European Rule of Law Mechanism: input from Hungary

Content:

Preliminary Statement

Hungary is committed to the fundamental values of the EU as enshrined in Article 2 TEU. Hungary participates in the network of national contact points on rule of law in order to contribute to a mechanism that is in line with Treaty provisions, conforms to the principles of conferral, institutional balance and equal treatment of Member States. Hungary reserves its decision on its commitment to the Commission's rule of law mechanism depending on the outcome of the ongoing preparatory work.

I. Justice System

A. Independence

1. Appointment and selection of judges and prosecutors

Appointment of judges

To be appointed as a judge in Hungary an applicant has to comply with the requirements as stipulated in the Legal Status of Judges Act. These can be summarized as follows: the applicant has to a.) be Hungarian citizen, b.) have a clean criminal record, c.) have full legal capacity, d.) have a university degree in law, e.) have passed the professional legal exam (bar exam), f.) give asset declaration, g.) have at least one year working experience in a position for which a professional legal exam is needed, h.) pass a physical and psychical examination, i.) be at least 30 years of age.

Judges are appointed by the President of the Republic for a fixed or indefinite term (for three years for the first time and thereafter for an indefinite term), if the conditions set out by the law are met. A vacant position shall be filled by way of a public selection process, save for certain cases defined in the Legal Status of Judges Act.

- The President of the court, where there is a vacancy, informs the President of the National Office for the Judiciary (hereinafter: NOJ) when a judge's position becomes vacant.
- The President of the NOJ announces a public call for applications to the vacant position (published on the official website and in the official journal of the courts). The judicial council of the court (a self-governing body consisting solely of judges elected by their peers) forms an opinion about the applicants and ranks them by giving points to evaluate their skills and attributes.
- The President of the court makes a suggestion to the President of the NOJ, who should be appointed as a judge at the court. When the President of the court makes a suggestion to the President of the NOJ he/she can only suggest the applicant who is the 1st, 2nd or the 3rd in the ranking of the Judicial Council. If he/she suggests the 2nd or the 3rd, he/she must provide a written explanation.
- The President of the NOJ submits a proposal to the President of the Republic who should be appointed as a judge. The President of the NOJ can only propose the applicant who is the 1st, 2nd or the 3rd in the ranking of the judicial council. If he/she suggests the 2nd or the 3rd, he/she must provide an explanation to the National Judicial Council (hereinafter: NJC) and ask for their consent. The 2nd or the 3rd in ranking can only be suggested to be appointed if the NJC gives its consent. [In case of applications to the Kúria (Supreme Court) it is the President of the Kúria, who is entitled to assess the applications.]
- The President of the Republic decides upon the appointment of a judge. If the successful applicant[1] is already a judge, than he/she is "transferred" to the position he/she applied for.

The selection process shall be conducted in a way to guarantee that the judge's position is filled upon an open selection procedure designed to ensure equal conditions for all candidates who are able to satisfy the requirements prescribed in the Legal Status of Judges Act and in the notice of vacancy, and in consequence, to choose the best suitable candidate for the office. The factors that can be taken into account in the establishment of the ranking, are defined in an exhaustive list in the Legal Status of Judges Act.

[1] The selection procedure may be considered unsuccessful only on the basis of the objective criteria precisely set out in the Legal Status of Judges Act, which do not include any discretionary element, namely: a) if no application is received, or the president of the court concerned, refused all applications due to formal reasons; or b) if the President of NOJ does not support the appointment of neither of the applicants, ba) as it would result in a conflict of interest, bb) due to any breach of procedural regulations by those taking part in the assessment of applications, bc) as certain reasoning offered by the judicial council prescribed by law, are deemed insufficient, bd) on account of changes arising after the notice of vacancy was published in work organization conditions, workload or funding filling the post is no longer considered viable for administrative reasons, be) due to certain conditions arising after the notice of vacancy was published, in consequence of which the post is to be filled by ways other than a public selection process in accordance with requirements laid down in the Act.

An unsuccessful applicant can challenge the outcome of the selection process within a preclusive period of 15 days from the time of publication in the Magyar Közlöny (Hungarian Official Journal) of the decision on the appointment of the successful applicant. The complaint shall be forwarded within five working days to the competent court of judges (i.e. disciplinary court, service tribunal). The remedy against the decision is being dealt with in a specific procedure within the judicial system and can therefore be deemed independent from any other authority.

As it is apparent from this description, the assessment of applications to a judicial position is a complex procedure with many stakeholders. The rules of the process guarantee that whenever a candidate is appointed or promoted, elected bodies of judges have a decisive role. It is either a local judicial council determining the ranking of applicants or the NJC giving prior consent to the appointment of the 2nd or 3rd ranked candidate.

Appointment of prosecutors

In Hungary, the rules on the appointment of prosecutors are provided for by the Status of Prosecutors Act. Prosecutors are appointed by the Prosecutor General. Generally, for the first time prosecutors are appointed for a definite term of three years. If the prosecutor appointed for a definite term requests his/her appointment for an indefinite term and the duration of his/her actual operation in the capacity of a prosecutor exceeded 18 months, the person exercising the employer's rights shall evaluate the prosecutor's work. Based on the result of the evaluation, the Prosecutor General shall appoint the prosecutor for an indefinite term effective as of the day following the expiry of the term of the first prosecutorial appointment, without a separate application if he/she has duly established the prosecutor's eligibility.

Basically, any Hungarian citizen having full legal capacity, who holds a university degree in law and has passed the relevant legal examination (bar exam) may be appointed as prosecutor. Prior to the appointment to prosecution offices, the candidate has to take part in a prosecution career eligibility screening test (testing their medical, physical and psychological eligibility). Detailed rules on a clean criminal record and professional experience are stipulated in the Status of Prosecutors Act. A vacant prosecutorial position shall be filled by way of a public selection process, save for certain cases defined in the Status of Prosecutors Act. The Prosecutor General is entitled to assess the applications. Job advertisements shall be published in „Ügyészségi Közlöny" (Prosecution Gazette) and on the website of the prosecution service. Before the assessment of applications, the Prosecutor General shall acquaint himself/herself with the opinions regarding the candidate of the prosecutors' council and of the head of the prosecution concerned.

Legal framework: Fundamental Law,[2] Articles 25-26, 29, Act CLXII of 2011 on the Legal Status and Remuneration of Judges (Legal Status of Judges Act),[3] Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career (Status of Prosecutors Act).[4]

2. Irremovability of judges, including transfers of judges and dismissal

The irremovability of judges is one of the cornerstones of judicial independence and a guarantee of judicial decision-making autonomy. Therefore, Section 26 (1) of the Fundamental Law states that "judges may only be removed from office for the reasons and in a procedure specified in a cardinal Act".

The transfer of judges is strictly limited by the Legal Status of Judges Act. President of the NOJ may decide on the transfer to another post only: a) if the judge successfully applied to an empty judicial position at that other court or b) if the court where the judge worked is dissolved (decision of the Parliament) or the territory of the court is substantially reduced (also decision of the Parliament) and it is not possible to employ the judge there anymore. In case b) the President of the NOJ offers the judge those empty positions at another court of the same level (or maximum one level lower or one level higher) of which the application procedure has not been closed yet. If there is no such position or the judge does not make a choice, the President of the NOJ transfers the judge to another court of the same level (or maximum one level lower). Judicial review of the transferring decision is possible.

The possibility of secondment of judges is also limited: A judge can be seconded a.) to foster the professional development of the judge - this type of delegation is only possible with the consent of the judge; b.) to ensure the even distribution of caseload between courts - this type of delegation is possible without the consent of the judge. Without his/her consent a judge only can be seconded for one year within a three year period. There are some judges that cannot be seconded at all to a court away from their residence without their consent (e.g. judges who have a child under the age of three). A judge may be seconded to another venue while carrying on the same activities related to judicature subject to the judge's consent. Secondments shall be made in due consideration of the judge's reasonable interest. The assignment order shall be delivered in writing to the judge affected at least thirty days in advance,

[2] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.376083; for official English translation, see: http://njt.hu/translated/doc/TheFundamentalLawofHungary_20191213_FIN.pdf
[3] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139703.377416
[4] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139717.377296

indicating the reason, the place where assigned to, the date of commencement and the length of service. The chamber of judges shall express its opinion on the secondment of a judge except where this takes place upon the judge's consent. The judge has the right to pursue remedy against the secondment. The seconded judge is also entitled to have certain benefits and expenses listed in the Legal Status of Judges Act (e.g. costs of transport and accommodation, housing allowances, availability premium).

To ensure the irremovabilty of judges, a judge can only be dismissed because of the reasons stated in the Status of Judges Act, including a) resignation, b) reaching the applicable old-age pension age, c.) due to incompatibility (e.g. if the judge was elected as a Member of Parliament), d) based on objective situations, if the conditions of appointment are not given any more (e.g. if a prison sentence or a sentence of community service was imposed on the judge on a final basis or the judge was subjected to compulsory psychiatric treatment, if the judge loses his/her Hungarian citizenship or his/her legal capacity etc.) and e) as a result of procedures conducted by the court of judges (e.g. if the judge was declared ineligible in the course of the inaptitude proceedings or if, in disciplinary proceedings instituted against the judge, removal from the office of judge was proposed as a final disciplinary sanction). If such reasons arise the competent person or organ (president of the court, court of judges etc.) informs the President of the NOJ. The President of the NOJ submits a proposal to the President of the Republic upon the dismissal of the judge. The President of the Republic has the right to decide upon the dismissal of a judge. The reasons for dismissal are objective or based on the evaluation of independent fora.

3. Promotion of judges and prosecutors

Judges

Under the conditions set out in the Legal Status of Judges Act, judges shall be entitled to a salary, other forms of salary, benefits and allowances. An important rule is that judges shall move up one pay grade for every three years of service time. Judges may be promoted – if rated outstanding, recommended for higher judicial office, or for professional excellence – by recommendation of the college on two occasions while in office and advanced one pay grade up. Unscheduled promotions are permitted at least six years apart.

If rated outstanding, recommended for higher judicial office, or for professional excellence, and after at least six years of service as a judge in a particular judicial level – including the time spent in judicial office in a higher court – the NJC may award honourable titles for the judges. These titles are automatically conferred after at least twenty years of service as a judge in a particular judicial level. If the conditions set out in the Courts' Administration Act are met, the judge may also apply for a court executive's position. As for the promotion of judges it should be mentioned that if the judge fulfils the conditions he/she can apply for a position on a higher court level.

Prosecutors

Prosecutors also shall proceed one pay grade up on the scale upon the completion of every three years of service time. In the case of an evaluation result of excellent, suitable for promotion or excellent and fully eligible, prosecutors may be transferred to one higher pay grade twice during the existence of their prosecution positions. A minimum period of six years shall elapse between two extraordinary pay promotions.

In the case of an evaluation result of excellent, suitable for promotion or excellent and fully eligible and upon the completion of minimum six years as prosecutor at the given level of prosecution, including any time completed as prosecutor at a more senior level of prosecution, the prosecutors may be awarded honourable titles. These titles are automatically conferred after at least twenty years of service at the given level of prosecution. If the certain conditions set out in the Status of Prosecutors Act are met, the prosecutor may also apply for an executive's position. If the prosecutor fulfils the conditions he/she can apply for a position on a higher prosecution level. The Prosecutor General fills the senior prosecutor positions as well as the prosecutor positions at the Office of the Prosecutor General and the Appellate Chief Prosecution Office by way of open call for applications.

4. Allocation of cases in courts

In line with the right to a lawful judge, each case has to be heard by a judge designated by a predetermined case allocation order and assigned to a court having jurisdiction and territorial competence in the proceedings by virtue of the applicable procedural rules. Therefore, the Courts' Administration Act contains detailed rules for the allocation of cases.

The case allocation rules of a court shall define the structure and number of the chambers of the court, the type of cases generally assigned to judges - including seconded judges - and to chambers, or court secretaries carrying out the functions of a single judge in cases provided for by law, as well as the rules of substitutions if absent or unavailable, and shall designate the court executive in charge of the allocation of cases and the methods by which

the cases are allocated. The case allocation rules of the Kúria shall, furthermore, provide for the appointment of judges to the local government chamber and the uniformity complaints chamber, and also for the assignment of judges to the various uniformity panel branches. The case allocation rules shall be arranged and reviewed taking into account in particular the following: a) the magnitude of cases, the amount of work a case requires, b) the chronological order of the filing of cases, and even distribution of the workload, c) the timeliness of adjudication, d) special expertise of judges, e) specialization based on the subject-matter of the case.

The case distribution regime is defined by the president of each court - taking into consideration the opinion of the judicial council and the professional division of judges. The case distribution regime shall be communicated to the judges and shall be published on the court's website and at the clerk's office for the clients. If the case distribution regime needs to be amended, it is the responsibility of the court president to do so within 30 days.

Deviation from the general rules of the pre-defined case allocation regime is allowed only for reasons defined by law (e.g. a judge is excluded from the case because he/she is related to one of the parties) or because of important circumstances affecting the functioning of the court (e.g. the judge who should be assigned to the case is known to leave the court in a short period so would not be able to finish the case).

Legal framework: Act CLXI of 2011 on the Organization and Administration of the Courts (Courts' Administration Act)[5]

5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Pursuant to the Fundamental Law of Hungary the central responsibilities of the administration of courts is performed by the President of the NOJ, whereas the central administration of courts is supervised by the NJC.

The candidate for the presidency of the NOJ is suggested by the President of the Republic. The candidate must be a judge appointed for an indefinite period with at least 5 years judicial practice. The committee of the Parliament responsible for justice issues hears the candidate. The NJC hears the candidate and forms an opinion about him/her. [In December 2019, the members of the NJC have unanimously supported the election of the candidate for the President of the NOJ.] The Parliament elects the candidate with the 2/3 majority of the votes for 9 years. No re-election is possible.

