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Five Years and Counting: Attacks against Hungarian Civil Society since the Adoption of the “Stop Soros” Law

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Executive Summary

The Hungarian Parliament passed the "Stop Soros" law on 20 June 2018, on World Refugee Day. The infamous legislation threatened those who carried out "organizing" activities aimed at assisting asylum-seekers with criminal sanctions, including potential imprisonment by adding the infamous Article 353/A to the Criminal Act.¹ The adoption of this law gave concrete expression to the government's propaganda stigmatizing independent civil actors as servants of foreign interest as well as enemies of the national community and created a direct existential threat to independent civil society. After five years of constant intimidation and attacks of a communicational, legal and administrative nature, Hungarian human rights watchdogs, anti-corruption and environmental NGOs are still standing with an unwavering determination to help those in need, in a political system which is built on the rule of the mighty and the complete ideological domination of the political majority.

The present paper provides a thematic overview of the repressive actions targeting independent civil society over the past five years in the course of an illiberal transition in Hungary. In four thematic chapters, the paper introduces the most significant instances of attacks on civil actors; the attempts to domesticate the civil sphere by building an alternative network of government affiliated NGOs and research institutes; the violations of rights of NGOs by the non-implementation of judgments of the Court of Justice of the EU and the patterns of hate propaganda targeting asylum seekers, migrants and members of the LGBTIQ community meant to cover the systemic capture of independent institutions capable of exerting control over the executive branch of power.

¹<https://helsinki.hu/en/hungarian-government-marks-world-refugee-day-by-passing-law-to-jail-helpers/>

1. The building of an “illiberal state” in Hungary

Gaining a landslide victory in 2010 and using its constitutional supermajority, the populist, right wing Fidesz-KDNP government started to systematically and consciously undermine the system of checks and balances by weakening, eliminating or occupying those institutions and actors that can exercise any form of control over the executive branch of power. During the past 13 years, the ambitious state capture process has virtually completed its cycle, as indicated by the European Parliament’s report identifying Hungary as a “hybrid regime of an electoral autocracy”.² During this cycle, the regime has successfully captured independent state institutions, domesticated the justice system, built up its own clientele in the private sector as well as in the media and done its utmost to intimidate critics of the illiberal project. Hungary’s worsening performance in international indexes on the rule of law,³ media freedom⁴ and corruption⁵ are clear indicators of the progress of the country’s illiberal transition.

The Hungarian transition is far from unprecedented. Many European countries have illiberal populist political actors following the example of Prime Minister Viktor Orbán, promoting the power of the majority instead of the rule of law, concentrations of power instead of checks and balances, and narrowly interpreted national interests instead of multilateral international cooperation. In response to this anti-democratic contestation, the European Union has established a new set of mechanisms and legal frameworks, in addition to its traditional procedures, to enforce common human rights, rule of law and democratic standards, as defined in the founding treaties, and to protect the financial interests of the community. Consequently, in April 2022, for the first time in the history of the Union, the Commission triggered the bloc’s new rule of law conditionality mechanism against Hungary because it had systematically failed to take appropriate measures to protect the Union’s budget.⁶ Furthermore, in accordance with the Common Provisions Regulation introducing compliance with the Charter of Fundamental Rights of the EU as an ex-ante conditionality for Member States to access cohesion funds, Hungary has been denied access to EU cohesion funds as a consequence of deficiencies in the freedom of the judiciary and national legislation violating academic freedom, rights of asylum-seekers and members of sexual minorities, until full implementation of the remedial measures agreed with the Commission.⁷ Hungary has also been subject to the procedure under Article 7(1) TEU since 2018 due to a clear risk of serious breach of the values referred to in Article 2 TEU.⁸ Furthermore, in October 2022 the Parliamentary Assembly of the Council of Europe voted to place Hungary under full monitoring procedure because of “long-standing rule of law and democratic issues in the country that remain largely unaddressed”.⁹

The evolution of the international institutional and legal framework and a firm response on the European level is a sine qua non for preserving the rule of law in EU Member States and for successfully parrying the illiberal challenge. At the same time, the work of non-governmental actors on a national level is also essential to halt transitions similar to those in Hungary, to restore the rule of law, to nurture democratic public life and to protect the vulnerable against those in power. However, Hungarian NGOs engaged in protecting fundamental rights and the rule of law and in combating corruption are systematically portrayed in the state-owned and government affiliated media as mercenaries of foreign interests and are hampered in their activities through a range of legal restrictions. The effort to eliminate independent civil voices and to domesticate the non-governmental social sphere is an integral part of the illiberal transition. Attacks on civilians are not only aimed at disabling any external control over the executive power, but are also necessary to create the image of an enemy, which is a crucial element

²[printficheglobal.pdf \(europa.eu\)](https://printficheglobal.pdf(europa.eu))

³[https://worldjusticeproject.org/rule-of-law-index/country/2022/Hungary/;](https://worldjusticeproject.org/rule-of-law-index/country/2022/Hungary/)

⁴<https://rsf.org/en/country/hungary>

⁵<https://www.transparency.org/en/cpi/2022/index/hun>

⁶<https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/>

⁷[HU EU funds assessment Q1 2023.pdf \(helsinki.hu\)](https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/) pp. 46-58.

⁸https://helsinki.hu/en/wp-content/uploads/sites/2/2023/05/HU_Article7_CSO_recs_May2023.pdf

⁹<https://pace.coe.int/en/news/8848/pace-votes-to-begin-monitoring-of-hungary-over-rule-of-law-and-democracy-issues>

in the government's political narrative. One lesson learned during the past 13 years in Hungary, is that there is no illiberal democracy without a devilish enemy image.

