



9.11.2022

NOTICE TO MEMBERS

Subject: Petition No 0453/2022 by A.F. (Hungarian) on the rule of law in Hungary

1. Summary of petition

The petitioner alleges that several EU rules and laws were breached in the run-up to the 2022 national elections in Hungary, mainly by the governing party Fidesz. The petitioner alleges that the presence of the opposition parties in the governmental media was hindered, and hate speech was applied on some media platforms, also by the Prime Minister and his sponsored publicists. The petitioner states that this type of communication occurred many times also during the PM's former mandate, while regulations were created against minorities (LGBTIQ+ people, women, "enemy" politicians, refugees). The petitioner also alleges that there are "secret" agreements between Orbán and other European leaders, not to disturb or fight against his governance. The petitioner calls on the EU institution representatives to take measures to protect the democratic values in Hungary and stop future such measures taken by Mr. Orbán. The petitioner notes that withdrawing EU money will be mostly a larger burden for those, who are not responsible and the restrictions can be also counterproductive.

2. Admissibility

Declared admissible on 22 August 2022. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 9 November 2022

The petition

The petitioner complains about the situation in Hungary. In particular, she refers to the April 2022 national parliamentary elections and alleged violations of the freedom of expression and information, the freedom of the arts and sciences, the right to education and the right to asylum.

The Commission's observations

While the European Commission monitors developments in the Member States, it does not have a general power to intervene in elections of the Member States. Subject to the respect of certain basic principles (such as those laid down in Articles 2 and 14 Treaty on European Union (TEU), and without prejudice to the procedure of Article 7 TEU), it is the competence and the responsibility of the Member States to lay down the specific conditions for the conduct of elections and ensure that elections are organised in line with international standards. These standards are largely set by the Venice Commission, sometimes together with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE). The Commission works with the Member States through the European Cooperation Network on Elections to support concrete and practical exchanges on a range of topics relevant to ensuring free and fair elections.

The freedom of expression and information, the freedom of the arts and sciences, the right to education and the right to asylum are enshrined in Articles 11, 13, 14 and 18 of the EU Charter of Fundamental Rights, respectively. However, under the Treaties on which the European Union is based, the Commission has no general powers to intervene with the Member States in the area of fundamental rights (without prejudice to the procedure of Article 7 TEU). It can only do so within the scope of EU law. On the basis of the information provided by the petitioner, it does not appear that the matter falls within the scope of EU law. The rules concerning the requirements for the establishment of an association falls within the competence of the Member States, and the petitioner has not raised any argument to show that they would be in breach of any provision of EU law. For this reason, it is not possible for the Commission to follow up on the matter raised by the petitioner.

More generally, the Commission shares a number of concerns expressed by the European Parliament in its reasoned proposal of 12 September 2018 triggering the Article 7(1) TEU procedure. The Commission's concerns regarding the rule of law in Hungary are clearly stated in the annual Rule of Law Reports¹.

The Commission has launched a number of infringement proceedings against Hungary. These relate to the rights of civil society organisations, academic freedom, the rights of migrants and asylum seekers, and the rights of LGBTIQ people. The Commission will not hesitate to take further action to launch infringement proceedings in order to uphold fundamental rights and the rule of law.

The Commission is actively monitoring compliance with the principle of non-discrimination in the execution of the EU Budget under all applicable rules.

Under Regulation (EU, Euratom) 2020/2092² on a general regime of conditionality for the protection of the Union budget, the Commission has sent a written notification to Hungary. The notification informed Hungary about the Commission's concerns regarding breaches of the principles of the rule of law in Hungary that affect or seriously risk affecting the sound financial

¹ https://ec.europa.eu/info/sites/default/files/40_1_193993_coun_chap_hungary_en.pdf

² Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, *OJ L 433I*, 22.12.2020, p. 1–10.

management of the Union budget or the protection of the financial interests of the EU in a sufficiently direct way. On 18 September 2022, the Commission proposed measures to the Council for the protection of the Union budget against such breaches in Hungary. These proposed protective measures, if adopted, shall not affect the rights of final beneficiaries or the implementation of EU programmes. The procedure is ongoing. On 13 October, the Council decided to extend the period to decide on the measures by two months, i.e. to 19 December. This would allow for consideration of the fulfilment of a substantial number of commitments by Hungary. The Council could then adopt, amend or reject the Commission's proposal, by qualified majority.

The Commission is constantly monitoring the situation and will not hesitate to use the appropriate tools where the conditions for their application are fulfilled.

Conclusion

Subject to the respect of certain basic principles, such as those laid down in Articles 2 and 14 TEU, and to the procedure of Article 7 TEU, it is the competence and the responsibility of Member States to ensure that elections are organised in line with international standards.

It is in the first place for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations. In matters falling within the scope of EU law, the Charter shall be respected in accordance with the interpretation of the Court of Justice of the European Union (CJEU).

The Commission continues to follow developments in Hungary closely, and it will report on key developments in its next Rule of Law Report to the extent they fall within the scope of the report.