

Memorandum on freedom of expression and media freedom in Hungary

Introduction

1. The present memorandum by the Council of Europe Commissioner for Human Rights (hereinafter, “the Commissioner”) addresses the conditions for freedom of expression and media freedom in Hungary. It builds on the Commissioner’s thematic work related to the protection of [freedom of expression, media freedom and the safety of journalists](#) across all Council of Europe member states. It also draws on her previous work focusing on Hungary, including the [report](#) of May 2019 following her country visit in February 2019, the [report](#) of December 2014 by her predecessor following his visit in July 2014, the [Opinion](#) of February 2011 on Hungary’s media legislation in the light of Council of Europe standards on freedom of the media, and her continuous monitoring of the situation related to freedom of expression in the country.¹
2. The memorandum constitutes a reaction to the deterioration of the environment for media pluralism and transparency of media ownership in the country, as also observed by numerous international, national, governmental and non-governmental organisations working to protect and promote the rights enshrined in Article 10 of the European Convention on Human Rights (hereinafter “the Convention”).
3. A key step in the preparation of the memorandum was the online consultation with Hungarian authorities, national human rights structures and representatives of Hungary’s civil society and media community, held between 29 January and 4 February 2021. The Commissioner had the opportunity to talk, in particular, to Judit Varga, Minister of Justice, Balázs Orbán, Deputy Minister of the Prime Minister’s Office, Monika Karas, President of the National Media and Info-communications Authority and Chairperson of the Media Council, and Ákos Kozma, Commissioner for Fundamental Rights. The Commissioner would like to express her appreciation to the Hungarian authorities in Strasbourg and in Budapest for their kind assistance in organising and facilitating her meetings with officials. She is grateful to all the people she spoke to in Hungary for sharing their views, knowledge and insights.
4. The memorandum begins by outlining the key issues regarding the legislative framework pertaining to freedom of expression and media pluralism (Section I). It then explores the effects on media freedom stemming from the media market situation, significant media concentration and lack of transparency related to state aid for the media (Section II). Lastly, it analyses the combined effects of the legal and market conditions on freedom of expression across Hungarian society, highlighting specific issues of concern that arise with respect to pro-government and public service media, the independent media and investigative journalists, judges and public officials, civil society organisations engaged in the defence of human rights, and selected marginalised groups and their ability to speak freely (Section III). The memorandum closes with the Commissioner’s conclusions and recommendations.

I. Hungary’s media legislation and the right to freedom of expression

5. Freedom of expression and information are prerequisites for any functioning democracy and the media play a crucial role in promoting public access to a diverse range of information. States

¹ Media freedom issues were also raised in a meeting on 22 September 2020 in Strasbourg between the Commissioner and the Minister of Foreign Affairs and Trade of Hungary.

therefore have a positive obligation to create an environment that is favourable to media pluralism.² Hungary's media legislation has been the subject of sustained criticism both nationally and internationally since its introduction in 2010.³ While minor adjustments were made to the legislation in 2013, the main causes for concern remained intact, shaping the environment for media pluralism in Hungary up to the present day.⁴

a. Independence of media regulation

6. Media regulatory authorities play an essential role in fostering a favourable environment for freedom of expression and media pluralism as they are assigned the responsibility for regulating the audio-visual sector at national level. To carry out their remit in an effective, transparent and accountable manner, they must enjoy genuine independence in law and in practice from all political, commercial, or other unwarranted influences. In Hungary, media regulation is performed by the National Media and Info-communications Authority (Media Authority), which is made up of three components: the President, the Media Council, and the Office of the Media Council.⁵ The Commissioner notes that the President of the Media Authority exercises a range of very important powers, including the appointment of the main decision-makers in the Media Authority, the nomination of candidates for the most senior position in each public service media provider, and the appointment of the executive director of the national public service broadcasting organisation (MTVA). The MTVA, in turn, provides funding to the public service media, employs its staff, and controls most of the production of media content supplied to the public service media.
7. The President of the Media Authority is nominated by the Prime Minister and appointed by the President, who may reject the candidate only on formal grounds, for a period of nine years.⁶ Section 88 of the Media Act contains conflict of interest rules which apply to the President of the Media Authority. However, these do not change the fact that a political appointee holds extensive and concentrated powers for nine years over all regulatory, senior staffing, financing and content matters across all media sectors.⁷ A particular problem is the system of "dual appointments", under which the President of the Media Authority is automatically the only candidate for the position of President/Chairperson of the Media Council.⁸ The latter, in turn, plays an instrumental role in the elections of the other four members of the Media Council by the Parliament. Critics have argued that the 2010 Media Act allows the Government to misuse its parliamentary majority to fill all Media Council seats with party loyalists with limited expertise in media policy. It is a fact that in December 2019, all four new members, like their predecessors, were nominated by the ruling party, after the opposition candidates had all been rejected.
8. The President of the Media Authority/Chairperson of the Media Council not only appoints the top officials in the public service media and oversees the production of media content but is also the indirect employer of all journalists working for the public service broadcasters. While Section 7 of

² In *Manole and Others v. Moldova* (appl. no. [13936/02](#)), judgment of 17 September 2009), the Court held that States must be the ultimate guarantors of media pluralism, without which there can be no democracy. In accordance with their duties under Article 10, States must ensure that "the public has access through television and radio to...a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country."

³ See, among others, the [Opinion of the Commissioner for Human Rights](#) "Hungary's Media Legislation in light of Council of Europe standards on freedom of the media" of 25 February 2011, the legal analyses of Hungarian media legislation, published by the OSCE Representative on Freedom of the Media (RFoM) in [September 2010](#) and [February 2011](#), the [End of mission statement](#) of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of 5 April 2011, and the [Opinion of the Venice Commission](#) on Media Legislation of Hungary, adopted on 22 June 2015. In this memorandum, the term 'media legislation' is used to refer to the so-called media package which comprises Hungary's Act CLXXXV of 2010 on Media Services and the Mass Media (the Media Act), and Act CIV of 2010 on the Freedom of the Press (the Press Act).

⁴ See also the Commissioner's [Report](#) of July 2014.

⁵ See Section 109 of the Media Act.

⁶ The law originally provided for an appointment for a renewable term of nine years. In response to international criticism, the mandate of the President of the Media Authority became non-renewable in 2013. See Venice Commission [Opinion](#).

⁷ See also Venice Commission [Opinion](#) and Miklós Haraszti, '[Hungary's Media Law Package](#)', 11 February 2011.

