that a National Strategy for the Promotion of Gender Equality 2010–2021 was adopted a decade ago under a different government and that there is no longer an actual action plan for its implementation. The authorities informed the Commissioner that while some parts of the strategy had been achieved, their current efforts focused on renewing the strategy by a new one together with an action plan for its implementation. They pointed out that the association of women's issues with family affairs was backed up by census data which demonstrated that 80 percent of women in the age group 25-60 were mothers. The aim was to strike a balance between family life and opportunities to work and seek a harmonious relationship between women and men.

142. The Commissioner observes that the present government policy highlights women's role in raising children within a family. On 5 November 2018, the government launched a national consultation regarding the promotion and protection of families with children which focused on assistance provided to young couples and families with many children and the recognition of "full-time motherhood". It also sought the public's reply to the proposition that "children have the right to have a mother and a father". During the launch of the consultation, the Minister of State for Family, Youth and International Affairs said that the government wished to adopt further measures which seek to promote births and the raising of children. She stressed that the government did not want to solve Hungary's population problem with immigration but by supporting Hungarian families raising children and young people starting families.[84] The Commissioner notes that the Fundamental Law defines family ties as being based on marriage ("the union of a man and a woman") or the relationship between parents and children (Article L (1)).

143. In February 2019, the government unveiled a family protection action plan as follow-up to the national consultation. It includes a series of measures to improve family support, especially for families with many

[83] European Union Agency for Fundamental Rights. Challenges facing civil society organisations working on human rights in the EU. 2017, p. 30.
[84] Ministry of Human Capacities news release. National consultation regarding promotion of families to start this week. 5 November 2018.

children, which will be introduced in stages in July 2019 and January 2020. One central measure is a subsidised loan of up to EUR 31,500 to be repaid within 20 years which is available to married couples where the wife's age is between 18 to 40. The aim of the loan is to support the bearing of children. If a child is born, the instalment scheme will remain interest-free and repayment will be suspended for three years. After the birth of the second child, repayment will be suspended for another three years and one-third of the loan balance will be written off. Following the birth of the third child, the remaining debt will be cancelled. If no child is born within five years, the entire loan will be transformed into a loan repayable at a market interest rate.[85]

144. Under the action plan, women with four or more children of any age will be exempt from tax on personal income from employment until their retirement. Other measures include extended benefits in terms of housing loans and mortgage repayment relief, a car purchase grant for large families and a childcare allowance for grandparents. The government also plans to increase the number of nursery places from 50,000 to 70,000 by 2020 to facilitate the return of parents to the labour market. The Commissioner notes that the EIGE Gender Equality Index 2017 highlighted inequality in time-sharing for household tasks in Hungary. For example, among women and men living as a couple with children, 72 percent of women and 12 percent of men did cooking and housework daily.[86]

145. In its 2017 mission report on Hungary, the UN Working Group on the issue of discrimination against women in law and practice pointed out that Hungary had an extensive family support system, including benefits, parental leave and increasing availability of child care facilities. However, it stated that the government's family policy sent a mixed message to women: on the one hand it presented an idealised role for women who stay at home to care for a family with many children, on the other, it called on women to work as a matter of economic necessity. The UN Working Group observed 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". It also noted that the family benefits system appeared to favour middle- to high-income parents over low-income families.[87]

4.2 POLITICAL REPRESENTATION, EMPLOYMENT AND GENDER STEREOTYPES

146. The Commissioner notes that the political representation of women is very low in Hungary. 12.6% of members of the Hungarian Parliament (25 out of 199) are women giving Hungary the 149th position on the world-wide classification of the Inter-Parliamentary Union in March 2019. Among government ministers, there is only one woman in the 14-member cabinet. Nine out of 65 state secretaries (14%) and 22 out of 106 deputy state secretaries (21%) are women.[88] Women's representation in regional and local assemblies in Hungary is estimated at 21%.[89] There are no legal requirements to promote women's political participation in Hungary and gender quotas have not so far been applied in elections. The UN Human Rights Committee recommended in May 2018 that Hungary should adopt specific measures to increase the representation of women in decision-making positions in the public sector, also through temporary special measures.[90]

