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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on her visit to Hungary**

**Comments by the State\***

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\* The present document is being issued without formal editing.



## **Comments of the Hungarian Government to the draft report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms. Irene Khan on her country visit to Hungary held between 15 and 22 November 2021**

### **Summary**

*“By adopting laws and policies that favour media outlets supportive of its political agenda, ostracising and delegitimising other outlets, undermining independence of the judiciary and media regulatory institutions, and stigmatizing civil society actors, the government has endangered media freedom and undermined freedom of opinion and expression.”*

We find it generally problematic that the Report relies largely on perceptions, speculations and allegations and draws generalized summary and unfortunately even politicized statements from these. During the period of global crises, it is more important than ever to ensure that the evaluation of the situation prevailing in a state is based on a clear and well-elaborated methodological framework that enables a correct and objective assessment. We therefore ask for a revision of the scope of the Report (to exclude issues that are not directly related to the right of freedom of expression and opinion); to ensure that the Report is based on a transparent list of sources of different nature, properly introducing the different view; to avoid far-reaching conclusions based on individual cases and to avoid inherent bias in the language of the Report. In the following, these issues will be addressed in details.

### **Paragraph 6**

*“[...] make “freedom ... a central element of state organization, but [would apply] a specific, national, particular approach in its stead.”*

The way of quotation distorts the original text. We ask to refer to the given sentences in their entirety: “the new state that we are building is an illiberal state, a non-liberal state. It does not deny foundational values of liberalism, as freedom, etc.. But it does not make this ideology a central element of state organization, but applies a specific, national, particular approach in its stead.”

*“Over the past decade, using its parliamentary majority, the Orbán government has pursued a program of wide-ranging constitutional, legislative and institutional changes, including in the area of freedom of expression to reach that objective.”*

This sentence insinuates that there is a problem with a government pursuing its objectives. Every government in the world pursues its objective. We request deletion of this sentence.

### **Paragraph 7**

*“They were followed by laws on non-governmental organisations, the higher education system and the judiciary, among other issues.”*

There have been several legislative amendments in the last 12 years; it is not entirely clear why the Report highlights only these.

*Many of the laws, policies and practices of the Orbán government have been the object of fierce criticism by international and regional human rights bodies, including the UN High Commissioner for Human Rights the UN Human Rights Committee, the Special Procedures of the UN Human Rights Council the European Commission, the Court of Justice of the European Union and the Council of Europe.*

This way of referring to the government is rather unusual in international documents and creates an unfortunate picture of politicized assessment. It should be avoided.

These bodies formulate criticism with respect to laws and practices of all governments, because this is their task. The sentence insinuates that this is unique. In addition, the sentence omits to mention that many of the concerns expressed by these institutions had been

addressed by the government and finally the laws and practices in many instances have been accepted. We request a re-formulation of the sentence.

*“The profound, systemic comprehensive strategy of political transformation led to such grave deterioration of human rights and democratic institutions in Hungary that for the first time in 2018 the European Parliament called on the Council of the European Union to initiate the procedure laid down in Article 7(1) the EU Treaty, “to prevent a systemic threat to the Union’s founding values.”*

Due to the *sui generis* nature of the EU legal order, the compliance with obligations under the Treaties shall only be examined within the framework of EU-level mechanisms. These questions should not be converted into UN-level issues. Such references should be omitted from the text.

#### **Paragraph 10**

*“On 5 May 2020, the Hungarian Parliament adopted a political declaration rejecting the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on the ground that it defines gender as a social construct. Among other major international human instruments, Hungary has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.”*

Hungary as a sovereign state has the right to decide on ratifying international treaties. The fact that Hungary did not ratify these conventions is not the sign of a failure or deficiency. Furthermore, these Conventions are not at all connected to the scope of the Report or have only very remote connection to it. This paragraph should be omitted.

#### **Paragraph 17**

*“Amendments to the media package since its passage in 2010 have failed to address the major concerns.”*

The legislation regarding the area of media in effect was formulated between 2011-2013 and was thoroughly consulted with the Secretary General of the Council of Europe. The Government duly considered the recommendations of the relevant international fora and the Hungarian legislator addressed all the remarks having relevance in legal terms. Secretary General Jagland at a press conference in 2013 said that the Council of Europe had “constructive dialogue” with the Government and that “significant progress has been made”. We request that these elements are featured in the report.

#### **Paragraph 19**

*“In Hungary the Media and Press Laws as well as the manner, in which they are being implemented, together with other laws, policies and practices of the government, have created a situation in which the freedom, independence and pluralism of the media have been put at grave peril.”*

The report does not support this general and preliminary finding, which has no basis in fact, with any objective facts, data or evidence. Contrary to what is written in the report, neither the relevant legislation nor the policy and practice of the government create a situation that would endanger freedom of the press, media independence or media pluralism. On the other hand, it can be stated that the European Commission and the Council of Europe have examined the compliance of the Hungarian media regulation with the European Union law on several occasions in detail but have not found it to be in conflict with EU law. In addition, the Hungarian Constitutional Court carried out the normative control of the Hungarian media regulation and did not establish any constitutional problems.

It is important to note that the Media and Information Communications Authority (NMHH) is not a legislative, but an executive body. In the context of its executive powers, the Media Council is only entitled to issue recommendations and guidelines in order to establish predictability, legal certainty and predictable case law, as a fundamental guarantee of the rule of law and legal certainty within the framework of existing legislation.

*“The Special Rapporteur wishes to highlight in particular the lack of independence of the regulatory authority, the erosion of media pluralism and the serious threats to the right of journalists to access information.”*

Ministry of Interior stressed on several occasions during the meeting that it does not discriminate between press inquiries and treats all media equally.

### **Chapter 1. Regulatory authority**

Unfortunately, this subchapter of the Report relies largely on perceptions, speculations and allegations and draws generalized, summary and unfortunately even politicized statements from these. Such an approach should be avoided.

#### **Paragraph 20**

*“ (...) the National Media and Info-communications Authority (“the Media Authority”), (...)”*

The National Media and Information Communications Authority (NMHH) is not a Media Authority. NMHH as a convergent authority is responsible for both telecommunications and media tasks. Media Council is the Media Authority, which is an independent body of the NMHH, under the supervision of the Parliament. The Media Council and its members are subject only to the law and may not be instructed in their activities.

*“In addition, the President of the Authority, who is also President of the Council, has extensive powers over the national public service broadcasting organizations, especially the Media Services and Support Trust Fund (MTVA).”*

The President of the Republic shall appoint the President of the NMHH on the proposal of the Prime Minister. The President of the Media Council is elected by the Hungarian Parliament by a two-thirds majority, as are the other 4 members of the Media Council. The President of the NMHH shall be nominated as President of the Media Council, but cannot take office until being elected by the Parliament. The positions of president of the NMHH and of the media council are separated and do not merge automatically.

#### **Paragraph 21**

*“Not only is the media governance and regulatory system highly centralized by law and endowed with excessively broad powers, the appointment process for these bodies is also politicized.”*

This claim is completely unfounded. It is important to point out that the powers of the Media Council, the rules for appointing the chairman and members of the body, and the rules guaranteeing the independence of the media authority have been examined several times by the European Commission and the Venice Commission. On the basis of all this, it can be concluded that the regulation of the media law is in all respects in accordance with the law of the European Union.

*“The Fidesz party has used its large parliamentary majority to exercise full control over the nomination and appointment of the President and members of the Council. The practice of the Fidesz Party to endorse only its own candidates and exclude the consideration of nominations by other Parties has created serious doubt about the impartiality of the appointment process and increased the likelihood of political influence and abuse of power.”*

The provisions of the Media Act ensure that the supervisory organs of the media services are appointed in a democratic and transparent manner in line with the relevant international

guidelines. The conditions of appointment ensure that only highly qualified persons with significant expertise in the field of media law can become members of this body. The nomination of the President is on professional grounds. According to Section 111/A of Media Act the Prime Minister before making the recommendation, shall request the Public Service Board, and the nation-wide self-regulatory trade organizations or interest groups of communications service providers, media content providers, broadcasters and journalists existing for at least five years to make a recommendation for the person of the president candidate. The requested organizations shall have the right to make public the name of their president candidate, subject to the prior consent of the person nominated. The Prime Minister shall consult with the requested organizations in person and make a recommendation upon consideration of the proposals made during such discussions.

The rules of nomination ensure that the members of the Media Council are appointed after reaching a high level of political consensus. In the nomination process, the nomination committee first needs to reach a unanimous decision, in the absence of unanimity, a two-thirds majority is required, which coerces a broad consensus. The chairperson and the four members of the Media Council are elected by Parliament for a term of nine years by a majority of two-thirds of the members present. The fact that the governing parties have a two-thirds majority in the Parliament is the result of democratic elections, not the result of any malpractice; thus, it cannot be interpreted as a deficiency.

#### **Paragraph 22**

*“The government is aware of the concerns expressed by the Human Rights Committee about the lack of sufficient independence of the Media Council and the Media Authority to perform their functions and their excessively broad regulatory and sanctioning powers.”*

We would like to indicate that the current Hungarian regulations are in line with relevant provisions of the Audiovisual Media Services Directive with special regard to Article 30 of the amended Directive, which provided for the independence of regulatory authorities from governments.

*“In February 2021, the Council of Europe’s Commissioner for human rights found that “(t)he 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.”*

Hungary has submitted detailed comments to the Report of the Commissioner. The facts and arguments described therein shall be taken into consideration in the current Report, which reiterates at several points the same concerns as the CoE Commissioner. See <https://rm.coe.int/omments-of-the-hungarian-authorities-on-the-memorandum-by-the-council-/1680a1f0f0>

#### **Paragraph 23**

*“However, the recent action – and inaction – by the President of the Authority/Council and members of the Media Council have demonstrated clearly that these institutions do not have the independence or capacity to stand up against the onslaught of the government’s actions and policies contravening media freedom.”*

This statement seems to contain a summary and perceptions-based statement. It suggests that according to the Rapporteur the independent Hungarian authorities should have taken a particular decision in individual cases in order to qualify as independent. This approach should be omitted in order to safeguard the objectivity of the report.