The main competences of the President of NOJ are laid down in the Courts' Administration Act. These include, among others, a.) to devise and update at least annually the long-term tasks of judicial administration, including a program laying down the conditions for the implementation thereof; b.) to represent the courts; c.) to provide an assessment of draft legislation relating to the judiciary relying on an analysis of the opinions of the courts, d.) to prepare a proposal for the budget for courts and to manage the funds allocated under the judiciary chapter (to be described later), e.) to collect statistics, f.) to publish calls for applications to fill vacant positions of judges and to make recommendations to the President of the Republic for the appointment and dismissal of judges, g.) to decide on training programs on a centralized level and supervise their implementation, and shall draw up the regional training program, h.) to give information on its activities and on the functioning of the judiciary as stipulated in the Act.

This model establishes an operative administrative management with the President of the NOJ and the NOJ under his/her direct control, which is capable of responding immediately to problems. However, the President of the NOJ does not operate without control: a.) the Parliament may dismiss him/her (upon the request of the President of the Republic or the NJC) and b.) the NJC supervises his/her activities.

The NJC is the supervisory body of the central administration of courts. The NJC consists of the president of Kúria and 14 judges. The 14 judge-members of NJC are elected by their peers through an electoral system by a secret ballot with the majority of votes. Judges with at least 5 years of judicial practice may be elected as a member of the NJC. Thus, the international requirement, that at least half of the members of councils for the judiciary shall be judges elected by their peers, is fully complied with. The office of President of the NJC shall be occupied by the members taking turn at half-year intervals. The NJC operates with an independent budget. Further to the above and the conflict of interest rules, the independence of the members of the NJC is also ensured by the fact that an elected judge member of the NJC may not be recalled, and may be subjected to disciplinary proceeding solely upon the consent of NJC.

Its main powers include among others a.) supervising the central administrative activity of the President of the NOJ, and making a notification if necessary, b.) making a proposal to the President of the NOJ on initiating legislation affecting the courts, c.) forming an opinion on the proposal on the budget and on the report on the implementation of the budget of the courts, d.) publishing annually its opinion on the relevant practice of the President of the NOJ and

[5] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139695.377293

of the President of the Kúria regarding the assessment of the applications for judiciary posts and court executive positions, e.) deciding on the re-appointment of certain court executives, if the office has already been filled by the applicant two times, f.) giving a prior consent for the President of the NOJ and the President of the Kúria if he/she wants to suggest the 2nd or the 3rd in ranking for appointment to a judge's position, g.) appointing the president and the members of the court of judges, h.) approving the Code of Ethics of judges. The removal from office of the President of the NOJ may be initiated by NJC.

In its latest related opinion, in March 2019 (Opinion no. 943/2018, Point 21-22.), the Venice Commission also acknowledges that a number of pivotal elements of the Hungarian judicial system and powers of the NOJ's President "had been transferred to the [NJC]. Furthermore, the amendments resulted in the improved accountability of the President of the [NOJ]". This statement also shows that the Hungarian legislation grants the possibility for the NJC to effectively counter-balance the powers of the President of the NOJ.

At each regional court, regional court of appeal and at the Kúria judicial councils operate as local level self-governing bodies elected by the judges. The judicial council among others, a.) hears and ranks the applicants for a judicial position at the court, b.) may initiate the examination or dismissal of certain court leaders, c.) shall form an opinion on the annual budget plan of the court and on the utilization of the approved budget. This way the judicial self-government is ensured at central and regional level as well.

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules

Judges

According to the Legal Status of Judges Act, professional misconduct shall mean when a judge violates the obligations stemming from his service relationship, or the judge's lifestyle and/or behaviour are likely to harm or jeopardize the prestige of the legal system. Further guidance is provided in the Ethical Code of judges, which was adopted at a session on 10 November 2014 by NJC as the superior judicial representative body.

Disciplinary cases of judges shall be heard in the first instance by the court of judges located in the territory of Budapest, and by the court of judges attached to the Kúria in the second instance. Members of the court of judges shall be nominated by the plenary meeting of the Kúria, the plenary session of judges of the courts of appeal and general courts. The president and members of the court of judges shall be appointed by the NJC. The rules of procedure of court of judges shall comprise the composition of the competent chambers and the rules of case allocation. The rules of procedure shall be approved by the NJC and shall be published on the central website.

According to the Legal Status of Judges Act, the court leader or the appointing person (in case of court leaders) respectively have the right to initiate the opening of a disciplinary procedure. The designated disciplinary board of the court of judges shall decide whether to initiate disciplinary proceedings, refuse to hold disciplinary proceedings, or order a preliminary hearing. The investigation during the disciplinary procedure is carried out by a disciplinary commissioner (a member of the court of judges, appointed by a panel of the court of judges). After receiving the report of the disciplinary commissioner, the court of judges decides within 15 days upon the initiation, refusal or suspension of the disciplinary procedure. The chamber of the court of judges shall adopt a decision in conclusion of the disciplinary proceedings. If the court of judges finds the judge guilty, it imposes a disciplinary penalty. The disciplinary sanctions are enlisted by the Legal Status of Judges Act in an exhaustive manner. The following disciplinary measures may be imposed against a judge for professional misconduct: a) reprimand; b) censure; c) downgrading by one pay grade; d) downgrading by two pay grades; e) discharge from executive office; f) motion for dismissal from judge's office.

The decision of the first instance court of judges may be appealed by the judge and the initiator of the disciplinary proceedings within fifteen days from the day on which it is served to the court of judges of the second instance. It can be seen that only judges have an influence on the disciplinary procedure (the role of the President of the NOJ is marginal, the Minister of Justice does not have any influence), judicial independence is fully safeguarded.

Prosecutors

According to Status of Prosecutors Act, the prosecutor who culpably violates his/her official obligations or curtails or jeopardises the prestige of his/her profession with his lifestyle or conduct commits a disciplinary breach. If the disciplinary breach is minor, the imposition of a disciplinary sanction may take place without actually conducting the disciplinary proceedings and the person exercising disciplinary powers may in this case serve a written warning on the prosecutor. In any other cases the conduct of disciplinary proceedings and – in case the disciplinary breach has been proven – the imposition of disciplinary sanctions by the senior prosecutor exercising disciplinary powers or, in more serious cases by the Prosecutor General will follow.

An appeal against the disciplinary decision may be filed in every case. An appeal against the decision of the person exercising disciplinary powers may be addressed to the Prosecutor General, whereas the disciplinary decision of the

Prosecutor General may be challenged at court. Disciplinary sanctions that may be imposed on prosecutors are a) reprimand; b) censure; c) revocation of formal acknowledgement awarded by the Prosecutor General, including a title; d) demotion by one pay grade; e) demotion to a lower position or exemption from managerial position; f) forfeiture of office. Upon the imposition of disciplinary sanctions, the gravity, consequences and degree of culpability of the breach shall be taken into consideration. The person exercising disciplinary powers are listed in Section 85 (1) of the Status of Prosecutors Act.

The mandatory appointment of a Disciplinary Supervisor in the disciplinary procedures against prosecutors is a recent progress in this field. Under the national provisions the guarantee-system that is applied in the disciplinary proceedings against prosecutors has become even more complete in order to ensure accountability and transparency in disciplinary proceedings. The legislation still allows for objection to bias against the exerciser of the disciplinary power or the Disciplinary Supervisor when their impartiality cannot be expected during the proceedings. Furthermore, an application for remedy may be lodged with the court against the disciplinary decision.

In order to ensure that proceedings are conducted within the framework of legal regulations in an impartial, consistent and unbiased way, the Recommendation on the Code of Ethics and Standards comprehensively consists of the ethical norms for prosecutors laying special emphasis on the principles to be followed in the course of their criminal and public law activities, as well as in their private lives. Moreover, it sets special ethical norms for senior prosecutors in order to ensure the dignity of their subordinate colleagues, as well as to objectively assess and promote them in their professional lives.

7. Remuneration/bonuses for judges and prosecutors

An important guarantee of judicial independence and the independence of the prosecution service is that the judge and the prosecutor should be remunerated in a manner that is commensurate with the dignity and responsibilities of his or her profession. In 2019 the Hungarian Parliament adopted a significant increase of remuneration for judges and prosecutors. With an increase of an average 32% in case of judges and 21% in case of public prosecutors, the level of their remuneration is brought to the same level in 2020, and the salaries of the two groups will be increased together in the years 2021 (by 12%) and 2022 (by 13%).

Judges

The rules on the remuneration of judges are provided for by the Legal Status of Judges Act. The salary of judges shall consist of a basic salary and allowances. The basic salary of a judge shall be determined on the basis of the judge's service time as calculated in accordance with the Legal Status of Judges Act, by multiplying the judge's salary base with the index numbers specified for each pay grade in Annex 2 of the Act. The salary base of judges shall be established by the act on the central budget, with the proviso that it may not be less than the sum established for the previous year. Judges shall move up one pay grade for every three years of service time. They also may be promoted - if rated outstanding, recommended for higher judicial office, or for professional excellence - by recommendation of the college on two occasions while in office and advanced one pay grade up.

The Legal Status of Judges Act contains the following forms of bonuses and premiums for judges: a.) special duty premium (non-discretionary, based on the place of service), b.) premium related to honorary titles,[6] c.) language premium (non-discretionary), d.) supplementary premium (discretionary), e.) skills premium (discretionary), f.) executive premium (non-discretionary). Judges are entitled to loyalty bonuses (non-discretionary) after 25, 30, 35 and 40 years of service. The bonus is a single additional payment that amounts to 2, 3, 4, and 5 times the monthly salary of the judges respectively. The Legal Status of Judges Act expressly provides for cafeteria benefits (related to restaurant, tourism and cultural services). Other benefits and increased cafeteria benefits may be provided based on a regulation adopted by the President of the NOJ in consultation with judges' representative organisations.

Prosecutors

In Hungary, the rules on the remuneration of prosecutors are provided for by the Status of Prosecutors Act. The prosecutor's salary consists of a basic salary and the supplement determined in the Status of Prosecutors Act. The basic salaries of prosecutors shall be established on the basis of the service time calculated in accordance with the Status of Prosecutors Act, as the product of the pay base and the multipliers determined for each pay grade in Annex No. 1 to the Act. The prosecutor's pay base serving as the basis for the calculation of the basic salary and the supplements shall be determined in the act on the central budget annually, in such a way that the amount thereof may not be lower than that of the year before and shall be equal to the pay base of judges as at any time. The Status of Prosecutors Act contains the following forms of bonuses and premiums for prosecutors: a.) executive bonus for

[6] For judges evaluated outstanding and recommended for higher judicial office, or outstanding, and after at least six years of service as a judge in a particular judicial level (discretionary, awarded by the NJC), or after at least twenty years of service as a judge in a particular judicial level (non-discretionary, awarded by the President of the NOJ).

prosecutors in leader positions, b.) position supplement (based on the place of service), c.) bonus related to honorary titles[7], d.) language premium, e.) compensatory supplement, f.) skills premium.

8. Independence/autonomy of the prosecution service

The Fundamental Law states in Article 29 (1) that "*the Prosecutor General and the Prosecutor's Office are independent*". The Act on the Prosecution Service states that "*the Prosecutor General shall not be directly or indirectly instructed to make or alter any individual decision with a particular content*". So it can be stated that the Prosecutor General and the prosecution service are independent entities and shall answer only to the law.

The Prosecutor General is elected from among prosecutors for nine years by the Parliament on the recommendation of the President of the Republic. The election of the Prosecutor General requires a two-thirds majority of the votes of the Members of Parliament. This way of election ensures a high level of personal independence for the Prosecutor General and for the whole Prosecution Service.

In order to safeguard the independence of the individual public prosecutors, public prosecutors may not be members of political parties and may not engage in political activities. The rules of the conflict of interest as stipulated in the Status of Prosecutors Act exclude any other gainful activities (with the exception of scientific, educational etc. activities), and holding executive offices and certain forms of membership in business associations, cooperative associations or cooperative societies etc. Another aspect of the independence is that prosecutors shall be granted the same privilege of immunity as Members of Parliament.

The Act on the Prosecution Service stipulates – similarly as in case of courts – that the Prosecution Service is a separate chapter in the central budget. The proposal for the budget of the Prosecution Service elaborated by the Prosecutor General shall be submitted to the parliament by the Government without modifications. Besides the functional independence, it is important to ensure the financial independence of the prosecutors as well by means of remuneration commensurate with their responsibilities (see above).

Legal framework: Fundamental Law, Article 29, Act CLXIII of 2011 on the Prosecution Service[8]

9. Independence of the Bar (chamber/association of lawyers)

The Hungarian Constitutional Court considers it as a guarantee of the independence of attorneys-at-law that the professional guidance and the representation of interests of those entitled to perform the professional activities is performed by a body that is separate from the state. Pursuant to Act LXXVIII of 2017 on the professional activities of attorneys-at-law, the Hungarian Bar Association and the regional bar associations are public bodies of those performing the professional activities of an attorney-at-law, operating on the principle of self-governance, performing professional duties and offering the representation of interests. In Hungary, public bodies are organizations with self-government and registered membership. The establishment of such organizations is required by law in order to perform public duties related to its members and their activities. The bar association exercises a public control function when it acts in order to enforce professional requirements in its disciplinary powers, and it provides institutional reputation, institutional legal protection and counterbalance to the performance of legal protection and legal representation tasks as a private activity, against public authority. The Hungarian Bar Association lays down, inter alia, the professional standards pertaining to the activities of an attorney-at-law, within its own legislating competence. The state supervises only the legality of the operation of the Hungarian Bar Association, through the minister responsible for justice. The bar association, as a public body, provides institutional guarantee as to the professional competence of its members and the independence of performing their tasks as a private activity.