147. In terms of women's employment in general, Hungary performs better than the EU average. The gender gap in employment was 15.1% (EU average 18.2%) and the gender pay gap 14% (EU average 16.2%) in 2016. However, gender segregation in employment remains significant. Gender segregation in occupations was 27.3% (EU average 24.1%) and in sectors 20.1% (EU average 19%) in 2016. The proportion of women on boards of the largest publicly listed companies stood at 14.5% (EU average 25.3%) in 2017.[91] Among senior positions in the public sector the picture is mixed. For example, 65% of Hungarian judges are women but only 14% of heads of delegation in the diplomatic service are women.[92]

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[85] Government news release. About the family protection action plan. 22 February 2019.
[86] EIGE. Gender Equality Index 2017: Hungary. 2018.
[87] Report of the UN Working Group on the issue of discrimination against women in law and in practice on its mission to Hungary. 21 April 2017. A/HRC/35/29/Add.1. The cited part is on p. 19.
[88] Information provided by the authorities. In the Ministry of Human Resources, gender parity has been achieved among state secretaries: five out ten are women.
[89] Visegrad Revue. Cracks in the glass ceiling: women in regional and local V4 politics. 2 September 2016.
[90] UN Human Rights Committee. Concluding observations on the sixth periodic report of Hungary. 9 May 2018, CCPR/C/HUN/CO/6.
[91] European Union. 2018 Report on Equality between Women and Men in the EU.
[92] Information provided by the authorities. Among members of delegation in the diplomatic service 49 percent are women.

148. The UN Working Group on discrimination against women has noted that the high prevalence of gender stereotyping of women has contributed to their low level of political participation. It has stressed that women's participation in all spheres of society is overshadowed by a stereotypical and patronising approach that pervades attitudes and speeches. Gender stereotypes depicting women solely in the role of mothers and caregivers and disparaging them as political actors are predominant and sexist remarks are also made by leading politicians. For example, in his speech to a political rally on 13 December 2015, the Speaker of the Parliament suggested that a woman's place was at home, not in politics.[93] The OSCE/ODIHR election observation mission highlighted sexist comments made by the Prime Minister in March 2018 and October 2017.[94]

149. The Commissioner observes that efforts to combat gender stereotypes in Hungary are hindered by the low representation of women in the media and the limited inclusion of gender equality issues in the school curriculum. The 2015 Global Media Monitoring Project revealed that the overall presence of women in the Hungarian news in the analysed print, radio and television media was 21%. In 2016, the Media Council rejected a complaint about a report depicting violence against women in a trivialising way as tradition on the grounds that it did not refer to violence in a humiliating way.[95]

150. Gender equality was not included among the tasks and values of public education in the 2012 national core curriculum for elementary education although the importance of knowledge about it is mentioned in a subchapter. In 2017, references to "gender" were removed from the national framework curriculum. A biology-based distinction between the sexes and an approach of complementary roles between men and women remain in the document. Some school books continue to contain gender stereotypes although textbooks were revised in 2013 for grades 1 to 8 to ensure that students are not exposed to stereotypes.[96] A new national core curriculum is expected to be adopted in 2019. The authorities informed the Commissioner that the draft document dealt with the issue of gender equality in terms of responsibility and respect. Civil society representatives pointed out that the text did not refer to gender equality directly.

4.3 VIOLENCE AGAINST WOMEN

4.3.1 PREVALENCE

151. The Commissioner observes that violence against women remains a serious problem in Hungary. According to the FRA survey, carried out in 2012, 28% of women aged 15 or over (EU average 33%) have experienced physical and/or sexual violence. 42% of women have experienced sexual harassment (EU average 55%).[97] Based on an extrapolation with census data from 2011, it is estimated that more than 223,000 women experience physical and/or sexual violence in a given year.[98] According to EUROSTAT data on Hungary, the number of women victims of homicide perpetrated by intimate partners was 24 and the number perpetrated by family and relatives was 21 in 2016. The UNODC homicide statistics place Hungary in the second highest position for the rates of female total homicide and intimate partner/family-related homicide among the selected 18 European countries.[99] EIGE estimates that at societal level, violence against women costs Hungary EUR 4.4 billion per year through lost economic output, service use and personal costs.[100]

