MISSION REPORT

following the ad-hoc delegation to Budapest, Hungary 29 September – 1 October 2021

Committee on Civil Liberties, Justice and Home Affairs

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Introduction

The European Parliament has adopted on 12 September 2018 a resolution on a proposal calling on the Council to determine, pursuant to Art. 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded. During this legislature, the LIBE Committee appointed a rapporteur and shadow rapporteurs to follow up on the developments linked to this procedure in the Council.

Since then several exchanges of views were organised by the LIBE Committee on the state of play of Article 7(1) TEU procedures in the Council. In all these exchanges of views, the Members of the Committee denounced the worrying developments in Hungary since the adoption of the European Parliament reasoned proposal and in particular as regards the independence of judiciary, the fight against discrimination, media freedom, freedom of association, the shrinking space for civil society and the fight against corruption. As a follow up, the LIBE Committee has requested authorisation in February 2019 to send a mission to Hungary to look into the developments since the reasoned proposal. The mission could not be organised at that time due to the pandemic.

The rule of law situation in Hungary continued to raise concerns also during the pandemic, as also highlighted in the resolution of 13 November 2020 on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights.

The European Parliament resolution of 16 January 2020 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary underlined that the hearings have not yet resulted in any significant progress by the two Member States with regard to redressing clear risks of a serious breach of the values referred to in Article 2 of the TEU. The same resolution noted with concern that reports and statements from the Commission and international bodies, such as the UN, OSCE and the Council of Europe, also indicate that the situation in Hungary has deteriorated since the triggering of Article 7(1) of the TEU. The recent hearing organised by the Portuguese Presidency on 22 June 2021 also demonstrate that concerns remain and that EU should continue to look closely into the situation.

Upon recommendation from the rapporteur and the majority of Shadow Rapporteurs, the LIBE Committee has therefore requested again authorisation for a mission visit to be organised to Hungary, in the same spirit of continued fact-based monitoring of the developments since the adoption of the reasoned proposal.

The mission was authorised for the period 29 September - 1st October 2021, provided that the sanitary conditions would allow such a mission to take place in Budapest. The aim of this mission was to take stock of latest developments in the country and to continue the work that was initiated in the previous legislature.
Summary account of meetings

BUDAPEST

Wednesday, 29 September 2021

14:00 – 14:30 Meeting with UNHCR and Menedék

During the meeting with representatives of UNHCR and Menedék, the following topics were discussed:

- Two problematic areas in Hungary as regards respect for fundamental rights of asylum seekers and refugees were pointed out. Firstly, access to the Hungarian territory is denied at the border, in violation of the 1951 Refugee Convention. Since 2016, when Hungary declared a state of emergency over ‘mass immigration’, more than 71000 persons, including unaccompanied minors, have been subjected to automatic forced removal without safeguards such as access to the asylum procedure, a practice ruled contrary to EU law by the ECJ on 17 December 2020.

- Secondly, access to the asylum procedure is made nearly impossible, since the closure of the transit zones following the ECJ judgement of 14 May 2020, after the procedure has been externalised to other countries (people need to apply for asylum and request an entry permit at Hungarian embassy in Serbia). Only 44 asylum applications have been registered this year, as in practice people are turned away at the border. In addition, there is a climate of xenophobia and political rhetoric against asylum seekers and refugees in Hungary. UNHCR is exceptionally stepping in to address challenges concerning integration of asylum seekers and refugees in the absence of funding for organisations such as Menedék.

- The apparent lack of an integration strategy for migrants, and the lack of government funding for organisations working in the field, were pointed out. The discretionary power of guardians was criticised, on whether or not to seek asylum through the Hungarian embassy in Serbia for unaccompanied minors under their care, and the absence of entitlement to child protection for minors between 14 and 18 years old. Organisations notice an increasing numbers of revisions and withdrawals of residency status for people with short-term residence permits, refugees or subsidiary protection on the basis of national security considerations, without appeal possibilities. There is no consideration for family reunification, and spouses are no longer entitled to regular employment. Students are not allowed to apply for asylum if anything happens in their country of origin. While more work permits are being handed out, violence and exploitation of migrants with and without work permits remains frequent, and is not investigated by the authorities. This causes a huge secondary movement to other Member States.
Meeting with NGOs I (NGOs active in the field on the protection of Rule of Law and/or with a general mandate)

In this exchange, the representatives of the NGOs pointed out, among others, the following concerns:

- The corruption situation that has worsened, corruption becoming extremely centralised, a sort of state capture. Several worrying developments such as overpricing of healthcare or of various medical supplies during the pandemic, unprecedented amount of money to support tourism, outsourcing of state assets to private foundations were also mentioned during the exchange. The high-level corruption was deplored as not being dealt with by a prosecution, which is totally captured by the current Government.

- Assessment that in their view, three years after the adoption of the reasoned proposal by the Parliament, the situation has worsened, in every field. The EU institutions are closely following the situation, in particular as regards threats to the judicial independence, the elimination and weakening of checks and balances. The Article 7 (1) TEU procedure proves to be too slow, specific recommendations being needed. In this context, the role of EP was considered as instrumental in conveying the urgency and with an impact on slowing down the further deterioration of the situation in the country. The role of the civil society was also underlined, the work they do on advocacy, to promote EU values.

- The importance of the next elections was also pointed out, while the country being under so called “illiberal democracy”, there are still elections, even if the process is not entirely fair. Concerns were expressed that even the result in elections would be different, the power of the ruling party is already cemented in the country. The situation of the media freedom was also pointed out in this context, as with all the intimidation and pressure on journalists, concerns were raised on how the elections can be held in a fair way.

- On the legislation regarding LGBTIQ, it was pointed out that the process leading to the adoption of this legislation, also impacting on quality education, was a rushed one, with no public consultation, no action of the institutions that should have acted such as the Ombudsman or the Constitutional Court, having as effect an undermining of the check and balances also as a result of the weakening of independent institutions. Cases of same-sex couples beaten in Budapest were mentioned and the lack of prosecution was deplored.

- As regards to the independence of judiciary, it was mentioned that for the nomination of the new Supreme Court President, there distinct legislations had to be modified to be able to nominate the current President; in this context it was reminded the Baka v. Hungary judgment and that adequate safeguards are still not in place;

- The situation of the civic space put under constant pressure and hate speech, cases of violence and threats against civil society were mentioned, threat of criminal prosecution because providing legal assistance which may have a chilling effect and which may deter people from providing assistance as for example in the case of asylum seekers;

- In connection with the Pegasus case, concerns were raised as regards the current legislation that does not provide enough safeguards as regards surveillance, with no real
check and balances and remedies;

- As regards freedom of assembly, concerns were raised, as given the state of emergency that is still ongoing, there were eight months of absolute ban on demonstrations, without any exemptions, while for example sport events were allowed;

- As regards corruption, concerns were raised that it goes beyond the usual forms of corruption, and is a sort of “legalised corruption”, especially in the field of public procurement, the system being rigged with a high tolerance towards corruption and no indictments for high level corruption being witnessed in the last years; also on misuse of EU funds, concerns were raised, and some examples were given where money was channelled towards programmes with a reduced use.

15:30 – 16:50 Meeting with NGOs II (NGOs active in the field of equal treatment, minority rights and social rights)

During a meeting with six NGOs working in various fields, the following topics were raised:

- There is continued racial segregation of Roma* in Hungary, with children being channelled into special education and overrepresented in state care, reproductive rights and access to health care limited, frequent ethnic profiling by the police and a proportion of people in need of 51%, compared to 11% in the general population. While ECJ infringement procedures drag on for over five years, the Commission has found that school segregation has recently worsened.

