

Third party intervention by the Commissioner for Human Rights of the Council of Europe

under Article 36, paragraph 3, of the European Convention on Human Rights

**Application no. 44253/19
Hungarian Helsinki Committee v. Hungary**

Introduction

1. On 16 June 2024, the Council of Europe Commissioner for Human Rights (hereinafter the Commissioner) informed the European Court of Human Rights (hereinafter the Court) of his decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter the Convention), and to submit written observations concerning the case of *Hungarian Helsinki Committee v. Hungary*. This case relates to the introduction in June 2018 of Article 353/A of the Criminal Code and was lodged by a non-governmental organisation active, amongst others, in the area of human rights of migrants.
2. According to his mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.¹ As stated by the Explanatory Report to Protocol No. 14 to the Convention, the Commissioner's experience may help enlighten the Court on certain questions, particularly in cases that highlight structural or systemic weaknesses in the respondent or other High Contracting Parties.²
3. The present intervention is based on the Commissioner's experience with and assessment of the human rights situation in Hungary, his Office's continuous monitoring of that situation, and the work of his predecessors.³ The Commissioner sees this case against the background of measures taken in Hungary to restrict the rights to freedom of expression and freedom of association, which have resulted in a shrinking of space for civil society organisations and human rights defenders, notably those defending the rights of refugees, asylum seekers and migrants.
4. Section I of the present written submission explores the restrictions affecting civil society organisations in Hungary. Section II reviews the nature of the restriction to the freedom of expression and freedom of association of organisations engaged in assisting refugees, asylum seekers and migrants contained in Article 353/A of the Hungarian Criminal Code as amended in June 2018, such as with respect to the quality and proportionality of the law. Section III adds observations related to the purpose of introducing Article 353/A of the Criminal Code. These sections are followed by the Commissioner's conclusions.

I. Restrictions to freedom of expression and freedom of association in Hungary

5. The Commissioner notes that the introduction of Article 353/A of the Criminal Code by Act VI of 2018 in June 2018 constitutes a component of broad restrictions to freedom of expression and freedom of association of civil society.
6. Shortcomings in the protection of these rights have been observed by the Commissioner's predecessors and other international entities since 2010 in Hungary. Legislative amendments have restricted the ability of civil society actors to provide information to rightsholders and impeded their activities by publicly questioning the legitimacy of their work, including presenting them as political activists attempting to promote foreign interests.⁴ Further, on 13 June 2017, the Hungarian Parliament adopted the Law on the Transparency of Organisations Supported from Abroad, which introduced special administrative burdens on organisations working in the field of human rights, through a new demanding reporting scheme.⁵
7. Organisations funded or otherwise viewed as linked to philanthropist George Soros have been specifically targeted, in particular those that provide assistance and support to refugees, asylum seekers and migrants.⁶ This targeting builds on an established anti-immigration stance and the

¹ [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

² [Explanatory Report to Protocol No. 14](#) to the Convention, 13 May 2004, para. 87.

³ See country work by the Commissioner regarding [Hungary](#).

⁴ See [Letter](#) by Commissioner Muižnieks to the Hungarian Prime Minister's Office, 14 July 2014.

⁵ See [Letter](#) by Commissioner Muižnieks to the Speaker of the National Assembly of Hungary, 3 May 2017.

⁶ In his [State of the Nation Address](#) in February 2017, the Hungarian Prime Minister said "there are large predators swimming in the water. This is the transnational empire of George Soros, with its international heavy artillery and

recurrent portrayal of migrants as threat to national security.⁷ It is reflected in constitutional amendments and secondary legislation as well as the continuation of the decreed “crisis situation due to mass migration”, which was first introduced in September 2015.⁸