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[93] Report of the UN Working Group on the issue of discrimination against women in law and in practice on its mission to Hungary. 21 April 2017. A/HRC/35/29/Add.1; pp. 14-15.
[94] OSCE/ODIHR. Hungary - Parliamentary Elections - 8 April 2018, ODIHR Limited Election Observation Mission Final Report. 27 June 2018, p. 15.
[95] Media Council (National Media and Infocommunications Authority). Decision No. 1000/2016. (VIII.1.).
[96] European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs. Backlash against Gender Equality and Women's and Girls' Rights – Chapter 2 Hungary. Study requested by the European Parliament FEMM Committee. June 2018; Report of the UN Working Group on the issue of discrimination against women in law and in practice on its mission to Hungary. 21 April 2017. A/HRC/35/29/Add.1; OECD. Report on the implementation of the OECD gender recommendations. 2017.
[97] See the FRA survey results and data explorer at http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey.
[98] See Judit Wirth and Zsuzsanna Winkler. Violence against women in light of FRA data. 2015. In Hungarian.
[99] United Nations Office on Drugs and Crime (UNODC). Global Study on Homicide. Gender-related killing of women and girls. 2018.
[100] EIGE. Estimating the costs of gender-based violence in the European Union. 2014.

4.3.2 LEGAL AND POLICY FRAMEWORK

152. Hungary signed the Istanbul Convention in 2014 but has not ratified it. The draft law on ratification was opened for a 9-day public consultation in February 2017. An informal coalition of nearly 50 organisations and groups was formed in 2017-2018 to advocate ratification.[101] During the visit, the authorities informed the Commissioner that the ratification of the Istanbul Convention was still under review, for example with reference to clarifying possible overlap between national and EU implementation of the Convention.

153. Hungary is not currently implementing a specific strategy or action plan for preventing and combating violence against women. In 2015, the Parliament adopted a resolution on national strategic goals to promote effective action against intimate partner violence which refers to prevention, expansion of the care system, training of professionals, awareness raising and research.[102] The authorities informed the Commissioner that efforts were underway to improve support services for victims of violence and train police officers and child protection professionals.

154. The Commissioner notes that amendments to the Hungarian Criminal Code which came into force on 1 July 2013 made important modifications to the legal framework criminalising domestic violence and relationship violence (section 212/A) and sexual coercion and violence. Previously, domestic violence was not a distinct criminal offence. The criminalisation covers physical, psychological and economic violence and includes, for example, battery, violation of personal freedom or duress and attacks on human dignity when perpetrated by spouses, ex-spouses, family members, cohabitants, ex-cohabitants or guardians or persons living under guardianship. Sexual violence is defined by the forced character of the act or threat against the life or bodily integrity of the victim. It includes cases where a person is exploited or incapable of self-defence, or unable to express her or his will. Sexual coercion as a criminal offence does not require proof that the perpetrator used violence to force the victim into a sexual act. [103]

155. In May 2018, the UN Human Rights Committee pointed out that the criminal law provisions on domestic violence which criminalised violent behaviour that does not reach the level of battery did not fully protect women victims of violence. The applicability of the provisions is limited by the requirements that the victim file a private complaint; that the victim and the abuser were or are in cohabitation or have joint children; and that at least two separate instances of domestic violence occurred within a short timeframe.[104] CEDAW, the UN Working Group on the issue of discrimination against women and civil society representatives has also stressed that the Criminal Code provisions on sexual violence and rape did not define rape on the basis of lack of consent by the victim but they rather focused on violence, threats and coercion.[105]

156. Preventive temporary restraining orders to perpetrators of domestic violence can be issued by the police for 72 hours and extended by the court for a maximum of 60 days (Act LXXVII of 2009 on restraining orders). The new Code of Criminal Procedure of 2017, in force since 2018, offers further possibilities for restraining orders after a criminal procedure has been initiated. The Chief Police Commissioner of Hungary has issued Instruction no. 2 of 2018 on the implementation of police tasks regarding domestic violence.

