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Hungary: the European Parliament should vote to trigger the Article 7 procedure to defend the rule of law

The International Commission of Jurists (ICJ) today called on all MEPs to vote in favour of the draft resolution and report by rapporteur Judith Sargentini MEP, before the European Parliament, which would activate Article 7 of the Treaty of the European Union in respect of Hungary.

A vote for the resolution would mean that, under Article 7.1, the Council would determine whether there is a clear risk of serious breach by Hungary of the founding values of the EU.

Ultimately, if the situation persists, this would allow the Council to take more robust measures, including suspension of voting rights, to address the situation.

The vote, scheduled for 12 September, is crucial for the rule of law in Hungary and throughout the European Union.

The Parliament will vote on whether to activate the process under Article 7, by calling on the Council to identify a risk of serious breach by Hungary of the EU's founding values, including the rule of law and respect for human rights.

The ICJ considers that the measures put in place by the Hungarian government since 2011 have led to a severe deterioration of the rule of law and human rights, by weakening Constitutional rights protection, limiting judicial independence, suppressing independent media, civil society and academic institutions, and imposing arbitrary laws that violate the human rights of marginalized sections of society.

Cumulatively, these measures pose a grave, systemic threat to the protection of the human rights of all people in Hungary.

"The European Parliament should respond to the critical situation in Hungary by using the powers available to it under Article 7 TEU to defend human rights and the rule of law. Not to do so would be to abandon Hungary to an increasingly dangerous path, and would set a damaging precedent for all of Europe," said Róisín Pillay, Director of the ICJ Europe Programme.

Key concerns

The ICJ is gravely concerned at legislative and constitutional amendments significantly affecting **the independence of the judiciary**, a core principle of the rule of law.

The government has restricted the competences of the Constitutional Court. It has abolished the institution of *actio popularis*, which facilitates public interest litigation by human rights defenders and others, and limited the Constitutional Court's ability to review budgetary matters, and to review constitutionality of any changes of the Fundamental Law.

The National Judicial Office (NJO), whose President is elected by the Parliament for an indefinite term, has been entrusted with extensive powers, including in the procedures

for the appointment and dismissal of judges. This has compromised the independent self-governance of the judiciary through the National Judicial Council (NJC).

The security of tenure of judges has also been undermined by arbitrary lowering the compulsory retirement age of judges from 70 to 62.

Although, after the dismissal of several judges, the government modified the law by lowering the retirement age gradually over the next 10 years, significant damage had already been done, as confirmed by judgments of the European Court of Justice (C-286/12 Commission v. Hungary) and by the European Court of Human Rights (Baka v. Hungary).

The ICJ is further concerned that the new Administrative Supreme Court, which is shortly to be established, may be insufficiently independent, and therefore further undermine the independence of the judiciary as a whole.

The government and high-ranking public officials have systematically attacked **civil society organizations and individuals** in Hungary, in law and in rhetoric, and restricted their capacity to defend human rights.

The 'Law on the Transparency of Organizations receiving Support from Abroad of Hungary' adopted in 2017 requires NGOs to label themselves as 'organization in receipt of foreign funding,' disclose the identity of all sponsors and in case of non-compliance face disproportionate sanctions.

Legislation passed in June 2018, as part of the 'Stop Soros legislative package', effectively criminalizes the work of civil society organizations, lawyers and other human rights defenders that work to assist migrants, including refugees seeking to access international protection.

Further legislation of July 2018 imposes a punitive, 25 percent tax on organizations supporting migration.

These measures are likely to have a severe impact on freedom of expression and association of civil society organizations and their members, and to significantly weaken the ability of civil society to protect human rights, and to lead to systematic violations of the rights of migrants, especially refugees.

Changes in Hungarian legislation, including the lack of independence of the Media Council and of public service broadcasting, as well as requirements for the media to provide "balanced" coverage and disproportionately high fines against media organizations have already had severe consequences for **freedom of expression of the media**.

In addition, the tendency towards the concentration of media ownership and self-censorship is necessarily corrosive to the exercise of freedom of expression.

Freedom of expression and association of academic institutions has also been curtailed, notably by the threat of closure of the Central European University (CEU).

A legal amendment adopted in April 2017 imposed disproportionate restrictions on the operation of foreign-accredited universities, which has an exclusively discriminatory effect on the CEU.

The freedom of the Hungarian Scientific Academia has also been threatened by reallocating their funds and transfer it to the newly created Ministry for Innovation and Technology.

Finally, a recent proposal of the Hungarian government is to eliminate 'gender studies' from the country's list of accredited university study programmes.

These measures have significant consequences for freedom of expression and association, as well as the promotion of human rights more generally.

In light of these developments, and others detailed in the report of Judith Sargentini MEP, there is a high risk of serious and systemic violations of rule of law and respect for human rights in Hungary, which warrants a response under Article 7.1 TEU.