



HUNGARY: LIVING UNDER THE SWORD OF DAMOCLES

THE IMPACT OF THE LEXNGO ON CIVIL SOCIETY IN HUNGARY

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Cover photo: Heart stunt in Budapest: Amnesty International placed a giant heart balloon outside the Parliament in Budapest to tell Hungarian MPs that people working for a fair and safe Hungary need to be protected, not attacked or threatened.

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EXECUTIVE SUMMARY

The paper provides a review of the impact of the law restricting Non-Governmental Organizations (NGOs) adopted in Hungary in 2017, that requires civil society organizations receiving support from foreign and international sources to register as “foreign-funded”.

While several NGOs have registered themselves as “foreign funded”, to date there have been very few cases of direct consequences for NGOs under this law. Legal measures against these organizations have not been enforced but continue to pose a threat to civil society, and their cumulative effect on NGOs in Hungary has been mostly negative, including a widespread chilling effect, self-censorship and divisions within civil society groups.

The LEXNGO was challenged in the Court of Justice of the European Union (CJEU) and in June 2020 the Court ruled that Hungary had introduced discriminatory and unjustified restrictions on foreign donations to civil society organizations by requiring affected organizations to register as “foreign-funded organizations”. In spite of the judgment, the Hungarian Parliament has not repealed or amended the respective law to date, leading the European Commission to launch an infringement procedure against Hungary.¹ Furthermore, a government-founded public foundation distributing EU-funds rejected one NGO’s application for an EU grant over non-compliance with the LEXNGO legislation in August 2020, even after the CJEU had ruled that the LEXNGO was discriminatory. The foundation insisted that being registered as a foreign-funded organization was a precondition for access to EU funds.

Amnesty International urges the Hungarian Parliament to repeal or substantially amend the LEXNGO and calls on the government and Parliament to reject the adoption of any new measures that unduly restrict NGO activity or that impose discriminatory or unjustified restrictions on the right to seek, receive and utilise funding from foreign or international sources, as mandated by the CJEU,² whether through additional restrictive mandatory registration or any other type of harassment.

¹ Letters of formal notice, Art. 260 (https://ec.europa.eu/commission/presscorner/detail/en/INF_21_441)

² Judgment of the Court (Grand Chamber), 18 June 2020, <http://curia.europa.eu/juris/document/document.jsf?docid=227569&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=6267498>

1. METHODOLOGY

The research for this paper was based on a desk review of available literature and media coverage, official statistics, reports and government statements (where accessible), as well as interviews with Hungarian civil society stakeholders, keeping them anonymous for security reasons, most of them belonging to the critical “watchdog” organizations engaged in advocacy and public criticism of the government or engaged in politically sensitive and contentious issues that the Hungarian government characterizes as threats to the nation, such as human rights and migration. Some of these organizations boycotted registration as “foreign-funded” NGOs, while a few of them have registered. Amnesty International conducted 15 interviews by phone and Skype, with all conversations taking place between 19 October and 9 December 2020.

Amnesty International also sought the views of the Hungarian State Treasury during the research but has not received any answer. Findings were shared with the Hungarian Justice Minister Judit Varga providing her with a right of reply prior to publication but no response was received by April 8, 2021.

2. BACKGROUND

In June 2017, a new Act on the Transparency of Organizations Supported from Abroad (LEXNGO) entered into force.³ The law, styled after the Russian “foreign agents” law,⁴ prescribes that civil society organizations “annually receiving money or other assets from abroad twice the amount specified in the Act on the Prevention and Combatting of Money Laundering and Terrorists Financing (which is 7.0 million HUF – today around 20,000 EUR) have the obligation to register with the Regional Court as “organizations receiving

³ 2017. évi LXXVI. törvény a külföldről támogatott szervezetek átláthatóságáról/Act on the Transparency of Organizations Supported from Abroad <https://net.jogtar.hu/jogszabaly?docid=a1700076.tv>

⁴ In January 2006, new legislative amendments (Federal Law No. 18-FZ of 10 January 2006 on Introducing Amendments to Certain Legislative Acts of the Russian Federation) came into force in Russia concerning the non-governmental sector. This particular law focused on a specific sub-category of non-commercial organisations called “public associations” which consist of public organisations, mass movements, public foundations, public institutions and several other forms of associations. According to the Opinion of the Commissioner for Human Rights of Council of Europe from 15 July 2013, approximately 50% of registered non-commercial organisations in Russia were public associations. Articles 29 and 38 of the Law required public associations to submit information about the funding and property they receive from foreign and international organisations and foreign persons to the registration authority. Repeated failure to submit such information in a timely manner could lead to the termination of the activities of the organisation. Following the adoption of this Law, foreign and international non-commercial organisations operating in Russia were obliged to undergo a reregistration in Russia. (OPINION OF THE COMMISSIONER FOR HUMAN RIGHTS ON THE LEGISLATION OF THE RUSSIAN FEDERATION ON NON-COMMERCIAL ORGANISATIONS IN LIGHT OF COUNCIL OF EUROPE STANDARDS, 15 July, 2013, <https://rm.coe.int/16806da5b2>) Under the „Foreign Agent” law of 2012, NGOs registered in Russia and receiving foreign funding are labelled as “foreign agents” if they are engaged in what is defined vaguely as “political activity”. Organizations must be listed on the “foreign agents” register, administered by the Ministry of Justice. „Although the Law explicitly states that the activities in the sphere of science, culture, art, health care, social support and environmental protection are not classified as “political activities”, in practice, almost any NGO receiving funds from abroad is likely to be placed on the “foreign agents” register, irrespective of the nature of its activities or the amount of funding, and regardless of whether funding is received directly as a grant from a foreign foundation or indirectly as a contribution from another Russian NGO which receives (or has received) foreign funding.” The Law has had a chilling effect on Russian civil society. According to data from the Ministry of Justice, as of June 2018, at least 158 groups had been labelled “foreign agents” at some point since the Law came into force, including 30 which were forced to close. Laws designed to silence: The global crackdown on civil society organizations (<https://www.amnesty.org/download/Documents/ACT3096472019ENGLISH.PDF>)

support from abroad”⁵ (foreign-funded) and use this label on their websites and all publications.⁶ They must also disclose the identity of all such donors contributing 500,000 HUF (appr. 1300 EUR) or more.⁷ Religious and sports organizations, national minority organizations, associations and foundations that do not qualify as non-governmental organizations are exempt from this act.⁸ In addition, “funds received from the European Union through a budgetary state organ according to a separate law are not covered by this law”.⁹

