



Minority rights violations in Hungary January 2022



Europe Team: Clara-Lou Lagièrre, Elia
Duran-Smith, Hanorah Hardy.

Table of contents

Executive Summary

Anti-LGBT+ Legislation and Discrimination

Hungary and Migration

Conclusion

Executive Summary

Since the election of prime minister Viktor Orbán in 2010, Hungary has continuously violated international law, threatening minorities' rights and wiping out democracy in the country. 2021 was no exception. This year again, the government directed its attacks toward migrants and asylum seekers, journalists, political opponents, women and the LGBT+ community by implementing discriminatory laws and restricting freedom of expression. Most of the media are now under the yoke of the state, and the last remaining independent media outlets are being threatened on a daily basis. In June, the supreme court decided not to renew the broadcast licence of independent media outfit Klubrádió. This decision was condemned by the European Commission and the radio station brought the case to the constitutional court, which is now in progress. Moreover, a group of not-for-profit media organisations revealed that dozens of independent journalists have possibly been targeted by the spyware Pegasus. The minutes of a parliamentary committee meeting on the Pegasus scandal are classified until 2050. If the government did not react to this, it is extremely worrisome for the freedom of press. Moreover, the rule of law is also under threat. Hungary used the COVID-19 pandemic as a reason to endlessly prolong the state of emergency, allowing itself to breach or suspend laws and implement extraordinary measures.

The European Union has repeatedly condemned the Hungarian policy and in particular the fate of migrants, asylum seekers and the LGBT+ community. This report will examine these later subjects and in particular two recently implemented laws which provoked strong reaction from the EU. The first part will look at a law introduced in June which has prohibited the sharing of content on homosexuality or sex reassignment to minors. This law, which violates human rights standards, has been widely criticised by sections of the Hungarian population, the EU and foreign countries. The second part of the report will examine the developments following the implementation of various legislative acts that restrict the chances to gain protection and criminalise the help to asylum seekers. Despite condemnation by the Court of Justice of the European Union (CJEU) in November 2021, the government refuses to change this legislation.

Anti-LGBT+ Discrimination and Legislation

Introduction

The ruling Fidesz party's right-wing populist ideology, according to academics Andrea Pető and Weronika Grzebalska, is held together by the “symbolic glue” of gender norms and the idea of the socially conservative Christian Hungarian nuclear family being under attack from various influences, including social liberalism, refugees and LGBT+ people.¹ It has been reported that Fidesz utilised culture war politics to activate the party's base and fragment the opposition so it can consolidate power within Hungary. The scholars say this is 'not so much trying to eliminate the progressive civil society but rather turn it into a bogeyman that governing elites can activate whenever they need to mobilise their supporters'.² Beauchamp points out that “in the name of fighting a phantom scourge, it has given [Fidesz] new abilities to regulate education, media, and advertising [...] In this sense, the anti LGBTQ provisions aren't merely cultural warfare but direct expansions of Orbán's authoritarian reach”.³

With this context in mind, this section will outline the legislative assaults on LGBT+ rights in Hungary under the Orbán government since 2010, the legislative developments of 2021 and the response of European international institutions - namely European Commission and the Council of Europe - and the referendum on the legislation concerning LGBT+ rights that will be held during the parliamentary elections in April 2022.

The history of LGBT+ discrimination under the current Orbán government

A slew of legislation introduced in recent years have acted as the foundation for the attacks on LGBT+ rights in 2021. From the early years of the second Orbán government starting in 2010, there have been systematic and widespread constitutional changes to ban any expression of LGBT+ identity in the country. In 2012, a constitutional provision was introduced that banned gay marriage⁴. In 2018, the teaching of gender studies in Hungarian universities was outlawed which the government explained was because “we do not consider it acceptable for us to talk about socially constructed genders, rather than biological sexes”⁵.

