



Viviane Reding
Vice-President of the European Commission
Commissioner for Justice, Fundamental Rights and Citizenship

Brussels, 20 April 2011
Our Ref.: B1073

Dear Commissioner,

Subject: Concerns over the new Constitution of Hungary

Amnesty International is concerned that the new Constitution of Hungary, adopted by the Hungarian Parliament on Monday 18 April, introduces changes which may restrict internationally protected human rights and calls on the Commission to take a position on the matter and to react to what seems to be an attack against EU core principles and values.

In a letter sent last week to Mr. Pal Schmitt, President of Hungary, Amnesty International's Secretary General Salil Shetty raised the concerns which several NGOs and European Parliamentarians have been sharing since the draft of the new Constitution was made public on March 14, and called on the Hungarian Government to introduce a Constitution that is firmly in line with European and international HR standards.

In the letter that you find here enclosed, Amnesty International expressed concerns over several provisions, such as Article II, which introduces the protection of the life of the foetus from the moment of conception thus risking to negatively affect pregnant women and girls' life and health; Article IV, introducing life sentence without the possibility of parole and Article XIV listing prohibited grounds for discrimination which fails to include grounds such as age or sexual orientation and gender identity.

The exclusion of sexual orientation as a protected ground of discrimination may narrow the scope of Hungary's anti-discrimination law and increase legal uncertainty for LGBT people and their families. Furthermore, it clearly contravenes both international and European human rights law, which includes sexual orientation as a protected ground of discrimination.

The UN Human Rights Committee made clear that sexual orientation is a status protected against discrimination under Art. 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and urged States to include in their Constitutions the prohibition of discrimination based on sexual orientation.

Article 21 of the EU Charter of Fundamental Rights explicitly prohibits discrimination on the ground of sexual orientation and Article 19 TFEU gives to the EU Institutions the power to intervene in case of breach of the principle on non-discrimination on various grounds, among them sexual orientation. Furthermore, Directive 2000/78/EC (the so-called "Employment Equality Directive") protects against discrimination on the ground of sexual orientation in the field of employment and occupation.

The Hungarian authorities have argued that the Constitution does not contain provisions explicitly excluding sexual orientation from the scope of the anti-discrimination legislation. However, since non-discrimination and equality before the law are universally recognized principles, enshrined in a number of international conventions and legal instruments, we believe that in such a fundamental document as a nation's Constitution, these principles should have been clearly stated.

Furthermore, the omission is even more blatant if we consider that during the drafting process the Hungarian Government repeatedly proclaimed that the new Constitution was built on the EU Charter of Fundamental Rights. Rather than reflecting the principles enshrined in the Charter and promoting an inclusive approach to fundamental rights, the new Constitution omits those provisions which make the Charter a progressive human rights instrument.

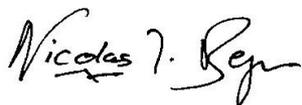
Once again, we believe that ensuring full compliance with European and international human rights standards is paramount, all the more so for the country currently holding the EU presidency, which should offer an example in protecting and enforcing human rights standards in the EU.

We therefore call on the Commission to closely monitor the constitutional reform in Hungary, carrying out a thorough assessment of the new Constitution's consistency with EU law and principles. We particularly urge the Commission further to investigate the Hungarian Constitution's compliance with the Treaty, the EU Charter of Fundamental Rights and EU anti-discrimination law and urge Hungary to ensure its legislation complies with international and European human rights standards.

Should the Commission find that it has not enough legal basis to intervene, Amnesty International hopes this will finally lead to a debate about how to close the glaring legal gap on human rights in the EU.

We look forward to hearing from you further on this issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Nicolas J. Beger". The signature is written in a cursive, flowing style.

Nicolas J. Beger
Director