

**Use of the rule of law legal instruments in the face of mounting dissensus at a national level**

**Hungary**

***RULE OF LAW RESPONDING TO EMERGING DISSENSUS***

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Abbreviations used

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| Abbreviation  | Full text  |
| CC | Constitutional Court |
| ETA | Equal Treatment Authority |
| CFR | Office of the Commissioner for Fundamental Rights in Hungary |
| NAIH/DPA | National Authority for Data Protection and Freedom of Information |
| NHRI | National Human Rights Institution |
| NOJ | National Office for the Judiciary |
| NJC | National Judicial Council |
| GANHRI | Global Alliance of National Human Rights Institutions |
| SCA | Sub-committee on Accreditation |
| CJEU | Court of Justice of the European Union |

1. Introduction: Rule of Law threats conform dissensus actions

*This factsheet shall analyze the existence and the use of rule of law instruments to face dissensus threatening democratic principles at a national level. Hence, it examines how national legal norms and governance instruments might react to breaches of the rule of law.*

*For the purpose of this work, dissensus is to be understood as the expression of a social, political and legal clash/conflict, which manifests itself in different national and supranational institutional and non-institutional arenas (parliamentary arenas, constitutional arenas, public sphere, technocratic and expert arenas…) driven by political, social, legal actors, including state and non-state actors, seeking to maintain liberal democracy, to replace liberal democracy or to restructure liberal democracy.*

*Examples of dissenting action can be found in populist or nationalist movements seeking to subvert democratic principles, fundamental rights, and the rule of law. In parallel, there are specific measures or rules established in each country to protect the respect of democratic principles.*

*At EU level the rule of law tool kit is composed of:*

* *Article 7 TEU to protect institutional system, fundamental rights and democratic principles including control mechanisms of citizens’ right to voting, participation to decision making, legislative initiative, access to justice*
* *The Infringement Proceeding*
* *The Preliminary Reference Procedure*
* *The Charter of Fundamental Rights*

*Tools within EU Legislation*

* *The EU Justice Scoreboard*
* *The Cooperation and Verification Mechanism*
* *The Technical Support Instrument and its precedents*
* *The Protection of the EU Financial Interests*
* *Rule of Law Conditionality Regulation*

*At national level, the existence and the use of rule of law instruments to face dissensus threatening democratic principles might be established in national Constitutions or national toolkits. Please try to identify measures that either have a similar function to those at EU level or implement the EU legislative measures at national level.*

Hungary is a parliamentary Republic with a unicameral National Assembly (the Parliament) that is the principal organ of the legislature with important oversight functions over the executive as well. The Parliament adopts and amends the 2011 Fundamental Law, which is the country’s constitution. Its legislative powers also extend to ordinary laws as well as to the so-called cardinal laws (*sarkalatos törvenyek*) that are special legislative acts that complement the Fundamental Law and contain the implementing rules of constitutional rights and democratic institutions covering 35 issue areas specified by the Fundamental Law[[1]](#footnote-2). The cardinal laws complement the Constitution and lay out its implementation measures both regarding the institutions and the exercise of fundamental rights[[2]](#footnote-3). The Parliament also elects the most important public officials, including the President of the Republic. There is no national rule of law toolkit as such in place, however, various processes can be considered to perform functions that can safeguard the rule of law. The extent to which those in fact provide protection against threats to the rule of law are called into question by a national context marred by rule of law violations as explained in the sections below.

1. The Instruments Provided by Hungarian law

*The principle of the rule of law includes the principle of legality, which implies a transparent, accountable, democratic, and pluralistic process for enacting laws, respect of fundamental rights and equality before the law; legal certainty and prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review.*

*Please explain how these principles are protected in national law. Please focus on key examples of the use of constitutional/legislative/governance instruments in situations of mounting dissensus. In section 2.5, please focus on the role, if any, of national courts.*

Protection against threats to democratic principles

*This section should be devoted to any attempts to affect the institutional structure or balance of powers*.

The passing of the **Fundamental Law of Hungary** was the signature act in the process of democratic backsliding in Hungary understood broadly as “the state-led debilitation or elimination of the political institutions sustaining an existing democracy”[[3]](#footnote-4). The Fundamental Law sits on the top of the hierarchy of norms in the domestic legal order and since 2011 has continued to provide both the ideological and legal framework of the now Fifth Orbán government. In the process, Prime Minister Orbán has entrenched his role as an illiberal nationalist leader. In 2022 he once again reasserted his power by winning a fourth consecutive term in the parliamentary elections [[4]](#footnote-5).

The period of 2010 – 2020 saw the systemic deterioration of the checks and balances eroding the separation of powers within the institutional system as well as continued attacks on fundamental rights and democratic principles. In 2023, Freedom House’s Freedom of the World Report continued to rank Hungary as only ‘partially free’, reporting a staggering 22-point decline in its democracy score over the past ten years[[5]](#footnote-6). The V-Dem 2023 Democracy Report echoes similar concerns and continues to report sustained decline in the state of democracy in Hungary, underlining that the country “has returned to electoral autocracy”[[6]](#footnote-7), naming it among the top 10 autocratizers globally[[7]](#footnote-8) and ranking it the lowest on its democracy index among the EU Member States[[8]](#footnote-9).

The Fundamental Law of Hungary came into force on 1 January 2012 amidst controversy - superseding the country’s 1989 Constitution that marked Hungary’s democratic transition from the communist era as part of the third wave of democratization, globally. The new Constitution was the flagship project of the second Orbán government, which obtained a sweeping victory in the 2010 parliamentary elections that guaranteed its super-majority in the legislature. The governing majority essentially draw up the Fundamental Law single-handedly in a process that was characterized by lack of transparency, shortcomings in the dialogue between the majority and the opposition, insufficient opportunities for an adequate public debate as well as a very limited timeframe - according to the Venice Commission reflecting national[[9]](#footnote-10) and international criticism[[10]](#footnote-11).

The Fundamental Law declared Hungary to be an independent State governed by the rule of law[[11]](#footnote-12), in Article U specifically guaranteeing that “[t]he form of government [is] based on the rule of law”. In the lack of an express definition, the concept and content of the rule of law in the national legal context have been clarified by the jurisprudence by the Constitutional Court (CC). In light of this, the **constitutional complaint procedure** can be considered as an important tool within the national legal system with the (*de lege*), possibility to guard the principles of the rule of law. The Constitutional Court has examined the rule of law as a question of collision of norms[[12]](#footnote-13), as the protection of public trust[[13]](#footnote-14), as the guarantee of sufficient preparation time[[14]](#footnote-15), as the clarity of norms[[15]](#footnote-16), as the protection of acquired rights[[16]](#footnote-17), and as the prohibition of legislation with retrospective effect[[17]](#footnote-18). In addition, the CC dealt with other elements of the rule of law in various cases, such as the separation of powers[[18]](#footnote-19) or democratic elections[[19]](#footnote-20). However, in practice, none of the above procedures proved to be effective in safeguarding the system of checks and balances in the face of the executive’s sustained attempts to erode the rule of law (see Section 2.5).

