

Brussels, 18 May 2022

Joint Letter from Civil Society Organisations to EU Governments

Article 7(1) TEU Hearing on the Rule of Law, Democracy and Fundamental Rights in Hungary

Dear Minister,

We write to you ahead of the EU General Affairs Council's meeting on 23 May 2022, where you will hear the Hungarian government speak on the situation of the rule of law and other Article 2 TEU values in Hungary.

The hearing takes place at a time when the importance of the rule of law, democracy and fundamental rights across Europe is in ever sharper focus. Fidesz's recent re-election, leading to Viktor Orbán's fourth successive term as prime minister, provides a critical opportunity for Member States to act firmly and swiftly to protect EU values.

The upcoming hearing is an important opportunity to raise key concerns with a view to adopting urgent recommendations and holding a vote regarding the clear risk of a serious breach of EU values in Hungary.

BACKGROUND

Next week's hearing will be the fourth hearing on Hungary since the activation of the Article 7(1) TEU procedure in September 2018. As recalled by the Court of Justice of the European Union (CJEU) in its [judgment](#) of 16 February 2022: *'The purpose of the procedure laid down in Article 7 TEU is to allow the Council to penalize serious and persistent breaches of the values contained in Article 2 TEU, in particular with a view to compelling the Member State concerned to put an end to those breaches.'*

On 5 May 2022, with an overwhelming cross-party majority, the European Parliament adopted a [resolution](#) calling on EU Member States to adopt concrete recommendations under the Article 7(1) procedure, with a clear deadline for their implementation and a view to identifying a clear risk of a serious breach of EU values under Article 7(1).

Since September 2018, violations of fundamental rights in Hungary have escalated, persistently eroding the democratic principles of the EU which Hungary has committed itself to. If these trends are not stopped a definitive collapse of EU values in Hungary is foreseeable.

KEY ISSUES

The hearing on 23 May coincides with three recent developments: i) the renewal of the political mandate of Fidesz following the April 2022 general election; ii) the proposal of the new government to amend the constitution to create a new *'state of danger'*; and iii) the decision of the European Commission to trigger the rule of law conditionality mechanism against Hungary. These developments link to three key sets of issues that we urge you to raise at the hearing.

THE APRIL 2022 GENERAL ELECTION AND LGBTIQI REFERENDUM

The [preliminary conclusions](#) of the full-scale OSCE electoral observation mission to Hungary indicated that both the election and the referendum *'were well administered and professionally managed but marred by the absence of a level playing field'*. The OSCE reached a similar conclusion in 2018, which suggests that without serious corrective measures, recurrent structural failures will remain and continue to further undermine Hungary's future electoral integrity. In the OSCE's assessment:

- the *'bias and lack of balance in monitored news coverage and the absence of debates between major contestants significantly limited the voters' opportunity to make an informed choice'*. This assessment raises acute concerns related to the right to political participation and media freedom in Hungary; and
- the anti-LGBTIQI referendum, was marred by a legal framework that was *'largely inadequate for the conduct of a democratic referendum'* and *'did not provide for a level playing field.'* Even though the

referendum was invalidated through a record number of abstentions and invalid votes, the government still publicized and utilized the results.

The unbalanced media coverage of the electoral campaign, coupled with disinformation generated by Russian Federation operatives, highlights the lack of transparent, independent and effective media regulation. In the last weeks, reminiscent of action against Klubradio, the Media Council [refused to renew the broadcasting license](#) of another independent station Tilos Radio. Hungarian authorities are suspected of arbitrarily using Pegasus spyware against at least three Hungarian journalists. The government extensively used the COVID-19 pandemic as cover to introduce measures that disproportionately target independent media and have a chilling effect on journalists.

After the referendum, the National Electoral Commission fined organisations who campaigned to invalidate the referendum. [Related civil society challenges](#) to the Kúria (Supreme Court) resulted in some fines being dismissed while others were upheld, leading to legal uncertainty about the legality of such campaigns under Hungarian law.

We urge you to ask how the government plans to address the concerns of the OSCE, particularly those stemming from a decade-long campaign to dismantle Hungary's free and independent media and curb the right of the opposition to campaign in elections. In addition, we call on you to question the protection of freedom of expression and civic space, including in the electoral context.

