

JULIANNA SZABÓ \*

### **Protection of Human Rights under the European Convention on Human Rights and in Central Europe: Hungary\*\***

**ABSTRACT:** This study examines the protection of human rights in Hungary, with particular attention to its evolving relationship with the European Convention on Human Rights (ECHR) and the Council of Europe. The analysis begins by outlining the historical developments of human rights in Hungary, emphasising key milestones that have shaped the country's constitutional and legislative framework during its democratic transition and beyond. This historical context is essential for understanding Hungary's current human rights commitments.

The analysis then turns to Hungary's engagement with the Council of Europe, focusing on its ratification and implementation of core human rights conventions. These include Protocol No. 1 to the European Convention for the Prevention of Torture, the European Social Charter, and the Framework Convention for the Protection of National Minorities. These international treaties play a vital role in shaping Hungary's human rights obligations and influencing the development of domestic legal standards.

Further, the article addresses Hungary's national implementation of the ECHR, illustrating how its provisions are reflected in the Fundamental Law and major legislative acts. Important law-making processes influenced by the ECHR are discussed, highlighting the impact of international human rights standards on domestic legislation.

Additionally, it reviews landmark cases brought against Hungary before the European Court of Human Rights, including *Rekvényi v. Hungary* on freedom of expression, *Gubacsi v. Hungary* regarding police ill-treatment, and *Karsai v. Hungary* concerning the right to respect for private and family life. These cases illustrate the ongoing challenges in meeting its human rights obligations and ensuring full compliance with European human rights jurisprudence.

In conclusion, the study stresses the importance of continued legal and

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\* Legal adviser, Department of Human Rights, Ministry of Justice, Hungary.  
sz.julia@hotmail.com.

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institutional reforms, as well as active engagement with both national and international legal frameworks to strengthen human rights protections.

**KEYWORDS:** Human Rights in Hungary; Constitutional Reform; National Implementation of International Law; Cooperation; Right to Respect for Private and Family Life; Ratification Process.

## 1. Historical Development of Human Rights in Hungary

The protection and enforcement of human rights in Hungary have undergone significant changes over the centuries, shaped by the country's monarchic, socialist, and eventually democratic eras. Until 1949, Hungary operated under a historical constitution, and human rights were regulated only through diverse acts.

Among the most important steps in the development of the Hungarian constitution was the Golden Bull, issued in April 1222 by King Andrew II of the Árpád dynasty. The Golden Bull granted numerous privileges and obligations, primarily aimed at protecting the rights of the nobility by limiting the king's power. Notable provisions of the document included the protection of private property, by introducing a prohibition on the donation and confiscation of lands acquired through service and making it mandatory to hold days for hearing grievance annually (*törvénylátó napok*), which can be seen as an early step towards the formation of a parliamentary system. Furthermore, it laid down principles that later served as the foundation for noble privileges, thus establishing the foundations of a feudal society. The Golden Bull was amended in 1231 and 1267.

As regards fundamental rights, the April Laws of 1848, which established Hungary as a constitutional monarchy, are particularly important. The April Laws included measures limiting the monarchy's legal institutions, regulating the state's organisation, ensuring civil liberties, and addressing economic matters. The April Laws extended suffrage, abolished censorship to ensure freedom of the press, introduced equality between officially recognised religious denominations, and affirmed the principle of freedom in education and learning.<sup>1</sup>

The Austro-Hungarian Compromise of 1867 affected minority rights, as it enshrined the equality of Jewish citizens in both civil and political

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<sup>1</sup> 1848. évi I. – XXXI. törvénycikk Ezer év törvényei. [Online]. Available at: <https://net.jogtar.hu/ezer-ev-torvenyei?pagenum=27> (Accessed: 12 October 2024).

ways.<sup>2</sup> After World War I, during the period of the Hungarian Soviet Republic, universal suffrage, right to work, and minority rights were regulated. In the ensuing period, Europe experienced severe economic damage and human rights violations, encouraging the European states to cooperate for recovery. Consequently, after World War II, major international organisations were established, such as the United Nations, the North Atlantic Treaty Organization (NATO), and the Council of Europe, which aimed to protect human rights, strengthen the economy, and maintain peace.

Following World War II, during the Soviet occupation of Hungary, serious human rights violations occurred as well.

Hungary's first written constitution was adopted in 1949. Act XX of 1949 (hereinafter referred to as the Constitution) granted a limited set of fundamental rights, such as the right to property, inheritance, education, work, rest and leisure, and gender equality.<sup>3</sup> However, it did not fully reflect Hungary's national characteristics or democratic traditions.

In the late 1980s, a political transition began to replace the socialist regime with a democratic, republican state. Consequently, the new republic was proclaimed on 23 October 1989. In the same month, the National Assembly adopted numerous amendments to the Constitution, including the reintroduction of the office of the president and establishment of the fundamental rules for constitutional review. Consequently, the president of Hungary and the first members of the Constitutional Court were elected. In the following years, Hungary made significant progress in the protection of human rights, establishing connections with major international organisations such as the Council of Europe, NATO, and European Union.

On 6 November 1990, Hungary joined the Council of Europe and has been a member for over 30 years now. It subsequently ratified the Convention for the Protection of Human Rights and Fundamental Freedoms or European Convention on Human Rights (hereinafter referred to as the Convention or ECHR). When depositing the instrument of ratification, the Government of the Republic of Hungary recognised the jurisdiction of the European Court of Human Rights (hereinafter referred to as the Court)

<sup>2</sup> 1867. évi XVII. törvénycikk. [Online]. Available at: <https://net.jogtar.hu/ezer-ev-torveny?docid=86700017.TV&searchUrl=/ezer-ev-torvenyei?pagenum%3D27> (Accessed: 12 October 2024).

<sup>3</sup> 1949. évi XX. törvény a Magyar Köztársaság Alkotmánya (közönyállapot) Net Jogtár. [Online]. Available at: <https://njt.hu/jogsabaly/1949-20-00-00> (Accessed: 12 October 2024).

regarding all matters related to the interpretation and application of the Convention and its protocols from the time they came into force for Hungary. Additionally, Hungary acknowledges the Court's judgments as binding and recognises its obligation to implement them, thereby accepting the monitoring mechanism associated with the Convention.<sup>4</sup>

Hungary submitted its application for membership to the European Union on 1 April 1994. A few years later, on 8 July 1997, along with the Czech Republic and Poland, Hungary was invited to begin accession negotiations with NATO, and it formally became a member on 12 March 1999, when its instruments of accession were deposited. After a thorough negotiation process, Hungary joined the European Union on 1 May 2004, along with nine other countries, marking the fifth enlargement of the European Union.<sup>5</sup>

Following its accession to the European Union, the protection of human rights in Hungary was significantly strengthened through the legal and institutional framework of the Union. Several European Union regulations contributed to the development of a more severe legal environment for human rights protection in Hungary, such as the Charter of Fundamental Rights of the European Union, the rulings of the European Court of Justice, and the Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

On 18 April 2011, the National Assembly adopted the Fundamental Law of Hungary, which came into force on 1 January 2012, replacing the Constitution – a document that had undergone significant amendments during the transition to democracy in 1989. The Fundamental Law, in its “Freedom and Responsibility” section, outlines fundamental rights and obligations through 31 articles.

It is important to highlight the role of the Constitutional Court, which was established by the amendments of the Constitution in 1989 and underwent significant changes with the passage of Act CLI of 2011 on the

<sup>4</sup> Az emberi jogok és az alapvető szabadságok védelméről szóló, Rómában, 1950. november 4-én kelt Egyezmény és az ahoz tartozó nyolc kiegészítő jegyzőkönyv kihirdetéséről szóló 1993. évi XXXI. törvény. [Online]. Available at: <https://net.jogtar.hu/jogszabaly?docid=99300031.tv> (Accessed: 12 October 2024).

