

SITUATION IN HUNGARY

1. Media law

The EP has harshly criticised the media law in its resolution of 10 March 2011 on media law in Hungary¹, on the basis of OSCE and Council of Europe Commissioner for Human Rights² criticism.

The Commission had raised with the Hungarian authorities 4 (minor) issues of conformity with EU law. The Hungarian authorities decided to review their laws so to bring them in conformity with EU law.

The Hungarian Constitutional Court struck down some parts of the Hungarian media law on 19 December 2011³. NGOs have welcomed the judgment but still considered that major problems remain and that the law should be further reviewed⁴.

Hundreds of workers have been fired from the public media including those that protested with a hunger strike against falsifying news coverage. Klubrádió, an opposition radio, was scrapped of its by the new media authority. Critics state that the media is being either controlled by the government or exercises self-censorship. Amnesty international⁵, Human Rights Watch⁶ and other NGOs have recently raised further concerns on media freedom and called the EU to act.

Commissioner Kroes expressed repeatedly her concern in 2012 and decided to set up a High Level Group on Media freedom and pluralism. During the EP hearing in LIBE on 9 February 2012, Commissioner Kroes called the Hungarian government to change its laws on the basis of the Council of Europe and OSCE requirements. Hungarian Minister Navracsics affirmed that Hungary would have looked at international bodies recommendations but that the Constitution would have not been changed. Commissioner Kroes stated that this was not what the Minister affirmed when they had met an hour before.

The LIBE committee has decided to draft a report on "EU Charter: Standard settings for Media Freedom across the EU" on 11/10/2011 under the authority of Renate Weber. The first exchange of views will take place on 20/21 March 2012 and the report is expected to be approved in plenary November.

Renate Weber and other ALDE MEPs have tabled a Written Question to the Commission on whether it is aware of any implementation by the HU authorities of the media law recommendations of the Council of Europe.

2. The Constitution

The EP addressed again the situation in Hungary by approving a resolution on 5 July 2011 on the Revised Hungarian Constitution⁷, where it called the Hungarian authorities to "address the issues and concerns raised by the Venice Commission and to implement its recommendations" and, in substance, to seek consensus; to make limited use of cardinal laws; to ensure non-discrimination; to avoid creating tensions with other countries, ref. Hungarians living abroad; to "reaffirm the independence of the judiciary by restoring the right of the Constitutional Court..., by revising the provision on the lower mandatory retirement age for judges and by guaranteeing explicitly the independent management of the judicial system"; to "ensure that the reorganisation

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN>

² <https://wcd.coe.int/ViewDoc.jsp?id=1751289>

³ "The Constitutional Court ruled the media law to be unconstitutional in four significant areas: 1. The Court excludes print media from the scope of the media law, effective on May 31st. 2. Effective immediately, rules that set the structure of the lack of real source-protection are annulled, taking into account the European Court of Human Rights' precedents. Now, instead of the journalists, authorities will have to prove public interest. 3. Effective immediately, the CC also terminated the National Media and Infocommunications Authority's license to obligate editors to provide data without pending proceedings and in order to initiate future proceedings. 4. The so-called 'Media Commissioner' is liquidated, effective May 31st, 2012", see HCLU press release.

⁴ <http://tasz.hu/en/political-freedoms/still-many-black-holes-media-law-constitutional-courts-intervention-welcomed-its>

⁵ http://www.amnesty.eu/content/assets/Doc2012/Letter_to_Reding_Kroes_Hungary_160112_Final.pdf

⁶ <http://www.hrw.org/news/2012/01/06/hungary-reverse-interference-courts-media>

⁷ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0315+0+DOC+XML+V0//EN>

of the system of parliamentary commissioners will not serve to water down the existing guarantees concerning the protection and promotion of rights in the areas of the protection of national minorities, the protection of personal data and the transparency of publicly relevant information, as well as the independence of the respective bodies responsible for these areas".

The EP based its resolution on the **Venice Commission** opinion on the Constitution, which raised a long series of concerns⁸ and complemented another opinion made on the basis of some minor questions asked by the Hungarian authorities to the Venice Commission.

The **Secretary General of the Council of Europe** wrote a letter to the Hungarian authorities on 16 December⁹ raising a series of concerns, notably on the issue of "respecting human rights, democracy and rule of law both in the course of the legislative process and in its results, but respecting the underlying principles of democracy, the "checks and balances" ensured through the proper functioning of independent institutions also".

