**Answers by Hungary**

**to the Questionnaire of the Working Group on the issue of human rights and transnational corporations and other business enterprises**

Question 1

The Fundamental Law (Constitution) of Hungary asserts that “Fundamental rights and obligations which by their nature apply not only to man shall be guaranteed also for legal entities established by an Act.” ( Article I, Paragraph 4)

The Fundamental Law and the Act CLI of 2011 on **Constitutional Court** provides for an enlarged possibility to pursue cases filed upon constitutional complaints. These latter can be filed in cases when the individual rights ensured by the Fundamental Law are violated during court rulings, or in exceptional cases, when the violation directly results from the entry into force of a legislative act. It is important to note that the constitutional complaint cannot be aimed at the revision of legality of a court ruling, as the Constitutional Court is not an additional grievance forum in the judicial system.

The Constitutional Court deals with three types of constitutional complaints:

1. „old type” complaints, when the Court is examining the compatibility of the applied piece of legislation with the constitutional provisions;
2. „direct” complaints, when the complainant attacks the piece of legislation or one of its sections, which entry into force resulted in direct violation of individual rights without any possibility of legal remedy by the court, or if such remedies are exhausted;
3. „real constitutional” complaints, when the complainant oppose not a piece of legislation, but the court ruling itself which allegedly violates his or her constitutional rights.

All these three types of constitutional complaints can be filed both individually or by an organisation.

It is possible to receive a judicial remedy in the case of an infringement in front of a civilian court. Further details on this process can be found in the responses to Question 3.

The Fundamental Law of Hungary has established a new **Ombudsman system**. In the place of the previous four parliamentary commissioners, one commissioner (the Commissioner for Fundamental Rights) and two deputy commissioners are working on the cases. The deputy commissioner for the Protection of Future Generations and the deputy commissioner for the Protection of the Right of Nationalities. The priority of the Commissioner for Fundamental Rights is to investigate whether maladministration has occurred in relation to the fundamental rights and if necessary initiate general or specific actions. The commissioner fulfills his or her duty to adhere to the national mechanisms outlined in response to international agreements. The commissioner can initiate a process at the Constitutional Court and supervises the implementation of international agreements. If maladministration is identified the Commissioner for Fundamental Rights can initiate a procedure with the Prosecutor, at the Curia (Supreme Court) and the National Authority for Data Protection and Freedom of Information, or can initiate other legal proceedings. The Commissioner for Fundamental Rights operates an E-gate available to make a notification in the interest of the general public. The E-gate ensures that the notifying party is well protected and the notification is made anonymously and at no cost.

The **protection of Personal Data** is a fundamental right. The Fundamental Law of Hungary asserts that “*everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest”* and *“the application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by a cardinal Act.”* (Article VI, Paragraph 2 and 3) Namely this authority is the **National Authority for Data Protection and Freedom of Information**.

The principal of equal treatment is supervised by the **Equal Treatment** **Authority** which has a national jurisdiction. This authority is an autonomous government unit. The authority is independent and functions independently from other governmental units. The tasks of the authority can only be defined by law.

Question 2

Without any rating, the Hungarian judicial system is able to effectively respond to business related human rights abuses through both judicial and non-judicial grievance mechanisms.

Question 3

1. The **Hungarian Civil Code** provides, as a general rule, that *„every person has the right to freely vindicate, without being unhindered, his or her individual rights to privacy, family life, to maintain contacts /…/ with others and to good reputation.”* According to the Civil Code, the scope of individual rights to be protected does not correspond to the catalogue of fundamental rights, although the violation of certain of these latter (right to life, physical integrity, health) can also be sanctioned within the scope of the civil law, but by different legal means. In general terms the Civil Code avoids encompassing all those constitutional freedoms and universal human rights, enacted in international conventions, that the state shall ensure by the means of public law, and which protection cannot be effectively safeguarded by the means of civil law.

2. The Civil Code, on the basis of factual infringements, can provide for the following sanctions:

1. establishment of the fact of infringement by court;
2. cessation of infringement, and prohibit the perpetrator from further violation(s)
3. order the perpetrator to provide adequate compensation while ensuring adequate publicity to it on its own expenses;
4. cessation of the prejudicial situation, reestablishment of the situation preceding the infringement;
5. concession of any goods obtained by infringement by the perpetrator or legal successor;

3. Instead of compensation on “non-pecuniary loss” the Civil Code has introduced the so called “solatium” (consolation money) which ensures more effective protection of persons whose individual rights are violated, as neither the court is obliged to investigate the losses of the complainant, nor this latter to prove them. The amount of solatium is established by the court on the basis of objective circumstances, including the gravity and the extent of the violation. If the infringement concerns also public interests, the prosecutor, with the consent of the complainant, can be involved and separate sanctions may apply. In such cases, the conceded goods obtained by infringement shall be used for public interest.