To that end the Fifth Orbán government continues to capitalize on an **electoral system** that it re-drew in its own favour using the two-thirds majority it has held. To that end, the Fundamental Law first cut the size of the Parliament in held then it redrew the electoral districts in line with voter preferences, thereby ensuring that Fidesz voters are distributed across many smaller districts whereas opposition supporters are concentrated in larger districts – leaving them less chance to win an electoral system that combines 106 single member districts elected using the first-past-the-post system, and 93 elected from a national list using the closed list proportional representation system[[20]](#footnote-21). To illustrate, the re-districting led to a Fidesz victory in 2014 where the Fidesz-coalition took 91% of the districts with only 45% of the votes[[21]](#footnote-22). Similar proportions followed in the four consecutive Orbán victory; however, when prior to last year’s parliamentary elections, the six opposition parties fragmented across the political spectrum joined forces with the sole goal of defeating the Orbán-government, yet another amendment came into force allowing for ‘voter tourism’ via allowing voting to be allocated to a certain district purely based on a contact address[[22]](#footnote-23).

Protection against threats to the principles of legality and abuse of power

Safeguards against threats to the principles of legality and abuse of power are embedded across the entire system of checks and balances that are fundamental to a constitutional democracy. The procedural and substantive concerns over the Hungarian legal system and its functioning, including its implementation by the judiciary, are addressed in various sections of this Country Report. Of particular relevance to the protection of legality stands the effective functioning of the legislative process without undue interference or restrictions as well as the judicial review by the Constitutional Court which exercises normative control, as discussed in the following.

In the lack of effective checks on the executive’s growing *de lege* and *de facto* power, threats to democratic principles have increasingly become entrenched practices in the national context. In particular, the transparency and inclusiveness of the **legislative process** has been eroded to the degree that national CSOs have consistently reported that public consultation on draft laws has virtually ceased to exist[[23]](#footnote-24) For instance, as also reported by the 2022 Rule of Law Report of the European Commission, the Hungarian Government has systematically failed to comply with its legal obligation to publish the online draft laws for public consultations. According to the government website, out of the 145 government draft laws in 2021, only three laws were **published for public consultations**. From these three, only one can be deemed as having been genuinely open for consultation; the other two drafts were published three weeks after the bills had already been submitted to Parliament.[[24]](#footnote-25) While the amendments in Act CXXXI of 2010 on Public Participation in Preparing of Laws that came into effect in October 2022 brought about some improvements, key areas of concern have remained intact[[25]](#footnote-26). For instance, while in response to the conditionality mechanism activated against Hungary (see Section 3.1), ministries started to publish some laws for consultation, none of those the Government submitted to meet the milestones required by the conditionality mechanism were published[[26]](#footnote-27).

In addition, under what has been called a ‘façade of legality’ – and with that, an affront to the rule of law - the Orbán government has cemented its rule by decree via the introduction of various new forms of ‘special legal orders’ which are **forms of state of emergency** in the Hungarian legal system. The mentioned state of danger, as well as an additional so-called ‘state of medical crisis’ were invoked and continuously extended since 2019. In addition, in May 2022 the Parliament passed the tenth amendment to the Constitution[[27]](#footnote-28) in ten years adding yet another special legal order type, this time with reference to an armed conflict in a neighboring country, such as Ukraine, which was then promptly invoked - in effect, providing a constitutional ground for the government’s continued decree governance.

Due to the ongoing special legal order, the ordinary legislative procedure with its inbuilt checks and balances has been set aside and the so-called **accelerated legislative procedure** is characterized by both rapid law-making with often next day or next week promulgation, little to no public consultation and the use of omnibus bills, bundling together substantively completely unrelated amendments, that have eroded the rule of law safeguards of the legislative process falling short of a transparent, accountable, democratic, and pluralistic process for enacting laws. Reportedly, the government has also routinely resorted to passing key amendment through individual MP bills or via the urgent or extraordinary procedure.

The possibility of the Constitutional Court to annul already final judicial decisions, as elaborated on in Section 2.5 below, have been heavily criticised as an avenue to deteriorate legal certainty in the country. A grave expression of both the government’s ‘anti-Brussels’ rhetoric and, in line with that, its continued attempts to exempt Hungary from its legal obligations under EU law, rather than complying with the CJEU ruling in the case *Commission v Hungary, C-808/18,* that found the country in violation of the EU asylum *acquis*[[28]](#footnote-29), the government petitioned the Constitutional Court – in effect, seeking a constitutional ground for the non-implementation of the CJEU judgment. The CC indeed found that “as long as the EU institutions do not take the measures necessary to ensure the effectiveness of the joint exercise of competences, Hungary is entitled to exercise the relevant non-exclusive field of competence of the EU”[[29]](#footnote-30). In response, the Commission brought action against Hungary before the CJEU requesting, among others, that the court declares that Hungary has failed to fulfil its obligations under Article 260(1) TFEU, in not taking all the necessary measures to comply with the CJEU judgment of 17 December 2020 concerning the reception of applicants for international protection[[30]](#footnote-31).

Protection against threats to Fundamental Rights

 *This section should cover political, civil and social fundamental rights, including environmental rights*.

The Fundamental Law assigns as the primary obligation of the state the protection of the inviolable and inalienable fundamental rights of human beings. Pursuant to Article I para. (3) of the Chapter on freedom and responsibility, “a fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a Constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right”. Protection from discrimination is also guaranteed by the Fundamental Law which, however, does not expressly recognise gender and sexual orientation as a protected ground. Nevertheless, Decision No. 20/1999 (25.VI.) of the Constitutional Court confirmed that the protection granted on the basis of ‘other status’ applies to sexual orientation i.e., discrimination on the basis of sexual orientation is unconstitutional according to the CC jurisprudence[[31]](#footnote-32). Under theconstitutional complaint procedure, an affected individual or an organization can turn to the CC once they exhausted all judicial remedies before the ordinary courts with a claim of a violation of their constitutional rights[[32]](#footnote-33). However, the procedure is used with limited efficacy, as many of the complaints are rejected as inadmissible or discontinued due to the challenged rules no longer being in force[[33]](#footnote-34). The latter is a severe limitation in a rapidly changing regulatory environment where the government has for years resorted to decree-governance during continued ‘state of dangers’ (a form of state of emergency under the Fundamental Law).

Despite the constitutional protection, **systemic human rights violations** have been taking place, **affecting** **in particular LGBTQI people, refugees and migrants, Roma people and human rights defenders**[[34]](#footnote-35):

