

AGAINST THE STREAM

**NGOs facing illiberal policies:
Hungary and Turkey**

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FOREWORD

Hafiza Merkezi Berlin (HMB) was founded within a global context of rising authoritarian governments, increasing nationalism, racism, anti-gender politics/discourse and right-wing extremist movements. This increasingly alarming trend of the erosion of the rule of law and a setback in human rights of all kinds at a global scale is accompanied by the criminalization of different political and social movements and the targeting of human rights defenders and activists.

HMB was established with the aim to fight this global trend in alliance with other international actors, with the goal of fostering change at a global level. We wanted to engage more directly with the international human rights system, grapple with the common human rights issues in different countries and build bridges between different countries, groups and activists through internationalization, knowledge production and civil engagement. To this end, we started our first activities in the summer of 2020. Within our first year, we focused on capacity building activities for international advocacy and workshops, where civil society actors from Turkey, Poland and Hungary came together.

From this perspective, we met with the human rights defenders and lawyers from Turkey and Hungary in March 2021 in order to discuss the issues surrounding the recent pressure on human rights and the threats human rights defenders and lawyers have been facing in both countries. We are observing attempts to silence NGOs defending democratic rights and to accuse them of “terrorist” acts. To criminalize different civil society actors, foreign funding, particular in terms of its source, amount, and recipients, is increasingly being questioned and governments in both countries have tried to introduce strict regulations in this regard. While these regulations lead to an increase in the control over the activities of organisations, the rhetoric of ‘foreign/western interest groups’ attacking the sovereignty of the states via NGOs operations gets stronger. The relevance of discussing these developments with a specific focus on Hungary and Turkey derives from the fact that similar rhetoric and tools are being used in both contexts. Also, this discussion gave us the opportunity to analyse not only the similarities but also the differences between these two contexts, helping us to develop our understanding of both countries. We appreciate the contribution of all participants to our workshop and would like to thank László Detre for his facilitation during the workshop and for drafting this report. We hope this report will provide some insights as to how we can develop comparative perspectives between these two countries and what steps to take next for common action.

INTRODUCTION

Illiberal policies likely target civil society as part of silencing critical voices,¹ thus undermining the broader system of checks and balances.² Sometimes, illiberal policies are also referred to as populist since they involve the claim that their respective agent would be the true and sole representative of the sovereign will of *the* people.³ As such, questioning such policies – as to who pursues them – would mean questioning the very foundation of the identity and existence of the people. It is not surprising then that illiberal policies try to – directly or indirectly – oppress critical voices, such as opposition parties, independent media outlets, academia, and civil society.⁴ Also, they would likely target and fight against certain groups, individuals, or ideas and concepts, aiming to legitimize the essence of their policies. This is really important for such regimes since constant war requires constant – extraordinary – measures, which they are willing to deliver.⁵

In such an environment, where NGOs constantly face direct or indirect threats, their work cannot be valued enough.⁶ This report aims to summarize the views of the members of some NGOs from Hungary and Turkey⁷ on the types of challenges they have to cope with and also, how they might adapt to such a hostile environment.

1 Drinóczi, Tímea (2021). Loyalty, Opportunism and Fear: The forced privatization of Hungarian universities. *Verfassungsblog*, 2021/2/05, <https://verfassungsblog.de/loyalty-opportunism-and-fear/>, DOI: [10.17176/20210205-115806-0](https://doi.org/10.17176/20210205-115806-0).

2 von Bogdandy, Armin (2020). Principles of a systemic deficiencies doctrine: How to protect checks and balances in the Member States. *Common Market Law Review*, Volume 57, Issue 3, p. 706.

3 See: Drinóczi, Tímea (2019). *The European Rule of Law and illiberal legality in illiberal constitutionalism: the case of Hungary*. MTA Law Working Papers 2019/16., p. 9, http://real.mtak.hu/121681/1/2019_16_Drinoczi.pdf

4 Schnider, Linda (2020). *Responses by the CJEU to the European Crisis of Democracy and the Rule of Law*. re:constitution Working Papers 2/2020, p. 23, 28, https://www.forum-transregionale-studien.de/fileadmin/pdf/SCHNEIDER_rec_WP_2_2020.pdf

5 See Krisztina Kovács's remark on "Indefensible War Rhetoric": Kovács, Kriszta (2020). Hungary's Orbánistan: A Complete Arsenal of Emergency Powers. *Verfassungsblog*, 2020/4/06, <https://verfassungsblog.de/hungarys-orbanistan-a-complete-arsenal-of-emergency-powers/>, DOI: [10.17176/20200406-131348-0](https://doi.org/10.17176/20200406-131348-0).

