

## Rule of Law, Free Speech, and Individual Rights Disappearing in Hungary

In April 2018, Prime Minister Viktor Orbán and his nationalist Fidesz party won a two-thirds majority in the Hungarian parliament after garnering roughly 50 percent of the popular vote. The election initiated Orbán's third consecutive term as prime minister, and followed extensive changes to the Hungarian constitution and electoral laws that election experts say provide his party with significant undue political advantage.<sup>1</sup> Given a political landscape in which Fidesz has abolished many governmental checks and balances and largely captured state-run and private media, Orbán faced no competitive opposition. Instead, in a campaign marked by state-funded antisemitic and racist advertising, he based his platform on opposition to migrants and refugees (of which Hungary accepts next to zero), non-governmental watchdogs, and the Hungarian-American financier George Soros.<sup>2</sup> During the election, Orbán declared that "after the elections we will take revenge—moral, political, and legal revenge" against real and perceived enemies of the Hungarian state.<sup>3</sup> Following the election, the Fidesz government has passed new laws curtailing judicial independence, further targeting

free speech, and criminalizing the activities of non-governmental organizations (NGOs).

## Capturing a Once-Independent Judiciary

Since coming to power, Fidesz has repeatedly undermined rule of law by changing the rules and personnel governing judicial appointments to pack the country's Constitutional Court with supporters, and by limiting the Court's ability to review the constitutionality of laws. Recent amendments to Hungary's constitution have established an entirely new judicial body—an Administrative High Court—tasked with hearing all cases related to civil liberties, such as freedom of assembly and electoral issues, asylum cases, and all cases related to taxation and procurement.<sup>4</sup> Notably, tax and procurement-related irregularities have been highlighted repeatedly by a dwindling number of independent Hungarian media outlets as the source of millions of dollars in suspect deals involving Orbán's family and friends. Several such deals have involved Russian governmental actors.<sup>5</sup>

## Strangling Independent Media

Since Orbán's rise to power, his close associates have purchased a growing number of independent Hungarian media outlets, either closing them outright or significantly altering their content in

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<sup>1</sup> "HUNGARY PARLIAMENTARY ELECTIONS 6 April 2014, OSCE/ODIHR Limited Election Observation Mission Final Report" OSCE: Office for Democratic Institutions and Human Rights, Warsaw, July 11, 2014, <https://www.osce.org/odihr/elections/hungary/121098?download=true>

<sup>2</sup> Disclosure: Human Rights First receives funding from roughly 40 foundations, including Open Society Foundations, which was founded by George Soros.

<sup>3</sup> Keno Verseck, "Hungary's Viktor Orban Targets Critics with 'Soros Mercenaries' Blacklist | DW | 13.04.2018," DW.com, April 13, 2018, accessed October 12, 2018,

<https://www.dw.com/en/hungarys-viktor-orban-targets-critics-with-soros-mercenaries-blacklist/a-43381963>.

<sup>4</sup> "Attacking the Last Line of Defense: Judicial Independence in Hungary in Jeopardy," Hungarian Helsinki Committee, June 15, 2018, <https://www.helsinki.hu/wp-content/uploads/Attacking-the-Last-Line-of-Defense-June2018.pdf>

<sup>5</sup> Daniel Hegedus, The Kremlin's Influence in Hungary, DGAP Kompakt 8, February 2016, <https://dgap.org/en/think-tank/publications/dgapanalyse-compact/kremlins-influence-hungary>.

support of the government. Others have been put under significant pressure through governmental manipulation of the advertising market. The precipitously declining state of press freedom in Hungary led U.S. Chargé d’Affaires David Kostelancik, a career foreign service officer, to devote an entire speech to the issue in October 2017. In his remarks, Kostelancik noted that “Government allies have steadily acquired control and influence over the media market,” and had completed the acquisition of all independent regional newspapers in the country, an erstwhile key source of credible information. Kostelancik went on to decry government-aligned media outlets labeling individual independent journalists, including American citizens, as “threats” to Hungary.<sup>6</sup>

Following Kostelancik’s speech, the U.S. State Department, through the Bureau of Democracy, Human Rights, and Labor (DRL), announced a \$700,000 Notice of Funding Opportunity (NOFO) to “support media outlets operating outside the capital in Hungary to produce fact-based reporting,” and otherwise promote independent

media.<sup>7</sup> The NOFO was quietly cancelled, following a policy reversal, in July 2018.<sup>8</sup>