LEGAL AND JUDICIAL CHALLENGES

The Government has used successive emergencies as a pretext to bypass democratic control and vest itself with virtually unlimited power to rule by decree. On 3 May 2022, with no consultation and ahead of the expiration of the COVID-19 emergency legislation, the Minister of Justice [submitted a bill](#) to transform the constitutional system of special legal orders and authorize the Government to declare a 'state of danger' in the case of an 'armed conflict, war or humanitarian disaster in a neighbouring country'. This was accompanied by another bill aimed at allowing the Government to maintain its excessive regulatory powers acquired under the COVID-19 pandemic. Together they provide the government with an extremely broad mandate to override acts of parliament and legislate via emergency decree. Amending the Constitution to bend the legal system towards Fidesz' desired policy outcomes, has been one of their long-standing strategies to subvert constitutional order and install an illiberal regime.

At the same time, Hungary has consistently [failed to implement domestic and regional court judgments](#). Over the last ten years, [71% of leading cases](#) from the European Court of Human Rights (ECtHR) against Hungary are pending execution. At least three recent rights-based judgments from the CJEU remain unimplemented. In November 2021, the European Commission [requested](#) the CJEU to impose financial sanctions on Hungary for failure to comply with a 2020 judgment in relation to EU rules on asylum and returns. The [2021 judgment](#) condemning the criminalization of organisations assisting migrants (the 'Stop Soros' law) remains unimplemented. In addition, Hungary adopted a restrictive transposition of the Council decision on the Temporary Protection Directive resulting in a discriminatory policy towards non-Ukrainian refugees. As it stands, the Hungarian asylum system remains incompatible with the EU *acquis* and makes it virtually impossible for people seeking international protection to obtain long-term refugee status.

The non-implementation of judgments links to longstanding concerns under the Article 7(1) process regarding the independence of the judiciary. The centralisation of the administration of courts has led to a situation where the most powerful positions, namely the President of the National Office for the Judiciary and the President of the Kúria, are elected by the legislature without any judicial involvement. The election of the current President of the Kúria, was met with [criticism](#) by the UN Special Rapporteur on the independence of judges and lawyers, who stated that the appointment 'may be regarded as an attack to the independence of the judiciary and as an attempt to submit the judiciary to the will of the legislative branch, in violation of the principle of separation of powers'.

We urge you to question the government on the consistency of the new bills on the 'state of danger' with international standards, namely on their necessity and proportionality. We also call on you to ask Hungary about the implementation of CJEU and ECtHR judgments, particularly in relation to the asylum system and the 'Stop Soros' legislation and to respond to long-standing concerns on the independence of the judiciary.

THE RULE OF LAW CONDITIONALITY MECHANISM

On 27 April, the College of Commissioners approved the activation of the Rule of Law Conditionality Regulation with regards to Hungary, pointing to *'the systemic irregularities and deficiencies in the management of Union funds that directly affect the EU budget, including systemic irregularities in the areas of public procurement, conflict of interest, public interest trusts, lack of independent investigation and prosecution.'* This decision, concerning the protection of the whole EU budget, following the previous move not to approve the Hungarian recovery plan, is testament to the gravity of rule of law concerns that fall in the scope of the Article 7(1) procedure.

While the Rule of Law mechanism may contribute to the protection of the EU budget, it is unfit to address the wider concerns about state capture of public funds in Hungary.

The award by the Hungarian government of a 35-year long motorway concession to a consortium of private equity funds, whose ultimate beneficiaries are obscure, is an example of how the government captures resources in an opaque manner that could mask corruption. This highlights the near total opacity of the system of allocating public funds, which is further exacerbated by the 2020 extension, of the statutory deadline to reply to freedom of information requests, undermining the right to freedom of information.

At the same time high-level corruption allegations remain uninvestigated or stalled. The most prominent omission occurred in the [so-called Elios case](#), where the questionable absorption of EUR 43 million, by a company that belonged partly to the Prime Minister's son-in-law, was investigated but did not result in prosecution in Hungary despite findings by OLAF of corrupt practice.

We urge you to ask the government to elaborate on how it plans to reform the anti-corruption framework to ensure transparency of all public funds, both those under examination through the Rule of Law Conditionality Mechanism and those within the wider national budget.

These developments all highlight persistent, structural and interrelated deficiencies with the respect for democracy, the rule of law and fundamental rights in Hungary and point towards the need for urgent action. It is the collective responsibility of all EU institutions to uphold the Union's founding values. We thus reiterate our long-standing calls to the Council and urge you to use the upcoming Article 7 hearing to seek necessary inputs **ahead of adopting recommendations under Article 7(1) TEU and a vote to determine of a clear risk of a serious breach of the values referred to in Article 2 TEU.**

We stand ready to provide any further information you may require.

Yours sincerely,

Amnesty International
FIDH (International Federation for Human Rights)
Human Rights Watch
Hungarian Helsinki Committee
International Commission of Jurists
Netherlands Helsinki Committee
Open Society European Policy Institute
Reporters Sans Frontières
Transparency International EU