4.3.3 LAW ENFORCEMENT

157. The Commissioner notes that reporting of domestic violence to the police appears to be very low in Hungary which can signal a lack of trust in police by the victims. According to data from the Investigation Authorities' and Prosecutor's Office's Unified Crime Statistics System ('ENYÜBS'), between 2013 and 2018, cases related to only 461 female victims and 56 male victims of violent crime against a relative were registered. Civil society

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[101] European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs. Backlash against Gender Equality and Women's and Girls' Rights – Chapter 2 Hungary. Study requested by the European Parliament FEMM Committee. June 2018.

[102] Parliamentary Resolution no. 30/2015 (VII.7).

[103] Report of the UN Working Group on the issue of discrimination against women in law and in practice on its mission to Hungary. 21 April 2017. A/HRC/35/29/Add.1.

[104] UN Human Rights Committee. Concluding observations on the sixth periodic report of Hungary. 9 May 2018, CCPR/C/HUN/CO/6.

[105] CEDAW. Concluding observations on the combined seventh and eighth periodic reports of Hungary. 26 March 2013. CEDAW/C/HUN/CO/7-8; Report of the UN Working Group on the issue of discrimination against women in law and in practice on its mission to Hungary. 21 April 2017. A/HRC/35/29/Add.1; Amnesty International. Right to be free from rape. 24 November 2018.

representatives also pointed out that preventive restraining orders are not used effectively in practice. The number of protection orders issued by the police is quite limited and the courts often do not extend the original order when it is issued. The number of temporary preventive restraining orders issued by the police has declined recently: 1623 in 2013, 1792 in 2014, 1749 in 2015, 1410 in 2016, 1427 in 2017, and 1050 in 2018.[106] The Commissioner points out that these statistics should be taken with caution as Hungary lacks systematic data collection on the number of investigations, prosecutions and convictions in cases of violence against women.

158. Research carried out by civil society on civil and criminal judicial proceedings related to domestic violence has pointed at a lack of understanding by many judges of the dynamics of domestic violence and insensitive treatment of the victims. In many cases, there has been a tendency to overlook domestic violence, blame the victim and promote reconciliation between partners even in criminal proceedings on physical violence. Courts and child protection authorities may also fail to recognise and take into account domestic violence when deciding on custody and visitation cases resulting in forced visitation rights to abusive parents. Parents, usually women, who obstruct such visiting rights face serious penalties.[107] The tendency of the police to blame the victim was illustrated by a video used by the police to educate girls to protect themselves against sexual predators which attributed the blame to the victim by stereotyping dress and flirtation as causes for violent attacks.[108] The authorities informed the Commissioner that police tasks related to domestic violence were part of police training and that health professionals were involved in carrying out such training.

4.3.4 SUPPORT SERVICES FOR VICTIMS OF VIOLENCE

159. The Commissioner notes with interest that the Hungarian authorities are in the process of expanding support services for victims of intimate partner violence, partly with EU funding. In early 2019, 17 crisis centres and three secret shelters were able to receive victims of violence with altogether 161 spaces. The facilities are operated by civil society organisations, church institutions and municipalities. Two new crisis centres and five secret shelters are expected to open shortly which will improve capacity and geographical coverage. The crisis centres provide immediate accommodation and care for individuals and families for up to 90 days. The secret shelters can address the needs of women who are at a high risk of serious harm and allow a maximum stay of six months. Halfway houses offer accommodation for a longer period. In 2018, four halfway houses were operational and further 19 halfway houses were opened later in the year. One halfway house has the minimum capacity of four places.[109]

160. The newest type of service is the "crisis ambulance" which provides mobile walk-in consultation without accommodation for domestic violence cases. There are currently seven crisis ambulances in the country, one in each region. A state-funded non-stop telephone hotline for women victims of violence has been operating since 2005. It is now run by a non-profit public organisation. There are also other helplines operated by civil society organisations.

161. The Commissioner visited a secret shelter in Budapest operated by the Hungarian Interchurch Aid which also runs an online victim counselling service. She met with victims of violence and staff of the facility. At the time of the visit, the shelter accommodated 30 people: eight women victims of violence and their children. The shelter had a total capacity of 40 people and it could receive people from all parts of the country. In 2018, 211 people had stayed in the facility. Children, who are also considered as victims under the law, were assessed by child development specialists at the shelter and were able to attend school during their stay. The services available included psychological and mental health counselling, individual and group therapy, management of social affairs, labour market coaching and training, and temporary housing in half-way houses. The Commissioner commended the staff of the shelter for their professionalism in assisting victims of violence.