⁸ See Section 125 of the Media Act.

the Press Act contains a reference to the editorial independence of the public service media, the actual political control over the recruitment and employment status of public service media staff runs counter to Council of Europe standards designed to preserve the independence, especially political independence, of public service broadcasting organisations.⁹

9. In 2015, the Venice Commission recommended that safeguards be introduced into the law to make the composition of the Media Council more pluralistic, even during times of a parliamentary majority. Political control over the appointment process could be reduced, for instance, by ensuring that all major political parties and social groups have fair representation in the Media Council and by introducing elements of self-governance into its composition.¹⁰ Such efforts would be in line with Council of Europe standards regarding the membership and functioning of media regulatory authorities and with the EU Audiovisual Media Services Directive.¹¹ Without such steps, however, the Media Council is viewed as a political body, made up of members who are all designated by the ruling party and unable to perform its functions in an effective and independent manner.
10. Given this lack of independence, the Commissioner is particularly concerned by the fact that judicial scrutiny over decisions taken by the Media Council remains limited. Firstly, according to Sections 163 and 189 of the Media Act, decisions on fines or sanctions become enforceable even if they have been challenged in court, as court proceedings have no regular suspensive effect. Such immediate enforcement of fines or suspensions of broadcasting can have irreversible consequences for the media outlet concerned, even if the court subsequently finds the decision to be incompatible with the media legislation. Secondly, the reviewing court is required to respect the discretion of the Media Council and review the decision only with respect to possible violations of the media legislation, not in terms, for instance, of violations of the principle of proportionality or constitutional provisions. The Commissioner reiterates that a remedy that is unable to determine whether there has been a violation of the Convention cannot be considered an effective remedy.¹²

b. Content regulation

11. Another major concern regarding Hungary's media legislation is the unpredictability of its vaguely formulated content regulation provisions. As a result, the Media Council may interpret the illegality of content without any clear proportionality requirements or other guidance to limit its discretion.¹³ In April 2020, the European Court of Human Rights (hereinafter "the Court") ruled that the Media Council's decision in 2012, applying Article 12 of the Media Act to prohibit a television channel from repeating a statement describing a political party as "far-right", amounted to a violation of Article 10 of the Convention. The Court ruled that the applicant company could not have foreseen that the term "far-right" would qualify as an opinion, nor could it have foreseen that the prohibition of its use in a news programme would be necessary to protect unbiased reporting. Therefore, the restriction imposed was disproportionate and not necessary in a democratic society.¹⁴ The Commissioner expects that this judgment, which is now pending before the Council of Europe Committee of Ministers for the supervision of its execution, will lead to amendments of Section 12 of the Media Act, in line with the recommendations made already in 2011 and 2014.
12. As regards content regulation online, a Digital Freedom Committee was established at the Ministry of Justice in early 2020 to prepare a legislative proposal on the activities of social media platforms by Spring 2021.¹⁵ The Committee is made up of representatives of relevant ministries and

⁹ See Recommendation [CM/Rec\(96\)10](#) of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting.

¹⁰ See Venice Commission [Opinion](#).

¹¹ See Recommendation [CM/Rec\(2000\)23](#) of the Committee of Ministers to member states on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, and Article 30 of [EU Directive 2018/1808](#).

¹² See [Opinion](#) of the Commissioner for Human Rights, February 2011 and *Glas Nadezhda EOOD and Elenkov v. Bulgaria* (appl. no. [14134/02](#), judgment of 11 October 2007).

¹³ The Venice Commission has recommended that the Media Council should develop policy guidelines to limit its discretion and make its decisions more predictable for media outlets. See Venice Commission [Opinion](#).

¹⁴ See *ATV ZRT v. Hungary* (appl. no. [61178/14](#), judgment of 28 April 2020).

¹⁵ See [website](#) of the Digital Freedom Committee.

institutions (including the Commissioner for Fundamental Rights, the National Data Protection and Freedom of Information Authority (NAIH), the Consumer Protection Authority, and the Media Authority), and citizens have been invited to send their comments online. The Commissioner considers it of crucial importance to involve relevant civil society organisations in the work of the Committee, and for there to be wide public consultation prior to the submission of the proposal, as it will no doubt greatly affect freedom of expression safeguards in Hungary. She urges the government to ensure that the law contains clear and predictable provisions for all content moderation and data retention practices, which must pursue a legitimate aim and be necessary in a democratic society, in line with Article 10 of the Convention and relevant Council of Europe standards.¹⁶ It is also essential for effective remedies to be available against all decisions related to user content and data, in full compliance with Article 13 of the Convention. In this context, the Commissioner encourages Hungary to support efforts at European level to harmonise standards related to digital services and digital markets.

c. Legislative developments in times of crisis

13. As part of the 'Authorisation Act' adopted on 30 March 2020, which introduced emergency rules in Hungary in response to the COVID-19 pandemic, Section 337 of the Criminal Code was permanently amended to extend the sentence for "fearmongering" to up to five years' imprisonment if it is "capable of obstructing the efficiency of protection efforts" during a "state of danger". By the end of July 2020, 134 related criminal investigations had been initiated.¹⁷ The Hungarian authorities have argued that the provision is precise enough to limit its applicability. However, the Commissioner considers that the high number of investigations launched, including in cases that undoubtedly involved expressions of opinions, and the fact that the Constitutional Court found it necessary to clarify that the crime must be interpreted in line with freedom of expression safeguards,¹⁸ demonstrate the ambiguity of the amendment, as an act's "capability of obstructing protection efforts" clearly leaves wide room for interpretation. Although investigations were often dropped without charges, the high media coverage of the arrests had an intimidating and chilling effect on freedom of expression.¹⁹
14. Government Decree 179/2020 of 4 May 2020 allowed public bodies to extend the deadline for responding to freedom of information requests to 45 days, which could be prolonged once by an additional 45 days (instead of the original 15 + 15 days), if it was "probable" that responding within the original deadline would jeopardise the fulfilment of their pandemic-related public duties.²⁰ The Commissioner was informed by government representatives that this extension was considered necessary since public bodies (including hospitals) were not trained to provide information during a pandemic and required extra time. The Commissioner considers that the original possibility of an extension totalling 30 days should have been sufficient to allow for any emergency-induced staff shortages and that an extension of 45 days, and possibly even 90 days, will render most information requests irrelevant by the time the response reaches the applicant, thus seriously undermining the freedom of information enshrined in Article 10 of the Convention.²¹ While welcoming the fact that Hungary was one of the first Council of Europe member states to ratify the Tromsø Convention on Access to Official Documents,²² the Commissioner encourages the authorities to keep up their

¹⁶ See, among others, Recommendation [CM/Rec\(2018\)2](#) of the Committee of Ministers to member states on the roles and responsibilities of internet intermediaries.

¹⁷ One person was detained, for instance, for having criticised the decision to ease the lockdown. Another case concerned a [Facebook post](#) on 20 April 2020 commenting on the government's instruction to empty 60% of hospital beds to make room for possible COVID-19 patients. This resulted in the premature release of patients, with painful consequences. See '[Concentration of Power Salvaged: Coronavirus Stocktaking](#)', Eötvös Károly Intézet, 19 June 2020.

