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#### **COVER NOTE**

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From:	The European Parliament signed by Mrs. Ellen ROBSON, Director for Legislative Acts
date of receipt:	18 September 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
Subject:	Proposal for a COUNCIL DECISION on the determination of a clear risk of a serious breach by the Republic of Hungary of the rule of law

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Delegations will find attached the reasoned proposal adopted by the European Parliament for a Council decision determining, pursuant to Article 7(1) of the TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.



Strasbourg, 12.9.2018

2017/2131(INL) -

2018/0902(NLE)

Proposal for a

**DECISION OF THE COUNCIL**

**determining, 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**

**Proposal for a Council decision determining, 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 7(1) thereof,

Having regard to the reasoned proposal from the European Parliament,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Union is founded on the values referred to in Article 2 of the Treaty on European Union (TEU), which are common to the Member States and which include respect for democracy, the rule of law and human rights. In accordance with Article 49 TEU, accession to the Union requires respect for and the promotion of the values referred to in Article 2 TEU.
- (2) The accession of Hungary was a voluntary act based on a sovereign decision, with a broad consensus across the Hungarian political spectrum.
- (3) In its reasoned proposal, the European Parliament presented its concerns related to the situation in Hungary. In particular, the main concerns related to the functioning of the constitutional and electoral system, the independence of the judiciary and of other institutions, the rights of judges, corruption and conflicts of interest, privacy and data protection, freedom of expression, academic freedom, freedom of religion, freedom of association, the right to equal treatment, the rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities, the fundamental rights of migrants, asylum seekers and refugees, and economic and social rights.
- (4) The European Parliament also noted that the Hungarian authorities have consistently been ready to discuss the legality of any specific measure but failed to take all the actions recommended in its previous resolutions.
- (5) In its resolution of 17 May 2017 on the situation in Hungary, the European Parliament stated that the current situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 TEU and warrants the launch of the Article 7(1) TEU procedure.

- (6) In its 2003 Communication on Article 7 of the Treaty on European Union, the Commission enumerated many sources of information to be considered when monitoring respect for and promotion of common values, such as the reports of international organisations, NGO reports and the decisions of regional and international courts. A wide range of actors at national, European and international level, have expressed their deep concerns about the situation of democracy, the rule of law and fundamental rights in Hungary, including the institutions and bodies of the Union, the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE), the United Nations (UN), as well as numerous civil society organisations, but these are to be considered legally non-binding opinions, since only the Court of Justice of the European Union may interpret the provisions of the Treaties.

### ***Functioning of the constitutional and electoral system***

- (7) The Venice Commission expressed its concerns regarding the constitution-making process in Hungary on several occasions, both as regards the Fundamental Law and amendments thereto. It welcomed the fact that the Fundamental Law establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles and acknowledged the efforts to establish a constitutional order in line with common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with binding international instruments. The criticism focused on the lack of transparency of the process, the inadequate involvement of civil society, the absence of sincere consultation, the endangerment of the separation of powers and the weakening of the national system of checks and balances.
- (8) The competences of the Hungarian Constitutional Court were limited as a result of the constitutional reform, including with regard to budgetary matters, the abolition of the *actio popularis*, the possibility for the Court to refer to its case law prior to 1 January 2012 and the limitation on the Court's ability to review the constitutionality of any changes to the Fundamental Law apart from those of a procedural nature only. The Venice Commission expressed serious concerns about those limitations and about the procedure for the appointment of judges, and made recommendations to the Hungarian authorities to ensure the necessary checks and balances in its Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted on 19 June 2012 and in its Opinion on the Fourth Amendment to the Fundamental Law of Hungary adopted on 17 June 2013. In its opinions, the Venice Commission also identified a number of positive elements of the reforms, such as the provisions on budgetary guarantees, ruling out the re-election of judges and the attribution of the right to initiate proceedings for *ex post* review to the Commissioner for Fundamental Rights.
- (9) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the current constitutional complaint procedure affords more limited access to the Constitutional Court, does not provide for a time limit for the exercise of constitutional review and does not have a suspensive effect on challenged legislation. It also mentioned that the provisions of the new Constitutional Court Act weaken the security of tenure of judges and increase the influence of the government over the composition and operation of the Constitutional Court by changing the judicial appointments procedure, the number of judges in the Court and their retirement age. The Committee was also concerned about the limitation of the Constitutional Court's competence and powers to review legislation impinging on budgetary matters.

- (10) In its report, adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights stated that the technical administration of the elections was professional and transparent, fundamental rights and freedoms were respected overall, but exercised in an adverse climate. The election administration fulfilled its mandate in a professional and transparent manner, enjoyed overall confidence among stakeholders and was generally perceived as impartial. The campaign was animated but hostile and intimidating campaign rhetoric limited space for substantive debate and diminished voters' ability to make an informed choice. Public campaign funding and expenditure ceilings aimed at securing equal opportunities for all candidates. However, the ability of contestants to compete on an equal basis was significantly compromised by the government's excessive spending on public information advertisements that amplified the ruling coalition's campaign message. With no reporting requirements until after the elections, voters were effectively deprived of information on campaign financing, key to making an informed choice. It also expressed concerns about the delineation of single-member constituencies. Similar concerns were expressed in the Joint Opinion of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections, *in which* it was mentioned that the delimitation of constituencies has to be done in a transparent and professional manner through an impartial and non-partisan process, i.e. avoiding short-term political objectives (gerrymandering).
- (11) In recent years the Hungarian Government has extensively used national consultations, expanding direct democracy at the national level. On 27 April 2017, the Commission pointed out that the national consultation "Let's stop Brussels" contained several claims and allegations which were factually incorrect or highly misleading. The Hungarian Government also conducted consultations entitled 'Migration and Terrorism' in May 2015 and against a so-called 'Soros Plan' in October 2017. Those consultations drew parallels between terrorism and migration, inducing hatred towards migrants, and targeted particularly the person of George Soros and the Union.

