

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

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SUMMARY: This application is submitted against the violation of the applicant's rights under Articles 10, 11, 13, 14 and 18 of the Convention by Article 253 of Hungary's Act XLI of 2018 on the Amendment of Certain Tax Laws and Other Related Laws and the Special Tax on Immigration.

REQUEST FOR PRIORITY: The applicant requests that the application be given priority under Rule 41 of the Rules of Court because of the impugned legislation's potential application for the purposes of silencing critical CSO voices in Hungary through vexatious tax investigations and their ramifications, including fines and the withdrawal of the applicant's tax number. Previous arbitrary actions of state authorities against CSOs (see below) prove that this risk is not hypothetical.

THE APPLICANT: The Hungarian Helsinki Committee (HHC) is an association registered under Hungarian law, which has been active in the area of asylum law for close to 25 years. Since 1998, as an implementing partner of the UN Refugee Agency (UNHCR), the HHC has provided through its contracted lawyers legal assistance to asylum-seekers, refugees and stateless persons in Hungary. The HHC has also carried out EDUCATIONAL ACTIVITIES in the field of asylum, statelessness and migrant detention. In the past ten years, HHC experts have trained over 4000 professionals on these issues, including lawyers, judges, prosecutors and police officers from over 80 countries. For a long time HHC managed the Refugee Law Reader a comprehensive on-line model curriculum for the study of asylum and refugee law aimed to be used by professors, students, lawyers and advocates. The HHC has organized a number of MEDIA SEMINARS on migration related issues. In 2009, as an invited project partner of the Hungarian Office of Immigration and Nationality, an HHC expert delivered training on migration and international protection issues to 20 Hungarian journalists on two occasions. In May 2011, the HHC trained 18 journalists in the framework of the HHC-led "The Media in Support of Migration" project. In April and May 2014, the HHC trained 12 journalists in the framework of the HHC-led "Training Media Workers for an Inclusive Society" project. The same project included the preparation and the test-run of a university curriculum on migration for communication students, in cooperation with the University of Pécs. The HHC also ran a number of CAMPAIGNS related to its activities, including the "family is back together" campaign presenting successful stories of family reunification. The campaign site is available at: egyuttacsalad.helsinki.hu. Open Society Foundations (founded by Hungarian born financier George Soros) has been one of the most important donors of the HHC's activities.

THE PROCESS LEADING TO THE ENACTMENT OF THE LAW: Since August 2013, human rights watchdog CSOs have been targeted by attacks by the Hungarian government and the ruling coalition (see attached timeline). In the summer of 2014, the Hungarian Prime Minister (PM) publicly denounced human rights CSOs as "paid political activists who are trying to help foreign interests". Rhetorical attacks were followed by administrative and criminal investigations against a number of CSOs involved in the so-called EEA/Norway Grants. These CSOs were accused by Hungarian politicians and authorities of misusing funds, although the funders themselves, including the Norwegian State, declared the accusations unfounded from the very beginning and called on the Hungarian authorities to stop the vexation of CSOs. A year later, the criminal charges were dropped, but the tax authority kept investigating some of the concerned CSOs until February 2016, before concluding that there had not been any irregularities necessitating further proceedings. Thus, while all the accusations turned out to be unfounded, the credibility of CSOs was heavily undermined, and some of them were unable to continue their activities because of the burden that the proceedings placed on their financial and human resources.

During the 2015 migration crisis, the Hungarian government started an intensive campaign vilifying migration and migrants. The campaign that has been going on ever since depicts migrants as potential terrorists, and it has become its central theme that the force behind the crisis is Mr Soros, who – by flooding Europe with Muslim immigrants – plans to undermine European and Christian values in order to realise his idea of an open society. The campaign is connected to the issue of CSOs through the allegation that as part of this "Soros Plan" Mr Soros finances "fake" CSOs which under the disguise of human rights activities work to realise his intentions. In his "state of the nation" speech in February 2017, the PM said that "we will also need to take up the struggle against international organisations' increasingly strong activists. [...] We are not talking [here] about non-governmental organisations fighting to promote an important cause, but about paid activists from international organisations and their branch offices in Hungary. [...] The organisations of George Soros are working tirelessly to bring hundreds of thousands of migrants into Europe". In April 2017, a so-called "national consultation" (questionnaires sent out to the adult population, but collected and processed in an unregulated and non-transparent manner) titled "Let's Stop Brussels" was launched, presenting citizens with six questions relating to the alleged interference in the Hungarian domestic affairs by foreign actors.

