



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

H-1074 Budapest, Dohány utca 20. II/9.

P.O. Box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

helsinki@helsinki.hu

www.helsinki.hu

FOLLOW-UP INFORMATION ON HUNGARY FROM THE HUNGARIAN HELSINKI COMMITTEE AFTER THE CONSIDERATION OF HUNGARY'S SIXTH PERIODIC REPORT

22 March 2018

With a view to the questions posed by the distinguished members of the UN Human Rights Committee during the consideration of Hungary's sixth periodic report, and to the oral responses given by the State Party's Delegation, the Hungarian Helsinki Committee (HHC) hereby respectfully submits the following additional information to the distinguished members of the UN Human Rights Committee, supplementing the information provided in the HHC's February 2018 submission¹ to the Human Rights Committee regarding the sixth periodic report of Hungary.

In the present document, information is provided on the following issues:

- the Human Rights Roundtable / Human Rights Working Group (p. 2);
- national consultations (p. 2);
- overcrowding in penitentiaries and the related complaint and compensation procedures (p. 5);
- situation of homeless people (p. 6);
- transparency of NGOs and updated information on the pending bills targeting NGOs (p. 8);
- asylum-seekers and refugees (p. 9);

¹ Available at: https://www.helsinki.hu/wp-content/uploads/HHC_submission_to_HRC_12022018.pdf.



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HUMAN RIGHTS ROUNDTABLE / HUMAN RIGHTS WORKING GROUP

The Human Rights Roundtable, operating with the participation of NGOs, was set up in late 2012 by the Hungarian Government, as a response to the recommendations formed in the framework of the Universal Periodic Review of Hungary.²

The **experiences of participating NGOs**, including the HHC, **had been mixed in terms of the practical operation** of the thematic working groups operating under the Human Rights Roundtable: apart from some positive exceptions, such as the working group on hate crimes, in most of the working groups attended by the HHC there was no substantive, professional discussion taking place (for example NGOs were never asked to comment on the draft laws pertaining to the issues covered by the given thematic working groups). NGOs also reported for example that in certain working groups, issues suggested by NGOs were not included on the agenda and invitations for working group sessions were sent out late.³

The HHC **left** the Human Rights Roundtable in September 2014, **as a protest against governmental attacks against NGOs**, in particular a police raid of the offices of the NGOs Ökotárs and DemNet on 8 September 2014.⁴ Shortly thereafter, the European Roma Rights Centre, the Legal Defense Bureau for National and Ethnic Minorities and the Hungarian Civil Liberties Union also left the Human Rights Roundtable, due to the same reasons as the HHC.⁵

NATIONAL CONSULTATIONS

A "national consultation" is a method introduced by current governing party Fidesz. It is **not equal to a referendum or a popular initiative**, there is **no participation requirement** attached to it, and its result is not binding for the Government. In the framework of a national consultation, the Government sends out **questionnaires with pre-formulated answers** to citizens. Consultations initiated so far by the Government include the following.

National consultation in relation to the new constitution

The first national consultation (called "National Consultation") was launched in February 2011, and was referred to by the ruling majority as a consultation on the new constitution of Hungary (the Fundamental Law). The consultation meant that a questionnaire with 12 questions was sent out to citizens, thus **no exact draft text to comment on was provided**. Fidesz representatives said that the questionnaire will reach all adult Hungarian citizens until 7 March 2011, and that citizens have two weeks to respond after receiving the questionnaire.⁶ (It shall be recalled that the draft Fundamental Law was submitted to the Parliament on 14 March 2011.)

The 12 questions included in the national consultation addressed the following topics: 1) the relation between basic rights and obligations; 2) the restriction of the public debt; 3) whether the constitution should enhance the role of the family, public order, labour and health; 4) the need for a "family voting system"; 5) whether

² See: <http://emberijogok.kormany.hu/the-government-creates-the-human-rights-roundtable-together-with-civil-society-organisations>.