- The Roma* community is defiant, as can be seen from the amount of local litigation and appeals. In Horváth and Kiss v Hungary, a school segregation case, the ECtHR found that Hungary violated the ECHR on the ground of indirect ethnic discrimination, and ordered compensation for the local village. While the Government paid, it denounced the case as abuse of fundamental rights and announced a new national consultation to undermine any possible wider effect of the court decision, hence feeding into nativism, antigypsyism and antisemitism (citing Soros funding for Roma communities). The Government moratorium on house evictions came to an end. Physical attacks by mobs on Romani neighbourhoods are categorised as an expression of freedom of assembly by the Government; on this, the ECtHR had to intervene stating that the right to security of the Romani community, including the right not to be subject to threats and humiliation, prevails over other rights, such as freedom of assembly.

- A Jewish organisation which has as objectives to ensure the right to practice the religion, to operate Jewish institutions such as school, kindergartens, higher education and a hospital, and to represent Jewish interests vis-à-vis the Government. There are no physical attacks against Jewish people or institutions in Hungary, nor direct discrimination. However, lately the Government started discriminating between Jewish groups, depending on their loyalty towards the Government. Several Jewish communities lost their church status and hence their funding. In addition, since 18 months, the Government is mingling into the internal affairs of the organisation, trying to reinforce a minority opinion by spreading misleading information. The Government is also imposing a single curriculum on all schools, which the organisation considers to be harassment. The Government started to make efforts to address the restitution of, or
compensation for, confiscated Jewish property.

- As regards women’s rights, the Government’s approach is to sideline women’s issues in their own right, and consider them under the umbrella of ‘family’ and/or of social status. The Government is promoting a restrictive middle class family model, leaving quite large social groups behind, and there are active policies and behaviours to restrict the areas where women can be active (“family mainstreaming”), in contradiction with a trend which should be “gender mainstreaming”. Many sexist comments take place in Parliament. In its five-year planning document, the Government does not mention the EU gender equality strategy, nor puts forward measures to combat domestic violence. The Government blocked the ratification at national and EU level of the Istanbul Convention, which requirements are not met by Hungarian legislation: problems with access to justice and speed and quality of justice persist, including victim blaming. A new ‘family law NGO working group’ has been set up by the Government, to which also ‘fathers’ rights NGOs’ are invited, effectively neutralising the call for better respect of women’s rights. The Government has however been listening to the problems of single parent families.

- Evangelical organisations are supporting the homeless, managing hospitals and schools. They did not experience any problems during the first 20 years after the fall of the communist regime. This changed in 2011 with the new law on churches; since then, Government funding seems to depend on support for the Government’s policies, as there are no clear criteria set in the law and funding is being channelled to cronies. Some organisations saw their church being deprived of all rights and funding and their debts hugely increasing.

- While schools normally receive 50% of their budget from the state, the Government stopped practically all funding, leading to billions of forints in debt for the organisation. 40.000 people still offer one percent of their taxes to the organisation and there is large solidarity from Jewish and atheist groups. Organisations are involved in many court cases. The ECtHR, the Venice Commission and the Hungarian Constitutional Court have all found that the right of association and the freedom of religion have been violated by the Government, but court rulings are not being implemented. Norway stopped its funding in view of violations of fundamental rights and the rule of law, which directly affects the organisations, not the Government.

- As regards LGBTI rights, it was explained that, until the mid-nineties, being gay or lesbian was not openly discussed. Then LGBT organisations were set up and prospered. In 2011, the new Fundamental Law was adopted without public debate, banning marriage of same sex partners. Since then, many achievements were turned back. In 2016, only Hungary refused to back the Council’s conclusions on LGBTI equality. While in 2017 the Government campaigned against Soros and Roma people for political gains, in 2019 it declared LGBT people as the enemy of the Hungarian society and politicians do not shy away from making homophobic remarks, including in the Hungarian Parliament where same-sex couples willing to adopt have been portrayed by some MPs as “paedophiles”. Also in 2019, a ban on changing one’s gender and name was adopted.

- Since the start of the Covid-19 crisis, Parliament enabled the Government to rule by
decree; the Government used its powers to turn back several legislative texts that provided rights to the LGBT community. Henceforth, ministerial approval is needed for LGBTI+ people to adopt children, which is not granted in practice. With the ninth review of the Fundamental Law the ‘anti-paedophiles’ law was adopted, banning practically any sexual education for children up to 18 years of age under the guise of child protection. Sexual relationships are allowed from a much earlier age; information however is not. The referendum to be held on the matter is a joke, since the law has been adopted already. It was difficult to get authorisation (police, approval, route) for the first big pride since 20 years. Eventually, possible attackers were barricaded, and not the participants. The act on registered partnerships is a big achievement for the LGBTI+ community.

- As regards social rights, the situation of trade unions in Hungary was discussed. Membership of trade unions stands at only 10% of the working population. Since 2010, there is no social dialogue anymore in Hungary, and only MPs can initiate the procedure for amending social laws. The Strike Law makes it practically impossible for the public sector to organise strikes. There is no freedom of the press in Hungary today, which makes it difficult for interest groups to channel their ideas to the population. The right to equal pay is being infringed, while the Istanbul Convention is not signed; collective labour agreements are not allowed. The Equal Treatment Authority in Hungary has been dismantled and does no longer exist in practice. The Government no longer provides data on how many people live of a minimum wage; one now has to pay to get the data from the Central Statistical Office. While it is a worldwide trend that rights of trade unions and employees are being curbed, those rights are almost impossible to practice in Hungary. Civil society organisations should be able to directly apply to the EU for European funding.

17:00 – 18:00 Meeting with NGOs III and representatives of minorities (active in various fields)

In this panel, the Delegations spoke to six more representatives of NGOs, on the following topics:

- As regards political presentation of minorities, and more specifically the German-speaking minority, it was described that there are over 1000 German-speaking cultural associations in Hungary. The German-speaking community suffers from a brain drain, since it is easy to work abroad with German as a mother tongue. In 2013, the Electoral Act made it possible for the German-speaking minority to have one representative in Parliament, like for twelve other minorities. Together they make up the Ethnic Minorities Committee in the Parliament. They are able to get projects and funding approved by Parliament; Hungarian minorities previously did not enjoy these rights. This change was supported by both government and opposition parties. The representative of the German-speaking minority, as the largest minority, has the right to vote in Parliament, while the others do not.

- It was stated that a Roma* programme has been developed thanks to the Government and the EU, which is being implemented by NGOs and consists of social aid, aid to develop communities, health care, employment and housing assistance. Support to Roma communities is no longer charity work. A related project, ‘Child in the Focus’
was realised in 118 municipalities, supporting citizens and families, also with Hungarian and EU funding. Education support, social services and support to fight energy poverty are being provided to local communities. Good cooperation between the EU and the Government is essential for such projects to succeed. It is a just expectation by the EU to want to see transparency in financing and project implementation.

- Since 2010, major projects are funded by the EU. Some organisations are well received by the Government and have the opportunity to be involved in the national Roma strategy. The speaker did not think that any fake NGOs were sitting around the table with the Government; the organisation did not experience any harassment by the Government. The speaker mentioned to be tolerant but his organisation should decide what are the traditional issues to support.

- As regards Government support for churches, it was mentioned that, while in the nineties they felt a much bigger discrimination of minorities, the situation has much improved, although dialogue is generally missing across organisations in society.

- As regards support for and the protection of the rights of single parents, it was explained that for more than ten years this largely depended on volunteers, with limited results due to a lack of funding. In 2017 structural funding came and a centre was opened, which is now helping close to 20000 families. The problems single parents are facing were put on the radar of the Government, including the much higher poverty risk, especially for large families, and social stigma. Only since this year are single parents considered as families. This summer, the National Assembly passed two important laws: 1) orphanage support: the allowance will be doubled for more than 14000 children; 2) child allowance: close to one quarter of children (90000 children) were not getting the allowance they are entitled to; the state will now automatically pay. This represents an important paradigm shift. Adoption by single parents is still possible; the only change is that an additional step has been built into the system, namely approval by the Minister. A second centre to support single parents will be opened, but much more needs to be done, such as setting up a national network of single parents’ centres.

