

21 June 2024

Subject: Open letter to EU Ministers on the situation in Hungary and Poland ahead of the 25 June EU General Affairs Council

Dear Minister,

On 25 June, the EU General Affairs Council is set to examine the situation in Hungary under Article 7.1 of the Treaty on European Union (TEU).

Ahead of this meeting, our organisations once again call on your leadership to take the Article 7.1 TEU procedure against **Hungary** forward, by issuing recommendations to the government and/or holding a vote to determine that there has been a serious breach of Article 2 TEU values by this member state. As Hungary prepares to take up the EU Council's Presidency on 1 July, it is paramount to use the opportunity to lay the foundations for further action to be taken in 2025.

As for the Article 7.1 TEU procedure against **Poland**, the European Commission decided on 29 May to close the procedure by withdrawing its 2017 reasoned opinion, which triggered the mechanism on account of a clear risk of a serious breach of the rule of law. We, the undersigned organisations, regret the premature closure of the Article 7.1 TEU procedure, which risks undermining ongoing efforts by the Polish government to restore the rule of law (as detailed further below), and the credibility of the procedure as the sole instrument by which the EU can defend its core values against systemic attacks in a comprehensive manner.

Our organisations urge the Council to continue to closely monitor developments in Poland, especially in the context of the implementation of reforms laid down in the Action Plan presented by the Polish government in February 2024, and to stand ready to use all available instruments to respond to breaches of the rule of law and other Article 2 TEU values, including those which could impact the EU's financial interests.

HUNGARY

Multiple breaches of Hungary's compliance with the values enshrined in Article 2 TEU have persisted or substantially worsened since the triggering of the Article 7 procedure. These relate to the independence of the judiciary, corruption, conflicts of interests, media independence and pluralism, the functioning of the constitutional and electoral systems, and civic space.

Hungarian authorities continue violating human rights and the rule of law, ignoring the multitude of rulings and recommendations from regional and international bodies. Hungary is still functioning under a state of danger and political interference with the judiciary is still cause for concern. Meanwhile, contempt for the Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECtHR) rulings continues, as Hungarian authorities also openly disregard the [latest CJEU decision](#) on non-implementation of judgements. In addition, authorities crack down further on independent voices in civil society,

media and politics with the set-up of the Sovereignty Protection Office, and on the LGBTI+ community through amended decrees in relation to Hungary's LGBTI+ Propaganda Law.

The new [Sovereignty Protection Office](#), with unfettered access to personal data to find, surveil and sanction those deemed 'foreign agents', can target opposition parties, civil society organisations and independent journalists. This office operates at will, without oversight nor judicial review and offers no avenue for legal redress.

POLAND

In Poland, despite progress made following the electoral victory of the democratic coalition led by Prime Minister Donald Tusk in October 2023, concerns remain. Legislative reforms aimed at restoring the rule of law face significant hurdles due to the presidential veto. Efforts by the government to amend the law on the National Council of the Judiciary (NCJ) to reduce political influence have not resolved concerns about proportionality and judicial independence, which need careful implementation to align with European standards. Simultaneously, recent shifts in state media management have sparked debate over the lawfulness of the measures undertaken and freedom of the press. At the Poland-Belarus border, violations persist regarding the treatment of asylum seekers, despite reports by Polish and international NGOs of ongoing pushbacks. These ongoing violations in the 'buffer zone' coupled with a proposed draft amendment to the Criminal Code, which would retroactively legalize violations of the law by public officials, indicate that Poland has yet to bring itself into substantial compliance with its human rights and rule of law obligations. While progress has been made with proposed amendments to liberalize access to abortion, the reform process is at a standstill.

The proposed reforms, as well as the request for Poland to join the European Public Prosecutor's office and the government's commitment to implementing CJEU and ECtHR judgments, represent a positive first step towards bringing Poland back in line with international and European rule of law standards. Yet, critical challenges remain to a full restoration of the rule of law in Poland, which make the decision to end the scrutiny under Article 7.1 TEU premature.