According to the LEXNGO, non-compliant organizations are subject to sanctions that, after several steps, may lead to fines or even the organization’s dissolution.¹⁰

The adoption of LEXNGO crystalized for the first time in law the stigmatization that civil society organizations faced for several years.¹¹ The Council of Europe’s Venice Commission called on the government to withdraw the LEXNGO when it was only a draft.¹²

3. APPLICABLE LEGAL FRAMEWORK

The right to freedom of association is a human right and an essential condition for the exercise of other human rights, such as the rights to freedom of expression, peaceful assembly and freedom of thought, conscience and religion.¹³ The right to association is guaranteed by different international human rights treaties that Hungary is a State party to, including the International Covenant on Civil and Political Rights (ICCPR),¹⁴ and the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁵ It is also guaranteed in the Fundamental Law of Hungary.¹⁶

Civil society organizations play an important role in achieving different goals that are in the public interest, including the promotion and protection of human rights, and are a tool that enable individuals to work

⁵ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June, page 3, A/7 2017)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

⁶ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June, page 3, A/7 2017)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

⁷ 2017. évi LXXVI. törvény a külföldről támogatott szervezetek átláthatóságáról, <https://net.jogtar.hu/jogszabaly?docid=a1700076.tv>

⁸ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June, page 4, A/8 2017)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

⁹ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June, page 4, A/8, 2017)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

¹⁰ 2017. évi LXXVI. törvény a külföldről támogatott szervezetek átláthatóságáról/ Act on the Transparency of Organizations Supported from Abroad, <https://net.jogtar.hu/jogszabaly?docid=a1700076.tv>

¹¹ <https://www.amnesty.org/en/latest/news/2017/06/hungary-we-will-not-be-intimidated/>

¹² OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

¹³ Joint Guidelines on Freedom of Association, Adopted by the Venice Commission (12-13, December, 2014), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e), page 5, 15

¹⁴ Article 21, https://www.echr.coe.int/documents/convention_eng.pdf

¹⁵ Article 11, https://www.echr.coe.int/documents/convention_eng.pdf

¹⁶ Magyarország Alaptörvénye/Fundamental Law of Hungary, VII/2 about the freedom of association, <https://www.parlament.hu/irom39/02627/02627.pdf>

towards the elimination of human rights violations and hold those responsible to account.¹⁷ Associations themselves enjoy human rights, including the right to privacy and to be protected from discrimination.¹⁸

The right of groups to seek, receive and utilize resources from national, foreign and international sources is an essential component of the right to association.¹⁹ The UN Human Rights Council has stressed the importance of safeguarding the capacity of civil society organizations to engage in fundraising activities, calling upon states not to criminalize or delegitimize activities in defence of human rights on account of the origin of funding.²⁰ Similarly, the UN Human Rights Committee and the Special Rapporteur on the rights to freedom of peaceful assembly and of association have stressed the importance of safeguarding NGOs' capacity to engage in fundraising activities, and have argued that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with Article 22 of the ICCPR.²¹ Similarly, Principle 7 of the Venice Commission-OSCE Joint Guidelines on Freedom of Association stipulates that „associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources”.²²

While the right to association is not absolute, international human rights law requires states to ensure that any restriction imposed on individuals' right to gather and organize must be adequately prescribed by law, in accordance with the principle of legality, and be necessary and proportionate to a legitimate aim. To comply with these provisions, states must ensure that any interference by authorities genuinely pursue one of the limited reasons allowed for such restriction, which are listed in the ICCPR, namely national security, public safety or public order, public health or morals and the protection of the rights and freedoms of others.²³

According to the Venice Commission, the right to freedom of association „shall be subject only to the requirements in laws that are generally applicable to (...) the prevention of money laundering and terrorism”.²⁴ According to Principle 9 of the Joint Guidelines, any limitations on access to resources from abroad must be proportionate to the state's objective of protecting the interests of national security, public safety or public order.²⁵

¹⁷ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on HRDs), preamble

¹⁸ Joint Guidelines on Freedom of Association, Adopted by the Venice Commission (12-13, December, 2014), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e), page 12, 15

¹⁹ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art. 2.1, 1999,

²⁰ Human Rights Council Resolution, 22/6, Protecting human rights defenders, UN Doc. A/HRC/Res/22/6, para. 9.b

²¹ Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, 2012, UN Doc. A/HRC/20/27, para. 69

²² Joint Guidelines on Freedom of Association, Adopted by the Venice Commission (12-13, December, 2014), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e), page 18

²³ Article 22 of International Covenant on Civil and Political Rights,

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> See also Article 11 of the ECHR

²⁴ Joint Guidelines on Freedom of Association, Adopted by the Venice Commission (12-13, December, 2014), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e), page 18

²⁵ Joint Guidelines on Freedom of Association, Adopted by the Venice Commission (12-13, December, 2014), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e), page 18

4. LEGAL CHALLENGES TO THE LEXNGO

In August 2017, 23 NGOs affected by the newly adopted LEXNGO, including Amnesty International, submitted a joint complaint to the Constitutional Court of Hungary²⁶ arguing that the Act violates the rights to freedom of expression and association, as well as the rights to privacy and a right to have a good reputation under the Fundamental Law of Hungary.²⁷

The European Commission (Commission) launched an infringement procedure²⁸ in July 2017 after the LEXNGO entered into force on the grounds that it limits the rights to freedom of association and expression as well as the free movement of capital within the EU.²⁹ As the matter could not be resolved, the Commission referred the case to the Court of Justice of the European Union (CJEU) in February 2018.