<sup>5</sup> Blutman, 2013, p. 63.

Constitutional Court.<sup>6</sup> The primary and most important task of the Constitutional Court is to protect the rights guaranteed by the Fundamental Law. In this capacity, it can conduct preliminary and subsequent constitutional review procedures and handle constitutional complaints submitted by individuals or organisations in specific cases, as well as review laws upon request by judges. In proceedings before the Constitutional Court, not only law but also judicial decisions can be challenged.<sup>7</sup> The decisions of the Constitutional Court have *erga omnes* effect, meaning they are binding on everyone. The Constitutional Court closely follows the case law of the Court and the Court of Justice of the European Union and frequently applies them in its own decisions.

As an alternative human rights protection institution, the Commissioner for Fundamental Rights (hereinafter referred to as the Commissioner), is available, introduced into the Hungarian legal system based on the Swedish model.<sup>8</sup> The Commissioner is assisted by the deputy commissioner responsible for protecting the rights of national minorities living in Hungary and by the deputy commissioner for protecting the interests of future generations. Anyone who alleges that an act or omission by a public authority listed in the legislation infringes or directly threatens a fundamental right, may apply to the Commissioner. The Commissioner prepares reports on investigations conducted and produces annual reports on the fulfilment of tasks related to the national preventive mechanism, which are made public.<sup>9</sup>

Apart from the abovementioned measures, Hungary is determined to protect the rights of Hungarians living across its borders.

## **2. Relationship between Hungary and the Council of Europe from a Human Rights Perspective**

Following the ratification of the Convention in 1995, Hungary established its government representation before the Court. Currently, the Department of Human Rights, within the Ministry of Justice, is responsible for human

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<sup>6</sup> Trócsányi, Schanda, and Csink, 2016, pp. 407-408.

<sup>7</sup> Act CLI of 2011 on the Constitutional Court. [Online]. Available at: <https://hunconcourt.hu/act-on-the-cc/> (Accessed: 12 October 2024).

<sup>8</sup> Trócsányi, Schanda, and Csink, 2016, p. 304.

<sup>9</sup> Act CXI of 2011 on the Commissioner for Fundamental Rights. [Online]. Available at: <https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011> (Accessed: 12 October 2024).

rights matters related to the Council of Europe. Among its primary duties are representing the Hungarian Government before the Court, assisting in the implementation of judgments of the Court, and participating in legislative work concerning human rights. A significant part of the workload of the Human Rights Department involves formulating Hungary's position on applications submitted to the Court and ensuring their execution.<sup>10</sup>

Annually, the Human Rights Department submits a report to the Committee of Justice of the Parliament, detailing the yearly caseload and related data, which is then subject to approval through a vote. The Human Rights Department continuously monitors the case law of the Court, regularly updating relevant authorities and occasionally contributing professionally to consultations organised by national universities and further training programs organised by national authorities.<sup>11 12</sup>

Furthermore, the Human Rights Education for Legal Professionals (HELP) courses,<sup>13</sup> created by the Council of Europe, have been incorporated into continuous training initiatives for national staff, which are attended by a broader range of professionals.

The Ministry of Justice maintains ongoing communication with the Department for the Execution of Judgments of the European Court of Human Rights (hereinafter referred to as the Department for the Execution of Judgments) regarding the implementation of judgments concerning Hungary, as reflected in the number of submissions made in various cases.

In October 2022, the Ministry of Justice and the Council of Europe co-organised a Round Table discussion titled “Professional Policing: Treatment of Apprehended Persons and Consequences”, addressing issues related to police ill treatment identified in the *Gubacsi group* of cases. The aim of the Round Table was to take further steps to reduce human rights

<sup>10</sup> 5/2024. (VI. 20.) IM utasítás az Igazságügyi Minisztérium Szervezeti és Működési Szabályzatáról 1.3.4.2. pont. [Online]. Available at: <https://njt.hu/jogszabaly/2024-5-B0-06> (Accessed: 12 October 2024).

<sup>11</sup> Professzori Szalon a strasbourg bíróság ítélezési gyakorlatáról. [Online]. Available at: <https://rtk.uni-nke.hu/hirek/2022/09/12/professzori-szalon-a-strasbourg-birosag-itelkezesi-gyakorlatarol> (Accessed: 12 October 2024).

<sup>12</sup> Az emberi jogvédelem Európában - Mivel jár Magyarország képviselete. [Online]. Available at: <https://mcc.hu/ir/az-emberi-jogvedelem-europaban> (Accessed: 12 October 2024).

<sup>13</sup> The HELP programme is designed to enhance the knowledge of legal professionals on human rights, within the legal frameworks of the Council of Europe and the European Union.

violations resulting from police abuse and ensure proper redress for any infringements already committed. The event was attended by special guests, such as the Secretariat of Human Rights at the Council of Europe; former and current members of the European Committee for the Prevention of Torture (hereinafter referred to as the CPT); and experts of the Department for the Execution of Judgments, alongside national experts. Notable Hungarian professors and representatives from the Ministry of the Interior and the Prosecutor General's Office gave informative presentations, emphasising the importance of prevention through proper training for law enforcement officers at all levels, along with the establishment of specific procedural safeguards.

During the event, further information was shared about the current training provided to officers during their university education. The Committee of Ministers welcomed the efforts of Hungarian authorities for co-organising the Round Table, and it was further noted that important developments appear to have taken place in respect of the training of law enforcement authorities.<sup>14</sup>

The Department for the Execution of Judgments usually carries out an annual visit to Hungary, where they consult with national authorities, such as the Constitutional Court, the Curia, the National Judicial Council, and experts, on the implementation of specific cases.<sup>15</sup>

In addition to official visits to Hungary by representatives of the Council of Europe, high-level diplomatic meetings are also held in Strasbourg, including with the Secretary General of the Council of Europe and the President of the Court.

Apart from monitoring the execution of judgments of the Court, Hungary also collaborates with the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE) in preparing an annual report on hate crimes in the country and current regulations.

It is also important to note the role of the Permanent Representation to the Council of Europe of Hungary, which plays a vital role in promoting Hungarian interests before Strasbourg institutions and advancing Hungarian

<sup>14</sup> CM/Notes/1451/H46-16. [Online]. Available at: <https://search.coe.int/cm?i=0900001680a91a95> (Accessed: 12 October 2024).

<sup>15</sup> Visit to Hungary on the execution of ECHR judgments. [Online]. Available at: <https://www.coe.int/en/web/execution/-/visit-to-hungary-on-the-execution-of-echr-judgments> (Accessed: 12 October 2024).

cases. It is worth mentioning that the presidency of the Committee of Ministers is held by the ministers of member states in a six-month rotational system.<sup>16</sup> Hungary first held the presidency between November 1998 and May 1999,<sup>17</sup> and most recently between 21 May and 17 November 2021.

During its most recent presidency, Hungary outlined the following priorities: promoting the effective protection of national minorities, interreligious dialogue, children's rights, youth participation, Roma inclusion, and addressing technological and environmental challenges.<sup>18</sup> During the presidency, several important professional conferences were organised online and in-person, both in France and Hungary.

Two key conferences were held during the time of Hungary's presidency of the Committee of Ministers. One conference focused on the "Current and Future Challenges of Coordinated Policies on AI Regulation", which aimed to discuss the challenges governments face in regulating artificial intelligence in a more organised manner. The other conference focused on "The Role of NGOs and Research Institutes in Promoting Council of Europe Norms and Standards on National Minority Rights".

It is also worth mentioning that Hungary, among others, is a member of the Group of States against Corruption (GRECO), the European Commission for Democracy through Law (Venice Commission), the European Commission for the Efficiency of Justice (CEPEJ), and the Consultative Council of European Prosecutors (CCPE).

