



# Asamblea General

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## Consejo de Derechos Humanos

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**Promoción y protección de todos los derechos humanos,  
civiles, políticos, económicos, sociales y culturales,  
incluido el derecho al desarrollo**

## Visita a Hungría

### Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan\* \*\*

#### *Resumen*

La Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, visitó Hungría del 15 al 22 de noviembre de 2021, por invitación del Gobierno. En el presente informe, la Relatora Especial expresa su grave preocupación por los ataques a la libertad, la independencia y el pluralismo de los medios de comunicación en Hungría durante la última década. El Gobierno, al aprobar leyes y políticas que han tendido a aumentar la influencia política del partido gobernante sobre los órganos reguladores de los medios de comunicación y sobre los medios de comunicación públicos, favorecer a los medios de comunicación que apoyan su agenda política, condenar al ostracismo y deslegitimar a otros medios, debilitar la independencia del poder judicial y estigmatizar a los agentes de la sociedad civil, ha puesto en peligro la libertad de los medios de comunicación y ha socavado la libertad de opinión y de expresión. La Relatora Especial recomienda que se revisen las leyes y políticas pertinentes para garantizar el derecho a la información procedente de fuentes, noticias y opiniones diversas, y para salvaguardar unos medios de comunicación independientes, libres y pluralistas como pilar indispensable de la democracia multipartidista.

\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó.

\*\* Se acordó publicar este informe tras la fecha prevista debido a circunstancias que escapan al control de quien lo presenta.



## **Annex**

### **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, on her visit to Hungary**

#### **I. Introduction**

1. The Special Rapporteur on the promotion and protection of freedom of opinion and expression, Irene Khan, conducted an official country visit to Hungary from 15 to 22 November 2021. The visit, which was the first one for the Special Rapporteur since she began her mandate in August 2020, was carried out at the invitation of the Government, pursuant to Human Rights Council resolution 43/4. The main purpose of the visit was to assess the situation of freedom of opinion and expression in Hungary in the light of its international human rights obligations.

2. During her visit, the Special Rapporteur met with the Vice President of the National Assembly, the Minister for Innovation and Technology, the State Secretary of the Prime Minister's Office, the State Secretary of the Ministry of Justice, the Deputy State Secretary of the Ministry of Foreign Affairs and Trade and the Deputy State Secretary for Migration Issues, and with senior officials of those ministries and the Ministry of Interior. The Special Rapporteur also met with a member and officials of the Media Council and the President of the National Authority for Data Protection and Freedom of Information; with the directors of the national broadcasting organizations; with representatives of the Media Services and Support Trust Fund and the Duna Médiaszolgáltató Nonprofit Zrt (Duna); with representatives of the Teachers Board of the Ministry of Human Capacities; and with members of the Kuria (the Supreme Court of Hungary). The Special Rapporteur met with officials at the Office of the Commissioner for Fundamental Rights, but the Commissioner was not available to meet her, despite the relevance of his work to the Special Rapporteur's mandate.

3. The Special Rapporteur also met with journalists and media workers, human rights defenders, lawyers, scholars, labour union leaders and other representatives of civil society. She sought and confirmed an appointment with the Head of the Central European Press and Media Foundation (KESMA), a private foundation that plays a dominant role in the Hungarian media sector, but was disappointed that he cancelled the meeting at the last minute.

4. The Special Rapporteur commends Hungary for maintaining a standing invitation to the Special Procedures since March 2001. She is grateful to the Government of Hungary for agreeing to her country visit and for the excellent cooperation provided by the officials prior to and during the visit, despite the challenges posed by the coronavirus disease (COVID-19) pandemic. The Special Rapporteur extends her appreciation to all individuals she met during and in connection with the visit for their time, information, insights and candid discussions.

#### **II. Background**

5. Hungary is a multiparty parliamentary democracy with a unicameral National Assembly. Every five years the National Assembly elects a President, who appoints the Prime Minister from the majority party or coalition following national elections every four years. In April 2010, the conservative Fidesz Party, together with its junior coalition partner, the Christian Democratic People's Party, was elected with a two-thirds parliamentary majority, and a Government headed by Prime Minister Viktor Orbán was set up. The ruling coalition won a second term in 2014 and a third term in 2018. In the April 2022 elections, the Government won a fourth term with a large majority.

6. In a major political speech in 2014, Mr. Orbán explained that the goal of his Government was to create an "illiberal State" which "does not deny foundational values of

liberalism, as freedom, etc. But it does not make this ideology a central element of State organization, but applies a specific, national, particular approach in its stead”.<sup>1</sup> Over the past decade the Government, under Mr. Orbán’s leadership, using its parliamentary majority, has pursued a programme of wide-ranging constitutional, legislative and institutional changes, including in the area of freedom of expression, to reach that objective, which ultimately had negative consequences for human rights.

7. Reforms began in 2011 with the adoption of a new constitution (the Fundamental Law) and laws on media and press freedom. They were followed by laws on non-governmental organizations, the higher education system and the judiciary, which had implications for freedom of expression. Many of the laws, policies and practices of the Government have been the object of strong criticism by international and regional human rights bodies, including the United Nations High Commissioner for Human Rights,<sup>2</sup> the Human Rights Committee,<sup>3</sup> the Special Procedures of the Human Rights Council,<sup>4</sup> the European Commission,<sup>5</sup> the Court of Justice of the European Union<sup>6</sup> and the Council of Europe.<sup>7</sup> Although the Government reviewed some laws on the basis of the comments it received, the profound, systemic comprehensive strategy of political transformation led to such grave concern about the human rights and democratic institutions in Hungary that for the first time in 2018 the European Parliament called on the Council of the European Union to initiate the procedure laid down in article 7 (1) of the Treaty on European Union, to prevent a systemic threat to the Union’s founding values.

8. The Special Rapporteur carried out her country visit shortly after the universal periodic review of Hungary in early November 2021. In that context, she welcomes the commitment of the Government to ensure independent media and media-regulating bodies, and to reinforce media plurality and an enabling environment for their operation, free from undue influence, interference or intimidation. She is, however, concerned about the apparent denial of longstanding as well as emerging human rights challenges relating to freedom of opinion and expression, as reflected in the conclusions presented by Hungary.<sup>8</sup> She hopes that the findings and recommendations set out in the present report will allow for a further opportunity for dialogue about issues relevant to her mandate, as follows: freedom, independence and pluralism of the media; the right to information; freedom of expression relating to civil society, academia and groups at risk of discrimination and hate speech; and the autonomy, willingness and ability of State institutions to protect and promote freedom of expression.

<sup>1</sup> Viktor Orbán’s speech at Băile Tușnad (Tusnádfürdő), 26 July 2014, available at: <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>.

<sup>2</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23239&LangID=E>; see also <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22765&LangID=E>.

<sup>3</sup> Concluding observations of the Human Rights Committee on the sixth periodic report of Hungary (CCPR/C/HUN/CO/6).

<sup>4</sup> See, for example, report of the Special Rapporteur on human rights defenders on his mission to Hungary (A/HRC/34/52/Add.2).

<sup>5</sup> See infringements procedures initiated by the European Commission at: [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\\_decisions/?r\\_dossier=&noncom=0&decision\\_date\\_from=&decision\\_date\\_to=&active\\_only=1&EM=HU&title=&submit=Search&lang\\_code=en](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?r_dossier=&noncom=0&decision_date_from=&decision_date_to=&active_only=1&EM=HU&title=&submit=Search&lang_code=en).

