



Human Rights  
Institute



Joint Submission to the United Nations Universal Periodic Review

THE INTERNATIONAL BAR ASSOCIATION & LAWYERS FOR LAWYERS

Hungary

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## **JOINT UPR SUBMISSION – HUNGARY – NOVEMBER 2021**

### **A. Introduction**

1. The International Bar Association's Human Rights Institute (IBAHRI) and Lawyers for Lawyers (L4L) submit this report on the state of human rights in Hungary, especially in respect of the legal profession, with recommendations for the 38th session of the Universal Periodic Review (UPR) Working Group in the UN Human Rights Council in October 2021.
2. The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law Societies, spanning all continents. The IBA's Human Rights Institute, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.
3. Lawyers for Lawyers (L4L) is an independent and non-political Dutch foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. Lawyers for Lawyers was granted Special Consultative status with the UN Economic and Social Council in July 2013.

### **B. Executive Summary**

4. This submission highlights key concerns regarding Hungary's compliance with its international human rights obligations to guarantee the independence of the judiciary, i.e. free and independent working of national courts and judicial personnel, and of lawyers, the separation of powers, the free expression, and ultimately the rule of law, as set out in international human rights instruments.

### **C. Normative and institutional framework of the State**

5. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice. Justice can only be provided effectively in a judicial system where judges, along with lawyers and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows inter alia from the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (ICCPR).
6. In its task of promoting and ensuring the rule of law, the Government of Hungary should respect the universal principle of the independence of the judiciary, as well as the independence of the lawyers. The UN Basic Principles on the Independence of the Judiciary, and UN Basic Principles on the Role of Lawyers<sup>1</sup> provide a concise description of international standards relating to key aspects of the principle of independence. Adherence to the UN Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to justice.

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<sup>1</sup> The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly. The Basic Principles are available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

7. During the UPR 2nd cycle in 2016, Hungary received much focus on the need to implement reforms on judicial independence and rule of law. More precisely, it received and supported recommendations to take concrete measures to ensure the independence of the Constitutional Court and the protection of human rights and fundamental freedoms, and that political pressure is not being applied to judicial decision making (128.50);<sup>2</sup> to implement the UN Basic Principles on the Independence of the Judiciary and repeal all provisions of national law that restrict the Constitutional Court's jurisdiction (128.152).<sup>3</sup>

8. We note that developments taking place in Hungary since 2010, and especially in the last years, are of great concern. In recent years, lawyers and judges have faced significant constraints when exercising their profession and implementing their professional duties. Their rights and privileges have often not been respected, and they have been repeatedly subjected to persecution and improper interference by state authorities and other branches of government. Moreover, a number of newly adopted laws and legislative initiatives further erode the independence of the judicial system, violate the separation of power principle, and thus weaken the rule of law in the country.

#### **D. Independence of the legal profession**

a. Harassment of lawyers; legislation criminalizing legal assistance to undocumented migrants

9. Article 16 of the UN Basic Principles on the Role of Lawyers states that "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference [...] and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics". Furthermore, the UN Basic Principles on the Role of Lawyers guarantee that lawyers must be allowed to participate in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights as well as take part in organization that aim to promote these issues.<sup>4</sup>

10. By adopting the so-called "Stop Soros" legislation in 2018, the Hungarian Government has restricted the right of lawyers to carry out their professional duties independently and curtailed their freedom of association. In June 2018, the Office of the UN High Commissioner for Human Rights defined this law as "shameful and blatantly xenophobic."<sup>5</sup> The Council of Europe's Venice Commission, a constitutional consultative body, stated that it "infringes upon the right to freedom of association and expression and should be repealed as it clearly violates EU's laws".<sup>6</sup>

11. In February 2019, the Hungarian Constitutional Court ruled the so-called "Stop Soros" legislation, which criminalized the legal assistance provided by the immigration lawyers and legal NGOs and associations to undocumented migrants, to be not unconstitutional.<sup>7</sup> This legislation came up from

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<sup>2</sup> Addendum 1: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/33/9/Add.1, 16 September 2016, p. 6

<sup>3</sup> Ibid, p. 3

<sup>4</sup> Principle 23 of the UN Basic Principles on the Role of Lawyers

<sup>5</sup> New Hungary legislation 'shameful and blatantly xenophobic' – Zeid, 21 June 2018. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23239&LangID=E>

<sup>6</sup> Freedom in the world 2020 (Hungary). Available at: <https://freedomhouse.org/country/hungary/freedom-world/2020>

<sup>7</sup> Hungary 2019. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/hungary/report-hungary/>

the current far-right government to basically effectively ban the work of all lawyers, NGOs or other legal associations that support asylum seekers and refugees in the country.

12. The fear and hate campaign towards immigrants that the government has been engaged in, directly affected lawyer's rights to work independently or by joining/establishing associations for the human rights causes.

b. Legislation and legislative initiatives impacting the judicial independence

13. In December 2018, the Hungarian parliament tabled legislation separating the administrative courts from the rest of the judicial system. According to the legislation, this newly established administrative courts system would be subject to an extensive control of ministerial agencies, and thereby significantly exposed to external interference.<sup>8</sup>

14. The proposed legislation aimed to prevent the remaining independent courts from reviewing and evaluating certain state decisions,<sup>9</sup> as it created a new administrative courts system, which would take up cases related to government actions/inaction, as well as such politically sensitive matters like elections, taxation, public procurement, corruption, the right to protest. Fortunately, the Orbán administration walked back on these reforms announcing a suspension of the proposed new courts, with a full repeal of the law in July 2019. Nevertheless, in November 2019, the Hungarian government re-introduced another bill to target the independence of the judicial system.<sup>10</sup>

