

20 June 2018

Compromise amendments – EP report situation in Hungary

COMP 1 – citations

Covers: 1, 2, 3, 4, 5, 6, 9, 10 (Kudrycka, Von Thun und Hohenstein)

Fall: 8 (Gál), FEMM Recitals A-L, CONT Recitals A-R, AFCO Recitals A-E

- having regard to the Treaty on European Union, and in particular Article 2 and Article 7(1) thereof,
- *having regard to the Charter of Fundamental Rights of the European Union,*
- *having regard to the European Convention on Human Rights and Fundamental Freedoms and the Protocols thereto,*
- *having regard to the Universal Declaration of Human Rights,*
- *having regard to the international human rights treaties of the United Nations and the Council of Europe, such as the European Social Charter and the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),*
- having regard to its resolution of 17 May 2017 on the situation in Hungary¹,
- having regard to its resolutions of 16 December 2015² and 10 June 2015³ on the situation in Hungary,
- having regard to its resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)⁴,
- having regard to its resolutions of 16 February 2012 on the recent political developments in Hungary⁵ and of 10 March 2011 on media law in Hungary⁶,
- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights⁷,
- having regard to its legislative resolution of 1 April 2004 on the Commission communication on Article 7 of the Treaty on European Union: Respect for and

¹ Texts adopted, P8_TA(2017)0216.

² Texts adopted, P8_TA(2015)0461.

³ OJ C 407, 4.11.2016, p. 46.

⁴ OJ C 75, 26.2.2016, p. 52.

⁵ OJ C 249 E, 30.8.2013, p. 27.

⁶ OJ C 199 E, 7.7.2012, p. 154.

⁷ Texts adopted, P8_TA(2016)0409.

promotion of the values on which the Union is based⁸,

- having regard to Communication of 15 October 2003 from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based⁹,
- **having regard to the annual reports of the European Union Agency for Fundamental Rights (FRA) and European Anti-Fraud Office (OLAF),**
- having regard to Rule 45, 52 and 83 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgetary Control, the Committee on Culture and Education, the Committee on Constitutional Affairs and the Committee on Women’s Rights and Gender Equality (A8-0000/2018),

COMP 2 – recital A

Covers: 11 (Vergiat), 12 (Michel e.a), AFCO 1, AFCO 2, AFCO 3

- A. whereas the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as set out in Article 2 of the Treaty on European Union (TEU), **reflected in the Charter of Fundamental Rights of the European Union and embedded in international human rights treaties**, and whereas those values, which are common to the Member States **and to which all Member States have freely subscribed**, constitute the foundation of the rights enjoyed by those living in the Union;

COMP 3 – recital B

Covers: 13 (Michel e.a.), 14 (Vergiat), AFCO 9

- B. whereas any clear risk of a serious breach by a Member State of the values enshrined in Article 2 TEU does not concern solely the individual Member State where the risk materialises but has an impact on the **other Member States, mutual trust between them and on the** very nature of the Union and **fundamental rights under Union law**;

COMP 4 – recital C and Ca

Covers: 16 (Michel e.a.)

Falls: 17, 18, 19 (Szájér, Járóka, Gál)

- C. whereas, **as indicated in the 2003 Commission Communication on Article 7 of the Treaty on European Union**, the scope of Article 7 TEU is not **confined to the obligations under the Treaties, as in Article 258 TFEU**, and whereas the Union can assess the existence of a clear risk of a serious breach of the common values in areas falling under Member States’ competences;

⁸ OJ C 104 E, 30.4.2004, p. 408.

⁹ COM(2003)0606.

Ca. whereas Article 7(1) TEU constitutes a preventive phase endowing the Union with the capacity to intervene in the event of a clear risk of a serious breach of the common values; whereas such preventive action provides for a dialogue with the Member State concerned and is intended to avoid possible sanctions;

COMP 6 – recital D and Annex I – point 3

Covers: 15 (Gomes), 20 (Gomes)

Fall: 35 (Gál, Ungureanu)

Separate vote: 21 (Gál, Ungureanu) as an addition to point 3: “**and respond to any concern**” after “**specific measure**”

D. whereas the *Hungarian authorities have consistently been ready to discuss the legality of any specific measure, but* the situation has not been addressed and many concerns remain, *having a negative impact on the image of the Union, as well as its effectiveness and credibility in the defence of fundamental rights, human rights and democracy globally, and revealing the need to address them by a concerted action of the Union;*

(3) The European Parliament also noted that the Hungarian authorities have ***consistently been ready to discuss the legality of any specific measure, but*** failed to take ***all*** the actions recommended in its previous resolutions.

COMP 7 – paragraph 1 and Annex I – point 2

Covers: 7 (Becker, Wikström, Boni, López Aguilar), 22 (Becker, Wikström, López Aguilar), 24 (Kudrycka, Von Thun und Hohenstein), 163 (Kudrycka, Von Thun und Hohenstein), FEMM 11, AFCO 8

Falls: 23 (Kudrycka, Von Thun und Hohenstein)

1. States that the concerns of Parliament relate to the following issues:

- (1) the functioning of the constitutional ***and electoral*** system;
- (2) the independence of the judiciary and of other institutions, ***the rights of judges***;
- (3) corruption and conflicts of interest;
- (4) privacy and data protection;
- (5) freedom of expression;
- (6) academic freedom;
- (7) freedom of religion;
- (8) freedom of association;
- (9) the right to equal treatment;

(10) the rights of persons belonging to minorities, including Roma and Jews, **and protection against hateful statements against such minorities**;

(11) the fundamental rights of migrants, asylum seekers and refugees;

(12) **economic and** social rights.

(2) In its reasoned proposal, the European Parliament presented its concerns related to the situation in Hungary. In particular, the main concerns related to the functioning of the constitutional **and electoral** system, the independence of the judiciary and of other institutions, **the rights of judges**, corruption and conflicts of interest, privacy and data protection, freedom of expression, academic freedom, freedom of religion, freedom of association, the right to equal treatment, the rights of persons belonging to minorities, including Roma and Jews, **and protection against hateful statements against such minorities**, the fundamental rights of migrants, asylum seekers and refugees, **economic and** social rights.

COMP 8 – paragraph 2

Covers: FEMM 25, CULT 21

Fall: 25 (Gál, Ungureanu), 27 (Szájer, Járóka), 26 (Morano)

2. Believes that the facts and trends mentioned in the Annex to this resolution taken together represent a systemic threat **to the values of Article 2 TEU** and constitute a clear risk of a serious breach **thereof**;

COMP 9 – paragraph 2a

Covers: 28 (Kudrycka, Von Thun und Hohenstein)

2a. Notes the outcome of the parliamentary elections in Hungary, which took place on 8 April 2018; highlights the fact that any Hungarian government is responsible for the elimination of the risk of a serious breach of the values of Article 2 TEU, even if this risk is a lasting consequence of the policy decisions suggested or approved by previous governments;

COMP 10 – paragraph 3 and 4

Covers: FEMM 26, CULT 22, CULT 23, CULT 25, AFCO 4, AFCO 5, AFCO 13, AFCO 14, AFCO 15, CONT 1, CONT 2, CONT 3, CONT 8, CONT 10

Fall: 29 (Meuthen), 30 (Szájer, Járóka), 31 (Gál, Ungureanu), 32 (Morano), 33 (Meuthen), 259 (Gál, Ungureanu), 260 (Szájer, Járóka, Gál), 261 (Szájer, Járóka, Gál), 262 (Gál, Ungureanu), 263 (Szájer, Járóka, Gál)

3. Submits, therefore, in accordance with Article 7(1) TEU, this reasoned proposal to the Council, inviting the Council to determine **whether** there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU and to address appropriate recommendations to Hungary in this regard;

4. Instructs its President to forward this resolution and the reasoned proposal for a Council decision annexed hereto to the Commission and the Council and to the governments and parliaments of the Member States.

COMP 11 - Annex I – point 1 and 1a

Covers: 34 (Michel e.a.)

(1) The Union is founded on the values referred to in Article 2 of the Treaty on European Union (TEU), which are common to the Member States and which include respect for democracy, the rule of law and human rights. ***In accordance with Article 49 TEU, the accession to the Union requires respect for and the promotion of the values referred to in Article 2 TEU.***

(1a) The accession of Hungary was a voluntary act based on sovereign decision, with a broad consensus across the Hungarian political spectrum.

COMP 12 - Annex I – point 4

Covers: 36 (Michel e.a.)

(4) In its resolution of 17 May 2017 on the situation in Hungary, the European Parliament stated that the current situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 TEU ***and warrants the launch of the Article 7(1) TEU procedure.***

COMP 13 - Annex I – point 5

Covers: 37 (Michel e.a.), 39 (Morano)

Separate vote: 38 (Gál), last part, as an addition: ***“but these are to be considered legally non-binding opinions, since only the Court of Justice of the European Union may interpret the provisions of the Treaties”***

(5) ***In its 2003 Communication on Article 7 of the Treaty on European Union, the Commission enumerated many sources of information to be considered when monitoring respect for and promotion of common values, such as the reports of international organisations, NGO reports and the decisions of regional and international courts.*** A wide range of actors at the national, European and international level, have expressed their deep concerns about the situation of democracy, the rule of law and fundamental rights in Hungary, including the institutions and bodies of the Union, the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE), the United Nations (UN), as well as numerous civil society organisations.

