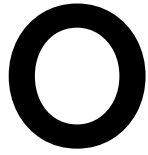


# “Stop Soros”: A Fake Governmental Legislation Proposal in the Hungarian Election Campaign



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JÁNOS  
KÁRPÁTI



n February 20, 2018, the Hungarian parliament started its spring session with a debate on a “Stop Soros” package of three bills. It was the last session before the parliamentary elections due on April 8. The package focuses on:

- organizations promoting migration,
- taxation of activities “promoting migration,”
- and restrictive regulations for organizations promoting migration as “counter-measures” to their activities.

The adoption of certain parts of the package would need qualified (two-third) majority. The governing alliance of Fidesz-KDNP (The Christian Democratic People’s Party) does not possess this majority at the present time in the parliament. Therefore, the proposals were tabled only for discussion and voting is not expected before the elections.



LEGAL FLAWS  
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IT IS ALARMING  
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OF FIDESZ

With respect to this delay, and considering several grave incoherencies and legal vagueness in the proposals, it is not unrealistic to assume that the proposals are primarily intended for campaigning purposes. But it is also alarming that the package clearly shows an authoritarian intention on behalf of Fidesz. Should the governing party alliance gain a two-third majority in the upcoming elections, it would be able to transform this campaigning material into a real law and real restrictions of the civil society as a whole.

In a broader context, it should be kept in mind that Human Rights Watch, in its *World Report – 2018*, described the rule of Prime Minister Viktor Orbán as an “illiberal democracy.” Mr. Orbán himself had used this expression earlier when referring to his own government.

“Central Europe has become especially fertile ground for populists, as certain leaders use fear of migration elsewhere in Europe to undermine checks and balances on their power at home,” the report said, referring specifically to Hungary and Poland.<sup>1</sup>

<sup>1</sup> Roth, K. (2018) “The Pushback Against the Populist

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SCHENGEN  
BORDERS

The presented article is an attempt to demonstrate that legal flaws of the text make it practically impossible to incorporate the three bills of the package into the Hungarian legal system.

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Challenge.” [in:] *Human Rights Watch*. Available [online]: <https://www.hrw.org/world-report/2018/push-back-against-the-populist-challenge>

## OFFICIAL REASONING

In the future it will be substantially more difficult to organize, support, and finance immigration in Hungary if parliament passes the “Stop Soros” legislative package, said Bence Tuzson, Hungarian Minister of State for government communications. According to the minister, the government had conducted a social debate on the legislative package, where more than 600 opinions and recommendations had been received. In light of these recommendations, the bills have been further tightened, he added.<sup>2</sup>

According to these bills, organizations, which intend to support migration and apply for a permit issued by the Ministry of Interior (on behalf of the Minister) to pursue such activities, must undergo a national security procedure. For that purpose, the Ministry must obtain the opinions of the national security services, the Constitution Protection Office, the Information Office, and the Military National Security Service. The Ministry’s decision can be appealed before a court of law, but only on the basis of procedural reasons.

The proposed legislation requires the applicant seeking to obtain a permit to also be screened, so as to determine whether it receives foreign funding for its activities. The National Tax and Customs Administration of Hungary would carry out this screening.

If anyone organizes, supports or finances migration without a permit, the prosecution service would have the authority to take action. As a first step, the prosecution

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<sup>2</sup> Rogán, K. (2018) “The Stop Soros Legislative Package Will Be Submitted in Stricter Form on Tuesday,” [in:] *Website of the Hungarian Government: Cabinet Office of the Prime Minister*. Available [online]: <http://www.kormany.hu/en/cabinet-office-of-the-prime-minister/news/the-stop-soros-legislative-package-will-be-submitted-in-stricter-form-on-tuesday>

service would issue a warning and remove the organization's tax number from the relevant register. As a second step, it may impose a monetary fine of up to HUF 1.8 million (app. EUR 6,000), which might be followed by a third step: the prosecution service may press charges before a court of law and may request the termination of the organization. Organizations coming under the effect of such a law would have 90 days to submit their applications to the Ministry of Interior. If an organization receives funding from abroad for the purposes mentioned above, they are required to report the receipt of such funding to the National Tax and Customs Administration of Hungary within three days.