<sup>16</sup> Rules of Procedure of the Committee of Ministers (6th revised edition: 2020) Article 66 'Subject to Articles 7 and 8 below, the Chair of the Committee of Ministers shall be held for a six-month term in turn by the representatives of the members in English alphabetical order. The Chair shall pass to a new Chair mid-May and mid-November, at a date to be fixed by the Committee of Ministers based on a joint proposal by the incoming and outgoing Chairs.' [Online]. Available at: <https://search.coe.int/cm?i=09000016804e393a> (Accessed: 12 October 2024).

<sup>17</sup> Previous Hungarian Presidency. [Online]. Available at: <https://huncoepres.mfa.gov.hu/eng/page/previous-hungarian-presidency> (Accessed: 12 October 2024).

<sup>18</sup> CM/Inf(2021)9 Priorities of the Hungarian Presidency of the Committee of Ministers of the Council of Europe (21 May – 17 November 2021) [Online]. Available at: <https://search.coe.int/cm?i=0900001680a28829> (Accessed: 12 October 2024).

### **3. Hungary and the Human Rights Conventions Accepted within the Framework of the Council of Europe**

As of today, Hungary has signed or ratified 96 out of the 225 conventions adopted within the framework of the Council of Europe, and signed an additional 18 without ratification. Among these, the following are particularly notable agreements.

#### ***3.1. The Convention***

Hungary has been a member of the Council of Europe since 6 November 1990 and has been subject to the jurisdiction of the Court, since ratifying the Convention on 5 November 1992. The Court has played a pivotal role in the protection of fundamental rights in Hungary, with its judgments prompting significant legal reforms and strengthening domestic safeguards for individual rights.

#### ***3.2. Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment***

Hungary ratified the protocol on 4 November 1993, committing to the prevention of torture and inhuman or degrading treatment in places of detention. The CPT, established under the Convention, regularly visits detention facilities, psychiatric institutions, and police stations in member states to assess conditions and treatment.

Until now, the CPT has conducted 11 visits to Hungary – seven periodic and four *ad hoc* – issuing reports and recommendations after each. These visits have addressed persistent issues such as prison overcrowding, conditions in psychiatric institutions, and the treatment of detainees. In response, Hungary has implemented measures to improve detention conditions and promote alternatives to imprisonment.<sup>19</sup>

#### ***3.3. European Social Charter***

The European Social Charter was opened for signature in 1961, and Hungary ratified the Charter on 8 July 1999. The European Committee of Social Rights monitors the implementation of the Charter by member

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<sup>19</sup> The CPT and Hungary. [Online]. Available at: <https://www.coe.int/hu/web/cpt/hungary> (Accessed: 12 October 2024).

states.<sup>20</sup> Hungary submits regular reports on the implementation, which are assessed by the Committee to determine the extent to which Hungary meets the obligations set out in the Charter.<sup>21</sup>

### ***3.4. European Commission Against Racism and Intolerance***

The European Commission Against Racism and Intolerance (ECRI) was established in 1993 within the framework of the Council of Europe; it is dedicated to combating racism, racial discrimination, antisemitism, xenophobia, and other forms of intolerance. Similar to the CPT, it conducts periodic investigations in member states, prepares reports, and proposes solutions to the identified issues and monitors their implementation.

The ECRI has prepared six reports concerning Hungary, with the most recent published in 2022. The report addressed a range of issues, including the new curriculum in education, the situation of persons unlawfully staying in Hungary, the investigation of hate speech and hate crimes, the reception and integration of Roma and persons in need of international protection, as well as other equality-related matters.

### ***3.5. Convention on Cybercrime (Budapest Convention)***

The Budapest Convention, which entered into force on 1 July 2004, aims to support efforts to combat crimes committed through the use of technology, where devices are both the instruments and targets of these crimes, as well as cases where technology has been used to amplify other offenses, such as fraud. The Budapest Convention provides guidance for countries developing their own cybercrime laws and serves as a foundation for international collaboration among its signatories. Article 37 of the Budapest Convention gives any state the opportunity to join; currently, there are 76 parties and 20 countries that have signed or been invited to accede.<sup>22</sup> The Budapest Convention is widely regarded as a milestone in international cybersecurity.

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<sup>20</sup> Reporting system of the European Social Charter. [Online]. Available at: <https://www.coe.int/en/web/european-social-charter/reporting-system> (Accessed: 12 October 2024).

<sup>21</sup> Country profiles – Hungary. [Online]. Available at: <https://www.coe.int/en/web/european-social-charter/hungary> (Accessed: 12 October 2024).

<sup>22</sup> Convention on Cybercrime. [Online]. Available at: <https://rm.coe.int/1680081561> (Accessed: 12 October 2024).

### ***3.6. Framework Convention for the Protection of National Minorities***

The Framework Convention entered into force in 1998, with the aim of protecting the rights of national minorities. Hungary signed the convention on 1 February 1995, and it became effective from February 1998. By signing, Hungary committed to submitting a report every five years on the domestic implementation of the convention. Since then, Hungary has introduced several measures to protect national minorities.

### ***3.7. Group of Experts on Action against Trafficking in Human Beings***

Hungary ratified the Council of Europe's Convention on Action against Trafficking in Human Beings (GRETA) on 4 April 2013. To fulfil the obligations outlined in this convention, Hungary sanctions human trafficking and its various forms through the Criminal Code. Additionally, a national strategy has been developed to combat human trafficking.

## **4. National Implementation of the ECHR**

The Convention was signed by Hungary on 6 November 1990. The Convention was ratified and entered into force on 5 November 1992.

Following the entry into force of the Convention, the Government of Hungary recognised the jurisdiction of the Court in matters arising from the interpretation and application of the Convention and its additional Protocols. The Government also acknowledged its obligation to implement the judgments of the Court, in cooperation with the Committee of Ministers of the Council of Europe, which supervises the execution of these judgments.

In Hungary, international treaties become applicable only after being integrated into the domestic legal system, which is typically done through legislation. Once promulgated, they become directly enforceable.<sup>23</sup> The ECHR was promulgated by Act XXXI of 1993 on the proclamation of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, along with its eight additional Protocols. This act contains the original English text of the Convention, as well as its authentic Hungarian translation. The act reflects not only the original text of the Convention and its Protocols but also any subsequent amendments.

Prior to Hungary's accession to the ECHR, an analysis lasting approximately 18 months was conducted as part of the ratification process.

<sup>23</sup> The Fundamental Law of Hungary (25 April 2011) Article Q) (3).

The Hungarian National Assembly, in its reasoning for Resolution No. 76/1990 (XI. 2.) OGY on Hungary's accession to the Statute of the Council of Europe and the General Agreement on Privileges and Immunities of the Council of Europe, as well as on the signing of the ECHR, emphasised the necessity of this analysis, which was primarily aimed at aligning Hungary's legal system with the Convention.<sup>24</sup>

As part of this analytical process, domestic legal experts studied the jurisprudence of the European Commission of Human Rights and the Court, along with the legal principles developed in the Court's case law, and all provisions of the Convention and its additional Protocols. The experts then compared these with the Hungarian legal provisions on human rights. During the early stages of the analysis, by reviewing key Strasbourg cases, the experts recommended that the relevant ministries begin legislative amendments.<sup>25</sup>

The review found that under Act IV of 1978, Hungary's former Penal Code, violations of all rights contained in Chapter I of the ECHR were already subject to sanctions, including the following: homicide, aiding and abetting suicide, abortion (Article 2 Right to life); battery committed for a malicious motive or cruelty, coercion, mistreatment in official proceedings, third degree, unlawful detention with the victim's torment (Article 3 Prohibition of torture); coercion (Article 4 Prohibition of slavery and forced labour); violation of personal freedom, unlawful detention (Article 5 Right to liberty and security); false accusation, misleading authorities through false reports, third degree, perjury, subornation of perjury, suppressing extenuating circumstances, legal malpractice (Article 6 Right to a fair trial); breach of domicile, violation of privacy, violation of the privacy of correspondence, defamation, libel, desecration (Article 8 Right to respect for private and family life); violation of freedom of conscience and religion (Article 9 Freedom of thought, conscience, and religion); violation of freedom of association and assembly (Article 11 Freedom of assembly and association).<sup>26</sup>

Additionally, Act IV of 1959 on the former Civil Code also protected

<sup>24</sup> 76/1990. (XI. 2.) OGY határozat az Európa Tanács Alapszabályához és az Európa Tanács kiváltságairól és mentességeiről szóló Általános Egyezményhez való csatlakozásról, valamint az Európai Emberi Jogi egyezmény aláírásáról. [Online]. Available at: <https://njt.hu/jogszabaly/1990-76-30-41> (Accessed: 12 October 2024).

