



Hungary must provide space for civil society

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Hungarian authorities have orchestrated a crack-down on human rights groups unprecedented since the end of the communist era. Alongside Russia, Uganda, Ecuador and China, Hungary sticks out as the only member country of the European Union which puts undue pressure on human rights groups. Hungary's Prime Minister Viktor Orbán has repeated a Putin-inspired idea of monitoring foreign-funded civil society organizations, described by state authorities as "agents of foreign powers". This Policy Paper argues that Hungary should reconsider its policies, which are hurting not only the country's international image, but also have negative consequences at home.

Worldwide, the trend is well-known: A large number of countries pass restrictive laws and make the operations of civil society organisations difficult. Over the past three years, more than 60 countries have introduced legislation that place restrictions on non-governmental and civil society organisations.¹ More surprising is that a member state of the EU is entering the club of states that restrict the space of civil society.

In the same speech in which Prime Minister Orbán described foreign-funded organizations as foreign agents, he made it clear that the government is now openly embracing the characteristics of an *illiberal* state.² A democratic state does not necessarily have to be liberal, according to the Prime Minister. Liberal values, in particular a concept of freedom which implies that the individual can do whatever s-/he wants, as long as s-/he does not infringe on the freedom of others, "today incorporate corruption, sex and violence".

The prevalence of liberal values in society leads to the strong dominating the weak, according to Prime Minister Orbán. It has resulted in a weakening of state structures in Hungary, including limited state ownership of key sectors of the economy.

The retreat from liberal values has already had serious consequences for the checks and balances that characterise a well-functioning democracy. In his criticism of liberalism, Prime Minister Orbán omits an important characteristic of a liberal democracy, namely the role played by independent institutions in holding power to account and safeguarding individual rights, including the rights of weak and vulnerable parts of the population. During Orbán's rule, a systematic weakening of such institutions has taken place.³

There are a range of emerging and existing challenges, which in sum contribute to undermining Hungary's functioning as a full-fledged democracy. The list includes weakening of the Constitutional Court and the independence of the judiciary and the Ombudsman. Measures have also been put in place that weaken respect for or violate fundamental freedoms, such as freedom of expression and freedom of religion.

Gerrymandering, i.e. dividing constituencies so as to give one party an unfair advantage, has favoured Fidesz, Prime Minister Orbán's party. Media independence has been weakened by policies that favour government-friendly media in terms of access to information and advertisements. A system of preferential regulations that reward favouritism (nepotism) and personal relationships has been developed.⁴

There is, in other words, no shortage of issues to monitor and report facing the Hungarian civil society.

What is of concern in this context, in addition to unfriendly rhetoric towards independent civil society, is that the government is actively shrinking the manoeuvring space of watchdog organizations by impeding access to funding, conducting unexpected and unwarranted inspections and blacklisting human rights organizations, which receive foreign funding.

Government campaign against foreign funded organizations

A 2015 report by Amnesty International documents cases where non-governmental organisations (NGOs) have come under sustained attacks by the Hungarian government, hindering their ability to carry out activities and having a negative impact on their exercise of the right to freedom of association.⁵ At the core of the conflict lies the source of funding for these organizations, i.e. the European Economic Area (EEA) and Norway grants.

The Hungarian government claimed that Norway was seeking to push for political changes in Hungary through the NGO Program under these financial mechanisms.⁶ In the words of Prime Minister Orbán:

If we look at civil organizations in Hungary, ... , debates concerning the Norwegian Fund have brought this to the surface, then what I will see is that we have to deal with paid political activists here. And these political activists are, moreover, political activists paid by foreigners. Activists paid by definite political circles of interest. It is hard to imagine that these circles have a social agenda. It is more likely that they would like to exercise influence through this system of instruments on Hungarian public life. It is vital, therefore, that if we would like to reorganize our nation state instead of the liberal state, that we should make it clear, that these are not civilians coming against us, opposing us, but political activists attempting to promote foreign interests. Therefore, it is very

apt that a committee was being formed in the Hungarian parliament that deals with constant monitoring, recording and publishing foreign attempts to gain influence, so that all of us here, you as well, will know who the characters behind the masks are.⁷

The EEA and Norway NGO Program in Hungary is designed and operated with the general aim to strengthen civil society in the fields of democracy, advocacy and civic participation. The main goal of the program is to foster active citizenship as an overarching theme around seven priority areas covering among others: human rights and democracy, women and equal opportunities, Roma integration and youth programs. The grants are operated by a consortium of four independent foundations: Ökotárs, DemNet, Autonomia and the Carpathian Foundation Hungary.