The CJEU issued their judgement on LEXNGO on 18 June 2020.³⁰ It held that “Hungary had introduced discriminatory and unjustified restrictions with regard to both the organizations at issue and the persons granting them such support”.³¹ These restrictions, according to the Court, “run contrary to the obligations on Member States in respect of the free movement of capital³² and on the right to respect for private and family life, the right to the protection of personal data³³ and the right to freedom of association”.³⁴ The Hungarian Constitutional Court stayed its procedure while the CJEU was considering the case,³⁵ but it has not yet decided on the case more than nine months since the CJEU delivered its judgement.³⁶

The CJEU’s judgment has immediate effect. The Commission wrote to the Hungarian government twice in the autumn (September and October) 2020 requesting clarification on measures taken to comply with the CJEU judgement³⁷ but they did not find the response satisfactory. On 18 February 2021, the Commission sent a letter of formal notice to Hungary informing the government that “this is an infringement procedure

²⁶<https://www.helsinki.hu/kozok-alkotmanyjogi-panaszt-adtuk-be-a-civilelloenes-torvennyel-szemben/>, <https://www.amnesty.hu/alkotmanybirosaghoz-fordultak-a-civilek/>, <https://www.helsinki.hu/kerdezz-felelek-a-civilelloenes-torveny-alkotmanybirosagi-panaszarol-qa/>

²⁷Article VII, VIII and V, Fundamental Law, Hungary, <https://www.parlament.hu/irom39/02627/02627.pdf> available in English at <https://www.parlament.hu/irom39/02627/02627.pdf>

²⁸ Infringement – European Commission refers Hungary to the Court of Justice for its NGO Law (https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5003),

²⁹ Article 12 of the Charter of Fundamental Rights of the European Union, known ‘the Charter’), https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en, Laid down in Article 63 TFEU (Treaty on the Functioning of the European Union), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

³⁰ Judgment of the Court (Grand Chamber), 18 June 2020, <http://curia.europa.eu/juris/document/document.jsf?docid=227569&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=6267498>

³¹ The restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law (Court of Justice of the European Union PRESS RELEASE No 73/20 Luxembourg, 18 June 2020). <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

³² Laid down in Article 63 TFEU (Treaty on the Functioning of the European Union) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

³³ Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union, known ‘the Charter’), https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en

³⁴ The restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law (Court of Justice of the European Union PRESS RELEASE No 73/20 Luxembourg, 18 June 2020). <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

³⁵ <https://arsboni.hu/kivar-az-alkotmanybirosag-ceu-es-civiltorveny-ugyeben/>

³⁶ The Constitutional Court is not bound by the judgement of CJEU or a deadline

³⁷ Some of the information about the correspondence was not published, but Katalin Halmi, correspondent of Hungarian daily of Népszava informed me about the content of her correspondence with Christian Wigand, EC Spokesperson of Rule of Law, <https://twitter.com/eublogo/status/1310921172587106304>, <https://twitter.com/eublogo/status/1323616927567273984>, https://nepszava.hu/3097908_elfogyott-a-turelem-magyarorszagnak-surgosen-modositania-kell-a-civileket-megbelyegzo-torvenyt

(...) meaning that the Commission can refer the matter back to the Court and ask for financial sanctions”.³⁸ In the letter of formal notice, the Commission asked Hungary to adopt and implement all required measures to remedy the situation.³⁹

In practice, this letter meant that the Commission considered that Hungary has not taken the necessary measures to comply with the judgment, despite repeated calls. In particular, the Commission raised concern over the fact that Hungary has not repealed the LEXNGO, which was found to be contrary to EU law.⁴⁰ In response, Hungarian Justice Minister Judit Varga said in a public debate on 24 February 2021 that the non-compliance with the CJEU ruling “is not an issue”.⁴¹ She referred to a “concept” which is “clear and fully in line with the CJE judgment” and which they sent on 12 February, though she didn’t elaborate where.⁴² Varga highlighted the government will abolish the law and make sure that other procedures are in place which provide full transparency of NGOs.⁴³

According to the Hungarian government’s answer for the Memorandum of the Commissioner for Human Rights of the Council of Europe published on 30st of March 2021⁴⁴ about Freedom of Expression and Media Freedom of Hungary, “the Hungarian Minister of Justice, Judit Varga, expressed one month ago that the Government of Hungary (hereafter: the Government) not only had indicated its readiness to repeal the disputed regulation, but also sent the legislative text on the regulation’s recast to the (European) Commission, indicating that as soon as the Commission informs the Government about the text’s admissibility, the Government would submit it to the Parliament immediately, so the draft bill could be negotiated during the spring session.”⁴⁵ The draft bill has not been made public and Amnesty International is not aware of any consultation with the stateholders.

5. IMPACT ON NGOS: MAIN FINDINGS

5.1 A “DAMOCLE’S SWORD” ON CIVIL SOCIETY?

While only a limited number of civil society organizations have suffered direct legal consequences for violating the provisions of the LEXNGO, the combined threat of the legislation and the prevailing political climate has already curtailed the activities of targeted NGOs. A director of a leading Hungarian NGO told Amnesty International that the political pressure and hostile rhetoric from the government achieve effects

³⁸ Based on Article 260 (2) Treaty on the Functioning of the European Union, February infringement package: Key decisions https://ec.europa.eu/commission/presscorner/detail/en/INF_21_441

³⁹ February infringement package: Key decisions https://ec.europa.eu/commission/presscorner/detail/en/INF_21_441

⁴⁰ February infringement package: Key decisions https://ec.europa.eu/commission/presscorner/detail/en/INF_21_441

⁴¹ <https://www.youtube.com/watch?v=RAybqhh2D-o&t=1s>,
https://twitter.com/daniel_freund/status/1364654782854680578,
<https://twitter.com/eublogo/status/1364841997228527617>

⁴² <https://www.youtube.com/watch?v=RAybqhh2D-o&t=1s>,
https://twitter.com/daniel_freund/status/1364654782854680578,
<https://twitter.com/eublogo/status/1364841997228527617>

⁴³ <https://www.youtube.com/watch?v=RAybqhh2D-o&t=1s>,
https://twitter.com/daniel_freund/status/1364654782854680578, <https://444.hu/2021/02/25/orbant-diktatorozo-peldamondatok-kapott-varga-judit-amikor-brusszelben-franciat-tanult>

⁴⁴ It is high time for Hungary to restore journalistic and media freedoms, <https://www.coe.int/en/web/commissioner/-/it-is-high-time-for-hungary-to-restore-journalistic-and-media-freedoms>

⁴⁵ Reflections on the Country Memorandum compiled by Dunja Mijatović, Council of Europe Commissioner for Human Rights by Hungary, <https://rm.coe.int/omments-of-the-hungarian-authorities-on-the-memorandum-by-the-council-1680a1f0f0>, page 21, see also https://nepszava.hu/3115198_civiltorveny-nincs-mire-varnia-a-kormanyrak

similar to “legal persecution”, which is not to suggest that there is no threat that legal instruments would be used in the future.⁴⁶ In other words, it is a sword of Damocles over the heads of NGOs.

