



Hungarian Helsinki Committee

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Mr. Clément Nyaletsossi Voule

UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Subject: input for the Special Rapporteur on the rights to freedom of peaceful assembly and of association for his report to be presented at the 47th session of the Human Rights Council

Dear Mr. Voule,

Please find below the **submission of the Hungarian Helsinki Committee (HHC)** to the call for input for the report to be presented at the 47th session of the Human Rights Council **regarding the situation of the right to freedom of peaceful assembly and association in Hungary**. The HHC is an independent human rights watchdog organisation, working towards defending human rights and the rule of law in Hungary, having significant experience and a unique expertise in the field of human rights, including the right to peaceful assembly. Relying on its litigation practice before domestic and international courts, the HHC offers legal aid to organisers and participants of public demonstrations when they face legal difficulties. As a human rights NGO trying to hold the government accountable for its obligations concerning fundamental rights, democracy and the rule of law, the HHC has a direct experience regarding the state of the freedom of association in Hungary.

1. THE ROLE OF LAWYERS IN THE HUNGARIAN CONTEXT

The right to peaceful assembly and association lies at the heart of the **space for civil society that has shrunk alarmingly** in the past decade of building an illiberal state in Hungary.¹ Particular challenges of most recent years include the **radical transformation of the legislative framework** by the introduction of new laws and overall reforms. While the adoption of a New Assembly Act² in 2018 significantly reshaped the legal framework of the right to peaceful assembly granting more discretionary power to authorities to restrict assemblies, the freedom of association was curbed by the adoption of a

¹ See more on the Hungarian context of dismantling the rule of law: https://www.helsinki.hu/wp-content/uploads/HHC_State_of_RoL_in_Hungary_2020.pdf

² Act LV of 2018 on the Right to Assembly (hereinafter: **New Assembly Act**) replaced the Old Assembly Act with effect of 1 October 2018. See a rights-based analysis of the New Assembly Act as applied in practice here: <https://www.helsinki.hu/en/research-paper-on-the-new-hungarian-assembly-law-as-applied-in-practice/>

Russian-style foreign agent law³ in 2017 aimed at **stigmatising and discrediting independent civil society organisations** receiving funds from abroad. Systemic violations of the rule of law and fundamental rights were carried out behind the smoke screen of government directed **hate propaganda against civil society organisations and vulnerable minorities**,⁴ such as migrants, Roma or LGBTQI persons. In this context, where **violations of rights were translated into laws** (and sometimes, constitutional norms), the greatest challenges lawyers face are the decreasing possibilities to combat violations at the domestic level and the necessity to rely on the protection of international courts.

2. RIGHT TO PEACEFUL ASSEMBLY

2.1. Overcoming limited legal capacities

The highly **specialised legal expertise** and the practical experience required for lawyers to be able to step up as effective defenders of the right to peaceful assembly creates a **limited pool of legal experts available for citizens** in case their freedom of assembly is breached. Most of the cases concerning violations of the freedom of assembly are taken by **attorneys commissioned by human rights NGOs**, such as the HHC. Recognising the limited professional capacities, the HHC often assists protesters in challenging mass breaches by **publishing model submissions** or **sharing comprehensive arguments** applicable in the relevant proceeding.

Example.- *During the lockdown measures adopted as in reaction to the coronavirus pandemic in the spring of 2020, all types of gatherings were prohibited in Hungary. Despite the general ban introduced by the government, opposition politicians organised "car demonstrations" to express their disapproval of certain governmental measures. The protesters expressed their opinion by driving around in the centre of Budapest honking, i.e. in a way that respected social distancing rules. Many of them were fined, either for violating the rules for honking when driving, or for violating the ban on attending demonstrations and leaving their homes despite the lockdown. Besides offering⁵ legal assistance to several protesters, HHC also assisted other protesters by publishing on its website⁶ the arguments it had submitted to the police.*

2.2. Mandatory legal representation as a hidden obstacle

While the contribution of a specialised lawyer can strongly empower organisers and participants of assemblies, conversely, the requirement of compulsory legal representation may create an undue obstacle to the freedom of assembly. In Hungary, legal representation before courts in assembly law cases became compulsory as of 1 January 2018.⁷ This can create a **significant administrative obstacle to obtaining judicial remedy against bans and restrictions on assemblies**. It may be difficult for organisers to find a legal representative within the very short time period necessitated by the fast-track assembly court procedure, especially if legal aid is required.⁸ Hungarian courts have recently started to refuse to review the police bans and restrictions on its merits on the basis that the complainant has no legal representation. **In case this jurisprudence is consolidated, exercising the right to assembly will be dependent on whether someone has the means to retain a lawyer.**

³ Act LXXVI of 2017 on the Transparency of Organisations Receiving Foreign Funds (hereafter: **Lex NGO**) with effect of 27 June 2017. See more: <https://www.helsinki.hu/wp-content/uploads/What-is-the-Problem-with-the-Law-on-Foreign-Funded-NGOs.pdf>

⁴ See more regarding most recent developments: https://www.helsinki.hu/wp-content/uploads/HHC_Illiberal_Highlights_of_2020.pdf

⁵ See more: <https://www.helsinki.hu/ingyenes-jogi-kepviselet-a-dudalasers-megbuntetett-demonstraloknak/>

⁶ See more: <https://www.helsinki.hu/ha-lagzin-vagy-focisikert-unnepelve-lehet-dudalni-akkor-tiltakozaskeppen-is-szabad/>

⁷ Act I of 2017 on the Administrative Court Procedure introduced compulsory legal representation in assembly cases.

