Hungarians are said to have settled in the Carpathian basin at the end of the 8th century. Whatever the date or circumstances, the basin was both before and after the Magyar conquest an area with a multitude of peoples, cultures and languages. At the heyday of the Habsburg Empire, Hungarians made up only about 50% of the whole population. Then came the 20th century and the demise of the old world, the territory shrank to its present size, minorities assimilated into the universal Hungarian People’s Republic or even sent to their ‘home countries’. Yet common family names in Hungary such as Török (Turk), Tóth (Slovak), Németh (German), Oroz (Russian), Horváth (Croat) or Szerti (Serbi) suggest that a multicultural past lingers under the soil of today’s much more homogenous society.

This historical backdrop seems long forgotten today, in a political climate where Viktor Orbán’s populist government claims that the very survival of the Hungarian nation is at stake. Orbán’s rhetoric propagates an image of Hungarian people tied together by ethnical, cultural and religious bonds, rather than citizenship, threatened by Europe and a perceived flood of migrants that must be stopped. There are also enemies within, a mix of cosmopolitans, ethnic minorities, feminists, LGBTI people, opposition intellectuals, human rights activists and other troublemakers.

The Hungarian government is walking a fine line between its isolationist nationalist policy and its dependence on the international community. For instance, the country cashes in generously on European Union (EU) subsides yet clashes with the EU over legislation on academic freedom, NGO liberties and refugee quotas, as the current infringement processes initiated by the European Commission against Hungary and the Article 7 vote in the European Parliament clearly show.

Free speech is under pressure in Hungary today, despite the ruling Fidesz party claiming the opposite. This PEN report documents how the Orbán government has taken measures against crucial areas of society where opposition can be voiced, above all the media sector, but also academia and the NGO sector, in an attempt to quell dissent. Even the cultural field is slowly being captured by the government, with Fidesz attempting to control even the non-compliant and versatile literary field. Although there is no official censorship, self-censorship threatens to become a way of surviving for writers and journalists.

I visited Hungary several times over the past 20 years, even lived in the country for years. I happened to be there that hot day in June 2010 when Fidesz parliamentarians approved the Declaration of National Cooperation, setting the ideals and objectives of the infamous System of National Cooperation (Nemzeti Együttműködési Rendszere, NER). Intended to represent an alternative to liberal democracy, the NER is described as a ‘revolution fought within the framework of the Constitution’, which of course only translates as a palace revolution, and places ‘work, home, family, health and order’ as pillars of the new Hungarian society. The Orbán government issued a decree stipulating that the declaration must be displayed in all executive government buildings. To my surprise, at that time almost no one seemed to take this seriously. Hungarians have always had a strong sense of humour. According to the NER, Hungarians themselves had decided to create a new social contract, but the power to carry through the revolution was in the hands of the government. Hence, anyone diverging from the new system or opposing it was seen as standing against the will of the people, echoing the ‘Goulash communism’ slogan of János Kádár: ‘those who are not against us are for us.’

Everything we see in Hungary today was already brewing just a few months after the landslide victory of Fidesz in 2010. Limits to free speech are merely a means to keep power in place. Silence in such a system is necessary. Although there are still pockets of freedom here and there, the resources and creativity of the Orbán government to marginalize and slowly suffocate opposition voices seem endless. This report shows that Hungary is heading towards a dark world labelled ‘illiberal democracy.’ Hopefully it can serve as a basis for discussion on how the PEN community can support freedom of expression in a country that is increasingly stifling it.

FOREWORD

Daniel Gustafsson, Translator, board member of Swedish PEN

FREE SPEECH IN HUNGARY

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PEN International promotes literature and freedom of expression and is governed by the PEN Charter and the principles it embodies: unhampered transmission of thought within each nation and between all nations. Founded in 1921, PEN International connects an international community of writers from its Secretariat in London. It is a forum where writers meet freely to discuss their work; it is also a voice speaking out for writers silenced in their own countries. Through Centres in over 100 countries, PEN operates on five continents. PEN International is a non-political organisation which holds Special Consultative Status at the UN and Associate Status at UNESCO. International PEN is registered charity in England and Wales with registration number 1117088.

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INTRODUCTION

This report was prepared by PEN International with a view to informing the PEN membership of the situation for freedom of expression in Hungary. This report follows the quasi-unanimous (only PEN Hungary abstained) adoption of a resolution by the PEN community at its 83rd International Congress in Lviv, Ukraine, in 2017, which expressed concern over the shrinking space for civil society, anti-refugee sentiment, and hate speech against minorities and at-risk groups in the country. Under the strong mandate of this resolution, which is attached in Annex, PEN International decided to undertake the high-level mission and research that led to this report.

A high-level mission to Hungary’s capital Budapest was undertaken from 26 to 28 April 2018 by PEN International with Jennifer Clement (President), Käтиln Kaldmaa (International Secretary), Jarkko Tontti (Treasurer), Carles Torner (Executive Director), Daniel Gustafsson (member of Swedish PEN), Laurens Hueting (Europe Programme Coordinator) and Orsolya Léhőtai (consultant).

By way of background, this report first provides a brief introduction to the Hungarian political context. The next chapters set out the findings regarding shrinking space for civil society, polarisation of the media landscape, capture of cultural institutions, and the attacks on academic freedom.

This report is based on the outcomes of desk and field research. PEN International wishes to thank all those who met with its Board members and staff. Most information and views shared with the researchers have not been individually attributed in this report. While most interlocutors were happy to speak on the record, some were not and accordingly this anonymization was necessary to ensure that all partners felt that they could speak frankly and without fear of reprisals. When describing findings from meetings, the pronoun ‘they’ is used to denote both singular masculine/feminine and plural.

Overall, PEN International shares the concern of many of its interlocutors about the state of freedom of expression in Hungary, as the successive governments led by Viktor Orbán have and – it is feared – will continue to undermine the basic institutions of the rule of law and attack the pluralist values that underlie open societies. PEN International, as an organisation that promotes a culture of peace based on freedom of expression, dialogue and exchange, and that is dedicated to linguistic and cultural diversity, is highly alarmed by the manifestations of the Hungarian illiberal state and the myriad ways in which this undermines rights and freedoms. In particular, PEN International is concerned about the consistent deterioration of the right to freedom of expression, through inter alia the attacks on civil society, the independence of the media and academic freedom, and the politicisation of the support to cultural institutions and the arts.

ORBÁN’S ELECTORAL SUCCESSES

In 2010, Viktor Orbán and his Fidesz party scored an overwhelming electoral victory. The party had been founded in 1988 as a stridently liberal movement intent on upending communism and re-linking Hungary to the West, but over the years shed its neo-liberal values to become a populist party and personal vehicle to power for Orbán.¹ In the first round of the 2010 elections, Fidesz candidates secured an absolute majority in Parliament enough to form a government on its own, and in the second round Fidesz-Christian Democrat People’s Party (KDNP) candidates won enough seats to achieve the two-thirds majority required to amend Hungary’s Constitution and other major laws. The extreme right wing Jobbik party also scored strong results, while the outgoing socialist party lost 131 of its 190 parliamentary seats.

The 2014 elections took place under an election law amended by the Fidesz-KDNP coalition; the coalition preserved its two-thirds majority in Parliament, and Orbán remained Prime Minister. In 2018, the Fidesz-KDNP coalition again preserved its two-thirds majority in Parliament, and Orbán took up his third consecutive mandate.

The 2018 election campaign was marred – as were previous ones – by racist, xenophobic and anti-Semitic remarks by Orbán and other members of Fidesz and other political parties. For instance, in a speech commemorating the 170th anniversary of the 1848 revolution on 15 March 2018, Orbán said that ‘we must fight against an opponent which is different from us … they are not national, but international: they do not believe in work, but speculate with money; they have no homeland, but feel that the whole world is theirs.’²

³

⁴ Ibid.

