

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/27.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the recently passed bill T/14686 amending Act CCIV of 2011 on National Higher Education. The bill appears to specifically target the Central European University, and represents undue interference with academic freedom and independence.**

The Central European University, established in 1991, is a graduate-level English language university located in Budapest. It is accredited both in the USA and in Hungary, and has over 1500 students from over 100 countries, as well as 300 faculty members. The CEU is currently awarding Hungarian diplomas under a 2004 joint declaration between the government of Hungary and New York State, which was followed by Act LXI of 2004 on State Recognition of Közép-európai Egyetem. The 2004 joint declaration and subsequent legislation established CEU's Hungarian sister-institution, Közép-európai Egyetem (KEE), which translates to "Central European University". KEE was established as a Hungarian entity which then allowed for Hungarian accreditation and the ability to award Hungarian diplomas.

According to the information received:

On 28 March 2017, the Government introduced the bill T/14686 ("the Bill"), amending Act CCIV of 2011 on National Higher Education ("HEA"). Thereafter, the Bill was swiftly adopted by Parliament on 4 April 2017. It has been reported that organizations involved in the academic life of Hungary were not consulted in the Bill's preparation, review or adoption. The bill was signed into law by the President of Hungary on 10 April 2017.

The law would require all foreign-accredited universities to provide higher education services in their country of origin. The higher education programmes must be offered within nine months of its ratification.

Additionally, the law bans universities accredited outside the EU from awarding Hungarian diplomas in the absence of the conclusion of a binding international agreement between the Hungarian government and the national government of the

foreign university. The international agreement must be reached within six months of the Bill's passage. Given that issues relating to education are decided by federal states and not to by the national government in the United States, this stipulation of the law makes it practically impossible for the CEU to conclude such an agreement.

The law also prevents Hungarian-accredited universities that are linked to foreign universities from delivering programmes or issuing degrees from the foreign university with which they are associated, and forbids institutions from having the same or similar names.

While the law is drafted in a neutral language, it has been reported that the law would specifically target the Central European University (CEU).

Before identifying the concerns raised under the law, I would like to note that article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Hungary on 17 January 1974, protects everyone's right to hold opinions without interference, and to seek, receive and impart information of all kinds, regardless of frontiers and through any media. Under article 19(3) of the ICCPR, any restriction to freedom of expression must be "provided by law", and necessary for "the rights or reputation of others", for "the protection of national security and public order (ordre public) or of public health and morals".

I am concerned at the allegations that the law targets the CEU, and would possibly make impossible its ability to operate in Hungary. I am further concerned that the provision of the law requiring an agreement between the Government of Hungary and the Government of the accreditation of foreign university would leave higher education institutions vulnerable to the unfettered discretion of the Government to pursue or not pursue such an agreement. I am equally concerned that the six-month time frame to complete such binding international agreements places an additional obstacle for the possibility of foreign academic institutions to operate in Hungary. It is also of concern that the law would force CEU to end its relationship with KEE. The law further seems to require the CEU to operate a campus in New York State, USA, where CEU is accredited but does not carry out academic activities, thereby generating great financial cost that could possibly force CEU to leave its campus in Budapest.

I am especially concerned that the restrictions and obligations imposed on higher education institutions, including the CEU, by the law contradict fundamental principles of academic freedom that are embodied and guaranteed by article 19. The restrictions imposed by the law would significantly restrict academic freedom, and would restrict the right to seek, receive, and impart information of students and faculty, as well as the citizens of Hungary who benefit from scholarly research of such higher education institutions. While ensuring that foreign institutions of higher learning are complying with the laws of the host nation is a legitimate State interest, it is unclear how the

requirements and restrictions under the law are necessary and proportionate to achieve this aim. I am therefore concerned that the restrictions imposed by the law would not meet some of the requirements of article 19(3).

While restrictions have been introduced by law, the swift process and lack of civil society consultations during the legislative process raises concerns about the law's compliance with the legality requirement under article 19(3). Under Act CXXX of 2010 on Law-Making (LMA), and of the requirements of Act CXXXI of 2010 on social participation in the preparation of legislation (PPA), an impact assessment must be carried out before the adoption of legislation. In the case of the current law, I understand that no impact assessment was made. The lack of consultations and parliamentary negotiation therefore appear to undermine any argument that the law's restrictions are "provided by law".

The international legal standards referenced above are available at www.ohchr.org and can be provided upon request.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about measures to be taken to bring the law into compliance with Hungary's obligations under international human rights law, in particular with article 19 of the ICCPR.
3. Please provide information about why civil society, in particular academic institutions, were not consulted during the legislative process, and explain how this is compatible with domestic law as well as with the legality requirement under article 19 of the ICCPR.
4. Please provide information about the objective sought through the law, and explain how this objective is compatible with the "legitimate objectives" under article 19(3) of the ICCPR.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I intend to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release is attached herewith and will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Finally, I would like to inform your Government that this communication will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: (<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>).

Your Government's response will also be made available on the same website as well as in the regular periodic Communications Report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression