

Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE:
AL HUN 7/2018

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 26/17, 34/18, 32/32, 34/5, 35/3, 34/21 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **recent adoption of a series of laws that introduce undue restrictions on the rights to freedom of association, peaceful assembly and freedom of expression in Hungary and risk to further fuel the already existing xenophobic and discriminatory public discourse on migration and negative narrative about civil society, in particular when its activities are related to migration issues.**

We have previously raised our concerns about the potential effect of the NGO Transparency Law in a letter dated 9 May 2017 (HUN 2/2017), to which we regret not having received a reply from your Excellency's Government up to now. We are still waiting to receive your feedback.

Related concerns regarding anti-migrant campaigns in Hungary were previously raised in letters dated 7 September 2015 (HUN 1/2015), 6 October 2016 (HUN 1/2016) and 20 June 2018 (HUN 4/2018). We acknowledge receipt of the replies of your Excellency's Government dated 24 November 2015, 21 December 2016 and 17 August 2018. Nevertheless, and in light of the recent developments regarding migration policies, as well as legislation and practices in Hungary impacting on the right to freedom of expression as well as on the effective protection of human rights defenders, we remain concerned about the situation of migrants and asylum seekers in the country, as well as about the situation of human rights defenders.

In a letter sent to the authorities on 8 March 2018, we expressed our concerns regarding the ‘Stop Soros Legislative Package’ and its potential detrimental effect on the rights to freedom of association and expression as well as the rights of migrants and the prohibition of racial discrimination (HUN 1/2018). We regret that, to date, no answer has been provided by your Excellency’s Government. We hope to receive your answer in due course.

According to the information received:

1. Legislative framework

a. Higher Education Law

On 4 April 2014, the amendments to the Higher Education Law were adopted. The enacted amendments introduced important threats to academic freedom in Hungary and the intended and real chilling impact on independent academic voices and activities.

On 7 December 2017, the European Commission decided to refer Hungary to the Court of Justice of the European Union (CJEU) on the grounds that its Higher Education Law runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union and the Union's legal obligations under international trade law (the General Agreement on Trade in Services, GATS, in the framework of the World Trade Organisation, WTO).

b. NGO Law

On 13 June 2017, the NGO Transparency Law, highly stigmatizing foreign funded NGOs, was adopted (see concerns raised in communication HUN 2/2017 and press release published on 15 May 2017). On 7 December 2017, the European Commission referred the case to the CJEU after submitting a letter of formal notice and reasoned opinion respectively submitted on 14 July and 4 October 2017. The case was published by the CJEU in June 2018 (Case C-78/18: the first hearing could take place in the autumn 2018). The Commission decided to initiate legal proceedings against Hungary for failing to “fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions in the NGO Law which indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations”. According to the Commission, these provisions, which apply by reference to the foreign source of the capital, place a number of administrative formalities and burdens on the recipient of capital and are liable to have a stigmatising effect on both recipients and donors. Thus, they may dissuade people from making donations from abroad to civil society organisations in Hungary.

In June 2017, 17 Hungarian NGOs filed a case against the NGO Transparency Law before the Hungarian Constitutional Court and other organizations filed cases related to the law before the European Court of Human Rights. So far the Government has not taken any legal action against organisations that failed to register as foreign funded organisations.

c. The “Stop-Soros” legislation

The “Stop Soros” Law Act VI

On 29 May 2018, a draft bill, Act VI 2018 amending certain laws relating to measures to combat illegal immigration, was published by the Hungarian Government. Explicitly named “Stop Soros”, Hungarian civil society organisations have noted that this and related recent legislative amendments are more accurately described as “starve and strangle” for the chilling impact they have on independent civil society, media and other independent or critical voices. On 20 June 2018, the bill was adopted and, on 1 July 2018, it came into force. On 18 July 2018, the European Commission referred Hungary to the CJEU regarding this legislation, for breaching EU law on asylum and returns, and sent a letter of formal notice.

