

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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HUNGARY REPEALS CONTROVERSIAL LAWS RESTRICTING THE RIGHT TO ASSOCIATION BUT CONCERNS REMAIN

Amnesty International calls on the Hungarian government to repeal the recently adopted law “on the transparency of civil society organizations capable of influencing public life”¹ (hereinafter: the new LEXNGO) that further stigmatizes non-governmental organizations (NGOs) and the recently adopted amendments to the Higher Education Law that undermines and limits academic freedoms.

The new LEXNGO, adopted on 18 May 2021, came ten months after the European Court of Justice (CJEU) ruled in June 2020 that the law known as LEXNGO,² passed by the Hungarian Parliament in 2017, had introduced discriminatory and unjustified restrictions which required NGOs receiving funding from foreign and international sources (including EU funds) to register as “foreign funded organizations”.

While the new LEXNGO repeals the previous law, at the same time introduced new regulations that once again unduly restrict the right to association justified in the need to “ensure transparency” of organizations which are “capable to influence public life”.³ The law prescribes annual audits of the finances of NGOs whose total assets exceed 20 million HUF (appr. 55,000 EUR). Affected NGOs, among them Amnesty International, have expressed concerns that these new provisions could lead to arbitrarily selective audits by the authorities that would particularly target critical organizations, and impose an extra-administrative burden on them.⁴ The new LEXNGO came into force on 1 July.

On the same day when the new LEXNGO was adopted, the Hungarian Parliament also amended the Higher Education Law.⁵ This followed a ruling by the European Court of Justice (CJEU) in October 2020 finding that the previous amendments of the Higher Education Law adopted in 2017 (widely known as LEXCEU⁶) violated European laws and regulations, including the Charter of Fundamental Rights, relating to academic freedoms, the freedom to found higher education institutions and the freedom to conduct a business.⁷ The changes⁸ basically retain those conditions which put pressure on the Central European University (CEU) to leave Budapest, Hungary in 2020 and establish a new campus in Vienna, Austria. The operation of a foreign funded higher educational institution in Hungary depends on consent given by a government office and an international agreement that needs to be concluded between the Hungarian government and the government of the state where the foreign higher educational institution has its seat.⁹ The new law also entered into force on 1 July.

1 2021. évi XLIX. törvény a közélet befolyásolására alkalmas tevékenységet végző civil szervezetek átláthatóságáról/On the transparency of civil society organizations capable of influencing public life <http://www.jogportal.hu/index.php?id=atajoujlv8x8vavfw&state=20210527&menu=view,https://www.parlament.hu/irom41/15991/15991.pdf?fbclid=IwAROPfgT-Z5kf-KgH17sGsyn5qLZGER5QDqT63xxkPsSkyvE7gQK5kOna5Kg>

2 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>

3 <https://www.amnesty.org/en/latest/news/2021/04/hungary-LEXNGO-repealed-but-replacement-very-concerning/>, <https://www.amnesty.org/en/latest/news/2021/05/hungary-LEXNGO-finally-repealed-but-a-new-threat-is-on-the-horizon/>

4 <https://civilizacio.net/en/news-blog/retraction-of-the-LEXNGO-important-step-but-more-is-needed>

5 2011. évi CCIV. törvény a nemzeti felsőoktatásról/Act CCIV of 2011 on National Higher Education (<https://net.jogtar.hu/jogszabaly?docid=a1100204.tv>)

6 Nemzeti felsőoktatásról szóló 2011. évi CCIV. törvény módosításáról szóló 2017. évi XXV. törvény (Law No XXV of 2017, amending Law No CCIV of 2011 on national higher education) (“Higher Education Law”).

