



HUNGARY

NEW LAWS THAT VIOLATE HUMAN RIGHTS, THREATEN CIVIL SOCIETY AND UNDERMINE THE RULE OF LAW SHOULD BE SHELVED

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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Hungary's continuing crackdown on civil society took an even more draconian turn on 20 June 2018 when Parliament adopted a bill that will criminalize a range of lawful activities in support of asylum seekers, refugees and migrants, said Amnesty International. A separate bill proposing a "seventh amendment" to the Constitution -- requiring state authorities to protect Hungary's "Christian culture" -- was also adopted and will ban the settlement of foreign populations; restrict people's ability to peacefully protest; undermine the independence of the judiciary; and criminalize homelessness.

Taken together, these changes to Hungarian law pose a serious threat to the right to seek asylum; the freedoms of association, assembly, expression, and movement; the right to housing and associated economic and social rights; and the right to be free from discrimination, in violation of international human rights law and regional law.

Amnesty International urges the Hungarian authorities to stop these laws from entering into force and to ensure that Hungary complies in full with its international and regional human rights commitments.

1. NEW CRIME OF "FACILITATING ILLEGAL IMMIGRATION"

Bill No. T/333, "amending certain laws relating to measures to combat illegal immigration" -- called the "Stop Soros" package¹ -- includes amendments to nine laws, including provisions of the penal code, the police act, the asylum law, and laws regulating the border.² The new law creates the criminal offence of "facilitating illegal immigration" and will apply to both individuals and organizations that are accused of engaging in certain "organizational activities" that assist persons who are seeking asylum as well as people who have entered Hungary irregularly³ and are attempting to secure a residence permit. Persons receiving such support would not have to actually submit an application for asylum or for a residence permit; the very act of assisting them is now a crime.

CRIMINAL "ORGANIZATIONAL ACTIVITIES"

Activities that will carry a criminal sanction when the law comes into force include, but will not be limited to:⁴

- border monitoring
- preparation or distribution of information materials, or the commissioning of such
- building or operating a network in support of facilitating "illegal immigration"

The law does not further define these terms by clearly laying out, for example, what "monitoring" entails; what it means to "commission" information materials; or what actions precisely would amount to "building or

¹ This bill is a revised version of a previous bill that focused on exorbitant fines for civil society organizations receiving "foreign funding". The revised Bill T/333 focuses instead on the criminalization of various migration-related activities as detailed in this statement. On the previous "Stop Soros" package, see Amnesty International, Authorities must stop new attempt to choke civil society, AI Index: EUR 27/7785/2018, <https://www.amnesty.org/download/Documents/EUR2777852018ENGLISH.pdf>, 24 January 2018; and Hungary: New law poses existential threat to NGOs, 14 February 2018, <https://www.amnesty.org/en/latest/news/2018/02/hungary-new-law-poses-existential-threat-to-ngos/>.

² Government of Hungary, Bill No. T/333, at <https://www.helsinki.hu/wp-content/uploads/T333-ENG.pdf> (unofficial English translation of bill and explanatory memorandum titled "General Reasoning").

³ It is already a criminal offence in Hungary to assist a person to cross Hungary's border unlawfully or to remain in Hungary unlawfully, or for a person to cross a border barrier. Hungarian Criminal Code, Sections 353 (smuggling illegal immigrants); 354 (facilitation of illegal residence); 352/A.

⁴ The accompanying memo specifically notes that "...the exact content of the organizing activity can not be fully listed" and "typical components" of organizational activities should be understood "with an appropriate abstraction as an interpretative provision... This allows the provision to penalize any conduct, which can in practice be identified as a type of organizational behaviour, in addition to punishing the most typical organizational behaviours and modes of committing listed." At p. 11.

operating” a “network.” The lack of clarity is a serious concern as criminal laws must be precisely worded to give persons subject to them **legal certainty** regarding what is and what is not a criminal act.

The vague terminology indicates that a broad range of activities would be subject to criminal penalties. The criminalization of such activities in the migration context is a direct assault on the work of non-governmental organizations and other civil society actors -- including legally residing family members, volunteers, and lawyers -- who offer people legal advice or representation; provide – in written form or online -- other forms of information, for example, about available housing, educational, or employment opportunities; provide interpretation to enable affected individuals to understand the asylum process or the residence permit application process, and their attendant rights; carry out monitoring at borders to document the treatment of foreigners by guards and police; provide material, medical and other humanitarian assistance in border zones; or who band together in coalitions or networks to provide assistance to people exercising their right to seek asylum and/or foreigners trying to secure residence permits. The law not only criminalizes the distribution of information materials, but also their “preparation” and “commissioning”.

