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The Universal Protection of Human Rights and Central Europe: Hungary

- **ABSTRACT:** *This paper explores Hungary's evolving relationship with the universal protection of human rights. It traces this topic through its historical developments of the early 19th century to the present. It begins with Hungary's Reform Era for the purpose of exposing how the ideals of the Enlightenment influenced progressive legislative initiatives, such as the April Laws of 1848, which introduced groundbreaking reforms in suffrage, press freedom, religious equality, and judicial modernisation. Despite setbacks following the 1848 Revolution, many of these reforms resurfaced post-1867 Austro-Hungarian Compromise and laid the groundwork for Hungary's later human rights engagements. After World War I, Hungary joined the League of Nations, demonstrating an early commitment to minority rights protection, although domestically, it began implementing discriminatory legislation, especially against Jews. The atrocities committed during World War II and the Holocaust marked a devastating failure in human rights protection, prompting global efforts toward codification of human rights norms, which Hungary gradually joined. Under communism, Hungary's legal framework was aligned with Soviet ideology, emphasising social over civil rights, while individual freedoms were largely sidelined. However, from 1989 onwards, democratic reforms, constitutional changes, and international engagement – such as ratifying key UN treaties and joining the Council of Europe and the European Union – marked a significant shift toward aligning domestic law with global human rights standards. The paper also examines Hungary's dualist legal approach, which requires international treaties to be enacted through domestic legislation, and how this has influenced treaty implementation. Particular focus is given to Hungary's participation in the UN human rights system, including its engagement with treaty bodies, responses to individual complaints, and Universal*

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Periodic Review (UPR) procedures. Through an analysis of key cases and mechanisms, the paper underscores both progress and ongoing challenges in ensuring full compliance with international human rights obligations. It concludes by stressing the need for continual vigilance and adaptation to safeguard rights amid evolving political and social contexts.

■ **KEYWORDS:** *international law, universal human rights protection, treaty bodies, Hungary*

1. The historical development of human rights in Hungary: a contextual introduction

The idea of universal human rights, inspired by Enlightenment philosophers, became well known to politicians of the Hungarian Reform Era from the 1820s onward. In this period, the staen of the day attempted to effect modernisation, following the example of some Western European states. Since there was no chartered constitution in Hungary at that time, there was no constitutional regulation of human rights either. The legal thinking of that time can be found incorporated into numerous works describing Hungarian society and the various paths towards modernisation.¹ These works both contained and inspired numerous progressive legislative proposals, as presented briefly herein.

Some of the legislative proposals that resulted from the Revolution of 15 March 1848, and the national assemblies called together in this period, were included in the so-called *April Laws*,² a series of laws that were promulgated by King Ferdinand V of Hungary (also known as Ferdinand I. Emperor of Austria) on 11 April 1848. The April Laws include 31 Acts, which transformed Hungary into a parliamentary democracy and a constitutional monarchy. Amongst these, Act V of 1848 concerning the system of democratic elections offered the widest suffrage rights in Europe at that time, on par with Switzerland: ‘men aged at least 20, meeting the property or income qualifications for voting, as well as members of the intelligentsia, were guaranteed voting rights and those above 24 could be elected representatives.’³ Additional April Laws relevant to this paper are Act IX establishing a modern judiciary, Act XV regarding the abolishment of ancestral rights and the introduction of equality in the area of property rights, Act XVII concerning the abolishment of censorship and freedom of the press, Act XIX on

1 István Széchenyi's works such ‘Credit’ (‘Hitel’), ‘World’ (‘Világ’), or ‘Phase’ (‘Stádium’), but also the works of other key figures of that period such as Lajos Kossuth, Ferenc Deák, József Eötvös, or Bertalan Szemere, amongst others. See also Lamm, 2022, pp. 1175–1177.

2 In Hungarian: *áprilisi törvények*.

3 Gerő, 2014.

freedom of education, or Act XX concerning the religious equality of established Christian churches. It is worth noting that these laws can be considered truly progressive for mid-19th century Central Europe, both in terms of content and intent. Lajos Kossuth, one of the most important political leaders at that time, noted that these laws did not contain all that was necessary for the nation's future, but rather constituted the foundations of its development.⁴

Following the elections organised pursuant to the new rules in June 1848, the newly elected national assembly commenced work in July 1848; they began drafting a constitution and adopted further laws that merit mentioning in the context of this chapter. Act VIII of 1849 concerning nationalities, provided the right of national minorities to use their mother tongue in their dealings with local authorities, and ensured access to education in the mother tongue. A second law of major importance was Act IX of 1849 which accorded equal political and civil rights to Jews. However, the abdication of King Ferdinand V in December 1848 led to his successor, Franz Joseph revoking all of these laws, and the crushing of the 1848 Revolution foiled the plans for the adoption of a French-inspired constitution containing numerous provisions on human rights.

Many of the above-mentioned legislative acts came to the fore once again after the Austro-Hungarian Compromise of 1867, and the ideas developed at that time were used during the adoption of laws on primary education (Act XXXVIII of 1868), and secondary school education for national minorities (Act XXX of 1883). Further laws were adopted aimed at improving equality of rights for Jews (Act XVII of 1867), and other national minorities (Act XLIV of 1868). A previously adopted act, intended to guarantee freedom of the press, was also reinstated. Reformist legislative ambitions within the Monarchy were also manifested in its foreign relations. In terms of international agreements, Hungary as part of the Austro-Hungarian Monarchy, contributed to the drafting of various international agreements, such as the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, and to its successor, the 1906 Geneva Convention, to the General Acts of the Berlin Conference (1885), and the Brussels Conference (1890), which were aimed at abolishing slavery and the slave trade.

Following the First World War, the newly independent Hungary became a member state of the League of Nations. This implicitly meant that Hungary adhered to the Covenant of the League of Nations. The Covenant referred to numerous, what we would today call fundamental human rights. It contained declarations such as the one pertaining to securing and maintaining fair and humane conditions of labour (Article 23(a)), or securing just treatment for the native inhabitants of territories under member states' occupation (Article 23(b)). The League of Nations, specifically the League Council, was also charged with supervising the so-called Minority Treaties, which were entered into at the end

4 Szabad, 2004.

of World War I, and – as suggested by their name – aimed to protect national minorities.⁵ Hungary, as a country that lost much of its population and territory after World War I, became more homogeneous in terms of ethnic composition. The lost population included over three million ethnic Hungarians, which made Hungary especially interested in upholding the rights of national minorities, and thus the country was in favour of seeing the Minority Treaties enforced by the League. This had the added consequence that Hungarian politicians and legal professionals became very much involved in the minority rights protection system, establishing a legal tradition upheld to this day. Nevertheless, the international protection system was more than imperfect, with League Council recommendations formulated pursuant to complaints made by minorities often being ignored by the member states.

While preoccupied with the rights of minorities abroad, the Hungarian government, starting in 1920, adopted laws that severely restricted the rights of its Jewish citizens. The situation became increasingly acute by the end of the 1930s, and at the beginning of the 1940s, with the so-called *Jewish Laws* (*zsidótörvények*).⁶ These laws were followed by the Holocaust against Jewish and Romani peoples, and other minorities, and the atrocities of World War II, resulting in the deaths of hundreds of thousands of Hungarian citizens.

The end of the Second World War saw the birth of fundamental human rights, enclosed in the Preamble of the United Nations (UN) Charter, which was drafted to ‘reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women (...).’⁷ The UN Charter’s Article 1(3) defines the purpose of the UN as being to ‘achieve international co-operation (...) in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.’

5 The term *Minority Treaties* includes unilateral declarations, bilateral, as well as multilateral treaties, all aimed at the protection of national minorities.

6 Act XXV of 1920, the so-called *numerus clausus* law, restricting the number of students of Jewish origin admitted to higher education (1920. évi XXV. törvénycikk a tudományegyetemekre, a műegyetemre, a budapesti egyetemi közgazdaságtudományi karra és a jogakadémiákra való beiratkozás szabályozásáról). The four Jewish Laws: Acts XV of 1938 (1938. évi XV. törvénycikk a társadalmi és a gazdasági élet egyensúlyának hatályosabb biztosításáról) and Act IV of 1939 (1939. évi IV. törvénycikk a zsidók közéleti és gazdasági térfoglalásának korlátozásáról) which restricted the civil and political rights of Jews, and their rights in conducting business; Act XV of 1941 (1941. évi XV. törvénycikk a házassági jogról szóló 1894:XXXI. törvénycikk kiegészítéséről és módosításáról, valamint az ezzel kapcsolatban szükséges fajvédelmi rendelkezésekről) which prohibited the marriage and sexual relations between Jews and non-Jews; Act XV of 1942 (1942. évi XV. törvénycikk a zsidók mező- és erdőgazdasági ingatlanairól) restricting the acquisition of real-estate pertaining to agricultural and forestry activities by Jews.

7 See full text of United Nations Charter.

As a direct consequence of the horrors of World War II, on 9 December 1948 the UN General Assembly (GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). Supplementing the above-mentioned brief declaration of intent, UN members drafted and adopted the Universal Declaration of Human Rights (UDHR), which was published on 10 December 1948. In 1949 further treaties were adopted regarding humanitarian treatment in times of war, supplementing the existing conventions and also adding new rules. Hungary, not yet a member of the UN at the time, neither contributed to the drafting, nor did it vote on the adoption of the UDHR, and the other conventions mentioned. The UDHR was later adopted by the member states of the Council of Europe as part of the European Convention of Human Rights (ECHR), who thereby assumed an enforceable obligation to uphold these human rights. These obligations are enforced by way of a specialised court known as the European Court of Human Rights (ECtHR), which exercises powers of oversight guaranteeing the rights under the ECHR. Hungary became a member of the Council of Europe, and consequently adopted the ECHR and other human rights treaties, on 6 November 1990.