6 Uitz, Renáta (2014). Expelling dissent: On account of the ECtHR judgment in *Baka v Hungary*. *Verfassungsblog*, 2014/6/03, <https://verfassungsblog.de/expelling-dissent-account-ecthr-judgment-baka-v-hungary-2/>.

7 Online meeting on "Local Struggles – International Strategies: Hungary and Turkey Human Rights under Pressure – The means of the civil society" 30 March, 2021, organized by Hafiza Merkezi Berlin with the participation of the representatives of: Amnesty International Hungary, Hungarian Helsinki Committee, Political Capital (Hungary), European Roma Rights Centre, Amnesty International Turkey, Hafiza Merkezi, Human Rights Foundation of Turkey, and Progressive Lawyers Association of Turkey.

SETTING THE SCENE

Due to the nature of illiberal policies, many similarities can be found in regimes that have adopted them. The basic elements of the toolbox are quite common and widely shared: claiming sovereignty, constitutional identity, national security, and disinformation.⁸ Other common traits include the use of historical narratives that serve to legitimize illiberal policies and legislation designed in line with these policies,⁹ polarized constitution-making,¹⁰ targeted legislation,¹¹ formal legalism,¹² the departure from formal rules towards informal structures,¹³ or abusive use of comparative law.¹⁴ Liberal constitutionalism – in a nutshell – is about constraining policies by law and guaranteeing the protection of individual rights.¹⁵ There have been many attempts to describe the legal nature of regimes that deny this notion, for example abusive constitutionalism, modern authoritarianism, populist constitutionalism, autocratic legalism, or hybrid regime.¹⁶ It is fair to say that “[i]lliberal constitutionalism is a particular state in the process of democratic decay or the backsliding from (liberal) constitutionalism, i.e., constitutional democracy [...] towards an authoritarian regime. In illiberal constitutionalism, each element of a constitutional democracy, such as a written constitution, constitutional review, the rule of law, democracy, and human rights, is observable – they exist in a *de jure* sense – but none of the elements prevail in their entirety.”¹⁷ Thus, it is a state of “in-between” which may vary greatly. Still, illiberal policies seek to find legitimacy in a patina of liberal constitutionalism.¹⁸

8 Kochenov, Dimitry Vladimirovich and Bárd, Petra (2018). The Four Elements of the Autocrats’ Playbook. *Verfassungsblog*, 2018/9/18, <https://verfassungsblog.de/the-four-elements-of-the-autocrats-playbook/>, DOI: 10.17176/20180918-164220-0.

9 Jakab, András (2020). Informal Institutional Elements as Both Preconditions and Consequences of Effective Formal Legal Rules: The Failure of Constitutional Institution Building in Hungary. *The American Journal of Comparative Law*, Volume 68, Issue 4, December 2020, pp. 781-789.; Tecimer, Cem (2021). Turkey’s Constitution of 1921 and Turkey’s Culture Wars of 2021. *Verfassungsblog*, 2021/4/07, <https://verfassungsblog.de/turkey-1921-2021/>, DOI: 10.17176/20210407-171109-0.

10 For a take on the Fundamental Law of Hungary as a dividing line, see: Jakab (2020): p. 783.; Öztürk, Ahmet Erdi and Gözaydın, İftar (2016). Turkey’s draft constitutional amendments: harking back to 1876? *Verfassungsblog*, 2016/12/30, <https://verfassungsblog.de/turkeys-draft-constitutional-amendments-harking-back-to-1876/>, DOI: 10.17176/20170103-113938.

11 Bakó, Beáta (2021). Hungary’s Latest Experiences with Article 2 TEU: The Need for ‘Informed’ EU Sanctions. In: Armin von Bogdandy, Piotr Bogdanowicz, Iris Canor, Christoph Grabenwarter, Maciej Taborowski and Matthias Schmidt (eds). *Defending Checks and Balances in EU Member States – Taking Stock of Europe’s Actions* (pp. 38-44). Springer, 2021; Yildiz, Ali (2019a). Did Turkey’s Recent Emergency Decrees Derogate from the Absolute Rights? *Verfassungsblog*, 2019/9/28, <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>, DOI: 10.17176/20190928-232402-0.

12 Drinóczi (2019): p. 27.; According to Jakab, the period after 2010 saw an increase in the instrumentalization of legislation, with law now representing a technical impediment and no longer a real barrier to politics. See Jakab (2020): p. 774, 786.

13 Acar, Ali (2016). “De-constitutionalism” in Turkey? *Verfassungsblog*, 2016/5/19, <https://verfassungsblog.de/de-constitutionalism-in-turkey/>, DOI: 10.17176/20160520-104855.; Jakab (2020): pp. 774-781.