1. Pető and Grzebalska. (2015). 'The gendered modus operandi of the illiberal transformation in Hungary and Poland', Women's Studies International Forum (68), pp. 165-166
2. Pető and Grzebalska. (2015). 'The gendered modus operandi of the illiberal transformation in Hungary and Poland', Women's Studies International Forum (68), pp. 170-171
3. Beauchamp. (2021, June 28). 'How hatred of gay people became a key plank in Hungary's authoritarian turn', Vox. <https://www.vox.com/22547228/hungary-orban-lgbt-law-pedophilia-authoritarian>
4. Beauchamp. (2021, June 28). 'How hatred of gay people became a key plank in Hungary's authoritarian turn', Vox. <https://www.vox.com/22547228/hungary-orban-lgbt-law-pedophilia-authoritarian>
5. Beauchamp. (2021, June 28). 'How hatred of gay people became a key plank in Hungary's authoritarian turn', Vox. <https://www.vox.com/22547228/hungary-orban-lgbt-law-pedophilia-authoritarian>

Moreover, 2020 was a significant year in the Hungarian government's discriminatory legislative agenda. In May, legislation was introduced that does not allow trans people to change their gender on government documentation, which essentially makes their legal recognition impossible.⁶ In December, a constitutional reform package was approved that prevents same sex couples from adopting without the permission of the minister of family.⁷ It also abolished the Equal Treatment Authority (ETA) as an independent agency, which has served to protect the rights of LGBT+ people, among others.⁸ Instead, the ETA's mandate will be subsumed under the authority of the Hungarian Commissioner for Fundamental Rights who is a government minister and, according to a group of European NGOs, has 'not shown interest in defending LGBTQIA+ rights in recent years'.⁹ On August 26th a group of 23 European NGOs - including Civicus, Civil Liberties Union for Europe, the Hungarian Helsinki Committee, and the International Planned Parenthood Federation European Network - published an open letter to the UN's special rapporteurs on freedom of opinion and expression, and the right to physical and mental health, as well as the UN's independent expert on sexual orientation and gender identity to ask them to condemn and call for a reversal of the actions of the Hungarian government.

The letter pointed out that this constitutional package served to bolster "institutionalised homophobia and transphobia" as Article L states that in Hungarian families "the mother is a woman and the father is a man", demonstrating the current Hungarian government's desire to create a hostile environment for rainbow families.¹⁰

6. Beauchamp. (2021, June 28). 'How hatred of gay people became a key plank in Hungary's authoritarian turn', Vox. <https://www.vox.com/22547228/hungary-orban-lgbt-law-pedophilia-authoritarian>
7. 'Hungary: concerns over the erosion of the rights of LGBTQIA+ persons'. (2021, August 26). Civicus. <https://www.civicus.org/index.php/media-resources/media-releases/open-letters/5249-hungary-concerns-over-the-erosion-of-the-rights-of-lgbtqia-persons>
8. Beauchamp. (2021, June 28). 'How hatred of gay people became a key plank in Hungary's authoritarian turn', Vox. <https://www.vox.com/22547228/hungary-orban-lgbt-law-pedophilia-authoritarian>
9. 'Hungary: concerns over the erosion of the rights of LGBTQIA+ persons'. (2021, August 26). Civicus. <https://www.civicus.org/index.php/media-resources/media-releases/open-letters/5249-hungary-concerns-over-the-erosion-of-the-rights-of-lgbtqia-persons>
10. 'Hungary: concerns over the erosion of the rights of LGBTQIA+ persons'. (2021, August 26). Civicus. <https://www.civicus.org/index.php/media-resources/media-releases/open-letters/5249-hungary-concerns-over-the-erosion-of-the-rights-of-lgbtqia-persons>

Developments in 2021

In March 2021, the Constitutional Court ruled that the law passed in May 2020 that prohibits Hungarians from changing their gender on official documents cannot be applied retroactively. Nevertheless, the Budapest Government County Office has failed to process applications submitted before the law came into effect.¹¹