The LEXNGO has played a role in deterring some civil society organizations from acting and diverted their time, energy and resources away from their programme activities to defending themselves and finding a way of operating in a new environment marked by smear campaigns orchestrated by leading politicians and the dominant government-aligned media.⁴⁷ Months after the Hungarian Parliament passed the first LEXNGO in June 2017, the government launched in October a highly biased “public consultation” on the so-called ‘Soros plan’⁴⁸ and specifically named the Hungarian Helsinki Committee (HHC) and Amnesty International as NGOs complicit in “illegal immigration and supporting terrorism.”⁴⁹

This also shows it is a highly political issue. According to the director of a leading Hungarian NGO, the government’s aim is to maintain the threat on an ongoing basis and generate the image of NGOs as the enemy. “The aim is not to shut us down for two reasons. One is that in this case they lose their perfect enemies in the public discourse and the other is they know a huge international scandal would follow up such a step ...if they would have wanted to shut us down, they could have done it a long time ago”. Another leader of a Hungarian NGO told Amnesty International that “the lack of enforcement of laws against the NGOs also highlights the deeply political nature of this issue”. This is supported by the fact that the smear campaigns against NGOs are ongoing in the government-aligned media and in some rare cases the attacks are personal and affect family members of NGO staff. The ruling political elite has since 2014 strongly castigated critical or even independent NGOs as threats to the country’s national security. Political leaders claim NGOs receiving foreign and international funding are puppets of their funders, carrying out a master plan to undermine the sovereignty of Hungary.⁵⁰

With the classification distinguishing between “foreign-funded” NGOs and the rest, the government has divided the sector by categorizing NGOs as either “bad” or “good”. The latter includes mostly religious organizations and small charitable or recreational associations, while the former covers NGOs engaged in advocacy and public criticism of the government and/or engaged in politically sensitive and contentious issues that the government is determined to characterize as threats to the nation, such as human rights and migration.

By the end of 2017, approximately 80 NGOs (including leading charities, animal welfare and environmental organizations) had registered themselves as “foreign-funded”, while another ten organizations (primarily human rights and community development NGOs) publicly boycotted registration.⁵¹ Staff of organizations in both categories told Amnesty International in October 2020 that their legal status had not been affected. The number of organizations in the “foreign-funded” organizations register grew year after year,⁵² reaching 162 NGOs in November 2020 and 177 in March 2021.⁵³ While a limited number of organizations who failed to register or openly boycotted the registration have been sanctioned, none had been directly inspected or penalized to date.⁵⁴ None of the organizations interviewed by Amnesty International who had registered as “foreign funded” had experienced any follow up on the issue either.⁵⁵

⁴⁶ The political pressure and the hostile rhetoric, the government’s anti-NGO propaganda and intimidation of organizations started around 2013 (with harassment and the threat to the fund operators and the project promoters of the EEA/Norway Grants in the spring of 2014) and became the key feature of public discourse in 2017.

⁴⁷ <https://english.atlatzo.hu/2019/06/30/data-visualization-this-is-what-the-pro-government-news-media-looks-like/>

⁴⁸ The “Soros Plan” national consultation was the government’s deliberate misrepresentation of George Soros’ proposals for managing the refugee crisis in 2015. The consultation conflates Soros’ remarks with a grand and elaborate scheme in which the “Brussels Commission” and Soros are in cahoots to dismantle the EU’s nation states and impose immigrants, i.e. Muslim terrorists, on them.

⁴⁹ The HHC later won a legal suit after having proven in court that the claims were unfounded and injurious to the organisation’s reputation. <https://verfassungsblog.de/the-hungarian-lex-ngo-before-the-cjeu-calling-an-abuse-of-state-power-by-its-name/>, <https://www.helsinki.hu/csatat-nyert-a-helsinki-bizottsag-a-nemzeti-konzultacios-perben/>, <https://www.helsinki.hu/jogserto-volt-a-nemzeti-konzultacio/>

⁵⁰ During the second half of 2017, government propaganda singled out philanthropist George Soros and his “network” - organizations supported by or linked to the Open Society Foundations - as the proclaimed “enemy” because of his alleged plan to introduce millions of immigrants to Europe, thereby threatening the integrity of the nation. Szilárd Németh, the MP of Fidesz was in charge of the campaign, who was a member of the National Security Committee between 2011-2018 and the Chairman of the Defense and Law Enforcement Committee between 2017-2018.

⁵¹ USAID Report on Hungary, 2017,

https://okotars.hu/sites/default/files/downloads/usaid_csosi_ee_2017_regional_report_en_hungary.pdf, page 3

⁵² Although, according to the law, deregistration is possible if no important foreign funding has been received during one year <https://net.jogtar.hu/jogszabaly?docid=a1700076.tv>

⁵³ https://civil.info.hu/kezdolap/civiltudastar/kulfoldrol_tamogatott_civil_szervezetek/index.html?st=napt%C3%A1r

⁵⁴ The information was confirmed by AI interviews and the USAID Report on Hungary, 2018, page 3

⁵⁵ According to the LEXNGO, the Prosecution Office is entitled to inspect and none of AI interviewees had a follow-up

5.2 NEGATIVE IMPACTS ON NGOS

While legal enforcement and consequences have largely been absent since the law came to force, NGOs interviewed for this briefing spoke of more indirect consequences and other associated repercussions which adversely affected their work or made it challenging. In this section Amnesty International shows how time, energy and resources of NGOs have been diverted to counter the effects of these laws instead of focusing on the communities they work for.

5.2.1 OPERATIONAL CONCERNS

All interviewees mentioned that initially much energy was diverted from core activities and strategic planning to preparation for “fighting” government attacks on civil society or to simply being alert all the time to what might come next. Employees and leaders of NGOs sometimes received death threats by phone or by email and attacks online via social media, and they felt they always needed to prove their legitimacy due to these attacks.

A government-led smear campaign and other forms of harassment also caused state officials at some crucial institutions to curtail their cooperation with or avoid entering into institutional partnerships with NGOs as they were afraid of personal or institutional retaliation. For example, leaders of NGOs told Amnesty International in October 2020 that state and municipal kindergartens and schools terminated previous collaboration with “foreign-funded” NGOs citing fears of political consequences.

The competent authorities terminated four agreements with the Helsinki Committee in 2017, including that with the immigration service.⁵⁶ As a result, the Helsinki Committee can no longer carry out its monitoring activities in detention and reception centers for asylum-seekers or migrants, and its lawyers were only allowed to meet with their clients in the transit zone or the few remaining immigration accommodation centres in Hungary. The HHC has also been denied access to Hungarian prisons for monitoring purposes.

