



Shrinking space for independent civil society in Hungary

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The Hungarian Helsinki Committee, a human rights non-governmental organisation based in Budapest, Hungary, wishes to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) to the alarmingly shrinking civic space and the persistent obstacles faced by human rights defenders in Hungary.

Civil society organisations (CSOs) and human rights defenders are vital for a healthy democracy and a society where people can enjoy their fundamental freedoms. To achieve this, CSOs should be able to work without fear in a supportive environment. However, for the past over 10 years, Hungarian independent CSOs have been facing an increasing number of challenges which severely hinder them in carrying out their legitimate work. These included legislative changes that stigmatised and even criminalised civil society activities and in general had a restrictive impact on civil society environment; administrative measures designed to hamper the operation of CSOs; the constant shrinking of avenues of cooperation and dialogue with domestic authorities; an unfavourable environment in terms of funding and financial viability; as well as smear campaigns and stigmatising rhetoric used by government representatives and governing party politicians that question the legitimacy of CSO work, resulting in a chilling effect.

These attacks against independent civil society form an integral part of Hungary's rule of law backsliding, and have intensified since the OSCE Warsaw Human Dimension Conference of 2023, including the adoption of a new restrictive law.

New law on "sovereignty protection" ramps up attacks against civil society and media

The most significant development affecting civic space since the OSCE Warsaw Human Dimension Conference of 2023 was the adoption of Act LXXXVIII of 2023 on the Protection of National Sovereignty (hereafter: Sovereignty Protection Act) in late 2023.¹ The law, which was the culmination of earlier

¹ For more details, see: <https://helsinki.hu/en/sovereignty-protection-act-in-breach-of-eu-law/>, in particular the joint analysis of Amnesty International Hungary and the Hungarian Helsinki Committee: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/02/Sovereignty_Protection_Act_breaches_EU_law_2024.pdf. The official English translation of the adopted law is available here: <https://njt.hu/jogszabaly/en/2023-88-00-00>.

attempts by the Hungarian government to “securitise” independent civil society,² is another clear attempt to intimidate and silence critical voices, including independent civil society and the media. It consists of two distinct elements: the setting up of the Sovereignty Protection Office (SPO) as of 1 February 2024, and an amendment to the Hungarian Criminal Code prescribing prison sentence for using funding from abroad (overtly or “in disguise to circumvent the prohibition”) for political campaign purposes.

The SPO has wide-ranging tools at its disposal to investigate private individuals, informal groups and legal entities both inside and outside of Hungary, and the law’s vaguely drafted provisions allow it to use its invasive powers against virtually anyone exercising their democratic right to engage in public matters. The scope of the activities which might trigger the investigation of the SPO are extremely broad and open to interpretation: they include for example “activities aimed at influencing democratic discourse and state and social decision-making processes” or “interest representation activities”, carried out in the interest of another state or a foreign organ, organisation or natural person, if such activities can harm or jeopardise the sovereignty of Hungary. The SPO shall also investigate organisations whose activities funded from abroad “may exert influence on the outcome of elections” or which, using funds from abroad, “perform or support activities aimed at influencing the will of voters”. During the course of its investigations, the SPO has access to all data in the possession of the investigated entity as well as the state or local government body concerned in the case that may be relevant to the investigation, and the intelligence agencies shall provide information to the SPO in order to facilitate its work. Investigations are followed by a public report on the findings of the SPO. There is no legal remedy available against the actions of the SPO, including against its investigation or the publication of its findings.

The combined effect of the above have the potential to disrupt the enjoyment of various fundamental rights of anyone whose lawful activities may fall under the Sovereignty Protection Act, and are capable of exerting a considerable chilling effect on civil society and social movements as a whole in Hungary, exacerbating existing pressures and leading to a serious distortion of public discourse and democratic life. The Sovereignty Protection Act clearly violates international standards, as also shown by the range of stakeholders that criticized the law, including the Council of Europe Commissioner for Human Rights,³ the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Human Rights Defenders,⁴ and the Venice Commission of the Council of Europe, which concluded in its respective opinion that “the regulation related to the establishment of the [SPO] and its mandate and competencies [...] should be repealed”.⁵ In February 2024, the European Commission decided to launch an infringement procedure against Hungary because of the Sovereignty Protection Act, considering that the law violates several provisions of primary and secondary EU law.⁶

Despite these criticisms, the Sovereignty Protection Act remains in force, and it has already been utilized. In June 2024, Transparency International Hungary and Átlátszó, an independent investigative news portal, announced that the SPO had sent them a notice of being under investigation along with

² See e.g.: Written statement submitted by the Hungarian Helsinki Committee in the framework of the OSCE Warsaw Human Dimension Conference 2023 on shrinking space for independent civil society, <https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/OSCE-WHDC-2023-HHC-civic-space-statement.pdf>, pp. 3-4.