The entry into force of the Constitution and of a series of "cardinal"-constitutional laws led to **mass demonstrations** of the beginning of January in Hungary.

During the EP hearing in LIBE on 9 February 2012, Commissioner Kroes had a tense exchange of views with Tibor Navracsics, the Hungarian deputy prime minister, when she asked him if the HU government would have changed its laws on the basis of the Council of Europe and OSCE requirements, including the media law. The Minister affirmed that this would have not applied to the Constitution and Commissioner Kroes stated that this was not what the Minister affirmed when they had met an hour before.

3. The Commission infringement procedures

Commissioner Reding wrote a letter to the Hungarian authorities on 12 Dec 2011 to raise concerns on the issue of the age of retirement of judges and on the independence of the Data Protection Supervisor¹⁰. An annex to the letter also raised the issues of the President of the new National Judicial Office and the transformation of the Supreme Court into Curia¹¹. Viviane Reding asked for observations before 16 Dec 2011 and called the HU authorities that "no measure is implemented until doubts about their compliance with EU law have been removed". The authorities answered but at the same time disregarded the Commission request to "freeze" these measures¹². Other letters were sent by Rehn and Barroso¹³ on the issue of the independence of the Central Bank of Hungary.

On 17 January 2012, the **Commission** decided to open "accelerated" infringement proceedings against Hungary and gave a 1 month deadline to Hungary to respond to 3 letters of formal notice on the age of retirement of judges, on the independence of the data protection authority and that of the Central Bank. At the same time, the Commission sent a wider information request to the Hungarian authorities on the issue of the independence of the judiciary. The Commission stated that "we hoped that the Hungarian authorities would make the changes necessary to guarantee respect of EU law. This has not been the case so far, therefore we have decided to begin infringement proceedings"¹⁴.

*On 7 March, the **Commission** decided to to send Hungary two reasoned opinions on the independence of the data protection authority and measures regarding the retirement age of judges and two administrative letters seeking further clarifications regarding the independence of the judiciary and the independence of the central bank. The Hungarian authorities have one month to bring in the requested changes.*

The different issues are examined with more depth below.

⁸ [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)016-E.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)016-E.pdf)

⁹ http://www.coe.int/t/dc/press/source/20120111_letter_hungary.pdf

¹⁰ <http://www.statewatch.org/news/2012/jan/eu-com-hungary-reding-letter-to-pm.pdf>

¹¹ <http://www.statewatch.org/news/2012/jan/eu-com-hungary-reding-letter-to-pm-annex.pdf>

¹² The EP had called for such "freezing mechanism" for contested MSs laws in the Gal report on fundamental rights in the EU, thanks to the adoption of ALDE amendments on the issue.

¹³ see leaked letter at <http://thecontrarianhungarian.wordpress.com/2011/12/21/barrosos-letter-to-viktor-orban/>

¹⁴ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/24> and for more details <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/24>

3.1. The Judiciary: the retirement age of judges and the independence of the judiciary

The EP had expressed its concerns on the independence of the judiciary already in its resolution on the Constitution (see above). The problematic issues are the following:

- the removal of the head of the Supreme Court and the establishment of the National Judicial Office: the Hungarian Supreme Court has been transformed to the so called Curia, which also allowed the removal of the head of the former Supreme Court before the end of his mandate. The National Council of Judges has been dismissed and replaced by the new National Judicial Office, hereby allowing the removal of its head before the end of the mandate. A close friend of Viktor Orban, the wife of József Szájer (Fidesz MEP), has been appointed as president of the new organisation. The administration of the courts has become fully centralised. The president can appoint the judges and may chose the court to proceed in a given case.
- the retirement age of judges: the retirement age of judges has been reduced from 70 to 62 years, which would lead to the anticipated retirement of 274 judges and public prosecutors in a very short notice. This affects a significant number of the judges serving at higher courts and the majority of the leaders of the higher courts. The new judges to replace those retired will be appointed by the Head of the National Judicial Office.
- Appointment of courts by the chief prosecutor: the chief prosecutor, also a Fidesz appointee, has the right to chose Court just as the head of the National Judicial Office. This was previously declared by the Constitutional Court as unconstitutional and against international agreements. The ruling coalition introduced again the provisions but inserting it to the interim provisions to the new Hungarian Fundamental Law that the Constitutional Court cannot review.

NGOs have raised serious concerns in the past (see AI and HRW press releases and letters cited above).