A dispute between Norway and Hungary started in the spring of 2014 when the Hungarian government breached the bilateral agreement between the two countries. On its own accord, it moved the administration of the EEA and Norway grants from the central government to a separate state-owned company. As a consequence, Norway suspended the disbursement of the funds, with one exception. The NGO Program being the only one administered by an independent consortium continued without alterations.

Consequently, a number of 13 organizations, recipients of grants from the NGO Program, were placed on a so called “blacklist” by the government, including organizations that were later drawn into allegations of embezzlement and fraud. Initially, the government denied the existence of such a list, but eventually it was leaked. It included organizations active in the fields of human rights protection, gender equality, the rights of sexual minorities (LGBTIQ), anti-corruption and transparency, Roma issues and rule of law issues.⁸

The government’s accusations against the consortium operating the grants of embezzlement and mismanagement of funds culminated in an investigation led by the Government Control Office (GCO).

The jurisdiction of the Government Control Office was called into question both by the audited organizations and the Norwegian government, calling the audit an attempt to limit freedom of expression.⁹ According to the bilateral agreements on the EEA and Norway Grants, audits of the grants should be carried out by auditors authorized by the Financial Mechanisms Office (FMO) in Brussels. The Hungarian Ombudsman, László Székely, supported the view that the Government Control Office (KEHI) lacked jurisdiction.¹⁰

The investigation resulted in a report in which evidence was presented in a rather generalized and sketchy way. The report found “irregularities” in 61 of 63 projects. Norway’s then Minister for EEA and EU Affairs, Vidar Helgesen declared that, “We don’t attach a lot of credibility to that report, to put it mildly... We made it clear that it is up to the donors to perform audits. One such audit is being conducted now.”¹¹

The investigation came to include 55 organizations, many of which refused to turn over documents and cooperate with the investigative authority. This resulted in police raids of the offices and even apartments of Ökotárs and DemNet employees. Police officers seized computers, servers and documents.

The police raids were later ruled illegal, due to lack of reasonable suspicion.¹² In September 2014, the members of the consortium were sanctioned for alleged non-cooperation with the audit and had their tax registration number suspended. The suspension of the tax registration number, if not reversed by a court, renders organizations incapable of operation.

Based on its audit, the Government Control Office reported on five organizations to the Hungarian prosecutorial services, accusing them of illegal operations. By October 2015, however, the prosecutors concluded that the organizations involved in the distribution of the NGO funds operated lawfully, having committed only a few minor administrative mistakes.¹³

On 20 October 2015 it also became public that the Criminal Division of the National Tax and Customs authority closed its investigation of Ökotárs and 17 other organizations for lack of evidence. The authority found that the activities of Ökotárs and beneficiary organizations were continuously documented, that all laws were kept, and that occasional changes of the projects were properly documented, and that they fulfilled all the obligations relating to their inspection.¹⁴

However, even after these victories, the organizations continue to face harassment and treats of further legal actions.

The foundations launched an administrative lawsuit, asking for a constitutional review of the availability or absence of legal appeal against the Government Control Office. The trial judge of the Eger Administrative and Labour Court, hearing the case of the Carpathian Foundation Hungary, referred the case to the Constitutional Court.

The 5 October 2015 Constitutional Court ruling, however, did not answer whether the request by the Government Control Office to suspend the tax numbers of the organizations was lawful. The court only addressed the question on whether the legislative environment was compatible with the Fundamental Law and gave an affirmative answer. It referred the issue back to the administrative court.

In her dissenting opinion, Ágnes Czine, one of the five members of the Constitutional Court who heard the case, goes into the substance of the case. She states, “tax suspension is a very “tough” tool in the hand of the authority that should be applied – according to the legislator’s original intention – only in special cases, essentially in the fight against fictitious taxpayers. Sanctioning non-cooperation with the Government Control Office through this method is disproportionately heavy in the case of lawfully operating taxpayers as it fundamentally affects the audited organizations.”¹⁵

The Constitutional Court did not take a position on whether the current legislation provides for effective legal remedies against the decisions of the Government Control Office either. This leaves the door open for further politically motivated actions against organizations that receive funding from the state budget audited by the Government Control Office.

By the end of 2015, the dispute between Norway and Hungary on the disbursement of the EEA Grants and those of the NGO funds was resolved. From the Norwegian point of view the denouement was a complete victory. Minister Helgesen explained that Hungary accepted all the

conditions Norway had requested. The government would in the future refrain from harassing civil society organizations and would refrain from getting involved in the administration of the funds.