The illiberal transition in Hungary has imposed an unprecedented challenge to civil society. The hostile legal and administrative environment, the denial of a dialogue with state authorities and the political stigmatization required effective response and a high degree of adaptation from independent civil actors. In this respect, the record of the past decade gives grounds to optimism. Political attempts to eradicate an enabling civil space have been countered successfully in numerous regards. Many NGOs have successfully developed their resilience and capability of uniting in the face of attacks, adapting their operation to arising challenges and finding new ways to carry on with their important activities, whether that is the promotion of fundamental rights, the fight against corruption and inequalities or the protection of the environment.

Given that the growing “dissensus” surrounding liberal democracy and the rule of law has taken on new challenging forms and has become a wider European experience. And whereas, over the past decade challengers of human rights and the rule of law across the EU have become ever more institutionally embedded and vocal in their support of anti-NGO ideas. The transfer of new methods and good practices adopted by Hungarian NGOs concerning resilience building, strategic planning, litigation and advocacy can strengthen the skills of civil actors in other countries facing a transition similar to that of in Hungary.

2. The advancement of the illiberal project 2018-2023

State institutions

Starting in 2010, several steps have been taking with the aim of taking over state institutions playing an important role in checking the executive branch. For instance, as one of the earliest such moves, the governing coalition changed the long-established consensus-based process for nominating justices to the Constitutional Court (CC) to ensure that the governing parties, having a two-thirds majority in the Parliament, could fill vacancies on the bench on their own, without support from the opposition parties. The size of the CC was also increased. As a result, the governing parties were able to pack the CC with loyal justices, including their former MPs, and have transformed it into a body that is supportive of the Government's agenda. Consequently, the CC has been repeatedly ruling in favor of the incumbent parties in politically sensitive cases.

The process has continued in the past five years. In a procedure that was considered by the Global Alliance of National Human Rights Institutions (GANHRI) as not sufficiently broad and transparent, a new Ombudsman was elected by the ruling majority in 2019. Due to his previous links with the Prime Minister, there were fears in the human rights community that the new appointee would not provide effective protection in politically sensitive cases. This fear was found to be justified when in 2022, Hungary's Ombudsman was downgraded by GANHRI from an A to a B status as Hungary's national human rights institution, since it had failed to effectively carry out its mandate in relation to vulnerable groups such as ethnic minorities, LGBTIQ people, human rights defenders, refugees and migrants, or human rights issues such as media pluralism, civic space and judicial independence, evidencing a lack of independence.¹⁰

The judiciary

The project of capturing the ordinary court system has been in progress for over ten years and has nearly come to full completion. Open attacks against the judiciary included the dismissal of individual judges and judicial leaders through forced early retirement, the removal of the President of the Supreme Court by ad hominem legislation and taking control over judicial administration by concentrating court management powers in the hands of a political appointee, the President of the National Office for the Judiciary (NOJ). As of 2018, instead of further striving to take control of the judiciary as a whole, the court capture project was focused to one single judicial body constituting the final instance of

¹⁰https://ganhri.org/wp-content/uploads/2022/04/SCA-Report-March-2022_EN.pdf pp. 43-47.

adjudication, the Kúria, i.e. the Supreme Court of Hungary. As a result of a series of legislative and court administration steps the Supreme Court has been successfully transformed into a court with extraordinary powers characterized by a highly increased likelihood of adjudicating politically sensitive cases in a manner that is favorable for the government.¹¹

Elections

As of 2013, a number of amendments to the election framework were adopted in favor of the ruling party, which amplified the distorted media landscape's impact on the fairness of the elections.¹² In 2014 and in 2018, consecutive reports of the OSCE/ODIHR election observation mission, have assessed the Hungarian electoral framework as free but lacking a level playing field and equal competition, substantially favoring the incumbent governing parties.¹³ In relation to the 2022 general elections, the OSCE/ODIHR deployed a full-scale election observation mission to Hungary.¹⁴ The mission's conclusions reinforced that of the previous years' underlying that: "Contestants were largely able to campaign freely, but while competitive, the campaign was highly negative in tone and characterized by a pervasive overlap between the ruling coalition and the government." Furthermore, "the lack of transparency and insufficient oversight of campaign finances further benefited the governing coalition. The bias and lack of balance in monitored news coverage and the absence of debates between major contestants significantly limited the voters' opportunity to make an informed choice."¹⁵

The economy

In recent years, there has been increased government intervention in the form of sector-specific taxes, tailor-made legislation and government decisions targeting business transactions.¹⁶ Specific companies and industries benefited from generous state subsidies and supportive regulation. These interventions have reduced competition and hindered the growth of more efficient companies. Furthermore, the deficiencies in the independence of the judiciary have had an effect that firms choose not to seek remedy against targeted administrative measures in the courts due to concerns about judicial impartiality.¹⁷

In order to remedy the shortcomings of the Hungarian economy and the investment environment regarding the national anti-corruption framework and the biased allocation of state financial resources among government-friendly private companies, the Recovery and Resilience Plan of Hungary (RRP)¹⁸ includes milestones to set up bodies to prevent and control conflicts of interest and corruption and monitor the rule of law and begin to apply strict procedures to protect the EU's financial interests, strengthen judicial independence as well as improve competition in public procurement.¹⁹

The media

The Central European Press and Media Foundation (KESMA), which came to existence in 2018 comprising 467 media outlets (offered to the Foundation for free by government-loyalist business persons) is at the full disposal of the government with capability to successfully convey the political narrative of the incumbent parties. As a consequence, the 2022 Media Pluralism Monitor has established that Hungary is among the top four countries in Europe with the highest concentration of the media.²⁰