³ <https://www.coe.int/ca/web/commissioner/-/hungary-the-proposal-for-a-defence-of-national-sovereignty-package-should-be-abandoned>

⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28661>

⁵ European Commission for Democracy through Law (Venice Commission), *Hungary – Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty*, CDL-AD(2024)001-e, 18 March 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)001-e), para. 65.

⁶ INFR(2024)2001, https://ec.europa.eu/commission/presscorner/detail/en/inf_24_301

an extensive list of questions.⁷ Subsequently, in July 2024, civil society members of the so-called Monitoring Committees monitoring the use of EU funds sent a joint letter to the Monitoring Committees, asking to convene extraordinary sessions of the Monitoring Committees, with a view to the attacked Transparency International Hungary also being a Monitoring Committee member.⁸ However, the request was dismissed.⁹ In September 2024, it was reported that the SPO launched another investigation against two CSOs: a local association focusing on environmental issues at a suburban settlement and speaking out against contamination by a controversial battery factory housed by the town, and a foundation linked to Átlátszó. Questions received by both entities relate to an EU-funded project jointly implemented by them that the SPO alleges to pose a threat to the sovereignty of Hungary.¹⁰ These investigations are very likely to exacerbate the already existing chilling effect of the Sovereignty Protection Act, which creates fear and self-regulation, hinders cooperation between organisations, and diverts resources away from their actual activities, creating an environment where for example EU funding can be perceived as a threat.¹¹

Legal environment remains restrictive in general

As pointed out by the European Commission in its 2024 Rule of Law Report regarding Hungary, since last year, there has been “[no] progress on fostering a safe and enabling civic space and remove obstacles affecting civil society organisations, including by repealing legislation that hampers their capacity of working”.¹² Accordingly, the following laws violating the rights of and exerting a chilling effect on CSOs continue to be in force:

(1) Act XLIX of 2021 on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life and accompanying amendments continue to violate the rights of certain CSOs by making them subject of audits by the State Audit Office, which cannot be reconciled with the constitutional mandate of the State Audit Office, without adequate justification and legal safeguards.¹³

(2) In 2018, the governing majority adopted legal provisions as part of a legislative package dubbed “Stop Soros” by the Government which criminalized the organisation of assistance to asylum-seekers. Even though the original provisions were amended in late 2022, the Hungarian Criminal Code continues to include a provision on the “facilitation and support of illegal immigration” and continues to have a deterring effect on the provision of legal assistance to asylum-seekers, failing to implement

⁷ Transparency International Hungary’s respective statement is available here: <https://transparency.hu/en/news/spo-targets-ti-hungary/>, Átlátszó’s statement is available here: <https://english.atlatszo.hu/2024/06/25/the-sovereignty-protection-office-launched-an-investigation-against-atlatszo/>.

⁸ The letter of the CSO representatives is available here: <https://helsinki.hu/en/wp-content/uploads/sites/2/2024/07/CSOs-letter-to-Managing-Authorities-and-Monitoring-Committees-1.pdf>.

⁹ The response of a deputy state secretary, dismissing the request, is available here: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/07/Valasz_Helsinki-Bizottsag_alairt.pdf.

¹⁰ See: <https://atlatszo.hu/orszagszerte/2024/09/12/a-god-ert-egyedet-is-kipecezte-a-szuverenitasvedelmi-hivatal/>.

¹¹ See in this regard the result of a survey conducted among Hungarian CSOs, showing that the Sovereignty Protection Act indeed has a chilling effect: <https://helsinki.hu/wp-content/uploads/2024/06/Consequences-of-the-Sovereignty-Protection-Act.pdf>.

¹² European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf, p. 2.