¹⁸ Decision 15/2020 of the Constitutional Court. See [European Centre for Press and Media Freedom](#), 17 June 2020.

¹⁹ See '[Research on the obstruction of the work of journalists during the coronavirus pandemic in Hungary](#)', Hungarian Civil Liberties Union, 15 April 2020.

²⁰ See an [analysis](#) also covering the data protection effects of the Government Decree of 7 May 2020. The rule was reintroduced on 25 November 2020 by Government Decree 521/2020 (XI.25.) and remains in force.

²¹ See also [Opinion 3071/2020](#) issued by the Hungarian NAIH on the emergency legislation relating to both data protection and freedom of information aspects, 30 March 2020.

²² Hungary [ratified](#) the Tromsø Convention on 5 January 2010 and it entered into force on 1 December 2020.

commitment and actively promote public access to information that is in the public interest, which is an integral aspect and essential prerequisite for freedom of expression.²³

15. The Commissioner also expresses concern at the repeated legislative restrictions on freedom of expression and information in 2020 over the successive “states of danger” and thus during periods when opportunities for public consultation and debate were severely restricted. As highlighted by the Venice Commission in June 2020, all state measures during a state of emergency should be *necessary* to help the State overcome the exceptional situation and return to normalcy.²⁴ However, a new law was adopted on 16 December 2020, for example, providing from 1 January 2021 onwards for a prison sentence of up to one year for publishing unauthorised drone recordings of someone’s property. In June 2020, the NAIH held that the use of drone recordings by investigative journalists to report on public spending was in the public interest and that no legitimate privacy interests had been violated.²⁵ The Commissioner also notes that the NAIH had twice objected to the amendments in question, pointing out that it was unnecessary and unjustified to establish a higher level of secrecy around drone recordings.²⁶

II. Distortion of Hungary’s media market

16. As also acknowledged by the representatives of the Hungarian Government during the online consultations, the digital evolution and resulting changes in media consumption patterns have seriously affected the financial sustainability of media outlets in Hungary.²⁷ State intervention therefore plays a particularly important role in supporting the financial viability of the media. A high level of transparency and close monitoring by an independent regulatory authority is necessary, however, to avoid political influence and enable independent and diverse media to perform their public watchdog function.

a. Hungarian state advertising

17. There are no transparency requirements in Hungarian legislation that require the government to publish information on its spending or the criteria applied when issuing state advertising contracts.²⁸ According to independent reports, however, growing amounts of state advertising are channelled each year to pro-government media outlets, resulting in indirect political influence over the media.²⁹ In 2018, for instance, the pro-government broadcaster TV2 received 67% of state advertising in the television sector, while the independent RTL Klub, which has a similar audience reach, received just 1%.³⁰ Even in 2020, when most government messages were focused on the

²³ In addition to outlawing the use of drone recordings by journalists, a [constitutional amendment](#) was introduced in December 2020, restricting the notion of ‘public funds’. While the Commissioner was informed in February 2021 that the amendments served to clarify the definition and thus improve oversight, the Commissioner points to the established case-law of Hungarian courts which have thus far upheld the public interest in the expenditure of funds, even if the government had argued that their ‘public nature’ had been lost.

²⁴ See Venice Commission Report ‘[Respect for Democracy, Human Rights and the Rule of Law during States of Emergency](#)’ of 19 June 2020. See also [Statement](#) of the Commissioner, 20 November 2020.

²⁵ See NAIH [Decision 4228/2020](#) of 10 June 2020.

²⁶ See [Letter of 17 November 2020](#) and [Letter of 2 December 2020](#) from the NAIH to the relevant Parliamentary Committee. See also the [recommendations](#) on drone journalism issued by the OSCE RFoM, March 2016.

²⁷ In 2020, pre-existing weaknesses in media sustainability were exacerbated by the economic downturn caused by the pandemic, which led to dramatic falls in advertising and other income for media across the Council of Europe region. See ‘[COVID and free speech](#)’, Council of Europe, 4 November 2020.

²⁸ Transparency on state spending has decreased overall. In [March 2016](#), the Hungarian Parliament authorised the government to make budget decisions by decree, without going through regular budget approval processes. In February 2021, the EU declared competition in public procurement to be insufficient in practice and cited “[systemic irregularities](#)”, calling specifically for improved data transparency and accessibility.

²⁹ See also the European Commission [Rule of Law Report 2020](#). According to the [Media Pluralism Monitor 2020](#) on Hungary, in 2019 the share of state advertising awarded to pro-government outlets was 75% for newspapers, 95% in the TV market, and 90% in the online and radio market. [Mérték Media Monitor](#) reported in 2019 that based on revenue, pro-government media controlled 77.8% of the news media.

³⁰ See ‘[Hungary dismantles media freedom and pluralism](#)’, report by a joint fact-finding mission, 3 December 2019.

pandemic, the imbalance grew still further, with a reported 86% of state advertising going to pro-government media.³¹

18. The Hungarian Government argues that its interventions are *promoting* media pluralism as they serve to balance out a predominantly “leftist” media landscape. However, the biased distribution of state advertising revenues has eroded the level playing field for the media. While it ensures that pro-government media do not suffer the economic consequences of the digital evolution, the independent media or those not perceived as loyal to the government have seen massive reductions in income. Many have faced closure, economic take-over or bankruptcy (see below), while small outlets have managed to finance themselves through crowdfunding.³² In addition, commercial advertisers – both Hungarian and multinational companies – are reported to be under pressure not to advertise with the independent media.³³

b. Concentration of media ownership

19. In November 2018, some 470 media outlets transferred their ownership rights to the Central European Press and Media Foundation (KESMA), a non-profit foundation registered on 11 September 2018.³⁴ Pending a decision by the competition authority on this merger, the Hungarian Government issued a decree, declaring it of ‘national strategic interest’, thereby exempting it from scrutiny by both the competition and media authorities.³⁵ The aim of the foundation is stated to be “to promote those activities of the print, radio, TV and online sections of the Hungarian mass media which serve to build values and strengthen Hungarian national consciousness...”.³⁶
20. During the online dialogue, representatives of the Hungarian Government argued that the merger was in the national interest because a large conglomerate enhances the financial independence of all of the media outlets concerned. Repeated comparisons were drawn with the Bertelsmann and Sanoma media companies. To establish media pluralism risks, however, several indicators must be considered, in addition to market plurality, including basic freedom of expression protections and, importantly, independence of the media and media regulatory authorities.³⁷ According to the Media Pluralism Monitor 2020, risks to the political independence of media in Hungary stood at 82%, the highest possible risk, of 97%, being that of state regulation of resources and support for the media sector.³⁸

³¹ See Mérték Media Monitoring 2021 Update on state aid [complaint](#) No. 53108 to the European Commission. See also state aid [complaint](#) No. 45463 on the incompatibility of Hungarian state advertising practices with the European Commission [Communication](#) on the application of State aid rules to public service broadcasting.

