

HUNGARY

By Ökotárs - Hungarian Environmental Partnership Foundation¹

Summary:

Over the last decade, the right-wing alliance **of Fidesz and Christian Democratic People's Party (KDNP)** has taken advantage of its parliamentary majority to **consolidate political control over the judiciary, media, cultural and education institutions**. At the same time, it **weakened all critical voices** - including local authorities, civic organisations and independent media - through restrictive legislation, cuts of funding and aggressive rhetoric. As a result, **Hungarian civil society's capacities and sustainability has been ranked lowest for several years in a row in the CSO Sustainability Index**, especially in the field of advocacy and financial viability.² The Covid-19 pandemic further deteriorated CSOs' capacities, as a consequence of the loss of income and increased powers of the public authorities. Despite this many **CSOs continued to play an essential role in mitigating the unfolding social crisis**, by providing information, relief and contributing to online schooling. They are also activated to monitor the fairness of the upcoming elections.

Since taking power, the governing majority has instituted **burdensome registration and reporting requirements for NGOs, including through the new 2021 law on organisations** "capable of influencing public life." This bill that replaced the repealed 2017 act on foreign funded organisations enables the State Audit Body to carry out inspections at CSOs with an annual income above 20 million HUF (around 60,000 EUR). **The law also discriminates against specific NGOs**, as religious, sport and national minority organisations are exempt. **NGOs assisting asylum seekers have also been subject to Hungary's 'Stop Soros' laws in 2018**, which heavily restricted the right to asylum, criminalised activities supporting asylum seekers and was found in contrast with EU legislation in 2021 by the European Court of Justice. Regarding the economic viability of the CSOs sector, the distribution of public funding is uneven, lacks transparency and is politically biased against independent organisations. In 2021, a major development affecting CSO funding, especially for those involved in issues linked to the rule of law, democracy, and fundamental rights, was **the unsuccessful conclusion of the negotiations concerning the third period of the EEA & Norway Grants**; for civil society, it means a loss of 10 million EUR for the coming years. The City Civil was set up by the Hungarian government in 2021. However, journalist investigations have shown **that the state-financed funding program are mainly disbursed by 'NGOs' directly controlled by politicians of the Fidesz ruling party**. On the contrary, NGOs working on human rights have been rejected funding based on dubious justifications.

¹ The following document is an adapted version of the case study written by Z Ökotárs - Hungarian Environmental Partnership Foundation in October 2021, for the upcoming publication Activizenship #6.

² The CSO sustainability index explorer, <https://csosi.org/?region=EUROPE>, rates CSO sustainability from 1 (high sustainability) to 5 (low sustainability). 2020 CSO Sustainability index rating: 3.9.

Legislation providing for public participation in lawmaking is generally disregarded and decisions are often made behind closed doors, without involving any of the affected stakeholders. The government often circumvents existing consultation mechanisms, e.g., through submitting significant bills by individual governing party MPs, abolishing or not convening earlier existing consultative bodies and committees. The government also used the pretext of the Covid-19 pandemic in 2021 to limit further avenues of participation or the expression of dissent, by banning public gatherings and extending the deadline for response to freedom of information requests until mid-May 2021. In the run-up to the 2022 elections, the government has also stated targeting of the LGBT+ community, including through legislative changes restricting LGBT+ rights. Reports from affected organisations show that attacks - especially verbal - on and conflicts with LGBT+ people have increased. Additionally, citizens' sensitisation and education programs carried out by CSOs in schools have been eliminated. NGOs whose activities conflict with government priorities have also been smeared by leading political figures and pro-government media. Overall, the restrictive legislative framework is combined with aggressive narratives against "political" CSOs and LGBT+ community and those that defend them and funding practices that de facto starve critical voices. These measures divide and polarise the civic sector creating a chilling effect on the great majority of associations that do not want to speak up on sensitive, fundamental rights issues for fear of being targeted by the government and cut off the funding.