### ***Independence of the judiciary and of other institutions and the rights of judges***

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

- (13) Since 2012, Hungary has taken positive steps to transfer certain functions from the president of the NJO to the NJC in order to create a better balance between these two organs. However, further progress is still required. GRECO, in its report adopted on 27 March 2015, called for minimising the potential risks of discretionary decisions by the president of the NJO. The president of the NJO is, inter alia, able to transfer and assign judges, and has a role in judicial discipline. The president of the NJO also makes a recommendation to the President of Hungary to appoint and remove heads of courts, including presidents and vice-presidents of the Courts of Appeal. GRECO welcomed the recently adopted Code of Ethics for Judges, but considered that it could be made more explicit and accompanied by in-service training. GRECO also acknowledged the amendments that were made to the rules on judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the NJC received a stronger supervisory function in the selection process. On 2 May 2018, the NJC held a session where it unanimously adopted decisions concerning the practice of the president of the NJO with regard to declaring calls for applications to judicial positions and senior positions unsuccessful. The decisions found the president's practice unlawful.
- (14) On 29 May 2018, the Hungarian Government presented a draft Seventh Amendment to the Fundamental Law (T/332), which was adopted on 20 June 2018. It introduced a new system of administrative courts.
- (15) Following the judgment of the Court of Justice of the European Union (the "Court of Justice") of 6 November 2012 in Case C-286/12, *Commission v. Hungary*<sup>1</sup>, which held that by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries when they reach the age of 62, Hungary failed to fulfil its obligations under Union law, the Hungarian Parliament adopted Act XX of 2013 which provided that the judicial retirement age is to be gradually reduced to 65 years of age over a ten year period and set out the criteria for reinstatement or compensation. According to the Act, there was a possibility for retired judges to return to their former posts at the same court under the same conditions as prior to the regulations on retirement, or if they were unwilling to return, they received a 12-month lump sum compensation for their lost remuneration and could file for further compensation before the court, but reinstatement to leading administrative positions was not guaranteed. Nevertheless, the Commission acknowledged the measures of Hungary to make its retirement law compatible with Union law. In its report of October 2015, the International Bar Association's Human Rights Institute stated that a majority of the removed judges did not return to their original positions, partly because their previous positions had already been occupied. It also mentioned that the independence and impartiality of the Hungarian judiciary cannot be guaranteed and the rule of law remains weakened.

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<sup>1</sup> Judgment of the Court of Justice of 6 November 2012, *Commission v. Hungary*, C-286/12, ECLI:EU:C:2012:687.

- (16) In its judgment of 16 July 2015, *Gazsó v. Hungary*, the European Court of Human Rights (ECtHR) held that there had been a violation of the right to a fair trial and the right to an effective remedy. The ECtHR came to the conclusion that the violations originated in a practice which consisted in Hungary's recurrent failure to ensure that proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to claim redress for excessively long civil proceedings at a domestic level. The execution of that judgment is still pending. A new Code of Civil Procedure, adopted in 2016, provides for the acceleration of civil proceedings by introducing a double-phase procedure. Hungary has informed the Committee of Ministers of the Council of Europe that the new law creating an effective remedy for prolonged procedures will be adopted by October 2018.
- (17) In its judgment of 23 June 2016, *Baka v. Hungary*, the ECtHR held that there had been a violation of the right of access to a court and the freedom of expression of András Baka, who had been elected as President of the Supreme Court for a six-year term in June 2009, but ceased to have this position in accordance with the transitional provisions in the Fundamental Law, providing that the Curia would be the legal successor to the Supreme Court. The execution of that judgment is still pending. On 10 March 2017, the Committee of Ministers of the Council of Europe solicited to take measures to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard. The Hungarian Government noted that those measures are not related to the implementation of the judgment.
- (18) On 29 September 2008, Mr András Jóri was appointed Data Protection Commissioner for a term of six years. However, with effect from 1 January 2012, the Hungarian Parliament decided to reform the data protection system and replace the Commissioner with a national authority for data protection and freedom of information. Mr Jóri had to vacate office before his full term had expired. On 8 April 2014, the Court of Justice held that the independence of supervisory authorities necessarily includes the obligation to allow them to serve their full term of office and that Hungary failed to fulfil its obligations under Directive 95/46/EC of the European Parliament and of the Council<sup>1</sup>. Hungary amended the rules on the appointment of the Commissioner, presented an apology and paid the agreed sum of compensation.
- (19) The Venice Commission identified several shortcomings in its Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted on 19 June 2012. In its report, adopted on 27 March 2015, GRECO urged the Hungarian authorities to take additional steps to prevent abuse and increase the independence of the prosecution service by, inter alia, removing the possibility for the Prosecutor General to be re-elected. In addition, GRECO called for disciplinary proceedings against ordinary prosecutors to be made more transparent and for decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications. According to the Hungarian Government, the 2017 GRECO Compliance Report acknowledged the progress made by Hungary concerning prosecutors (publication is not yet authorised by the Hungarian authorities, despite calls by GRECO Plenary Meetings). The Second Compliance Report is pending.

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<sup>1</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23.11.1995 P. 31).

## *Corruption and conflicts of interest*

- (20) In its report adopted on 27 March 2015, GRECO called for the establishment of codes of conduct for members of the Hungarian Parliament (MPs) concerning guidance for cases of conflicts of interest. Furthermore, MPs should also be obliged to report conflicts of interest which arise in an ad hoc manner and this should be accompanied by a more robust obligation to submit asset declarations. This should also be accompanied by provisions that allow for sanctions for submitting inaccurate asset declarations. Moreover, asset declarations should be made public online to allow for genuine popular oversight. A standard electronic database should be put in place to allow for all declarations and modifications thereto to be accessible in a transparent manner.
- (21) In its report adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the limited monitoring of campaign spending and the absence of thorough reporting on sources of campaign funds until after the elections undercuts campaign finance transparency and the ability of voters to make an informed choice, contrary to international obligations and good practice. The State Audit Office has the competence to monitor and control whether the legal requirements have been met. The report did not include the official audit report of the State Audit Office concerning the 2018 parliamentary elections, as it had not been completed at the time.
- (22) On 7 December 2016, the Open Government Partnership (OGP) Steering Committee received a letter from the Government of Hungary announcing its immediate withdrawal from the partnership, which voluntarily brings together 75 countries and hundreds of civil society organisations. The Government of Hungary had been under review by OGP since July 2015 for concerns raised by civil society organisations, in particular regarding their space to operate in the country. Not all Member States are members of the OGP.
- (23) Hungary benefits from Union funding amounting to 4,4 % of its GDP or more than half of public investment. The share of contracts awarded after public procurement procedures that received only a single bid remains high at 36 % in 2016. Hungary has the highest percentage in the Union of financial recommendations from OLAF regarding the Structural Funds and Agriculture for the 2013-2017 period. In 2016, OLAF concluded an investigation into a EUR 1,7 billion transport project in Hungary, in which several international specialist construction firms were the main players. The investigation revealed very serious irregularities as well as possible fraud and corruption in the execution of the project. In 2017, OLAF found “serious irregularities” and “conflicts of interest” during its investigation into 35 street-lighting contracts granted to the company at the time controlled by the Hungarian Prime-Minister’s son-in-law. OLAF sent its final report with financial recommendations to the Commission’s Directorate-General for Regional and Urban Policy to recover EUR 43,7 million and judicial recommendations to the General Prosecutor of Hungary. A cross-border investigation, concluded by OLAF in 2017, involved allegations related to the potential misuse of Union funds in 31 Research and Development projects. The investigation, which took place in Hungary, Latvia and Serbia, uncovered a subcontracting scheme used to artificially increase project costs and hide the fact that the final suppliers were linked companies. OLAF therefore concluded the investigation with a financial recommendation to the Commission to recover EUR 28,3 million and a judicial recommendation to the Hungarian judicial authorities. Hungary decided not to participate in the establishment of the European Public Prosecutor’s Office responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union.