On June 14th 2021, the government added amendments targeting the LGBT+ community to a bill increasing penalties for sex crimes against children.¹² The amendments aim to stop sex educators teaching about the full range of sexualities and gender identities, impose a ban on expressions of LGBT+ identity on television outside the hours of 10pm to 5am, and outlaws films and adverts aimed at people under the age of 18 which feature same-sex physical acts or gender-affirmation surgery.¹³ By including these amendments, the government makes explicit its view that paedophilia and LGBT+ identity belong in the same category. The Fidesz party has stated that the bill will serve to “protect children's natural and healthy sexual development”, further suggesting that LGBT+ expression is both unnatural and unhealthy.¹⁴ The bill sparked mass protests in Budapest on June 15th, where over 10,000 people gathered to express their disapproval.¹⁵

11. 'Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.
https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13
12. Beauchamp. (2021, June 28). 'How hatred of gay people became a key plank in Hungary's authoritarian turn', Vox.
<https://www.vox.com/22547228/hungary-orban-lgbt-law-pedophilia-authoritarian>
13. Hungary: concerns over the erosion of the rights of LGBTQIA+ persons'. (2021, August 26). Civicus. <https://www.civicus.org/index.php/media-resources/media-releases/open-letters/5249-hungary-concerns-over-the-erosion-of-the-rights-of-lgbtqia-persons>
14. Beauchamp. (2021, June 28). 'How hatred of gay people became a key plank in Hungary's authoritarian turn', Vox.
15. 'Hungary: Dark day for LGBTI rights as homophobic and transphobic law adopted'. (2021, June 15). Amnesty International.
<https://www.amnesty.org/en/latest/news/2021/06/hungary-dark-day-for-lgbti-rights-as-homophobic-and-transphobic-law-adopted/>
<https://www.vox.com/22547228/hungary-orban-lgbt-law-pedophilia-authoritarian>

The European Commission has issued a robust response to the developments in Hungary. The Commission's President, Ursula von der Leyen, said she will "use all the powers of the Commission to ensure that the rights of all EU citizens are guaranteed".¹⁶ This led her to instruct the Justice and Internal Market Commissioners to write a letter to the Hungarian government "expressing our legal concerns before the bill enters into force".¹⁷ This was prompted by a statement supported by 16 EU countries which called on the European Commission to take action against the law that bans children from learning about LGBT+ issues. The letter, sent on July 15th, explicitly laid out the Commission's concerns with the legislation and its violations of European law.

The Commission states that the law banning exposure of LGBT+ people and issues to children as "restrictive and discriminatory measures" and constitutes a violation of "human dignity, freedom of expression and information, the right to respect of private life as well as the right to non-discrimination, as enshrined respectively in Articles 1, 7, 11 and 21 of the EU Charter of Fundamental Rights".¹⁸ In terms of the violations of EU standards, the Commission points out that the Audiovisual Media Services Directive has been breached as "Hungary put in place unjustified restrictions that discriminate against people based on their sexual orientation and are moreover disproportionate".¹⁹ It also violates the e-commerce Directive as the law impedes showing different sexual orientations to children from broadcasters based in Hungary or abroad. Additionally, the Commission views the law as a violation of the principles of the Treaty on the Functioning of the European Union - namely Article 56 which denotes "the freedom to provide services" and Article 34 on "the free movement of goods" - for "failing to demonstrate that the restrictions are duly justified, non-discriminatory, and proportionate".²⁰ The letter was intended as a preliminary step to attempt to prevent the bill from becoming a law and to point out the Commission's disapproval of other discriminatory actions taken by the Hungarian government. If passed, however, the Commission may choose to "formally infringe" - which may include referring Hungary's government to the Court of Justice of the EU - and the letter serves as a warning of these proceedings.²¹

16. Elder, F. and von der Burchard, H. (2021, June 23). 'A shame': Von der Leyen vows EU will fight Hungary's anti-LGBTQ+ law. Politico. <https://www.politico.eu/article/european-commission-legal-steps-hungarys-anti-lgbtq-law/>

17. Elder, F. and von der Burchard, H. (2021, June 23). 'A shame': Von der Leyen vows EU will fight Hungary's anti-LGBTQ+ law. Politico. <https://www.politico.eu/article/european-commission-legal-steps-hungarys-anti-lgbtq-law/>

18. 'EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people'. (2021, July 15). European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668