Institutional landscape and safe space (including state duty to protect and right to freedom from fear)

Since 2010, Hungary has been ruled by Viktor Orbán and the right-conservative Fidesz party, holding a two-thirds (constitutional) majority in parliament. The party won two consecutive elections in 2014 and 2018, against a fragmented and weak opposition. This position enabled the government to fundamentally reshape the legal and institutional landscape of the country: it eliminated most democratic checks and balances, primarily by filling the institutions (such as the Constitutional Court, the media authority, the public prosecutor, the State Audit Body) with party functionaries; concentrated large parts of the economy (e.g., construction, energy production, tourism, media) in the hands of a few loyal oligarchs; and generally weakened the rule of law mechanism on a systematic level.

In 2020, the government utilised the Covid-19 pandemic to advance its political goals, instead of efficiently fighting against the virus. Under the guise of the emergency, a number of decrees and other measures were introduced which were not related with the health crisis but were meant rather to further consolidated the power of Fidesz. Such measures included decisions about new, large-scale infrastructure projects from public funding awarded to oligarchs in dubious procurement processes; while other projects were declared as being of “national importance”, with the consequence of fast-tracking their approval without any public participation, providing sizeable public funding support to sports and church

organisations close to the government. At the same time, the health and education system remained seriously underfunded, while smaller businesses received little support.

Pressures on LGBT+ increases

As part of the electoral campaign, the government named a new target for its hatemongering: sexual minorities. In June 2021, anti-paedophilia legislation was introduced to parliament, and through last-minute amendments, it was hijacked to ban “*homosexual propaganda to minors*” - i.e., the appearance of LGBT+ people in media and schools. In spite of national and international protests, the law was approved with the amendments, although it left many questions regarding its exact definitions and applicability unanswered. Reports from affected organisations show that the number of - especially verbal - attacks on and conflicts with LGBT+ people has increased since then. The government’s narrative harmfully blends gender and sexual orientation with the abuse of children, while framing the law as targeting “the sexual education of children by LGBT+ activists”. As a consequence, citizens’ sensitisation and education programs carried out by CSOs were eliminated, as schools have been afraid to cooperate with them.

The regulatory environment for and implementation of civic freedoms

The two major pieces of legislation governing civil society operation in Hungary are the Civil Code (2013) and the Act on the Right to Association, Public Benefit Status and the Operation of and Support to Civic Organizations (2011, also known as the ‘Non-Profit Act’). They generally conform with relevant international standards: the former regulates the fundamental legal forms of organisations – associations and foundations

- while the latter provides for the freedom of association, public benefit status and rules of operation. Under these laws, anyone can register a CSO at the administrative courts (and with the introduction of an electronic system a couple of years ago, this process has become easier, though geographic differences among courts still prevail), and the organisations can freely operate. However, current regulation and oversight are placing unnecessary administrative burdens on smaller organisations, while larger organisations - especially those with public benefit status (20% of all) and those receiving public funding - must meet rigorous reporting obligations. They must annually and publicly report separately on their accounts and activities, on the collection of donations and the use of the 1% personal income tax assignments - but, thereby, their transparency is guaranteed as well.

The infamous 2017 Act on the Transparency of Organisations Supported from Abroad, stigmatising CSOs based on their funding sources, was found by the European Court of Justice in June 2020 to breach EU law on several counts - including restrictions on the freedom of assembly, the right to privacy, and the free movement of capital in the EU. Hungarian legislators moved very slowly, and only repealed the act in April 2021. However, it was replaced with similarly worrying new clauses that affect organisations "capable of influencing public life" - i.e., those with an annual budget above 20 million HUF (about 60,000 EUR) - making them subject to inspection by the State Audit Body. As this law will apply first to the current financial year, its practical consequences are yet to be seen, but at a minimum, new administrative burdens and, perhaps, new inspections for CSOs are expected.