We would like to emphasize that Media Council acts in accordance with the law and its decisions may be appealed to an independent tribunal. In accordance with the guarantee rules of the official procedure, the Media Council makes decisions within the framework of a demonstrably independent, non-discriminatory, transparent and open procedure, during which it emphasizes the public interest aspects related to ensuring and maintaining media pluralism. At the basic level, the Media Act states that “The diversity of media services is a paramount value. The protection of diversity also extends to the prevention of the creation of a monopoly on property and to the unjustified restriction of competition in the market. The

provisions of this Act shall be interpreted in the light of the protection of diversity.” (Section 4)

*“The Council did not pronounce itself on the merger of almost 500 outlets under the Central European Press and Media Foundation (KESMA).”*

This general finding of the report also lacks an examination based on objective facts. The establishment and operation of the Central European Press and Media Foundation (KESMA) did not substantially change the operation of the media market, nor did it adversely affect media pluralism and the exercise of the right to diverse information. Importantly, KESMA's market position and impact cannot be judged on its own merits and the number of media owned. A realistic picture of KESMA's role in the Hungarian media market and opinion market can be obtained if we take into account the influence of KESMA-owned media, other players in the Hungarian media market, including not only the media established in Hungary, but also the Hungarian media market, content services, their market power, their share and the proportion of the audience they reach.

It can be stated that the role of the press products published by KESMA in public information and opinion formation is not significant when examining the entire diverse media offer available on the entire Hungarian media market, especially when considering the role of influencing new types of media services and online platforms. Based on the entire media market, it can also be stated that KESMA cannot be considered a dominant player in the media market based on its revenues.

It is also important to emphasize that media market concentration is not in itself infringing and does not necessarily infringe media pluralism, but if KESMA's operation would adversely affect competition in the media market or infringe conflict of interest rules, competition or media law proceedings may be instituted. If the influence of the media services owned by KESMA reaches the level specified in the Media Act, the procedure for the prevention of media market concentration is guaranteed in the Media Act. However, KESMA does not currently reach the legal level.

*“The Council has taken no action against pro-government media vilifying migrants and LGBTIQ, despite the provision in Press Act that media content should respect human dignity.”*

It is unacceptable that the report bases its findings and conclusions on statements made at the level of generality that are not substantiated by objective facts. The report states, without speculation, that the pro-government media had published defamatory content against migrants and LGBTIQs and that there had been a request for such content for which the Media Council had not acted unlawfully. Under the Media Act, in the case of an application, the Media Council is obliged to act in all cases (if it fails to do so, the applicant may go to court) and to make a reasoned decision on the application, which can be challenged in court. Thus, it is clear from the report that the guarantee rules of the official procedure ensure that in the case of content deemed to be infringing, in the case of a request to that effect, the Media Council examines the content in question on the merits.

As an example, in one of the interactive programs of the radio media service called Karc FM, in connection with a civil protest, the presenter used defamatory terms against civil activists and described them as enemies of Hungary, members of an anti-Hungarian network supported from abroad, and therefore the Media Council prohibited the infringing conduct, ordered the service provider to publish a notice and imposed a fine on it.

Another example of official action against hateful content was the coverage of a non-governmental organization running an asylum program on one of Echo TV's permanent media services. The program also dealt with the wave of migration to Europe, including Hungarian NGOs operating asylum programs, in particular the Hungarian Helsinki Committee and Migration Aid. The program presented these organizations as harmful and dangerous to Hungary and to Hungarian society. As the compilation was suitable for inciting hatred against the employees and activists of these organizations, the Media Council prohibited the infringing conduct in its decision, obliged the service provider to publish a notice and imposed a fine on it.

An example of an official action against exclusionary content is the case of Magyar Hírlap's internet press product, when an article in connection with a gay parade dealt with the situation of the homosexual minority in Hungary. The Media Council noted that the article as a whole argued for the alienation, isolation, and isolation of the homosexual community from the majority society.

In its decision, the Media Council obliged the publisher to remove the content from its website immediately, inform its readers about the infringement on its website and imposed a fine on it.

#### **Paragraph 24**

*"Furthermore, the Media Council failed to act against biased reporting in public service media, although such bias was explicitly identified by the OSCE/ODIHR Limited Election Observation Mission following the 2018 elections."*

This finding is unfounded. In the event of a violation of the balanced information requirement, the Media Council shall act in accordance with the procedure regulated by the Media Act, however, no circumstance has arisen contrary to the position of the proposer that would have adversely affected the unbalanced information. It is important that the investigation and detection of media offenses is not a matter for the rapporteur, but for independent national law enforcement authorities, and that these procedures are harmonized at EU level and that decisions taken in the proceedings can be challenged in an independent court.

#### **Paragraph 25**

*"In discussions with the Special Rapporteur media experts pointed to the decisions of the Media Council on allocation of radio frequencies as clear evidence of its political bias. They claim that the Council has consistently favoured those close to the ruling party, with the result that independent local radio has been practically eliminated. The decision on Klubradio which is now deliberately the subject of an EU infringement procedure is discussed in the next section of this report."*

According to the latest register of the Authority, there are 4 public service radio services in Hungary with limited coverage, 1 nationwide commercial reception area, 37 district reception area, 108 local reception area, and 14 small community radio services, also with local reception area, using limited resources.

In view of the above, the statement that local radio has ceased to exist in Hungary is incorrect.

Radio media service opportunities (frequencies), which are state-owned limited resources, can be obtained through a tender procedure. Detailed rules of the tender procedure are laid down in Act CLXXXV of 2010 on Media Services and Mass Communication (hereinafter: Mttv.) and is based on the call for tenders issued by the Media Council. Tender procedures are official procedures in which it is governed by Act CL of 2016 on General Administrative Procedure. The rules of the Act shall be applied with the exceptions and additions contained in the Mttv. The possibility of legal appeal against the decisions of the Media Council in the tender procedure is provided in accordance with the law.

Last year, the Media Council determined the success of the tender procedure for 45 tender procedures, and thus 45 frequencies, and announced the winner. In 43 of these 45 procedures, one tenderer submitted a tender, so no evaluation (and preference) was carried out. The Media Council declared the only tenderer who submitted a valid tender to be the winner. A competition was held in two tender procedures, in which case the Media Council selected the winner of the tender procedure by evaluation.

Calls for proposals are public and will also be published on the Media Council's website. The evaluation system and framework for calls for proposals are pre-established. Political aspects are not included in the evaluation categories in any of the calls for proposals.

**Paragraph 26**

*“There was widespread speculation that the resignation was engineered to enable the Government to appoint a new President for another nine years, and by so doing reinforce the ability of the ruling political party to control the media sector, regardless of the results of the 2022 April elections.”*

It is unacceptable that speculations and assumptions that ignore facts and evidence form the basis of a report that should be based on objective findings of fact.

It was a personal decision by President Karas not to fulfill his full mandate. This decision did not and could not have had any effect on the independence of the media, as there is no link between the departure of the President and the independence of the media, especially since the Media Council is a body with four members in addition to the President. Its operation and quorum were not affected by the termination of the previous President's term of office.

**Paragraph 27**

*“The Special Rapporteur believes that the lack of political independence of the regulatory authorities has had serious adverse consequences on the freedom, (...)”*

Without repeating what has been said before, we point out that legal and factual findings without evidence are not suitable for establishing an objective, impartial report. The independence of the Media Council is guaranteed by a media law in line with EU law.

*“She calls on the government (...) enhancing the public accountability of the Media Authority and Council.”*

It is not clear exactly what the proposal is about. The Media Act sets out in detail the rules for the election and appointment of the Chairman and members of the Media Council, as well as the rules for guaranteeing the independence of the Board and the democratic requirements for the procedures of the Media Council.

**Paragraph 29**

*“While one official claimed they have achieved a “50:50 balance”, others acknowledged that most print and broadcast media are supportive of the government’s political line and only the online space provided “compensation” to the opposition.”*

Without citing an authentic source, such statements are, in our opinion, not only incorrect, but justify the bias of the author. We also note that in order to make such a statement, the conditions of the Hungarian media market and the influence of each media market segment should have been examined in detail. For example, this type of study would make it clear that the print media referred to in the report has been facing serious problems for years, the number of readers is constantly falling, and the importance of influencing opinion in this market segment is constantly declining. The decline of traditional media is well illustrated by the fact that less than 1 percent of those surveyed in an objective market survey use the print press for “intelligence”.

**Paragraph 30**

*“As noted by a wide range of stakeholders in Hungary as well as European and international institutions, the numbers of media outlets supporting or aligned with the government’s political line have continued to expand, while those independent or critical of the government have faced hurdles or have closed down. The Special Rapporteur was informed that all national television channels, except one run by the German RTL company, and all national radio are pro-government outlets.”*

Nor is that finding correct. Contrary to the statement, it is a clear fact that there are hundreds of media service and press publishing companies in Hungary, and there is no administrative or financial requirement to enter the market. At the basic level, the Media Act stipulates that media services may be provided freely, press products may be published freely, information



and opinions may be transmitted freely through the mass media, and Hungarian and foreign media services intended for public purchase may be freely available.

Thus, anyone can enter the media services market, the Media Act does not link the performance of the activity to a corporate form, so a natural person, association, foundation or other legal entity can also provide media services. Thus, the Media Act does not contain a special capital requirement or corporate governance rule for companies providing media services, it only establishes conflict of interest rules in order to avoid transparency of ownership and media concentration.

Based on the above, the media service can be provided freely, neither the Media Act nor the Media Council defines the subject matter of the media service. There is no record of which media service would be pro-government or opposition, but it is clearly untrue that only the media service of a channel operated by the German company RTL would be able to display “opposition” content.

The language of the report unfortunately conveys an inherent bias at certain points. Presenting one part of the media as ‘pro-government’ and the other part as ‘independent’, is misleading, biased, and invalid. Therefore the Government strongly objects such an erroneous approach.

*“The gradual extinction of independent or more critical outlets is reportedly due to the government’s proactive policies and strategies to root out critical voices and to provide direct and indirect political and financial support to those outlets willing to further its policies.”*

Without facts or evidence, this finding is also unsuitable for a substantive, professional-level response.

### **Paragraph 31**

*“To give some examples, in 2016, the largest print daily, Nepszabadsag, shut down soon after it was bought by businessmen with reported links to the government.”*

Both the sale of some elements of the portfolios, and the buyers’ decisions to reorganize the business models with terminating the loss-making papers (like Népszabadság) were the internal decisions of the affected business organisations and not results of a public authority’s decisions.

*“In September 2018, the parent company of Index.hu, the second-largest portal site, was purchased by investors with ties to Fidesz’s satellite party, KDNP. Two years later, Index.hu’s editor in chief was dismissed after he voiced concerns about the outlet’s independence. Following a wave of resignations of its staff in protest, Index resumed operating under a completely new editorial leadership”*

The findings are based on assumptions without facts or evidence, and it is not clear how the examples presented would support the Rapporteur’s preconception. In the media markets, the change in the ownership structure and the possible termination of a company are fundamentally influenced by market conditions and, as described above, no company is excluded from publishing a press product or providing a media service.

Such allegations and rumours should be avoided from the analysis of an independent monitoring.