The proposal also includes an immigration financing duty "as a mark of social responsibility." Those who support such activities are required to pay a 25% "duty" on any money transferred to them from abroad.

Every organization that would come under the effect of the proposed legislation will be required to pay the above duty. The proceeds of the duty would be used for border protection purposes on a mandatory basis. Returns would have to be submitted by the end of the year, and the relevant amount would have to be paid by June 30 of the following year.

Exemption from the payment of the duty could be granted if the organization proves that it does not use its funding for migration purposes or is engaged in humanitarian activities.

If the payment obligation is not fulfilled, a liability extending to double the amount of the duty may come into effect.

Individuals who "violate the interests of Hungarian national security or are a threat to public order" may be issued with a "re-

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EVEN THOUGH  
THE NUMBER  
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WHO WANT  
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straining order," which will keep them out of an eight-kilometer area of Hungary's Schengen borders. The proposed legislation defines in detail which activities qualify as contrary to the interests of national security or as posing a threat to public order.



# INTERPRETATIONS IN THE MEDIA EMPHASIZED THAT THE BILL WAS A KEY PART OF PM ORBÁN'S ANTI-IMMIGRATION CAMPAIGN TARGETING U.S. FINANCIER GEORGE SOROS WHOSE PHILANTHROPY AIMS TO BOLSTER LIBERAL AND OPEN- BORDER VALUES IN EASTERN EUROPE

The Ministry of Interior (on behalf of the Minister) has the right to extend the immigration restraining order to the entire territory of the country if the individual concerned is not a Hungarian national. This type of restraining order can be issued in a state of emergency due to mass immigration.

In his speech in parliament, Minister of State Tuzson said that mass immigration had brought a major security risk to Europe, public security had deteriorated,

and the threat of terrorism had increased. The government will, however, "make every effort to protect Hungary, the Soros plan cannot prevail, its implementation must be prevented, and the relocation of migrants to Hungary is out of the question," he stressed.<sup>3</sup>

However, government spokesman Zoltan Kovacs, speaking in a state radio station – Kossuth Radio's "180 Minutes" program on January 18 – defended the bill, saying that "George Soros' network is working to ensure that as many people as possible reach Europe, because they believe this is what will ensure the future of the continent." According to Kovacs, this is a political program in which organizations that help migrants are taking part "disguised as human rights organizations."<sup>4</sup>

## INTERNATIONAL REACTION

After publication of the original proposals on January 18, 2018, several news reports found that the key element of the package was that the legislation would empower the Ministry of Interior to ban non-governmental organizations (NGOs) that support migration and pose a "national security risk."<sup>5</sup> The bill would allow for restraining orders that prevent activists from working in areas on the country's Serbian border, which is a frontier for the European Union, and similar restrictions for foreign nationals anywhere in the country.

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<sup>3</sup> Ibid.

<sup>4</sup> Kovács, Z. (2018) "We Will Be Doing Everything Possible to Close Existing Loopholes," [in:] *Website of the Hungarian Government: Cabinet Office of the Prime Minister*. Available [online]: <http://www.kormany.hu/en/government-spokesperson/news/we-will-be-doing-everything-possible-to-close-existing-loopholes>

<sup>5</sup> Bare Naked Islam (2018) *Hungary Submits Anti-Muslim Invasion "Stop Soros" Bill to Parliament*. Available [online]: <http://barenakedislam.com/2018/02/18/hungary-submits-anti-muslim-invasion-stop-soros-bill-to-parliament/>

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## THE HUNGARIAN HELSINKI COMMITTEE SAID THE BILL WAS UNACCEPTABLE AND SERVED POLITICAL GOALS