* Starting with 2019, **LGBTQI people** became the new target of the government’s hate propaganda (see for example the government’s “homophobic referendum” described under Section 2.5. below), after years of xenophobic hate campaigns against migrants and asylum-seekers. A number of measures and laws were adopted severely violating the rights of LGBTQI people. For instance, constitutional amendments further curtailed the rights of LGBTQI people[[35]](#footnote-36), and laws were adopted for prohibiting legal gender recognition[[36]](#footnote-37), for blocking adoptions, among others, for same-sex couples[[37]](#footnote-38), and for the protection of children while in effect discriminating against and stigmatising the LGBTQI community[[38]](#footnote-39).
* Since 2015, the government has also continuously destroyed the **Hungarian asylum system**, and in 2020 introduced a new system that made applying for asylum in Hungary practically impossible[[39]](#footnote-40).
* **Educational segregation of Roma pupils** has been a serious problem in Hungary for decades and when a second instance court awarded compensation to 60 Roma victims, high-level politicians from the governing party initiated a public campaign against the court ruling, questioning its credibility and politically interfering in the case (which was at that time pending as the court decision was challenged at the Curia by the respondents)[[40]](#footnote-41). After the Curia upheld the second instance court’s decision, an amendment to the National Public Education Act[[41]](#footnote-42) was adopted, obliging courts to grant compensation in case of similar future violations in the form of educational services instead of monetary compensation for moral damages[[42]](#footnote-43). This latter is an example of how the government and the ruling majority use the law to undermine respect for court decisions[[43]](#footnote-44).
* Governing party politicians have been making political statements trying to discredit **human rights defenders**, for instance those involved in the Roma segregation case described above or in other human rights cases[[44]](#footnote-45). Furthermore, several legislative measures were adopted to obstruct civic space in Hungary. For example, in 2017, a law was adopted[[45]](#footnote-46) which introduced “discriminatory and unjustified restrictions on foreign donations to **civil society organisations**”, leading to a 2020 CJEU judgement[[46]](#footnote-47) that confirmed that the law and the restrictive measures introduced amounted to “unjustified interference with the respect for private life, protection of personal data and freedom of association […] likely to create a general climate of mistrust and stigmatisation of the associations and foundations concerned in Hungary”[[47]](#footnote-48). After the Commission sent a letter of formal notice to Hungary for non-compliance with the CJEU ruling, in 2021 the Parliament adopted a new law[[48]](#footnote-49) which repealed the former contested one; however, it introduced new measures, influencing the operational space of NGOs and further stigmatising them[[49]](#footnote-50). Another law criminalising assistance to asylum seekers[[50]](#footnote-51) was also subject to a CJEU court ruling[[51]](#footnote-52), deciding that Hungary breached Union law, but the judgment was not implemented by Hungary which puts further pressure on CSOs working in the field of asylum[[52]](#footnote-53).

The government and the political majority have also taken a series of measures to undermine **media pluralism and judicial independence** (please see examples in the sections below).

Hungary used to have several **national human rights institutions**, but the human rights protection system got significantly centralised with the entry into force of the Fundamental Law in 2012. Former ombuds institutions were abolished, and the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations became subordinated as deputies to the Parliamentary Commissioner for Citizens’ Rights, re-named to Commissioner for Fundamental Rights (hereinafter CFR). The mandate of the Commissioner for Data Protection was delegated to the newly created National Authority for Data Protection and Freedom of Information (hereinafter NAIH). Further centralisation took place in 2020, when the Equal Treatment Authority and the Independent Police Complaints Board were also integrated as departments into the Office of the Commissioner for Fundamental Rights. The Equal Treatment Authority, established in 2004 used to be an autonomous institution responsible for investigating violations of the prohibition of discrimination, while the Independent Police Complaints Board, created in 2008, used to be an organ of civil control over the Police.

**The Commissioner for Fundamental Rights (CFR)**

Following the merger of several bodies responsible for the protection against threats to fundamental rights, as described above, the CFR now acts as ombudsman (through the office of the CFR, and the Deputy-Commissioner responsible for the protection of the interests of nationalities living in Hungary and the Deputy-Commissioner responsible protection of the interests of future generations), equality body (through its Directorate-General for Equal Treatment) and oversight body of police conduct (though its General Directorate for Law Enforcement). It also carries out the activities of the National Preventive Mechanism introduced by the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

With this overarching mandate and according to the Fundamental Law, the CFR exercises several functions that could safeguard rule of law principles on the national level. Firstly, it holds a broad obligation to both **investigate any violations related to fundamental rights** that come to its knowledge, or to ensure that such violations are investigated and must initiate **general or specific measures to remedy** them. Detailed rules on the activities of the CFR are laid down in Act no. CXI of 2011[[53]](#footnote-54), which specifically requires the CFR to conduct ***ex officio* proceedings** for the protection of the rights of the child, the interests of future generations, the rights of national minorities living in Hungary, and the rights of the most vulnerable social groups[[54]](#footnote-55).

Procedures before the CFR may be initiated by anyone. An **individual complaint** may be sent to the CFR by email, post or in person. The CFR also runs an electronic platform where complaints or **public interest disclosures** can be submitted. The latter also serves as a **reporting channel for whistle-blowers**. The latter includes an additional guarantee providing for the anonymity of the whistle-blowers who may request that their personal data to be accessible only to the CFR [[55]](#footnote-56). However, according to the 2022 Commission Rule of Law Report, the CFR has “limited formal competence as regards whistleblower complaints, including the forwarding of reports to competent authorities”[[56]](#footnote-57); thus, the protection of whistle-blowers is not effectively ensured.

Since 2015, the CFR may also inquire into ordering and conducting a **review of national security checks** to determine whether there is an irregularity related to fundamental rights[[57]](#footnote-58), as provided for in the Act on National Security Services[[58]](#footnote-59). However, the CFR’s investigation cannot cover certain information related to national security services in light of Article 23 of the Act on the Commissioner for Fundamental Rights, which lists 39 sets of cases in relation to which the CFR cannot access sensitive or classified information regarding the operation of certain state bodies. Thus, in addition to the security services, the CFR cannot access certain information in relation to the armed forces, police forces, the tax and customs authority, prosecution services, and of the National Security Inspectorate. In all of these cases, the CFR can turn to the Minister in charge to carry out the inquiry and to inform the CFR about the results[[59]](#footnote-60). This limits the ability of CFR to access information for its investigations and to carry out its fundamental rights mandate in an independent manner, especially so in controversial cases that often involve the above-listed agencies with investigative and prosecutorial functions.

In addition, the CFR can give its opinion on draft legislation falling under its competence, and to propose the amendment or the adoption of legislative acts affecting fundamental rights, or the recognition of the binding force of an international treaty[[60]](#footnote-61). The CFR may also **initiate at the Constitutional Court the constitutionality review of legislation** as well as the interpretation of constitutional provisions[[61]](#footnote-62).

**This multiplicity of competencies and powers allocated to the CFR and the procedures attached to these could serve as tools for safeguarding the rule of law** against dissensus threatening fundamental rights. However, in practice several national and international stakeholders raised concerns about the independence of the CFR and its ability to fulfil the Office’s mandate to effectively promote and protect all human rights.

Among others, the **Global Alliance of National Human Rights Institutions** (GANHRI) responsible for reviewing and accrediting National Human Rights Institutions (NHRIs) in compliance with the Paris Principles[[62]](#footnote-63) have for the past three years consistently raised concerns over the **CFR’s compliance with the minimum standards that NHRIs must meet in order to be considered credible and to operate effectively.** As highlighted by the Venice Commission in its 2021 official Opinion on certain legal amendments in Hungary[[63]](#footnote-64), the GANHRI’s Sub-Committee on Accreditation (SCA), in its **2019** Report concluded that *“the CFR did ‘not demonstrate adequate efforts in addressing all human rights issues, nor has it spoken out in a manner that promotes and protects all human rights’. The SCA further noted that the Commissioner made limited use of international and regional human rights mechanisms in relation to sensitive issues. The SCA referred, inter alia, to concerns expressed by the Special Rapporteur on the situation of human rights defenders in 2017 that, despite its mandate, the CFR has been reluctant to refer complaints to the Constitutional Court for review in cases that it deems political or institutional”.[[64]](#footnote-65)*

Furthermore, in its 2021 report, the SCA stated that failure of the CFR to speak out in a manner that promotes protection of all human rights demonstrates a lack of sufficient independence. It also noted that the CFR “*is operating in a way that has seriously compromised its compliance with the Paris Principles*”[[65]](#footnote-66), therefore, it recommended that the CFR be downgraded to status “B” (partially compliant with the Paris Principles). The CFR was given the opportunity to provide the documentary evidence necessary to establish its continued conformity with the Paris Principles. However, in its most recent report issued in March 2022, the SCA reiterated its previous recommendation for downgrading, noting again with concern, among others, that: *“[b]ased on the CFR written and oral response […] the SCA is of the view that the CFR has not effectively engaged on and publicly addressed* *all human rights issues, including in relation to vulnerable groups such as ethnic minorities, LGBTI, refugees and migrants as well as constitutional court cases deemed political and institutional, media pluralism, civic space and judicial independence”*[[66]](#footnote-67)*.* The recommendation took effect in April 2022, and since then the CFR is accredited as a “B” status institution with the GANHRI[[67]](#footnote-68).