In July 2021, the Pegasus Project, a consortium of reporters revealed how Pegasus, a surveillance technology developed by the Israeli company NSO, had been abused for years.²¹ The forensic

¹¹<https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Court-Capture-Project-Completed-20221026-.pdf>

¹²https://helsinki.hu/en/wpcontent/uploads/sites/2/2022/02/HHC_ElectionThreatAssessment_February2022.pdf

¹³OSCE/ODIHR 2018: [377410.pdf \(osce.org\)](https://www.osce.org/files/documents/3/7/377410.pdf) ; 2014: [INTERNATIONAL ELECTION OBSERVATION \(osce.org\)](https://www.osce.org/files/documents/0/0/00000000.pdf)

¹⁴<https://www.osce.org/files/f/documents/7/6/511429.pdf>

¹⁵OSCE/ODIHR 2022: [515111_1.pdf \(osce.org\)](https://www.osce.org/files/f/documents/5/1/515111_1.pdf)

¹⁶<https://www.spiegel.de/international/business/mafia-methods-viktor-orban-puts-the-pressure-on-german-companies-to-leave-hungary-a-cf38f4d2-1576-4f55-896a-b65f19542f43>

¹⁷https://economy-finance.ec.europa.eu/system/files/2023-05/HU_SWD_2023_617_en.pdf p.6.

¹⁸<https://helsinki.hu/en/the-hungarian-government-is-yet-to-comply-with-conditions-to-access-eu-funds/>

¹⁹<https://data.consilium.europa.eu/doc/document/ST-15447-2022-ADD-1/en/pdf> pp. 85-100.

²⁰https://www.europarl.europa.eu/doceo/document/A-9-2023-0189_EN.pdf

²¹<https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>

analyses of four Hungarian journalist's phones have confirmed that their devices have been hacked with the spyware.²² In February 2023, a delegation of the PEGA Committee visited Hungary. It reached the conclusion that: "There is every indication that spyware had been grossly abused in Hungary and the authorities' explanation citing national security was deemed very unconvincing. Strong evidence indicates that people have been spied on with the objective of gaining even greater political and financial control over the public sphere and media market."²³

The academia

In March 2019 Hungary initiated a change of the governance model of higher education institutions, which promotes the transformation of public universities into private universities, maintained by newly established public interest trusts led by a Board of Trustees nominated for an indeterminate period of time by the government.²⁴ In December 2022, European Commission has found that "The submission of public universities to the new management model in this particular context puts at serious risk the respect of the right to academic freedom as set out in Article 13 of the Charter, which has both an individual dimension and an institutional and organizational dimension."²⁵ As a consequence, those Hungarian universities which have adopted the model are not entitled for any EU funds in the 2021-2027 Multiannual Financial Framework until remedying the shortcomings violating academic freedom as well as the deficiencies in the conflict of interest and procurement regulation of the public interest trust framework.²⁶

In July 2019, the Parliament passed a law which stripped the Hungarian Academy of Sciences from 15 academic institutes.²⁷ In accordance with the structural change initiated by the legislation, the removed research institutes were placed under the supervision of a new institution, part-controlled by the government. The reform deprived the Academy of important financial resources, including scholarships for scientists and funds for research projects.²⁸

In October 2020, the CJEU ruled in the framework of an infringement procedure, that the conditions introduced by Hungary in "Lex CEU" for foreign higher education institutions to carry out their activities were incompatible with EU law.²⁹ However, by the time of the issuing of the judgment, the US branch of CEU had already been forced out of Hungary.³⁰

3. Attacks against NGOs behind the smoke screen of hate propaganda

Human rights watchdogs, anti-corruption and environmental NGOs, especially those that have the knowledge and resources enabling them to take issues outside the borders of the country where the means of asserting rights are increasingly limited, can exercise a certain degree of control over the executive (e.g. by making complaints to international bodies, litigating before international judicial forums, or simply by providing information to the international community). For this reason, the attack on independent civil society is a logical step in the above described process.

This process of taking over all the existing control mechanisms has been carried out behind a smoke screen of hate propaganda depicting Hungary and its government at war against different external forces trying to damage the country. While starting from 2015, this external threat has primarily been – Muslim – immigration, as of 2019 anti-LGBTI propaganda has also gained prominent ground in government propaganda. The following are examples of elements of the campaign against vulnerable groups of migrants and sexual minorities:

²²<https://www.direkt36.hu/en/leleplezodott-egy-durva-izraeli-kemfegyver-az-orban-kormany-kritikusait-es-magyar-ujsgirokat-is-celba-vettek-vele/>

²³https://www.europarl.europa.eu/doceo/document/A-9-2023-0189_EN.pdf

²⁴https://helsinki.hu/en/wp-content/uploads/sites/2/2021/05/parallel_state_I_May2021.pdf

²⁵[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10009&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10009&lang=en) p. 3.