19. 'EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people'. (2021, July 15). European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668

20. 'EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people'. (2021, July 15). European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668

21. Elder, F. and von der Burchard, H. (2021, June 23). 'A shame': Von der Leyen vows EU will fight Hungary's anti-LGBTQ+ law. Politico. <https://www.politico.eu/article/european-commission-legal-steps-hungarys-anti-lgbtq-law/>

'EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people'. (2021, July 15). European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668

The constitutional law experts of the Council of Europe's Venice Commission also issued a statement on the bill introduced in June. They criticised the “rushed manner” of its adoption “without consulting civil society, opposition and other stakeholders” which “disrespected Venice Commission recommendations in its Rule of Law Checklist and the Report on the role of the opposition in a democratic Parliament”.²² On the content of the bill, they protested against the restrictions on “legitimate expressions of sexual orientation and gender identity” in violation of the rights protected by Article 10 of the European Convention on Human Rights.²³ The experts also stated that this legislation advances the creation of a “threatening environment” for LGBT+ people in which “LGBTQI children can be subjected to health-related risks, bullying and harassment”.²⁴ Moreover, the bill would ensure that Hungarian schools provide “one-sided and biased teaching, opening doors to stigmatisation and discrimination of LGBTQI people”.²⁵

On August 6th, a law was passed that bans businesses from selling products depicting LGBT+ identity within 200m of schools, youth institutions and churches. It also orders businesses to use special packaging to differentiate these products. A bookshop was fined 250,000 HUF (around 700 EUR) for selling a children's book that featured rainbow families beside other children's books.²⁶

In addition, several publishers have been targeted by Fidesz. For example, on January 19th 2021, the Hungarian Consumer Protection Authority compelled the publishers of a book for children that included LGBT+ characters to feature a disclaimer in the book that it features “behaviour deviating from traditional gender roles”, which the European Commission labelled a violation of “the freedom of expression and the right to non-discrimination” enshrined in Articles 11 and 21 of the EU Charter of Fundamental Rights.²⁷ Another book that retells fairy tales with LGBT+ characters was banned from kindergartens in Budapest by the Fidesz mayor who branded the book “homosexual propaganda”.²⁸

22. 'Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13

23. 'Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13

24. 'Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13

25. 'Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13

26. 'Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13

27. 'EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTQI people'. (2021, July 15). European Commission.

https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668

28. 'Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13

Media organisations have also faced restrictions. For example, independent broadcaster RTL have faced legal proceedings from the country's media regulator for broadcasting an advert that aimed to raise awareness of rainbow families before 10pm as it said the content was not appropriate for children.²⁹

Referendum

On April 3rd 2022, the same day as the parliamentary elections, a referendum will be held on this bill. The referendum will ask voters five questions, including whether they support the “promotion” of content associated with sexual orientation and gender identity to children without parental consent. The Fidesz party is urging voters to vote in favour of their bill. In line with the party's strategy of dividing the opposition, this issue may be a key opportunity as the opposition parties do not agree on their stance on LGBT+ rights. This referendum may, therefore, serve to provide the Fidesz party with another term in government if this strategy proves successful.³⁰

29. 'Hungary: Amendments affecting LGBTIQ people incompatible with international human rights standards, according to Venice Commission'. (2021, December 14). Council of Europe Directorate of Communications.

https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a4dd13

30. Slad, A. and Kottasová, I. (2022, January 11). Hungary sets a date for referendum on controversial LGBTQ law. CNN. <https://edition.cnn.com/2022/01/11/europe/hungary-lgbtq-law-referendum-intl/index.html>

Hungary and Migration

Introduction

In recent years, overt discrimination against refugees and asylum seekers has been at the heart of the Hungarian government's policies. The systematic attacks on people seeking refuge have intensified, with each new piece of legislation or policy continuously chipping away at refugee rights, fundamental freedoms and Hungary's international obligations. Slowly but surely the Hungarian government has chipped away at safe-guards for refugees and asylum seekers and in 2021, migrants rights have been stripped down to the bare minimum.