- As regards women’s rights, organisations are active to protect women and children, to support the establishment of families, women at work and girls to become women, and this on the basis of Christian values, while being tolerant. Christian children in Damascus and children whose parents died from covid-19, flood victims and orphans in Ukraine have received support. Ethnic Hungarians abroad are also supported. It is important that Hungary’s Fundamental Law declares that a marriage can only exist between a man and a woman and that parents are of different sex. The mother determines the family, the family determines the state. People born as men and competing as women in women sport events is treading on the rights of women; it is important that a flagship organisation like this one carries out those values. It is very difficult to be heard abroad and at the European Parliament.
18:30 – 19:00  Meeting with representatives of research and think thanks

The Delegation met with representatives of research and think thanks active in the fields of migration, fundamental rights and history and social science. The following points were raised during the exchange:

- Hungary picked the security version of the policy options available to address the migration crisis, and had every right to do so; it also seems to be the right option. Asylum procedures have been externalised. Asked about Hungary’s opposition to burden-sharing in handling the migration crisis, it was stated that there are other ways to express solidarity with refugees and migrants than through the Dublin mechanism, adding that the Government complied with the CJEU ruling and that “asylum shopping” is not to be considered a human right.

- There is no real legal collision between Hungary and the EU, only a political one. Some EU leaders are claiming that there are neutral legal values that are not met in Hungary, while these are in fact progressive values, which the conservative Government does not wish to implement.

- Western-European countries were colonisers, and therefore have a responsibility for the past and hence for the people coming to Europe. One speaker declared that there are no political prisoners in Hungary, while there are political prisoners in Spain - but that issue is not being addressed at EU level. A similar situation applies to the problematic media situation in Germany: the EU has not questioned it.

19:00 – 20:00  Meeting with journalists and press freedom organisations I

In this exchange with journalists representing several media outlets, the following aspects were raised:

- Investigative journalists are in a difficult situation, legislation being changed to make more difficult to ask for public information; concerns were raised on spyware on phones, including of fellow journalists who were investigating into the fortune of oligarchs; the “Pegasus” case and the fact that journalists were targeted are considered as an intimidation and a real threat to independent journalism;

- The lack of balance in the media landscape; the impression that the state owns the media, more than 500 media outlets being concentrated in one foundation without any oversight of the national or EU competition authorities; inequity in distribution of funding, media close to power receiving considerable amounts of funding; also huge amounts for advertising are channelled into the “friendly” media which is heavily over-financed compared to competitors; there is no transparency as regards distribution of funding; attention was drawn to the composition of the Media Council (5 members were appointed by the ruling party, 1 member left and the nomination of its replacement by the opposition was not accepted by the Government) which does not exercise its competences as it should and with which no dialogue is possible since the fifth member has left; it was noted that the whole propaganda machine is basically financed by EU money, including regular anti-EU billboards and social media campaigns;

- The huge hate campaign against journalists, individuals or politicians who represent a
different opinion; the attacks and threats perpetrated against journalists, including by oligarchs close to the government, have a chilling effect on independent media;

- Concerns were raised as regards the very difficult working conditions, the press considered as not “friendly” not being invited in press conferences or not getting question time; as regards the primaries of opposition parties, concerns were noted on how it was presented in the so-called government media and their absence at the debates held; in general critical voices have problems to get access to the population;

- Very strong Russian propaganda and disinformation, including on vaccines; critical media being accused to be anti-vaccine if questions are raised on the effectiveness of some of the vaccines.

**20:00 – 20:45 Meeting with journalists II**

At the beginning of the meeting, one of the journalists made a statement, raising question marks on the mission objectives, considered in his views as not protecting EU values, but partisan interests of different organisations. The journalist left after this statement.

In the exchange that followed, several aspects were mentioned by the present journalists such as:

- The rising market share of online media and the fact that the pluralism of Hungarian media cannot be ruled out; their assessment of the media landscape and the fact that after the new adopted new media law and liberalised advertisement market, there is a fully free market more independent than in other EU Member States;

- Asked who can define what is propaganda and raised concerns also as regards the treatment applied to conservative media by opposition;

- Questioned if there are indeed threats on media and if journalists are hampered in their work, in their view the media being totally free;

- Asked about Pegasus there was understanding that anyhow every government is using secret surveillance tools and put citizens on different lists;

- Expressed a general feeling that there is disinformation in international media about the situation in Hungary.

**Thursday, 30 September**

**8:00 – 9:00 Meeting with the President and other members of the Kúria (Supreme Court)**

- Prof. Dr. András Zs. Varga, President of the Kúria of Hungary

The President of the Kúria announced that an audio recording would be made of the meeting.

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1 The Members of the delegation received written contribution from the Kúria after the mission ended.
The Chair of the Delegation explained that this is unusual for the format of mission meetings, which are supposed to be in camera meetings.

It was explained that the Kúria operates in a functional division of powers with the Constitutional Court, even if the latter does not belong to the ordinary court system. The Kúria acts as a third instance, i.e. cassation level, in the ordinary court system, in addition to other functions. If a party is not convinced that the rules of the country have been applied correctly by the Kúria, an appeal can be brought before the Constitutional Court, which can annul the Kúria’s ruling.

In reply to questions concerning certain controversies surrounding his appointment and new functions attributed to the position of president of the Kúria (powers on appointments, careers of judges), such question was called scandalous, in view of the fact that these concerned a decision and laws adopted by the Hungarian Parliament, respectively, which the EP delegation should have read. A court is not supposed to have a dialogue with or report to politicians. This meeting is considered a courtesy call; the members of the delegation are received as guests, just as the Kúria regularly receives groups of university students. Going beyond this would mean going back to the era where politicians made courts accountable.

In Hungary, the President of the Republic appoints the judges. The president of a court merely has to sign the proposal, without having any discretionary powers. The Venice Commission recommendation has created this misunderstanding, which the Commission has taken over in its Rule of law report. The appointment system is an objective one: a table has to be filled in with details on the career of the candidate; this is then checked by the local judicial council and approved; the judicial council organises hearings and takes a decision on the ranking of candidates by secret ballot; an appeal is possible in case of dispute. The list is binding for the court president, who signs the appointment decision. The court president only enjoys one freedom: he or she can change the order of the first three candidates on the list. This has never been done by the previous Kúria President in the past nine years, nor by the current President, who is in office since one year.

Following the transition after the communist system, a constitutional amendment introduced the possibility to challenge administrative rulings before the Kúria. A college for administrative cases was set up within the Kúria, which now administers almost half of the cases brought before the Kúria. This additional layer of legal protection for the citizens was an important step for the rule of law in Hungary.

Asked about the system for allotment of cases to judicial colleges within the Kúria, it was explained that this happens in an automated manner, unlike in many other countries. The President himself plays no role in the process, except in exceptional circumstances, which have not occurred in the last thirty years. In case one judicial council is overburdened, a system of redistribution of cases is set in motion, whereby the Vice-President of the Kúria tables a proposal, the judicial council of the Kúria decides, and the President signs the decision. Also within the councils, there is an automated system of allotting cases to individual judges. Strict rules on conflicts of interests apply.

In reply to a question on possible disciplinary procedures applied against judges that referred preliminary questions to the CJEU, it was explained that there is a separate court for disciplinary procedures, with two instances. None of the Kúria judges have been subjected to such
procedures for having initiated a preliminary procedure before the CJEU. According to CJEU statistics, Hungarian judges are among the most active ones in referring preliminary questions. Four cases are pending before the Constitutional Court where judges have turned to the CJEU to have cases resolved where EU law is not relevant to adjudicate the case.

9:30 – 10:15 Meeting with Tamás Sulyok, President, and other representatives of the Constitutional Court

The President of the Constitutional Court announced that an audio recording would be made of the meeting. The Chair of the Delegation explained that this is unusual for the format of mission meetings, which are supposed to be in camera meetings.

