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Ms Marija Pejčinović Burić
Secretary General of the Council of Europe

Permanent Representatives of the member States of the Council of Europe

20 May 2021

Dear Secretary General,

Dear Permanent Representatives,

HUMAN RIGHTS VIOLATIONS IN HUNGARY AHEAD OF ITS PRESIDENCY OF THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS

As Hungary assumes the Presidency of the Council of Europe's Committee of Ministers on 21 May 2021, Amnesty International would like to draw your attention to the human rights situation in this member State and raise concerns about a series of laws adopted in the last few years which curtail the enjoyment of human rights enshrined in the European Convention on Human Rights and Fundamental Freedoms. Such legislation has introduced new limits to the rights to family life, privacy, freedom of expression, assembly and association. Moreover, it has further restricted the independence of the judiciary and undermined the rule of law. Finally, the laws introduced in the last years fail to address gender-based discrimination and guarantee gender equality in the workplace, and fail to protect women's rights, the rights of the Roma, refugees and asylum-seekers. *(See the detailed list of laws and issues with reference to our publications in the annex on the 'Human Rights Situation in Hungary')*.

It is particularly alarming that Hungary's human rights record has significantly deteriorated during the last decade, most importantly when it comes to the treatment of groups such as LGBTI persons, asylum-seekers, refugees and homeless people, the intensification of shrinking space and the chilling effect on freedom of expression and association in the case of journalists, civil society organisations and members of the judiciary.

The important role that Hungary is about to assume as President of the Committee of Ministers comes with significant responsibilities to lead the Council of Europe's work for the defence and promotion of human rights, the rule of law and democracy across the continent. It is a role which must, inevitably, expose its bearer to greater scrutiny of its human rights record. We therefore urge the Secretary General and the Committee of Ministers to give these matters critical attention and call on Hungary to:

- Ratify the Istanbul Convention to effectively combat violence against women and domestic violence;
- Implement the binding judgments of the European Court of Human Rights, in particular *Baka v Hungary* and, in that respect, put in place measures that effectively ensure the independence and impartiality of the judiciary, including guarantees and safeguards protecting judges' freedom of expression and other rights from undue interference, and reduce the chilling effect amongst Hungarian judges;

- Protect and ensure the rights to freedom of association, peaceful assembly and freedom of expression, including by repealing laws stigmatizing and discriminating against NGOs and foreign-owned universities, as called for repeatedly by the Commissioner for Human Rights and the Venice Commission, and implement their recommendations;
- Combat widespread discrimination that some groups are facing, particularly LGBTI persons and Roma, as identified by Council of Europe monitoring bodies including the Advisory Committee of the Framework Convention for the Protection of National Minorities in its 2020 Opinion, and the European Commission against Racism and Intolerance, and refrain from the use of stigmatising and discriminatory political rhetoric, in particular against migrants and refugees.

We thank you for your attention and remain at your disposal for any further information.