Legal framework: Act LXXVIII of 2017 on the professional activities of attorneys-at-law;[9] *Act LXV of 2006 on the amendment of Act XXXVIII of 1992 on public finances and on the amendment of certain related acts.*[10]

[7] In the case of an evaluation result of excellent, suitable for promotion or excellent and fully eligible and upon the completion of minimum six years as prosecutor at the given level of prosecution, including any time completed as prosecutor at a more senior level of prosecution (optional) or after at least twenty years of service as a prosecutor in a particular level of prosecution (automatically)

[8] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139710.377036

[9] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=202607.377348, for official English version, see: http://njt.hu/translated/doc/J2017T0078P_20180101_FIN.pdf

[10] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=103353.354509

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

The NOJ carries out each year an anonymous and voluntary survey among judges since 2015. "The survey is meant to find out how judges see the impartiality and independence of the judiciary in Hungary. The questionnaire was filled in by the highest number of judges in 2019. Based on their answers, more than 96% of the judges consider themselves independent. 95% did not meet any conditions that would imply influence. Judges are trying to avoid situations that endanger judicial independence. 93% of the judges think that the case allocation system ensures impartial judgements."[11]

As even the country report within the framework of the European Semester acknowledges: "the latest data for perceived judicial independence shows improvement based on the forthcoming 2020 EU Justice Scoreboard". [12]

The above described increase of remuneration also ensures a higher level of personal independence for judges.

In December 2019, the Members of the NJC have unanimously supported the election of the candidate for the President of the NJC. This fact demonstrates the beginning of a new chapter in the institutional relationship between the NJC and the President of the NOJ and is therefore crucial for the proper evaluation of the current situation in the justice system.

11. Other – please specify

Act CXXVII of 2019 on the amendment of certain acts in relation to the single instance administrative procedures of district offices – instead of an organisationally separated administrative court system – introduced certain modifications in the court system in order to make the operation of the administrative justice faster and more predictable.

From April 1, 2020 there is a two instance system of administrative judicial review: the administrative decisions may be challenged at first instance before the county (general) courts [8 designated county (general) courts with regional jurisdiction and with division of public administration], then, in the cases provided by law, it is possible to seek remedy before the Kúria with division of public administration.

The Kúria is the first and final instance only in a few special types of cases (e.g. in the procedure for establishing a procedural instrument for remedying a constitutional complaint or in court proceedings concerning the right of assembly – except dissolution). This model ensures the maintenance of unified court system and courts administration. The rules which guarantee judicial independence have remained unchanged.

Access to justice will be facilitated by the extension of the use of electronic procedures, communication with IT technology in litigations, the already regularly used possibility of remote hearings, and the further development of free legal assistance. The designation of administrative courts with regional jurisdiction also took into account the specificities of the territorial location.

Litigation in labour cases takes place at first instance on the county (general) courts and at second instance on the courts of appeal. Labour judges may remain in their position; hence the high professional level of labour judges is guaranteed.

B. Quality of justice

12. Accessibility of courts (e.g. court fees, legal aid)

According to the Duties Act a court fee must be paid - as a general rule - for the court proceedings.

The general amount of the court fee in a first instance civil case is 6% of the value of the case, with the minimum amount of 15 000 HUF and maximum of 1 500 000 HUF. In some types of cases laws define different percentage or fix amount, e.g. the court fee of a litigious divorce case is a fix amount of 30 000 HUF. The general amount for a second instance case is 8% of the value of the case with the minimum amount of 15 000 HUF and maximum of 2 500 000 HUF. The general amount for a review of the case at the Kúria is 10% of the value of the case with the minimum amount of 50 000 HUF and maximum of 3 500 000 HUF. Some proceedings – specified in Sections 56-57 of the Duties Act – are free of charges. The Duties Act provides for reduction of duties (e.g. if the procedure was terminated by settlement). In cases defined by Sections 59-62 of the Duties Act, the court fee does not have to be paid in advance, only at the end of the procedure according to the decision of the court.

[11] https://birosag.hu/en/news/category/about-courts/judges-are-independent-rule-law-criteria-are-met
[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX:52020SC0516

According to the Act on Civil Procedure, a party, on request and with regard to his income and assets, shall be granted cost exemption due to personal circumstances or cost deferral due to personal circumstances; a party shall be granted fee exemption due to personal circumstances *ex officio*, if justified by the person of the party.

In order to ensure access to justice for those who do not have sufficient financial resources to meet the costs of a court case or legal representation, there are legal aid systems in Hungary, which exist in civil, administrative and criminal proceedings. The Hungarian Legal Aid Service even provides assistance prior to the commencement of the judicial proceeding.

The rules of application for legal assistance are provided by the Legal Aid Act. [The procedure for the authorisation of the legal assistance is free of any administration fees.] Following receipt of the request, the Hungarian Legal Aid Service may issue a legally binding resolution, authorising the plaintiff to get access to free legal assistance. Legal aid providers give, inter alia, free legal advice to the parties, and prepare submissions and other legal documents for them. Their involvement is extrajudicial, which implies that they provide assistance prior to the commencement of the judicial proceeding. During the proceedings the assistance of an assigned attorney can be provided upon request filed with the Hungarian Legal Aid Service. The State may advance the costs of assigned attorney on behalf of the parties, or exceptionally, cover them in civil procedures.

Legislative framework: Act XCIII of 1990 on Duties (Duties Act)[13], Act LXXX of 2003 on Legal Aid (Legal Aid Act)[14], Act CXXX of 2016 on Civil Procedure.[15]

13. Resources of the judiciary (human/financial)

The Courts' Administration Act ensures a high level of financial independence for the judiciary. The budget of the court system is adopted by the Parliament as a separate chapter of the central budget. The President of the NOJ shall elaborate – with regard to the opinion of the NJC and the Kúria – his/her proposal on the budget of the courts and his/her report on the implementation of the budget, to be submitted without modification by the Government to the Parliament as part of the bill on the budget and the bill on the implementation of the budget. The President of the NOJ shall exercise the duties related to the financial management of the courts, however, the NJC has considerable control powers in this regard. The NJC: a) shall express its opinion on the budget of the courts, b) shall examine the economic and financial management of courts, c) shall express opinions on the detailed conditions and levels of other benefits. The State Audit Office supervises the financial management of the court system.

The budget of the court system for the year 2020 is HUF 125bn. The court system has about 11 700 employees: 3 000 judges and 8 700 judicial employees working on the four levels of jurisdiction.

14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

According to the publicly available Justice Scoreboard 2019,[16] the availability of electronic means in Hungary is widely ensured: Hungary is among the countries ranked first in this regard. Hungary was among the first to digitise the processes of justice, thanks to which in 2018, some 51 per cent of civil and commercial cases, and 80 per cent of bankruptcy and liquidation proceedings were instituted electronically. As part of the project 'Digital Court' of the NOJ, the full and comprehensive digitisation of court proceedings is now in progress, including e-files, the possibility of submitting and delivering documents electronically, the electronic viewing of lawsuit documents, online duty payment, and tools for electronic signature and signature authentication. The NOJ is also implementing the project 'Via Video', as part of which hearing rooms are being equipped with digital video and sound recording and transmission systems. IT applications allow court executives to gather information on the timely jurisdiction of the cases of the court. This helps the court executives to take adequate measures in types of cases if it is needed to support the effective jurisdiction of the court. Statistical data allow court executives to monitor the number of incoming cases, number of resolved cases, number of pending cases, appeal ratio, clearance rate, the subject of incoming / finished / pending cases etc. Detailed statistical data and their analysis are publicly available at the website of NOJ (https://birosag.hu/statisztikai-adatok).

According to the Courts' Administration Act, the President of NOJ is responsible for collecting statistics and workload assessment. Therefore, the President of NOJ defines the main duties relating to the collection and processing of statistical data in the judicial system; and devises and, if necessary, annually review the data sheet and

[13] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=13511.376975
[14] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=75608.362955
[15] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=198992.377344, for official English version see: http://njt.hu/translated/doc/J2016T0130P_20200101_FIN.pdf
[16] Source of data: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf

methods for the assessment of the workload of judges, review at least once a year the charts on workloads and case load statistics at the national level, and shall define the national workload for contentious and non-contentious proceedings broken down according to judicial level and case types.

National and local level surveys are conducted regularly aimed at either the court staff or the court users (e.g. on the helpdesk of the electronic communication system with courts: https://birosag.hu/form/ugyfel-elegedettsegi-kerdoiv)

15. Other – please specify

C. Efficiency of the justice system

16. Length of proceedings

The figures of the last edition of the Justice Scoreboard published in April 2019[17] show that the Hungarian justice system performs above or well above the EU average, just like in previous years. Regarding the length of proceedings, Hungarian courts are permanently at the top of the EU in many types of cases. The number of pending civil, commercial and administrative and other cases at first instance is among the lowest in Europe, the number of pending first instance administrative cases per 100 citizens is the second lowest among the Member States, just as the average length of EU trademark infringement cases. Regarding the time needed to resolve administrative cases at first instance, Hungary ranked fourth in this research; with respect to administrative cases at all court instances the ranking was the fifth best. According to the data of NOJ, 85.3% of the cases are finished within one year.[18]

Concerning clearance rates, the data show similarly positive trends. Courts are able to reduce the backlog year by year. For example in the first half of the year 2019 the number of incoming cases was 603 688, while the number of resolved cases was 635 974. The number of pending cases on 30 June 2019 was about 37 000 less than on 30 June 2018. Both Hungarian and EU level data underline that the timeliness of court procedures is ensured in Hungary.

17. Enforcement of judgements

The decisions of various courts and authorities resolving legal disputes as well as certain claims based on certain documents must be enforced by way of judicial enforcement proceedings, a non-litigous proceeding. The rules of court execution proceedings are laid down in the Judicial Enforcement Act. Judicial enforcement proceedings are of two stages, namely ordering and implementation of enforcement. Enforcement proceedings are instituted at the request of the party requesting enforcement. The court with competence to order enforcement will issue the enforcement order, where the general conditions of enforcement are fulfilled, namely the resolution to be enforced sets forth an obligation (condemnation), furthermore if it is final, non-appealable, or where the resolution is preliminarily enforceable, and the deadline for fulfilment has elapsed. The debtor or the party seeking enforcement have legal remedies at their disposal against the ordering of enforcement.

As a general rule, enforcement is implemented by an independent court bailiff in judicial enforcement proceedings. A separate legal remedy against measures by the bailiff, known as an enforcement objection, is available.

Coercive measures restrict primarily the debtor's financial rights and – exceptionally – may touch upon the debtor's personal rights. Measures against the person can be applied by the police on the basis of a measure of the court or court bailiff. Regarding financial measures, the Enforcement Act defines their scope of application, including certain basic properties and sums that are exempt from enforcement, in order to ensure the debtor's basic conditions of living. As for special enforcement procedures (keeping contact with children, clearing of apartments, violation of intellectual property rights) the Enforcement Act contains specific provisions. Thus, the Enforcement Act establishes a balance between the legitimate interests of the debtor and the aim of enforcement, thus ensuring the proper enforcement of judgements in line with the principle of rule of law.

Legislative framework: Act LIII of 1994 on Judicial Enforcement[19]

18. Other – please specify

[17] Source of data: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_quantative_data_factsheet_en.pdf
[18] For detailed statistics, see: https://birosag.hu/statisztikai-adatok
[19] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=21471.376984

II. Anti-corruption framework

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

Corruption crimes are detected and investigated by the police acting as an investigation authority or by the Prosecution Service depending on whether the crime has been committed in the private or public sector. Corruption crimes committed in the private sector are detected and investigated by the police. Supervising and directing investigations, filing indictments and prosecuting such cases in court is the task of chief prosecution offices of the counties and of the capital, Budapest. The regional investigative prosecution offices investigate corruption crimes of public officials. In addition, the Investigation Division of the Chief Prosecution Office of Investigation as a special, central unit handles those corruption cases specifically that need to be treated as priority cases with regard to the special position, profession or rank of the offender, the high rank in the structure of the state or the complexity of the cases. Accordingly, it investigates corruption cases committed by or involving persons enjoying immunity, foreign public officials, the President of the Republic, the Prime Minister, members of the Government, high ranking officials of the public security authorities and disaster management bodies, and senior officials of certain central state administration bodies. In the course of the detection and investigation of crimes the Prosecution Service may use the investigative forces of the police and the National Protective Service (hereinafter: NPS).

The most important task of NPS, is to reduce corruption, to prevent the expansion of organised crime within law enforcement and public administration agencies, to continue high-quality detection work and to organise sufficient protection for people working at law enforcement agencies and certain government agencies, including their family members, who are at risk due to their profession. In case of crimes stipulated in the relevant Government decree, the detection activities of the NPS do not go beyond the confirmation or exclusion of the occurrence of a suspected crime.

The integrity check introduced as a new instrument by the amendment of the Police Act of 2010 made the fight against corruption more effective both in terms of prevention and collecting proof.[20] The integrity test conducted by the NPS is aimed at determining whether the supervised official performs its duty in line with the rules and obligations defined by law. For this purpose, the NPS creates situations that are likely or presumed to take place in real life when the official under supervision performs its duties. Experience shows that integrity testing has the potential to be dissuasive. In 2019, NPS carried out integrity tests on a total of 1 150 people. The officials of the NPS often give information on the results of integrity testing at the staff meetings of the law enforcement and public administration agencies under the NPS's protection. Recordings of integrity tests are also shown during the training programs for law enforcement officials.

The Minister of Interior is the minister responsible for co-ordinating the government tasks relating to anti-corruption. The government strategy against corruption is to be prepared and submitted to the Minister of Interior by NPS. For the implementation of these tasks a specified department, the Corruption Prevention Department (hereinafter: CPD) started its operation in October 2014. The CPD focuses its work on strengthening integrity of State organisations by way of strategic planning, developing integrity management systems, providing state actors with methodological support, education and training. Furthermore, the CPD reaches out to the private sector and to the society as a whole by way of different awareness raising and information activities and also takes part in international cooperation. Numerous legal amendments, guidelines, trainings, awareness-raising and information campaigns prove the commitment of state organisations towards the development of organisational integrity, including the ministries, the Curia, the State Audit Office, the National Tax and Customs Authority, the Prosecutor General, the Public Procurement Authority, the Hungarian National Bank, local governments, the associations of local governments, professional associations and unions, business chambers, research and educational organisations etc.