The Act IV 2018 amends the 2007 Asylum Act and the 2007 Act on the State Border. Together with a new constitutional provision adopted concurrently (T332) the Act imposes further restrictions on the right to seek asylum. Section 7 of the Law provides that an asylum application is inadmissible if the applicant arrived via a third country where they were not subject to persecution or to serious harm. The changes to the 2007 State Border Act bar anyone who is under criminal proceedings from staying in Hungary, on the basis of a criminal offence of the unlawful crossing of the border. Given that asylum applications can only be submitted in one of two transit zones at the Serbian border, and that Serbia is considered to be a “safe country”, applications for asylum status will be found inadmissible. The recently enacted legislation therefore renders it almost impossible for asylum seekers to submit asylum claims and regularise their migratory status in the country and may violate the non-refoulement principle.

The law also *inter alia* creates a new criminal offense, punishable with one year of imprisonment, in the Criminal Code (Section 11 of the Law amends section 353/A (S353/A) of “supporting and facilitating illegal immigration”. The bill criminalises any ‘organisational activities’ to assist asylum-seekers - already in Hungary or at Hungary’s border - to exercise their legal rights to submit an asylum procedure or to obtain a residence permit; it provides that such offences may be committed by a person directly assisting an individual migrant, but also by preparing, or distributing informational materials or by creating or operating a network to carry out these activities. It finally makes it a crime to organise border monitoring and it makes it a crime to provide financial means for the above activities.

The provisions of the law effectively prevent civil society from protecting and promoting the rights of refugees, asylum seekers and migrants and from carrying out their legitimate and lawful activities, including providing the above mentioned assistance to individual migrants or from carrying out advocacy campaigns on their behalf, among others.

The “Stop Soros” Act XLI

The amendments to the Tax Code were adopted on 25 July and entered into force on 25 August 2018. Section 253 introduces a special 25% tax, on funding of organizations which carry out any activities that “promote migration” or for “immigration activities” which can include building networks and “propaganda activities that portray immigration in a positive light”. The tax of 25% must be paid on all the “costs incurred” for those activities (253(3)(b)).

The law defines “immigration” as “permanent relocation of people from their country of residence to another country”. It is not limited to immigration to Hungary – so could include, for example, related activities on the rights of refugees in other countries. The tax applies only where there is funding from an organisation (section 253(5)). This creates exemptions, including *inter alia* for the promotional work of commercial immigration firms who receive their funding from individual clients, political parties and party foundations and organisations whose exception is guaranteed by international treaty.

According to the law, the tax is payable by an organisation providing financial support (wherever they are based) and the funding organisation is required to provide a declaration that the tax has been paid. In the absence of such a declaration the organisation conducting the activities is required to pay the tax.

The law adds a second layer of administrative burdens, in the form of a licencing requirement for a segment of NGOs working on issues related to asylum and migrants. By imposing a specific financial burden on organizations related to immigration, the law could discourage foreign donors from providing funds in solidarity to civil society organizations (CSOs) in Hungary working on protecting the rights of refugees, asylum seekers and migrants, including those carrying out advocacy efforts domestically and internationally. The additional financial and administrative burdens as well as the excessive fines imposed in cases of non-compliance could also lead to the potential cessation of their activities. The law consequently interferes with the right to freedom of association of these organizations, limiting their capacity to carry on their activities and creates a differential treatment between organizations.

The law also interferes with the right to freedom of expression as the tax could be imposed on organisations for engaging in activities intended to express opinions which promote or are positive about immigration. It could therefore have a

detrimental impact on the media, creating self-censorship on immigration-related information.

d. Law on Freedom of Assembly

On 20 July, the Parliament adopted a new Law on Freedom of Assembly. The Law introduces extensive vaguely phrased prior conditions to be met for an assembly to be authorized. Therefore, the police can use the non-compliance of one of the set conditions to ban an assembly. For example, if “there are grounds for believing a protest may directly, unnecessarily and disproportionately interfere with the functioning of the courts”, the assembly might be banned.