Following World War II, and the Paris Peace Treaty of 1947, Hungary undertook to 'take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.'⁸ Nevertheless, Hungary came under severe pressure and influence from the Soviet Union, resulting in the communists taking over political power and governing Hungary through the next four decades, giving a particular spin to the above-mentioned commitment. With a communist government, and under considerable influence from the Soviet Union, Hungary adopted its first-ever chartered constitution in 1949.⁹ This was based on the 1936 Constitution of the Soviet Union, which used the terminology of *citizens' rights* instead of *human rights*, focusing on social and economic rights, rather than civil and political rights. During this period, repression and *show trials* became the order of the day, with an utter disregard for the right to life, freedom, property, religion, or due process.

Hungary eventually became a member of the UN in 1955, undertaking all of the human rights obligations that were attached to this membership. It must be noted, however, that with the defeat of the Hungarian Revolution of 1956 – with the assistance of the Soviet Union – and the reprisals that followed, fundamental human rights were repeatedly violated.

The codification of human rights at an international level progressed in the 1950s and in the following decades with the adoption of several conventions

8 Article 2(1) of the Paris Peace Treaty with Hungary.

9 Act XX of 1949 (1949. évi XX. törvény, a Magyar Népköztársaság alkotmánya).

and covenants. Hungary adhered to a number of these, such as the International Covenant on Civil and Political Rights¹⁰ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹¹ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),¹² the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹³ the Convention relating to the Status of Refugees,¹⁴ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹⁵ While Hungary did eventually adhere to the mentioned covenants and conventions, it was not as active in the moulding of norms that were taking shape on the human rights front at that time, in contrast to the country's involvement in other areas of international cooperation, such as the unification of civil law undertaken at the United Nations Commission on International Trade Law.¹⁶ Hungary ratified these international agreements, and submitted reports to the experts overseeing their implementation, making efforts to meet the expectations of the international community.

Some of the international human rights agreements were only ratified after the regime change that took place around 1989. The fall of communism and regime change also brought a series of amendments to the Hungarian Constitution, which included the introduction of civil and political rights, and the recognition of the inviolable and inalienable nature of fundamental human rights. Various other laws were passed pertaining to fundamental rights, such as Act II of 1989 concerning the freedom of association, Act III of 1989 concerning the freedom of assembly, Act XVII of 1989 concerning referendums, and Act IV of 1990 concerning freedom of conscience and religion. There was also institutional reform providing the infrastructure that would guarantee the respect of fundamental rights, such

10 Ratified via Act 8 of 1976 (1976. évi 8. törvényerejű rendelet az Egyesült Nemzetek Közgyűlése XXI. ülészakán, 1966. december 16-án elfogadott Polgári és Politikai Jogok Nemzetközi Egyezségokmánya kihirdetéséről).

11 Ratified via Act 9 of 1976 (1976. évi 9. törvényerejű rendelet az Egyesült Nemzetek Közgyűlése XXI. ülészakán, 1966. december 16-án elfogadott Gazdasági, Szociális és Kulturális Jogok Nemzetközi Egyezségokmánya kihirdetéséről).

12 Ratified via Act 8 of 1969 (1969. évi 8. törvényerejű rendelet a faji megkülönböztetés valamennyi formájának kiküszöböléséről New Yorkban 1965. december 21-én elfogadott nemzetközi egyezmény kihirdetéséről).

13 Ratified via Act 10 of 1982 (1982. évi 10. törvényerejű rendelet a nőkkel szembeni megkülönböztetés minden formájának felszámolásáról 1979. december 18-án New Yorkban elfogadott egyezmény kihirdetéséről).

14 Ratified via Act 15 of 1989 (1989. évi 15. törvényerejű rendelet a menekültek helyzetére vonatkozó 1951. évi július hó 28. napján elfogadott egyezmény, valamint a menekültek helyzetére vonatkozóan az 1967. évi január hó 31. napján létrejött jegyzőkönyv kihirdetéséről).

15 Ratified via Act 3 of 1988 (1988. évi 3. törvényerejű rendelet a kínzás és más kegyetlen, embertelen vagy megalázó büntetések vagy bánásmódok elleni nemzetközi egyezmény kihirdetéséről).

16 See *Thirty-five Years of Uniform Sales Law: Trends and Perspectives*, Introduction by János Martonyi, UNCITRAL, 2015.

as the Constitutional Court, the commissioner for citizens' rights, and the office of the commissioner for ethnic and national minorities, both in the Hungarian National Assembly.

Following the regime change, Hungary sought to become party to additional international treaties and European organisations which involve a robust commitment to enforcing the protection of universal human rights. Particularly impactful with regard to the human rights regime in Hungary were joining the Council of Europe (CoE) in 1990, and ratifying the ECHR and other human rights conventions under it, such as the Framework Convention for the Protection of National Minorities, and the European Charter for Regional and Minority Languages.¹⁷ In 2004 Hungary became a Member State of the European Union (EU), so undertaking to adhere to all of the human rights norms adopted by members. This includes the EU Charter of Fundamental Rights applicable since 1 December 2009. The human rights regime under both the CoE and the EU have strict supervisory structures including, in some cases, the possibility of judicial review and enforcement. After the regime change of 1989, Hungary also proceeded to ratify further UN conventions, such as the Convention on the Rights of the Child,¹⁸ the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the related Optional Protocol,¹⁹ and the Convention on the Rights of Persons with Disabilities (CRPD).²⁰

Hungary strives to ensure that its domestic legal system functions in line with the international human rights system. In this respect, Hungary regularly participates in the review and reporting mechanisms, by reporting and receiving the recommendations of the international human rights bodies of the UN. The obligations thus assumed are enshrined in the constitution (*alkotmány*) of Hungary, and guaranteed by its Constitutional Court (*Alkotmánybíróság*). In 2011 a new constitution, called the Fundamental Law (*Alaptörvény*) was adopted, which contains a set of civil, political, economic, social and cultural rights, as well as third generation human rights. These fundamental rights are included in the chapter titled 'Freedom and Responsibility' of the Fundamental Law.

17 Hungary ratified the ECHR on 5 November 1992, and published the law pertaining to this ratification in 1993 via Act XXXI of 1993 (1993. évi XXXI. törvény az emberi jogok és az alapvető szabadságok védelméről szóló, Rómában, 1950. november 4-én kelt Egyezmény és az ahhoz tartozó nyolc kiegészítő jegyzőkönyv kihirdetéséről).

18 Ratified via Act LXIV of 1991 (1991. évi LXIV. törvény a Gyermekek jogairól szóló, New Yorkban, 1989. november 20-án kelt Egyezmény kihirdetéséről).

19 Ratified by Hungary via Act CXLIII of 2011 (2011. évi CXLIII. törvény a kínzás és más kegyetlen, embertelen vagy megalázó bánásmód vagy büntetés elleni egyezmény fakultatív jegyzőkönyvének kihirdetéséről).

20 Ratified by Hungary via Act XCII of 2007 (2007. évi XCII. törvény a Fogytékossággal élő személyek jogairól szóló egyezmény és az ahhoz kapcsolódó Fakultatív Jegyzőkönyv kihirdetéséről).

Table 1: Full table of the ratification status of UN human rights treaties in Hungary²¹

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment – CAT	28 Nov 1986	15 Apr 1987
Optional Protocol of the Convention against Torture – CAT-OP		12 Jan 2012 (a)
International Covenant on Civil and Political Rights – CCPR	25 Mar 1969	17 Jan 1974
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty – CCPR-OP2-DP		24 Feb 1994 (a)
Convention for the Protection of All Persons from Enforced Disappearance – CED		
Convention on the Elimination of All Forms of Discrimination against Women – CEDAW	6 Jun 1980	22 Dec 1980
International Convention on the Elimination of All Forms of Racial Discrimination – CERD	15 Sep 1966	4 May 1967
International Covenant on Economic, Social and Cultural Rights – CESCR	25 Mar 1969	17 Jan 1974
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – CMW		
Convention on the Rights of the Child – CRC	14 Mar 1990	7 Oct 1991
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict – CRC-OP-AC	11 Mar 2002	24 Feb 2010
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography – CRC-OP-SC	11 Mar 2002	24 Feb 2010
Convention on the Rights of Persons with Disabilities – CRPD	30 Mar 2007	20 Jul 2007

2. International treaties in the Hungarian legal system

Prior to its first written constitution, the contact between Hungary's domestic legal system and international law was scarcely regulated by Hungarian positive law in terms of the applicable procedure. The first written constitution, adopted in 1949, as with the previously applied unwritten *historic constitution* (in Hungarian: *történeti alkotmány*), was consistent in leaving this matter unaddressed. Previous to the 1949 Constitution, the judiciary served with case law that guided the interaction of domestic law and international law. Courts argued that international agreements, in order to produce effects domestically, must be adopted in the shape of domestic law, meaning they must be ratified. This tradition was continued under the Constitution of 1949, as it was also in line with the logic of soviet law: international agreements can produce effects domestically only if they are adopted through national legislation.

²¹ Based on the UN Treaty Body Database, as of November 2024.

