



Hungarian Helsinki Committee



Budapest, 17 February 2018

OPERATION STARVE & STRANGLE:

HOW THE GOVERNMENT USES THE LAW TO REPRESS HUNGARY'S CIVIC SPIRIT

1. BACKGROUND

On 13 February 2018, the Hungarian government introduced in Parliament the '[Stop Soros](#)' package, a legislative proposal of three bills that target civil society organisations working on migration.

- Bill T/1976 on the licensing of organisations supporting migration;
- Bill T/19775 on the immigration financing duty;
- Bill T/19774 on the immigration restraint order.

These laws follow up on the 2017 NGO Law on foreign-funded organisations (Act LXXVI of 2017), for which the European Commission has launched a lawsuit against Hungary at the EU Court of Justice. The 2017 NGO Law requires that NGOs receiving foreign funding over €24,000 register on a separate list, report and publicly label themselves as 'foreign-funded' or face sanctions.

The latest set of proposals comes amidst a wider effort to stigmatize specific individuals and non-governmental organisations, and has been presented as a bid to stop migration', to 'strengthen the protection of borders' and to 'protect Hungary's national security interests'. The proposed measures will subject a number of areas key to the functioning of civic life in Hungary to government authorisation. They not only target those who engage in 'supporting or funding migration', but open the door to further arbitrary and politically motivated measures against civil society and freedom of expression in Hungary.

2. CONTENT

The bills cast helping a person seeking asylum in Hungary as a threat to national security. The bills cover groups working on migration and asylum in almost any capacity, including those that provide funding, monitor treatment of refugees, press for change, inform or advise asylum seekers or in any way use foreign funds.

Organizations carrying out activities in the field of migration will have to apply for a license from the Interior Minister to continue performing their work. The licensing process would include a full tax investigation and security clearance by three civilian and military security services. Failure to apply for a license would trigger legal proceedings against the organisation that could ultimately result in dissolution by a court. If the minister would refuse the license, the organisation would not have an effective court remedy to challenge the decision and would need put their activities on hold for a year until they could reapply for the license.

Second, licensed groups would be required to pay 25 % tax on any foreign funding or face a fine of 50 % of their foreign funding.

Third, the proposal would give the Interior Minister authority to impose a ban, on national security grounds, on the movement of both Hungarian and foreign nationals involved in refugee assistance in border areas. Foreign nationals could be excluded from the entire territory of Hungary on these grounds.

3. IMPACT ON THE NGO SECTOR

Following up on the 2017 NGO Law on foreign-funded organisations, the bills are potentially lethal blows to civil society in Hungary: their novelty is that the threat is now existential and also targets individuals. Should the proposals be adopted in spring 2018, they will cause grave and irreparable damage to Hungarian civil society. By the end of 2018, a number of NGOs will be unable to function or carry out core work due to five direct and imminent threats to their mission.

I. NGOs could be forbidden to operate based on an arbitrary decision of the government

- a. The exercise of fundamental rights and the protection of human rights, in certain fields, would become dependent on an arbitrary decision of the government, motivated by political interests. Government would arbitrarily decide which civil society organisation is permitted to engage in which human rights or social issues;
- b. Arbitrary licensing by the government of important and lawful activities by civil society organisations and individuals severely restricts their ability to provide essential services to persons who seek and enjoy international protection;
- c. Human rights defenders who work with targeted organisations could be declared a national security risk and be subjected to arbitrary and unlawful restrictions on their freedom of movement;
- d. NGOs will have to assume their work and staff are being monitored by intelligence services, pressuring them into self-censorship and impacting their families;
- e. Stigmatising civic groups and individuals as national security risks will have a chilling effect on other groups, supporters and clients by sending a clear message that at any point in time restrictions could be imposed on their work and they could become targets as well.

II. Funding for essential services will be cut and driven away

- f. All foreign donors who directly or indirectly give funds to targeted Hungarian NGOs should calculate losses, as significant portion of their funds will be seized by the government (25 % as tax or 50 % as a fine);
- g. The risk of the government taxing funding in an arbitrary manner could make yet unaffected donors pull away from funding civil society in Hungary;
- h. Domestic funding for the work of the civil sector is largely available from public funds administered by national or local government agencies, it is already politically conditioned and discourages public advocacy or exposing faulty or inefficient public services.