8. Additional restrictions to the freedom of association of civil society organisations and human rights defenders engaged in assisting refugees, asylum seekers and migrants have been adopted through the so-called “Stop Soros” legislative package introduced by the government in 2018, which requires organisations receiving foreign funding and “propagating mass migration” to register as such and pay a 25% tax on any foreign revenue given for “supporting migration”.
9. In view of his specific role regarding human rights defenders,⁹ the Commissioner notes that the imposition of administrative burdens on civil society organisations and the obligation to self-label as an organisation that “propagates mass migration” limit human rights defenders’ ability to exercise their rights to freedom of expression and freedom of association,¹⁰ particularly when the measures are accompanied by a rhetoric that draws a causal connection between immigration and national security risks.¹¹
10. The Commissioner further observes that, according to the Committee of Ministers Recommendation to member states CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, activities of civil society organisations should be presumed to be lawful in the absence of contrary evidence.¹² In view of the contribution made by NGOs to the development and realisation of democracy and human rights, they should be assisted in the pursuit of their objectives through the creation of a favourable environment, in which they are free to solicit and receive funding from both public bodies and private institutional or individual donors, including from abroad, subject only to the generally applicable laws.

II. Observations on the nature of the restriction contained in Article 353/A

11. While member states of the Council of Europe have the right to control their borders and prevent irregular entries, the Commissioner considers that the criminalisation of the activities of civil society organisations assisting refugees, asylum seekers and migrants introduced by Article 353/A of the Criminal Code is neither foreseeable as to its effects nor necessary or proportionate in the sense of the conditions contained in Article 10(2) and Article 11(2) of the Convention. The aim pursued by this provision is addressed in Section III.
12. First, the Commissioner notes the vague formulation of Article 353/A of the Hungarian Criminal Code as amended in June 2018. The provision contains an open-ended list of activities that may be punishable with custodial arrest or imprisonment for up to one year, which leaves an overbroad discretion to the implementing authorities.¹³ As a result, it remains unclear for civil society organisations or their individual members how to adjust their conduct in order not to commit an offence. While no penalty appears to apply in cases where the person who is assisted is persecuted or fears persecution, it is impossible for the individual who wishes to provide immediate assistance to establish this on the spot. In fact, one of the aims of the assistance is to facilitate effective access to an asylum procedure, the purpose of which is to determine in the individual case whether such well-founded fear of persecution can be established or not.

huge sums of money” [...] which are “secretly used to influence Hungarian politics”. He referred to “the world’s most bizarre coalition of people smugglers, human rights activists and leading European politicians” [...], which was created “with the aim of systematically bringing millions of migrants into Europe”. See also [Statement](#) by Commissioner Muižnieks, 15 February 2018.

⁷ See, for instance, the [joint press conference](#) with the Austrian Chancellor in Budapest on 26 July 2016, during which the Hungarian Prime Minister said: “Every single migrant poses a public security and terror risk”.

⁸ See [Rule 9 submission](#) by Commissioner Mijatović in the case of Ilias and Ahmed v. Hungary, App. no. 47287/15, 12 August 2022.

⁹ See [mandate](#) of the Commissioner and [Declaration](#) of the Committee of Ministers, adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers’ Deputies.

¹⁰ See also [Statement](#) by Commissioner Mijatović, 1 June 2018.

¹¹ See para. 7.

¹² See Committee of Ministers Recommendation to member states [CM/Rec\(2007\)14](#), para. 67.

¹³ See [Venice Commission and OSCE ODIHR Joint Opinion](#) on the provisions of the so-called “Stop Soros” Draft Legislative Package which directly affect NGOs, adopted on 22-23 June 2018.

