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Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University

Report¹

Committee on Political Affairs and Democracy
Rapporteur: Mr Mogens JENSEN, Denmark, Socialist Group

Summary

Two recent Hungarian pieces of legislation raise concern: the draft law on “Transparency of Organisations Receiving Foreign Funding” and the Act amending the National Higher Education Act. These appear in the context of a dramatic deterioration of the situation of civil society in certain Council of Europe member States.

These recent developments merit the Assembly's close attention as well as the mobilisation of Council of Europe expertise in order to help the Hungarian authorities ensure compliance with relevant Council of Europe and international standards in the field of freedom of association and expression.

The Hungarian authorities are asked to suspend the parliamentary debate on the draft law on “Transparency of Organisations Receiving Foreign Funding” and the implementation on the Act amending the National Higher Education Act, pending the opinion of the Venice Commission and to engage in an open dialogue with civil society and international human rights NGOs, as well as with the Council of Europe and other intergovernmental organisations.

1. Reference to committee: Bureau decision, Reference 4285 of 24 April 2017.



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A. Draft resolution²

1. Concerned by recent developments in Hungary, the Parliamentary Assembly recalls its [Resolution 2096 \(2016\)](#) “How can inappropriate restrictions on NGO activities in Europe be prevented?” and reiterates the importance of the role of a dynamic civil society for the good functioning of democracy.
2. Freedom of association, freedom of expression, as well as the right to privacy, are fundamental rights and freedoms guaranteed by the European Convention on Human Rights (ETS No. 5), vital to the proper functioning of civil society. Their respect should be effectively ensured by all States Parties to the Convention, in the light of the case law of the European Court of Human Rights, Committee of Ministers Recommendation [CM/Rec\(2007\)14](#) on the legal status of non-governmental organisations in Europe and the Joint guidelines on freedom of association, adopted in December 2014 by the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR).
3. In recent years, the Assembly has denounced the dramatic deterioration of the situation of civil society in certain Council of Europe member States, in particular following the adoption of restrictive laws and regulations regarding registration, operating and financing. In its [Resolution 2096 \(2016\)](#), the Assembly explicitly criticised the so-called “foreign agents law”, modifying the Russian legislation on non-commercial organisations, as well as changes to the legislation on non-governmental organisations (NGOs) in Azerbaijan imposing inappropriate restrictions on their activities.
4. Regrettably, this alarming trend seems to be spreading in Europe. Today, the Assembly is thus concerned with developments in Hungary and in particular the proposal for a draft law on “Transparency of Organisations Receiving Foreign Funding”. The Assembly agrees that NGOs must be transparent about their sources of funds, but cannot accept the allegations that civil society organisations serve foreign interest groups, rather than the public interest, and may endanger the national security and sovereignty of a country simply because they receive foreign funding over a certain yearly threshold.
5. The Assembly notes that the Hungarian draft law, although inspired by the corresponding Russian law, does not include some of the latter’s elements criticised by the Venice Commission, such as the use of the controversial term “foreign agent” or the specific and thus discriminatory reference to NGOs defending human rights, and that it provides for a judicial, rather than administrative, review.
6. The Assembly is concerned, however, about a number of issues that the Hungarian draft law raises with respect to freedoms of association and of expression, as well as the right to privacy, in particular as regards:
 - 6.1. the lack of public consultation prior to its submission to parliament;
 - 6.2. the obligation for NGOs receiving foreign funding to indicate this on all the materials published or distributed;
 - 6.3. the obligation for NGOs to submit detailed personal data of foreign donors, including private individuals
 - 6.4. the gravity of the sanctions provided in the draft, including ultimately the dissolution of the association for non-compliance with administrative obligations;
 - 6.5. the scope of application of the draft law, which applies to certain associations and excludes others, such as sports and religious organisations.
7. The Assembly also regrets the overall accusatory and labelling rhetoric by Hungarian public officials surrounding the drawing up and discussion of the draft law, which raises doubts about the real aims of the proposed legislation.
8. The Assembly notes the numerous reactions by Hungarian and international civil society, as well as intergovernmental organisations raising concerns about the proposed draft. These include the Council of Europe Conference of International Non-Governmental Organisations which, on 24 April 2017, called on the Hungarian authorities not to adopt the draft Act on the Transparency of Organisations Receiving Foreign Funding in view of its incompatibility with international and European standards.