- (24) According to the Seventh report on economic, social and territorial cohesion, government effectiveness in Hungary has diminished since 1996 and it is one of the Member States with the least effective governments in the Union. All Hungarian regions are well below the Union average in terms of quality of government. According to the EU Anti-corruption Report published by the Commission in 2014, corruption is perceived as widespread (89 %) in Hungary. According to the Global Competitiveness Report 2017-2018, published by the World Economic Forum, the high level of corruption was one of the most problematic factors for doing business in Hungary.

### ***Privacy and data protection***

- (25) In its judgment of 12 January 2016, *Szabó and Vissy v. Hungary*, the ECtHR found that the right to respect for private life was violated on account of the insufficient legal guarantees against possible unlawful secret surveillance for national security purposes, including related to the use of telecommunications. The applicants did not allege that they had been subjected to any secret surveillance measures, therefore no further individual measure appeared necessary. The amendment of the relevant legislation is necessary as a general measure. Proposals for amendment of the Act on National Security Services are currently being discussed by the experts of the competent ministries of Hungary. The execution of this judgment is, therefore, still pending.
- (26) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that Hungary's legal framework on secret surveillance for national security purposes allows for mass interception of communications and contains insufficient safeguards against arbitrary interference with the right to privacy. It was also concerned by the lack of provisions to ensure effective remedies in cases of abuse, and notification to the person concerned as soon as possible, without endangering the purpose of the restriction, after the termination of the surveillance measure.

### ***Freedom of expression***

- (27) On 22 June 2015 the Venice Commission adopted its Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, which called for several changes to the Press Act and the Media Act, in particular concerning the definition of "illegal media content", the disclosure of journalistic sources and sanctions on media outlets. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe's Commissioner for Human Rights in his opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. In his statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. The Commissioner also mentioned the issues of concentration of media ownership and self-censorship and indicated that the legal framework criminalising defamation should be repealed.

- (28) In its Opinion of 22 June 2015 on Media Legislation, the Venice Commission acknowledged the efforts of the Hungarian government, over the years, to improve on the original text of the Media Acts, in line with comments from various observers, including the Council of Europe, and positively noted the willingness of the Hungarian authorities to continue the dialogue. Nevertheless, the Venice Commission insisted on the need to change the rules governing the election of the members of the Media Council to ensure fair representation of socially significant political and other groups and that the method of appointment and the position of the Chairperson of the Media Council or the President of the Media Authority should be revisited in order to reduce the concentration of powers and secure political neutrality; the Board of Trustees should also be reformed along those lines. The Venice Commission also recommended the decentralisation of the governance of public service media providers and that the National News Agency not be the exclusive provider of news for public service media providers. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe's Commissioner for Human Rights in his opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. In his statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014.
- (29) On 18 October 2012, the Venice Commission adopted its Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information of Hungary. Despite the overall positive assessment, the Venice Commission identified the need for further improvements. However, following subsequent amendments to that law, the right to access government information has been significantly restricted further. Those amendments were criticised in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in March 2016. It indicated that the amounts to be charged for direct costs appear to be entirely reasonable, but the charging for the time of public officials to answer requests is unacceptable. As was acknowledged by the Commission's 2018 country report, the Data Protection Commissioner and the courts, including the Constitutional Court, have taken a progressive position in transparency-related cases.
- (30) In its report, adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections stated that access to information as well as the freedoms of the media and association have been restricted, including by recent legal changes and that media coverage of the campaign was extensive, yet highly polarized and lacking critical analysis due to the politicisation of media ownership and influx of the government's publicity campaigns. The public broadcaster fulfilled its mandate to provide free airtime to contestants, but its newscasts and editorial output clearly favoured the ruling coalition, contrary to international standards. Most commercial broadcasters were partisan in their coverage, siding either with the ruling or opposition parties. Online media provided a platform for pluralistic, issue-oriented political debate. It further noted that politicisation of the ownership, coupled with a restrictive legal framework and absence of an independent media regulatory body, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information. It also mentioned that the amendments introduced undue restrictions on access to information by broadening the definition of information not subject to disclosure and by increasing the fee for handling information requests.

- (31) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about Hungary's media laws and practices that restrict freedom of opinion and expression. It was concerned that, following successive changes in the law, the current legislative framework does not fully ensure an uncensored and unhindered press. It noted with concern that the Media Council and the Media Authority lack sufficient independence to perform their functions and have overbroad regulatory and sanctioning powers.
- (32) On 13 April 2018, the OSCE Representative on Freedom of the Media strongly condemned the publication of a list of more than 200 people by a Hungarian media outlet which claimed that over 2 000 people, including those listed by name, are allegedly working to "topple the government". The list was published by the Hungarian magazine Figyelő on 11 April and includes many journalists and other citizens. On 7 May 2018, the OSCE Representative on Freedom of the Media expressed major concern over the denial of accreditation to several independent journalists, which prevented them from reporting from the inaugural meeting of Hungary's new parliament. It was further noted that such an event should not be used as a tool to curb the content of critical reporting and that such a practice sets a bad precedent for the new term of Hungary's parliament.

### *Academic freedom*

- (33) On 6 October 2017, the Venice Commission adopted its Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. It concluded that introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, for foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. Those universities and their students are protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to, and freedom of, education. The Venice Commission recommended that the Hungarian authorities, in particular, ensure that new rules on the requirement to have a work permit do not disproportionately affect academic freedom and are applied in a non-discriminatory and flexible manner, without jeopardising the quality and international character of education already provided by existing universities. The concerns about the Amendment of Act CCIV of 2011 on National Tertiary Education have also been shared by the UN Special Rapporteurs on the freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on cultural rights in their statement of 11 April 2017. In the concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of such constraints on the freedom of thought, expression and association, as well as academic freedom.
- (34) On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the new criteria to 1 January 2019 at the request of the institutions concerned and following the recommendation of the Presidency of the Hungarian Rectors' Conference. The Venice Commission has welcomed that prolongation. Negotiations between the Hungarian Government and foreign higher education institutions affected, in particular, the Central European University, are still ongoing, while the legal limbo for foreign universities remains, although the Central European University complied with the new requirements in due time.