Statement of the facts (continued)

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The questions were formulated in a highly manipulative manner confirming the message of the government propaganda that organisations receiving foreign funding pose severe risk to Hungary. Quoting the overwhelming support of its stance among respondents, the Hungarian legislature passed Act LXXVI of 2017 on the Transparency of Organisations Receiving Support from Abroad, which imposed the obligation on CSOs receiving over HUF 7.2 million per annum from abroad to register as "organisations supported from abroad" and indicate this fact in all their public communications under the ultimate threat of being dissolved. Another national consultation concerning the "Soros Plan" was launched in September 2017. Question 6 stated that "the aim of the Soros Plan is to repress the languages and cultures of European countries in order to accelerate the integration of illegal migrants". Question 5 expressly mentioned two NGOs, the HHC and Amnesty International, claiming that these Soros-supported organisations "assist immigration and defend immigrants who have committed unlawful acts". (The HHC challenged this statement in a lawsuit, and on 4 May 2018 the Budapest Regional Appeals Court found that it was false and misrepresented HHC's position.) Again quoting the results of the consultation, on 18 January 2018, the Hungarian government launched the First "Stop Soros" Package, a proposal of three laws targeting CSOs, requiring organisations that receive foreign funding and allegedly "propagate mass migration" or "support illegal migration" to register as such and pay a 25% tax on any foreign revenue given for "supporting illegal migration". This package was replaced by the Second "Stop Soros" Package that would have – among others – required organisations carrying out activities in the field of migration to apply for a license from the Interior Minister to continue performing their work. Failure to apply for a license could have ultimately resulted in dissolution by a court. Licensed groups would have been required to pay a 25% tax on any foreign funding. This package was withdrawn, and on 29 May 2018, a new draft legislative package was submitted to Parliament by the Minister of the Interior. This Third "Stop Soros" Package that criminalizes organizing activities aimed at providing assistance to asylum seekers was adopted on 20 June 2018 triggering heavy criticism from the Venice Commission and an infringement procedure launched by the European Commission. On 19 June 2018, the Minister of Finance submitted and on 20 July, the Parliament passed Act XLI of 2018 on the Amendment of Certain Tax Laws and Other Related Laws and the Special Tax on Immigration, Article 253 of which stipulates the special tax on immigration. The essence of the legislation is that a 25% tax is imposed on financial support provided for any "immigration supporting activity" in Hungary or for the operations of any Hungarian organisation "that carries out activities to promote migration." Immigration supporting activity" is "any programme, action or activity that is directly or indirectly aimed at promoting immigration (the permanent relocation of people from their country of residence to another country [...])" and is realised by (i) carrying out media campaigns, media seminars and participating in such activities, (ii) organising education, (iii) building and operating networks or (iv) propaganda activities that portray immigration in a positive light. The primary taxable entity is the funder, who is obliged to declare and pay 25% of the support provided to the organisation performing immigration supporting activities, and also notify the grantee of this fact. If the funder fails to do so, the grantee becomes obliged to pay the tax after the costs incurred in the course of performing the immigration supporting activities listed above. Potential sanctions for failure to comply with the obligation to declare and pay this tax include a tax fine up to 200% of the tax deficiency (Act CL of 2017 on Taxation, Article 215) and probably even imprisonment (up to 10 years depending on the concerned amount) for tax fraud (Criminal Code, Article 396). The law's reasoning states: "the activities of organisations assisting immigration [...] are accompanied by an increase in society's joint expenditures, since financing state tasks related to immigration results in an increase in the expenditures of the state budget. It is incompatible with the principle of burden sharing that the entire society should pay the costs that arise because the activities of some organisations result in an increase of immigration, and thus an increase in state tasks and expenditure."

GOVERNMENT COMMUNICATION: Throughout the above outlined process, government agencies and representatives of the ruling coalition have (i) repeatedly charged HHC with supporting and facilitating (illegal) migration (although they could never concretely identify any illegal action by HHC); (ii) repeatedly referred to the fact that the new tax targets CSOs focusing on migration including the HHC; and (iii) unveiled their wish that HHC would be dissolved, banned or expelled from Hungary. E.g. MP Szilárd Németh, Vice President of Fidesz stated on 10 January 2017 that "the Soros empire's fake civil organisations are maintained so that global capital and the world of political correctness can be imposed on national governments. These organisations have to be pushed back with every means, [...] they have to be SWEPT OUT OF HERE [emph. added]". In January 2018, during discussions on the First "Stop Soros" Package, Antal Rogán, chief of staff of the PM said that the Hungarian government has a list of those organisations that picture immigration as a good thing, and aid migration. He said that "whether it is the Helsinki Committee or anybody else", they will fall under the scope of the "Stop Soros" law. On 21 March 2018, the government's press office issued a press release, in which it stated: "[W]hat has come to light in the past few days has confirmed our stance: the operation of Soros organisations MUST BE BANNED [emph. added], the operation of organisations focusing on immigration must be made dependent on the permission of the state, and the STOP Soros legislative package [...] must be passed by the Parliament immediately after the elections".