Nevertheless, a Hungarian government press release testifies a completely different attitude, claiming that in the future no foreign states shall be able to finance civil society organizations without the authority's cooperation and control. The press release also states that Ökotárs would most certainly not continue as program operator of the NGO fund in the future. Furthermore, even if all legal charges are dropped, the government maintain the position that some organizations had received grants in unlawful ways.¹⁶

Some observers argue that in reaching the agreement with the Norwegian authorities, the Hungarian government indirectly showed that the authorities that normally should function as guarantees for the rule of law are mere political tools in the hands of the government.¹⁷

The campaign against the NGO Program operators and the blacklisted organisations had negative consequences not only for the organizations involved, but also for other organizations working in the same fields.¹⁸ The combination of the Government Control Office audit, unfounded accusations and hostile media reports have transformed these organizations into a "toxic" group of entities; scaring away donors, partners, clients and even lawyers to represent them for fear of being caught in a political dispute with the government.

The campaign has created fear among civil society organisations of being affiliated with the EEA and Norway Grants because this may attract too much negative attention from the government. In addition, some organizations have imposed self-censorship in order to distance themselves from anything that can be considered remotely political.¹⁹

Parallel with the investigations, government-friendly media has run a smearing campaign in order to shape public opinion. Organizations were accused of receiving funding given with specific foreign agendas. In particular, the Open Society Institute and its funder, George Soros, were portrayed as influencing watchdog organizations in criticising the government.

There is little doubt that in the current political climate in Hungary, these allegations have increased popular suspicion towards projects and organizations receiving foreign funding. Seemingly as an orchestrated effort, government friendly organizations have declared themselves as the "real" and decent nongovernmental organizations. They do not allow themselves to be at the mercy of foreign donors pushing their own political agendas.²⁰

Not so open government

In 2012 Hungary became a member of the Open Government Partnership (OGP).²¹ The partnership was launched to provide an international platform for domestic reformers committed to making their governments more open, accountable and responsive to citizens. As a member country in this partnership, Hungary has committed itself to working together with civil society to develop and implement ambitious, open government reforms.

The Open Government Partnership commitments include:

- Facilitating easy access to information about government activities;
- Supporting civic participation;
- Implementing the highest standards of professional integrity throughout administration;
- Increase access to new technologies for openness and accountability.

Notwithstanding these commitments, the Hungarian government initiated legislative amendments to the Freedom of Information Act, a new bill on Public Procurement and a national Anticorruption Plan without real consultations with organizations working in the field of anticorruption, transparency and freedom of information. According to civil society representatives the Norwegian Helsinki Committee talked with, organizations advocating for transparency experience lack of real government consultations or some form of pseudo-consultations on planned legislative acts.²²

The government has largely ignored requests of nongovernmental organizations to take measures to restore trust and collaboration with civil society. A government anticorruption action plan adopted in late 2015 targets leaders of nongovernmental organisations, recommending them to declare their private assets.

In an apparent attempt to further impede the work of watchdog organizations, recent amendments of the Freedom of Information Acts make access to public information more difficult, i.a. by requiring those requesting information to pay for the costs involved in providing it. The amendments also allow for requests to be arbitrarily rejected and opens up for classifying important documents as “preparatory documents” not eligible for public scrutiny.

These measures not only place new barriers for watchdog organizations, but also infringes on people’s fundamental right to freedom of information.

Government failure to engage with civil movements that support refugees

In the midst of the current refugee crisis in Europe, Hungary again stands out as a sore thumb, attracting heavy criticism for the way in which the government has chosen to deal with the influx of refugees. The restrictive policies applied by the government are, according to Prime Minister Orbán, designed to reduce the refugee inflow to zero.²³

Measures applied include:

- Providing refugees underequipped facilities that lack transparency;
- Construction of fences along the country’s southern borders;
- Sealing borders by various means;
- Imposing harsh penalties for crossing borders without papers, including imprisonment;
- Suspending train services to Germany, in order to deter refugees using Hungary as transit;
- Using teargas and water cannons against refugees.

In the chaotic situation resulting from the arrival of large numbers of refugees and clearly insufficient measures by the Hungarian government to handle the situation, Hungarian citizens

mobilized in order to provide some support. One of the Facebook groups, *Migration Aid*, quickly grew into a national civil movement.

The initiative was originally established to help the refugees arriving to Budapest to reach their assigned refugee camps. Volunteers provided information, organized food and water distribution and provided toiletry articles, clothes and blankets.

The spokesperson of the initiative described the movement as non-political, without any ideological goals, aiming simply to solve the immediate societal problems that had arisen: “These people are dirty. They have diarrhoea. They are locked into train cars. They are not treated by doctors.”²⁴

Due to government measures to hinder transit of refugees, since September 2015 refugees no longer cross through Budapest. They now enter through the Croatian border and exit through the Austrian. Migration Aid has established branches in these areas in order to assist refugees in these areas as well.

