

OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process

Participating State: Hungary

UPR Working Group Session and Date of Review: 39th Session, 1-12 November 2021

Background

1. Hungary has been a participating State in Organization for Security and Co-operation in Europe (OSCE) since 1973 and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.¹
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Hungary, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE-Area.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Hungary and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Hungary.

Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE participating State, an OSCE field operation or another OSCE institution, the OSCE/ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards.² In 2016-2020, the following legal opinions (on topics other than elections) were issued on legislation or draft legislation of Hungary:

Joint OSCE/ODIHR-Venice Commission Opinion on the Provisions of the So-called “Stop Soros” Draft Legislative Package which directly Affect (In particular Draft Article

¹ OSCE Office for Democratic Institutions and Human Rights, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, <http://www.osce.org/odihr/elections/76894> and *Compendium of OSCE Human Dimension Commitments: Volume 2, Chronological Compilation (third edition)*, 2011, <http://www.osce.org/odihr/76895>; OSCE Summit Meeting, Astana 2010, *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010, <http://www.osce.org/cio/74985?download=true>

² The legal reviews and opinions, often produced in co-operation with the Council of Europe’s Commission for Democracy through Law (Venice Commission), are available at www.legislationline.org. Basic information about the constitutional system and human dimension-related legislation of Hungary is also available in English on www.legislationline.org.

*353A of the Criminal Code on Facilitating Illegal Migration)*³

This Opinion on the *So-called “Stop Soros” Draft Legislative Package*, (“Joint Opinion”) requested on 22 March 2018 by the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe. The Draft Law proposed significant changes to the Criminal Code of Hungary, introducing draft 353A on Facilitating Illegal Migration (hereinafter Draft Article 353A). The target of the legislation (that is the crime of facilitation of illegal migration) was any organisation whose activities were aimed to assist a person entering Hungary illegally or residing in Hungary illegally, or obtaining a title of residence. The legislation was adopted by the Parliament on 20 June 2018, just prior to the plenary session of the Venice Commission on 22-23 June 2018, without waiting for the recommendations of the Joint Opinion.

5. Serious concerns regarding Draft Article 353A were raised by OSCE/ODIHR and the Venice Commission, in the Joint Opinion and a number of crucial recommendations were made, with a final strong suggestion for the authorities to refrain from adopting the Draft Law altogether. It is therefore recommended that the law be repealed for the following reasons (as set out in the joint opinion);
 - it defines organizational activities related to illegal migration, such as “preparing or distributing informational materials”, as criminal. The interference into the activities of associations proposed, is a direct interference of the enjoyment of Article 11 ECHR and Article 22 ICCPR.
 - it provides grounds for criminalising advocacy and campaigning activities and thus constituting an illegitimate interference with the freedom of expression guaranteed under Article 10 ECHR and Article 19 ICCPR;
 - it does not limit criminal sanctions to only those activities where there was intentional encouragement of migrants to circumvent the law and; and may sanction as a criminal offence assistance by NGOs of asylum seekers in applying for asylum and lodging appeals.
 - it does not clearly distinguish individual criminal liability of an NGO member from the association as such. therefore, criminal conviction of an NGO member under Draft Article 353A, may lead to the dissolution of the whole association, which would be a clearly disproportionate measure.

*Joint Opinion on Section 253 on the Special Immigration Tax of Act XLI of 20 July 2018 Amending Certain Tax Laws and Other Related Laws*⁴

6. The Joint Opinion on Section 253 on the Special Immigration Tax of Act XLI of 20 July 2018 Amending Certain Tax Laws and Other Related Laws (hereinafter the Joint Opinion and Section 253 respectively) was requested by the Chairperson on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) on 20 July 2018 to assess the compatibility of Section 253 with international human rights standards. The Opinion was adopted by the Venice Commission at its Plenary Session on

³ Joint OCSE/ODIHR-Venice Commission Opinion on the Provisions of the So-called “Stop Soros” Draft Legislative Package which directly Affect (In particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration) of 25 June 2018

⁴ Joint Opinion on Section 253 on the Special Immigration Tax of Act XLI of 20 July 2018 Amending Certain Tax Laws and Other Related Laws

14-15 December 2018).