**Hungarian human rights NGOs**, such as the Hungarian Helsinki Committee, Amnesty International Hungary, Eötvös Károly Institute, Háttér Society and the Hungarian Civil Liberties Union also raised similar concerns, and in their shadow report submitted to the SCA in February 2021[[68]](#footnote-69), concluded that “*while the Commissioner has been very active in certain, politically neutral areas*, ***he has been avoiding to go against the Government and the governing majority in politically sensitive cases****, and has failed to step up or to step up adequately to protect the rights of affected groups*”[[69]](#footnote-70). The selection process of the CFR was also contested by the SCA in 2019 as not sufficiently broad and transparent, and the mentioned NGOs showed in their shadow report that no initiatives have been taken by the executive or the legislative to ameliorate this.[[70]](#footnote-71)

The NGOs also recalled the controversial abolishment of the Equal Treatment Authority (ETA) and the transfer of its tasks and competencies to the CFR as of 1 January 2021 in a process that lacked transparency, and stressed that while the ETA used to step up in the defence of vulnerable groups, the CFR fails to (adequately) act in defence of their rights[[71]](#footnote-72). The European Network of Legal Experts in Gender Equality and Non-discrimination reported that: *“while the Equal Treatment Authority was a well-functioning body that had gained the respect of a wide range of stakeholders, including civil society organisations representing the interests of the protected groups, the same cannot be said about the Ombudsman […] there is a strong concern that due to the lack of the Ombudsman’s functional independence, the reorganisation of the institutional framework has decreased the level of protection against discrimination in Hungary”*.[[72]](#footnote-73)

The **Council of Europe Commissioner of Human Rights** also expressed concerns about the merger of the ETA and the CFR, indicating that doubts remained about the appointment of the Commissioner in office and the adequacy of the CFR’s efforts to address all human rights issues[[73]](#footnote-74). In the **Venice Commission**’s view, “*the new system of protection against discrimination is overall more complicated and thus has the potential to be less effective than the previous one*”[[74]](#footnote-75).

Hungarian NGOs have reported that the **number of discrimination complaints has significantly decreased since the CFR became the equality body**. For instance, while the ETA received 868 cases in 2019, in the first semester of 2021, the Directorate of Equal Treatment of the CFR received only 156 complaints[[75]](#footnote-76). In addition, it was also reported that the CFR did not investigate complaints filed with the institution. For instance, Romaversitas, a Roma-led community education organisation in Hungary reported that Romani activists have complained to the CFR about cases of discrimination of Transcarpathian Roma displaced persons in Hungary, but the CFR did not initiate investigations into the violations brought to their attention[[76]](#footnote-77).

Against this background, **the efficacy of the procedures available before the CFR is questionable**. Furthermore, the CFR does not seem to have challenged any legislative acts before the Constitutional Court since 2020[[77]](#footnote-78), and as mentioned above, it has been unwilling to refer political or institutional cases to the Constitutional Court for review. As to reviewing draft legislation and initiating legislative proposals, in 2021 NGOs reported that the CFR “*has not stepped up in any way against an unconstitutional new law that excludes pecuniary compensation for segregation, even when 21 NGOs asked him to do so […], he has failed to protect the rights of LGBTQI people (e.g. against laws banning legal gender recognition and blocking adoptions, an anti-LGBTQI constitutional amendment, and homophobic statements by politicians), despite calls by NGOs*”[[78]](#footnote-79). Hence, **the exercise of the CFR’s function to challenge controversial draft or adopted legislative acts affecting fundamental rights is also deemed to be problematic**.

**National Authority for Data Protection and Freedom of Information (NAIH or DPA)**

According to Act no. CXII of 2011 on the right to informational self-determination and information freedom (hereinafter Information Act), the NAIH is an autonomous state administration organ, responsible for **monitoring and promoting the enforcement of personal data rights**, including access to data of public interest and data accessible on public interest grounds, as well as for the promotion of the free movement of personal data within the European Unio[[79]](#footnote-80). As mentioned above, its predecessor was the Commissioner for Data Protection which was abolished in 2012, leading the CJEU to found a violation of EU law on the grounds that “by prematurely bringing to an end the term served by the supervisory authority for the protection of personal data, Hungary had(s) failed to fulfil its obligations under Directive 95/46/EC”[[80]](#footnote-81).

The NAIH can conduct investigations in its field of competence, based on complaints or data breach notifications, but also *ex officio*. **This function of the NAIH and the procedures related to it could serve as tools for safeguarding the rule of law against dissenting actions misusing personal data.**

However, **the law provides for extensive exceptions which limit the NAIH’s ability to access data for its investigations.** The NAIH is subject to almost the same limitation as the CFR (based on Article 23 of the Act on the CFR described above and Article 71 of the Information Act[[81]](#footnote-82)) in relation to a list of state institutions. The European Court of Human Rights in its judgment of September 2022 in *Hüttl v. Hungary* found that the above exceptions raise concerns, as “*it does not allow for the legal scrutiny of certain instances of data-processing by an external and independent body. This is so because the DPA cannot find out, of its own volition, the contents of the documents and data in question. Instead, it must rely on information obtained from the minister overseeing the activity, who will communicate their views on the matter – while potentially having a direct interest in maintaining the secrecy of the data concerned*”[[82]](#footnote-83).

In the most serious wiretapping scandal in recent years, in 2021 investigative journalists uncovered that hundreds of journalists, businessmen and lawyers in several countries may have had the Pegasus spy software installed on their mobile phones. In Hungary, the scandal affected over 300 prominent opposition politicians, civil society critical of the government as well as journalists. The NAIH initiated an *ex officio* investigation on the use of the Pegasus spyware in Hungary, as media information indicated a possible violation of data protection laws[[83]](#footnote-84). The NAIH in its report specifically referred to its limited ability to access information[[84]](#footnote-85), and concluded in a very formalistic manner that during “*the Authority’s investigation, no information was found that the bodies authorised to covertly gather information subject to external authorisation […] would have used the spyware for any purpose other than those specified by the manufacturer (prevention and detection of criminal acts and acts of terrorism), and the discharge of the duties specified by law*”[[85]](#footnote-86). The evasive approach of the NAIH, the lack of either *de lege* or *de facto* remedy and/or protection provided to the individuals under surveillance, some of whom filed lawsuits against the state[[86]](#footnote-87), are yet another example of how the rules of secret information gathering are too loose in Hungary, allowing for secret surveillance of citizens, including lawyers and journalists, on grounds of national security, without effective judicial supervision[[87]](#footnote-88).