According to the Act LXXVof1996on**Labour Inspection**, the labour authority may take the following measures concerning the irregularities experienced in the course of the inspection:

1. prohibits further employment if – in the case of the first and second subsentences of Paragraph a) of Subsection (1) of Section 3, furthermore sub-paragraphs *b), e), f), i), k)* and *s)* - the employment or work performance cannot be maintained due to the grave violation of the legal regulation, and the violation cannot be remedied within a short time. If further employment was prohibited because the employer violated the regulations regarding the form of the legal declarations required for establishing employment relationship, or the reporting of the relationship, the labour authority shall oblige the employer to pay to the employee the remuneration under Subsection (1) of Section 146 of the Act I of 2012 on the Labour Code for the period of prohibition,
2. obliges the employer to remedy the irregularity within a specified period of time;
3. obliges the employer to make payment into the central budget in case of non-compliance with the provisions of the regulations concerning the authorization of the employment of third-country nationals in Hungary;
4. *imposes a labour inspection fine;*
5. declares the existence of the employment relationship from the first day of work between the employee(s) and the employer and obliging the employer to comply with the relevant provisions;
6. prohibits the employer from pursuing its activity if it does not have the required permission or registration;
7. reports the irregularity under Paragraph a) of Subsection (1) of Section 3 (the age-related conditions associated with the legal status of employees) to the child welfare services because of the threat to child safety;
8. declares the non-compliance with the provisions of the employer if Paragraph b) cannot be applied;
9. obliges the main contractor or the intermediate subcontractor responsible according to Subsection (8) of Section 1 to pay the outstanding wages on behalf of the employer.
10. obliges the employer to provide the necessary information for the execution of the requests under Subsection (1a) of Section 3.

In addition, Hungary has been a **member of the OECD** since 2016, and an adhering country to the OECD Declaration on International Investment and Multinational Enterprises, including also the OECD Guidelines for Multinational Enterprises (the Guidelines), since 2014. The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. It has a human rights chapter, which is fully consistent with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

The Guidelines are supported by a unique implementation mechanism of *National Contact Points (NCPs*), agencies established by adhering governments to promote and implement the Guidelines. They assist enterprises and their stakeholders to take appropriate measures to this end. They also provide a mediation and conciliation platform for resolving practical issues that may arise. Thus NCPs can also act as non-judicial grievance mechanisms.

The OECD NCP mechanism serves as a *non-judicial grievance* mechanism in Hungary as well. The NCP’s activity will be reinforced by a Government decree which is expected to enter in force in summer 2017.

Question 4

The Hungarian NCP (National Contact Point) has been active since 2000. Presently, it is in the process of reinforcement by a Government Decree that will also help further promotion of standards and principles set forth in the Guidelines including its Human rights chapter. According to the new legislation, stakeholders will be involved in the activity of the Hungarian NCP as foreseen by the Procedural Guidance of the Guidelines. Establishment of an advisory body is foreseen in which the business community, the worker organisations and other non-governmental organisations will play an important role.

Since 2015, the Hungarian NCP have organised regular awareness raising events to make the Guidelines and the NCP mechanism better known and to disseminate information on good NCP practices. The UNGPs and their relationship with other internationally recognised RBC documents such as the Guidelines were important part of the events. Two conferences with international lecturers (in October 2015 and in November 2016) can be mentioned as especially useful in this regard.

Question 5

The NCP mechanism is an adequate potential tool to redress extraterritorial human rights abuses by Hungarian multinational corporations as well, although until now no such specific instance cases were submitted to the Hungarian NCP.

Question 6

At present the cooperation between stakeholders and the Hungarian NCP is informal. However, according to the new legislation, stakeholders will be involved in the activity of the Hungarian NCP as foreseen by the Procedural Guidance of the Guidelines. Establishment of an advisory body is foreseen in which the business community, the worker organisations and other non-governmental organisations will play an important role.

Question 7

Article XV. of the Fundamental Law stipulates, that Hungary ensures fundamental rights without discrimination on any ground such as race, coulour, sex, disability, language, religion, political or other opinion, national or social origin, wealth, birth or other situation. Women and men are equal, the State promotes the achievement of equal opportunities and social inclusion, as well as the protection of families, children, women, the elderly and persons living with disabilities by means of separate measures.

Act CXXV of 2003 on Equal Opportunity provides for the equal treatment of any person, their groups, legal persons and entities without legal personality established on the territory of Hungary, with the same respect and foresight, equal consideration of individual criteria.

According to Paragraph e) of Subsection (1) of Section 3 of Act LXXV of 1996 on Labour Inspection, the labour inspection covers the compliance with the following provisions:legal regulations related to the employment of women, young people and those with changed working abilities.

Question 8

Additional information

Pursuant the Government Decree No. 354/2012. (XII.13) on the identification order of victims of trafficking in human beings, the labour authority is one of the bodies entitled to identification.

According to the Government Decree, if the body that performs the identification, in its scope of procedure obtains knowledge or detects otherwise that a Hungarian citizen, or a person who holds a permit of free movement and residence, is presumably a victim of human trafficking, shall conduct an identification conversation with this person.

Considering the above, the labour authority participates in the identification of the victims of trafficking in human beings (labour exploitation).