The undersigned organisations are concerned that the decision to prematurely close the Article 7.1 TEU procedure against Poland, and the failure to take further steps in the procedure pending against Hungary could also impact the credibility of the Article 7 procedure, which its critics already accuse of excessive politisation. In the aftermath of one of the most tense European elections in EU history and ahead of the incoming Hungarian Presidency, preserving the procedure and ensuring its effectiveness is crucial to maintain the EU's credibility in defending its core values both domestically and internationally.

In the annex, you will find some more detail and links to further documentation on the developments listed in this letter.

We stand ready to provide any further information you may require.

Yours sincerely,

Amnesty International

FIDH (International Federation for Human Rights)

International Commission of Jurists

Protection International

Transparency International EU

ANNEX : Recent Legal and Political Developments in Hungary and Poland

HUNGARY

On 8 January 2024, 128 judge-delegates elected the 14 new National Judicial Council (NJC) members. The term of the newly elected Council ends in January 2030. Several indicators demonstrate that political and administrative [pressure was exerted](#) during the election process and re-establishment of the NJC.

At the end of February 2024, the government majority in the Parliament once again [extended](#) the “state of danger”, now valid until 19 November 2024. This is a routine exercise for the Hungarian Government, which has been maintaining its excessive emergency regulatory power of “ruling by decrees” for more than four years now. This has allowed the Government to override any Act of Parliament via emergency government decrees overnight, or issuing hundreds of emergency decrees. Among these, many had nothing to do with the ground for the state of danger (previously the pandemic, presently the war in Ukraine) but served the Government's political purposes instead.

Also, in February the European Commission decided to launch an [infringement procedure](#) (INFR(2024)2001) against Hungary for violating EU Law. This decision followed the Commission's assessment of the new law on the [Defence of National Sovereignty](#), which was adopted by the Hungarian Parliament in December 2023. This law established the so-called [Sovereignty Protection Office](#). The Office has begun to operate with wide ranging tools at its disposal and unhindered access to sensitive data to investigate private individuals, informal groups and legal entities both inside and outside of Hungary allegedly ‘threatening the sovereignty of Hungary’, causing serious concerns amongst civil society organisations, activists and media outlets. Once initiated, these investigations, which can be launched against anyone at the authority's whim, carry a stigma and leave those targeted with no legal remedies against the procedure or the ensuing public report. This office operates at will, without oversight nor judicial review and offers no avenue for legal redress.

In April 2024 the Parliament adopted a new law granting the Minister of Justice [unlimited access to decisions delivered by the judiciary, the prosecution service and other autonomous state bodies](#) and government agencies mandated to limit and independently review the exercise of public powers. This allows the Government to acquire protected information to which it would not have access otherwise, and interfere in ongoing court proceedings and influence their outcome.

In order to further stigmatize the Hungarian LGBTI community. The Government [amended the infamous „packaging decree”](#) that prohibits the display and distribution of products depicting deviation from one's sex at birth, gender reassignment, or homosexuality without closed packaging or within 200 meters of schools and churches. The new amendments represent a further tightening of restrictions on the distribution of products featuring LGBTI-related content, further undermining the right to freedom of expression and non-discrimination. On 11 June the Parliament established surveillance powers for the police

to conduct an ["impeccable lifestyle"](#) check on child protection professionals. Amnesty Hungary's [recent research documented](#) for the first time how the Hungarian Propaganda Law adopted in 2021, and currently pending before the CJEU, had a pervasive chilling effect within the media, advertising, and publishing industries, with effects felt widely among LGBTI+ groups and individuals.

On 13 June, the CJEU ruled that Hungary had to pay a lump sum of 200 million euros for [failure to implement an earlier judgment](#) of the Court. The Government is also to pay a penalty payment of 1 million euros per day for each day it fails to put an end to the often violent pushback of migrants. Government officials – including Prime Minister Orbán - publicly declared that Hungary would not comply with the decision.