*“In September 2020, the request for extension of the broadcasting license of Klubradio, a well-known commercial talk and news radio station sometimes described as the voice of the left-liberal opposition, was rejected by the Media Council on the grounds that, in 2016 it had “repeatedly violated” its responsibilities under Section 22(8) of the Media Act.”*

The Report fails to refer to the arguments of the Government and to the complete facts of the case. During its seven years of operation, Klubrádió has repeatedly violated the provisions of the Media Law, which resulted with legal proceedings from the Media Council. In such cases, the Media Council is required by law to reject the request of the service provider for the prolongation of its permit of frequency use. This legal provision is in place since 1996 and has been consistently applied by the media authority. Klubrádió had the chance to

continue its operation on the same frequency or to submit its bid for tender for the rights of use of any other frequency. In case of all administrative decisions of the Media Council, judicial review, which encompasses both formal and substantial review by an independent court in a fair trial was ensured. The report in its formulation suggests that the Government should have had an influence on the judicial review, which would be clearly against the separation of powers.

*“Apparently Klubradio had violated this law by twice submitting its monthly reports on Hungarian music programming past the submission deadline. Despite the apparent minor nature of the offence and the settling of fines for the breaches at that time, the licence of Klubradio was not renewed by the regulator, and then it was not allowed to compete for its airwave licence in February 2021.”*

It is unacceptable to assume that the purpose of the Media Council is to prevent a radio from operating by making a discriminatory decision. In all its proceedings, the Media Council acts in accordance with the law, and all its decisions may be subject to judicial review. The legality of the decisions of the Media Council in the case of Klubrádió has been fully reviewed by the Hungarian courts and confirmed by final court rulings that the decisions of the Media Council are fully lawful and that both the Hungarian legislation and the procedures in individual cases are in line with the relevant directive provisions and principles.

In addition, it is also important to emphasize that the regulatory environment has remained essentially unchanged for twenty-five years, and the practice of applying official law has been uniform, so the procedure for granting and renewing radio media service rights using more than a thousand limited resources has been conducted under the same rules.

Numerous court proceedings were initiated in connection with the proceedings, and during this period, it did not appear in any case that the Hungarian regulations were incompatible with the European Union regulations in any way, nor did it appear that the Media Council interpreted them in any discriminatory manner. The relevant rules. This concern was raised solely by the Commission in the context of the Club Radio case and has therefore initiated infringement proceedings against Hungary. This procedure is still ongoing, and the Hungarian Government has answered all the Commission's questions in detail.

A statement that can be proved to be untrue by objective facts. On November 4, 2020, the Media Council launched a tender procedure for the use of the media service facility, creating the possibility for the use of the media service facility to be continuous. Three applicants, including Klubrádió, submitted tenders. The Media Council ruled in the proceedings that the tender procedure was unsuccessful, given that all tenders submitted in the tender procedure were invalid. Klubrádió filed an action against the decision of the Media Council, however, the court finally dismissed its action in a two-instance procedure and found that the Media Council acted in a non-discriminatory manner during the proceedings and Klubrádió submitted an invalid tender in several respects, thus invalidating it. declaration can only be traced back to Klubrádió's own fault.

*“Consequently, it is no longer able to broadcast on air and remains available only online where its representatives claim it has a much smaller audience and is less accessible to rural listeners.”*

The media service right of Klubrádió was for Budapest, so it did not provide services to the rural audience, thus the rural audience's number could not decrease with the termination of the radio media service right. In addition to the analogue radio media service, Klubrádió was still available on the Internet and is still available there today.

### **Paragraph 32**

*“Whilst radically shrinking independent and critical media, the government simultaneously facilitated the merger of 476 Hungarian outlets under the Central European Press and Media Foundation (KESMA), a foundation whose board members and Chief Executive have close ties with the Fidesz party. Apparently, the media outlets were donated to KESMA by several pro-government businessmen. KESMA, which now owns TV channels, radio stations, online news sites, tabloids and almost all regional print daily newspapers, appears to have been using its highly favourable outreach to promote the views of the government. By qualifying*

*the merger as an issue of “strategic national interest”, the government exempted the consolidation from scrutiny by the competition authorities. State officials explained that the “strategic national interest” is to retain ownership in Hungarian hands but failed to explain why that should lead to ownership only of those who support the government.”*

This general finding of the report also lacks an examination based on objective facts. The establishment and operation of the Central European Press and Media Foundation (KESMA) did not substantially change the operation of the media market, nor did it adversely affect media pluralism and the exercise of the right to diverse information. Importantly, KESMA's market position and impact cannot be judged on its own merits and the number of media owned. A realistic picture of KESMA's role in the Hungarian media market and opinion market can be obtained if we take into account the influence of KESMA-owned media, other players in the Hungarian media market, including not only the media established in Hungary, but also the Hungarian media market, content services, their market power, their share and the proportion of the audience they reach.

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*“Apparently, the media outlets were donated to KESMA by several pro-government businessmen.”*

Such allegations and rumours should be avoided from the analysis of an independent monitoring.

### **Paragraph 33**

*“Not only has the merger resulted in a sharp decline of media pluralism, but it also appears to be one of the most emblematic examples of how the Hungarian media market has been profoundly transformed by the Orbán government in its favour.”*

This statement seems to be highly politicized and not supported properly by objective facts.

*“The lack of any legal requirement for transparency in media ownership is a major weakness in Hungary.”*

Such rules are common not even within the EU.

### **Paragraph 34**

*“On the other hand, the MTVA controls media content and quality produced by the Duna Médiaszolgáltató Nonprofit Zrt (Duna).”*

According to the Media Act Section 84-86, the Parliament shall establish the Public Service Foundation to provide for public service media and news service programs and for protecting their independence. The Public Service Foundation is the owner of the Duna Media Service Nonprofit Private Limited Company. The Board of Trustees shall function as the management body of the Public Service Foundation. Parliament shall elect six members to the Board of Trustees by voting for each member individually. One half of the members who may be elected by Parliament to the Board of Trustees shall be nominated by the governing faction and the other half by the opposition faction. The governing faction and the opposition factions shall agree as to the persons nominated by each side. The chairperson of the Board

of Trustees and one other member shall be delegated by the Media Council for a term of nine years.

The Media Act also declares in Section 118, that the chairperson of the Board of Trustees of the Public Service Foundation and the chairperson and members of the Public Service Board, the executive director and deputy director of the Fund, may not be appointed to the President of the Authority (NMHH).

#### **Paragraph 35**

*“During her visit, the Special Rapporteur heard repeated testimonies that the public service media has become a propaganda tool for the government.”*

Such allegations (without even referring to sources) cannot be reacted on properly, and should be omitted for the sake of objectivity.

*“Furthermore, some stakeholders reported that the public service provides “free” news content to smaller outlets, which in turn reinforces the uniformity of news, with serious adverse effects on freedom of opinion.”*

The fact that certain news of general interest are taken over by several sources, is a natural phenomenon. The news of the Hungarian News Agency can be taken over by all media services. Therefore, the fact that certain news appear similarly in the public service media and in certain other press products is related to the normal functioning of the media market.

#### **Paragraph 36**

*“In their meeting with the Special Rapporteur the MTVA representatives denied political bias. However, they could not provide data to demonstrate equal participation of politicians from different political parties in the public service media. Despite documentary evidence of correspondence showing that the Fund had ordered its staff not to report on statements from human rights organisations, Amnesty International and Human Rights Watch, MTVA representatives maintained that such matters fell within the sole discretion of the editor. They shared with the Special Rapporteur an internal code of ethics and integrity adopted in 2011. Given the lack of independence of the regulatory body and its control over the public service media and other evidence that shows the bias of the public service media, the code of conduct is clearly an inadequate response.”*

Nor are these statements in the report substantiated by substantive and objective arguments or evidence, making them unsuitable for professional-level debate. However, we note that the financial operation and program structure of the public service media service provider are completely independent of the Media Council, which is clearly guaranteed by the rules of the Media Act.

*“Given the lack of independence of the regulatory body and its control over the public service media and other evidence that shows the bias of the public service media, the code of conduct is clearly an inadequate response.”*

This statement seems to be highly politicized, categorical and not supported properly by objective facts.

#### **Chapter 4 State support of the media (paragraph 37-41)**

The report does not support these findings either.

It is important to emphasize that the content and uniform definition of “public advertising expenditure” cannot be defined even in legal theory in Hungary or in European Union law, therefore there is no objective measurement of such expenditures based on an accepted method, so the exact quantification of public advertising expenditure is not possible. There is also no international standard for the form in which advertisements and campaigns should be compared to the entire market.

However, the Media Council is of the opinion that public advertising spending is transparent, that its share is not significant in relation to the volume of the entire advertising market, and that there is no substantiated evidence that the distribution of advertising spending would be

unfair. Year after year, the Hungarian Advertising Association prepares an analysis of the Hungarian advertising market and estimates its size. Due to the voluntary nature of the data, an estimate is available for the television market, which shows that public advertising accounted for only 14% of turnover. According to other data (Nielsen Media Researcher), only 0.6 percent of the advertisements in the 79 television channels surveyed were traditionally attributed to the government.

We also note that state subsidies and resources provided to the media sector are audited by the State Audit Office.

#### **Paragraph 40**

*“It is alleged that the economic distress of the media sector was exploited deliberately by pro-government businessmen to acquire outlets which were then consolidated under the umbrella of KESMA.”*

Such allegations (without even referring to sources) cannot be reacted on properly, and should be omitted for the sake of objectivity.

#### **Paragraph 44**

*“While recognizing the importance of upholding the right to privacy, the Special Rapporteur believes the restriction of freedom of expression in Article VI is overly broad and therefore fails to meet the test of necessity and proportionality required under Article 19 (3) of the ICCPR.”*

Article I) Paragraph (3) of the Fundamental Law states in a general way that *“The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.”*

#### **Paragraph 47**

*“However, the officials were unable to provide any further information on the policies, the process, safeguards, or oversight measures in place for targeted electronic surveillance.”*

The details are described in the relevant laws, which are publicly available and are described in details in the Report of the National Data Protection Authority. See <https://www.naih.hu/adatvedelmi-jelentesek/file/486-jelentes-a-nemzeti-adatvedelmi-es-informacioszabadsag-hatosag-hivatalbol-inditott-vizsgalatanak-megallapitasai-a-pegasus-kemszoftver-magyarorszagon-torteno-alkalmazasaval-osszefuggesben>

#### **Paragraph 49**

*“The Special Rapporteur is concerned that the allegations regarding the use of Pegasus surveillance technology against journalists will have a chilling effect on investigative journalism.”*

This statement is highly hypothetical and should be omitted from the Report.

