



HUNGARIAN
HELSINKI
COMMITTEE



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Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the European Court of Human Rights

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Subject: NGO communication under Rule 9(2) of the Rules of the Committee of Ministers concerning the execution of the judgment of the European Court of Human Rights in the case of *Patyi and others case group*

Dear Madams and Sirs,

the **Hungarian Civil Liberties Union** and the **Hungarian Helsinki Committee** hereby respectfully submit their joint observations and recommendations under Rule 9(2) of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements" regarding the execution of the judgment of the European Court of Human Rights (the Court or ECtHR) in the **Patyi and others case group**. This group of cases includes

- (i) the *Patyi and others v. Hungary* case (Application no. 5529/05, Judgment of 07 October 2008),
- (ii) the *Szerdahelyi v. Hungary* case (Application no. 30385/07, Judgment of 17 January 2012),
- (iii) the *Patyi (No. 2) v. Hungary* case (Application no. 35127/08, Judgment of 17 January 2012),
- (iv) the *Sáska v. Hungary* case (Application no. 58050/08, Judgment of 27 November 2012),
- (v) the *Körtvélyessy v. Hungary* case (Application no. 7871/10, Judgment of 05 April 2016),
- (vi) the *Körtvélyessy (No. 2) v. Hungary* case (Application no. 58271/15, Judgment of 18 July 2017),
- (vii) the *Körtvélyessy (No. 3) v. Hungary* case (Application no. 58274/15, Judgment of 03 October 2017),
- (viii) the *United Civil Aviation Trade Union and Csorba v. Hungary* case (Application no. 27585/13, Judgment of 22 May 2018) and
- (ix) the *Tóth v. Hungary* case (Application no. 20497/13, Judgment of 26 May 2020).
- (x) the *Póka v. Hungary* case (Application no. 31573/14, Judgment of 06 October 2020)
- (xi) the *Vincze v. Hungary* case (Application no. 44390/16, Judgment of 21 October 2021)

The **Hungarian Civil Liberties Union (HCLU)** and the **Hungarian Helsinki Committee (HHC)** are independent human rights watchdog organisations, working towards defending human rights and the rule of law in Hungary, having significant experience and outstanding expertise in the field of human rights, including the right to peaceful assembly. As human rights NGOs, the HCLU and the HHC endeavour to hold the government accountable for its obligations concerning fundamental rights, democracy and the rule of law.

The present communication concerns the execution of the cases in the group, in particular (i) the developments in the implementation of the judgments since the submission of the last NGO communication¹ in October 2020 [see [Section I.](#)]; (ii) the evaluation of the general measures described in the Group Action Report of the Hungarian Government of 18 November 2022² (the “Action Report”) [see [Section II.](#)] and (iii) relevant additional information not covered by the Action Report [see [Section III.](#)]. Both the HCLU and the HHC are of the view that the Hungarian Government has failed to remedy the structural problems that led to the violations found by the ECtHR and therefore has not fully complied yet with its obligations under Article 46 Paragraph 1 of the European Convention on Human Rights (the “Convention”).

I. NO PROGRESS SINCE THE LAST REVISION

Since the last revision of the execution of the case-group, no steps have been taken by the Hungarian authorities to implement measures that sufficiently guarantee the exercise of the freedom of assembly against unjustified bans on demonstrations and restrictions applied outside the Act LV of 2018 on the Right to Assembly (the “Assembly Act”).

- (i) No legislative steps have been taken to provide guarantees for holding demonstrations in the proximity of the private residence of politicians. On the contrary, as a result of legislative amendments introduced in 2018, the possibility of holding demonstrations in the neighbourhood of politicians’ residences has been practically terminated and Hungarian citizens have been deprived of the right to protest in the proximity of the private residences of politicians (see below under [Section I.1.](#)).
- (ii) The Government has failed to introduce safeguards against assemblies being banned, restricted or dissolved for reasons falling outside the Assembly Act. The legislation in force deliberately keeps up the possibility of the police to declare any public space unavailable for demonstrations (see below under [Section I.2.](#)).
- (iii) There is no effective legal remedy against the arbitrary application of security measures converting public venues into areas restricted for demonstrations (see below under [Section I.3.](#)).

The Action Report prepared by the Hungarian government does not claim to have taken the proper legislative steps to remedy the above-mentioned deficiencies.

I.1. Demonstrations at the private residence of high-ranking politicians terminated

Several cases of the group concerned the unjustified prior ban or dissolution of demonstrations to be held in the vicinity of the private residence of the Prime Minister and other governmental officers (including the *Patyi and others v. Hungary case*, the *Póka v. Hungary case*, and the *Vincze v. Hungary case*). In all these cases, the ECtHR found that the Hungarian authorities unlawfully expanded the grounds for banning a demonstration (or dissolving it, respectively); therefore the interference was devoid of legal basis and thus constituted a violation of Article 11 of the Convention.

In order to implement these judgments of the case-group, the Hungarian authorities should have provided stronger guarantees for citizens to be able to exercise their freedom of assembly even in the vicinity of the private residence of high-ranking politicians. Instead of building safeguards into the legislation to protect the evidently existing need of citizens to express their dissent at the private residence of governmental officers and politicians, the Hungarian authorities adopted a new legislation to provide a solid legal basis for prohibiting such demonstrations.