2. Negative rhetoric against civil society supporting migrants

This restrictive legislative framework is combined with a series of attacks directed against civil society registered over the past few months, in particular when the scope of its activities is related to migration issues..

a. Negative rhetoric towards civil society organizations

Since the last general elections, the Government has engaged in fierce smear campaign against civil society, discrediting and intimidating dissenting voices, notably through its own agencies and through public media.

On 12 April 2018, a few days after the general elections, two newspapers close to the Government published an article titled “The Speculator’s People” consisting of a list of 200 persons who allegedly work for the so called “Soros organizations”. Of these 200 people, numerous individuals are staff of CSOs such as Amnesty International, the Hungarian Civil Liberties Union, Transparency International, the Hungarian Helsinki Committee as well as organizations working on Roma or migrant integration issues and academics.

On 12 June, the Fidesz–KDNP coalition spokesperson, held a press conference in front of Amnesty International Hungary’s building and affixed labels on its doors branding it as an “organization that supports immigration”. On 14 June, another organization, helping refugees, was also branded as such. On 27 June, similar events occurred in front of the Hungarian Helsinki Committee.

b. Shrinking media pluralism

Since the last general elections, held in April 2018, several important media outlets, such as Magyar Nemzet, Budapest Beacon, and Heti Valász, have closed down, or have changed ownership (HirTV). Some private media companies, subsidized by the Government (notably through high volume advertising), disseminate political messages from the authorities.

This shrinking of media pluralism is particularly worrying as it is happening in an already existing restrictive legislative framework that does not provide for an uncensored and unhindered press (Concluding Observation, Human Rights Committee, CCPR/C/HUN/CO/6, para. 57). In March 2018, the newspaper Magyar Idők published an article criticizing the work of foreign reporters that criticize the Government.

c. Academia and programmes working on migrants studies

On 19 June 2018, a list of names and pictures of academics affiliated with the Hungarian Academy of Sciences studying migration, ethnic minorities, gender and LGBTQ policies, as well as other fields, was published in a newspaper. The article claimed that the research topics are politically suspicious, suggesting that the Government should have a “greater insight” into the Academy’s work.

In August 2018, the Government announced plans to eliminate gender studies from Hungary’s list of accredited university programmes. The two universities concerned by this plan, the Central European University and the ELTE, have not been consulted.

On 28 August 2018, the Central European University announced the suspension of the Opening Learning Initiative for registered refugees and asylum seekers, together with the administration of Marie Curie Research Grant on migration policy in Central and Southern Europe, as a result of the adoption of the the imposition of the 25% compulsory tax on measures promoting migration..

Staff of civil society organizations, as well as other independent or critical persons report having suffered a range of detrimental impacts, including pressure on family members, dismissal from work, as well as death threats and other threats from the general public.

3. Continuous deterioration of the situation of migrants

The facts alleged are taking place in an increasingly hostile environment for migrants, asylum seekers and refugees in Hungary.

In August 2018, the Immigration Office stopped giving food to detained asylum-seekers in transit zones who challenge their case in courts. After the European Court of Human Rights’ issuance of five emergency orders to Hungary, meals were again provided to asylum-seekers in detention.

We also refer to the Human Rights Committee’s May 2018 Concluding Observation in which the Committee notes with concern reports that pushbacks have been applied indiscriminately and that individuals subjected to this measure have very limited opportunity to submit an asylum application and virtually no right of appeal. The Committee also notes with concern reports of collective and

violent expulsions, allegedly accompanied by heavy beatings, attacks by police dogs and shooting with rubber bullets, which have resulted in severe injuries and, at least in one case, in the death of an asylum seeker (CCPR/C/HUN/CO/6, para 47).

We are concerned about the highly restrictive legislative framework imposed on civil society organizations, in particular, the NGO Transparency Law, the recent “Stop Soros” laws, as well as the recent law on the right to assembly.

As indicated in previous letters, the NGO Transparency Law severely curtails the rights to freedom of expression and freedom of peaceful assembly and association in Hungary.