13. Second, as indicated in the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (ODIHR) Joint Guidelines on Freedom of Association, civil society activity shall be presumed to be lawful, and prohibitions and criminalisation should always be a measure of last resort, such as when conduct creates an imminent threat of violence or other grave violation of the law.¹⁴ The Commissioner notes that the provision of assistance to another person to irregularly cross the state border was already punishable under Article 353/A of the Hungarian Criminal Code,¹⁵ and understands that neither the applicant organisation nor any other civil society organisation in receipt of foreign funding has ever been prosecuted under that Article. This, in the Commissioner's view, questions the necessity of regulating the activities of civil society organisations who assist refugees, asylum seekers and migrants through an amended provision.
14. Third, the Commission notes that restrictions on freedom of association call for heightened levels of scrutiny in terms of proportionality. The mere criminalisation of assistance activities can lead civil society organisations working on behalf of refugees, asylum seekers and migrants, to adjust their working methods, such as by no longer approaching the border area, no longer producing information leaflets for asylum seekers, and by refraining from providing any information to asylum seekers under certain circumstances. As stated by the Commissioner's predecessor,¹⁶ the provision in question can be applied to any humanitarian assistance to migrants, a factor that could have a chilling effect on action for solidarity.
15. The Commissioner observes that the provision as amended in 2018 might contravene the right of associations to engage in education and advocacy on issues of public debate, regardless of whether the position taken is in line with government policy or not.¹⁷ This would complicate the access of asylum seekers to refugee status determination procedures. Such effect would be contrary to Hungary's obligations under the Convention as well as international refugee law.¹⁸ In this regard, in line with the concerns raised by the OSCE ODIHR and the Venice Commission in their Joint Opinion of June 2018, the Commissioner notes that the provision in question criminalises activities of a humanitarian nature that are not only legitimate but even essential.¹⁹
16. Moreover, criminalising any form of assistance to irregularly present migrants can spur intolerance and racism as it punishes individuals for helping others based on their immigration status.²⁰
17. In this context, for the Commissioner, even in its current form, following the amendments in December 2022 that intended to implement the judgment of the Court of Justice of the European Union of November 2021 which found the provision in breach of EU law,²¹ Article 353/A continues to be at variance with the criteria of foreseeability, necessity, and proportionality.

III. Observations on the purpose of introducing Article 353/A of the Criminal Code

18. In relation to the broader limitation of the use of restrictions on rights and freedoms enshrined in the European Convention, notably with respect to the prohibitions of the misuse of power prescribed in

¹⁴ See Venice Commission and OSCE ODIHR [Joint Guidelines on Freedom of Association](#), Principle 10 on proportionality of restrictions.

¹⁵ See Article 353 of Act C of 2012 on the Criminal Code on Illegal Immigrant Smuggling at <https://www.refworld.org/legal/legislation/natlegbod/2012/en/78046> (in the version in force in 2018).

¹⁶ See [Statement](#) by Commissioner Muižnieks, 27 November 2015.

¹⁷ See Venice Commission and OSCE ODIHR [Joint Guidelines on Freedom of Association](#), Principle 6, and Committee of Ministers Recommendation to member states [CM/Rec\(2007\)14](#), paras. 12 and 13.

¹⁸ See, for example, European Court of Human Rights, [N.D. and N.T. v. Spain](#), applications 8675/15 and 8697/15, judgment [GC] of 13 February 2020, noting the need to ensure genuine and effective access to means of legal entry, including as regards border procedures.

¹⁹ See [Venice Commission and OSCE ODIHR Joint Opinion](#) on the provisions of the so-called "Stop Soros" Draft Legislative Package which directly affect NGOs, adopted on 22-23 June 2018.

See also, for example, European Court of Human Rights, [N.D. and N.T. v. Spain](#), applications 8675/15 and 8697/15, judgment [GC] of 13 February 2020, noting the need to ensure genuine and effective access to means of legal entry, including as regards border procedures.

²⁰ See European Commission against Racism and Intolerance [General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination](#), 16 March 2016.

²¹ See Court of Justice of the European Union, [Grand Chamber Judgment](#), Case C-821/19, European Commission against Hungary, 16 November 2021.

Article 18 of the Convention, the Commissioner submits that there are three aspects which raise issues regarding the declared purpose behind criminalising the humanitarian assistance activities of civil society organisations on behalf of refugees, asylum seekers and migrants.