His rhetoric pits different groups in society against each other: ‘we, the millions with national feelings, are on one side; the elite ‘citizens of the world’ are on the other side … on one side, national and democratic forces; and, on the other side, supranational and anti-democratic forces.’³ Typically, Orbán presents Hungarian-born philanthropist and writer George Soros as the leader of this alleged international conspiracy: ‘we are up against media outlets maintained by foreign concerns and domestic oligarchs, professional hired activists, troublemaking protest organisers, and a chain of NGOs financed by an international speculator, summed up and embodied in the name George Soros.’⁴ Throughout his speeches, Orbán identifies migration as the key threat to Hungary. Although tied to religious and cultural identity, there is a strong racial undertone, saying for instance that ‘Hungarians are an endangered species … There are many people who would like to see the end of Christian Europe, and they believe that if they replace its cultural subsoil, if they bring in millions of people from new ethnic groups which are not rooted in Christian culture, then they will transform Europe’.

On 8 February, Orbán told a gathering of Hungarian mayors that ‘we do not want to be multi-coloured by being mixed … with others.’⁵ Following the 2018 elections, the Organization for Security and Co-operation in Europe (OSCE) said that they ‘were characterized by a pervasive overlap between state and ruling party resources, undermining competitors’ ability to compete on an equal basis … Fundamental rights and freedoms were respected overall, but exercised in an adverse climate. Access to information as well as

The hungarian political context: Orbán’s ‘illiberal democracy’

The concept of ‘illiberal democracy’

Coined by journalist and author Fareed Zakaria in his famous essay The Rise of Illiberal Democracy,2 the concept describes the situation in which a country’s political power is exercised by the majority, elected through a (more or less) free and fair process. The difference with ‘liberal democracy’ lies in the rejection of the ideas behind a ‘bourgeois’ open society,3 including basic principles of rule of law and respect for and protection of individual rights and liberties, in particular for vulnerable and minority groups. As put forward by Zakaria, “[t]here is a spectrum of illiberal democracy, ranging from modest offenders … to near tyrannies … Along much of the spectrum, elections are rarely as free and fair as in the West today,” but they do reflect the reality of popular participation in politics and support for those elected.4

In Hungary in particular, the concept of illiberal democracy is used to legitimise the suppression of dissenting voices coming from civil society organisations, independent media and cultural actors, and to discredit their legitimate role in policymaking, including by painting them as stooges for foreign interests. In an infamous July 2014 speech that according to one of PEN International’s interlocutors marked the starting point of “a war on human right standards”,5 Orbán before an ‘ethnic’ Hungarian audience in Tuzsékbánya (Romaonia) set out his vision of illiberal democracy:

**THE CONCEPT OF ‘ILLIBERAL DEMOCRACY’**

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**HUNGARY: AN UNDEMOCRATIC DEMOCRACY?**

Orbán’s implementation of his version of illiberal democracy had many of PEN International’s interlocutors raising grave concerns about the state of Hungarian institutions, saying for instance that the country “is now moving towards a system of government by decree rather than agreement”6 while another was afraid “it cannot be even democracy if the most important element, freedom of expression, is also thwarted”7. One interviewee8 called Orbán’s version of illiberal democracy “a historic collapse of working practices from all parts of history”, with “weird fascist elements, weird communist elements.

**MIGRATION POLICY**

Beginning in 2015, the ‘year of Europe’s refugee crisis’,9 the Hungarian authorities embarked on a campaign to – as put by Amnesty International – “deliberately, painstakingly and ruthlessly prevent refugees from reaching its soil”10. Among other measures, in September 2015 Hungary erected barbed-wire fences on its borders to physically keep migrants out.11 Additionally, it declared Serbia a ‘safe third country’, in which asylum can be sought without danger, in order to avoid taking in refugees who travelled through Serbia and to make it possible to forcibly return refugees and migrants.12 On 5 July 2016, a new law entitled into force enabling police to push back asylum seekers apprehended up to eight kilometres inside Hungarian territory.13 Overall, as described by independent and international human rights groups, Hungary’s discriminatory and cruel policies have given rise to increased physical violence against refugees and migrants and a wholesale denial of the rights of refugees and migrants, which has disproportionately affected the most vulnerable groups.14

Furthermore, the Hungarian Parliament refuses to participate in a binding EU agreement regarding the equitable relocation of asylum seekers across EU member states. In response to the EU’s Emergency Response Mechanism, Orbán called a national referendum for October 2016 with a view to mobilising the Hungarian public against refugee quotas that had been imposed on Hungary “without the consent of the Hungarian parliament.”15 The government campaign was accompanied by a media campaign, whereby the government included messages such as “Did you know that since the beginning of the immigration crisis more than 300 people died as a result of terror attacks in Europe?”; “Did you know that Brussels wants to settle a whole city’s worth of illegal immigrants in Hungary?”; and “Did you know that since the beginning of the immigration crisis the harassment of women has risen sharply in Europe?”.16 The referendum result was invalid because a low turnout but Orbán nevertheless declared victory because among valid ballots, 98 per cent said no to the EU quota system.17 The fairness of the procedure was also the subject of controversy, with some legal scholars arguing that the referendum question was deceptive and unconstitutional.18

In December 2015, the European Commission opened an infringement procedure against Hungary concerning its asylum law. Following a series of exchanges on administrative and political levels and a complementary letter of formal notice, the European Commission in December 2017 sent a reasoned opinion having put forward its concerns regarding the Hungarian asylum laws and the ways in which they fail to comply with EU law on the matter. Following an analysis of the Hungarian government’s reply to that reasoned opinion, the Commission considered that the majority of its concerns were not adequately addressed and in July 2018 decided to refer Hungary to the Court of Justice of the European Union.19

In June 2018, the Hungarian Parliament refused a legislative package that ‘not only makes it almost impossible to seek asylum in Hungary, but also makes it a crime to help migrants and refugees’.20 Some of the effects of this law on civil society are discussed below. Amnesty International in its analysis of the law points out that they “criminalise activities that are lawful under international and EU law. As a signatory to key international human rights treaties … Hungary would be responsible for violations of the right to seek and enjoy asylum; freedom of movement, association, and expression; the right to privacy and family life; the principle of non-discrimination; and internationally recognized fair trial standards. Various rights under the EU Asylum Acquis21 will also be under threat, including asylum seekers’ right to information on asylum procedures; the right to advice at border crossings.

**Some of the effects**
and in transit zones; and the right to free legal assistance and counsel in asylum appeals and in appeals regarding detention, among other things. 28

**STATE-SPONSORED RACISM AND XENOPHOBIA**

Orbán’s rhetoric often appears aimed at cultivating an antagonistic divisiveness, which pits the Christian, conservative, Fidesz-voting Hungarian citizen against a perceived ‘other’. For instance, in a speech given at the 2018 Bálványos Summer Open University and Student Camp in 2017, Orbán said:

> ‘What is the conclusion to be drawn? It is that we can never show solidarity with ideologies, peoples and ethnic groups which oppose to the aims of European existence and culture, because that would lead to surrender … We shouldn’t forget that Hungary … was the country which stood against the migration flood into Europe. And I made it clear earlier, and I’ll repeat this now: for as long as I am the Prime Minister of Hungary, at the head of the Fidesz and Christian Democratic government, the border fence will remain in place and we will strengthen it. And in so doing we shall also protect Europe.’ 29

One of PEN International’s interlocutors described the rhetoric coming from the government quarters as ‘a mix of dog-whistle and very direct and strong racism, amplified by a strong right-wing media presence’. 30 Another stressed how worrying the normalisation of racist speech has become: ‘people are no longer protesting and even the liberal press has abandoned this topic.’ 31