<sup>6</sup> Court of Justice of the European Union, *Action under article 258 TFEU for failure to fulfil obligations*, Case No. C-78/18, Judgment on Law No. LXXVI of 2017 on the Transparency of Organizations which Receive Support from Abroad, 18 June 2020. Available at <https://curia.europa.eu/juris/liste.jsf?num=C-78/18>.

<sup>7</sup> See Opinions of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, <https://www.venice.coe.int/webforms/documents/default.aspx?country=17&year=all&lang=EN>.

<sup>8</sup> A/HRC/49/8/Add.1, para. 26.

### **III. International and national legal frameworks relating to freedom of opinion and expression in Hungary**

#### **A. International legal framework**

9. Hungary ratified the International Covenant on Civil and Political Rights on 17 January 1974 and is a party to various international and regional human rights treaties, including the Convention for the Protection of Human Rights and Fundamental Freedoms. As a member of the European Union, Hungary is bound by the Treaty on European Union and the Charter of Fundamental Rights of the European Union. Hungary has played a leading role in introducing resolutions at the Human Rights Council on the independence of judges and lawyers, and on the issue of reprisals for cooperation with the United Nations, its representatives and mechanisms in the field of human rights. Both matters are relevant for the full enjoyment of freedom of opinion and expression.

10. The right to freedom of opinion and expression is protected by article 19 of the Universal Declaration of Human Rights, article 19 of the International Covenant on Civil and Political Rights, article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and article 11 of the Charter of Fundamental Rights. Article 11 (2) of the Charter specifically states that the “freedom and pluralism of the media shall be respected”.

11. Under article 19 (1) of the International Covenant everyone has the right to hold opinions without interference. Article 19 (2) protects the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice. Article 19 (3) specifies the narrow conditions under which freedom of expression may be restricted. Under international human rights law, restrictions must be provided by law and meet the requirements of proportionality and necessity to protect one of the enumerated legitimate interests, namely respect for the rights or reputation of others, and the protection of national security, of public order or of public health or morals.

12. Under article 20 (2) of the International Covenant, the Government of Hungary is under the obligation to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, violence or hostility towards any individuals or segments of the society, including LGBT individuals, refugees and migrants. In accordance with international law, restrictions under article 20 must be lawful, necessary and proportionate, in accordance with article 19 (3).<sup>9</sup>

13. Given the focus of the present report on the freedom of the media in Hungary, it is worth noting that freedom of opinion and expression is particularly critical for journalists and media workers and for the healthy functioning of democratic societies. As affirmed by the Human Rights Council, freedom of expression and free media play a crucial role in building inclusive knowledge societies and democracies and in fostering intercultural dialogue, peace and good governance.<sup>10</sup> In other words, a free, uncensored and unhindered press or other media constitutes one of the cornerstones of a democratic society.<sup>11</sup> To that end, media freedom requires the existence and implementation of freedom of information and transparency laws, robust regulations safeguarding the independence of media-regulating bodies and of public service media, effective measures to protect the safety and privacy of journalists and their sources, and the absence of criminal defamation laws and disproportionate restrictions on expression.

14. Freedom of opinion and expression is critical for all sectors of the society, including politicians, academics, judges and lawyers, environmental activists and gender equality and human rights defenders, among many others. As underlined by the Human Rights

<sup>9</sup> Human Rights Committee, general comment No. 34 (2011) on freedoms of opinion and expression, para. 50.

<sup>10</sup> General Assembly resolution 68/163.

<sup>11</sup> Human Rights Committee, general comment No. 34 (2011), para. 13.

Committee, attacks on a person owing to the exercise of their right to freedom of expression are incompatible with article 19 of the International Covenant.

## **B. National legal framework**

15. Freedom of expression is guaranteed by the Fundamental Law of Hungary, adopted in 2011. Under article IX of the Law, everyone shall have the right to freedom of expression; and Hungary shall recognize and protect the freedom and diversity of the press and shall ensure the conditions for the freedom to receive and impart information as is necessary in a democratic society. In 2010, Act CIV on the Freedom of the Press and the Fundamental Rules on Media Content (the press freedom act) and Act CLXXXV on Media Services and on the Mass Media (the media act), often referred to as the “media package”, were adopted. The press freedom act stipulates the independence of the press from the State and from any organizations and interest groups. The media act established the National Media and Infocommunications Authority (NMHH) and the Media Council.

16. Notwithstanding the strong unequivocal statement in article IX of the 2011 constitution, article VI on privacy, explored further below, and the laws on the media and press freedom have raised considerable concern with international and regional human rights mechanisms. Commenting on the legislation in 2011, the then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted that the main weaknesses of the media law package were the prescription of media content based on vague concepts and insufficient guarantees to ensure the independence and impartiality of the regulatory body.<sup>12</sup> Both issues remain pertinent despite some amendments to the media package since its passage in 2010.

17. The right to access public information is explicitly recognized in the constitution and in the freedom of information legislation, including the “glass pocket law” of 2003 that seeks to promote the transparency and accountability of public bodies. Hungary has since passed amendments to the freedom of information legislation, triggering concerns and recommendations from the Special Procedures.<sup>13</sup>

## **IV. Main findings**

### **A. Media freedom**

18. The right to freedom of expression, including the right to access, receive and impart information, online and offline, is essential for free, independent and pluralistic media. International human rights bodies and mechanisms have repeatedly emphasized the obligation of States to promote media pluralism and ensure media independence to allow diverse views to be published and for public debate to thrive (see, for instance, Human Rights Committee, general comment No. 34 (2011), para. 40). In Hungary, the media and press laws and the manner in which they are being implemented, together with other laws, policies and practices of the Government, have created a situation in which the freedom, independence and pluralism of the media have been placed in grave peril, as explained in the following subsections. The Special Rapporteur wishes to highlight in particular the lack of independence of the regulatory authority, the erosion of media pluralism and the reported serious threats to the right of journalists to access information.

#### **1. Regulatory authority**

19. The political and economic independence of media regulatory authorities is critical for ensuring media freedom. Under the legal framework in Hungary, media regulations are controlled by the National Media and Infocommunications Authority, and its administrative organ, the Media Council, which is responsible for the regulation and surveillance of

<sup>12</sup> [http://www2.ohchr.org/english/issues/opinion/docs/2011-04-05\\_Hungary\\_Freedex\\_EndMission.doc](http://www2.ohchr.org/english/issues/opinion/docs/2011-04-05_Hungary_Freedex_EndMission.doc).

<sup>13</sup> See, for example [A/HRC/34/52/Add.2](#), paras. 36–41.

communication and the media. The President of NMHH, and the Media Council itself, exercise extensive regulatory powers, including allocation of the frequency assets available to radio and television media services, monitoring of content and sanctioning of media outlets. In addition, the President of NMHH, who is also President of the Media Council, has extensive powers over the national public service broadcasting organizations, especially the Media Services and Support Trust Fund.