We are concerned the ‘Stop Soros’ Law Act VI allegedly aims to prevent individuals from seeking asylum and could lead to the criminalization of lawyers and NGO workers assisting migrants. The law also creates a new category of NGOs, organizations supporting migration, and imposes distinctive additional requirements on organizations that receive foreign funding, thereby discriminating between different categories of organizations.

We are worried the new Law on Freedom of Assembly will further restrict the right to freedom of peaceful assembly by increasing the threshold of conditions under which a peaceful assembly can be held.

Our concerns are heightened by the fact that this restrictive legislative framework was adopted immediately after the tenure of the general elections, possibly underlying the Government’s political priorities, allegedly aiming at obstructing the work of civil society critical to the Government’s policies as well as fuelling hostility towards migrants, asylum seekers and refugees. In this connection, we are also concerned at the smear campaign by public officials against civil society which may distort the public narrative on human rights defenders. In particular, we are concerned that the comments foster an intolerance and hostility which, considering his influence as a political leader, may lead to persons being incited to exercise violence against Karapatan and its members, who are already facing a severely hostile environment. We are concerned that such rhetoric by public officials negatively impacts not only the work of civil society, but also the faith of civil society in State institutions and, thus, the quality and level of their participation in democracy.

We finally express serious concerns about the negative impact of this restrictive legislative framework and of this hostile environment which might further fuel and legitimize the xenophobic rhetoric and racist attitudes towards non-citizens, further exposing them to abuse, hatred and violence but also stigmatize organizations working on issues related to refugees, asylum seekers and migrants.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would 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 explain whether a human rights impact assessment has been undertaken to assess the impact of the above-mentioned legislation, in particular on legal principles and standards listed in the annex of this letter. Please share the outcome of any such analysis or consultation.
3. Please provide information on efforts taken by State authorities to protect the lives and basic human rights of all people within its territory and under its jurisdiction, including migrants, asylum seekers and refugees, regardless of their legal status. Please provide information regarding allegations of violations of the non-refoulement principle.
4. Please provide information regarding the allegations of smear campaign, including from the national authorities, against civil society organizations or individuals related to migration issues. Please explain how these measures are compatible with articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR).
5. Please indicate what measures have been taken to ensure that migrant rights defenders in the Hungary are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation or retaliation directed against them or harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we 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.

We intend to publicly express our concerns as, in our view, the information upon which the press release is based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate

that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The above-mentioned legislation, as well as the different measures and policies recently adopted, seem to pose significant restrictions on the rights to freedom of expression, freedom of assembly and to freedom of association. In this connection, we wish to draw attention to articles 19, 21 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Hungary in 1974.

Freedom of expression

Freedom of opinion and expression is protected under article 19 of the ICCPR. Article 20(2) of the ICCPR, which further requires States to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Article 20(2) must be read in conjunction with the conditions for restrictions to the exercise of freedom of expression set out in article 19(3) of the ICCPR.

As pointed out by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, when high-level officials engage in hate speech, they undermine not only the right to non-discrimination of affected groups, but also the faith of such groups in State institutions and, thus, the quality and level of their participation in democracy (A/67/357, para. 67).

Similarly, article 21 and 22 provide that no restrictions may be placed on freedom of peaceful assembly and of association other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.'

Regarding the right to freedom of association, we would like to stress the Human Rights Committee concerns about the Law on the Transparency of organizations (CCPR/C/HUN/CO/6, para. 53): "The Committee is concerned about unreasonable, burdensome and restrictive conditions imposed on some non-governmental organizations (NGOs) receiving foreign funding under Act LXXVI of 2017 on the Transparency of Organizations Supported from Abroad, including the requirement that certain NGOs should register as "foreign-supported organizations" and publicly identify their foreign supporters. Despite the information provided by the State party delegation claiming that the law aims to ensure transparency regarding NGO funding sources, the Committee notes a lack of sufficient justification for the imposition of these requirements, which appear to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary (arts. 19, 21, 22 and 26)".