Bernard Rorke at the European Roma Rights Centre notes that ‘there was little by way of public outrage when journalist Péter Kovács published this statement in which the Prime Minister equated Hungary’s Roma population with the Syrian refugees; likened his fellow citizens to a historically inherited burden and spoke of a national “we” who have to live with them’. 32 Besides propagating hateful views of Roma people, the government also fails in its duty to protect them from frequent acts of violence, discrimination and racism by non-state actors. 33 In January 2017, the European Court of Human Rights (ECtHR) found that Hungary has violated the right to respect for private and family life of the applicants of Roma origin, who alleged that the police failed to protect them from racist abuse during a demonstration and to properly investigate the incident. The ECtHR found a multitude of shortcomings on the part of the Hungarian authorities, entailing that an openly racist demonstration driven by a largely undefined – forces aiming to destroy Hungary’s Christian culture through mass migration. The anti-Semitism has manifested itself in several ways, including for instance in an infamous billboard that read ‘Don’t let George Soros have the last laugh’, which recalled historic traumas of the Nazi era with its image of the ‘Laughing Jew’. 34 Another example is Orbán’s characterisation of Soros as one of Hungary’s enemies that ‘do not believe in work, but speculate with money’, recalling the common anti-Semitic stereotype portraying Jews as ‘scheming merchants’. 35

**ANTI-SEMITISM**

Orbán’s campaigns targeting civil society and academia (see below) at times have apparent anti-Semitic undertones, as they centre on the person of George Soros who, through the Open Society Foundations (OSF) and other vehicles, has supported the transition to liberal democracy and the promotion of human rights throughout post-Soviet European countries, including very prominently also in Hungary, which until recently was an important hub for OSF’s activities. Street billboards paid for by the Hungarian government and full-page ads in pro-government media have depicted Soros as the puppet master behind an international conspiracy driven by a vaunted and largely undefined force aiming to destroy Hungary’s Christian culture through mass migration. The anti-Semitism has manifested itself in several ways, including for instance in an infamous billboard that read ‘Don’t let George Soros have the last laugh’, which recalled historic traumas of the Nazi era with its image of the ‘Laughing Jew’. 34 Another example is Orbán’s characterisation of Soros as one of Hungary’s enemies that ‘do not believe in work, but speculate with money’, recalling the common anti-Semitic stereotype portraying Jews as ‘scheming merchants’. 35

Orbán and members of his government have repeatedly pledged ‘zero tolerance’ for anti-Semitism, for instance saying that all of the Jewish citizens in Hungary are under the protection of the government on the occasion of a controversial state visit to Israel, where politicians and party leaders had urged Prime Minister Netanyahu to cancel the trip after Orbán drew criticism for praising Miklós Horthy, Hungary’s Second World War era ruler, who introduced anti-Semitic laws and collaborated with the Nazis. 36 It should furthermore be noted that Orbán often expressly states his5/response of the Jewish people in anti-Islamic, anti-immigrant views. 37 Nevertheless, as also noted by one of PEN International’s interlocutors, 38 while most of the members of the Jewish community are against Orbán, he does enjoy some support among people of Jewish religion or descent and some hold government or government-appointed positions.

**SEXISM AND MISOGyny**

Hungarian society is characterised by a high level of acceptance of traditional gender roles and stereotypes, particularly in the countryside. One of PEN International’s interlocutors linked this to education and the role of the media. For instance, the proportion of women in the news is very low and they are portrayed in a very limited way, mostly in vox populi reactions or because they are celebrities or victims of crimes and only rarely as spokesperson or professional experts (medicine being an exception). Women’s human rights have never been high on the political agenda in Hungary. Nevertheless, as one of the people with whom PEN International met remarked, 39 Orbán’s successive governments have displayed a particular lack of political will regarding these issues. Another noted that the biggest change since 2010 in their experience had been on the rhetorical level: it changed from ‘a benevolent sexism’ to hostility and the propagation of ideas and policies on limiting women’s role in society, although ‘when it comes to women’s rights, there was nothing much to dismantle in the first place’. 40

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30 PEN International interview, April 2018.

31 PEN International interview, 27 April 2018.


33 Bernard Rorke, ‘10 things they said about Roma in Hungary’, (http://www.erc.org/) 10 things they said about roma in hungary.


39 Freedom House, see footnote 2.


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44 PEN International interview, 27 April 2018.

45 PEN International interview, 25 April 2018.

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47 The hungarian political context: Orbán’s ‘illiberal democracy’
The government’s gender-related policies were said to centre around a ‘pro family’ and ‘traditional values’ discourse, which PEN International’s interlocutors frame as anti-thetical to women’s human rights.47 This antagonistic framing of ‘women’s rights v. traditional Hungarian values’ was also reflected in the government’s rhetoric around the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which was portrayed by the government as an attempt to force ‘gender ideology’ on Hungary and thus to undermine the country’s values. In August 2018, the government moved to ban gender studies sparked international backlash.48

Several of PEN International’s interlocutors49 pointed out that while they denounced the ‘male chauvinism of Hungarian politics’ also translates to the aesthetics of the art (deemed ‘macho’ by one) and the gender of the artists it supports. For instance, when it comes to literary state prizes (see more on this issue below), there are always more men nominated than women and this is more pronounced when the prize is more prestigious.

HOMOPHOBIA AND TRANSPHOBIA

In the yearly ranking compiled by the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) which reflects how the laws and policies of each country impact on the rights of and tolerance for LGBTI persons in an already-negative context, Hungary has placed it among the mid-tier performers (20th out of 49 countries reviewed).50 Háttér Society, one of the oldest and largest LGBTI organisations in Hungary considers the legal situation for LGBTI people in Hungary relatively quite favourable, with the second highest standard of legal protection in the Eastern and Central European region. Nevertheless, ‘LGBTIQ people still face prejudice and discrimination in many areas of life. Most of them decide to keep their sexual orientation and/or gender identity secret … Nearly every second Hungarian agrees with the statement that homosexuality is a sickness, and would rather not have a gay or lesbian neighbour’.51

While recently, as one of PEN International’s interlocutors pointed out,52 overtly homophobic speech by members of Orbán’s governments appears to have been replaced by anti-migrant statements compared with the period 2010-2014, it continues to rear its head on occasion. For instance, on 17 May 2015, in response to a journalist’s question about the relevance of the International Day Against Homophobia, Transphobia and Biphobia, Orbán said that the values on which Hungary are based are fundamentally traditional, and it is a traditional country. Tolerance, according to Orbán, however does not mean that ‘we apply identical rules on lifestyles which are different from ours’. He also added that he is ‘grateful to the Hungarian homosexual community, the members of which do not pursue the kind of provocative behaviour which many European countries are faced with’.53 Shortly after 2010, the Orbán government introduced repressive legislation, including most notably defining marriage as a union between a man and a woman in the 2011 Constitution, but overall none of PEN International’s interlocutors warned of a further recent regression regarding LGBTI rights in Hungary. Neither, however, has there been much advancement. One said that in their opinion, the government’s policy appears to be to just ignore LGBTI issues and the LGBTI community.

One of the persons with whom PEN International met noted that LGBTI migrants and refugees are especially vulnerable, falling victim to persecution and discrimination, often by their own community as well as society more broadly.54 At the same time, it was pointed out that also within the Hungarian LGBTI community, some hold hateful views towards migrants and refugees, as well as towards Roma people.