20. Not only is the media governance and regulatory system highly centralized by law and endowed with excessively broad powers, the appointment process for these bodies does not provide sufficient legal safeguards to ensure independence.<sup>14</sup> The President of the National Media and Infocommunications Authority is appointed by the President of the Republic on the proposal of the Prime Minister. She or he is automatically nominated as the Chair of the Media Council, with a formal vote by the National Assembly, for a term of nine years. In theory, the positions of NMHH and the Media Council are distinct and require a high level of political consensus; in practice, however, the large parliamentary majority of the Fidesz Party has enabled it to exercise full control over the nomination and appointment of the President of NMHH and members of the Media Council. The practice by the Fidesz Party of endorsing only its own candidates and excluding the consideration of nominations by other parties has created serious doubts about the impartiality of the appointment process and increased the likelihood of political influence and abuse of power.

21. The Government is aware of the concerns expressed by the Human Rights Committee in reference to the lack of sufficient independence of the Media Council and NMHH in the performance of their functions and their excessively broad regulatory and sanctioning powers. The Committee recommended that the laws and practice be revised.<sup>15</sup> In February 2021, the Commissioner for Human Rights of the Council of Europe found that the combined effects of a politically controlled media regulatory authority and sustained and distorting State intervention in the media market had eroded the conditions for media pluralism and freedom of expression in Hungary.<sup>16</sup> In 2015 the European Commission for Democracy through Law (Venice Commission) recommended that the Media Act be amended to reduce political control of the appointment process and make the Media Council more pluralistic.<sup>17</sup> The Special Rapporteur reiterates the recommendation of the Venice Commission, which, as noted by the Commissioner, is in line with Council of Europe standards and the Audiovisual Media Services Directive of the European Union.

22. According to the 2021 report of NMHH, the stated objective of the Authority and the Media Council is to achieve a “balanced market” and “preserve media pluralism and diversity.”<sup>18</sup> However, the recent actions – and inaction – by the President of the Authority and the Council and members of the Council raise serious concerns regarding the independence, willingness or capacity of those bodies to examine and pronounce on the Government’s actions and policies or other major developments which have a significant impact on media freedom. The Media Council did not pronounce itself on the merger of almost 500 outlets under the control of KESMA. Nor has it made any effort since then to evaluate the impact of the merger under KESMA, or the consequences of the closure of other independent media outlets (or those critical of the Government) on the freedom, independence, pluralism or quality of the media in Hungary. The Special Rapporteur

<sup>14</sup> The European Commission, in its 2021 rule of law report on the situation in Hungary, noted that the 2021 Media Pluralism Monitor had confirmed its previous assessment that, while the Media Law formally guaranteed the independence of the Media Authority, the appointment procedures did not provide adequate legal safeguards for independence (Brussels, 20 July 2021, SWD(2021) 714 final).

<sup>15</sup> CCPR/C/HUN/CO/6, paras. 57–58.

<sup>16</sup> Commissioner for Human Rights of the Council of Europe, “Memorandum on freedom of expression and media freedom in Hungary” (Strasbourg, 2021). Available at <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-hungary/1680a1e67e>. Comments from the Government of Hungary on the Commissioner’s report can be found at <https://rm.coe.int/omments-of-the-hungarian-authorities-on-the-memorandum-by-the-council-/1680a1f0f0>.

<sup>17</sup> Council of Europe, Venice Commission, opinion No. 798/2015 on media legislation, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)015-e).

<sup>18</sup> National Media and Infocommunications Authority, “Responsible regulation, conscious vision” (Budapest, 2021), p. 4, [https://english.nmhh.hu/document/170790/nmhh\\_kiadvany\\_eng.pdf](https://english.nmhh.hu/document/170790/nmhh_kiadvany_eng.pdf).

welcomes information from the Council that it responded firmly in some specific cases of attacks by media outlets against civil society activists, LGBT people and organizations working with asylum seekers. In the light of the extensive reports the Special Rapporteur received about continuing attacks in the media against the above-mentioned individuals, she encourages the Council to do more in line with article 14 (1) of the press freedom act, according to which media content should respect human dignity.

23. Furthermore, the Media Council reportedly failed to act against biased reporting in public service media, although such bias was explicitly identified by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR) Limited Election Observation Mission following the 2018 elections.<sup>19</sup> When the Special Rapporteur enquired whether, considering the findings and recommendations of the OSCE/ODIHR mission, the Council had taken or planned to take any action ahead of the 2022 April elections, she did not receive a response.

24. In discussions with the Special Rapporteur, media experts pointed to the decisions of the Media Council on allocation of radio frequencies as clear evidence of its political bias. They claimed that the Council had consistently favoured those close to the ruling party, with the result that independent local radio had been practically eliminated. The decision on Klubradio, which is now deliberately the subject of a European Union infringement procedure, is considered in subsection A.2 of the present report.

25. The President of the National Media and Infocommunications Authority resigned from her position in October 2021, although her term did not expire until October 2022. A new appointment was made on 3 December 2021 following the same process that excluded any input outside the ruling party and its allies.

26. The Special Rapporteur believes that the lack of legal and other safeguards to ensure the political independence of the regulatory authorities has had serious adverse consequences on the freedom, independence and pluralism of the media as well as on the level of public trust in the media and on democratic processes in Hungary more broadly.<sup>20</sup> It is not only essential for the media regulatory body to be truly independent and impartial, but also to be perceived as such by the public.

## 2. Media pluralism

27. Under international law, the free flow of information and ideas in society, either orally or in writing, through any media of one's choice, forms the basis of the exercise of freedom of expression. Diversity in the media, which includes diversity of outlets, ownership and content,<sup>21</sup> as well as diversity of medium (print, broadcast or online) and audience (local or national) is critically important for the proper functioning of democracy and broad participation in decision-making. The Human Rights Committee affirmed the importance of media pluralism in its general comment No. 34 (2011), making it clear that States should take appropriate action to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views and should promote plurality of the media (para. 40).

28. Despite the clear requirements of international law and the provision on media pluralism contained in the Fundamental Law of Hungary, the distortionary practices in the media market by successive Fidesz coalition Governments have led to the predominance of pro-government outlets and the decline of independent media or media critical of the Government. The Special Rapporteur was informed by several senior State officials that since coming to power in 2010, the Government had sought to correct what it perceived as an imbalance between liberal and conservative media in Hungary. One senior official noted that

<sup>19</sup> <https://www.osce.org/files/f/documents/0/9/385959.pdf>.

<sup>20</sup> According to the report "Nations in transit", the "democracy score" of Hungary has continuously declined since 2012 (p. 25). Available at [https://freedomhouse.org/sites/default/files/2022-04/NIT\\_2022\\_final\\_digital.pdf](https://freedomhouse.org/sites/default/files/2022-04/NIT_2022_final_digital.pdf).

<sup>21</sup> <https://www.osce.org/files/f/documents/f/0/29825.pdf>.



the authorities had now achieved a “50:50 balance”, and that some online outlets provided “compensation” to the opposition.<sup>22</sup>

29. As noted by a wide range of stakeholders in Hungary and at European and international levels, media outlets supporting or aligned with the political views of the Government significantly outnumber those independent or critical of the Government.<sup>23</sup> The Special Rapporteur was informed that all national television channels except one run by the German company, RTL, and all national radio stations have editorial lines considered to be pro-government. The gradual extinction of independent, or more critical, outlets is reportedly due to the Government’s proactive policies and strategies to root out critical voices and provide direct and indirect political and financial support to those outlets willing to further its policies, as well as broader challenges of economic viability of the media sector in the digital age. In some cases, political difficulties combined with a fall in revenue led to the closure of the outlets or to their acquisition by investors said to be linked to the Government.