²⁶<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D2506>

²⁷<https://mta.hu/english/statement-of-the-mta-presidium-109894>

²⁸<https://www.universityworldnews.com/post.php?story=20190806103103293>

²⁹<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>

³⁰<https://www.ceu.edu/article/2018-12-03/ceu-forced-out-budapest-launch-us-degree-programs-vienna-september-2019>

(a) *Anti-migration and anti-Muslim statements:*

The government's anti-migration propaganda started during the Syrian refugee crisis in 2015 and peaked in 2018 with the adoption of the “Stop Soros” package. The authorities have made extensive use of legislative, administrative and propaganda tools to create fear of and hatred for Syrian asylum seekers arriving in Europe in Hungary. To this end, a national consultation on migration was held in 2015.³¹ The questionnaire contained loaded questions placing migration in a clearly threatening context, connecting migrants to terrorism or depicting them as people who jeopardize the safety of Hungarian people:

- “According to some, the migration mishandled by Brussels is connected to the extension of terrorism. Do you agree?”
- “According to some, economic migrants endanger the employment and livelihood of Hungarian people. Do you agree?”
- “Do you agree with the Government of Hungary that instead of immigration, support should go to Hungarian families and children to be born?”
- Did you know that economic migrants enter into Hungary illegally?”

Furthermore, a referendum on migration was held in 2016 as a response to the possible introduction of a mandatory solidarity quota for the allocation of Syrian refugees in order to ease the burdens of front-countries in 2015-2016. The government took advantage of the high influx of refugees coming to Europe to mobilize the electorate to support a government sponsored referendum question which was deliberately misleading and did not entail any clear legal consequences:

- “Do you want the European Union to be able to mandate the obligatory resettlement of non-Hungarian citizens into Hungary even without the approval of the National Assembly?”

As a response, 22 Hungarian NGOs started a campaign asking the voters to boycott the anti-refugee referendum or cast an invalid vote through spoiled ballots. Eventually, the referendum was declared invalid as less than 50 percent of the eligible voters cast a valid vote.

In May 2018, the Fundamental Law was amended in line with the anti-migration narrative as part of the “Stop Soros” package. By introducing the notion of a safe transit country (Article XIV. [4]) to the text of the Fundamental Law, the ruling majority restricted asylum to persons who come directly from persecution. The amendment also added a new section (Article XIV. [1]) to the Fundamental Law, reading: “No alien population shall be settled in Hungary. Any foreign citizen, excluding persons having the right of free movement and residence, shall be allowed to live in the territory of Hungary on the basis of his or her application individually evaluated by the Hungarian authorities.”³²

In June 2020, the government launched yet another national consultation on “the coronavirus and restarting the economy”.³³ The consultation comprised of a set of 13 questions including two concerning migration which the Government used to attack the EU and the CJEU in relation to immigration matters, and specifically the CJEU judgment on transit zones.³⁴

- “12. According to a European Court of Justice ruling, it is illegal to have immigrants wait in the transit zone on the Hungarian border. The decision found that migrants should be allowed entry into our country during the epidemic. This ruling coincides with George Soros’s old plan on migration, which proposed that one million immigrants must be allowed entry annually and at

³¹<https://helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf>

³²<https://helsinki.hu/wp-content/uploads/T332-Constitution-Amendment-29-May-2018-ENG.pdf>

³³<https://www.euractiv.com/section/politics/news/hungary-launches-national-consultation-targeting-covid-19-soros-and-debt-slavery/>

³⁴<https://helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>

any cost. Do you agree that the government should continue to stand up against immigration and maintain strict protection of Hungary's borders?"

- "13. Brussels is preparing an offensive against the immigration-related regulations of the Hungarian constitution. They want to force us to amend the Fundamental Law's articles that prevent migration. Do you agree that the Hungarian government must insist on its anti-immigration rules even at the price of an open conflict with Brussels?"

During the summer of 2021, a subsequent national consultation was conducted. According to the government's explanation the main reason for the consultation was to survey people's opinion about the restrictions regarding the epidemic still in force at that time in Hungary, nevertheless the questionnaire included a set of questions concerning migration in accordance with the previously promoted anti-migration narrative:

- After the pandemic George Soros will again attack Hungary because Hungarians are against illegal migration. Some say the pressure exerted by the Soros organizations must be resisted, while others think Hungary needs to surrender in the migration debate.
 - Hungary must not yield to the pressure exerted by the Soros-backed organizations.
 - We need to give in in the migration dispute.
- The bureaucrats in Brussels and the organizations of George Soros argue that the import of migrants needs to be accelerated in the post-pandemic years. And it will be mandatory to resettle migrants arriving by sea in European countries. The government of Hungary is not in favor of any mandatory resettlement. The government's standpoint is that migrants can be taken in only on a voluntary basis even after the pandemic, and their resettlement in EU member states cannot be made mandatory.
 - There is no need for mandatory resettlement, migrants cannot be forced on any country.
 - We need to live up to the expectations of Brussels, and Hungary will also need to take in immigrants.
- Some say there's a need for a 'migrant STOP' for two years after the pandemic. Borders need to be closed completely to migrants because they can introduce new virus mutations in Hungary. The bureaucrats in Brussels think accepting migrants arriving during the pandemic cannot be rejected.
 - There is a need to put a hold on migration for a period of two years after the pandemic.
 - Immigrants arriving during the pandemic must be taken in.