The **Commission**, pushed by the President of the Finnish Constitutional Court, as well as by other Member States' Constitutional Courts, analyzed these changes and decided to open infringement proceedings on the issue of the retirement age for judges (as this could amount to a discrimination prohibited by the anti-discrimination directive 2000/78/EC) and art. 47 of the Charter of Fundamental Rights, as these reforms might have an impact on the Right to an effective remedy and to a fair trial. It also announced that it is "asking Hungary for more information regarding new legislation on the organisation of the courts"¹⁵.

The HU authorities replied on 17 February 2012. The Commission analyzed it and concluded that "Hungary has failed to provide an objective justification" for such change: "Hungary only proposed a clause that would allow to extend in individual cases the retirement age of a judge to beyond 62 if the judge passes a review by the National Judicial Council of his 'professional and medical aptitude'. This proposal does not comply with EU law because such extensions may be arbitrary, apply only in individual cases and they do not remove the Commission's main concern: the difference in treatment of judges with other professions", stated the Commission¹⁶.

On the basis of the above reasons, on 7 March 2012 the Commission decided to send a reasoned opinion – the second stage under EU infringement proceedings after which the matter may be referred to the Court of Justice of the European Union – on measures regarding the retirement age of judges and an administrative letter seeking further clarifications regarding the independence of the judiciary (the letter asks explanations on the issue of "the powers attributed to the President of the National Judicial Office, particularly the President's powers to designate a court in a given case and the transfer of judges without consent. The Commission also raised concerns with regard to potentially systemic deficiencies in Hungary's justice system.

¹⁵ "...the president of a new National Judicial Office concentrates powers concerning the operational management of the courts, human resources, budget and allocation of cases. There is no longer collegial decision-making of the operational management of the courts or other appropriate safeguards. One person alone now makes all important decision on the judiciary, including as regards the appointment of judges. In addition, the mandate of the former president of the Supreme Court, who was elected for six years in June 2009, was prematurely terminated at the end of 2011. In contrast, other former judges of the Supreme Court continue their mandate as judges of the new Curia, which has replaced the Supreme Court. The Commission expects detailed answers of the Hungarian authorities to be able to decide whether further infringement proceedings are needed".

¹⁶

Hungary is reminded that national courts act as "Union courts" whenever they apply EU law, and therefore need to satisfy minimum standards of independence and effective judicial redress"). Due to the urgency of the matter (the various laws in question are already in force), the Commission has accelerated the deadline for Hungary to respond to the reasoned opinions and administrative letters to one month instead of the normal two-month period.

3.2. The Data Protection Supervisor

The EP had already raised concerns on this issue in its resolution on the Constitution (see above).

The Freedom of Information Act has abolished the Parliamentary Commissioner for Data Protection and established an administrative body / agency, the National Agency for Data Protection. The former Data Protection Commissioner was forced to resign before the end of his term in 2014.

The **Commission** initially had 3 concerns about the independence of the data protection authority. Under the EU's Data Protection Directive ([Directive 95/46/EC](#)), Member States: 1. have to establish a supervisory body, 2. which acts in complete independence, 3. to monitor the application of the Directive, which let it to open infringement proceedings, as the "new rules also create the possibility that the prime minister and president could dismiss the new supervisor on arbitrary grounds", which is in contradiction with Article 16 of the TFEU and Article 8 of the Charter of Fundamental Rights, as well as the EU directive on data protection (Directive 95/46/EC), as it infringes the independence of the DPA.

*The **HU authorities** replied on 17 February and the **Commission** took note of the fact that "Hungary has satisfied one of the Commission's concerns by showing that there was proper consultation of the 'former' Data Protection Commissioner before the legislation was adopted". It remained concerned about the premature termination of the Data Protection Commissioner's six-year term, as "Hungary has not provided any valid arguments as to why there are no interim measures allowing the former Data Protection Commissioner to stay in office until the end of his term, which ends in 2014. This is a violation of the personal independence of the data protection authority", as well as for "the possibility for the President – following a proposal from the Prime Minister – to dismiss the new supervisor on too broad and vaguely defined grounds. Hungary has proposed measures to address this concern, but they have not been formally adopted"¹⁷.*

*On the basis of these reasons, on 7 March 2012 the **Commission** decided to send a reasoned opinion – the second stage under EU infringement proceedings after which the matter may be referred to the Court of Justice of the European Union – on the independence of the data protection authority. Due to the urgency of the matter (the various laws in question are already in force), the Commission has accelerated the deadline for Hungary to respond to the reasoned opinions and administrative letters to one month instead of the normal two-month period.*

3.3. The Central Bank

The European Central Bank expressed concern on 22 Dec in a press release about the independence of the central bank of Hungary¹⁸. It criticised the fact that the government has failed to consult the ECB on the draft constitutional law allowing the legislator to merge the MNB with the Financial Supervisory Authority and create a new institution. It stated quite strongly: "the Governing Council of the ECB has requested the Hungarian authorities to bring their consultation practice into line with the requirements of European Union law and to respect the obligation to consult the ECB. Three major revisions of the central bank law in 18 months are incompatible with the principle of legal certainty". The ECB expressed concerns on the revised draft law on the central bank of Hungary as its provisions could undermine the central bank's independence and the personal independence of the central bank's governor.