<sup>25</sup> Bán and Bárd, 1992, p. 3.

<sup>26</sup> Wolters Kluwer Hungary, Complex Jogtár, 2022.04., Act IV of 1978 on the Criminal Code.

the human rights related to personal dignity and property rights guaranteed by the Convention.

Regarding the availability of adequate legal remedies for individuals in case of human rights violations, Article 70/K of the Constitution stipulated that individuals may turn to the courts to enforce claims arising from violations of fundamental rights committed by either private persons or public authorities.<sup>27</sup>

As a result of the analysis, experts recommended minor amendments to 15 legal provisions and proposed one reservation. When formulating these recommendations, experts considered that the legal amendments made and the substantial legal reforms enacted in 1989 were already aligned with the Convention, and that at the time, the Court's case law had not yet covered all areas.<sup>28</sup>

The Government accepted the proposed reservation, which pertained to criminal misdemeanours under Article 6. Accordingly, Hungary exercised its right to make a reservation concerning the right of access to a court guaranteed by Article 6 Paragraph 1 of the Convention, citing the need for time to establish a system for judicial review of administrative decisions, which was a lengthy process.<sup>29</sup> The Government later fulfilled this obligation by introducing the right to appeal decisions of administrative authorities to the courts under Act LXIX of 1999 on misdemeanours.<sup>30</sup>

## **5. Reflection of Human Rights Protection Obligations Deriving from the ECHR in the Constitution and the Major Acts of Hungary**

This section provides a brief, non-exhaustive overview of the relevant domestic regulations. It is important to highlight that in addition to the substantive and procedural rules of criminal and civil law, there are separate acts governing specific areas, for example freedom of assembly, right to education, and religious communities.

<sup>27</sup> A Magyar Köztársaság Alkotmánya 1949. évi XX. törvény. Available at: <https://njt.hu/jogsabaly/1949-20-00-00> (Accessed: 12 October 2024).

<sup>28</sup> Bán and Bárd, 1992, p. 5.

<sup>29</sup> Az emberi jogok és az alapvető szabadságok védelméről szóló, Rómában, 1950. november 4-én kelt egyezmény és az ahoz tartozó nyolc kiegészítő jegyzőkönyv kihirdetéséről szóló 1993. évi XXXI. törvény indokolása Wolters Kluwer Hungary, Complex Jogtár 2022.04.

<sup>30</sup> 1999. évi LXIX. törvény a szabálysértésekrol 36. § [Online]. Available at: <https://mkogy.jogtar.hu/jogsabaly?docid=99900069.TV> (Accessed: 12 October 2024).

### **5.1. The Hungarian Constitution and ECHR**

Hungary's first constitution was adopted in 1949, which was significantly amended over time and was still in effect at the time of ratification of the ECHR, naming certain fundamental rights. However, it stipulated that the rules regarding fundamental rights and obligations should be defined in separated acts.

Following the 1989 and 1990 amendments to the Constitution, a wider range of fundamental rights were guaranteed. The institutions of the Constitutional Court, the Parliamentary Commissioner for Citizens' Rights, and the Parliamentary Commissioner for the Rights of National and Ethnic Minorities were established. As the Constitution has been repealed, it is advisable to look into the new legislation.

Hungary's Fundamental Law<sup>31</sup> came into force on 1 January 2012. The Fundamental Law begins with the "National Avowal", which acts as a preamble, followed by the "Foundation" section, which contains basic provisions regarding the state, core values, constitutional principles, state goals, and essential provisions related to the Fundamental Law and other laws.

Principles were established for the first time at the constitutional level, such as the separation of powers and the state's monopoly on the use of force; the origin of citizenship; the protection of the Hungarian language; the recognition of national and state holidays; support for childbearing; the recognition of an economy based on value-creating work; the principles of balanced, transparent, and sustainable budgeting; as well as the preservation and maintenance of a healthy environment.<sup>32</sup>

The second part of the Fundamental Law is titled "Freedom and Responsibility", with a focus on the individual and their inalienable and inviolable fundamental rights. The provisions concerning fundamental rights are based on the Charter of Fundamental Rights of the European Union.

The third part of the Fundamental Law, titled "The State", sets out basic rules regarding the structure of the Hungarian state.

In the "Freedom and Responsibility" section of the Fundamental Law,

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<sup>31</sup> The Fundamental Law of Hungary. [Online]. Available at: <https://hunconcourt.hu/fundamental-law/> (Accessed: 12 October 2024).

<sup>32</sup> Magyarország Alaptörvénye indokolása Wolters Kluwer Hungary, Complex Joggárt 2022.04.

the following fundamental rights are included, which support the realisation of the rights contained in the Convention. Article I of this section – similar to Article 1 of the Convention – defines the protection of fundamental human rights as a primary obligation of the state. Similar to the Convention, the Fundamental Law sets out fundamental rights in separate articles.

The Fundamental Law protects, among others, the right to life and human dignity (Convention Article 2); the right to liberty and security (Convention Article 5); the right to property (First Additional Protocol, Article 1); the right to respect for private and family life, home, communications, and good reputation (Convention Article 8); the right to freedom of thought, conscience, and religion (Convention Article 9); the right to peaceful assembly (Convention Article 11); the right to establish and join organisations, the right to freedom of expression (Convention Article 10); the freedom of scientific research and artistic creation, the freedom of learning and teaching, the right to education (First Protocol, Article 2); the right to elections (First Protocol, Article 3); the right to a fair trial (Convention Article 6); the right to freedom of movement and the free choice of residence (Fourth Protocol, Article 2); prohibition of torture, inhuman, and degrading treatment (Convention Article 3); and provision for procedural guarantees in criminal proceedings (Convention Article 7).

The Fundamental Law extends the right to life to include protection of the foetus, thereby granting protection from conception. With respect to the prohibition of torture, it establishes absolute bans, explicitly prohibiting inhuman and degrading treatment, slavery, human trafficking, experiments on the human body without consent, the use of the human body or its parts for financial gain, and human cloning.

It also defines key procedural guarantees in criminal proceedings, including the principles of *nullum crimen sine lege* (no crime without a law), *nulla poena sine lege* (no punishment without a law), and *ne bis in idem* (not being tried twice for the same offense).

Regarding the right to respect for private and family life, the Fundamental Law sets limitations on the exercise of freedom of expression and the right of assembly, stipulating that these rights must not infringe upon the rights to respect for private and family life. The protection of personal data, as well as the right to access public information, is ensured by an independent authority, which is currently the National Authority for Data Protection and Freedom of Information.

With respect to the right to peaceful assembly and freedom of

association, the Fundamental Law guarantees the right to form and join organisations, including political parties, trade unions, and other interest-representation bodies.

In terms of freedom of expression, the Fundamental Law protects the press, while also affirming that this freedom must not infringe upon the rights of others. Oversight of the press and media is conducted by the National Media and Infocommunications Authority, as an independent authority.

It is worth mentioning the provisions of the Fundamental Law that ensure free and compulsory primary education, as well as free and universally accessible secondary and higher education.

Regarding property rights, the Fundamental Law stipulates that the deprivation of property is only possible in exceptional cases defined by law.