Under this *dualist system*, Hungary promulgated several international human rights agreements, as also shown in the previous section. The Constitutional Court and the judiciary play a crucial role in the implementation of the international norms Hungary committed to. The judiciary has been described as regularly being concerned with the domestic legislative instrument that promulgates an international agreement, rather than with the text of the agreement itself.²² The dualist approach was finally integrated into the positive law and elevated to the rank of constitutional law during the amendments to the 1949 Constitution that took place during the 1989 regime change. It was the amendment to Article 7 that introduced regulations containing the normative relationship between Hungarian domestic law and international law. Below is the author's translation of paragraph (1) Article 7 of the amended Constitution: 'The legal system of the Republic of Hungary accepts the generally recognised rules of international law, and ensures the consistency between domestic law and the international legal obligations assumed.'²³ This paragraph was maintained in the Constitution up until its abrogation, and the adoption of the 2011 Fundamental Law. The dualist tradition was carried on into the 2011 Fundamental Law, which is the latest iteration of the millennium-old Hungarian Constitution.

The process of adopting the 2011 Fundamental Law came under scrutiny both domestically and abroad, not least because it is a rare occurrence that an EU Member State adopts a new constitution in the post-accession phase. The Fundamental Law replaced the Constitution of 1949,²⁴ which had previously been revised during the transition and regime change of 1989,²⁵ and then amended extensively, most notably in the process of EU accession.²⁶ The 2010 parliamentary elections resulted in a landslide victory that allowed for the conservative government coalition to adopt a new constitution in the form of the Fundamental Law in April 2011. The new government, with a two-thirds majority in Parliament, considered that a new constitution was long overdue, partly due to comparisons made with neighbouring countries who had managed to adopt completely new constitutions after the regime change of 1989.²⁷ In terms of this new Constitution being called the Fundamental Law, is underpinned by the argument – as noted by one of its drafters – that the Fundamental Law is only *pars* of the Hungarian constitutional

22 Molnár, 2013, pp. 57–58, 61–64.

23 Paragraph (2) of Article 7 was a provision setting the two-thirds majority of MPs as necessary to adopt the act pertaining to the rules of the legislative process.

24 Act XX of 1949, the Constitution of the Hungarian Republic (1949. évi XX. törvény – A Magyar Népköztársaság Alkotmánya).

25 Act XXXI of 1989, regarding the revision of the Constitution (1989. évi XXXI. törvény az Alkotmány módosításáról).

26 Act LXI of 2002, concerning the amendment of Act XX of 1949 on the Constitution of the Hungarian Republic (2002. évi LXI. törvény a Magyar Köztársaság Alkotmányáról szóló 1949. évi XX. törvény módosításáról).

27 Szájer, 2014, pp. 635–640.

system spanning a thousand years.²⁸ The Fundamental Law entered into force on 1 January 2012.

The Fundamental Law contains various provisions pertaining to Hungary's obligations as a participant in the international community. Article Q) of the Fundamental Law, in its second and third paragraphs provides the obligation to align national law with the international norms Hungary adheres to:

- (2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law.
- (3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation in laws.

While there are certain similarities to the text of the Constitution as amended in 1989, the provisions of the Fundamental Law on this matter appear clearer. According to the explanatory memorandum to the original Bill on the Fundamental Law, the above provisions contain the obligation to ensure consistency between international legal rules binding Hungary and Hungarian law in order to ensure the *bona fide* fulfilment of international legal obligations. In other words, this is an expression of the *pacta sunt servanda* principle. It also means that Hungary adheres to the general principles of international law, customary international law, and the international *jus cogens*, as well as to international treaties, and decisions made by international organisations and judicial bodies. The explanatory memorandum further states that this provision is in line with the international law requirement according to which violations of international legal obligations cannot be justified by invocation of domestic law. It is the Constitutional Court that plays an integral role in ensuring harmony between domestic and international law.²⁹ While this role may appear straightforward, difficulties may yet occur, especially when it comes to determining the precise function of international law under the Fundamental Law.

Within the current constitutional system, the adherence to international treaties and the commitment to be bound by them, is governed – in addition to the Fundamental Law – by Act L of 2005 on the procedure relating to international treaties.³⁰ According to these sources of law, the authorisation for adhering to various international agreements must be given either by the National Assembly or by the Government, depending on their functions and powers.³¹ The authorisation is included in the law pertaining to the ratification of the international

28 Szájer, 2014, p. 828.

29 Explanatory memorandum to the original Bill on the Fundamental Law (T/2627), explanation pertaining to Article P).

30 Act L of 2005 (2005. évi L. törvény a nemzetközi szerződésekkel kapcsolatos eljárásról).

31 As per Article 7(1) of Act L of 2005.

agreement.³² After the adoption of the ratifying law, it is the President of the Republic that promulgates the law, and the minister of foreign affairs proceeds to deposit or notify the instrument of ratification. Sometimes the consent to be bound by an international agreement must be expressed by the minister of foreign affairs, or by the head of government (the Prime Minister), in which case the instrument of ratification is once again deposited or notified by the minister of foreign affairs. In order for domestic courts to start interpreting an international agreement, it must take the form of Hungarian law. Act CXXX of 2010 on law-making, at Section 2(4), sets out certain conditions that must be adhered to when drafting laws:

When making laws, it shall be ensured that laws

- a) comply with the requirements of form and content arising from the Fundamental Law,
- b) fit into the unity of the legal system,
- c) comply with obligations arising from international law and the law of the European Union, and
- d) comply with the professional requirements of law-making.³³

The various multilateral agreements that Hungary is a party to which were enumerated in the previous section, were ratified prior to the entry into force of the 2011 Fundamental Law. However, these are upheld by the Fundamental Law, which notes in paragraph 8 of the Closing and Miscellaneous Provisions: ‘The entry into force of the Fundamental Law shall not affect (...) international legal commitments undertaken before its entry into force.’ In accordance with this, and the obligations assumed under the various international treaties ratified, Hungary participates in the monitoring and reporting programmes tied to some of these treaties. This work is regularly carried out by the Human Rights Working Group (*Emberi Jogi Munkacsoport*) established in 2012 and tasked with observing the human rights situation in Hungary, and consulting with stakeholders and government on human rights related matters.³⁴ The next section provides a brief outline of universal human rights protection under Hungarian domestic law.

3. Hungary as a state party to UN Human Rights Treaties

■ 3.1. The 1951 Refugee Convention

The protection of refugees in Hungary relies on a system that combines internal laws, bilateral and multilateral international agreements, as well as EU norms and

³² As per Article 7(2) of Act L of 2005.

³³ Act CXXX of 2010 (2010. évi CXXX. törvény a jogalkotásról), official translation to English is available online: <https://njt.hu/jogszabaly/en/2010-130-00-00> (Accessed: 23 August 2024).

³⁴ Government Decision 1039/2012. (II. 22.) (1039/2012. (II. 22.) Korm. határozat az Emberi Jogi Munkacsoportról).

agreements. This section will only focus on the international agreements Hungary is a party to, which were conceived at the level of the UN, namely the 1951 Refugee Convention and its 1967 Additional Protocol.

Law-decree no. 15 of 1989 ratified the 1951 Refugee Convention (Geneva Convention), and the 1967 Additional Protocol to that convention. 1989 marks a year of massive legislative reforms in Hungary, including the adoption of three laws amending the 1949 Constitution, and an expansion of fundamental rights and freedoms, such as freedom of assembly and freedom of association. The obligations pursuant to the Convention were implemented into national law by Law-decree no. 19 of 1989 on the legal status of persons recognised as refugees,³⁵ and Decree of the Council of Ministers no. 101/1989 (IX. 28.) on recognition as a refugee.³⁶ At the time, Hungary was the first state in the Eastern bloc to ratify the Convention. The ratification was mainly aimed at providing a framework for receiving ethnic Hungarians fleeing from the brutal dictatorship of neighbouring Romania, which was a growing concern during that period. This focus becomes evident from the geographical limitations of the ratification, excluding the application of the treaty to refugees fleeing events that occurred outside of Europe.³⁷ The Yugoslav Wars also resulted in many people fleeing and seeking asylum in Hungary.

The material support for refugees was arranged via Act no. XXVI of 1993 establishing the Refugee Fund (*Menekülteket Támogató Alap*)³⁸ which replaced the Resettlement Fund established in 1988. In terms of supporting state bodies, the Decree of the Council of Ministers No 64/1989 (VI. 30.) on refugee reception centres³⁹ established the structures that provided care and accommodation to refugees.⁴⁰ In terms of the procedure itself, the 1989 Act reorganised the administration of refugees, placing it under county-level police authority.