COMP 14 - Annex I – point 6

Covers: 41 (Weidenholzer), 43 (Morano), AFCO 6

Fall: 40 (Szájer, Járóka, Gál), 42 (Gál)

(6) ~~Since its adoption and entry into force in January 2012, the Constitution of Hungary (the “Fundamental Law”) has been amended six times.~~ The Venice Commission expressed its concerns regarding the constitution-making process in Hungary on several occasions, both as regards the Fundamental Law and amendments thereto. ***It welcomed that the Fundamental Law establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles, as well as acknowledged the efforts to establish a constitutional order in line with the common European democratic values and standards, and to regulate fundamental rights and freedoms in compliance with binding international instruments.*** The criticism focused on the lack of transparency of the process, the inadequate involvement of civil society, the absence of sincere consultation, the endangerment of the separation of powers and the weakening of the national system of checks and balances.

COMP 15 - Annex I – point 7 and point 8

Covers: AFCO 10

Fall: 44 (Szájer, Járóka, Gál), 45 (Gál), 46 (Járóka), 47 (Szájer, Járóka, Gál), 48 (Gál)

(7) The competences of the Hungarian Constitutional Court were ***limited*** as a result of the constitutional reform, including with regard to budgetary matters, the abolition of the *actio popularis*, the possibility for the Court to refer to its case law prior to 1 January 2012 and the limitation on the Court’s ability to review the constitutionality of any changes to the Fundamental Law apart from those of a procedural nature only. The Venice Commission expressed serious concerns about those limitations and about the procedure for the appointment of judges, and made recommendations to the Hungarian authorities to ensure the necessary checks and balances in its Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted on 19 June 2012 and in its Opinion on the Fourth Amendment to the Fundamental Law of Hungary adopted on 17 June 2013. ***In its Opinions the Venice Commission also identified a number of positive elements of the reforms, such as the provisions on budgetary guarantees, ruling out the re-election of judges and the attribution of the right to initiate proceedings for the ex post review to the Commissioner for Fundamental Rights.***

(8) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the current constitutional complaint procedure affords more limited access to the Constitutional Court, does not provide for a time limit for the exercise of constitutional review and does not have a suspensive effect on challenged legislation. It also mentioned that the provisions of the new Constitutional Court Act weaken the security of tenure of judges and increase the influence of the government over the composition and operation of the Constitutional Court by changing the judicial appointments procedure, the number of judges in the Court and their retirement age. The Committee was also concerned about the limitation of the Constitutional Court’s competence and powers to review legislation impinging on budgetary matters.

COMP 16 - Annex I – point 9

Covers: 51 (Kudrycka, Von Thun und Hohenstein), 53 (Morano)

Fall: 49 (Szájer, Járóka, Gál), 50 (Gál), 52 (Járóka)

(9) In its *preliminary findings and conclusions* adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights *stated that the technical administration of the elections was professional and transparent, fundamental rights and freedoms were respected overall, but exercised in an adverse climate. The election administration fulfilled its mandate in a professional and transparent manner and enjoyed overall confidence among stakeholders. The campaign was animated, but hostile and intimidating campaign rhetoric limited space for substantive debate and diminished voters' ability to make an informed choice. Public campaign funding and expenditure ceilings aim at securing equal opportunities for all candidates; however, the ability of contestants to compete on an equal basis was significantly compromised by the government's excessive spending on public information advertisements that amplified the ruling coalition's campaign message.* It also expressed concerns about the delineation of single-member constituencies. Similar concerns were expressed in the Joint Opinion of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections – *it was mentioned that the delimitation of constituencies has to be done in a transparent and professional manner through an impartial and non-partisan process, i.e. avoiding short-term political objectives (gerrymandering).*

COMP 17 - Annex I – point 10

Covers: 56 (Vergiat), 57 (Boni, Becker, Coelho, Engel, Štětina), 58 (Morano), 59 (Michel e.a.), 60 (Weidenholzer e.a.), 242 (Weidenholzer e.a.), AFCO 12

Fall: 54 (Szájer, Járóka, Gál), 55 (Gál)

(10) In recent years the Hungarian Government has extensively used national consultations, *expanding direct democracy at the national level.* On 27 April 2017, the Commission pointed out that the national consultation “Let’s stop Brussels” contained several claims and allegations which were factually incorrect or highly misleading. ~~Nevertheless, the Hungarian Government subsequently continued to have recourse to similar consultations.~~ *The Hungarian Government also conducted consultations entitled ‘Migration and Terrorism’ in May 2015 and against a so-called ‘Soros Plan’ in October 2017. These consultations drew parallels between terrorism and migration, inducing hatred towards migrants, and targeted particularly the person of George Soros and the EU.*

COMP 18 - Annex I – point 11

Covers: 61 (Weidenholzer e.a.), 64 (Vergiat)

Fall: 62 (Szájer, Járóka, Gál), 63 (Gál)

(11) As a result of the extensive changes to the legal framework enacted in 2011, ~~the administration of courts became more centralised and the president of the newly created~~

National Judicial Office (NJO) was entrusted with extensive powers. The Venice Commission criticised those extensive powers in its Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted on 19 March 2012 and in its Opinion on the Cardinal Acts on the Judiciary, adopted on 15 October 2012. Similar concerns have been raised by the UN Special Rapporteur on the independence of judges and lawyers on 29 February 2012 and on 3 July 2013, as well as by the Group of States against Corruption (GRECO) in its report adopted on 27 March 2015. All those actors emphasised the need to enhance the role of the collective body, the National Judicial Council (NJC), as an oversight instance, because the president of the NJO, who is elected by the Hungarian Parliament, cannot be considered an organ of judicial self-government. Following international recommendations, the status of the president of the NJO was changed and the president's powers restricted in order to ensure a better balance between the president and the ~~NJO~~ *NJC*.

COMP 19 - Annex I – points 12 and 12a

Covers: 68 (Sargentini), 79 (Vergiat)

Fall: 65 (Szájer, Járóka, Gál), 66 (Gál), 67 (Járóka),

(12) Since 2012, Hungary has taken positive steps to transfer certain functions from the president of the NJO to the NJC in order to create a better balance between these two organs. However, further progress is still required. GRECO, in its report adopted on 27 March 2015, called for minimising the potential risks of discretionary decisions by the president of the NJO. The president of the NJO is, inter alia, able to transfer and assign judges, and has a role in judicial discipline. The president of the NJO also makes a recommendation to the President of Hungary to appoint and remove heads of courts, including presidents and vice-presidents of the Courts of Appeal. GRECO welcomed the recently adopted Code of Ethics for Judges, but considered that it could be made more explicit and accompanied by in-service training. *GRECO acknowledged also the amendments that were made concerning the rules of judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the NJC has received a stronger supervisory function in the selection process. On 2 May 2018, the NJC held a session where it unanimously adopted decisions concerning the practice of the president of the NJO with regard to declaring calls for applications to judicial positions and senior positions unsuccessful. The decisions found the president's practice unlawful.*

(12a) On 29 May 2018, the Hungarian Government presented a draft Seventh Amendment to the Fundamental Law (T/332), which was adopted on 20 June 2018. It introduces a new system of administrative courts.

COMP 20 - Annex I – point 13-17

Covers: 78 (Weidenholzer e.a.)

Fall: 69 (Járóka), 70 (Gál), 71 (Szájer, Járóka, Gál), 72 (Gál), 73 (Szájer, Járóka, Gál), 74 (Gál), 75 (Gál), 76 (Szájer, Járóka, Gál), 77 (Gál)

- (13) Following the judgment of the Court of Justice of the European Union (the “Court of Justice”) of 6 November 2012 in Case C-286/12, *Commission v. Hungary*¹⁰, which held that by adopting a national scheme requiring the compulsory retirement of judges, prosecutors and notaries when they reach the age of 62, Hungary failed to fulfil its obligations under Union law, the Hungarian Parliament adopted Act XX of 2013 which provided that the judicial retirement age is to be gradually reduced to 65 years of age over a ten year period and set out the criteria for reinstatement or compensation. ***According to the Act, there was a possibility for retired judges to return to their former posts at the same court under the same conditions as prior to the regulations on retirement, or if they were unwilling to return, they received a 12-month lump sum compensation for their lost remuneration and could file for further compensation before the court, but the reinstatement into leading administrative positions was not guaranteed. Nevertheless, the Commission acknowledged the measures of Hungary to make its retirement law compatible with EU law.*** In its report of October 2015, the International Bar Association’s Human Rights Institute stated that a majority of the removed judges did not return to their original positions, ***partly because their previous position had already been occupied by them. It also mentioned that the independence and impartiality of the Hungarian judiciary cannot be guaranteed and the rule of law remains weakened.***
- (14) In its judgment of 16 July 2015, *Gazsó v. Hungary*, the European Court of Human Rights (ECtHR) held that there had been a violation of the right to a fair trial and the right to an effective remedy. The ECtHR came to the conclusion that the violations originated in a practice which consisted in Hungary’s recurrent failure to ensure that proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to claim redress for excessively long civil proceedings at a domestic level. The execution of that judgment is still pending. ***A new Code of Civil Procedure adopted in 2016 provides for the acceleration of civil proceedings by introducing a double-phase procedure. Hungary has informed the Committee of Ministers of the Council of Europe that the new law creating an effective remedy for prolonged procedures will be adopted by October 2018.***
- (15) In its judgment of 23 June 2016, *Baka v. Hungary*, the ECtHR held that there had been a violation of the right of access to a court and the freedom of expression of András Baka, who had been elected as President of the Supreme Court for a six-year term in June 2009, but ceased to have this position in accordance with the transitional provisions in the Fundamental Law, providing that the Curia would be the legal successor to the Supreme Court. The execution of that judgment is still pending. ***On 10 March 2017, the Committee of Ministers of the Council of Europe solicited*** to take measures to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard.