7The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law, 6 October 2020, Luxemburg, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf> <https://www.ceu.edu/article/2020-10-06/landmark-judgment-lex-ceu-struck-down-european-court-justice>

8 <https://www.parlament.hu/irom41/15909/15909.pdf>

9 Article 76, Higher Education Law/2011. évi CCIV. törvény

a nemzeti felsőoktatásról, <https://net.jogtar.hu/jogszabaly?docid=a1100204.tv>

Unexpectedly, a new government decree targeting NGOs was issued on 30 June and entered into force the next day,¹⁰ requiring NGOs¹¹ to collect and list the names of all „final donors” (individuals providing donations or the executives or CEOs of institutional donors) and publish them in their public annual report by listing their names. As unexpectedly as it was submitted, the government withdrew the provision on July 16,¹² therefore it only lasted for two weeks, with no time to apply it in practice. Amnesty International is not aware of what led the government to withdraw the decree.

HISTORY OF THE LEXNGO

The adoption of the LEXNGO in 2017 led to the stigmatization of NGOs in Hungary. The law severely restricted the civic space and had a strong chilling effect on NGOs, human rights defenders and other activists. The law diverted NGOs' energy and resources away from their core activities to defend themselves and find a way to continue operating amidst a context of elevated pressure from the authorities, including smear campaigns orchestrated by government-aligned media. Staff at NGOs have sometimes received death threats by phone, email or via social media.¹³

Despite the judgment of the CJEU in June 2020, at least one Hungarian institution – a public foundation – continued applying the law until February 2021, ruling out at least two applications due to the lack of registration.¹⁴

THE NEW LEXNGO PRESENTS A THREAT TO CIVIL SOCIETY

While the new LEXNGO repealed the anti-NGO law from 2017,¹⁵ the government introduced new provisions that would similarly undermine the right to association. The new law imposes administrative requirements on organizations with annual total assets of more than 20 million HUF (appr. 55,000 EUR) that “engage in activities that could influence public life”.¹⁶ The law does not provide any criteria to define “influencing public life” and remains vague. Foundations and associations that meet these broad criteria will be subject to an annual audit by Hungary’s State Audit Office (SAO).

Amnesty International and civil society organizations are concerned that the SAO lacks legal powers to oversee the work of NGOs and that may be weaponized to further restrict their work. While the SAO function is to safeguard public funds, many of the affected organizations by the new LEXNGO do not receive public funding. As provided by the law that regulates SAO’s duties and shown on its own website, the primary function of SAO is to control the management of public money and national assets. In particular, the law states that: “The State Audit Office of Hungary is the supreme financial and economic audit institution of the National Assembly and the guardian of public funds for 150 years and the financial guarantor of democracy for 30 years. Its mission is to support accountability of public funds and to contribute to good governance (...) With its recommendations and conclusions, the SAO facilitates the regular, economical, efficient and effective use of public money”.¹⁷ The website also says that “in recent years, the SAO’s advisory and knowledge-sharing activities supporting public money users have received increasing emphasis, which improves the management of public funds”.¹⁸

Civil society organizations have expressed their serious concern that using SAO for auditing NGOs that are not receiving public funding is just another tool to discredit and stigmatize these groups.¹⁹ Many of the NGOs which are subject to the law are critical “watchdog” organizations engaged in campaigning and advocacy work relating to human rights, anti-

10 <https://magyarkozlony.hu/dokumentumok/6d408ec9c88221276266e0b2ed05caea8e79df7a/megtekintes>

11 Hungarian NGOs immediately protested against it, saying that “it is in contradiction with Hungarian and EU law and ignores the judgment of the Court of Justice of the European Union issued last June. It violates the right to freedom of association, respect for private and family life and the protection of personal data.”

(<https://civilizacio.net/en/news-blog/why-does-the-state-want-to-tell-people-how-they-should-spend-their-own-money-for-the-common-good>)

12 https://m.hvg.hu/gazdasag/20210716_civil_szervezetek_adomany_bejelentesi_kotelezettseg

13 <https://www.amnesty.org/en/documents/eur27/3968/2021/en/>

14 <https://www.amnesty.org/en/documents/eur27/3968/2021/en/>

15 The preamble of the new LEXNGO says the following: „The National Assembly whereas the European Court of Justice has confirmed in its judgment that certain non-governmental organizations can have a significant influence on public life and public debate, given the aims they pursue and the means at their disposal,

also taking into account constitutional and international expectations regarding the transparency of grants to such organizations, constitutes the following law” <http://www.jogiportal.hu/index.php?id=atajoujlv8x8vavfw&state=20210527&menu=view>