Legal framework: Act XXXIV of 1994 on the Police (Police Act),[21] Government Decree No. 293/2010 (XII. 22) on the designation of the police agency performing internal crime prevention and detection tasks and the detailed rules of the performance of such tasks, the lifestyle monitoring and integrity checks[22]

[20] Other data sources: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2019-September-4-6/Contributions_NV/Hungary_HU_EN.pdf
https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2019-September-4-6/V1904637e.pdf
[21] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=21269.376388
[22] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=133717.371012

B. Prevention

20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

Asset declarations

The rules of asset declaration regarding public officials in Hungary are stipulated by the Act on certain obligations related to asset declaration (Vnyt.). The aim of the asset declaration is the supervision of enrichment in order to prevent illicit enrichment. Accordingly, the assets and financial interests existing on the day of the declaration and all incomes that have occurred in the five years prior to the day of the declaration have to be declared.

Service members of law enforcement agencies, including the National Tax and Customs Authority, professional and contracted soldiers at the Hungarian Armed Force, public employees, civilian public officials, members of the Public Prosecution Service, professionals with justice service status, and employees of the Hungarian Central Bank, who either individually or as a member of a team are entitled to propose or make decisions or supervise public administration and misdemeanour procedures, in a public procurement process and also who dispose or supervise the disposing of public funding, especially state (municipal) subventions, are requested to submit asset declarations. Furthermore political government consultants, executives, those who fall under national security clearance, public prosecutors, notaries and bailiffs are all obliged to declare their assets.

As regards the frequency of asset declaration, a three pillar system can be found, since assets have to be declared (1) prior to the appointment to the job that requires it, (2) within 15 days after the termination of such jobs and (3) with different frequency depending on the type of job or position. Annually declare their assets who fulfil the above mentioned jobs in public procurements, the deputy minister, the state secretary, and those who fulfil one of the above mentioned jobs at budgetary organisations, at companies majority owned by a municipality, furthermore, those who fulfil one of the above mentioned jobs in public procurement procedures managed by the a public foundation established by the Parliament, the Government or a municipality. Biannually declare their assets those – not mentioned above – who dispose of or supervise the disposal of state (municipal) subventions. All other requested officials declare their assets every 5 years. The asset declarations of public officials are not public.

The assets declarations can be submitted either in paper or in electronic format. The declaration is submitted to the employer of the public official or bailiff, the county chamber of notaries, the owner of the state (municipality) owned company, the manager of the state subvention fund and the President of the Hungarian Central Bank. They are called "record keepers" in the Vnyt. The assets and financial interests of those relatives, who live in the same household with the requested person, have to be declared with the same frequency as those of the requested person. The fulfilment of the obligation to disclose is checked by the record keeper. Where it is established that the requested person failed to declare their assets, they are called upon in writing to do so. If they still fail to fulfil their obligation to disclose after the written call, their service contract is terminated. The verification of the content of the declaration is also the task of the record keeper either upon own initiative or upon notification. In the latter case the requested person is heard during the process. The so called enrichment verification procedure is conducted by the National Tax and Customs Authority.

The asset declarations of MPs are regulated in the Act on the Parliament. The MPs shall make a declaration of assets in the form specified in the Act within thirty days of taking oath and in each subsequent year until 31 January as well as within thirty days of the termination of their mandate. The declarations of assets of family members living in a common household with the MP shall be attached. With the exception of the declaration of assets of the family member, the declaration of assets shall be published without delay on the website of the Parliament. Judges are also obliged to submit asset declarations before taking oath and then every three years. The asset declarations are kept by the judicial leader exercising the rights of the employer. Detailed rules as regards confidentiality and control of asset declarations are set out in the Act on the Legal Status and Remuneration of Judges.

Legal framework: Act CLII of 2007 on certain obligations related to asset declaration,[23] Act XXXVI of 2012 on the National Assembly (Act on the Parliament)[24]

Lobbying and transparency of public decision-making

The Government Decree on the system of integrity management (Intr.) regulates the communication between public administrative organisations supervised by the Government or by the member of the Government and third parties representing private interests. The rules concerning the communication with lobbyists contribute to strengthening organisational integrity through recognising and managing possible risks.

[23] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=111766.362520
[24] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=148174.376601

In the course of or in connection with performing their tasks, the employees of public administration bodies may meet persons who, pursuant to the procedure defined by law, do not qualify as clients or complainants or as other persons participating in the procedure who are not part of the state organisation (lobbyist) only after informing their superiors of this fact. The information given to their superiors shall include the name of the lobbyist and – if applicable – the name of the organization represented by the lobbyist, as well as the objective, date and location of the meeting. Officers who become aware of information about risks pertaining to the organization's integrity with regard to the meeting shall be obliged to inform their superior of this fact in writing. The superior may prohibit the meeting of the officer and the lobbyist or may make the meeting conditional on the presence of a third person. Heads of office organizations may issue a normative instruction to prohibit the officers of the public administration body from meeting lobbyists, to restrict or to make such meetings conditional on the presence of a third person.[25]

Procedure regulated by Intr. is not applicable to the participation of the public in the preparation of legislation covered by the Act CXXXI of 2010 on public participation in the preparation of legislation. (For further information on the transparency of public decision-making, see Chapter IV, Question 37. Regarding access to public information, see Chapter III, Question 35.)

Legal framework: Government Decree 50/2013 (II. 25.) on the system of integrity management at public administration bodies and the procedural rules of receiving lobbyists.[26]

21. Rules on preventing conflict of interests in the public sector

Conflicts of interest rules concerning government officials and state officials are stipulated by Kttv., Kit. and concerning law enforcement officials (police, prison guards, excise officers and disaster recovery staff) by Hszt.

Regulations of Kttv. and Kit. cover all outside activities of public officials covering both the matter of political and economic conflicts of interests. Public officials shall not hold offices in political parties and shall not engage in public appearances in name of political parties (except for standing as candidates at elections). As far as economic conflict of interests is concerned, Kit. and Kttv. generally exclude the holding of executive positions in corporations or in their supervisory boards, except for certain cases where the company belongs to a local municipality or another public body or is in permanent state ownership etc. [The Hszt. also covers political and economic conflicts of interest stipulating rules similar to those of Kttv. in relation to second employment, membership and positions in legal entities, and management of conflicts of interest.]

In cases of conflicts of interest, the public officials shall immediately report their superiors the fact of the conflict of interest. The employer then instructs the public official to terminate its cause. If this does not happen in 30 days the service contract of the public official is terminated. The establishment of conflict of interest and its legal consequences is a basic right of the employer. In order to prevent conflicts of interest all applicants for vacant positions in the public service have to declare in writing that there is no conflict of interest between the public position and their activities outside it. In practice the HR units of the different state agencies provide information and assistance on the causes and relevant procedural rules of conflicts of interest. Besides this both the Code of Ethics of the Hungarian Government Officers and State Officers Corps[27] and the Code of Ethics of the Law Enforcement[28] that are obligatory for all public officials, cover the ethical aspects of conflicts of interest.

Legal framework: Act CXCIX of 2011 on government officials and state officials (Kttv.),[29] *Act CXXV of 2018 on governmental administration (Kit.),*[30] *Act XLII of 2015 on service status of the members of law enforcement agencies (Hszt.).*[31]

22. Measures in place to ensure whistle-blower protection and encourage reporting of corruption

According to the Act on the Commissioner for Fundamental Rights and the Act on Complaints and Public Interest Disclosures, the Commissioner ensures – through his Office – the operation of an electronic system for making and recording public interest disclosures. Public interest disclosures can be made through the electronic system (on the platform established for this purpose on the Office's website), or in person at the Client Service.

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[25] The practical application of these rules is facilitated by the methodological guideline published by the NPS and the Ministry of the Interior, which can be found on the thematic website on corruption prevention. https://korrupciomegelozes.kormany.hu/szakmai-anyagok-es-osszefoglalok2

[26] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159079.377541

[27] See text at: https://mkk.org.hu/hivatasetika

[28] See text at: http://www.rendvedelmikar.hu/letoltes/document/document_108.pdf

[29] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=142936.381628

[30] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=211886.381634

[31] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=175262.376363

The discloser may request that his/her submission be treated anonymously. In this case, the acting body may only access the excerpted version of the public interest disclosure without any data that would reveal the identity of the discloser. The relevant laws ensure the protection of personal data even in lack of a request for anonymity. Exceptions are limited to cases where it becomes clear that the complainant or the whistle-blower has disclosed untrue information of crucial importance in bad faith, and a) it gives rise to an indication that a crime or an offence has been committed, then the personal data of the complainant or the whistle-blower are disclosed to the body or person entitled to carry out proceedings; b) there is good reason to consider it likely that the complainant or the whistle-blower caused unlawful damage or other harm to the rights of others, then his/her data are disclosed upon the request of the body or person entitled to initiate or carry out proceedings.

The Commissioner makes the disclosure and its annexes or the anonymized extract accessible to the body authorized to investigate (the "acting body") in the electronic system within 8 days after submission. The acting bodies record the information on their (interim and meaningful) measures taken during their investigation in the electronic system within 30 days from receiving the public disclosure. The whistle-blower may follow the investigation of his/her disclosure on the webpage and may query the status of his/her case. In addition to that, the brief excerpt of the disclosure (the so-called "public excerpt"), without personal data, is accessible to everybody.

After the inquiry of the public interest disclosure, the whistle-blower may submit a petition requesting the Commissioner to remedy a perceived impropriety if the acting body found his/her disclosure unsubstantiated, or the whistle-blower does not agree with the result of the investigation, or the acting body did not fully examine his/her disclosure. The Commissioner may investigate the practice of acting bodies examining public interest disclosures ex officio as well. If, based on the investigation, the Commissioner finds improprieties, he/she may make recommendations for remedying them in the case of those involved, or their superior body.

Any action taken as a result of a public interest disclosure which may cause disadvantage to the whistle-blower shall be unlawful even if it was otherwise lawful, except in the cases of bad faith (described above). [According to Act II of 2012 on regulatory offences, offence procedures and the system for registering regulatory offences, persecution of the whistleblower qualifies as an offence.] The state provides whistle-blowers aids defined in Act on Legal Aid.

Legal framework: Act CXI of 2011 on the Commissioner for Fundamental Rights[32]*, Act CLXV of 2013 on Complaints and Public Interest Disclosures,*[33] *Act LXXX of 2003 on Legal Aid*[34]

23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).

The objectives of the National Anti-Corruption Programme (hereinafter: NAP) adopted in May 2015 were implemented by way of action plans covering two-year terms (First Action Plan: 2015-2016, Second Action Plan 2017-2018). Within law enforcement agencies and public administrative bodies jobs and types of jobs that are exposed to a higher risk of corruption[35] were mapped. The mapping was based on risk analyses, comparative data analysis, qualitative and quantitative analysis of the risk factors of different jobs and types of jobs. The research within the project financed by the ESF entitled "Capacity building for the more effective detection and prevention of corruption" examined the prevalence rate of risks concerning to all jobs and types of jobs and risk factors.

According the First Action Plan the methodology of the training programs on corruption prevention, professional ethics, anti-corruption and the fight against foreign bribery was developed. The NPS organised anti-corruption training courses for police officers and prosecutors aimed at building their capacities in detecting and investigating corruption related crimes. The competent Directorate developed an e-learning training ("*It's your choice*") for the members of law enforcement agencies. In line with the First Action Plan public officials became obliged to participate in at least one training program related to corruption prevention in each training cycle. The Second Action Plan focused on supporting corruption prevention efforts and the dissemination of the integrity training material developed by NPS. NPS and Rapid Response and Special Police Services jointly introduced a special training, inter alia, for border guard patrols ("*How to say No? How to be assertive in corrupt situations?"*). The e-learning curriculum titled "*Integrity: Strong Morality in Practice*", ordered as a mandatory central training program, was completed between 1 November 2018 and 30 June 2019 by 49 698 professionals. Based on the experience so far, the trainings have a very positive effect on the participants' awareness of integrity, i.e. their ability to resist the challenge of corruption. In addition, the aggregated experience of the trainings can be put to good use in conscious leadership behaviour.

[32] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139247.381623
[33] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=164339.376770
[34] see text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=75608.362955
[35] At this point we reiterate our conviction expressed at expert level that "high-risk corruption" is not a clearly defined category; it is not evident, how Commission defined this concept and there are no clear standards in this regard. The answer therefore refers to the mapping of jobs exposed to a higher risk of corruption within the framework of NAP.

24. Any other relevant measures to prevent corruption in public and private sector

The National Anti-Corruption Programme (hereinafter: NAP) was adopted by the Hungarian Government in May 2015. Tasks envisaged in the NAP were completed, as NAP expired 31 December 2018. The NAP encompassed a wide range of measures: value-based and compliance-based (e.g. legislative) processes. Its corruption prevention measures reached at large section of the society. Tailor-made measures were implemented involving different actors from students to businesses.

The year of 2019 was dedicated to evaluating its results, mapping new areas for intervention and, on the basis of conclusions drawn, drafting the new Anti-corruption Strategy (2020-2022). Anti-corruption efforts can be effective by way of creating a culture that makes corruption socially unacceptable. In this sense, an awareness raising campaign ended in 2019, which targeted citizens, businesses and public sector. It aimed at giving information on the nature of corruption, corruption risks and how to avoid corrupt situations, creating an organisational culture and attitude amongst citizens that resists corruption. The campaign consisted of banners, Video and Radio spots, a Facebook site, a Youtube channel, E-Newsletters, mobile applications. [This way through the Facebook site 1 210 849 citizens, while via Youtube channel 3 344 428 citizens received up-to-date information on the perils of corruption and guidance on how to behave properly in situations exposed to corruption. NPS's CPD organized or took part in different events (conferences, workshops) 57 times and reached this way 3 168 public officials.]

Risk management activity within the integrated risk management system by now became a valuable prevention tool for budgetary authorities. Surveys conducted in every half a year contributed to monitoring and analysing the anti-corruption risk management activities of state authorities. Concerning state authorities, a continuously positive tendency can be seen in the field of the risk management activities, which also cover anti-corruption risk management. Since January 2020 the majority of meaningful state owned enterprises are also subjects of internal control regulations and similarly to integrity advisors of public administration organisation or internal control coordinators of budgetary authorities, compliance officers will be appointed to certain state owned enterprises so as to contribute to improving internal control measures and the prevention of corruption as well.