¹⁰ Judgment of the Court of Justice of 6 November 2012, *Commission v. Hungary*, C-286/12, ECLI:EU:C:2012:687.

The Hungarian Government *noted that those measures are not related to the implementation of the judgment.*

(16) On 29 September 2008, Mr András Jóri was appointed Data Protection *Commissioner* for a term of six years. However, with effect from 1 January 2012, the Hungarian Parliament decided to reform the data protection system and replace the *Commissioner* with a national authority for data protection and freedom of information. Mr Jóri had to vacate office before his full term had expired. On 8 April 2014, the Court of Justice held that the independence of supervisory authorities necessarily includes the obligation to allow them to serve their full term of office and that Hungary failed to fulfil its obligations under Directive 95/46/EC of the European Parliament and of the Council¹¹. *Hungary amended the rules on the appointment of the Commissioner, presented an apology and paid the agreed sum of compensation.*

(17) The Venice Commission identified several shortcomings in its Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted on 19 June 2012. In its report, adopted on 27 March 2015, GRECO urged the Hungarian authorities to take additional steps to prevent abuse and increase the independence of the prosecution service by, inter alia, removing the possibility for the Prosecutor General to be re-elected. In addition, GRECO called for disciplinary proceedings against ordinary prosecutors to be made more transparent and for decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications. *According to the Hungarian Government, the 2017 GRECO Compliance Report acknowledged the progress made by Hungary concerning prosecutors (publication is not yet authorised by the Hungarian authorities, despite the calls of GRECO Plenary Meetings). The Second Compliance Report is pending.*

COMP 25 - Annex I – point 18-19

Covers: 81 (Boni, Coelho, Engel)

Fall: 80 (Szájer, Járóka, Gál), 82 (Gál), 83 (Szájer, Járóka, Gál), 84 (Gál), 85 (Járóka)

(18) In its report adopted on 27 March 2015, GRECO called for the establishment of codes of conduct for members of the Hungarian Parliament (MPs) concerning guidance for cases of conflicts of interest. Furthermore, MPs should also be obliged to report conflicts of interest *which arise* in an ad hoc manner and this should be accompanied by a more robust obligation to submit asset declarations. This should also be accompanied by provisions that allow for sanctions for submitting inaccurate asset declarations. *Moreover, the asset declarations should be made public online to allow for genuine popular oversight; standard electronic database should be put in place to allow for all declarations and modifications thereof to be accessible in a transparent manner.*

¹¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23.11.1995 P. 31).

(19) In its *preliminary findings and conclusions* adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the limited monitoring of campaign spending and the absence of thorough reporting on sources of campaign funds *until after the elections* undercuts campaign finance transparency and the ability of voters to make an informed choice, contrary to OSCE commitments and international standards. *The legislation in force opts for an ex-post monitoring and controlling mechanism. The State Audit Office has the competence to monitor and control whether the legal requirements have been met. The preliminary findings and conclusions did not include the official audit report of the State Audit Office concerning the 2018 parliamentary elections, as it had not been completed at the time.*

COMP 27 - Annex I – point 20

Covers: 89 (Vergiat)

Fall: 87 (Szájér, Járóka, Gál), 88 (Gál)

(20) On 7 December 2016, the Open Government Partnership (OGP) Steering Committee received a letter from the Government of Hungary announcing its immediate withdrawal from the partnership, *which voluntarily brings together 75 countries and hundreds of civil society organisations*. The Government of Hungary had been under review by OGP since July 2015 for concerns raised by civil society organisations, *in particular* regarding their space to operate in the country. *Not all the EU Member States are members of the OGP.*

COMP 28 – Annex I – point 20a

Covers: 91 (Gomes), 92 (Kudrycka, Von Thun und Hohenstein), 95 (Ferrara e.a.), 96 (Vergiat), 98 (Weidenholzer e.a.), 99 (Weidenholzer e.a.), CONT 4, CONT 6, CONT 7, CONT 9

(20a) Hungary benefits from EU funding amounting to 4.4% of its GDP or more than half of public investment. The share of contracts awarded after public procurement procedures that received only a single bid remains high at 36% in 2016. Hungary has the highest percentage in the Union of financial recommendations from OLAF regarding the Structural Funds and Agriculture for the 2013-2017 period. In 2016 OLAF concluded an investigation into a EUR 1.7 billion euro transport project in Hungary, in which several international specialist construction firms were the main players. The investigation revealed very serious irregularities as well as possible fraud and corruption in the execution of the project. In 2017, OLAF found “serious irregularities” and “conflicts of interest” during its investigation into 35 street-lightning contracts granted to the company at the time controlled by the Hungarian Prime-Minister’s son-in-law. OLAF sent its final report with financial recommendations to the European Commission Directorate-General for Regional and Urban Policy to recover EUR 43.7 million, and judicial recommendations to the General Prosecutor of Hungary. A cross-border investigation OLAF concluded in 2017 involved allegations related to the potential misuse of EU funds in 31 Research and Development projects. The investigation, which took place in Hungary, Latvia and Serbia, uncovered a

subcontracting scheme used to artificially increase project costs and hide the fact that the final suppliers were linked companies. OLAF therefore concluded the investigation with a financial recommendation to the European Commission to recover EUR 28.3 million and a judicial recommendation to the Hungarian judicial authorities. Hungary decided not to participate in the establishment of the European Public Prosecutor's Office responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union.

COMP 29 – Annex I – point 20b

Covers: 86 (Ferrara e.a.), 93 (Michel e.a.), 97 (Vergiat), 100 (Weidenholzer e.a.), CONT 5

(20b) In accordance with the Seventh report on economic, social and territorial cohesion, government effectiveness in Hungary has diminished since 1996 and it is one of the Member States with the least effective governments in the Union; all Hungarian regions are well below the Union average in terms of quality of government. According to the EU Anti-corruption Report published by the Commission in 2014, corruption is perceived as widespread (89%) in Hungary. According to the Global Competitiveness Report 2017-2018 published by the World Economic Forum, the high level of corruption was one of the most problematic factors for doing business in Hungary.

Separate vote: 90 (Weidenholzer e.a.), 94 (In t Veld)

COMP 30 - Annex I – point 21-25

Covers: 109 (Beňová), CULT 7, CULT 8, CULT 9, CULT 14

Fall: 101 (Szájér, Járóka, Gál), 102 (Gál), 103 (Beňová), 104 (Szájér, Járóka, Gál), 105 (Gál), 106 (Beňová), 107 (Járóka), 108 (Gál), 112 (Gál), 113 (Gál), 114 (Gál), 115 (Szájér, Járóka, Gál), 117 (Gál), 118 (Gál)

(21) In its judgment of 12 January 2016, *Szabó and Vissy v. Hungary*, the ECtHR found that the right to respect for private life was violated on account of the insufficient legal guarantees against *possible* unlawful secret surveillance for national security purposes, including related to the use of telecommunications. ***The applicants did not allege that they had been subjected to any secret surveillance measures, therefore, no further individual measure appears necessary.*** The amendment of the relevant legislation is necessary as a general measure. ***Proposals for amendment of the Act on National Security Services are currently being discussed by the experts of the competent ministries of Hungary.*** The execution of this judgment is, therefore, still pending.

(22) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that Hungary's legal framework on secret surveillance for national security purposes allows for mass interception of communications and contains insufficient safeguards against arbitrary interference with the right to privacy. It was also concerned by the lack of provisions to ensure effective remedies in cases of abuse, and notification to the

person concerned as soon as possible, without endangering the purpose of the restriction, after the termination of the surveillance measure.

- (23) On 22 June 2015 the Venice Commission adopted its Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, which called for several changes to the Press Act and the Media Act, in particular concerning the definition of “illegal media content”, the disclosure of journalistic sources and sanctions on media outlets. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe’s Commissioner for Human Rights in his opinion on Hungary’s media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. ***In his statement of 29 January 2013, the Council of Europe’s Secretary General welcomed that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated*** by the Council of Europe’s Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. The Commissioner also mentioned the issues of concentration of media ownership and self-censorship and indicated that the legal framework criminalising defamation should be repealed.
- (24) In its Opinion of 22 June 2015 on Media Legislation, ***the Venice Commission acknowledged the efforts of the Hungarian government, over the years, to improve on the original text of the Media Acts, in line with comments from various observers including the Council of Europe, and positively noted the willingness of the Hungarian authorities to continue the dialogue. Nevertheless,*** the Venice Commission insisted on the need to change the rules governing the election of the members of the Media Council to ensure fair representation of socially significant political and other groups and that the method of appointment and the position of the Chairperson of the Media Council or the President of the Media Authority should be revisited in order to reduce the concentration of powers and secure political neutrality; the Board of Trustees should also be reformed along those lines. The Venice Commission also recommended the decentralisation of the governance of public service media providers and that the National News Agency not be the exclusive provider of news for public service media providers. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe’s Commissioner for Human Rights in his opinion on Hungary’s media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. ***In his statement of 29 January 2013, the Council of Europe’s Secretary General welcomed that discussions in the field of media have led to several important changes. Nevertheless, the remaining*** concerns ***were reiterated*** by the Council of Europe’s

Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014.