³² This is the case, for instance, for smaller news sites such as *Direct36.hu* and *Klubrádió*.

³³ It is not fully clear whether this is due to direct pressure or to self-censorship for fear of economic or tax-related retaliation by the government. See ‘[Hungary dismantles media freedom and pluralism](#)’, report by a joint fact-finding mission, 3 December 2019.

³⁴ See [Media Pluralism Monitor](#), July 2019. The CEO of the Foundation is considered to be politically close to the Hungarian Prime Minister and its board is made up of former and current Fidesz members. KESMA also owns outlets in other countries, including Poland, Slovenia, and Croatia. On 23 June 2020, the Constitutional Court [rejected](#) an application by a quarter of members of parliament challenging the Government Decree, finding that it rests solely and exclusively within the government’s prerogative to determine matters of ‘strategic national importance’ and that “nothing in the merger could be read as necessarily threatening media pluralism in the country”.

³⁵ See Government Decree 229/2018 (XII.5). The advice of the Media Authority should have been sought as the merger resulted in concentration concerning “enterprises with editorial responsibility, the primary objective of which is to distribute media content to the general public”. See Section 24 of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices.

³⁶ See the [goals](#) of the KESMA Foundation. A further goal is “to contribute...towards shaping Hungarian public discourse and towards raising a next generation in our community with members who will profess national values”.

³⁷ The Media Pluralism Monitor (MPM) is a scientific tool designed to identify potential risks to media pluralism, including those stemming from digital developments, based on a set of indicators. It was developed through a European Commission-funded study, published in 2009. Since 2016 it has been implemented in all EU Member States and selected candidate countries. See ‘[Monitoring pluralism in the digital era](#)’, last update 25 January 2021.

³⁸ See [overall results](#) of the Media Pluralism Monitor 2020 and those on [Hungary](#): Basic protection (43% - medium risk); Market plurality (71% - high risk); Political independence (82%-high risk); Social inclusiveness (53% - medium risk).

21. The Commissioner finds that by disregarding the role of the regulatory authorities, which are mandated by law to scrutinise mergers and prevent excessive market dominance and media concentration, the government demonstrated a unique lack of regard for their independence and towards European standards related to media pluralism and transparency of media ownership.³⁹ The latter are crucial safeguards and should be scrupulously adhered to in an environment where the growth of large media conglomerates across Europe is indeed raising concerns.

c. Political agenda-setting by the National Communication Office

22. The National Communication Office was created in October 2015 and is officially charged with “preparing and spreading the government’s messages” through billboard, television, radio and print advertisements. Its budget is reported to have grown exponentially in recent years.⁴⁰ One feature of the national communication strategy has been the organisation of so-called “national consultation campaigns”, which are direct marketing campaign letters sent to every Hungarian household on behalf of the government to seek the people’s opinion. In the letters, Hungarian citizens are asked to indicate their support for or rejection of certain statements that could be interpreted as fearmongering or scapegoating.⁴¹ The results are not public. The national consultation campaigns have been strongly criticised both for being “hate campaigns” and for being part of Fidesz’s efforts to set the political agenda ahead of a national election – at the taxpayers’ expense.⁴²

23. The OSCE’s final report on the April 2018 elections concluded that the main governing party enjoyed an undue campaign advantage because of a pervasive overlap between state and ruling party resources, biased media coverage and opaque campaign financing regulations, recommending that government information activities should avoid any appearance of seeking to influence voting.⁴³ The Court has repeatedly underlined the close relationship between the right to free elections and freedom of expression, particularly freedom of political debate, which together form “the bedrock of any democratic system”.⁴⁴ The Commissioner stresses that it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely and that there is fair competition between the candidates through means including unbiased media coverage throughout the country.⁴⁵

III. Impact of legislative and other state measures on media pluralism and freedom of expression

24. The combined effects of a media regulatory authority that at least lacks the appearance of independence or impartiality, quite apart from being free de facto from political control, and biased state intervention in the media market have had decidedly negative effects on freedom of expression protections in Hungary. While these are noticeable across Hungarian society, including in relation

³⁹ See Recommendation [CM/Rec\(2018\)1](#) of the Committee of Ministers to member states on media pluralism and transparency of media ownership. The “national strategic interest” justification has been used by the Hungarian Government 23 times since 2014. In other EU member states, the clause has been used not to justify a media merger but on the contrary, to *prevent* the creation of too large a media concentration. See [Media Pluralism Monitor](#) 2019.

⁴⁰ The annual advertising budget was estimated at USD [90 million](#) in 2015, growing to a [reported](#) EUR 300 million in 2018 and EUR 450 million in 2019.

⁴¹ The Stop Soros campaign in 2017, for instance, contained statements such as “*The goal of the Soros Plan is to push the languages and cultures of Europe into the background so that integration of illegal immigrants happens much more quickly*” and “*It is also part of the Soros Plan to initiate political attacks against those countries which oppose immigration, and to severely punish them*”. See here for the [full list](#) of questions. Despite the clearly political nature of this and other campaigns, the Media Council has classified them as ‘public service advertisements’ allowing the media service providers to charge for such related broadcasting spots. See Mérték Media Monitoring ‘[Centralised Media System - Soft Censorship 2018](#)’, December 2019.

⁴² See ‘[National consultation campaigns in Hungary](#)’, Friedrich Naumann Foundation Europe, 23 November 2017.

⁴³ See OSCE Office for Democratic Institutions and Human Rights [final report](#) on Hungary’s parliamentary elections, 27 June 2018. On 10 April 2018, Hungary’s Prime Minister [explained](#) his resounding election win by the fact that voters wanted to stop US billionaire philanthropist George Soros from interfering in the country.

⁴⁴ See among others *Bowman v. the United Kingdom* (appl. no. [141/1996/760/961](#), judgment of 19 February 1998).

⁴⁵ See also *Kudeshkina v. Russia* (appl. no. [29492/05](#), judgment of 26 February 2009) and *Erdoğan Gökçe v. Turkey* (appl. no. [31736/04](#), judgment of 14 October 2014).

to academic freedoms and culture,⁴⁶ specific concerns arise with respect to the public service and pro-government media, the independent media and investigative journalists, judges and public officials, civil society organisations engaged in the defence of human rights, and marginalised groups.