2. Draft resolution adopted by the committee on 25 April 2017.

9. The Assembly is all the more concerned about developments in Hungary in light of the recent vote by the Hungarian Parliament on amendments to the National Higher Education Act, which could, according to the Central European University, founded by George Soros in 1991 and operating in Budapest, lead to the termination of its activities.

10. In conclusion, the Assembly believes that recent developments in Hungary merit its close attention as well as the mobilisation of Council of Europe expertise to help the Hungarian authorities ensure compliance with relevant Council of Europe and international standards in the field of freedom of association and expression. The Assembly therefore:

10.1. requests the opinion of the Venice Commission on the compatibility with Council of Europe standards of the Hungarian draft law on the Transparency of Organisations Receiving Foreign Funding, as well as of the Act of 4 April 2017 amending the National Higher Education Act;

10.2. calls on the Hungarian authorities to co-operate with the Venice Commission and suspend, pending the adoption of the latter's Opinion, the implementation of the Act amending the National Higher Education Act and the parliamentary debate on the draft law on the Transparency of Organisations Receiving Foreign Funding;

10.3. calls on the Hungarian Government to engage in an open dialogue with civil society and international human rights NGOs, as well as the Council of Europe and other intergovernmental organisations, on both pieces of legislation and refrain from measures which might be detrimental to the development of civil society in Europe.

11. The Assembly resolves to continue to follow closely developments in Hungary.

B. Explanatory memorandum by Mr Mogens Jensen, rapporteur

1. Introduction

1. On Monday, 24 April 2017, the Parliamentary Assembly, following a request by the Socialist Group approved by the Bureau, decided to hold, during its April 2017 part-session, a debate under urgent procedure with the title “Alarming developments in Hungary: a new NGO law restricting civil society and the closure of an international university” and referred it to the Committee on Political Affairs and Democracy for report.

2. The committee appointed me as rapporteur on the same day. Given the short time available, this report is succinct and meant to serve as a basis for discussion.

3. To start with, I suggest a slightly modified title for the draft report as the NGO law is not yet adopted, so the term “draft NGO law” is more appropriate; no university has been closed but there is the risk of a possible closure of the Central European University. I therefore suggest to add the terms “possible” before “closure” and spell out the name of the university concerned rather than merely referring to an “international university”. Therefore the new title would be as follows: “Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University”.

2. Background

4. On 4 April 2017, the Hungarian Parliament adopted, without consultation of the entities entitled to express their opinion, such as the Hungarian Academy of Sciences and the Hungarian Rectors Conference, an Act amending the National Higher Education Act. The main consequence of this Act could be the closure of the Central European University, which was founded in 1991 by George Soros and operates in Budapest.

5. On 7 April 2017, the governing party Fidesz submitted to the Hungarian Parliament the draft law T/14967 on the Transparency of Organisations Receiving Foreign Funding, whereby organisations which receive foreign funds over a certain yearly threshold will have to register themselves and self-identify as “organisations receiving foreign funding”. This labelling should appear on all publications by the NGOs in question, such as press releases, leaflets, websites and reports they produce, and failure to comply may lead to the closure of the NGO.

6. Both pieces of legislation are very much criticised by those affected by them but also by many international observers. They are seen by the Soros Foundation as a direct attack against it, which seems to be confirmed by some declarations by the Vice-President of Fidesz and by the Hungarian Prime Minister.³

3. The Act amending the National Higher Education Act

7. The Act introduces new regulations for foreign-operating universities in Hungary, which may only operate if the Hungarian Government has an agreement with the university's other country of operation. In addition, universities operating outside the European Union should have a campus in their other country of operation, where comparable degree programmes would be offered. Furthermore, both existing and new non-European Union academic staff would be required to apply for working permits.

8. This requirement is seen by critics as placing, *de facto*, the Central European University (CEU) at a particular disadvantage, given that it operates outside the European Union, does not have a campus in its other country of operation (United States of America) and employs non-EU academic staff. Finally, the law would also prohibit both the American and Hungarian entities from sharing the same name.

