

HUMAN RIGHTS WATCH

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HUMAN
RIGHTS
WATCH

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April 29, 2014

Re: New Hungarian Government Should Prioritize Strengthening Human Rights Protection

Dear Prime Minister Orbán,

I am writing to you to ensure that the new Hungarian government, elected by popular vote on April 6, uses its democratic mandate to improve the protection of human rights for everyone in Hungary and ensure that its legal framework and practices are in accordance Hungary's international and regional human rights obligations.

Human Rights Watch has worked extensively on human rights in Hungary since 2011 and has engaged with Hungarian authorities on a range of issues relating to human rights and the rule of law. We recognize that the government in its previous term took some positive steps to address international concerns with its laws and policies. We would like to take the opportunity to raise the issues that require the urgent attention from the government during its current term.

Independence of the judiciary and respect for the rule of law are hallmarks of a democratic society. Amendments to the Hungarian constitution which entered into force January 2012 and related legal changes introduced by the government in its previous term had a negative effect on the rule of law and the protection of human rights. In our May 2013 report, [Wrong Direction on Rights](#), we identified a number of rule of law issues including: unreasonable curbs on the powers of the Constitutional Court, interference with judicial appointments, limitations on political participation for persons with disabilities and religious freedom, as well as discrimination with respect to the rights of women; lesbian, gay, bisexual, and transgender (LGBT) people, and homeless people. We had the opportunity to discuss some of these issues with Hungarian government officials in May, 2013.

Despite some positive amendments to the constitution and laws, including in the September 2013 Fifth Amendment, a number of these problems have yet to

be addressed.

Independence of the Judiciary

The limitations on the powers of the Constitutional Court and changes to its appointments system have undermined its independence and ability to serve as a check on executive authority. Under its previous term, the government made legal amendments limiting the power of the Court to review laws pertaining to the central budget and taxation issues, removing its ability to hear *actio popularis* cases brought by NGOs and others without a direct interest, and restricting it in the constitution from referring to its own case-law prior to January 2012 (although in a June 2013 ruling, the Court suggested that it will continue to do so). Legal amendments also restricted the Constitutional Court from ruling on the substance of constitutional amendments. The government also restructured the court, adding four new posts to the existing 11 and appointed, through parliament, a total of eight judges.

The government should amend the constitution to remove any bar on the Constitutional Court to consulting its case law prior to January 1, 2012, to hear *actio popularis* cases, and to review the substance of constitutional amendments.

While the September 2013 Fifth Amendment and other changes to the law on the administration of the courts strengthened the powers of the National Judicial Council and removed powers of the president of the National Judicial Office (a post elected by parliament) to transfer cases from one court to another, and to transfer and appoint judges, we remain concerned about the fact that the NJO president effectively retains the power to block candidates for judicial appointments. If the NJO rejects the top-ranked candidate for a judgeship proposed by the National Judicial Council, and the NJC refuses to consent to a lower ranked candidate being appointed, the NJO president can cancel the application procedure, which must then begin again, thereby effectively blocking the top candidate. To address this, the Venice Commission recommends: “that the possibility of declaring the appointment procedure “unsuccessful” in this case be removed and that the President of the NJO be obliged to make a proposal for appointment of the candidate ranked first when the NJC disagrees with the change in the ranking.” Human Rights Watch urges the government to implement the recommendation by the Venice Commission.

Media Freedom

Our May 2013 report also drew attention to the negative impact on media freedom of some legal changes introduced by the government in its previous term, including the lack of political independence of the broadcast regulators the Media Authority and Media Council and the potential for high fines on journalists for violating media laws, notably vaguely-defined “balanced content” requirements. Our research suggests the content requirements and potential fines have had a chilling effect on media freedom. Changes in February 2013 to the appointment process for the president of the Media Authority, in practice, have not removed the risk of political bias.

In order to ensure media regulation is carried out without undue political interference, Human Rights Watch recommends that the government restructure the Media Authority and Council to ensure

independence from the government by establishing a multiparty parliamentary nomination system for its members.

Human Rights Watch is also concerned that some constitutional and other legal changes adopted by the government in its previous term have had a detrimental effect on particular groups, including homeless people, persons with disabilities, and members of religious groups. We note that the new constitution contains provisions that could legitimize restrictions on access to abortion (with the inclusion of language that “the life of the foetus shall be protected from the moment of conception”) and that despite amendments continues to discriminate against LGBT people by defining marriage as between a man and woman.