30. To give some examples, in 2016, the largest print daily, *Nepszabadsag*, shut down soon after it was bought by businessmen with reported links to the Government. While the Government has stated that the sale and closure were private business decisions, the consequences of the takeover have been to silence critical voices. In September 2018, the parent company of *Index.hu*, the second-largest portal site, was purchased by investors with ties to Fidesz’s satellite party, the Christian Democratic People’s Party. Two years later, *Index.hu*’s editor in chief was dismissed after he voiced concerns about the outlet’s independence, which was followed by a wave of resignations of the outlet’s staff in protest. *Index.hu* resumed operations under a completely new editorial leadership, with disproportionately pro-government storylines, according to an academic study. In September 2020, the request for an extension of the broadcasting licence of Klubradio, a well-known commercial talk and news radio station sometimes described as the voice of the left-liberal opposition, was rejected by the Media Council on the grounds that in 2016 it had “repeatedly violated” its responsibilities under section 22 (8) of the Media Act. Apparently Klubradio had violated this law by twice submitting its monthly reports on Hungarian music programming past the submission deadline. Despite the apparent minor nature of the offence and the settling of fines for the breaches at that time, the licence of Klubradio was not renewed by the regulator, and it was not allowed subsequently to compete for its airwave licence in February 2021. Consequently, it is no longer able to broadcast in Budapest and remains available only online where its representatives claim it has a much smaller audience and is less accessible to its listeners. An infringement procedure for failure to comply with European Union electronic communications rules has been initiated by the European Commission, and the Special Rapporteur will continue to monitor the case.

31. While independent and critical media radically shrank, the Government simultaneously facilitated the merger of 476 Hungarian outlets under KESMA, a foundation whose board members and Chief Executive have close ties with the Fidesz Party. Media experts have noted that the creation of KESMA represents a huge and unprecedented concentration of media in the hands of oligarchs who are friendly to the ruling party.<sup>24</sup> KESMA, which now owns television channels, radio stations, online news sites, tabloids and almost all regional print daily newspapers, appears to have been using its highly favourable outreach to promote the views of the Government. By qualifying the merger as an issue of “strategic national interest”, the Government exempted the consolidation from scrutiny by the competition authorities. State officials explained that the “strategic national interest” is

<sup>22</sup> Meeting with the State Secretary, Prime Minister’s Office; and Commissioner for Human Rights of the Council of Europe, “Memorandum on freedom of expression and media freedom in Hungary” (Strasbourg, 2021). Available at <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-hungary/1680a1e67e>.

<sup>23</sup> See, for example, International Press Institute and others, “Conclusions of the joint international press freedom mission to Hungary” (3 December 2019).

<sup>24</sup> <https://cadmus.eui.eu/bitstream/handle/1814/67828/MPM2020-PolicyReport.pdf?sequence=5&isAllowed=y>; and <https://reutersinstitute.politics.ox.ac.uk/fighting-words-journalism-under-assault-central-and-eastern-europe>.



to retain ownership in Hungarian hands but failed to explain why that should lead to ownership of only those who support the Government.

32. Not only has the merger resulted in a sharp decline of media pluralism, as noted by experts,<sup>25</sup> but the Special Rapporteur finds it deeply disturbing that an action that led to such significant concentration of media ownership with such critical impact on media freedom and pluralism in the country was not subject to any independent oversight or control.

### 3. Public service media

33. In Hungary, public service media are supervised by the Media Services and Support Trust Fund, which is managed by the Media Council. Under section 136 of the Media Act, the Chair of the Media Council exercises all employer's rights over the Fund's Executive Director, including appointment. The Media Council also approves the Fund's annual plan, subsidy policy and rules governing how the Fund's assets can be used, managed and accessed by public media. Moreover, the Fund controls media content and quality produced by Duna.

34. During her visit, the Special Rapporteur heard repeated testimonies from numerous civil society actors, journalists, political commentators and media experts expressing the view that the public service media had become a propaganda tool for the Government. As the Fund is managed by the Media Council, some stakeholders have noted that the Council has the potential to exert direct political influence over Hungary's public service media, including over its programming and finances.<sup>26</sup> Following the elections in 2018, the OSCE/ODIHR Limited Election Observation Mission raised serious concerns that media monitoring revealed clear patterns of political bias on the part of the public broadcaster. Furthermore, some stakeholders reported that the public service provided "free" news content to smaller outlets, and that in turn reinforced the uniformity of news, with serious adverse effects on freedom of opinion.

35. In their meeting with the Special Rapporteur the representatives of the Media Services and Support Trust Fund denied political bias. However, they could not provide data to demonstrate equal participation of politicians from different political parties in the public service media. When shown documentary evidence of correspondence in which the Fund had ordered its staff not to report on statements from human rights organizations Amnesty International and Human Rights Watch, representatives of the Fund maintained that such matters fell within the sole discretion of the editor. They shared with the Special Rapporteur an internal code of ethics and integrity adopted in 2011. Given the control of the regulatory body over the public service media, and continued reports from stakeholders of bias in the public service media, an internal code of conduct does not appear to be an adequate response.

### 4. State support to media

36. To ensure media viability, the financial sustainability of media outlets is critical. According to information received during the visit, there has been steady economic decline of the media sector in Hungary in recent years, owing to a mixture of reasons, including digitalization and consequent changes in media consumption and revenue patterns, the impact of targeted State policies to reduce media pluralism and the diversity of views and more recently, the overall impact of the pandemic.

37. State advertising spending is an important source of revenue for the media in Hungary, where there appears to have been a longstanding problem of past and current Governments favouring media outlets supportive of their policies. Under the Government of Prime Minister

<sup>25</sup> According to *Media Pluralism Monitor*, a publication representing a scientific and holistic effort to document the health of media ecosystems in European Union member States, the market plurality of the media in Hungary scores high risk overall, mostly due to media ownership, news media concentration and commercial and ownership pressure over editorial content. Centre for Media Pluralism and Media Freedom (2021), p. 13, available at [https://cadmus.eui.eu/bitstream/handle/1814/71949/hungary\\_results\\_mpm\\_2021\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/71949/hungary_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y). See also Reporters without Borders Index: on the index for 2006, Hungary was 10th out of about 160 countries. It is now 85th. <https://rsf.org/en/ranking> (accessed 5 May 2022).

<sup>26</sup> [http://medialaws.ceu.hu/public\\_service\\_media\\_more.html](http://medialaws.ceu.hu/public_service_media_more.html).

Viktor Orbán, the political motivation behind the distribution of the funds has become more blatant and the budget vastly bigger.