The President further considered that all Members of the Delegation would be speaking on behalf of the LIBE Committee. He asked whether the meeting was taking place within the framework of a legal or political procedure, and if so, which one; the Chair of the Delegation replied that the purpose of the mission was to find out about the functioning and independence of the judicial system in Hungary, and that it was to be framed within the Article 7(1) TEU procedure.

It was explained that the Court was set up thirty years ago and that its functioning is transparent in that all its decisions are published on its website. It is part of the judicial system, and independent of all other branches of power.

The delegation asked questions on the independence of the judicial system, the power of the Constitutional Court to review the substance of court decisions in fourth instance, the constitutionality of certain emergency measures, including the three states of emergency currently in place, the appointment of the President of the Constitutional Court for which legislation had been adapted, the powers of the Court to review cases handed down on public authorities, the allocation of cases within the Constitutional Court, whether the Court sometimes referred preliminary questions to the CJEU, whether the Court has the necessary means to exercise its functions and how the transition from a communist state had happened.

The President of the Constitutional Court replied that for most of the questions, a written reply would be prepared. Questions on the constitutionality of Hungarian laws cannot be answered, since this would constitute a pre-judgment, in the event a case on the matter would be referred to the Court. The fact that the Constitutional Court has the power to adjudicate cases in fourth instance is not unique; the Constitutional Court has powers that are roughly the same as those of the German Constitutional Court, and quite similar to the constitutional courts of Slovakia, the Czech Republic, Slovenia and Serbia. The power to adjudicate in fourth instance is limited in numbers: only about 36 cases per year are referred to the Constitutional Court, out of 30000 cases per year.

As regards the relationship with EU law, the President explained that in some decisions it was stated that a dialogue shall be maintained with other constitutional courts and the CJEU. The Court has suspended a decision in a case related to an infringement procedure launched against Hungary, in order to wait for the CJEU ruling. In general, it is rare to have cases in EU law; it is more frequent to have cases concerning fundamental rights.

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2 A written contribution was sent to the Members of the delegation as a follow up of the mission.
Meeting with National Judicial Office

- György Senyei, president of the National Office for the Judiciary (NOJ)

In the introductory remarks, the President of NOJ made a short presentation of the legislative changes concerning the system for the appointments of judges and the distribution of competences between the Ministry of Justice, the National Judicial Office and the National Judicial Council. It was clearly stated that they cannot formulate political opinions, being an impartial body and that the principle of separation of powers should be upheld.

In the exchange, the President brought some precisions on the role of NOJ mentioning that they have a right of initiative and they are also consulted on legislation affecting the courts functioning. He also specified that the President of the NOJ does not have the power to appoint judges, the judges being appointed by the President of the Republic. In terms of reporting, the NOJ does an annual report before the Parliament.

On questions linked to the chilling effect on judges of recent developments linked to the judiciary that are also mentioned in several Rule of law reports, it was noted that in Hungary the independence of judges is guaranteed and that he cannot answer to political questions.

As regards efficiency of the justice system, the President’s overall assessment is that there is improvement as regards performance of courts, length of cases and caseload and that also digitalisation is improving.

On specific questions linked to the relations between NOJ and National Judicial Council (NJC), it was mentioned that NJC supervises their functioning and that they have a functional cooperation. It was added that the cooperation is better now compared to previous years. As regards the ranking of candidates established by the local judicial councils, he noted that the NOJ President can change this ranking only in agreement with the NJC. He mentioned that there were two such cases in which this ranking was proposed to be changed. As a follow up of questions as regards the practice of cancelling selection procedures, he specified that declaring an application procedure void needs a reasoned decision.

Meeting with judge, member of the National Judicial Council

In the introduction, the representative of the NJC mentioned that as a judge, he cannot make political statements.

Among the elements raised during the exchange, the following were mainly underlined:

- Exclusive powers of the NOJ President to administer courts and the limited powers of the NJC considered as “weak” powers; the NJC can give notifications or ask for a removal of NOJ President before the Parliament; in 2019 despite a lengthy reasoning the Parliament rejected such a request for removal;

- The NJC has no legal personality, no seat, basically no staff members (1 staff member),
they had to develop and pay the website relying on individual contributions, no adequate resources or extra remuneration for its Members; the use of the budget requires the signature of NOJ President; it was raised the difficulty to exercise independently the mandate as a Member of the NJC, when depending on a Court President to reduce workload;

- The current President NOJ cooperates better with NJC, but the dialogue is getting slower, as there are institutional limitations, no structural changes are planned in this regard;

- On the judicial appointments, the President of NOJ cannot appoint a judge, but problems with the application process can be raised and the procedure is restarted until the “right” person gets the position;

- On the nomination of the President of the Kúria, the NJC did not support his nomination, as he did not have experience as a judge; in this context several changes of the legislation that allowed for this nomination were recalled, including the one allowing members of the Constitutional Court to be appointed as judges of the Kúria; the additional extensive powers given to the President of the Kúria via recent legislation were also mentioned;

- On disciplinary proceedings against judges that initiated preliminary requests before the EUCJ, one specific case was recalled; another case of a judge that initiated such a request was mentioned and the fact that the respective judge was not prolonged in the position held; all these actions can have a chilling effect on the judiciary;

12:30 – 13:00     Meeting with former judges

One of the participants recalled that in 2011 and 2012 hundreds of judges were sacked or forced to retire, hence leading to the disappearance of the most experienced part of the judiciary. After the CJEU ruling, they were permitted to come back, but they never regained their previous positions of leaders of the courts.

The focus of the Government has now turned to the top level courts, namely the Kúria and the Constitutional Court. The new President of the Kúria has never been a judge, other than having spent a few years at the Constitutional Court. Previously, he served as the country’s Deputy Prosecutor General, also without having served as an ordinary prosecutor. As President of the Kúria, he has the power to initiate disciplinary procedures against judges, select cases and benches. The Kúria is responsible for the uniformity of the case law, by means of rendering uniformity decisions binding on all Hungarian courts. This is a form of interference within the judicial work of the courts.

The Constitutional Court has the possibility to intervene in the adjudication of cases via its constitutional control function over the judiciary (adjudication in fourth instance). The judges of the Constitutional Court have all been elected on a nomination of the ruling party. They have an automatic right to become member of the Kúria after their term at the Constitutional Court.
expires. With the Constitutional Court being partly a legal, partly a political body, this ‘passerelle’ is another element of politicising the ordinary court system.

The allocation of cases within the Kúria should be automatic, but this is not the case in reality: the most important cases are decided by the President, else by the head of department. The President is also entitled to choose the bench to decide the most important cases. Judges are not allowed to speak up on professional matters, not even to make suggestions to improve the administration of justice.

Asked about their views for the future, the participants gave a pessimistic outlook. The economic power, unlimited financing through foundations, the rules, the justice system: everything is in the hands of the ruling party. While normally bills can be amended by simple majority, the ruling party has locked a large number of changes up in cardinal laws, which require a two-thirds majority. A new coalition will not be in a position to change those laws, nor to go after cases of corruption, for lack of independent and efficient prosecution, judiciary and Constitutional Court.

It was also explained that in one case of a former judge the person received a negative evaluation after an initial three years-term as a judge in an administrative court had ended, which in the views of the participants was because of a preliminary reference that was made to the CJEU in relation to Hungarian asylum law, which later indeed turned out to be contrary to EU legislation. As court adjudicating as highest instance on the matter, the respective former judge was under an obligation under EU law to refer such questions on interpretation of EU law to the CJEU. The participant maintained it is presumable that the real motivation of this removal from the judiciary can be linked to that order for a preliminary reference that interfered with the political interests of the Hungarian government. Several lawsuits and a disciplinary procedure were initiated against this person. The former judge has no right to challenge the decision not to prolong the mandate before a labour law court - a judge should still be eligible for a fair trial.

Another case was recalled of a judge who faced disciplinary proceedings for reason of referring preliminary questions to the CJEU. The president of the court to which the judge belonged withdrew the questions; this is the same person who did not prolong the speaker’s position as a judge. Disciplinary proceedings should instead be launched against someone trying to influence a judge in his or her work of adjudicating cases, including when prompting to withdraw preliminary questions referred to the CJEU.

