



Hungarian Helsinki Committee



SHORT ANALYSIS OF THE PROPOSED HUNGARIAN BILL ON FOREIGN FUNDED NON-GOVERNMENTAL ORGANIZATIONS

11 APRIL 2017

1. Background

- In December 2016, the Hungarian Government submitted its legislative agenda for 2017 spring foreseeing the amendments of the law on civil organizations¹ and on the scope of persons obliged to submit a declaration of assets.
- In early January 2017, MP Szilárd Németh, Vice President of Fidesz stated that “the Soros empire’s fake civil organizations [...] have to be rolled back with every means, and [...] they have to be swept out of here”.
- Prime Minister Orbán, in February 2017 in his annual state of the nation speech said: “*in 2017 we will also need to take up the struggle against international organizations’ 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 organizations and their branch offices in Hungary.*” The Prime Minister also stated that “*the organizations of George Soros are working tirelessly to bring hundreds of thousands of migrants into Europe*”.
- In April 2017, the Hungarian Government launched a new “National Consultation” with six questions to be answered by citizens, including the question:

“4. More and more foreign-supported organizations operate in Hungary with the aim of meddling in the internal affairs of our country in an opaque manner. Their operations could jeopardize our independence. What do you think Hungary should do?

(a) Require them to register, revealing the objectives of their activities and the country or organization instructing them.

(b) Allow them to continue their risky activities unsupervised.”

- The UN Special Rapporteur on the situation of human rights defenders, Michel Forst expressed concern in March 2017 about the continued stigmatization 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.²

¹ Act CLXXV on freedom of association, public benefit status and the operation and support of CSOs

² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/010/12/pdf/G1701012.pdf?OpenElement>

Furthermore: The Council of Europe President of the Conference of INGOs and the President of the Expert Council on NGO Law issued a [statement](#) on March 7 to urge politicians to refrain from using accusatory and labelling rhetoric, respect some key principles to ensure that fundamental rights are not infringed and ensure effective consultation and participation of NGOs at all stages of the drafting process.

2. About the proposed Bill

The [Bill T/14967](#) on the Transparency of Organisations Financed from Abroad (“the Bill”), in the preamble and the justification, refers to the need to counter money laundering and financing terrorism and to protect the political, economic interests of the country as well as the operation of statutory institutions from undue influences.

Scope

Associations and foundations, with the exception of sport and religious associations, and those not considered civil society organizations (e.g. political parties and their foundations) if the organization at least 7.2 million HUF³ annually from “foreign funding”. These organizations become “organizations receiving foreign funding”.

Definition of foreign funding

- regardless of its legal title, any financial or other economic support originating *directly or indirectly* from abroad,
- includes donations from private individuals as well,
- EU funding is exempted only if it’s paid through a [Hungarian] budgetary institution according to separate law.

Obligations of “organizations receiving foreign funding”

1. Registration

The organization receiving foreign funding has to register with the court as an organization receiving foreign funding.

The organization shall declare, within 15 days, that it has become an organization receiving foreign funding to the registering court.

The court shall send the names, registered addresses and tax numbers of the associations and foundations which in the previous month were registered as organizations receiving foreign funds in the Register to the Minister responsible for the management of the Civil Information Portal until the 15th day of each month. The Minister responsible for the management of the Civil Information Portal shall, without delay, publish these data on the electronic platform developed for this purpose, which will be available free of charge.

2. Reporting

The organization shall also annually report about their foreign funding, including the amount and donor of each foreign transaction (in case of individuals their name, country and city, in case of organizations their name and registered address) and the sum of the foreign donation.

3. Labeling

The “organization receiving foreign funding” title should also be marked on the organization’s website and be indicated on its publications.

Sanctions

Failure to register will ultimately result in the entity’s legal status being revoked through a simplified termination procedure by the court.