38. The Special Rapporteur was informed that State funding forms about a third of all advertisement revenue in the country. The National Communications Authority, located in the Cabinet Office of the Prime Minister, is responsible for State spending on advertising and issues public procurement tenders for media agencies that design and implement media advertisement plans. It is claimed that Government contracts are consistently awarded to agencies that have close ties to the Government. In 2018, the largest broadcaster reportedly received 67 per cent of State advertising in the television sector, while an independent broadcaster that has a similar sized audience, received only 1 per cent. In 2020, the imbalance is said to have grown further, with a reported 86 per cent of State advertising going to pro-government media outlets.<sup>27</sup>

39. The deliberate skewing of public revenue advertising in favour of outlets with a particular political view has adverse consequences, not only for the health of the media sector but also for the viability of the entire information ecosystem. First, the distribution of a high proportion of public funds to pro-government media gives them an unfair advantage over independent media and distorts democratic debate. Secondly, in a competitive market where media viability is challenged by various factors, the deliberate deprivation of independent media of an important source of funds is contrary to the obligation of the State to promote media independence, diversity and pluralism. The Special Rapporteur believes that in line with international standards,<sup>28</sup> the Government should put into place effective systems to ensure transparency, fairness and non-discrimination in the allocation of resources to the media, including public advertising funds.

## **B. Right to information**

40. The right to information under international human rights law underscores the right of journalists to access and share information with the public and the obligation of States to proactively make available public information. Hungary demonstrated its strong commitment to freedom of information by becoming one of the first signatories to the Council of Europe Convention on Access to Official Documents (Tromsø Convention) in 2010. However, more recently, the right to information has been constrained by several factors.

### **1. Right to privacy**

41. Article VI of the Fundamental Law states that exercising freedom of expression and freedom of assembly shall not result in violating private and family life, and the home of others. While recognizing the importance of upholding the right to privacy, the Special Rapporteur believes the restriction of freedom of expression in article VI is overly broad and should be interpreted in line with the country's obligations under article 19 (3) of the International Covenant on Civil and Political Rights as well as the general provision of Article I (3) of the Fundamental Law.

42. A new law which became effective in January 2021 provides for imprisonment of up to a year for publishing unauthorized drone recordings of someone's property. The Special Rapporteur has noted that despite the decision of the National Authority for Data Protection and Freedom of Information that the use of drone recordings to report on public spending is an issue of public interest and does not violate legitimate privacy interests,<sup>29</sup> a journalist has been sued in the national courts.

43. The right to privacy cannot be used as a ground to restrict the right of the media to publish information that may be relevant to matters of public interest, for example, in relation to public figures. As emphasized in a joint declaration issued in October 2021 by the Special Rapporteur and regional experts on freedom of expression, the realization of freedom of

<sup>27</sup> <https://europeanjournalists.org/blog/2019/12/03/new-report-hungary-dismantles-media-freedom-and-pluralism/>.

<sup>28</sup> [https://www.ohchr.org/Documents/Issues/Opinion/JointDeclaration2May2018\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Opinion/JointDeclaration2May2018_EN.pdf).

<sup>29</sup> NAIH-2020-4228-hatarozat.pdf (in Hungarian).

expression and the right to information requires both strong protection for open and inclusive debate about matters of public interest and acceptance by politicians and public officials who, by virtue of their positions, their official conduct and certain aspects of their private lives, are legitimate objects of close public scrutiny and criticism.<sup>30</sup>

## 2. Surveillance of journalists

44. In the weeks leading up to the country visit, reports in the media and by international non-governmental organizations claimed that the Pegasus technology developed by NSO Group, a technology firm based in Israel, had been used to conduct surveillance of investigative journalists covering political leaders and elites, and crime and corruption issues in Hungary. Targeted surveillance undermines the ability of journalists to conduct investigations and build and maintain relationships with sources of information. The allegations about Hungary, if proven true, are deeply troubling. When the Special Rapporteur sought clarification on the issue, she did not receive a clear denial and was told instead that targeted surveillance is authorized by a committee of senior officials chaired by the Minister of Justice. Without more information from the officials at that time it was not possible for the Special Rapporteur to examine the issue further.<sup>31</sup>

45. Since the Special Rapporteur's visit, journalists and others in Hungary have initiated legal action before the Hungarian authorities, the European Commission, the European Court of Human Rights and in Israel, alleging unlawful secret surveillance with Pegasus surveillance technology.<sup>32</sup> The European Parliament is also preparing to launch a commission of inquiry into the use of Pegasus by European Union Governments in the surveillance of journalists and others.<sup>33</sup>

46. The Special Rapporteur is concerned that the allegations regarding the use of Pegasus technology to conduct surveillance of journalists could have a chilling effect on investigative journalism. She encourages the Government to enforce the 2016 decision of the European Court of Human Rights in the case of *Szabó and Vissy v. Hungary*, in which the Court found that the Hungarian legislation on surveillance does not provide safeguards sufficiently precise, effective and comprehensive on the ordering, execution and potential redressing of such measures.

## 3. Access to information

47. In 2020, the Government adopted new regulations in the context of the COVID-19 pandemic, which allowed public bodies to extend the deadline for responding to freedom of information requests from 15 to 45 days when the data request might endanger the fulfilment of public tasks related to the state of danger, which could be prolonged by an additional 45 days if required. Such a long delay in providing information is detrimental for journalism as the news loses value over that period of time, and also creates a risk that such a delay will be used by the authorities to avoid media coverage of certain information.

48. The Special Rapporteur was pleased to learn from the President of the National Authority for Data Protection and Freedom of Information that they produced guidelines, which were subsequently affirmed by judicial decisions, to ensure that the prolongation of the deadline for responding to freedom of information requests was applied only where relevant and when necessary. However, despite that measure, the Special Rapporteur received testimony from many journalists and human rights defenders that government institutions continued to delay disclosure of information or did not respond to the requests at all. The Special Rapporteur urges the Government to ensure that all State institutions comply

<sup>30</sup> <https://www.osce.org/files/f/documents/9/4/501697.pdf>.

<sup>31</sup> The process is described in a report of the National Data Protection and Freedom of Information Authority. Available at <https://www.naih.hu/adatvedelmi-jelentesek/file/486-jelentes-a-nemzeti-adatvedelmi-es-informacioszabadsag-hatosag-hivatalbol-inditott-vizsgalatanak-megallapitasai-a-pegasus-kemsoftver-magyarorszagon-torteno-alkalmazasaval-osszefuggesben> (in Hungarian).

<sup>32</sup> Hungarian Civil Liberties Union (TASZ), "Pegasus case: HCLU takes coordinated domestic and foreign legal action". Available at <https://hclu.hu/pegasus-case>.

<sup>33</sup> <https://www.theguardian.com/news/2022/feb/10/eu-close-to-launching-committee-of-inquiry-into-pegasus-spyware>.

promptly and fully with the guidelines of the National Authority and the related judicial decisions.