7. The Joint Opinion, must be seen in the context of the preceding, mounting pressure on civil society in Hungary as evidenced by the Venice Commission’s Opinion on the *Hungarian Draft Law on the transparency of organisations receiving support from abroad*.⁵ This Draft Law, provided that associations and foundations annually receiving money or other assets from abroad in the amount of around 24 000 euros must register as an “organisation receiving support from abroad” and label themselves as such. It is important to note that the Court of Justice of the European Union in Case C-78/18 found the Hungarian government in violation of Article 63 TFEU and Articles 7, 8 and 12 of the Charter.”⁶
8. Therefore, Section 253 presented itself as another step to curtailing the right of association in Hungary. This Section imposes a 25 per cent tax on (1) financial support to an “immigration-supporting activity” carried out in Hungary and (2) on the financial support to the operations of an organization based in Hungary that carries out “immigration-supporting activities”. Such activities are defined as; a) conducting or taking part in media campaigns and media seminars; b) organizing education; c) building and operating networks, or d) propaganda activities “that portray immigration in a positive light”.
9. The OSCE/ODIHR and the Venice Commission Joint Opinion found that the law should be repealed. The ODIHR upholds the recommendations made to repeal the law, and this recommendation stands for the following reasons;
 - Section 253 restricts disproportionately the “objectives and activities” of associations;
 - it discourages the exercise of freedom of expression and association as granted by international human rights standards, including the ECHR and ICCPR and are considered intertwined rights⁷;
 - Section 253 interferes with the enjoyment of the freedom of associations and expression by NGOs as it may serve to hamper advocacy work, research, and participation in political debate on immigration;
 - it has a chilling effect on the exercise of fundamental rights of the associations and on individuals and organisations who defend these rights or support their defence financially;
 - it has the potential to deter potential donors from supporting these NGOs and put more hardship on civil society engaged in legitimate human rights’ activities.

Election-related activities

⁵ Venice Commission: Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad, CDL-AD(2017)015, 20 June 2017.

⁷ OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, Principle 6

10. ODIHR has observed one election in the country during the reporting period, parliamentary. ODIHR deployed a Limited Election Observation Mission (LEOM) for this election.

Parliamentary elections, 8 April 2018

11. Following an invitation to observe the parliamentary elections in Hungary scheduled for 8 April 2018, based on the findings and conclusions of the Needs Assessment Mission deployed from 29 January to 1 February 2018, and in accordance with its mandate, ODIHR deployed a LEOM). The LEOM was headed by Douglas Bruce Wake and consisted of a core team of nine international experts based in Budapest and six long-term observers deployed throughout the country.
12. According to the LEOM's final report: "parliamentary elections "were characterized by a pervasive overlap between state and ruling party resources, undermining contestants' ability to compete on an equal basis. Voters had a wide range of political options but intimidating and xenophobic rhetoric, media bias and opaque campaign financing constricted the space for genuine political debate, hindering voters' ability to make a fully-informed choice. The technical administration of the elections was professional and transparent".⁸ In addition, the report notes that "fundamental rights and freedoms were respected overall, but exercised in an adverse climate. Accesses to information, as well as the freedoms of the media and association were restricted, including by recent legal changes. The electoral legal framework, as recently amended, formed an adequate basis for democratic elections. However, the legislative process was a missed opportunity to hold inclusive consultations and address prior ODIHR recommendations, including with respect to suffrage rights, a level playing field for campaigning, the freedom of the media, and citizen observation."
13. The report recommended measures to provide a fully democratic basis for the conduct of elections, including by removing unreasonable hindrances on civil society. A public and inclusive review of current legislation, with an emphasis on freedoms of expression and association and access to information, is among the suggested measures. In this respect, the report recommended revising the rules for law-making to ensure opportunities for meaningful public consultation and to reconsider the possibility for individual members of parliament to propose amendments that are not subject to public scrutiny.
14. Noting the increasing ownership of media outlets by party-affiliated entrepreneurs and the allocation of state advertising only to certain outlets, the report recommended amending legislation to prevent the governing party from having an undue campaign advantage. It further recommended that government information activities avoid any appearance of seeking to influence voting. In addition, concrete steps should be taken to strengthen the financial and editorial independence of the public broadcaster, which include ensuring an open and inclusive appointment of the management and a transparent and sustainable financing system.
15. The report further recommends introducing limits on individual campaign donations, improving regulations on financing of election-related campaigns by third parties and introducing measures to enhance the transparency of campaign finance.

⁸ See the full report and recommendations at: <https://www.osce.org/files/f/documents/0/9/385959.pdf>

16. Other recommendations include permitting observation by non-partisan civil society organizations, decriminalizing defamation, reviewing legislative and practical aspects of national minority participation in elections, and introducing temporary special measures to promote women candidates.