#### **Paragraph 50**

*“In 2020, the government adopted new regulations in the context of the COVID19 pandemic, which allows public bodies to extend the deadline for responding to freedom of information requests from 15 to 45 days when the data request may “endanger the fulfilment of public tasks related to the state of danger”, which could be prolonged by an additional 45 days if required. Such a long delay in providing information is detrimental for journalism as the news loses value over that period of time, and also creates a risk that such delay will be used by the authorities to avoid media coverage of certain information.”*

At the meeting, the Ministry of Interior indicated that it will respond to all public data requests received, as far as its tasks and competences cover. The extension of the deadline for responding to requests due to the Covid-19 epidemic will only be used by the body concerned if the original deadline cannot be met for some reason. The special rapporteur was

advised to study Act CXII of 2011 on the Right to Informational Self-Determination and Freedom of Information, given that the legislation contains detailed rules on the different types of data. The epidemiological emergency has not been lifted, and accordingly many restrictions are still in force, including the 45-day rule, but those on assembly are no longer in force.

#### **Paragraph 52**

*“As part of the Authorisation Act adopted in the context of the COVID19 pandemic, the government amended Section 337 of the Criminal Code to extend the offense for “fearmongering” to up to five years’ imprisonment if the information is “capable of obstructing the efficiency of protection efforts” during a “state of danger.”*

It is noteworthy that the title of the act concerned is ‘Act XII of 2020 on the containment of coronavirus’. We propose to stick to the official title of the legislation instead of a deceptive one.

At the meeting in November 2021, rapporteur Irene Khan asked about the experience of the fear-mongering on the Covid-19 epidemic. The Ministry of the Interior said that several proceedings were initiated at the beginning of the epidemic, when there was a higher degree of uncertainty, on the basis of the legal provisions of the Hungarian Criminal Code in force.

Furthermore, it has to be noted that the new criminal law rule did not extend the scope of the previous norm, but created a new, special version: The prohibition applies only to statements of fact that are untrue and capable of hindering the effectiveness of the defence, and the communication must be capable of hindering or frustrating the effectiveness of the defence.

*“The amendment was adopted purportedly to address false rumours that might hinder the effectiveness of the efforts to combat the COVID-19 pandemic. In practice however, the provision was reportedly used by the authorities to silence individuals and media critical of the government’s response to the pandemic.”*

Hungary has submitted detailed comments to the Report of the Commissioner. The facts and arguments described therein shall be taken into consideration in the current Report, which reiterates at several points the same concerns as the CoE Commissioner. See <https://rm.coe.int/omments-of-the-hungarian-authorities-on-the-memorandum-by-the-council-/1680a1f0f0>

#### **Paragraph 56**

*“During her visit the Special Rapporteur heard repeated complaints from journalists working for independent outlets about restrictions on accreditation or access to the Parliament building, parliamentarians and politicians. Several journalists reported that the outlets that are not favoured by the government face challenges in obtaining information from the government, accessing official press briefings, or getting interviews with senior members of the government. They also reported that some sources do not feel comfortable to respond to questions from journalists belonging to media outlets not favoured by the government.”*

Such perceptions are difficult to refute or to comment on by the national authorities, and should be omitted.

#### **Paragraph 57**

*“A number of legislative and policy changes by the government in recent years have sought to restrict the role of non-governmental organizations, especially human rights defenders, LGBTIQ rights and gender equality advocates and online activists.”*

Such intentions of the legislation cannot be supported by factual evidence.

#### **Paragraph 58**

*“In 2017 Hungary adopted the NGO Transparency Law, which imposed obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving financial support from abroad that exceeds a certain*

*threshold. International human rights mechanisms, including this mandate, urged the government to withdraw the Law as it was discriminatory, and stigmatized and delegitimized NGOs that receive foreign funding.”*

The Court explicitly endorsed the objective of the Hungarian legislation by stating that some civil society organisations may, having regard to the aims which they pursue and the means at their disposal, have a significant influence on public life and public debate and that the objective consisting in increasing transparency in respect of the financial support granted to such organisations may constitute an overriding reason in the public interest.

#### **Paragraph 60**

*In March 2018, a controversial set of laws known as the ‘Stop Soros Legislative Package’ were adopted, criminalising “organisational activities” to assist asylum-seekers lodging asylum requests. As part of the legislative package, organisations receiving funds from abroad were subjected to onerous licencing requirements and a special tax. It generated a strong reaction from international human rights bodies, including the Special Procedures, criticizing the xenophobic nature of the legislation and the creation of a hostile environment for asylum seekers and the organisations supporting them. In November 2021 the Court of Justice of the European Union ruled that the legislation infringed EU laws.*

This case seems to be connected rather remotely to the scope of the Report.

#### **Paragraph 61**

*“The ruling of the European Court is a positive development not only for the freedom of expression of civil society organizations but also for the realisation of the right to information of refugees and asylum seekers. The Special Rapporteur was disappointed to note the defiant reaction of the government, which suggested in its last UPR that it may still initiate action against foreign-funded civil society organisations.”*

This is a misinterpretation of the Government’s arguments and should be omitted. The respective recommendations have been rejected because “because they contain factually inaccurate allegations.” The Fundamental Law guarantees the freedom of the civil society, and the Hungarian legislation has even eased the administrative burdens accompanying the registration of such organizations.

#### **Paragraph 62**

*“The European Court decisions vindicate the position of civil society as a vital pillar of an inclusive, democratic society. The Special Rapporteur encourages the government to review and revise its position on the issue of civil society organisations receiving foreign funding, especially those working on human rights, migrants and asylum seekers.”*

This review has been carried out after the judgment of the CJEU. The current framework is in line with European standards.

#### **Paragraph 63**

*“In his report on academic freedom in 2020, the previous Special Rapporteur on the freedom of opinion and expression described the legal pressure which forced the Central European University (CEU) to move its campus from Hungary as an example of assault on academic freedom. Subsequently, the Court of Justice of the European Union ruled in November 2020 that the law that had been applied to the CEU was contrary to the provisions of the Fundamental Rights Charter.”*

The modified law came into force on June 4, 2021 and it was based on an established European legal model. According to the amendment to the law, a higher education institution established in a non-EEA country may pursue training activities leading to a degree in Hungary if

- the program provided in Hungary is equivalent to a program of a Hungarian higher education institutions,

- the admission requirements for the program are in line with the admission requirements for a state-recognized Hungarian higher education institution providing program comparable to that,
- the name of the foreign higher education institution is included in an international agreement concluded between the Government of Hungary and the government of the state where the foreign higher education institution has its seat, on the equivalence of higher education qualifications and degrees, and
- the right of the higher education institution to provide training activities has been granted by the Education Office upon request.

#### **Paragraph 64**

*“The Special Rapporteur received extensive testimony from stakeholders in academia who feel their institutional and individual freedoms are under attack from a range of legislative and policy changes introduced by the government since 2018.”*

Such perceptions are difficult to refute or to comment on by the national authorities, and should be omitted

#### **Paragraph 65**

*“The scholars raised concerns about the transfer of control of most of Hungary’s public universities to private entities governed by individuals closely allied to the Fidesz party. They mentioned ideologically driven attacks against individual scholars by media supportive of the government, and of efforts to influence research and teaching on certain issues, such as gender studies. They pointed to the reorganisation by the government of the highly esteemed longstanding research institutes of the Hungarian Academy of Sciences that has now placed them under the control of a government-run agency known as Eötvös Loránd Research Network. The new leadership – seemingly appointed for an indefinite period – will have significant influence over the choice of directors for each research institute, as well as decisions concerning funding, creation and closure of existing research institutes and other matters including the administration of grants and scholarships, with little, if any, public control.”*

The claim made in paragraph 65 of the report, that the Eötvös Loránd Research Network is an agency operated by the government is incorrect on the following grounds:

- The Eötvös Loránd Research Network (hereinafter “ELRN”) is not in itself a legal entity but an organisation, which in the definition of Section 42/A of Act LXXXVI of 2014 on scientific research, development and innovation (hereinafter “RDI Act”) consists of the ELRN Secretariat and the research centres, research institutes and research groups (hereinafter collectively “research establishments”) operated by it in the form of a budgetary institution or business association. The ELRN Secretariat and the research establishments it operates, however, have independent legal personality.
- The ELRN Secretariat was established by Parliament as of 1 August 2019, which is regulated by the RDI Act as follows:
  - “Section 50(1) The Hungarian Parliament has established the ELRN Secretariat as a central budgetary institution as of 1 August 2019. The Memorandum of Association of the ELRN Secretariat is issued by the Speaker of Parliament; it is registered by the Hungarian State Treasury within 30 days.”
  - Pursuant to subparagraph 3.1.1 of the memorandum of association issued by the Speaker of Parliament, the governing body of the ELRN Secretariat is the ELRN Secretariat itself, which may be founded, converted or terminated – under subparagraph 2.3 of the memorandum of association – only by Parliament.
- The ELRN Secretariat exercises control over the research establishments operated by the ELRN Secretariat, which is regulated by the RDI Act as follows:
  - “Section 42/B (2) The ELRN Secretariat exercises management powers under Section 9 of Act CXCV of 2011 on general government finances (hereinafter “General



Government Act”) over research establishments it operates as central budgetary institutions in accordance with Section 42/A, and rights conferred upon the person exercising shareholder rights of research establishments operating as a business association, and performs the administrative and control duties of the research establishments.”

- Pursuant to Section 42/D (2) of the RDI Act, the activity of the ELRN Secretariat is managed by the president, and the president is responsible for his/her activity toward the Governing Board /RDI Act, Section 42/I (2)/. The president – and the secretary-general responsible for administrative management of the ELRN – is appointed for five years; the same person may be appointed to such position maximum twice.
- The chief decision-making body of the ELRN Secretariat, the Governing Board, may adopt organisational, management decisions relating to operation of the research establishments.

Based on the foregoing it may be established that the organisation and management of the ELRN is independent of the government; it is subordinated to the Governing Board, and to Parliament in relation to the conversion or termination of the ELRN Secretariat.