19. First, the Commissioner notes that Article 353/A of the Criminal Code appears to list specifically the activities performed for many years by the applicant organisation. The Hungarian Helsinki Committee has provided assistance to refugees, asylum seekers and migrants for decades. It has provided legal assistance, including through legal representation, conducted a border monitoring programme in cooperation with the border guard forces and the United Nations High Commissioner for Refugees, and has developed and distributed information leaflets that provide updated information about the asylum procedure and the respective rights of refugees and asylum seekers.²² In this connection, the Commissioner notes that paragraph 5 of Article 353/A of the Hungarian Criminal Code defines as punishable activity “in particular a) organising a border watch ...”, and “b) preparing or distributing information leaflets”.
20. Second, the Commissioner draws the Court’s attention to the sustained level of intimidation inflicted upon civil society organisations by the Hungarian authorities through campaigns and rhetoric. The Commissioner’s predecessors have called on the Hungarian authorities to refrain from any stigmatising statements and to ensure an enabling environment for NGOs.²³ In 2017, the UN Special Rapporteur on the situation of human rights defenders noted that human rights defenders in Hungary faced “enormous pressure due to public criticism, stigmatisation in the media, unwarranted inspections and a reduction in State funding”, urging the government to widen and strengthen civil society space.²⁴ Despite numerous calls by the Commissioner’s predecessors and other international stakeholders, this human rights issue remains unaddressed to date.
21. The Commissioner notes the words employed by senior members of the Hungarian government, including the Prime Minister, who referred to the necessity “to take up the struggle against international organisations’ increasingly strong activists” in 2017 and, during campaigning for the 2018 parliamentary elections, referred to them as “an army of mercenaries”.²⁵ The Minister of State for Government Communication stated during a press conference on 11 February 2018 that organisations “which support migration must be restrained” and, explicitly naming the applicant organisation, that they “continually [...] attack the government’s immigration policy” [...] and would “also attack the border guarding efforts and the police officers who protect our borders.”²⁶ On 11 April 2018, a list of about 200 persons allegedly working for so-called “Soros organisations”, including the applicant organisation, was published in a government-associated weekly magazine, referring to them again as “mercenaries” and alleging their intent “to topple the government”.²⁷ During the summer of 2018, there was a targeted campaign of putting stickers reading ‘organisation supporting illegal migration’ on the doors of civil society organisations, including the applicant organisation, carried out by a government coalition partner and the youth wing of the ruling party.²⁸
22. The Commissioner further observes the repeated references made by senior members of the ruling party in Hungary to the need to ban or dissolve civil society organisations. The Vice President of the government party, for instance, stated in January 2017 that “the Soros empire’s pseudo-civil organisations [...] must be driven back by all possible means”.²⁹ It is noteworthy that under Hungarian legislation, the criminal conviction of an individual member of a civil society organisation can result in a number of measures being taken against the organisation, including ultimately its dissolution.³⁰

²² See the Hungarian Helsinki Committee’s website (helsinki.hu).

²³ See country work by the Commissioner regarding [Hungary](#).

²⁴ UN Special Rapporteur on the situation of human rights defenders. Report on his mission to Hungary, 19 January 2017. [A/HRC/34/52/Add.2](#), pp. 11 and 13.

²⁵ See the Prime Minister’s [State of the Nation Address](#), 10 February 2017, and OSCE/ODIHR [Final Report](#) of the Limited Election Observation Report 27 June 2018, p. 14.

²⁶ See [Press Release](#) by the Hungarian Government Press Office, 12 February 2018.

²⁷ See [OSCE media freedom representative Désir condemns blacklisting of journalists in Hungary | OSCE](#), 13 April 2018.

²⁸ See [Country Report](#) by Commissioner Mijatović on the visit to Hungary from 4 to 8 February 2019, 21 May 2019.

²⁹ See [Hungarian attack on George Soros prompts NGO anger - BBC News](#), 12 January 2017.

³⁰ See Act CIV of 2001 on measures applicable to legal entities under Criminal Law at <https://njt.hu/jogszabaly/2001-104-00-00>.