Even persons outside of Hungary who are involved in such activities inside Hungary could be subjected to the proposed law and charged with the criminal offense of being an accessory to or being complicit in “facilitating illegal immigration”, which potentially could give rise to an international arrest warrant.

PENALTIES FOR “FACILITATING ILLEGAL IMMIGRATION”

The penalty for being found guilty of engaging in the activities discussed above will be five to 90 days imprisonment, with “more severe punishment” for anyone who has provided the financial means to carry out the prohibited activities or who has “regularly” engaged in such activities. What will constitute regular engagement is not defined in the law. Any person who engages in “organizational activities” for financial gain, in support of more than one person, or within an eight kilometre area of the external border will be subjected to up to one year in prison. If found criminally liable, a monetary fine could be imposed on associations, organizations, and foundations alleged to have been involved in such activities – and courts will have the power to restrict them from conducting certain activities/operations in the future.

The new law also provides for an automatic ban on entry or stay in the border zone of any person charged (but not yet convicted) with “facilitating illegal immigration”, and for banishment from part of Hungary (e.g. the border area) of one to five years if convicted. Non-nationals could be expelled and subjected to a ban on re-entry to Hungary.

PROPOSED LAW WOULD VIOLATE INTERNATIONAL AND EU LAW

The proposed laws criminalize activities that are lawful under international and EU law. As a signatory to key international human rights treaties such as the 1951 Convention relating to the Status of Refugees; the International Covenant on Civil and Political Rights (ICCPR); the European Convention on Human Rights and Fundamental Freedoms, and the EU Charter of Fundamental Rights, 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 acquis⁵ will also be under threat, including asylum seekers’ right to information on asylum procedures; the right to advice at border crossings and in transit zones; and the right to free legal assistance and counsel in asylum appeals and in appeals regarding detention. If a person is subjected to an order for forcible return, EU law provides for that person to have interpretation assistance, legal advice and representation. The new law could also present an obstacle to persons who potentially would be eligible for a residence permit under both the asylum aquis and other EU measures governing the granting of residence permits.

⁵ Asylum Procedures Directive Article 8.2 (information and counselling in detention facilities and at border crossing points); Article 12 (right to information on asylum procedure, to interpretation services, to communication with UNHCR and other organisations providing legal advice and counselling); Article 20 (free legal assistance and representation in appeals procedures); Reception Conditions Directive Article 9.6 (free legal assistance and representation in appeals regarding detention); Return Directive Article 13 (effective remedies against return decisions).

AMNESTY INTERNATIONAL COULD BE TARGET OF THE LAW

The work of Amnesty International in Hungary includes campaigning on behalf of refugees and migrants; human rights education that includes components on people's rights when they are "on the move" and fleeing persecution as asylum seekers and refugees; and work on some individual cases where these and associated rights have been violated.

Amnesty International's activities in Hungary have already been scrutinized by pro-government media⁶ and the organization is likely to be targeted under the new law. For example, on 12 June 2018, a spokesperson for Fidesz-KDNP, István Hollik, and some of his associates, held a press event outside the Budapest office of Amnesty International Hungary.⁷ Hollik falsely claimed that Amnesty International facilitated illegal immigration, and wanted to flood Europe with migrants and make Hungary a migrant country.⁸ He attached two signs to the doors of the offices, one identifying Amnesty as an organization that facilitates illegal immigration and another claiming that Amnesty is associated with acts of terrorism.⁹ Hollik encouraged his supporters to openly fight against Amnesty and other organizations who allegedly "threaten Hungary's security" by supporting migration.

Such harassment is clearly intended to signal that Amnesty International's activities -- which are lawful under international and regional law -- should be subjected to criminalization when the new law comes into force. Such bullying tactics targeting NGOs, including Amnesty International, could have a profound chilling effect on civil society organizations and hinder the important work they do.