The automatic distribution of cases in the ordinary court system is still not up and running. A former colleague did not receive certain types of cases, since previous rulings had not been favourable for the Government.
Meeting with Dr. Judith Varga, Minister of Justice

The Minister of Justice in her introduction underlined that freedom of opinion must prevail and that they respect the mutual dialogue. Her assessment is that there are no legal debates, but ideological ones and therefore infringement procedures on content there are only a few, Hungary performing well at the transposition and implementation of EU legislation.

As regards the procedure leading to the adoption of the reasoned proposal in the Parliament, she expressed the regret that the former rapporteur did not meet with her back then and that MEPs refused to see legal details.

On the conditionality regulation that Hungary is challenging, it was noted that it should be waited for CJEU to decide, and inquired why an accelerated procedure would apply, while it took three years for the case initiated by Hungary as regards the voting procedure in the European Parliament.

As regards this mission, she underlined that it is for the Council to act now under Article 7 (1) TEU and there is no role of the Parliament. In any case, in their view, a left liberal majority triggered the reasoned proposal within EP. In the Council there is no majority so far to determine a risk, therefore other instruments such as the rule of law report and conditionality are used to put political pressure.

The Chair of the delegation recalled that the Parliament is following up on the developments since the reasoned proposal was adopted 3 years ago and that should the Council act on Article 7(1) TEU, the Parliament is still required to provide a consent according to the Treaty provisions - and therefore is fully legitimate to conduct this current mission in this specific framework.

As a follow up of questions raised by the Members of the delegation, the following were also pointed out:

- As regards independence of the judiciary, it was recalled that in Hungary the independence of judges is guaranteed by the Fundamental Law, and that judges have no political affiliation;

- As regards salaries, they managed to increase salaries of judiciary and as regards efficiency of justice, Hungary is performing among the best within EU according to the EU Justice Scoreboard;

- On the appointment of judges, the Minister of Justice has no power, the local judicial councils make the ranking, the system being autonomous and independent;

- On the case of Klubradio, there was a decision taken by an autonomous body and a court decision; therefore the infringement procedure by the Commission is against a Court decision which is against the rule of law;

- As regards Constitutional Court judges being appointed to Kúria, it was explained that Constitutional Court judges are supervising Kúria cases, so they have a real experience, so why they would not fulfil the criteria;
- On Pegasus case it was mentioned that it has no relevance for any EU law, and currently there is a parliamentary inquiry chaired by the opposition;

- On the media landscape it was assessed that there is a real plurality of opinion, there is nothing to be raised of relevance for the rule of law;

- Child protection act, it is an internal decision on how families raise their children, but in Hungary all minorities are respected according to the Constitution and legislation in place;

- On the private foundations being set up for universities with EU money, she mentioned that she was sitting on the board of her alma mater and that there is no issue there.

16:15 – 17:00 Meeting with Sándor Pintér, Minister of Interior

The Minister of the Interior stated that every single time, Hungary complied with the rulings of the CJEU. While the ECtHR had ruled that people staying in the transit zones were not held captive, but were accommodated and could freely return to Serbia, the CJEU decided otherwise; following that ruling, the Government emptied the transit zones, placed people in temporary accommodations and guaranteed free movement in Hungary and the EU. The rules on entry of the EU territory at border crossing points or elsewhere, where to apply for asylum and the role of the country of origin (safe/non-safe) in assessing the application are not always clear; the government nevertheless does its best to comply with the Schengen acquis.

The EU is judging Member States with different standards: fences to protect the external borders from illegal migration were first used in Spain and Greece; nobody complained. While then also Bulgaria and now Lithuania and Poland are building fences, only Hungary is being put to shame for doing so. More than 700 people smugglers were apprehended this year. The Government has called a special emergency situation because of the migration crisis. Hungary has made efforts to relocate unaccompanied minors during the past five years. As regards voluntary relocation, more generally, only five countries met the commitments made, while Hungary was openly admitting it disapproved of the policy.

Frontex was in Hungary for a long time, then left because of disagreement over the activities that also the CJEU disagreed with. Hungary did not remove its unit from Frontex, and is still participating in the joint patrol system.

Asked about the Pegasus case, the Minister explained that Member States have used such software, but that again criticism was only directed at Hungary. Such IT services create an opportunity for secret services to try to control data traffic in order to go after criminals, however always under control of the courts. Every single use of the software complies with Hungarian laws. MPs were not tapped.

In 2010 and 2011, the police was reformed in order to achieve a better state of public order and security in the country, and to tackle police violence. It is a peculiar feature of Hungarian democracy that there are not many big demonstrations.

In the 300 Roma settlements under the worst conditions, 100% of employment and schooling was reached.
17:15 – 18:00 Meeting with Dr. Ákos Kozma, Commissioner for Fundamental Rights

The Commissioner presented his office and the fact that they have a significant staff covering almost 15 departments. He recalled that he is only accountable to the National Parliament and made a short description of the competences of his office, including questions to answer in deadline, special reports to the Parliament, investigation of complaints. He also briefly recalled the selection process and election by the National Assembly with a 2/3 majority for a six years mandate and the fact that the rules are very clear to this regard.

On complaints they receive them via various channels, they developed a standard way for “face to face” submissions, with a personal relations desk, where anyone can make an appointment, ask guidance, and eventually make a complaint. They intend to open regional desks in three regions, get close to those who need help and possibly envisage a mobile desk, for remote areas. It was recalled the wide range of areas that is covered by his office from utility bills payments, healthcare issues, concerns faced by people with disabilities or by ethnic minorities.

On questions linked to the Pegasus case, it was mentioned that this is a data protection issue and that there is a specific officer for data protection. As regards the downgrading as a status B human rights national institution as a result of the evaluation process, he mentioned that the evaluation is in progress and they are waiting for the final outcome. It was pointed out that the evaluation covers the previous period 2014-2019 and that they do not agree with the evaluation report and are submitting comments.

18:30 – 19:45 Meeting with representatives of academia and education system I

The Delegation spoke with six representatives of academia and education. The following aspects regarding the recent reforms in academia were raised:

- Several representatives cited as one of the most worrying developments in the academic sphere of the last years the creation of private foundations to manage the finances of universities. The members of the boards of these foundations are appointed for life by the Government and formally cannot be removed. While the universities could make proposals for candidates, these were sometimes completely ignored; many of the appointees are active or retired politicians belonging to the governing party, entrepreneurs and sometimes academics with a clear political affiliation. Academics fear that they have been appointed to have a decisive influence on the academic profile of the universities, beyond the financial aspects. At the same time, the rights of elected bodies with representatives of academics and students have been diminished by law. The system of the foundations has been laid down in a cardinal law requiring a two-thirds majority in Parliament for it to be amended. Spending on universities is no longer transparent and it becomes difficult to compare budget; the former part of the state budget detailing spending has been replaced by a single number representing the sum of state support.
The case of the Central European University’s moving from Budapest to Vienna (Austria) was mentioned as an example of how academic freedom is violated when the rule of law is no longer guaranteed, and the chilling effect of such situation. By the time the CJEU handed down its ruling stating that the Hungarian ‘Lex CEU’ violates Union law, the university had already started its academic year in Vienna. It was argued that the amendments to the Hungarian statutory law do not bring any material change to the conditions that were found to be in breach with Union law. In the meantime, the Government is advancing its Fudan University project, building a huge campus in Budapest for Chinese students.

It was stated that, more generally, during the pandemic a further concentration of executive power was achieved. The acts on national health matters and on catastrophic matters gave large but unnecessary empowerments to the Government to handle the pandemic. While these empowerments are unconstitutional in themselves, the Government has also abused them beyond their purpose. It has for instance enacted a decree to privatise an enterprise producing paper boxes, and has declared invalid the autumn semester of the University of Theatre and Film Arts (SZFE) after months of protests by students against the transfer ownership of the University to a private foundation in July 2020. The Government also enacted a decree allowing the military to handle the pandemic, which is prohibited by the Constitution. While the Constitutional Court has the competences to check the constitutionality of the Government’s decrees, it has not acted.