Statement of the facts (continued)

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A week later, Bence Tuzson, Secretary of State Responsible for Government Communication said the following: "what we have already known and suspected will become obvious: the clear aim of the Helsinki Committee is to settle migrants in Hungary [...]". He added that the organisations funded by George Soros work to change Hungary and turn it into an immigrant-country and "if at the general elections of 8 April the 'people of Soros' seize power, they will accomplish [their plan of] settling [migrants in Hungary] and "will settle migrants in apartments owned by the state, municipalities and private persons". On 27 June 2018, i.e. a week after the tax bill was targeting organisations supporting immigration was submitted to the Parliament, the spokesperson of Fidelitas (the youth branch of Fidesz) placed a sticker with the text "Organisation supporting immigration" on the door of the building where HHC is seated. He said that "the Helsinki Committee and several other organisations work to turn Hungary into an immigrant country" and "Europe into an immigrant continent". The same rhetoric was used in relation to the immigration tax too. On 22 July 2018, István Hollik, MP of the Christian Democratic People's Party (KDNP, the smaller party of the ruling coalition) said at a press conference that the immigration tax is in fact a "Soros tax" providing a new layer of protection for Hungary. He added that the "Soros organisations" must pay if they wish to carry out any activity supporting immigration or accept support for such activities. He stated that the objective of Soros organisations is to turn Hungary into an immigrant country and the Soros tax levied on them can be spent on protecting the borders. Máté Kocsis, leader of the Fidesz faction was reported to have said that "the state imposes a tax on organisations that aid immigration or accept funding for this purpose. [...] The 'Soros-organisations' are known to carry out such activities and are not willing to give them up." On 23 July 2018, Lőrinc Nacsa, faction leader of KDNP made reference to the applicant in this context. He said that the special immigration tax aims to protect the security of Hungary, and it could be called a "Soros-tax", because primarily organisations funded by Mr Soros carry out the taxable activities. When the reporter asked how the donor and the grantee can be distinguished and quoted as an example the Open Society Foundation and the Helsinki Committee, Mr Nacsa answered in a way indicating that the tax applies to the HHC either as a donor or as a grantee: "There are efforts to build several similar networks. These organisations that you have also mentioned, are the recipients of the funding in a lot of cases, and sometimes they fund others as well, this is pretty non-transparent." Not only CSOs were "charged" with being moved by Mr Soros from the background with the aim of invading Hungary: this conspiracy theory was extended to all entities criticising the ruling coalition or taking a stance opposing that of the government. The list ranges from the European Commission to the European Court of Human Rights. E.g. referring to the Ilias and Ahmed judgement, István Hollik stated that the Hungarian judge, András Sajó is a "man of George Soros", and this is how the "migrant business" is set up: organisations that can be linked to Soros sue Hungary before a court where the people of Soros sit.

UNCERTAINTIES OF THE LEGISLATION: The impugned legislation is full of uncertainties. By way of example, the law makes donations supporting activities "indirectly" promoting immigration taxable, however, the inclusion of the term "indirectly" makes the provision so overly broad that it is impossible to assess with any precision if a given activity that is somehow, even distantly related to migration falls under the law. Similarly, it is not defined in any way what shall be regarded as a "network" or "propaganda" for the purposes of the law. Furthermore, the provisions can be understood in a way that if a donor provides financial support to a Hungarian organisation, the full amount of the support falls under the 25% if the grantee performs any activity promoting immigration (even if that is only a minimal part of what the organisation does), although this seems to be in contradiction with the professed purpose of the legislation (obliging those promoting immigration to take a share in the costs caused by immigration). On 24 August 2018, Central European University announced that it "has been forced to announce the immediate suspension [...] of its education programs for registered refugees and asylum seekers [...] (OLive), together with the administration of its European Union-funded Marie Curie Research Grant on migration policy in Central and Southern Europe" in response to the immigration tax law. They added: "CEU's action follows advice from our tax advisors in respect of potential liability for a 25% levy on our immigration related programs. We are suspending these programs while we await clarification of our tax and legal situation." It has been reported that even employees of the tax authority are uncertain about the interpretation of the law. The e-mail attached as Annex 26 shows that UNHCR had to suspend the process of signing a grant agreement with the applicant with regard to an education-related project because they were uncertain whether the tax law would apply to the grant.