2. "SEVENTH AMENDMENT" TO THE FUNDAMENTAL LAW

The second proposed law that was adopted on 20 June -- Bill No. T/332: "seventh amendment of the fundamental law of Hungary" -- contains a number of provisions, now enshrined in Hungary's Fundamental Law (essentially the Constitution), that threaten to undermine human rights and the rule of law in Hungary¹⁰. A key requirement of the amendment is that state authorities "shall protect the constitutional self-image and the Christian culture of Hungary" which signals a worrying departure from the principle of non-discrimination in light of the priority that state institutions in Hungary must now give to one religion/faith over others.

⁶ For example, on 12 April 2018, Figyelő, a pro-government media publication printed a list of individuals who they claimed were part of a Soros-funded plot to bring down the Hungarian government. The list included the full names of Amnesty International Hungary's (AIHU) staff members and board chair; see <https://www.amnesty.org.uk/press-releases/we-are-not-afraid-amnesty-hungary-reacts-blacklisting-ngo-workers>. Other publications have also labelled AIHU staff "Soros Agents", including Magyar Idők (on 28 February 2018, 1 March 2018, and 6 May 2018). On 7 June 2018, speaker of the Christian Democratic parliamentary group, Nasca Lőrinc, claimed that "the Soros network has switched to a higher level" and referred to Amnesty International's "I Welcome" campaign; see <https://magyaridok.hu/belfold/fidesz-kdnp-a-soros-halozat-nagyobb-fokozatba-kapcsolt-3171175/>. Outlets making similar claims include Pesti Srácok (24 February 2018), and 888.hu (14 March 2018).

⁷ See video of event here:

<http://www.origo.hu/itthon/20180612-az-amnesty-international-egy-bevandozlopartiszervezet.html>

⁸ See, for example, <https://888.hu/article-az-amnesty-international-bevandozloorszagot-csinalna-magyarorszagbol>

and <https://magyaridok.hu/belfold/kormanypartok-az-amnesty-international-egy-bevandozlast-tamogato-szervezet-3189718/>

⁹ Amnesty International is campaigning for the release of Ahmed H, a Syrian man who was unjustly convicted in March 2018 of having been complicit in an "act of terror" during clashes between the Hungarian police and refugees at the Serbia-Hungary border. A resident of Cyprus, Ahmed H had gone to the aid of his family, which had previously fled Syria, and was at the border with his family when it was closed by the Hungarian authorities in September 2015. Amnesty International is calling for Ahmed H's conviction under Hungary's broad and vague counter-terrorism laws to be quashed when his appeal is heard in September 2018. The Hungarian authorities have publicly incriminated Ahmed H, and vilified Amnesty International for the organisation's work on his case. For example, a national consultation document sent to all households in Hungary in 2017 referred to Ahmed H and Amnesty's campaign in a question on organisations that "George Soros is supporting" and that "defend immigrants who commit crimes." See <http://hungarianspectrum.org/2017/10/01/national-consultation-on-the-soros-plan-questions-and-infoboxes/>.

¹⁰ <https://www.helsinki.hu/wp-content/uploads/T332-Constitution-Amendment-29-May-2018-ENG.pdf>

UNDERMINING THE OBLIGATION TO PROVIDE INTERNATIONAL PROTECTION

The newly adopted Constitutional amendment states that “[n]o alien population will be settled in Hungary” (Article 5), save persons granted specific, individual permission by the Hungarian authorities. This raises the concern that Hungary will continue to reject participation in any EU-promoted and sponsored resettlement schemes that contain quotas or otherwise provide for the resettlement/relocation of groups of people, for example, groups of nationals from one country (e.g. Syria, Democratic Republic of Congo) fleeing persecution and/or violent conflict. Persons arriving in Hungary from or after having transited through an alleged “safe third country”... “ shall not be entitled to asylum”, which implies that no individual process shall be afforded to them.

Moreover, the amendment will require a two-thirds supermajority of votes in the parliament in the future, that is from the date the law will come into force, to amend Constitutional provisions regarding asylum and the residence of foreign nationals in Hungary. Such a requirement will tie the hands of future parliaments, where there is a simple majority as opposed to a supermajority, and which might wish to amend the Fundamental Law to bring it into conformity with Hungary’s international human rights commitments.

THREATS TO FREEDOM OF ASSOCIATION AND EXPRESSION

People’s ability to protest and challenge government policy could also be severely restricted when the “seventh amendment” comes in to force. Under Article 4 of the amendment, Article 6 of the Fundamental Law will be replaced by a provision stating that “[t]he exercise of freedom of expression and the right of assembly shall not harm others’ private and family life and their homes.”