A discussion took place on the students and teachers’ five months strike at the SZFE against the setting up by the Government, without consultation of students or teachers’ representatives and without communication, of the private foundation henceforth owning the University and taking financial decisions. The lack of expertise of the new people who arrived as professors and members of the board was lamented. Students are suffering as a consequence of the lack of dialogue with the new board and many are afraid to express themselves. Five court cases are pending concerning the reform, including before the Constitutional Court and the ECtHR in Strasbourg.

The diversity in views among academics, including in relation to the Act on the Hungarian Academy of Science, was recalled; the Government omitted to consult the Academy and the result was found hurtful by many academics, but not all. The Act brought about that research institutions are no longer represented by the Hungarian Academy of Science and that a parallel institute was set up. Fears that this would lead to the closure of research institutes or interference with research programmes turned out to be unfounded; additional funding was received.

It was stated that key parts of the rule of law system are in ruins in Hungary: the court system, checks and balances; there is also a clear lack of media pluralism. Even the students are affected by self-censorship due to fear for the system. During the pandemic, a wholesale transformation of the academic system was set up. There is also a big financial gap between critical and pro-government academic institutions. There is no hard resistance in the academic and university sphere, due to the general rule of law environment and the Covid situation, which have a strong chilling effect, including on rectors and deans. This situation is quite detrimental for
academic freedom and scientific autonomy, including scientific results; Hungarian universities are no longer worthy partners in the eyes of Western European universities. With the foundations in many sectors of society being packed with politicians and close friends of the ruling party, a shadow/deep state behind the constitutional state is being created.

19:45 – 20:15 Meeting with representatives of academia and education system II

The Delegation had the opportunity to speak with three more representatives of academia and education. The following points were raised during the exchange:

- No pressure from the Government was experienced to curb the autonomy or independence of teachers;

- The transition of the governance structure of the universities went smoothly. The new boards of trustees have signed financial agreements with the state. There is a good cooperation and dialogue with university student leaders. The budget to support the universities has been doubled under the new system to increase competitiveness and develop infrastructure; quality indicators have been introduced; salaries have been increased;

- The reform is not a privatisation; the foundations cannot sell assets without using the money to the benefit of the universities. The new governance structure is not much different than the Finish system. A sophisticated control system has been put in place. The Government took a political risk one and a half year before the elections, since it takes time to see the results of the reforms, but most universities are satisfied. The autonomy of universities is not questioned. Only one in 500 appointees in the boards belong to politics, the others come from academia and business. A closer relationship with the business world is being sought, including a differentiating of financing sources. Public money however remains very important;

- Hungary has 64 universities, among which 21 belong to the new system, 24 are church-owned and managed, 12 are private and six are state-owned;

- The intention of the reforms was to increase competitiveness, improve the quality of teaching and stop the brain drain, by stabilising the universities financially, by measuring achievements of professors. The first results are expected by 2025-26. This is a sensitive period for universities, which were not obliged to make the transition to the new system, nor to do it in a uniform manner. Representatives of student associations fully support this whole transition; a lot of effort has been put into discussing with them; they have many veto rights, which they keep under the new system; they acknowledge the efforts put in by the Government. The annual budget of the universities is to be discussed in the senate of the universities, which include professors.

20:15 – 20:45 Meeting with representatives of cultural institutions

The delegation had the opportunity to meet with three representatives of cultural institutions.
As regards the University of Theatre and Film Arts (SZFE), concerns were expressed about its situation after the changes in 2020, where in one’s speaker view it was put an end to the autonomy of the higher education by transferring the governance of the university to a public trust fund. A board of trustees was nominated only with pro-government Members. As a result, students protested, the auditoriums were closed, the teaching was stopped. On the funding of these public trusts and foundations, concerns were raised on the way the money are channelled and towards whom.

On the other hand another speaker noted that they tried to put a dialogue with the theatre university for years. He recalled the Association of Hungarian Theatre, umbrella organisation for more than 70 theatres and that with the new legislative changes the financial support is increasing, managing to support more than 300 alternatives theatres. Also there is increased support for orchestras and other projects. Inquired about preserving the independence with such foundations and the boards of trustees, given their nomination process, the speaker explained that in his view there is no interference in the freedom of critical theatres and that nothing is closed down.

A speaker also drew attention to the diversity within EU and that the situation in Hungary is not worse than in other EU countries.

Friday, 1 October 2021

08:30 – 10:15 Hungarian National Assembly

08:30 – 9:15 Committee on Justice

- Imre Vejkey (KDNP – EPP)

During the meeting with the Committee on Justice, the following topics were raised:

- The Committee on Justice counts 119 members, i.e. half of the members of the National Assembly. It registers all legislative proposals submitted to the Parliament and manages them before they go to the plenary. All amendments are debated in the Committee. The Committee has a right of initiative to request legislative proposals by the Government. It is also responsible for individual initiatives and referenda, and for the registration of churches. Since 2018, the Committee submitted 218 motions, drafted 25 reports and held 83 meetings. Each of the 13 national minorities have a representative with a right to speak; the member of the German minority also has the right to vote.

- The Fundamental Rights Commissioner submits his annual report to the Committee on Justice, just like several other bodies. The Committee organises hearings with several candidate ministers before their appointment, such as for the posts of minister of justice and minister of churches and minorities, and hearings with candidates for positions of judge in the Constitutional Court, the National Office for the Judiciary, look at questions submitted to referendum, etc.

- The changes in the judiciary introduced in the Fundamental law (Easter Act) in 2011 take the separation of powers as a starting point and guarantee the independence of
the judicial system, and of the judges more specifically. Nobody can give orders to the judges or remove them from office. A personal story was told to illustrate the independence of judges in Hungary: a court case had been initiated against a newspaper for having published a cartoon on Jesus Christ on the cross, which is an insult to the religion; while the judge in first instance refused, after churches (including Orthodox, Jewish and Muslim) were contacted for help and all signed a declaration, the case was won in second instance.

- The independence of the judiciary is laid down in cardinal laws; it is the task of the National Judicial Office to be the guardian. It launches calls for applications, and selects the best candidate; this is the main role of this body elected by judges. Ultimately, the President of the Republic appoints the judges, but this is a mere formality. Judges are not allowed to undertake any political activities. The Constitutional Court does not only deal with theoretical issues around constitutionality of laws, but also acts as fourth instance in real cases, as an additional remedy for the parties. This means that judges of the Constitutional Court do work as judges; the criticism on the passerelle to the Kúria does therefore not hold.

09:15 – 10:00 Committee on European Affairs

- Mr Richárd HÖRCSIK (FIDESZ – NI), Chair
- Zoltán BALCZÓ (JOBBIK – NI), Vice-Chair”
- Hajnalka JUHÁSZ (KDNP – EPP), Member

During the meeting with representatives of the Committee on European Affairs, the following statements were made by the present Members of the Hungarian Committee on European affairs:

- It was said that the rule of law situation is not worse in Hungary than elsewhere in Europe. National parliaments play a key role in holding political leaders to account. The fairness of elections is beyond doubt. The primaries just took place, with over 600000 people participating.

- Judges have referred several thousands of preliminary questions to the CJEU. The law applies to everyone; a former MP is currently in prison, illustrating that the rule of law works in Hungary. One would wonder sometimes if in the European Parliament something else is meant by the rule of law. There is no generally accepted definition that could serve as a basis for judicial review; no objective set of criteria that could allow unbiased judgment. The ruling party believes in legality, accountability, democratic and pluralist legislative procedures, legal security, respect for fundamental rights, separation of powers and equality before the law. But the exact content of the principles of the rule of law may be different depending on the national constitutions of countries. Europe is united in diversity. The issue of the rule of law divides Member States, even the European institutions. One sees debates and arguments, instead of rules and principles.
- The problem with ascertaining whether there are real problems with the rule of law Hungary have to do with the boundaries of EU competences. This is not a question on Hungary recognising EU law or not. Should the question on legal partnerships be raised under the umbrella of the rule of law, or not? Is there really a legal ground to deny Hungary EU funds? This assertive language from the EU is playing in the cards of Fidesz. In order to receive EU funds, it should be sufficient that those can be used free of corruption.