⁸ Although state funded legal aid is available in principle, due to the length of the granting procedure, including the obligation to acquire and attach different official documents substantiating indigence, this is not a viable option in the fast-track procedures that characterise freedom of assembly cases. Furthermore, even if the jurisprudence evolves to allow the time for the petitioner to acquire a legal aid lawyer, the assembly may lose its relevance by the time legal aid is secured.

2.3. Challenges during the coronavirus pandemic

After the Hungarian government declared a state of danger due to the pandemic in March 2020, one of the first extraordinary measures adopted was a **blanket ban of all kinds of gatherings, demonstrations and assemblies**, excluding the possibility of considering the individual circumstances of each case. Despite the general ban, during the first wave of the pandemic for three consecutive months,⁹ citizens found innovative ways to hold spontaneous physical protests in safe ways (e.g. the car protests mentioned above). Although citizens proved that assemblies could be held respecting safety rules, the **second wave of the coronavirus has brought back the full prohibition** for over three consecutive months again. To prevent spontaneous physical protests, the government **increased penalties**¹⁰ and **authorised military forces** to monitor the enforcement of the restrictions. Excessive punitive measures created a strong **chilling effect on citizens**, and *de facto* abolished the right to assemble. The reinforced blanket ban introduced by law left little margin for lawyers to secure the protection of the freedom of assembly. Challenging the legislation in the framework of **strategic litigation** before international courts remained the only option.

Example.- *Lawyers of the HHC assisted an organiser in notifying an assembly during the second wave of the pandemic. Despite the blanket ban and the fact that assembly authorities were not provided with any margin of discretion in weighing the particular health risks of the notified assembly, the organiser notified the police of an assembly to be held, where, in order to eliminate the risks of infection, protesters would sit in cars, parked in a safe distance from each other, wearing masks and using banners to express their opinion. Although it was reasonably expected that the police would ban the demonstration and Hungarian courts would uphold the ban, this procedure opened the way to challenge the ban before both the Hungarian Constitutional Court and the European Court of Human Rights.*

2.4. Freedom of assembly of LGBTQI persons

Hostility towards minority groups based on sexual orientation and gender identity is widespread in Hungary,¹¹ and there has been a remarkable decline in the acceptance of LGBTQI persons in recent years as a result of the homophobic and transphobic political statements by the governing party. This **discriminative attitude has triggered further violations in the field of freedom of assembly**. On one hand, right-wing groups regularly organise counter-demonstrations against Pride Marches or LGBTQI-related protests in Hungary. Therefore, in order to guarantee security of protesters, the assembly authority prescribes the application of fences, establishment of entry points and individual admission to the march, which puts extra burdens and responsibilities on organisers and restricts free access to the demonstration. On the other hand, right-wing groups also often disguise hostile and intimidating actions against groups of LGBTQI persons as practicing their right to peaceful assembly, while the **police often shows reluctance to take action** to disperse such gatherings. In this latter case, where the omission of authorities contributes to the occurrence of violations by third parties, lawyers play an important role in enforcement of an appropriate measure to be taken.

Example.- *Attorneys assigned by HHC represented a group of plaintiffs – including several private individuals pertaining to the LGBTQI minority and NGOs fighting for LGBTQI rights – in an action brought against the police. In the autumn of 2019, a right-wing homophobic group appeared at a private event organised in the premises of a club in Budapest for members of the LGBTQI community. The hostile group entered the club and behaved aggressively, intimidating and provoking participants of the event. They claimed to exercise their freedom of expression and right to peaceful assembly and refused to leave, even after the owner closed the club and cancelled the event. Although the owners of the club immediately called the police,*

⁹ From 16 March, 2020 until 17 June, 2020

¹⁰ Organising a protest under the second wave became punishable up to approximately EUR 2800.

¹¹ E.g. in 2019, 72% of Hungarians rejected legal gender recognition, and only 33% supported same sex marriage. See the Eurostat report on Discrimination in the EU published in 2019

<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/search/discrimination/surveyKy/2251>

the police officers arriving on site were at first reluctant to intervene and call the hostile group to leave. Based on the complaint brought by the plaintiffs against the police, the court established that both the belated intervention of the police and both the failure to recognise the presence of offence and the lack of interruption constituted a breach of law on the side of the police.

As a result of the blanket ban introduced on grounds of the pandemic stripped all Hungarians of their right to freedom of assembly but affected the LGBTQI community even more severely. The governing majority - exploiting the full prohibition of demonstrations – adopted new laws that curtail the rights of LGBTQI persons. During the first wave of the pandemic, the Parliament passed a law that prohibited legal gender recognition,¹² later, during the second wave, a modification of the Fundamental Law and the underlying legislation practically excluded same-sex couples from adoption.¹³ Both legislations were adopted while the right to protest was prohibited and any breach of the ban was sanctioned by serious penalties.

3. FREEDOM OF ASSOCIATION

The severest **governmental attack against freedom of association** remains in force despite a clear ruling of the Court of Justice of the European Union (CJEU). The so-called Lex NGO was introduced in 2017 with the aim to stigmatise and discredit independent civil society organisations receiving funds from abroad. On basis of an infringement procedure launched against Hungary, the **CJEU issued a judgment establishing that Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations**. Despite the clear obligation to modify the law, the Lex NGO remains in effect and applied in practice, even 7 months after the judgment.¹⁴ As demonstrated by this particular case, the scope of action of lawyers becomes very limited when the rule of law, as fundamental framework of their activity is disrespected and breach is converted to law.

¹² See more: https://www.helsinki.hu/wp-content/uploads/HHC_Illiberal_Highlights_of_2020.pdf p. 13.

¹³ Ibid, p. 14.

¹⁴ Ibid, p. 12.