³ See e.g.: <http://abcug.hu/kamu-egyveztetesekkel-vaaja-kormany-civileket/>.

⁴ See: <http://www.helsinki.hu/a-helsinki-bizottsag-kilepett-az-emberi-jogi-kerekasztalbol/>.

⁵ See: <http://dev.neki.hu/kileptunk-az-emberi-jogi-kerekasztalbol/>, <http://vs.hu/kozelet/osszes/a-neki-az-errc-es-a-tasz-is-lelep-az-emberi-jogi-kerekasztaltol-0918>.

⁶ See: <http://www.fidesz.hu/index.php?Cikk=159786>.



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helsinki@helsinki.hu

www.helsinki.hu

the state should ban the levying of taxes on the expenses related to child rearing; 6) the protection of future generations; 7) the conditions of public procurements; 8) the togetherness of Hungarians across frontiers; 9) the protection of natural diversity and national treasures; 10) the protection of the land and water; 11) whether the possibility of imposing life imprisonment without the possibility of parole should be included in the constitution; and 12) the obligation to testify before a parliamentary commission if a person is summoned.⁷

In the view of the HHC, some of these questions were loosely related to the constitution-writing process; however, others constituted a **populist wish-list**. The questionnaire **did not cover the important questions** that surfaced and should have been answered in a constitution-writing process **and ignored those questions that have already emerged as dilemmas** in the ongoing process, e.g. the powers of the Constitutional Court. Moreover, it was unclear whether the answers will be processed, and if yes, how and who will be in charge of the process, and what impact it is meant to have on the overall process of constitution-making.

The Social Consultation and the related data protection issues

The so-called "Social Consultation", consisting of 10 questions, was launched after the Fundamental Law was adopted, in May 2011. This was the consultation in relation to which **Data Protection Commissioner András Jóri raised concerns**: on 7 June 2011 he issued a statement concluding that the **protection of personal data is not ensured** in the course of the data management related to the Social Consultation, and, therefore, the questionnaires shall be destroyed after the responses have been recorded.⁸ (In the framework of the Social Consultation, questionnaires with individual bar codes were sent out to citizens.) The spokesperson of the Prime Minister stated that the central agency responsible for the Social Consultation had personally consulted with Mr Jóri several times before the Social Consultation, and that Mr Jóri had not raised any concerns in relation to the protection of personal data. The spokesperson also stated that they presume that Mr Jóri had "personal motives" for issuing the above standpoint, since the Fundamental Law mentions only one Ombudsperson and Mr Jóri is "obviously uncertain regarding his personal career".⁹ The Minister of Public Administration and Justice also stated in the Parliament that the Data Protection Commissioner had not expressed any concern regarding the issue "until he got to know that the position of the Data Protection Commissioner would cease according to the Fundamental Law and the new law and is replaced by an authority. Since then he has conducted a desperate war against any data protection laws proposed by this Government."¹⁰ Mr Jóri contested the above statements, stated that he had not been consulted before the Social Consultation, and is to initiate lawsuits against the spokesperson of the Prime Minister, the Minister and the responsible central agency for damaging his reputation.¹¹

As to the outcome of the debate: in August 2011 the responsible state agency requested the judicial review of the decision issued by the Data Protection Commissioner.¹² The **lawsuit was terminated upon the joint request of the parties** in May 2012, thus **after the National Authority for Data Protection and Freedom of Information took over the position of the Data Protection Commissioner**.¹³ The National Authority for Data Protection and Freedom of Information **also announced that they do not agree with the original decision** of the Data Protection Commissioner, and will issue a new decision.¹⁴

⁷ The questions are available at: <http://www.fidesz.hu/index.php?Cikk=158885>.

⁸ ABI-1642-4/2011/H, 7 June 2012

⁹ See e.g.: http://hvg.hu/itthon/20110607_jori_szerint_aggalyos_szocialis_konzultac.

¹⁰ See e.g.: http://atv.hu/cikk/20120229_navracsicsot_es_szijartot_perli_jori.