14 Tecimer, Cem (2017). Abusive comparativism: “Pseudo-comparativist” political discourse as a means to legitimizing constitutional change in Turkey. *Verfassungsblog*, 2017/5/15, <https://verfassungsblog.de/abusive-comparativism-pseudo-comparativist-political-discourse-as-a-means-to-legitimizing-constitutional-change-in-turkey/>, DOI: 10.17176/20170515-094627.; Uitz, Renáta (2019). A jogállamiság párbeszéd útján történő védelmének buktatói. *Fundamentum*, 2019/1-2, p. 48.

15 Dyeve, Arthur (2005). The constitutionalisation of the European Union: discourse, present, future and facts. *European Law Review*, Vol. 30, No. 2, 2005, p. 173.

16 For a comprehensive evaluation see: Drinóczi (2019), pp. 3-9.

17 Drinóczi (2019), p. 4.

18 About the ‘patina of legitimacy’ provided by the rule of law (which as an ideal is sometimes associated with constitutionalism), see: Tamanaha, Brian Z. (2004). *On the Rule of Law – History, Politics, Theory*. Cambridge University Press: p. 120.

The bigger picture – Hungary

It is greatly agreed that the situation in Hungary – even though its autocratization progress tends to be considered as the most advanced one in the European Union (Union)¹⁹ – cannot be fully compared to the one in Turkey. Several indexes and reports could be cited to highlight the areas in which the state of affairs in the two countries differs. For example, according to the World Justice Project Rule of Law Index of 2020, based on given indicators, Hungary scored 53 points (40 points on constraints on government powers, 58 points on the protection of fundamental rights) whilst Turkey achieved 43 points (30 points on constraints on government powers, 32 points on the protection of fundamental rights).²⁰ To understand the significance of these numbers, it might be useful to note that Poland – whose political situation is often compared to Hungary’s – received an overall score of 66 points.

It is also commonly accepted that there has not been a clear game-changing moment in Hungary, but that it rather was – and still is – a steady process of dismantling liberal constitutionalism. In 2010 the Fidesz – KDNP²¹ party coalition won constitutional majority in the Hungarian National Assembly and ever since a great deal of the measures taken by public authorities – implemented into law, constitutional amendments or even a new constitution – have been, to varying degrees, criticized not just within Hungary but also by the European Institutions [both the Union and the Council of Europe (CoE)] and even the United States of America.²² Besides the debates around the way of the adoption and content of the new constitution, the Fundamental Law of Hungary,²³ various other issues have been in the spotlight over the course of the past few years. These include constitutional amendments that overturned decisions of the Constitutional Court of Hungary (CCoH),²⁴ changes in electoral law (re-drawing constituencies, implementing the system of “winner compensation”),²⁵ various laws regarding the “reform” of the judiciary,²⁶ the situation

19 Hegedűs, Dániel (2020). Az uniós értékek védelmének politikai-intézményi háttere. *Fundamentum*, 2020/2-3, p. 8.; Hong, Mathias (2018). “Constitutional Resilience – How Can a Democratic Constitution Survive an Autocratic Majority?”: Freedom of Speech, Media and Civil Society in Hungary and Poland. *Verfassungsblog*, 2018/12/09, <https://verfassungsblog.de/constitutional-resilience-how-can-a-democratic-constitution-survive-an-autocratic-majority-freedom-of-speech-media-and-civil-society-in-hungary-and-poland/>, DOI: 10.17176/20181209-203705-0.

20 <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>

21 Christian Democratic People’s Party.

22 <https://www.reuters.com/article/us-hungary-usa-corruption-idUSKCN0I70KL20141018>

23 The adoption procedure and the content of the Fundamental Law of Hungary have been greatly discussed. See for instance the Opinion of the Venice Commission: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)016-e)

24 The Fourth Amendment of the Fundamental Law has been fiercely criticized. It essentially overturned some decisions of the CCoH, lifting unconstitutional elements into the body of the Fundamental Law. Moreover, the Fourth Amendment declared that the CCoH could not review constitutional amendments substantially. See the compilation of the Hungarian Helsinki Committee: <https://helsinki.hu/wp-content/uploads/Constitutional-Court-vs-Fourth-Amendment.pdf> and the opinion of the Hungarian Civil Liberties Union: <https://tasz.hu/cikkek/what-is-wrong-with-the-fourth-amendment-to-the-fundamental-law-1>

25 von Notz, Anna (2018). How to Abolish Democracy: Electoral System, Party Regulation and Opposition Rights in Hungary and Poland. *Verfassungsblog*, 2018/12/10, <https://verfassungsblog.de/how-to-abolish-democracy-electoral-system-party-regulation-and-opposition-rights-in-hungary-and-poland/>, DOI: 10.17176/20190116-210647-0.