Interpretations in the media emphasized that the bill was a key part of PM Orbán's anti-immigration campaign targeting U.S. financier George Soros whose philanthropy aims to bolster liberal and open-border values in Eastern Europe.<sup>6</sup> It was also mentioned that Orbán had been embroiled in an escalating "Stop Soros" feud with the 87-year-old Hungarian-born Jew, waging a billboard and media campaign asserting that he would "settle millions from Africa and the Middle East".<sup>7</sup> After Gergely Gulyas, the leader of the ruling Fidesz party's parliamentary group, accused Soros of a "full frontal" attack on Hungary in November 2017<sup>8</sup>, Soros described the ongoing campaign against him as "distortion and lies," meant to create a false external enemy.<sup>9</sup>

Pro-government Hungarian media reported that the new legislation could lead to a ban on Soros, who has U.S. and Hungarian citizenship, entering the country.<sup>10</sup>

It is important to point out that Hungary, like Poland and other ex-communist eastern member states of the EU, have all pushed a strong anti-immigrant stance, even though the number of asylum seekers who want to stay in these countries are very few compared to western European countries. Last year, the Orbán government introduced a measure requiring NGOs that get more than USD 26,000 (app. EUR 21,000) a year from international sources to register as "foreign-supported," raising alarm in the EU and the United States.<sup>11</sup>

The European Commission said in 2017 that it was taking Budapest to the European Court of Justice over its NGO laws as well as a higher education law that targets the Central European University in Budapest founded by Soros.<sup>12</sup>

### REACTION OF HUNGARIAN CIVIL ORGANIZATIONS

Human rights groups and critics have criticized the right-wing Hungarian government's introduction of legislation targeting NGOs that work with refugees and migrants.

<sup>6</sup> Than, K. (2018) "Hungary Submits Anti-Immigration 'Stop Soros' Bill to Parliament," [in:] *Reuters*. Available [online]: <https://www.reuters.com/article/us-hungary-soros-law/hungary-submits-anti-immigration-stop-soros-bill-to-parliament-idUSKCN1FY1JE>

<sup>7</sup> Ibid.

<sup>8</sup> Al Jazeera (2018) *Hungary Blasted over 'Stop Soros' Bill Targeting NGOs*. Available [online]: <https://www.aljazeera.com/news/2018/01/hungary-blasted-stop-soros-bill-targeting-ngos-180118184038476.html>

<sup>9</sup> Reuters (2018) *Hungary Outlines "Stop Soros" Legislation Against Immigration*. Available [online]: <http://news.trust.org/item/20180117170228-z44xn/>

<sup>10</sup> Than, K. (2018) "Hungary Submits Anti-Immigration 'Stop Soros' Bill to Parliament," [in:] *Reuters*.

<sup>11</sup> Hungarian Spectrum (2017) *Today's Extra: Interview with Leaders of Three Hungarian NGOs*. Available [online]: <http://hungarianspectrum.org/2017/04/19/todays-extra-interview-with-leaders-of-three-hungarian-ngos/>

<sup>12</sup> Baczyńska and L. Cusack (2017) "EU Steps Up Pressure on Hungary over Soros University, NGO Laws, Migration," [in:] *Reuters*. Available [online]: <https://www.reuters.com/article/us-eu-hungary/eu-steps-up-pressure-on-hungary-over-soros-university-ngo-laws-migration-idUSKBN1E11CN>

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THERE WAS NO  
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WHATSOEVER  
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MORE THAN  
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AND RECOMMENDATIONS  
HAD BEEN RECEIVED

The Hungarian Helsinki Committee, an NGO that has been providing support for the legal and human rights of various groups including asylum seekers and prisoners since 1994, said the bill was unacceptable and served political goals.

“[Its goal] is to stigmatiz[e] certain civil organizations that the government does not like (...) and to distance them from society, and in the end make their operation im-

possible,” the committee, which receives a major chunk of its funding from Soros, said in a statement.<sup>13</sup>

Furthermore, the Károly Eötvös Institute for Public Policy (EKINT), led by former data protection ombudsman László Majtényi, released an assessment of the government’s controversial Stop Soros bill.<sup>14</sup>

According to EKINT, the purpose of the bill is to silence NGOs that are critical of the government and restrict organizations from providing legal assistance in human rights cases. Defending human rights and making statements about the government will be tied to a license issued by the Ministry of Interior. If an organization does not have the license, such actions can be subject to penalties. The 25% tax imposed on the organizations that receive the license from the Ministry of Interior would be punitive.