The geographical restriction on asylum seekers was subsequently lifted as a result of the adoption of Act no. CXXXIX on asylum in 1997.⁴¹ This act also contained a mandate for establishing a comprehensive asylum system. The Act was complemented by Government Decree no. 25/1998 (II. 18.) regarding care and support for aliens under Act CXXXIX of 1997 on asylum.⁴² Subsequently, competence in the area of asylum was transferred from the police to administrative

35 In Hungarian: 1989. évi 19. törvényerejű rendelet a menekülteként elismert személyek jogállásáról.

36 In Hungarian: 101/1989. (IX. 28.) MT rendelet a menekülteként való elismerésről.

37 Nagy, 1989.

38 In Hungarian: 1993. évi XXVI. törvény a Menekülteket Támogató Alapról.

39 In Hungarian: Minisztertanács 64/1989. (VI. 30.) számú rendelete a menekülteket befogadó állomásokról.

40 Klenner, 2017, pp. 52–54.

41 In Hungarian: 1997. évi CXXXIX. törvény a menedékjogról.

42 In Hungarian: 25/1998. (II. 18.) Korm. rendelet a menedékjogról szóló 1997. évi CXXXIX. törvény hatálya alá tartozó külföldiek ellátásáról és támogatásáról.

authorities, but were later handed over to the newly established Office for Migration and Citizenship of the Ministry of Interior.⁴³

The latest iteration of the asylum regime in Hungary comes in the form of Act no. LXXX of 2007 on asylum, which replaces the Act of 1997, and is complemented by Government Decree no. 301/2007 (XI. 9.) on the implementation of this Act.⁴⁴ The right to asylum is also featured in Article XIV, para. (4) of the Fundamental Law, which provides the following:

Hungary shall, upon request, grant asylum to non-Hungarian nationals who are persecuted in their country or in the country of their habitual residence for reasons of race, nationality, the membership of a particular social group, religious or political beliefs, or have a well-founded reason to fear direct persecution if they do not receive protection from their country of origin, nor from any other country. A non-Hungarian national shall not be entitled to asylum if he or she arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution.⁴⁵

The 2007 Act contains not only the regime under the 1951 Refugee Convention and the Additional Protocol, but also serves to harmonise Hungarian legislation with the EU norms on the matter of asylum, as is also noted in its preamble. The Act was also amended several times, especially in the past decade, and as a consequence of the 2015 European migrant crisis. This crisis prompted the government to declare a state of emergency, which has been maintained ever since.⁴⁶ The legislative measures seeking to manage the crisis were criticised by many accusing the unnecessarily severe limitations on access to asylum.⁴⁷ The legislative measures also drew the attention of the UN High Commissioner for

43 Pursuant to Act no. XXXIX of 2001 (2001. évi XXXIX. törvény a külföldiek beutazásáról és tartózkodásáról).

44 In Hungarian: 2007. évi LXXX. törvény a menedéjogról; 301/2007. (XI. 9.) Korm. rendelet a menedéjogról szóló 2007. évi LXXX. törvény végrehajtásáról.

45 Translation provided by the Ministry of Justice of Hungary, available at: <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178> (Accessed: 24 August 2024).

46 Government Decree No. 41/2016 (III. 9.) on the declaration of a state of emergency due to mass immigration throughout the territory of Hungary and on the rules related to the declaration, existence, and termination of the state of emergency; 41/2016. (III. 9.) Korm. rendelet a tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról. This state of emergency was prolonged until 7 March 2025, via Government Decree no. 265/2024 (IX. 2.) (265/2024. (IX. 2.) Korm. rendelet a tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról szóló 41/2016. (III. 9.) Korm. rendelet módosításáról).

47 More recently Friedery and Molnár, 2024; Hoffmann, 2022.

Refugees, the UN Refugee Agency.⁴⁸ Hungary's asylum regime prompted numerous complaints against Hungary in front of the European Court of Human Rights.⁴⁹ It also resulted in a number of complaints being brought before UN treaty bodies, as also shown herein.

■ 3.2. *International Covenant on Civil and Political Rights*

Hungary, or the Hungarian People's Republic at the time, signed the International Covenant on Civil and Political Rights (ICCPR) in 1974, and implemented its provisions into national law in 1976. At the time of its signature and ratification, Hungary made a declaration that Article 48(1) of the ICCPR, which refers to states that may become signatories of the Covenant, stating that it was discriminatory, incompatible with the Covenant itself, and inconsistent with the principle of sovereign equality of states. It sought to implement the rights contained therein 'in conformity with the principle of socialist legality'.⁵⁰ In 1988, Hungary also acceded to the First Optional Protocol which allows for individual complaints to be lodged before the UN Human Rights Committee. Hungary also ratified the Second Optional Protocol to the ICCPR which aims to abolish the death penalty, acceding to it in 1994, after the regime change.⁵¹

It is fair to say that neither granting the possibility of individual complaints, nor abolishing the death penalty, were topics that generated much interest in communist Hungary. Nevertheless, the human rights contained in the ICCPR were reflected in the Hungarian Constitution even at that time.⁵² While the Covenant itself is not expressly mentioned in the 2011 Fundamental Law, the chapter titled 'Freedom and Responsibility' accurately reflects the fundamental rights enshrined in the ICCPR. Hungary abolished capital punishment in 1990,⁵³ and the Fundamental Law, in Article II provides that '[e]very human being shall have the right to life and human dignity'. This constitutes the basis for the prohibition of the death penalty in Hungary.

■ 3.3. *International Covenant on Economic, Social and Cultural Rights*

The Hungarian People's Republic ratified the ICESCR at the same time as it did the ICCPR.⁵⁴ At that time, Hungary took issue with the limitations contained in Article 26(1) and (3) of the ICESCR, which refer to states that may become signatories of

48 UNHCR, The UN Refugee Agency: UNHCR concerned by Hungary's latest measures affecting access to asylum, Press release, 10 March 2021.

49 E.g. *G.H. v. Hungary*, *SS and others v. Hungary*, *KP v. Hungary*, *H.M. and others v. Hungary*, *Shahzad v. Hungary*, etc.

50 HRC, Consideration of Reports submitted by states parties under Article 40 of the Covenant, CCPR/C/1/Add. 11, 25 May 1977, 1.

51 Act 8 of 1976.

52 See HRC, 1977.

53 Decision of the Constitutional Court of the Republic of Hungary No. 23 of 24 October 1990.

54 Act 9 of 1976.

the Covenant, making a declaration that these provisions were discriminatory, incompatible with the universal character of the Covenant itself, and inconsistent with the principle of sovereign equality of states.

The provisions of the Covenant are clearly reflected in the chapter of the Fundamental Law titled 'Freedom and Responsibility'. As noted in scholarly literature, the rights contained therein are not subjective rights, they are not actionable, but rather reflect the duties of the state related to those rights.⁵⁵

Hungary did not ratify the Optional Protocol to the ICESCR. Thus, Hungary did not subject itself either to the inquiry procedure or the individual complaints mechanism that were adopted under the Optional Protocol.

■ 3.4. *International Convention on the Elimination of All Forms of Racial Discrimination*

Hungary ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) quite early, in 1969. The People's Republic of Hungary, upon signature of the treaty, made a declaration, similar to the case of ICCPR and ICESCR, regarding the limitation to the possibility of becoming a party to the Convention. The declaration states that the limitation imposed by Articles 17(1) and 18(1) of the Convention are in effect discriminatory and contrary to international law. It maintained the position that a multilateral Convention of a general character should be open to all states without discrimination of any kind, in accordance with the principle of sovereign equality of states.

The Fundamental Law of Hungary in Article XV provides that '[e]veryone shall be equal before the law', and expressly prohibits discrimination on grounds of 'race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.' The law on equal treatment and the advancement of equality of opportunity⁵⁶ provides a more ample basis for the prohibition of discrimination based on race as well as other markers. However, this Act serves as a tool for the harmonisation of Hungarian law with EU norms on the matter, and it fails to mention CERD as its basis.

While it ratified CERD early on, Hungary continues to face many challenges in terms of abolishing discrimination and promoting tolerance. Years of reporting and observing the implementation of CERD in Hungary provides ample material for anyone wanting to conduct in-depth research on the matter. The situation of the Roma communities is particularly dire, given that individuals belonging to these communities continue to face multiple forms of discrimination.

⁵⁵ Hungler and Pozsár-Szentmiklósy, 2023, p. 184.

⁵⁶ Act CXXV. of 2003 (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról).

■ 3.5. *Convention on the Elimination of All Forms of Discrimination against Women*

The Convention was signed by Hungary in 1980, and ratified in 1982. The ratification act provides that the Convention should be considered as having been applicable since 3 September 1981.⁵⁷ Hungary also ratified the Optional Protocol of CEDAW in 2001,⁵⁸ thus becoming subject to the inquiry procedure under Articles 8 and 9.

Article XV(3) of the Fundamental Law states that '[w]omen and men shall have equal rights', and the law on equal treatment and the advancement of equality of opportunity also prohibits discrimination on the basis of gender. The Hungarian National Assembly adopted a resolution in 2003 on the creation of a national strategy for the prevention and the effective management of cases of domestic violence.⁵⁹ This resulted in the adoption of legal provisions on restraining orders in 2006 in pending criminal proceedings. A further act adopted in 2009 was adopted with a view to closing the gaps left by the previously adopted legislation. Thus, Act no. LXXII of 2009 on restraining orders on the grounds of violence between relatives was adopted.⁶⁰ The Criminal Code of Hungary also treats relationship and domestic violence as a crime. The 2003 national strategy was later replaced with a new strategy on relationship violence.⁶¹

■ 3.6. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Hungary signed the CAT in 1987 and ratified it in 1988. The Optional Protocol was also ratified in 2011.⁶² At the time of the Optional Protocol's ratification, Hungary made a declaration that it would postpone the implementation of Part IV concerning national preventive mechanisms by three years.

The Fundamental Law provides in Article II that '[n]o one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude.' The implementation into national law of the various obligations under the CAT is extensive, from criminal law and sentencing regulations, to policing, migration, protection of minors, and public health legislation.

⁵⁷ Article 3 of Law – decree no. 10 of 1982.

⁵⁸ Ratification via Act LX of 2001 (2001. évi LX. törvény a nőkkel szembeni hátrányos megkülönböztetés minden formájának kiküszöböléséről szóló, 1979. december 18-án, New Yorkban elfogadott Egyezmény Kiegészítő Jegyzőkönyve kihirdetéséről).