16 <https://www.parlament.hu/irom41/15991/15991.pd>

17 <https://www.asz.hu/en/about-us> and the SAO Act of July 1, 2011, <http://www.jogiportal.hu/index.php?id=c1c4860bb27e01371&state=20210701&menu=view>

18 <https://www.asz.hu/en/about-us> and the SAO Act of July 1, 2011, <http://www.jogiportal.hu/index.php?id=c1c4860bb27e01371&state=20210701&menu=view>

19 <https://civilizacio.net/en/news-blog/retraction-of-the-LEXNGO-important-step-but-more-is-needed>

corruption and other issues, and the government has often deemed these organizations as a threat to the nation.²⁰ The main source of income of these organizations mostly comes from foreign or international institutional donors, including EU funds and private funding, as well as micro-donations, crowdfunding and their own revenues (membership fees, sale of goods and services).²¹

According to the calculations of Civilizáció Coalition – an informal network and platform of Hungarian NGOs that became the main coordinating force of the efforts against LEXNGO that has played a key role in defending the right to association and protecting civil society against further restrictions²² – around 4.000 organizations will fall under the scope of the new LEXNGO .

Sport, minority and religious organizations remain exempt²³ from the provisions of the new LEXNGO, even if they pass the income threshold provided by new and while some of these receive significant amounts of public funding. The new LEXNGO provides no justification for the exclusion of these organizations, similarly to the discriminatory treatment identified in the 2017 LEXNGO. According to the opinion of the Venice Commission on the 2017 LEXNGO, these exemptions were arbitrary and put into question the „genuine aim of ensuring general transparency” from the very beginning.²⁴

In light of the exceptions, the label of “engaging in activities that could influence public life” might be rather seen as a continuation of the government’s demonizing narrative that divides civil society into “good” and “bad” organizations that further ignores that influencing public discourse is one of the core functions of civil society organizations.²⁵ 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 empower individuals to stand up to human rights violations and hold those responsible to account.²⁶ Declaring civil society organizations “capable of influencing public life” could lead to further stigmatization and harassment of critical and independent NGOs using this seemingly neutral description which is vague and overly-broad.

The government argued that the 2017 LEXNGO was aimed to increase the transparency of NGOs and boosted efforts against money laundering and the financing of terrorism.²⁷ While the new law omits the latter argument, it continues to refer to transparency as one of the main objectives to impose the restrictions contained in the new LEXNGO. However, the transparency of civil society organizations is already guaranteed by other laws and regulations,²⁸ “as anyone can openly access to, and find information about their operation and finances in their compulsory annual reports available on the website of the National Office of the Judiciary.”²⁹

The government didn’t conduct any kind of public consultation prior to the submission of the bill. NGOs and other stakeholders affected by the law were not allowed to provide feedback and their concerns were not taken into account. Hungary’s Ministry of Justice, which authored the bill, did not respond to multiple requests for comments, even after submitting the draft to Parliament. Appropriate regulation of civil society organizations should be developed in consultation and with the effective participation of civil society.³⁰

The right to association is guaranteed by different international human rights treaties that Hungary is a party to, including the International Covenant on Civil and Political Rights (ICCPR),³¹ and the European Convention for the Protection of

20 <https://www.amnesty.org/en/documents/eur27/3968/2021/en/>

21 <https://www.amnesty.org/en/documents/eur27/3968/2021/en/>

22 <https://www.amnesty.org/en/documents/eur27/3968/2021/en/>

23 They were exempt from the LEXNGO in 2017 too

24 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

25 <https://www.amnesty.org/en/documents/eur27/3968/2021/en/>, <https://civilizacio.net/en/news-blog/retraction-of-the-LEXNGO-important-step-but-more-is-needed>

26 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

27 <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-peldamondatokat-kapott-varga-judit-amikor-brusszelben-franciat-tanul>