- (35) On 7 December 2017, the Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that the Amendment of Act CCIV of 2011 on National Tertiary Education disproportionately restricts Union and non-Union universities in their operations and that the Act needs to be brought back in line with Union law. The Commission found that the new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (the “Charter”) and the Union’s legal obligations under international trade law.
- (36) On 9 August 2018, it became public that the Hungarian government plans to withdraw the Masters programme of Gender Studies at the public Eötvös Loránd University (ELTE) and to refuse the recognition of the MA in Gender Studies from the private Central European University. The European Parliament points out that a misinterpretation of the concept of gender has dominated the public discourse in Hungary and deplors this wilful misinterpretation of the terms ‘gender’ and ‘gender equality’. The European Parliament condemns the attacks on free teaching and research, in particular on gender studies, the aim of which is to analyse power relationships, discrimination and gender relations in society and find solutions to forms of inequality and which has become the target of defamation campaigns. The European Parliament calls for the fundamental democratic principle of educational freedom to be fully restored and safeguarded.

### *Freedom of religion*

- (37) On 30 December 2011, the Hungarian Parliament adopted Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, which entered into force on 1 January 2012. The Act reviewed the legal personality of many religious organisations and reduced the number of legally recognised churches in Hungary to 14. On 16 December 2011 the Council of Europe Commissioner for Human Rights shared his concerns about this Act in a letter sent to the Hungarian authorities. In February 2012, responding to international pressure, the Hungarian Parliament expanded the number of recognised churches to 31. On 19 March 2012 the Venice Commission adopted its Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, where it indicated that the Act sets a range of requirements that are excessive and based on arbitrary criteria with regard to the recognition of a church. Furthermore, it indicated that the Act has led to a deregistration process of hundreds of previously lawfully recognised churches and that the Act induces, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they are recognised or not.
- (38) In February 2013, Hungary's Constitutional Court ruled that the deregistration of recognised churches had been unconstitutional. Responding to the Constitutional Court's decision, the Hungarian Parliament amended the Fundamental Law in March 2013. In June and September 2013, the Hungarian Parliament amended Act CCVI of 2011 to create a two-tiered classification consisting of “religious communities” and “incorporated churches”. In September 2013, the Hungarian Parliament also amended the Fundamental Law explicitly to grant itself the authority to select religious communities for “cooperation” with the state in the service of “public interest activities”, giving itself a discretionary power to recognise a religious organisation with a two-thirds majority.

- (39) In its judgment of 8 April 2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, the ECtHR ruled that Hungary had violated freedom of association, read in the light of freedom of conscience and religion. The Constitutional Court of Hungary found that certain rules governing the conditions of recognition as a church were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the European Convention on Human Rights. The relevant Act was accordingly submitted to the Hungarian Parliament in December 2015, but it did not obtain the necessary majority. The execution of that judgment is still pending.

### ***Freedom of association***

- (40) On 9 July 2014, the Council of Europe Commissioner for Human Rights indicated in his letter to the Hungarian authorities that he was concerned about the stigmatising rhetoric used by politicians questioning the legitimacy of NGO work in the context of audits which had been carried out by the Hungarian Government Control Office concerning NGOs which were operators and beneficiaries of the NGO Fund of the EEA/Norway Grants. The Hungarian Government signed an agreement with the Fund and, as a result, the payments of the grants continue to operate. On 8-16 February 2016, the UN Special Rapporteur on the situation of human rights defenders visited Hungary and indicated in his report that significant challenges stem from the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedoms of opinion and expression, and of peaceful assembly and of association, and that legislation pertaining to national security and migration may also have a restrictive impact on the civil society environment.
- (41) In April 2017 a draft law on the Transparency of Organisations Receiving Support from Abroad was introduced before the Hungarian Parliament with the stated purpose of introducing requirements related to the prevention of money laundering or terrorism. The Venice Commission acknowledged in 2013 that there may be various reasons for a state to restrict foreign funding, including the prevention of money-laundering and terrorist financing, but those legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. On 26 April 2017, the Council of Europe Commissioner for Human Rights addressed a letter to the Speaker of the Hungarian National Assembly noting that the draft law was introduced against the background of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labelled some NGOs as “foreign agents” based on the source of their funding and questioned their legitimacy; the term “foreign agents” was, however, absent from the draft. Similar concerns have been mentioned in the statement of 7 March 2017 of the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law, as well as in the Opinion of 24 April 2017 prepared by the Expert Council on NGO Law, and the statement of 15 May 2017 by the UN Special Rapporteurs on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression.

- (42) On 13 June 2017, the Hungarian Parliament adopted the draft law with several amendments. In its Opinion of 20 June 2017, the Venice Commission recognised that the term ‘organisation receiving support from abroad’ is neutral and descriptive, and some of those amendments represented an important improvement but at the same time some other concerns were not addressed and the amendments did not suffice to alleviate the concerns that the law would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination. In its concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of those requirements, which appeared to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary.
- (43) On 7 December 2017, the Commission decided to start legal proceedings against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions in the NGO Law which in the view of the Commission, indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission alleged that Hungary had violated the right to freedom of association and the rights to protection of private life and personal data enshrined in the Charter, read in conjunction with the Treaty provisions on the free movement of capital, defined in Article 26(2) and Articles 56 and 63 of the Treaty on the Functioning of the European Union.
- (44) In February 2018, a legislative package consisting of three draft laws, (T/19776, T/19775, T/19774), was presented by the Hungarian Government. On 14 February 2018, the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law made a statement indicating that the package does not comply with the freedom of association, particularly for NGOs which deal with migrants. On 15 February 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. On 8 March 2018, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance warned that the bill would lead to undue restrictions on the freedom of association and the freedom of expression in Hungary. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that by alluding to the “survival of the nation” and protection of citizens and culture, and by linking the work of NGOs to an alleged international conspiracy, the legislative package would stigmatise NGOs and curb their ability to carry out their important activities in support of human rights and, in particular, the rights of refugees, asylum seekers and migrants. It was further concerned that imposing restrictions on foreign funding directed to NGOs might be used to apply illegitimate pressure on them and to unjustifiably interfere with their activities. One of the draft laws aimed to tax any NGO funds received from outside Hungary, including Union funding, at a rate of 25 %; the legislative package would also deprive NGOs of a legal remedy to appeal against arbitrary decisions. On 22 March 2018, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the draft legislative package.

- (45) On 29 May 2018, the Hungarian Government presented a draft law amending certain laws relating to measures to combat illegal immigration (T/333). The draft is a revised version of the previous legislative package and proposes criminal penalties for ‘facilitating illegal immigration’. The same day, the Office of the UN High Commissioner for Refugees called for the proposal to be withdrawn and expressed concern that those proposals, if passed, would deprive people who are forced to flee their homes of critical aid and services, and further inflame tense public discourse and rising xenophobic attitudes. On 1 June 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. On 31 May 2018, the Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe confirmed the request for an opinion of the Venice Commission on the new proposal. The draft was adopted on 20 June 2018 before the delivery of the opinion of the Venice Commission. On 21 June 2018, the UN High Commissioner for Human Rights condemned the decision of the Hungarian Parliament. On 22 June 2018, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights indicated that the provision on criminal liability may chill protected organisational and expressive activity and infringes upon the right to freedom of association and expression and should, therefore, be repealed. On 19 July 2018, the Commission sent a letter of formal notice to Hungary concerning new legislation that criminalises activities that support asylum and residence applications and further restricts the right to request asylum.

