REFUTATION OF THE TOP10+1 ERRONEOUS STATEMENTS OF THE SARGENTINI REPORT

CENTER FOR FUNDAMENTAL RIGHTS

REFUTATION OF THE TOP10+1 ERRONEOUS STATEMENTS OF THE SARGENTINI REPORT

For the first time in the history of European Parliament the members shall decide if they will initiate the procedure established for the case of a systematic breach of the fundamental values of the European Union. This institution walks on eggshells, since abstract terminologies with no factual legal definition, such as democracy or the rule of law have no generally accepted meaning among the Member States. Standards fully accepted by all national states certainly do not exist, since due to the different cultural and historical traditions of the Member States there are no identical state structures or legal systems. On this basis, in fact there is rather a risk that the exclusive demand for the determination of the concept of the rule of law by the liberal ideology makes diversity impossible, which has always made Europe great. Therefore, the activation of Article 7 may have unforeseeable consequences for the entire European Union.

Whatever the procedure of the Union is, it shall be objective and unbiased, otherwise the legal instruments will be wiped out and will become instruments of political pressure. After a thorough examination of the Sargentini report on the situation of the Hungarian rule of law, the firm belief of the Center for Fundamental Rights is that the criticism of the report is not more than political accusations arising from opposite ideological views, disguised however as a legal opinion. Namely, certain parts of the allegations are noticeably based on insufficient knowledge or intentional misinterpretation of the Hungarian legislation, others, however, are clearly ideologically driven. In addition, Hungary has already successfully refuted the vast majority of the charges set out in the document before the relevant international organisations, whether it is the European Commission or the Venice Commission.

The other part of the criticisms covers areas of law, which by all means belong to sovereignty of the Member States, since they do not, even indirectly concern any competence of the European Union, and consequently, they could not be subjects of an EU scrutiny. Sargentini lifted this prohibition clearly set out in the Treaties, by referring to a document without any legal relevance, issued by the European Commission in 2003, claiming that the actually elusive "values of the European Union" are so important, that in order to protect them, the procedure under Article 7 may extend to exclusive competences of the Member States. Nevertheless, this kind of covert power expansion ignores the sovereignty of the Member States, so it is against the principles of the EU and points out that in fact, the argument is not about the rule of law but about the sovereignty. We are convinced that when deciding such disputes, we must take into consideration that the European Union in itself is not a purpose, but an instrument, which shall serve the benefit of the Member States.

As a result, the report contains numerous factual errors, which make it clear that it is inappropriate to provide an objective and unbiased picture of the Hungarian situation.

The errors listed below do not provide a full catalogue of the inaccuracies and distortions of the report, but they sufficiently demonstrate how far its accusations are from reality. Contrary to the claims of the report, the truth is that:

1. The powers of the Constitutional Court were not limited: in certain respect, they have been increased, in others – as per the request of the body itself – have been decreased.

2. The delimitation of the constituencies was the constitutional obligation of the Hungarian Parliament and it is exactly this measure that ensures the equality of voting rights, unlike the former rules.

3. The Commission of the European Union conducted a detailed investigation on the Hungarian regulation on the media, adopted in 2010: as a result, the new laws were proven to be in full compliance with community law.

4. The „registration" of the non-governmental organisations funded from abroad ensures transparency: accepting the arguments of the report would mean that the requirement of the transparency is an obstacle – which is necessary to be eliminated - of the freedom of association.

5. The purpose of the „Stop, Soros!" legislative package is to enforce the principle of the first safe country, included in both the Fundamental Law of Hungary and in the relevant international documents, in order to ensure the security of Hungarian and EU citizens.

6. The Fundamental Law of Hungary protects the traditional European family model, but also guarantees the full equality of men and women.

7. Pursuant to the Fundamental Law of Hungary, the marriage can only be interpreted as a relationship between a man and a woman, which is not a restrictive provision, but rather an appropriate definition of the common sense and traditions.

8. Not providing protection for asylum-seekers coming from or through a safe country to Hungary is exactly what is in line with the original meaning of international law.

9. The Hungarian transit zones were established in line with the applicable EU directives; they are open to Serbia, hence, they conceptually cannot be considered as closed establishments.

10. In the case of Ahmed H., accused for the events at the border-crossing point of Röszke, there has not yet been a final and binding judgement, moreover, it would breach the principle of separation of powers if the government intervened by any means in the procedure.

+ 1. In Hungary, under the new regulation of the strikes, the strike is still not illegal.

Background of the procedure leading to the report

Ever since its formation, the political opponents have been attacking the Orbán government; in 2010, among other things, the bank levy (and other "special sectoral taxes") provoked intense reactions from both home and abroad.[1]

The political attacks soon took the form of legal objections: in its resolutions, the European Parliament (EP), under the pressure of left-wing liberal parliamentary groups,[2] has criticized the activity of the Hungarian government and the legislative activity of the Hungarian Parliament, first for the reform of the regulation of the media in 2011,[3] then for the adoption of the Fundamental Law of Hungary,[4] but in fact it rather criticized its general political trends. In 2012, the EP already formed opinion[5] on the "Hungarian situation", as a result of which, in 2013, Rui Tavares, a representative belonging to the green fraction, prepared a report on the status of the Hungarian rule of law for the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the EP, in which he proposed punishing Hungary.[6] In 2015, the EP held a debate about the Hungarian situation,[7] where mainly the national consultation on the migration was attacked. In 2017, [8] on the basis of a report approved by the plenary session of the EP following a debate held in relation to the regulations regarding the transparency of the organisations funded from abroad, the EP appointed LIBE to prepare a further report in order to entitle the EP to demand the Council of the EU to come to the conclusion that Hungary poses a threat of serious violation of the fundamental values of the EU.[9] Thus, the Sargentini report, prepared as a "consequence" of the above is not without any background. Nevertheless, the above criticisms have one point in common: they are all political and not legal, motivated in 2010 and the following years by the unorthodox governmental measures aimed to recover the Hungarian financial and economic autonomy, and following 2014, motivated by the rejection of the multi-cultural social model favoured by the European elite.

The circumstances of the preparation of the report

On 31 August 2017, the LIBE appointed Judith Sargentini, a Dutch representative of the greens (Greens-EFA), to prepare the report, and she has been preparing her report for eight months. During this period, Sargentini mostly only merged the claims of documents earlier discussed by the EP with statements of certain international and non-governmental organisations. For this reason, the almost seventy-page long document attacks many measures, on which the Hungarian government and the European Commission (EC) has already agreed. During the course of the preparation of the report, the LIBE did not send an official delegation to Hungary and Sargentini has visited Budapest only once; following her only officially known program, a discussion with the deputy-minister of the Foreign Affairs and Trade, she did not provide any information to the press.[10] At the meeting of LIBE on 26 April, Péter Szijjártó, the Minister of the Foreign Affairs and Trade, explained the opinion of the Hungarian government,[11] but Hungary had no other meaningful opportunity for defence; Sargentini did not take into account the document with detailed facts, presented by the Hungarian government. During the process clearly violating the requirements of the fair procedure, Sargentini also made clear that she considers her activity rather political than legal,[12] in which Hungary has no right to speak up.[13] Her bias is proved by the fact that her declared aim is the suspension of the voting rights of Hungary,[14] thus the report aims to support this, rather than exploring the real situation.

The above is also highlighted by the fact that the non-governmental organisations included in the annex of the draft report, from which Sargentini and the LIBE were informed about the „Hungarian situation" - except for the Center for Fundamental Rights, are explicitly on the basis of liberal, human rights fundamentalist ideology or they are linked straight to the open society network, .

The interpretation of Article 7 of Treaty on European Union (TEU) is obscure for multiple reasons, as it is about a never used, thus unprecedented legal concept.

According to the commonly accepted interpretation, the Article sets forth two different phases of the same procedure, in the first phase of which the clear risk of a serious breach of the values of the EU" may be established, and in the second phase of which, the existence of a "serious and persistent breach" of such values may be established, and so the voting right of a member state can be suspended. According to other interpretations, the two phases means two totally different procedures. In this sense, the possible outcome of the procedure initiated by the EP is exclusively the establishment of the "risk", the "breach" itself can only be established in a procedure initiated by the EC or one third of the Member States: as a result, it is conceptually excluded, that the procedure launched by the EP results in the gravest sanction, the suspension of voting rights.