9. The CEU claims that the Act violates the rules of the legislative process as: it was adopted without consultation of the organisations entitled to express their opinion, *inter alia* the Hungarian Academy of Sciences and the Hungarian Rectors' Conference; no social impact assessment was made; there was no social consultation, and the draft law was presented to parliament under an exceptional procedure, which meant that no more than 24 hours passed between the opening of the parliamentary debate on the draft and its adoption.

10. The CEU further claims that the Act also undermines the freedom of academic research, studies and education as set forth in the Basic Law of Hungary; that it contradicts rights by requiring a binding international agreement; that it targets, disproportionately, foreign higher education institutions by requiring them to provide

3. See paragraph 22 below.

higher education programmes in their country of origin; that it discriminates by targeting the current structure of co-operation between the CEU's US entity (Central European University) and its Hungarian university (Közép-európai Egyetem); that it breaks non-discrimination guarantees by requiring the CEU to change its name; and that it provides insufficient time to prepare for compliance with its new provisions.

11. It would be necessary to hear the arguments by the representatives of both the majority and the opposition from the Hungarian parliamentary delegation on this issue, as well as request the Opinion of the European Commission for Democracy through Law (Venice Commission) on the compatibility of this law with Council of Europe standards. Our Assembly should in particular encourage dialogue between the Hungarian authorities and the CEU and contribute to finding solutions which would avoid the closure of the university.

4. The draft law on the Transparency of Organisations Receiving Foreign Funding

12. The draft law claims to address the problem posed by “foreign interest groups” who “try to exploit the organisations of civil society”.⁴ A common tool for this is considered to be the financial support provided on various legal grounds, which may, directly or indirectly, be suitable for influencing the operation of a civil society organisation, possibly to the extent that it significantly transforms the basic goals of the civil society organisation concerned.

13. To tackle such issues, the draft law makes it compulsory for any association and foundation registered as civil society organisations in the meaning of Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations, which receive financial support from abroad in excess of a threshold, which is now about €24 000 per year, to declare to the competent Regional Court the fact that it has become an organisation receiving foreign funds.

14. Upon information received from the Registering Court, the minister responsible for the management of the Civil Information Portal will promptly disclose the name, registered address and tax number of the association or foundation on an electronic platform developed for this purpose, which will be publicly available free of charge.

15. After that, the organisation receiving foreign funds must indicate on its publications (e.g. flyers, printed and electronic press products) that it constitutes an organisation receiving foreign funds as defined in the Act.

16. The Act establishes gradual and proportionate sanctions for the violation of the obligations specified by it. The public prosecutor has enhanced responsibility in this regard. Following a two-step request by the public prosecutor, the Registering Court may impose a fine in accordance with the general rules of the Act on the Court Registration of Civil Society Organisations, and ultimately, if neither of the previous measures results in law-abiding conduct, it has the possibility to cancel the registration of the association or foundation, according to the rules of the simplified procedure, thus leading to its dissolution.

17. Before referring to the issues of concern the draft law raises, I would like to recall [Resolution 2096 \(2016\)](#) “How can inappropriate restrictions on NGO activities in Europe be prevented?”, adopted only last year by our Assembly, in which we reiterated the importance of the role of a dynamic civil society for the good functioning of democracy. Freedom of association, freedom of expression, as well as the right to privacy, are fundamental rights and freedoms guaranteed by the European Convention on Human Rights (ETS No. 5), vital to the proper functioning of civil society. Their respect should be effectively ensured by all States Parties to the Convention, in the light of the case law of the European Court of Human Rights, Committee of Ministers Recommendation [CM/Rec\(2007\)14](#) on the legal status of non-governmental organisations in Europe and the Joint guidelines on freedom of association, adopted in December 2014 by the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR).

18. For my part, if I fully agree that NGOs must be transparent about their sources of funds, I cannot accept the allegations that civil society organisations serve foreign interest groups, rather than the public interest, and may endanger the national security and sovereignty of a country simply because they receive foreign funding over a certain yearly threshold.