28 Article 30, part 3 and 4, 2011. évi CLXXV. törvény az egyesülési jogról, a közhasznú jogállásról, valamint a civil szervezetek működéséről és támogatásáról (2011 CLXXV. Act on the Right of Association, Public Benefit Status and the Operation and Support of Non-Governmental Organizations), <https://net.jogtar.hu/jogszabaly?docid=a1100175.tv>

29 <https://civilizacio.net/en/news-blog/retraction-of-the-LEXNGO-important-step-but-more-is-needed>

30 <https://civilizacio.net/en/news-blog/retraction-of-the-LEXNGO-important-step-but-more-is-needed>

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

Human Rights and Fundamental Freedoms.³² It is also guaranteed in the Fundamental Law of Hungary (Constitution).³³ Associations themselves enjoy human rights, including the right to privacy and to be protected from discrimination.³⁴ 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.³⁵

By introducing the new LEXNGO, the government has decided to maintain a climate of uncertainty and undue restrictions by applying additional financial control and audit that is highly stigmatizing of certain NGOs. Despite the amendments adopted to the 2017 LEXNGO, Hungary continues failing to fulfill its obligations under international human rights law. The new LEXNGO violates the right to protection from discrimination because the law creates a special category of NGOs, subject to a specific audit system, which appears to be arbitrary and beyond the powers of protecting public funds granted to SAO.

NEW AMENDMENTS CHANGE NOTHING FOR THE CEU

A new amendment to Hungary's Higher Education Law,³⁶ widely known as LEXCEU, entered into force in 2017 which prevents foreign-owned universities that do not provide courses in their country of origin and whose country of origin does not have a bilateral agreement with Hungary from operating locally.³⁷ The amendments were mainly intended to target the Central European University (CEU). CEU tried to comply with the new rules by establishing a satellite campus in the USA, but regardless of its efforts and a series of protests held in Budapest and supporting statements from all over the world, the university was under pressure to leave the country. The university then opened a campus in Vienna, Austria, in September 2019 and moved all degree-related activities there while maintaining a non-teaching, research presence in Budapest.

In December 2017, after a few months of intense correspondence with the Hungarian government, the European Commission decided to refer Hungary to the Court of Justice of the European Union „on the grounds that its Higher Education Law as amended on 4 April 2017 disproportionately restricts EU and non-EU universities in their operations and needs to be brought back in line with EU law”.³⁸ In October 2020, the Court of Justice of the European Union (CJEU) found³⁹ that the law was contrary to the provisions of the Charter of Fundamental Rights of the EU⁴⁰ and the General Agreement on Trade in Services (GATS).⁴¹

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

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

34 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

35 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.

36 <https://net.jogtar.hu/jogszabaly?docid=a1100204.tv>

37 “A foreign higher education institution may deliver programs leading to a diploma in the territory of Hungary, if the binding effect of an international agreement made between the Hungarian government and the government of the state of the country of origin of the foreign higher education institution on the in-principle support of its Hungarian operation – such international agreement to be based on the previous agreement with the central government of the state in case of a federal state, where the recognition of the binding effect of an international agreement does not fall into the scope of the central government - has been acknowledged by the contracting parties, it qualifies as state-recognized higher education institution operating in its country of residence and de facto delivering a higher education program there, (...), and its operation has been authorized by the educational authority.”

38 https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5004

39 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0066>

40 Article 13 relating academic freedom, Article 14(3) relating to freedom to found higher educational institutions and Article 16 relating the freedom to conduct a business.

41 In its judgment the Court of Justice upheld that “teaching activities leading to a qualification by higher education institutions situated outside the European Economic Area (EEA) subject to the existence of an international treaty between Hungary and the third country in which the institution concerned has its seat, Hungary has failed to comply with the commitments in relation to national treatment given under the General Agreement on Trade in Services (GATS), concluded within the framework of the World Trade Organisation (WTO).” That requirement is also contrary to the provisions of the Charter of Fundamental Rights of the European Union (‘the Charter’) relating to academic freedom, the freedom to found higher education institutions and the freedom to conduct a business.” The Court also upholds that „the activities of foreign higher education institutions, including institutions having their seat in another Member State of the EEA, subject to the condition that they offer higher education in the country in which they have their seat, Hungary has failed to comply with its national treatment commitments under the GATS and with its obligations in respect of the freedom of establishment, the free movement of services and the abovementioned provisions of the Charter”.