Yours sincerely,



Nils Muižnieks
Europe Director
Amnesty International

HUMAN RIGHTS SITUATION IN HUNGARY

May 2021

1. LEGAL FRAMEWORK

- In March 2020, the Hungarian Parliament adopted the Bill on Protection against the Coronavirus (T/9790). It extended the government's power to rule by decree with very limited oversight by the Parliament and without providing a clear cut-off date. While the bill was replaced in mid-June, the government continued to uphold a set of transitional powers allowing restrictions of human rights, such as the right to freedom of peaceful assembly, and curtailing access to asylum. At the time of writing, the Government has proposed to extend the "state of danger" situation until late September 2021.
- The Fundamental Law of Hungary (Hungary's Constitution) declares that "the inviolable and inalienable fundamental rights of man must be respected" but amendments of the Fundamental Law in 2018 and 2020 restricted the rights of asylum seekers, homeless people and LGBTI people. The main stipulations of the June 2018 amendment were that alien populations cannot be settled in Hungary and that protection of Hungary's constitutional identity and Christian culture is the obligation of all organs of the state. It also banned homelessness by referring to the protection of the public use of public space, further stigmatizing homeless people while violating their human dignity. The December 2020 amendments of the Fundamental Law stipulate that children's gender identity is restricted to their sex assigned at birth, that their upbringing must reflect the values based on Hungary's constitutional identity and Christian culture and that family ties must be based on marriage, where "the mother is a woman, and the father is a man."
- A law in May 2020 banned legal gender recognition for transgender and intersex people. The Act XXX of 2020 requires the recording of the individual's sex assigned at birth in the national registry of birth, marriages and deaths, which cannot later be changed.
- An omnibus bill adopted in December 2020 stipulated that only married couples should be allowed to adopt children, while single people can adopt by special permission of the Minister without Portfolio for Family Affairs.
- The Parliament passed three laws in 2017 and 2018, the effect of which was to stigmatize NGOs critical towards the government, violating the right to freedom of association and expression. The first (LEXNGO) required NGOs receiving foreign funding (EU funding included) above a certain threshold to register as "foreign-funded" and disclose the personal data of some of their donors. The second legislative package criminalized the human rights work of those who support asylum-seekers, refugees and migrants, and the third imposed a "special immigration tax" of 25% on all funding on activities "supporting immigration" in Hungary. The Council of Europe's Venice Commission called on the government to withdraw all three laws as their provisions are discriminatory and arbitrary.¹
- A new Law of Higher Education (commonly referred to as Lex CEU) entered into force in 2017 which prevents foreign-owned universities to operate locally that do not provide courses in their country of origin or whose country of origin does not have a bilateral agreement with Hungary.
- Despite signing and accepting recommendations to ratify the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) during the 2nd Cycle of the UN Universal Periodic Review in 2016 and to update current legislation, Hungary has not done so. Rather, there is an increasingly hostile environment for women's rights activists and civil society organizations whose calls for ratification since 2014 have been dubbed "political whining". The Hungarian Parliament adopted a political declaration submitted by a governing party in May 2020 not to ratify the Convention on the grounds that it "supports illegal migration" and "prescribes dangerous gender ideologies".

¹ See Venice Commission Opinions: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)013-e);
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

2. DISCRIMINATION RELATED TO MARRIAGE AND FAMILY AND THE RIGHTS OF CHILDREN

- The ban on legal gender recognition makes it impossible to obtain documents that reflect the gender identity of transgender and intersex people. This particularly affects those individuals whose appearance, gender expression or gender identity may not match their sex assigned at birth on their official documents. Many communities – especially in smaller villages – are actively ostracizing their trans members. In March 2021, the Constitutional Court decided that the ban cannot be applied retroactively, but the law is still in effect and violates transgender and intersex people’s dignity and their rights to privacy and family life and their right to legal recognition of their gender based on self-determination.
- The omnibus bill adopted in December 2020 prevents single parents and LGBTI people from adopting children. Same-sex marriage is not legal in Hungary, and same-sex partners do not have adoption rights. Previously, LGBTI people were able to adopt children as single parents but with this recent amendment they have been excluded totally. The discriminatory new regulation also violates children’s rights to living and being brought up in a family, even in a single parent family.

3. FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

- The 2017 amendment of the National Higher Education Act (Lex CEU) targeted especially the Central European University (CEU) which was forced to leave the country and open a new campus in Austria. In November 2020, the Court of Justice of the European Union (CJEU) found that the law is contrary, among others, to the provisions of the Charter of Fundamental Rights of the EU relating to the right of academic freedom, the right to education and the freedom to conduct a business. Following the decision of the Court, a new bill has been submitted to the Hungarian Parliament in April 2021 amending the National Higher Education Act. The new proposed provisions retain basically the same conditions which forced CEU to leave in the first place.
- The adoption of the LEXNGO in 2017 legalized stigmatization of independent NGOs for the first time. The law severely restricted civic space and had a strong chilling effect on NGO activities. The CJEU in June 2020 ruled that Hungary had introduced unjustified restrictions on the freedom of movement of capital within the EU and amounted to unjustified interference with fundamental rights, including respect for private life, protection of personal data and freedom of association, as well a citizens’ right to participate in public life. Eleven months after the CJEU’s ruling, a new draft law was accepted by the Hungarian Parliament in May 2021 repealing the LEXNGO but proposing annual audits by the State Audit Office regarding finances of NGOs whose revenue is higher than appr. 55,000 EUR. The bill identifies those as civil society organizations “capable of influencing public life”. Potentially affected NGOs, among them Amnesty International Hungary, expressed their concerns since the proposal could lead to arbitrarily selective audits by the authority and impose an extra administrative burden on them.
- The LEXNGO 2018 criminalized a range of legitimate activities, including the provision of legal support to asylum-seekers, refugees and migrants. The criminalization of such activities is a direct assault on the work of civil society. After LEXNGO 2018 came into force, social service providers and organizations promoting the integration of asylum-seekers have lost up to two-thirds of their previous funding. Municipal institutions have also suspended the provision of services for refugees and asylum-seekers. An NGO was forced by these circumstances to change its name, stating that the word “migrant” made it difficult to operate. The LEXNGO 2018 is pending before the CJEU, a decision is expected to be made in 2021.²
- The freedom of media deteriorated significantly in the last decade. One of the latest significant examples of this negative trend was the mass resignation of the editorial team and nearly 100 staff members from Index, the country’s largest independent online news portal in July 2020, in response to the dismissal of its editor-in-chief. The editors had publicly announced that their independence was in danger following the takeover of the portal’s advertising branch by a media executive with close ties with the government.

² Advocate General’s Opinion in Case C-821/19 Commission v Hungary.

4. DISCRIMINATION AGAINST WOMEN

- Women continue to experience widespread gender-based discrimination in Hungary. Many government policies and official communication have actively reinforced gender stereotypes, reducing a women's role to raising children and caring for the family. The COVID-19 pandemic has further exacerbated gender inequality and discrimination.
- Gender-based discrimination in the workplace and labour market particularly affects pregnant women and women with young children wanting to return to work. The authorities have failed to ensure access to effective remedies for unlawful termination of employment.
- Despite legislation prohibiting gender-based discrimination, Hungary has not taken any effective measures to tackle the longstanding issue of the gender pay-gap in the workplace. The difference between the average monthly wage of men and women was 16% in 2020. The gender pay-gap results in inequality which has life-long effects and further marginalizes women.

5. DISCRIMINATION AGAINST ROMA

- The UN Committee on the Rights of the Child expressed serious concerns in March 2020 about the continuing segregation of Roma children in special education, the increased gap in attainment between Roma and non-Roma children, and the lack of data on Roma children in education.
- In January 2020, the government launched a co-ordinated communication and media campaign to discredit 63 Roma former elementary school students in the town of Gyöngyöspata who had successfully taken a case to court about segregated and lower quality education. Despite the government's campaign, the Curia ((the Supreme Court of Hungary) confirmed in May that the compensation they had been awarded had to be paid in full without delay.
- Discrimination of Roma has occurred also in the health system. For instance, the maternity ward in a hospital in the city of Miskolc discriminated against pregnant Roma women from disadvantaged and low-income backgrounds when it required birth companions to purchase and wear a "maternity garment" for hygiene reasons. This practice often resulted in Roma women being forced to give birth without the support of their companions. The Curia (the Supreme Court of Hungary) in its decision in May 2020 ordered the termination of the practice.

6. RIGHT TO ASYLUM

- Access to asylum was gradually curtailed in the last years. The latest measures introduced in June 2020 removed the possibility for asylum-seekers to submit their application for asylum in Hungary, instead requiring them to first submit a "declaration of intent" at selected embassies outside the country. By the end of 2020, only a handful of declarations were registered in the embassies, and one family was granted permission to enter Hungary to claim asylum.
- Those entering irregularly, mostly from Serbia, were expelled, often collectively. By the end of 2020, police pushbacks across the border fence exceeded 30,000 in breach of the obligation to individually assess the risk of *refoulement*, the forcible return of individuals to countries where they risk serious human rights violations. In December, the CJEU ruled that such forcible returns breached EU law.³ Frontex, the EU Agency responsible for border management, suspended its operations in Hungary following the ruling of the CJEU in January 2021.