- The legal framework is being politicised. Hungary can only be credible if it respects and observes the provisions of EU law. Aren’t there very strict rules on fact-finding missions for the EP, that these should be based on petitions received and that no Member of the country to be visited can participate? It was explained by the Chair of the Delegation that those rules are specific for the Petitions Committee of the European Parliament, and that the rules applying for this LIBE mission do not prevent the participation of Members who are nationals from the country concerned.

- One MP deplored that one member of the Media Council died and that the proposed person by the opposition to replace him was rejected.

- Trust in dialogue was expressed; every six months, COSAC\(^3\) provides for this opportunity. Some bilateral meetings with national parliaments took place/are to take place soon, for instance with France, Austria or the Netherlands.

10:30 – 11:30 Meeting with Gergely Karácsony, Mayor of Budapest

In this meeting with the mayor of Budapest, the deputy -mayor and other representatives, the following were mainly pointed out:

- In 2019 the opposition parties managed to win elections in most big cities; as a follow up, the relationship with the national government became a problem; this has led to less funding and measures taken against local governments; it was experienced a withdrawal of funds, that were there for thirty years; this appears to be discriminatory practices as only local governments dominated by the ruling party received large funds, distributed against fundamental principles of local governance;

- The lack of real partnership between central and local levels; special economic zones were set up, which lead to local tax revenues to be taken away and channelled at central level;

- On the situation of LGBTI+ citizens; it was noted that many are exposed to discriminatory measures; as mayor office they are supporting to keep Budapest tolerant and diverse;

- It was noted that in the last decade and mainly in the last two years, there has been a centralisation, all the utilities being regulated now centrally and the last tax

\(^3\) Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
revenues at local level were taken away; there are concerns that via funding and the way it is distributed, there is an attempt to undermine the independence of the local governments; concerns that they are left out of the recovery plan and next generation package despite good programmes drafted at local/regional level in line with the EU priorities but that were not taken into account by the central government and that they will not have enough funding for the all the plans needed for Budapest like mobility and so on;

- During the pandemic the emergency measures were used against the local governments where there is an opposition majority; funding was cut during this period; also the funding of theatres that are not pro-government was stopped;

- As regards the situation of the media, it was mentioned that there is a lot of government propaganda as media concentrated in one huge outlet; the mayor has been invited by this public media only once and for a very short time;

- Given the funding issue and systematic starvation of local governments there is a risk for local governance to be disappearing;

12:00 – 13:00  **Meeting with representatives of the opposition**

During the meeting with representatives of six opposition parties, the following issues were raised:

- As regards the media situation in Hungary, it was stated that the ruling party transformed local media in 2016; government-friendly businessmen bought up by means of party financing local media outlets, including TV and radio stations, which were previously financed by local governments. People on the countryside have no access to other information, unless they use the internet. 150 lawsuits were initiated by the opposition to denounce fake news and disinformation. The Government only gave closed press conferences on the state of the pandemic in Hungary, with no press allowed.

- The statement that ‘rule of law is difficult to define’ is not credible; it is self-evident what it means (anti-corruption, transparency, etc.). The state budget should not be spent on achieving party goals; the judicial system should not be used for protecting people from the government side against prosecution and for attacking political rivals; the media should not be used for state propaganda. In Hungary, the elections are not free and fair; there are no equal financial opportunities nor access to the public for political parties to mobilise the population to share its judgment on the country. Corruption and abuse of power abound, as demonstrated by the European institutions and by OLAF. Three different states of emergency apply simultaneously. Checks and balances have been eroded entirely.

- According to one opposition party, the one element that should not be comprised within the concept of the rule of law is the recent law on provision of information on sexual diversity to schools; Hungary should be held to account for other gaps and deficiencies as regards the rule of law, including financially. Another opposition party called the law ‘not a child protection law’ and deplored the lies of the ruling
party to pretend that the EU is attacking Hungary on this, hiding concerns on corruption and that not only the left political side is seriously concerned by all attacks on the rule of law.

- As regards the state of democracy, it was denounced that the opposition cannot even convene parliamentary committee meetings to control the work of the Government; it did not manage to convene a single committee meeting during the pandemic and the chief of the medical office refused to show-up. One can count on one hand the motions introduced by the opposition that have been adopted during the last seven years. The Chair of the National Assembly is misusing his power by handing out very high fines for showing protest signs or allegedly insulting Fidesz politicians; there is no legal remedy against the appeal, only a political one whereby a two-thirds majority decides on the appeal. All politicians present during this LIBE mission meeting will be under massive attack in the government-friendly media.

- Many reforms in crucial sectors of society, including the setting up of private foundations to manage huge public funds, have been laid down in cardinal laws requiring a two-thirds majority, hence building a deep state. It is a real tragedy that Fidesz consciously and knowingly abuses its two-thirds majority; even if the united opposition parties would win the elections, it will be very hard to bring about real political change quickly.

- Practices as revealed under the Pegasus case exist all over Europe, but the Hungarian Government has classified all relevant information for a duration of thirty years; one is not allowed to ask questions, even if the Government admitted surveillance of journalists and opposition politicians.

- The presence of the European Parliament in Hungary is very important. The case of Hungary must be separated from Poland, where there have only been weak attempts to overstep the Constitution, while in Hungary there is a perfectly captured state. The Tavares and Sargentini reports, the PACE and Venice Commission reports all used tough wording and contained serious statements, but nothing happened. There was no immune response from the EU, practically until the Recovery and Resilience Funds were delayed. The delegation has been asked to pressure the European Commission not to compromise with this regime anymore.

13:45 – 14:15 Meeting with representatives of the Association of Hungarian judges

The Delegation spoke to active judges working for an organisation dealing with self-governance of judges and interest representation. The following points were raised:

- Since the current system of administration of justice came into being in 2011, many problems and errors occurred, and some advantages emerged. The President of the National Judicial Office (NJO) has too strong powers in that he or she controls the entire administration of justice and takes all budgetary decisions (including for the NJC). He or she is only being supervised by the National Judicial Council (NJC), but the latter’s opinion cannot be enforced. 2018 was a particularly difficult year for the judges because the NJO was headed by a person not cooperating at all with the NJC; while the NJC tried to recall her, this did not work; the person left for career
reasons. Despite a more cooperative person leading the NJO now, dysfunctions in the system prevail.

- The NJO President appoints and promotes judges (except for the Kúria). It is not known how many positions are open, where and when, and how many positions are cancelled; this lack of transparency is a major problem as it can be used to exert pressure on judges. This is less of a factor with the new President. The President of the NJO is directly connected to the Council of judges, elected by the Parliament. He is the employer of the judges and closely related to the presidency of regional councils; this personal dependence (even if the current President is not using the possibilities under the regulatory framework to directly influence) is a major danger.

- An important factor in guaranteeing the independence of the judges is paying them proper wages; while the official communication is that this problem is resolved, Hungarian judges’ wages are still below the national average, not to mention below what European colleagues earn. The number of staff in courts is becoming a problem.

- The adoption of legislation has been accelerated; the judicial branch cannot follow, which leads to a lack of transparency.

- A passerelle for judges of the Constitutional Court to become judges at the Supreme Court was introduced, while the requirement of five years’ experience in adjudication cases was abolished. The current Kúria President was promoted through this amendment. The power of interpretation of laws has been centralised in the Kúria; it also acts as a second instance in administrative cases. Its personnel has been increased in an uncontrolled manner.