Many LGBTI organisations in Hungary receive foreign funding, which appears to make them suspect in the eyes of the government. Subsequent to the authorities’ efforts to distinguish between LGBTI NGOs working on migration issues on the one hand, who are heavily attacked, and other NGOs and think tanks on the other hand, a bit more in the background. However, said another,55 even if a specific NGO is not directly affected by the government’s measures, it still affects the work: collaboration with other civil society organisations becomes more difficult, institutional donors wonder whether their funding is well-spent, businesses hesitate to enter into partnerships with NGOs even in politically neutral projects, and it becomes harder to get one’s voice heard in the media.

Yet, while recent waves of anti-LGBTI rhetoric have kept the government in the global media spotlight, the pace of legal and economic restrictions on LGBTI rights has slowed, at least until recently.56 Not all LGBTI individuals are affected by these developments, however. In Hungary’s case, attention seems to have been directed at the members of the Hungarian homosexual community, who are for now remaining a bit more in the background. However, the campaign to discredit human rights organisations with the ‘liberal’ and the portraying of criticism directed at the policies as politically motivated, which they called highly cynical.57 It was stressed that the work is driven by a belief in equality and freedom, and that civil society did exactly the same under previous governments. One interlocutor said that unfortunately it is not yet part of Hungarian political culture to understand that opposing one party’s view does not necessarily subscribe to the opposition, and another noted that ‘if you are not for the system, you are considered against; there is no such thing as the concept of independence’.58

Not all civil society organisations are affected equally by the government’s campaign. One of the interviewees59 said that in their experience, for now the government appears to distinguish between LGBTI NGOs working on gender rights against women and domestic violence (Istanbul Convention), which was portrayed by the government as an attempt to force ‘gender ideology’ on Hungary and thus to undermine the country’s values. In August 2018, the government moved to ban gender studies sparked international backlash.60

Even if the government’s campaign was initially mostly rhetorical, the people with whom PEN spoke still pointed out some concrete effects, including the fact that an increasing part of the general public believes that civil society is out to destroy Hungarian values, and additional challenges to building partnerships and trust have been engendered by suspicion of NGOs’ activities. Moreover, as one noted,61 the government’s accusations are difficult to dispel because the attacks are personal and not based on substance.

Furthermore, several interviewees expressed regret about the diminution of rights organisations from the political scene, which according to PEN International’s interlocutors warned of a further recent regression regarding LGBTI rights in Hungary. Neither, however, has there been much advancement. One said that in their opinion, the government’s policy appears to be to just ignore LGBTI issues and the LGBTI community.

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Further, several of PEN International’s interlocutors noted that the government’s anti-LGBT stance has changed the nature of the work itself: tokenistic Erdogan-style efforts to feign a free market propelled by self-censorship and true consultation and collaboration. One described interaction with the government as “symbolic”, and said that in the current climate, the line between professionalism and politics has become so thin that it endangers years of building partnerships and trust with government instances.

In addition, it was said66 that while so far there has not been any self-censorship, the attacks by the authorities have engendered a great deal of cautiousness about every public statement. People working in civil society will always try to ‘look at ourselves with the eyes of the propagandists’, and ponder every word.

Marking the government’s shift from rhetoric to action, on 10 January 2017 the Deputy Chairperson of Fidesz, Szilárd Németh announced the government’s intention to get rid of the ‘pseudo civilians’ of the ‘ Soros Empire’ who are allegedly foreign agents representing ‘global plutocracy’ and the political correctness above the heads of the national governments. He added that ‘these organisations should be forced back, and, I believe, they should be thrown out. I feel that the international opportunity for such a move has arrived’.67

Despite much domestic and international criticism,68 Hungary’s Parliament approved in June 2017 the Law on the Transparency of Organisations Receiving Foreign Funds, which requires any organisation receiving more than 7.2 million HUF (approximately 24,000 euros) in financial support from abroad to register as a ‘foreign-supported organisation’ and to identify themselves as such on any publication. The law imposes a duty to report annually on the names, countries and cities of foreign donors, including private individuals, for each transaction. Failure to register can result in a fine and ultimately, could lead to the targeted NGO’s dissolution. Sports and religious organisations, political parties and trade unions are excluded from the scope of the law. The European Commission has opened an infringement procedure against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions that indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission argues that Hungary violates the right to freedom of association and the rights to protection of private life and personal data, as enshrined in the Charter of Fundamental Rights of the EU.69


69 The hungarian political context: Orbán’s ‘illiberal democracy’
A few months after the adoption of the NGO funding law, the government announced their ‘STOP-Soros’ legislative package which contained far-reaching restrictions on the activities of civil society. The initial version used administrative measures to restrict the work of charities, including, but not limited to, a licensing procedure for organisations working on migration and a 25% tax on foreign funding. After the April 2018 elections, the government tabled a new version, which takes a different approach using criminal law to restrict space for civil society.67 On 19 June 2018, a new amendment was added at the last minute to change the tax code with a view of re-imposing the 25% tax on all ‘immigration activities’. The legislative package was adopted on 20 June 2018 by the Parliament.

As noted also by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in their joint opinion, the ‘extremely hasty adoption process’ of the law has not given an opportunity to experts, to engage in any meaningful discussion on the activities. The legislative package was adopted on 20 June 2018 by the Parliament.

In terms of consulting the wider public, the interviewee said that there was a ‘pre-fabricated consultation formed with pre-fabricated answers sent to the homes of Hungarian people’. Commenting generally on the legislative process, the UN Human Rights Committee has recommended that Hungary ‘should strengthen its legislative process, especially in relation to laws affecting the enjoyment of human rights, by ensuring … a transparent, inclusive and participatory process’.68

By way of rationale for the law, the government provides that ‘the mass immigration hitting Europe and the activities of pro-immigration forces threaten the national sovereignty of Hungary. Brussels plans to introduce a compulsory fixed-quotas scheme for the relocation of migrants residing or arriving in Europe which presents a danger to the security of our country and would change the population and culture of Hungary forever’.69 In order to achieve this, the law among other things criminalises supporting or facilitating illegal immigration (new article 353A of the Criminal Code). The new provision criminalises any organisational activities to assist asylum seekers and people with the legal rights for asylum procedures or to obtain a residence permit; it provides that such offences may be committed by a person directly assisting an individual migrant, but also by preparing or distributing informational materials or by creating or operating a network to carry out these activities; it criminalises a person who organises border monitoring; and it criminalises any ‘organising activities’ which may fall under the scope for the above activities. As such, it is clear that the law is not aimed at individuals who knowingly assist fraudulent applications (already a crime), but rather at actions that are legal, and even required, under international law.70 Pursuant to international standards, ‘the exercise of freedom of expression and opinion also means that associations should be free to undertake research education and advocacy on issues of public debate, regardless of whether the position taken is in accordance with government policy or advocates a change to the law’.71 Providing information and legal aid and assistance in relation to existing procedures for applying for asylum and on human rights-based arguments to lodge appeals and make full use of the appeal procedures (including before international bodies) are protected under international human rights law, including the European Convention on Human Rights.72

As pointed out by the Venice Commission and ODIHR, ‘criminalising certain activities by persons working for NGOs … represents an interference with their freedoms of association and, in some cases, expression. In order to be justified, such interference needs to be in accordance with the law, must pursue a legitimate aim and must be necessary in a democratic society’.73 In this case, however, ‘although the prevention of disorder or crime is a legitimate aim in principle, the draft provision [Article 353A of the Criminal Code] lacks the required clarity and does not meet the criterion of foreseeability. First, the meaning of ‘organising activities’ which may fall under the scope of the provision is not exhaustively defined and legitimate activities, such as initiating an asylum request on behalf of a migrant, are criminalised under the provision. Second, Paragraph 3 of the draft provision does not distinguish between financial gain “as the strict financial counterpart of the illegal activities” and income generated by associations in their ordinary operations. Lastly, the draft provision does not provide an exemption clause for “humanitarian activities”, which may have a chilling effect on action for solidarity, and the legal consequences of the criminal conviction of NGO staff member on the legal entity itself … appear to be disproportionate’.74