Rights of Homeless People

The March 2013 Fourth Amendment adds a provision to the constitution which enables parliament and local governments to ban homeless people from certain areas. A law with similar effect had previously been struck down by the Constitutional Court in November 2012 as “violating human dignity.” In September 2013, the Hungarian parliament passed a law enabling local governments to make it a petty offense to reside habitually in public spaces, with those who commit the offence liable to community service or fines and in repeat cases imprisonment. The local government of Budapest, based on the aforementioned law, in November 2013 adopted a decree which bans homeless persons from large parts of central Budapest.

As the Constitutional Court ruling made clear, homelessness should be addressed through social policy measures rather than criminal or administrative sanctions. Human Rights Watch recommends that the government reverse the constitutional amendment permitting criminalization of homelessness by national and local authorities and repeal all legislation with the same effect.

Freedom of Religion

In its previous term, the government adopted a Church Act which imposed restrictions on freedom of religion and association. The law de-registered hundreds of churches and introduced a system where some religious groups benefit from state subsidies while others do not. The European Court of Human Rights ruled on April 8, 2014, that Hungary’s Church Act violates freedom of religion and association. In light of that ruling, the new government should ensure that eligibility for state subsidies by religious groups is determined by an independent body and subject to appeal in the courts. Changes to the Church Act in September 2013, which allow all religious organizations to label themselves as “churches,” do not address the problem of differential treatment for some religious groups, as only churches recognized by parliament are eligible for state subsidies.

Rights of Persons with Disabilities

Action is needed to ensure the political participation for people with mental and intellectual disabilities who are deprived of legal capacity. While the 2012 constitution no longer automatically disenfranchises persons who are deprived of legal capacity, in practice the system for determining eligibility is based on an individual assessment by a court of legal capacity - a procedure which is highly subjective and based on largely irrelevant factors. This falls short of Hungary's obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD), ratified in July 2007, which states that persons with disabilities shall enjoy the right to vote on an equal basis with others.

Hungary should take immediate steps to remedy this situation in response to the CRPD committee ruling which said that any exclusion of the right to vote on the basis of "perceived or actual disability," whether as a general rule or following an individual assessment, is discrimination in violation of the treaty. Hungary, as the second country to ratify the CRPD, should set an example in ensuring that all citizens are entitled to vote regardless of disability and amend its constitution to reflect this.

Roma Rights

The Hungarian government should also take positive action to ensure the protection of the rights of the Roma minority, especially in light of the rising popularity of the overtly anti-Roma, far-right Jobbik party. Strong and clear public condemnation by the government at the highest levels of anti-Roma and anti-Semitic speech should be coupled with concrete action to tackle violence and discrimination against Roma and other minority groups.

Women's Rights

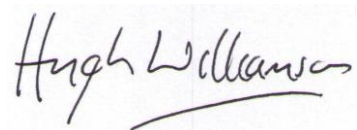
Human Rights Watch welcomes the fact that Hungary signed the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence ("Istanbul Convention") on March 14, 2014, and encourages the new Hungarian government to ratify the Convention as soon as possible. We also welcome the legislation that came into force in June 2013 strengthening the legal and police response to domestic violence. Nonetheless Human Rights Watch research detailed in our November 2013 report "[Unless Blood Flows](#)" found significant protection gaps in the response of the authorities for women who suffer violence at the hands of their partners. We had the opportunity to discuss our findings and recommendations with Hungarian government officials in November 2013.

We recommend that the government take further specific steps to improve the protection of women victims of domestic violence, in particular by extending the protection under the new law to non-cohabitating couples and removing the requirement that violence must occur more than once before the domestic violence provision applies; establishing specialized police units on domestic violence and violence against women, increasing the number of shelter spaces for domestic violence victims and by adopting national guidelines for medical professionals and social workers on how to identify and effectively combat domestic violence.

We hope that this letter can serve as a basis for a constructive dialogue on these important matters.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink that reads "Hugh Williamson". The signature is written in a cursive style with a long horizontal flourish underneath the name.

Hugh Williamson
Director
Europe and Central Asia Division
Human Rights Watch