As a further difficulty, the procedure set forth in Article 7 of TEU may be activated by the breach (or the risk of breach) of the values enumerated in Article 2 of TEU. Nevertheless, the exact content of the values enumerated[15] in Article 2 – whilst appear to be classic and common – is vague, as the concepts of "democracy", "rule of law" or "justice" are defined at most by political-philosophical means, but they clearly do not have a firm legal definition. Nevertheless, Sargentini refers to the violation of "rule of law" as in fact the politically liberal "dogma" does, and from this basis she naturally judges right wing–conservative social or judicial measures.

However, an even greater problem is that the Sargentini report refers multiple times to a communication of the EC published in 2003,[16] disguising it as a source of community law, whilst the scope of such sources is clearly limited, and certainly does not include a communication.[17]

The claims of Sargentini are mostly based on the above communication, as she thinks that her investigation may include areas, in respect of which the EU does not have any competence. As the procedure according to Article 7 is unprecedented in history of the EU, every episode of the present case may create a precedent, providing a great opportunity for the covert transfer of competences and legislation. The institution defending the EU values were implemented already in the Treaty of Amsterdam[18] as a preparation for the accession of Central-European countries (in fact, for using double standard against them), and such institution became even stricter in the Treaty of Nice, following the spectacular lack of success of the political sanctions applied against Austria. Nevertheless, extending beyond the competences of the EU is a new, however undesirable element.[19]

If Sargentini indeed claimed respecting the EU values from Hungary on the basis of the rule of law, she would need to take into consideration paragraph (1) of Article 4 of TEU, pursuant to which "competences not conferred upon the Union in the Treaties remain with the Member States". Paragraph (2) of Article 5 further states that under the principle of conferral, the EU shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. The above provisions make clear not only that Sargentini is conducting a procedure with a preconception, but also that she proposes to implement sanctions against Hungary for matters the EU is not even entitled to examine. Thus, even if the EP was entitled to demand the Council of the EU to punish Hungary, it would only be entitled to do so for matters relating to EU competences.

If, as a result of the above covert transfer of competences and legislation, Sargentini's interpretation was accepted, this would mean a serious breach of the sovereignty of Hungary or potentially of any other Member State. Article E) of the Fundamental Law of Hungary sets forth that any exercise of competence must comply with the Fundamental Law of Hungary, moreover, the Constitutional Court has confirmed[20] the interpretation, according to which, by the accession to the EU, Hungary did not waive its sovereignty, but conferred (upon the EU) the joint exercise of certain competences, and so the sovereignty of Hungary must be presumed. This is also a reason why Sargentini walks on eggshells – presumably with the intention of provocation – to put the other EU institutions into an impossible position, whereby they have to decide whether an EU procedure, by referring to abstract values may prevail over the constitution of a sovereign Member State.

Therefore, the very basics of the Sargentini report are erroneous: values of Article 2 are undefined, obscure concepts; the meaning of the procedure of Article 7 is doubtful for multiple reasons; and it applies Article 7 by extending beyond EU competences. These defaults question the legal basis of any procedure initiated under Article 7.

1. Competences of the Constitutional Court – (paragraph) (8)-(9)

Claim:

„The competences of the Hungarian Constitutional Court were limited as a result of the constitutional reform, including with regard to budgetary matters, the abolition of the actio popularis (…) the current constitutional complaint procedure affords more limited access to the Constitutional Court, does not provide for a time limit for the exercise of constitutional review and does not have a suspensive effect on challenged legislation (…) that the provisions of the new Constitutional Court Act weaken the security of tenure of judges and increase the influence of the government over the composition and operation of the Constitutional Court by changing the judicial appointments procedure, the number of judges in the Court and their retirement age. (…)"

Rebuttal:

The Fundamental Law of Hungary incorporates legal sovereignty of Hungary and guarantees the protection of its independence. Joining the EU did not mean the waiving of the sovereignty, but rather that our country exercises certain elements jointly with the institutions of the EU.[21] Already back in 1974, the German Constitutional Court made its Solange I decision,[22] referring to the German Fundamental Law, (Grundgesetz), claiming that community law, and consequently the common fundamental heritage protected by the Court of Justice of the European Union, does not prevail over the Grundgesetz applied by the German courts. The Solange[23] decisions opposed to emphasize the common constitutional heritage by rather highlighting the role of the national constitutions,[24] thus the standpoint of the Hungarian Constitutional Court is not without any background. Accordingly, the sovereignty of our country is still intact and exercising EU competences results from the Fundamental Law of Hungary. In Hungary, the Constitutional Court is the guardian of the Fundamental Law of Hungary, this institution enforces its application, not the EU. Thus, the institutions of the European Union have nothing to do with the content of the Fundamental Law of Hungary, nor with the rules applicable to the Constitutional Court.