49. In the context of the COVID-19 pandemic, the Government adopted Act XII of 2020 to extend the offence for “fearmongering” to up to five years’ imprisonment if the information was “capable of obstructing the efficiency of protection efforts” during a “state of danger”. The amendment was adopted purportedly to address false rumours that might hinder the effectiveness of the efforts to combat the COVID-19 pandemic. In practice, however, the provision was reportedly used by the authorities to silence individuals and media critical of the Government’s response to the pandemic. It was reported that between March and July 2020, a total of 134 related criminal investigations were initiated.<sup>34</sup>

50. While the above-mentioned legislation is no longer in place, the Special Rapporteur encourages the authorities to review the recommendations contained in her report on disinformation and freedom of opinion and expression, presented to the Human Rights Council in 2021.<sup>35</sup> The Special Rapporteur understands the challenge to health posed by the COVID-19 pandemic but wishes to underscore that the free flow of information from diverse sources, including independent media unhindered by threats of prosecution and penalties, has proved to be more effective in tackling disinformation and misinformation than criminal sanctions.<sup>36</sup>

51. Furthermore, the Special Rapporteur urges the Government to decriminalize the offence of defamation, as set forth in section 226 (1) of Act C of 2012 in the Criminal Code. Criminal defamation is a disproportionate response, can be used wrongly against journalists, human rights defenders and political opponents, and has a chilling effect on freedom of expression. The Human Rights Committee has called on States parties to the International Covenant on Civil and Political Rights to consider the decriminalization of defamation.<sup>37</sup>

52. Independent journalists and human rights defenders mentioned that access to information had been made particularly difficult by the government’s propensity to designate certain projects as being of “strategic importance” and thus “classified” for decades without substantive justification from the authorities as to why the projects were being removed from public scrutiny, including the construction of the Fudan University campus in Budapest; the loan agreement with the Russian Federation on Hungarian atomic energy; the purchasing of German military hardware; and the construction of a high-speed railway from southern Europe. Such practices by the Government hinder investigative journalism, undermine the transparency of lucrative government contracts and hinder public debate on politically important issues.

## C. Freedom of expression

### 1. Civil society

53. The promotion of the right to freedom of opinion and expression, online and offline, is essential to creating an enabling environment for civil society to play its role in monitoring human rights and the rule of law and promoting cultural, social and economic development and participation in public affairs. A number of legislative and policy changes by the Government in recent years have had the effect of restricting the role of non-governmental organizations, especially human rights defenders, advocates for LGBT rights and gender equality, and online activists.

54. In 2017 the Government of Hungary adopted Law No. LXXVI of 2017 on the Transparency of Organizations which Receive Support from Abroad (Transparency Law), which imposed obligations of registration, declaration and publication on certain categories

<sup>34</sup> Memorandum on freedom of expression and media freedom in Hungary by the Commissioner for Human Rights of the Council of Europe, para. 13. Available at: <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-hungary/1680a1e67e>.

<sup>35</sup> A/HRC/47/25.

<sup>36</sup> See also the report on freedom of expression and disease pandemics of the former Special Rapporteur on freedom of opinion and expression (A/HRC/44/49).

<sup>37</sup> Human Rights Committee, general comment No. 34 (2011), para 47.

of civil society organizations directly or indirectly receiving financial support from abroad that exceeded a certain threshold. International human rights mechanisms, including the holder of this mandate, urged the Government to withdraw the Law, as it was discriminatory and stigmatized and delegitimized non-governmental organizations that received foreign funding.<sup>38</sup> In 2020, the Court of Justice of the European Union found that the Transparency Law introduced discriminatory and unjustified restrictions in breach of the rights protected by articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union.

55. As a result of the Court's ruling, the Government repealed the legislation and adopted, in April 2021, a new law on the transparency of civil society organizations capable of influencing public life, which placed audit obligations on civic organizations with an annual budget above 20 million forints (about 55,000 euros) "engaging in activities likely to influence public life". The Special Rapporteur notes that religious and sports organizations – some of which receive significant amounts of public money and have influence over the public – are exempt from such audits. She urges the authorities to ensure that the State Audit Office of Hungarian Public Management did not selectively audit non-governmental organizations that were critical of the Government or impose unnecessary administrative burdens on such organizations that could inhibit their work. Although she is disappointed that the Commissioner for Fundamental Rights failed to comment on the legislation during its drafting phase, she calls on him to monitor the application of the law.

56. In March 2018, a controversial set of laws known as the "Stop Soros" legislative package was adopted, criminalizing "organizational activities" to assist persons lodging asylum requests. As part of the legislative package, organizations receiving funds from abroad were subjected to onerous licensing requirements and a special tax, with adverse impacts on their advocacy activities. The legislation generated a strong reaction from international human rights bodies, including the Special Procedures,<sup>39</sup> who criticized its xenophobic nature and its creation of a hostile environment for asylum seekers and the organizations supporting them. In November 2021 the Court of Justice of the European Union ruled that the legislation infringed the laws of the European Union.

57. The ruling of the European Court is a positive development not only for the freedom of expression of civil society organizations but also for the realization of the right to information of refugees and asylum seekers. The Special Rapporteur would like to draw the attention of the Government to Human Rights Council resolution 22/6, which explicitly calls upon States to ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy; and to ensure that they do not discriminatorily impose restrictions on potential sources of funding. The Special Rapporteur, together with other relevant Special Procedures, will continue to monitor the situation and calls on the Government to comply with the judgment.

58. The European Court decisions vindicate the position of civil society as a vital pillar of an inclusive, democratic society. Access to resources from abroad to promote human rights should be seen, not as a threat, but as a measure of international solidarity, from which Hungary itself has benefited significantly in previous decades. The Special Rapporteur urges the Government to strengthen its relationship with civil society actors, including by ensuring their meaningful participation in public consultations.

## 2. Academic freedom

59. In his report on academic freedom in 2020, the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression described the legal pressure which forced the Central European University to move its campus from Hungary as an example of assault on academic freedom.<sup>40</sup> Subsequently, in November 2020,

<sup>38</sup> <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-HUN-2-2017.pdf>.

<sup>39</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23668>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24080>; and <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22861&LangID=E>.

<sup>40</sup> [A/75/261](#), para. 34.

the Court of Justice of the European Union ruled that the law that had been applied to the University was contrary to the provisions of the Charter of Fundamental Rights.

60. The Minister for Innovation and Technology explained to the Special Rapporteur that changes had been made in the academic sector to strengthen the independence of the institutions and that the universities were now controlled by boards of trustees with no interference from the Government. The scholars with whom the Special Rapporteur met during her mission did not share that view. The Special Rapporteur received extensive testimony from stakeholders in academia who felt their institutional and individual freedoms were under attack from a range of legislative and policy changes introduced by the Government since 2018.

61. The scholars raised concerns about the transfer of control of most of Hungary's public universities to private entities governed by individuals closely allied to the Fidesz Party. They mentioned ideologically driven attacks against individual scholars by media supportive of the Government, and of efforts to influence research and teaching on certain issues, such as gender studies. They pointed to the reorganization by the Government of the highly esteemed long-standing research institutes of the Hungarian Academy of Sciences that had now placed them under the control of the Eötvös Loránd Research Network. The new leadership – composed of 13 members, six delegated by the minister responsible for coordinating scientific policy and six by the president of the Hungarian Academy of Sciences, appointed by the Prime Minister and the president of the Network, for an indefinite period – would have significant influence over the choice of directors for each research institute and over decisions concerning funding, creation and closure of existing research institutes and other matters, including the administration of grants and scholarships, with little public control.

62. A number of experts pointed out that a pattern similar to the “capture” of the media sector is emerging in the academic sector, characterized by ideologically driven public criticism of scholars, political pressure on institutions and a gradual transfer of ownership to those closely linked to the ruling party. They feared those trends would eventually reshape the academic sector and weaken academic freedom.

