

TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Hungary, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Hungary, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

HUNGARY REVIEW

Justice System

➤ *Independence*

In its 2018 concluding observations, the UN Human Rights Committee expressed concern about the provisions of the new Constitutional Court Act, which weakens judges' security of tenure and increases the influence of the Government over the composition and operation of the Constitutional Court by changing the judicial appointment procedure, the number of judges in the Court and their retirement age, and by transferring administrative authority over the judicial system from the National Judicial Council to the National Judicial Office. In addition, the Committee noted with concern the premature termination of the mandate of the former President of the Supreme Court, Judge Baka, allegedly for having criticized reforms of the judiciary. It was also concerned about the limitation of the Constitutional Court's competence and powers to review legislation impinging on budgetary matters ([CCPR/C/HUN/CO/6](#), para 11).

In its 2018 concluding observations, the UN Human Rights Committee raised concern about information suggesting that indigent defendants receive a lower quality of legal representation. It noted the information provided by Hungary according to which the new 2018 Code of Criminal Procedure provides for higher standards of notification to lawyers representing arrested persons. But it remained concern about some provisions of the law,

including a very short notification time to lawyers before court hearings ([CCPR/C/HUN/CO/6](#), para 31).

➤ ***Quality of justice***

In May 2020, the UN Special Rapporteur on the human rights of migrants welcomed the closure of the transit zones in Hungary, where migrants and asylum seekers used to be automatically and immediately detained during their asylum procedure. After his visit to Hungary in 2019, the Special Rapporteur had expressed deep concern about the limited access to legal aid and the lack of substantive judicial review on the lawfulness of the detention and the asylum decision. Similar concerns had been shared previously by other human rights mechanisms (e.g. the UN Committee on Elimination of Racial discrimination, ([CERD/C/HUN/CO/18-25](#) para 22); the UN Working Group on Arbitrary Detention, (available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23879&LangID=E>) as well as the UN Human Rights Office, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24551&LangID=E>).

In its 2020 concluding observations, the UN Committee on the Rights of the Child urged Hungary to ensure access to judicial remedies and redress for children with disabilities and access to independent lawyers and human rights defenders for the provision of legal aid and counselling. It also urged the country to strengthen the independent monitoring of institutions and to ensure that reporting of cases of violence, abuse and neglect of children with disabilities be mandatory for all persons working with them. The Committee further recommended that all offences under the Optional Protocol on the sale of children, child prostitution and child pornography be promptly investigated and that perpetrators are prosecuted and duly sanctioned ([CRC/C/HUN/CO/6](#), para 29 and 42(f)).

Following an inquiry procedure, the UN Committee on the Rights of Persons with Disabilities in 2020 concluded that Hungary violates the right to equal recognition before the law. The Civil Code allows the restriction of the capacity to act on the basis of impairment, judicial procedures rarely lead to restoring the capacity to act restored and the Constitution permits the disenfranchisement of persons with disabilities. ([CRPD/C/HUN/IR/1](#) para 99).

In its 2019 concluding observations, the UN Committee on Elimination of Racial discrimination expressed concern at the lack of detailed information on training programmes for judges, prosecutors, lawyers and State and public officials on the prevention of racial discrimination and on the rights enshrined in the International Convention on the Elimination of Racial Discrimination ([CERD/C/HUN/CO/18-25](#), para 26).

In its 2018 concluding observations, the UN Human Rights Committee raised concern about reports that domestic violence continues to be a persistent and underreported problem, that the police response to cases of domestic violence and the mechanisms to protect and support victims are inadequate and that access to shelters remains insufficient. The Committee recommended that Hungary ensure that police officers, prosecutors and judges receive appropriate training to deal effectively with cases of domestic violence. Hungary should also strengthen its legal framework and ensure that cases of domestic violence are reported, recorded and thoroughly investigated, that perpetrators are prosecuted and

punished with appropriate sanctions and that victims have access to effective remedies and means of protection ([CCPR/C/HUN/CO/6](#), para 25 and 26).

➤ ***Efficiency of the justice system***

In its 2018 concluding observations, the UN Human Rights Committee expressed concern about the reported absence of a defined legal limit on the length of pretrial detention and about the excessive use of pretrial detention during the investigation phase, including for juveniles ([CCPR/C/HUN/CO/6](#) para 37).