- (25) On 18 October 2012, the Venice Commission adopted its Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information of Hungary. Despite the overall positive assessment, the Venice Commission identified the need for further improvements. However, following subsequent amendments to that law, the right to access government information has been significantly restricted further. Those amendments were criticised in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in March 2016. ***It indicated that the amounts to be charged for direct costs appear to be entirely reasonable, but the charging for the time of public officials to answer requests is unacceptable. As it was acknowledged by the 2018 country report of the Commission, the Data Protection Commissioner has taken a progressive position in transparency-related cases and so did courts as well as the Constitutional Court.***

Separate vote: 110 (Boni, Becker, Coelho, Engel, Štětina), 111 (Boni, Becker, Coelho, Engel, Štětina), 119 (Vergiat), CULT 15, CULT 17

COMP 35 - Annex I – point 26

Covers: 116 (Boni, Becker, Coelho, Engel, Štětina), 121 (Beňová), CULT 10, CULT 11, CULT 12, CULT 13, CULT 24

Fall: 120 (Gál), 122 (Gál)

- (26) In its ***preliminary findings and conclusions*** adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections ***stated*** that ~~access to information as well as~~ the freedoms of the media and association have been restricted, including by recent legal changes and that media coverage of the campaign was extensive, yet highly polarized and lacking critical analysis; ***the public broadcaster fulfilled its mandate to provide free airtime to contestants, but its newscasts and editorial outputs clearly favoured the ruling coalition, at odds with international standards; most commercial broadcasters were partisan in their coverage, either for ruling or opposition parties; online media provided a platform for pluralistic, issue-oriented political debate.*** It further noted that politicisation of the ownership, coupled with a restrictive legal framework, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information. ***It also mentioned that the amendments introduced undue restrictions on access to information by broadening the definition of information not subject to disclosure and by increasing the fee for handling information requests.***

Separate vote: 123 (Gál)

COMP 36 - Annex I – point 27a

Covers: 124 (Boni, Coelho, Engel), 125 (Sargentini), 126 (Sargentini), 145 (Vergiat), CULT 16, CULT 18

(27a) On 13 April 2018, the OSCE Representative on Freedom of the Media strongly condemned the publication of a list of more than 200 people by a Hungarian media outlet which claimed that over 2,000 people, including those listed by name, are allegedly working to “topple the government”. The list was published by the Hungarian magazine Figyelő on 11 April and includes many journalists as well as other citizens. On 7 May 2018 the OSCE Representative on Freedom of the Media expressed major concern over the denial of accreditation to several independent journalists, which prevented them from reporting from the inaugural meeting of Hungary’s new parliament. It was further noted that such event should not be used as a tool to curb the content of critical reporting and that such practice sets a bad precedent for the new term of Hungary’s parliament.

COMP 37 - Annex I – points 28 - 30

Covers: 130 (Weidenholzer e.a.), FEMM 22, CULT 1, CULT 2, CULT 3, CULT 4, CULT 5, AFCO 7

Fall: 127 (Gál), 128 (Járóka), 129 (Gál), 131 (Gál)

(28) On 6 October 2017, the Venice Commission adopted its Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. It concluded that introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, for foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. Those universities and their students are protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to, and freedom of, education. The Venice Commission recommended that the Hungarian authorities, in particular, ensure that new rules on requirement to have a work permit do not disproportionately affect academic freedom and are applied in a non-discriminatory and flexible manner, without jeopardising the quality and international character of education already provided by existing universities. The concerns about the Amendment of Act CCIV of 2011 on National Tertiary Education have also been shared by the UN Special Rapporteurs on the freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on cultural rights in their statement of 11 April 2017. In the concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of such constraints on the freedom of thought, expression and association, as well as academic freedom.

(29) On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the new criteria to 1 January 2019, **by the request of the concerned institutions and following the recommendation of the Presidency of the Hungarian Rectors’ Conference; the Venice Commission has welcomed the prolongation.** Negotiations between the Hungarian Government and foreign

higher education institutions affected, in particular, the Central European University, are still ongoing, while the legal limbo for foreign universities remains, *although the Central European University complied with the new requirements in due time.*

- (30) On 7 December 2017, the Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that the Amendment of Act CCIV of 2011 on National Tertiary Education disproportionately restricts Union and non-Union universities in their operations and that the Act needs to be brought back in line with Union law. The Commission found that the new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (the “Charter”) and the Union’s legal obligations under international trade law.

COMP 38 - Annex I – point 31

Covers: 134 (Weidenholzer e.a.), 135 (Beňová)

Fall: 132 (Szájer, Járóka, Gál), 133 (Gál)

- (31) ~~In~~ **On 30 December** 2011, the Hungarian Parliament adopted Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, *which entered into force on 1 January 2012.* The Act *reviewed* the legal personality *of* many religious organisations ~~of legal personality~~ and reduced the number of legally recognised churches in Hungary to 14. On 16 December 2011 the Council of Europe Commissioner for Human Rights shared his concerns about this Act in a letter sent to the Hungarian authorities. In February 2012, responding to international pressure, the Hungarian Parliament expanded the number of recognised churches to 31. On 19 March 2012 the Venice Commission adopted its Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary, where it indicated that the Act sets a range of requirements that are excessive and based on arbitrary criteria with regard to the recognition of a church. *Furthermore, it indicated* that the Act has led to a deregistration process of hundreds of previously lawfully recognised churches and that the Act induces, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they are recognised or not.

COMP 39 - Annex I – point 32-33

Covers: 138 (Boni, Coelho, Engel)

Fall: 136 (Szájer, Járóka, Gál), 137 (Gál), 139 (Szájer, Járóka, Gál), 140 (Gál), 141 (Gál)

- (32) In February 2013, Hungary's Constitutional Court ruled that the deregistration of recognised churches had been unconstitutional. Responding to the Constitutional Court's decision, the Hungarian Parliament amended the Fundamental Law in March 2013. In June and September 2013, the Hungarian Parliament amended Act CCVI of 2011 to create a two-tiered classification consisting of “religious communities” and “incorporated churches”. In September 2013, the Hungarian Parliament also amended the Fundamental

Law explicitly to grant itself the authority to select religious communities for “cooperation” with the state in the service of “public interest activities”, *giving itself a discretionary power to recognise a religious organisation with a two-thirds majority*.

- (33) In its judgment of 8 April 2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, the ECtHR ruled that Hungary had violated freedom of association, read in the light of freedom of conscience and religion. *The Constitutional Court of Hungary found that certain rules governing the conditions of recognition as a church were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the European Convention on Human Rights. The relevant Act was accordingly submitted to the Parliament in December 2015, but it did not obtain the necessary majority.* The execution of that judgment is still pending.

COMP 41 - Annex I – point 34

Covers: 144 (Boni, Coelho, Engel, Štětina)

Fall: 142 (Szájer, Járóka, Gál), 143 (Gál)

- (34) On 9 July 2014, the Council of Europe Commissioner for Human Rights indicated in his letter to the Hungarian authorities that he was concerned about the stigmatising rhetoric used by politicians questioning the legitimacy of NGO work in the context of audits which had been carried out by the Hungarian Government Control Office concerning NGOs which were *operators and* beneficiaries of the *NGO Fund of the EEA/Norway Grants*. *The Hungarian Government signed an agreement with the Fund, as a result the payments of the grants continue to operate.* On 8-16 February 2016, the UN Special Rapporteur on the situation of human rights defenders visited Hungary and indicated in his report that significant challenges stem from the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedoms of opinion and expression, and of peaceful assembly and of association, and that legislation pertaining to national security and migration may also have a restrictive impact on the civil society environment.

COMP 42 - Annex I – points 35 and 36

Covers: FEMM 10, CULT 19, CULT 20, AFCO 11

Fall: 146 (Szájer, Járóka, Gál), 147 (Gál), 148 (Szájer, Járóka, Gál), 149 (Gál), 150 (Post, Weidenholzer)

- (35) In April 2017 a draft law on the Transparency of Organisations Receiving Support from Abroad was introduced before the Hungarian Parliament, with the declared purpose *to introduce requirements related to the prevention of money laundering or terrorism. The Venice Commission acknowledged in 2013 that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing, but these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights.* On 26 April 2017, the Council of Europe Commissioner for Human Rights addressed a letter to the Speaker of the Hungarian National Assembly noting that the draft

law was introduced against the background of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labelled some NGOs as “foreign agents” based on the source of their funding and questioned their legitimacy; *the term “foreign agents” was however absent from the draft*. Similar concerns have been mentioned in the statement of 7 March 2017 of the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law, as well as in the Opinion of 24 April 2017 prepared by the Expert Council on NGO Law, and the statement of 15 May 2017 by the UN Special Rapporteurs on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression.

- (36) On 13 June 2017, the Hungarian Parliament adopted the draft law with several amendments. In its Opinion of 20 June 2017, the Venice Commission recognised that *that the term ‘organisation receiving support from abroad’ is neutral and descriptive, and* some of those amendments represented an important improvement but at the same time some other concerns were not addressed and the amendments did not suffice to alleviate the concerns that the law would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination. In its concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of those requirements, which appeared to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary.