¹ DH-DD(2022)1022 31/10/2020, available at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)1022E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)1022E)

² DH-DD(2022)1291 23/11/2022, available at <https://rm.coe.int/0900001680a91eb7>

As the Action Report of the Hungarian government describes,³ with effect from June 2018, the Fundamental Law was modified remarkably restricting the right to freedom of assembly declaring that "*exercising the right to freedom of expression and assembly shall not violate the private and family life and home of others.*"⁴ With effect from August 2018, the Criminal Code was modified, introducing a new type of criminal offence that provides a legal basis for criminalising the act of protesting at the private residences of politicians.⁵ On 1 October 2018, the Assembly Act entered into force providing a legal basis to impose a ban on assemblies being held at public venues surrounding the home of politicians.⁶ The legislative modifications are rooted in Decision No. 13/2016 (VII.16) AB of the Constitutional Court (CC), according to which "*it is only compatible with the principle of fair balance in exceptional cases when citizens wish to express their views as a group choosing the area around the private home of a public figure as the exclusive place of assembly.*"⁷

Although the Government claims that "*the new legislative framework in no way should lead to a general ban on assemblies in the vicinity of politicians or other prominent persons' residences,*"⁸ not a single example is provided by the Hungarian government to prove this claim. Contrary to what is claimed in the Action Report, the government publicly declared that the new set of rules was introduced with the aim "*to prevent demonstrations in front of the private residence of politicians.*"⁹ The legislative modifications introduced in 2018 in fact deprived Hungarian citizens of their right to hold demonstrations in the vicinity of the private residence of politicians. The communicated goal of the modifications – that "*the era of protests in front of private residences should end*"¹⁰ – has been achieved, and **since 2018, demonstrations at the private residence of prominent politicians have totally disappeared from the toolbox of Hungarian citizens.** In sum, with respect to public venues around the private residence of politicians, instead of providing guarantees for the exercise of their freedom of assembly, the Hungarian authorities have practically deprived the citizens of the possibility to demonstrate.

1.2. The police may still at any time declare any given public space unavailable for demonstrations

As the most important option to introduce bans outside the Assembly Act, the current legislation upholds the possibility of the police (and other similar law enforcement bodies, including amongst others the Anti-Terrorist Centre, and the guards of the National Assembly) to **restrict access to any given public space at any time for security reasons and declare it unavailable for holding demonstrations.** While the right to close down public spaces for security reasons is obviously not problematic in itself and may be necessary, the problem lies in the fact that the fast-track judicial review process that is otherwise applicable to bans and restrictions ordered under the Assembly Act is not available when the basis for the *de facto* ban or dissolution is such a "*security measure*". The legislator has failed to lay down the rules through which the clash between the freedom of assembly and the potentially legitimate interests of public safety could be resolved in a procedure that could be regarded as an effective remedy for the restriction of the freedom of assembly.

The legal possibility of the police to close down a public venue for security reasons creates a permanently pending, arbitrarily applicable legal basis for banning or dissolving an assembly outside the scope of grounds foreseen by the Assembly Act.

An outstanding example: the unlawful closure of the public venue in front of the Karmelita

³ See Section 5 of the Action Report of the Hungarian government.

⁴ See Article VI of the Fundamental Law. <https://njt.hu/jogszabaly/en/2011-4301-02-00>. See more in detail in Section 2.1. (iv) (a) of the Rule 9 Submission of HHC and HCLU of 20 August, 2020. [https://hudoc.exec.coe.int/?i=DH-DD\(2020\)707E](https://hudoc.exec.coe.int/?i=DH-DD(2020)707E)

⁵ See Article 222(3) of the Criminal Code codifying the criminal offence of harassment against public official.

⁶ Under Article 13(4) of the Assembly Act an assembly can be banned if it is suitable to infringe "*the rights of others to privacy, to family life and home.*" Under Article 13(2) of the Assembly Act, an assembly can be banned if it would qualify as a criminal offence (e.g. harassment committed against public officials). See more in detail in Section 2.1. (iv) (c) of the Rule 9 Submission of HHC and HCLU of 20 August, 2020. [https://hudoc.exec.coe.int/?i=DH-DD\(2020\)707E](https://hudoc.exec.coe.int/?i=DH-DD(2020)707E)

⁷ See para [53] of Decision 13/2016 AB:

[http://public.mkab.hu/dev/dontesek.nsf/0/c07367433a343387c1257e06005de170/\\$FILE/13_2016%20AB%20hat%C3%A1rozat.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/c07367433a343387c1257e06005de170/$FILE/13_2016%20AB%20hat%C3%A1rozat.pdf)

⁸ See Section 46-48 of the Action Report.

⁹ As claimed by Head of the Prime Minister's Office, Gergely Gulyás in an interview on 24 May 2018

<https://www.atv.hu/belfold/20180524/korlatoznak-a-gyulekezesi-jogot-ezt-jelenti-a-gulyas-altal-bejelentett-otthon-vedelme>

¹⁰ See: <https://index.hu/belfold/2018/05/24/gulyas-be-lehet-fejezni-a-maganlakasok-elotti-tuntetest/> and <https://merce.hu/2018/05/25/hamarosan-korlatozhatjak-a-politikusok-hazai-elotti-tunteteseket/>

One of the symbolic public venues affected by this measure is Színház Street in Budapest, surrounding the building of the Prime Minister's Office (also called Karmelita). The Színház Street – and therefore the building of the Prime Minister's Office – has been permanently closed down by the police with cordons since December 2020. The first cordon was installed on 2 December 2020, after a scandal concerning one of the members of the ruling Fidesz party broke.¹¹ The closure of the public venue was effected by the police without any transparent reasoning when journalists of a newspaper intended to approach the building of the Prime Minister's Office to conduct an interview with government officials before a government meeting was held in the building (as they had done on several occasions before December 2020). After the cordon was established, the journalists were asked by the police to stay out of the venue. The journalists lodged a complaint against the security measure of the police on 31 December 2020. Based on their action, the Metropolitan Court declared that closing down the venue and establishing cordons was unlawful under Article 46 of Act XXXIV of 1994 on the Police (Police Act).¹² The final and binding decision of the Metropolitan Court was delivered in April 2023, more than two years after the measure was taken and the police closed down Színház Street. Thus, once again, it was proved that the police complaints procedure is not an effective remedy against the unlawful closure of the public venue.