a. Impact on the public service media and media belonging to KESMA

25. Bias in state advertising practices is considered harmful to the entire media ecosystem because the financial reward is not based on market performance or audience share but on political loyalty and favour.⁴⁷ As a result of the concentration of media ownership and the dependence of the pro-government media on state advertising in Hungary, there does indeed appear to be little accountability in the public service media and those belonging to KESMA. Despite the repeated propagation of hate messages against specific groups including the migrant and LGBTI community on the pro-government media and their portals, the Media Council has not once initiated ex officio proceedings in line with Section 14 of the Press Act in recent years.⁴⁸ The Commissioner was informed by representatives of the institution that it had no recollection of any hate being spread in the Hungarian media against protected groups. In fact, a few widely known examples could well have prompted the interest of the Media Council and raise doubts about the scrutiny applied by the Media Council to the pro-government media.⁴⁹ Another factor that limits accountability is the fact that even the fines imposed by the courts on media for defamation and publication of falsities are inconsequential, as continued awards of state advertising contracts mean they have no impact on the outlet's financial viability.⁵⁰
26. Following the merger of over 470 media outlets into KESMA, some 200 journalists and media professionals were laid off in one day; hundreds of journalists employed by KESMA are no longer represented by a journalists' union, making them more vulnerable, and prone to political and managerial pressure.⁵¹ Public service media staff are alleged to have received direct instructions not to report on certain topics without seeking approval. Moreover, references to reports from Amnesty International or Human Rights Watch have been explicitly forbidden.⁵² The Commissioner is highly concerned about this restriction on journalistic freedom and editorial control in the public service media, which should be bound only by professional and ethical codes of conduct rather than by political considerations.⁵³ To serve as a major public source of unbiased information and diverse political opinions, the public service media should operate within a sustainable governance

⁴⁶ On 6 October 2020, the Court of Justice of the European Union found in its judgment [C-66/18](#) that the targeting of the Central European University by the Hungarian Government was in breach of EU law, among others, as it was contrary to fundamental protections relating to academic freedom. Since then, the research network of the Hungarian Academy of Sciences and several other formerly autonomous scholarly research institutions, including also the [Institute of Political History](#), have been subject to government efforts to dismantle their independent functioning. With respect to culture, see the recent [discussion](#) on gender roles prompted by a statement by poet Krisztina Tóth.

⁴⁷ See [Media Pluralism Monitor](#) 2019.

⁴⁸ According to Section 14 of the Press Act, media service providers should respect human dignity in the media content they disseminate and should not portray "vulnerable people" in a degrading way.

⁴⁹ In November 2019, a smear campaign against two journalists defamed not only the individuals but also propagated blatantly anti-Semitic messages in pro-government and far-right media. See Council of Europe Platform to promote the protection of journalism and safety of journalists (Platform) [Alert 139/2019](#), no State reply. See also a [collection](#) of articles with rather explicit vilification of persons belonging to the Roma and Jewish communities. In a 2018, Freedom House [reported](#) that "the pro-government news site *Origo.hu* ran a Facebook advertisement with a video of two dark skinned men attacking a white skinned woman in a church, with the tagline "Western Europe, 2017. Do you want this?" It was later found out that the video was of a 2015 robbery in Nebraska and that "the sound of the video was tampered with to contain shouts praising Allah." In April 2019, a lesbian couple was likened to "dog shit" in a programme on pro-government HírTV. The Media Council found that the equal human dignity of homosexuals was [not questioned](#). In January 2020, the likening on the opposition ATV channel of white, Christian men to a "fearful bunch" as they do not allow innovation, was considered an '[exclusion](#)' by the Media Council and resulted in a fine.

⁵⁰ In 2018 alone, Hungarian courts ordered *Origo.hu* to issue corrections in at least 34 cases. See [Politico](#), 3 April 2019.

⁵¹ See [Media Pluralism Monitor](#) 2019.

⁵² See Platform [Alert 26/2020](#), no State reply.

⁵³ See Recommendation [CM/Rec\(2012\)1](#) of the Committee of Ministers to member states on public service media governance.

framework that secures both the necessary editorial independence and public accountability. In this context, it is noteworthy that levels of trust in the Hungarian media are very low overall, with 74% of the population agreeing that there is strong political bias.⁵⁴

b. Impact on the independent media and investigative journalists

27. Countering a dominant and largely unanimous pro-government narrative in the public service media, KESMA and most private media, a small number of critical, independent media outlets continue to exist in Hungary, although their reach is mostly limited to the capital. Readers and viewers who do not actively look for alternative sources of news (mainly online) receive virtually exclusive government messages via the print, radio and television markets, restricting their access to the diverse range of information and ideas guaranteed by Article 10 of the Convention.⁵⁵ Hungary has just one remaining opposition learning political daily, *Népszava*, with a circulation of 20,000. By contrast, the government-controlled network of regional daily newspapers alone has a combined circulation of over 200,000.⁵⁶
28. The effects of the government-controlled media market and the lack of state advertising and other subsidies has had a devastating effect on the independent media, forcing them to close or accept financial take-over or bankruptcy.⁵⁷ Hungary's largest opposition newspaper *Népszabadság* was closed suddenly in October 2016, following its reports on corruption allegations against close allies of the Prime Minister.⁵⁸ The country's largest independent news website *Index.hu* was in increasing financial trouble since 2018. In March 2020, 50% of its advertising agencies were taken over by an affiliate of the Prime Minister, leading to growing editorial pressure on its staff. The editor-in-chief publicly criticised these events and was dismissed, following which more than 70 journalists and staff resigned.⁵⁹ In November 2020, another acquisition sealed the take-over and *Index* has now become part of the pro-government media, running exclusively pro-government storylines.⁶⁰ Following the Media Council's decision not to renew the broadcasting licenses of two popular music radio stations in early 2019,⁶¹ the frequencies were taken over by radio stations belonging to the KESMA foundation, who have since been broadcasting free hourly news provided by the National News Agency.
29. The excessive discretion of the Media Council discussed above can, unfortunately, be illustrated further by the case of *Klubrádió*.⁶² Its application for the renewal of its broadcasting licence was rejected by the Media Council on 11 September 2020 on the ground that in 2016, by twice submitting

⁵⁴ See Mérték Media Monitoring '[An infected media system](#)', 1 December 2020. [Reuters Digital News Report 2019](#), comparing trust in media in a world-wide survey, revealed a low average of 28% among those surveyed expressing trust in the Hungarian media; in 2019, the independent RTL Klub TV channel was the most trusted and the private pro-government TV2 channel the least.

⁵⁵ According to a [statement](#) made by the President of the Media Council in February 2021, "the Hungarian media market is free, diverse and varied: 393 television stations, 156 terrestrial radio stations, 78 internet radio stations, 6731 printed and 3540 electronic press outlets offer information to the Hungarian people". These figures, however, include small local stations that broadcast only teletext as well as countless free advertising papers. Observers consider only two TV stations, one radio station limited to Budapest (*Klubrádió*) and some online news portals to be independent from government influence. The others either define themselves as pro-government or their ownership structures show close affiliation with the ruling party.

⁵⁶ See '[Hungary dismantles media pluralism](#)', Report by a joint fact-finding mission, 3 December 2019.

⁵⁷ The independent Hungarian news website *origo.hu*, for instance, was sold after it unveiled a corruption scandal involving a senior official close to the Prime Minister in 2014. See for background '[The Website That Shows How a Free Press Can Die](#)', NYT, 24 November 2018. Many of its journalists and the editor [walked out](#) in the aftermath. Since 2018, it has formed part of KESMA and is now considered one of the government's strongest supporters.