At the same time as the ‘anti-Soros’ legislative package, Hungary’s Parliament also adopted the seventh amendment to the Fundamental Law of Hungary. It contains a number of concerning provisions, including the introduction of a constitutional obligation for all state authorities to ‘protect our self-identity rooted in our historical constitution’ and, a provision stipulating that ‘no alien population shall be settled in Hungary’. Furthermore, the amended Fundamental Law could pave the way for violations of the right to freedom of assembly and freedom of expression, as it appears to subjugate the exercise of these rights to ‘the right to data and family life’.75 While it remains to be seen how the legislative package will be implemented, PEN International’s interlocutors expressed fear that it will be used to quell the remaining critical voices within civil society.76 OSF in their briefing on the NGO law notes that, ‘with the adoption of the law, police and prosecutors have the power to, for example:

- Arrest, charge and remove from Hungary’s border zone any lawyer, advisor or volunteer suspected of assisting a person to make an asylum claim and or obtain a residence permit;
- Raid and arrest the staff of NGOs who provide advice to third country nationals;
- Arrest and prosecute leaders of organisations who publish information about asylum procedures on their websites; and,
- Arrest and prosecute staff and board members of foundations that fund the above activities.’77

Meanwhile, some of the effects of the intensification of the attack on civil society since 2017 are already apparent. For one, the atmosphere has become grim.

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68  PEN International interview, 24 April 2018.
70  See Joint Opinion Venice Commission and ODIHR, para. 12.
71  See for instance, Council of Europe, Committee of Ministers, Guidelines on the protection of human rights in the context of accelerated asylum procedures, 1 July 2009; Council of Europe, Parliamentary Assembly, Resolution on Criminalisation of irregular migrants: a crime without a counterpart of the illegal activities’ and income generated by associations in their ordinary operations. Lastly, the draft provision does not provide an exemption clause for “humanitarian activities”, which may have a chilling effect on action for solidarity, and the legal consequences of the criminal conviction of NGO staff member on the legal entity itself … appear to be disproportionate.
74  Ibid., para. 93.
76  PEN International interview, 23 April 2018.
78  PEN International interview, 24 April 2018.
Through a restructuring of the public service broadcasters and interventions in the private market, the Hungarian government controls most of the Hungarian media, while the few independent outlets that remain face a host of obstacles.

As a consequence, it can be difficult – if not practically impossible if one does not read any foreign languages – to access high-quality, independent news and information. Also here, the difference between Budapest and the rest of the country is very pronounced. To some, the polarisation is so complete that they speak of ‘alternative universes’ or also ‘almost parallel realities with no common topics and no links between the two groups’.

One of PEN International’s interlocutors said that independent radio stations broadcast the state media’s ‘centralised and pro-governmental. Pursuant to the Venice Commission’s opinion on the new Constitution of Hungary, the state controls the media; and, Act CLXXXV on Media Services and Mass Media, which deals with regulatory bodies and their procedures.

The laws set strict content requirements and establish a single regulatory regime that applies to all media. They were slightly amended in 2012, after Hungary’s Constitutional Court annulled some parts and following pressure from the EU and other regional as well as domestic actors.

The Act on Media Services and Mass Media establishes a National Media and Infocommunications Authority (NMFH), the head of which is appointed by the Prime Minister and is vested also with the chairmanship over the Media Council. The other four members of the Media Council are elected by a two-thirds majority of Parliament. The Authority and Council have broad discretion over the enforcement of content and other media regulations across all kinds of media, and they can impose heavy fines.

The Venice Commission in its opinion has advised to limit the Media Council’s discretion, noting that the broad powers and lack of clarity can lead to self-censorship. The chair of the Media Council directs the Public Service Media Fund (MTVA), which operates six public television channels and seven radio channels.

The structure and production of public news is strongly centralised and pro-governmental. Pursuant to the media law, public radio and television stations must broadcast a minimum amount of information (news stories and photographs) provided by the government-funded news agency Magyar Távirati Iroda (MTI). Furthermore, MTI provides news items free of charge also to commercial media.

The effect of these changes has been, on the one hand, the promotion and proliferation of politicised and centralised news coverage biased in favour of the positions of the Hungarian government, while on the other hand independent news agencies are put at an economic disadvantage and thus alternative coverage of certain stories is financially unviable for newsrooms.

In July 2015, MTI as well as the three other public media organisations managed by the MTVA were merged into a single organisation called Duna Media Service. According to one interviewee, the result of the establishment of the centralised ‘news service’ has been that almost of the independent radio stations broadcast the state media news every hour. While it is hard to calculate the reach, in practice it means the whole radio news market is dominated by the state.

One of PEN International’s interlocutors said that government media ‘is like Stalin’s propaganda’. In exclusively ‘a mouthpiece for government spokespersons’. The role of MTI, according to another, means that the state controls the media. Another interlocutor, according to another, works for a civil society organisation said that ‘we have reached a point where our work is only positively reflected in independent online media’ and through the occasional opportunity on RTL Klub. On other channels, spokespersons for public television channels and other media outlets are portrayed as ‘evil foreign agents working against the Hungarian nation’. They added that invitations to public service media are increasingly rare especially in the last two to three years, whereas before 2010 it was quite normal for colleagues to go on public television or radio.

GOVERNMENT INTERVENTION IN THE PRIVATELY-OWNED MEDIA MARKET

In recent years, the Hungarian government has become the most influential player in the advertising market, consistently increasing its spending year-on-year. Most goes into television advertising, which as a consequence is the second-most important segment, after the internet and before print media. Mértek Média Monitor has documented that independent media outlets are at a disadvantage as they do not receive advertisement revenue from government spending. That effect is exacerbated by the fact that also private companies cut off spending in advertising in these media, as they fear losing government support.

In November 2014, not long after the government proposed and eventually withdrew – after large street protest – a tax on internet usage, a new high level of taxation on media advertising was introduced. The tax appeared to target mostly RTL and its main competitor TV2, and was considered by critics to be politically motivated and aimed at undermining commercial, non-state broadcaster, channels. The changes to the tax code triggered a ‘media war’ between Orbán and his former friend and supporter Lajos Simicska, who owns a media empire among others invested in February 2015, Simicska publicly turned on Orbán and Fidesz, telling investigative website Altatszo.hu that ‘of course the media, our media, will fight that and will not give a damn about what Orbán says.’ In the same period, a host of pro-Fidesz editors and journalists at Hír TV, Magyar Nemzet, and Lánchíd Rádió and other media owned by Simicska, resigned. Meanwhile, a number of private media are increasingly rare especially in the last two to three years, whereas before 2010 it was quite normal for colleagues to go on public television or radio.

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businessmen linked with Orbán and/or Fidesz stepped up their participation in the Hungarian media market, both by taking over existing media from foreign owners and investors and by establishing new outlets. They were aided in their efforts by credit extended by banks owned by Fidesz affiliates or by the media authority’s practices in deciding radio frequency tenders and in evaluating media market mergers.

As noted above, the Media Authority is exclusively made up of Fidesz-appointed members.106 One of PEN International’s interlocutors107 described the Media Authority as ‘not very active’, but ‘basically they are supporting government policies to re-nationalise the media market away from capitalist ownership’. Another108 stressed that in particular the radio market ‘is a disaster’ that ‘is heavily and directly influenced’ by politically motivated decisions on the part of the Media Authority. By way of illustration, they pointed to the Authority’s decisions on radio frequencies: until 2015 most frequencies went to Simicska, but since the latter’s fight with Orbán, licenses now go to other candidates who remain Fidesz allies.