(b) *Anti-migration and anti-Muslim statements*

The start of the governments' anti-LGBTIQ propaganda was marked by an infamous speech of the Speaker of the National Assembly in May 2019, in which László Kövér equated the promotion of same-sex marriage and adoption with pedophilia: "Morally there is no difference between the behavior of a pedophile and the behavior of someone who demands such things. In both cases, the children are treated as objects, luxury goods, mere tools for gratification, for self-realization. I don't want to have children for various reasons, but I claim the right to raise someone else's child."³⁵

In December 2020, the Parliament passed legislation stipulating that as a main rule only married couples are allowed to adopt children. The regulation aimed at preventing people in homosexual relationships from adopting children as singles. On the same day, the Parliament amended the constitution for the ninth time, adding that "the mother is a woman, the father a man" and providing children with the right "to their identity in accordance with their birth gender".³⁶

³⁵https://helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf

³⁶<https://helsinki.hu/en/new-bills-undermine-the-rights-of-lgbtqi-people-freedom-of-information-and-fair-elections/>

In June 2021, the Parliament passed Act LXXIX of 2021, which initially aimed at safeguarding children's wellbeing and fighting pedophilia. However, due to last-minute amendments to the text by Fidesz MPs, the law was transformed into an anti-LGBTIQ act, prohibiting the portrayal of homosexuality and gender reassignment in content addressed to minors, such as school education material and television programmes. Consequently, the European Commission initiated an infringement procedure against Hungary for violating fundamental rights of sexual minorities, in addition to other breaches of the EU acquis. As a consequence of the government's lack of willingness to cooperate in remedying the breaches of EU law detected by the Commission, Hungary was referred to the CJEU. Subsequently, 15 EU Member States have joined the case to support the indictment which is currently in front of the Court.³⁷

The adoption of the anti-LGBTIQ legislation was immediately followed by the national consultation in the summer of 2021 which has already been referenced above. Apart from questions portraying irregular migration as a consequence of the operation of NGOs supported by George Soros, the questionnaire also contained one question concerning the newly adopted child protection legislation:

- “Organizations financed by George Soros have launched a wide-ranging international attack on Hungary over its law on the protection of children. This law prohibits sexual propaganda directed at children in kindergartens, schools and in media accessible to children.”
 - “It is right that the government restricts sexual propaganda aimed at children.”
 - “Sexual propaganda directed at children poses no threat therefore its prohibition is unnecessary.”

As a consequence of the infringement procedure started by the Commission, Prime Minister Orbán announced a so-called “child protection referendum” on legislation limiting education about and portraying homosexuality and transgender issues.³⁸ The Prime Minister explained the need for the referendum by saying that “the future of our children is at stake” due to Brussels’ attack against “Hungary over its child protection law”. Four of the questions proposed by the government were approved by the Supreme Court, despite having deliberately manipulative wording.

- “Do you support the teaching of sexual orientation to minors in public education institutions without parental consent?”
- “Do you support the promotion of sex reassignment therapy for underage children?”
- “Do you support the unrestricted exposure of underage children to sexually explicit media content that may affect their development?”
- “Do you support the showing of sex-change media content to minors?”

The referendum was held at the same day as the parliamentary elections and the associated campaign played an important role in reinforcing the government's narrative, with the aim of mobilizing right-wing and conservative voters in favor of the incumbent parties. The ODIHR's observation report on the general election and referendum concluded concerning the referendum questions that: “While by law the results of all valid referendums are binding, the legal effect of the 3 April referendum was unclear, as the law which is the legislative basis of the issues put to the referendum was already in force, at odds with international good practice.”³⁹

As a response, 16 Hungarian NGOs started a campaign asking the voters to express their resistance to the government's discriminating policies by casting an invalid vote at the referendum.⁴⁰ A clear

³⁷<https://www.euronews.com/my-europe/2023/04/07/15-countries-including-germany-and-france-join-legal-case-against-hungarys-anti-lgbt-law>

³⁸<https://www.theguardian.com/world/2021/jul/21/hungarys-viktor-orban-will-hold-referendum-on-anti-lgbt-law>

³⁹[523568.pdf \(osce.org\)](#) p. 2.

⁴⁰<https://en.hatter.hu/news/hungarian-ngos-call-for-invalid-votes-on-the-governments-anti-lgbtqi-referendum>

indicator of the success of the campaign is the 1.6 million invalid votes cast, which contributed to the referendum being declared invalid.

Five days after the referendum, the 16 campaigning NGOs received a ruling from the National Election Commission which ordered a fine of HUF 3,000,000 (EUR 8,100) against the two main organizers and HUF 176,400 (EUR 475) against each supporting organization (in five separate decisions), with the justification that the campaign amounts to an “abuse of rights” and defeats the purpose of exercising the voters’ direct decision making power through a referendum. This move could only be interpreted as backlash for the success of the campaign. The affected organizations jointly appealed to the Supreme Court, which overturned three of the decisions. However, two decisions imposing fines on the two main organizers were upheld. Háttér Society and Amnesty International Hungary, the two affected organizations, turned to the European Court of Human Rights in the matter.⁴¹

(c) Rhetorical attempts of intimidation by senior state officials

Smear campaigns against human rights and anti-corruption NGOs by government representatives and pro-government media are ongoing. The hostile narrative on human rights watchdog and anti-corruption NGOs crafted and conveyed by government affiliated media outlets is coupled with alarming statements by senior state officials portraying the activities of NGOs defending the rule of law and democratic principles in Hungary as serving foreign interest and threatening national sovereignty.

- *18 May 2022: Committee of the Parliament on National Security: harming Hungary's interests is a threat to national security*

Mr. Máté Kocsis, Fidesz member of the Committee: “[...] there are NGOs involved in Hungarian domestic politics that are funded from abroad and yet carry out their domestic political activities here, or there are media outlets that are clearly in the service of foreign countries. Identifying these, or at least being aware of them, will be essential if we are to talk about the defense of sovereignty.”