TAX AUTHORITY THREAT: On 17 September 2018, the applicant put out a press release explaining why it thinks that the law in its current form is not applicable to it. On the same day, the National Tax and Customs Administration issued a press release stating that the tax authority will be strict in overseeing the implementation of the tax norms and emphasizing that if an organization fails to pay the tax it will have to pay a fine. The press release declared that "the deadline for declaring and paying the 25% tax expires on Monday, but certain organisations speak openly about circumventing the laws and tax norms". Although the applicant obviously did not do so, only presented its legal stance, the connection between the two releases seems rather clear, substantiating the applicant's fear that there is an intention to apply the law to them.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

59. Article invoked	Explanation
Victim status of the applicant in relation to the breached Convention rights (Articles 10, 11, 13, 14 and 18)	While at the moment the applicant does not carry out any activities that it considers to be falling under the scope of the impugned legislation, in the past it did have activities that could have been categorized as “immigration supporting activities” under the law (especially due to its overly broad nature and the uncertainty of what constitutes INDIRECT support of immigration), e.g. its media seminars or campaign on family reunification. The applicant also does not wish to exclude the possibility of implementing such activities in the future, but may be forced to do so if it does not want to subject itself to the punitive tax complained of. Having to choose between exercising freedoms and facing the risk of negative consequences for doing so establishes victim status even if the applicant refrains from exercising a particular freedom so as to avoid triggering the consequence (<i>Dudgeon v UK</i> , § 41; <i>Lombardo v Malta</i> , § 61). This chilling effect is in place in this case. The legislation also puts the applicant into a direct disadvantage (compared to CSOs dealing with other issues, non-Hungarian CSOs that focus on migration-related matters outside Hungary, and exempt entities, such as party foundations) when seeking financial support from donors, because of the obvious chilling effect that the tax has on donors in matters related to HHC's ctivities, because of the higher costs of providing support to the applicant for taxable activities, but also because some donors do not wish to risk being sanctioned for not paying taxes in cases when the applicability of the legislation is uncertain due to its lack of clarity. This comparative disadvantage is also a "direct effect" that the applicant must suffer as a result of the impugned legislation. Finally, the ruling coalition's rhetoric showing that the applicant is one of the targets of the tax and the past experience of using unfounded tax investigations to put pressure on CSOs that are critical of the government also establishes the applicant’s victim status.
Articles 11 and 10	In pursuing their objectives and in conducting their activities, associations shall be free from undue interference. They shall also have the freedom to seek, receive and use financial, material and human resources for the pursuit of their activities (c.f. the joint OSCE and Venice Commission guidelines on the freedom of association, §§ 29 and 32; and <i>Ramazanov v. Azerbaijan</i> , § 59). The impugned legislation interferes in the manners outlined above with both of these important aspects of the freedom of association as protected by ARTICLE 11. Based on the government rhetoric (c.f. the stickers placed on the applicant's office door) and due to the lack of clarity of the legislation, the risk that the applicant's professed views on the state's obligation to guarantee the rights of asylum seekers, refugees, and other aliens will be regarded and consequently taxed as "propaganda portraying immigration in a positive light" is sufficiently direct to create a chilling effect on the applicant's exercise of its freedom to impart information and ideas under ARTICLE 10. The interference with these rights is not compatible with the Convention. (i) IT IS NOT PRESCRIBED BY LAW: Article 253 does not have the quality required to meet this criterion. It is not foreseeable (not formulated with sufficient precision to enable the individual to regulate his/her conduct), nor does it afford protection against arbitrary interferences by public authorities (c.f. <i>Koretskyy v. Ukraine</i> , §§ 46-48). Examples for this are quoted in the Facts section, here the applicant only reiterates the uncertainty of what constitutes "indirect" support of immigration. (ii) IT HAS NO LEGITIMATE AIM: The law's reasoning states that the tax is levied because the activities of organisations assisting immigration increase state expenditures, and the principle of burden sharing requires that they should contribute to the increased costs. This however clearly does not correspond to any of the legitimate aims exhaustively listed in Articles 10 or 11 of the Convention. (iii) IT IS NOT NECESSARY IN A DEMOCRATIC SOCIETY: Even if -- strictly for the sake of the argument -- it is presumed that the interference has a legitimate aim, it does not respond to a pressing social need and is disproportionate. Immigration to Hungary is negligible. The number of foreign citizens residing in Hungary is around 161,800, which amounts to only 1.6% of the total population and is much lower than when it was the highest in 2011 (206,900). The number of asylum seekers is also steeply decreasing Whereas in 2016, 29400 asylum claims were registered, in 2018 (up to 1 May) only 325.