Protection of Judicial Independence

Pursuant to Article C)(1) of the Fundamental Law, the functioning of the Hungarian State is based on the principle of the division of powers. The administration of justice belongs to the courts, which are organised at multiple levels, in a four-tier hierarchy: there are 113 district courts, 20 regional courts (tribunals), five regional courts of appeal and the Curia, which is the supreme judicial organ[[88]](#footnote-89). The Constitutional Court is not part of this ordinary court system. However, the hierarchical organisation does not mean that lower courts are subordinated to the higher ones. According to the Fundamental Law and the Courts Administration Act[[89]](#footnote-90), judges are independent and subordinated only to the law and they may not be influenced or instructed in relation to their activities in the administration of justice. The Fundamental Law also specifies that judges may not be members of political parties or engage in political activities.

The rule of law guarantee of judicial independence and its accompanying Constitutional safeguards implemented via a territorially and competence-wise decentralised judicial apparatus has been challenged by the **new uniformity complaint procedure** that was introduced on 1 April 2020. The procedure can be initiated before the Curia in case a final and binding court decision differs from judgments previously published by the Curia. While the Curia has long held the role of guaranteeing the uniform application of the law and to that end it has adopted uniformity decisions (*jogegységi határozat*) that have been binding on courts, on the basis of the new procedure, the uniformity complaint panel of the Curia can simply annul final and binding judgments of other courts and of other panels of the Curia should it deem that the ruling diverted from published jurisprudence of the Curia[[90]](#footnote-91).

The Fundamental Law assigns the central responsibility of administration of courts to the President of the National Office for the Judiciary (NOJ), supervised by the National Judicial Council (NJC). The National Judicial Council and other bodies of judicial self-government also participate in the administration of courts[[91]](#footnote-92). The NJC is a judicial self-governing body, composed of 15 judges, out of which one is the president of the Curia and the others are elected by secret ballot by the judges themselves, with the appointment of delegates. The body can bring decisions with two-thirds of its members present[[92]](#footnote-93). **This could serve as a framework for checks and balances in the administration of courts and judicial independence**; however, the NJC does not have enough powers to effectively counterbalance the powers of the NOJ’s President who is able to bring arbitrary decisions concerning appointment and promotion of judges.

Judges are appointed by the President of the Republic, on the recommendation of the President of the NOJ, based on an application procedure that provides for **certain guarantees against arbitrary appointments**; for instance, the ranking of candidates is established by the local judicial councils and the NOJ President cannot deviate from this in his recommendation without the approval of the National Judicial Council[[93]](#footnote-94). However, these guarantees are not sufficient, as the national legislation includes loopholes by which the NOJ President or the President of the Curia may block or circumvent the application procedure. It was reported that these loopholes were often utilised in 2022 and several judicial appointments were made in a non-transparent and non-objective manner[[94]](#footnote-95). Since these Presidents are politically appointed (they are elected for nine years by two thirds of the Members of the Parliament, on the proposal of the President of the Republic[[95]](#footnote-96)), they might misuse the procedure to grant judicial appointments to politically affiliated persons or persons without appropriate qualifications, as was the case in the appointment of a former state secretary without any prior judicial experience[[96]](#footnote-97). Judicial promotions and leadership positions should also be awarded in the framework of an ordinary application procedure, but the law allows for a number of exceptions[[97]](#footnote-98). The presidents of the NOJ and the Curia have discretionary powers concerning decisions on promotions without an application procedure, eliminating thus the guarantees associated with a transparent application procedure. No judicial remedy is available against such appointments[[98]](#footnote-99). Certain legislation amendments also took place which allowed for the appointment as judges and heads of panels at the Curia of some persons (such as the current president and vice-president), exempting them from going through the ordinary application procedure[[99]](#footnote-100). Secondments to the Curia based on discretionary decisions of the NOJ President have also been widely used to bypass the ordinary process of promotions[[100]](#footnote-101). **Such irregularities in appointments and promotions call into question the independence and professionalism of the judges and judicial leaders**. A survey with the participation of 29% of the Hungarian judges shows the lack of trust in the judicial appointment processes even among the judiciary itself with 42% believing that judges in Hungary “have entered the judiciary on first appointment other than solely on the basis of ability and experience during the last three years”; whereas 52% believing the same in case of judges appointed to the Curia[[101]](#footnote-102).

In addition, court presidents have discretion on establishing the case allocation schemes, and since 1 April 2020, schemes can be modified any time, which in practice happens on a regular basis, sometimes from one day to the next[[102]](#footnote-103). The case allocation schemes leave ample room to manipulate the judicial system by failing to prevent the possibility that sensitive or politically important cases can be allocated to “reliable” judges who will adjudicate according to political interests[[103]](#footnote-104). Moreover, the NOJ president and judicial leaders have a wide discretion in setting bonuses for judges; therefore, cutting or giving bonuses can serve as a tool for silencing judges or influencing their activities. This has further impact on the independence of the judiciary.

With the dissolution of the Administrative and Labour courts on 1 April 2020, the Curia “*gained exclusive competence to rule (i) as the first instance court (especially in certain politically sensitive matters, including cases related to elections and the right to freedom of assembly); (ii) as the second instance court (in general in all cases where regional courts ruled as first instance) and (iii) as the court of extraordinary review (in all administrative cases)*”[[104]](#footnote-105). According to NGO contributions to the 2023 Commission Rule of Law Report, such centralisation of administrative adjudication was important for the Hungarian government as in such instances relevant cases involving fundamental rights (such as elections, asylum, administrative decisions by the police, or the exercise of the right to freedom of assembly) and cases of significant economic importance (such as tax and customs disputes, public procurement, building and construction permits, land and forest ownership) are decided. The extensive centralisation and the mentioned legal or practical shortcomings of the national system of checks and balances within the judiciary has indicated the judicial proceedings and administrative processes related to the judiciary have increasingly fallen short of the standards, such as judicial independence, required to protect the rule of law especially in the face of mounting dissensus from the executive. **How the Fidesz-led political majority has been undermining the independence of the judiciary in Hungary since 2010** has been subject of extensive criticism, among others, by the Hungarian Helsinki Committee whose analysis concluded that the only independent body, for now, remains the National Judicial Council that, however, has limited powers to uphold judicial independence[[105]](#footnote-106).

Judicial Intervention

The Constitutional Court processes explained in Section 2.1 above give various avenues for the CC to intervene in case of breaches of the rule of law either during legislative or judicial processes. These make the CC well placed, on paper, to guard the rule of law in the national context. However, in practice, as the individual complaint mechanism has not performed an effective control function on the executive’s continued attacks on the separation of powers, neither did the **preliminary and subsequent norm control functions** of the Constitutional Court - even though their very objective is to provide additional *de lege* tools to ensure that national legislation is in line with constitutional principles, such as the rule of law. The preliminary norm control, as defined in Article 23 of Act CLI of 2011 on the Constitutional Court, assigns competence to the Constitutional Court to examine whether an adopted but not yet promulgated law is in line with the Constitution, including its rule of law guarantees, while Article 27 assigns the same competence *vis-à-vis* laws already in effect. In 2021, the Constitutional Court annulled six legal acts and in 11 cases provided recommendations[[106]](#footnote-107). Importantly, the CC does not carry out the norm control *ex officio* but only acts upon specific request.