We would further like to stress the Committee’s concluding observation regarding the pre-existing “Soros-Package” replaced by the “Stop-Soros” legislation. The Committee stressed his concerns regarding the “imposition of restrictions on foreign funding directed to NGOs may be used to apply illegitimate pressure on them and to interfere unjustifiably with their activities”.

Furthermore, we would like to note UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, has stressed ‘the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association, but also to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources’ (A/HRC/23/39, para 8).

Regarding the right to freedom of peaceful assembly, the Special Rapporteur has stressed that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities, but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others (A/HRC/20/27, para. 28).

Similarly, it is relevant to note that the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders States in its article 13 that ‘[e]veryone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration’.

We would also like to express concern that such restrictions violate the crucial principle of international solidarity, as reflected in the Draft Declaration on the right to international solidarity (A/HRC/35/35).

Lastly, the Government of Hungary, at the September 2016 session of the Universal Periodic Review (UPR) accepted recommendations including that it ‘refrain from targeting or restricting the activities of civil society organizations based on their political affiliation or their receipt of foreign funding (para 128.38, recommendation by Australia, 2nd review of Hungary under the UPR).

Non-refoulement and non-discrimination

We wish to recall your Excellency’s Government that the prohibition of refoulement is explicitly included in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, ratified by Hungary. Furthermore, the prohibition of return to a place where individuals are at risk of torture and other ill-treatment is enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), also ratified by your Excellency’s

Government. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

We would like to bring to Your Excellency's Government's attention article 26 of the International Covenant on Civil and Political Rights stating that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

We are concerned that the legislation as well as the Government's policies and practices against migrants, asylum seekers and refugees, further fuel racial discrimination, xenophobia and intolerance towards non-citizens in contravention of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was ratified by Hungary on 4 May 1967. Article 2(c) of the Convention obliges States to adopt immediate and effective measures to review and rescind any legislation, which has the effect of perpetuating racial discrimination. Article 5 (d) (viii) and (ix) further require States Parties to prohibit and eliminate racial discrimination with regards to the enjoyment of the rights to freedom of expression and to freedom of association.

The Durban Declaration and Declaration and Programme of Action (DDPA) reiterate that xenophobia against migrants, refugees and asylum seekers constitutes one of the main sources of contemporary racism. It therefore request States to combat the generalized rejection of, and xenophobic attitudes towards, migrants (para. 24). In this context, the DDPA stresses the vital role of NGOs in combatting racial discrimination, xenophobia and related intolerance. The DDPA calls for the removal of unlawful barriers to the effective functioning of NGOs working in this field and urges States to provide an open and conducive environment that enables them to operate freely within their societies (paras. 118 and 213).

In this regard, we refer the Government of Your Excellency's Government's to the 2018 Concluding Observation of the Human Rights Committee: The State party should regularly, publicly and effectively reaffirm that any advocacy of ethnic or racial hatred that constitutes incitement to discrimination, hostility or violence is prohibited by law and should act promptly to bring perpetrators of hate crimes to justice. It should take effective measures to improve the reporting, investigation, prosecution and punishment of hate crimes and criminal hate speech, in accordance with its obligations under the Covenant, and should strengthen its efforts to eradicate stereotyping and discrimination against migrants, refugees, Jews and Roma, among others, by conducting public awareness

campaigns to promote tolerance and respect for diversity and to highlight the unacceptability of racial profiling. It should also ensure that State officials responsible for discriminatory behaviour towards Roma and other minority groups are held accountable in all instances (CCPR/C/HUN/CO/6, para 19).

Finally, we would like to draw your Excellency's Government's attention to Article 28 of the Universal Declaration of Human Rights, which calls on States to create a social and international order in which all human rights and fundamental freedoms can be fully realized, and to Article 2 of the International Covenant on Economic, Social and Cultural Rights (ratified by Hungary on 17 January 1974), in which States undertake to take steps through international assistance and cooperation in order to ensure the full realization of covenant rights. We recall that international solidarity and cooperation are key principles underlying international law and are essential to ensuring that States meet their human rights obligations while responding to shared challenges.