Unlike the previous Constitution, the new Fundamental Law of Hungary, in the framework of constitutional complaint procedure, ensures not only the possibility of challenging the constitutionality of laws applied in an individual case, but also grants the Constitutional Court competences to examine the constitutionality of a judicial decision granted in an individual case. This is an additional, extraordinary possibility for plaintiffs having exhausted ordinary remedies, which ensures that the judicial decisions in case of their anti-constitutionality comply with the Fundamental Law of Hungary. The constitutional complaint procedure ensures full access to the Constitutional Court, and ensuring its suspensive effect being totally independent of the circumstances of a given matter would be a legal nonsense.

The members of the Constitutional Court are appointed directly by the supreme organ of the representative democracy, the Hungarian Parliament, which elects them with a two-thirds majority of the representatives. The guarantees of the independence of the Constitutional Court are the twelve-year term (of judges), the prohibition of being a member of a political party, and the prohibition of any political activity. Thus, the independence of the judges are not jeopardised in any way.

"Actio popularis" was abolished as per request of the Constitutional Court, as a result of the high number of cases;[25] and even the Venice Commission does not claim that such extensive right to initiate a procedure would be a precondition of the rule of law. Altogether, the control function of the Constitutional Court has been reinforced and now it provides a more efficient legal protection.[26]

2. The delimitation of single-member constituencies – paragraph (10)

Claim:

"(…) The limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights] also expressed concerns about the delineation of single-member constituencies. Similar concerns were expressed in the Joint Opinion of 18 June 2012 on the Act on the Elections of Members of Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections, in which it was mentioned that the delimitation of constituencies has to be done in a transparent and professional manner through an impartial and non-partisan process, i.e. avoiding short-term political objectives (gerrymandering)."

Rebuttal:

By joining the EU, Hungary did not confer such competence, and therefore, this is still a part of national sovereignty. As EU institutions may only act within the scope of "conferred" competences, this point of the report is a typical example of a desire to extend beyond the existing competences.

Otherwise, the borders of the Hungarian single-member constituencies have been determined in 1989, as a result of an agreement between the parties in opposition at the time and between the reigning MSZMP, and the regulation was set by a decree of the government.[27] Nevertheless, in the past decades, the population of the constituencies changed to varying degrees, resulting in significant differences between them, which breached the principal of equal representation. Thus, the Constitutional Court has ruled[28] that the Parliament has breached the constitution by leaving unresolved the change of population of the constituencies and not regulating this matter in an Act. Therefore, in 2011, by changing the borders of constituencies, the Parliament has fulfilled its constitutional obligation, and according to the Parliamentary Assembly of the Council of Europe, by the amendment, Hungary complies with the guidelines of the Venice Commission.[29]

On the basis of all the above, the new system of the single-member constituencies complies with the provisions of the Fundamental Law of Hungary, as well as with the international regulations.

3. Freedom of expression and its guarantees – paragraph (31), point 9 of the opinion of the Committee on Culture and Education

Claim:

"(…) [t]he UN Human Rights Committee expressed concerns about Hungary's media laws and practices that restrict freedom of opinion and expression. It was concerned that, following successive changes in the law, the current legislative framework does not fully ensure an uncensored and unhindered press. It noted with concern that the Media Council and the Media Authority lack sufficient independence to perform their functions and have overbroad regulatory and sanctioning powers.

"(…) [t]he Hungarian media council (into which all the members could be delegated only by the governing party since 2010) actively helped the restructuration of the radio market (…)"

Rebuttal:

The European Commission has already examined all elements of the Hungarian media regulation in an infringement procedure, and it has found that the current legislation was appropriate.[30] In Hungary, all media platforms, such as social media, as well as domestic and international blogs are free to access, anyone can freely express his/her opinion, even if it is obscene, or contains strong criticism towards the government; no one has ever suffered any disadvantage due to this.