¹³ See in more detail: Hungarian Helsinki Committee, *LexNGO 2021 – a look into Hungary’s second anti-NGO law on its first anniversary*, 12 May 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_LexNGO2021_info_note.pdf.

the judgment of the Court of Justice of the European Union in Case C-821/19 that found the original provisions to be in breach of EU law.¹⁴

(3) Also in 2018, a provision of Act XLI of 2018 on the Amendments of Certain Acts on Taxation and on the Special Tax on Immigration prescribed a special 25% immigration tax on donors if they provide funds for activities “facilitating” immigration or on grantees performing such activities (largely undefined by the Act) in case the donor organisation fails to pay the tax. This law has remained in effect to this day as well.

Smear campaigns, stigmatisation and securitisation continues

Smear campaigns and verbal intimidatory attacks against human rights and anti-corruption CSOs and activists by government and governing party representatives and by government-affiliated media outlets have been ongoing with varying intensity and focus since around 2013. One of the main narratives built by the Government and pro-government media outlets has portrayed CSOs defending human rights, the rule of law and democratic principles in Hungary as being paid by foreign powers to serve foreign interests under the guise of doing human rights work. In relation to that, the narrative that CSOs receiving funding from abroad may pose a national security threat has also gained prominent ground, culminating in the adoption of the Sovereignty Protection Act as described above.

On top of the investigations launched by the SPO, the President of the SPO has also continued the smearing, stigmatisation and securitisation of CSOs (and also the independent media) in his public statements. Examples for such statements include the following:

“Not only do we have to protect our sovereignty in relation to the EU and other states, but a so-called ‘sovereignty grey zone’ has emerged in which certain organisations lurk that are not government or state organs, but call themselves press or civil organisations, while in fact they are political pressure organisations.”¹⁵

“The actors have changed; [...] states have been joined by new actors: economic actors and actors who call themselves civil society actors. They are the ones who are trying to undermine, to steal the sovereignty of countries.”¹⁶

Difficulties in accessing funding

According to the European Commission’s 2024 Rule of Law Report, “[c]oncerns related to the State’s role in financing civil society persist”, with stakeholders reporting that public funding is “distributed unevenly, and that the operation of state funding for CSOs is non-transparent. Funding earmarked for civil society is often absorbed by organisations affiliated with the governing parties.”¹⁷ Thus, the

¹⁴ See in more detail: Hungarian Helsinki Committee, *Criminalisation continues – Hungary fails to implement CJEU judgment*, 21 December 2022, <https://helsinki.hu/en/criminalisation-continues-hungary-fails-to-implement-cjeu-judgment/>.

¹⁵ <https://youtu.be/7E5WeJ8iGPK>, 1:56 min.

¹⁶ <https://mandiner.hu/belfold/2024/07/schiffer-a-szuverenitas-fogalmat-erdemes-lenne-kiragadni-az-aktualpolitika-posvanyabol>

¹⁷ European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf, pp. 38-39.

distribution of public funding to civil society continues to be politically biased, with independent CSOs promoting e.g. human rights rarely having a chance to secure a grant.¹⁸

As pointed out by the 2022 Civil Society Organization Sustainability Index, “[t]here are no dedicated national public funding sources that specifically support CSOs engaged in the areas of democracy, rule of law, and fundamental rights”.¹⁹

RECOMMENDATIONS

We call on the OSCE and OSCE Participating States to:

1. Continue monitoring the situation of human rights defenders in Hungary and intensify efforts to empower and support them, including through political, legal, and financial assistance.
2. Call on the Government of Hungary to repeal laws hampering the work of civil society organisations and human rights defenders, and refrain from introducing any further legislation that limits the freedom of association in any way.
3. Urge the Government of Hungary to fully implement the OSCE Guidelines on the Protection of Human Rights Defenders. Most notably, the Government should be urged to refrain from using accusatory and labelling rhetoric against human rights defenders and independent civil society organisations; instead, it should be encouraged to take proactive steps to counter discrediting of human rights defenders by political leaders and in the media.
4. Ensure non-politicized access to domestic public funding for all civil society organisations, including those working to promote democracy, fundamental rights, and the rule of law; and ensure that funding processes are open, transparent and inclusive.
5. Encourage the Government of Hungary to strengthen the dialogue between the Government and civil society.

¹⁸ For more details, see: *Civic Space Report 2024 – Hungary*, <https://civic-forum.eu/wp-content/uploads/2024/05/CIVIC-SPACE-REPORT-2024-HUNGARY.pdf>, pp. 14-16.

¹⁹ 2022 Civil Society Organization Sustainability Index – Hungary, September 2023, <https://storage.googleapis.com/cso-si-dashboard.appspot.com/Reports/CSOSI-Hungary-2022.pdf>, p. 5.