De facto ban on assemblies around the Karmelita without clear legal basis

Despite the final and binding decision of the Metropolitan Court declaring that the establishment of the cordons in December 2020 was unlawful, Színház Street continues to be fenced off. New, higher cordons appeared around the Karmelita in November 2021¹³ and have remained there ever since. While the Deputy Prime Minister, Zsolt Semjén claimed in April 2023 that the cordon was installed due to construction works around the Karmelita, in reality, construction works have not been carried out in the whole area affected. In a complaint proceeding initiated by an activist, the police admitted that the cordons were installed as part of a security measure under the Police Act.¹⁴

In the Action Report, the Hungarian government claimed that the security measures introduced pursuant to Article 46(1) a) and d) of the Police Act are all published on the website of the police.¹⁵ Nevertheless, this is clearly not true with respect to the area closed down by the cordons installed around the Karmelita. The website of the police does not contain any specific order with respect to the area, which has been permanently closed down for years, preventing both demonstrations and the access of journalists to members of the government. While in the proceeding before the Metropolitan Court, the police expressly admitted that the legal basis for closing down the area was Article 46 (1) d) of the Police Act, the respective order was neither referred to by the police nor published on the website of the police.

While the legal basis of the establishment of the cordons around the Karmelita remain unclear, the cordon is still standing and strictly protected by the police. In the first half of 2023, opposition politicians and activists tried to dismantle the cordon on several occasions.¹⁶

Disproportionate coercive measures applied to protect the cordon

Since the beginning of 2022, the severely deteriorating conditions in Hungarian public education have caused an ongoing wave of demonstrations throughout Hungary. The participants of these demonstrations were, for the most part, students, also minors, who, together with their teachers and parents protested against the government's suppressive decisions, the devastation of public education, the curtailment of teachers' right to strike and the planned restrictions on their employment rights. Despite the persisting demonstrations, the Hungarian government disregarded the protesters' demands for change and – sometimes relying on its special

¹¹ <https://www.bbc.com/news/world-europe-55145989>

¹² See: <https://helsinki.hu/jogszerutlen-volt-a-karmelita-elkordonozasa-a-telex-ujsgiroi-elol/>

¹³ See: <https://444.hu/2021/11/29/korbekordonoztak-a-karmelita-kolostort>

¹⁴ See: <https://444.hu/2023/07/07/elszolta-magat-a-rendorseg-a-karmelita-elotti-terulet-nem-epitesi-hanem-objektumvedelmi-okok-miatt-van-lezarva>

¹⁵ See Section 30 of the Action Report.

¹⁶ See e.g. <https://444.hu/2023/04/05/megint-kordont-bont-a-momentum-es-hadhazy-a-karmelitalan> and <https://444.hu/2023/04/06/gulyas-gergely-ugy-erzekelte-hogy-az-ellenzek-a-kormanyulest-akarta-megakadalyozni-a-kordonbontassal-a-karmelitalan> and <https://444.hu/2023/07/14/orban-ugyan-sopronban-de-a-momentum-ismet-kordont-a-karmelitalan>

emergency powers and dismissing some of the most vocal teachers – continued to implement its agenda.¹⁷ The building of the Prime Minister’s Office and the cordons surrounding the Karmelita became a symbol of the government’s unwillingness to take into account the views of the demonstrating teachers, students and parents.

In April and May of 2023, the ongoing protests of students and teachers ended up in disproportionate actions by the police. The police used tear gas against the students twice: once on 24 April 2023, and once on 3 May 2023. On both occasions, after the end of their announced demonstrations, students continued the protest in front of the Prime Minister’s Office, which was surrounded by cordons and guarded by the police.

On 24 April 2023, the police not only disproportionately applied coercive measures, but also failed to provide the prior warning required by law. It is important to highlight the fact that the protesters were mostly minors, and none of them attempted to attack the police, which is well documented by the journalists who were present.¹⁸ The demonstrators aimed to get through the cordons which they claimed to have been illegally established and to continue the demonstration directly in front of the Prime Minister’s Office. The **use of coercive measures was disproportionate**; both HCLU and HHC provide legal aid to students concerned to file a complaint against the police.

On 3 May 2023, protesters intended to pull down the much-criticised, symbolic cordons around the Karmelita once again. When mostly young people and students dismantled the cordon that had been blocking the Prime Minister’s Office, the police used tear gas against the demonstrators, then removed several of them from the crowd and arrested some. Several people were prosecuted for violence against an official or for public nuisance, while others were prosecuted for breaching the law on assembly. The next day the police published a press release¹⁹ in which it classified the demonstration as illegal. According to the law, the failure to notify the police about a demonstration (or about the continuation of a demonstration) gives grounds for the liability for a petty offence of the only person who, as an organiser, should have reported the demonstration. Nevertheless, the mere fact that a demonstration is not notified does not make it illegal *per se*.²⁰

After the second demonstration, the police brought charges against several students who covered their faces with masks to defend themselves against the use of tear gas. The Assembly Act prohibits any type of face cover on demonstrations in general (except in the case when the accepted notification itself refers to the masks that participants aim to wear) and the law considers a breach of this law as a criminal offence. The charges against those who wore masks during the protest are not just a petty offence, but a criminal procedure, which completely ignores the *ultima ratio* nature of criminal law.