POLAND

Presidential Veto and legislative reforms

The presidential veto constitutes a critical barrier to legislative reforms aimed at restoring the rule of law in Poland. With the President holding the power to block any legislative changes, at least until the next presidential elections in 2025, it is virtually impossible for the current government to enact reforms in a number of areas. This veto power, conferred upon a representative of the previous ruling party, undermines the democratic process and perpetuates the legacy of illiberal policies instituted by the former Law and Justice (Prawo i Sprawiedliwość - PiS) government.

Judicial appointments and Independence

On 12 April 2024, the Polish government proposed a [Draft Law Amending the Law on the National Council of the Judiciary](#) (NCJ), aiming to address the significant political influence over judicial appointments that has compromised the NCJ's independence under PiS' rule. The legislative process for the bill is ongoing, with it currently under examination by the Senate after being adopted by the Parliament (Sejm). However, concerns have been raised, including by the Council of Europe's Commission for Democracy through Law (Venice Commission) and Polish civil society organisations, regarding whether the proposed amendments adequately address these issues.

The Venice Commission, in its [Urgent Joint Opinion](#) with the Directorate General of Human Rights and Rule of Law of the Council of Europe, has noted that although the bill includes measures to restore the election of judicial members by their peers, it also proposes a wholesale blanket exclusion of judges appointed or promoted since 2017 to stand in the NCJ elections. This exclusion, affecting between 2,000 and 3,000 judges, lacks individual assessment and raises questions of proportionality.

Further potentially problematic actions include the early termination of the current NCJ members' terms once the new members are elected. Although intended to safeguard judicial independence, this measure needs careful implementation to align with European standards. The Commission asks to provide a judicial remedy for the early termination to avoid potential breaches of Article 6 of the European Convention on Human Rights.

The [Helsinki Foundation for Human Rights](#) has also expressed concerns that, while the proposed changes are a step in the right direction, they do not go far enough to restore judicial independence. The organisation emphasizes the need for comprehensive reforms that ensure the judiciary's autonomy from political influence and stresses the importance of establishing transparent and fair procedures for judicial appointments and removals.

Media Freedom

In December 2023, significant changes in state media management occurred when the new government dismissed and replaced state media chiefs, leading to a chaotic transition. This included the liquidation of state media organisations like Telewizja Polska (TVP), Polskie Radio, and the Polish Press Agency, ostensibly to free them from political influence. However, this move has sparked criticism over the legality and potential implications of these changes. Several voices, including the [European Centre for Press and Media Freedom](#) and the [International and European Federations of Journalists](#), have raised, expressing concerns and condemning the measures as an attack on media freedom and plurality, which create instability and potential government overreach in media operations.

Migration and Border Issues

The situation at the Poland-Belarus border remains a critical human rights concern. Despite legal improvements for Ukrainian refugees, other asylum seekers continue to face harsh conditions which may amount to unlawful ill-treatment and pushbacks. In this regard, on 27 January 2024, hundreds of Polish and international NGOs, including the European Council on Refugees and Exiles, [signed a petition](#) demanding that the Polish Prime Minister end pushbacks and ensure compliance with international law. To date, these calls have remained unheard. The reintroduction of the 'buffer zone' is highly problematic as it hampers journalists and civil society organisations' attempts to legally observe the actions of Polish officials and report violations to the public.

Concerns about violations in the buffer zone are further reinforced by a draft amendment to the Criminal Code, which would legalize violations of the law by public officials, and could be applied retroactively. The proposed draft law assumes that there are situations in which officers cannot be held liable for firing at people even when this is done in violation of existing laws governing the rules of deadly force.

Sexual and Reproductive Health and Rights

On April 12, 2024, the Polish Parliament approved four amendments to the country's abortion laws in the first reading, aimed at liberalizing access to abortion services. This step marks significant progress toward ending the draconian restrictions introduced under the previous rule, which have had devastating impacts on women's health and lives. Our organisations, however, [stress the urgent need](#) to decriminalize abortion, ensuring that those seeking or providing abortion services are not subjected to criminal prosecution. These changes are essential to align Poland's laws with international human rights standards.