



Viviane Reding

Commissioner for Justice Fundamental Rights and Citizenship
Vice President
European Commission

Neelie Kroes

Commissioner for Digital Agenda
Vice President
European Commission

Brussels, 13 January 2012
Our Ref: B1145

Dear Commissioners Reding and Kroes,

Hungary: Serious concerns over human rights impact of constitution and media laws

Amnesty International wishes to reiterate our concerns about the constitution and media laws, now in force in Hungary, which we previously raised in our letters and meetings in March and April 2011. We also wish to address concerns about the European Commission's weak response to serious fundamental rights concerns.

We note that in December 2011 Commissioner Reding expressed concerns over the retirement of judges and the independence of the Hungarian Parliamentary Commissioner for Data Protection. However, the European Commission has to date issued only a limited response to developments in Hungary regarding the new constitution and media laws, both of which may have serious implications for the exercise of human rights in Hungary. In the past year, the Commission took a wary approach to these legislative developments, arguing that various human rights concerns raised by the media laws and draft constitution fell outside the remit of EU law, and that it was too early to assess their implementation and effect under EU law. On 1 January 2012 the new constitution entered into force, while the media laws have now been in force for a year.

We urge the Commission to review Hungary's compliance with the EU Treaties, including the EU Charter for Fundamental Rights (Charter). Under the principle of the supremacy of EU law, where there is a conflict between national constitutional laws and the provisions of the EU Treaties or the Charter, EU law must always prevail.

We are aware of the steps the Commission has taken over the past month relating to economic governance and the judiciary in Hungary as affected by the new constitution. However, we remain deeply concerned about the wider impact these laws might have on human rights, as protected under the Charter and particularly Articles 2, 11 and 47, if they continue to be ignored.

Media laws

The new media laws which were adopted in Hungary in September and December 2010, and amended by the Parliament in March 2011,¹ introduced a single body which regulates all media sectors. Serious concerns were expressed immediately after the legislation was adopted, warning that concentrating powers over all types of media into a single body may have an adverse affect on the exercise of freedom of expression. These concerns grew during 2011. They included criticism that the concentration of powers over the licensing of broadcast media in the hands of an administrative body which lacks independence may lead to “arbitrary control over the tendering and licensing process”.² In December 2011, the National Media and Infocommunications Authority (Media Authority) decided not to grant a licence to an independent news radio station, Klubradio. This station is known for its public service-style programmes “including interactive phone-in debates, a unique forum where figures from a broad political spectrum can participate.”³ Its frequency has been allocated to a new media company, founded only in 2011. The Media Authority’s decision made it impossible for the station to operate and there is no possibility of an appeal under the current regulation. An NGO, Article 19, and other critics warned that the decision appeared to be politically motivated and that it represented another indication of the deterioration of media freedom and pluralism in Hungary since the adoption of media legislation.⁴

Owing to concerns over the Media Authority’s wide discretionary powers in conjunction with concerns over its independence, Article 19 and the Hungarian Civil Liberties Union (TASZ) have also challenged the provision which allows the Authority to introduce a five-year ban on companies from participating in future tender offers if sanctioned for a “gross breach” of broadcasting and licensing obligations. The determination of a “gross breach” is left to the Media Council.⁵

We urge the Commission to review the effects of the media legislation on the freedom of expression and information as laid out in Article 11 of the Charter.

The constitution

We are concerned that the constitution, in force as of 1 January this year, may, in practice, restrict internationally protected human rights, including the right to be protected from discrimination and the right to an effective remedy.

Article 21 of the Charter, that “[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited” [our emphasis].

The new Hungarian constitution (the *Fundamental Law*) led to the adoption of several ‘cardinal laws’ which raise concerns over possible discriminatory impact. In December 2011, the Law on the Protection of Families was adopted. In paragraph 7 it establishes that families are formed by a “relationship system establishing emotional and economic ties among natural persons that is based on the marriage of a *man and a woman*, or linear blood relationship, or guardianship” [our emphasis]. We are concerned that a restrictive understanding of the family as a unit between a man and woman may have a discriminatory effect by preventing courts from extending the institution to include same-sex couples.

1 The Hungarian Press and Media Act adopted in September 2010; the Act on Media Services and Mass Media adopted in December 2010.

2 “Hungarian Media Laws Q&A,” Article 19 and the Hungarian Civil Liberties Union (TASZ), August 2011, Available at: <http://www.article19.org/data/files/medialibrary/2714/11-09-01-REPORT-hungary.pdf>.

3 Hungary: ARTICLE 19 condemns Media Authority refusal of license to Klubrádió. Available at: *is another indication of the deterioration of media freedom and pluralism in Hungary since the ado*

4 Id.

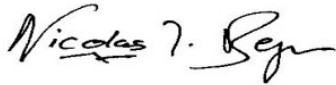
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Article 47 of the Charter guarantees "[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before." In November 2011, Hungary adopted a law on the Constitutional Court, which raises concerns over the accessibility of remedies in the form of individual complaints to that court. Under the law, citizens are entitled to turn to the Constitutional Court only by way of a constitutional complaint which would require them to have legal representation. "Moreover, the already ongoing procedures that have been launched through the provision *actio popularis* would be allegedly terminated, which will, according to the Hungarian Helsinki Committee, affect 1,600 pending cases of law review."

We urge the Commission to carry out and deliver without delay a full and comprehensive human rights-based assessment of the new Hungarian constitution and its subsequent legislation, and the media laws.

We also urge the Commission to take all available measures, including a full assessment of the possibility of infringement procedures as well as the possibility of using sanctions under Article 7 of the Treaty of the EU.

Yours sincerely,

A handwritten signature in black ink, reading "Nicolas J. Beger". The signature is written in a cursive style with a large, sweeping flourish at the end.

Dr. Nicolas J. Beger
Director