Moreover, the freedom of speech gains wider and wider protection in the practice of courts: according to the latest practice of the Constitutional Court, it is very difficult to apply sanctions against someone for expressing an opinion.[31] The Media Council and the Media Authority also acts in this spirit, given that fundamental laws ensure their independency necessary for this role.[32]

Every political party represented in the Parliament may initiate the election of a member to the Media Council; nevertheless, opposition parties were unable to appoint members, due to the lack of compromise between them.[33] Pursuant to paragraph (3)–(6) of Act CLXXXV of 2010 on media service and mass media, the opposition has a substantial opportunity to influence the procedure aimed at the election of the members of the Media Council.

4. Transparency of organisations funded from abroad – paragraph (41)

Claim:

„(…) the law would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination. "(…) the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of those requirements, which appeared to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary."

Rebuttal:

By joining the EU, Hungary did not confer such competence, and therefore, this is still a part of national sovereignty. As EU institutions may only act within the scope of "conferred" competences, this point of the report is a typical example of a desire to extend beyond the competences.

Otherwise, the law on non-governmental organisations does not prohibit receiving financial support from abroad, does not complicate the operation of non-governmental organisations, only makes it transparent when receiving financial support from abroad.

The law does not breach any civil right and it is compliant with community law, as it is exclusively aimed for creating transparency, as well as clear circumstances. Otherwise, the Hungarian measures are not unique in the EU, as beside multiple member states' parliament, the Parliament of the EU itself has been examining transparency of organisations funded from abroad, and a consensus seems to be achieved in respect of a need for greater transparency of lobbying organisations.[34] This is the reason

why the EP and the EC operates their Transparency Register, and also, anti-money laundering rules of the EU are very similar to the Hungarian regulations. If the report is voted in its current form, than according to the EP, transparency may no longer be an obstacle to the freedom of assembly.

5. Stop Soros legislative package – paragraph (43)

Claim:

"(…) by alluding to the "survival of the nation" and protection of citizens and culture, and by linking the work of NGOs to an alleged international conspiracy, the legislative package would stigmatise NGOs and curb their ability to carry out their important activities in support of human rights and, in particular, the rights of refugees, asylum seekers and migrants."

Rebuttal:

The main aim of the legislation is the protection of state border, which is not only the right of every member state, but concerning the external Schengen borders, it is an obligation under community law in order to defend public security and public order.[35] In addition to the above, the principal of the first safe country, determined pursuant to paragraph (1) of article 31 of the treaty signed on 28 July 1951 on the status of refugees (hereinafter the Treaty of Geneva), is also included in the Fundamental Law of Hungary; therefore, whilst the supporters of open society try in vain to "wash-out" the Treaty of Geneva by a "progressive" interpretation, the Hungarian authorities are obliged to enforce such principle when deciding on refugee applications, and must sanction those individuals or organisations, who/which try to circumvent the principle of the first safe country.

Beyond the above, the legislative package is certainly not aimed at stigmatizing or preventing the operation of non-governmental organisations receiving financial support from abroad, but at enforcing their lawful operation. In addition to the above, it is important to note that the elements of the legislative package amending the Criminal Code do not fall within the scope of the EU, thus, they cannot be included in the report of the EP, as it would breach paragraph (1) of Article 4 of TEU.

6. Balance between the rights of women and families – paragraph (45)

Claim:

" (…) [a] woman's right to equality cannot be seen merely in the light of protection of vulnerable groups alongside children, the elderly and the disabled, as they are an integral part of all such groups. New school books still contain gender stereotypes, depicting women as primarily mothers and wives and, in some cases, depicting mothers as less intelligent than fathers."

Rebuttal:

The Fundamental Law of Hungary states that women and man are equal.[36]. Women are free to decide about their own life and about having children. In addition, Hungary puts a special emphasis on protecting[37] and supporting[38] families. The latest also translates in financial support (the government spends 4,7 % of the GDP to supporting families, whilst EU average is 2,5 %), and compatibility of working and having children also plays a prominent role. On the other hand, preference for the traditional family model is a competence of the member states, therefore this is not subject to any European regulation.

7. Enforcement of the right to equal treatment - paragraph (48)

Claim:

"(…) UN Human Rights Committee expressed concerns that the constitutional ban on discrimination does not explicitly list sexual orientation and gender identity among the grounds of discrimination and that its restrictive definition of family could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples. (…)"

Rebuttal:

Article XV of the Fundamental Law of Hungary obviously states that everyone should be equal before the law, and every human being shall have legal capacity. Hungary shall guarantee the fundamental rights to everyone without discrimination based on any ground such as race, colour, sex, disability, language, religion, political or any other opinion, ethnic or social origin, wealth, birth or any other circumstance whatsoever.

