

Preliminary observations by the UN Special Rapporteur on freedom of opinion and expression, Ms Irene Khan, at the end of her visit to Hungary, 15 to 22 November 2021

Let me begin by thanking the Government of Hungary for agreeing to this visit. I appreciate greatly the cooperation which I have received from the officials of the Ministry of Foreign Affairs and from Hungary's Permanent Mission in Geneva to set up this visit.

This is my first country visit since I took up this mandate in August 2020. As a Special Rapporteur appointed by the UN Human Rights Council, I am part of the Special Procedures system of the UN, reporting directly to the Council and the UN General Assembly. I work independently from any government or organization and exercise my professional judgment impartially, based on principles and standards of international law.

During my visit, I met with the Vice President of the Parliament, the Minister for Innovation and Technology, and senior officials from the Ministries of Foreign Affairs, Justice, Interior and the Prime Minister's Office, as well as several members of the Kuria. I also met with a member of the Media Council, the President of the National Data Protection and Freedom of Information Authority, the Directors of the national Broadcasting organizations MTVA and DMSZ and with the Teachers Board at the Ministry of Human Capacities.

I am disappointed that the Commissioner for Fundamental Rights was not available to meet me despite the relevance of his work to my mandate. However, staff in his Office were very helpful and met with me.

I would like to thank all the officials I met for their time, information and insights. Our discussions were frank and substantive, and I appreciate their candid responses.

During my visit, I also had the privilege to meet with human rights defenders, lawyers, journalists and media workers, scholars, labour union leaders and other representatives of civil society. I am grateful to them for sharing their experiences and views.

Within the time constraints of this visit I have tried to reach out to as diverse as possible range of stakeholders. With that in mind, I sought and obtained an appointment with the 'Central European Press and Media Foundation' (KESMA). Unfortunately, the Head of KESMA cancelled our meeting at the last minute. I believe KESMA lost an important opportunity to share its views as a dominant player in the Hungarian media sector.

The overall purpose of my visit has been to examine the situation of freedom of opinion and expression in Hungary in light of international human rights law and standards, and in a spirit of cooperation and dialogue with the authorities and other stakeholders. I have focused on four key issues that I believe are critical for freedom of opinion and expression in Hungary:

- independence, diversity and pluralism of media in Hungary;
- freedom of expression, including the right to information, and the protection of groups at risk of hate speech; and
- academic freedom as an aspect of freedom of expression.
- independence, willingness and ability of State institutions to protect freedom of expression. This is a cross-cutting issue that is relevant to the other three issues.

The purpose of this note is to share preliminary observations on my findings, which I will develop in more detail along with concrete recommendations over the coming weeks. I look forward to continuing my dialogue with the Government and all stakeholders and welcome any further information and comments before finalizing my report. I will present the final report to the Human Rights Council in Geneva at its June session.

Media freedom

In Hungary, media freedom is guaranteed by the Fundamental Law and is protected under the Media and Press Acts. Serious concerns arise with the implementation of these laws, which together with other laws and government policies and practice, have been used to create ground realities that fly in the face of the international human rights principles and standards on media freedom.

Media pluralism

Several senior state officials I met during my visit informed me that since coming to power in April 2010, the government's objective has been to correct what it perceives as an imbalance between liberal and conservative media and that it has now reached that goal by creating a more diverse and pluralistic media sector with 50:50 balance between the two "mind sets". However, I was not provided with, nor could I find any objective evidence of such results in the Hungarian media landscape.

On the contrary, a wide range of stakeholders in Hungary and in European and international institutions have noted that while the numbers of those supporting the government or aligned to the government continue to increase thanks to the government's political support, policies and direct and indirect financial support, many independent media outlets – i.e., outlets not aligned to the government and/or critical of the government - have closed. I was informed that in some cases, political difficulties have combined with fall in revenue of some outlets that have then led to their closure due to bankruptcy or an economic take-over by pro-government investors.

The recent economic takeover and change of editorial leadership at Index.hu, the non-renewal and denial of license by the regulator to Klubradio, and the consolidation of 476 Hungarian outlets under the Central European Press and Media Foundation (KESMA), closely affiliated to the government, are three examples that I was given by stakeholders to illustrate the different ways in which voices critical of the government are being silenced or squeezed out systematically, openly and brazenly.