The **Commission**, after having raised the issue with the HU authorities via letters of Barroso Rehn and advising the government to withdraw them¹⁹, decided to open an infringement proceedings on this for breaches contained in the Constitution and in the law of Article 130 TFEU stipulating full independence of the central bank and of Article 127(4) TFEU requiring consultation with the ECB "on any draft legislative provision in its field of competence".

The HU government replied on 17 February. The Commission analyzed it and took note of the commitments of the government to "settle some of the issues". The Commission stated though that it "needs further clarification from the Hungarian authorities", calling it "to communicate the draft legislation substantiating their commitments at the same time as they consult with the European Central Bank. Hungary is also invited to confirm that it stops the practice of systematically issuing official press releases criticising monetary policy decisions of the Hungarian Central Bank. Hungary is further asked to inform the Commission and the ECB on the new procedural steps it intends to take in order to consult the ECB in a systematic and timely way on any draft legislative provision in its field of competence, including the forthcoming draft law. On the salary scheme applied to the Governor of the Central Bank, the information obtained by the Commission points to the wage regime being targeted at the Governor as a tool to exercise pressure and a breach of independence of the Central Bank. The Commission invited the Hungarian authorities to clarify their statements on the effects of the salary scheme applied to the public sector"²⁰.

On the basis of the abovementioned reasons, on 7 March 2012 the Commission decided not to send a reasoned opinion on the issue and stated that the "promise to change Hungary's legislation affecting the independence of the central bank addresses some of the key concerns of the Commission. Now Hungary needs to flesh out these commitments and provide evidence through new legislation". The Commission decided to send an administrative letter seeking further clarifications regarding the independence of the central bank.

4. Other issues

- The Church law : Hungary has approved a law on the Churches that has been widely criticised. A first law was adopted in July 2011, but in December the Constitutional Court struck it down on procedural grounds, without reviewing its contents. An even stricter version of the law was passed again and entered into force on 1.1.2012. It recognises 14 Christian churches and Jewish groups and their privileges, subjecting the others to a procedure that requires a 2/3 majority in the Hungarian Parliament to allow for the recognition.

The Council of Europe Commissioner for human rights wrote on 16 December a letter to the Hungarian authorities expressing concern²¹. The Hungarian authorities replied²² but the Commissioner remained worried and stated "The Parliament will in future decide on the recognition of an applicant denomination. Such a procedure, which tasks a political body to assess the legitimacy of religious beliefs, is not compatible with the State's duty of neutrality and impartiality".

On 27 February 2012 the list of churches formally recognized enlarged from 14 to 32 with a 2/3 majority vote in Parliament. Among the newly recognized ones are five Buddhist groups, Methodists, Jehovah's Witnesses, the Church of Latter Day Saints and two Islamic communities., while the requests of 66 other religious groups were rejected, including all those backed by the opposition parties, which led them to boycott the vote²³.

¹⁹ Barroso stated in its letter: "I agree with you that we should always take into account a wider context of the recent financial turbulences in Europe, but the origin of Hungary's economic and financial troubles predominantly lies in the domestic policy decisions and measures".

²⁰

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/165&format=HTML&aged=0&language=EN&guilanguage=en>

²¹ <https://wcd.coe.int/ViewBlob.jsp?id=1892969&SourceFile=1&BlobId=2006680&DocId=1842988>

²²

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2006698&SecMode=1&DocId=1842996&Usage=2>

²³

http://www.google.com/hostednews/ap/article/ALeqM5iRKPGYnqWj0dW_keEUfpQPmPmOg?docId=a5f89986b7e245cb8041c027846f63c6