The main objective of the new anti-corruption strategy to be adopted in the near future is to prevent every opportunity of the occurrence of corruption. The novelties of technology and the development of e-administration shall be taken increasingly into consideration. That is why the main pillars of the strategy will be: technology-based, compliance-based and value-based measures. The new strategy also aims at reaching as many social groups as possible through the attitude shaping activity based on the elaborated and proven methodology.

C. Repressive measures

25. Criminalisation of corruption and related offences

The new Criminal Code (hereinafter: HCC) entered into force on 1 July 2013 regulates the criminal offences related to corruption in a specified, independent Chapter (XXVII.). The rules of HCC are based on the international and EU standards and obligations in the field of fight against corruption. Accordingly, HCC criminalizes active and passive bribery (Section 290-291 HCC) and their commission regarding a public officer (Section 293-294 HCC). HCC also criminalizes active and passive bribery in court or in authority proceedings (Section 295-296 HCC), the active and passive trading in influence (Section 298-299 HCC) and the failure to report a corruption criminal offence (Section 300 HCC). According to these rules, giving and promising any undue advantage, asking or accepting such advantage or a promise of it are punishable acts. The scope of the criminal offences is extended to foreign public officers as well. The latest OECD country report concerning Hungary was adopted in 2019. In that report OECD (OECD Phase 4 Report point 69-70.) recommended to Hungary to amend the definition of foreign public official in order to expressly clarify that it includes officials of foreign public enterprises in point 13. a) of Section 459 of HCC. The bill containing this modification was submitted to the Hungarian Parliament at the beginning of April 2020 and is expected to be adopted by the Parliament in the second half of this year.

Legal framework: Act C of 2012 on the Criminal Code[36]

26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

Corruption crimes, without exception, are punishable by imprisonment under the law. Depending on the legal qualification of the crime, the minimum term of punishment is imprisonment not exceeding two years (active trading in influence committed in connection with a person who is working for or on behalf of an economic operator or an

[36] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.381189, official English translation at: https://njt.hu/translated/doc/J2012T0100P_20200331_FIN.PDF

association); the most severe punishment ranges from five to ten years' imprisonment (e.g. passive bribery committed by a high-ranking public official in a criminal association).

The person who is sentenced to a fixed-term imprisonment for a criminal offense committed with the purpose of financial gain and has sufficient income or property shall also have a fine imposed. Prohibition to exercise professional activity may be imposed upon a person who has committed a criminal offense knowingly, by using his profession. Any person who is sentenced to executable imprisonment for an intentional criminal offense, and is deemed unworthy of the right to participate in public affairs, shall be deprived of these rights.

Any property embodying the subject of financial gain given or promised shall be subject to confiscation of property. Any financial gain or advantage resulting from criminal activities obtained by the offender in the course of or in connection with a criminal act, also if it served the enrichment of another person, shall be confiscated. If such gain or advantage was obtained by an economic operator, this economic operator shall be subject to confiscation of property. Unless proven to the contrary, property obtained by the perpetrator of the criminal offence of active bribery, passive bribery, active bribery of public officials, passive bribery of public officials within a period of five years prior to the commencement of the criminal proceedings, if such property or the lifestyle of the perpetrator are particularly disproportionate to the certified income and the personal circumstances of the perpetrator, shall also be deemed to be property subject to confiscation of property, and the confiscation of property shall be ordered for such property. The court may terminate the legal entity, limit the activity of the legal entity or impose a fine on the legal entity if the perpetration of the criminal act was aimed at or has resulted in the legal entity gaining benefit, or the criminal act was committed with the use of the legal entity and the criminal act was committed by a.) the legal entity's executive officer, its member, employee, officer, manager entitled to represent it, its supervisory board member and/or their representatives, within the legal entity's scope of activity; b.) its member or employee within the legal entity's scope of activity, and it could have been prevented by the executive officer, the manager or the supervisory board by fulfilling his/her/its supervisory or control obligations; c.) or the legal entity's executive officer, its member, employee, officer, manager entitled to represent it, its supervisory board member had knowledge of the commission of the criminal act.

Legal framework: Act C of 2012 on the Criminal Code

27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The right to immunity of Members of Parliament is guaranteed by Article 4 of the Fundamental Law of Hungary. Apart from MPs, a number of other officials are entitled to the right of immunity in order to ensure their independence (e.g. judges, prosecutors, members of the Constitutional Court).

Special rules of the proceeding against persons entitled to immunity are laid down in Section 719 of the Act on the Criminal Proceedings (hereinafter: CCP) entered into force on 1 July 2018. The current regime does not impede the effective investigation, prosecution and adjudication in bribery cases. Even if the Parliament upholds immunity, the case does not lapse. Immunity is not an absolute privilege; when an MP's mandate terminates, he or she is no longer protected by immunity, a proceeding can be launched against him or her and he or she can be called to account. Regarding Section 28 (3) of HCC, when a criminal proceeding is postponed on the grounds of personal immunity, and by virtue of the fact that the immunity was not suspended by the authority having powers to do so, or because such authority did not consent to have the proceeding initiated or continued, this period of time shall not be included in the period of limitations. According to the practice followed by the Parliament in cases of criminal offences that are prosecuted by the public prosecutor (e.g. bribery offences), at the request of the Prosecutor General, the immunity of the MP allegedly involved in the commission of such an offence is suspended in every case.

While recalling that "high-level" corruption is not defined (such a category does not exist in criminal law), it shall be stressed that the Prosecution Service carefully examines cases followed by public interest. E.g. on 25 April 2017 an indictment was filed against a government party MP for the felony of passive bribery of public officials. In September 2019 the perpetrator was sentenced to four years' imprisonment. On 21 August 2019 a government party MP was indicted for crimes affecting the financial interests of the EU, as well as for other corruption crimes. In the so-called Alstom case the Central Chief Prosecution Office of Investigation filed an indictment in April 2019 against 4 persons (and against one more person later in April 2019) for bribery in relation to contracts for the procurement of metro trains in the Metro 4 project. The indictment rate based on OLAF recommendations is 45%, which is over EU average.[37]

Legal framework: Act XC of 2017 on the Criminal Proceedings (CCP)[38]

[37] https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2018_en.pdf
[38] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=202672.377060

III. Media pluralism

A. Media regulatory authorities and bodies

28. Independence, enforcement powers and adequacy of resources of media authorities and bodies

Organization: The National Media and Infocommunications Authority (hereinafter: NMHH) is an autonomous regulatory agency subordinated solely to the law. The Media Council and its members are also subject only to the law and cannot be instructed in their activities.

The *regulatory powers* of the Media Council are divided into three groups: regulation of media service activities, tendering of media service rights and related registries, and supervision of media services. *Non-regulatory powers* are also diverse, including internal administrative decisions (such as the adoption of rules of procedure), the issuance of non-legislative regulatory acts (recommendations), and involvement in the preparation of government decisions (commenting on draft laws).

The Office of NMHH ensures the professional background for the Media Council and the NMHH leaders, prepares and implements their decisions (official decisions, application procedures). This includes professional background activities (for example, by a program monitoring and analysis service). At the same time, the Office also has autonomous media administrative powers (such as maintaining of registry), which are exercised by the Director of the Office, the Director General. In these matters, the Media Council is the superior body of the Office, which exercises professional management, second instance remedy, over the Office.

Resources: The independence of NMHH is ensured by the fact that its consolidated budget shall be approved by the Parliament in the form of a separate piece of legislation. Therefore, the Government has no influence on the budget of the media authority. NMHH has also its own revenues, which shall comprise frequency charges, fees received for the booking and use of identifiers as well as for regulatory procedures; it shall also include supervisory fees, which shall be used to ensure the efficient and highly professional operation of NMHH. Within the consolidated budget of NMHH, the budget of the Media Council shall be treated separately as prescribed in the Media Act.

Procedures: In all official proceedings set out in the Media Act, the rules of the Code of General Administrative Procedure (hereinafter: CGAP) shall be applied with the supplementary and different rules applicable to the media administration as laid down in the Media Act. So the Media Act may establish additional procedural provisions consistent with the rules of CGAP and where CGAP allows, there the Media Act may deviate from the provisions thereof.

The framework of sanctions ensuring the enforcement of media legislation is clear and transparent, governed by the principles of proportionality, equal treatment and graduated approach. These principles are aimed to ensure that the sanctions reflect the gravity and nature of the infringement. When imposing sanctions the Media Council takes the following into account in each case: the gravity of the infringement, whether it was committed on one or more occasions or on an *ad hoc* or continuous basis, its duration, the pecuniary benefits earned as a result of the infringement, the harm caused by the infringement, the number of persons aggrieved or jeopardized, the damage caused by the infringement, the violation of personality rights and the impact of the infringement on the market as well as other considerations that may be taken into account in the particular case. Significant fines therefore are not imposed in the case of a first offence. In the practice of the Media Council heavy fines are rarely used as a sanction, in the last years only a few fines reached the amount of HUF 1mn (approximately 3 000 EUR) or above. Furthermore, the possibility of suspending the exercise of the right to provide media services for a specific period of time (which was frequently used in the last years before the new regulation entered into force) was not used by the Media Council at all. The decision of the Media Council may be challenged before court, which ensures an independent review of the Media Council's activity.

Legal framework: Act CLXXXV of 2010 on Media Services and Mass Communication (Media Act),[39] Act CL of 2016 on the Code of General Administrative Procedure[40]

29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

The provisions of the Media Act ensure that the supervisory organs of the media services are appointed in a democratic and transparent manner as it is required in the Recommendation No. R (00) 23 of the Committee of Ministers to Member States on the independence and functions of regulatory authorities for the broadcasting sector.

[39] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=133252.381620

[40] See text at http://njt.hu/cgi_bin/njt_doc.cgi?docid=199170.362806, and the official English translation at: https://njt.hu/translated/doc/J2016T0150P_20190710_FIN.pdf.

The chairperson and the four members of the Media Council are elected by Parliament for a term of nine years by a majority of two-thirds of the members present.

The length of the mandate is counterbalanced by the fact that the chairperson and members of the Media Council may not be re-elected. It is excluded that a political party representative, official, employee or any person engaged in party political activities may be a member of the Media Council. In order to reach consensus between the parties in the nomination process, the nomination committee first needs to reach a unanimous decision, in the absence of unanimity, a two-thirds majority is required, which coerces a broad consensus.

Neither the chairperson nor the four members of the Media Council can be recalled. Their membership shall terminate upon expiry of the mandate, upon resignation, in connection with any conflict of interest (this includes failure to comply with duty to declare assets or to provide evidence that they have a clean criminal record); upon dismissal (not self-inflicted conduct e.g. placement under guardianship fully limiting the capacity to act), by way of expulsion (self-inflicted conduct; e.g. failure to comply with official duties during more than 6 months; final criminal conviction), upon death. In lack of a unanimous decision of the Media Council, the Parliament shall decide on the dismissal or expulsion by a two-thirds majority of the members present.

Legal framework: Media Act Sections 124, 118, 129.

B. Transparency of media ownership and government interference

30. The transparent allocation of state advertising (including any rules regulating the matter)[41]

The Hungarian legal system regulates public service announcements, community facility advertisements and political advertisements.

According to the Media Act 'Public service announcement' means any announcement released without consideration, originating from an organization or person fulfilling State or local governmental responsibilities, or by a State financed or State managed institution, conveying certain specific information of public concern intended to attract the attention of the viewers or listeners, and that does not qualify as political advertisement.

'Community facility advertisement' means any communication or message made in the public interest, without any commercial interest, not for advertising purposes, transmitted for or without consideration, aiming to influence the viewer or the listener of the media service to achieve a goal of public interest, which does not qualify as political advertisement.

'Political advertisement' means any program published, the purpose of which is to enhance or advocate support for a political party or political movement, or the government, or which promotes the name, objectives, activities, slogan, or emblem of such entities, which is displayed and/or published in a manner similar to that of an advertisement.

Any person on whose behalf a political advertisement, public service announcement or community facility advertisement is broadcast, or any other person who has an interest in the broadcasting thereof, shall not exercise editorial influence concerning the media service. The political advertisement, public service announcement and community facility advertisement shall be readily recognizable as to its nature and distinguishable from other media contents.

The method of distinction in linear media services shall take place by optical and acoustic means in the case of audiovisual media services and by acoustic means in the case of radio media services.

Concerning political advertisements, the Constitutional Court confirmed that: "*in the interest of the realisation of balanced information, the legislator may set up restrictions and conditions for the publication of political advertisings*." During electoral campaign periods political advertisements may only be published in media services in accordance with the provisions of the Act on Election Procedures. [The basic principles of this regulation stem from the Fundamental Law itself. Article IX Paragraph (3) stipulates that "*[i]n the interest of the appropriate provision of information as necessary during the electoral campaign period for the formation of democratic public opinion, political advertisements may only be published in media services free of charge, under the conditions guaranteeing equal opportunities, laid down in a cardinal Act*".]

[41] In relation to this topic, we reiterate our conviction – as expressed during the preparation of the Input document – that the ways of allocation of state advertising is not a rule of law related issue; there are no well-established European standards in this regard and therefore, it should not be assessed in the framework of the Rule of Law Mechanism. Thus, the current document describes only the regulatory framework of certain advertisements related to questions of public interest.

Outside electoral campaign periods, political advertisements may only be published in connection with referendums already ordered. The media service provider is not responsible for the content of political advertisements.

If the request for the publication of a political advertisement complies with the provisions of the Act on Election Procedures, the media service provider shall publish the advertisement without any discretion.

The person having commissioned the political advertisement, public service announcement and community facility advertisement shall be clearly identified in the course of publication. The media service provider may not request any consideration in exchange for the publication of public service announcements. The duration of a public service announcement may not exceed one minute.