With regard to observations concerning the management of the ELRN Secretariat, we wish to state the following:

- Members of the Governing Board of the ELRN Secretariat are indeed appointed for an indefinite period, but as regards its composition, the Government and the Hungarian Academy of Sciences apply delegation by parity for involvement of the scientific community in management. Pursuant to the RDI Act, the Governing Board of the ELRN consists of 13 members; 6 members are delegated by the minister responsible for coordinating scientific policy and 6 members by the president of the Hungarian Academy of Sciences, who are appointed by the prime minister together with the president of the ELRN. Appointment of the president requires consensus between the competent minister and the president of the Hungarian Academy of Sciences.
- The RDI Act also stipulates that at least two thirds of members of the Governing Board must be chosen from the field of science, which services enforcement of the constitutional requirement set out in paragraph (2) of Article X of the Fundamental Law.
- The Governing Board of the ELRN Secretariat is the chief decision-making body of the ELRN, which is responsible for managing the network, the well-founded and predictable distribution of resources, and the designation and continuous review of directions of research. It is important to emphasise, however, that the authority of the Governing Board of the ELRN Secretariat extends to distribution of the ELRN funds among the ELRN research establishments: the Secretariat or the Governing Board does not directly provide research grants or scholarships. The ELRN should be distinguished from the funding institution of the institutional system of research and innovation, the National Research, Development and Innovation Office, and from the institutional system of indirectly available European Union funds.
- As regards the election of heads of institutions, there have been neither major changes since 2019, nor any changes of a political nature at all. Applicants were interviewed and evaluated exclusively on the basis of criteria relating to their profession, science, institution management. Researchers are also ensured representation in ad hoc committees interviewing directors.
- According to the strategic target system of the ELRN, decisions should be adopted as close as possible to stakeholders, thereby enforcing the principle of subsidiarity. Therefore, to ensure successful professional work, heads of research establishments were granted greater independence in terms of administration and finances, and may independently decide on the use of their funds. The ELRN thereby significantly increased the autonomy and also the responsibility of the research establishments.
- According to the strategic target system of the ELRN, the ELRN operates according to a transparent management system, committing itself to a performance-based approach. Members of the research network perform their duties as a body free of political

considerations and expect their colleagues to perform activities in a similar spirit. The ELRN considers each employee of the research network to its own and represents their interests.

The claim made in the fourth sentence of paragraph 65 of the report, that the decisions of the ELRN management and its measures taken in relation to operation of the research establishments are "with little, if any, public control" (are not subject to State control) is incorrect on the following grounds:

- The budgetary institutions within the ELRN organisation carry out public functions. Pursuant to Section 26(1) of Act CXII of 2011 on informational self-determination and freedom of information (hereinafter "Information Act"), a body performing public functions should allow any person to access upon a relevant request data of public interest and data disclosed out of public interest managed by it, with exceptions referred to in the Information Act. Sections 32 and 33 of the Information Act require the body performing public functions to fulfil its information and electronic (internet) publication obligation relating to data concerning matters falling within the scope of its functions.
- The ELRN Secretariat – together with the bodies it manages – fully meets the obligations set out in the Information Act; it responds to requests for data of public interest and data disclosed out of public interest in conformity with requirements of the Information Act, and it publishes on its website the list of publications relating to data of public interest, budgets relating to management data, reports, contracts in excess of HUF 5 million within the scope of operation, public procurement information and aids. The internet public database – and data uploaded there – also ensure easier public access to data of public interest of the ELRN Secretariat.

*"They claimed that young scholars are leaving the country to avoid an academic environment."*

Such perceptions are difficult to refute or to comment on by the national authorities, and should be omitted.

#### **Paragraph 66**

*"A number of experts pointed out that a pattern similar to the "capture" of the media sector is emerging in the academic sector, characterised by ideologically driven public criticism of scholars, political pressure on institutions and a gradual transfer of ownership to those closely linked to the ruling party. They fear these trends will eventually reshape the academic sector and weaken academic freedom. The Special Rapporteur urges the government to reverse the current trend that is having a profound impact on academia, to abstain from disproportionately interfering with the work of academic institutions and to protect the autonomy of universities and research institutes."*

- The research establishments belonging to the ELRN, with independent legal personality, carry out scientific research with a high level of independence within the budgetary framework determined by the ELRN Secretariat's Governing Board.
- The Government has not made the slightest attempt to interfere with scientific work and academic freedom at the research establishments of the ELRN. The management of the ELRN is fully committed to academic freedom, which is also defined in the strategic target system of the Eötvös Loránd Research Network (<https://elkh.org/en/strategic-planning-framework-of-elkh/>). We are similarly unaware of any ideological attacks or criticism against anyone at the ELRN research establishments.

#### **Paragraph 67-68**

*"Article IX (4) of the Hungarian Constitution states, "The right to freedom of expression may not be exercised with the aim of violating the human dignity of others." Notwithstanding the exhortation, the Special Rapporteur received extensive and deeply troubling testimony from journalists, human rights defenders, LGBTIQ activists and those working for refugees and migrants about state orchestrated campaigns of fearmongering, scapegoating and stigmatisation, especially online, fuelling discrimination and racial and ethnic hatred. Many*

*people reported being publicly vilified on pro-government media as foreign agents, traitors and “Hungary-haters” or “non-Hungarians”. Homophobia seems to be on the rise. Many pro-government national and media outlets appear to be deliberately fuelling the negative public attitude.”*

*“While human rights defenders, especially those working on the rights of LGBTIQ individuals or migrants, are reportedly given limited or no opportunities to appear in the media and express their views and concerns, homophobic and sometimes violent groups are said to be given extensive coverage on online platforms by some pro-government outlets. Various stakeholders claimed that national consultation campaigns organized by the government deliberately seek to fuel dissension, division and hate. The Special Rapporteur was provided with visual evidence of such campaigns so that she could see for herself the toxic and deliberately provocative style of the messages. Stakeholders also claimed that while the government makes extensive use of billboards to promote highly politicised campaigns portraying refugees, asylum seekers, migrants and minorities, including LGBTIQ, in a negative light, positive, non-political messages about these groups are not covered by the pro-government media outlets. It was brought to the Special Rapporteur’s attention that even attempts to advertise humanitarian messages about refugees and asylum seekers on billboards on International Refugee Day were thwarted as billboard companies refused to rent out the space for fear of adverse reaction from the authorities.”*

The Media Council regularly examines hate speech and excludes hate speech.

As an example, in one of the interactive programs of the radio media service called Karc FM, in connection with a civil protest, the presenter used dehumanist terms against civil activists and described them as enemies of Hungary, members of an anti-Hungarian network supported from abroad, and therefore the media council prohibited the infringing conduct, ordered the service provider to publish a notice and imposed a fine on it.

Another example of official action against hateful content was the coverage of a non-governmental organization running an asylum program on one of Echo TV's permanent media services. The program also dealt with the wave of migration to Europe, including Hungarian NGOs operating asylum programs, in particular the Hungarian Helsinki Committee and Migration Aid. The program presented these organizations as harmful and dangerous to Hungary and to Hungarian society. As the compilation was suitable for inciting hatred against the employees and activists of these organizations, the Media Council prohibited the infringing conduct in its decision, obliged the service provider to publish a notice and imposed a fine on it.

An example of an official action against exclusionary content is the case of Magyar Hírlap's internet press product, when an article in connection with a gay parade dealt with the situation of the homosexual minority in Hungary. The Media Council noted that the article as a whole argued for the alienation, isolation, and isolation of the homosexual community from the majority society.

In its decision, the Media Council obliged the publisher to remove the content from its website immediately, inform its readers about the violation on its website, and imposed a fine on it.

### **Paragraph 69**

*“In June 2021, the parliament adopted a package of legislative amendments which, claiming to combat paedophilia, bans all products, advertising and media content that is deemed to “popularize” or depict consensual same-sex conduct or the affirming of one’s gender, to persons under the age of 18. A wide range of stakeholders were concerned that, by conflating paedophilia with sexually non-conforming behaviour, the new law will encourage stigmatization, discrimination hatred and violence towards LGBTIQI persons. Many teachers and activists fear that the law will be used to alter the school curriculum and restrict access of adolescents to sexual and reproductive health information, although the Teachers Board, with whom the Special Rapporteur met, maintained that they are still awaiting the rules for the application of this law to the curriculum. The new legislation has triggered infringement procedures by the European Commission, on the grounds that Hungary failed to explain why*

*the exposure of children to LGBTQI content would be detrimental to their well-being or not in line with the best interests of the child.”*

This is a misinterpretation of the law. The Hungarian Government is convinced that, despite the sharp criticism, the European Commission is wrong in its assessment of the Child Protection Package. This conviction is supported by legal arguments in the context of the infringement procedure. It is up to the Member States to decide on how to protect minors. This also includes the level of the moral development that warrants protection.

Hungary upon its accession to the European Union did not renounce its sovereignty, but only allowed the joint exercise of certain competences. However, none of these shared competences relate to altering the values that are part of our national identity, such as our language, culture and history. Thus, EU membership does not affect Hungary’s right to take decisions on the protection of children. Hungary will defend its cultural, national identity and family values. This right is guaranteed by both EU and international law for Hungary as a free and independent country.

In Hungary, the level of protection for both families and children is ensured at a constitutional level. The provisions of the Fundamental Law protecting families, marriages and children bind the legislator. The State has a duty to protect and enforce the principles and legal institutions enshrined at constitutional level. The legislation on child protection was adopted as a result of and in accordance with the Fundamental Law. However, the Hungarian Government considers the opinion of the Hungarian citizens to be decisive in this matter. Therefore, Hungarian citizens could recently express their views on issues related to the protection of our children through a national consultation as well as in a referendum held on 3 April 2022.

The Child Protection Act ensures that the parent can decide on his or her child’s education and that children do not receive sexual education or face harmful content that does not correspond to their age without the consent of the parent.

The Child Protection Act does not constitute any discrimination, does not apply to adult citizens and does not in any way violate the rights of sexual minorities. In Hungary, we guarantee the rights of religious, ethnic, sexual and other minorities. The Hungarian Fundamental Law strictly prohibits, and our laws severely sanction, exclusionary and discriminatory manifestations affecting minorities. The act does not mix paedophilia and LGBTI-issues: the amendments shall be analysed on their own within the scope of the amended acts.

The Child Protection Act is only about the education of Hungarian children and the protection of minors. In any event, EU law allows Member States to lay down stricter rules as regards minors.

#### **Paragraph 76**

*“The first issue is the alarming signs of the erosion of the independence of the judiciary, including the undue and premature termination of the President of the Kuria after he had publicly expressed his views on legislative reforms affecting the judiciary, (...)”*

This case has been solved after the judgment of the ECtHR years ago.