Interviews conducted by Amnesty International also confirmed that organizations lost members, especially people who were state employees and in a few cases, businesses refused to provide services to NGOs (e.g. catering or renting).

5.2.2 DIFFICULTIES IN FUNDRAISING

The LEXNGO had an obvious chilling effect on the sector.⁵⁷ Both donors and beneficiaries exhibited some caution or reluctance towards organizations that were targeted by the government. While the Hungarian business sector was always reluctant to speak out and support NGOs publicly, a few institutional donors have also become more reluctant to give significant support to these organizations or only gave it anonymously. Interviewees confirmed that corporate and private donors had become much more careful and invisible, making most donations anonymously and distancing themselves from NGOs. Those interviewed by Amnesty International believed that too many anonymous donors are not helpful for fundraising campaigns.

While some NGOs, particularly smaller organizations, became hesitant about accepting money from abroad, interviewees confirmed that they didn't lose international institutional donors due to the LEXNGO. However, it caused confusion among donors over whether registration as a „foreign-funded” organization was a prerequisite before an international donation had legal basis.

As far as funding, the ratio of public funding in the whole Hungarian civil society sector's overall income has increased in recent years from approximately 38 percent to 45 percent,⁵⁸ calculated as the direct support to the NGO sector by the different levels of government, including EU Structural Funds. For the latter, NGOs are not eligible to apply primarily and directly, only local government entities, churches and companies have the status to apply on their own and may engage NGOs as partners in the project. The exclusion of NGOs as primary applicants for these funds has meant that only those organizations which are loyal to the government are picked as partners for projects funded by the EU Structural Funds, resulting in the total exclusion of

⁵⁶ <https://www.helsinki.hu/allami-szervek-felmondtak-a-megallapodasaikat-a-helsinki-bizottsaggal/>

⁵⁷ Despite the stigmatization of funding from foreign or international sources, NGOs may conclude contracts, earn income and can accept funds from foreign donors. This information was confirmed by AI interviews and the USAID Report on Hungary, 2017, USAID Report on Hungary, 2018 and USAID Report on Hungary, 2019

⁵⁸ The statistical office interprets the civil sector more broadly than this report, so I used the data from the USAID annual reports.

organizations that are critical of the government or that are engaged in politically sensitive or contentious issues that the government often characterizes as threats to the nation.

Critical organizations tend to apply for EU funds which are managed directly by the European Commission.⁵⁹ Their main source of income comes from international institutional donors and private funding, as well as from micro-donations, crowdfunding and their own revenues (membership fees, sale of goods and services).

5.2.3 NON-COOPERATION OF LOCAL GOVERNMENTS

Organizations that are based outside Budapest are facing a more difficult situation. The passing of the LEXNGO created a climate of hostility towards “foreign founded” NGOs, which is particularly acute outside the capital. For instance, in December 2017, a few months after the LEXNGO came into force, several mayors in cities around the country made critical public statements against NGOs that were allegedly part of the “Soros-network”.⁶⁰ The municipal assembly of Pécs went as far as passing a resolution requesting the public not to provide space or cooperation to the Power of Humanity Foundation.⁶¹ Due to the resolution, the foundation needed to leave their office. The main activity of this foundation is capacity buildings for NGOs and it was implementing a regional project started in 2017, lasted several years, supported by the Open Society Foundation. The foundation sued the municipality with the help of the Hungarian Civil Liberties Union (HCLU) and the court ruled that the municipal resolution violated the rights of the foundation because it tarnished its good reputation.⁶²

NGOs experienced harassment from officials in some localities in Budapest too. Aurora, a community center in the 8th district of Budapest that houses a number of NGOs and provides space for events on topics ranging from housing to the rights of people who use drugs and lesbian, gay, bisexual, transgender and intersex (LGBTI) people, was especially targeted.⁶³ The previous mayor (from the governing party, Fidesz) repeatedly tried to close it down using a variety of tools and tactics, including imposing limits on its opening hours and attempting to buy the building that the centre leases. The municipality has repeatedly ordered the site to be closed, but the capital government office and later the Metropolitan Administrative and Labor Court of Budapest overturned the municipal decisions.⁶⁴ Aurora was represented by the Hungarian Helsinki Committee in the legal proceedings, but the harassment came to an end after the local governmental elections of October 2019 when the opposition won this district.

5.2.4 HARASSMENT AND SMEAR CAMPAIGNS

In April of 2018, the names of academics and people working for different civil society organizations, including Amnesty International Hungary and many other NGOs, were listed in a government-aligned weekly newspaper as being the “mercenaries of George Soros” and being part of his network.⁶⁵ Two staff members of the listed NGOs - with the support of the lawyers of the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union won a lawsuit against the publisher who had to pay compensation to those affected.⁶⁶

In June of 2018, the vice-president of Fidelitas (the governing party’s youth organization) visited the offices of Amnesty International Hungary, the Hungarian Helsinki Committee and Shelter Association for Migrants (Menedék Association), put up stickers reading “immigration supporting organizations”, and held press

⁵⁹ E.g. Europe for Citizens; Rights, Equality and Citizenship, LIFE

⁶⁰ Organizations supported by or linked to the Open Society Foundations which was founded by the American-Hungarian philanthropist George Soros

⁶¹ <https://tasz.hu/cikkek/pert-nditunk-hoppal-es-pava-ellen-a-megtamadott-pecsi-civil-szervezettel>

⁶² <https://tasz.hu/cikkek/masodfokon-pert-nyertunk-az-emberseg-erejevel-a-pecsi-onkormanyzat-ellen>

⁶³ USAID Report on Hungary, 2019, https://okotars.hu/sites/default/files/downloads/hungary_eng.pdf, page 3.

⁶⁴ <https://www.helsinki.hu/aurora-jozsefvarosi-jegyzo-2-0/>, <https://www.helsinki.hu/torvenyserto-volt-az-aurora-kioszk-bezaratasa/>

⁶⁵ <https://www.amnesty.org.uk/press-releases/we-are-not-afraid-amnesty-hungary-reacts-blacklisting-ngo-workers>

⁶⁶ The judgement said the publisher violated the personality rights of the listed people.