The apparent priority that would be given to the right to privacy and family life over the right to assembly threatens to violate international human rights law. While states can put limits on freedom of assembly, there are strict criteria that govern such restrictions. The restrictions must be in conformity with the law, necessary and proportionate to the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others (ICCPR, Article 21; ECHR Article 11). International and regional human rights law, binding on Hungary, allows restrictions on the right to freedom of assembly, including to protect the privacy of others, but these restrictions cannot be blanket and would only be permissible if they are strictly necessary and proportionate to the goal they seek to achieve.

In many European countries, persons who demonstrate against government policies often choose to direct their protests at particular politicians and other state actors. Protests outside the headquarters of political parties, or in and around the offices, or sometimes residences of individual political figures, are valid and effective ways to express dissent and be heard and can only be restricted when strictly necessary to achieve a legitimate goal, such as protecting the rights of others.

In numerous judgments, the European Court of Human Rights has underlined that the limits of acceptable criticism are wider in regard to politicians than regards private individuals; politicians inevitably and knowingly lay themselves open to close public scrutiny of their words and actions and must consequently display a greater degree of tolerance.¹¹ Similarly the UN Human Rights Committee has observed that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high ... all public figures, including those exercising the highest political authority ..., are legitimately subject to criticism and political opposition”.¹² Restrictions on protests against politicians and other public figures must therefore face stringent scrutiny to ensure the right to peaceful protest is protected.

The proposed “seventh amendment” could pave the way for violations of the right to freedom of assembly under international and regional human rights law by allowing the state to unnecessarily and disproportionately interfere with the right to peaceful protest. Specifically, the law may allow authorities to restrict protests without requiring that such restrictions be strictly necessary and proportionate to protect the

¹¹ See e.g. *Lingens v Austria*, Application no. 9815/82, Judgment of 8 July 1986, para. 42; and *Lyashko v Ukraine*, Application no. 21040/02, judgment of 10 August 2006, para. 41.

¹² General Comment No. 34 on freedom of expression, para. 38.

rights and freedoms of others or to advance another legitimate goal. Such a blanket restriction on peaceful protest would undermine the right to freedom of assembly and cut off an important avenue for the public in Hungary to collectively and publicly address their concerns to political figures and other state actors.

UNDERMINING THE INDEPENDENCE OF THE JUDICIARY

The “seventh amendment” also narrows the sources of interpretation available to judges, which would undermine meaningful Constitutional review. The amendment requires that:

...courts shall interpret the test of the legal regulations primarily in accordance with their purposes and with the Fundamental Law. Primarily the preamble of the legal regulation, and the reasoning of the legal regulation or its amendment shall be taken into account when the purposes of the legal regulations are established.

By making the reasoning of the proponents of a legal regulation a *primary* consideration in terms of interpretation, this amendment gives undue weight to one branch of government (the legislative) over impartial, independent review by the judiciary, which typically employs a wide range of sources and authority to determine whether a specific provision is Constitutional or not. It is particularly worrying that such a provision has been adopted in the context of a parliamentary super-majority, where the objectives and intention of the proponents of most bills would reflect the platform of the current government.

CRIMINALIZATION OF HOMELESSNESS

The amendment also states that “[i]t is forbidden to stay (or reside) in public places habitually.” This marks a departure from the previous legislation, which limited such ban to specific areas and places, and effectively enacts a general ban country-wide.

Homelessness is an egregious violation of various human rights, including potentially the rights to life, health and adequate housing, and affects people who are already some of the most disadvantaged and marginalized. Beyond this failure, the criminalization of homelessness raises concerns of discrimination and cruel, inhuman and degrading treatment. By adopting this amendment, the Hungarian authorities are not only failing to meet their positive obligations to address homelessness humanely, but are also showing a complete disregard for their international human rights obligations of equality and non-discrimination; and protection of the right to liberty, privacy, and personal security. As such the new law will have serious and dramatic consequences for people who are already in an extremely vulnerable situation.

Homelessness is the result of a state failing to implement the right to adequate housing for everybody who needs it and it requires an urgent and immediate human rights response. The Hungarian government must stop the use of stigmatizing legislation; and instead provide appropriate housing solutions and access to essential services for all.

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TO ONE PERSON, IT
MATTERS TO US ALL.**

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