¹¹ See e.g.: http://hvg.hu/itthon/20110821_szemelyisegi_jogi_perek_adatvedelmi_ombud.

¹² See e.g.: http://hvg.hu/itthon/20110816_szocialis_konzultacio_hivatal.

¹³ See e.g.: http://hvg.hu/itthon/20120514_szocialis_konzultacio_per.

¹⁴ See e.g.: http://hvg.hu/itthon/20120515_peterfalvi_jori_szocialis_konzultacio.



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Finally, in July 2012, the questionnaires were destroyed. However, the former Data Protection Commissioner claimed that, according to his decision, the electronic database containing the personal data of those citizens who provided a response should have also been abolished, but this did not happen.¹⁵

The "Let's stop Brussels" national consultation

In his speech opening the Parliament's spring session in 2017, Prime Minister Viktor Orbán announced that a "national consultation" will be held about five threats to Hungary, including "illegal migration" and the "foreign influencing attempts".¹⁶ On 1 April 2017, the Government reported that the national consultation titled "Let's stop Brussels" was launched,¹⁷ containing the following **questions related to NGOs**:

- Question 3: **"By now it has become clear that, in addition to the smugglers, certain international organisations encourage the illegal immigrants to commit illegal acts.** What do you think Hungary should do?" – Possible answers: "(a) Activities assisting illegal immigration such as human smuggling and the popularization of illegal immigration must be punished. (b) Let us accept that there are international organisations which, without any consequences, urge the circumvention of Hungarian laws."
- Question 4: **"More and more foreign-supported organisations operate in Hungary with the aim of interfering in the internal affairs of our country in an opaque manner. These organisations could jeopardize our independence.** What do you think Hungary should do?" – Possible answers: "(a) Require them to register, revealing on which country's or organisation's authority they act and the objectives of their activities. (b) Allow them to continue their risky activities without any supervision."¹⁸

The national consultation on the "Soros plan"

Prime Minister Viktor Orbán addressed the Parliament at the opening day of its autumn session on 18 September 2017. In his speech, the Prime Minister said that the Brussels bureaucrats are implementing the "Soros plan", and "are feeding out of Soros's hand". He also announced that the parliamentary groups of the governing parties have asked the Government to launch a national consultation on the "Soros plan".¹⁹ Questions of the national consultation concerning the "Soros plan" were published late September 2017, with Question 5 **mentioning two NGOs, the HHC and Amnesty International in a negative context**:

- "5. George Soros would also like to see migrants receive lighter sentences for the criminal offences they commit. / George **Soros supports organisations that assist immigration and defend immigrants who have committed unlawful** acts with significant amounts of funds. One example is the [Hungarian] Helsinki Committee, which argued with regard to the prohibited crossing of the border fence that »applying strict legal consequences with regard to unlawful entry may be considered troubling«. Another Soros-organisation, Amnesty International, demanded numerous times that Ahmed H, the man who was

¹⁵ See e.g.: http://hvg.hu/itthon/20120727_szocialis_konzultacio_kerdoivek.

¹⁶ See e.g.: <http://www.origo.hu/itthon/20170220-orban-viktor-napirend-elott-ot-veszely-nemzeti-konzultacio.html>.

¹⁷ See: <http://www.kormany.hu/hu/miniszterelnoki-kabinetiroda/kormanyzati-kommunikacioert-felelos-allamtitkar/hirek/elindult-a-nemzeti-konzultacio>.

¹⁸ See e.g.: http://index.hu/belfold/2017/03/31/igy_nez_ki_a_legujabb_nemzeti_konzultacio/, <http://hungarianspectrum.org/2017/04/02/national-consultation-2017-lets-stop-brussels/>

¹⁹ See in English: <http://www.kormany.hu/en/the-prime-minister/news/hungary-will-never-be-an-immigrant-country>

For the full speech in English, see: <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-address-in-parliament-before-the-start-of-daily-business20170918>.



