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Democratic Law-Making: Ensuring Participation
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Statement by the Hungarian Helsinki Committee

The Hungarian Helsinki Committee wishes to draw the attention of the Organisation for Security and Cooperation in Europe to the systemic lack of transparency of and public participation in law-making in Hungary that was only exacerbated during the COVID-19 pandemic.

1. Compulsory consultation prior to legislation – even the façade is missing

According to the Act on Law-Making, prior public consultation is compulsory for bills submitted by the Government. The Act also prescribes that impact assessments must be drawn up and published as well. To ensure that consultations are meaningful, the Act prescribes that answers must be provided as to why suggestions were put aside. Until 2014, the governing majority circumvented these by using their MPs to submit legislation – as these requirements are not applicable to bills submitted by members of parliament. After 2014, the Government decided it no longer needs this façade and submits legislative proposals without any consultation to Parliament regularly. On the few occasions it conducts targeted consultations before submitting them to Parliament, it provides deadlines that are impossible to meet. This was the case when trade unions were invited to comment on a proposal that transformed the status of certain public sector employees over the Easter weekend in 2020. Similarly, the Government gave 54 minutes to the Hungarian Academy of Sciences to "consult" the proposal that stripped the Academy of its research institutions and half of its budget.

Out of the 159 government-submitted bills in 2020, only 1 was published for commenting. In a number of cases, the Government resorted to using its MPs to submit crucial legislation in 2020 as well: this was the case with the abolishment of the Equal Treatment Authority as well as an amendment that excludes pecuniary compensation for segregated education.

Even such extremely important changes such as the Ninth Amendment to the Fundamental Law was not published for consultation. Neither was the law that blocked LGBTQI people from adopting children, nor the amendments to the national election rules.

Common to these is that the Government's Legislative Plan, a document outlining the contents and planned size of the proposals the Government intends to submit to Parliament during the spring or the autumn sessions, does not include them.

2. Dialogue with civil society, consultation on strategic documents

A telling example of how the Government treats dialogue on strategic documents is the case of the 2020-2050 National Climate Strategy. In 2019, a very basic questionnaire was published on the Government's website without any announcement or promotion, but with a short deadline to comment. A news portal accidently discovered the questionnaire and published an article about it online: within few days, 200 000 people completed the survey. In response to the article, the Government's spokesperson admitted that the aim of the exercise was not to consult the public, but to meet the relevant minimum requirements set out by the European Union.

The Government's so-called Human Rights Roundtable is often referred to as the forum for dialogue with civil society by decision-makers. In protest against a crackdown on a number of NGOs that received EEA/Norway Grants, many organisations left the roundtable in 2014. By 2020, the Roundtable as well as its thematic working groups are no more than a fig leaf: on the very rare occasions that a bill is put on the agenda of a working group for discussion, the participant's comments or criticism do not receive responses from Government representatives and are not taken into account either, as was the case with the bill that banned legal gender recognition.

3. Parliament turned into a yes-man

Following the unilateral adoption of the new Rules of Procedure of the Parliament by the governing majority in 2014, a new super committee was established, the Committee on Legislation. This super committee is tasked with, among others, deciding on which motions reach the agenda of items to be debated by Parliament thereby serving as a pre-filtering entity that successfully thwarts any item to even reach debate.

The omission of public consultations cannot be remedied in the Parliament either. Bills, often lengthy omnibus proposals are adopted within a very short timeframe. The governing majority regularly amends proposals substantially in the very last phase of the legislative process, after detailed parliamentary "debate" has already taken place. On the meaningfulness of parliamentary debates, a telling example is the one that took place in the Committee of Justice Affairs on the bill that banned legal gender recognition. An opposition MP attempted to channel in the views of affected individuals and their advocacy groups in lieu of public consultation. The chair of the committee attempted to revoke the floor from the MP several times, claiming among others that "it is irrelevant what those affected by the proposals think."

The governing majority regularly obstructs even discussions in parliamentary committees: the most significant of this was the obstruction of the Committee on National Security, the only entity that has oversight over the intelligence agencies. Using its supermajority to obstruct even holding a discussion in committees is a regular practice during the pandemic as well. By way of example, the Committee on Social Welfare has been unable to hear the representatives of the authorities in charge of the management of the pandemic.