4.4 CONCLUSIONS AND RECOMMENDATIONS

162. The Commissioner observes that the realisation of gender equality in Hungary will require rigorous and focused efforts to promote women's human rights. She welcomes the government's intention to prepare a new national

[106] Figures provided by the authorities.
[107] PATENT Association. Monitoring How Courts Treat Domestic Violence in Hungary: A Court Watch Program. 2016.
[108] Report of the UN Working Group on the issue of discrimination against women in law and in practice on its mission to Hungary. 21 April 2017. A/HRC/35/29/Add.1.
[109] Figures provided by the authorities.

strategy on gender equality and an action plan for its implementation. The Commissioner points out that the strategy should identify the main issues related to gender equality and women's rights in close consultation with all stakeholders, including women's rights defenders, and propose targeted measures with corresponding budgetary resources to address them. An evaluation of the results of the previous strategy should serve as a starting point for the strategy's preparation.

163. The Commissioner stresses that the close association of women's issues with family affairs in the government's policy carries the risk of reinforcing gender stereotypes. Although the government seeks to empower women through labour market participation and is in the process of increasing available nursery places, the notable focus of the family protection action plan lies on women as bearers of many children, including "full-time motherhood". In the Commissioner's opinion, the strict future-oriented conditionality attached to the subsidised loan for young married couples to support child bearing raises questions in terms of women's right to decide freely and responsibly on the number and spacing of their children (Article 16 of CEDAW). It also appears discriminatory on the grounds of family status. The Commissioner is particularly concerned that the strong emphasis on women's role as child bearers risks instrumentalising women as means of implementing the government's goals for demographic and immigration policies. While she acknowledges the family as a basic unit of society entitled to protection, the Commissioner also points at the current diversity of families and the duty to address their needs without discrimination.

164. The Commissioner urges the authorities to address the overwhelmingly unequal representation of women in political and public life through positive measures, for example by applying gender quotas in electoral lists and setting gender targets for senior recruitment in the public sector. The elimination of the gender pay gap will require continuous efforts and strict enforcement of the current legislation. The Commissioner points out that pervasive gender stereotypes and sexist rhetoric are key factors in hindering progress in gender equality and addressing gender segregation in the labour market. She calls on the authorities to take determined action to eradicate gender stereotypes in educational materials while highlighting the need to promote gender equality in school curricula. The authorities should condemn sexism and carry out awareness-raising initiatives questioning gender stereotypes. They should also encourage wider representation of women in the media. The Council of Europe Committee of Ministers Recommendation CM/Rec(2019)1 on preventing and combating sexism provides detailed guidance on addressing sexism in different walks of life.

165. The Commissioner points out that women's rights organisations face serious difficulties in carrying out their activities because of narrowing space for civil society. She calls on the authorities to involve women's organisations in policy formulation and service delivery to profit from their knowledge and experience. The Commissioner also urges the authorities to facilitate the opportunities of defenders of women's rights to access public and EU funding following transparent and objective criteria.

166. The Commissioner urges the Hungarian authorities to ratify the Istanbul Convention. The ratification would be an essential step towards a comprehensive response to violence against women and girls by developing integrated policies and data collection, preventive measures, support services, the legislative framework, and law enforcement. After ratification, Hungary will also benefit from the expert advice of the independent expert body responsible for monitoring the implementation of the Convention.

167. The Commissioner welcomes the authorities' efforts to expand support services for women victims of violence. However, she points out that women's access to justice is compromised by the restrictive conditions attached to the penal measures, low levels of reporting, and the lack of understanding by many judges and police officers of the realities of violence against women. The Commissioner urges the Hungarian authorities to strengthen training efforts about gender-based violence among the judiciary, prosecutors and the police and to involve women's rights defenders in such training. Broader awareness raising among the public is also necessary to change attitudes and encourage victims to seek assistance and report violence without stigmatisation. The Commissioner encourages the authorities to include absence of consent explicitly in the definition of rape in the Criminal Code. The Commissioner urges the authorities to carry out systematic data collection on the prevalence of gender-based violence and on the number of investigations, prosecutions and convictions in such cases.