Mr. Antal Rogán, Head of Cabinet of the Prime Minister is responsible for the national security after the formation of the reelected government. In his hearing before the Committee of the Parliament on National Security, he said: “A national security risk means that if someone harms Hungary's interests, national security is endangered. [...] The same applies if someone engages in activities that are contrary to the interests of the country and its people in matters that threaten the simple interests of the Hungarian people, their physical security, material security or energy security, this is a violation of national security.”⁴²

- *13 June 2022: Member of the Committee on National Security commented his views on foreign funded NGOs*

Mr. Máté Kocsis, Fidesz member of the Parliament and member of the Committee on National Security said in a short interview on his views expressed at the Committee’s meeting about NGOs and media posing a threat to national security. “This is a suggestion that came up back in 2018 in connection with the “Stop Soros” legislation. And we are serious about it too – namely, that organizations which are being financed by money from foreign governments and this is an important detail: using money received from another state to acquire political influence in Hungary which is not based on democratic legitimacy needs to be examined. This is a simple matter of protecting Hungary’s sovereignty.”⁴³

- *20 January 2023: Minister accuses the Hungarian Helsinki Committee for the suspension of the Erasmus Programme in Hungary*

⁴¹<https://civic-forum.eu/wp-content/uploads/2023/03/Civic-Space-Report-2023-HUNGARY-European-Civic-Forum.pdf> pp. 10.

⁴²[2205181.pdf \(parlament.hu\)](#) pp. 12, pp.16

⁴³[Kocsis Máté külföldről támogatott civilekről és médiáról - YouTube](#)

Mr. Tibor Navracsics, Minister of regional development and EU funds accused the Hungarian Helsinki Committee and others for denouncing Hungary to the European Commission which led to the exclusion of 180 thousand Hungarian students from the Erasmus Programme.⁴⁴

4. Legislative and administrative attacks on NGOs

In addition to the smear campaign aimed at undermining the credibility of independent NGOs and making the limitation of liberties more acceptable through creating a false image of enemies, the Hungarian government also introduced a plethora of restrictive legal and administrative measures targeting human rights watchdog NGOs. Several pieces of the earlier legislation negatively affecting civil society still remain in effect, though are not or only partially implemented. The current legal framework in force keeps on violating the freedom of association and expression of human rights watchdog and anti-corruption NGOs and still has the potential to have a chilling effect on civil society actors and to create a hostile environment for the wider civil spectrum.

(a) *Criminalization of assistance*

On 20 June 2018, the Hungarian Parliament adopted a legislative package under the name “Stop Soros”,⁴³ which inserted Section 353/A into the Criminal Code (“Facilitating or supporting illegal immigration”). The provision rendered punishable anyone who engages in organizing activities in order to facilitate (a) the initiation of asylum proceedings in Hungary by persons who are not persecuted in their country of origin or in the country through which they arrived to Hungary, or whose reason to fear direct persecution is not well-founded, or (b) the initiation of a procedure aimed at acquiring a title of residence by persons entering or staying illegally in Hungary. The offence is punishable with confinement (for up to 90 days), or – if certain aggravating factors are in place – imprisonment for up to one year. A person who provides material resources for this offence is also punishable with imprisonment for up to one year.

The law has been criticized by various international bodies, including the Council of Europe’s constitutional advisory body, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, which concluded in a joint report that Article 353/A “infringes upon the right to freedom of association and expression and should be repealed”, as “it criminalizes organizational activities which are not directly related to the materialization of the illegal migration” and “are fully legitimate including activities which support the State in the fulfilment of its obligations under international law”. The Venice Commission found that as the law “criminalizes the initiation of an asylum procedure or asserting other legal rights on behalf of asylum seekers, it entails a risk of criminal prosecution for individuals and organizations providing lawful assistance to migrants”. Finally, the body emphasized that “only intentionally encouraging migrants to circumventing the law could give rise to criminal prosecution”, but “assistance by NGOs of asylum seekers in applying for asylum and lodging appeals cannot be regarded as such circumvention”.⁴⁵

In 2018 July, the European Commission started an infringement procedure against Hungary taking the view that the adopted legislative package is contrary to EU law. In the framework of the procedure, the CJEU handed down its judgement in Case C-821/19 in November 2021 establishing that the criminalization of activities carried out to assist the initiation of applications for international protection in Hungary is incompatible with EU law. The Court has underlined that: “The introduction of such criminal penalties undeniably has a very significant deterrent effect, which may lead persons wishing to assist third-country nationals or stateless persons wishing to obtain refugee status in Hungary to refrain from participating in the assistance activities.” The execution of the concerning law therefore

⁴⁴[Navracsics: A Helsinki Bizottság és mások „feljelentése” miatt most körülbelül 180 ezer magyar egyetemistát akarnak kizárni az Erasmusból | Mandiner](#)

⁴⁵[https://www.venice.coe.int/webforms/documents/default.aspx?pdfid=CDL-AD\(2018\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdfid=CDL-AD(2018)013-e)

would result in the violation of the right to asylum enshrined in Article 18. of the Charter of Fundamental Rights of the EU.⁴⁶

On 7 December 2022, the Hungarian Parliament amended the infamous Stop Soros law in a last-minute amendment that was introduced through a parliamentary supercommittee to an unrelated omnibus bill. The amendments failed to implement the CJEU's November 2021 judgment that found the criminalization of assistance given to asylum-seekers to be in breach of EU law. The modification rewrites Section 353/A of the Criminal Code in a manner that upholds the chilling effect on providing assistance to asylum-seekers, and, through its unclear wording, retains the possibility of arbitrarily persecuting helpers, including the staff and contracted attorneys of the Hungarian Helsinki Committee. The vaguely defined criminal activity introduced by the amendment still jeopardizes the attorney-client privilege, and in the case of non-attorney helpers, forces them to sacrifice the applicant's best interests in order to protect themselves from potential prosecution.