COMP 43 - Annex I – point 37

Covers: 153 (Kudrycka, Von Thun und Hohenstein)

Fall: 151 (Járóka), 152 (Gál)

- (37) On 7 December 2017, the Commission decided to start legal proceedings against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions in the NGO Law which, *in the view of the Commission*, indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission *alleged* that Hungary had violated the right to freedom of association and the rights to protection of private life and personal data enshrined in the Charter, read in conjunction with the Treaty provisions on the free movement of capital, *defined in Articles 26(2), 56 and 63 TFEU*.

Separate vote: 154 (Vergiat)

COMP 44 - Annex I – points 38 and 38a

Covers: 156 (Sargentini), 158 (Weidenholzer e.a.), 159 (Vergiat), 161 (Boni, Coelho, Engel, Štětina),

Fall: 155 (Szájer, Járóka, Gál), 157 (Gál), 160 (Beňová), 162 (Weidenholzer e.a.)

- (38) In February 2018, a legislative package consisting of three draft laws ~~also known as the “Stop Soros Package”~~ (T/19776, T/19775, T/19774), was presented by the Hungarian

Government. On 14 February 2018, the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law made a statement indicating that the package does not comply with the freedom of association, particularly for NGOs which deal with migrants. On 15 February 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. ***On 8 March 2018, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance warned that the bill would lead to undue restrictions on the freedom of association and the freedom of expression in Hungary.*** In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that by alluding to the “survival of the nation” and protection of citizens and culture, and by linking the work of NGOs to an alleged international conspiracy, the legislative package would stigmatise NGOs and curb their ability to carry out their important activities in support of human rights and, in particular, the rights of refugees, asylum seekers and migrants. It was further concerned that imposing restrictions on foreign funding directed to NGOs might be used to apply illegitimate pressure on them and to unjustifiably interfere with their activities. ***One of the draft laws aimed to tax any NGO funds received from outside Hungary, including EU funding, at a rate of 25%; the legislative package would also deprive NGOs of legal remedy to appeal against arbitrary decisions.*** ***On 22 March 2018, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the draft legislative package.***

(38a) On 29 May 2018, the Hungarian Government presented draft law amending certain laws relating to measures to combat illegal immigration (T/333). The draft is a revised version of the previous legislative package and proposes criminal sanctions for ‘facilitating illegal immigration’. The same day the Office of the UN High Commissioner for Refugees called for withdrawal of the proposal and expressed concern that these proposals, if passed, would deprive people who are forced to flee their homes of critical aid and services, and further inflame tense public discourse and rising xenophobic attitudes. On 1 June 2018, the the Council of Europe Commissioner for Human Rights expressed similar concerns. On 31 May 2018, the Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe confirmed the request for an opinion of the Venice Commission on the new proposal. The draft was adopted on 20 June 2018 before the delivery of the opinion of the Venice Commission.

~~(38b) On 29 May 2018, the Hungarian Government presented draft Seventh Amendment to the Fundamental Law (T/332).~~

Covers: 166 (Beňová), 168 (Kudrycka, Von Thun und Hohenstein), FEMM 1, FEMM 2, FEMM 3, FEMM 8, FEMM 12, FEMM 18, FEMM 21, FEMM 23, FEMM 24

Fall: 165 (Járóka), 167 (Járóka, Gál)

(39) On 17-27 May 2016, the UN Working Group on discrimination against women in law and in practice visited Hungary. In its report, the Working Group indicated that a conservative form of family, whose protection is guaranteed as essential to national survival, should not be put in an uneven balance with women's political, economic and social rights and the empowerment of women. The Working Group also pointed out that a woman's right to equality cannot be seen merely in the light of protection of vulnerable groups alongside children, the elderly and the disabled, as they are an integral part of all such groups. *New school books still contain gender stereotypes, depicting women as primarily mothers and wives and, in some cases, depicting mothers as less intelligent than fathers. On the other hand, the Working Party acknowledged the efforts of the Hungarian Government to strengthening the reconciliation of work and family life by introducing generous provisions in family support system and in relation with early childhood education and care. In its preliminary findings and conclusions adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections stated that women remain underrepresented in political life and there are no legal requirements to promote gender equality in the electoral context; although one major party placed a woman at the top of the national list and some parties addressed gender-related issues in their programmes, empowerment of women received scant attention as a campaign issue, including in the media.*

COMP 46 - Annex I – point 40

Covers: 170 (Beňová), , 254 (Weidenholzer e.a.), FEMM 4, FEMM 6, FEMM 7, FEMM 14, FEMM 15, FEMM16

Fall: 171 (Kudrycka, Von Thun und Hohenstein), 172 (Járóka), 173 (Járóka, Gál)

Separate vote: 169 (Járóka, Gál), first par as an addition to point 40: *“By contrast, Hungarian law provides a strong protection for women against violence; the legal definition of ‘violence committed in a relationship’ in the Criminal Code of Hungary covers a broader range of actions to be considered as abuse and since 2013 punishes these actions more severely than before and as of 1st January 2008 harassment constitutes a sui generis criminal act.”*

(40) In its concluding observations of 5 April 2018, the UN Human Rights Committee *welcomed the signature of the Istanbul Convention, but* expressed regret that patriarchal stereotyped attitudes still prevail in Hungary with respect to the position of women in society, and noted with concern discriminatory comments made by political figures against women. It also noted that the Hungarian Criminal Code does not fully protect female victims of domestic violence. *It expressed concern that women are underrepresented in decision-making*

positions in the public sector, particularly in Government ministries and Parliament. The Istanbul Convention has not been ratified yet.

(41) *The Fundamental Law of Hungary sets forth mandatory provisions for the protection of parents' workplaces and for upholding the principle of equal treatment; consequently, there are special labour law rules for women and for mothers and fathers raising children.* On 27 April 2017, the Commission issued a reasoned opinion calling on Hungary to correctly implement Directive 2006/54/EC of the European Parliament and of the Council¹², given that Hungarian law provides an exception to the prohibition of discrimination on the grounds of sex that is much broader than the exception provided by that Directive. On the same date, the Commission issued a reasoned opinion to Hungary for non-compliance with Directive 92/85/EEC of the Council¹³ that stated that employers have a duty to adapt working conditions for pregnant or breastfeeding workers to avoid a risk to their health or safety. *The Hungarian Government has committed itself to amend the necessary provisions of the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, as well as the Act I of 2012 on the Labour Code. Consequently, on 7 June 2018 the case was closed.*

COMP 48 - Annex I – point 42

Covers: 174 (Kudrycka, Von Thun und Hohenstein), FEMM 5

Fall: 175 (Járóka, Gál)

(42) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the constitutional ban on discrimination does not explicitly list sexual orientation and gender identity among the grounds of discrimination and that its restrictive definition of family could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples. The Committee was also concerned about acts of violence and the prevalence of negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, particularly in the employment and education sectors.

COMP 48a - Annex I – point 42a

Covers: 176 (Kudrycka, Von Thun und Hohenstein)

(42a) *In its concluding observations of 5 April 2018, the UN Human Rights Committee* also mentioned forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities, as well as

¹² Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

¹³ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

reported violence and cruel, inhuman and degrading treatment and allegations of a high number of non-investigated deaths in closed institutions.

COMP 49 - Annex I – points 43, 49 and 49a

Covers: 179 (Becker, Wikström, Boni, López Aguilar), FEMM 13

Fall: 177 (Szájer, Járóka, Gál), 181 (Beňová), 199 (Gál), 200 (Szájer, Járóka, Gál), 201 (Beňová), 204 (Becker, Wikström, Boni, López Aguilar)

Separate vote: 178 (Járóka, Gál), second part - in the beginning of point 49a: ***“While racism, xenophobia and intolerance are not any more prevalent in Hungary than in any other Member State, the Hungarian Act on Equal Opportunities provides an even stronger protection than the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, since it extends its rules to cover all grounds of discrimination. Hungarian laws and legal norms identify the following five offenses related to hatred or incitement of hatred including anti-Semitic or Holocaust denying, denigrating acts: (1) violating the dignity of a member of a national, religious etc. community, as well as the dignity of a community itself (being also an aggravating circumstance if it serves a motive for another crime), (2) the denial or belittling in public of crimes committed by totalitarian (Nazi and Communist) regimes, punishable with up to 3 years of imprisonment (3) the use of totalitarian symbols in public, (4) establishing and running paramilitary groups or institutions, and (5) hate speech by MPs in the Parliament additionally sanctioned by the House Rules. It was largely due to the Hungarian Government’s firm stance against anti-Semitism that by the unanimous decision of 31 countries, Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016 with a high international recognition of Jewish and non-Jewish organisations and personalities. As a result of the Hungarian Chairmanship’s year-long endeavours and lobbying in EU institutions, EU and IHRA member states, the EU’s new data protection draft legislation (GDPR) was amended in line with IHRA commitments.”*** If adopted, point 49a will be adapted to avoid repetitions.

Separate vote: 202 (Gál), first part - in the beginning of point 49a: ***“The Hungarian Government has several times declared a ‘zero tolerance policy’ against anti-Semitism and– as acknowledged by Israeli Prime Minister Benjamin Netanyahu – Hungarian Jewish life is experiencing a renaissance and Hungarian Jews live in peace and safety. The current Hungarian Government has among others, established the Holocaust Documentation Centre and Memorial Collection in 2002.***

and third part: ***In recognition of the Hungarian Government’s firm stance against anti-Semitism, Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016 by the unanimous decision of 31 countries.”*** If adopted, point 49a will be adapted to avoid repetitions.