Article 25 of the Act on the CC also provides for a **judicial referral procedure, akin to the preliminary ruling procedure to the CJEU** as per Article 267 TFEU, whereby the sitting judge in an individual case can suspend the procedure before it on suspicion of unconstitutionality and can request its individual norm control from the Constitutional Court.

The efficacy of these procedures has remained limited under the use of various types of **state of emergency** – in the domestic legal order ‘special legal order’- that in practice has been the new normal for the past three years. This is despite the fact that Article 54 (7) of the Fundamental Law provides a specific guarantee to ensure that even in a state of emergency, the operation of the Constitutional Court cannot be restricted (unlike that of the ordinary courts). After initiating a state of emergency, the Government is obliged to take all measures to guarantee the continuous operation of the Constitutional Court” [[107]](#footnote-108). At the same time, it followed from the above explained standing rules that in fact no cases could reach the CC as long as adjudication within the ordinary court system was suspended or limited with reference to the pandemic. It is only the abstract norm control procedure that could have been exercised, however, the initiation of those procedures are limited (to the Government, a quarter of the members of the National Assembly, the President of the Curia, the Chief Prosecutor or the Commissioner of Fundamental Rights[[108]](#footnote-109)), i.e., officials whose independence from the government has long been called into question, including due their reluctance to challenge politically sensitive matters[[109]](#footnote-110).

Accordingly, neither of the above outlined procedures meant a meaningful check on the expansion of executive power in practice. This is despite the fact that it has for years been extensively documented how the government used the declaration of a ‘state of danger’ to rule by decree. As a result, it has circumvented the statutory safeguards built in the ordinary legislative procedure and has also routinely overstepped parliamentary authorization and uses its decree power to regulate matters unrelated to the pandemic and to overrule judicial decisions and limit the exercise of fundamental rights, such as media freedom[[110]](#footnote-111). Recent examples include the ban of the media from Hungarian hospitals - despite the Hungarian Medical Association along with 28 media platforms requesting the lifting of the ban[[111]](#footnote-112). When the Budapest Regional Court’s ruling[[112]](#footnote-113) quashed the ministerial decision banning access, the government issued yet another government decree[[113]](#footnote-114) giving *de lege* authorisation to administrative authorities, such as the ministry in question, to regulate contact between hospitals and the media[[114]](#footnote-115).

Lastly, the role of the Constitutional Court processes as a guard of the rule of law have been called into question, especially, due to the insertion of Article 24 (2)d) in the Fundamental Law via the Fourth Amendment, whereby the CC acquired competence to review the consistency of a final judicial decision with the Fundamental Law based on a constitutional complaint. This has not only increased the tensions between the CC and ordinary courts[[115]](#footnote-116), as the CC can annul already final decisions, but has also created a *de facto* fourth instance in the domestic justice system, which the CC has reportedly used to overrule ordinary courts in politically sensitive cases[[116]](#footnote-117). In this context, it is important to recall that the judges of the Constitutional Court are elected by the Parliament, and not nominated by the judiciary. Among others, in its most recent decisions, the CC annulled the Supreme Court, in the Hungarian terminology Curia (*Kúria*)), decision and found it unconstitutional to hold a national referendum about a controversial high-investment project to develop in Budapest a campus for the Chinese Fudan University[[117]](#footnote-118), which in its Founding Declaration pledged the service of the Chinese Communist Party.

Pursuant to Article 28 of the Fundamental Law, “in the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law”. However, as indicated in Section 2.4 above, the independence of the judiciary, in particular of the Curia, has been seriously undermined by the ruling party, which also affects the outcome of the judicial decisions addressing threats to the rule of law and fundamental rights.

One prominent example is the 2021 “referendum for child protection” initiated by the government, which was actually part of a hate campaign against LGBTIQ persons[[118]](#footnote-119). The government planned to organise the referendum together with the general elections in April 2022 which was not possible under the election law in effect. Therefore, a legislative amendment was initiated and approved, allowing for holding the referendum on the same day as the parliamentary elections[[119]](#footnote-120). The questions played on populist sentiments and a fearmongering campaign against the LGBTIQ community that prompted human rights organisation to encourage the casting of an invalid vote on the referendum. The referendum questions and the massive campaign surrounding it systematically conflated (and equated) homosexuality and paedophilia[[120]](#footnote-121) and asked voters provocative questions that did not reflect the views of either the political opposition or the LGBTIQ community, such as, whether they “support(ed) the unrestricted exposure of minors to sexually explicit media content, that may influence their development?”; or whether they “support(ed) showing minors media content on gender changing procedures?[[121]](#footnote-122).

Nevertheless, the National Electoral Commission approved the five questions proposed to be asked at the referendum[[122]](#footnote-123). The National Electoral Commission’s decision was challenged before the Curia, among others, by the Hungarian Civil Liberties Union (HCLU), arguing that the questions lacked clarity, and violated international human rights conventions (by restricting children's freedom of information) as well as the Fundamental Law (which protects sexual orientation as part of human dignity)[[123]](#footnote-124). Four of the questions were upheld by the Curia, while one question[[124]](#footnote-125) was found unlawful, violating Article XVI of the Fundamental Law on the rights of the child[[125]](#footnote-126). Yet, the president of the judges’ panel deciding on this question was accused to be ‘a left-wing judge, supporting gender ideology’ in the pro-government media[[126]](#footnote-127).

The government submitted an appeal against the decision to the Constitutional Court[[127]](#footnote-128). The Constitutional Court found the Curia’s decision contrary to Article XXVIII (1) of the Fundamental Law on the right to fair trial and therefore annulled it[[128]](#footnote-129). Nevertheless, the government did not wait for the Constitutional Court’s decision, and removed the question from the list; thus, the referendum took place with the four questions approved by the Curia. Due to critics calling for casting an invalid vote in protest of what has been referred to as the “homophobic referendum”, none of the questions reached the required threshold of 50% of registered voters casting a valid "yes" or "no" vote.[[129]](#footnote-130) Nevertheless, **this case illustrates the lack of independence of the Curia and that its review procedure may not be effective in protecting human rights against the dissenting actions of the government.**

However, positive examples of courts upholding human rights and rejecting populist practices and propaganda also exist. For example, after the 2018 elections, the government-relatednewspaper *Figyelő* published an article which contained a list of 200 private individuals and public figures, including jurists, academics, journalists, and people working for NGOs, and claimed that these persons were associated with George Soros, a Hungarian-American businessman and philanthropist, calling them “Soros’ mercenaries” who committed treason against the nation[[130]](#footnote-131). The affected persons became the target of online and personal verbal attacks and harassment or had to live in fear of such attacks[[131]](#footnote-132). The article was part of a national-wide, long-running, intimidating media propaganda campaign against civil society actors. The case was brought before the Budapest-Capital Regional Court by 34 plaintiffs, mainly people working at NGOs and universities. The Court, in its judgment of September 2022[[132]](#footnote-133) found the article to be not only unlawful, but also fear-mongering which could not remain without legal consequences. It maintained that such ‘listing’ damaged the public opinion of the persons concerned and gave rise to fear, especially in view of the historic precedents of the Second World War. The judgement held that just because someone works for a particular organisation does not mean that they are an enemy of the nation. The Court awarded damages to the plaintiffs and ordered the publishing of the Court’s judgment in the online version of the newspaper (since the printed version ceased to exist), and a public apology to the listed persons[[133]](#footnote-134). The judgment become final and legally binding on 3 December 2022. The *Figyelő* published an apology on its website on 10 February 2023 for violating the plaintiffs individual right to the protection of their reputation[[134]](#footnote-135). **This is an example of how the judiciary withstanding political pressure and populist ideology could provide effective remedies against violations of the rule of law through a discrediting and intimidating media practice directly violating the fundamental right of the targeted individuals and indirectly threatening political dissent to the ruling party’s ideology**.