The summer of 2015 saw an influx of people coming from various parts of the world to Europe, seeking safety and refuge, and fleeing war and persecution. By the end of 2015, a total of 411,515 migrants and asylum seekers were registered arriving in Hungary.³¹ Prime Minister Viktor Orbán and his Fidesz party immediately painted the 2015 migrant crisis as a threat to national security, social cohesion, and above all, migrants were seen to jeopardise the 'Christian identity' of the Hungarian nation. Since 2015, the Hungarian Government has ostracized asylum seekers socially, politically and legally. They have painted asylum seekers as fundamentally different to Hungarian nationals, deeming them as less worthy of protection in their country, so as to justify Hungary negating their international obligations. This section will provide an overview of the legislative assaults on migration and refugee rights in Hungary, as well as the international response and pushback since 2015, as this is important to note in order to understand the current political context that has manifested in 2021, carrying on into 2022.

Background

In 2015 the Council of the European Union addressed the issue of "exceptional migratory flows" and created the EU burden-sharing scheme so each EU country would take their "fair [share] of responsibility."³² Hungary was supposed to accept 1,294 refugees. However, Orbán immediately opposed this, stating that any EU plan to relocate asylum seekers would destroy Hungary's Christian identity and culture. Rather than accepting the EU decision, the Hungarian government spent approximately 28 million euros on an anti-immigrant campaign.

31. International Organisation for Migration, 'Mixed Migration Flows in the Mediterranean and Beyond, Compilation of Available Data and Information' (2016) IOM

32. Council Decision (EC) 2015/1601 on establishing provisional measures in the area of international protection for the benefit of Italy and Greece (22 September 2015)

In the first of a series of anti-migration amendments, in September 2015 Hungary amended its Criminal Code to create specific 'border points' at which migrants could, in theory, claim asylum. Crossing the border at any other point was deemed illicit and punishable by three to ten years' imprisonment.³³ Accompanying the amendment, the Hungarian government declared a "state of crisis due to mass migration."³⁴ Hungary continues to retain the 'State of Crisis' status in 2022. Following this, between September 2015 and March 2016, 2,353 people were convicted of unauthorised border crossing. According to the Szeged court, "2,353 individuals were convicted of unauthorised crossing of the border fence between 15 September 2015 and 31 March 2016. Of these, 1,331 were sentenced to expulsion for one year, 943 to expulsion for two years, 33 to expulsion for three years, one to expulsion for four years and one to expulsion for five years. In addition, two were sentenced to actual imprisonment, 36 to suspended imprisonment, four were issued a warning and two were put on probation."³⁵

In order to gain the public's support for criminalising migration, the Hungarian government organised a national referendum. On October 2, 2016, Hungarians went to the polls to answer: "Do you want the European Union to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly?"³⁶ Voter turnout was only 39 percent, far short of the 50 percent participation required to make the referendum valid under Hungarian law. Orban disregarded this and took the vote to speak for all Hungarian people. He stated that "The European Union's proposal is to let the migrants in and distribute them in mandatory fashion among the Member States and for Brussels to decide about this distribution. Hungarians today considered this proposal and they rejected it. Hungarians decided that only we Hungarians can decide with whom we want to live. The question was 'Brussels or Budapest' and we decided this issue is exclusively the competence of Budapest." With the referendum decision as ammunition, in 2016, the Hungarian police started recruiting 3,000 "border hunters" to join some 10,000 police and soldiers patrolling a 100-mile-long, four-meter-high, razor-wire-topped fence erected on Hungary's borders with Serbia and Croatia to keep refugees out. Along with this, refugee camps were closed, leaving many people without food, shelter or access to any support whatsoever.