I.3. Existing legal remedies are insufficient

Organisers and participants do not have a truly effective legal remedy against the arbitrary application of security measures. The Government fails to explain how the freedom of peaceful assembly is protected in cases of collisions with security measures and what action the organisers can take to effectively challenge the restriction of their right to the assembly through such a security measure. All venues closed for security reasons become ineligible for holding a demonstration. Since its closure, it is not even possible to walk through the Színház Street.²¹

¹⁷ See: <https://helsinki.hu/en/curtailing-the-rights-of-teachers-in-hungary/>

¹⁸ See for example: <https://rtl.hu/hazon-kivul/2023/05/03/tanartunetes-diaktunetes-konnygaz-kordonbontas-statusztorveny-rendorallami-eszkozok-bosszutorveny?fbclid=IwARoZBD6LhgNXu5BGxhbz3l9mlxKZW2bS67i8L2PS5kkAVplFv9BGHg3WRk>

¹⁹ See the press release of the police <https://www.police.hu/index.php/hu/hirek-es-informaciok/legfrissebb-hireink/kozrendvedelem/intezkedesek-a-karmelitalan/>

²⁰ See: <https://helsinki.hu/csak-partatlan-vizsgalatok-tisztazhatjak-mi-tortent-a-karmelitalan/>

²¹ See the post of an opposition politician who wished to walk through the street and faced police measures. https://www.facebook.com/gelencser.ferenc.momentum/posts/742494347887773?ref=embed_post

(i) While an assembly must be notified at earliest three months in advance of the planned time of the demonstration, the police are not subject to any time limit in ordering a security measure, therefore nothing prevents the police (the Anti-Terrorist Centre or the Parliamentary Guards respectively) from applying the security measure after the assembly authority takes note of the assembly, in which case the otherwise acknowledged assembly cannot be held at the chosen venue.

(ii) If the regulatory authority takes note of the assembly, there is no ban that could be challenged before the court. If afterwards the police orders a security measure and on that basis prevents the participants from entering the planned venue of the demonstration, the assembly cannot even start. Neither a ban, nor a dissolution will take place, and therefore, the judicial remedy against unlawful dissolutions will again be unavailable for organisers. Therefore, depending on the timing, the police can fully subtract such a restriction from under the remedial scope of the Assembly Act.

As the Court established in the *Patyi (No. 2) v. Hungary* case (application no. 35127/08, Judgment of 17 January 2012), “[g]iven the instantaneous nature of a political demonstration – the impact of which may rapidly diminish with the lapse of time from the triggering event – a judicial procedure, which included several remittals and decisions maintaining the ban and which produced at last a decision to the contrary only after more than four years, can hardly be regarded as effective or adequate and must be attributed a chilling effect on the freedom in question.” In order to properly execute the judgment concerned, the Hungarian authorities should establish a fast-track procedure within which the lawfulness of the security measures ordered by the police can be reviewed in the context of the freedom of assembly.

II. FULL DISCRETION OF THE GOVERNMENT TO INTRODUCE BLANKET BANS

II.1. A rule-by-decree system since 2020

The Hungarian government has been maintaining a “rule-by-decree” system since 2020 and continues to possess excessive regulatory powers under a limitlessly renewable state of danger, which has recently been extended until 25 November 2023.²² The legal framework allows the Government to override basically any Act of Parliament via emergency government decrees during the state of danger due to the excessive, *carte blanche* mandate it has been granted by law in terms of the scope and subject matter of these decrees.

In addition, in a state of danger, the Fundamental Law allows for the emergency government decrees to suspend or restrict most fundamental rights beyond the extent permissible under ordinary circumstances. There is no automatic and regular parliamentary oversight over individual emergency decrees, also depriving the opposition of the opportunity to contest government decrees publicly in the Parliament. Emergency decrees are not subject to obligatory public consultation, and their effective constitutional review is not ensured, in part because demands by the opposition and independent NGOs that the CC should review their constitutionality in an accelerated procedure have been neglected by the ruling majority. As also raised by European Commission’s 2022 Rule of Law Report,²³ the Government has been issuing emergency decrees extensively and in an abusive manner, for purposes not related to the ground for the state of danger – previously the pandemic, presently the war in Ukraine. Thus, the current constitutional and statutory framework pertaining to the state of danger makes the Government capable of overriding Acts of Parliament including the statutory regulation of the freedom of assembly.²⁴

²² Government Decree 167/2023. (V. 11.)

²³ European Commission, 2022 Rule of Law Report – Country Chapter on the rule of law situation in Hungary, https://commission.europa.eu/system/files/2022-07/40_1_193993_coun_chap_hungary_en.pdf, p. 25.

²⁴ For more information on the legal framework, the main concerns, and examples of the inappropriate use of emergency decrees, see: Hungarian Helsinki Committee, *Government gains excessive powers from forever renewable state of danger*, 24 February 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC_Hungary_state_of_danger_24022023.pdf.

II.2. A blanket ban on demonstrations during state of danger

After the outburst of the COVID-19 pandemic in March 2020, the Hungarian government introduced a state of danger and ordered a full prohibition on all kinds of demonstrations, protests and assemblies. Under the pretext of the pandemic, the total ban on exercising the right to peaceful assembly was repeatedly ordered by the government and further extended to last together for nine months. Despite the apparent decline in infection rates and the gradual alleviation of lockdown measures, the government remained reluctant to lift the ban until the end of May 2021. While those willing to exercise their freedom of assembly faced full repression, the government made a wide range of exceptions for non-political gatherings to be held without restrictions or under less restrictive measures (such as masses, funerals, but also going to casinos or shopping malls). Enforcement of the ban was strictly secured by **severe administrative and criminal sanctions**. **The legislation authorised military forces to control compliance with the measures**. Consistent application of the ban paired with the severe consequences of any breach created a **strong chilling effect** on individuals and *de facto* silenced the Hungarian society.