4. Law-making during COVID-19

The Government obtained carte blanche authorisation to rule-by-decree during the first wave of the pandemic in March 2020. According to the Fundamental Law it is the prerogative of the Government to declare and to terminate special legal orders, including the so-called state of danger it ordered because of COVID-19. During a state of danger, the Government may, to the extent and in the area necessary, issue decrees to manage to situation that gave rise to the declaration of the state of danger. Such decrees can suspend the application of certain Acts of Parliament, derogate from the provisions of Acts, and introduce measures that suspend or restrict certain fundamental rights. Such special decrees can remain in force only for 15 days, unless Parliament extends their force.

In March 2020, the Government submitted the so-called Authorisation Act to Parliament, that provided a much wider, carte blanche authorisation to the Government on what areas and to what extent it can issue special decrees. The Authorisation Act also automatically extended the force of special decrees, both already adopted and future ones, from 15 days until the Government terminate the state of danger, thereby effectively ceding its oversight role.

Using the so-called Authorisation Act, the Government issued almost 150 decrees within less than three months. While many of the provisions of these special decrees indeed dealt with the management of the pandemic, a number of these had nothing to do with COVID-19. By way of example, the Government adopted a decree that introduced the concept of a special economic zone. Once such a zone is designated by the Government on the territory of a municipality, the local government loses all taxation and regulation jurisdiction over the area. One such zone was designated in a town where an electronics

factory's expansions plans was met with the resistance of the local population and the local government. The designation of the factory's area and its environs as a special economic zone stripped the local government of any oversight of the development as well as its income from the local industry tax, a significant proportion of its annual budget.

The Rules of Procedure of Parliament was also amended in order to severely limit MPs ability to propose bills: as a general rule, all proposals were to be decided whether to be put on the agenda after the state of danger was terminated by the Government.

In June 2020, the Government submitted a Bill to Parliament that, among others, transposed the carte blanche authorisation of the first Authorisation Act into regular law. The state of danger was terminated at the same time the bill entered into force.

In November 2020, the Government declared a state of danger for the second time and submitted the second Authorisation Act to Parliament. The second Authorisation Act no longer included a widening of the potential scope of special decrees, as this has been already done as a general rule when the first state of danger was terminated. However, the second Authorisation Act again provided a general authorisation for already adopted special decrees and for those to be adopted in the future to remain in force for 90 days.

In February 2021, the third Authorisation Act was adopted with the same content, extending the force of special decrees for another 90 days.

The fourth Authorisation Act has already been submitted to Parliament that would extend the force of special decrees until September.

Law-making during the pandemic highlighted and exacerbated the already existing deficiencies regarding consultation, public participation and public scrutiny. While hundreds of restrictive decrees were introduced during the year-long special legal order, the Government and its supermajority in Parliament was busy adopting legislation that further curbed fundamental rights and eroded independent institutions and the system of checks and balances, thereby further weakening the rule of law. With one exception, all of the legal changes were introduced without prior public consultation.

Therefore, we call on the OSCE and OSCE Participating States to urge the Hungarian Government to:

- Strengthen legislative processes, "especially for laws affecting the enjoyment of human rights, by ensuring that mechanisms are in place to guarantee a transparent, inclusive and participatory process, including with opposition politicians, civil society, other relevant stakeholders and the general public, with adequate opportunity and time for meaningful review and proper debate of legislative proposals and amendments", as recommended by the UN Human Rights Committee;
- Appropriately implement and adhere to existing domestic legislation providing for public participation and consultation in the legislative process;
- Re-organise and expand consultative bodies ensuring proportional and meaningful participation for civil society representatives;
- Make use of the expert knowledge of ODIHR to devise a strategy to enhance impartial, open, and inclusive public consultation and dialogue;
- Ease restrictions on the right of members of parliament to propose legislation and close loopholes on public scrutiny and debate in parliamentary procedures;
- Fully observe the requirements set out in the 1990 Copenhagen Document and the 1991 Moscow Document on the openness and inclusivity of the process of making laws.