### *Right to equal treatment*

- (46) On 17-27 May 2016, the UN Working Group on discrimination against women in law and in practice visited Hungary. In its report, the Working Group indicated that a conservative form of family, whose protection is guaranteed as essential to national survival, should not be put in an uneven balance with women’s political, economic and social rights and the empowerment of women. The Working Group also pointed out that a woman’s right to equality cannot be seen merely in the light of protection of vulnerable groups alongside children, the elderly and the disabled, as they are an integral part of all such groups. New school books still contain gender stereotypes, depicting women as primarily mothers and wives and, in some cases, depicting mothers as less intelligent than fathers. On the other hand, the Working Party acknowledged the efforts of the Hungarian Government to strengthen the reconciliation of work and family life by introducing generous provisions in the family support system and in relation to early childhood education and care. In its report adopted on 27 June 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections stated that women are underrepresented in political life and there are no legal requirements to promote gender equality in elections. Although one major party placed a woman at the top of the national list and some parties addressed gender-related issues in their programmes, the empowerment of women received scant attention as a campaign issue, including in the media.
- (47) In its concluding observations of 5 April 2018, the UN Human Rights Committee welcomed the signature of the Istanbul Convention but expressed regret that patriarchal stereotyped attitudes still prevail in Hungary with respect to the position of women in society, and noted with concern discriminatory comments made by political figures against women. It also noted that the Hungarian Criminal Code does not fully protect female victims of domestic violence. It expressed concern that women are underrepresented in decision-making positions in the public sector, particularly in Government ministries and the Hungarian Parliament. The Istanbul Convention has not yet been ratified.

- (48) The Fundamental Law of Hungary sets forth mandatory provisions for the protection of parents' workplaces and for upholding the principle of equal treatment; consequently, there are special labour law rules for women and for mothers and fathers raising children. On 27 April 2017, the Commission issued a reasoned opinion calling on Hungary to correctly implement Directive 2006/54/EC of the European Parliament and of the Council<sup>1</sup>, given that Hungarian law provides an exception to the prohibition of discrimination on the grounds of sex that is much broader than the exception provided by that Directive. On the same date, the Commission issued a reasoned opinion to Hungary for non-compliance with Directive 92/85/EEC of the Council<sup>2</sup> that stated that employers have a duty to adapt working conditions for pregnant or breastfeeding workers to avoid a risk to their health or safety. The Hungarian Government has committed itself to amend the necessary provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, as well as Act I of 2012 on the Labour Code. Consequently, on 7 June 2018 the case was closed.
- (49) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the constitutional ban on discrimination does not explicitly list sexual orientation and gender identity among the grounds of discrimination and that its restrictive definition of family could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples. The Committee was also concerned about acts of violence and the prevalence of negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, particularly in the employment and education sectors.
- (50) In its concluding observations of 5 April 2018, the UN Human Rights Committee also mentioned forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities, as well as reported violence and cruel, inhuman and degrading treatment and allegations of a high number of non-investigated deaths in closed institutions.

***Rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities***

- (51) In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe's Commissioner for Human Rights indicated that he was concerned about the deterioration of the situation as regards racism and intolerance in Hungary, with anti-Gypsyism being the most blatant form of intolerance, as illustrated by distinctively harsh, including violence targeting Roma people and paramilitary marches and patrolling in Roma-populated villages. He also pointed out that, despite positions taken by the Hungarian authorities to condemn anti-Semitic speech, anti-Semitism is a recurring problem, manifesting itself through hate speech and instances of violence against Jewish persons or property. In addition, he mentioned a recrudescence of xenophobia targeting migrants, including asylum seekers and refugees, and of intolerance affecting other social groups such as LGBTI persons, the poor and homeless persons. The European Commission against Racism and Xenophobia (ECRI) mentioned similar concerns in its report on Hungary published on 9 June 2015.

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<sup>1</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

<sup>2</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).



- (52) In its Fourth Opinion on Hungary adopted on 25 February 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted that Roma continue to suffer systemic discrimination and inequality in all fields of life, including housing, employment, education, access to health and participation in social and political life. In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended the Hungarian authorities to make sustained and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by Roma, improve, in close consultation with Roma representatives, the living conditions, access to health services and employment of Roma, take effective measures to end practices that lead to the continued segregation of Roma children at school and redouble efforts to remedy shortcomings faced by Roma children in the field of education, ensure that Roma children have equal opportunities for access to all levels of quality education, and continue to take measures to prevent children from being wrongfully placed in special schools and classes. The Hungarian Government has taken several substantial measures to foster the inclusion of Roma. On 4 July 2012, it adopted the Job Protection Action Plan on 4 July 2012 to protect the employment of disadvantaged employees and foster the employment of the long-term unemployed. It also adopted the “Healthy Hungary 2014–2020” Healthcare Sectoral Strategy to reduce health inequalities. In 2014, it adopted a strategy for the period 2014-2020 for the treatment of slum-like housing in segregated settlements. Nevertheless, according to Fundamental Rights Report 2018 of the European Union Agency for Fundamental Rights, the percentage of young Roma with current main activity not in employment, education or training, has increased from 38 % in 2011 to 51 % in 2016.
- (53) In its judgement of 29 January 2013, *Horváth and Kiss v. Hungary*, the ECtHR found that the relevant Hungarian legislation as applied in practice lacked adequate safeguards and resulted in the over-representation and segregation of Roma children in special schools due to the systematic misdiagnosis of mental disability, which amounted to a violation of the right to education free from discrimination. The execution of that judgment is still pending.
- (54) On 26 May 2016, the Commission sent a letter of formal notice to the Hungarian authorities in relation to both Hungarian legislation and administrative practices which result in Roma children being disproportionately over-represented in special schools for mentally disabled children and subject to a considerable degree of segregated education in mainstream schools, thus hampering social inclusion. The Hungarian Government actively engaged in dialogue with the Commission. The Hungarian Inclusion Strategy focuses on promoting inclusive education, reducing segregation, breaking the intergenerational transmission of disadvantages, and establishing an inclusive school environment. Furthermore, the Act on National Public Education was complemented with additional guarantees as of January 2017, and the Hungarian Government initiated official audits in 2011-2015, followed by actions by government offices.