³ Horn Gabriella, Car honking protests cancelled due to astronomical fines handed out by Budapest police, <https://english.atlatszo.hu/2020/05/25/car-honking->

Impact of Covid-19

The government also used the pretext of the Covid-19 pandemic in 2021 to limit avenues of participation, or the expression of dissent, by extending the deadline for response to freedom of information requests from 15 to 45 days and introducing a total ban on peaceful assemblies. These restrictions remained in place until mid-May 2021, and were criticised by human rights organisations as unjust, disproportional and discriminatory, especially as certain larger gatherings were permitted, such as for religious purposes. Back in 2020, when two independent Members of Parliament organised a series of demonstrations with cars circling and honking in a downtown roundabout in Budapest, the police reacted by sanctioning participants with significant fines of up to 750,000 HUF (about 2100 EUR), citing either traffic rules or emergency restrictions.³ This disproportionate reaction induced a chilling effect, making everyone else cautious to organise public protests as long as the ban was in effect. However, the first major demonstration was held just a week after the ban was lifted, with many thousands of people protesting against a planned Budapest campus of the Chinese Fudan University (supported by the Hungarian government). This and other demonstrations, including the Budapest Pride, took place without incidents.

The framework for civic organisations' financial viability and sustainability

According to the latest official statistics, the total income of associations and foundations is around 900 billion HUF (2.6 billion EUR). Of this amount, somewhat less than 40% comes from public funding, around 20% from private

protests-cancelled-due-to-astronomical-fines-handed-out-by-budapest-police/, *Atlatszo*, (25 May 2020).

sources, with the rest originating from generated own income and a variety of other sources.⁴ However, this income is very unevenly distributed across the sector, with more than 70% of all CSOs operating on an annual budget of less than 5 million HUF (around 16,000 EUR). Also, it has been shown that the distribution of public funding lacks transparency⁵ and is politically biased against independent organisations. For example, in 2021, a new City Civil Fund was opened - following the Village Civil Fund in the previous year - but about half of its biggest beneficiaries are organisations directly controlled by local Fidesz politicians or their affiliates.⁶ While independent CSOs - e.g., those engaged in human rights or LGBT+ issues - are not excluded from applying for public funding *per se*, they rarely have a chance to secure a grant. These organisations remain dependent on international philanthropic and institutional donors - of which fortunately more and more are active - and individual giving. The latter has steadily increased over the past years, with an unprecedented surge observed during the first wave of the Covid-19 pandemic in Spring 2020: the most popular crowdsourcing platform (*adjukossze.hu*) reported a ten-fold increase in the amounts collected in March and eighteen-fold in April compared to the year before. CSOs themselves are also becoming more and more professional in collecting donations, especially online and through other creative tools, such as collections by 'ambassadors', Giving Tuesday, etc. At the same time, domestic institutional philanthropy (grant-making foundations) remains very underdeveloped.

In Spring 2020, several organisations conducted surveys among CSOs to gather information about the impacts of the Covid-19 pandemic. According to these, approximately three-quarters of respondents suffered income losses in the short term and expected further decrease in their budget in the longer run. The Hungarian government did not provide any additional funding or relief to CSOs in response to the effects of the pandemic on the sector.

The 'Norwegian case'

In 2021, a major development affecting CSOs funding was the unsuccessful conclusion⁷ of the negotiations⁸ concerning the third period of the EEA & Norway Grants. While the donors and the Hungarian government signed a Memorandum of Understanding (MoU) in late 2020, and the open call to find a Fund Operator managing the Active Citizens Fund - the allocation for supporting CSOs - was announced, eventually the parties could not come to the required consensus to select a mutually acceptable candidate (based on the expert assessment). According to the MoU, if no agreement is reached in this respect in seven months after signing, the whole support to Hungary becomes void. This deadline was passed at the end of July 2021, and thus, as the Norwegian Foreign Minister announced, "*no programmes will be implemented in Hungary under the EEA and Norway Grants scheme during this period*". This situation is exceptional: out of the fifteen eligible countries, Hungary is the only one not able to benefit from the programme. For civil society, this means a loss of 10 million EUR for the coming years.