The blanket ban ordered during the first wave of the pandemic: After the COVID-19 pandemic reached Hungary in March 2020, the government declared a state of danger and gained authorisation to rule by decree.²⁵ One of the first extraordinary measures adopted by government decree²⁶ under the state of danger was a **blanket ban on all kinds of public gatherings and assemblies**, with the exception of religious gatherings. The ban practically abolished the exercise of the right to peaceful assembly, excluding even the possibility of considering the individual circumstances of each case. Despite the general ban introduced during the first wave of the pandemic for three consecutive months,²⁷ citizens found innovative ways to hold spontaneous physical protests in safe ways by organising demonstrations in a way that respected social distancing rules (for example car protests).²⁸ Many of the participants were fined, either for violating traffic rules (for honking when driving), or for violating the ban on attending demonstrations and leaving their homes despite the lockdown. **The first blanket ban lasted for three consecutive months. It was introduced on 16 March 2020 and was lifted with effect of 17 June 2020.**

The blanket ban ordered during the second wave: In November 2020 the government declared the state of danger again and brought back the **full prohibition of assemblies with effect from 11 November 2021**.²⁹ To prevent spontaneous physical protests, the government **introduced harsh penalties**: organising an assembly became punishable by up to HUF 1,000,000 (approximately EUR 2,800); participating in an assembly became punishable by up to HUF 500,000 (approximately EUR 1,400). To ensure compliance with the ban, the government **authorised military forces to monitor the enforcement of the restrictions**.³⁰ Sanctions were not only prescribed but also applied on several occasions.³¹ Excessive punitive measures and the consistent application thereof created a strong **chilling effect on citizens**, and *de facto* abolished the right to assemble. **The second blanket ban lasted for over six consecutive months. It was introduced on 11 November 2020 and was lifted with effect of 23 May 2021.**

While demonstrations and protests were fully abolished, more lenient rules applied for other – non-political – types of gatherings. A non-exhaustive list of exemptions included the following non-political gatherings: **funerals** could be held with 50 participants;³² **sports events** (matches, competitions) were allowed during the whole term of the curfew without spectators; from 1 May 2021 even spectators could participate at sports events; from 24 April 2021 **bar terraces and garden areas were opened** allowing the public to consume food and drink outdoor and causing mass clusters in bigger cities, yet the total ban on all kinds of assemblies was still

²⁵ See more: https://helsinki.hu/en/unlimited-power-is-not-the-panacea/#_ftn1

²⁶ Article 4 (1) of Government Decree no. 46/2020 (III.16.).

²⁷ From 16 March 2020 until 17 June 2020.

²⁸ Opposition politicians organised "car demonstrations" to express their disapproval of certain governmental measures. The protesters expressed their opinion by driving around in the centre of Budapest honking.

²⁹ Article 5 of Government Decree no. 484/2020 (XI.10.).

³⁰ Article 20 (2) b) and (3) of Government Decree no. 484/2020 (XI.10.).

³¹ <https://telex.hu/belfold/2021/03/29/godeny-gyorgy-tuntetes-birsag-brfk> and <https://telex.hu/koronavirus/2021/01/31/uzletnyitasert-tuntetnek-vasarnap-a-hosok-teren-elkeseredett-vendeglatosok>

³² Article 6 (4) of Government Decree no. 484/2020 (XI.10.).

effective;³³ from 1 May 2021 the curfew rules have further been relaxed for those holding a so-called immunity pass³⁴ (indoor spaces of restaurants, bars, hotels, swimming pools and baths were opened for the public), but still, the total ban on assemblies remained. **While gatherings for all kinds of different matters were allowed, demonstrations and protests remained prohibited until 23 May 2021, irrespective of the number of participants or other circumstances of the assembly.**

II.3. The Kúria, the Constitutional Court and the Ombudsman legitimised the gross human rights violation

(a) Contesting the blanket ban before the Supreme Court of Hungary (Kúria)

Several persons tried to organise assemblies in this period, and notified the assembly authority of a planned assembly, but all of them were turned down with a banning resolution.³⁵ Even though organisers challenged the decision of the police before the courts, the Kúria (Supreme Court of Hungary) consistently upheld the decision of the police claiming that *"any resolution issued on the basis of an imperative ban of assemblies established by law during the state of danger shall be considered lawful"*.³⁶

(b) Worrying decision of the Constitutional Court

Organisers and several other individuals also challenged the legislation before the Constitutional Court (CC) via constitutional complaints submitted against the government decree introducing the blanket ban but to no avail. Together thirteen complaints were lodged to the CC requesting the annulment of the ban, and all were rejected. The CC – packed with loyalists of the government³⁷ – took a highly controversial decision³⁸ claiming that the total ban shall be deemed as a proportionate restriction in the pandemic irrespective of the fact the ban does not assess the actual dangerousness of the planned assembly (e.g. in the case of car demonstrations) and that other, similar – non-political – gatherings are allowed. Going further, the decision of the CC practically authorised the government to introduce bans in the future prescribing as a constitutional requirement the sole criteria that the government shall periodically review whether the ban is still necessary.³⁹

(c) The Ombudsman remained inactive

The HCLU and the HHC turned to the National Human Rights Institution (the Ombudsman) to call attention to the blanket ban arguing that it is neither necessary nor proportionate and therefore constitutes a violation of the right to peaceful assembly.⁴⁰ In September 2020, the two NGOs also requested the Ombudsman to make suggestions to the government in order to avoid further blanket bans introduced under the pretext of the pandemic as health measures. The Ombudsman did not take any actions until the CC Decision was delivered, after which he issued a statement explaining at length why no action was required at all.⁴¹ **The gross violation of the right to peaceful assembly remained without any effective domestic remedy.**