⁵⁸ See Platform [Alert 110/2016](#), see also the [State reply](#) of 31 January 2019. The sudden closure was later declared to be in breach of the Labour Code by a Budapest Court.

⁵⁹ See [Euro News](#), 23 July 2020, and [BBC](#), 24 July 2020.

⁶⁰ See '[Hungary: Illiberal highlights of 2020](#)', Hungarian Helsinki Committee, 1 December 2020.

⁶¹ See Platform [Alert 13/2018](#) and [State reply](#) of 31 January 2019.

⁶² See also the Commissioner's [Report](#) of July 2014. *Klubrádió* was already cited as an example at this point as it had been granted a broadcasting licence for Budapest by the Media Council only after a prolonged legal battle during which it lost its frequencies for the countryside.

its monthly reports on Hungarian music programming late, it had “repeatedly violated” its responsibilities under Section 22(8) of the Media Act.⁶³ Because the nature of a ‘significant’ offence is not defined in law, the Media Council has used wide discretion. It has not only considered the late submission of reports to be negligible in previous cases,⁶⁴ but it has also renewed the broadcasting licences of radio stations despite having established ‘repeated violations’ before.⁶⁵ This record casts doubts over the Media Council’s assertion that it had no other option but to decide against *Klubrádió*. Moreover, there has been no effective remedy for the outlet as periods of litigation against decisions of the Media Council do not alter the expiry of the licence. The Commissioner was disappointed to learn that *Klubrádió* lost its airwaves on 15 February 2021, leaving citizens in Budapest bereft of independent news on the radio.⁶⁶

30. The independent media have also faced growing obstacles to their work. Access to information is reported to have become increasingly difficult as their requests for information have been ignored and they have frequently not been invited to press conferences,⁶⁷ even in the context of the pandemic, where the utmost priority should be given to the broadest possible dissemination of information and news. In two recent judgments, the Court found violations of Article 10 of the Convention on grounds of the suspension of a journalist’s accreditation to Parliament without adequate safeguards and the barring of a journalist’s access to an asylum reception centre from which he wished to report.⁶⁸ Investigative journalists seeking to expose corruption and the misuse of public funds for private purposes have faced particular difficulties in accessing information, through means which have even included changes in the relevant legislation (see above), and been increasingly exposed to police questioning and threats of litigation.⁶⁹
31. The Commissioner notes that there has been an extreme polarisation of the Hungarian, which has an overall adverse effect on the free exchange of information and opinions. Her discussions with government representatives in February 2021 confirmed that any form of criticism expressed by the media is interpreted by the government as hostility and proof of an ‘anti-government’ disposition. Yet, scrutinising government is one of the core functions of the media, and it is actually “in the strong interest of a democratic society” for the press to exercise its vital role as a public watchdog.⁷⁰ It is therefore unacceptable and contrary to basic media freedom standards for journalists to be denigrated as ‘activists’ or ‘Soros mercenaries’ simply because they are doing their job.⁷¹ The Commissioner is deeply concerned by reports of repeated harassment of independent media

⁶³ According to Section 187(4) of the Media Act, violations are considered to be ‘repeated’ when occurring more than once within 365 days, not including minor offences. The radio must therefore commit two significant offences within one year for the Media Council to have grounds under Section 48(7)a not to renew a broadcasting licence. This contradicts the [statement](#) of the State Secretary for International Communication and Relations on 10 February 2021.

⁶⁴ See, for instance, Media Council decisions nos. [1700/2013 \(XII. 3.\)](#) and [835/2014. \(IX. 9.\)](#).

⁶⁵ See, for instance, Media Council decision no. [464/2016. \(IV. 19.\)](#), establishing a repeated violation, while decision no. [1118/2019. \(IX. 10.\)](#) renews the licence of the radio in question. The same sequence (establishment of repeated violations followed by licence renewal) is found in decisions nos. [812/2015. \(VI. 30.\)](#) and [1117/2019. \(IX. 10.\)](#) and in decisions nos. [174/2014. \(II. 18.\)](#) and [1241/2014. \(XII. 16.\)](#).

⁶⁶ See her tweet of [9 February 2021](#). A new [call for tender](#) for the frequency in question was issued on 4 November 2020 and decided on 10 March 2021. The Media Council [rejected](#) *Klubrádió*, the only eligible contender, on the ground that its programming plan contained errors and “did not meet the basic requirements for radio broadcasting.” According to [Szabad Európa](#), *Klubrádió* used to attract about half a million single listeners per week, which is roughly 15% of Budapest’s population. Only a small percentage have continued to follow the outlet via the internet.

⁶⁷ See [‘Research on the obstruction of the work of journalists during the coronavirus pandemic in Hungary](#), Hungarian Civil Liberties Union, 15 April 2020.

⁶⁸ See *Mándli and others v. Hungary* (appl. no. [63164/16](#), judgment of 26 May 2020) and *Szurovecz v. Hungary* (appl. no. [15428/16](#), judgment of 8 October 2016).

⁶⁹ See Platform [Alert 129/2020](#), no State reply.

⁷⁰ As consistently held by the Court; see for instance *Animal Defenders International v. the United Kingdom* (appl. no. [48876/08](#), Grand Chamber judgment of 22 April 2013).

⁷¹ On 11 April 2018, a list of 200 individuals was published in the *Figyelő* magazine, including numerous independent journalists, labelling them “Soros mercenaries”. See [OSCE media freedom representative Désir condemns blacklisting of journalists in Hungary](#), 13 April 2018. The Hungarian State Secretary for International Communications and Relations has repeatedly and publicly vilified journalists. See also Platform [Alert 111/2017](#), updated in December 2018, and [State Reply](#) of 31 January 2019.

representatives by government officials, who call them “traitors” for opposing the Prime Minister and threaten them with legal retaliation.⁷²

32. In the current climate, the Commissioner further notes with great concern that independent journalists who are being aggressed or defamed have virtually no remedy at their disposal. Because the Media Council cannot be trusted to act as an independent or effective authority, journalists are forced to turn to the courts. While such proceedings have frequently come out in their favour and the media outlets in question have been ordered to issue corrective statements and/or pay fines, these orders have not always been complied with (see below) and have not succeeded in putting an end to what are clearly co-ordinated campaigns against the independent media. It is also alarming that the level of threat felt by individual journalists is growing. Although there have not yet been any acts of physical violence, it is clear that actual violence might flare up, if fuelled by repetitive hate messages that circulate with impunity.