Upon the media service provider's request, the Media Council shall adopt an official resolution within fifteen days from having received the request - for an administrative service fee - to determine whether the announcement in respect of which the request is lodged should be treated as a public service announcement, a community facility advertisement or a political advertisement.

On the basis of the Election Procedure Act any complaints related to the participation of media service providers, the media and cinemas in the election campaign (i.e. the breaching of the provisions of the Election Procedure Act) shall be assessed by the National Election Commission. The supervisory powers of the NMHH and its competence to proceed are limited to infringements by way of media content published as political advertisements, i.e. any breach of the requirements set out by the Media Act in connection with political advertising. In other words, the administrative powers of the NMHH do not extend to the review of breaches of the provisions of the Election Procedure Act concerning political advertising.

Legal framework: Fundamental Law Article IX, Media Act; Act XXXVI of 2013 on the Election Procedure (Election Procedure Act)[42].

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

Public information campaigns are tools to inform the citizens on current issues, new developments in certain fields of public-policy, changing legislation etc. The Hungarian Government regularly publishes community facility advertisements in relation to questions of public interest (e.g. most lately information material on COVID-19 pandemic and on the measures of the Government to protect the economy have been published in such forms). These information materials reach a significant part of the population; thus their usefulness is beyond doubt.

In case of significant public-policy issues the Government regularly surveys Hungarian citizens' opinion since 2010 by means of national consultations. During the last nine years there were seven national consultations held with the participation of more than 2 million Hungarian citizens.

However, the ordinary implementation of fundamental rights and the proper functioning of constitutional organs – in lack of unusual circumstances – do not need to be advertised. Detailed information on the listed rule of law related questions (including the functioning of the judiciary, judicial processes, founding and operation of civil society organizations, their access to state funding etc.) are available at the websites of the respective state organs. Furthermore, efficient systems of access to public information, legal aid and information obligations ensure that citizens are well-informed about the legal institutions affecting them.

32. Rules governing transparency of media ownership

The Media Act stipulates that the diversity of media services has a particularly important public value. The protection of diversity extends to avoiding the formation of ownership monopolies and any undue restriction of competition on the market. The provisions of this Act shall be interpreted in due consideration of the protection of diversity. In line with these objectives, the Media Act contains detailed rules for the prevention of media market concentration.

The Media Act developed a two-pillar set of tools to effectively prevent the emergence of dominant positions and safeguard the pluralism of the media market. The first pillar is that market concentration of providers of linear media services may be limited within the framework of Media Act in order to maintain the diversity of the media market and to prevent the formation of information monopolies. The restrictions are based on an average annual audience share. Service providers with an annual audience share of 35% or in some cases 40% are required to take measures to promote pluralism of the media market.

The other pillar of securing and maintaining media market pluralism are the additional obligations that the Media Act attaches to Significant Powers of Influence (hereinafter: SPI) businesses as a media service provider. An SPI is

[42] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=159995.381630; English translation available here.

a linear audiovisual media service provider and linear radio media service provider with an average annual audience share of at least fifteen percent, provided that the average annual audience share of at least one media service they provide reaches three percent.

Furthermore, the Media Act contains detailed provisions governing providers of analogue linear radio media services acquiring rights to media services based on a public contract or broadcasting agreement, which determine the number of media services per authorization in the number of services allowed. With regard to the disclosure of ownership, the current regulation on the registration of linear media service providers and on the tendering of linear radio media services states that the prospective or Tender's media service provider is required to disclose the size of the notifier's - or any other person's maintaining a qualifying holding in the notifier's business enterprise - direct or indirect ownership stake in any business enterprise providing media services, or applying for media service rights, in the territory of Hungary.

Legal framework: Media Act

C. Framework for journalists' protection

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

The general right of freedom of expression is safeguarded in Article IX of the Fundamental Law. Freedom of expression enjoys traditionally a high level of fundamental rights protection in Hungary: the case-law of the Constitutional Court attached priority to freedom of expression in the system of fundamental rights, as the freedoms of expression, speech and press are basic preconditions for developing and upholding democratic public opinion.

The Fundamental Law states in its Article IX Paragraph (2) that "*Hungary shall recognize and protect the freedom and diversity of the press, and shall ensure the conditions for the free dissemination of information necessary for the formation of democratic public opinion.*" The Fundamental Law considers highly important to ensure plurality and prevent the creation of information monopolies with regards to the enforcement of the freedom of the press. This formulation lays a positive obligation on the State: The State shall abstain from infringement, but also shall take the necessary steps in order to provide the freedom of the press. The detailed provisions of the freedom of the press are regulated in the Freedom of the Press Act and the Media Act.

Media services may be provided and press products may be published freely, as well as the contents of media services and press products may be determined freely.

The Freedom of the Press Act explicitly contains that "*[f]reedom of the press embodies independence from the State, and from any and all organizations and interest groups.*" The Act contains detailed guarantees for the editorial and journalistic freedom of expression including the right to professional sovereignty and independence from the owners of the media content provider, from the sponsors of the media content provider, as well from natural and legal persons on whose behalf any commercial communication is made in any media content. According to the Freedom of the Press Act the sanctions prescribed in labour regulations, and those arising from other forms of employment relationship shall not apply to journalists, editors etc.[43] if they refused to carry out any instruction given in violation of editorial and journalistic freedom of expression.

It also guarantees that journalists cannot be held responsible for any infringement committed with a view to obtaining information of common interest, where obtaining such information by other means would have been impossible for the journalist in question, or it would have entailed undue difficulties, provided that the infringement committed did not result in unreasonable or grave injury, and that the information was not obtained in violation of the Act on the Protection of Classified Information.

Governmental bodies and State institutions, officers, persons entrusted with official and public functions are required to provide assistance, making available the necessary information to journalists in due time, within the framework of provisions governing access to information of public interest and freedom of information.

Significant privilege is the right to protect the source of information. Journalists shall have – with limited exceptions – the right in accordance with the relevant legislation not to reveal in court and administrative proceedings the identity of any person from whom they receive information relating to their activities in providing media content, as well as they have the right to refuse to surrender any document, written instrument, article or data medium that may reveal the identity of the source of information.

[43] These provisions refer to "*persons employed by media content providers under contract of employment or some other form of employment relationship"*.

The scope of exceptions is narrow, and the courts and competent authorities must construe these exceptions narrowly in order to ensure that the freedom of the press is respected. Therefore, it is open to the judge to order or refuse the disclosure (the media authority does not have this right).

According to the Criminal Procedure Code during a criminal procedure the journalist can be ordered by the judge to supply the source of information in case it is essential in order to prosecute an intentional crime which is punishable by imprisonment of up to three years, and the probable evidence cannot be replaced with other material of probative value, and the interests vested in investigation are so significant, that they clearly exceed the interest of keeping hidden the source of information. These are conjunctive conditions that must be examined and assessed in the specific case, and remain valid even if the journalist's legal relation with the media service provider has previously come to an end. These requirements are in line with Principle 3 of the Recommendation No. R(2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.

This way an all-around protection is ensured for journalists from unjustified prosecutions in connection to their reporting in accordance with the principles of rule of law and legal certainty.

Legal framework: Fundamental Law, Article IX; Act CIV of 2010 on the Freedom of the Press (Freedom of the Press Act)[44], Media Act, Act XC of 2017 on the Criminal Procedure (Criminal Procedure Code).[45]

34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

Besides the above described measures (protection against undue interference in journalistic freedom, labour law protection etc.), the Hungarian law offers several measures for the protection of freedom of expression, which also extends to the enforcement of journalists' rights. The possibility of challenging the actions, measures of the Police in case of alleged violation of fundamental rights by means of complaint is ensured, including the possibility of examination by the Commissioner for Fundamental Rights (an "A" status national human rights institution). Special procedural rules apply for the complaint as stipulated by the Act on the Commissioner for Fundamental Rights and the Act on the Police. Against the decisions of the Police remedy is possible at independent and impartial courts.

Against the decisions of the courts, constitutional complaint is possible at the Constitutional Court, if the affected person considers that the decision made regarding the merits of the case or other decision terminating the judicial proceedings violates his fundamental rights. Individuals, who think that their freedom of expression has been violated by authorities or there is an imminent danger thereof, may turn to the Commissioner for Fundamental Rights. The procedures of the Equal Treatment Authority, as an independent and autonomous administrative body, subject only to the laws, can also contribute to the protection of the rights of journalists. E.g. in a recent case, it established discrimination based on political opinion as a municipality and the communication centre owned by the municipality did not invite a local public affairs news portal to public events.[46] In case of rejecting access to information requests, remedy is possible in line with the general rules on access to public information.

Legal framework: Freedom of the Press Act, Act CXI of 2011 on the Commissioner for Fundamental Rights,[47] Act XXXIV of 1994 on the Police,[48] Act I of 2017 on the Code of Administrative Court Procedure,[49] Act CXXV of 2003 on equal treatment and the promotion of equal opportunities,[50] Act CXII of 2011 on the right to informational self-determination and on the freedom of information (Info Act)[51] Section 31.

35. Access to information and public documents

The basic piece of legislation on freedom of information (access to information) in Hungary is the Info Act, which provides for general provisions (definitions, procedures for requests, rules on proactive publication, possible grounds for limitations, legal remedies etc.) regulating the exercise of the right to access to information. The Info Act stipulates that any person or organ performing state or local government functions, or performing other public duties defined by law ("organ performing public duties"), shall allow any person to have free access to data of public interest

[44] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=132460.370110
[45] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=202672.377060
[46] https://www.egyenlobanasmod.hu/en/node/1609
[47] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139247.376425
[48] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=21269.376388
[49] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=200732.377426, and the official English translation at: https://njt.hu/translated/doc/J2017T0001P_20180101_FIN.pdf.
[50] See the text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.376567, and the official English translation at: http://njt.hu/translated/doc/J2003T0125P_20200101_FIN.PDF.
[51] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139257.376593, and the official English translation at: http://njt.hu/translated/doc/J2011T0112P_20200101_FIN.PDF.

and data accessible on public interest grounds under its control if so requested, with the exceptions provided by the Info Act. In addition, rules for sector-specific situations are enshrined in a number of legislative instruments.

Besides setting up the applicable legal regime for requests for information, the Info Act obliges organs performing public duties to grant access to certain up-to-date information prescribed by law (e.g. concerning organisational structure, activity, financial management) proactively, by means of a regular publication.

Access to public information whose publication is rendered mandatory under the Info Act shall be made available through a website, in digital format, to the general public without any restriction, in a manner not to allow the identification of specific individuals, in a format allowing for printing or copying without any loss or distortion of data, free of charge, covering also the functions of consultation, downloading, printing, copying and network transmission. Access to information disseminated as per the above shall not be made contingent upon the disclosure of personal data.

The Info Act defines the public bodies which have to fulfil their obligation of electronic publication through their own websites (e.g. Ministries and other government agencies, the National Office for the Judiciary, the Prosecutor General's Office, the State Audit Office etc.), while all other bodies are free to choose whether they fulfil their obligation through their own website or other websites maintained jointly with others, or through a central website set up for this purpose.

Furthermore, in order to provide for a simple and quick accessibility of electronically published data, a "central electronic register" is set up that contains all relevant descriptive information on the websites of bodies subject to the obligation of electronic publication. This central register is also accompanied by a "single data retrieval system" that can be accessed via the following link: http://kozadat.hu/kereso/.

As far as data requests are concerned, the Info Act provides only a very limited opportunity to restrict public access to data of public interest (e.g. with regard to confidential information, protection of decision-making process). All of these restrictions are in line with applicable international norms, and are necessary and proportionate in a democratic society.

It has to be highlighted that according to the provisions of the Info Act, the data controller is obliged to provide the person requesting the data with a detailed justification when it comes to a limitation of the right of access to public information. When deciding within its discretionary powers on fulfilling or rejecting data requests, the data controller shall apply a narrow interpretation of the basis of rejection and access to data of public interest may only be rejected if the public interest serving as a basis for the rejection prevails over the public interest relating to the access to data of public interest. Also, in the course of a judicial redress initiated by the requestor, the burden of proof to justify the legality of such measures rests solely on the data controller.

Finally, it has to be added that courts, as well as the Constitutional Court interpret the right to public information in a rather extensive manner.

Pursuant to Article VI Paragraph (4) of the Fundamental Law "*[t]he application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by a cardinal Act.*" The Info Act, in accordance with relevant EU and international obligations establishes a National Authority for Data Protection and Freedom of Information, which is responsible for supervising and promoting the enforcement of the right to the protection of personal data and of the right to access to data of public interest.

The strong commitment of the Hungarian legislator to ensuring a high level protection for the right to access to information is demonstrated by the fact that Hungary is among the few Member States of the European Union that ratified the Council of Europe Convention on Access to Official Documents.

Legal framework: Fundamental Law, Article VI, Info Act.

36. Other – please specify

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

Stakeholders'/public consultations, transparency of the legislative process

The legislative plan of the Government is adopted by a resolution. The minister competent to draft the legislation shall publish his or her legislative brief in respect of the legislative planning period of the Government on a designated website. The list of primary laws (acts) planned by the Government for a given ordinary session is accessible on the website of the Parliament.

The minister responsible for drafting a given regulation (bill, decree of the Government, ministerial decree) is also responsible for publishing the draft and for holding a public consultation. Public consultations are to be carried out within the framework of general or direct consultations. While general consultations are mandatory, direct consultations are optional.

General consultation is carried out in a way that anyone (natural or legal persons, HRDs, NGOs, business companies etc.), using the e-mail address published on the webpage, may express an opinion on the draft or concept subject to public consultation. The draft shall be published in a way to allow sufficient time for the substantive appraisal of the draft, as well as for expounding opinions and considering the merits of the received comments. Generally, the deadline for making comments shall be the same as that set in the course of submitting the draft for consultation with government agencies. The minister competent to draft the legislation shall consider the received comments and prepare a typified summary on them, and, in the case of rejected comments, on the reasons for rejection, which shall be published together with the list of commenters on the website. The minister responsible for drafting the legislation may decide to form a "strategic partnership" and establish close cooperation with certain organisations which represent a wide range of social interests in drafting legislation, or carry out scientific activities, in the particular areas of law.