(43) In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe’s Commissioner for Human Rights indicated that he was concerned

about the deterioration of the situation as regards racism and intolerance in Hungary, with anti-Gypsyism being the most blatant form of intolerance, as illustrated by distinctively harsh, including violence targeting Roma people and paramilitary marches and patrolling in Roma-populated villages. He also pointed out that, despite positions taken by the Hungarian authorities to condemn anti-Semitic speech, anti-Semitism is a recurring problem, manifesting itself through hate speech and instances of violence against Jewish persons or property. In addition, he mentioned a recrudescence of xenophobia targeting migrants, including asylum seekers and refugees, and of intolerance affecting other social groups such as LGBTI persons, the poor and homeless persons. The European Commission against Racism and Xenophobia (*ECRI*) mentioned similar concerns in its report on Hungary published on 9 June 2015.

(49) In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended that the Hungarian authorities continue to improve the dialogue with the Jewish community, making it sustainable, and to give combatting anti-Semitism in public spaces the highest priority, to make sustained efforts to prevent, identify, investigate, prosecute and sanction effectively all racially and ethnically motivated or anti-Semitic acts, including acts of vandalism and hate speech, and to consider amending the law so as to ensure the widest possible legal protection against racist crime.

(49a) *The Hungarian Government has ordered that the life annuity of Holocaust survivors shall be raised by 50% in 2012, established the Hungarian Holocaust – 2014 Memorial Committee in 2013, declared the year of 2014 as Holocaust Memorial Year, launched renovation and restoration programmes of several Hungarian synagogues and Jewish cemeteries and is currently preparing for the 2019 European Maccabi Games to be held in Budapest. According to the Action and Protection Foundation’s report (January-June 2017), the number of anti-Semitic actions in Hungary decreased compared to the number of the previous years. Hungarian legal provisions identify several offenses related to hatred or incitement of hatred including anti-Semitic or Holocaust denying or denigrating acts. Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016. Nevertheless, in a speech held on 15 March 2018 in Budapest, the Prime Minister of Hungary used polemic attacks including clearly anti-Semitic stereotypes against George Soros that could have been assessed as punishable.*

COMP 50 - Annex I – points 44 and 45

Covers: FEMM 9, FEMM 19, FEMM 20, CULT 6

Fall: 180 (Kudrycka, Von Thun und Hohenstein), 182 (Szájer, Járóka, Gál), 184 (Járóka, Gál), 185 (Beňová), 187 (Szájer, Járóka, Gál), 189 (Járóka)

Separate vote: 186 (Járóka, Gál) - as an addition to point 44: *“The Hungarian Government is deeply committed to achieve the integration of Roma people; the issue was put to the political agenda of the European Union as the initiative of the Hungarian presidency in the first half of 2011, by initiating the EU Framework Strategy on Roma inclusion, which*

was not only based on a human rights approach but also from the aspects of poverty and social inclusion, recognising that a complex approach is necessary for genuine solutions. Furthermore, the Hungarian Government in 2014 updated the Hungarian National Social Inclusion Strategy, and established a three-year action plan for its implementation by designating responsible persons, deadlines and available funds.”

Separate vote: 188 (Járóka, Gál), second part - as an addition to point 45: *“Continuous consultations are in place for resolving practical issues in this regard, the Hungarian Government has taken several steps to solve these questions, also including fulfilling the decision of the ECtHR.”*

(44) In its Fourth Opinion on Hungary adopted on 25 February 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted that Roma continue to suffer systemic discrimination and inequality in all fields of life, including housing, employment, education, access to health and participation in social and political life. In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended the Hungarian authorities to make sustained and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by Roma, improve, in close consultation with Roma representatives, the living conditions, access to health services and employment of Roma, take effective measures to end practices that lead to the continued segregation of Roma children at school and redouble efforts to remedy shortcomings faced by Roma children in the field of education, ensure that Roma children have equal opportunities for access to all levels of quality education, and continue to take measures to prevent children from being wrongfully placed in special schools and classes. *The Hungarian Government has taken several substantial measures to foster the inclusion of Roma. It adopted the Job Protection Action Plan on 4 July 2012 to protect the employment of disadvantaged employees and foster the employment of the long-term unemployed; adopted the “Healthy Hungary 2014–2020” Healthcare Sectoral Strategy to reduce health inequalities; in 2014 adopted a strategy for the period of 2014 to 2020 for the treatment of slum-like housing in segregated settlements. Nevertheless, according to the Fundamental Rights Report 2018 by FRA, the percentage of young Roma with current main activity not in employment, education or training, has increased from 38% in 2011 to 51% in 2016.*

(45) In its judgement of 29 January 2013, *Horváth and Kiss v. Hungary*, the ECtHR found that the relevant Hungarian legislation as applied in practice lacked adequate safeguards and resulted in the over-representation and segregation of Roma children in special schools due to the systematic misdiagnosis of mental disability, which amounted to a violation of the right to education free from discrimination. The execution of that judgment is still pending.

COMP 51 - Annex I – point 46

Covers: 192 (Beňová),

Fall: 190 (Szájer, Járóka, Gál), 191 (Járóka, Gál), 209 (Járóka)

(46) On 26 May 2016, the Commission sent a letter of formal notice to the Hungarian authorities in relation to both Hungarian legislation and administrative practices which result in Roma children being disproportionately over-represented in special schools for mentally disabled children and subject to a considerable degree of segregated education in mainstream schools, *thus hampering social inclusion. The Hungarian Government actively conducted dialogue with the Commission. The Hungarian Inclusion Strategy focuses on promoting inclusive education, reducing segregation, breaking the intergenerational transmission of disadvantages, and establishing an inclusive school environment. Furthermore, the Act on National Public Education was complemented with additional guarantees as of January 2017, and the Hungarian Government initiated official audits in 2011-2015, followed by actions by government offices.*

COMP 52 - Annex I – point 47

Covers: 203 (Vergiat)

Fall: 193 (Szájér, Járóka, Gál), 194 (Járóka), 195 (Járóka, Gál),

(47) In its judgement of 20 October 2015, *Balázs v. Hungary*, the ECtHR held that there had been a violation of the prohibition of discrimination in the context of a failure to consider the alleged anti-Roma motive of an attack. In its judgment of 12 April 2016, *R.B. v. Hungary*, and in its judgment of 17 January 2017, *Király and Dömötör v. Hungary*, the ECtHR held that there had been a violation of the right to private life on account of inadequate investigations into the allegations of racially motivated abuse. *On 31 October 2017, M.F. v. Hungary, the ECtHR held that there have been a violation of the prohibition of discrimination in conjunction with the prohibition of inhuman or degrading treatment, as the authorities failed to investigate possible racist motives behind the incident.* The execution of *the* judgments is still pending. *Following the judgments, however, the modification of the fact pattern of the crime of ‘inciting violence or hatred against the community’ in the Penal Code entered into force on 28 October 2016 with the purpose of implementing Council Framework Decision 2008/913/JHA. Earlier on, in 2011 the Penal Code was amended in order to prevent campaigns of extreme right paramilitary groups, by introducing the so-called ‘crime in uniform’, punishing any provocative unsocial behaviour inducing fear in a member of a national, ethnic or religious community with three years of imprisonment.*

COMP 53 - Annex I – point 48

Covers: 183 (Kudrycka, Von Thun und Hohenstein), 198 (Weidenholzer e.a.)

Fall: 196 (Szájér, Járóka, Gál), 197 (Járóka, Gál)

(48) On 29 June - 1 July 2015, the OSCE Office for Democratic Institutions and Human Rights conducted a field assessment visit to Hungary, following reports about the actions taken by the local government of the city of Miskolc concerning forced evictions of Roma. *The local authorities adopted a model of anti-Roma measures, even before the change of the local decree of 2014, and public figures in the city often made anti-Roma*

statements. It was reported that in February 2013, the Mayor of Miskolc said he wanted to clean the city of “anti-social, perverted Roma” who allegedly illegally benefited from the Nest program (Fészekrakó program) for housing benefits and people living in social flats with rent and maintenance fees. His words meant the beginning of a series of evictions, and during that month, fifty apartments were removed from 273 apartments in the appropriate category - also to clean up the land for a renovation of a stadium. Based on the appeal of the government office in charge, the Supreme Court annulled the relevant provisions in its decision of 28 April 2015. The Commissioner for Fundamental Rights and the Deputy-Commissioner for the Rights of National Minorities issued a joint opinion on 5 June 2015 about the fundamental rights violations against the Roma in Miskolc, the recommendations of which the local government failed to adopt. The Equal Treatment Authority of Hungary also carried out an investigation and rendered a decision in July 2015, calling on the local government to cease all evictions and to develop an action plan on how to offer housing in accordance with human dignity. On 26 January 2016 the Council of Europe Commissioner for Human Rights sent letters to the governments of Albania, Bulgaria, France, Hungary, Italy, Serbia and Sweden concerning forced evictions of Roma; the letter addressed to the Hungarian authorities expressed concerns about the treatment of Roma in Miskolc. The action plan was adopted on 21 April 2016 and in the meantime a social housing agency was also established. In its decision of 14 October 2016, the Equal Treatment Authority found that the municipality fulfilled its obligations. Nevertheless, ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary published on 15 May 2018, that despite some positive developments to improve the housing conditions of Roma, its recommendation has not been implemented.