In early August, HírTV, Hungary’s first television station dedicated to news programming, was sold to an Orbán ally.<sup>9</sup> Its programs were immediately cancelled and replaced by a video of an Orbán speech running on a loop. In September, Index.hu, Hungary’s largest independent online news outlet, was bought by a ruling party member, raising significant concerns that it too will soon experience either a directed editorial change or a sudden closure.<sup>10</sup> In October, in response to online outlet Atlatszo’s investigations of corruption within Fidesz, state-aligned media branded the outlet “pro-migration” and aligned with unspecified foreign intelligence agencies.<sup>11</sup>

### **Criminalizing NGO Activity—Including Free Speech**

On July 1, a new law regulating NGO activity went into effect criminalizing the act of ‘facilitating illegal immigration.’<sup>12</sup> Under the new law, given the politically-charged title of “STOP Soros,” any action that is deemed by the government to be helping illegal migrants achieve legal status or

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<sup>6</sup> U.S. Embassy Budapest, “Freedom of the Press: Enduring Values in a Dynamic Media Environment,” U.S. Embassy in Hungary, October 17, 2017, accessed October 12, 2018, <https://hu.usembassy.gov/freedom-press-enduring-values-dynamic-media-environment/>.

<sup>7</sup> “Bureau of Democracy, Human Rights and Labor (DRL) Notice of Funding Opportunity (NOFO): Supporting Objective Media in Hungary,” U.S. Department of State, November 07, 2017, accessed October 12, 2018, <https://www.state.gov/j/drl/p/previouscalls/275396.htm>.

<sup>8</sup> Marton Dunai, “Gloom in the Newsroom as Hungary’s Independent Media Recedes,” Reuters, September 25, 2018, , accessed October 12, 2018, <https://www.reuters.com/article/us-hungary-orban-media-insight/gloom-in-the-newsroom-as-hungarys-independent-media-recedes-idUSKCN1M40SP>.

<sup>9</sup> Marton Dunai, “Orban Loyalists Take Control of Prominent Hungarian News Channel,” Reuters, August 01, 2018,

accessed October 12, 2018,

<https://www.reuters.com/article/us-hungary-orban-media/orban-loyalists-take-control-of-prominent-hungarian-news-channel-idUSKBN1KM4VT>.

<sup>10</sup> Staff, “Leading Online Daily Index.hu Sold to Foundation Linked to Lajos Simicska,” The Budapest Beacon, April 21, 2017, , accessed October 12, 2018, <https://budapestbeacon.com/leading-online-daily-index-hu-sold-foundation-linked-lajos-simicska/>.

<sup>11</sup> “How Orban’s Media Empire Is Smearing Atlatszo,” VSQUARE.ORG, October 3, 2018, , accessed October 12, 2018, <https://vsquare.org/how-orbans-media-empire-is-smearing-atlatszo/>.

<sup>12</sup> The Hungarian Government’s Proposal on the Stop Soros Legislative Package, Hungarian Helsinki Committee, (unofficial translation of the law) <https://www.helsinki.hu/wp-content/uploads/STOP-SOROS-LEGISLATIVE-PACKAGE-PROPOSAL.pdf>.

otherwise supporting individuals considered to have entered the country illegally could result in criminal prosecution and up to a year's imprisonment. Criminal actions could therefore include offering immigrants food or providing leaflets with information on legal resources to asylum-seekers.<sup>13</sup>

Additionally, the parliament passed a law levying a 25 percent tax on any activity or organization that "directly or indirectly supports immigration."<sup>14</sup> This law will require that NGOs pay a heavy tax if they assist immigrants, even in very minor ways. Passage of the law led to the closing of the Open Learning Initiative at Hungary's Central European University, the country's U.S.-accredited, leading post-graduate institution, which the Orbán government has sought to shutter. The program offered free, non-degree courses for asylum-seekers and refugees.<sup>15</sup>

Both laws were passed by the Hungarian parliament over objections raised by the Council of Europe's Venice Commission. As a result of the passage of these laws, the European Commission initiated infringement proceedings in the European Court of Justice in July—based on Hungary's violations of EU law related to its asylum policy—and issued a notice of concern regarding the STOP Soros legislation.

## **Curtailing Freedom to Assemble**

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<sup>13</sup> Hungary to criminalise migrant helpers in crackdown, BBC, May 29, 2018, <https://www.bbc.com/news/world-europe-44288242>.