Another interviewee109 regretted that as a consequence of licensing policy, a very vibrant community radio scene has disappeared. They added that the media regulator issues systematically biased decisions, moreover made in an opaque way.

As a result, Hungarian media ownership concentration has reached ‘unprecedented heights’, according to domestic watchdogs.110 By redistributing control over the media market, Fidesz has transformed the entire media system in a way that allows it to disseminate political messages and political propaganda more effectively than ever before.111 Over 500 titles are now published by companies owned by businessmen close to the government, and the entire rural population is served by regional papers in the hands of government allies.112 One of PEN International’s interlocutors113 expressed regret that the formerly diverse and wide network of local newspapers has now completely changed their tone and have become propaganda tools, depending on government advertising revenue. Another114 noted that disseminating ‘simplified, primitive messages to bash civil society, Soros, migrants, whoever’ becomes much easier when you control all media channels. Furthermore, it was stressed115 that even journalists who know that exclusively disseminating the government’s message makes it difficult for alternative media and civil society organisations to reach their audiences.

One of the persons with whom PEN International spoke116 said that journalists working for pro-government outlets practice self-censorship and seem hesitant to publish certain stories or even quotes, because they believe their reporting would be perceived as interfering with the political line of the publisher. PEN International’s interlocutors generally agreed that these reporters are aware that they are making propaganda, but choose to continue out of ideological reasons, or because they are driven by ‘opportuism or a cynical approach regarding money’ as one interlocutor115 put it rather harshly or the need for a ‘more stable income’ in a difficult economic environment, in the kinder assessment of several others.117 It was also pointed out118 that many journalists resigned or were dismissed following ownership changes at several news outlets, as they were no longer allowed to write about ‘sensitive issues’. One interlocutor119 warned that as a consequence, Hungary risks losing an entire generation of journalists. INDEPENDENT MEDIA

Independent media face a number of challenges, such as a lack of advertising revenue and stiff competition from outlets owned by Orbán allies, entailing that they are not always economically viable. Subsequently, only few independent news outlets remain in Hungary. The survival of critical journalism now depends on an external funding system.110 According to one of PEN International’s interlocutors, the unconventional way of funding guarantees that they can continue to write freely: the newspaper or portal cannot be bought as it does not have an owner; for the same reason, there is no external interference with the editorial line; and, because the usual pressure of the news cycle is eased, there is the opportunity to do more in-depth investigative journalism.111

Also here, there is a stark divide between Budapest and the rest of the country. One of PEN International’s interlocutors110 said that a major problem in this regard is that it is difficult to find journalists who can report independently from the countryside. They described reprisals against critical journalists and their family members, which is a problem exacerbated further by the fact that the state is an important employer and that political and economic elites often overlap. Another112 said that furthermore, people are also ‘quite afraid to talk with journalists’, especially those in public positions, who fear losing their job if anyone were to find out.

Meanwhile, the Hungarian government attempts to discredit these remaining independent journalists and their critical reporting, linking them to an allusive international conspiracy against Hungary and Hungarian values and interests. For instance, in July 2017 while looking ahead to the election campaign, Orbán said: ‘I should also say a few words about our opponents, because this time our real opponent will not be the domestic opposition parties … In the campaign facing us we’ll primarily have to stand our ground against external forces: in the next nine months we’ll have to stand our ground against Soros’s mafia network and the Brussels bureaucrats, and the media operated by them. We know their methods …: financial blackmail, political threats, this report and that report, media campaigns, infringement procedures, this article and that article.113’

One interviewee114 said that, as a consequence of the government’s smear campaign, ‘half of the country thinks we are traitors’ and that this ‘bothers me very much’. They said that they receive hate mail almost daily. In addition to this smear campaign, independent publications are also boycotted by government and Fidesz officials.111 One of PEN International’s interlocutors115 said that in their experience, government officials and politicians never respond to questions for comments or quotes from independent journalists, but after publication of a critical article will respond with a press release in which they deny the reporting. Another116 in this regard said that ‘from their perspective, writing critically about the government is an act of treachery’.

REACH AND LACK OF TRUST

The most trusted117 and most frequented120 source of news in Hungary is online portals. While on the one hand, digital media has become important as a space where freedom of expression remains the norm and where critical information can be found on independent media, on the other hand the reliance on digital news further intensifies already high levels of polarisation.121 Nevertheless, according to PEN International’s interlocutors, the online media field remains for now ‘more or less free’. However, it was also stressed that often the older generation do not have access to the internet, and even more so in the countryside, and thus an important part of the population does not have access to digitally disseminated and independent news.122 Furthermore, many Hungarians also get their news from television, and the most frequently watched is the
commercial channel RTL Klub, which is owned by the German multinational Bertelsmann. In second place is TV2, formerly owned by Simicska, but now part of the growing media empire of Andrew Vajna, a Hungarian-born Hollywood producer who is also the government’s Commissioner for the development of the national film industry and one of the few people in Hungary to hold a casino operating license. Since the take-over, the channel’s reporting has become blatantly pro-government.44

Newspapers are not widely read, and especially outside of Budapest and the main cities, it can be difficult to find outlets other than the pro-government regional newspapers.45 One of PEN International’s interlocutors46 said that there are a ‘small number of intellectuals in Budapest who have international ties and are part of networks, and then there are the millions who have no such ties’. The government targets people of lower socio-economic status, who typically do not read newspapers and are ideal targets for propaganda and manipulation. Several interviewees47 also pointed out that Hungarian can be an ‘isolating language’, making it difficult for people to cross-check information against sources that are not controlled by the government.

Trust in the media is low in Hungary: in a 2018 Reuters study, it was ranked 35 out of 37 countries surveyed, with only 29% of respondents saying they trust the mainstream media. A historical lack of trust in institutions, combined with the political polarisation and frequent accusations in public discourse by politicians and public figures of spreading ‘fake news’ and having a political agenda, have all been cited as contributing factors to low trust in traditional media and a preference for reliance on digital and social media. It is however noteworthy that also trust in digital and social media is low (27%).48 Furthermore, it was pointed out by one PEN International’s interlocutors that49 while for activists social media could be an effective tool, in practice the propaganda is so suffocating that ‘even the echo chamber is shrinking’. With regard to ‘fake news’, several interviewees50 stressed the role of education: there is a need to educate people on media literacy. Put aptly by one: ‘for simplistic propaganda to work, you need people who are not schooled very well’. Another51 said that in their opinion, the authorities are ‘on purpose creating a whole generation that cannot think for themselves’.

Several PEN International’s interlocutors52 stressed the important role that writers can play in initiating and driving a dialogue that is urgently needed in an increasingly divided Hungarian society, as positions are becoming more and more entrenched. On the other hand, another53 said that ‘we as intellectuals should realise that we do not have a voice in the villages anymore’, once again illustrating the divide between Budapest and the main cities, and the countryside.

After the electoral victory in 2010, Orbán’s amendments to the Fundamental Law gave constitutional status to EU funds to new loyal economic elites, who are much more closely controlled by them.54 A similar process has occurred in the field of culture also: the incumbent political elite aspires to eliminate old cultural structures in order to redistribute cultural positions and resources.55 They are attempting to rewrite cultural canons and occupy existing elite positions in the cultural field. In other cases, they have founded new cultural institutions and positions or strengthened parallel structures in order to elicit elite change. Also the financial system was changed in favour of new loyal groups.56 Thus, striving to limit and discredit the principle of pluralism, the government uses public institutions to force on society those theories, beliefs and norms it champions.57

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Since coming to power in 2010, Orbán and his successive governments have reallocated property rights, public and EU funds to new loyal economic elites, who are much more closely controlled by them. A similar process has occurred in the field of culture also: the incumbent political elite aspires to eliminate old cultural structures in order to redistribute cultural positions and resources. They are attempting to rewrite cultural canons and occupy existing elite positions in the cultural field. In other cases, they have founded new cultural institutions and positions or strengthened parallel structures in order to elicit elite change. Also the financial system was changed in favour of new loyal groups. Thus, striving to limit and discredit the principle of pluralism, the government uses public institutions to force on society those theories, beliefs and norms it champions.