COMP 54 - Annex I – points 50, 50a and 50b

Covers: 206 (Post, Weidenholzer)

Fall: 205 (Szájér, Járóka, Gál)

Separate vote: 208 (Gál), first part - in the beginning of point 50b: *“Hungary however has enacted powerful legal instruments to combat hate crimes and hate speech; the Hungarian Penal Code strictly punishes inciting violence or hatred against a member of a community, as well as the public denial of Holocaust, By reason of the Fourth Amendment of the Fundamental Law the ‘freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community’; the amendment has been greeted as a historic step by many – in particular by Jewish – communities, as it makes the fight against hate speech more efficient.”* If adopted, point 50b will be adapted to avoid repetitions.

(50) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about reports that the Roma community continues to suffer from widespread discrimination and exclusion, unemployment, housing and educational

segregation. It is particularly concerned that, notwithstanding the Public Education Act, segregation in schools, especially church and private schools, remains prevalent and the number of Roma children placed in schools for children with mild disabilities remains disproportionately high. It also mentioned concerns about the prevalence of hate crimes and about hate speech in political discourse, the media and on the internet targeting minorities, in particular Roma, Muslims, migrants and refugees, including in the context of government-sponsored campaigns. The Committee expressed its concern over the prevalence of anti-Semitic stereotypes. The Committee also noted with concern allegations that the number of registered hate crimes is extremely low because the police often fail to investigate and prosecute credible claims of hate crimes and criminal hate speech. Finally, the Committee was concerned about reports of the persistent practice of racial profiling of Roma by the police.

(50a) In a case regarding the village of Gyöngyöspata, where the local police was imposing fines solely on Roma for minor traffic offences, the first instance judgement found that the practice constituted harassment and direct discrimination against the Roma even if the individual measures were lawful. The second instance court and the Supreme Court ruled that Hungarian Civil Liberties Union (HCLU), which had submitted actio popularis claim, could not substantiate discrimination. The case was brought before the ECtHR.

(50b) In accordance with the Fourth Amendment of the Fundamental Law, the ‘freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community’. The Hungarian Penal Code punishes inciting violence or hatred against a member of a community. The Government has established a Working Group Against Hate Crime providing training for police officers and helping victims to cooperate with the police and report incidents.

Separate vote: 210 (Vergiat)

COMP 55 - Annex I – points 51 and 51a

Covers: 207 (Vergiat), 211 (Weidenholzer e.a.), 213 (Weidenholzer e.a.), 214 (Vergiat), 215 (Vergiat), 230 (Vergiat)

Separate vote: 212 (Gál), as two additions to point 51: ***“The extraordinary circumstances and emergency situation urged the Hungarian Government to address the situation with quick legal responses and despite the urgent government actions, each application for international protection is thoroughly examined on an individual basis.”*** and ***“However, no court case has so far been reported where Hungarian border police officers have been charged of abusing asylum seekers.”***

(51) On 3 July 2015, the UN High Commissioner for Refugees expressed concerns about the fast-track procedure for amending asylum law. On 17 September 2015, the UN High Commissioner for Human Rights expressed his opinion that Hungary violated international law by its treatment of refugees and migrants. On 27 November 2015, the Council of Europe Commissioner for Human Rights made a statement that Hungary’s response to the

refugee challenge falls short on human rights. On 21 December 2015, the UN High Commissioner for Refugees, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights urged Hungary to refrain from policies and practices that promote intolerance and fear and fuel xenophobia against refugees and migrants. On 6 June 2016, the UN High Commissioner for Refugees expressed concerns about the increasing number of allegations of abuse in Hungary against asylum-seekers and migrants by border authorities, and the broader restrictive border and legislative measures, including access to asylum procedures. *On 10 April 2017, the Office of the UN High Commissioner for Refugees called for an immediate suspension of Dublin transfers to Hungary. In 2017, out of 3397 applications for international protection filed in Hungary, 2880 applications were rejected - rejection rate constituted 69.1%. In 2015, out of 480 judicial appeals relating to applications for international protection, there were 40 positive decisions, i.e. 9%. In 2016, for 775 appeals, there were 5 positive decisions, i.e. 1% while there were no appeals in 2017.*

(51a) The Fundamental Rights Officer of the European Border and Coast Guard Agency visited Hungary in October 2016 as well as in March 2017, owing to the Officer's concern that the Agency might be operating under conditions which do not commit to the respect, protection and fulfilment of the rights of persons crossing the Hungarian-Serbian border, that may put the Agency in situations that de facto violate the Charter of Fundamental Rights of the European Union. The Fundamental Rights Officer concluded in March 2017 that the risk of shared responsibility of the Agency in the violation of fundamental rights in accordance with Article 34 of the European Border and Coast Guard Regulation remains very high.

COMP 56 - Annex I – points 52 and 52a

Covers: 217 (Beňová), 219 (Vergiat)

Separate vote: 216 (Gál) - as an addition to point 52: *“Despite all this, asylum seekers in Hungary are not detained or deprived of their liberty since they can leave the transit zone freely at any time. Pursuant to the Directive 2013/33/EU, Member States may designate such areas not only based on considerations of public interest and public order, but also to ensure the availability of applicants during the procedure; this measure is also permitted by Article 72 TFEU.”*

(52) On 3 July 2014, the UN Working Group on Arbitrary Detention indicated that the situation of asylum seekers and migrants in irregular situations needs robust improvements and attention to ensure against arbitrary deprivation of liberty. Similar concerns about detention, in particular of unaccompanied minors, have been shared by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. On 21-27 October 2015 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Hungary and indicated in its report a considerable number of foreign nationals' (including unaccompanied minors) claims that they had been subjected to physical ill-treatment by police officers and armed guards working in immigration or

asylum detention facilities. On 7 March 2017, the UN High Commissioner for Refugees expressed his concerns about a new law voted in the Hungarian Parliament envisaging the mandatory detention of all asylum seekers, including children, for the entire length of the asylum procedure. On 8 March 2017, the Council of Europe Commissioner for Human Rights issued a statement similarly expressing his concern about that law. On 31 March 2017, the UN Subcommittee on the Prevention of Torture urged Hungary to address immediately the excessive use of detention *and explore alternatives*.

(52a) In its judgement of 5 July 2016, O.M. v. Hungary, the ECtHR held that there had been a violation of the right to liberty and security in the form of detention verged on arbitrariness. In particular, the authorities failed to exercise care when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons. The execution of that judgment is still pending.

COMP 57 - Annex I – points 53 and 54

Covers: 218 (Ferrara e.a.), 221 (Vergiat), 222 (Weidenholzer e.a.), 223 (Sargentini), 255 (Weidenholzer e.a.), FEMM 17

Fall: 224 (Járóka), 225 (Járóka), 226 (Gál)

Separate vote: 220 (Gál), first part - as an addition to point 53: *“Hungary pays special attention to the needs of different age and social groups, including but not limited to separated placement, 24/7 presence of social workers, separate accommodation facilities for both families and unaccompanied minors, continuous security service and CCTV video surveillance system to ensure the prevention of any kind of violence, sexual exploitation or abuse. Hungarian authorities trained experts for the successful identification of victims of human trafficking (including sexual exploitation) and unaccompanied children are under supervision by social workers 24 hours a day. Between the age of 14 and 18, three meals a day as well as clothing, health care, education, and religious practice are provided in transit zones and children under the age of 14 are placed in special care institutions inside the country where they get five meals a day.”*

(53) On 12-16 June 2017, the Special Representative of the Secretary General of the Council of Europe on migration and refugees visited Serbia and two transit zones in Hungary. *In his report, the Special Representative stated that violent pushbacks of migrants and refugees from Hungary to Serbia raise concerns under Articles 2 (the right to life) and 3 (prohibition of torture) of the European Convention on Human Rights (ECHR). The Special Representative also noted that the restrictive practices of admission of asylum seekers into the transit zones of Röszke and Tompa often make asylum-seekers look for illegal ways of crossing the border, having to resort to smugglers and traffickers with all the risks that this entails. He indicated that the asylum procedures, which are conducted in the transit zones, lack adequate safeguards to protect asylum-seekers against refoulement to countries where*

they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The Special Representative concluded that it is necessary that the Hungarian legislation and practices are brought in line with the requirements of the ECHR. The Special Representative made several recommendations, including a call on the Hungarian authorities to take the necessary measures, including by reviewing the relevant legislative framework and changing relevant practices, to ensure that all foreign nationals arriving at the border or who are on Hungarian territory are not deterred from making an application for international protection. On 5-7 July 2017 a delegation of the Council of Europe Lanzarote Committee (Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse) also visited two transit zones and made a number of recommendations, including a call to treat all persons under the age of 18 years of age as children without discrimination on the ground of their age, to ensure that all children under Hungarian jurisdiction are protected against sexual exploitation and abuse, and to systematically place them in mainstream child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them by adults and adolescents in the transit zones. On 18-20 December 2017, a delegation of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) visited Hungary, including two transit zones, and concluded that a transit zone, which is effectively a place of deprivation of liberty, cannot be considered as appropriate and safe accommodation for victims of trafficking. It called on the Hungarian authorities to adopt a legal framework for the identification of victims of human trafficking among third country nationals who were not legally resident and to step up its procedures for identifying victims of such trafficking among asylum seekers and irregular migrants. As of 1 January 2018, additional regulations were introduced favouring minors in general and unaccompanied minors in specific; among others a specific curriculum was developed for minor asylum seekers. ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary published on 15 May 2018, that while acknowledging that Hungary has faced enormous challenges following the massive arrivals of migrants and refugees, it is appalled at the measures taken in response and the serious deterioration in the situation since its fifth report. The authorities should as a matter of urgency end detention in transit zones, particularly for families with children and all unaccompanied minors.