c. Impact on judges and public officials

33. In its Grand Chamber judgment on *Baka vs Hungary*,⁷³ the Court found a violation of Article 10 on the ground of the undue and premature termination of the applicant’s mandate as President of the former Hungarian Supreme Court after he had publicly expressed his views on a number of legislative reforms affecting the judiciary. The Court also found that the impugned measures had a “chilling effect”, discouraging the applicant and other judges and court presidents from participating in public debate on issues concerning the independence of the judiciary. The Committee of Ministers of the Council of Europe, examining the execution of the *Baka* judgment in September 2019, noted “with grave concern” reports suggesting that the chilling effect on the freedom of expression of judges and court presidents in general “has not only not been addressed but rather aggravated”.⁷⁴ In line with the ongoing supervision of the execution of the judgment by the Committee of Ministers, the Commissioner expects the Hungarian authorities to take decisive action to ensure that the chilling effect on judges is remedied.⁷⁵ It is a source of deep concern in this context, however, that court decisions have repeatedly and publicly been criticised by government spokespersons.⁷⁶ This evident lack of respect for the independence of the judiciary reinforces the chilling effect on the freedom of expression of ordinary judges, especially as the President of the National Judiciary Office and other court leaders have said nothing about these attacks.⁷⁷
34. In 2020 and in the context of the pandemic, public officials, including teachers and health officials, were banned from speaking to the independent media, as all information related to COVID-19 and the government’s response measures has been centralised. The Commissioner was informed during the online consultations that the creation of a central communication platform was considered necessary to protect citizens from disinformation. However, the Commissioner considers freedom of expression and the free flow of information to be the best means of dealing with disinformation, particularly in an environment where any form of criticism is actively quashed.

⁷² See Committee to Protect Journalists ‘[Hungarian journalist Csaba Lukács on covering COVID-19 amid attacks on independent media](#)’, 22 April 2020. See also Platform [Alert 180/2020](#) and [State reply](#) of 25 June 2020.

⁷³ See *Baka v. Hungary* (appl. no. [20261/12](#), Grand Chamber judgment of 23 June 2016).

⁷⁴ See Decision of the Committee of Ministers [CM/Del/Dec\(2019\)1355/H46-11](#) of 25 September 2019.

⁷⁵ In its last examination of the execution of the judgment in [October 2020](#), the Committee of Ministers decided not to close the supervision of the case but to seek a clear and unequivocal formal undertaking from the Hungarian authorities that they will refrain from similar interferences with judicial mandates in the future and that tangible measures be taken to correct the chilling effect on judges.

⁷⁶ The second instance decision of the Debrecen Appeals Court in September 2019, granting non-pecuniary damages to over 60 Roma victims of educational segregation in the elementary school of Gyöngyöspata, for instance, was publicly denounced by the Prime Minister as ‘unjust’ while a review by the Kúria was ongoing. The decision was upheld but legislative changes were introduced shortly afterwards to make the payment of damages in segregation cases impossible in the future. See [Flash Report](#) by the European network of legal experts in gender equality and non-discrimination, 15 August 2020.

⁷⁷ See ‘[Status of the Hungarian Judiciary](#)’, Amnesty International, February 2021.

d. Impact on civil society, human rights defenders and independent voices

35. The prevailing climate in Hungary also has a chilling effect on civil society activists and those who wish to express an independent opinion. A political analyst, who had remarked on the government's apparent disregard for public mistrust regarding vaccinations in an interview in December 2020, was subjected to an intense smear campaign in the pro-government media, falsely alleging that he had encouraged opposition politicians to undermine confidence in vaccines and "sacrifice citizens' lives for political gain".⁷⁸ Subsequently he received death threats. In a previous disinformation campaign of this sort in early 2019, numerous articles published in *Origo*, *888* and *Figyelő* had claimed that the analyst served foreign interests and was involved in a secret British psychological warfare campaign. While the claims were debunked in December 2020 in a second instance ruling by the Budapest Regional Court,⁷⁹ on 14 March 2021 the three outlets had still not published the verdict and corrected the facts as the Regional Court had ordered.
36. Civil society representatives and human rights defenders have also been demonised as "foreign agents" and "traitors to the nation", particularly when protecting the rights of migrants, Roma or LGBTI people. Legislative amendments in recent years have shown blatant disrespect for the important role that civil society organisations play in modern democratic societies.⁸⁰ In June 2020, the Court of Justice of the European Union found the registration and publication obligations imposed on civil society organisations who receive support from abroad to be in breach of Hungary's obligations under EU law, as they undermined their right to freedom of association and created a climate of suspicion and stigmatisation towards them.⁸¹ Following the judgment, the Prime Minister talked of "liberal imperialism in Western Europe" and "conspiracies to manoeuvre for power", referring to "political organisations in Hungary that are striving to erode the independence of their own country. Suddenly they're not on the side of the Hungarians, but are always found on the side of foreigners, outsiders, centres of power...";⁸² his suggestion was that some threat arose from an activity which is regarded by the Court as "important to the proper functioning of democracy".⁸³
37. In June 2018, the Hungarian Parliament adopted a legislative package which, among other things, criminalised advocacy and campaigning activities on behalf of asylum seekers and migrants and levied a 25% tax on any financial support to an "immigration-supporting activity" in Hungary. The Commissioner considers that both amendments constitute illegitimate interferences with the freedom of expression of civil society organisations engaged in the defence of refugee and migrant rights and have a chilling effect on the exercise of rights guaranteed by the Convention.⁸⁴ Inexplicably, the Commissioner for Fundamental Rights has remained silent on these developments. He has not reacted to repeated and collective requests from civil society organisations to intervene on their behalf despite the fact that support for human rights defenders and co-operation with civil society organisations is listed as one of his core functions and he has confirmed his particular and personal interest in this aspect of his work on occasions including the online consultations.

⁷⁸ See Political Capital '[Political Capital fights back against brutal disinformation attack from Hungarian government-controlled media](#)', 5 January 2021. After the interview which appeared in [Politico](#) on 26 December 2020, the allegations were first published in *Magyar Nemzet* on 29 December 2020. Within the next 10 days some 150 identical articles were published in central and regional pro-government media outlets. On 17 February 2021, the [Budapest Civil Court](#) gave a first instance ruling, calling on *Magyar Nemzet* to publish a correction. Seven separate litigations for press correction and for non-pecuniary damages suffered by the individual, his family and the workplace are ongoing.

⁷⁹ See Political Capital '[Legally binding ruling: Péter Krekó won a lawsuit against Figyelő, Origo and 888 for spreading false information](#)', 18 December 2020.

⁸⁰ See also [statement](#) of the Commissioner on 15 February 2018.

⁸¹ See Judgment of the Court (Grand Chamber) [C-78/18](#) of 18 June 2020, *Commission vs Hungary* (Transparency of associations). Hungary did not repeal the Act but continued to implement it. [In February 2021](#), the European Commission sent a letter of formal notice to Hungary requesting it to take and implement all the measures required to remedy the situation.

⁸² From an interview on [Kossuth Radio](#), 19 June 2020.

