



The honouring of membership obligations to the Council of Europe by Hungary

Report¹

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¹ Assembly decision. Reference to committee: Reference 4446 of 12 April 2019.

A. Draft resolution²

1. Hungary joined the Council of Europe on 6 November 1990 and has been an active member state of the Organisation ever since. It was the first of the former communist countries to ratify the European Convention on Human Rights (ETS No. 5, “the Convention”) in 1992 and subsequently has signed and ratified 94 Council of Europe treaties. Hungary exercised, for the second time since joining the Organisation, the Chairmanship of the Committee of Ministers from May to November 2021. It actively promoted, inter alia, the effective protection of national minorities issues and discussions on challenges related to digitalisation and artificial intelligence, which culminated with the formal approval of the Second Additional Protocol to the Convention on Cybercrime (2001 “Budapest Convention”) on enhanced co-operation and the disclosure of electronic evidence (CETS No. 224) by the Committee of Ministers on 17 November 2021.

2. The Parliamentary Assembly has closely followed Hungary’s honouring of its Council of Europe membership obligations since 2013. In [Resolution 1941 \(2013\)](#), it expressed its deep concern about “the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary” that had introduced “excessively concentrated powers, increased discretionary powers and reduced both the accountability and legal oversight of numerous government institutions and regulatory bodies in Hungary”. Although the Assembly decided not to open a monitoring procedure in respect of Hungary at that time, it resolved to closely follow the situation in Hungary. In subsequent resolutions, including [Resolution 2203 \(2018\)](#) adopted in the framework of the discussion on the 2018 periodic review report on Hungary, the Assembly has continued to follow developments in the country.

3. Since its accession to power in 2010, the coalition of the Hungarian Civic Alliance (Fidesz) and the Christian Democratic People’s Party (KDNP) has won four consecutive parliamentary elections and enjoyed, nearly continuously, a two-thirds parliamentary majority, which constitutes a unique situation among Council of Europe member States and contemporary democracies.

4. Since the adoption of the Fundamental Law (which is the official name of the new Hungarian constitution) in 2011, the Venice Commission has expressed serious concerns about the impact of cardinal laws requiring two-third majorities on issues that are usually decided by simple majority and which should be left to the ordinary political process. The wide use of cardinal laws therefore impacts the “functionality of a democratic system” and cements the political preferences and the country’s legal order. It also undermines the ability of the parliament to adapt to new conditions and face new challenges within society in the future.

5. In addition, the safeguards foreseen in the Constitution – with qualified majorities designed to require the search for a broad agreement between the majority and the opposition on key issues - become inefficient in cases where a ruling coalition enjoys a two-thirds majority. This is in particular the case when appointing the highest judicial officials (notably members of the Constitutional Court, the President of the Supreme Court (*Kúria*) and the President of the National Office for the Judiciary (NOJ)) or adopting constitutional changes (eleven since 2010). This situation severely restricts political pluralism - which is the hallmark of a democratic system - that should be embedded in the political system and state institutions.

6. The Assembly notes the valuable contribution of the Venice Commission, which has issued 23 opinions on Hungary since 2011, assessing the compliance of the Hungarian constitutional, legal and electoral framework with Council of Europe standards. The Assembly encourages the Hungarian authorities to pursue their co-operation with Council of Europe monitoring bodies and to implement their recommendations.

7. A two-thirds majority was once again achieved by the ruling coalition in the April 2022 parliamentary elections. This was done with 54% of the constituency and 52% of the party-list votes. Under these circumstances, it is incumbent on the authorities to ensure that the principles governing the proper functioning of democratic institutions are respected and safeguarded in good faith, including through effective checks and balances, meaningful dialogue with the opposition and co-operation with civil society organisations.

² Draft resolution adopted by the Committee on 14 September 2022.

8. Hungary, like all countries, has had to face the Covid-19 pandemic. In recent months, it has also had to tackle the consequences of the Russian aggression in neighbouring Ukraine. The Assembly commends the people of Hungary for the great solidarity shown in the handling of the mass arrival of refugees from Ukraine since February 2022. The Assembly welcomes the decision of the authorities to allow persons fleeing the war and holding Hungarian citizenship to have access to the benefits provided to holders of temporary protection. However, it shares the concerns of the Commissioner for Human Rights concerning the situation of third country nationals and stateless persons excluded from this scheme.