### **3. Hateful speech**

63. Article IX (4) of the constitution of Hungary states that the right to freedom of expression may not be exercised with the aim of violating the human dignity of others. Notwithstanding the exhortation, the Special Rapporteur received extensive and deeply troubling testimony from journalists, human rights defenders, LGBT activists and those working for refugees and migrants about State-orchestrated campaigns of fearmongering, scapegoating and stigmatization, especially online, fuelling discrimination and racial and ethnic hatred. Many people reported being publicly vilified on pro-government media as foreign agents, traitors and “Hungary-haters” or “non-Hungarians”. Homophobia seems to be on the rise. Many pro-government national and media outlets appear to be deliberately fuelling the negative public attitude.

64. While human rights defenders, especially those working on the rights of LGBT individuals or migrants, are reportedly given limited or no opportunities to appear in the media and express their views and concerns, homophobic and sometimes violent groups are said to be given extensive coverage on online platforms by some pro-government outlets. Various stakeholders claimed that national consultation campaigns organized by the Government deliberately sought to fuel dissension, division and hate. The Special Rapporteur was provided with visual evidence of such campaigns so that she could see for herself the toxic and deliberately provocative style of the messages. Stakeholders also claimed that while the Government made extensive use of billboards to promote highly politicized campaigns portraying refugees, asylum seekers, migrants and minorities, including LGBT persons, in a negative light, positive, non-political messages about those groups were not covered by the pro-government media outlets. It was brought to the Special Rapporteur's attention that even attempts to advertise humanitarian messages about refugees and asylum seekers on billboards on World Refugee Day were thwarted, as billboard companies refused to rent out the space for fear of adverse reaction from the authorities.



65. In June 2021, the National Assembly adopted a package of legislative amendments which – claiming to combat paedophilia – banned all products, advertising and media content that were deemed to “popularize” or depict consensual same-sex conduct or the affirming of one’s gender, for persons under the age of 18. A wide range of stakeholders were concerned that by conflating paedophilia with sexually non-conforming behaviour, the new law would encourage stigmatization, discrimination, hatred and violence towards LGBT persons. Many teachers and activists feared that the law would be used to alter the school curriculum and restrict access of adolescents to sexual and reproductive health information, although the Teachers Board, with whom the Special Rapporteur met, maintained that they were still awaiting the rules for the application of this law to the curriculum. The new legislation triggered infringement procedures by the European Commission, on the grounds that Hungary had failed to explain why the exposure of children to LGBT content would be detrimental to their well-being or not in line with the best interests of the child.

66. The Government announced that it would hold a referendum on the issues related to the new law alongside the national elections in April 2022. That move was being interpreted by political commentators as a useful distraction to overshadow the opposition campaign.<sup>41</sup> The Special Rapporteur is concerned that the timing of the referendum and the way in which the referendum questions were framed could increase tensions and lead to further hate speech in the charged political environment of the forthcoming elections, have a chilling effect on civil society actors and endanger the safety of LGBT persons and activists.

#### **4. Digital freedom committee**

67. The Special Rapporteur was informed that a digital freedom committee had been convened by the Ministry of Justice, involving relevant ministries and State institutions, and that the committee had called for input from various stakeholders with a view to informing the Government on the implementation of the Digital Services Act of the European Union. The Special Rapporteur encourages the Government to consult proactively with civil society, including human rights organizations and diverse media organizations. She will be monitoring developments concerning this process and looks forward to sharing her views with the Government in due course in line with best practices on State regulation of digital companies.

68. Under the current circumstances, the online space is critical for the continued operation of independent media outlets in Hungary. After the Government of Hungary begins to enforce the Digital Services Act, European institutions will have a key role to play in ensuring the new legislation is implemented in a way that effectively protects the online space, including access to free and varied information, the right to privacy and freedom of opinion and expression.

### **D. Oversight institutions**

69. In the face of the various challenges to media freedom, freedom of information and freedom of expression and the weakness of the media regulatory bodies in fulfilling their responsibilities, already described in the present report, the role of the judiciary and human rights institutions becomes vital in ensuring the State’s compliance with its human rights obligations. The findings of the Special Rapporteur on those institutions should be read in that context.

#### **1. The judiciary**

70. The Constitutional Court notably and rightly emphasized that the press, even though its activities were increasingly complex and diverse, was first and foremost a means of expressing opinions, forming opinions and obtaining the information necessary to form an opinion (Decision No. 7/2014 (III. 7.) AB) (3 March 2014). The Special Rapporteur notes that the Court, in expressing its position on the constitutional protection of speech on matters

<sup>41</sup> <https://www.euractiv.com/section/non-discrimination/opinion/why-orbans-child-protection-referendum-makes-no-sense-and-why-it-does/>.



of public interest, stated that even if value judgments might be excessive and exaggerated, the free criticism of the institutions of the State was a fundamental right of members of society and an essential element of democracy (Decision 36/1994 (VI. 24.) AB (21 June 1994)).

71. During her visit, the Special Rapporteur met with senior judges of the Kuria. She welcomed their assurances that they were fully committed to upholding the rule of law and the supremacy of the decisions of the Court of Justice of the European Union and the European Court of Human Rights, and appreciated the clarification they provided to her on a number of legal and constitutional issues. Nevertheless, the Special Rapporteur remains concerned about two main issues.

72. The first issue relates to the alarming signs of the erosion of the independence of the judiciary, including the undue and premature termination of the President of the then Supreme Court after he had publicly expressed his views on legislative reforms affecting the judiciary, and public criticism by government officials of some court decisions. In addition, a series of legal amendments paved the way for the election of a new President of the Kuria with significant additional powers in respect of the appointment of the Kuria's judges, heads of panels and heads of chambers. Those additional powers were not supported by the National Judicial Council, the country's self-governing judicial body. The Special Rapporteur shares the views of the Special Rapporteur on the independence of judges and lawyers, who warned that the constitutional reform and legal changes had the effect – if not the main goal – of hampering the constitutionally protected principle of judicial independence and enabling the legislative and executive branches to interfere with the administration of justice.<sup>42</sup>

73. The second issue relates to the limits placed by law on judicial scrutiny of decisions on media issues, noted in the memorandum of the Commissioner for Human Rights of the Council of Europe.<sup>43</sup> The court is required to respect the discretion of the Media Council and cannot question the basis of decisions beyond the violation of the media law. Those limits restrict the ability of the courts to substantively question the decisions of the Media Council. Moreover, court proceedings have no suspensive effect on decisions of the Media Council, which means that fines or suspension of broadcasting are immediately enforced and do not await the court's final judgment, potentially placing a heavy burden on media outlets, especially smaller ones, and disincentivize them from seeking justice. More broadly, since January 2012 citizens have no longer been able to petition the Constitutional Court, thus foreclosing an important avenue for claiming their constitutional rights.

## 2. Commissioner for Fundamental Rights

74. In June 2021, during the session of the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions, the Commissioner for Fundamental Rights was downgraded to B status.<sup>44</sup> In its deliberations, the Subcommittee noted that the selection process of the Commissioner was not sufficiently broad or transparent, and regretted that the Commissioner had made limited use of international and regional human rights mechanisms on some sensitive issues. In her meeting with officials of the Commissioner's Office, she was told that he would provide documentary evidence to the Subcommittee to establish the Office's conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

75. Human rights defenders who met with the Special Rapporteur criticized the Commissioner for Fundamental Rights for his failure to comment on important legislation having an impact on the work of civil society, including the new law on the transparency of civil society organizations capable of influencing public life. They also mentioned that he had remained silent on a number of important human rights issues, including on issues related to LGBT and minority rights. This is particularly worrying in the light of his additional mandate as the Head of the Equal Treatment Authority since 1 January 2021.