33. The Government of Hungary, 'Unauthorised border crossing will be illegal from mid-September' (30 August 2015)

34. The Government of Hungary, 'Government declares state of crisis due to mass migration in two counties' (15 September 2015)
<http://www.kormany.hu/en/prime-minister-s-office/news/government-declares-state-of-crisis-due-to-mass-migration-in-two-counties>

35. United Nations High Commissioner for Refugees, Global Report (2016) UNHCR, p. 57

36. Elzbieta Gozdziaik, 'Brussels or Budapest, that was the question...!' (27 October 2016)

The European Commission

The rapid assaults on asylum seekers and international law sparked international condemnation and on 10 December 2015, the European Commission initiated the first step in an infringement procedure by sending a letter of formal notice to Hungary. The Commission found the Hungarian legislation to be incompatible with EU law, specifically, the recast Asylum Procedures Directive (Directive 2013/32/EU) and the Directive on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU).³⁷ The reply of the Hungarian authorities to the letter of formal notice sent in December 2015 did not address the Commission's concerns, and on 17 May 2017 the Commission sent a Complimentary Letter of Formal Notice.

New amendments to the Hungarian asylum legislation were added in March 2017. This was the so-called 'Stop Soros' legislation. This legislation was a package of bills that criminalised help given to immigrants. The legislation narrowed the scope for action by non-governmental organisations, making their workers liable for jail terms for helping migrants to seek asylum when they are not entitled to it. The Hungarian Helsinki Committee, a human rights group, when discussing the law said “instead of giving protection against persecution, the Hungarian government has decided to join the ranks of the persecutors.”³⁸ The Commission addressed this by organising a series of meetings with experts and politicians to support the Hungarian authorities in making the necessary adjustments to bring the new provisions in line with EU standards and rules.³⁹ The Hungarian Government, however, decided not to modify any of the relevant legal provisions. Due to Hungary's inaction, a “reasoned opinion” was then sent to Hungary - which is a formal request to comply with EU law - and called on the Hungarian government to inform the Commission of the measures taken to comply within a specified period. Hungary took no action to comply.

37. The European Commission, 'Brussels Commission opens infringement procedure against Hungary concerning its asylum law' (10 December 2015)

38. Hungarian Helsinki Committee, 'Hungarian Government marks World Refugee Day by passing law to jail helpers' (Hungary, 20 June 2018)

39. The European Commission, 'Brussels Commission follows up on infringement procedure against Hungary concerning its asylum law' (17 May 2017)

Court of Justice of the European Union

In the final stage of the infringement procedure, due to the fact that Hungary made no substantial effort to reform their legislation in line with EU and international law, the European Commission decided to refer Hungary to the Court of Justice of the European Union (CJEU) on 19 July 2018 for non-compliance of its asylum and return legislation with EU law. The Commission's referral decision was based on the fact that Hungary was not fulfilling its obligations under the EU Treaties, EU laws and the Charter of Fundamental Rights of the European Union. Along with this, the Council of Europe's Commission for Democracy Through Law (the 'Venice Commission') and the OSCE Office for Democratic Institutions and Human Rights published their Joint Opinion on the new legislation and the constitutional amendment on 25 June 2018. Their analysis concluded that the provisions examined infringe upon the right to freedom of association and expression and should be repealed.⁴⁰

In the year 2021, despite various national and international actions taken against Hungary, anti-migration law and policy have remained in place. Treatment of those seeking asylum is at an all time low, as a result of the manifestation of years of rolling back refugee rights come to light in 2021. In March 2021, The UNHCR's Europe Bureau Director, Pascale Moreau in a statement said "We urge the Government of Hungary to withdraw these legislative provisions and ensure that people who wish to seek international protection, many of whom are fleeing war, violence and persecution, have effective access to its territory and to the asylum procedure. UNHCR stands ready to support the Government of Hungary to review its asylum system to bring it in line with international refugee and human rights law."⁴¹

On 16 November 2021, the CJEU ruled that Hungary was in violation of EU law. The Court found that Hungary violated both the Procedures and Reception Directives of the EU, by allowing applications for asylum by those arriving in Hungary through "safe transit country" to be rejected as inadmissible. The court also found that Hungary unlawfully criminalised the activities of those who provide assistance to asylum-seekers, which included NGOs and Charitable organisations as well as individuals.