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>

Following the decision of the CJEU, a new bill was then submitted six months later to the Hungarian Parliament in April 2021, amending the National Higher Education Law. The new proposed provisions retain basically the same conditions which forced the Central European University to leave Hungary that were found by the Court of Justice to be contrary to academic freedom. Article 76 of the new law provides that: „A foreign higher education institution which has its registered seat in a state that is not a party to the Agreement on the European Economic Area (hereinafter: a non-EEA Member State) may pursue a degree-granting training activity on the territory of Hungary if it is included in the international agreement concluded between the government of Hungary and the government of the state where the foreign higher education institution has its seat on the equivalence of higher education qualifications and degrees, (...) and the training activity leading to the diploma has been authorized by the Education Office upon request.”⁴²

According to a statement released by the CEU in relation to the new bill, the changes proposed by the government “mean nothing”⁴³ for the operation of the university and the possibility of reopening a campus in Budapest. CEU officials announced that the university will remain in Austria and that they will maintain a non-teaching, research presence in Budapest in order to avoid being subjected again “to the political whims of one man and his regime.”⁴⁴

Academic freedom is explicitly protected by the Charter of the Fundamental Rights of the European Union.⁴⁵ According to Article 13, “the arts and scientific research shall be free of constraint. Academic freedom shall be respected”.⁴⁶ Academic freedom is also protected by the European Convention on Human Rights, under Article 10, which guarantees the right to freedom of expression that includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.⁴⁷ In 2006, the Parliamentary Assembly of the Council of Europe (PACE) adopted Recommendation 1762 concerning the protection of academic freedom of expression.⁴⁸ The Recommendation states, among other things, that “academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction.”⁴⁹

The UN Committee on Economic, Social and Cultural Rights has also stated that the right to education, enshrined in article 13 of the Covenant on Economic, Social and Cultural Rights to which Hungary is a party, can only be enjoyed if accompanied by the academic freedom of staff and students.⁵⁰ The Committee has explained that academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the state or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction.⁵¹

Hungary is also a state party of the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Preamble of the 1997 UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel

42 The translation of the new law was provided by the Central European University.

43 Statement on Proposed Amendment to LEXCEU, 20 April, 2021, <https://www.ceu.edu/article/2021-04-20/statement-proposed-amendment-lex-ceu>

44 Statement on Proposed Amendment to LEXCEU, 20 April, 2021 <https://www.ceu.edu/article/2021-04-20/statement-proposed-amendment-lex-ceu>

45 Charter of Fundamental Rights of the European Union (2000/C 364/01), https://www.europarl.europa.eu/charter/pdf/text_en.pdf

46 Charter of Fundamental Rights of the European Union (2000/C 364/01), https://www.europarl.europa.eu/charter/pdf/text_en.pdf

47 European Convention on Human Rights, https://www.echr.coe.int/documents/convention_eng.pdf

48 <https://strasbourgobservers.com/2010/07/22/academic-freedom-and-the-european-court-of-human-rights/>

49 Recommendation 1762 (2006) on Academic freedom and university autonomy, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17469&lang=en>, 4.1.

50 „In the light of its examination of numerous States parties’ reports, the Committee has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, even though the issue is not explicitly mentioned in article 13, it is appropriate and necessary for the Committee to make some observations about academic freedom. The following remarks give particular attention to institutions of higher education because, in the Committee’s experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The Committee wishes to emphasize, however, that staff and students throughout the education sector are entitled to academic freedom and many of the following observations have general application.”