In case the statement remains in the report, we ask to correct the sentence as follows:

**“(...) including the undue and premature termination of the President of the THEN SUPREME COURT Kuria (...)”**

**“public criticism by government officials of court decisions, WHICH IS, HOWEVER, PART OF THE PUBLIC DEBATE IN A DEMOCRATIC SOCIETY LIKE HUNGARY (THE GOVERNMENT MAY CHALLENGE SUCH DECISIONS ONLY BY MEANS OF THE AVAILABLE LEGAL REMEDIES AND HAS TO REMAIN FROM FORMULATING AD PERSONAM CRITICISM AGAINST THE JUDGES THEMSELVES) that is not only disrespectful of the independence of the judiciary but is likely to have a chilling effect on judges,”**

*“(...) a series of legal amendments that paved the way for the election of a new President of the Kuria with significant additional powers, despite the objection of the National Judicial Council, Hungary’s self-governing judicial body.”*

According to the Fundamental Law, the President of the Kúria shall be elected by the National Assembly from among the judges for nine years on a proposal from the President of the Republic. The President of the Kúria shall be elected with the votes of two thirds of the Members of the National Assembly. The selection of the candidate is the prerogative of the President of the Republic. This model has been unaltered since the change of regime. The National Judicial Council hears the candidate (shall convey its prior opinion upon conducting personal interview concerning the candidate), thus the involvement of the judicial bodies is safeguarded. [Before the entry into force of the new Fundamental Law and the related reforms, the State Jurisdiction Council had similar rights as regards the election of the President of the Supreme Court (see: Act LXVI of 1997 on the Organization and Administration of the Courts)]. In order to ensure a high level of independence for the President of the Supreme Court, only the President of the Republic can initiate his/her removal from office.

In case the statement remains in the report, we ask to correct the sentence as follows:

*“(...) a series of legal amendments that paved the way for the election of a new President of the Kuria **with significant ONLY ONE** additional – **FORMAL AND NOT EXERCISED** – powers, **IN RESPECT OF THE APPOINTMENT OF KURIA’S JUDGES, HEADS OF PANELS AND HEADS OF CHAMBERS** despite the objection of the National Judicial Council, Hungary’s self-governing judicial body.”*

*“The Special Rapporteur shares the views of the Special Rapporteur on the independence of judges and lawyers, who warned that the legal changes have the “effect – if not the main goal – (...) to enable the legislative and executive branches to interfere with the administration of justice.”*

This statement is factually incorrect. In Hungary, only the National Office for the Judiciary and the National Judicial Council have powers in the administration of courts. Political influence is excluded.

In case the statement remains in the report, we ask to correct the sentence as follows:

*“(...) who warned that the **CONSTITUTIONAL REFORM AND** legal changes have (...)”*

#### **Paragraph 80**

*“The Special Rapporteur strongly encourages the Commissioner to comment on draft legislation in accordance with Hungary’s human rights obligations, monitor the implementation of laws affecting the media and civil society, and ensure that journalists, human rights defenders, academics and others can play their essential role in society.”*

The Commissioner is an independent constitutional organ; it shall not be instructed in its activities.

#### **Paragraph 83**

*“Some members of the European Parliament have questioned the NAIH’s finding on this issue.”*

Such statements are difficult to comment or refute and should be omitted.

#### **Paragraph 84**

*“By adopting laws and policies that favour media outlets supportive of its political agenda and ostracising and delegitimising those that are not, undermining judicial independence and smearing civil society actors, the government has proactively reshaped the media sector,*

*endangered media diversity, pluralism and independence and undermined freedom of opinion and expression.”*

See comments above.

Without repeating the remarks made in the previous parts of the report, it should be emphasized that the report does not contain any evaluable objective arguments or substantiated evidence in support of these positions, only statements based on uncertain assumptions, subjective, superficial and biased opinions. The findings and conclusions of the report are therefore not suitable for discussion and reaction at the professional level, and since the findings of the report are fundamentally incorrect, untrue or unfounded, the report is also unacceptable in its details and conclusions.

#### **Paragraph 85**

*“Special Rapporteur calls on European institutions to ensure fundamental rights are effectively enforced within all EU Member States, including Hungary. European institutions have a collective responsibility to ensure EU Member States apply international human rights norms, as well as the European values that include media freedom and diversity, human rights defenders’ protections and respect for the rule of law.”*

EU-level and UN-level issues should not be mixed.

#### **Paragraph 86**

*“Ratify international and regional human rights treaties, including the Istanbul Convention on preventing and combating violence against women, the Optional Protocol to the ICESCR, the Optional Protocol to the CRC, the ICRMW and the ICPED.”*

These issues fall outside the scope of the Report.

#### **Paragraph 87**

*“Implement the recommendation of the Human Rights Committee, namely, to guarantee judicial independence by bringing the selection and appointment procedures of court presidents in line with international standards, especially the United Nations Basic Principles on the Independence of the Judiciary and strengthening the role of the National Judiciary Council.”*

These issues fall outside the scope of the Report.

#### **Paragraph 89**

*“Revise the appointment procedure of the Chairperson of the Media Council to make it more transparent and inclusive to reflect the full range of the political spectrum and the media community, taking into consideration proposals of the Venice Commission.”*

The procedure for appointing the President of the Media Council has been examined several times by the European Commission and the Venice Commission, and the current rules have been developed in cooperation with these organizations.

#### **Paragraph 90**

*“Redistribute the power of the Chairperson of the Media Council, including by ensuring a transparent and inclusive appointment procedure of the public media asset fund, MTVA, (...).”*

The powers of the Media Council and the President of the Media Council are clearly set out in law, and these rules are fully in line with EU law.

*“(...) ensure the decisions of the Media Council can be considered substantively by the courts.”*

This proposal is incomprehensible, as the Media Council can initiate legal proceedings against all official decisions, and the judicial review is comprehensive, so the legality of the decision can be examined by the court.

This is ensured as described in the comments to Commissioner Mijatovic's report.

### **Paragraph 91**

*"Take measures to prevent bias in news coverage, including by ensuring that all media outlets, including those critical of the government, are able to access and impart information freely, and the public has access to a diversity of voices, online and offline."*

It has already been implemented, it is not clear what specific measures the rapporteur considers necessary.

The Ministry of Interior stressed on several occasions during the meeting that it does not discriminate between press inquiries and treats all media equally.

### **Paragraph 92-93**

*"Adopt anti-monopoly rules to prevent undue concentration of media ownership, direct or indirect."*

*"Adopt legislation on the transparency of media ownership, licensing of broadcasters, and content diversity among and within media outlets."*

These rules are already included in the Media Act. This is not general in the EU either.

The current rules of the Media Act also fully ensure the transparency and publicity of the ownership of the Hungarian media system, as well as the rules ensuring the freedom of media services and broadcasting and the diversity of the media market.

It is important to mention that the domestic rules governing the ownership structure, in accordance with EU law, basically only apply to media content providers established in Hungary, therefore the ownership structure of service providers established abroad is governed by the regulations of the place of establishment. It is also important to mention that a significant part of the wider media system (online media content, platforms) is currently not covered by media regulation, but the emerging EU regulation may establish principles for ownership and transparency.

The Hungarian legislation contains a number of transparency rules in relation to media ownership in line with the provisions of the AVMS Directive.

1. Linear media service providers shall declare their ownership structure during the registration procedure with the Authority. Media service providers registered with the Authority are required to report any change in the ownership structure or company data of the media service provider.
2. In tendering procedures for analogue radio media services, the applicant shall declare its ownership structure.
3. Pursuant to the requirements of the calls for tenders issued by the Media Council, the tender of the tenderer whose indirect and direct ownership background cannot be established broken down to all owners of the tenderer (to a natural person or to the last owner in the case of a company without additional owners) shall not be validated.
4. The Media Council also stipulates in the official contracts concluded with media service providers regarding the use of limited media services that the media service provider must ensure that its indirect and direct ownership background to all owners (natural persons or unincorporated companies) during the term of the media service right to the person of the last owner) can be identified and deduced.
5. In Hungary, all economic enterprises must be registered with the Court of Registration. The National Company Information and Company Registration System contains public data on the ownership, ownership structure and changes in all companies, including media service providers. This information is available upon individual request.

### **Paragraph 94**

*"Adopt measures to ensure that public advertising is directed to all media and does not result in any form of political interference in the media."*

Financing is subject to the general rules of the Public Finance Act, and these expenditures are audited by the State Audit Office. Based on the above, public advertising expenditures are transparent, the proportion of these expenditures is not significant in relation to the volume of the entire advertising market, and there is no substantiated fact that the distribution of advertising expenditures would be unfair.

#### **Paragraph 95**

*“Put in place a transparent and clear policy to protect the safety of journalists, and the privacy and security of their communications and sources, in line with the Recommendations on the Protection of Journalists and the Safety of Journalists and Other Media Actors CM/Rec (2016)4, adopted by the Council of Europe’s Committee of Ministers.”*

The protection of the safety of journalists and the privacy and security of their sources in Hungary is ensured by law (Act CIV of 2010 on Freedom of the Press and Basic Rules of Media Content).

#### **Paragraph 96**

*“Review the decision on Klubradio taking into account the importance of maintaining media diversity.”*

The decisions of the Media Council have been fully reviewed by the courts and found that the decisions of the Media Council have been transparent, non-discriminatory and lawful. In view of all this, it is not clear from what point of view and in the framework of which it would be necessary to review the decisions of the Media Council.

Moreover, the Government has no powers to interfere with the rulings of the independent courts thus any review would go against the principle of judicial independence.

#### **Recommendations to the international community, especially the European Union (Paragraph 103-105)**

EU-level and UN-level issues should not be mixed.

#### **Annex**

##### **Background of Paragraphs 64-66**

The Government of Hungary submitted its bill on public-interest asset management foundations with public-service mission (hereinafter referred to as the “Bill”) to the National Assembly on 31 March 2021.

With the ninth amendment of the Fundamental Law, the constitutional authority expressed the outstanding social value-creating role of public-interest asset management foundations with public-service mission. Public-interest asset management foundations with public-service mission ensure the attainment of their public-interest objectives of major importance to the society in a private-law form, independent of the government at any given time. These entities, therefore, play a prominent role in Hungary’s legal system, thus the long-term stability of their operation is a requirement arising from the constitutional principle of legal certainty.

In the Bill, the legislator develops the framework of a new legal institution that is able to adapt to the rapid changes in the social, economic and cultural life while ensuring the desired level of the performance of public-service missions. Within the framework of the latter, the state supports this modern and unique form of public service task performance with the available means while respecting the private-law autonomy of public-interest asset management foundations with public-service mission and the free exercise of the fundamental rights guaranteed under the Fundamental Law, with particular regard to the freedom of scientific research and artistic creation.

In Hungary, the freedom of scientific research and artistic creation, and in relation to this, the freedom of learning and teaching are guaranteed at constitutional level. Indeed, paragraph



(1) of Article X of the Fundamental Law lays down that “Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge and, within the framework laid down in an Act, the freedom of teaching.”