III. Trust in and support for civil society and willingness to seek its assistance will decline

- i. Smear-campaigns, tax and national security investigations will further stigmatise and discredit NGOs by accusing them of working against the national interest and posing risks to national security;
- j. The xenophobic discourse is stirring up popular fears and intolerance towards foreigners and mistrust towards civil society organisations.

IV. Sanction procedures and targeted tax investigations drain and divert NGO resources

- k. NGOs that have refused to register under the 2017 Law on foreign-funded NGOs can expect to face legal procedures for non-compliance once they publish their annual financial reports at the end of May 2018. These procedures are likely to roll out during the summer and will further aggravate the pressure.

- I. Politically-motivated tax investigations could pave the way for repressive criminal prosecutions against NGO leaders and human rights defenders.

V. Serious risk of 'mimicry effect' by potential Europe-wide copying of worst practices related to shrinking civic space

- m. The proposed laws could serve as a model within the EU to thwart the valuable work of civil society organisations that fight for the respect of human rights in the European Union, a danger that the EU Fundamental Rights Agency has recently underlined.

4. NEXT URGENT STEPS FOR THE EU AND OTHER INTERNATIONAL INSTITUTIONS

Hungarian democracy has been in free-fall for some time. We witnessed the dismantling of rule of law institutions, and a full-scale assault aimed at stifling independent media and universities. This is weakening the entire European project from within. Hungary's NGO sector is the latest battlefield where havens of autonomous thinking and action are tightened and shut down. This trend must stop.

We call on European Union bodies, and more specifically

- the **European Commission**, to urgently raise with the Hungarian government that the 'Stop Soros' proposed legislation would, if adopted, violate the freedom of association guaranteed under Art. 12 of the EU Charter of Fundamental Rights, Arts. 11 and 14 of the European Convention on Human Rights, and Art. 22 of the International Covenant on Civil and Political Rights;
- the **Commission**, to closely monitor the unfolding legislative process and the extent to which the proposals breach EU law, including its Fundamental Rights Charter;
- the **Commission**, to seek interim measures and an expedited ruling in the lawsuit concerning the 2017 NGO Law pending at the EU Court of Justice;
- the **Commission**, to encourage the Hungarian government to request a joint opinion from the Venice Commission of the Council of Europe and from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) regarding the compatibility of the proposal with Council of Europe and OSCE standards;
- the **European Parliament**, to consider the adoption of an urgent resolution to denounce this proposal and the targeting of human rights defenders in Hungary in line with the previous EP resolution 2017/2656(RSP) on the situation in Hungary, in addition to its on-going work on the ensuing report;
- the **European Parliament** and the **Commission**, to actively support the establishment of a robust financial instrument that would allow for a more active policy to defend, uphold and promote democracy and rule of law in EU Member States; push for the inclusion of the instrument in the next Multi-Annual Financial Framework;
- the **EU Agency for Fundamental Rights**, to engage in further research to document ways in which the freedom of association is increasingly subject to assault in a growing number of EU Member States.

We call on Council of Europe (CoE) bodies, and more specifically

- the **CoE Secretary General**, to publicly voice concern about the bills and encourage Hungary to once again engage the Council of Europe's expertise in thoroughly reviewing its compliance with CoE standards, thus avoiding disproportionate and unnecessary

interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination; take other necessary and possible actions available through CoE mechanisms;

- the **CoE Parliamentary Assembly**, to raise concern and discuss the bills at the next meeting of its Committee on Legal Affairs and Human Rights in March 2018, and request an opinion of the CoE Venice Commission;
- the **CoE Committee of Ministers**, to make these bills and their compliance with the CoE standards a subject of urgent discussion at the earliest possible meeting on the Deputies Level, as well as its next Ministerial session in May 2018;
- the **CoE Conference of INGOs**, to continue taking an active stance against the stigmatization and discrimination of NGOs in Hungary and follow up on its report of the fact-finding mission to Hungary from November 2016;
- the **Special Representative on Migration and Refugees** of the CoE Secretary General, to look at the legislative proposals from the perspective of refugee rights and access to legal aid;
- the **CoE Commissioner for Human Rights**, to continue to monitor the unfolding of the legislative process of the legislative package and recommend action to prevent violations of the rights guaranteed by the Convention.