9. The Assembly is also concerned that the country has been ruled under a special legal order since 2020. The parliament adopted notably, on 24 May 2022, the Tenth (constitutional) Amendment, allowing the government to trigger a “state of danger” in “cases of war or humanitarian catastrophes in neighbouring countries”, following the outbreak of war in Ukraine. The Assembly recalls that the use of special legal orders must be restricted to what is strictly necessary, proportionate and must be limited in time. It also stresses that parliamentary oversight, political deliberations involving all political forces in parliament and proper checks and balances are crucial in times of crisis.

10. The Assembly recalls the human rights issues raised in its previous resolutions related to policies and developments in the fields of migration, gender equality, academic freedoms, and the situation of LGBTIQ people. It welcomes the revocation of the disputed Act on transparency of organisations receiving support from abroad (Lex NGO) in April 2021, but the recent fines imposed on NGOs for their actions against the Child protection referendum could have a chilling effect on civil society organisations. Recalling its [Resolution 2203 \(2018\)](#), and [Resolution 2417 \(2022\)](#), the Assembly strongly encourages the Hungarian authorities to improve the standards in all these fields in light of the opinions of the Venice Commission, the case-law of the European Court of Human Rights and the recommendations of the Commissioner for Human Rights. The Assembly will continue to follow these issues closely.

11. *In the field of elections:*

11.1. With respect to the April 2022 parliamentary elections, the Assembly notes that, according to ODIHR, “the electoral legal framework provides an adequate basis for the conduct of democratic elections but contains a number of omissions and key provisions that fall short of international standards and obligations, undermining its effectiveness and at times leading to legal uncertainty, mostly related to campaign rules and provisions for a level playing field”. ODIHR also notes that ~~the April 2022~~ elections were efficiently and professionally organised and the campaign was competitive. However, it highlighted a lack of transparency and insufficient oversight of campaign finances, as well as a lack of balance in monitored news coverage significantly limiting voters’ opportunity to make an informed choice, a highly negative campaign in tone characterised by a pervasive overlap between the ruling coalition and the government, and insufficient effective legal remedies for election disputes. ODIHR also noted that extensive and unregulated spending by entities other than the election contestants, including through advertisements on social media, largely favoured the ruling party. This echoes issues of concern previously identified by GRECO in the funding of political parties and electoral campaigns;

11.2. The Assembly notes that electoral amendments were adopted hastily in December 2020, by means of a cardinal law, under a state of emergency, without meaningful consultation - which is not in line with Venice Commission guidelines – and without reaching a broad political consensus;

11.3. While these amendments include some technical improvements, the Venice Commission assessed that their main effect would be “to favour the incumbents”. In particular, the obligation for political parties to appoint candidates in 71 (instead of 27, as was previously the case) out of 106 constituencies, raises questions. One impact of this is that it makes it more difficult for opposition and smaller parties to obtain a foothold and forces them to unite in heterogeneous coalitions. As regards the drawing up of the electoral map, the Assembly notes that constituency boundaries continue to be drawn by parliament and not by an independent and impartial commission, as recommended by the Venice Commission. To prevent gerrymandering, the process should be transparent, include all parties within the Parliament and be based on clear and widely accepted criteria;

11.4. As a result of the recent legal changes and the unaddressed deficiencies of the electoral legislation identified by the Venice Commission, ODIHR and GRECO in the past, the Assembly concludes that the current electoral framework does not ensure a level playing field conducive to fair elections. It also concludes, in light of ODIHR findings, that the legal framework to conduct referendum campaigns is inadequate and challenges voters' ability to make informed choices;

11.5. The Assembly therefore urges the Hungarian authorities to address without further delay the issues identified by ODIHR and the Venice Commission, and in particular to significantly reduce the number of single-member constituencies and counties in which each party needs to nominate candidates, and to enhance the transparency of the funding of political parties and electoral campaigns, including on social media.