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helsinki@helsinki.hu

www.helsinki.hu

sentenced for attacking with stones Hungarian policemen defending the border, is set free. Amnesty would even have the Hungarian state pay compensation. Do you support this point of the Soros plan? Yes/No²⁰

As a response to the above questionnaire, the HHC filed a civil lawsuit against the Cabinet Office of the Prime Minister for damaging the organisations good reputation,²¹ and on 28 February 2018 the first instance court found that the Cabinet Office had indeed violated the HHC's rights with the national consultation: according to the court, the statements in Question 5 of the questionnaire related to the HHC were false and misrepresent the human rights organization. The ruling is pending appeal.²²

OVERCROWDING IN PENITENTIARIES

The latest data available to the HHC on the occupancy rate of penitentiary institutions is the following:

Table 1 – [Average] occupancy rate of penitentiaries in 2017, up to the end of October 2017²³

Name of the	Occupancy rate
Bács-Kiskun County Penitentiary Institution (Kecskemét)	121%
Baranya County Penitentiary Institution (Pécs)	109%
Békés County Penitentiary Institution (Gyula)	130%
Borsod-Abaúj-Zemplén County Penitentiary Institution (Miskolc)	131%
Metropolitan Penitentiary Institution (Budapest)	152%
Győr-Moson-Sopron County Penitentiary Institution (Győr)	112%
Hajdú-Bihar County Penitentiary Institution (Debrecen)	139%
Heves County Penitentiary Institution (Eger)	142%
Jász-Nagykun-Szolnok County Penitentiary Institution (Szolnok)	126%
Közép-dunántúli National Penitentiary Institution II (Székesfehérvár)	128%
Somogy County Penitentiary Institution (Kaposvár)	102%
Szabolcs-Szatmár-Bereg County Penitentiary Institution (Nyíregyháza)	142%
Tolna County Penitentiary Institution (Szekszárd)	129%
Veszprém County Penitentiary Institution (Veszprém)	103%
Zala County Penitentiary Institution (Zalaegerszeg)	108%
COUNTY PENITENTIARY INSTITUTIONS (REMAND PRISONS²⁴) TAKEN TOGETHER	133%
Állampusztai National Penitentiary Institution	117%
Balassagyarmat High and Medium Security Prison	135%
Budapest High and Medium Security Prison	152%
Penitentiary Institution for Juveniles (Tököl)	60%
Kalocsa High and Medium Security Prison	140%
Central-Transdanubian National Penitentiary Institution I (Baracska)	125%
Márianosztra High and Medium Security Prison	143%
Pálhalmi National Penitentiary Institution	116%
Sátoraljaújhely High and Medium Security Prison	154%
Sopronkőhida High and Medium Security Prison	149%
Szeged High and Medium Security Prison	138%
Szombathely National Penitentiary Institution	99%
Tiszalök National Penitentiary Institution	110%
Tököl National Penitentiary Institution	118%
Vác High and Medium Security Prison	149%
Central Hospital of the Prison Service (Tököl)	12%

²⁰ English translation partly based on: <http://abouthungary.hu/news-in-brief/national-consultation-on-the-soros-plan/>.

²¹ See: <http://www.helsinki.hu/a-helsinki-bizottsag-beperelte-a-miniszterelnoki-kabinetirodat-a-nemzeti-konzultacio-miatt/>.

²² See: <https://www.helsinki.hu/en/hhc-wins-lawsuit-against-cabinet/>.

²³ Data provided by the National Penitentiary Headquarters.

²⁴ County penitentiary institutions accommodate pre-trial detainees as a main rule.