<https://www.helsinki.hu/jogeros-fizetnie-kell-a-figyelonek-a-civilek-listazasa-miatt/> The personality rights, according to the Hungarian Civil Code, means that “everyone shall have the right, subject to limitations by law and by the rights of others, to exercise his personality rights freely, in particular the right to respect for his private and family life, his home, and to his communications made by whatever ways or means, and the right to good reputation and not to be hindered by anyone from exercising these rights. Everyone shall respect human dignity and the personality rights derived from it.” Act V of 2013 on the Civil Code, 2:24, http://njt.hu/translated/doc/J2013T0005P_20180808_FIN.pdf

conferences to further attack these organizations.⁶⁷ The affected NGOs were not offered the opportunity to reply to his attack in those press conferences.

Charitable organizations that have registered as “foreign-funded”, including various international humanitarian organizations and animal shelters, did not suffer any direct stigmatization as they are perceived by the government to belong to the category of “good” organizations as they are not engaged in advocacy and public criticism of the government or engaged in politically sensitive and contentious issues.

5.2.5 SILENCING CRITICAL ADVOCACY WORK

Advocacy has decreased in recent years due to various reasons, as reported in a study published in March 2019 by Ökotárs Foundation, which mapped civil society activities.⁶⁸ They conducted 58 interviews both with bigger and smaller local NGOs in Hungary.

The persistent government smear campaign against a group of NGOs engaged in advocacy and public criticism of the government or engaged in politically sensitive and contentious issues is one important reason the study noted for the decreasing advocacy. The government’s message has been effectively delivered: the organizations, especially in the countryside, have understood that it is not worth confronting the authorities if they want to continue operating.⁶⁹ According to the report, civil society organizations also realized that “to stand by the power, to legitimize it by participating in celebrations and collecting signatures, etc. proved to be particularly rewarding. In many places, the municipality allocates money to the active civil society organizations, which in most cases (...) do not engage in (...) advocacy. Such typical groups are neighbourhood watches, voluntary fire brigades, organizations preserving traditions, song circles, sports clubs, etc. Most of the interviewed organizations are critical of this situation, but they acknowledge it, and do not confront the authorities”.⁷⁰ According to the study, these organizations are “afraid to speak up, (...) fearing repercussions and repressions from local powers”.⁷¹

Interviews conducted by Amnesty International in October and December 2020 confirmed this situation. Organizations that are perceived as ‘good’ by the government, mainly those in the countryside whose main focus is usually on local community building and other charitable purposes and whose funding mainly comes from local governments, usually refuse to cooperate with critical organizations due to fear of reprisals.

5.2.6 CONTINUED APPLICATION OF THE LEXNGO: THE TEMPUS STORY

In spite of the judgment of the European Court of Justice (CJEU) condemning the introduction of discriminatory and unjustified restrictions on foreign donations to civil society organizations, the government has not repealed the LEXNGO to date. Moreover, after the judgment, in August 2020, the government-established Tempus Public Foundation (which handles the EU-programme Erasmus+ supporting education, training, youth and sport) rejected the grant application submitted by the NGO Power of Humanity, which aimed at raising awareness on active citizenship.

Although the Tempus Public Foundation acknowledged that the organization met the eligibility criteria to receive the Erasmus+ grant, they rejected the application because the foundation was not registered as a „foreign-funded” organization. The foundation cited non-compliance with the impugned legislation and rejected the application because Power of Humanity didn’t submit a statement⁷² proving their registration as a “foreign-funded” organization, which was a precondition for access to EU funds.⁷³ Power of Humanity sent a letter of complaint to the European Commission at the end of September 2020, criticizing the decision.⁷⁴

⁶⁷ https://index.hu/belfold/2018/06/27/a_helsinki_bizottsagot_matricazta_fel_a_fidelitas/

⁶⁸ https://okotars.hu/civil_terkep, https://okotars.hu/sites/default/files/summary_of_the_first_phase_of_mapping.pdf

⁶⁹ Summary of the first phase of mapping, March, 2019, https://okotars.hu/sites/default/files/summary_of_the_first_phase_of_mapping.pdf, page 1

⁷⁰ Summary of the first phase of mapping, March, 2019, https://okotars.hu/sites/default/files/summary_of_the_first_phase_of_mapping.pdf, page 1

⁷¹ Nataliya Novakova: Civil Society in Central Europe: Threats and Way Forward, October, 2020, https://www.gmfus.org/sites/default/files/publications/pdf/Novakova%20-%20Civil%20Society%20Central%20Europe%20-%202012%20October_Final.pdf, page 6

⁷² The criteria of being foreign-funded was originally not included in the eligibility criteria in the call for proposals when Power of Humanity submit his application

⁷³ <https://autocracyanalyst.net/hungarian-ngo-foreign-agent-law>, <https://www.emberseg.hu/en/2020/10/05/tpf-rejected-our-application-for-eu-funding-over-unlawful-foreign-agent-law/>, <https://444.hu/tag/emberseg-erejevel-alapitvany>

⁷⁴ <https://444.hu/tag/emberseg-erejevel-alapitvany>

On 14 January 2021, Vera Jourova, the Vice-President of the European Commission replied that “the Commission is investigating the situation”.⁷⁵ The foundation is considering filing a lawsuit before a Hungarian court for compensation.⁷⁶

Since rejecting Power of Humanity’s application, the Tempus Foundation has included compliance with the LEXNGO as an eligibility requirement in the next call for proposals. In October 2020, the Tempus Public Foundation required the Autonómia Foundation, which works with marginalized communities, mainly Roma people, to submit a statement that they were registered as a “foreign-funded” organization.⁷⁷ Autonómia Foundation refused to register and thought they would be excluded from the possibility of applying for the EU-grant.⁷⁸ At the end of December 2020, they were informed that their application had been rejected on substantive grounds that allegedly had nothing to do with their lack of registration under the LEXNGO, which strains credibility.

Following a request from the Power of Humanity Foundation to the Tempus Public Foundation in early 2021, compliance with the LEXNGO is again no longer a requirement to apply for Erasmus+ grants.⁷⁹ Amnesty International is not aware of what led the Tempus Public Foundation to remove this requirement from applications.

5.3 UNINTENDED IMPACTS OF THE LAW

The political and legal turmoil around civil society unintentionally resulted in some positive effects for the work of these organizations.

Domestic coalition building, stronger cooperation and solidarity are among the few consequences that some NGOs highlighted as important positive developments since 2017. NGOs quickly understood that they were more vulnerable individually than together.⁸⁰

In response to plans to introduce restrictive legislation, approximately 30 major nationwide NGOs formed the Civilizáció (Civilization) coalition with the aim of standing up for one another,⁸¹ eventually getting the endorsement of almost 300 organizations from all around the country.⁸² This informal network became the main coordinating force of the efforts against LEXNGO.