It shall be emphasized that if a certain sector-specific law prescribes the obligation the carry out consultation with a given organisation, the failure might result in the formal unconstitutionality (invalidity) of the norm, as concluded several times by the Constitutional Court. According to the Courts' Administration Act, the President of the NOJ shall provide an assessment of bills of legislation relating to the judiciary - excluding municipal decrees - relying on an analysis of the opinions of the courts, obtained through NOJ. Therefore, in case of legislative reforms affecting the judiciary, the consultation with courts/judges is ensured adequately by means of a synthetized opinion.

Transparency of the legislative process

The website of the Parliament ensures the complete transparency of the legislative process. According to the Act on the Parliament, following reception of a legislative proposal, it is to be published without delay on the website of the Parliament. Amendment proposals, committee reports prepared for proposals and any other document and data recorded in the parliamentary registry are to be made public without delay upon submission on the website of the Parliament. The minutes of the Parliament's public sittings as well as the related electronic voting lists are published on the website of the Parliament. All pieces of legislation (acts, decrees, public law regulatory instruments etc.) that are currently in effect are available free of charge at a single website (National Legislative Database – njt.hu).

Fast-track procedures and emergency procedures

According to the Rules of Procedure of the Parliament, discussion with urgency, exceptional procedure and derogation from the provisions of the Rules of Procedure are available to accelerate the discussion of a proposal.

Discussion with urgency

Discussion with urgency may be ordered up to six times every six months. A two-thirds majority of the Members present is required. The reasoned proposal of urgency shall be submitted not later than one hour before the opening of the sitting. The proposal of urgency submitted by the Member shall require the supporting signatures of at least twenty-five Members. The proposal of urgency may include a suggestion on how to make the procedure faster based on the list of measures included in the Rules of Procedure. The discussion with urgency shall be ordered by allowing at least six days passing between the day of ordering and the final vote on the legislative proposal. The Act on the central budget cannot be discussed with urgency.

Exceptional procedure

An exceptional procedure may be ordered up to four times in six months. More than half of the votes shall be required to order a discussion in an exceptional procedure. The proposal for exceptional proceeding submitted by a Member shall require the supporting signatures of at least one-fifth of the Members. Simultaneously with the ordering of the discussion in the exceptional procedure, within certain limits, the National Assembly also decides on the relevant deadlines and dates in the legislative process.

In exceptional cases, the detailed discussion of the proposal is carried out by the Legislative Committee. The Legislative Committee shall evaluate the proposed amendments and take a position on them. The Legislative Committee decides which amendment it supports, maintains the unsupported amendments with the changes it deems necessary, and formulates its intention for further amendments. The joint debate may take place at the earliest on the day following the order for the exceptional procedure. After concluding the joint debate, the Parliament decides on the summary amendment proposal, and then holds a final vote on the text of the bill as amended by the summary amendment proposal.

Exceptional procedure shall not be requested for discussing certain motions, including among others the adoption or the amendment of the Fundamental Law, the adoption or the amendment of a provision qualifying as cardinal on the basis of the Fundamental Law or the adoption of the Act on the central budget.

Derogation from the provisions of the Rules of Procedure laid down in a resolution

Exceptionally, on the proposal of the House Committee, the National Assembly may decide without debate, with the votes of at least the four-fifth of the Members present, to derogate from the provisions of the Rules of Procedure laid down in a resolution in the course of the discussion of and/or decision making on specific matters.

Legal framework: Act CXXXI of 2010 On Public Participation in Developing Legislation[52], Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure,[53] Act XXXVI of 2012 on the National Assembly (Act on the Parliament)[54]

38. Regime for constitutional review of laws

The constitutional review of laws is carried out by the Constitutional Court (hereinafter: CC). Members of the CC shall be independent, subordinated only to the Fundamental Law and Acts. The CC is composed of fifteen members, each elected for twelve years with the votes of two thirds of the Members of the Parliament. The President of the CC is elected from among the members of the CC by the Parliament with a two thirds majority. Members of the CC may not be members of political parties or engage in political activities.

The CC examines for conformity with the Fundamental Law the provisions of adopted but not yet promulgated Acts on the motion of the Parliament or the President of the Republic. This competence extends to the preliminary review of the conformity with the Fundamental Law of international treaties or certain provisions thereof [ex ante review, preliminary norm control]. At the initiative of the Government, one quarter of the Members of the Parliament, the President of the Curia, the Prosecutor General or the Commissioner for Fundamental Rights, the Constitutional Court reviews the conformity with the Fundamental Law of any law [ex post review, posterior norm control] and examines any law for conflict with any international treaties. The CC reviews, at the initiative of a judge, the conformity with the Fundamental Law of any law applicable in a particular case.

The CC carries out the protection of the fundamental rights of individuals based on constitutional complaints. A person or an organisation affected by a concrete case may submit a constitutional complaint to the CC if their rights enshrined in the Fundamental Law were violated, and the possibilities for legal remedy have already been exhausted or no possibility for legal remedy is available. The constitutional complaint may be initiated a.) if the violation of rights laid down in the Fundamental Law can be lead back to the application of a legal regulation contrary to the Fundamental Law in their judicial proceedings; b.) exceptionally if, due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights were violated directly, without a judicial decision; c.) if a judicial decision made regarding the merits of the case or other decision terminating the judicial proceedings violates their rights laid down in the Fundamental Law. The proceedings of the Constitutional Court are free of charge; in constitutional complaint procedures legal representation is not mandatory.

[52]See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=132784.366975.
[53] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=167220
[54] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=148174.376601

The CC examines parliamentary resolutions ordering a referendum or dismissing the ordering of a referendum to be obligatorily ordered with regard to legality the conformity with the Fundamental Law on the petition of anyone. The CC also gives its opinion on the dissolution of a local representative body operating contrary to the Fundamental Law, on the operation of a religious community with legal personality contrary to the Fundamental Law, acts in the case of the removal of the President of the Republic from office, is competent to resolve conflicts of competence between state organs and/or local government organs (with the exception of courts and public administration authorities). On the petition of Parliament or its standing committee, the President of the Republic, the Government, or the Commissioner of the Fundamental Rights, the CC shall provide an interpretation of the provisions of the Fundamental Law regarding a concrete constitutional issue, provided that the interpretation can be directly deduced from the Fundamental Law.

The CC can, depending on which of the above mentioned cases is before it, annul any law or any provision of a law which conflicts with the Fundamental Law, can, annul any judicial decision which conflicts with the Fundamental Law; may annul any law or any provision of a law which conflicts with an international treaty; and shall determine legal consequences as set out in a cardinal Act. In the case of an ex ante review, the Act may not be promulgated if the CC has declared that it is contrary to the Fundamental Law, and the Fundamental Law or its amendment cannot be promulgated if the CC has found that it has been adopted in violation of the relevant procedural requirements. In the case of an ex post review, any legislative act or provision can be annulled by the CC if it has been found being in violation of the Fundamental Law. If the CC observes that the legislator has omitted to fulfil an obligation to legislate and thereby violates the Fundamental Law, the CC calls upon the legislator to fulfil this duty and sets a time-limit for that. Unless provided for otherwise by the Act on the CC, the decisions of the CC are binding on everyone. There is no remedy against the decisions of the CC.

Legal framework: Fundamental Law Article 24, Act CLI of 2011 on the Constitutional Court[55]

B. Independent authorities

39. Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

The Commissioner for Fundamental Rights

According to Article 30 of the Fundamental Law, the Commissioner for Fundamental Rights (hereinafter: Commissioner) shall investigate any violations related to fundamental rights that come to his or her knowledge, or have such violations investigated, and shall initiate general or specific measures to remedy them.

The Commissioner is solely accountable to the Parliament. The Commissioner is elected for a six-year term by a majority of two-thirds of the votes of the Members of Parliament at the proposal of the President of the Republic. The Commissioner may be re-elected for a second term. The Commissioner has two deputies, the Deputy Commissioner responsible for the rights of the minorities and the Deputy Commissioner responsible for the interests of future generations also elected by the Parliament by a two-thirds majority. The Act on the Commissioner for Fundamental Rights ensures the compliance with the Paris Principles: the national human rights institution received an "A" status accreditation from the Office of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights on 29 November 2014.

Anyone may turn to the Commissioner if, in his or her judgment, the activity or omission of any authority infringes a fundamental right of the person submitting the petition or if an imminent danger thereof exists, provided that this person has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him or her. Such authorities include, for example public administration organs; local governments; nationality self-governments; the Hungarian Defense Forces; law enforcement organs; any other organ with public administration competence, acting in this capacity; investigation authorities or investigation organs of the Prosecution Service.

The Commissioner may select the course of action that he/she deems to be the most appropriate. The measures available to the Commissioner are e.g. to make recommendations to the supervisory organ of the authority subject to inquiry to redress the impropriety, to initiate proceedings by the CC, to initiate other legal proceedings. The Commissioner can propose the organ authorised to make law or to issue a public law instrument for the regulation of organisations to modify, repeal or issue the provision of law or the public law instrument for the regulation of organisations. As an ultimate measure, the Commissioner can submit the case to the Parliament as part of the annual report.

[55] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139622.381625; non-official English translation: http://hunconcourt.hu/act-on-the-cc

As of January 1, 2015, the Commissioner for Fundamental Rights shall proceed as National Preventive Mechanism based on the Optional Protocol of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. As of 1 January 2014 the Commissioner ensures – through his Office – the operation of an electronic system for making and recording public interest disclosures. Since 27 February 2020 the Commissioner for Fundamental Rights has taken on the duty of the former Independent Police Complaints Board to investigate claims against the services of the police.

The National Authority on Data Protection and Freedom of Information

Article VI paragraph (4) of the Fundamental Law states that the application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by a cardinal law. The Info Act contains all relevant rules on the composition and functioning of the National Authority for Data Protection and Freedom of Information (hereinafter: NAIH). NAIH shall be an autonomous and independent body; it may not be instructed in its official capacity and shall operate independent of any outside interference and without any bias. In this regard the Info Act also emphasizes that the tasks of NAIH may only be determined by an Act adopted by the Parliament. The budget of NAIH shall constitute an independent title within the budgetary chapter of the Parliament.

The *President of NAIH* shall be appointed by the President of the Republic, on a recommendation of the Prime Minister. The President of NAIH shall be selected from those Hungarian citizens who have a law degree and the right to stand as candidates in parliamentary elections, have at least ten years of experience in overseeing procedures related to data protection or freedom of information, or who hold an academic degree in either of those fields. The Info Act also expressly prohibits the election of a person who served in certain positions (e.g. as a member of the Parliament) in the four-year period before the proposal for appointment. The president of the NAIH also may not be a member of any political party, shall not engage in political activities, and his mandate shall be considered irreconcilable with other state or local government offices or mandates. The president may not pursue any other gainful occupation and may not receive remuneration for any other activity, except for scientific, educational and artistic activities etc. The Info Act also contains strong safeguards against undue termination of the mandate of the President of the NAIH.

Based on the above analysis, we can conclude that NAIH is an independent authority and the relevant Hungarian law provides strong and appropriate safeguards in order to allow the NAIH to perform its duties free from external influence, therefore the Info Act is in compliance with the Fundamental Law and the GDPR as well.

The Authority fulfils several tasks pronounced in the Info Act and GDPR. NAIH is responsible for monitoring and promoting the enforcement of the rights to the protection of personal data and access to public information and information of public interest, and to ensure the free flow of personal data within the European Union. The Info Act also regulates in details the procedural rules of NAIH ensured by legal guarantees and in compliance with the GDPR in Chapter VI. As part of the tasks related to the right to freedom of information, NAIH is authorised to launch a procedure for the supervision of data classification, should it be presumed, pursuant to information received, that national classified information has been illegally classified. Anyone is entitled to request an inquiry of NAIH concerning the exercise of the right to access data of public interest or data accessible on public interest grounds. NAIH vigorously protects rights to freedom of information.

The Equal Treatment Authority

The Equal Treatment Act ensures complete independence for the Equal Treatment Authority (hereinafter: EBH), the organ responsible for overseeing compliance with the obligations of equal treatment. EBH is an autonomous state administration organ. This legal status ensures complete independence for EBH as to its organisation, tasks and competences, personnel, finances and budget.

From an *organisational* point of view, EBH does not form part of the hierarchical organisation of public administration, it is not under the direction or supervision of the Government, nor is it established by the Government but by the Equal Treatment Act. Provisions of the Equal Treatment Act ensure that EBH exercises its tasks and competences *free from any outside influence* and according to professional criteria only. The *budgetary and financial independence* is based on the fact that EBH may autonomously manage the budget appropriated for it in the Act on the central budget, and – with the narrowly defined exception of the budgetary effects of a possible natural disaster – only the Parliament may take decisions thereon.

The *President of EBH* is appointed by the President of the Republic for 9 years. The length of the mandate for a term extending beyond a parliamentary session ensures the independence from the everyday political developments and "keeps distance" from the Government and the Parliament.

The rigorous professional selection criteria vis-à-vis potential candidates for the presidency of the EBH (including outstanding knowledge in the field of equal treatment or human rights protection, at least 5 years of professional experience in the field of law or public administration, bar exam) safeguard that the choice is based on professional suitability. Having been a member of Government or a leading official in any political party or having held a leading state office in the four years before the proposal for appointment shall disqualify persons from becoming President of EBH. The President of EBH also has to comply with detailed rules on incompatibility ensuring his independence.

As provided for by the Equal Treatment Act, direct discrimination, indirect discrimination, harassment, segregation, victimisation, and any instruction given to that effect shall constitute a violation of the principle of equal treatment. In the event of the violation of the obligation to ensure equal treatment, it is up to the injured party to submit a complaint to EBH, or to initiate a lawsuit under other branches of law. An investigation by EBH regarding non-compliance with the requirement of equal treatment may be initiated upon application or, in the cases set out in the Equal Treatment Act, *ex officio*. If EBH has established that the requirement of equal treatment has been violated, it may order the unlawful situation to be ended, it may prohibit the unlawful conduct for the future, it may order its final and binding decision to be published as data accessible on public interest grounds in a de-identified manner apart from any accessible data of the infringer, it may impose a fine, it may apply a legal consequence specified in a separate Act. The parties may turn to the courts against the decisions of EBH.