Tolerance and non-discrimination issues

17. ODIHR's 2020 publication on "OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic"⁹ reported that in Hungary Muslim migrants and refugees and foreign Muslim students were blamed for the spread of the virus. Civil society reported that Hungary expelled a group of foreign university students of Muslim background for alleged violations of hospital quarantine, severely affecting their personal and professional lives.

18. Members of some minority groups, such as LGBTI, were in a particular situation of vulnerability in the context of the pandemic. LGBTI community members in Hungary reported that self-isolation and quarantine rendered them vulnerable to discrimination and hate crime at the hands of their own family members. At the same time, in some OSCE participating States, including Hungary, the state of emergency was seen as an opportunity to amend legislation that adversely impacted the LGBTI community in those states. In Hungary, a provision in an omnibus legislation passed on 18 May 2020 will make it impossible for transgender and gender-diverse persons to legally change their sex and/or gender marker, since Article 33 provides that all references to "sex" will now instead refer to "sex assigned at birth" in the national registry and on identity documents.

19. ODIHR's recommendations to Hungary include:

- Uphold existing commitments and international obligations on tolerance and non-discrimination;¹⁰
- Condemn any form of discrimination and hate crime and abstain from any statement or action that exacerbates vulnerabilities;
- Ensure that any measures and restrictions imposed due to the emergency situation are created and applied in a non-discriminatory manner, as prescribed by relevant international standards. Working together with civil society organizations and minority communities in this process is crucial; and
- Ensure meaningful public participation of minority communities' representatives, in both the assessment of the situation as well as in designing and implementing the adequate remedial policies and actions, while taking into account the different needs of

⁹ Organization for Security and Co-operation in Europe, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, Warsaw, 17 July 2020, <https://www.osce.org/files/f/documents/e/c/457567_0.pdf>.

¹⁰ OSCE participating States have committed to strongly condemn racial and ethnic hatred, xenophobia, discrimination, anti-Semitism and intolerance against Muslims, Christians and other religions, and have committed to address these phenomena in all their forms (Copenhagen Document, 1990). Since 2003, the OSCE participating States have established a normative framework of OSCE Ministerial Council (MC) decisions to reflect their commitments to address these phenomena: MC Decisions 4/03, 12/04, 10/05, 13/06, 10/07 and 9/09. Additionally, a number of OSCE human dimension commitments recognize the vital importance of participating States' realization of their binding human rights obligations under international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

women and men.

Roma and Sinti issues

20. OSCE/ODIHR has a specific mandate to assist participating States in implementing the “OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area”¹¹. ODIHR issued a First Status Report on the implementation of this Action Plan in 2008¹², estimating the Roma population of Hungary at about 600,000 to 800,000, and a second Status Report in 2013¹³. It released its Third Status Report in 2018, assessing the progress OSCE participating States have made in implementing their commitments towards enhancing the participation of Roma and Sinti in public and political life.¹⁴
21. ODIHR’s 2020 report “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic” found that “people living from collecting scrap metal and recyclable materials, as well as those who are self-employed, or work in markets or as daily labourers without a contract, were unable to benefit from the unemployment measures provided during the pandemic, and were thus left alone to survive as best they could”. At the same time, it noted that “without an economic safety net to compensate for their loss of daily income, the socio-economic situation of Roma and Sinti may become significantly worse than before the pandemic, making it still more difficult to escape from the cycle of poverty”. ODIHR’s recommendations for Hungary include:
- Assist Roma and Sinti children in accessing remote learning and materials, by providing the necessary electronic equipment and support by social and education workers;
 - Ensure that the upcoming recovery plans being developed for the post-pandemic period are inclusive and take the challenges and vulnerabilities of Roma and Sinti communities and their needs fully into account; ensure the full participation of Roma in the consultations, design and development of such recovery plans and strategies;
 - Strongly and unequivocally condemn racial and ethnic hatred, anti-Roma sentiment, xenophobia and discrimination against Roma and Sinti, and ensure that violations of human rights do not enjoy impunity; and
 - Develop measures to promote and protect human rights while actively countering racism and discrimination against Roma and Sinti.

¹¹ OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE, 27 November 2003: <http://www.osce.org/odihr/17554>

¹² Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, 24 September 2008: <https://www.osce.org/odihr/33500>

¹³ Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, Status Report 2013, 24 October 2008 <https://www.osce.org/odihr/107406>

¹⁴ Third Status Report: Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, 11 December, 2018: <https://www.osce.org/odihr/roma-sinti-action-plan-2018-status-report>