- Judges are not allowed to conduct any political activities. ‘Political activities’ is however defined in such a broad manner that any opinion of any sort can be interpreted as political; this makes judges’ lives very difficult as judges are regularly attacked because of their activities in associations of judges.

- In 2021, a judge was removed who had turned to the CJEU; while this dismissal was declared unlawful, the chilling effect was achieved.

14:15 – 15:00 Meeting with representatives of the media

14.15-14.35 Representative of Central European Press and Media Foundation / Közép-Európai Sajtó és Média Alapítvány (KESMA)

The representative of KESMA clarified in this exchange that in his views the foundation is similar to other foundations in other EU Members States and outside EU and that in his views the media market is totally free.

As regards the foundation he mentioned that the daily paper market has the largest share of media outlets in its composition while the share of TV is rather small.
In his views, Hungarian population has an easy access to information and to the media outlets, via different means, including internet and mobile phones. In terms of statistics⁴, he mentioned that around 81 percent get daily regular information and that the share of those who access also pro-government media and opposition media is similar around 82 percent versus 81 percent. The left liberal media is constantly growing since 2010 with a large share of the digital space, and with new anti-government media outlets entering the market since then (25 such opposition outlets since 2010 had begun operations on the market). He also mentioned that the journalists are free and that there are no “taboos” in Hungarian journalism, the media being far more independent than in many EU countries.

On questions linked to accountability of KESMA and the funding and the money coming from state advertising, he mentioned that there are public tenders organised for advertising. On the share of funding that comes from this advertising, the speaker was not sure, mentioning around 18-20 percent. As regards the foundation, he specified that it is not linked to the government, that they report to the leaders of the foundations, that there is a board of trustees and that they meet regularly.

14.40-15.00 Dr. Monika Karas, President, Hungarian Media Council

The Media Council welcomed the possibility of having a meeting. In their presentation, they underlined that media freedom is very important and significant in Hungary, that they have provisions in the Fundamental Law, being an integral part of Hungarian legislation on media. The Media Council is the decision making body of the Media Authority which reports annually to the Parliament.

In the exchange, several statistics on the media outlets and media landscape in Hungary were presented, with more than 10000 media outlets in total and a rather large share of written media outlets.

Since 2011 there is a funding support system. They work in full transparency, as regards funding and financial management. It was mentioned that there were more than 300 cases in the court were Media Council decisions were challenged. In case the court rules against the decision taken by Media Council, they incorporate the outcome in their consequent decisions.

On question regarding freedom of speech, on whether there are special rules on proportional timing for any political opinion, on the access by the population to a balanced information and their role in safeguarding this, it was clarified that Media Council only supervises but that editors and broadcasters have their editorial freedom and that if there is a complaint they are looking into it.

Press conference

The mission ended with a press conference by the Chair of the delegation. The link to the press

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⁴ The representative of KESMA has sent a document with statistics into the attention of the delegation, after the mission ended.
conference is here below.

**Conclusions**

As a follow up of this mission, the Members of the delegation reached the following key findings:

Although most of the exchanges were constructive, the delegation was not welcomed by all interlocutors. Some mission delegates were also personally attacked by Hungarian media. Hostility expressed towards the official delegation did not really facilitate an open dialogue and sincere cooperation.

In September 2018, the European Parliament triggered the procedure of Article 7(1) TEU. Although the procedure is mostly taking place in the Council now, the Parliament follows the situation closely and is entitled to address recommendations to the Council. The Parliament's consent is needed for the Council decision. It should be recalled that the European Parliament is not an outsider body interfering in Hungarian affairs. Hungary is a part of the Union since 2004, Hungarian citizens are fully represented in all EU institutions and parliamentary scrutiny also applies there, as in any other member state.

Members of the mission come from all political groups represented at the European Parliament, and the programme was agreed on the basis of inputs and suggestions submitted by them. After the mission, the majority of the Members of the delegation, with the exception of ID Member Nicolas BAY and ECR Member Jorge BUXADÉ VILLALBA, still has serious concerns about democracy, the rule of law and fundamental rights in Hungary. Unfortunately, the situation has not improved since 2018 – rather deteriorated. During the visit, the delegation did get information on very worrying specific cases. Important concerns remain over threats to the independence of judiciary and media freedom. Widespread corruption seems to have led to a parallel state, making it almost impossible to address in the absence of an independent judicial system. Also, as mentioned by several speakers, the Pegasus case have shed light on increased surveillance by the state against activists, journalists and lawyers.

The Committee on Civil Liberties, Justice and Home Affairs will draft an interim consent report on Hungary in the nearest future. All findings of the delegation, including on the written contributions received after the mission, will be included into the report.
Annex I

Committee on Civil Liberties, Justice and Home Affairs (LIBE)

Mission to Hungary, Budapest
Draft programme

**Wednesday 29 September 2021**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>14.00 - 14.30</td>
<td>Meeting with international organisations and NGOs active in the field of migrants’ rights &amp; protection</td>
</tr>
<tr>
<td>14:30 - 15:30</td>
<td><strong>Meeting with NGOs I</strong> <em>(NGOs active in the field of the protection of Rule of Law and/or with a general mandate)</em></td>
</tr>
<tr>
<td>15.30 - 16:50</td>
<td><strong>Meeting with NGOs II</strong> <em>(NGOs active in the field of equal treatment, minority rights and social rights)</em></td>
</tr>
<tr>
<td>17:00 - 18:00</td>
<td><strong>Meeting with NGOs III and representatives of minorities</strong> <em>(active in various fields)</em></td>
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<tr>
<td>18:30 - 19:00</td>
<td>Meeting with representatives of research and think thanks</td>
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<tr>
<td>19:00 - 20:00</td>
<td>Meeting with journalists and press freedom organisations I</td>
</tr>
<tr>
<td>20:00 - 20:45</td>
<td>Meeting with journalists II</td>
</tr>
</tbody>
</table>

**Thursday 30 September 2021**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:00 - 9:00</td>
<td>Meeting with the President and other Members of the Kuria (Supreme Court)</td>
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<tr>
<td>9:30 - 10.15</td>
<td>Meeting with representatives of the Constitutional Court</td>
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<tr>
<td>10:45 - 11:30</td>
<td>Meeting with representatives of the National Judicial Office</td>
</tr>
<tr>
<td>11:30 - 12:00</td>
<td>Meeting with representatives of the National Judicial Council</td>
</tr>
<tr>
<td>12:30 - 13:00</td>
<td>Meeting with former judges</td>
</tr>
<tr>
<td>15:15 - 16:15</td>
<td>Meeting with Minister of Justice</td>
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<tr>
<td>16:15 - 17:00</td>
<td>Meeting with Minister of Interior</td>
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<tr>
<td>Time</td>
<td>Event</td>
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</tr>
<tr>
<td>17.15 - 18.00</td>
<td>Meeting with Commissioner for Fundamental Rights</td>
</tr>
<tr>
<td>18.30 - 19:45</td>
<td>Meeting with representatives of academia and education system I</td>
</tr>
<tr>
<td>19:45 - 20:15</td>
<td>Meeting with representatives of academia and education system II</td>
</tr>
<tr>
<td>20:15 - 20:45</td>
<td>Meeting with representatives of cultural institutions</td>
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</table>

**Friday 1 October 2021**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:30 - 10.15</td>
<td>Meetings with MPs members of the Committee on Justice &amp; of the Committee on European Affairs</td>
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<tr>
<td>10:30 - 11:30</td>
<td>Meeting with Mayor of Budapest</td>
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<tr>
<td>12.00 - 13.00</td>
<td>Meeting with representatives of the opposition</td>
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<tr>
<td>13.45 - 14.15</td>
<td>Meeting with representatives of Hungarian judges</td>
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<tr>
<td>14.15 - 15:00</td>
<td>Meeting with representatives of KESMA and of the Hungarian Media Council</td>
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<tr>
<td>15:30 - 16:00</td>
<td>Press conference by the Head of the delegation</td>
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