In response to the ruling, Director of Amnesty International Hungary, David Vig said:

"Today's court ruling sends an unequivocal message that the Hungarian government's campaign of intimidation, targeting those who stand up for the rights of refugees and asylum-seekers cannot, and will not be tolerated. It is now time for the Hungarian government to implement the court's decision and immediately withdraw this piece of shameful legislation. We also urge the government to guarantee an environment where NGOs and activists can freely carry out their essential work without being intimidated."⁴²

40. The European Commission, (19 July 2018) 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary'

41. The UNHCR (10 March 2021) 'UNHCR concerned by Hungary's latest measures affecting access to asylum'

42. Amnesty International, 'Hungary: Court of Justice of the EU rejects anti-migrant "Stop Soros" law' (Hungary, 16 November 2021)

Hungary is now compelled to abide by the CJEU's findings "without delay", which in practice would mean amending or withdrawing the controversial legislation. However, the future does not look promising as Zoltan Kovacs, Secretary of State for Public Diplomacy and Relations of Hungary, released a statement stating that Hungary's position remained unchanged. He stated "Whereas Hungary acknowledges the judgement of the Court of Justice of the European Union on the Stop Soros Act, as it has previous judgments, we reserve the right to take action against the activities of foreign-funded NGOs, including those funded by George Soros, seeking to gain political influence and interference or even to promote migration... As long as there is a national government in Hungary, it will enforce the will of the Hungarian people and prevent Hungary from becoming an immigrant country."⁴³ As of January 2022, no action of reform has yet been taken by the Hungarian government. If the government doesn't comply, the Commission can ask the court to impose financial penalties.⁴⁴

43. Zoltan Kovacs, 'Hungary's position on migration remains unchanged' (16 November 2021)

44. Euronews, 'Hungary's Stop Soros law that criminalises helping asylum seekers 'infringes EU law' Euronews (Brussels, 17 November 2021)

Conclusion

In 2021, Viktor Orbán's fight to preserve what he sees as the Christian and conservative heritage of Hungary continued with two main targets: the LGBT+ community and migrants. In both cases, the legislative changes which were implemented since 2010 by the far-right Fidesz party made Hungary a top-priority concern for the European Union in 2021.

The first part of this report gives an analysis of the continuous assaults on the LGBT+ community under Orban's government, the latest development in 2021 and the international reaction. After years of the curtailment of LGBT+ rights, in June 2021, a new bill once again threatened their dignity. The government linked paedophilia to LGBT+ identity by adding amendments targeting the LGBT+ community to a bill aimed at preventing sex crimes against children. These new amendments prohibit sharing content on homosexuality or gender affirmation to minors in school and on television between 10 pm and 5am. This law, which is discriminatory and violates fundamental rights, provoked indignation in the country and was condemned by the EU. Last summer, the Council of Europe and the European Commission reacted in the hope to prevent the law from passing and warned the government. If Hungary does not back out, the Commission could refer it to the CJEU.

The second part of the report looks at the anti-immigration policy that has been implemented by Orbaá since the so-called "migrant crisis" in 2015 and the recent events in 2021. After a series of legislative changes targeting migrants which motivated the European Commission to initiate an infringement procedure in late 2015, Hungary implemented the "Stop-Soros" legislation in 2017, restricting access to asylum and criminalising humanitarian assistance to migrants. Due to the absence of a reaction from the government to the Commission's criticisms, Hungary was referred to the CJEU in 2018 for non-compliance with EU asylum and migration law. In November 2021, the CJEU found Hungary in violation of European law, which means Orbán's government must now abide by the court's findings or it could face financial sanctions. However, Hungary does not seem willing to change its policy and continues to deny refugees their due rights.

These two cases reflect the determination of Viktor Orbán to diminish protections on human rights, political freedoms and democracy. This all contributes to the findings of the organisation Freedom House that recorded that Hungary is the country of the Eastern Europe and Central Asia region whose democratic health has declined most rapidly.

45. Washington Post Editorial Board. (2022, January 6). Opinion: Former president Trump embraces a kindred spirit in Hungary. The Washington Post. Opinion | Former president Trump embraces Hungarian Prime Minister Viktor Orban, a kindred spirit - The Washington Post

Minority rights violations in Hungary

January 2022



www.ghrd.org