(54) In its judgment of 14 March 2017, *Ilias and Ahmed v. Hungary*, the ECtHR found that there had been a violation of the applicants' right to liberty and security. The ECtHR also found that there had been a violation of the prohibition of inhuman or degrading treatment in respect of the applicants' expulsion to Serbia, as well as a violation of the right to an effective remedy in respect of the conditions of detention at the Rösztke transit zone. The case is currently pending before the Grand Chamber of the ECtHR.

COMP 58 - Annex I – point 54a

Covers: 227 (Vergiat), 240 (Gomes), 241 (Post, Weidenholzer)

(54a) On 14 March 2018, Ahmed H., a Syrian resident in Cyprus who had tried to help his family flee Syria and cross the Serbian-Hungarian border in September 2015, was

sentenced by a Hungarian court to 7 years' imprisonment and 10 years expulsion from the country on the basis of charges of 'terrorist acts', raising the issue of proper application of the laws against terrorism in Hungary, as well as the right to a fair trial.

COMP 59 - Annex I – point 54a and 55

Covers: 228 (Weidenholzer e.a.), 229 (Vergiat), 234 (Ferrara e.a.)

Fall: 231 (Gál), 232 (Járóka)

(54a) In its judgment of 6 September 2017 in Case C-643/15 and C-647/15, the Court of Justice dismissed in their entirety the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers in accordance with Council Decision (EU) 2015/1601. However, since that judgment, Hungary has not complied with the Decision. On 7 December 2017 the Commission decided to refer the Czech Republic, Hungary and Poland to the Court of Justice of the EU for non-compliance with their legal obligations on relocation.

(55) On 7 December 2017, the Commission decided to move forward on the infringement procedure against Hungary concerning its asylum legislation by sending a reasoned opinion. The Commission considers that the Hungarian legislation does not comply with Union law, in particular Directives 2013/32/EU¹⁴, 2008/115/EC¹⁵ and 2013/33/EU¹⁶ of the European Parliament and of the Council and several provisions of the Charter.

Separate vote: 233 (Vergiat)

COMP 60 - Annex I – point 56

Covers: 237 (Vergiat), 238 (Kudrycka, Von Thun und Hohenstein), 239 (Beňová)

Fall: 235 (Gál), 236 (Járóka)

(56) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the Hungarian law adopted in March 2017, which allows for the automatic removal to transit zones of all asylum applicants for the duration of their asylum procedure, with the exception of unaccompanied children identified as being below the age of 14, does not meet the legal standards as a result of the lengthy and indefinite period of confinement allowed, the absence of any legal requirement to promptly examine the specific conditions of each affected individual, and the lack of procedural safeguards to meaningfully challenge removal to the transit zones. The Committee was particularly concerned about reports of the extensive use of automatic immigration detention in holding facilities inside Hungary and was concerned that restrictions on personal liberty have been used as a general deterrent against unlawful entry rather than in response to an

¹⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

¹⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

¹⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

individualised determination of risk. In addition, the Committee was concerned about allegations of poor conditions in some holding facilities. It noted with concern the push-back law, which was first introduced in June 2016, enabling summary expulsion by the police of anyone who crosses the border irregularly and was detained on Hungarian territory within 8 kilometres of the border, which was subsequently extended to the entire territory of Hungary, and decree 191/2015 designating Serbia as a “safe third country” allowing for push-backs at Hungary’s border with Serbia. The Committee noted with concern reports that push-backs have been applied indiscriminately and that individuals subjected to this measure have very limited opportunity to submit an asylum application or right to appeal. It also noted with concern reports of collective and violent expulsions, including allegations of heavy beatings, attacks by police dogs and shootings with rubber bullets, resulting in severe injuries and, at least in one case, in the loss of life of an asylum seeker. It was also concerned about reports that the age assessment of child asylum seekers and unaccompanied minors conducted in the transit zones is inadequate, relies heavily on visual examination by an expert and is inaccurate, and about reports alleging the lack of adequate access by such asylum seekers to education, social and psychological services and legal aid. ***According to the new proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU the medical age assessment will be a measure of a last resort.***

COMP 61 - Annex I – point 57

Covers: 245 (Weidenholzer e.a.)

Fall: 243 (Szájer, Járóka, Gál)

Separate vote: 244 (Gál), second part, as an addition to point 57: “***whereas the prohibition of residing in public areas is not unique to Hungary but it is a common internationally accepted practice that homeless people are not allowed in certain public areas.***”

(57) ***On 15 February 2012 and 11 December 2012, the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on the right to adequate housing called on Hungary to reconsider legislation allowing local authorities to punish homelessness and to uphold the Constitutional Court’s decision decriminalising homelessness.*** In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe’s Commissioner for Human Rights indicated his concern at measures taken to prohibit rough sleeping and the construction of huts and shacks, which have widely been described as criminalising homelessness in practice. The Commissioner urged the Hungarian authorities to investigate reported cases of forced evictions without alternative solutions and of children being taken away from their families on the grounds of poor socio-economic conditions. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about state and local legislation, based on the Fourth Amendment to the Fundamental Law, which designates many public areas as out-of-bounds for “sleeping rough” and effectively punishes homelessness. ***On 20 June 2018, the Hungarian Parliament adopted the Seventh***

amendment to the Fundamental law which forbids habitual residence in a public space. The same day, the UN Special Rapporteur on the right to adequate housing called Hungary's move to make homelessness a crime is cruel and incompatible with international human rights law.

COMP 62 - Annex I – point 58-59

Covers: 248 (Vergiat), 249 (Beňová), 252 (Weidenholzer e.a.)

Fall: 246 (Szájer, Járóka, Gál), 251 (Gál), 256 (Szájer, Járóka, Gál), 258 (Gál)

Separate vote: 247 (Gál), second part, as an addition to point 58: “*Contrary to the special monitoring mechanisms related to the European Social Charter, Hungary has performed at or above the level of EU-average in 8 out of the 12 indicators of the renewed Social Scoreboard of the European Pillar of Social Rights, published by the European Commission.*”

Separate vote: 257 (Gál) first part, as an addition to point 59: “*In reality however, the relevant services of the Hungarian system guarantee a minimal income for people in their active years and the 2015 reform lead to a more transparent welfare system and granted municipalities the right to create a system of provisions which better corresponds to local needs; they can determine the types and checklists for the services under their jurisdiction, and so they can regulate further forms of care tailored to the need of the local population.*”

(58) The 2017 Conclusions of the European Committee of Social Rights stated that Hungary is not in compliance with the European Social Charter on the *grounds* that self-employed and domestic workers, as well as other categories of workers, are not protected by occupational health and safety regulations, that measures taken to reduce the maternal mortality have been insufficient, that the minimum amount of old-age pensions is inadequate, that the minimum amount of jobseeker's aid is inadequate, that the maximum duration of payment of jobseeker's allowance is too short and that the minimum amount of rehabilitation and invalidity benefits, in certain cases, is inadequate. The Committee also concluded that ~~in~~ Hungary is not in conformity with the European Social Charter on the *grounds* that the level of social assistance paid to a single person without resources, including elderly persons, is not adequate, ~~on the ground that~~ equal access to social services is not guaranteed for lawfully resident nationals of all States Parties and ~~on the grounds that~~ it has not been established that there is an adequate supply of housing for vulnerable families. *With regard to trade union rights, the Committee has stated that the right of workers to paid leave is not sufficiently secured, that no promotion measures have been taken to encourage the conclusion of collective agreements, while the protection of workers by such agreements is clearly weak in Hungary and in the civil service the right to call a strike is reserved to those unions which are parties to the agreement concluded with the government; the criteria used to determine public servants who are denied the right to strike go beyond the scope of the Charter; public service unions can only call a strike with the approval of the majority of the staff concerned.*

(59) In its Recommendation of 23 May 2018 for a Council Recommendation on the 2018 National Reform Programme of Hungary and delivering a Council opinion on the 2018 Convergence Programme of Hungary, the Commission indicated that the proportion of people at risk of poverty and social exclusion has decreased to 26.3 % in 2016 but remains above the EU average; children in general are more exposed to poverty than other age groups. The level of minimum income benefits is below 50 % of the poverty threshold for a single household, making it among the lowest in the EU. The adequacy of unemployment benefits is very low: the maximum duration of 3 months ranks as the shortest in the EU, and represents only around a quarter of the average time required by job seekers to find employment. In addition, the levels of payment are among the lowest in the EU. The Commission recommended to improve the adequacy and coverage of social assistance and unemployment benefits.

Separate vote: 164 (Kudrycka, Von Thun und Hohenstein), 250 (Weidenholzer e.a.), 253 (Weidenholzer e.a.)
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