⁴ See: https://www.ksh.hu/stadat_eves_3_2

⁵ <https://telex.hu/belfold/2021/07/28/fideszes-vezetesu-civil-szervezeteket-tamogat-a-magyar-allam-egy-uj-palyazati-alapbol>

⁶ <https://atlatszo.hu/kozpenz/2021/08/11/fideszes-politikusok-atal-iranyitott-szervezetek-nyertek-a-norveg-alap-helyen-felallitott-civil-programon/>

⁷ https://norvegcivilalap.hu/sites/default/files/anyago_k/ncta_book_angol_epdf.pdf, pp. 27-29

⁸ https://helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_H_U_NGOs_17112017.pdf

The right to participation and dialogue between the sector and governing bodies

The Hungarian legislation from 2011 provides for public participation in law-making. Nevertheless, in practice, decisions are often made behind closed doors, without involving any of the affected stakeholders. The government often circumvents existing consultation mechanisms, e.g., through submitting significant bills by individual governing party MPs, abolishing or not convening earlier existing consultative bodies and committees. In 2020, the parliament adopted 159 government-submitted laws, but only one was published for commenting on the government's dedicated webpage. Even when drafts are circulated, deadlines allowed for comments are often exceedingly short, in some cases not more than a few hours. Besides, both the central government and parliament routinely ignore CSOs pleas and petitions for dialogue in many areas and remain unresponsive - or often downright hostile - to any criticism or proposals coming from 'outside'. Thus, traditional channels of CSOs advocacy - both formal (such as consultative bodies and processes) and informal (petitions and signature collections) - ceased functioning years ago.

During the Covid-19 pandemic, in the absence of other options, online petitions were increasingly used, especially through the *ahang.hu* platform. Nevertheless, despite collecting as many as 100,000 signatures in response to some major national issues (especially against the emergency restrictions adversely impacting rule of law standards, such as the ban on assemblies), these petitions had little or no effect on decision-makers.

The government used the pretext of the pandemic to obstruct participation through

other measures too. For example, many questionable investment projects were declared of "*national strategic importance*" by decree, thereby legally exempting them from public oversight or control. A recent example was the contested industrial investment planned in Göd, a small town near Budapest, which drew much popular protest. Under these circumstances, CSOs' advocacy efforts rarely bring results. The few successful cases of the past years involved multi-year concentrated campaigning, broad coalitions and popular mobilisation, as was recently the case with a planned experimental oil drilling project in the Western border area.

Civil society's responses to challenges to democracy, the rule of law and fundamental rights

In early 2017, in reaction to the first news about the then-planned legislation on foreign-funded organisations, around 30 prominent CSOs came together to brainstorm about possible action and protest. Out of this series of discussions the Civilisation Coalition⁹ was born, which remains the major (informal) coalition in Hungary that defends civil space up to this day. Civilisation is a platform of solidarity, mutual help and protection, that regularly speaks out on issues affecting civil space and conducts campaigns to improve the positive image of civil society in Hungary.

In 2021, among other issues, Civilisation dealt also with the lack of participation in the preparation of the Hungarian national Recovery and Resilience plan and in the debate on the new legal provisions replacing the foreign-funded law. Most recently, it has compiled the Civil Minimum 2022, a set of 13+1 measures in four areas - legislation, funding, dialogue and social support - that should form the basis of a future

⁹ <https://civilizacio.net/en/about-us/our-story>

governmental civil society strategy. Parties and candidates running for the next 2022 parliamentary elections were asked to include these in their programs and to commit themselves to adopt and implement such a strategy - should they achieve a position to do so. To January 2022, three main opposition parties, and their Prime Minister candidates, made public commitments.