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www.helsinki.hu

Forensic Psychiatric and Mental Institution	70%
INSTITUTIONS FOR SERVING SENTENCES TAKEN TOGETHER	128%
ALTOGETHER	129%

While taking note of the *Domján v. Hungary* judgment,²⁵ saying that the domestic remedy (complaint) and compensation procedure introduced for those detained in overcrowded cells “meets in principle the criteria set out in the pilot judgment given in the case of *Varga and Others v. Hungary*”, the HHC wishes to reiterate its standpoint that the solution chosen by the Hungarian Government is not ideal and that the **system of complaints is ineffective** due to the lack of sufficient prison capacity. This assessment is supported by the National Penitentiary Headquarters’ 5 May 2017 response to the HHC’s freedom of information request on complaints and compensation claims related to the overcrowding of prisons. Between 1 January and 21 April 2017, altogether 984 complaints were submitted due to substandard detention conditions. **Only in 136 cases (13.8%) could governors take measures to remedy the situation within the concerned prison**, in the rest of the cases the complaint was forwarded to the national headquarters. Out of the 734 cases in which the national headquarters had taken a decision until 21 April 2017, **only in 72 (9.8%) could the complaining detainee be transferred into another prison**, in the remaining over 90% of the cases, there was no less crowded prison into which the complainant could have been transferred, so the case had to be referred back to the prison governor.

- *For more information on the legal framework concerning the complaint and the compensation system, along with the deficiencies in practice, see the HHC’s communication submitted to the Committee of the Ministers of the Council of Europe in August 2017:*
http://www.helsinki.hu/wp-content/uploads/HHC_communication_Varga_and_Others_v_Hungary_082017.pdf

SITUATION OF HOMELESS PEOPLE

According to data from homeless care providers and government statements, circa **3000 places** were available in homeless night shelters **in Budapest**, and **9600 countrywide**, varying due to the weather conditions in 2017²⁶. Based on the estimates, around **8-10.000 people are homeless in Budapest**.

According to a Freedom of Information request submitted by ‘The City is for All’, **12.447** different people used **night shelters** countrywide **in 2015**. 30.157 different people used the daily shelters - the majority of the users are homeless, some users need the services available at the shelters due to their very poor housing conditions, without heating and washing opportunities.²⁷

Based on the data of the The City is for All, 70 808 people, including 4 838 minors did not have a valid address in Hungary in 2017, compared to 63 660 in 2015. Not all of them are homeless, but their number shows the amount of people who have serious and persistent housing problems. With the lack of address they are excluded from the the social care and education system, and face serious difficulties in the health care system.²⁸

²⁵ Application no. 5433/17

²⁶ See: http://www.kormanyhivatal.hu/download/1/83/00000/szoc_int.pdf and <https://merce.hu/2017/10/31/az-emmi-szerint-a-hajlektalan-ellatas-felkeszult-a-telre-de-hosszabb-tavu-megoldasokrol-tovabbra-sem-beszelnék/>

²⁷ See: http://avarosmindentkie.blog.hu/2016/09/03/hany_hajlektalan_ember_el_magyarorszagon

²⁸ See: http://avarosmindentkie.blog.hu/2017/08/08/tobb_mint_100_ezer_ember_van_bizonytalan_lakcim_helyzetben



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Between 2013 and 2017, sanctions were imposed for the petty offences of begging and “using public space for habitual residence” (rough sleeping) in the numbers indicated in the tables and chart below. These statistics show that **most petty offence fines against homeless people and people living in deep poverty are imposed for different types of begging, and community service is underused.** Although the “use of public space as habitual residence” is still a petty offence under the law, the number of procedures launched based on this offence significantly decreased since 2015. However, **other types of petty offences, such as littering and consumption of alcohol in public spaces often serve as a basis for petty offence procedures launched against homeless people,** but there are no specific statistics available on the ratio of homeless people affected by these cases.