- The new electoral law and the requirements of free and fair elections: a new electoral law has been approved on 23 Dec 2011 which has been contested by opposition parties for being designed to serve Fidesz's own party interests. It notably introduces a single round of elections, rearranges the electoral districts and gives a premium to the winner. The newly introduced voting rights for Hungarians living abroad is also criticised for being a way for Fidesz to ensure a strengthening of its electoral base.
- The cardinal law on the tax system: the government has used a "cardinal law" to cement its decision to introduce a flat income tax of 16%. This will make it almost impossible for the next Parliament to change it, as it has been in substance "constitutionalized". **Barroso** asked in his letter to Orban to withdraw the "financial stability law". The **European Court of Human Rights** in Strasbourg has been submerged with almost 8.000 appeals of Hungarian citizens against the flat income tax and reform of the pension scheme²⁴.
- Criminalisation of the opposition party MSZP: the interim provisions to the new Hungarian Constitution declare that the Hungarian Socialist Party is the legal successor of the Hungarian Socialist Workers' Party, culpable and punishable for the criminal acts committed by the latter under the communist regime. This might lead to the criminalization and ruling out of the party at upcoming elections.
- The law on the protection of families: the Law on the Protection of Families states 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". NGOs, including **Amnesty International**, have expressed concerns "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"²⁵.
- The criminalization of homeless persons: Homeless persons in Hungary have been outlawed since 1 Dec 2011: after a first warning, homeless persons sleeping in the streets will be fined 445 Euros or imprisoned. **ALDE** has tabled an OQ on the issue to the Commission and the Council.
- Asylum: *Sophie In't Veld* has tabled an ALDE/LIBE co-signed Written Question on the issue of the rising number of Hungarian citizens asking for asylum in Canada, with a high number of Roma among them. Apparently also *Viktoria Mohacsi*, former ALDE MEP from Hungary, has also asked for asylum to Canada (on the internet there are some news about this, it seems it was for personal and political reasons).

5. EP and CoE follow up

At the beginning of 2012, following the entry into force of the Constitution, ALDE requested the urgent application of art. 7.1 TEU on the "risk of a serious breach by a Member State of the values referred to in Article 2", that is to say democracy, rule of law, fundamental rights and equality²⁶. The LIBE EP committee coordinators examined since January the ALDE request, but EPP opposed and SD kept asking for a postponement of the decision.

*To overcome the stalemate and get a formal mandate from plenary, the EP adopted a **plenary resolution on the recent developments** on 16 February 2012²⁷. The resolution instructed at its point par. 6 "the Committee on Civil Liberties, Justice and Home Affairs, in cooperation with the European Commission, the Council of Europe and the Venice Commission, to follow up the issue of whether and how the recommendations of the Commission and the European Parliament set out in point 4 of this resolution have been implemented and to present its findings in a report". The resolution also instructed "the Conference of*

²⁴ <http://www.euractiv.com/future-eu/human-rights-court-inundated-hungary-complaints-news-510155>

²⁵ http://www.amnesty.eu/content/assets/Doc2012/Letter_to_Reding_Kroes_Hungary_160112_Final.pdf

²⁶ The procedure art. 7.1 can be started by the Commission, 1/3 of the MSs, the EP; LIBE is the competent committee ; it shall draft a "specific report" of initiative and on this basis the EP votes a "reasoned proposal calling on the Council to act pursuant to Article 7(1) of the Treaty on European Union"; the EP shall vote by a *two-thirds majority of the votes cast, constituting a majority of Parliament's component Members*; the Council, acting by a majority of 4/5 of its members, hears the MS in question and may address recommendations to it and with the consent of the EP determines a clear risk of a serious breach by a MS of the values referred to in Article 2.

²⁷ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0053&language=EN&ring=B7-2012-0095>

Presidents, in the light of the report described in point 6, to consider whether to activate necessary measures, including measures pursuant to Article 74e of the Rules of Procedure and Article 7(1) TEU".

This led LIBE to finally decide on 28 February to draft a report and Greens secured it (Rui Tavares, Greens/PT). The timeline for the report is still to be decided. LIBE will check if art. 7 TUE is respected by Hungary on a series of issues, among which those highlighted in the resolution. It will be then for the CoPs to take the final decision. LIBE will work closely with the Commission and the Venice Commission and the Council of Europe in general, as well as with OSCE and NGOs.

*The **Venice commission** has visited Hungary on 20/21 February and will adopt a first opinion during its session of 16-17 March on the laws on judiciary and freedom of religion. A full analysis on 8 different points will be adopted in June - including on Freedom of Information, the Constitutional Court, Prosecution, Nationalities and Family Protection, independence of the judiciary, freedom of religion and parliamentary elections.*

9.3.2012 OM