- (55) In its judgement of 20 October 2015, *Balázs v. Hungary*, the ECtHR held that there had been a violation of the prohibition of discrimination in the context of a failure to consider the alleged anti-Roma motive of an attack. In its judgment of 12 April 2016, *R.B. v. Hungary*, and in its judgment of 17 January 2017, *Király and Dömötör v. Hungary*, the ECtHR held that there had been a violation of the right to private life on account of inadequate investigations into the allegations of racially motivated abuse. In its judgment of 31 October 2017, *M.F. v. Hungary*, the ECtHR held that there was a violation of the prohibition of discrimination in conjunction with the prohibition of inhuman or degrading treatment as the authorities had failed to investigate possible racist motives behind the incident in question. The execution of those judgments is still pending. Following the *Balázs v. Hungary* and *R.B. v. Hungary* judgments, however, the modification of the fact pattern of the crime of ‘inciting violence or hatred against the community’ in the Penal Code entered into force on 28 October 2016 with the purpose of implementing Council Framework Decision 2008/913/JHA<sup>1</sup>. In 2011 the Penal Code had been amended in order to prevent campaigns of extreme right paramilitary groups, by introducing the so-called ‘crime in uniform’, punishing any provocative unsocial behaviour inducing fear in a member of a national, ethnic or religious community with three years of imprisonment.
- (56) On 29 June - 1 July 2015, the OSCE Office for Democratic Institutions and Human Rights conducted a field assessment visit to Hungary, following reports about the actions taken by the local government of the city of Miskolc concerning forced evictions of Roma. The local authorities adopted a model of anti-Roma measures, even before the change of the local decree of 2014, and public figures in the city often made anti-Roma statements. It was reported that in February 2013, the Mayor of Miskolc said he wanted to clean the city of “anti-social, perverted Roma” who allegedly illegally benefited from the Nest programme (Fészekrakó programme) for housing benefits and people living in social flats with rent and maintenance fees. His words marked the beginning of a series of evictions and during that month, fifty apartments were removed from 273 apartments in the appropriate category - also to clean up the land for the renovation of a stadium. Based on the appeal of the government office in charge, the Supreme Court annulled the relevant provisions in its decision of 28 April 2015. The Commissioner for Fundamental Rights and the Deputy-Commissioner for the Rights of National Minorities issued a joint opinion on 5 June 2015 about the fundamental rights violations against the Roma in Miskolc, the recommendations of which the local government failed to adopt. The Equal Treatment Authority of Hungary also carried out an investigation and rendered a decision in July 2015, calling on the local government to cease all evictions and to develop an action plan on how to offer housing in accordance with human dignity. On 26 January 2016 the Council of Europe Commissioner for Human Rights sent letters to the governments of Albania, Bulgaria, France, Hungary, Italy, Serbia and Sweden concerning forced evictions of Roma. The letter addressed to the Hungarian authorities expressed concerns about the treatment of Roma in Miskolc. The action plan was adopted on 21 April 2016 and in the meantime a social housing agency was also established. In its decision of 14 October 2016, the Equal Treatment Authority found that the municipality fulfilled its obligations. Nevertheless, ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary published on 15 May 2018 that, despite some positive developments to improve the housing conditions of Roma, its recommendation had not been implemented.

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<sup>1</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55).

- (57) In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended that the Hungarian authorities continue to improve the dialogue with the Jewish community, making it sustainable, and to give combatting anti-Semitism in public spaces the highest priority, to make sustained efforts to prevent, identify, investigate, prosecute and sanction effectively all racially and ethnically motivated or anti-Semitic acts, including acts of vandalism and hate speech, and to consider amending the law so as to ensure the widest possible legal protection against racist crime.
- (58) The Hungarian Government ordered that the life annuity of Holocaust survivors was to be raised by 50 % in 2012, established the Hungarian Holocaust – 2014 Memorial Committee in 2013, declared 2014 to be the Holocaust Memorial Year, launched renovation and restoration programmes of several Hungarian synagogues and Jewish cemeteries and is currently preparing for the 2019 European Maccabi Games to be held in Budapest. Hungarian legal provisions identify several offences related to hatred or incitement of hatred, including anti-Semitic or Holocaust-denying or denigrating acts. Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016. Nevertheless, in a speech held on 15 March 2018 in Budapest, the Prime Minister of Hungary used polemic attacks including clearly anti-Semitic stereotypes against George Soros that could have been assessed as punishable.
- (59) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about reports that the Roma community continues to suffer from widespread discrimination and exclusion, unemployment, housing and educational segregation. It is particularly concerned that, notwithstanding the Public Education Act, segregation in schools, especially church and private schools, remains prevalent and the number of Roma children placed in schools for children with mild disabilities remains disproportionately high. It also mentioned concerns about the prevalence of hate crimes and about hate speech in political discourse, the media and on the internet targeting minorities, in particular Roma, Muslims, migrants and refugees, including in the context of government-sponsored campaigns. The Committee expressed its concern over the prevalence of anti-Semitic stereotypes. The Committee also noted with concern allegations that the number of registered hate crimes is extremely low because the police often fail to investigate and prosecute credible claims of hate crimes and criminal hate speech. Finally, the Committee was concerned about reports of the persistent practice of racial profiling of Roma by the police.
- (60) In a case regarding the village of Gyöngyöspata, where the local police was imposing fines solely on Roma for minor traffic offences, the first instance judgment found that the practice constituted harassment and direct discrimination against the Roma even if the individual measures were lawful. The second instance court and the Supreme Court ruled that the Hungarian Civil Liberties Union (HCLU), which had submitted an *actio popularis* claim, could not substantiate discrimination. The case was brought before the ECtHR.
- (61) In accordance with the Fourth Amendment of the Fundamental Law, the ‘freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community’. The Hungarian Penal Code punishes inciting violence or hatred against a member of a community. The Government has established a Working Group Against Hate Crime providing training for police officers and helping victims to cooperate with the police and report incidents.