We call on the OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR) to

- deploy an election observation mission to Hungary's parliamentary elections in April 2018 to closely monitor, as a priority, the government's misuse of administrative resources and the election campaign that continues to vilify civic organizations engaged in public interest causes;
- review the 'Stop Soros' legislative proposal in light of Hungary's OSCE human dimension commitments and, more specifically, the OSCE-ODIHR Guidelines on Freedom of Association.

We call on the UN Office of the High Commissioner for Human Rights (OHCHR) to

- communicate, without delay, strong concern about the deteriorating conditions for human rights defenders to the Hungarian government and report back to the UN Human Rights Council;
- express alarm over present threats to freedom of association and to the work of human rights defenders as well as the increasingly menacing restrictions on civil society on the occasion of the upcoming review of the state party report of Hungary by the UN Human Rights Committee at its 122nd session starting on 12 March 2018.

5. RESOURCES

a) Hungary

- [Unofficial translation of the legislative proposal as submitted by the Government to Parliament on 13 February 2018](#)

b) European Union

- European Commission, [‘Infringements - European Commission refers Hungary to the Court of Justice for its NGO Law’](#) (7/12/2107);
- European Parliament, [Resolution on the Situation in Hungary](#) (2017/2656(RSP), 17/5/2017);
- Fundamental Rights Agency, [Challenges facing civil society organisations working on human rights in the EU](#) (January 2018).

c) Council of Europe

- Council of Europe Parliamentary Assembly Resolution 2162 (2017), [Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the Central European University](#) (27/4/2017);
- Council of Europe Venice Commission, [Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad](#) (16-17/6/2017);
- Council of Europe Commissioner for Human Rights, [‘Commissioner concerned about proposed additional restrictions to the work of NGOs in Hungary’](#) (15/2/2018);
- Council of Europe's Conference of INGOs and Expert Council on NGO Law, [‘Hungary: Conference of INGOs concerned about ‘Stop Soros package’](#) (14/2/2018);
- Council of Europe's Conference of INGOs and Expert Council on NGO Law, [Opinion on the Hungarian Draft Act on the Transparency of Organisations Supported from Abroad](#) (24/4/2017);
- Council of Europe's Conference of INGOs (Expert Council on NGO Law), [Civil Participation in the Decision-Making Process - Fact Finding Visit in Hungary](#) (20-22/11/2016).

d) OSCE-ODIHR

- OSCE-ODIHR, [Guidelines on Freedom of Association](#) (adopted by the CoE Venice Commission at its 101st Plenary Session, 13-14/12/2014);
- OSCE/ODIHR, [Limited Election Observation Mission Final Report](#) (Parliamentary Elections, 6/4/April 2014).

e) United Nations

- UN High Commissioner for Human Rights, [‘Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries’](#) (Human Rights Council 36th session, 11/9/2017);
- Office of the UN High Commissioner for Refugees, [‘Hungary: UNHCR dismayed over further border restrictions and draft law targeting NGOs working with asylum-seekers and refugees’](#) (16/2/2018);
- Spokesperson for the UN High Commissioner for Human Rights, [Press Briefing on Iran, Hungary and El Salvador](#) (16/2/2018);
- UN Special Rapporteur on the Situation of Human Rights Defenders and UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression, [‘UN rights experts urge Hungary to withdraw Bill on foreign funding to NGOs’](#) (15/5/2107);
- UN Report of the Special Rapporteur on the Situation of Human Rights Defenders, [Note by the Secretariat: Mission to Hungary](#), 2016A/HRC/34/52/Add.2 (19/1/2017).

f) Civil society

- Civil Liberties Union for Europe, [Participatory Democracy Under Threat: Growing Restrictions on the Freedoms of NGOs in the EU](#) (28/8/2017);
- Civil Liberties Union for Europe, [‘Hungary Steps Up Its Attack on Civil Society’](#) (15/2/2108);
- Human Rights Watch, [‘Hungary: Bills Seek to Block Migrant Support’](#) (17/2/2018);
- Amnesty International, [‘Hungary: New law poses existential threat to NGOs’](#) (14/2/2018);
- Hungarian Civil Liberties Union and Hungarian Helsinki Committee, [‘What is the Problem with the Hungarian Law on Foreign Funded NGOs?’](#) (9/10/2017);
- Hungarian Helsinki Committee, [Timeline of governmental attacks against NGOs](#)