³³ See: <https://telex.hu/belfold/2021/04/24/ilyen-volt-az-este-az-ujranyitott-teraszokon>

³⁴ See: <https://helsinki.hu/wp-content/uploads/2021/05/what-is-the-covid-19-immunity-pass-good-for-04052021.pdf>

³⁵ See: <http://www.police.hu/hu/hirek-es-informaciok/gyulekezesi-hatarozatok/tilto-hatarozat-46> and <http://www.police.hu/hu/hirek-es-informaciok/gyulekezesi-hatarozatok/tilto-hatarozat-47>

³⁶ See: <https://kuria-birosag.hu/hu/gyulhat/kii4044620202-szamu-hatarozat> and <https://kuria-birosag.hu/hu/gyulhat/kiv3972520212-szamu-hatarozat>

³⁷ See: <https://helsinki.hu/en/hungarys-government-has-taken-control-of-the-constitutional-court/>

³⁸ See: https://www.alkotmanybirosag.hu/uploads/2021/06/sz_iv_288_2021.pdf

³⁹ See an analysis of the decision in Hungarian at: <https://helsinkifigyelo.444.hu/2021/07/21/az-alkotmanybirosag-krokodiltelete-a-kormany-azt-tesz-gyulekezesi-jogunkkal-ami-akar> see more in detail: <http://fundamentum.hu/sites/default/files/Fundamentum-2023-1-10.pdf>

⁴⁰ See: <https://helsinki.hu/gyulekezesi-jog-ombudsmanhoz-fordulnak-a-jogvedok/>

⁴¹ See a detailed report on the activities and independence of the Hungarian NHRI in English here: https://helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf

III. OTHER OBSERVATIONS ON THE GROUP ACTION REPORT OF THE GOVERNMENT

As a part of the Action Report,⁴² the Government mentioned Decision Kgyk. 39.453/2022/4. of the Kúria (the Supreme Court of Hungary) as an example of the domestic courts' case law.⁴³ The Government summarizes a case where the domestic court examined the legality of a prescriptive-restrictive administrative decision, which set a time limitation for a demonstration. The Action Report states that the Kúria changed the defendant's decision but **does not mention other important elements of the case.**

For the demonstration, the organiser intended to use a yurt – a traditional tent used by Hungarians in historical times –, which was used during the day to express the views of the demonstration and at night to protect the privacy of the organizers and the property of the demonstrators. For sanitary and privacy purposes the demonstrators used a mobile toilet, too. The organiser and her companions intended to **hold a continuous assembly in a large public park**, there were always at least two people on the spot to maintain the continuation of the demonstration in line with the applicable domestic legislation. Film screenings and discussions related to the purpose of the demonstration took place in the yurt and banners were placed on the outside. The banners stated that there is a demonstration happening in the yurt against the so-called 'COVID-dictatorship'. In the organiser's view, the yurt not only provided safety and heat for cold days and nights, but it also served as a symbol of freedom (as the ancient Hungarians used this kind of tent during their wandering from the East to the West). Furthermore, since the organiser runs a youtube-channel called "Jurta TV" ("Yurt Channel"), the structure at the venue of the demonstration made the organizers easily identified by the visitors of the park.

The organiser insisted in the procedure that **without the proper infrastructure of the assembly, it is impossible to hold the assembly continuously, day and night.** Because of the continuous nature of the protest, the participants need a place to sleep and keep their valuables in a safe place. It should also be pointed out that the yurts and tents did not prevent people from joining the assembly as outsiders at daytimes. The meeting was open to those who agreed with the purpose of the assembly, and anyone was free to join it. Moreover, the banners which were placed on the outside of the yurt made the structure recognizable as part of an assembly and served as expressions of the purpose of the demonstration even at nighttimes, therefore the communicative manner of the gathering was continuous.

The **prescriptive-restrictive decision issued by the police not only prescribed a time frame in which the assembly could be held, but also prohibited the use of the planned necessary items, including the yurt.** The Kúria changed the decision regarding the time limitation, but not the restriction of necessary items, even though it is practically impossible to hold a continuous demonstration without those equipments.

Moreover, the Action Report does not mention that **prior to the abovementioned decision, the same organisers filed a notification for an assembly** to continue from 3 May 2022, 23:00 until 23:00 on 3 August 2022 at a different venue. In this case, the **police issued a prescriptive-restrictive decision** under order No. 01000-160/575-2/2022, according to which the **organiser is entitled to hold the assembly with a time limit and under certain conditions.** The reason for the time limit was that in the decision the police gave preference to events organised jointly by Municipality of the XII. District of Budapest and the MOM Cultural Centre Nonprofit Ltd. and considered that the demonstration could not take place during the events.

The organiser appealed to the Kúria against the restrictive decision of the police under order No. 01000-160/575-2/2022. The organiser argued that because of the time limit the continuity of the demonstration would be interrupted. At the same time, **it would be practically impossible to transport the necessary items of the demonstration from and to the garden**, and dismantle and rebuild them for such time frames. Besides these,

⁴² See Section 56-57. of the Action Report

⁴³ Published at <https://kuria-birosag.hu/hu/gyulhat/kgykiv3945320224-szamu-hatarozat>

the **organiser found it unacceptable that the assembly was restricted because of a municipal event**, which could be organized next to the demonstration as well, since the demonstration would only take up a very small portion of the park. In its decision No. Kgy.IV.39.450/2022/5,⁴⁴ the **Kúria dismissed the Applicant's application** and upheld the decision of the police No. 01000-160/575-2/2022.

Both cases (decisions Kgy.IV.39.450/2022/5 and Kgyk.39.453/2022/4. of the Kúria) **are currently being examined by the European Court of Human Rights**, since no further domestic remedies were available to the organisers.