Paragraph 38 of General Comment 13 of the CESCR, https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf

51 COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Twenty-first session (15 November-3 December 1999), IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, General Comment No. 13 (Twenty-first session, 1999) The right to education (article 13 of the Covenant),

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW%2BKyH%2BnXprasyMzd2e8mx4cYID1VMUKXaG3Jw9bomiLKS84HB8c9nIHQ9mUemvtOFbz%2FOSS7kENyDv5%2FbYPWaxMw47K5jTga59puHtt3NZr>

provides that “the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom and autonomy for institutions of higher education (...).”⁵² The Recommendation establishes in Article V./A about institutional autonomy that “Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source”.⁵³

The additional condition requiring foreign higher education institutions to obtain an international agreement between the government of Hungary and the government where the foreign institution has its seat is a clear barrier to the ability of educational institutions to operate freely and constitute a violation of Hungary’s obligation to fulfil the right to education. In its decision of 2020, the CJEU found the requirement of an international treaty as a condition of opening a foreign higher education institution problematic as „the fulfilment of that condition being in the discretion of the Hungarian authorities”.⁵⁴

The Court also examined whether the requirements introduced by the 2017 law were consistent with articles 13 of the Charter.⁵⁵ Examining the provisions of the law, the Court stated that “in relation to the exercise of the activities of higher education institutions, that academic freedom did not only have an individual dimension in so far as it is associated with freedom of expression and, specifically in the field of research, the freedoms of communication, of research and of dissemination of results thus obtained, but also an institutional and organizational dimension reflected in the autonomy of those institutions”.⁵⁶

The Court held that the measures were “capable of endangering the academic activities of the foreign higher education institutions concerned within the territory of Hungary and, therefore, of depriving the universities concerned of the autonomous infrastructure necessary for conducting their scientific research and for carrying out their educational activities; consequently those measures were such as to limit the academic freedom protected in Article 13 of the Charter”.⁵⁷

Despite the findings of the court, the new law maintains the additional conditions that were found to be contrary to academic freedom, including the condition that the operation of a foreign funded higher educational institution in Hungary depends on the consent by a government office and an international agreement that needs to be concluded by the Hungarian government and the government of the state where the foreign higher educational institution has its seat. Amendments to the LEXCEU further failed to clarify the criteria to obtain the consent of the government and continues to limit academic freedoms and the right to freedom of expression.

TIMING AND HISTORY OF THE LEXNGO AND LEXCHJUIIOEU

Over the past few years, the Hungarian government has persistently stigmatized independent NGOs by introducing restrictive laws that undermine the work of human rights defenders and other critical voices.⁵⁸ At the same time, the

52 Recommendation concerning the Status of Higher-Education Teaching Personnel, http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html, 11 November, 1997

53 Recommendation concerning the Status of Higher-Education Teaching Personnel, http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html, 11 November, 1997

54 The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law, 6 October 2020, Luxemburg, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>,

55 The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law, 6 October 2020, Luxemburg, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>,

56 The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law, 6 October 2020, Luxemburg, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>,

57 The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law, 6 October 2020, Luxemburg, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>,

58 In addition to LEXNGO in 2017, Hungarian authorities passed a series of laws in 2018 that severely restricted space for and operations of civil society. Legislation known as the “Stop Soros” package (LEXNGO 2018) was adopted on 20 June 2018. The new provisions criminalized a range of legitimate activities related to migration, under penalty of up to one year in prison. The law created a criminal offence of “facilitating illegal immigration” and it applies to both individuals and organizations that engage in “organizational activities” that assist people who seeking asylum, those who have entered Hungary irregularly and are attempting to secure a residence permit. The vague terminology contained in this law could see criminal penalties imposed for a broad range of legitimate activities, including campaigning, providing legal support to migrants and refugees or conducting research into human rights violations. The criminalization of such activities was a direct assault on the work of civil society actors who support or campaign on behalf of refugees, asylum-seekers and migrants. The law is pending in front of the CJEU. In 20 July 2018, the Hungarian Parliament adopted new legislation imposing a special tax of 25% on any funds received by civil society organizations who are conducting activities deemed to be “supporting immigration.” Such activities include “carrying out and participating in media campaigns”, “building and operating a network”, “educational activities” and “propaganda activity that portrays migration in a positive light”. Although the law was not applied, it is still force.