The Civilizáció coalition is still active as a platform to protect NGOs and to exchange knowledge. It plays a key role in defending the right to association and protecting civil society against further restrictions by promoting a safe and enabling environment for their operation. However, the movement is struggling to recruit new members, especially in the countryside, as most of the organizations fear losing financial support and resources provided by the local governments.

Another positive effect of the government efforts against civil society was that the NGO sector has received a lot of international attention, solidarity and advocacy as well as financial support from international and domestic sources.⁸³

⁷⁵ https://www.emberseg.hu/wp-content/uploads/2021/01/letter_from_vera_jourova.pdf

⁷⁶ This information was confirmed in the interviews made by Amnesty International

⁷⁷ Like Power of Humanity, Autonómia Foundation had boycotted registration as a foreign-funded organization, and joined other NGOs petitioning the Hungarian Constitutional Court in 2017.

⁷⁸ <https://www.facebook.com/autonomiaalapitvany/posts/3581854638524336>

⁷⁹ <https://www.emberseg.hu/2021/02/24/mar-nem-feltetele-az-erasmus-palyazatoknak-a-jogserto-nyilatkozat/>

⁸⁰ Nataliya Novakova: Civil Society in Central Europe: Threats and Way Forward, October, 2020,

https://www.gmfus.org/sites/default/files/publications/pdf/Novakova%20-%20Civil%20Society%20Central%20Europe%20-%202012%20October_Final.pdf, page 14

⁸¹ Nataliya Novakova: Civil Society in Central Europe: Threats and Way Forward, October, 2020,

https://www.gmfus.org/sites/default/files/publications/pdf/Novakova%20-%20Civil%20Society%20Central%20Europe%20-%202012%20October_Final.pdf, page 14

⁸² <https://civilizacio.net/hu/rolunk/tortenetunk>

⁸³ While keep supporting Hungarian NGOS, Open Society Foundations, the most stable international donor since the '90-s, left Budapest in 2018 and relocated to Berlin after two years of government’s hate campaign, including propaganda posters and billboards, invoking anti-Semitic imagery from World War II, and a supposed ‘national consultation’, attacking George Soros, founder and chair of the Open Society Foundations, and Hungarian human rights groups.” The Open Society Foundations to Close International Operations in Budapest, press release, May 15, 2018, <https://www.opensocietyfoundations.org/newsroom/open-society-foundations-close-international-operations-budapest>

Some international foundations that stopped being active in the region by the early 2000s reappeared in Hungary in 2018, mainly with the purpose of supporting NGOs. A few other foundations started funding projects in the country for the first time.⁸⁴

An example for the growing domestic support is that while the option for Hungarian taxpayers to assign 1 percent of their own income tax to nonprofit organizations, including NGOs,⁸⁵ remained unchanged, the total amount assigned through this option grew in 2018 from HUF 7.5 to 8.28 billion (approximately EUR 22 million to EUR 26 million). It grew further in 2019 to 8.77 million (EUR 29 million). In 2019, nearly 600 more NGOs received the 1% of the income tax and the average donation as well as the total support per organization also increased. However, the number of taxpayers using this option decreased from 1.7 million to 1.6 million,⁸⁶ due to a new tax declaration system introduced in 2017.⁸⁷ The other possible explanation for the decreasing number of people assigning their 1% to NGOs could be the fear of signaling to the tax authorities that they support a “bad” organization.

6. CONCLUSION

In its analysis of the LEXNGO, the Venice Commission found that several provisions amounted to a violation of the right to freedom of association.

The preamble of the LEXNGO states that “recognising that the support provided by unknown foreign sources to organisations established under the freedom of association may be capable of being used by foreign interest groups to promote – through the social influence of these organisations - their own interest instead of community objectives in Hungary’s social and political life.”⁸⁸ According to the Opinion of the Venice Commission, this is so broad and vague that it raised the question if this legislation was even “pursuing a legitimate purpose”.⁸⁹ The absence of a legitimate purpose puts into question the legitimacy of limitations to the work of NGOs.

Furthermore, the obligation for NGOs receiving funding from foreign or international sources to indicate this on all the materials and documents published does not seem to be proportional to the declared legitimate aim „of ensuing transparency for the purposes of preventing undue foreign political influence and combatting money-laundering and terrorism financing.”⁹⁰ It achieves rather the opposite: it reinforces the impression that any “foreign-funded” organization has something to do with money laundering. The law differentiating between NGOs based on the origin of their funding is fundamentally discriminatory, while the lack of similar transparency obligations for domestically-funded NGOs makes it even more discriminatory.

⁸⁴ „Civitates, a philanthropic initiative that began operations in 2018 under the umbrella of the Network of European Foundations, provides funding to civil society to play a role in shaping open European democracies. Civitates is a consortium of sixteen foundations, including well-known donors such as OSF and the Charles Stewart Mott Foundation, as well as lesser-known foundations such as Adessium, Luminare, Körber, and Mercator Stiftungs.” USAID Report on Hungary, 2018, https://okotars.hu/sites/default/files/downloads/hungary_eng.pdf, page 6

⁸⁵ All NGOs are eligible regardless if they belong to the category of „good” or „bad” organisations in the governmental communication (<https://www.nonprofit.hu/tudastar/utmutato-nonprofit-szervezetek-reszere--szja-1-fogadasa>)

⁸⁶ <https://ado.hu/ado/iden-kevesebb-adozotol-tobb-civil-reszesult-az-egyszazalekos-tamogatsabol>

⁸⁷ Under this system, the tax authority prepares the tax forms for taxpayers based on data employers submit, eliminating the need for taxpayers to make declarations themselves unless they want to check their accuracy or assign taxes to an NGO.

⁸⁸ 2017. évi LXXVI. törvény a külföldről támogatott szervezetek átláthatóságáról, <https://net.jogtar.hu/jogszabaly?docid=a1700076.tv>, OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e), page 9.

⁸⁹ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e), page 9.

⁹⁰ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e), page 14.