Migration Aid has repeatedly called on Hungarian authorities to fulfil their responsibilities regarding the refugee crisis, but these demands have fallen on deaf ears. Among the requests to the Hungarian Government are:²⁵

- Immediately to cease fear mongering and instead engage in initiating measures to address the actual needs arising from the refugee situation in Hungary;
- Immediately to stop demonizing any groups of people;
- To respect human rights and fundamental freedoms;
- To commit to and play an active role in European policies aimed at the integration of migrants;
- To engage in a dialogue with organizations and volunteer groups involved in helping refugees.

Responding to these requests in Parliament, Prime Minister Orbán, on 21 September 2015 claimed that civil society organizations that were helping refugees did receive substantial financial support from the government, but he would not say this out loud.²⁶ Migration Aid then requested the Government to publicly list the names of the organizations that have received funding. In a response, the Fidesz fraction in the Parliament listed three humanitarian organizations that had received financial support. It explicitly disqualified Migration Aid from similar support due to the organizations alleged lack of transparency, adding that “the costs related to political activities such as demonstrations initiated by the movement as well as other costs can surely be covered by the generous support of George Soros”.²⁷

This statement by Fidesz, rebutted by Migration Aid, stands as an example of the ruling party’s strategy of delegitimizing and limiting the sphere of operations of critical movements and organizations. Civil initiatives and organizations that express concerns with current policies lose any chance of becoming partners with the government for dialogue, discussions or actions.

Intricate application of public benefit status

Hungary's civil law recognizes two types of nongovernmental, not-for-profit organizations: associations and foundations. These may register as public benefit organizations. However, other types of organizations, such as non-profit companies, may also be authorized by law to acquire public benefit organization status.

There are a number of requirements in order for an organization to obtain this status, the most important being that the organization must undertake public benefit activity. This is defined as activity that directly or indirectly serves the completion of public (i.e. government, including local government) tasks, and thereby contributes to the satisfaction of the common needs of society and individuals.²⁸

Any association or foundation can apply for public benefit organization status provided they carry out activities in the benefit of the public. Organizations obtaining this status are eligible for government grants. In addition they may receive a designated 1 % of income tax of taxpaying individuals.

However, recent changes in the legislation have led to a decrease in the number of organizations with this status. Stricter eligibility criteria have resulted in the loss of this status by many organizations.

Local governments cannot contract organizations without public benefit statuses to complete public tasks, reducing thus even more the opportunities of interaction between civil society organizations and authorities. According to the CSO Index for 2014, the state relies on public institutions for the development and implementation of social welfare policies, providing only basic services to the population. Services for people with disabilities for example are left out.

In Hungary today, civil society organizations do not seem to have a place in a nationalized and centralized system of service provision, jeopardizing particularly the rights of marginalized groups in the country.

Recommendations

Hungary's authorities have the primary responsibility to initiate reforms that strengthens respect for the rights and role of civil society in the country. Hungary should:

1. Fully respect freedom of assembly and association. In particular, the government should respect the rights of organizations working in the field of human rights, anticorruption, transparency and equality to operate independently;
2. Acknowledge the important role of civil society organizations in the fields of rights protection, anticorruption, transparency and equality by initiating real consultations between authorities and the organizations on legislation and policies;
3. Acknowledge the freedom to seek and receive funding from abroad, as it is stipulated in the 2007 Recommendation of the Council of Europe Committee of Ministers on the legal status of nongovernmental organizations in Europe.²⁹ The Recommendation is specific on

the rights of nongovernmental organizations “to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties” (paragraph 50);

4. Distinguish in its rhetoric between *advocacy* and *partisan political activity*. It should not conflate the two concepts for the purpose of delegitimizing watchdog organizations and disregarding unregistered civil movements;
5. Engage in open dialogue with civil groups that represent apolitical grass root movements and consider them as legitimate voices of the population;
6. Acknowledge contributions by civil society organizations in the fields of education, health and service provisions. Authorities should cooperate with and support organizations that provide services for marginalized groups such as the homeless, sexual minorities (LGBTIQ), the Roma and people with disabilities.

Csilla Czibalmos, advisor at the Norwegian Helsinki Committee, drafted the policy paper. Gunnar M. Ekeløve-Slydal, Deputy Secretary General, edited it.