IV. BAN ON DEMONSTRATIONS WITHOUT LEGAL REMEDY (THE EXAMPLE OF THE 2021 BUDAPEST PRIDE)

The Budapest Pride Parade is a rally of national and international interest since 1995 in Hungary. It is a part of the tradition of the Parade, and therefore a well-known fact, that its route usually includes Budapest's central historical avenue, the symbolic Andrásy út, a UNESCO-protected route. It is traditionally notified by the organisers for the same period every year. The smooth and safe running of the parade, which brings together tens of thousands of people, is a major organisational task for the organisers, requiring the work and cooperation of hundreds of people over several months. To facilitate and coordinate the organisation, the organisers usually set and publicise the date of the Parade in January each year, six months before the planned date of the event. However, based on the Assembly Act, in accordance with Article 10 (1), the notification of the Parade and thus the acquisition of legal protection can only take place three months before the date of the planned assembly at the earliest.

Additionally, the priority rule under Article 12(1) of the Assembly Act generally applicable for concurring demonstrations stipulates that "*[i]f more than one assemblies are notified for the same place and time, and their simultaneous holding is not possible because of their nature or the characteristics of the place, the one notified earlier to the assembly authority shall have priority.*" This rule, in line with the Article 2(1) of the Assembly Act (which defines the notion of "assembly" and interprets freedom of assembly in the context of the freedom of expression) was created to protect assemblies and at the same time provide guarantees for counter-demonstrators.

However, the priority rule was **not paired with sufficient procedural guarantees** allowing the courts to weigh the interests of the concurring demonstrations. According to Article 15(3) of the Assembly Act, the legislation excludes the possibility of joining the proceeding before the court, which – in the case of concurring assemblies, as the outstanding example of the 2021 Budapest Pride Parade proves – may result that the priority gained in one proceeding by one organiser is lost without the possibility of a legal remedy.

The priority rule and the deficiencies in the procedural rules enable those who are aware of the date of a planned assembly to compete for the venue of a demonstration in bad faith. Due to the earlier announcement of the date of the Parade and the "priority rule", in recent years the organisers of the Parade have been forced into a kind of competition with a homophobic group (backed by the far right-wing political party, the "Mi Hazánk Movement") that wanted to prevent the event by reserving all relevant traditional venues from the Parade. Based on the current legislation, the extreme right-wing party developed a know-how on obstructing the Budapest Pride Parade by lodging a mass amount of notifications for the announced day and the traditional routes and venues of the Parade at the earliest time possible. For the date of the 2021 Budapest Pride Parade (24 July 2021) and the following days, nineteen; and for the date of the 2022 Budapest Pride Parade (23 July 2022) and the days surrounding it, fifteen assemblies were notified by the Mi Hazánk Movement's politicians and supporters, with the purpose of "demonstration of normality vis-à-vis the 'Budapest Pride' parade".

⁴⁴ Published at <https://kuria-birosag.hu/hu/gyulhat/kgykiv3945020225-szamu-hatarozat>

According to these notifications, the organiser intended to hold a parade and a stationary gathering every day for a month, 4-7 hours a day. The real purpose of these notifications was obviously to “reserve” the locations that could be reasonably covered to organize the Parade, thereby forcing the organizers to change the venue of the planned rally. The president of the Mi Hazánk party publicly claimed that the aim of the notifications was to take advantage of the priority rules in the legislation to make the Budapest Pride Parade impossible to happen.⁴⁵

The priority of the 2021 Budapest Pride gained for the traditional venue was lost without the possibility of a legal remedy

The organiser of the 2021 Budapest Pride Parade personally went to the police headquarters to lodge the notification to the assembly authority at the first possible moment, at 00.00 hours on 25 April 2021 to make sure that the traditional venue of the parade is secured for the planned date of the rally. At the same time members and supporters of the Mi Hazánk Movement submitted a mass amount of online notifications (all together 19) within the first few seconds of the opening of the three-month notification period under Article 10(1) of the Assembly Act for the usual symbolic route of the Parade (Andrássy Street) as well as several other venues and routes in Budapest suitable for holding an event of such volume.

Although the assembly authority took note of the Pride notification and rejected the notifications of the right-wing homophobic organisers, the priority gained by the 2021 Budapest Pride Parade for the traditional venues was taken away in a court proceeding initiated before the Kúria by one of the homophobic organisers, without the possibility of a legal remedy.⁴⁶ The organiser of the Parade did not have the possibility to join the proceeding due to the fact that Article 20(1) of the Assembly Act expressly precludes this possibility.⁴⁷ The procedural rule that precluded the organiser of the Budapest Pride Parade from joining the proceeding also precluded that the interests of the organiser of the Budapest Pride Parade be taken into account before the Kúria.

It also deprived the Pride organisers of their right to an effective remedy, since their original notification was acknowledged by the police (so no remedy was necessary in that regard), but they had no remedy against the Kúria decision giving priority to the homophobic organisers’ event, as they were not parties to that decision, therefore, their planned event was de facto banned outside the scope of the Assembly Act and without any meaningful remedy.

This led to a solution where the Kúria deprived the Budapest Pride Parade of the priority gained and granted it to the organiser that submitted its notification online in bad faith, misusing the priority rule of the Assembly Act and publicly claiming that the notification was aimed to make the Budapest Pride impossible. The judgment delivered by the Kúria fully neglected the submission⁴⁸ prepared by the organiser of the Budapest Pride Parade.