⁸³ See *Gorzelik and others v. Poland* (appl. no. [44158/98](#), judgment of 17 February 2004).

⁸⁴ See [Statement](#) by the Commissioner for Human Rights, 1 June 2018. See also Joint Opinions of the Venice Commission and ODIHR [CDL-AD\(2018\)013](#) of 25 June 2018 and [CDL-AD\(2018\)035](#) of 17 December 2018.

e. Impact on specific groups and their access to rights

38. Persons belonging to marginalised groups, including migrants and LGBTI, have faced growing harassment in recent years, with the result that they have been silenced. The LGBTI community in particular has been the target of homophobic and transphobic statements by governing officials, including the Prime Minister himself.⁸⁵ Several legislative amendments in 2020, adopted during consecutive ‘states of danger’ of no relevance to the pandemic but creating conditions which precluded any public debate or manifestation of disapproval, significantly curbed the rights of LGBTI persons or served to stigmatise them further.⁸⁶ In September 2020, a children’s book with fairy tales featuring the stories of different individuals, including LGBTI persons and Roma, was publicly shredded by a member of Parliament and a planned public reading of the book had to be reorganised for fear of violence from extreme right-wing groups.⁸⁷ The Consumer Protection Authority ordered the publisher of the book to include a warning on its cover that it portrayed “non-traditional gender roles”.⁸⁸
39. As a result, the overall climate for LGBTI persons is deteriorating rapidly, resulting in their being marginalised and silenced still more. While LGBTI persons themselves are not given access to the media to express their views and concerns,⁸⁹ violent homophobic groups are given ample coverage. This imbalance fuels a general climate of hostility against the LGBTI community while, at the same time, making them invisible and reducing the public space on offer to them. The Commissioner finds incomprehensible that the Commissioner for Fundamental Rights failed to react, despite repeated requests by civil society representatives and citizens for him to intervene. During the online consultations, he highlighted the need to examine complex human rights matters carefully, as hurried steps could backfire and “views on LGBTI issues” diverged in Hungary. While that may be the case, the Commissioner stresses that human rights obligations apply continuously and that it is indeed an integral part of the role of an independent Ombudsman Institution to uphold international human rights norms, make every effort to protect those whose rights are violated and provide them with a voice, even when faced by an unfavourable government.

Conclusions and recommendations

40. The combined effects of a politically controlled media regulatory authority and sustained and distorting state intervention in the media market have eroded the conditions for media pluralism and the freedom of expression in Hungary. While independent voices can still be heard and media consumer surveys in 2020 cautiously suggest a renewed public appreciation for independent and professional journalism,⁹⁰ such voices have been systematically crowded out. Free political debate and the free exchange of diverse opinions, which are the prerequisites for democratic societies to thrive, have been severely curtailed, particularly outside the capital. The situation is exacerbated by sustained smear campaigns against human rights defenders and independent voices, which are designed to stifle civil society and send a clear and chilling message that there will be prompt retaliation against any form of criticism against the government. Moreover, the government has

⁸⁵ From an interview on [Kossuth Radio](#), 4 October 2020, equating LGBTI persons with a threat to Hungarian children.

⁸⁶ In May 2020, the Hungarian Parliament prohibited legal gender recognition in clear breach of international human rights norms and amid widespread [condemnation](#). Multiple court cases have been brought against this ban and some Regional Courts have announced their intention to submit it for constitutional review. Constitutional amendments adopted in December 2020 introduced an obligation for children to be brought up in accordance “with the values based on our homeland’s constitutional identity and Christian culture”.

⁸⁷ See [Shadow Report](#) to the GANHRI Sub-Committee on Accreditation, 18 February 2021. After the Minister of the Prime Minister’s Office insinuated that educational facilities using the book may face criminal charges, it was banned in several educational districts – a measure which was subsequently found illegal in at least one case.

⁸⁸ A legal complaint against the decision has been lodged. In a separate decision, [Coca Cola](#) was fined 500,000 Forints for its advertisement featuring same sex couples on the ground that this was detrimental to children’s development.

⁸⁹ Consecutive [annual reports](#) by the Media Council between 2014 and 2018 highlight the fact that LGBTI organisations are represented in only 0.1-0.8% of the civil society segment – which itself is very under-represented. Since 2018, access to the media is reported to have been further curtailed, even to the point where invitations already issued by public broadcasters to LGBTI persons have been rescinded because of orders received from above.

⁹⁰ See Mérték Media Monitoring [‘An infected media system’](#), 1 December 2020.

consistently failed to recognise the importance of the role of independent institutions, whether regulatory authorities or the judiciary. By repeatedly disregarding the judgments of national and international courts, the government has demonstrated that it has no intention of adhering to the rule of law, which is crucial for the functioning of democracy and, indeed, the unencumbered exercise of freedom of expression.

41. In order to create a favourable environment for media pluralism and freedom of expression in Hungary, the authorities should:

- a) amend the media legislation to i) divide the powers of the President of the Media Authority and the Chairperson of the Media Council between several autonomous bodies; ii) establish means of safeguarding the Media Council's freedom from political control and ensuring that it represents the full range of political/social groups and the media community; iii) reduce the ambiguity of provisions on illegal content and the application of the Media Council's punitive powers; and iv) ensure that courts have comprehensive powers of scrutiny and suspension with regard to its decisions;
- b) engage in broad consultations, including with relevant civil society organisations, prior to submitting a proposal related to the regulation of online platforms and ensure that it contains clear and predictable provisions for all content moderation and data retention practices, in line with the guarantees enshrined in the Convention and the relevant caselaw of the Court;
- c) take proactive steps to enable the free exchange of diverse information and opinions as these are the best means of addressing disinformation, and ensure that the relevant Criminal Law provisions are compliant with the requirements of legality, necessity and proportionality enshrined in Article 10 of the Convention;
- d) take all the necessary steps to implement the Tromsø Convention and ensure that strong public interest safeguards are included in the relevant legislation on access to publicly held information; show respect for the independent opinions of the NAIH and reduce the applicable deadlines for freedom of information requests as set by Government Decree 521/2020 (XI.25);
- e) publish information on the processes and distribution of state advertising revenues and comply with European standards related to transparency of media ownership and the application of state aid rules to public service broadcasting;
- f) adhere to Council of Europe standards relating to the protection of media pluralism and show due regard for the editorial freedom of all public and private media in Hungary; actively promote a favourable environment for free political debate ahead of the 2022 parliamentary elections and ensure a level playing field for all candidates in terms of media coverage and application of campaign financing rules;
- g) publicly and promptly condemn all incidents of hate speech and verbal attacks against journalists and other media actors and put an end to the spread of smear campaigns and misinformation about civil society organisations, human rights defenders and those who criticise the government;
- h) show unequivocal commitment towards the rule of law and implement with immediate effect all outstanding judgments of national courts, the Court of Justice of the European Union and the European Court of Human Rights.