¹ The Guardian, Human rights groups face global crackdown 'not seen in a generation' available at:

<http://www.theguardian.com/law/2015/aug/26/ngos-face-restrictions-laws-human-rights-generation>

² The full text of Viktor Orbán's speech can be found here: <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592>

³ See previous Norwegian Helsinki Committee publications on the centralization of power in Hungary, and the weakening of the independence of a range of important institutions:

http://www.nhc.no/no/land_og_regioner/europa/ungarn/

⁴ For a full description of these aspects see http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf

⁵ The full Amnesty report can be downloaded here: <https://www.amnesty.ch/de/laender/europa-zentralasien/ungarn/dok/2015/hexenjagd-auf-ungarns-ngos/their-backs-to-the-wall-civil-society-under-pressure-in-hungary-1>

⁶ The NGO Programs are part of the EEA and Norway Grants scheme designed to support the development of civil societies in 16 beneficiary member countries of the EU. The overall objective of the NGO Programs is to strengthen civil society and enhance its contribution to social justice, democracy and sustainable development.

⁷ Viktor Orbán, *op.cit.* (endnote 2).

⁸ «Hungarian police raided the offices of two NGOs», available at: <http://gong.hr/en/active-citizens/civil-society/hungarian-police-raided-the-offices-of-two-ngos/>

⁹ Amnesty International, *Op. Cit.* (endnote 5).

¹⁰ «Ombudsman: KEHI probe of Norway NGO Fund beneficiaries illegal», available at:

<http://budapestbeacon.com/public-policy/ombudsman-kehi-probe-of-norway-ngo-fund-beneficiaries-illegal/10632>

¹¹ «Norway defies Hungary in 'political' aid row», available at: <http://www.thelocal.no/20141101/norway-fronts-up-to-hungary-in-political-aid-row>

¹² <http://www.theguardian.com/law/2015/aug/26/ngos-face-restrictions-laws-human-rights-generation>

¹³ «Prosecutors, NAV give Norway Civil Fund recipients clean bill of health», available at:

<http://budapestbeacon.com/public-policy/city-prosecutors-nav-give-norway-civil-fund-recipients-clean-bill-of-health/28538>

¹⁴ *Op.cit.* (endnote 14).

¹⁵ Statement: «The Prime Minister's Office is not telling the truth», available at:

<https://norvegivilalap.hu/en/node/12067>

¹⁶ «Titkos alkut kötött a kormány a norvégokkal, mindenben engedtek nekik», available at:

<http://444.hu/2015/12/22/titkos-alkut-kotott-a-kormany-a-norvegokkal-mindenben-engedtek-nekik>

¹⁷ «Ellenpénz», available at: <http://nol.hu/velemen/ellenpenz-1581309>

¹⁸ Amnesty International, *Op. Cit* (endnote 5).

¹⁹ USAID's 2014 CSO Sustainability Index report on Hungary available at:

<https://www.usaid.gov/sites/default/files/documents/1863/CSOSI-Report-FINAL-7-2-15.pdf>

²⁰ "Összeült a jobboldal gerince, hogy megvitassák, merre tart Európa", available at:

<http://444.hu/2015/05/29/osszeult-a-jobboldal-gerince-hogy-megvitassak-merre-tart-europa/>

²¹ The partnership's official website can be found here: <http://www.opengovpartnership.org/>

²² This opinion is strengthened also by the USAID's 2014 CSO Sustainability Index report on Hungary that qualifies consultations with civil society organizations as mere formalities. *Op.cit.* (endnote 19).

²³ International media has reported extensively on this issue. Some examples:

<http://www.vox.com/2015/9/13/9313371/refugees-viktor-orban> and

<http://www.theguardian.com/world/2015/sep/10/record-number-of-refugees-enter-hungary-amid-border-crackdown-fears>

²⁴ "Migration Aid: "They are the quiet heroes"" available at: <http://budapestsentinel.com/interviews/migration-aid-quiet-heroes/>

²⁵ Migration Aid's full statement and requirements are to be found here:

http://www.xpatloop.com/news/not_in_my_name_demonstration_organised_by_migration_aid_budapest_2_september

²⁶ "Cáfolta Orbán Viktort a Migration Aid" available here: <http://www.origo.hu/itthon/20150921-migration-aid-orban-viktor-tamogatas-menekult-parlament-cafolat.html>

²⁷ "Reagálás a Migration Aid nyilatkozatára" available at:

http://mandiner.hu/cikk/20150921_fidesz_reagalas_a_migration_aid_nyilatkozatarara

²⁸ For a full overview of applicable laws for civil society in Hungary visit: <http://www.cof.org/content/hungary#Types>

²⁹ The full text of Recommendation CM/Rec(2007)14 is available at: <https://wcd.coe.int/ViewDoc.jsp?id=1194609>