The UN Human Rights Committee, which is entrusted with the oversight and interpretation of the International Covenant on Civil and Political Rights, has called on States to "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". In Hungary, the government's actions appear to be going in the opposite direction.

I was told that the merger of the 476 outlets under KESMA could not be scrutinized by the Hungarian competition authority because the government granted an exemption on grounds of "strategic national interest". State officials explained that the government's "strategic national interest" is to retain media ownership in Hungarian hands. The officials were unable

to explain why Hungarian ownership should require a merger of media outlets with a Foundation governed only by ruling party members and supporters, and which appears to be using its highly favourable outreach – deliberately created by the government, with support of State institutions and using public funds - to promote the views of the government.

The KESMA merger seems to indicate that the Hungarian media market is being transformed proactively by the government, not only to increase Hungarian ownership but also to ensure the dominance of pro-government media, friendly to the ruling party.

Regulatory authority

The political and economic independence of media regulatory authorities is critical for ensuring media freedom in democratic societies. In Hungary, the President of the Media Authority, who is also the President of the Media Council, is appointed by the President on the nomination by the Prime Minister. The four members of the Media Council are appointed by Parliament. The practice so far has been for the ruling Party to exercise its two-thirds majority in Parliament to endorse its own candidates and exclude the consideration of nominations by other Parties. Both the President and the Council exercise extensive regulatory powers, including significant powers of licensing and sanctioning media outlets. In addition, the President of the Council has major additional powers over the public service broadcasting organizations including the appointment of its senior leadership.

As the government of Hungary is aware, the UN Human Rights Committee has found that the National Media and Telecommunications Authority and the Media Council lack sufficient independence to perform their functions effectively and enjoy excessively broad regulatory and sanctioning powers that risk media freedom. The Venice Commission has also recommended safeguards be introduced to make the composition of the Media Council more pluralistic. I fully share those concerns.

The recent action - and inaction - by the President and the Media Council have demonstrated their inability to stand up against the onslaught of government's actions and policies that contravene media freedom. The Media Council failed to take action against biased reporting in public service media, although it was explicitly identified by the OSCE/ODIHR following the 2018 elections. The Council appears to have no plans to counter similar problems in the forthcoming elections. It played no role in the merger of almost 500 outlets under KESMA. Nor has the Media Council made any effort in the aftermath of the decision to evaluate the impact of such a merger on media independence, pluralism diversity or quality in Hungary. At the same time, it has made decisions on licensing that over time has led to all radio and most television frequencies to be given to government-supporting outlets.

The case of Klubradio, on which the European Commission has opened an infringement procedure, is just one of many examples of the failure of the Media Council to promote media pluralism.

The upcoming appointment of a new President of the Media Authority and Council, just months before a national election, create both an opportunity and risks: an opportunity for the government to introduce a transparent and inclusive process and show that it is committed to upholding the independence of the regulator, and a risk that the failure to do so will further entrench the lack of political independence of the regulator, raising national and international

concerns, with possibly serious consequences for public trust in the media and democratic processes.

The Media and Press Laws have not proved to be sufficient to preserve the political independence of the Media Authority/Council President or the Media Council. Much more fundamental reforms of law, policies and practices are needed.

State support to media

A major factor distorting the media market is the way in which the State dispenses public funds for advertisements. The Hungarian State, including national and local governments and state or state-funded institutions, form the largest advertiser in Hungary. I was told that in 2019 the total state spending on advertisements was some 320 million EUR or approximately one third of the total advertising revenue of the market, of which 75% went to government-aligned private and public media.

Such skewed distribution of state funds has major consequences, not only for the health of the media sector but also for democratic freedoms that independent media nurture. Firstly, the distribution of high proportions of public funds to pro-government media gives them an unfair advantage over media critical of the government and distorts democratic debate, and secondly, in a competitive market where media viability is challenged by various factors, the deliberate deprivation of independent media from an important source of funds is contrary to the obligation of the State to promote media independence, diversity and pluralism.

I heard complaints that the operation of the public service media is opaque and that it has become a propaganda tool for the government. One example cited is the OSCE/ODIHR report following the 2018 elections which identified a high degree of biased political reporting by public service media. Such complaints and concerns need to be taken seriously and investigated thoroughly in light of the resources that are being funnelled into the public service media and their falling audience rates. (In 2020 the publicly funded budget of the public service media was nearly 290 million EUR, making it the largest media company in Hungary).