government's rhetoric against George Soros, founder of the CEU and donor of many civil society organizations, intensified.⁵⁹ The American-Hungarian businessman became the key scapegoat for the main Hungarian governing party, representing liberal values that Fidesz publicly rejects.⁶⁰ As part of this rhetoric, Viktor Orbán's party has sought to limit the influence of most human rights and anti-corruption NGOs and associated them with George Soros. In 2016, after Amnesty International and other human rights organizations condemned Hungary's treatment of migrants and refugees on the Hungarian-Serbian border,⁶¹ the government replied that "Soros's people are using lies to attack Hungarian policemen and soldiers defending our borders."⁶² Viktor Orbán also deliberately started to call the CEU "Soros-university"⁶³ in a way to further stigmatize the university, its academic staff and students by directly associating it with the demonization of its founder.

On 4 April 2017, two months before the LEXNGO was adopted, the Hungarian Parliament amended the Higher Education Law without public consultation. A few months after a national consultation on the 'Soros plan'⁶⁴ was launched in October in a clear misrepresentation by the government⁶⁵ of George Soros' proposals for managing the refugee crisis in 2015.⁶⁶ In the eyes of the government, civil society organizations that publicly criticized government policies and measures to handle the influx of migrants and refugees became part of the "Soros-network" or were even called "mercenaries of George Soros"⁶⁷ who work on the implementation of his alleged plan to introduce millions of immigrants to Europe, thereby threatening the integrity of the Hungarian nation.⁶⁸

The attacks against civil society organizations intensified in 2018 when Hungarian authorities passed a series of laws that severely restricted the space for civil society. Legislation known as the "Stop Soros" package (LEXNGO 2018) was adopted on 20 June 2018 and criminalized a range of legitimate activities related to migration with a penalty of up to one year in prison. On 20 July 2018, the Hungarian Parliament also adopted new legislation imposing a special tax of 25% on any funds received by civil society organizations who are conducting activities deemed to be "supporting immigration".⁶⁹ Both laws are still in force.

SIMILARITIES OF THE LAWS INTRODUCED IN 2017 AND THE SUBSEQUENT 2021 VERSIONS

The adoption of both laws in 2017 and the subsequent versions of 2021 follow a similar pattern. In both cases, the adoption of the laws was accompanied by an intensive smear campaign in government-aligned media that stigmatized NGOs and the CEU, portraying them as "traitors" and "anti-Hungarian" organizations that represent a threat to Hungary

59 <https://www.politico.eu/article/hungary-vs-civil-society/>

60 <https://hungarytoday.hu/orban-hungary-says-yes-to-democracy-no-to-liberalism/>, <https://www.economist.com/briefing/2019/08/29/how-viktor-orban-hollowed-out-hungarys-democracy>

61 <https://www.amnesty.org/en/latest/news/2016/09/hungary-appalling-treatment-of-asylum-seekers-a-deliberate-populist-ploy/>

62 https://index.hu/belfold/2017/03/08/a_fidesz_szerint_soros_gyorgy_es_brusszel_mar_megint_tamadast_inditott_magyarorszag_ellen/,

<https://www.washingtonpost.com/news/monkey-cage/wp/2017/04/07/why-is-hungary-trying-to-close-george-soross-prestigious-university/>

63 <https://www.origo.hu/itthon/20181109-orban-viktor-kossuth-radio.htm>

64 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, which they implied to be Muslim terrorists, on them.

65 Prime Minister Viktor Orbán gave an interview on 15 April, 2017 where he said the following: „The whole case is about György Soros supporting illegal immigration with a lot of money, hidden from the public, through his organizations in Hungary. (...) Those who call themselves liberal and leftist, led by George Soros who support them with his money, power and networks, and want [] migrants to be allowed to create a new quality with us, the traditional peoples of Europe.", <https://miniszterelnok.hu/orban-viktor-interjuja-a-magyar-idokben/> Later in the year the government launched a poster-campaign, saying: Don't let Soros laugh at the end <https://nepszava.hu/tag/soros-plakat/>