1. Recent Trends on the implementation of the Rule of Law facing threats from dissension actions

*This section examines developments across the Member States, both positive and negative, in two key areas for the rule of law: the anti-corruption framework and media pluralism and whether inter-institutional cooperation and support mechanisms to strengthen the rule of law have been implemented. In your research, please focus on measures taken to address dissenting actions.*

*As a starting point, please read the 2022 Rule of Law Report for your Member State.[[135]](#footnote-136)*

*Please note that the Italian Report briefly analyses, among other instruments, the Technical Support Instruments. While it might not be an expected point in the reports, it could bring interesting points for the analysis of the relationship between the rule of law instruments at EU and national level. Should you find TSIs relevant for this section, please only refer to projects related to the rule of law.*

3.1. Anti-corruption

Corruption constitutes a significant threat to the rule of law. It jeopardises the good functioning of public institutions and diverts their human and financial capacities from public interest. It can disrupt the legislative process, introduce a degree of arbitrariness in decision-making and can be the breeding ground of human rights violations. The form notwithstanding, corruption undermines citizens’ trust in state institutions. Against this conceptual framework, as outlined by the Parliamentary Assembly of the Council of Europe[[136]](#footnote-137), Hungary has the worst corruption perception score among all EU Member States according to the latest Transparency International Report[[137]](#footnote-138). The country’s corruption perception index has consistently deteriorated since 2012 - in 2023 standing at its lowest, 44/100 score[[138]](#footnote-139), in yet another year marked by high-profile corruption cases closely entangled with the political elite. In February 2023, the largest corruption trial of recent years has started with 22 defendants, including the prime accused, György Schadl, the President of the Hungarian Association of Judicial Officers, and Pál Völner, the former Parliamentary State Secretary of the Ministry of Justice[[139]](#footnote-140). Nevertheless, it was only on 27 April 2023 that György Schadl resigned (along with the entire chairmanship of the association) – after he has spent the previous year and a half in detention[[140]](#footnote-141).

Against this background, the efficacy of the procedures available in national law to protect the rule of law from the threats brought about by corruption are questionable. The main law enforcement agency responsible for anti-corruption is the National Protection Service, which is overseen by the Ministry of Interior that is also in charge of related policymaking. Private sector corruption cases are investigated by the police, whereas corruption in the public sector fall under the exclusive competence of the Investigation Division of the Central Chief Prosecution Office of Investigation[[141]](#footnote-142). These **preventative and investigative functions** are also complemented by the work of the National Tax and Customs Administration as well as the State Audit Office. In addition, various anti-corruption processes are in place at the Hungarian Competition Authority, the Public Procurement Authority, the Prosecution Service, and the Government Control Office – all of which, however, are administered by the minister in charge of the thematic area. Since mid-2022, the National Protection Service can only carry out **integrity checks** *vis-à-vis* the staff of institutions under the supervision of the Ministry of Interior, as well as public healthcare providers. Whereas the integrity tests and crime detection for public administrative staff not in healthcare or under the Interior Ministry’s supervision is allocated to the Constitution Protection Office, which is one of Hungary’s civilian secret services, overseen by the Prime Minister’s Cabinet Office, functioning in a less transparent manner – and with neither procedure covering political leaders.[[142]](#footnote-143)

In the course of 2022, the national rule of law framework has been strengthened, which however took place in a national context where the state of play had led to the European Commission triggering the EU’s conditionality mechanism as well as to the negotiations over Hungary’s Recovery and Resilience Plan. It was only in response to these EU-level RoL mechanisms that Hungary committed to meeting 27 rule of law related ‘super milestones’ with the objective of protecting the financial interests of the European Union[[143]](#footnote-144). However, national NGOs reiterated that despite the pledges, little substantive improvement has been achieved in practice and has called on the European Commission to be more intransigent in order to stop systemic corruption in Hungary[[144]](#footnote-145).

As part of the above efforts, in 2022, the Anti-Corruption Task Force was set up as well as the investigative judges of the Buda Central District Court were assigned exclusive competence to examine **individual complaints concerning the termination of corruption investigations**. A relevant tool added to the national anti-corruption processes is **the group of acts the newly established the** **Integrity Authority** can carry out in all cases where an organization that has tasks and powers in the use of EU funds has not taken the necessary steps to prevent, detect and correct irregularities, in particular, fraud, conflict of interest, corruption and other violations of law that affect the efficient and effective financial management of the EU budget or the protection of the EU’s financial interests[[145]](#footnote-146). The Integrity Authority is, however, wholly reliant on other government agencies in carrying out its mandate, that, as reported by national CSOs, have proven reluctant to uncover wrongdoings associated with the government[[146]](#footnote-147). In addition, the **monitoring procedure of the newly established** **Directorate for Internal Audit and Integrity** is another procedure that aims at curbing corruption – specifically via monitoring conflict of interest declarations and to “raise awareness” about related incidents at any national authority implementing EU funding. Besides this limited mandate, the Directorate also operates a **reporting platform** via which anyone can report incidents of conflict of interest even anonymously[[147]](#footnote-148). Nevertheless, the ineffectiveness of the integrity and conflict of interest procedures has been reported in numerous instances. Most recently, a new phenomenon of conflict of interest have pervasively emerged in the form of channelling massive public funding to so-called public interest asset management foundations, which are in fact private law foundations with boards filled with Fidesz-affiliates and leaders, such as János Lázár, Minister of Construction and Traffic and Mihály Varga, Minister of Finance who both hold a number of such board memberships[[148]](#footnote-149).

In the context of public procurement, despite various reforms initiated in response to the triggered conditionality mechanism, the need for corruption prevention safeguards as well as for an in fact independent Public Procurement Council continue to lack. This is despite the fact that these functions would be essential to prevent, among others, the circumvention of public procurement principles when establishing concessions such as the one that was recently assigned with waste management and the operation of expressways for 35 years[[149]](#footnote-150).

A new tool on the national level to incentivise **data disclosure** and to increase the transparency of public contract data, is that bodies of the state budget – but not other agencies - are now required to disclose, among others, the metadata of their contracts. If the information is not uploaded in the new public data repository, the National Authority for Data Protection and Freedom of Information can impose fines up to HUF 50 million (ca. EUR 127,000)[[150]](#footnote-151).

As part of the bundle of legislative amendments passed in order for the country to meet the super-milestones required by the conditionality mechanism, both private individuals and legal entities can now submit a **complaint to a judge to challenge termination of a corruption investigation**, which can be ordered to re-commence upon judicial decision[[151]](#footnote-152). While the private prosecution of high-level corruption cases is now available on paper as a new remedy process to counter the inaction of the Prosecution Service, CSOs have warned that the lack of equality of arms within the procedure, and the hindered accessibility of casefiles make such procedure unviable in practice[[152]](#footnote-153). This is in a context where the lack of appropriate prosecutorial action is a hindering factor to the prudent administration of both public and EU funds. One prominent example of the latter is the irregularities found in the administration of the “Bridge to the Word of Labour” EU project, in relation to which Transparency International Hungary and K-MONITOR reported that “tax administration terminated the process in 2022 after having investigated into supposed subsidy fraud for seven years in lack of evidence of a criminal conduct. The prosecution service approved this decision, albeit both the European Commission (OLAF) and the Hungarian government uncovered signs of serious misconduct. The European Commission ordered the repayment of the entire project budget (HUF 1.5 billion).” [[153]](#footnote-154) The beneficiary of the grant was the National Roma Self-Government, whose president during the grant period, Flórián Farkas, used to serve as a Fidesz MP and who was not even interrogated in the process despite the fact that he was referred to as the instigator in related interrogations.