The Fundamental Law declares that all individuals are equal before the law, thereby guaranteeing that the fundamental rights it enshrines apply to everyone. Additionally, it emphasises the equality of men and women.

Furthermore, the Fundamental Law establishes guarantees for the right to a fair trial, including independent and impartial proceedings, a requirement for decisions to be made within a reasonable time, and the right to appeal decisions made by state authorities.

Based on the above analysis, it is evident that the Fundamental Law guarantees a broader range of fundamental rights compared with the previous constitution, largely covering the rights protected by the Convention and its additional protocols. A number of these rights are further enshrined in additional legislative instruments.

## **5.2. The Hungarian Penal Code and ECHR**

In Act C of 2012 on the Criminal Code<sup>33</sup> (hereinafter referred to as the Criminal Code), the penal code in force, there are numerous offenses aimed at protecting human rights.

Regarding the right to life guaranteed by Article 2 of the Convention, the Hungarian Criminal Code provides strict protection, penalising crimes such as homicide, aiding and abetting suicide, abortion, and failure to offer aid or assistance. Concerning the prohibition of torture and inhuman or degrading treatment under Article 3 of the Convention, the Criminal Code penalises battery, professional misconduct, and duress. The Criminal Code

<sup>33</sup> Act C of 2012 on the Criminal Code. [Online]. Available at: <https://njt.hu/forditasok/-:2012:C/1/10> (Accessed: 12 October 2024).

also provides protection against physical and psychological coercion and unlawful detention, as it criminalises violations of personal freedom. Additionally, the Criminal Code defines offenses such as battery and mistreatment in official proceedings.

The Criminal Code also addresses human trafficking and forced labour, providing protection for the rights enshrined in Article 4 of the Convention.

In relation to the right to liberty and security in Article 5 of the Convention, the Criminal Code again mentions offenses such as violations of personal freedom and unlawful detention.

Concerning the right to a fair trial, guaranteed in Article 6 of the Convention, the Criminal Code, in Chapter XXVII on corruption-related offenses, defines various forms of bribery during official procedures. It also sanctions offenses such as false accusation, misleading authorities, perjury, subornation of perjury, coercion in official procedures, suppressing exculpatory evidence, and legal malpractice. It also provides protection for crimes committed against officials in the course of their official duties.

Regarding the right to respect for private and family life (Article 8 of the Convention), the Criminal Code addresses illegal entry into private property, misuse of personal data, violation of private secrets, and mail fraud.

The Criminal Code supports the protection of freedom of thought, conscience, and religion under Article 9 of the Convention, by criminalising acts that violate these rights. It also guarantees freedom of association and assembly by sanctioning violations of these rights, thereby safeguarding the rights enshrined in Article 11 of the Convention.

In accordance with the prohibition of discrimination under Article 14 of the Convention, the Criminal Code penalises violence against a member of the community and incitement against a community.

Furthermore, the Criminal Code protects the right to property under Article 1 of the First Protocol to the Convention by criminalising theft, robbery, embezzlement, and fraud.

From the above analysis, it is clear that through numerous provisions, the Criminal Code ensures the protection of the rights enshrined in the Convention, both for individuals and the community. It sanctions crimes against life, liberty, bodily and mental integrity, privacy, freedom of expression, and property, and provides special protection against discrimination, hate speech, and inhuman treatment, reflecting compliance

with the Convention in Hungarian criminal law.

### **5.3. The Criminal Procedure Code and ECHR**

Act XC of 2017 on the Code of Criminal Procedure<sup>34</sup> (hereinafter referred to as the Criminal Procedure Code) ensures the protection of the rights enshrined in the Convention as follows.

One of the most important principles in criminal proceedings is the guarantee of the right to a fair trial, which is protected in the following manner. The preamble of the Criminal Procedure Code refers to the right to a fair trial and the observance of reasonable deadlines. Furthermore, it stipulates the right to defence, which allows the accused to retain a lawyer and actively exercise their defence during the proceedings. The Criminal Procedure Code defines the presumption of innocence, as well as the rights and obligations of the accused and of the person reasonably suspected of committing an offense, the latter of which is extensively guaranteed by law. The Criminal Procedure Code incorporates a version of the so-called Miranda warning, developed in American law, which appears under the title of “Defendant advice” in Section 185.

The following rule is in effect in connection with Article 5. During the proceedings, the application of any coercive measure must be duly justified. In certain circumstances, the suspect may be held in custody, which can only be imposed based on the conditions specified by law. The Criminal Procedure Code prescribes various procedural guarantees, including the possibility to appeal against coercive measures, as well as a remedy for unlawful detention.

Respect for the prohibition of torture and inhuman treatment (Article 3) is particularly important during criminal proceedings, especially when applying detention and coercive measures.

The provisions of the Criminal Procedure Code ensure respect for the right to privacy, while also stipulating specific procedural guarantees for intercepting private communication. The use of undercover tools is subject to either judicial or prosecutorial authorisation, or it may be conducted without such authorisation. This is especially important for protecting the right to family life and correspondence (Article 8).

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<sup>34</sup> Act XC of 2017 on the Code of Criminal Procedure. [Online]. Available at: <https://njt.hu/forditasok/-/-2017:XC/1/10> (Accessed: 12 October 2024).

#### **5.4. The Hungarian Civil Code, Civil Procedure Code, and ECHR**

Act V of 2013 on the Civil Code<sup>35</sup> also contains numerous provisions that ensure the enforcement of rights protected by the Convention, particularly in the areas of personality rights, property rights, and the protection of privacy and family life.

In the civil proceedings, Act CXXX of 2016 on the Code of Civil Procedure<sup>36</sup> (hereinafter referred to as the Civil Procedure Code) ensures the enforcement of the rights contained in the Convention in the following way.

The protection of the right to private life also receives special attention in civil proceedings, as the law provides for the examination of documents, creation of copies thereof, and related data management. According to the Civil Procedure Code, as a general rule, the court reviews the case in a public hearing and announces its decision publicly; however, in justified cases, the court may decide to exclude the public either on its own initiative or upon a justified request from a party.<sup>37</sup>

The Civil Procedure Code stipulates that courts are obliged to respect the dignity of the parties in all proceedings. In line with the principles of the ECHR, it also guarantees the right to a fair trial, protection of private life, equal treatment, and the right to legal remedy.

In addition to the provisions of the Constitution, criminal and civil substantive and procedural law, the case law of the Constitutional Court, as well as the binding legal interpretations of the Supreme Court are also relevant for the establishment of domestic regulations in compliance with the Convention, as references to the Court's case law are becoming increasingly common.

### **6. Major Law-Making Processes in Hungary Based on the ECHR**

The primary function of the Court is to establish whether a respondent state has breached the Convention. When a violation is found, the judgment may provide for just satisfaction. Nevertheless, it remains the respondent state's duty to determine and execute suitable measures to remedy the breach and

<sup>35</sup> Act V of 2013 on the Civil Code. [Online]. Available at: <https://njt.hu/forditasok/-:2013:V/1/10> (Accessed: 12 October 2024).

<sup>36</sup> Act CXXX of 2016 on the Code of Civil Procedure. [Online]. Available at: <https://njt.hu/forditasok/-:2016:CXXX/1/10> (Accessed: 12 October 2024).

<sup>37</sup> Act CXXX of 2016 on the Code of Civil Procedure Section 231 [The publicity of a hearing]. [Online]. Available at: <https://njt.hu/forditasok/-:2016:CXXX/1/10> (Accessed: 12 October 2024).

restore the situation. Although the Court has typically avoided specifying exact remedies, it may, in exceptional cases, recommend particular actions to be taken.<sup>38</sup>

Article 46, Paragraph 1 of the Convention states: ‘*The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties*’.<sup>39</sup> Consequently, the member states are obliged to remedy the violations identified in the Court’s judgments by creating a legal environment where similar violations are unlikely to recur. These violations generally arise when a particular legislation contrary to the Convention are applied, or when there is a lack of legislation. However, violations may also be caused by errors in administrative processes, such as those attributable to an authority.