In the words of one of PEN International’s interlocutors: ‘in the mind of the right wing, now is their time to do away with 50 years of “tolerance propaganda”’.60 Several of PEN International’s interlocutors61 in this regard said that ‘for each organisation, they have created a counterpart’. They stressed that, while the organisations closest to Fidesz get a disproportional amount of funding, ‘they don’t seem to have produced anything memorable’. One62 alluded to corruption, pointing out that in some occasions, books are published but sold nowhere, while the money disappears. Another interviewee63 pointed out that there is a disproportionate amount of money attached to some of the newly established state-sponsored prizes.

The award of cultural prizes serves as an institutional marker of reputation, but it is also the acknowledgment

139 Ard. p. 21.
142 PEN International interviews, 27 April 2018.
144 PEN International interviews, 24 April 2018.
145 PEN International interviews, 25 April 2018.
146 PEN International interviews, 27 April 2018.
147 Ard.
by political power of cultural achievements. Their politicisation, it was said, is part of a conscious effort by Fidesz to dilute these prizes’ value. Some144 have refused to accept theirs, or the attached financial reward. One interviewee156 noted that in their view, literary prizes had always been politicized, but that now ‘it’s more blatant’. Yet another135 saw no difference with the past: ‘if the government gives you something, it is always something political’. Also here, one of the persons with whom PEN complaining, as the prizes carry a sometimes sizeable financial reward as well as other benefits, for instances a bonus to the pension. Concerning the latter, one interviewee158 said that even if the higher pension is automatic, one has to request if it’s more blatant’. Yet another151 noted that one effect of the constant creation of ‘shadow organisations’ is to delegitimise the old cultural associations. Yet another interviewee153 remarked that as a consequence of the constant creation of ‘shadow organisations’ is to delegitimise the old cultural associations. Yet another interviewee156 noted that while there is no censorship in Hungary currently as there was under the communist regime, artists who are seen as ‘problematic’ by the authorities do appear to be blacklisted and no longer have access to the same opportunities as their peers. One interlocutor said that perhaps in the strict sense there is no censorship as there is no central office or policy, but in practice there is a lot of political manipulation through financing. It was described as a ‘censorship of people, rather than censorship of texts’. One of the persons with whom PEN International met154 was struck in this regard by the lack of solidarity, when state funding was being withdrawn from various artistic sectors and activities. For them, it pointed towards ‘a very atomised society which has finally gone up’ although perhaps, they speculated, it is also related to the fact that intellectuals in Hungary do not currently face ‘traditional persecution’. Not receiving funding for a theatre production, not having to opportunity to publish an article: ‘this is not something for which people will take to the streets’.

As opposed to publishing and writing, theatre was deemed160 to be very much dependent on politics. In part, this was said to be because productions often rely on subsidies in order to be economically viable. However, one interviewee added, since the time of the post-socialist transition already theatre, and movie have been supported by the state, whereas the book market was largely left alone.

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In particular of non-fiction, were also said to have suffered economically due to the government’s decision160 to centralise the publication of school textbooks, which represented a large share of the market. In addition, none of PEN International’s interlocutors were confident that the book publishing sector would imperatively remain independent. One157 said that ‘if Orbán thinks that books would be a good thing to capture, they would capture it’. And while it was noted154 that arts and literature are popular in Hungary, at the moment, in part because they offer an escapist quality as ‘people read or come together and feel transported into a better realm’, another interlocutor154 said that ‘I don’t think this government cares too much about writers’.

On 4 April 2017, a law166 that has become known under its nickname ‘the CEU’ for its apparent targeting of the Central European University (CEU), was passed by Orbán’s government. The CEU was founded in 1991 with a view to reinforcing democratic institutions and ideas, including the importance of free speech in an open society, in a part of the world that was at the time of the university’s establishment just emerging from communist dictatorship and passive citizenship.160 Over the years, the university has developed into an internationally recognised academic institution.169

The amended Higher Education Act appears designed to force the CEU into insolvency. Its most discriminatory aspects include those that would prevent the university from issuing degrees by non-EU countries, as it does under an OECD agreement. Another provision overhauls a good-faith waiver allowing non-EU staff to teach at the university without a work permit. Furthermore, the law required the university to open a second campus in the United States of America, imposing a serious burden on financial and academic resources while providing little to no educational benefits. Under its most obstructive measure, the law requires the CEU to establish a campus in its home state of New York and to receive authorisation operate from the US federal government, while under US Constitutional Law authority on matters related to higher education lie at state level rather than federal.166

Subsequent to its review of the law, the Venice Commission concluded that ‘introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, to foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees’.168 On 7 December 2017, the European Commission decided to refer Hungary to the Court of Justice of the European Union (CJEU) on the grounds that the amended law disproportionally restricts EU and non-EU universities in their operations and need to be brought back in line with EU law, thus further escalating the on-going infringement procedure against Hungary that was launched in April 2017.171

Meanwhile, the CEU has at an institutional level started to take the necessary steps to pre-empt some of the law’s effects on its operability. For one, it has set up a satellite campus at Bard College in New York, although CEU is still waiting for its agreement with New York to be signed by the Hungarian government, which is thus prolonging a period of uncertainty over the Budapest operations. In a conversation with New York Times, the university president estimated that the institution would lose ‘50% to 60% of its income’ to the university’s operations in the United States while waiting for the agreement to be signed with New York.170

148 PEN International interview, 26 April 2018.
149 Act.
150 PEN International interview, 27 April 2018.
151 Act.
152 Act.
153 PEN International interview, 28 April 2018.
154 PEN International interview, 27 April 2018.
155 PEN International interview, 26 April 2018.
156 PEN International interview, 27 April 2018.
157 PEN International interview, 26 and 27 April 2018.
159 PEN International interview, 27 April 2018.
160 PEN International interview, 27 April 2018.
161 Act.
162 PEN International interview, 26 and 27 April 2018.
163 PEN International interviews, 25, 27 and 28 April 2018.
164 PEN International interview, 27 April 2018.
165 Act XIV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education.

Source: https://fep-fee.eu/The-end-of-educational-book-market. 17 18

Several of PEN International’s interlocutors working in academia in various roles described a host of problems faced by CEU’s and other universities’ students and staff, some related to thelex CEU specifically, others to the xenophobic and anti-migrant policies and climate created by Fidesz.

Regarding students, one interlocutor noted that students of non-EU origin have regularly faced migration-related detention on unclear grounds, including students being placed in closed centres. They also noted how Orbán’s policies have created a climate in which people have difficulty integrating into Hungarian society. For one, the Hungarian state has removed all social benefits for refugees, leading to students with refugee status to be permanently on the verge of homelessness and sometimes resorting to working illegally in order to make ends meet. Moreover, the indirect effect of xenophobic and anti-migrant policies and rhetoric by the government has been to legitimise hate-driven verbal and physical attacks on students. Another interviewee said that the events had created a sense of solidarity among the students. In the interlocutor’s view, many of the students were also affected by the lack of certainty. On the other hand, the number of applications has gone up slightly, so there is still an audience for the university.