Table 2 – Number of sanctions imposed for begging and for using public space as habitual residence²⁹

	2013	2014	2015	2016	2017
Confinement for different types of begging offences³⁰ (converting a fine into confinement is not included)					
- number of confinement sentences	16	15	12	17	1
- total number of days in confinement	184	137	92	341	10
Confinement for use of public space as habitual residence³¹ (converting a fine into confinement is not included)	0	0	0	0	0
Fines for different types of begging offences					
- number of on the spot fines	4,288	3,907	2,799	2,574	2,592
- number of fines	503	592	458	762	676
Fines for use of public space as habitual residence					
- number of on the spot fines	0	0	0	0	0
- number of fines	0	5	0	1	0
Community service sentences for different types of begging offences	9	7	2	8	2
Community service sentences for use of public space as habitual residence	0	1	2	0	0

Table 3

	2013 ³²	2014	2015	2016	2017
Number of petty offence cases launched for the use of public space as habitual residence ³³	66	354	78	26	0

²⁹ Source: Bűnügyi Statisztikai Rendszer, <https://bsr.bm.hu>

³⁰ Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System, Article 185 (1)-(2)

³¹ Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System, Article 179/A. (1)

³² Data available only from 1 October to 31 December 2013.

³³ Source: statistics of the “The City is for All”, acquired from the Ministry of Interior.



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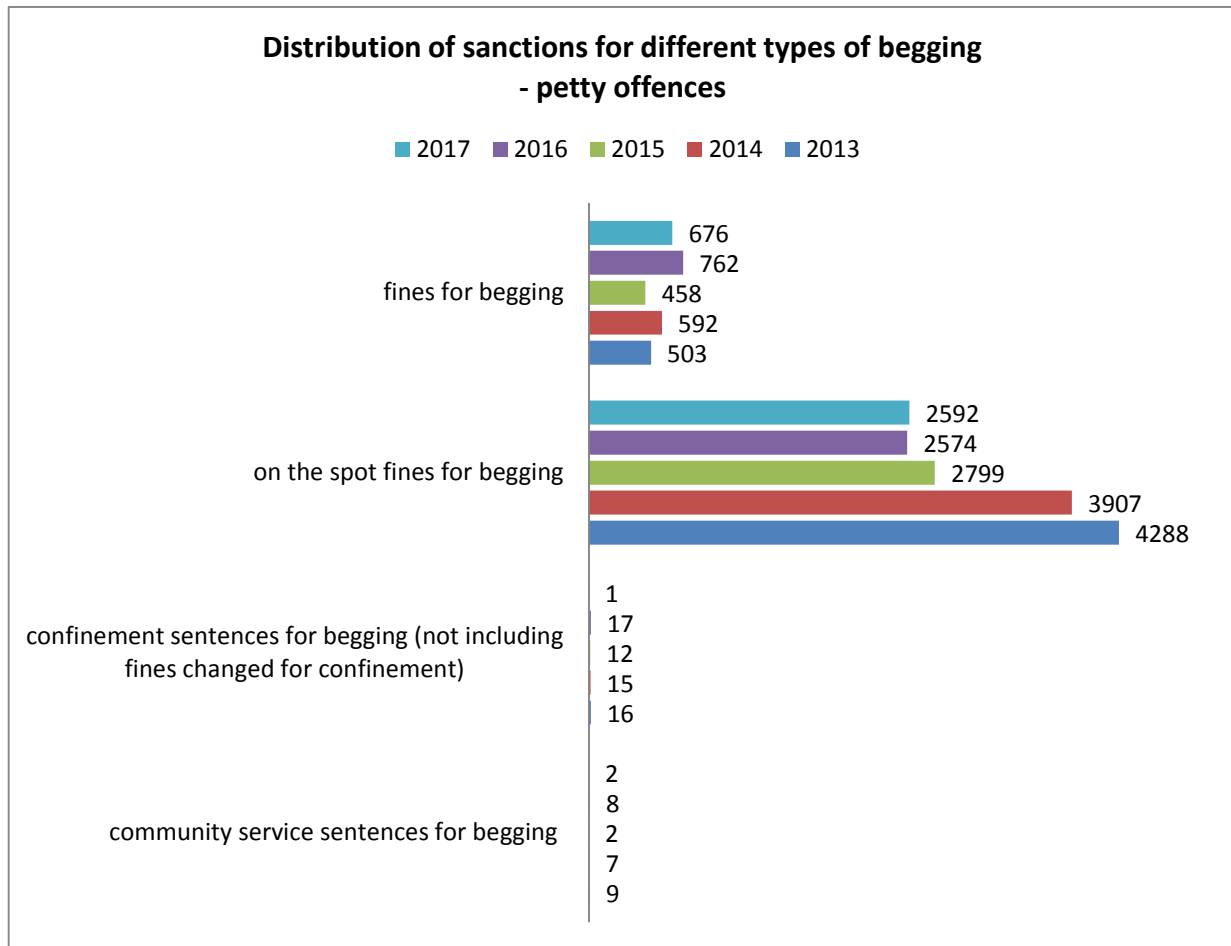
H-1074 Budapest, Dohány utca 20. II/9.