<sup>42</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26371>.

<sup>43</sup> Ibid.

<sup>44</sup> <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>.

76. The Commissioner did not meet with the Special Rapporteur; consequently, she was unable to discuss the above-mentioned concerns with him. She hopes that he will fulfil his responsibilities to comment on draft legislation in accordance with the country's human rights obligations, monitor the implementation of laws affecting the media and civil society, and ensure that journalists, human rights defenders, academics and others can play their essential role in society.

### 3. National Authority for Data Protection and Freedom of Information

77. The Special Rapporteur met with the President of the National Authority for Data Protection and Freedom of Information, which plays an important role in striking a balance between the protection of privacy and access to information.

78. She noted the initiative taken by the National Authority to provide guidelines on the implementation of deadlines for access to information, introduced owing to the exigencies of the pandemic. She welcomed his proactive engagement with legislative procedures to ensure that freedom of expression was protected, and the guidance he had provided on the implementation of European Union data protection regulations without undue infringement on freedom of expression.

79. The Special Rapporteur notes that the National Authority recently announced that, while the National Security Services did in fact conduct surveillance with Pegasus, all such surveillance was legally permissible because the cases involved national security risks and the surveillance was undertaken pursuant to Ministry of Justice or court authorization.<sup>45</sup> Some members of the European Parliament have questioned the finding of the National Authority on this issue.<sup>46</sup> The Special Rapporteur calls upon the National Authority to ensure that all targeted surveillance undertaken as a matter of national security is done with proper judicial oversight and under clear and narrowly defined rules that are fully compliant with international human rights standards, including on press freedom.

## IV. Conclusion and recommendations

80. **In a democracy, there can be no information monopoly. By adopting laws and policies that have enhanced political influence over media regulatory bodies and public service media, favouring media outlets supportive of its political agenda and ostracizing and delegitimizing other outlets, weakening the independence of the judiciary and stigmatizing civil society actors, the Government has proactively reshaped the media sector, endangering media diversity, pluralism and independence and undermining freedom of opinion and expression. It is deeply troubling that the authorities failed to address the findings of the OSCE/ODIHR Limited Election Observation Mission following the 2018 elections that intimidating and xenophobic rhetoric, media bias and opaque campaign financing had constricted the space for genuine political debate, hindering voters' ability to make a fully-informed choice. The Special Rapporteur reaffirms that critical coverage of information, news and opinions are indispensable conditions of a multiparty democracy.**

81. While the primary obligation to uphold human rights rests with Government and State institutions, given the centrality of human rights, the rule of law and democratic principles in the founding instruments of the European Union, the Special Rapporteur calls on European institutions to ensure fundamental rights are effectively enforced within all European Union member States, including Hungary.<sup>47</sup> European institutions have a collective responsibility to ensure that the member States apply international human rights norms, including media freedom and diversity, human rights defenders' protections and respect for the rule of law.

<sup>45</sup> <https://hungarytoday.hu/pegasus-hungary-spyware-data-authority-naih-peterfalvi/>.

<sup>46</sup> [https://www.europarl.europa.eu/doceo/document/E-9-2022-000440\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2022-000440_EN.html).

<sup>47</sup> On 16 February 2022, the Court of Justice of the European Union ruled in favour of the conditionality mechanism, which made the receipt of financing from the European Union budget subject to the respect by the member States of the principles of the rule of law.

## **A. General recommendations**

### **Recommendations with regard to media**

82. **Adopt a legal and policy framework, through an inclusive multi-stakeholder process, to promote media independence and pluralism.**
83. **Revise the appointment procedure of the Chair of the Media Council to make it more transparent and inclusive to reflect the full range of the political spectrum and the media community.**
84. **Guarantee the independence, transparency and accountability of NMHH and the Media Council, including through legislative reforms to redistribute the concentration of power currently in the hands of the President of NMHH, who also serves as the Chair of the Media Council.**
85. **Take measures to reduce bias in news coverage and enhance diversity of views, including by reforming the governance and management of public service media to enhance its editorial independence, transparency, accountability and professional standards, and ensure that all media outlets, including those critical of the Government, are able to access and impart information freely.**
86. **Guarantee fair competition and the application of anti-monopoly rules to prevent undue concentration of media ownership, direct or indirect, and adopt legislation on the transparency of media ownership, licensing of broadcasters and content diversity among and within media outlets.**
87. **Ensure that public advertising is directed to all media on the basis of transparent and fair criteria and does not result in any form of political interference with the media.**
88. **Protect the safety of journalists, and the privacy and security of their communications and sources, in line with recommendation CM/Rec(2016)4 of the Committee of Ministers of the Council of Europe to member States on the protection of journalism and the safety of journalists and other media actors, adopted on 13 April 2016, and launch an independent investigation into the alleged use of Pegasus spyware against journalists and human rights defenders.**
89. **Review the decision on Klubradio, taking into account the importance of maintaining media diversity.**

### **Recommendations with regard to freedom of expression**

90. **Introduce legislation to counter strategic lawsuits against public participation, in line with European Union recommendations to protect journalists from vexatious lawsuits, and repeal the provision in the Criminal Code relating to defamation as a criminal offence.**
91. **Rescind policies adopted in the context of the COVID-19 pandemic that delay or limit access to information.**
92. **Set up a protocol to allow all media outlets to have unhindered access to the National Assembly, parliamentarians and politicians, and apply it equally, fairly and transparently.**
93. **Enforce the decision of the European Court of Human Rights in the case of *Szabó and Vissy v. Hungary* and, as a result, ensure acts of surveillance are subject to independent oversight and judicial review, are conducted in accordance with international human rights principles of legality and necessity, with effective legal mechanisms of redress, and do not result in undue restrictions to freedom of opinion and expression.**
94. **Publicly denounce and prosecute all instances of hate speech stigmatization and discrimination against such vulnerable groups as Roma, LGBT persons, asylum seekers and migrants and those working for them, including by strengthening efforts to**

eradicate stereotyping and discrimination and by providing training to law enforcement officials to tackle violence, threats and harassment, both online and offline.

95. Protect the scientific freedom and autonomy of universities and research institutes, including in relation to the appointment and dismissal of leadership and professors, curricula, teaching and allocation of resources.

96. Strengthen the participation of civil society organizations in inclusive processes for the consideration of new legislation and engage with civil society actors on issues of concern to them;

97. Respond firmly at the highest levels of Government and institutions to hateful comments made by politicians, media representatives or other commentators aimed at human rights defenders, independent journalists and vulnerable and marginalized social groups.

**B. Recommendations to the international community, especially the European Union and United Nations human rights bodies**

98. Respond vigorously to the Government of Hungary's failures to meet its obligations to protect, promote and fulfil freedom of opinion and expression, set up clear benchmarks and deadlines for the realization of such fundamental rights and freedoms and initiate actions if and where rights are violated.

99. Support the Government of Hungary in its efforts to ensure that decisions of international and regional courts, especially those of the Court of Justice of the European Union and the European Court on Human Rights, are promptly and properly executed.

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