On 22 December 2022, the Commission, considering the implementation of the judgment of the CJEU insufficient, decided to suspend Hungary's access to EU funds supporting national programmes from the Asylum, Migration and Integration Fund in the framework of the Multiannual Financial Framework of the EU for the 2021-2027 programming period.⁴⁷

(b) *Stigmatization of independent NGOs*

Building on the rhetoric that NGOs are paid by foreign powers to serve their interests under the guise of doing human rights work, in the summer of 2017, the Hungarian Parliament adopted the law on the transparency of foreign-funded organisations,³⁸ which mirrored the Russian foreign agent law. The Preamble to the law echoes the government propaganda, emphasizing that “funding from unknown foreign sources to organizations established based on the freedom of association might enable foreign interest groups to enforce their own interests instead of public interest in the political and social life of Hungary, through the societal influence of these organizations” and “this may endanger the political, economic interests of the country as well as the operation of statutory institutions without undue influence”.

The foreign-funded NGO law requires that any foundation or association that receives any type of foreign funding (including funding from natural persons, charities and the European Commission) over about EUR 23,000 per year, for any purpose whatsoever, must register at court as a “foreign-funded organization.” The registration list was public and these NGOs must also have displayed the label of “foreign-funded organization” on their website and on all of their publications. Foreign funded NGOs were also obliged by the law to inform the state authorities about each and every donor (including natural persons) who donated more than EUR 1,400 in the given year. Failure to register and to comply with other obligations imposed by the law was sanctioned with a fine initially, however, it would have ultimately resulted in the NGO's dissolution through a simplified termination procedure by the court.⁴⁸ The law was not necessary to guarantee the transparency of the concerned NGOs funding structure, as under the previously existing laws, NGOs were already required to submit to the state authorities as a part of the annual report and publish their financial data, also indicating the sources of support. For instance, since 2003, The HHC has fulfilled in each year its legal obligations to submit annual public benefit reports to the court and has published these reports on its website. Without an exception, all its – foreign, as well as domestic – donors can be found in the annual reports, along with the exact amounts of their donations and descriptions of how these funds have been used.⁴⁰

In July 2017 the European Commission launched an infringement procedure due to interference of the legislation with fundamental rights enshrined in the Charter of Fundamental Rights of the EU and exposure of disproportionate restrictions to the free movement of capital. Subsequently, in December

⁴⁶<https://curia.europa.eu/juris/document/document.jsf?text=&docid=249322&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=21965706>

⁴⁷[Register of Commission Documents - C\(2022\)10022 \(europa.eu\)](https://register.consilium.europa.eu/doc/default/docweb/2022/10022)

⁴⁸<https://www.helsinki.hu/wp-content/uploads/NGO-Bill-HU-short-analysis-0411-final.pdf>

2017, the Commission decided to refer Hungary to the CJEU for failing to fulfil its obligations stemming from the EU acquis.⁴⁹

On 18 June 2020, the CJEU declared that Act LXXVI of 2017 on the Transparency of Organizations Supported from Abroad, which stigmatized certain civil society organizations as “foreign-funded organizations”, violated EU law.⁵⁰ However, for over ten months, the governing majority failed to comply with the judgment, and repealed the LexNGO 2017 only in May 2021. At the same time, Act XLIX of 2021 on the Transparency of Organizations Carrying out Activities Capable of Influencing Public Life (LexNGO 2021) was adopted. The passing of the new law was not preceded by any public consultation or direct consultation with NGOs.

The LexNGO 2021 and accompanying amendments made NGOs operating as an association or a foundation whose annual balance sheet total in a given year amounts to at least HUF 20 million (EUR 54,000) subject to inspection/audit by the State Audit Office. The State Audit Office shall audit these NGOs from the aspect of lawfulness, and shall disclose its conclusions in a public report, the content of which cannot be challenged before the court even if it contains unfounded conclusions. In addition, the audit may impose excessive administrative burden on targeted NGOs, and can extend to all documents and data, including sensitive information (such as documents otherwise falling under attorney-client privilege), which may be acceptable when the State Audit Office inspects authorities exercising public power, but not when it audits NGOs. The regulation is also discriminatory, as – without any meaningful justification – it exempts certain entities whose activities are also capable of influencing public life, including religious associations, minority organizations and trade unions. Finally, the LexNGO 2021 violates the constitutional provisions pertaining to the mandate of the State Audit Office, given that under the Fundamental Law the State Audit Office is mandated to audit the administration and use a public finance.

As a consequence, in late May 2022, coinciding with the deadline to submit their annual reports, hundreds of NGOs falling in this category received an order from the State Audit Office to submit internal financial rules and guidelines through the agency’s online platform with a deadline of about 10 days. In spite of the occasional malfunctioning of the online platform, affected NGOs complied with the request. To our best knowledge none of them received any follow-up or further requests from the State Audit Office by the end of the year.⁵¹

(c) *Special immigration tax*

On 20 July 2018, a month after the adoption of the Stop Soros law, another piece of legislation targeting NGOs dealing with migration related matters was passed.⁵² Article 253 of this law stipulates the special tax on immigration: a 25% tax is imposed on financial support provided for any “immigration supporting activity” in Hungary or for the operations of any Hungarian organization “that carries out activities to promote migration.” “Immigration supporting activity” is “any program, action or activity that is directly or indirectly aimed at promoting immigration” and is realized by (i) carrying out media campaigns, media seminars and participating in such activities, (ii) organizing education, (iii) building and operating networks or (iv) propaganda activities that portray immigration in a positive light. The primary taxable entity is the funder (only legal persons), who is obliged to declare and pay 25% of the support provided to the organization performing immigration supporting activities, and also notify the grantee of this fact. If the funder fails to do so, the grantee becomes obliged to pay the tax after the costs incurred in the course of performing the immigration supporting activities. Potential sanctions for failure to comply with the obligation to declare and pay this tax include a tax fine up to 200% of the tax deficiency and probably even imprisonment (up to 10 years depending on the concerned amount) for tax fraud.