66 George Soros published an article in September, 2015 how to manage the refugee crisis (<https://www.marketwatch.com/story/george-soross-heres-my-plan-to-solve-the-asylum-chaos-2015-09-29>)

67 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. <https://www.amnesty.org/en/documents/eur27/3968/2021/en/>

68 One of the questions of the consultation was the following: "György Soros wants to persuade Brussels to relocate at least one million people from Africa and the Middle East to the territory of the European Union, including Hungary. Do you support this point of the Soros Plan?" <https://444.hu/2017/09/28/itt-a-teljesen-nemzeti-konzultacios-kerdoiv>

69 <https://www.amnesty.org/en/documents/act30/9647/2019/en/>

and its people.⁷⁰ In both cases, the smear campaigns targeted George Soros, who was made to represent values and ideas that the Hungarian government is opposed to.⁷¹

Both laws from 2017 were highly criticized by Hungarian and international organizations, as well as other local and international stakeholders, for the threat the laws represent to the rights to freedom of association and of expression, and more generally to the work of civil society.⁷² Both campaigns against NGOs and the CEU defined the government's politics and communication for years.

Moreover, the European Commission launched infringement procedures in both cases in 2017,⁷³ and both procedures eventually landed at the CJEU. Even after the CJEU found the two laws of 2017 to be contrary to European law, the government failed to promptly repeal or amend these laws. The new LEXNGO came before the Parliament only after the Commission had started a new infringement procedure in February 2021⁷⁴ for not complying with the earlier decision of the Court, and the Higher Education Law was only amended after the government signed an agreement with the Chinese Fudan University that would open a campus in Budapest by 2024.⁷⁵ The timing of this agreement clearly shows that opening a foreign university in Hungary is a question of political will as the new Higher Education Law maintains the requirement of an international treaty as a condition of opening a foreign higher education institution.

In addition, in both cases the government only technically complied with the CJEU decision while the core issues remained unsolved. Regarding the new Higher Education Law, foreign universities continue to be dependent on the political will of the government which makes any current and future agreement insecure and depending on the good will of the authorities. With the new LEXNGO, the government has seemingly implemented the decision of the CJEU by repealing the 2017 LEXNGO but adopted a new regulation that poses similar threats to the operation of critical and independent NGOs.

/ends

70 https://mandiner.hu/cikk/20171128_csepregi_janos_szegenyeket_akartak_etetni_a_hazaarulo_civilek, https://nepszava.hu/1108105_orban-utasitasara-tamadtak-a-soros-berenc-civileket,

https://index.hu/belfold/2017/01/11/nemeth_szilard_megnevezte_milyen_civileket_akarnak_eltakaritani_az_utbol/,
https://hvg.hu/itthon/20170410_Orbant_a_vasarnapi_tomeg_csak_megerosithette_sajat_realmaban

71 <https://www.magyarhirlap.hu/velemeny/20201130-soros-a-hamiskartyas>, <https://www.origo.hu/itthon/20170425-hollik-istvan-soros-gyorgy-brusszel.html>, <https://444.hu/2018/12/30/a-tv2-bemondta-hogy-soros-gyorgy-az-egesz-vilagot-befolyasolna>, <https://444.hu/2017/05/02/tv2-tenyek-soros-megolte-volna-az-anything>

72 OSCE/ODIHR hosts meeting with civil society and state institutions on situation of human rights defenders in Hungary (<https://www.osce.org/odihr/128056>), Commissioner concerned about proposed additional restrictions to the work of NGOs in Hungary (<https://www.coe.int/en/web/commissioner/-/commissioner-concerned-about-proposed-additional-restrictions-to-the-work-of-ngos-in-hungary>) UN experts decry Hungary's tough new measures against migrants and civil society (<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23533&LangID=E>)

73 **Hungary: Commission takes legal action on Higher Education Law and sets record straight on 'Stop Brussels' consultation** https://ec.europa.eu/commission/presscorner/detail/en/MEX_17_1116, 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),

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

75 <https://www.euronews.com/2021/05/02/hungary-agrees-to-open-chinese-university-campus-in-budapest-by-2024>