Freedom of Expression

Access to information

The right to access public information is explicitly recognized in the Fundamental Law and in freedom of information legislation including the “Glass Pocket Law” of 2003 that seeks to promote the transparency and accountability of public bodies. It is particularly consequential for journalists given the accountability role played by independent media in democracies. However, despite the formal legal framework and Hungary’s commitment as one of the first signatories to the Tromso Convention of the Council of Europe, a growing number of constraints are emerging that affect the right to information.

The government adopted last year new regulations in the context of the COVID19 pandemic, which allow public bodies to extend the deadline for responding to freedom of information

requests from 15 to 45 days, which could be prolonged by an additional 45 days if required. Such a long period means that the information is likely to lose its “news value” for journalists. The President of the Data Protection and Information Authority informed me that he produced guidelines, which were subsequently affirmed by judicial decisions, to ensure that this prolongation is applied only where relevant and necessary. Despite this positive development, it appears that many government institutions continue to delay their disclosure or fail to respond to the requests.

I was informed that access to information has become problematic with increasing numbers of government contracts being deemed as being of strategic importance and thus classified for decades, without providing any substantive reason for restricting the public's right to know. I also heard complaints about restricted access to journalists to the Parliament, parliamentarians and politicians. A number of journalists I met reported that outlets that are not favoured by the government face challenges to access information, access official press briefings, or to obtain responses to interview requests with political leaders.

Freedom of expression and privacy

Issues have arisen relating to the potential conflicts between freedom of expression, including the media's right to publish information, and the right to privacy of individuals under the data protection provisions of the European Union's General Data Protection Regulation. I appreciate that there is on-going litigation against a journalist before national courts on this issue, and hope that judiciary will take into account the need for greater transparency with regard to public officials and others who have a public profile, such as corporate leaders.

I was pleased to note the positive decision of the Data Protection Authority on the use of drones in the context of investigative journalism, and its recognition that there can be legitimate public interest in certain personal data relating to public figures.

I am seriously concerned that the Pegasus surveillance technology may have been used against investigative journalists. None of the officials I met were able to provide clear and comprehensive information on the process, safeguards and oversight measures for electronic surveillance of journalists other than to indicate that no profession is immune from such measures. Not only is the surveillance of journalists troubling in terms of the privacy of the individuals, it can expose sources of journalists that are otherwise protected under Hungarian law and could have a chilling effect on investigative journalism.

I encourage the government to move forward to enforce the 2016 decision of the European court of human rights, *Szabó and Vissy vs Hungary*, which 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”.

Hate speech

I am deeply troubled by reports of orchestrated campaigns of hate-speech, harassment, and stigmatisation of journalists, human rights defenders, civil society activists and others. Several of the journalists, human rights defenders and LGBTQI activists I met reported having been publicly vilified, stigmatized and harassed, especially online, for the work they do. Human rights defenders, especially those working on the rights of migrants or LGBTI,

are reportedly given limited or no opportunities to appear on the media and express their views and concerns, while homophobic and sometimes violent groups are said to be given extensive coverage by some pro-government outlets.

I was also informed by various stakeholders that national consultation campaigns of the government are framed to fuel dissension, division and hate. While the government has extensive use of billboards to promote its political messages, including messages portraying refugees, asylum seekers, migrants and minorities, including LGBTQI, in a negative light, positive, non-political messages about these groups are not covered by the pro-government media outlets. According to a source, even attempts to advertise non-political positive messages about refugees and asylum seekers on billboards were not possible as billboard companies were fearful of the reaction of the authorities.

I discussed the potential impact of the ban on LGBTQI information in schools with a range of stakeholders, from government officials to schoolteachers and activists. While the officials said they are awaiting more detailed rules on the application of this law, there is concern on the part of some stakeholders that it can become a pretext for stigmatization, spreading hate and violence and restricting access to sexual and reproduction health information. I understand a referendum is planned next year on the issue alongside the national elections, and am concerned that the way in which the questions are framed may not be conducive to promoting tolerance and inclusion.