➤ ***Other***

In its 2020 concluding observations, the UN Committee on the Rights of the Child welcomed the entry into force of the 2018 Code of Criminal Procedure with enhanced safeguards for children's rights. It recalled its recommendations to Hungary to bring its child justice system fully into line with the Convention on the Rights of the Child and to ensure, among other things, that child victims and witnesses of crime have access to adequate procedures to seek compensation for damages and adequate support, irrespective of whether they assist with police investigations, prosecutions or trials; that the practice of sentencing children to prison terms for petty crimes is abolished; non-judicial measures and non-custodial sentences are promoted; and that pretrial detention is regularly and judicially reviewed ([CRC/C/HUN/CO/6](#), para 40 and 41).

Various UN Human Rights Mechanisms have raised serious concerns at reports of hate speech, hate crimes and discriminatory behaviour by the police in Hungary, targeting in particular migrants, refugees, asylum seekers, Roma and other minorities. In 2018, the UN Human Rights Committee was concerned over allegations of low numbers of registered hate crimes due to the police failing to investigate and prosecute credible claims ([CRC/C/HUN/CO/6](#), para 17). In 2019, the UN Committee on Elimination of Racial Discrimination urged Hungary to effectively identify, register, investigate and prosecute cases of racist hate speech or incitement to racial hatred, sanction those responsible, including politicians and media officials. In addition, the Committee raised concerns about the lack of clarity on the criteria for the imposition of penalties for perpetrators of hate crimes and other measures for the protection of vulnerable groups; about the improper classification and recording of cases of hate crime and the lack of proper investigations leading to a lack of accountability for the perpetrators and by reports that the hate crime provisions are applied more frequently to protect the majority rather than ethnic minority groups, and more severe punishments are applied in cases where the offenders belong to ethnic minority groups ([CERD/C/HUN/CO/18-25](#), para 14, 16, 17). Moreover, the Human Rights Committee in its 2018 concluding observations urged Hungary to ensure the effective identification, recording, investigation, prosecution and punishment of acts of violence motivated by the sexual orientation or gender identity of the victims ([CRC/C/HUN/CO/6](#), para 20).

Anti-corruption framework

➤ *Prevention*

In 2018, the UN Special Rapporteur on the independence of judges and lawyers initiated a dialogue on the legislative package on administrative courts. In his communication, the Special Rapporteur referred to the Administrative Procedural Act and the Administrative Court Procedural Act. Allegedly, the two bills were submitted to the Parliament without any meaningful consultation with the judiciary and civil society organisations. The Government posted the two bills in a Government website only on 25 October 2018, and the general public was given only three working days to provide comments. As a result, only one civil society organisation provided comments on the bills which were not published and disseminated by the Government, despite a legal obligation to do so. As to the involvement of the opposition parties in discussions concerning the development of a new administrative justice system, the SR referred to a report that on 5 November 2018, the Ministry of Justice invited political parties to a public consultation on the administrative reform although none of the substantive comments were included in final package ([HUN 8/2018](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).

Media pluralism

➤ *Media authorities and bodies*

In its 2018 concluding observations, the UN Human Rights Committee raised concern that Hungary's media laws and practices restrict freedom of opinion and expression and that, following successive changes in the law, the current legislative framework does not fully provide for an uncensored and unhindered press. The Committee noted with concern that the Media Council and the National Media and Infocommunications Authority lack sufficient independence to perform their functions and have excessively broad regulatory and sanctioning powers. It called on Hungary to ensure the existence of truly independent media and media-regulating bodies, and an enabling environment for their operation, free from undue governmental influence or interference ([CCPR/C/HUN/CO/6](#), para 57, 58).

Other institutional issues related to checks and balances

➤ *The process for preparing and enacting laws*

In its 2018 concluding observations, the UN Human Rights Committee raised concern about the process by which legislation has been adopted and about the negative impact of some of the resulting legislative provisions on the promotion and protection of human rights in Hungary. In particular, concerns were expressed at reports of insufficient consultation with opposition politicians, the speed at which the legislative process is often conducted, especially when initiated by committees and individual lawmakers, and the failure to ensure the transparency of draft legislation or to allow sufficient time for deliberation, public consultation and impact assessment. The Committee was also concerned about the practice of introducing substantive legislative amendments after the end of parliamentary

deliberation, making use of a special measure that is intended only for the review of technical or inconsistent provisions ([CCPR/C/HUN/CO/6](#), para 5).