23. Third, the Commissioner notes that restriction of the space for civil society organisations continues today. In December 2023, the Hungarian Parliament adopted Act LXXXVIII on the Protection of National Sovereignty, providing, among other things, for the formation of a new State body, the Sovereignty Protection Office. The Office was established in early 2024 and is vested with unlimited authority to investigate anybody who it believes to be carrying out activities in the interest of a foreign entity, including through invasive scrutiny of sensitive data and private information.³¹ This development has been criticised by UN Special Rapporteurs as well as the Parliamentary Assembly of the Council of Europe and the European Parliament. They indicated its far-reaching consequences on the functioning of democratic institutions, human rights and the rule of law in Hungary as it provides, as noted by the Commissioner's predecessor, "the executive with even more opportunities to silence and stigmatise independent voices and opponents".³² This Act has also been criticised for not providing sufficient guarantees of the Office's independence with both President and Vice-President appointed and dismissed by the executive branch of government.³³
24. The Commissioner notes that the adoption of this new Act restricts the freedom of expression and freedom of association of civil society organisations in Hungary, particularly as the new Office has no limitation on its competencies, acts without oversight, has full access to even classified information, and can investigate without notifying the object of its interest, with no legal remedies available against any of its acts. A recent survey among civil society organisations shows the extent to which the Act has created fear and self-censorship among organisations across Hungary, hindering their operations and diverting their attention and resources from their core activities.³⁴ The Commissioner also observes the opening of investigations by the Sovereignty Protection Office in June 2024 against Transparency International Hungary, a civil society watchdog committed to exposing corruption and promoting transparency in Hungary, and Átlátszó, the largest remaining independent media outlet in the country, focused on investigative journalism and uncovering stories of corruption and misuse of funds.³⁵
25. Against this background, the Court may consider that the introduction of Article 353/A of the Criminal Code as part of the so-called Stop Soros package in June 2018 constitutes a component of broad restrictive measures intended to intimidate civil society organisations who are perceived as critical of the government, especially as regard its migration policies. The Court may consider that the aim of the provision may have been to discredit civil society activists.³⁶

Conclusion

26. The Commissioner is of the view that it is vital in a healthy democracy that the role and functioning of civil society organisations and the rights to freedom of expression and freedom of association be effectively facilitated and protected in member states' laws and practice. Indeed, the commitment to supporting and maintaining a safe and enabling environment in which civil society and human rights defenders can operate free from hindrance was reasserted at the highest level in the Reykjavík Declaration of May 2023.³⁷
27. In the present written submission, the Commissioner puts before the Court information on the basis of which it may consider that:

³¹ See [Statement](#) by Commissioner Mijatović of 27 November 2023. See also European Parliament [Resolution](#) on the situation in Hungary and frozen EU funds (2024/2512(RSP), 18 January 2024.

³² See [Statement](#) by Commissioner Mijatović of 27 November 2023. See also European Parliament [Resolution](#) on the situation in Hungary and frozen EU funds (2024/2512(RSP), 18 January 2024.

³³ See also Venice Commission [Opinion](#) on Act LXXXVIII of 20-23 on the Protection of National Sovereignty, 15-16 March 2024.

³⁴ See Hungarian Helsinki Committee [From Chilling Effect to Immediate Harm: Consequences of the Sovereignty Protection Act](#), 27 June 2024.

³⁵ See also [Joint statement](#) within the framework of the Observatory for the Protection of Human Rights Defenders, 'In solidarity with Transparency International Hungary and Átlátszó', 27 June 2024.

³⁶ See also [Memorandum](#) by Commissioner Mijatović on freedom of expression and media freedom in Hungary, 31 March 2021.

³⁷ See [United around our values](#), Reykjavik Declaration, Reykjavik Summit, 4th Summit of Heads of State and Government of the Council of Europe, 16-17 May 2023.

- the introduction of Article 353/A of the Criminal Code by Act VI of 2018 in June 2018 constitutes a component of broad restrictions to freedom of expression and freedom of association of civil society in Hungary.

- Article 353/A of the Criminal Code is neither necessary nor foreseeable within the meaning of Article 10(2) and Article 11(2) of the Convention.

- there are several aspects which call into question the declared purpose behind criminalising the humanitarian assistance activities of civil society organisations on behalf of refugees, asylum seekers and migrants.