



Hungarian Helsinki Committee



HUNGARIAN
LGBT
ALLIANCE



EÖTVÖS KÁROLY
POLICY INSTITUTE



Mr. Boriss Cilevičs

Chairperson

Committee on the Election of Judges to the European Court of Human Rights

Budapest, 22 July 2016

Dear Mr Cilevičs,

We, the 15 undersigned Hungarian NGOs¹ write to express our deep concerns about the serious deficiencies in the selection of candidates from Hungary for election to the European Court of Human Rights. We believe that the selection procedure has fallen far short of the relevant norms, including Resolution 1646 (2009) of the Parliamentary Assembly on the nomination of candidates and election of judges to the European Court of Human Rights (hereafter: Resolution) and the Guidelines adopted by the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights (CM(2012)40 final) (hereafter: Guidelines).

¹ Annex 1

We understand that the Hungarian list of candidates for the European Court of Human Rights has been or will shortly be submitted to your committee for consideration. We respectfully urge the committee to recommend to the Assembly that the list of candidates be rejected on the basis that the national procedure for the nomination of candidates has not complied with the criteria which the Assembly has drawn up for the establishment of lists. The rejection of the list would allow Hungary to start a selection process that is fair, transparent, and in full accordance with the Resolution and the Guidelines. We base our position on the following facts.

The term of office of Mr András Sajó, the judge elected in respect of Hungary will expire on 31 January 2017. The Government of Hungary was invited to submit a list of candidates by 26 August 2016. Since in Hungary there is no established, codified procedure for eliciting applications (nor is there settled administrative practice), on 10 February the Hungarian Helsinki Committee (hereafter: HHC) approached the Minister of Justice asking about how the Government wished to meet the requirements of Resolution.² The HHC asked – among others – the following:

- when and how the Government plans to publicise the call for applications;
- in what procedure the Government plans to evaluate the applications, hear the applicants and select the candidates; and
- how the Government plans to ensure transparency throughout the procedure.

On 29 February 2016, the Ministry sent the following reply:³ “The Hungarian Government regards the fulfilment of its international obligations important, and attributes special significance to the operation of the European Court of Human Rights. Giving consideration to the documents of recommendatory nature mentioned in your letter, [the Government] will within the deadline and with the necessary prudence see to it that suitable candidates would be nominated.” The Ministry’s letter contained nothing further on the selection procedure.

On 3 June 2016, the HHC approached again the Ministry of Justice asking whether a list had been submitted to the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, and if this was the case, in what procedure the candidates had been selected.⁴

On 21 June 2016, the Ministry sent the following, laconic answer:⁵ “In accordance with the traditions of Hungarian public law – after consultation with [unidentified] experts –, the list of candidates for the position of Hungarian judge has been submitted within the prescribed deadline on the basis of the Government’s decision made in relation to the names presented by the Minister of Justice”.

On 23 June 2016, the HHC approached the Ministry of Justice⁶ inquiring about who the experts that the Government had allegedly consulted were. The inquiry referred to the fact that in the absence of an

² Annexes 2a and 2b

³ Annexes 3a and 3b

⁴ Annexes 4a and 4b

⁵ Annexes 5a and 5b

⁶ Annexes 6a and 6b

open call for tender, only the experts could have provided any legitimacy to the selection process, so it was a matter of pressing public interest to know who had participated in the compilation of the list. However, on 7 July 2016, the Ministry informed⁷ the HHC that in its view, the identity of the consulted experts could not be regarded as data of public interest, and therefore the request for information was refused.

On 24 June 2016, 11 NGOs sent an open letter to the Minister of Justice⁸ requesting him to withdraw the list and select – within the remaining two-month deadline until 26 August – candidates in a procedure that meets the requirements of the Resolution and the Guidelines. To date, the Minister has not responded.

Thus, neither the signatory NGOs, nor Hungarian society as a whole have any information about who the candidates are, and how they have been selected. Hungary has clearly and blatantly violated the principles outlined for the national selection procedure in the Resolution, the Guidelines and other relevant Council of Europe norms and recommendations:

- there was no previously established (and publicised) selection procedure;
- there was no open call for applications (leaving all related requirements – making the call widely available in the public, reasonable time period set for applications, etc. – unsatisfied);
- the request for information about the identity of the consulted experts was expressly rejected;
- it is impossible to know whether applicants have been interviewed, and if yes, how and by whom.

Recalling the Parliamentary Assembly's caution that "In order for the European Court of Human Rights to continue to inspire confidence, it is vital that the process by which judges are selected and appointed also inspire confidence," it is clear that the procedure followed in Hungary does not meet the standard. The Parliamentary Assembly has stated that in the absence of a fair, transparent and consistent national selection procedure, the Assembly may reject a list. We therefore respectfully urge the committee, in the interest of ensuring that all qualified candidates be given an opportunity to apply, and in order to protect confidence in the European Court, to take such a stand now and to recommend to the Assembly that the list of candidates be rejected.

Yours sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

On behalf of the signatories: András Kádár,
Co-chair, Hungarian Helsinki Committee

⁷ Annexes 7a and 7b

⁸ Annexes 8a and 8b

Signatories:

Amnesty International Hungary
Chance for Children Foundation (CFCF)
Eötvös Károly Policy Institute (EKINT)
European Roma Rights Centre (ERRC)
Háttér Society
Hungarian Civil Liberties Union (HCLU)
Hungarian Helsinki Committee (HHC)
Hungarian LGBT Alliance (8 member organisations)
Hungarian Women's Lobby (22 member organisations)
Knowing the Law Foundation
Legal Defence Bureau for National and Ethnic Minorities (NEKI)
Mental Disability Advocacy Centre (MDAC)
PATENT (People Opposing Patriarchy) Association
Real Pearl Foundation
Transparency International Hungary

Annexes:

Annex 1: Introduction of the signatories
Annex 2a: HHC's letter to the Ministry of Justice, 10 February 2016, original
Annex 2b: HHC's letter to the Ministry of Justice, 10 February 2016, translation
Annex 3a: Ministry of Justice's letter to HHC, 29 February 2016, original
Annex 3b: Ministry of Justice's letter to HHC, 29 February 2016, translation
Annex 4a: HHC's letter to the Ministry of Justice, 3 June 2016, original
Annex 4b: HHC's letter to the Ministry of Justice, 3 June 2016, translation
Annex 5a: Ministry of Justice's letter to HHC, 21 June 2016, original
Annex 5b: Ministry of Justice's letter to HHC, 21 June 2016, translation
Annex 6a: HHC's letter to the Ministry of Justice, 23 June 2016, original
Annex 6b: HHC's letter to the Ministry of Justice, 23 June 2016, translation
Annex 7a: Ministry of Justice's letter to HHC, 7 July 2016, original
Annex 7b: Ministry of Justice's letter to HHC, 7 July 2016, translation
Annex 8a: Open letter of 11 NGOs to the Minister of Justice, 24 June 2016, original
Annex 8b: Open letter of 11 NGOs to the Minister of Justice, 24 June 2016, translation