A university is a higher education institution established for the performance of educational, academic research and artistic creative activities, which constitute their core activities. Thus, the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge, and the freedom of teaching as laid down in paragraph (1) of Article X of the Fundamental Law of Hungary are especially manifested within the university’s organisational system, which is based on the university’s autonomy enjoying constitutional level protection. This principle is under constitutional protection in the manner designated in paragraph (3) of Article X of the Fundamental Law, which lays down that higher education institutions are autonomous in terms of the content and the methods of research and teaching, and their organisation is regulated by Act CCIV of 2011 on National Higher Education (hereinafter referred to as Higher Education Act).

The Bill contains special rules relating to higher education activity. Within this framework, it strengthens the competitiveness of Hungarian higher education, determines the regulatory guarantees of higher education as the performance of public-service missions, establishes the rules of mutual cooperation between the foundation’s board of trustees and the university’s senate, while it strengthens the autonomy relating to the content and the methods of research and education granted under the Fundamental Law also in the form of maintenance by a public-interest asset manager with public-service mission.

The Bill – in line with the provisions of the Higher Education Act – lays down that higher education activity, in particular tertiary vocational education and training, initial training, master training, doctoral training and further vocational training can be pursued exclusively within a specific organisational framework established to this end. Any activity falling within the scope of higher education core activity – which includes scientific research and artistic creation in addition to education – can only be pursued by a higher education institution, provided that higher education activity was specified as one of the foundation’s public-service missions. The foundation can, thus, perform the higher education public-service mission by way of the higher education institution maintained and owned by it; the higher education institution maintained and owned by the foundation is a state-recognised university.

In terms of a private higher education institution operating in accordance with the Bill, in addition to the capacity of the foundation maintainer, the owner’s right of disposition also appears emphatically, which requires a specific interpretation between the higher education institution and its owner. In view of that, the Bill lays down that the autonomy guaranteed to the higher education institution under the Fundamental Law in relation to the content and the methods of research and education shall constitute the restriction of the owner’s right of disposition and the maintainer’s right. For the protection of its autonomy, higher education institutions shall be entitled to the right of appeal defined in Section 75(1) of the Higher Education Act [*“The maintainer shall exercise control without prejudice to the higher education institution’s autonomy in matters such as the academic subject and content of education and research. Upon the decision of the senate of the higher education institution, the rector may appeal against the maintainer’s measure – in order to protect the autonomy of the higher education institution guaranteed under this law – within thirty days of the notification thereof in an administrative action. Failure to meet the time limit shall result in loss of rights. The Budapest-Capital Regional Court shall have jurisdiction for the proceedings.”*]

The owner and the maintaining foundation shall be entitled to issue and amend the founding charter of the higher education institution. With a view to ensuring cooperation, although the foundation is entitled to lay down in the founding charter that the maintainer shall accept the budget of the higher education institution, its annual accounts drawn up in accordance with the applicable accountancy provisions, its rules for organisation and operation, its asset management plan, the establishment of an economic entity, acquisition of holdings in an economic entity, and that the maintainer shall publish the tender for the rector position, **in**

**these matters it needs to obtain the prior opinion of the higher education institution's senate, or – if required so by the founding charter – the consent thereof.**

The ability of the foundation and its higher education institution to perform the higher education public-service mission is subject to an adequate level of cooperation. A prerequisite for this is that both organisations shall be adequately informed of each other's operational environment, situation, objectives, intentions and expectations. This purpose is served by the Bill's provision which states that **the senate of the higher education institution is entitled to delegate one member to the supervisory committee of the foundation**, thus ensuring that not only the foundation can learn about the operation of the higher education institution, but the higher education institution can also learn about the operation of the foundation.

**The foundation and its higher education institution exist as two separate organisations in terms of the performance of public-service missions, but as a unified organisation in terms of their objectives.** The foundation as the entity obliged and entitled to perform public-service missions cannot perform the higher education public-service mission without the higher education institution, whereas the maintainer is responsible as a guarantor for the higher education institution's liabilities exceeding its assets, while it is also responsible for the lawful operation of the higher education institution, is interested in its effective operation, and its asset management, maintainer's and owner's activity also serve the purpose of performing public-service missions.

In case of public higher education institutions the senate	Possible way of derogation	In case of public higher education institutions the consistorium	In case of public higher education institutions the maintainer
<b>- evaluates rector applications, selects candidate for rector</b>	the senate has the opportunity to comment, the board of trustees decides on the candidate for rector	-	initiates the appointment of the rector, which may differ from the senate's decision
Conclusion:	<i>the acceptance of the senate's decision was not mandatory by the law earlier either, though there were not many examples of the contrary</i>		
<b>- adopts rules for organisation and operation</b>	the board of trustees adopts the rules for organisation and operation	-	examines the rules for organisation and operation
Conclusion:	<i>maintainer control existed earlier as well</i>		
<b>- adopts the institution's budget</b> (within the framework set by the maintainer)	the board of trustees adopts the higher institution's budget	gives prior consent	examines the higher institution's budget, defines the framework for it
Conclusion:	<i>prior consent and ex-post examination are replaced with adoption</i>		
<b>- adopts the annual accounts drawn up in</b>	the board of trustees adopts the annual accounts drawn up in accordance with	gives prior consent before the senate's adoption	evaluates the annual accounts drawn up in accordance with the

In case of public higher education institutions the senate	Possible way of derogation	In case of public higher education institutions the consistorium	In case of public higher education institutions the maintainer
accordance with the applicable accountancy provisions	the applicable accountancy provisions		applicable accountancy provisions, ensures the inspection of the financial accounts of the institution operating as a budgetary unit
Conclusion:	<i>prior consent, evaluation and oversight are replaced with adoption</i>		
- decides on <b>the asset management plan</b> (with the consent of the maintainer)	the board of trustees adopts the asset management plan	gives prior consent	examines the institution's financial activity, its operation's conformity with the law, efficiency, gives consent to the asset management plan
Conclusion:	<i>prior consent and ex-post examination are replaced with adoption</i>		
- decides on <b>the founding of a business association and the acquisition of shares in a business association</b> (with the consent of the maintainer)	the board of trustees adopts the founding of a business association and the acquisition of shares in a business association	gives prior consent	examines the institution's financial activity, its operation's conformity with the law, efficiency, gives consent
Conclusion:	<i>consent and examination are replaced with adoption</i>		

The maintainers of non-public higher education institutions – depending on their decision with the exception as set out in Article 94(6) of the Act on National Higher Education – have the same maintainer rights as the maintainers of public higher education institutions.

Pursuant to Article 12(1) of the Act on National Higher Education the governing body of the higher education institution is the Senate. The Senate

- defines the higher education institution's educational and research tasks and monitors their implementation;
- adopts the medium term institutional development plan, which shall cover a period of not less than four years, and include a strategy for research, development and innovation;
- adopts the training programme of the higher education institution;
- decides on the establishment of an academic council and the election of its members and chair;
- decides on the establishment and dissolution of a doctoral school and the launch of doctoral programmes;
- decides on initiating the award of national higher education scholarships;

- decides on initiating the launch or termination of programmes.

The rights of the higher education institution laid down in the Fundamental Law – that is that they are autonomous in terms of the content and the methods of research and teaching – are vested in the senate. [Article 12(1) and (2) of Act on National Higher Education]

According to Article 13(1) of the Act on National Higher Education “*The higher education institution shall be headed and represented by the rector, who shall have competence to act and take decisions in respect of all matters that do not fall under the competence of any other person or body pursuant to a law, the rules for organisation and operation, or the collective bargaining agreement.*”

Higher education institutions are organisations established for the performance of educational, academic research and artistic creative activities, which constitute their core activities. The rector is responsible for ensuring that the core activities of the higher education institution are performed properly. As part of this, the rector is

- a) responsible for
  - aa) maintaining domestic and international relations and cooperation in the field of education and research,
  - ab) ensuring the compliance of the institution’s training programme with the applicable legal provisions and the training and output requirements defined by the minister;
  - ac) adopting the measures necessary for the amendment of the operating authorisation of the higher education institution, the launch of programmes, the registration of the doctoral school and the higher education admission procedure, as defined by law;
  - b) exercises, with the limitation set out in Article 14(3a), the maintainer’s rights over the public education institution maintained by the higher education institution;
  - c) keeps contact with representative organisations, the students’ union and the doctoral students’ union regarding matters falling under the competence of the rector;
  - d) coordinates cooperation between the higher education institution and other higher education institutions as well as national higher education organisations and bodies in the field of education and research. [Article 13(7) of Act on National Higher Education]

In case of non-public higher education institutions Article 94 (2b) of the Act on National Higher Education provides the opportunity to create the position of president in order to manage institutional work organisation and perform the tasks defined by the maintainer. The regulation of the Act declares here as well that the position of the president may be created only in a way that does not infringe the higher education institution’s autonomy in terms of the content and the methods of research and teaching ensured by the Fundamental Law.

Overall, it may be considered that higher education institutions enjoy autonomy in terms of academic freedom, the maintainers of higher education institutions – whether it be a public higher education institution or a private one – have no powers of decision in these matters.

1. The Parliament decided on the model change of 10 higher education institutions (Corvinus University of Budapest, University of Veterinary Medicine Budapest, University of Miskolc, Moholy-Nagy University of Art and Design, Hungarian University of Agriculture and Life Sciences, John von Neumann University, University of Pannonia, University of Sopron, Széchenyi István University, University of Theatre and Film Arts). The Government of Hungary does not aim to carry through the model change of other higher education institutions, therefore, it will decide on the model change of further higher education institutions only on the base of their request for the model change, which is based on the decision of the senate of the given higher education institution.

In January and February of 2021 the following higher education institutions’ senate decided on the model change and requested the Government to support their request for the model change:

- o The Senate of the Semmelweis University expressed its support in a decree passed at its January 28, 2021 meeting – with 41 votes in favour and one abstention – to operate in the future under the direction of a public-interest foundation established by the state.

- o The Senate of the University of Debrecen decided on the model change of the university on 22 January of 2021 with no votes against it.
- o The Senate of the University of Pécs decided on the model change on 29 January 2021 with 29 votes in favour, 9 against and 1 abstaining.
- o The Senate of the University of Szeged decided on the model change on 29 January 2021 with 29 votes in favour, 16 against and 7 abstaining.
- o The Senate of Óbuda University unanimously supported at its meeting on 15 February 2021 that the university shall change its operation model as of 1 August, 2021.
- o The Senate of the Eszterházy Károly University unanimously decided on 17 February 2021 that it supports that the university operate under the Roman Catholic Archdiocese of Eger from 1 August 2021 and the Comenius Campus of Sáropatak separate from the university. It creates the grounds for the Eszterházy Károly University to operate under the Roman Catholic Archdiocese of Eger from 1 August 2021 and that the Tokaj-Hegyalja University shall be established with a public interest asset management foundation performing public duty as its maintainer.
- o The Senate of the University of Nyíregyháza supported the model change of the institution on 24 February 2021 with 16 votes in favour, 1 against and 0 abstaining.
- o The Budapest Business School supported the model change at its meeting on 25 February of 2021 with 17 votes in favour, 1 against and 0 abstaining.