The interior minister would be able to ban anyone from going within 8 km of the border. Another highly controversial point of the proposal is the fact that the Ministry of Interior’s decision may be subjective and arbitrary, and the courts have no right to review the decision in merit.

“It should be clear to everyone: while this law attacks a specific set of NGOs, the government can later use this against anyone,” EKINT writes.<sup>15</sup> “The government can decide at any time to use this law against anyone who is critical of the government health-care policies, education policies,

<sup>13</sup> Than, K. (2018) “Hungary Submits Anti-Immigration ‘Stop Soros’ Bill to Parliament,” [in:] *Reuters*.

<sup>14</sup> Eötvös Károly Intézet (2018) *Az Eötvös Károly Intézet gyorselemzése a Stop Soros törvénycsomagról*. Available [online]: <http://ekint.org/alkotmanyossag/2018-02-14/az-eotvos-karoly-intezet-gyorselemzése-a-stop-soros-torvenycsomagrol>

<sup>15</sup> *Ibid.*

tax policies....citing the desire to protect [Hungary's] sovereignty. Because whoever is not with us is against us."<sup>16</sup>

Moreover Nora Koves, a human rights expert at the Budapest-based Eotvos Karoly Policy Institute, described the bill as "utter nonsense."

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DOES "SUPPORT"  
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RIGHTS: FREEDOM  
OF SPEECH

"It doesn't make sense, not even in a legal perspective," she said in a telephone interview to Al-Jazeera. "We have no idea what the bill has to do with Soros. It's basically just part of the government's propaganda," she added,

"This new bill is just the next step along the way of undermining NGOs and distracting public opinion from actual problems like corruption." The broader campaign against

human rights groups and humanitarian organizations "could mean the end of NGOs" in Hungary, Koves concluded.<sup>17</sup>

The content of the package clearly shows that the Hungarian government looks upon any kind of migration as a negative phenomenon and considers punitive actions against those who promote migration in any way as justified. The civil society, however, is trying to defend its autonomy.

The analysis of EKINT has highlighted several legal absurdities and incoherencies of these proposals, which make it practically impossible to incorporate this text into a logical legal system. I try to summarize a few of them.

### **LACK OF SOCIAL DEBATE**

The so-called public consultation required by law in dealing with government proposals in the case of this legislative package consisted of merely an email address (velemenyezes@mk.gov.hu)<sup>18</sup> to receive public opinions.

There was no transparency whatsoever in the process, nobody could check what opinions had been registered to the governmental mailbox. The government simply stated more than 600 opinions and recommendations had been received – and in the light of these recommendations, the bill had been further tightened.<sup>19</sup> It is clear now that the Hungarian government did

<sup>17</sup> Al Jazeera (2018) *Hungary Blasted over 'Stop Soros' Bill Targeting NGOs*.

<sup>18</sup> The e-mail address contains the word "opinion" in Hungarian and the extension is that of the Hungarian government.

<sup>19</sup> Magyar idők (2018) *Tuzson bence: Szigorított formában nyújtják be a „Stop Soros” törvénycsomagot*. Available [online]: <https://magyaridok.hu/belfold/tuzson-bence-szigorított-formában-nyújtják-stop-soros-törvénycsomagot-kedden-2795877/>

<sup>16</sup> Ibid.





THE PACKAGE  
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PART IN PUBLIC LIFE

not intend to facilitate public consultation on refugee policy, on migration or on civil society. This was a fake debate.