Regarding academic staff, several interlocutors stressed how the uncertainty has negatively affected and disrupted the work of CEU researchers and teachers. First, as a consequence of diverted attention, they have to deal with a backlog of several months’ work. Second, they described the emotional toll as ‘very depressing’. While acknowledging that they continue to work and live in a situation of privilege and had not faced any personal threats, one interlocutor said that the attacks on the institution and on friends and colleagues had generated a sense of vulnerability and that the general atmosphere makes the future appear ‘dark’ and makes them worry about Hungary’s future and the position of CEU therein. It was also pointed out that ‘you cannot live in campaign mode forever and that an initial surge of international and local solidarity has somewhat eroded over time. Several academics also said that CEU colleagues are impeded from participating in TV panels or publishing opinion pieces in pro-government media. They were also said to be excluded from participating in government-supported conferences.

Describing the negative consequences of the government’s policies that affect students and staff alike across universities, an interlocutor noted that they are not sure that all colleagues feel free to discuss whatever they want with their students or in their classes. They described a sense of risk, saying that ‘there is a kind of fear in academic life in Hungary’.

On the other hand, several interlocutors mentioned that the Hungarian government’s attacks on CEU have given rise to a decline in self-censorship among academics in Hungary: they described a feeling that even more than before, they have a duty speak out against the slide towards authoritarianism, and to advance both international and local collaboration.

PEN International shares the concerns of many of its interlocutors about freedom of expression in Hungary, as the successive governments led by Viktor Orbán have and – it is feared – will continue to undermine the basic institutions of the rule of law and attack the pluralist values that underlie open societies.

PEN International, as an organisation that promotes a culture of peace based on freedom of expression, dialogue and exchange, and that is dedicated to linguistic and cultural diversity, is alarmed by the manifestations of the Hungarian illiberal state and the myriad ways in which this undermines rights and freedoms. In particular, PEN International is concerned about the consistent deterioration of the right to freedom of expression, through inter alia the attacks on civil society, the independence of the media and academic freedom, and the politicisation of the support to cultural institutions and the arts.

Accordingly, PEN International calls on the Hungarian authorities to:

- End the propaganda of anti-migrant, racist and xenophobic speech and instead combat hate and discrimination and promote cultural diversity;
- Amend legislation and practices relating to the treatment of migrants and asylum seekers with a view to bringing them in line with their obligations under international universal and regional human rights law and standards;
- Ensure a climate in which civil society can thrive and this end règle legislation and practice that affects non-governmental organisations and ensure that the law reflects the important role of NGOs in a democratic society and is designed to facilitate, not undermine, their operations. Among other things:
  - Amend the Act on the Transparency of Organisations Supported from Abroad, taking into consideration the opinion adopted by the Venice Commission;
  - Repeal the measures of the so-called ‘Stop Soros’ legislative package;
  - Recognise and facilitate the role of civil society in the legislative process; and,
  - End the smear campaign by (members of) the government against civil society groups.

- Respect, protect and promote freedom of the press and to this end revise law and practice with a view to creating an environment in which the media can function free from undue government influence and interference. Among other things, this would entail:
  - Ensuring the independence of the media’s regulating bodies, and reviewing biased and politicised decisions that were made over the past years;
  - Stopping the smear campaign against independent journalists and media outlets;
  - Reducing the role of the government in the advertising market; and,
  - Ensuring the adequate and appropriate cooperation of government officials with independent reporters.

- Respect, protect and promote academic freedom and to this end amend Act CCIV of 2011 on National Higher Education taking into consideration the opinion adopted by the Venice Commission, with a view to ensuring that any restrictions on the operation of foreign-accredited universities do not unreasonably or disproportionately target in particular the Central European University, and in general do not violate the rights to freedom of expression, to freedom of association and to peaceful assembly; and,

- End the politicisation of support to cultural institutions and the arts. To this end inter alia:
  - Ensure that decisions concerning the award of state prizes are taken solely based on artistic merit as decided by a representative jury of the artists’ peers; and,
  - Ensure that the attribution of public funds for cultural institutions and individual artists is based on artistic merit while supporting and stimulating art’s capacity to build bridges and overcome societal divides.

Furthermore, PEN International calls on the institutions of the European Union, the Council of Europe and the United Nations to continue exercising their watchdog function with regard to, and where appropriate to provide support for, compliance with international universal and regional human rights law in Hungary, in particular the right to expression.

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172 PEN International interviews, 24 and 25 April 2018.
173 PEN International interview, 24 April 2018.
174 Ibid.
175 PEN International interview, 24 April 2018.
176 PEN International interview, 24 April 2018.
In Hungary, a series of government actions in the past few months show the continuation of the authorities’ ongoing crackdown on independent civil society groups and critical voices. These actions are in violation of principles of international law, enshrined in the International Convention on Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR), to which Hungary is a state party.

In April 2017, Hungary adopted amendments to its National Act on Higher Education, which appear to particularly target the Central European University (CEU) community. The most discriminatory aspects of the new Higher Education Act include those that prevent Hungarian universities from issuing degrees by non-EU countries, which the CEU currently does under an OECD agreement. Another provision overturns a good faith waiver allowing non-EU staff to teach at the university without a work permit. The law would also require the university to open a campus inside the US where it is registered. Finally, the CEU would be subject to the self-certification scheme adopted in 2015 under which universities are required to submit a declaration, 25 years the CEU has been an institution that fosters free speech and critical thought.

The amendments are an example of the broader hostility that the Hungarian government has shown towards independent civil society groups in recent years. In the country if the government does not overturn the amendments in question. PEN International is concerned that this new law constitutes an attack on foreign funded academic institutions and particularly the CEU’s independence and academic freedom – which derives from and is protected by the fundamental right to freedom of expression and information.178 Vibrant and independent academic institutions are one of the key drivers of knowledge creation, and a thriving public sphere. Specifically, for 25 years the CEU has been an institution that fosters independent thought and critical debate in Hungarian society and beyond. This flagrant attempt to shut down the university in this way is tantamount to silencing these voices. In this sense, it is also a deliberate attack on freedom of expression and information, which is enshrined in Article 19 of the ICCPR and Article 10 of the ECHR.

The past few months have seen an escalation of the country’s anti-migrant stance, with the authorities openly fuelling anti-migrant rhetoric and smearing rights groups critical of their stance. The latest in this string of worrying incidents saw Hungarian-bom businessman, philanthropist and writer George Soros, the founder of the CEU, become the target of a government-run anti-immigration campaign, with apparent anti-Semitic undertones.180 In the light of this situation, the Assembly of Delegates of PEN International calls on the government of Hungary to:

- Investigate and prosecute all racist, xenophobic and anti-Semitic crimes that amount to advocacy of incitement to violence and to end all attacks against dissenting voices;
- End their campaign against independent civil society groups and instead publicly recognize the value of such groups in promoting and protecting an open, transparent and tolerant society;
- Take all possible measures to combat xenophobia, anti-refugee sentiment and racism; and
- Repeal all laws that discriminate against or target foreign-funded NGOs.

In June 2017, the Hungarian Parliament approved Draft Law T/14967 on the Transparency of Organisations Receiving Support from Abroad. The new law will compel non-governmental organisations (NGOs) that receive more than 7.2 million Hungarian forints (approximately 24,000 euros) to re-register as ‘foreign-supported organisations’ and to identify themselves as such on every publication. The Hungarian authorities have claimed that the purpose of the law is to fight against money laundering and terrorism funding. The fact is, however, that the majority of NGOs that receive foreign funding focus on civil and political rights and are, as a result, more likely to be critical of the authorities and of their policies. By labelling NGOs as ‘foreign-funded,’ the new law will stigmatise and delegitimise their work and ultimately have a chilling effect on their ability to operate, and thus on the freedom of expression and information.


ANNEX – PEN INTERNATIONAL’S RESOLUTION ON FREEDOM OF EXPRESSION IN HUNGARY (2017)

Resolution adopted by the Assembly of Delegates of PEN International, meeting at its 83rd Congress in Lviv, Ukraine, 18 to 22 September 2017.

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