## *Fundamental rights of migrants, asylum seekers and refugees*

- (62) On 3 July 2015, the UN High Commissioner for Refugees expressed concerns about the fast-track procedure for amending asylum law. On 17 September 2015, the UN High Commissioner for Human Rights expressed his opinion that Hungary violated international law by its treatment of refugees and migrants. On 27 November 2015, the Council of Europe Commissioner for Human Rights made a statement that Hungary's response to the refugee challenge falls short on human rights. On 21 December 2015, the UN High Commissioner for Refugees, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights urged Hungary to refrain from policies and practices that promote intolerance and fear and fuel xenophobia against refugees and migrants. On 6 June 2016, the UN High Commissioner for Refugees expressed concerns about the increasing number of allegations of abuse in Hungary against asylum-seekers and migrants by border authorities, and the broader restrictive border and legislative measures, including access to asylum procedures. On 10 April 2017, the Office of the UN High Commissioner for Refugees called for an immediate suspension of Dublin transfers to Hungary. In 2017, out of 3 397 applications for international protection filed in Hungary, 2 880 applications were rejected, which amounted to a rejection rate of 69,1 %. In 2015, out of 480 judicial appeals relating to applications for international protection, there were 40 positive decisions, i.e. 9 %. In 2016, there were 775 appeals, 5 of which resulted in positive decisions, i.e. 1 %, while there were no appeals in 2017.
- (63) The Fundamental Rights Officer of the European Border and Coast Guard Agency visited Hungary in October 2016 and March 2017, owing to the Officer's concern that the Agency might be operating under conditions which do not commit to the respect, protection and fulfilment of the rights of persons crossing the Hungarian-Serbian border, that may put the Agency in situations that *de facto* violate the Charter of Fundamental Rights of the European Union. The Fundamental Rights Officer concluded in March 2017 that the risk of shared responsibility of the Agency in the violation of fundamental rights in accordance with Article 34 of the European Border and Coast Guard Regulation remains very high.
- (64) On 3 July 2014, the UN Working Group on Arbitrary Detention indicated that the situation of asylum seekers and migrants in irregular situations needs robust improvements and attention to ensure against arbitrary deprivation of liberty. Similar concerns about detention, in particular of unaccompanied minors, have been shared by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. On 21-27 October 2015 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Hungary and indicated in its report a considerable number of foreign nationals' (including unaccompanied minors) claims that they had been subjected to physical ill-treatment by police officers and armed guards working in immigration or asylum detention facilities. On 7 March 2017, the UN High Commissioner for Refugees expressed his concerns about a new law voted in the Hungarian Parliament envisaging the mandatory detention of all asylum seekers, including children, for the entire length of the asylum procedure. On 8 March 2017, the Council of Europe Commissioner for Human Rights issued a statement similarly expressing his concern about that law. On 31 March 2017, the UN Subcommittee on the Prevention of Torture urged Hungary to address immediately the excessive use of detention and explore alternatives.

- (65) In its judgment of 5 July 2016, *O.M. v. Hungary*, the ECtHR held that there had been a violation of the right to liberty and security in the form of detention that verged on arbitrariness. In particular, the authorities failed to exercise care when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons. The execution of that judgment is still pending.
- (66) On 12-16 June 2017, the Special Representative of the Secretary General of the Council of Europe on migration and refugees visited Serbia and two transit zones in Hungary. In his report, the Special Representative stated that violent pushbacks of migrants and refugees from Hungary to Serbia raise concerns under Articles 2 (the right to life) and 3 (prohibition of torture) of the European Convention on Human Rights (ECHR). The Special Representative also noted that the restrictive practices of admission of asylum seekers into the transit zones of Röszke and Tompa often make asylum-seekers look for illegal ways of crossing the border, having to resort to smugglers and traffickers with all the risks that this entails. He indicated that the asylum procedures, which are conducted in the transit zones, lack adequate safeguards to protect asylum seekers against refoulement to countries where they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The Special Representative concluded that it is necessary that the Hungarian legislation and practices are brought in line with the requirements of the ECHR. The Special Representative made several recommendations, including a call on the Hungarian authorities to take the necessary measures, including by reviewing the relevant legislative framework and changing relevant practices, to ensure that all foreign nationals arriving at the border or who are on Hungarian territory are not deterred from making an application for international protection. On 5-7 July 2017 a delegation of the Council of Europe Lanzarote Committee (Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse) also visited two transit zones and made a number of recommendations, including a call to treat all persons under the age of 18 years of age as children without discrimination on the ground of their age, to ensure that all children under Hungarian jurisdiction are protected against sexual exploitation and abuse, and to systematically place them in mainstream child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them by adults and adolescents in the transit zones. On 18-20 December 2017, a delegation of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) visited Hungary, including two transit zones, and concluded that a transit zone, which is effectively a place of deprivation of liberty, cannot be considered as appropriate and safe accommodation for victims of trafficking. It called on the Hungarian authorities to adopt a legal framework for the identification of victims of human trafficking among third-country nationals who were not legally resident and to step up its procedures for identifying victims of such trafficking among asylum seekers and irregular migrants. As of 1 January 2018, additional regulations were introduced favouring minors in general and unaccompanied minors in specific; among others a specific curriculum was developed for minor asylum seekers. ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary, published on 15 May 2018, that while acknowledging that Hungary has faced enormous challenges following the massive arrivals of migrants and refugees, it is appalled at the measures taken in response and the serious deterioration in the situation since its fifth report. The authorities should, as a matter of urgency, end detention in transit zones, particularly for families with children and all unaccompanied minors.

- (67) In mid-August 2018, the immigration authorities stopped giving food to adult asylum seekers who were challenging inadmissibility decisions in court. Several asylum seekers had to seek interim measures from the ECtHR to start receiving meals. The ECtHR granted interim measures in two cases on 10 August 2018 and in a third case on 16 August 2018 and ordered the provision of food to the applicants. The Hungarian authorities have complied with the rulings.
- (68) In its judgment of 14 March 2017, *Ilias and Ahmed v. Hungary*, the ECtHR found that there had been a violation of the applicants' right to liberty and security. The ECtHR also found that there had been a violation of the prohibition of inhuman or degrading treatment in respect of the applicants' expulsion to Serbia, as well as a violation of the right to an effective remedy in respect of the conditions of detention at the Röszke transit zone. The case is currently pending before the Grand Chamber of the ECtHR.
- (69) On 14 March 2018, Ahmed H., a Syrian resident in Cyprus who had tried to help his family flee Syria and cross the Serbian-Hungarian border in September 2015, was sentenced by a Hungarian court to 7 years' imprisonment and 10 years' expulsion from the country on the basis of charges of 'terrorist acts', raising the issue of proper application of the laws against terrorism in Hungary, as well as the right to a fair trial.
- (70) In its judgment of 6 September 2017 in Case C-643/15 and C-647/15, the Court of Justice of the European Union dismissed in their entirety the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers in accordance with Council Decision (EU) 2015/1601. However, since that judgment, Hungary has not complied with the Decision. On 7 December 2017, the Commission decided to refer the Czech Republic, Hungary and Poland to the Court of Justice of the European Union for non-compliance with their legal obligations on relocation.
- (71) On 7 December 2017, the Commission decided to move forward on the infringement procedure against Hungary concerning its asylum legislation by sending a reasoned opinion. The Commission considers that the Hungarian legislation does not comply with Union law, in particular Directives 2013/32/EU<sup>1</sup>, 2008/115/EC<sup>2</sup> and 2013/33/EU<sup>3</sup> of the European Parliament and of the Council and several provisions of the Charter. On 19 July 2018, the Commission decided to refer Hungary to the Court of Justice for non-compliance of its asylum and return legislation with Union law.