Recommendations

The 13+1 steps included in the Civilisation Coalition's Civil Minimum 2022 summarise the main measures that any future Hungarian government needs to take to ensure an enabling civic space.

On legislation:

- 1) commit to adhere to international standards in legislating civil society matters and abolish any restrictive provisions;
- 2) in consultation with civil society, review existing legislation in order to guarantee the full exercise of the freedom of association and to decrease the administrative burdens of CSOs;
- 3) encourage, e.g. through special tax incentives, the development of domestic philanthropic foundations.

On funding:

- 4) award service contracts in open, competitive and sector-neutral processes enabling CSOs to tender;
- 5) support CSOs in an unbiased, transparent and accountable manner, involving representatives of the sector in the decision-making;
- 6) provide for meaningful CSO participation in the Monitoring Committees of EU funds.

On dialogue:

- 7) fully and appropriately implement existing legislation providing for participation;
- 8) develop transparent plans for dialogue in main policy and strategy procedures, including feedback to stakeholders;
- 9) guarantee the freedom of information without undue obstacles to requests for access;
- 10) re-join the Open Government Partnership.

On social support:

- 11) encourage individual giving through reintroducing personal tax benefits;
 - 12) re-organise the system of corporate tax benefits to encourage business giving;
 - 13) provide for balanced reporting on CSOs in its media policy and regulation;
- +1) encourage the direct participation and activism of individual citizens.

For EU institutions

Instead of viewing CSOs as instruments to achieve specific policy goals, and addressing shrinking space issues in a reactive and piecemeal manner, the European Commission should adopt and implement a comprehensive European civil society strategy, acknowledging the role CSOs play in upholding European values in accordance with Article 2 of the Treaty, and thereby putting civil society on the policy agenda.

Such a strategy should address:

1) The right to entry (freedom of association and assembly) - legal environment:

- convene a working group to develop guidelines for the statutory legislation of associations and foundations as well as for the tax treatment of cross-border activities of public benefit and philanthropic entities across the EU, based on best practices of the Member States;

- develop and pass legislation on European Statute for Associations and Foundations;
- integrate the CoE Convention on the recognition of civil society organisations into European law.

2) The right to the freedom of peaceful assembly:

- monitor and regularly report on the state of and potential restrictions on the freedom of assembly across Member States, highlighting practices that contravene relevant international law.

3) The right to operate free from unwarranted state interference and state duty to protect:

- cover civil society in the annual Rule of Law reports in a structured and detailed manner;
- continue the regular FRA data collection and monitoring of the state of civil society;
- continue using infringement and legal procedures in case of legislation restricting legitimate civil society action;
- create an alert system to report attacks on civic space;
- condemn instances of harassment and attacks on civil society on the political level;
- continue acknowledging the contribution of civil society to the European project.

4) The right to free expression:

- encourage balanced reporting about and giving more space to civil society in media during the implementation of the European Democracy Action plan and the Media Plan;
- fully implement and use the CoE charter and framework for citizen education; create European best practice and a separate agency devoted to the subject.

5) The right to cooperation and communication – participation:

- develop inter-institutional guidance for structured dialogue with civil society;

- improve the accessibility and the impact of the European Citizens Initiative;
- develop binding rules for delegating civil society members to the 3rd group of the EESC;
- encourage consultation with and participation of civil society on the national and local levels;
- monitor national-level consultation processes in the programming of EU funds under shared management.

6) The right to seek and secure resources – funding:

- in consultation with civil society experts, develop transparent, flexible and user-friendly grant mechanisms in the CERV programme to decrease administrative burdens on applicants, also taking into account capacity building and institutional development needs of target CSOs;
- increase the accessibility of other centrally managed funding programs to CSOs (through simplifying procedures and/or capacity building of applicants);
- monitor the accessibility of funds under shared management for CSOs and step up in case of deficiencies observed.