Hungary has undertaken two significant legislative reforms in response to judgments delivered by the Court. These reforms pertain to conditions in detention facilities and the length of proceedings before the domestic courts.

The Court first addressed the issue of detention conditions in Hungary in 2011 in the case *Szél v. Hungary*.<sup>40</sup> The following year, in the case *István Gábor Kovács v. Hungary*, the Court found violations regarding prison overcrowding, poor conditions in the detention facilities, the lack of effective remedies, and other deficiencies in protecting detainees’ rights.<sup>41</sup> Recognising these systemic issues, the Court delivered a pilot judgment in the case *Varga and Others v. Hungary* in 2015, determining that prisoners in Hungarian penal institutions were subjected to inhuman or degrading treatment due to overcrowding.<sup>42</sup> A significant number of applicants subsequently turned to the Court due to the poor conditions in these institutions. To monitor the execution of these judgments, the Committee of Ministers of the Council of Europe formed a group from these cases under the leading case of *István Gábor Kovács v. Hungary*. This group also

<sup>38</sup> Harris, O’Boyle, and Warbrick, 2023, p. 33.

<sup>39</sup> 1993. évi XXXI. törvény az emberi jogok és az alapvető szabadságok védelméről szóló, Rómában, 1950. november 4-én kelt Egyezmény és az ahoz tartozó nyolc kiegészítő jegyzőkönyv kihirdetéséről. [Online]. Available at. <https://net.jogtar.hu/jogszabaly?docid=99300031.tv#lbj41id4a30> (Accessed: 12 October 2024).

<sup>40</sup> See further: *Case of Szél v. Hungary*, App. No. 30221/06, 07 September 2011.

<sup>41</sup> *Case of István Gábor Kovács v. Hungary*, App. No. 15707/10, 17 April 2012.

<sup>42</sup> *Case of Varga and Others v. Hungary*, App. Nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13 (2015), 10 June 2015.

includes related issues, such as inadequate living space, insufficient capacity expansion, restrictions on maintaining contact with family members, and the failure to implement alternative coercive measures.

The Committee of Ministers invited the Hungarian Government to submit an action plan addressing the identified problems. In response, and with the aim of preventing abuses related to compensation procedures for prison overcrowding, Hungary introduced domestic remedies targeting conditions that violate fundamental rights. This was achieved through amendments to the Act on the Enforcement of Penalties, Measures, Certain Coercive Measures and Misdemeanour Custody (hereinafter referred to as the Prison Code) and Decree of the Minister of Justice 16/2014 (XII.19.) IM on the detailed rules of the implementation of imprisonment, custodial arrest, pre-trial detention and custodial arrest in lieu of a disciplinary penalty (hereinafter referred to as the IM Decree). Chapter III/A of the Prison Code<sup>43</sup> and Article 5/A of the IM Decree<sup>44</sup> regulate the compensation procedure for placement conditions that violate fundamental rights. The new rules expanded the scope of reintegration custody, introduced the possibility of compensation, and provided remedies for the review of complaints.

According to Section 75/B of the Prison Code, a convicted person is entitled to compensation if there was a lack of living space required by law during their detention or if they were subjected to other conditions that violate the prohibition on torture or inhuman or degrading treatment, such as inadequate ventilation, lighting, heating, or pest control. The compensation claim can also be submitted after release, within the legal deadline.<sup>45</sup>

Following the introduction of domestic remedies addressing the issue, the Court delivered its judgment in *Domján v. Hungary*,<sup>46</sup> wherein it found that the newly established remedies were, in principle, effective for the purposes of Article 35 § 1 of the Convention.<sup>47</sup> However, subsequent

<sup>43</sup> 2013. évi CCXL. törvény a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról. [Online]. Available at: <https://njt.hu/jogszabaly/2013-240-00-00> (Accessed: 12 October 2024).

<sup>44</sup> 16/2014. (XII. 19.) IM rendelet a szabadságvesztés, az elzárás, az előzetes letartóztatás és a rendbírság helyébe lépő elzárás végrehajtásának részletes szabályairól. [Online]. Available at: <https://njt.hu/jogszabaly/2014-16-20-06> (Accessed: 12 October 2024).

<sup>45</sup> 2013. évi CCXL. törvény a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról 75/D. [Online]. Available at: <https://njt.hu/jogszabaly/2013-240-00-00> (Accessed: 12 October 2024).

<sup>46</sup> See further: *Case of Domján v. Hungary*, App. No. 5433/17, 23 November, 2017.

<sup>47</sup> Sonnevend and Bodnár, 2021, 56. p. 48.

revisions were undertaken owing to the excessive complexity of the original regulatory framework. The effectiveness of the amended system is currently under evaluation by the Committee of Ministers.

Regarding the length of civil proceedings, the Court delivered a pilot judgment in 2015 in the case *Gazsó v. Hungary*.<sup>48</sup> Given the large number of judgments against Hungary regarding the protracted nature of court proceedings, these cases have also been moved in one group under the leading case of *Gazsó v. Hungary*, at the execution stage of judgments of the Court – similar to the case *István Gábor Kovács v. Hungary*. The group includes complaints about the length of civil, criminal, and administrative proceedings. The Committee of Ministers has invited Hungary to accelerate these proceedings and introduce domestic remedies.

To address the issue, the legislator took into account the structural problem of excessive length of proceedings when drafting the new civil and criminal procedure codes, aiming to reduce the duration of proceedings. While these reforms did not fully resolve the issue, they encouraged the parties involved to refrain from procedural tactics that would deliberately extend the proceeding.

Additionally, the legislator found it expedient to create a remedy procedure to compensate for violations caused by protracted proceedings. Consequently, Act XCIV of 2021 on the enforcement of pecuniary satisfaction relating to the protraction of civil contentious proceedings (hereinafter referred to as the Pecuniary Satisfaction Act) was adopted. This act exclusively addresses claims for pecuniary satisfaction due to delays in civil litigation. In terms of compensating for fundamental rights violations, the law establishes a new legal consequence called pecuniary satisfaction, distinct from compensation, damages, or non-pecuniary damages.

According to the Pecuniary Satisfaction Act, only a party involved in the proceedings can submit a claim for pecuniary satisfaction if the court proceedings were unreasonably prolonged. There are two courts specified by the law to decide on such claims in non-litigation proceedings within a short time. If the claim for pecuniary satisfaction is well-founded, the proceedings are exempt from fees. Non-litigation proceedings can be initiated for both pending and terminated cases, covering the entire duration of the case or just a specific part.

The deadline for submitting such a claim is the same as that for applying to the Court: four months.

<sup>48</sup> Case of *Gazsó v. Hungary*, App. No. 48322/12, 16 October 2015.

The law also specifies how to calculate the duration of court proceedings and defines what constitutes a reasonable period, generally set at 60 months (five years) from the start of the first-instance proceedings to the delivery of the final decision. The amount of pecuniary satisfaction is adjusted to the duration of the proceedings.

The Pecuniary Satisfaction Act also defines exclusion criteria, including cases where the Court has already ordered the state to pay just satisfaction for the excessive length of court proceedings. If the Court granted just satisfaction for only part of the case, that amount will be deducted from the pecuniary satisfaction awarded under the domestic procedure, and the remaining balance will be paid to the party. Similarly, if the party has already exhausted domestic remedies, the court will determine pecuniary satisfaction only for the period previously not reviewed.

The order for payment procedure is a special case of a pecuniary satisfaction claim. Pecuniary satisfaction claims cannot be pursued for payment procedure. However, if the order for payment procedure turns into a civil proceeding, the date of submission of the order for payment procedure is considered the start of the civil proceeding.