Nevertheless, the National Avowal, included in the Fundamental Law of Hungary makes it clear, that Hungary recognises the "role of Christianity in preserving our nation", consequently, supporting the traditional family model is a constitutional obligation. The principal of equal rights, proclaimed in the Fundamental Law of Hungary, is also guaranteed by the Equal Treatment Authority, established in order to ensure compliance[39] with race directive[40], which body operates as an independent state administration institution since the entry into effect of the Fundamental Law of Hungary, thus, its independence is fully guaranteed.

8. The refugee applications of migrants – paragraph (61)

Claim:

"(…) In 2017, out of 3 397 applications for international protection filed in Hungary, 2 880 applications were rejected, which amounted to a rejection rate of 69,1 %. In 2015, out of 480 judicial appeals relating to applications for international protection, there were 40 positive decisions, i.e. 9 %. In 2016, there were 775 appeals, 5 of which resulted in positive decisions, i.e. 1 %, while there were no appeals in 2017."

Rebuttal:

No breach of law may be concluded from the figures referred to in the report; Hungary enforces the principal of the „first safe country"[41] when deciding on asylum applications, and it is not alone in the EU when following such regulation: similarly to the Fundamental Law of Hungary, the Fundamental Law of Germany also lays down the principle of the first safe country. Thus, applicants arriving to Hungary through three or four safe countries are normally not entitled to refugee status, and the number of rejections reflects this.

9. Transit Zones – paragraph (65)

Claim:

„(…) a transit zone, which is effectively a place of deprivation of liberty, cannot be considered as appropriate and safe accommodation (…). The authorities should, as a matter of urgency, end detention in transit zones (…)."

Rebuttal:

Directive 2013/32/EU of the European Parliament and of the Council (26 July 2013) explicitly mentions among common procedures for granting and withdrawing international protection procedure "at the border" or "in the transit zones" procedures. Thus, the operation of transit zones is in compliance with community law. Anyone can freely leave the transit zones towards Serbia, so per definitionem, they cannot be considered as a place of detention. Serbia is an EU candidate,accordingly, a safe country under Hungarian law; thus the rights of applicants returning to Serbia are not violated by Hungary.

10. Attacking the border barrier – paragraph (67)

Claim:

„On 14 March 2018, Ahmed H., a Syrian resident in Cyprus who had tried to help his family flee Syria and cross the Serbian-Hungarian border in September 2015, was sentenced by a Hungarian court to 7 years' imprisonment and 10 years expulsion from the country on the basis of charges of "terrorist acts", raising the issue of proper application of the laws against terrorism in Hungary, as well as the right to a fair trial."

Rebuttal:

Ahmed H. was threatening the police officers lined up on the border, and police units representing Hungarian state power were attacked by the rioting mass gathered behind him. It was proven in court that Ahmed H. had acted like a leader of the mass. No final and binding decision has yet been granted against Ahmed H., and blaming the executive power for the acts of independent courts would be against the principal of the separation of powers. Defending the border is anyway a legitimate purpose, which is not only acknowledged but also partially financed by the EU.[42]

+1. Right to strike – paragraph (73)

Claim:

„Since December 2010, strikes in Hungary were made illegal in principle when the government of Victor Orban passed an amendment to the so-called Act on strikes.. (…) The problem lies somewhere else, mainly in the percentage of employees who must take part in the strike referendum, to make it important -up to 70 %. Then the decision on the legality of strikes will be taken by a labour court that is completely subordinate to the state. (…)"

Rebuttal:

By joining the EU, Hungary did not confer such competence, and therefore, this is still a part of national sovereignty. As EU institutions may only act within the scope of "conferred" competences, this point of the report is a typical example of a desire to

extend beyond the competences. Otherwise, strikes in Hungary were not made illegal. Legislation filling the gaps of regulations on strike has granted powers to the labour courts to decide on the lawfulness of strikes with the explicit purpose of ensuring an independent decision, free from any influence. The labour courts operate within the organisation of regional courts organised in every county and the capital, as a result they are absolutely independent from the government.