With regard to the above, those public higher education institutions that intend to continue to operate as state (public) universities and colleges of education can continue their operation with the same conditions as before.

If we look at the statistical data of OECD on the proportion of higher education students in European countries by maintainer (2017), it can be stated that the vast majority of students (78-99%) study at a state-run higher education institution. In Finland, the proportion is 52.7%, but the remaining 47.3% of students go to a private institution with more than half of its core funding provided by the state. In Belgium and Latvia the vast majority of students attending non-state higher education institutions (61.8-76%) are mostly state-funded students. Thus, in this respect the amount of core funding provided by the State is more decisive.

**Table 1. Proportion of higher education students in European countries by maintainer (2017)**

<i>Level of education</i>	<i>Total tertiary education (ISCED2011 levels 5 to 8)</i>				
<i>Reference sector</i>	<i>All public and private institutions</i>	<i>All public and private institutions</i>			
		<i>Public institutions</i>	<i>All private institutions</i>	<i>All private institutions</i>	
				<i>Government dependent private institutions[1]</i>	<i>Independent private institutions</i>
<b>Country</b>					
Austria	100,0	81,5	18,5	..	..
<b>Belgium</b>	100,0	42,9	57,1	<b>57,0</b>	0,2
Czech Republic	100,0	89,3	10,7	1,8	8,9
Denmark	100,0	99,0	1,0	1,0	0,1
Estonia	100,0	90,3	9,7	0,0	9,7
<b>Finland</b>	100,0	52,7	47,3	<b>47,3</b>	..
France	100,0	78,9	21,1	3,2	18,0
Germany	100,0	90,0	10,0	..	..

Level of education	Total tertiary education (ISCED2011 levels 5 to 8)				
Greece	100,0	100,0	..	..	..
Hungary	100,0	86,8	13,2	7,7	5,5
Iceland	100,0	78,2	21,8	21,8	0,0
Ireland	100,0	96,4	3,6	0,0	3,6
Italy	100,0	87,9	12,1	0,0	12,1
Lithuania	100,0	91,4	8,6	..	8,6
<b>Latvia</b>	100,0	7,9	92,1	<b>68,6</b>	23,5
Luxembourg	100,0	96,0	4,0	0,0	4,0
Netherlands	100,0	83,1	16,9	..	16,9
Norway	100,0	84,7	15,3	5,5	9,8
Poland	100,0	74,7	25,3	..	25,3
Portugal	100,0	83,5	16,5	0,0	16,5
Slovak Republic	100,0	86,7	13,3	0,6	12,7
Slovenia	100,0	85,0	15,0	5,7	9,3
Spain	100,0	79,5	20,5	2,3	18,2
Sweden	100,0	90,4	9,6	9,6	0,0
Switzerland	100,0	85,1	14,9	7,4	7,5
Turkey	100,0	92,1	7,9	..	7,9
United Kingdom	100,0	..	100,0	100,0	..

(Source: OECD [https://stats.oecd.org/Index.aspx?DataSetCode=EAG\\_ENRL\\_SHARE\\_INST](https://stats.oecd.org/Index.aspx?DataSetCode=EAG_ENRL_SHARE_INST))

In the new model the initial endowment of the trust funds is entirely provided by the State of Hungary and their operation is also financed by the State (through other funds) meaning that they are financed for the most part (more than 50 %) by the State of Hungary. Thus, the strategic path of Hungarian higher education is not unprecedented in Europe and in the world.

1. The claim made in paragraph 65 of the report, that the Eötvös Loránd Research Network is an agency operated by the government is incorrect on the following grounds:
  - The Eötvös Loránd Research Network (hereinafter “ELRN”) is not in itself a legal entity but an organisation, which in the definition of Section 42/A of Act LXXVI of 2014 on scientific research, development and innovation (hereinafter “RDI Act”) consists of the ELRN Secretariat and the research centres, research institutes and research groups (hereinafter collectively “research establishments”) operated by it in the form of a budgetary institution or business association. The ELRN Secretariat and the research establishments it operates, however, have independent legal personality.
  - The ELRN Secretariat was established by Parliament as of 1 August 2019, which is regulated by the RDI Act as follows:
    - “Section 50(1) The Hungarian Parliament has established the ELRN Secretariat as a central budgetary institution as of 1 August 2019. The Memorandum of Association of the ELRN Secretariat is issued by the Speaker of Parliament; it is registered by the Hungarian State Treasury within 30 days.”
    - Pursuant to subparagraph 3.1.1 of the memorandum of association issued by the Speaker of Parliament, the governing body of the ELRN Secretariat is the ELRN Secretariat itself, which may be founded, converted or terminated – under subparagraph 2.3 of the memorandum of association – only by Parliament.
  - The ELRN Secretariat exercises control over the research establishments operated by the ELRN Secretariat, which is regulated by the RDI Act as follows:
    - “Section 42/B (2) The ELRN Secretariat exercises management powers under Section 9 of Act CXCV of 2011 on general government finances (hereinafter “General

Government Act”) over research establishments it operates as central budgetary institutions in accordance with Section 42/A, and rights conferred upon the person exercising shareholder rights of research establishments operating as a business association, and performs the administrative and control duties of the research establishments.”

- Pursuant to Section 42/D (2) of the RDI Act, the activity of the ELRN Secretariat is managed by the president, and the president is responsible for his/her activity toward the Governing Board /RDI Act, Section 42/I (2)/. The president – and the secretary-general responsible for administrative management of the ELRN – is appointed for five years; the same person may be appointed to such position maximum twice.
- The chief decision-making body of the ELRN Secretariat, the Governing Board, may adopt organisational, management decisions relating to operation of the research establishments.

Based on the foregoing it may be established that the organisation and management of the ELRN is independent of the government; it is subordinated to the Governing Board, and to Parliament in relation to the conversion or termination of the ELRN Secretariat.

2. With regard to observations concerning the management of the ELRN Secretariat, we wish to state the following:

- Members of the Governing Board of the ELRN Secretariat are indeed appointed for an indefinite period, but as regards its composition, the Government and the Hungarian Academy of Sciences apply delegation by parity for involvement of the scientific community in management. Pursuant to the RDI Act, the Governing Board of the ELRN consists of 13 members; 6 members are delegated by the minister responsible for coordinating scientific policy and 6 members by the president of the Hungarian Academy of Sciences, who are appointed by the prime minister together with the president of the ELRN. Appointment of the president requires consensus between the competent minister and the president of the Hungarian Academy of Sciences.
- The RDI Act also stipulates that at least two thirds of members of the Governing Board must be chosen from the field of science, which services enforcement of the constitutional requirement set out in paragraph (2) of Article X of the Fundamental Law.
- The Governing Board of the ELRN Secretariat is the chief decision-making body of the ELRN, which is responsible for managing the network, the well-founded and predictable distribution of resources, and the designation and continuous review of directions of research. It is important to emphasise, however, that the authority of the Governing Board of the ELRN Secretariat extends to distribution of the ELRN funds among the ELRN research establishments: the Secretariat or the Governing Board does not directly provide research grants or scholarships. The ELRN should be distinguished from the funding institution of the institutional system of research and innovation, the National Research, Development and Innovation Office, and from the institutional system of indirectly available European Union funds.
- As regards the election of heads of institutions, there have been neither major changes since 2019, nor any changes of a political nature at all. Applicants were interviewed and evaluated exclusively on the basis of criteria relating to their profession, science, institution management. Researchers are also ensured representation in ad hoc committees interviewing directors.
- According to the strategic target system of the ELRN, decisions should be adopted as close as possible to stakeholders, thereby enforcing the principle of subsidiarity. Therefore, to ensure successful professional work, heads of research establishments were granted greater independence in terms of administration and finances, and may independently decide on the use of their funds. The ELRN thereby significantly increased the autonomy and also the responsibility of the research establishments.
- According to the strategic target system of the ELRN, the ELRN operates according to a transparent management system, committing itself to a performance-based approach. Members of the research network perform their duties as a body free of political

considerations and expect their colleagues to perform activities in a similar spirit. The ELRN considers each employee of the research network to its own and represents their interests.

3. The claim made in the fourth sentence of paragraph 65 of the report, that the decisions of the ELRN management and its measures taken in relation to operation of the research establishments are "with little, if any, public control" (are not subject to State control) is incorrect on the following grounds:
  - The budgetary institutions within the ELRN organisation carry out public functions. Pursuant to Section 26(1) of Act CXII of 2011 on informational self-determination and freedom of information (hereinafter "Information Act"), a body performing public functions should allow any person to access upon a relevant request data of public interest and data disclosed out of public interest managed by it, with exceptions referred to in the Information Act. Sections 32 and 33 of the Information Act require the body performing public functions to fulfil its information and electronic (internet) publication obligation relating to data concerning matters falling within the scope of its functions.
  - The ELRN Secretariat – together with the bodies it manages – fully meets the obligations set out in the Information Act; it responds to requests for data of public interest and data disclosed out of public interest in conformity with requirements of the Information Act, and it publishes on its website the list of publications relating to data of public interest, budgets relating to management data, reports, contracts in excess of HUF 5 million within the scope of operation, public procurement information and aids. The internet public database – and data uploaded there – also ensure easier public access to data of public interest of the ELRN Secretariat.

*66. A number of experts pointed out that a pattern similar to the "capture" of the media sector is emerging in the academic sector, characterised by ideologically driven public criticism of scholars, political pressure on institutions and a gradual transfer of ownership to those closely linked to the ruling party. They fear these trends will eventually reshape the academic sector and weaken academic freedom. The Special Rapporteur urges the government to reverse the current trend that is having a profound impact on academia, to abstain from disproportionately interfering with the work of academic institutions and to protect the autonomy of universities and research institutes.*

- The research establishments belonging to the ELRN, with independent legal personality, carry out scientific research with a high level of independence within the budgetary framework determined by the ELRN Secretariat's Governing Board.
- The Government has not made the slightest attempt to interfere with scientific work and academic freedom at the research establishments of the ELRN. The management of the ELRN is fully committed to academic freedom, which is also defined in the strategic target system of the Eötvös Loránd Research Network (<https://elkh.org/en/strategic-planning-framework-of-elkh/>). We are similarly unaware of any ideological attacks or criticism against anyone at the ELRN research establishments.