12. *In the field of the judiciary and the rule of law:*

12.1. As regards the judiciary, Hungary has an efficient and well-functioning judicial system, as noted by the Council of Europe European Commission for the efficiency of justice (CEPEJ). Nevertheless, while acknowledging that the Venice Commission stated that a number of powers of the President of the National Office of the Judiciary (NOJ) had been transferred to the National Judicial Council (NJC), which resulted in the improved accountability of the President of the NOJ, it also stated that the powers of the NOJ President were still extensive and concentrated in the hands of just one person. The Assembly therefore remains concerned about long-standing issues related to the independence of the judicial system, including the imbalance of powers between the NOJ and the NJC and the concentration of powers in the hands of the President of the Supreme Court (*Kúria*);

12.2. The Assembly regrets that the December 2020 amendments pertaining to the judiciary were adopted without public consultation and during a state of emergency, severely restricting the fundamental rights to gather, discuss, protest, and demonstrate, as pointed out by the Venice Commission;

12.3. While the judicial reforms introduced in 2019 and 2020 failed to address previously identified structural problems concerning the imbalance of powers, the Assembly reiterates previous recommendations made in 2012 by the Venice Commission.

12.4. The Assembly in particular takes note of the latest opinions of the Venice Commission highlighting that:

12.4.1. the 2019 reform, allowing members of the Constitutional Court to become members of the *Kúria* without the involvement of the NJC, could open the door to a politicisation of the Supreme Court;

12.4.2. The procedure for the appointment of the President of the *Kúria* could pose "serious risks of politicisation and important consequences for the independence of the judiciary, or the perception thereof by the public, considering the crucial role of his/her position in the judicial system", in light of the limited guarantees of independence applying after his/her appointment;

12.4.3. The power of the NOJ President to decide on the temporary transfer of any judge to state institutions and their reintegration in the judiciary could lead to judges being 'promoted' to higher judicial functions by a decision of the NOJ President, thus circumventing the procedural guarantees of regular application procedures;

12.4.4. Despite detailed rules, the lack of transparency concerning the discretionary powers of the NOJ President and court presidents to allow bonuses to judges could lead to arbitrary decisions or self-censorship by judges.

12.5. In line with the recommendations issued by the Venice Commission, the Assembly therefore asks the Hungarian authorities to:

12.5.1. set up clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment;

12.5.2. remove the prerogative of the President of the Kúria to mandate temporary presiding judges, or at least eliminate any margin of discretion in their selection;

12.5.3. abolish the possibility to adopt the authoritative type of uniformity decisions, while recalling that any unification competence of the Kúria must comply with fundamental principles of the separation of powers;

12.5.4. With respect to the changes brought to the complex case allocation system in 2020, clarify the criteria for the President of the Kúria to increase the members (from three to five) of adjudicating panels for certain types of cases and to make the opinion of the relevant college and the judicial council public and binding in order to ensure the transparency of the process and increase the trust of citizens in the good and impartial functioning of the judiciary.

12.6. The Assembly also recalls the [interim resolution of the Committee of Ministers of 9 March 2022](#) on the implementation of the *Baka vs Hungary* ruling. the Assembly takes note of the declaration made by the Minister of Justice of Hungary that this case resulted from a one-time constitutional reform which was a unique event in the constitutional development of Hungary that is completed. However, it recalls that the Committee of Ministers strongly urged the authorities to “introduce the required measures to ensure that a decision by Parliament to impeach the President of the Kúria will be subject to effective oversight by an independent judicial body in line with the European Court’s case-law, as well as to evaluate the domestic legislation on the status of judges and the administration of courts”, including the evaluation of the guarantees and safeguards protecting judges from undue interference;

12.7. The Assembly therefore urges the Hungarian authorities to strengthen the self-governance of the judicial system and guarantee its independence more effectively. It calls for the strengthening of the role and independence of the National Judicial Council and the extension of its powers to ensure effective oversight of the NOJ President, in line with the recommendations of the Venice Commission;