According to the data of the European Trade Union Confederation, in respect of numbers and trends of days without work, Hungary is in the same group with Sweden, whilst in Denmark, Ireland or Finland is trending down in respect of striking activity.[43]

1 Act XC of 2010 on adapting and amending certain economic and financial Acts.

2 Progressive Alliance of Socialists and Democrats (S&D), Alliance of Liberals and Democrats for Europe (ALDE), Greens/European Free Alliance (G/EFA), European United Left/Nordic Green Left (GUE-NGL).

3 European Parliament resolution of 10 March 2011 on media law in Hungary.
https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=uriserv:OJ.CE.2012.199.01.0154.01.HUN&toc=OJ:C:2012:199E:TOC

4 European Parliament resolution of 5 July 2011 on the Revised Hungarian Constitution.
https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=uriserv:OJ.CE.2013.033.01.0017.01.HUN&toc=OJ:C:2013:033E:TOC

5 European Parliament resolution of 16 February 2012 on the recent political developments in Hungary (2012/2511(RSP))
http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-53

6 European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practi-es in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI))
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0315+0+DOC+XML+V0//HU

7 Situation in Hungary (debate), Strasbourg, 19 May 2015.
http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20150519&secondRef=ITEM-010&language=HU

8 Situation in Hungary (debate), Bruxelles, 26 April 2017.
http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20170426&secondRef=ITEM-014&language=HU

9 European Parliament resolution of 17 May 2017 on the situation in Hungary (2017/2656(RSP))
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0216+0+DOC+XML+V0//HU#ref_1_3

10 Judith Sargentini nem válaszolt érdemben a köztelevízió kérdéseire. Magyar Idők, 2018. január 9. (Hungarian newspaper article on Sargentini)
https://magyaridok.hu/belfold/judith-sargentini-nem-valaszolt-erdemben-koztelevizio-kerdeseire-2662549/

11 http://www.kormany.hu/hu/kulgazdasagi-es-kulugyminiszterium/hirek/minositett-hazugsagok-gyujtemenye-a-tervezet

12 12. April 2018. Statements by Sargentini at a press conference in Brussels (23:44, 24:05). ()
https://www.youtube.com/watch?v=mUGgAqvApLk

13 22. July 2018. Interview with Sargentini on a Hungarian website.
https://merce.hu/2018/07/21/mar-a-veszelyzonaban-vagyunk-interju-judith-sargentinivel/

14 Statement on the website of the Greens/EFA, 11. July 2017.
https://www.greens-efa.eu/en/article/press/judith-sargentini-to-lead-investigation-into-hungary/

15 The Union is based on respect for human dignity, freedom, democracy, equality, the rule of law and the respect for human rights, including the rights of persons belonging to minorities. These values are commonin the Member States, in the society of pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

16 Communication from the Commission to the Council and the European Parliament on Article 7 of the Treatyon European Union - Respect for and promotion of the values on which the Union is based.

17 Kende Tamás, Szűcs Tamás (szerk.): Európai közjog és politika. Osiris, Budapest, 2003. 538. o.

18 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Com munities and certain related acts, (2 October 1997).

19 Wojciech Sadurski: Adding a Bite to a Bark? A story of Article 7, the EU Englargment, and Jörg Haider, The University of Sydney, Sydney Law School, Legal Studies Research Paper No. 10/01. january 2010.
Schöpflin: The Political Traditions of Eastern Europe. Daedalus 1990. 1. sz. 55-90. o. és
Péter László: AutokráciaKelet-Európában. In: Péter László: Az Elbától keletre. Osiris, Budapest 1998. 37-59. o.

20 22/2016. (XII. 5.) Constitutional Court resolution (ABH 2016, 28.).

21 Dezső Márta, Vincze Attila: Magyar alkotmányosság az európai integrációban HVG-ORAC Kiadó Kft.2006. 45.o.

22 Solange I. – Internationale Handelsgesellschaft von Einfuhr- und Vorratsstelle für Getreide und Futtermittel, BVerfGE 37271 [1974] CMLR 540.

23 Solange II – Wünsche Handelsgesellschaft, BVerfGE 73, 339.

24 Varga Zs. András: Az alkotmánybíróságok szerepe a nemzeti/alkotmányos önazonosság védelmében. Iustum Aequum Salutare XIV. 2018. 2. 21–28.