Apart from the Pecuniary Satisfaction Act, a government decree sets out the details for calculating pecuniary satisfaction in relation to civil proceedings. The amount is adjusted according to the duration of the court case.

The Pecuniary Satisfaction Act, which took effect on 1 January 2022, includes transitional provisions to facilitate its phased implementation. Until 31 December 2022, claims for pecuniary satisfaction could only be made in connection with cases that had already been closed with a final decision.<sup>49</sup>

Currently, it appears that the domestic remedy introduced for civil proceedings is functioning effectively.

## 7. Landmark Cases of Hungary Before the Court

The following Hungarian cases before the Court are significant, as they addressed fundamental legal issues such as police ill-treatment, freedom of expression and freedom of association, the length of detention, ill-treatment

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<sup>49</sup> 2021. évi XCIV. törvény a polgári peres eljárás elhúzódásával kapcsolatos vagyoni elégtétel érvényesítéséről. [Online]. Available at: <https://njt.hu/jogszabaly/2021-94-00-00.2#AC5> (Accessed: 12 October 2024).

on account of the conditions of expulsion, and the right to respect for private and family life.

### ***7.1. Rekvényi v. Hungary 25390/94 – Freedom of Expression and Freedom of Association***

This was the first judgment delivered by the Court concerning Hungary, in 1999.

The applicant was a police officer and Secretary General of the Police Independent Trade Union. The applicant challenged Act CVII of 1993 on certain amendments to the Constitution, which prohibited police officers from engaging in political activities. The amendment was enforced through circulars in 1994, requiring police officers to leave the institution if they wanted to engage politically. The Police Independent Trade Union filed a constitutional complaint, but the Constitutional Court dismissed it, stating it had no competence to annul a constitutional provision.

The Court found that the restriction on the applicant's freedom of association, which prohibited police officers from joining political parties, was lawful under Article 11, as it was clearly established in domestic law and not arbitrary. The interference was justified, and there was no violation of Article 11. Furthermore, the Court held that there was no violation of Article 14 in conjunction with Article 10 or 11, as the special status of police officers had been taken into account, justifying the difference in treatment.<sup>50</sup>

The case of *Rekvényi* affirmed the principle that public servants, particularly those exercising coercive powers, may be subject to special restrictions to protect the political neutrality of state institutions. The Court afforded Hungary a broad margin of appreciation, justifying the restriction on police officers' political activity as a necessary measure in light of the country's ongoing democratic transition and efforts to strengthen institutional neutrality.<sup>51</sup> However, the judgment also reflects a cautious approach by the Court, marked by deference to state discretion in a transitional context. This case remains a pivotal yet debated precedent in the Court's evolving jurisprudence on freedom of association and expression in the public sector.

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<sup>50</sup> *Case of Rekvényi v. Hungary*, App. No. 25390/94, 20 May 1999.

<sup>51</sup> Sonnevend and Bodnár, 2021, 254. p. 23.

### **7.2. *Gubacsi v. Hungary (44686/07) – Police Ill-Treatment***

The applicant alleged, under Article 3 of the Convention, that he was subjected to severe ill-treatment by police officers in August 2006 after being taken into custody. He claimed that the police officers beat him during the transfers to medical examinations and while in custody, resulting in multiple injuries across his body. Despite an investigation carried out, the authorities found the testimonies inconsistent, especially due to the applicant's intoxicated state. Although his injury was likely caused by police abuse, no specific officer could be identified, and his complaint was dismissed.

The Court noted that the applicant had entered police custody with minor injuries, but after his release, more serious injuries were detected. The Court emphasised that if someone is injured in custody, the State must explain how the injuries occurred. In this case, the Government failed to prove the injuries were caused by anything other than police ill-treatment. The Court ruled that this constituted inhuman and degrading treatment, violating Article 3. However, the Court noted that the investigation into the allegations was considered adequate, despite being unable to identify individual responsibility due to contradictory evidence.<sup>52</sup>

The judgment reaffirms the State's responsibility to safeguard the safety and dignity of individuals in custody. However, the Court's restrained assessment of the domestic investigation – despite unresolved accountability – reflects a cautious judicial approach in complex cases. This case illustrates the ongoing challenge the Court faces in ensuring not only declaratory justice for victims but also systemic compliance by States with their obligations under the Convention.

### **7.3. *X.Y. v. Hungary 43888/08 – Length of Detention***

The applicant was arrested in November 2007 for car thefts and was held in pre-trial detention until May 2008, when he was placed under house arrest. All restrictions were lifted in November 2009, but the proceedings remained pending. He alleged that his detention was unlawful due to a clerical error, and the length of his pre-trial detention had been excessive, which the authorities did not consider when making a decision to extend his detention.

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<sup>52</sup> *Case of Gubacsi v. Hungary*, App. No. 44686/07, 28 September 2011.

The Court determined that a clerical error rendered part of the applicant's detention initially unlawful, and that the total duration of his pre-trial detention was excessive.<sup>53</sup>

The Court's case law affirms that defendants are entitled to trial within a reasonable time or to be released before trial, with one year generally considered a reasonable period for pre-trial detention. Decisions on detention must be well-justified, evidence-based, and tailored to the individual, while authorities must continually assess the suitability of less restrictive alternatives.

Subsequently, the Court delivered a pilot judgment concerning the length of detention, identifying it as a structural problem in Hungary. Consequently, related cases have been processed as one group during the execution phase. This group of cases has become more complex and includes violations such as unlawful detention, excessive pre-trial detention, and inadequate reasoning by domestic courts for continued detention. It also includes infringements of the "equality of arms" principle, as applicants were denied access to relevant investigation materials when contesting their detention, and the excessive length of judicial review of detention.<sup>54</sup>

#### ***7.4. Ilias and Ahmed v. Hungary 47287/15 – Ill-Treatment on Account of the Conditions of Expulsion***

The applicants are Bangladeshi citizens who entered Hungary from Serbia on 15 September 2015, and immediately submitted asylum applications. Following the rejection of their applications, they proceeded to file an appeal. Until the appeal was decided, they were held in the Röszke transit zone. After their asylum applications were rejected, the applicants were returned to Serbia. They argued that their detention in the transit zone was unlawful, the conditions of detention were inadequate, and their expulsion to Serbia exposed them to a real risk of inhuman and degrading treatment for which they also claimed that there was no effective remedy available.

The Fourth Section of the Court found a violation of Article 3 regarding the applicants' expulsion to Serbia and Article 5, Paragraph 1 concerning their unlawful detention. It also held that there had been a violation of Article 5, Paragraph 4 and Article 13 in conjunction with Article 3. However, it found no violation of Article 3 in relation to the

<sup>53</sup> *Case of X.Y. v. Hungary*, App. No. 43888/08, 19 June 2013.

<sup>54</sup> X.Y. v. Hungary. Status of Execution. [Online]. Available at: <https://hudoc.exec.coe.int/eng?i=004-11104> (Accessed: 12 October 2024).

conditions of detention in the transit zone. At the Government's request, the case was referred to the Grand Chamber on 18 September 2017.<sup>55</sup>

The Grand Chamber concluded that the applicants' situation in the transit zone did not constitute deprivation of liberty under Article 5, based on the fact that the applicants had voluntarily entered the transit zone, and their stay was relatively short (23 days), while waiting for their asylum claims to be processed. The Grand Chamber noted that as there were no significant obstacles to returning to Serbia, their stay did not meet the threshold of *de facto* deprivation of liberty. Therefore, Article 5 was deemed inapplicable.

In connection with the expulsion to Serbia, the Grand Chamber found that Hungary failed in its procedural duty under Article 3 when expelling the applicants to Serbia without ensuring if they had access to an adequate asylum procedure. The Hungarian authorities did not assess the risks of refoulement or conditions in Serbia, relying on a presumption of Serbia as a "safe third country". The Grand Chamber found that the expulsion violated Article 3, as it did not consider the risk of denial of asylum or ill-treatment upon return.