Civil society

During my visit to Hungary, the decision of the European Court of Justice was published on the so-called “Stop Soros” legislation, which criminalises ‘organisational activities’ to assist asylum-seekers. The ruling is a positive development not only for the freedom of expression of civil society organisations advocating in this field, but also for the realisation of the right to information of refugees and asylum seekers.

I note that following a decision of the Court of Justice of the European Union earlier this year, the controversial 2017 NGO Transparency Law was repealed and a new “Law on the transparency of civil society organisations capable of influencing public life” was adopted. I urge the Ombudsperson office, which regrettably did not comment on the legislation during its drafting phase, to monitor the application of this law to ensure it does not infringe into the ability of civil society to play its essential role in society, nor result into the stigmatization and discrimination against any of those that are active in the public domain.

The two European Court decisions vindicate the position of civil society as a vital pillar of inclusive, democratic society. I hope they will encourage the government to review and revise its position on foreign funding of civil society. I would like to emphasise that associations’ access to resources from abroad to promote human rights should not be seen as a threat but as a measure of international solidarity, from which Hungary has benefited for many decades.

Academic freedom

I received testimony from stakeholders in the academic sector who are concerned that their institutional and individual freedoms may be subjected to a similar pattern of pressure as has occurred for journalists and outlets in the media sector. While the Minister for Innovation and

Technology explained to me that universities are now controlled by a board of trustees with no interference of the executive, the scholars to whom I spoke do not share that view, and have pointed out that transferring control over most of Hungary's public universities to private bodies, including the reorganisation of highly esteemed longstanding research institutes of the Hungarian Academy of Sciences into the private entity, Eötvös Loránd Research Network, has resulted in reduced autonomy.

By transferring the public universities to private bodies, the new leadership – seemingly appointed for an indefinite period – will have significant influence over the choice of directors for each research institute, as well as decisions concerning funding, creation and closure of existing research institutes, with little, if any, public oversight. As measures taken in the media sector shows, the pattern of pressures, private ownerships and public criticisms of individual scholars who work on certain topics, may well result into the re-shaping of the country's higher education sector. I urge the authorities to listen to the voices of professors and students and to effectively protect academic freedom and the autonomy of universities and research institutes.

Online freedom of expression

I have taken note of the Digital Freedom Committee, convened by the Ministry of Justice. Given the Committee's stated mandate to inform the government's position on the EU Digital Services Act, I will follow its work with a great interest.

I will also follow the implementation of a protocol-based norm to provide effective law enforcement responses to hate crimes, whether offline or online, where a dedicated working group, which includes civil society minority groups.

Oversight Institutions

The importance of the role of oversight bodies, including regulatory bodies, rights protection institutions and the judiciary, cannot be understated. Effective, independent accountable institutions are an essential measure of a State's commitment to respect, protect and fulfil human rights.

I have covered the media regulatory bodies and the Data Protection and Freedom of Information Authority in earlier paragraphs.

I greatly appreciated the opportunity to meet and interact with senior judges of the Curia. I was impressed by their commitment to the rule of law and their reiteration of their commitment to uphold the supremacy of European law and the decisions of the European Court of Justice and the European Court for Human Rights. I will provide further comments in the full report on the judiciary's role with respect to freedom of expression.

In my meeting with stakeholders, I heard concerns about the Fundamental Rights Commissioner. In my meeting with his staff, I noted that he has not taken a public stand on a number of human rights issues, including those relating to LGBTQI. Nor has he sought to advise and influence legislative processes that could have a detrimental effect on equal rights of certain minorities. This is a matter of concern given the recent incorporation of the Equality office within his remit. I am aware that the accreditation process for the Commissioner's office is still pending.

In my final report I intend to provide further comments on the all above institutions, given their relevance to my mandate.

Conclusion

My visit comes at an important juncture as the country prepares to go to the polls next year.

Independent, diverse and pluralistic media is a fundamental pillar of democracy, never more so than at election times. Impartial coverage of information, news and opinion about candidates and their programmes and electorates' access to diverse sources of information will be crucial. The coming months will witness heightened political activity and on all sides, it will be important to ensure that political discourse is inclusive and respectful of human rights.

I urge the government to review and implement the recommendation made in the final report of the OSCE/ODIHR Election Observation Mission on Hungary's 2018 parliamentary elections, and to publicly proclaim its commitment to uphold human rights, including the freedom of opinion and expression.