⁵⁹ Decision of Parliament 45/2003. (IV. 16.) (45/2003. (IV. 16.) OGY határozat a családon belüli erőszak megelőzésére és hatékony kezelésére irányuló nemzeti stratégia kialakításáról).

⁶⁰ In Hungarian: 2009. évi LXXII. törvény a hozzátartozók közötti erőszak miatt alkalmazható távoltartásról.

⁶¹ Decision of Parliament 30/2015. (VII. 7.) (30/2015. (VII. 7.) OGY határozat a kapcsolati erőszak elleni hatékony fellépést elősegítő nemzeti stratégiai célok meghatározásáról).

⁶² Act CXLI of 2011.

■ 3.7. *Convention on the Rights of the Child*

Hungary ratified the CRC in 1991 and adopted the Optional Protocols to the CRC on the involvement of children in armed conflict,⁶³ and on the sale of children child prostitution and child pornography.⁶⁴ The Optional Protocol providing for the possibility of individual complaints was not adopted by Hungary.

The protection of children has a long history in Hungary, with the first specific law to address this matter being adopted in 1901.⁶⁵ Today, the rights of children are regulated in multiple laws. Article XVI of the Fundamental Law provides that '[e]very child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development.' Article XVIII of the Fundamental Law prohibits child labour. There is also a single act that is an extensive regulatory instrument regarding the rights of the child, which was adopted in part in consideration of the CRC.⁶⁶

Article XVI of the Fundamental Law also contains further provisions which place the choice in terms of the child's upbringing with the parents, provides an obligation of care of the child by the parents, but also vice versa. The mentioned provision also states that 'Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.' This was inserted into the Fundamental Law as a consequence of a 2020 amendment. This amendment also resulted in the amendment to the Act on the rights of the child which prohibits providing access to content that portrays sexuality as an end in itself, or which promotes and portrays deviations from the identity of the sex at birth, gender reassignment and homosexuality.⁶⁷ This resulted in an infringement proceeding being launched against Hungary by the European Commission, which was followed by the referral of the case to the Court of Justice of the European Union.⁶⁸

63 Act CLX of 2009 (2009. évi CLX. törvény a gyermekek fegyveres konfliktusba történő bevonásáról szóló, a Gyermek jogairól szóló egyezményhez fűzött Fakultatív Jegyzőkönyv megerősítéséről és kihirdetéséről).

64 Act CLXI of 2009 (2009. évi CLXI. törvény a gyermekek eladásáról, a gyermekprostitúcióról és a gyermekpornográfiáról szóló, a Gyermek jogairól szóló egyezményhez fűzött Fakultatív Jegyzőkönyv megerősítéséről és kihirdetéséről).

65 Act VIII. of 1901 (1901. évi VIII. törvénycikk az állami gyermekmenhelyekről).

66 Act XXXI of 1997 (1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról).

67 Section 6/A of Act no. XXXI of 1997. Considering the limitations of a proper translation of the legal text, this is reproduced in its current form in Hungarian: 'E törvényben foglalt célok és gyermeki jogok biztosítása érdekében tilos tizennyolc éven aluliak számára pornográf, valamint olyan tartalmat elérhetővé tenni, amely a szexualitást öncélúan ábrázolja, illetve a születési nemnek megfelelő önzonosságtól való eltérést, a nem megváltoztatását, valamint a homoszexualitást népszerűsíti, jeleníti meg.'

68 See Case C-769/22 European Commission v. Hungary (Union Values), pending as of the closing of this manuscript.

■ 3.8. *Convention on the Rights of Persons with Disabilities*

The CRPD was ratified in 2007 and in the same year Hungary also ratified the Optional Protocol which makes it possible to lodge individual complaints, as well as accepting the inquiry procedure.⁶⁹

The Fundamental Law prohibits discrimination on the basis of disability. Article XV of the Fundamental Law also provides that special laws must be adopted for the protection of persons living with disabilities. The Act on equal treatment and the advancement of equality of opportunity also contains provisions prohibiting discrimination on the basis of disability. In terms of state policies in the area of disability, an advisory body was formed called the National Disability Council.⁷⁰ The legal protection of persons with disabilities spans numerous legislative acts, while the improving implementation of these presents an ongoing challenge for the government and administrative authorities.

4. The protection of universal human rights in Hungarian domestic law

According to the Fundamental Law, '[t]he rules for fundamental rights and obligations shall be laid down in an Act.'⁷¹ The universal human rights treaties Hungary has adhered to are reflected in national law, principally by the ratifying legislative acts as noted above. These are implemented by administrative authorities and their implementation is supervised by the courts. The Fundamental Law lays down the basic rule that '[a] fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.'⁷²

Human rights norms form part of Hungarian domestic legislation and are implemented by state bodies at the level of the central and local governments, and national minority groups' self-government bodies. Fundamental rights claims can be adjudicated directly in the judicial system, through judicial enforcement, and remedies in case of fundamental rights violations. The Constitutional Court reviews legislative norms in the *ex ante* process, but also in *ex post* control (also called *abstract control*), as well as through the process of constitutional complaints. Courts may also ask that the Constitutional Court review the conformity of the law with the Fundamental Law in a particular case. The Constitutional Court may

69 Act XCIII of 2007 (2007. évi XCII. törvény a Fogyatékkal élő személyek jogairól szóló egyezmény és az ahhoz kapcsolódó Fakultatív Jegyzőkönyv kihirdetéséről).

70 *Országos Fogyatékosügyi Tanács*, established under Government Resolution 1330/2013 (VI. 13.) (1330/2013. (VI. 13.) Korm. határozat az Országos Fogyatékosügyi Tanácsról).

71 Article I(3) Fundamental Law.

72 Ibid.

also act autonomously, and review the constitutionality of legal norms and judicial decisions on its own motion.

In addition, there are two state bodies that play an important role in the proper implementation of universal human rights norm: the Office of the Commissioner for Fundamental Rights of Hungary, and the Human Rights Working Group (HRWG).

The Office of the Commissioner for Fundamental Rights of Hungary⁷³ is the successor of the Parliamentary Commissioner for Civil Rights,⁷⁴ and is enshrined in the 2011 Fundamental Law. The Office includes the Commissioner for Fundamental Rights and two deputies acting as Ombudsman for the Rights of National Minorities, and Ombudsman for Future Generations, as well as three Directorates-General dealing with the rights of people with disabilities, equal rights and policing, respectively.⁷⁵ The Office is charged with ensuring ‘the effective, coherent and most comprehensive protection of fundamental rights’ the ‘implement[ation of] the Fundamental Law of Hungary.’⁷⁶

The Office may engage in a number of activities in its verification of the implementation of various international agreements pertaining to universal human rights protection. In the legislative process, any bill that contains regulatory proposals pertaining to the activities of the Office will come under its supervision. Any person may turn to the Office with a complaint for violations of their fundamental rights. This means that the Office may carry out investigations and lodge judiciary action in cases where it notes violations. The Office takes note of violations, gathers data for statistical purposes, and submits annual reports before the National Assembly.

The list of domestic laws adopted as a consequence of ratifying, and implementing the various universal human rights treaties would be difficult to exhaust, and lengthy to attempt enumerating. The various fields to which special attention is given can be observed in the activities of the HRWG.

The HRWG reviews and monitors the implementation and enforcement of the human rights treaties that Hungary is party to, including those at UN level. The HRWG is also tasked with monitoring the implementation of the recommendations of the various UN treaty bodies, evidently to the extent that these have been accepted. This activity also entails formulating recommendations regarding ways to better implement human right norms.

The HRWG brings together senior political and professional leaders from ministries such as that of the interior, the economy, defence, justice, culture and

73 Act CXI of 2011 (2011. évi CXI. törvény az alapvető jogok biztosáról).

74 Organised under Act LIX of 1993 (1993. évi LIX. törvény az állampolgári jogok országgyűlési biztosáról).

75 See organisational structure of the Office of the Commissioner for Fundamental Rights, available at: <https://www.ajbh.hu/en/a-hivatal-szervezete> (Accessed: 25 August 2024).

76 See website of the Office of the Commissioner for Fundamental Rights, available at: <https://www.ajbh.hu/en/web/ajbh-en/about-the-office> (Accessed: 25 August 2024).

innovation, foreign affairs and trade, the Prime Minister's Office, and EU affairs. The activity of the HRWG, organised in various thematic working groups, spans from equal rights matters, through the rights of children, the rights of the elderly, the rights of national minorities, women's rights, and the rights of Roma. In carrying out this activity, the HRWG operates the Human Rights Roundtable, bringing together over a hundred stakeholders consisting of NGOs and other organisations, along the lines of the topics outlined above in the thematic working groups.

The next section will briefly present some of the more notable results of treaty bodies' external oversight through reporting and recommendations.

5. Hungary's interaction with treaty bodies under universal human rights agreements

International agreements intended to protect universal human rights contain various obligations and duties that states have to abide by. The supervision of their implementation, including activities such as reporting, complaints, inquiries, formulating comments, and strengthening the implementation of the treaties overall, is carried out by the treaty bodies. There are ten such bodies at the level of the UN.⁷⁷ The treaty bodies are made up of independent experts that monitor the implementation by party states of a given human rights treaty.