19. The Hungarian draft law seems to be inspired by the so-called “foreign agents law”, modifying the Russian legislation on non-commercial organisations to the effect that NGOs receiving foreign funding are obliged to register as “foreign agents”. This law was criticised by the Venice Commission in its Opinions Nos. 716/2013 and 717/2013, adopted in June 2014, and by the Assembly in its [Resolution 2096 \(2016\)](#). The

4. See the general reasoning of the law.

Hungarian draft law does not include some of the Russian law's elements criticised by the Venice Commission, such as the use of the controversial term "foreign agent" or the specific and thus discriminatory reference to NGOs defending human rights, and it provides for a judicial, rather than administrative, review.

20. However, the draft law raises serious concerns with respect to freedoms of association and of expression, as well as the right to privacy, as regards in particular: the lack of public consultation prior to its submission to parliament; the obligation for NGOs receiving foreign funding to add this label on all the materials published or distributed; the obligation for NGOs to submit detailed personal data of foreign donors, including private individuals; the gravity of the sanctions provided in the draft, including ultimately the dissolution of the association, for non-compliance with administrative obligations; the scope of application of the draft law, which applies to certain associations and excludes others, for instance sports and religious organisations.

21. Also, the overall accusatory and labelling rhetoric used by Hungarian public officials during the process of the elaboration and discussion of the draft law raises doubts about the real aims of the proposed legislation. To quote some examples, in early January 2017, MP Szilárd Németh, Vice-President of Fidesz, stated that "the Soros empire's fake civil organisations ... have to be rolled back with every means, and ... they have to be swept out of here".⁵ Prime Minister Orbán, in his annual state of the nation speech, in February 2017, said: "In 2017 we will also need to take up the struggle against international organisations' increasingly strong activists. ... It is a problem that foreign funding is being secretly used to influence Hungarian politics. ... We are [talking about] paid activists from international organisations and their branch offices in Hungary." The Prime Minister also stated that "the organisations of George Soros are working tirelessly to bring hundreds of thousands of migrants into Europe".⁶

5. Reactions

22. Since the new higher education law was passed and signed by the Hungarian President, thousands of Hungarians have taken to the streets in support of the university and the concept of academic freedom, as well as to express concern over the country's illiberal drift. It is reported that more than 10 000 people gathered on Heroes' Square in Budapest on Wednesday to support the university and also protest against the draft law on foreign-funded non-governmental organisations.

5.1. Council of Europe

23. On 4 April 2017, the Council of Europe Commissioner for Human Rights stated that in Hungary, in a context where members of the ruling coalition have publicly questioned the legitimacy of foreign-funded NGOs to carry out what they consider "political activities", the government has recently announced plans to amend the law on non-governmental organisations and clarify who is required to make public asset declarations.

24. The Chairperson of the Conference of International Non-governmental Organisations (INGOs) of the Council of Europe requested the Conference's Expert Council on NGO Law to issue a legal opinion that examines "the compatibility of the draft Act on the Transparency of Organisations Supported from Abroad" with international standards and best practices, particularly the European Convention on Human Rights and Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe. After such examination, the Expert Council opinion, published on 24 April 2017, concluded that this draft Act "gives rise to concerns with respect to its compatibility with the ECHR and other recognised international standards" and "fails to provide evidence why and how such NGOs provide concrete danger to the society" In its statement issued on 24 April, the Conference of INGOs considers that the draft is "largely incompatible with international and European standards and would open the door to further acts of discrimination and/or vilification of civil society". The Conference of INGOs has thus called on the Hungarian authorities not to adopt this law in the name of respect of freedom of association, a right which is so precious to the Council of Europe member States.⁷

25. On the same day (24 April 2017), the Hungarian Minister of Justice, László Trócsányi, met with Council of Europe Secretary General Thorbjørn Jagland and discussed current issues, including the draft Hungarian law on NGOs and the situation of the Central European University in Budapest. They agreed to "continue working together in a spirit of openness and constructive dialogue".⁸

5. http://bbj.hu/politics/government-on-offensive-against-ngos-with-draft-bill_127158.

6. <http://abouthungary.hu/speeches-and-remarks/prime-minister-viktor-orbans-state-of-the-nation-address-full-text-in-english/>.