Finally, the law applies to certain organisations and excludes others without a clear justification. According to the opinion of the Venice Commission, no justification has been offered differentiating the funding paid through a budgetary institution and other EU funding.⁹¹ Other exemptions for sport, minority and religious organizations, are also arbitrary and put into question the „genuine aim of ensuring general transparency”⁹² from the very beginning. In the light of exceptions, the label of “foreign-funded” organization conveys the message that such NGOs are in fact serving foreign interests. The Venice Commission drew attention before the LEXNGO was passed that this could affect the way these NGOs would be perceived and may result in a chilling effect on cooperation with such organizations or prevent donors from making financial contributions.⁹³

Against this background, even if the implementation of the LEXNGO was not effectively pursued by the Hungarian authorities, its mere existence represented a “Damocles’ sword” on NGOs and it contributed to creating an extremely challenging situation in Hungary producing a chilling effect on the work of NGOs. Today, it continues to pose a threat to civil society and its cumulative impact on NGOs in Hungary was mostly negative. In this regard, human rights obligations require states to respect, protect and facilitate the right to freedom of association and create a safe and enabling environment in which human rights defenders and civil society organizations can operate without fear of reprisals.⁹⁴ By maintaining in place the LEXNGO, which creates a climate of uncertainty and stigmatization of certain NGOs, Hungary is failing to fulfill its obligations under international human rights law.

The decision of the CJEU in the summer of 2020 clearly stated that the LEXNGO was not in compliance with EU legislation. As a result, the LEXNGO should already have been repealed. However, there is a clear indication⁹⁵ that the government will still insist on some kind of registration process for critical organizations, as Justice Minister Judit Varga suggested⁹⁶ in a public debate on 24 February. The Hungarian government should not propose and the Parliament should not impose new restrictions on the activities of NGOs that are discriminatory or otherwise undermine the rights to freedom of association, peaceful assembly, expression and privacy. The Hungarian authorities must also desist from smearing and slandering NGOs and engaging in other forms of harassment.

⁹¹ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e), page 13.

⁹² OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e), page 14

⁹³ OPINION ON THE DRAFT LAW ON THE TRANSPARENCY OF ORGANISATIONS RECEIVING SUPPORT FROM ABROAD, Adopted by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e), page 12

⁹⁴ Joint Guidelines on Freedom of Association, 17 December, 2014, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e), page 15. and 17.

⁹⁵ The main pro-government think-tank, Századvég Foundation published an analysis on June 26, 2020, only a few days after the CJEU judgement was delivered, proposing that foreign-funded NGOs shall be registered as lobbyists. It says that NGO-s and lobbying organizations are in some respects similar to political parties (recruiting members, fundraising, cooperating with international partner organizations, organizing and participating in demonstrations, etc.). The study specifically mentions The Hungarian Helsinki Committee and the Hungarian Civil Liberties Union as examples of lobbying organizations funded by George Soros. It also quotes the example of Austria where lobbyist organizations need to register since 2013 and Amnesty International and Greenpeace are registered as lobbyists. <https://szazadveg.hu/hu/kutatasok/az-alapitvany-kutatasai/ngo-radar/lephet-e-ujabbat-az-allam-a-kulfoldrol-tamogatott-ngo-k-politikai-es-lobbitevekenysegenek-szabalyozasaban>

⁹⁶ <https://www.youtube.com/watch?v=RAybqhh2D-o&t=1>
https://twitter.com/daniel_freund/status/1364654782854680578,
<https://twitter.com/eublogo/status/1364841997228527617>

<https://444.hu/2021/02/25/orbant-diktatorozo-peldamondatok-kapott-varga-judit-amikor-brusszelben-franciat-tanult>

RECOMMENDATIONS:

Amnesty International urges the Hungarian Parliament to repeal or substantially amend the LEXNGO and calls on the government and Parliament to reject the adoption of any new measures that unduly restrict NGO activity or that impose discriminatory or unjustified restrictions on the right to seek, receive and utilise funding from foreign or international sources, as mandated by the CJEU,⁹⁷ whether through additional restrictive mandatory registration or any other type of harassment.

Furthermore, Amnesty International calls on the Hungarian authorities to:⁹⁸

- Ensure that any draft bill on the modification of the LEXNGO shall be made public with immediate effect.
- Ensure that any future draft bill that affects NGOs shall be adopted following a thorough and inclusive consultation and NGOS feedback shall be seriously taken into account.
- Ensure that registration of associations or other administrative procedures do not violate the privacy rights of organizations and their members and that administrative and reporting requirements are not arbitrary or discriminatory, and are respectful of the right to privacy of associations and their members.
- Allocate funds in a way that is non-discriminatory and ensure that organizations that hold different views from the government or that work for the rights of marginalized groups can access funds on an equal basis with those organizations that align with government policies.
- Ensure that NGOs are not subjected to threats, attacks, harassment, smear campaigns, intimidation or reprisals for their human rights work and that organizations that defend the rights of marginalized and discriminated groups are not targeted for their activities or their identity.
- Ensure the rights to freedom of expression and association for civil society organizations and human rights defenders, and that their members and activities are not restricted on vague or discriminatory grounds such as “political activities” or “traditional values”.

Publicly acknowledge the importance of civil society organizations and human rights defenders and their contribution to the advancement of human rights.

⁹⁷ Judgment of the Court (Grand Chamber), 18 June 2020, <http://curia.europa.eu/juris/document/document.jsf?docid=227569&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=6267498>

⁹⁸Law Designed to Silence: The Global Crackdown on Civil Society Organizations, February 2021, <https://www.amnesty.org/en/documents/act30/9647/2019/en/>

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HUNGARY: LIVING UNDER THE SWORD OF DAMOCLES

THE IMPACT OF THE LEXNGO ON CIVIL SOCIETY IN HUNGARY

In June 2017, a new Act on the Transparency of Organizations Supported from Abroad (LEXNGO) entered into force. This briefing provides a review of the impact on Non-Governmental Organizations (NGOs) of this new law, that requires civil society organizations receiving support from foreign and international sources to register as “foreign-funded”.

While several NGOs have registered themselves as “foreign funded”, to date there have been very few cases of direct consequences for NGOs under this law. Legal measures against these organizations have not been enforced but continue to pose a threat to civil society, and their cumulative effect on NGOs in Hungary has been mostly negative, including a widespread chilling effect, self-censorship and divisions within civil society groups.

Amnesty International urges the Hungarian Parliament to repeal or substantially amend the LEXNGO and calls on the government and Parliament to reject the adoption of any new measures that unduly restrict NGO activity or that impose discriminatory or unjustified restrictions on the right to seek, receive and utilise funding from foreign or international sources, as mandated by the CJEU, whether through additional restrictive mandatory registration or any other type of harassment.