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<sup>1</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

<sup>2</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

<sup>3</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

(72) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the Hungarian law adopted in March 2017, which allows for the automatic removal to transit zones of all asylum applicants for the duration of their asylum procedure, with the exception of unaccompanied children identified as being below the age of 14, does not meet the legal standards as a result of the lengthy and indefinite period of confinement allowed, the absence of any legal requirement to promptly examine the specific conditions of each affected individual, and the lack of procedural safeguards to meaningfully challenge removal to the transit zones. The Committee was particularly concerned about reports of the extensive use of automatic immigration detention in holding facilities inside Hungary and was concerned that restrictions on personal liberty have been used as a general deterrent against unlawful entry rather than in response to an individualised determination of risk. In addition, the Committee was concerned about allegations of poor conditions in some holding facilities. It noted with concern the push-back law, which was first introduced in June 2016, enabling summary expulsion by the police of anyone who crosses the border irregularly and was detained on Hungarian territory within 8 kilometres of the border, which was subsequently extended to the entire territory of Hungary, and decree 191/2015 designating Serbia as a “safe third country” allowing for push-backs at Hungary’s border with Serbia. The Committee noted with concern reports that push-backs have been applied indiscriminately and that individuals subjected to this measure have very limited opportunity to submit an asylum application or right to appeal. It also noted with concern reports of collective and violent expulsions, including allegations of heavy beatings, attacks by police dogs and shootings with rubber bullets, resulting in severe injuries and, at least in one case, in the loss of life of an asylum seeker. It was also concerned about reports that the age assessment of child asylum seekers and unaccompanied minors conducted in the transit zones is inadequate, relies heavily on visual examination by an expert and is inaccurate, and about reports alleging the lack of adequate access by such asylum seekers to education, social and psychological services and legal aid. According to the new proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU the medical age assessment will be a measure of a last resort.

### *Economic and social rights*

(73) On 15 February 2012 and 11 December 2012, the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on the right to adequate housing called on Hungary to reconsider legislation allowing local authorities to punish homelessness and to uphold the Constitutional Court’s decision decriminalising homelessness. In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe’s Commissioner for Human Rights indicated his concern at measures taken to prohibit rough sleeping and the construction of huts and shacks, which have widely been described as criminalising homelessness in practice. The Commissioner urged the Hungarian authorities to investigate reported cases of forced evictions without alternative solutions and of children being taken away from their families on the grounds of poor socio-economic conditions. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about state and local legislation, based on the Fourth Amendment to the Fundamental Law, which designates many public areas as out-of-bounds for “sleeping rough” and effectively punishes homelessness. On 20 June 2018, the Hungarian Parliament adopted the Seventh amendment to the Fundamental law which forbids habitual residence in a public space. The same day, the UN Special Rapporteur on the right to adequate housing called Hungary’s move to make homelessness a crime cruel and incompatible with international human rights law.

- (74) The 2017 Conclusions of the European Committee of Social Rights stated that Hungary is not in compliance with the European Social Charter on the grounds that self-employed and domestic workers, as well as other categories of workers, are not protected by occupational health and safety regulations, that measures taken to reduce the maternal mortality have been insufficient, that the minimum amount of old-age pensions is inadequate, that the minimum amount of jobseeker's aid is inadequate, that the maximum duration of payment of jobseeker's allowance is too short and that the minimum amount of rehabilitation and invalidity benefits, in certain cases, is inadequate. The Committee also concluded that Hungary is not in conformity with the European Social Charter on the grounds that the level of social assistance paid to a single person without resources, including elderly persons, is not adequate, equal access to social services is not guaranteed for lawfully resident nationals of all States Parties and it has not been established that there is an adequate supply of housing for vulnerable families. With regard to trade union rights, the Committee has stated that the right of workers to paid leave is not sufficiently secured, that no promotion measures have been taken to encourage the conclusion of collective agreements, while the protection of workers by such agreements is clearly weak in Hungary and in the civil service the right to call a strike is reserved to those unions which are parties to the agreement concluded with the government; the criteria used to determine public servants who are denied the right to strike go beyond the scope of the Charter; public service unions can only call a strike with the approval of the majority of the staff concerned.
- (75) Since December 2010, strikes in Hungary were made illegal in principle when the government of Victor Orban passed an amendment to the so-called Act on strikes. The changes mean that strikes will, in principle, be allowed in companies associated with governmental administration through public service contracts. The amendment does not apply to professional groups that simply do not have such a right, such as train drivers, police officers, medical personnel and air traffic controllers. The problem lies somewhere else, mainly in the percentage of employees who must take part in the strike referendum, to make it important -up to 70 %. Then the decision on the legality of strikes will be taken by a labour court that is completely subordinate to the state. In 2011, nine applications for strike permits were submitted. In seven cases they were rejected without giving a reason; two of them were processed, but it proved impossible to issue a decision.
- (76) The UN Committee on the Rights of Children's report on 'Concluding observations on the combined third, fourth and fifth periodic reports of Hungary', published in 14 October 2014, voiced concerns over an increasing number of cases where children are being taken away from their family based on poor socio economic condition. Parents may lose their child due to unemployment, lack of social housing and lack of space in temporary housing institutions. Based on a study by the European Roma Right Centre, this practice disproportionately affects Roma families and children.



- (77) In its Recommendation of 23 May 2018 for a Council Recommendation on the 2018 National Reform Programme of Hungary and delivering a Council opinion on the 2018 Convergence Programme of Hungary, the Commission indicated that the proportion of people at risk of poverty and social exclusion has decreased to 26,3 % in 2016 but remains above the Union average; children in general are more exposed to poverty than other age groups. The level of minimum income benefits is below 50 % of the poverty threshold for a single household, making it among the lowest in the Union. The adequacy of unemployment benefits is very low: the maximum duration of 3 months ranks as the shortest in the Union and represents only around a quarter of the average time required by job seekers to find employment. In addition, the levels of payment are among the lowest in the Union. The Commission recommended that the adequacy and coverage of social assistance and unemployment benefits be improved.
- (78) On [...] 2018, the Council heard Hungary in accordance with Article 7(1) TEU.
- (79) For those reasons, it should be determined, in accordance with Article 7(1) TEU, that there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU,

HAS ADOPTED THIS DECISION:

*Article 1*

There is a clear risk of a serious breach by Hungary of the values on which the Union is founded.

*Article 2*

The Council recommends that Hungary take the following actions within three months of the notification of this Decision: [...]

*Article 3*

This Decision shall enter into force on [...] day following that of its publication in the *Official Journal of the European Union*.

*Article 4*

This Decision is addressed to Hungary.

Done at Brussels,

*For the Council*

*The President*