15. In December 2019, the Hungarian Government adopted this new law, which created a serious negative impact on the independence of the judicial bodies.<sup>11</sup> The law granted public authorities the possibility of filing constitutional complaints with the Constitutional Court, if their fundamental rights have been violated or if their scope of competence has been unconstitutionally limited by an ordinary court decision.<sup>12</sup> Thus, the state authorities can channel the judicial review directly to the Constitutional Court instead of passing through the ordinary court system. However, it has been evident that in recent years the independence of the Constitutional Court has been seriously undermined by the governing majority, and the Court therefore has often been reluctant to hold state authorities accountable for their wrongful acts.<sup>13</sup>

16. Moreover, through this new law Constitutional Court judges after their retirement could almost automatically become judges of the Hungarian Supreme Court. This would allow the ruling majority, which currently needs two-third majority in Parliament to elect Constitutional Court justices, to indirectly select and have so-called 'loyal judges' at the Supreme Court as well. This might have a direct effect on further eroding impartiality principle.

17. More recently, in December 2020, the Hungarian parliament, under the premise of tackling the Covid-19 pandemic, passed a legislation that lowers the threshold to declare national emergencies

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<sup>8</sup> Judicial Independence (Still) Under Threat in Hungary. Available at: <https://www.fidh.org/en/region/europe-central-asia/hungary/judicial-independence-still-under-threat-in-hungary>

<sup>9</sup> Judicial Independence (Still) Under Threat in Hungary

<sup>10</sup> Judicial Independence (Still) Under Threat in Hungary

<sup>11</sup> New law threatens judicial independence in Hungary – again, Analysis by the Hungarian Helsinki Committee, January 2020. Available at: [https://www.helsinki.hu/wp-content/uploads/HHC\\_Act\\_CXXVII\\_of\\_2019\\_on\\_judiciary\\_analysis\\_2020Jan.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Act_CXXVII_of_2019_on_judiciary_analysis_2020Jan.pdf)

<sup>12</sup> Proposed new law threatens judicial independence in Hungary – again. Available at:

<https://www.helsinki.hu/en/proposed-new-law-threatens-judicial-independence-in-hungary-again/>

<sup>13</sup> <https://www.helsinki.hu/en/proposed-new-law-threatens-judicial-independence-in-hungary-again/>

and limits the possibility of judicial oversight of the government actions. Therefore, the executive branch can act more freely, without further constitutional limits.<sup>14</sup>

c. Public rhetoric against lawyers and judges

18. According to our information, media resources have been widely used in Hungary to target, discredit, and demonize lawyers and judges that criticize the government, and uphold human rights.<sup>15</sup> In January 2020, the Prime Minister Viktor Órban heavily criticized several judicial decisions that awarded compensation to Roma children segregated in Hungarian schools and to prisoners that complained about the inhumane conditions in prisons throughout the country.<sup>16</sup>

19. The Prime Minister also openly and harshly attacks lawyers who provide legal aid to undocumented migrants and detainees. Lawyers are portrayed as the enemies of the Hungarian State and Hungarian people who defend terrorists and criminals. The government's discourse is that these lawyers grab money of taxpayers.<sup>17</sup> It has been reported that the two biggest television companies in Hungary have a very close alignment with the government, which facilitates the spread of pro-governmental and anti-human rights discourse and hinder any narrative that aims to disapprove governmental acts and policies.

20. The legal profession in Hungary is under a heavy pressure caused exclusively by the attempts of the government to crackdown on dissent. It contradicts the UN Basic Principles on the Role of Lawyers. On 22 June 2017, the Human Rights Council (HRC) passed a resolution condemning in general *"the increasingly frequent attacks on the independence of judges, and lawyers, (...), in particular threats, intimidation and interference in the discharge of their professional functions"*. The HRC affirmed that *"an independent and impartial judiciary, an independent legal profession, (...) able to perform its functions accordingly, and the integrity of the judicial system are prerequisites for the protection of human rights and the application of the rule of law and for ensuring fair trials and the administration of justice without any discrimination"*.<sup>18</sup>

**E. Recommendations to the Government of Hungary:**

- **Respect the freedom of expression and association of lawyers and judges in order to allow them to accomplish their work to provide access to justice and tackle discrimination, crime, impunity and oppression.**
- **Preserve the right to people to access justice, and then preserve lawyers' mission to guarantee that.**
- **Safeguard and guarantee a full and effective independence of the judiciary in Hungary; stop any sort of harassment and persecution, including criminal prosecution, of judges who speak up against governmental policies or acts, or who adopt rulings that overrule the decisions of the government.**

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<sup>14</sup> IBAHRI expresses concern over Hungarian laws expanding executive power and curtailing LGBTQI+ rights. Available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=38d74852-b163-4c91-a559-2e81684398c8>

<sup>15</sup> 2020 Rule of Law Report The rule of law situation in the European Union. Available at: [https://ec.europa.eu/info/sites/info/files/hu\\_rol\\_country\\_chapter.pdf](https://ec.europa.eu/info/sites/info/files/hu_rol_country_chapter.pdf)

<sup>16</sup> 2020 Rule of Law Report The rule of law situation in the European Union

<sup>17</sup> A propaganda stunt: attack on gypsies, lawyers, and prisoners. Available at: <https://hungarianspectrum.org/tag/hungarian-bar-association/>

<sup>18</sup> UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/L.20](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20)

- **Safeguard and guarantee a full and effective independence of lawyers, by ensuring that they can perform their professional duties without any fear of reprisals, intimidations, threats, or criminal prosecution.**
- **Enhance collaboration with the Special Rapporteur on Independence of Judges and Lawyers and with the civil society in general to ensure compliance with international standards relating to the independence of judiciary and the legal professions.**