7. Statement by the Conference of INGOs of the Council of Europe, 24 April 2017.

5.2. European Union

26. At the initiative of the President of the European Commission, Jean-Claude Juncker, First Vice-President Frans Timmermans led a debate on 12 April 2017 in the College of Commissioners on recent developments in Hungary which have widely raised concerns about compatibility with EU law and the common values on which the Union is based. The College discussed, among others, the Hungarian Higher Education Act and the draft law concerning foreign funding of NGOs. The College agreed that where the new Law may touch on EU competences, and may also apply to European Economic Area universities, it needed to quickly complete a thorough legal assessment of its compatibility with free movement of services and the freedom of establishment, as well as EU rules on admission of third country researchers. The College agreed to take forward the relevant and legally mature individual infringement cases in the next cycle of infringement procedures at the end of this month.⁹

27. The Commission will also swiftly complete a thorough legal assessment of the Higher Education law and decide on next steps in the next infringement cycle. On the draft law on NGO funding, the Commission will closely monitor the process and will revert to the matter on the basis of an analysis of the legal issues at stake. The issues discussed by the College relate both to the respect of European Union law and the respect of the Union's common values as enshrined in Article 2 of the Treaty on the European Union.

28. Taken cumulatively, the overall situation in Hungary is a cause of concern for the Commission. The College therefore agreed to start a political dialogue with the Hungarian authorities, the other member States and the European Parliament.

5.3. United Nations

29. "The Parliament of Hungary should reconsider recently adopted legislation which appears to be aimed at undermining the Central European University (CEU) in Budapest", said the United Nations Special Rapporteur on the freedom of opinion and expression, Mr David Kaye. He warned that the law, adopted on 4 April and signed by President János Áder into law on 10 April, "is likely to violate the central precepts of academic freedom in a free society". "The new law targets freedom of opinion and expression in Hungary, freedom of academic pursuit, the role that scholarship and research play in the expansion of knowledge and the development of democratic societies", he said.¹⁰

30. For his part, the United Nations Special Rapporteur on the situation of human rights defenders, Mr Michel Forst, has expressed concern about the continued stigmatisation of human rights defenders and about the chilling effect of the inflammatory language used by senior government officials on the public perception of the value of civil society.

5.4. Other reactions

31. "The United States is disappointed by the accelerated passage of legislation targeting the Central European University, despite the serious concerns raised by the United States, by hundreds of local and international organisations and institutions, and by thousands of Hungarians who value academic freedom and the many important contributions by the Central European University to Hungary", according to a statement from the United States Embassy in Hungary.¹¹

32. For Human Rights Watch, "the law endangers academic freedom and the future of the CEU, which has educated a generation of leaders in Central and Eastern Europe". The well-known international NGO called the Hungarian president not to sign "a law that seems motivated by a desire to silence critical voices in Hungary".¹²

6. Conclusions

33. In the short time available to prepare this report, I could not analyse in detail the pieces of legislation in question or the arguments of all sides but have tried to summarise the main concerns.

8. Secretary General meets Hungarian Justice Minister, 24 April 2017.

9. See http://europa.eu/rapid/press-release_SPEECH-17-966_en.htm.

10. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21493&LangID=E.

11. <https://hu.usembassy.gov/charge-daffaires-embassy-united-states-budapest-david-kostelancik-issued-following-statement-2/>.

12. <https://www.hrw.org/news/2017/04/04/hungary-law-threatens-independent-universities>.

34. In conclusion, I believe that recent developments in Hungary merit the Assembly's close attention as well as the mobilisation of Council of Europe expertise in order to help the Hungarian authorities ensure compliance with relevant Council of Europe and international standards in the field of freedom of association and expression. I therefore suggest that the Assembly:

- requests the opinion of the Venice Commission on the compatibility with Council of Europe standards of the Hungarian draft law on the Transparency of Organisations Receiving Foreign Funding, as well as of the Act of 4 April 2017 amending the National Higher Education Act;
- calls on the Hungarian authorities to co-operate with the Venice Commission and suspend, pending the adoption of the latter's Opinion, the implementation of the Act amending the National Higher Education Act and the parliamentary debate on the draft law on the Transparency of Organisations Receiving Foreign Funding;
- calls on the Hungarian Government to engage in an open dialogue with civil society and international human rights NGOs, as well as the Council of Europe and other intergovernmental organisations, on both pieces of legislation and refrain from measures which might be detrimental to the development of civil society in Europe.

35. Our committee should stand ready to return to this matter once the Opinion of the Venice Commission is available.