³ Defined as reaching individually or in total, the double of the sum specified in Article 6 paragraph (1) (b) of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter referred to as: Act on Money Laundering) in a year

If the organization fails to register after repeated calls from the public prosecutor, fines can be imposed (ranging between 10,000 – 900,000 HUF) by the court. The public prosecutor shall motion the imposition of a fine with the registration court. If the organization still fails to register as a foreign funded organization, the public prosecutor shall motion a procedure at court for the dissolution of the association or the foundation.

3. Most important violations and concerns

3.1.LACK OF OPEN CONSULTATION

Related reference to EU or international law:

- ICCPR Article 25

There has been no public consultation about the Bill. Although – as explained above – the bill on civil organizations was planned and supposed to be submitted by the Government, it has been submitted as a proposal by three Fidesz MPs. This move made it possible to evade the obligation to carry out consultation as foreseen by Act CXXXI of 2010 on public participation in the legislative process (which is mandatory for government-submitted bills). The government called for a consultation between the five parliamentary groups of political parties. None of the opposition factions supported the proposal. The general public was informed about the draft before its submission to Parliament only through an information leak to the media; therefore no public/professional debate could precede the political debate in Parliament. Such a process violates the right to participate in public affairs protected by Article 25 of ICCPR⁴.

Furthermore, to our knowledge, the government has not conducted any risk assessment regarding the planned legislation, although this is required by Recommendation 1, 8 and the Interpretive Notes of the Financial Action Task Force (FATF) and the Directive (EU) 2015/849 of the European Parliament and of the Council.⁵

3.2.FREEDOM OF EXPRESSION

Related reference to EU or international law:

- EU Charter of Fundamental Rights Article 11
- ICCPR Article 19
- ECHR Article 10

The law violates the citizens' and their organizations' freedom of expression when it obliges NGOs to use negative labels as their self-identification, in order to discredit their opinions in

⁴ It also violates the UN Human Rights Council Resolutions regarding participation and the Council of Europe Code of Good Practice for Civil Participation in the Decision-Making Process

⁵ The international policies developed by FATF (Recommendation 1, 8 and the Interpretive Notes of the Financial Action Task Force (FATF)) and the Directive (EU) 2015/849 do not provide the basis for introducing reporting/transparency rules on associations/foundations receiving foreign funding as such. Furthermore, the draft law does not follow the risk-based and proportional approach required by FATF which asks that the government first identify which NGOs are at risk for counter-terrorism financing purposes before imposing further legal measures. Considering this, the draft law may also be in violation of the Directive (EU) 2015/849. The Directive requires a risk-assessment, evidence-based decision-making, and proportionate approach that considers the specific needs and the nature of the business of the entities affected. The Directive asks countries to align their approach with FATF recommendations, as well as the Union data protection law and the protection of fundamental rights as enshrined in the Charter. As we discuss below the draft law violates several fundamental freedoms as well.

the public discourse.⁶ This labeling roots in the presumption that foreign funding enables foreign interest groups to enforce their own interests instead of the public interest, through the societal influence of the NGOs, and it endangers the political, economic interests of the country as well as the operation of statutory institutions without undue influence. (This presumption appears in the preamble and the justification of the Bill.) Compelling NGOs to use negative labels on their publications causes that their opinions will be handicapped: they will be always coupled with the discrediting message stating that the source of the opinions expressed are serving other interests than those of the Hungarian nation and society.

3.3. RIGHT TO PERSONAL DATA PROTECTION AND RIGHT TO PRIVACY

Related reference to EU or international law:

- EU Charter Article 8
- ECHR Article 8
- ICCPR Article 17
- EU General Data Protection Regulation (2016/679) Article 9.

The Bill violates the rights to data protection and privacy when it obliges NGOs to submit the name, country and city of each foreign donor, even if they are private individuals. The list of individuals providing financial support to certain NGOs is a list of identifiable people indicating their affiliation, opinion and belief. There is no proportionate legitimate aim of such an interference with personal privacy, and none of the possible legal grounds specified in the EU GDPR of such a data processing may be applied.

There is no justification in a democratic state to make a list of individuals who support certain organizations.⁷ Furthermore, the obligation to list private donors is also a violation of their freedom of expression. By supporting a cause, they also express their opinion, and being listed for doing so is a disproportionate restriction on that right by the state.