The Grand Chamber noted the conditions in the transit zone did not reach the threshold for inhuman treatment under Article 3, as the applicants had access to adequate food, hygiene, medical care, and human contact during their 23-day long stay; therefore, no violation could be established regarding the condition of the transit zone. Furthermore, it concluded that the applicants' complaint concerning the lack of an effective remedy in this context had been submitted out of time.

The Grand Chamber's judgment in *Ilias and Ahmed v. Hungary* reflects a nuanced outcome for human rights protection. The Court reaffirmed the procedural obligations under Article 3, underscoring the importance of a thorough, individualised assessment of the risk of ill-treatment prior to expulsion.

According to the interpretation of the Court, the High Contracting Parties are required not only to determine whether expulsion or return would directly expose an individual to torture, inhuman or degrading treatment, or punishment prohibited by Article 3 of the Convention, but also to evaluate whether there is a genuine risk that owing to the absence of adequate asylum procedures, the individual might be returned to a country where such

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<sup>55</sup> *Case of Ilias and Ahmed v. Hungary*, App. No. 47287/15, 21 November 2019.

treatment could occur or from which further removal to another State with similar risks is possible (i.e. *chain refoulement*).<sup>56</sup>

In the case *Ilias and Ahmed*, the Court accepted Hungary's reliance on a general list of safe third countries to justify the applicants' expulsion. This approach differs from the general requirement of individualised and detailed risk assessments in removal decisions, indicating that presumptive designations may be considered sufficient in certain procedural contexts.

The Court addressed the applicants' requests for urgent protection through interim measures with reference to the specific circumstances, offering limited engagement with the broader implications of potential harm during the proceedings. Similarly, the judgment did not examine in detail the overall functioning of the transit zone system or its effects on asylum seekers in practice.

Overall, while the judgment strengthened certain procedural safeguards, some protection gaps remained unaddressed, potentially limiting its broader impact on state asylum practices.

### **7.5. *Karsai v. Hungary 32312/23 – Right to Respect for Private and Family Life***

The applicant was diagnosed with amyotrophic lateral sclerosis (ALS). He complained that the prohibition and strict criminal sanctioning of physician-assisted dying (PAD) in Hungary infringed his rights under Articles 8 and 14 of the ECHR, which guarantees the right to respect for private and family life and prohibits discrimination, respectively. While acknowledging that Hungarian law permits terminally ill patients to refuse life-sustaining treatment, he argued that the criminalisation of any form of assistance in ending one's life, including acts taken abroad where assisted dying is lawful, constitutes a disproportionate restriction on his personal autonomy.

The Court found that given the wide margin of appreciation of the state, the fact that physician-assisted dying is not permitted in Hungary, and the assistance in suicide is criminalised with extraterritorial effect, does not violate the applicant's right to self-determination (right to respect for private life) as guaranteed by Article 8. Furthermore, the prohibition of discrimination (Article 14) was not violated particularly when compared with the right to refuse life-sustaining treatments, as the latter is widely recognised in member states and in the Oviedo Convention, which regulates

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<sup>56</sup> Sonnevend and Bodnár, 2021, 58. p. 54.

bioethical issues, whereas the right to physician-assisted dying does not exist in international law.<sup>57</sup>

The judgment aligns with the Court's earlier jurisprudence, reflecting its cautious approach to end-of-life cases: it has upheld restrictions on assisted suicide in *Pretty v UK*, supported protective safeguards such as psychiatric assessments in *Haas v Switzerland*, and allowed withdrawal of life-sustaining treatment against parental wishes in *Gard v UK*, without finding violations of Article 8.<sup>58</sup> These cases illustrate the Court's cautious approach in interpreting Article 8 in the context of assisted dying, particularly in the absence of European consensus.

*Karsai v. Hungary* reflects a careful and highly deferential interpretation of state discretion under the Convention. The Court carefully balanced competing interests, reaffirming the wide margin of appreciation afforded to national authorities in ethically sensitive areas where no clear European consensus exists. While consistent with existing case law and reflective of the diversity of moral, cultural, and legal views across Council of Europe member states, the judgment may be viewed by some as offering limited advancement in the protection of personal autonomy in end-of-life contexts. Its real-world effect may be to preserve the legal status quo rather than to challenge or refine state protections concerning self-determined death.

#### **7.6. *Panyik v. Hungary 12748/06 – Functioning of Justice***

The applicant argued that the court hearing a case filed against him by his former employer for unpaid fees was not impartial. He claimed that the judge handling his appeal was biased due to their frequent professional collaboration, and noted that this judge had previously recused himself from another case against him for the same reason. He further pointed out that two other judges had also recused themselves from related proceedings, raising broader concerns about the impartiality of the court. On these grounds, the applicant alleged a violation of his right to a fair hearing under Article 6, Paragraph 1 of the Convention.

The Court emphasised the importance of public confidence in the judiciary, which requires impartiality as guaranteed by Article 6. It recalled that impartiality must be assessed both subjectively, considering the personal conviction of the judge, and objectively, by evaluating whether the

<sup>57</sup> *Case of Dániel Karsai v. Hungary*, App. No. 32312/23, 13 June 2024.

<sup>58</sup> Harris, O'Boyle, and Warbrick, 2023, p. 531.

circumstances of the case could raise legitimate doubts. While judges are presumed impartial until proven otherwise, establishing subjective bias can be challenging. The Court often focuses on the objective test, which considers facts that might raise doubts about impartiality, including perceptions of bias.

In the present case, the applicant questioned the impartiality of the Regional Court due to a judge's prior declaration of bias in a related case and the withdrawal of two judges from previous proceedings due to personal prejudice. Although the judge had not shown personal bias in this instance, the Court noted that he previously recused himself because of a work relationship with the applicant, which still existed. This ongoing connection raised legitimate doubts about the judge's impartiality, which in turn affected the perceived neutrality of the entire panel. The Court found the applicant's concerns objectively justified and therefore concluded that there had been a violation of Article 6, Paragraph 1.<sup>59</sup>

This judgment emphasises the importance of judicial impartiality for fair trials. While affirming the applicant's right to an impartial tribunal under Article 6, Paragraph 1, it highlights gaps in domestic procedures for addressing judicial bias. The case underscores the need for strong mechanisms to maintain public confidence and prevent conflicts of interest in the judiciary.

As a result of the *Panyik* case, Act CXXX of 2016 on the Code of Civil Procedure introduced the possibility of reopening civil law cases.<sup>60</sup>

## 8. Conclusion

The evolution of human rights protection in Hungary is deeply intertwined with its engagement in the European human rights framework, particularly through its membership in the Council of Europe. Hungary's domestic legal system has undergone significant adaptation to incorporate the obligations arising from the ECHR, as evidenced in its constitutional framework and core areas of criminal, civil, and procedural law. Moreover, the nation's law-making processes and judicial practices reflect ongoing efforts to harmonise domestic norms with European human rights standards. Landmark decisions by the Court concerning Hungary illustrate both areas of compliance and

<sup>59</sup> *Case of Panyik v. Hungary*, App. No.12748/06, 12 October 2011.

<sup>60</sup> *Panyik v. Hungary*. Status of Execution. [Online]. Available at: <https://hudoc.exec.coe.int/eng?i=004-10975> (Accessed: 12 October 2024).

instances where further improvements remain necessary, particularly regarding conditions of detention and law enforcement practices.

In conclusion, while Hungary has established a robust legal and institutional foundation for human rights protection, the dynamic nature of European human rights law and evolving societal challenges require continuous vigilance and commitment. Future developments will be shaped by Hungary's continued dialogue with international human rights bodies, the adaptive capacity of its legislative and judicial institutions, and the collective commitment within society to uphold and promote human dignity and fundamental rights.

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