⁴⁹https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5003

⁵⁰<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

⁵¹https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_LexNGO2021_info_note.pdf

⁵²Act XLI of 2018 on the Amendment of Certain Tax Laws and Other Related Laws and the Special Tax on Immigration

This law was criticized by international bodies, including the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, which concluded that “the special tax on immigration constitutes an unjustified interference with the rights to freedom of expression and of association of the NGOs affected. The imposition of this special tax will have a chilling effect on the exercise of fundamental rights and on individuals and organizations who defend these rights or support their defense financially. It will deter potential donors from supporting these NGOs and put more hardship on civil society engaged in legitimate human rights’ activities. For all these reasons, the provision as examined in the present opinion should be repealed.”⁵³

Up to this date, the provisions of Act XLI of 2018 stipulating the 25% punitive tax on activities that are regarded as “supporting” immigration have remained unchanged and in effect.

5. Attempts aimed at domesticating civil society

(a) *Cutting off the EEA/Norway grants in Hungary*

Persistent attacks against independent civil society organizations are a key characteristic of Hungary’s illiberal regime.⁵⁴ One of the consequences of these attacks was that no agreement was reached between the Hungarian and the Norwegian governments over the management of the civil society fund of the EEA/Norway Grants for the 2014-2021 cycle.⁵⁵ To replace the financial support from the Norwegian fund to Hungarian civil society organizations, the Hungarian government set up its own fund (Urban Civic Fund) in 2021 with HUF 4 billion (EUR 110 million). The Hungarian government has made serious efforts over the years to establish its own clientele in civil society and this additional source is also furthering that end. The list of grantees shows that NGOs receiving the largest amount of funding are closely affiliated with the governing party coalition. Most of the successful applicant organizations to the Urban Civic Fund have received grants for communication purposes, which indicates a high probability that these resources might be spent on campaigns promoting the narrative of the incumbent Fidesz-KDNP coalition.⁵⁶

(b) *Building an alternative civil space*

While access to national funding has been denied for independent NGOs engaged in the areas of rule of law, fundamental rights and anti-corruption, the government has used the public interest trust (KEKVA) framework to endow pro-Orbán institutions which belong to the private sector with extensive financial resources.⁵⁷ Public interest trusts have been used as the institutional framework for recasting the management of Hungarian cultural and academic institutions. The Board of Trustees of the funds are carefully selected members of the innermost pro-government political and economic elite. Several universities and state owned cultural facilities have been transferred to public trust funds, enabling the Government to appoint boards with loyal members and thus decreasing the independence of the institutions in question. As of today, 34 public trust funds have been established with various core activities and goals.⁵⁸

The pro-Orbán establishment has successfully instrumentalized state assets and public financial resources via the public interest trust framework in order to strengthen the illiberal agenda in the academic sphere and civil society. Exploiting the monstrous financial and institutional resources transferred to them via a series of profound legislative measures, the public trust funds embarked on to

⁵³[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)035-e)

⁵⁴https://helsinki.hu/en/wp-content/uploads/sites/2/2021/03/UPR_submission_3rdcycle_civilspace.pdf

⁵⁵<https://eeagrants.org/news/no-agreement-reached-funding-hungary>

⁵⁶<https://english.atlatszo.hu/2021/08/11/organizations-run-by-fidesz-politicians-win-hungarian-ngo-grants-set-up-to-replace-norway-ngo-grants/>

⁵⁷https://helsinki.hu/en/wp-content/uploads/sites/2/2021/05/parallel_state_1_May2021.pdf

⁵⁸<https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/List-of-Public-Trust-Funds-Performing-a-Public-Function-Sept2022.pdf>

build an extensive institutional network including think-thanks, media outlets, research institutes, book publishers and GONGOs engaged in policy making and advocacy.

At the heart of the project is the Mathias Corvinus Collegium (MCC) a private education institution chaired by Mr. Balázs Orbán, Political Director of the Prime Minister. Enjoying full political support, the MCC has expanded its scope of activities and its institutional framework on a domestic as well as international level.⁵⁹ Alongside the MCC is the Batthyány Lajos Alapítvány (BLA) in the forefront of building a network of non-governmental illiberal actors. The BLA funds two significant think-tanks/foundations: the Center for Fundamental Rights (CFR) created as a research institute focused on legal analysis and the Danube Institute, established by the Batthyány Lajos Foundation “with the aim of encouraging the transmission of ideas and people within the countries of Central Europe and between Central Europe, other parts of Europe, and the English-speaking world”.⁶⁰

The narrowing space for independent scholarly communities, research institutes and NGOs coupled with the sky rocketing number of pro-government scholarships, public events, publication and job opportunities results in a significant drain of young scholars into the pro-government institutional orbit. As a long term goal, the project led by MCC and BLA aims at building a new illiberal intellectual elite replacing the current liberal intelligence.

⁵⁹[Regional Centers \(mcc.hu\)](https://mcc.hu)

⁶⁰<https://danubeinstitute.hu/en/content/mission-statement>

www.helsinki.hu