<sup>14</sup> The Hungarian Government's Proposal on the Stop Soros Legislative Package, Hungarian Helsinki Committee, (unofficial translation of the law) <https://www.helsinki.hu/wp-content/uploads/STOP-SOROS-LEGISLATIVE-PACKAGE-PROPOSAL.pdf>

<sup>15</sup> Lydia Gall, "University Program First Victim of Hungary Anti-Immigration Tax," Human Rights Watch, August 30, 2018, accessed October 12, 2018,

In July, the Hungarian parliament again altered the country's constitution and passed a new law further limiting freedom of assembly. In effect since October, the new provisions prohibit any gathering of at least two people in the public sphere for the purpose of "discussion of public affairs."<sup>16</sup> These provisions make it illegal to protest in a way that violates "the private and family life of others and their home," and were intended to criminalize any protest near the house or dwelling of any Fidesz member. The law could be used to criminalize nearly all protests. Rallies may also be banned if they are deemed to "violate the dignity of the Hungarian nation," which gives the state an explicitly political justification to suppress speech. Any appeal of a banned rally would fall under the jurisdiction of the new highly-politicized Administrative High Court.<sup>17</sup>

## **Opening the Door to Vladimir Putin**

Prime Minister Orbán's continued closeness with the Kremlin, despite warnings from the U.S. government, remains a political and security risk. Orbán appears to be emulating the Russian government's approach to governance by making use of what many analysts consider corrupt procurement deals. More concerning, he is actively collaborating with Russia in the form of corrupt business initiatives such as PAKS II, disinformation cooperation such as the repackaging of Russian media narratives, and

<https://www.hrw.org/news/2018/08/29/university-program-first-victim-hungary-anti-immigration-tax>.

<sup>16</sup> "Hungary's New Law Restricting Freedom of Assembly," Hungarian Spectrum, October 02, 2018, , accessed October 12, 2018, <http://hungarianspectrum.org/2018/10/02/hungarys-new-law-restricting-freedom-of-assembly/>.

<sup>17</sup> Summary of the Hungarian Civil Liberties Union's Analysis of the New Bill on the Right to Assembly, HCLU site, July 2018, <https://hclu.hu/en/articles/summary-of-the-hungarian-civil-liberties-unions-analysis-of-the-new-bill-on-the-right-to-assembly>.

support of Russia's foreign policy through the blocking of Ukrainian integration into NATO and the EU.<sup>18</sup>

## Europe's Response

On September 12, the European Parliament voted to invoke Article 7 of the Lisbon Treaty against Hungary noting that damage to the rule of law, democracy, and human rights had become a serious threat to EU fundamental principles. The Article 7 process requires that Hungary make significant changes to bring its laws and policies into line with EU principles, or face possible sanctions such as suspension of its voting rights in the EU Council. However, the process will require the EU to forcefully negotiate with Hungary, and it may be thwarted if Poland or another EU member votes against.

## Failure of the United States to Counter Hungary's Disappearing Rule of Law will have Strategic Costs

### The U.S. State Department should:

- Publicly defend the right of Hungarian NGOs to accept international funding and to operate free from restriction so they can do their work.
- Open a new grant solicitation for independent media in Hungary, to provide support to outlets that investigate stories related to public accountability, transparency, and

corruption, including funds to help them provide for their own safety.

- Request democracy and governance funding for support to NGOs and watchdog organizations in Hungary, to allow them to engage with the Hungarian public and showcase their work. The funds request and future solicitation should recognize that Hungary's anti-democratic slide will only be combated when citizens of Hungary see that democratic institutions, such as civil society, work on their behalf. The best way to demonstrate this is for civil society to engage with the Hungarian public.
- Apply the Global Magnitsky Act to Hungarian officials involved in corruption, building upon visa bans issued against suspected corrupt actors in 2014.
- Urge EU leaders to use budget discussions to give weight to how Hungary and other European countries protect civil society and maintain the rule of law, including the independence of the judiciary.
- Reject head of state-level bilateral meetings, in Washington D.C. or elsewhere, until Prime Minister Orbán stops his attacks on governmental checks and balances, and civil society.

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<sup>18</sup> Drew Hinshaw and Marcus Walker, "In Orban's Hungary, a Glimpse of Europe's Demise," *The Wall Street Journal*, August 09, 2018, accessed October 12, 2018,

<https://www.wsj.com/articles/in-orbans-hungary-a-glimpse-of-europes-demise-1533829885>.