### CLARITY

Legal texts should be clearly understandable, and definitions are required to be clean-cut. According to the Hungarian Constitutional Court, it is unconstitutional if it is impossible to interpret the legal text or if different interpretations are possible and thus the consequences of the law are unforeseeable.<sup>20</sup> This package of bills introduces legal categories the definitions of which are vague. For instance,

nobody knows exactly what is meant by "organizations supporting migration." If "support" stands only for human trafficking, a new law would be redundant: it is already prohibited in the Hungarian penal code.<sup>21</sup> Does "support" mean giving legal advice to an asylum seeker? According to international conventions, signed and ratified by Hungary as well, everybody has the right to seek asylum.<sup>22</sup> If somebody can be punished for giving information to an asylum-seeker about the legal context, it makes it impossible to exercise the right to seek asylum, which is a legitimate action. Or does "support" mean to publicly speak in favor of migration? You cannot ban it, it would be the denial of one of the basic rights: freedom of speech.

Furthermore, what about money transferred from abroad? Regarding foreign financial support, the proposal mentions money transferred to the organization from abroad. It is not clear what kind of donation we speak about here. The political intention is pretty clear but from the legal point of view, into what category should fall, for example, a Hungarian citizen transferring the money from abroad or an international entity transferring the money from its Budapest office?

### THE IMMIGRATION FINANCING DUTY

Duties are usually to be paid for some kind of services of the authorities. For example, you ask for an official attestation and you pay for it. "Immigration financing duty" is not a duty; there is no service from the authorities at all. It is actually a fine or a pu-

<sup>21</sup> 2012. évi V. törvény (Btk.) 353.

<sup>22</sup> Article 14 of the Universal Declaration of Human Rights states that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution." The United Nations 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees guides national legislation concerning political asylum.

<sup>20</sup> Kiadó, O. (2011) *Alkotmánytan I.* Available [online]: [http://www.tankonyvtar.hu/hu/tartalom/tamop425/2011\\_0001\\_520\\_alkotmanytan\\_i/ch04s05.html](http://www.tankonyvtar.hu/hu/tartalom/tamop425/2011_0001_520_alkotmanytan_i/ch04s05.html)

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## SUCH LEGISLATION IS TYPICAL OF DICTATORSHIPS, NOT DEMOCRACIES

nitive tax – for some kind of activities that are not even defined as illegal according to the Hungarian law.

### **RESTRAINING ORDER**

It contradicts the spirit of the Hungarian constitution if the minister of interior has the right to determine whether an individual violates the interests of Hungarian national security, or is a threat to public order. In the case of Hungarian citizens, it is especially alarming, seen from the criteria of the rule of law, to ban someone from a specific area (8 kilometers from the southern border) of the country. “Ban” is a category of criminal law and it should be solely the up to the courts to have the right to ban someone from somewhere. The institution of a “restraining order” is a circumvention of the rules on “ban” because the Minister of Interior can use it without any court saying that a criminal act has been committed. This legal construction is a breach of the separation of powers since it helps the executive branch to “switch off” jurisdiction in a matter which should clearly belong to criminal law.

### **CONCLUSIONS**

The terminology of this package of bills is highly problematic from a legal point of view. Certain categories (e.g. “supporting migration” or “violate the interests of national security”) would enable the government an arbitrary interpretation.

According to the latest campaign slogans of Fidesz, it is important to go to the polls and give Fidesz a two-thirds majority, ensuring the adoption of the “Stop Soros” package. It clearly shows that the package is an integral part of the government’s communication campaign that denies civil organizations being critical of the government, the right to express their views, and take part in public life.

Should this text become an actual law, its tools will endanger the very existence of targeted civil organizations. The bills also contain measures that may restrict fundamental rights of individuals, e.g. the freedom of movement. Such legislation is typical of dictatorships, not democracies.

The future of this legislation lies in the outcome of the April 2018 parliamentary elections but the text itself in this campaign period is at least one of the main tools – if not *the* main tool – to convey the basic message of Fidesz. The message that goes somewhere along the lines of: “We will defend you from dangers but at the same time, we expect you to follow suit.” In this sense, the package can be considered as a “fake legislation initiative”, serving primarily political purposes. •



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