Accordingly, in addition to the autonomous internal control provided by the Constitutional Court, the Office of the Commissioner for Fundamental Rights of Hungary, and the HRWG, Hungary's commitment to the implementation of international treaty obligations includes participating in the monitoring and reporting activities of treaty bodies. This constitutes the external control of the implementation of international commitments. As noted, Hungary ratified and implemented most all agreements on universal human rights, opening itself up to scrutiny under their respective treaty bodies. Among notable treaty exceptions, we find the Istanbul Convention⁷⁸ and the ambiguous situation of the Rome Statute, which despite ratification was not promulgated into domestic law.⁷⁹

77 This paper will not focus on legislative provisions related to Hungary's membership of the Council of Europe and the EU.

78 Council of Europe Convention on preventing and combating violence against women and domestic violence.

79 On 17 July 1998, the Rome Statute establishing the International Criminal Court (ICC) was adopted by the representatives of states, including by Hungary, on the basis of the Government Decision 2014/1998 (V. 6.) authorising it. On 15 January 1999, the representative of the Hungarian Government signed the Rome Statute, on the basis of the authorisation contained in Government Decision 2296/1998 (XII. 30.). The National Assembly ratified the Rome Statute via Resolution 72/2001 (XI. 7.) of the Hungarian Parliament, and as a result the instrument of ratification was deposited on 30 November 2001. On 1 July 2002, the Rome Statute entered into force. Kovács, 2019.

Hungary takes its obligations vis-à-vis treaty bodies seriously, as demonstrated by the fact that it acts as one of the main sponsors of resolution A/HRC/36/21 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights'. This resolution also opened up Hungary to scrutiny, with allegations of intimidation and reprisals, to which responses were provided.⁸⁰

Human rights monitoring in the UN treaty system is done under two sets of mechanisms. Under the treaty-based mechanism Hungary has a track record at the following treaty bodies: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Optional Protocol of the Convention against Torture (CAT-OP), International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Covenant on Economic, Social and Cultural Rights (CESCR), Convention on the Rights of the Child (CRC, CRC-OP-AC, CRC-OP-SC), Convention on the Rights of Persons with Disabilities (CRPD). Right after the adoption of the 2011 Fundamental Law, Hungary submitted its first report for the Universal Periodic Review (UPR), under the Human Rights Council (HRC) of the UN. This is part of the charter-based monitoring mechanism, which was mandated to 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States'.⁸¹

The activity of treaty bodies is of course transparent, country reports, recommendations, and other monitoring-related documents can be consulted online in the UN Treaty Body Database, for every treaty body separately. The charter-based monitoring mechanism, which is the UPR, brings all this information together. The UPR process secures information from a wide variety of interested stakeholders, starting with the state under review, civil society reports, and public law stakeholders, including the above-mentioned treaty bodies. Conducting this review, the UPR also analyses obligations assumed under the UN Charter, the UDHR, treaties, voluntary pledges, commitments, and applicable international humanitarian law.

The National report submitted in the 2021 UPR⁸² provides Hungary's official viewpoint on a number of questions that are lined up in the Report of the Working Group on the UPR of Hungary.⁸³ The UPR report is nothing less than

80 For details, see Human Rights Council, Thirty-ninth session, Annual Report, Doc no. A/HRC/39/41 of 13 August 2018, paras. 51–59.

81 UNGA Resolution 60/251, Human Rights Council, Article 5(e).

82 Human Rights Council, National report, Hungary, A/HRC/WG.6/39/HUN/1, 1–12 November 2021.

83 Human Rights Council, Report of the Working Group on the UPR Hungary, A/HRC/49/8, 28 February – 1 April 2022.

a concise, concentrated account of the five years since the previous report. In this 20-page report, we find a brief account of Hungary's activities related to the implementation of the recommendations pursuant to the 2016 Report. It addresses the matter of new normative and institutional frameworks, obligations related to international human rights agreements, voluntary commitments, pledges, and the implementation of the previous recommendations.

The following subsections will briefly describe the UPR, and bring examples of cases ^aagainst Hungary at various treaty bodies.

■ 5.1. *Universal Periodic Review*

The UPR mechanism is the framework in which the HRC meets three times a year for two-week sessions to review the human rights situation and performance of all UN Member States. During these sessions, Member States may make recommendations to the Member States under review, which will be featured in the review and report that must be made every five years.

Hungary last underwent review in 2021-2022 marking its third cycle. There is a wide range of topics that are addressed in the report. One in particular was selected for a brief account below.

5.1.1. *Rights of Roma in Hungary*

It is part of legal tradition that many Hungarian lawyers are knowledgeable regarding the human rights of national minorities. The evolution of minority rights legal thought over two centuries has resulted in the adoption of a human rights regime which appears rather fitting for Hungary: one that establishes a legal framework for non-territorial autonomy. There are thirteen established national minorities in Hungary: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serbian, Slovakian, Slovenian, and Ukrainian. The Act on the rights of national minorities provides that under it

‘ethnic groups resident in Hungary for at least one century are nationalities which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities.’⁸⁴

84 Section 1(1) of Act on the rights of national minorities (2011. évi CLXXIX. törvény a nemzetiségek jogairól), official translation, available at: <https://njt.hu/jogszabaly/en/2011-179-00-00> (Accessed: 25 August 2024).

The Act provides for a framework in which the sense of cohesion within a minority group can be put actively toward the preservation of the culture of the national minority group, in common action of the individuals that declare themselves as part of that group.

The Roma is the largest national minority group in Hungary. In the latest census in 2022, close to 210,000 people declared themselves as being of Roma heritage, although the European Roma Rights Centre previously put their numbers at 750,000.⁸⁵ The discrepancy between the estimate and the official census figures speaks volumes as to the challenges they face. As an ethnic group, the Roma have established their own institutions, within the Hungarian legislative framework, called *Országos Roma Önkormányzat*. This fact is also acknowledged in the second paragraph of the UPR *Summary of Stakeholders' Submissions on Hungary*.⁸⁶ However, enjoying the legislative framework ensuring cultural autonomy may appear as being far away from the daily realities for those stricken by deep poverty. The plight of individuals coming from Roma communities presents a multifaceted crisis, one that embodies violations across all three generations of human rights: civil and political rights, economic, social, and cultural rights, as well as collective rights. The comprehensive scope of human rights breaches underscores the severity of the situation. Recognising the depth of this crisis, various stakeholders have highlighted this toward UN treaty bodies, and specifically via the UPR process.⁸⁷ The document cited herein brings to light the pressing need for coordinated attention and action.

Key areas of concern include the persistent challenge of ensuring equal and effective access to education for Roma children, as well as robust protections against all forms of discrimination. Stakeholders expressed concerns about the portrayal of Roma in media and public discourse in ways that exacerbate societal biases. The treatment of Roma individuals by police forces remains another significant issue, characterised by practices that frequently contravene human rights standards.

The situation of Roma communities is Central and Eastern Europe's most persistent regional crisis. A comparative examination of reports from Hungary and its nine neighbouring countries reveals a disturbing consistency in the challenges faced by Roma communities across all countries in the region. These reports highlight parallel issues raised by stakeholders, featuring similar concerns about discrimination and rights violations. Concerted state action may be warranted in tackling the persistent human rights violations faced by Roma individuals and

⁸⁵ See European Roma Rights Centre, 10 Fact About Hungarian Roma, 20 October 2015.

⁸⁶ Human Rights Council, Summary of Stakeholders' submissions on Hungary, Report of the Office of the United Nations High Commissioner for Human Rights, Working Group on the Universal Periodic Review, Thirty-ninth session, A/HRC/WG.6/39/HUN/3, 25 August 2021, para. 2.

⁸⁷ Ibid.

communities. It could also be that a comprehensive regional project benefitting from international support may be a better way to address deep-seated socio-economic, cultural, and political barriers which perpetuate inequality for Roma individuals and communities.

■ 5.2. *Convention against Torture*

Under the CAT there are two public individual complaints that were lodged against Hungary, both of them concerning the application of the rule on non-refoulement.

5.2.1. *E. H. versus Hungary*

This 1996 case of E. H., a Turkish citizen belonging to the Kurdish minority who fled Turkey escaping execution ordered by his superiors in the armed wing of the Kurdistan Workers' Party (PKK). E. H. was arrested by Hungarian border police, while attempting to cross the border illegally into Austria. Subsequently, he applied for asylum.⁸⁸ His request for asylum was denied by administrative decision, as well as the court of first instance, with a pending appeal at the time his petition to the Committee Against Torture was submitted.⁸⁹ The appeal was also denied.⁹⁰ E. H. argued that his expulsion would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, alleging that 'torture is systematically practised' in Türkiye.⁹¹

Although E. H. had not been successful in the administrative and judicial proceedings, no other expulsion procedure had been lodged against him. However, he proceeded to argue that his case was unresolved, as granting him temporary residence – instead of asylum – would not enable him to obtain a work permit or claim social benefits.⁹²

The Committee against Torture retained that with the granting of temporary residence in effect, and no other expulsion procedure being initiated against E. H., the communication was inadmissible under Article 22, paragraph 2, of the Convention as it was incompatible with the provisions of Article 3 of the Convention.⁹³

5.2.2. *D.I.S. versus Hungary*

Another case concerns D.I.S., a Canadian national and resident of Hungary, who was in extradition detention in Budapest following an international arrest warrant issued by the U.S. for crimes including fraud and money laundering. D.I.S. filed

⁸⁸ Communication no. 62/1996, CAT/C/22/D/62/1996, 3 June 1999, paras. 2.1–2.3.

⁸⁹ Id., paras. 2.5–2.9.

⁹⁰ Id., para. 4.6.

⁹¹ Id., paras. 3.1–3.3.