The judgment of the Kúria greenlighted the homophobic organiser that manifestly acted in bad faith

The Kúria’s judgment did not take into account that the extreme right-wing party was not exercising its lawful right to counter-demonstrate when making mass notifications to the assumed locations for the day of the Parade in order to occupy venues and routes. Anyone wishing to assemble in protest against the original demonstration would, obviously, only announce it later, after the notified route has been published by the

⁴⁵ See: <https://mihazank.hu/lefoglalta-az-lmbtqp-felvonulas-elol-a-fobb-budapesti-kozteruleteket-a-mi-hazank/>

⁴⁶ See: <https://helsinkifigyelo.444.hu/2021/05/12/gyulekezesi-jogotokkal-visszaelni-nem-kell-felnetek-jo-lesz>

⁴⁷ According to Article 20(1) of Act I of 2017 on the Administrative Procedure (AP) “any person whose right or legitimate interest is affected by the contested administrative act or is directly affected by the contested measure or likely to be directly affected by the judgment to be given in the action, may enter as an interested party in the proceedings pending between other parties.” Although the decision of the assembly authority may be challenged in an administrative lawsuit under the provisions of the AP, Article 15(3) of the Assembly Act precludes the possibility of joining the proceeding pending between other parties.

⁴⁸ <https://helsinki.hu/wp-content/uploads/2021/05/BP-Pride-amicus.pdf>

organiser of the Parade. Anyone who deliberately competes with the organiser of the demonstration for the assumed locations at the earliest possible time of notification, knowing the time, is only seeking to sabotage the exercise of the right to protest of others. The protection of fundamental rights does not apply to assemblies the purpose of which is not the expression of an opinion. As the ECtHR put it, "*In a democracy, the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.*" (Case of Fábér v. Hungary, Application no. 40721/08, p. 38).

The Kúria did not examine the possibility of holding both demonstrations

In addition to the above, the right to demonstration is also protected under the priority rule, which means that in case of competing assemblies, the assembly authority must check whether holding both (or all) demonstrations is possible. "As a first step, if the police unit receiving the notification notice that several assemblies are to be held in the same place or at the same time, they will check whether it is possible to hold them parallelly. If it is not possible to hold parallel assemblies (cannot be ensured, in particular because of the nature of the assemblies or the particularities of the location), the organiser who submitted the notification has priority" (detailed reasoning for Article 12 of the Assembly Act). This rule resembles the practice of the ECtHR according to which "[T]he State has to fulfil its positive obligations to protect the right of assembly of both demonstrating groups, and should find the least restrictive means that would, in principle, enable both demonstrations to take place."⁴⁹

V. OTHER OBSERVATIONS

Administrative obstacles

Several administrative obstacles are built into the Hungarian regulation that can in practice hinder or even fully bar the exercise of the freedom of assembly. The most important administrative obstacles include the following:

- (i) The requirement of **compulsory legal representation** in assembly law cases before the Kúria, failing which any request for legal remedy will be rejected without the assessment of the merits of the case [see: Decision no. K.I.39.006/2020 of the Kúria⁵⁰]. The requirement of **using one specific online channel for lodging the request for judicial review** against the decision of the police, failing which the legal remedy will not be examined in the merits [see: Decisions [Kgyk.IV.39.037/2023/2.](#) and [Kgyk.VII.39.537/2022/6.](#) of the Kúria⁵¹]. These administrative obstacles can *de facto* block the exercise of the right to freedom of assembly.
- (ii) Under the current legislation **holding a banned assembly constitutes a crime⁵² while holding an unnotified assembly constitutes a petty offence⁵³**. Due to the difference in the severity of the consequences, those assemblies that are likely to be banned or restricted by the assembly authority remain simply unnotified, disguised as a tour, memorial event or a press conference. The result of this is that the offending behaviour simply becomes "priceable" and under the same factual circumstances, the legislation punishes more severely those who notify the assembly authority in advance, thus encouraging them not to notify the assembly.

⁴⁹ Case of Fábér v. Hungary, Application no. 40721/08, p. 43.

⁵⁰ Published at <https://kuria-birosag.hu/hu/gyulhat/ki3900620202-szamu-hatarozat>

⁵¹ Published at <https://kuria-birosag.hu/hu/gyulhat/kgykiv3903720232-szamu-hatarozat> and <https://kuria-birosag.hu/hu/gyulhat/kgykvii3953720226-szamu-hatarozat>

⁵² Article 217/C of Act C of 2012 on the Criminal Code.

⁵³ Article 189 of Act II of 2012 on Petty Offences.

VI. RECOMMENDATIONS

For the reasons above, the HCLU and the HHC respectfully recommend the Committee of Ministers to continue examining the execution of judgments in the Patyi and others v. Hungary group of cases and call the Hungarian state to

- (i) create a procedure through which the judicial forum ruling in assembly cases can in a timely manner review and if necessary, repeal the security measures taken by the police serving as legal basis for restricting, banning or dissolving an assembly;
- (ii) abolish the potential criminal law consequences of exercising the right to peaceful assembly in the proximity of the residence of government officials and politicians and take measures to countervail the chilling effect of the long-standing prohibitive practice of the police and the strict limitations imposed by law in order to strike a fair balance between the right to private life of politicians and the freedom of assembly;
- (iii) eliminate the obstacle to joining the proceeding in case of concurring demonstrations (Article 15(3) of the Assembly Act), entailing the possibility of banning or restricting a notified and acknowledged demonstration outside the scope of the Assembly Act;
- (iv) countervail by legislative amendments the right of the Hungarian government to impose a blanket ban on all assemblies under the state of danger;
- (v) eliminate the administrative obstacles incorporated in the Assembly Act and the related regulations, including the mandatory legal representation when a ban or a prior limitation is challenged.

Sincerely yours,



András Kristóf Kádár
co-chair

Hungarian Helsinki Committee



Máté Szabó
executive director

Hungarian Civil Liberties Union



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