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helsinki@helsinki.hu

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TRANSPARENCY OF NGOs AND UPDATED INFORMATION ON THE PENDING BILLS TARGETING NGOs

With regard to as Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (LexNGO 2017), the HHC wishes to emphasise that in contrast to what has been continuously implied by the Hungarian Government, including at the 122nd session of the UN Human Rights Committee, **the transparency of NGOs was ensured by law already before the adoption of LexNGO 2017**, and the new law **did not enhance the already existing transparency of NGOs**. Under the law which has been already in force before LexNGO2017, NGOs have to submit annual reports, which also contain information on funds received e.g. from other states, international organisations and other non-governmental organisations, the reports being published on the National Judicial Office's website.

The three draft laws targeting civil society organisations, dubbed the **"Stop Soros" package**, have been officially **submitted to the Parliament on 13 February 2018**, after the HHC has submitted its written comments to the UN Human Rights Committee. The bills submitted differ from the original proposals in two main features:



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- instead of *registering*, the bills now require organizations carrying out activities in the field of migration to apply for a *license* from the Interior Minister;
- the possibility that NGOs could lose their public benefit status (which gives tax advantages to both organisation and their clients) has been omitted from the submitted text of the bills.

Summary of the content of the bills:

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.

For further information, see

- "Operation starve & strangle", the joint statement of the HHC and the Hungarian Civil Liberties Union, revised to reflect the final version of the bills:
<https://www.helsinki.hu/wp-content/uploads/OPERATION-STARVE-AND-STRANGLE-17022018.pdf>;
- the unofficial translation of the version of the bill submitted to the Parliament on 13 February 2018:
<https://www.helsinki.hu/wp-content/uploads/Stop-Soros-package-Bills-T19776-T19774-T19775.pdf>.

ASYLUM-SEEKERS AND REFUGEES

Admittance (only on working days) to the two operational transit zones at Röszke and Tompa were **reduced to an average of daily 5 in each on 23 January 2017**. Although this measure was never communicated officially, it is transparent from the data provided by the Immigration and Asylum Office to a Freedom of Information request in October 2017.³⁴

On 23 January 2018, daily admittance rate **was further reduced to an average 1 in each zone**. This was officially acknowledged by the Minister of the Prime Minister's Office at his press conference on 1 February 2018.³⁵

An employee of the Commissariat for Refugees³⁶ of the Transit Centre in Subotica, Serbia, where those soon to be admitted to either of the two Hungarian transit zones are accommodated temporarily, provided a detailed explanation of the admittance practice in an interview published on 18 March 2018.³⁷ According to his statement, at the time of speaking, the last person on the unofficial waiting list to the Hungarian transit zones was to wait for 10 (ten) years to be admitted.

³⁴ See: <https://kimittud.atlatszo.hu/request/9817/response/14492/attach/html/4/k%20relemek%20sz%20ma.pdf.html>

³⁵ See: <https://index.hu/belfold/2018/02/01/kormanyinfo/>

³⁶ See: <http://www.kirs.gov.rs/articles/index.php?lang=ENG>

³⁷ See: <https://24.hu/belfold/2018/03/18/akkor-most-orban-felesege-is-migranssimogato/>