In its 2018 concluding observations, the UN Human Rights Committee expressed concern about the level of protection afforded in law and in practice to fundamental rights in Hungary, as the Fundamental Law had been subject to frequent amendments, often in relation to laws that the Constitutional Court had earlier ruled unconstitutional. The Committee noted that the institution of *actio popularis* had been abolished in the new Constitution, and was concerned that the constitutional complaints procedure afforded more limited access to the Constitutional Court, did not provide for a time limit for the exercise of constitutional review and did not have a suspensive effect on legislation being challenged. The Committee was also concerned about the use of cardinal laws that shield governmental policies from change by an ordinary majority in the parliament and about the limited information provided concerning the application of, or reference to, the International Covenant on Civil and Political Rights by the Supreme Court and the Constitutional Court ([CCPR/C/HUN/CO/6](#), para 5).

In April and December 2020, several UN Special Procedures, including the UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, urged Hungary to reconsider then proposed legislation, including an amendment to the constitution, undermining LGBTI equal rights. The Special Procedures expressed concern that the draft legislation had been proposed amid the COVID-19 pandemic, called on Hungary not to use the emergency context to discriminate against persons, communities or populations ([OL HUN 1/2020](#); [OL HUN 3/2020](#); see also: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25844&LangID=E>).

➤ ***Independent authorities***

In 2020, the UN Committee on the Rights of the Child recommended Hungary to ensure that the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, within the Office of the Commissioner for Fundamental Rights, has adequate resources to conduct regular monitoring visits to places where children are, or may be, detained ([CRC/C/HUN/CO/6](#), para 12).

In raising concerns about the excessive use of force, including ill-treatment and torture, by law enforcement officials at the time of arrest and during interrogations, and about the very low number of prosecutions and convictions in such cases, the UN Human Rights Committee in 2018 urged Hungary to take appropriate measures to strengthen the Independent Police Complaints Board, to expand its investigatory powers and to ensure its independence in carrying out investigations of alleged misconduct by police officers ([CCPR/C/HUN/CO/6](#), para 31).

➤ ***The enabling framework for civil society***

In its 2018 concluding observations, the UN Human Rights Committee raised concern about unreasonable, burdensome and restrictive conditions imposed on some non-governmental organizations (NGOs) receiving foreign funding under Act LXXVI of 2017 on the

Transparency of Organizations Supported from Abroad, including the requirement that certain NGOs should register as “foreign-supported organizations” and publicly identify their foreign supporters. It raised alarm over the introduction of the “Stop-Soros” package (T/19776, T/19775 and T/19774), imposing serious restrictions on the operations of civil society organizations (CSOs) and of critics of Hungary’s immigration policy ([CCPR/C/HUN/CO/6](#), para 53, 55). In his global update to the Human Rights Council, the High Commissioner for Human Rights expressed concern about the package and additional laws imposing punitive taxes on funding from abroad.

(<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772>).

Several Special Procedures mandate-holders initiated a dialogue with the Government citing concerns that the legislation and the various attacks on civil society, migrants, refugees and asylum seekers ran counter to Hungary’s international and EU obligations.

([HUN 7/2018](#); also

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23533&LangID=E>).

In 2020, the UN Committee on the Rights of the Child urged Hungary to ensure that NGOs can conduct their activities unimpeded, including on detention, asylum and migration issues, in an environment conducive to human rights. It recommended Hungary strengthen its collaboration with children’s rights NGOs ([CRC/C/HUN/CO/6](#), para 14). In 2019 the UN Committee on Elimination of Racial Discrimination recommended Hungary to continue consulting and increasing its dialogue with human rights CSOs, in particular those working to combat racial discrimination. Deep concerns were also expressed at the presence and operation of organizations promoting racial hatred in Hungary ([CERD/C/HUN/CO/18-25](#), para 18, 32).

In his 2018 report on ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights’, the UN Secretary-General noted that two organizations that participated in Hungary’s 2018 review by the Human Rights Committee, the Hungarian Helsinki Committee and Amnesty International Hungary, had been targeted, at least in part, for their advocacy on migrants’ rights at the UN ([A/HRC/39/41](#), para 47-49; para 51-59 of Annex I). Hungary was again included in the 2019 reprisals’ report, which noted that legislative initiatives and related stigmatizing public discourse had been reported as intimidating and deterring civil society from cooperating with the UN, resulting in self-censorship and affecting research, advocacy and informed reporting in some cases ([A/HRC/42/30](#), para 57; para 47-52 of Annex I). Follow-up information was included in the 2020 report ([A/HRC/45/36](#), para 68-71 of Annex II).