12.8. The Assembly welcomes the progress achieved in fighting money laundering and financing of terrorism, in compliance with the recommendations made by MONEYVAL, which has upgraded Hungary’s rating from “partially compliant” to “largely compliant” in several areas. This should inspire the authorities to address other deficiencies and establish legal frameworks that ensure transparency and accountability, in particular when fighting corruption, in line with GRECO’s recommendations. This notably requires improving the level of transparency and consultation in the legislative process, adopting codes of conduct or ethics for members of parliament and government, reviewing the format of asset declarations and the broad immunity enjoyed by MPs and strengthening rules governing conflicts of interest and whistle-blowers’ protection;

12.9. The recent creation of “public-interest trusts”, is very worrying. These trusts will manage a large amount of public and private funds without supervision by the state audit. Also of concern is the absence of legal provisions governing the prevention of conflict of interests of board members (appointed for life by the government). These problems should be addressed by the authorities, in line with the Venice Commission’s recommendations;

12.10. The Assembly is also concerned by the use of the Pegasus spyware, whereby several hundred individuals, including journalists, lawyers and politicians, were subject to secret surveillance. It calls on the Hungarian authorities to urgently revise the National Security Services Act governing secret surveillance, urging them to ensure that it provides for an independent external oversight and sufficient safeguards against abuses and possible violations of the right to privacy and family life, and calls for the implementation of the *Szabó and Vissy v. Hungary* judgment of 2016.

13. *In the field of media:*

13.1. The Assembly reiterates its concerns about the media. The establishment, in 2018, of a conglomerate of over 470 media outlets – the Central European Press and Media Foundation (“KESMA”) – has led to greater media market concentration. The overwhelming distribution of advertising by the state or state-owned companies to pro-governmental medias has resulted in distorted media pluralism and state capture of media. The Assembly asks the authorities to ensure fair and transparent distribution of such advertising expenditure, including on social media. In addition, the Assembly is highly concerned by the decision taken by the Media Council not to renew the licence of the independent radio stations Klubrádió in 2020 and Tilos Rádió's in 2022 due to failings, which has resulted in discriminatory measures and a shrinking space for alternative media;

13.2. Recent legislation about the “dissemination of false information” relating to the Covid-19 pandemic has placed additional pressure on journalists, who could face a three-year prison sentence. The Assembly calls on the Hungarian authorities to repeal this law and to fully and effectively guarantee access to public information and to suppress statutory provisions that have a chilling effect on freedom of expression, including by decriminalising defamation.

13.3. In addition, the Assembly encourages the Hungarian authorities, in line with Venice Commission recommendations, to improve the media environment by strengthening the functional independence of the Media Council, reducing the term of office of the Authority's president, and withdrawing some of his/her powers of appointment. The Assembly also invites the Hungarian authorities to consider implementing a more open and pluralistic appointment procedure for Media Council members, including by allowing civil society groups to participate in the nomination process;

13.4. The undisputed exercise of power by the same coalition, which since 2010 has enjoyed almost continuously a two-thirds majority, has, over time, in the current constitutional framework, significantly reduced the efficiency of the system of checks and balances and strengthened the ruling coalition's influence on state bodies and key independent institutions. The recent changes in the electoral law have further reduced the fairness of the electoral process, and thus weakened the ability of the system to safeguard political pluralism and foster political alternatives. The Assembly concludes that the cumulative effects of the measures that negatively impact the independence of the judiciary, the situation of media, transparency and accountability of state institutions, overall undermine the functioning of democratic institutions. It acknowledges, however, that despite this restrictive environment, there is an effective parliamentary opposition as well as a vibrant civil society. The Assembly remains therefore confident that the authorities can restore the necessary conditions for a fully pluralistic, democratic society with full respect of the rule of law, in co-operation with the Council of Europe monitoring and expert bodies, and the Venice Commission. It takes note, in this respect, of the authorities' declared commitment to democratic values.

14. In light of the long-standing issues pertaining to the rule of law and democracy that remain largely unaddressed by the authorities, the Assembly resolves to use the means at its disposal to closely follow the developments with regard to the functioning of democratic institutions and the rule of law in Hungary in close co-operation with the Hungarian authorities.