³ See Court of Justice of the European Union PRESS RELEASE No 161/20 Luxembourg, 17 December 2020.

7. RULE OF LAW AND INDEPENDENCE OF THE JUDICIARY

- From 2012, under the judicial reform, the administration of Hungarian courts became centralized under the President of the newly established National Judiciary Office (NJO). The NJO President is elected by the Hungarian Parliament and the laws granted extensive powers to the NJO President over the court administration. The NJO President is the leader of the judicial administration and a key actor in providing the institutional guarantees of the right to a fair trial and other human rights. Although the European Commission, the Venice Commission and the Council of Europe's Commissioner for Human Rights repeatedly called upon the Hungarian Government to counterbalance the powers of the NJO President to appoint court leaders and other competences – for example by widening the competences of the most important body of judicial self-administration, the National Judicial Council, this has not happened yet to date.⁴
- In the framework of monitoring the execution of the judgment relating to the *Baka v. Hungary* case, in September 2019⁵ the Committee of Ministers of the Council of Europe noted “with grave concern” that the “chilling effect” on the freedom of expression of judges and court presidents “has not only not been addressed but rather aggravated”. They urged the authorities to provide information on the measures envisaged to counter this. In October 2020, the Committee of Ministers decided not to close the supervision of the *Baka* case, as it does not deem the judgment executed, and that the Government has not been able to dispel the concerns in relation to the freedom of expression of judges. The Committee invited the authorities to submit an updated action plan, including information on all these issues by 31 March 2021, at the latest. The Hungarian authorities have not yet complied with this request.
- The president of the Curia (the Supreme Court of Hungary) was elected by the Parliament in October 2020 with the help of ad hominem legislation and without any legal practice as a judge.
- The Integrity Policy, which had been issued by the previous NJO President, continues to be in effect and adversely impacts judges' right to freedom of expression. It prescribes how a judge may conduct any activities outside of their task of adjudication. The provisions on judges' potential involvement in political activities are unclear, therefore these provisions pave the way for arbitrary interpretation.

8. RELEVANT AI DOCUMENTS

1. [Amnesty International Annual Report on Hungary, 2020, March, 2021.](#)
2. [Living under the Sword of Damocles - The impact of the LexNGO on civil society in Hungary, April, 2021 .](#)
3. [Shrinking space for Human Rights – Amnesty International submission for the Universal Periodic Review, 39th Session of the UPR Working Group, 1-12 November, 2021, April, 2021.](#)
4. [Status of the Hungarian Judiciary – legal changes have to guarantee the independence of judiciary in Hungary, February, 2021.](#)
5. [Hungarian Parliament must reject amendments further undermining the rights of LGBTI people, November, 2020.](#)
6. [Europe: Policing the pandemic: Human rights violations in the enforcement of Covid-19 measures in Europe, June, 2020.](#)
7. [No working around it: Gender-based discrimination in Hungarian workplaces, June, 2020.](#)
8. [Hungarian NGOs contribute to the European Commission's second rule of law report, March, 2021.](#)
9. [Chilling effect on the freedom of expression on Hungarian judges remains, August, 2020.](#)
10. [The looming shadow of the Baka v. Hungary case – the government is still failing to guarantee the freedom of expression of judges, October, 2020.](#)

⁴ See Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012); CoE Commissioner for Human Rights Report following visit to Hungary from 4 to 8 February 2019; European Commission Recommendation for a Council Recommendation, COM(2019) 517 final, Para. 17 and Recommendation 4.

⁵H46-11, *Baka Group versus Hungary*, (23-25, September, 2019); Communication from NGOs (Amnesty International Hungary and the Hungarian Helsinki Committee) (20/07/2020) concerning the case of *Baka v. Hungary*.