25 Alapjogokért Központ: A Tavares-jelentés Top 10 hibája. 2013. július 3. 2.o.
http://alapjogokert.hu/tavares-jelentes/ (Analysis of the Center for Fundamental Rights)

26 AlapjogokértKözpont: Nem csökkent az Alkotmánybíróság súlya; Az Alkotmánybíróság hatásköreire vonatkozó szabályozás elemzése. 2013. november 13. 11-15.o. (Analysis of the Center for Fundamental Rights) http://alapjogokert.hu/wp-content/uploads/2013/11/Nem-cs%C3%B6kkent-az Alkotm%C3%A1nyb%C3%ADr%C3%B3s%C3%A1g-s%C3%BAlya_Alapjogok%C3%A9rt-K%C3%B6zpont_20131113.pdf

27 2/1990. (I. 11.) MT rendelet az országgyűlési egyéni és területi választókerületek megállapításáról.

28 193/2010. (XII. 8.) AB Constitutional Court resolution (ABH 2010, 997.).

29 ALAPJOGOKÉRT Központ: Nem csökkent az Alkotmánybíróság súlya; Az Alkotmánybíróság hatásköreire vonatkozó szabályozás elemzése. 2013. november 13. 11-15.o.
http://alapjogokert.hu/wp-content/uploads/2013/11/Nem-cs%C3%B6kkent-az Alkotm%C3%A1nyb%C3%ADr%C3%B3s%C3%A1g-s%C3%BAlya_Alapjogok%C3%A9rt-K%C3%B6zpont_20131113.pdf

30 Media: Commission Vice-President Kroes welcomes amendments to Hungarian Media Law.
http://europa.eu/rapid/press-release_MEMO-11-89_en.htm

31 3159/2018. (V. 16.) Constitutional Court resolution (ABH 2018, 16.), and 3236/2018. (VII. 9.) Constitutional Court resolution (ABH 2018, 21.).

32 .Act CLXXXV of 2010 on Media Services and Mass Communication,

33 H/1339. A Nemzeti Média- és Hírközlési Hatóság Médiatanácsának megválasztása (Szalai Annamáriát elnöknek, dr. Auer Jánost, dr. Kollarik Tamást, dr. Koltay Andrást és dr. Vass Ágnest taggá), 2. o.
http://www.parlament.hu/orszaggyulesi-naplo-elozo-ciklusbeli-adatai?p_auth=t6aP70TJ&p_p_id=pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_irom.irom_adat%3Fp_ckl%3D39%26p_izon%3D1339

34 See:https://www.politico.eu/article/ayman-jallad-ayman-jallad-mystic-money-man-behind-brussels-activists-ngo-funding/

35 Schengen Borders Code
https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=celex:32006R0562

36 Paragraph (3) of Article XV. of the Fundamental Law of Hungary.

37 Act CCXI. of 2011., paragraph 1.

38 Paragraph (3) of Article L) of the Fundamental Law of Hungary.

39 Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities.

40 Council DirectiveA Tanács 2000/43/EK irányelve (2000. június 29.) a személyek közötti, faji- vagy etnikai származásra való tekintet nélküli egyenlő bánásmód elvének alkalmazásáról (HL L 180., 2000.07.19.) COUNCIL DIRECTIVE 2000/43/EC. of 29 June 2000. implementing the principle of equal treatment between persons irrespective of racial or ethnic origin)

41 Alapjogokért Központ: Menekültügy: tovább bővíthető a magyar szabályozás. 2015.február 04.2-4.o (Analysis of the Center for Fundamental Rights)
http://alapjogokert.hu/wp-content/uploads/2015/02/Menek%C3%BClt%C3%BCgy_tov%C3%A1bb-b%C5%91v%C3%ADthet%C5%91-a-magyar-szab%C3%A1lyoz%C3%A1s.pdf

42 https://www.hirado.hu/kulfold/kulpolitika/cikk/2018/08/31/fordulat-tortent-brusszelben-a-magyar-hatarvedelemmel-kapcsolatban/

43 Between 2000-2009 and 2010-2016 days spent on strike decreased, in Sweeden from 20 to 3, in Denmark from 103 to 60, in Ireland from 88 to 33 and in Finland from 70 to 44. (Hungarian data: 23/5)
https://www.etui.org/ReformsWatch/EU-28