3.4. FREEDOM OF ASSOCIATION

Related reference to EU or international law:

- EU Charter Article 12
- ICCPR Article 22
- ECHR Article 11

The sanctions imposed by the bill (fines between 10.000 – 900.000 HUF \approx 32 – 2.900 EUR; dissolution of the organization by the court upon a motion by the prosecutor) are extremely harsh, therefore disproportionate, considering the nature and the significance of the obligations specified by the bill. It also has to be noted that according to current law, the legal personality of an association can only be revoked if the court dissolves it for reasons

⁶ As stated in the OSCE/ODIHR-Venice Commission Joint Opinion No. 738/2013 on the draft law of the Kyrgyz Republic, “the labeling of a non-commercial organization as foreign agent and the obligation for it to include a reference to the “foreign agent origin” in any materials published or distributed..., together with the additional reporting obligations ...undoubtedly represent an interference with the exercise of the right to freedom of association and of freedom of expression without discrimination”.

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2013\)049-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2013)049-e)

⁷ According to the Council of Europe Recommendation CM/Rec(2007)14 on the legal status of non-governmental organizations in Europe, “All reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality”.

[https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2007\)14E_Legal%20status%20of%20NGOs.pdf](https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2007)14E_Legal%20status%20of%20NGOs.pdf)

exhaustively prescribed by law (i.e. committing a crime, infringement of others' rights, unconstitutional activity), or if the court establishes the dissolution of the association without succession (i.e. because it fulfilled its original purpose or the number of its members remains below ten for six consecutive months – therefore it is not an association anymore). The Bill would introduce a new ground for dissolution by the court as a sanction for non-compliance with certain administrative obligations. Non-compliance with administrative obligations (e.g. infringement of tax law, or failure of reporting) is not considered as legal ground for dissolving an association in democratic states, as such a restriction of the freedom of association would not meet the standards of having a legitimate aim, pressing social need and proportionality.

3.5. NON-DISCRIMINATION IN RELATION TO FREEDOM OF ASSOCIATION

Related reference to EU or international law:

- EU Charter Article 21 and 12
- ICCPR Article 26 and 22
- ECHR Article 14 and 11

The Bill also violates the general prohibition of discrimination in relation to the freedom of association when it treats NGOs differently on the basis of the sources of funding they receive. The European Court of Human Rights was reluctant to accept the foreign origin of a NGO as a legitimate reason for a differentiated treatment,⁸ and, according to the Venice Commission, the same reluctance would *a fortiori* be in place in case of mere foreign funding.⁹

The Bill also violates sectoral equity: it treats NGOs with legal personality differently than other entities without any reasonable justification; therefore it disproportionately targets and burdens NGOs with onerous requirements not applicable to the corporate sector. The Bill imposes more burdensome reporting requirements and sanctions on NGOs than on other entities (including other entities that are also involved in the policy discourse) without proper justification.¹⁰ It is also not justified why the Bill applies to this category of NGOs and excludes other organizations, such as sports and religious organizations from the scope of the law, especially in light of the reasons attached to the Bill, according to which the main consideration behind the legislation is that NGOs can and do influence public opinion. It is obvious that religious organizations also have this ability – often to a much greater extent than other civil society organizations –, and it is also clear that on the basis of this reasoning, media companies should also fall under the same obligation.

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⁸ Moscow Branch of the Salvation Army v. Russia, Application No. 72881/01, Judgment of 5 October 2006, par. 81-86.

⁹ Venice Commission Opinion on Law on Foreign Agents of The Russian Federation. CDL-AD(2014)025, par. 59.

¹⁰ According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association there is no basis in international human rights law for imposing more burdensome reporting requirements upon NGOs than upon businesses or other entities and that justifications such as protecting State sovereignty are not legitimate bases under the international human rights instruments. Factsheet: Comparing treatment of business & associations (General Assembly Report – Oct. 2015). http://freeassembly.net/wp-content/uploads/2015/09/A_70_266_ENG.pdf