3.2. Media pluralism

While freedom of expression is guaranteed by Article IX of the Fundamental Law, the 2010 Media Act[[154]](#footnote-155) has been criticized from the start, among others by the OSCE Representative on Freedom of the Media[[155]](#footnote-156) for being a means of eliminating media pluralism. Throughout the past decade, the public service media has continued to become increasingly concentrated and has openly served the interests of the Orbán government[[156]](#footnote-157). This is backed by an advertising market that favours pro-government companies at the detriment of independent media. National watchdogs continue to report on how “this practice renders fair competition impossible and distorts the market” [[157]](#footnote-158). In this context, the 2022 Election Observation Mission of ODIHR concluded that “the pervasive bias in the news and current-affairs programs of the majority of broadcasters monitored ... combined with extensive government advertising campaigns provided the ruling party with an undue advantage”[[158]](#footnote-159).

The Media Council plays a central role in maintaining this *status quo* and to back the political agenda of the ruling part. Most recently, it even refused to investigate complaints about Russian propaganda infiltrating the Hungarian public media and rather publicly criticized the complainants[[159]](#footnote-160).

In this context, rule of law safeguards, such as **freedom of information requests**, while available under national law, are obstructed by entrenched institutional practices. One such example is how national authorities tend to deny they have the requested data unless court proceedings start and tend to only make the information accessible after significant time and sustain efforts required from the requester. When the data is provided, the case is automatically closed d[[160]](#footnote-161). In addition, FOI requests can only be used with restrictions when it comes to the access of data concerning public funds, due to a constitutional amendment that narrowed down the definition of the latter. The narrow interpretation of the term is confirmed by the Curia’s standing case law, which found that information about subcontractors’ participation in national constructions carried out with the support of EU funds does not need to be disclosed in response to FOI requests [[161]](#footnote-162).

The use of **judicial proceedings** to protect the journalistic freedom to research and report publicly available information on public figures has systematically been repressed in Hungary. In this context, national watchdogs report that 2022 has even seen the emergence of strategic litigation against public participation (SLAPP) lawsuits in Hungary[[162]](#footnote-163). The legal ground for these is usually the fact that Hungary failed to implement the **GDPR with regard to journalism exemptions of Article 85**, which expressly requires Member States to reconcile the right to the protection of personal data with the right to freedom of expression and information, *including processing for journalistic purposes*, in their national law[[163]](#footnote-164).

1. Conclusion and New Challenges

Since 2010 the Fidesz-led governing coalition has systematically captured democratic institutions, such as the Parliament, the Constitutional Court, the judiciary as well as other key state agencies, such the Office of the Commissioner for Fundamental Rights or the Media Council that were supposed to ensure checks and balances against undue expansion of power. To that effect a variety of tools were employed by the four consecutive Orbán-governments ranging from the rewriting of the constitution to the massive centralisation of the equality bodies and the circumvention of the safeguards of the ordinary legislative process via the use of decree-governance. The revamp of the legal and democratic institutional landscape was accompanied by an increasingly exclusionary populist political rhetoric with open attacks on any political view different from the Christian-conservative government ideology, on minorities and vulnerable groups from LGBTIQ persons to refugees, as well as on any entities not falling in line. So-called public consultations have increasingly become means of gaining populist support for the government policies that focused on painting an enemy picture against whom the Hungarian nation must protect itself: be it the anti-immigrant Stop-Soros campaign, or the Stop-Brussels consultation claiming a list of ways in which “Brussels have attacked our country”.[[164]](#footnote-165) In the reign of what has emerged as the hybrid partially-free electoral autocracy of a nationalist populist leader[[165]](#footnote-166), the national tools to protect the rule of law have proven to be weak and recent positive legislative and administrative steps to strengthen the rule of law have not been the result of domestic mechanism but have rather been linked to the activation of the EU rule of law toolkit.

1. Parliament, Cardinal Laws, available at: <https://www.parlament.hu/aktual/srk_trv/bevezetes> [↑](#footnote-ref-2)
2. Commission Staff Working Document, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p 23 available at: <https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf> [↑](#footnote-ref-3)
3. Bermeo, Nancy. “On Democratic Backsliding”. Journal of Democracy, vol. 27, no. 1, Jan. 2016, pp. 5-19, available at: <https://www.journalofdemocracy.org/articles/on-democratic-backsliding/> [↑](#footnote-ref-4)
4. Freedom House, Freedom of the World 2023, p 12, available at: <https://freedomhouse.org/sites/default/files/2023-03/FIW_World_2023_DigtalPDF.pdf> p 28 [↑](#footnote-ref-5)
5. Largest ten-year declines in Freedom House, Freedom of the World 2023, p 12, available at: <https://freedomhouse.org/sites/default/files/2023-03/FIW_World_2023_DigtalPDF.pdf> [↑](#footnote-ref-6)
6. V-Dem Institute: Democracy Report 2023: Defiance in the Face of Autocratisation, p 10, available at: <https://www.v-dem.net/documents/29/V-dem_democracyreport2023_lowres.pdf> [↑](#footnote-ref-7)
7. Ibid. p 23. [↑](#footnote-ref-8)
8. Ibid p. 45. [↑](#footnote-ref-9)
9. Z. Fleck et al., Opinion of the Fundamental Law, June 2011

available at: <https://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf> [↑](#footnote-ref-10)
10. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), OPINION ON THREE LEGAL QUESTIONS ARISING IN THE PROCESS OF DRAFTING THE NEW CONSTITUTION OF HUNGARY, Adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011) available at: <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)001-e> [↑](#footnote-ref-11)
11. Article B of the [Fundamental Law of Hungary 2011 (rev. 2016)](https://www.constituteproject.org/constitution/Hungary_2016?lang=en) [↑](#footnote-ref-12)
12. Constitutional Court Decision 43/2012. (XII. 20.) AB határozat, Indokolás [54]–[60], [63]–[64]. [↑](#footnote-ref-13)
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“(1) Do you support that education presenting sexual orientations be available to minors in public education institutions without the consent of the parents?

(2) Do you support that sex change treatments be propagated to minors?

(3) Do you support that sex change treatments be available also to minors?

(4) Do you support the presentation of sexual media content to minors that influences their development without restrictions?

(5) Do you support the presentation of media content to minors that display sex change?”

See: Zsolt Körtvélyesi, Orsolya Salát, Júlia Mink, Tamás Fézer, Balázs Majtényi (2022), Franet National contribution to the Fundamental Rights Report 2022 Hungary, Milieu Consulting SRL, p.13, available at http://fra.europa.eu/sites/default/files/fra\_uploads/fundamental\_rights\_report\_2022-\_hungary\_.pdf. [↑](#footnote-ref-123)
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