⁹² Id., paras. 5.1–5.5.

⁹³ Id., para. 6.2.

for asylum in Hungary, arguing that extradition to the U.S. would subject him to torture and inhumane treatment due to past experiences in U.S. prisons. He cited instances of assault, rape, and inadequate protection, linking these abuses to his Jewish faith. The Hungarian authorities, however, rejected his asylum requests based on U.S. assurances of proper treatment and an investigation that did not substantiate his claims of faith-related assaults.

The Hungarian court ruled in favour of the extradition, considering the U.S. to be a safe country, and did not accept D.I.S.'s evidence, which included forensic psychiatric reports and testimonies from religious and legal figures. D.I.S. contested that these findings ignored crucial details, such as anti-Semitic death threats he received from the U.S. and his past solitary confinement which contravened international standards for humane treatment. Despite interim measures requested by the Committee against Torture to halt extradition, the Hungarian authorities proceeded with the transfer, citing domestic law constraints and pledges from the U.S. to ensure humane treatment.⁹⁴

The Committee concluded that Hungary's action violated procedural obligations under the CAT, particularly by not adhering to interim protective measures. The State party justified its actions on the basis of extradition laws, but the Committee retained that it failed to respect the Committee's request. This non-compliance was deemed a serious breach of the cooperation expected from Hungary under international human rights standards. The Committee recommended Hungary prevent similar violations in the future.⁹⁵ However, due to judicial action pending in front of the European Court of Human Rights, the Committee concluded that the communication was inadmissible under article 22(5)(a) of the CAT.⁹⁶

■ 5.3. *Optional Protocol to the International Covenant on Civil and Political Rights*

Regarding the CCPR-OP1, there are several complaints that were lodged against Hungary, of which only the three most recent ones will be presented briefly below.

5.3.1. *Safi Rehman v Hungary*

The communication before the Human Rights Committee concerns Safi Rehman, an Afghan national, who claimed violations of articles 2 (3) (a) and 7 of the Covenant due to his deportation from Hungary to Bulgaria. Rehman fled Afghanistan in 2014 to escape persecution by the Taliban for his musical activities. After an unsuccessful stay in Türkiye, he moved to Bulgaria, where he was detained under poor conditions and suffered police abuse. He ultimately entered Hungary,

⁹⁴ Communication No. 671/2015, CAT/C/56/D/671/2015, 10 February 2016, para. 2.

⁹⁵ Id., paras. 11–12.

⁹⁶ Id., para. 10.4.

seeking asylum, but Hungarian authorities applied the Dublin III Regulation and ordered his deportation to Bulgaria, claiming it was responsible for processing his application. Rehman argued that Bulgaria's reception conditions were inhumane and could exacerbate his trauma.⁹⁷

Rehman's case emphasized inadequate procedural safeguards during the Hungarian asylum process. He stated that he was not given a full opportunity to explain the risk of return to Bulgaria and lacked legal assistance in court. The Hungarian authorities reportedly failed to conduct a personalized assessment of his case and did not consider his mental health or the documented inhuman conditions in Bulgarian facilities. Despite the Cordelia Foundation's psychological report supporting Rehman's claims, Hungary proceeded with his deportation, defying interim measures requested by the Committee to halt his removal until the case was reviewed.⁹⁸

The Committee found procedural errors and noted Hungary's obligation under the Optional Protocol, criticising its failure to respect interim measures that protect against potential harm. Although it ultimately concluded that Rehman had not substantiated an imminent risk of inhuman treatment specific to his circumstances, the Committee acknowledged that Hungary violated its obligations by executing the deportation prematurely.⁹⁹ The case underscored the importance of thorough, individualized asylum assessments and compliance with international procedural safeguards.

5.3.2. *X versus Hungary*

The case involves X, a Pakistani national and unaccompanied minor, who fled to Hungary after facing severe persecution in Pakistan due to his Baloch ethnicity.¹⁰⁰ Following dangerous conditions in Bulgaria, where he experienced detention and mistreatment, X sought asylum in Hungary in June 2016.¹⁰¹ However, Hungarian authorities, citing the Dublin III Regulation, planned his transfer back to Bulgaria, which raised concerns over potential violations of his rights under Article 7 of the ICCPR due to the inhumane conditions and lack of adequate support in Bulgarian asylum facilities.¹⁰²

X's detention in Hungary was marked by errors, including misrecorded personal data and doubts about his age despite evidence submitted. The authorities failed to conduct an individual assessment of X's situation, and the courts upheld the transfer decision without considering the conditions in Bulgaria or X's mental

97 Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2963/2017, CCPR/C/138/D/2963/2017, 22 January 2024, para. 3.

98 *Id.*, paras. 7.1–7.2.

99 *Id.*, para. 11–12.

100 Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2901/2016, CCPR/C/125/D/2901/2016, 22 May 2019, para. 2.1.

101 *Id.*, para. 2.

102 *Id.*, paras. 3.1–3.4.

health. This lack of due diligence led X to file a complaint with the HRC, claiming violations of his right to protection from cruel and inhuman treatment and the right to an effective remedy.

The HRC ultimately deemed the communication inadmissible, noting that Hungary had withdrawn its removal decision after interim measures were granted, and X had since left for Austria. The Committee determined that without the risk of imminent removal by Hungary, X no longer met the conditions for victim status under Article 1 of the Optional Protocol. The claim regarding ineffective remedies was similarly dismissed, as the general obligations under Article 2 of the ICCPR did not constitute a standalone basis for a communication.¹⁰³

5.3.3. *Shafaq Baharuddin versus Hungary*

The communication was lodged by Shafaq Baharuddin, an Afghan national, who sought asylum in Hungary after fleeing persecution and threats by the Taliban in Afghanistan. He claimed that deportation to Bulgaria under the EU Dublin III Regulation would expose him to inhuman treatment, citing prior experiences of abuse and inadequate asylum conditions there. His legal arguments focused on violations of Articles 7 and 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR), alleging the failure of Hungarian authorities to assess his individual circumstances and the dire conditions awaiting him in Bulgaria.¹⁰⁴

The author recounted entering Bulgaria in 2016, where he faced physical abuse by police, inadequate living conditions in refugee camps, and a lack of medical and mental health services, which exacerbated his asthma and post-traumatic stress disorder (PTSD). Despite his family ties in Hungary, including relatives with citizenship, Hungary deemed Bulgaria responsible for processing his asylum claim. He argued that Hungary ignored critical procedural safeguards and his vulnerabilities, while failing to perform a meaningful evaluation of the risk to him under Bulgarian asylum procedures.¹⁰⁵

Hungary defended its decisions, stating that the procedures adhered to EU regulations and that the author had not provided sufficient evidence of health issues or risks during the asylum process. The State party questioned the credibility of his claims and argued that its courts reviewed his case fairly and thoroughly. Hungary also maintained that Bulgaria remains a designated safe country under EU standards.¹⁰⁶

The HRC determined that Hungary did not violate Articles 7 or 2(3)(a) ICCPR. It found that Baharuddin failed to substantiate a personal risk of inhuman

¹⁰³ Id., paras. 6.1–6.5.

¹⁰⁴ Human Rights Committee, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning communication No. 2923/2016, CCPR/C/125/D/2923/2016, 3 June 2019, paras. 3.1–3.4.

¹⁰⁵ Id., para. 2.

¹⁰⁶ Id., para. 6.

treatment in Bulgaria and that the Hungarian authorities acted within legal frameworks.¹⁰⁷ However, the Committee encouraged Hungary to ensure Bulgaria is informed of the deportation and its responsibility to provide appropriate support to meet Baharuddin's medical and other needs.¹⁰⁸

■ 5.4. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*

5.4.1. *A. S. versus Hungary*

The communication was submitted by A.S., a Hungarian Roma woman, who alleged violations of her rights under the CEDAW, following a coerced sterilisation at a Hungarian hospital in 2001. A.S. claimed she was asked to sign a consent form for sterilisation while in labour and in a state of shock, with incomplete information provided about the procedure's risks, permanence, and alternatives. She only realised the sterilisation's irreversible nature after inquiring about future pregnancies post-surgery.¹⁰⁹

A.S. pursued legal action, claiming violations of her rights to informed consent, reproductive autonomy, and equal treatment. Domestic courts acknowledged procedural shortcomings, such as the lack of detailed information about the sterilisation and its alternatives, but denied her appeal for damages. They reasoned that sterilisation was not entirely irreversible, citing medical possibilities for reversal.¹¹⁰

The CEDAW Committee found that Hungary violated Articles 10(h), 12, and 16(1)(e) of the Convention, stressing that informed consent was not obtained, particularly given A.S.'s vulnerable state during labour. The Committee highlighted that sterilization is a significant and irreversible intervention requiring thorough counselling and explicit informed consent. It underscored that failing to provide adequate information and advice on family planning constitutes a violation of the Convention.¹¹¹

The Committee recommended that Hungary provide A.S. with appropriate compensation and implement systemic changes to safeguard women's reproductive rights. These included revising legislation to align with international standards on informed consent, ensuring comprehensive counselling before sterilisation procedures, and monitoring health facilities for compliance. The

¹⁰⁷ Id., para. 10.

¹⁰⁸ Id., para. 11.

¹⁰⁹ Committee on the Elimination of Discrimination against Women, Views Communication No. 4/2004, CEDAW/C/36/D/4/2004, 29 August 2006, para. 2.

¹¹⁰ Id., para. 6.