Legal framework: Fundamental Law, Articles VI, 30, Act CXI of 2011 on the Commissioner for Fundamental Rights[56], Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (Info Act)[57], Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (Equal Treatment Act)[58]

C. Accessibility and judicial review of administrative decisions

40. Modalities of publication of administrative decisions and scope of judicial review

Publication of administrative decisions

The Code of General Administrative Procedure (hereinafter: CGAP) regulates the publication of administrative decisions. The authority shall *communicate the decision* to the party, those regarding whom the decision contains a provision and whose rights or legitimate interest is affected, and the specialist authority which acted in the case. The decision is delivered by post as an official document or it is sent electronically as specified in Act CCXXII of 2015.[59] The communication shall be performed by *public notice* where the party's whereabouts are unknown, or the delivery of decision is impossible (insurmountable obstacle), or it is prescribed by and Act or a government decree. The public notice contains the name of the authority and party, the number and subject of the case and a notice that the full decision of the case can be found at the authority. The public notice shall be posted on the bulletin board and on the website of the authority.

The communication shall be performed by *public announcement* if the circle of parties cannot be precisely established or it is prescribed by an Act or a government decree or there are more than fifty parties involved in a procedure after the decision reached administrative finality or it has been declared immediately enforceable. Public announcement shall also be used if the final decision can be challenged by an action in the public interest, or the authority made it in the interest of the prevention, avoidance or mitigation of the harmful consequences of a life-threatening situation or an event threatening to cause serious damage, affecting a board or indeterminate circle of people, or if the decision was made in the interests of the preservation of public safety or for the compelling reason of the protection of public order, environmental protection or nature conservation. It is important to note that sectoral acts can overrule the above explained regulations, so sectoral law shall be examined first.

Scope of judicial review

The judicial review of administrative decisions is regulated in the Code of Administrative Court Procedure (hereinafter: CACP). The scope of CACP is wider than that of the CGAP, because CACP is used for all administrative disputes before the court.

[56] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139247.376425
[57] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139257.376593, and the official English translation at: http://njt.hu/translated/doc/J2011T0112P_20200101_FIN.PDF.
[58] See the text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=76310.381616, and the official English translation at: http://njt.hu/translated/doc/J2003T0125P_20200101_FIN.PDF.
[59] Act CCXXII of 2015 on the general rules of electronic procedures and services requiring confidentiality, see text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=193173.377340.

In contrast, CGAP is not applicable for some cases that are not covered by itself (e.g. taxation, infraction, election procedure, asylum and immigration procedures) because these cases have their own procedure system, but decisions that are made in these cases can be challenged before the court under the scope of the CACP.

CACP provides full, effective and gap-free judicial protection in those cases that are covered by the administrative law, namely CACP declares that the subject of the administrative dispute shall be the lawfulness of an act regulated under administrative law and taken by an administrative organ with the aim to alter the legal situation of an entity affected by administrative law or resulting in such an alteration, or the lawfulness of the administrative organ's failure to carry out such an act (general clause).

The challenged administrative act can be an individual decision; administrative acts of general scope to be applied in a specific case, and not falling under the scope of the Act on law-making; and administrative contracts. CGAP and CACP express together that an administrative court action may be brought against an administrative decision contestable by appeal if any entitled person has appealed and the appeal has been adjudicated. In other words, the disputed administrative act may be the subject of an administrative dispute if any party directly involved in the administrative activity has exhausted the administrative remedy provided by law for the disputed administrative act or if the lawsuit is preceded by another administrative procedure.

According to the available data, since the CGAP came into force, the proportion of administrative decisions appealed within the system of public administration has remained insignificant (below 0.5%) in most areas, while administrative actions at courts have been initiated in 20-25% of second instance decisions. Therefore, Act CXXVII of 2019 introduced the single instance model of the administrative procedure. Instead of appeal, direct administrative action is instituted before the independent administrative courts, and the overall length of the proceedings will be significantly reduced. As a pre-litigation tool, documents are submitted to the court through the authority's supervisory body (it is the county government/Metropolitan office in the case of a district office decision), which provides an excellent opportunity for the supervisory body to remedy the challenged decision if necessary.

Legal framework: Act CL of 2016 on the Code of General Administrative Procedure[60]*, Act I of 2017 on the Code of Administrative Court Procedure,*[61] *Act CXXVII of 2019 on the amendment of certain acts in relation to the single instance administrative procedures of district offices*

41. Implementation by the public administration and State institutions of final court decisions

The court may dismiss the claim or make a judgement granting the claim and it can declare the infringement in its judgement. The court may amend, annul or set aside the challenged administrative act and it can oblige the administrative organ to conduct a new procedure in addition to annulling or setting aside the challenged administrative act. The court shall provide the administrative organ with categorical guidance covering all the relevant points of remedying the established infringement, in connection with the new procedure ordered in the judgment or the performance of the act.

The court shall *amend* the unlawful administrative act if it is possible by the nature of the case, if the facts are properly clarified and the legal dispute may be ultimately settled on the basis of the available information and the administrative act was carried out in a multi-level administrative procedure or the amendment is permitted by an Act in the case of an administrative act in a one level administrative procedure.

The court may also amend the challenged administrative act if it is possible by the nature of the case and in the repeated procedure the administrative authority concluded for a decision which is in contrary with the judgement of the court having the same legal and factual situation. Amendments cannot be executed with administrative acts of general scope to be applied in a specific case, and not falling under the scope of the Act on law-making, or with an administrative act taken, under the law, by assessing specific circumstances, or with an administrative act relating to a payment affecting the budget based on exercising discretionary power, or if it is excluded by Act.

The court shall *annul* or *set aside* an administrative act with retroactive effect if the administrative act is null and void or invalid on grounds specified by law, or has an essential deficiency as to form for which it is to be considered not to exist, or if the infringement caused by the violation of substantial rules of the preceding administrative procedure cannot be remedied in the action, or if the administrative organ based its act solely on legal provisions not applicable in the case, or amending the administrative act is not allowed.

[60] See text at http://njt.hu/cgi_bin/njt_doc.cgi?docid=199170.362806, and the official English translation at: https://njt.hu/translated/doc/J2016T0150P_20190710_FIN.pdf.
[61] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=200732.377426, and the official English translation at: https://njt.hu/translated/doc/J2017T0001P_20180101_FIN.pdf.

The claimant or the interested party, within 90 days of the expiry of the time limit for enforcement can apply to the court which has made the judgement at first instance to enforce the final and binding judgement if the administrative organ has failed to execute the acts stated in the final and binding judgement.

The court imposes a *fine for non-compliance* if the administrative organ does not act as the court has ordered and it does not explain or fails to explain the reason of failure to proceed and at the same time the court obliges the administrative organ to act.

There may be cases where the administrative organ is not required to comply with the order of the court. Such a situation can occur when the client applied for personal related allowance, the court found the decision of the authority unlawful, annulled it and at the same time ordered a new procedure during which the client died. In this case the authority is not obliged to comply with the instructions of the court because the applied allowance is personal related, and nobody is entitled to it anymore in the case. That is why CACP declares that fine for non-compliance cannot be used, if completing the procedural steps prescribed by the court results in a different legal assessment from what the court found and therefore the administrative organ a.) does not take the legal position expressed in the final and binding judgement of the court which rendered a new administrative procedure, or b.) does not apply the specific legal consequences which were prescribed in the final and binding judgement of the court which rendered a new administrative procedure.

Legal framework: Act I of 2017 on the Code of Administrative Court Procedure

D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

Hungary recognises the vital contribution of nongovernmental organisations to the promotion of common values and goals (over 60 000 non-governmental organisations are operating in Hungary). These organisations also play an important role not only in the democratic control of the government and shaping public opinion but also in addressing certain social difficulties and fulfil other community policy needs. Therefore, the right to freedom of association as well as other relating fundamental rights, such as the freedom of assembly and freedom of expression, are guaranteed by the Fundamental Law of Hungary in line with the norms of the Council of Europe.

The Fundamental Law ensures in its Article VIII that "*[e]veryone shall have the right to establish or join organizations.*" Civil society organizations are forms of expression of democracy and the self-induced organization of society, and the legislator shall define the specific framework for putting those forms to practice. This legal framework includes e.g. the Civil Code and the Freedom of Association Act. The general limitations concerning the freedom of association are defined in accordance with Article I. Paragraph (3) of the Fundamental Law, and therefore comply with the principles of necessity and proportionality.

According to the Freedom of Association Act, organizations under the right of freedom of association may pursue any activity that is in harmony with the Fundamental Law and that is not prohibited by law. Under the right of association armed bodies may not be created, and activities for the pursuit of public functions conferred under the exclusive jurisdiction of public bodies by law may not be carried out. The Hungarian legislation ensures the lawful operation of organizations under the right of freedom of association through the intervention possibilities of the independent public prosecution and judiciary.

Legislative amendments in the last couple of years ensure simplified registration and modified registration procedures for associations and foundations and reduced administrative burdens affecting NGO grant applications.

Government support is available to NGOs through 2 dedicated channels: The National Cooperation Fund (NCF) and the 1% personal income tax (PIT) donation scheme. Since 2015, NCF funding has equalled the difference between the amount that can be offered and what is actually paid to beneficiary NGOs in the second year preceding the current fiscal year. In other words, the amount corresponding to 1% of PIT reaches NGOs in any event, in part directly as donated by tax payers, in part through NCF funds. The total NCF budget continues to rise to HUF 5.9bn in Fiscal Year 2019 and to HUF 7.7bn in Fiscal Year 2020.

The NCF is a form of funding created by the NGO Act to support the operation and professional activities of NGOs; in addition to having an opportunity to submit grant applications to cover their costs and finance their professional programmes, NGOs are entitled to government funding to supplement private funds they have raised.

In order to ensure the independence of the grant-funding system, 85% of NCF grants are distributed through applications under the NGO Act. Five colleges (decision-making bodies), each of which is composed of 9 members in part selected by NGOs, are responsible for drafting NCF calls for grant applications, appraising incoming applications, and verifying the achievement of supported goals. The range of activities that can be supported by the 5 colleges cover the entire NGO sector.

NCF's colleges are: "Building Communities" College; Mobility and Adaptation College, National Cohesion College, Social Responsibility College, College for the Future of New Generations.

In order to provide professional support for NGO operations, strengthen their sustainability and facilitate the lawful use of grants provided from public finance subsystems, there are Civil Information Centres offering services free of charge in Budapest and in 19 counties.

Legal framework: Act CLXXV of 2011 on the Freedom of Association, on Public-Benefit Status, and on the Activities of and Support for Civil Society Organizations;[62] *Act CLXXXI of 2011 on the Court Registration of Civil Society Organisations and Related Rules of Procedure;*[63] *Decree No. 5/2012 (16 February) KIM of the Minister of Public Administration and Justice on Certain Issues Related to the National Cooperation Fund*[64]

43. Other - please specify

The Government established the Human Rights Working Group in its decision adopted in February 2012 with the main purpose of monitoring the implementation of human rights in Hungary, conducting consultations with civil society organisations, representative associations and other professional and constitutional bodies as well as of promoting professional communication on the implementation of human rights in Hungary. The Working Group monitors the implementation of the fully or partially accepted recommendations in relation to Hungary of the United Nations, Human Rights Council, Universal Periodic Review (UPR) Working Group. Due to the modification of the Government Resolution, the Working Group also reviews and monitors the enforcement of human rights conventions and agreements – of which Hungary is a signing party – adopted in the framework of the UN, the Council of Europe, the OSCE, and the obligations arising from Hungary's EU membership. It makes recommendations to the Government and the other central administration bodies involved in legislation and application of the law to provide regulations that allow for a wider representation of human rights and oversees the implementation of these regulations. The Working Group operates the Human Rights Roundtable, which currently operates with 72 NGO members and further 40 organisations take part in the activities of the thematic working groups with the right of consultation. The Roundtable holds its meetings in 11 thematic working groups.

The National Economic and Social Council (hereinafter: NESC) works independently from the Parliament and the Government and is a consultative and counselling body, comprising six sides (side of employers, side of employees, NGOs, representatives of scientific life, and the arts, as well as the representatives of the established churches), which provide opinions on different topics and raises questions to the government bodies. The NESC holds plenary sessions, which are to be convened at least twice a year. In 2017, there were 4, in 2018, there were 3, and in 2019, there were 4 plenary sessions. In advance to the plenary sessions, the presidents of the different sides and the presidency itself agrees on the crucial questions to be discussed at the plenary. This forum gives an opportunity to hold structured dialogues in between the plenary sessions as well. The active participation of the government organs in the work of the NESC is a guarantee that an adequate dialogue can emerge between the different sides and the sides of the NESC may obtain a wide range of information in relation to the government instruments.

The NESC discussed the enlisting of Good Friday among the national holidays; the legislation was later passed by Parliament, the Council also regularly discusses the minimum wage and the lowest personal income rate, and later the defined wages – before being published in a government decree – have to be consulted with the NESC. In 2017 the Council unanimously accepted two Statements; one on Health Care and one on the policy regarding Hungarian affairs outside the Hungarian borders. In 2020, the Council issued a statement of consent regarding the measures taken by the government due to the coronavirus disease (Covid-19 pandemic).

Legal framework: Government Resolution 1039/2012 (II.22) on the Human Rights Working Group,[65] *Act XCIII of 2011 on the National Economic and Social Council*[66]

[62] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139791.376428
[63] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139831.370219
[64] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=143944.380150
[65] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=146229.367940. Further information in English at: https://emberijogok.kormany.hu/human-rights-working-group
[66] See text at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139052.366976. Further information in English at: http://ngtt.hu/en/