¹¹¹ Id., paras. 11.1–11.4.

decision emphasised the need for measures to prevent coercive sterilisations and respect women's autonomy over reproductive health.¹¹²

5.4.2. *G. H. versus Hungary*

The case involves G.H., a Hungarian woman who alleged her rights were violated following her sterilisation during an emergency caesarean section in 2008. She argued that the sterilisation was carried out without her informed consent, violating Articles 2, 5, 10, 12, 15, and 16 of the CEDAW. G.H. also claimed discrimination based on perceived Roma association, as she was treated as Roma due to her husband's ethnicity.¹¹³

G.H. pursued legal action in Hungary, claiming breaches of her right to informed consent, reproductive choice, and privacy. Courts recognized procedural violations due to the lack of written consent and awarded her €3,300 and an apology but concluded she had orally consented to the sterilization. G.H. disputed this, asserting she was neither informed nor had consented, and argued that the sterilization was forced. The Hungarian courts, however, treated the issue as a procedural error, not a violation of her fundamental rights.¹¹⁴

The case was later brought to the ECtHR but declared inadmissible because the domestic courts had acknowledged the procedural breach and provided remedies. G.H. then submitted her complaint to the CEDAW Committee, emphasizing the lack of fully informed consent, alleged gender-based discrimination, and the impact on her reproductive autonomy.¹¹⁵

The CEDAW Committee ultimately deemed the communication inadmissible under Article 4(2)(c) of the Optional Protocol, stating that G.H.'s claims were insufficiently substantiated. It concluded there was no evidence that the Hungarian judicial process was biased or based on harmful gender stereotypes, arbitrary, or a denial of justice.¹¹⁶

■ 5.5. *Optional protocol to the Convention on the Rights of Persons with Disabilities*

5.5.1. *Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó versus Hungary*

The communication was submitted to the UN Committee on the Rights of Persons with Disabilities by six Hungarian nationals, who had been placed

¹¹² Id., paras. 11.5–11.6.

¹¹³ Committee on the Elimination of Discrimination against Women, Decision adopted by the Committee under Article 4 (2) (c) of the Optional Protocol, concerning communication No. 114/2017, CEDAW/C/76/D/114/2017, para. 2.

¹¹⁴ Id., paras. 3.1–3.5.

¹¹⁵ Id., para. 3.6.

¹¹⁶ Id., paras. 7–8.

under guardianship due to intellectual disabilities. The authors alleged that Hungary violated their rights under Articles 12 and 29 of the Convention on the Rights of Persons with Disabilities. Specifically, they were automatically disenfranchised under Article 70(5) of Hungary's Constitution, barring them from voting in the 2010 elections, with no consideration for their individual abilities or circumstances.¹¹⁷

The authors argued that their disenfranchisement was discriminatory and unjustified, emphasizing that Hungarian law offered no effective remedy to restore their voting rights without challenging their guardianship status, which they did not seek to have revoked. The State party, in response, highlighted legislative changes enacted after the communication was filed. These changes replaced the automatic disenfranchisement with individualised court assessments of voting capacity. However, the authors maintained that this system continued to discriminate, as it targeted individuals with disabilities specifically.¹¹⁸

The Harvard Law School Project on Disability intervened, asserting that any form of disenfranchisement based on disability, including individualised assessments, violates Article 29 of the Convention, which guarantees an unconditional right to vote for persons with disabilities. The intervenor argued that capacity assessments inherently discriminate, disenfranchise capable voters, and perpetuate stereotypes against those with disabilities.¹¹⁹ The Committee supported this view, determining that individualized assessments contravene the Convention's principles by discriminating based on disability status.¹²⁰

Ultimately, the Committee found Hungary in violation of Articles 12 and 29. It recommended that Hungary compensate the authors for moral damages, amend relevant laws to prevent similar violations, and guarantee the right to vote for all individuals with disabilities, without capacity assessments. It also urged Hungary to ensure voting procedures are accessible and to provide assistance where needed to enable equal participation in elections.¹²¹

5.5.2. *Magdolna Rékasi versus Hungary*

The communication was submitted by Magdolna Rékasi, a Hungarian citizen, who claimed her rights under the CRPD were violated. She had been placed under full guardianship due to a psychosocial disability, which restricted her legal capacity. In 2012, her guardian, with the approval of the guardianship authority, arranged a life insurance contract without consulting her, aimed at covering funeral costs.

117 Committee on the Rights of Persons with Disabilities, Communication No. 4/2011, CRPD/C/10/D/4/2011, 16 October 2013, para. 2.

118 *Id.*, paras. 3–4.

119 *Id.*, para. 5.

120 *Id.*, paras. 9.6–9.7.

121 *Id.*, paras. 10–11.

Rékasi only learned of this decision years later when her legal capacity regarding financial matters was restored.¹²²

The author argued that this decision disregarded her autonomy, as it was made without her input and did not serve her best interests. She contended that she was capable of expressing her will and preferences, but her guardian failed to include her in the decision-making process.¹²³ The State party claimed that consulting her was impossible due to her condition at the time and that her interests were protected by the guardian's actions. However, Rékasi emphasized that her exclusion violated her right to control her financial matters as outlined in Article 12 of the Convention.¹²⁴

The Committee found that Hungary had not made sufficient efforts to ascertain Rékasi's will and preferences before authorising the contract. The Committee concluded that the State's approach prioritised substitute decision-making over supported decision-making, violating her rights to legal capacity and autonomy. The Committee underscored that measures relating to legal capacity should respect a person's will and preferences, apply safeguards against abuse, and not merely be based on 'best interests.'¹²⁵

The Committee recommended that Hungary provide Rékasi with a remedy, including assistance with repurchasing the insurance contract if requested and compensating her for financial loss. It also advised broader legal reforms, suggesting that the country abolish guardianship practices and shift towards supported decision-making frameworks, along with training for officials to uphold the rights of persons with disabilities.¹²⁶

5.5.3. *Szilvia Nyusti and Péter Takács versus Hungary*

The document concerns a communication submitted to the Committee on the Rights of Persons with Disabilities by Szilvia Nyusti and Péter Takács, Hungarian nationals with severe visual impairments. The authors alleged that Hungary violated their rights under Articles 5, 9, and 12 of the CRPD. Specifically, they claimed discrimination by OTP Bank, which failed to make its ATMs accessible for visually impaired users, forcing them to rely on assistance despite paying fees equivalent to sighted customers.¹²⁷

The authors' legal battle began in 2005 when they requested OTP to retrofit nearby ATMs to meet their needs. The Metropolitan Court ruled in their favour in

122 Committee on the Rights of Persons with Disabilities, Views adopted by the Committee under Article 5 of the Optional Protocol, concerning communication No. 44/2017, CRPD/C/25/D/44/2017, 11 October 2021, para. 2.

123 *Id.*, para. 3.

124 *Id.*, paras. 4–5.

125 *Id.*, para. 11.

126 *Id.*, paras. 12–13.

127 Committee on the Rights of Persons with Disabilities, Communication No. 1/2010, CRPD/C/9/D/1/2010, 21 June 2013, para. 2.

2007, finding direct discrimination and ordering OTP to make specific ATMs accessible. However, upon appeal, the Metropolitan Court of Appeal in 2008 reduced OTP's obligation, citing potential risks and contractual freedom. The Supreme Court upheld this decision in 2009, determining that OTP's conduct constituted indirect, not direct, discrimination.¹²⁸

Hungary acknowledged the importance of addressing ATM accessibility but maintained that its Supreme Court's decision adhered to national laws. Despite this, OTP committed to gradually retrofitting ATMs, and the government began exploring broader regulatory solutions. However, these steps were criticized as insufficient by the authors, who argued that Hungary had not met its obligations to ensure equal treatment and accessibility for persons with disabilities.¹²⁹

The Committee concluded that Hungary failed to fulfil its obligations under Article 9(2)(b) of the Convention, as it had not ensured the necessary accessibility to banking services. It recommended Hungary establish enforceable standards for ATM accessibility, ensure judicial officials understand the Convention, and guarantee that domestic laws do not undermine the rights of persons with disabilities. The Committee also called for compensation to the authors for their legal costs, and dissemination of the findings.¹³⁰

6. Concluding remarks

Hungary is a party to numerous international and European organisations which at their core have robust universal human rights protection regimes. These protections are reflected in domestic legislation and the Fundamental Law, offering extensive human rights protections. The fragmented international human rights regime, and especially the various treaty bodies and courts that have competence in such matters may pose a challenge in terms of access to remedies. Some of the cases sampled above show how the various human rights regimes may conflict: a complaint lodged at one international body may preclude another body from formulating its views on the same case. For example, due to the robust human rights regime at the level of the EU and the CoE, the number of complaints that have been lodged against Hungary at UN treaty bodies is significantly less than those that have reached the ECtHR.

Despite overlap, there have been certain alleged violations which have resulted in the filing of complaints at the UN treaty bodies as well, with more or less success for their authors. As always, the gap between the principles Hungary adhered to and their practical implementation lingers on. Hungary strives towards

128 Ibid.

129 Id., para. 3.

130 Id., paras. 10–11.

ensuring a better implementation of its human rights obligations. This effort is, in part, ensured by the various levels of protection, akin to safety nets. The domestic legislative framework, European commitments, and the UN treaties form a human rights protection system that should prevent violations from going unaddressed. The task of enforcing universal human rights principles is ongoing, and demands ever more attention. Rights are not self-executing, but are in need of constant acknowledgment, protection, and reinforcement. The continuously evolving mission of human rights protection needs continued attention and evaluation from both the state and stakeholders.

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