26 For example, the European Commission launched an infringement procedure against Hungary because of the forced retirement of judges. The CJEU, in its Judgement of 6 November 2012 (*European Commission v. Hungary*, C-286/12), found that Hungary violated EU law when it lowered the retirement age of sitting judges by law. The dismissal of the sitting President of the (former) Supreme Court of Hungary ended up at the ECtHR which found violations of the European Convention of Human rights in the famous *Baka v. Hungary* no. 20261/12 Judgment [GC] of 23 June 2016.

of media freedom,²⁷ the termination of the mandate of the Data Privacy Ombudsman,²⁸ changes to the laws defining the legal status of churches,²⁹ the “Stop Soros” package,³⁰ the “Lex CEU”,³¹ the situation of academic freedom,³² and the “Lex NGO.”³³ And the list could be continued. In some cases, however, the Hungarian policy makers have changed their minds. Firstly, authorities heavily rely on public opinion and come round if the vast majority opposes intended measures. This is especially true when such opposition occurs among the supporters of the ruling coalition. This happened when the government dropped the idea of an “internet tax” in 2014.³⁴ In the second case, authorities tried to find a “solution” with European institutions, or implement – at least to some degree (“cosmetic compliance”)³⁵ – decisions of the Court of Justice of the European Union (CJEU) or the European Court of Human Rights (ECtHR). It is widely accepted that Hungarian authorities are generally quite cooperative with the European institutions.³⁶

It has been already indicated above that narratives are essential sources of self-legitimation for illiberal policies. Declaring to be acting in defense of the “nation” is a way to justify extraordinary measures. In Hungary, after the elections of 2010, the National Assembly adopted the Declaration of National Cooperation,³⁷ stating – *inter alia* – that a new social contract had been born during the elections. While the Declaration suggested that the system was open to all Hungarians, reality looked different. Ethno-nationalism surged and received constitutional acceptance.³⁸ Policies have been targeting certain groups, individuals, and institutions against whom the nation is defended. The International Monetary Fund, homeless people, NGOs, asylum seekers (or migrants), the liberal elite, “Brussels,” LGBTQI people and behind all these, George Soros have borne the brunt of this agenda. Hungary is in a constant “war”³⁹ and in a constant need to be defended. To make these policies known, it was vital to expand political influence in the media. Since legal means to this end triggered criticism, the strategy had to be adjusted. The “solution” turned out to be of a financial

27 In 2011 new media laws were adopted, triggering serious international criticism. For example see the European Parliament’s Resolution: https://www.europarl.europa.eu/doceo/document/TA-7-2011-0094_EN.html/; the Opinion of the Commissioner for Human Rights of the CoE: <https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-on-hungary-s-media-legis/16806daac3>; or a short news report: <https://www.dw.com/en/hungary-amends-media-law-seen-as-curbing-press-freedom/a-14895879>. The CCoH, in its Decision 165/2011. (XII. 20.), found some parts of the new laws unconstitutional. The laws were in fact amended – as a result of the exchanges with European institutions – to some extent. The state of media freedom in Hungary – *inter alia* the independence of the Media Council, the transparency of the ownership of media outlets, the centralization of media ownership – was highlighted in the 2020 Rule of Law Report of the European Commission: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX-52020SC0316&from=EN>

28 The CJEU, in its Judgement of 8 April 2014, (*European Commission v. Hungary*, C-288/12), found that Hungary violated EU law when it terminated the mandate of the Data Privacy Ombudsman before the end of his term.

29 The law aimed at ceasing the operation of “business” churches, acknowledged the legal status of some by law and referred the registration competence from the courts to the National Assembly. The law was challenged at the CCoH, which, in its Decision 6/2013. (III. 1.) AB, found the main points of the new law unconstitutional. Shortly, the Fourth Amendment of the Fundamental Law overturned the decision of the CCoH, placing the regulations into the body of the Constitution. Later, the case ended up at the ECtHR which found that Hungary violated the European Convention of Human Rights in its Judgment on *Magyar Keresztény Mennonita Egyház and Others v. Hungary* no. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12 of 8 April 2014.

30 To be discussed later.

31 The fate of the Central European University is greatly discussed, but see: Uitz, Renáta (2020). Finally: The CJEU Defends Academic Freedom. *Verfassungsblog*, 2020/10/08, <https://verfassungsblog.de/finally-the-cjeu-defends-academic-freedom/>, DOI: 10.17176/20201008-233515-0.

32 Ziegler, Tamas Dezso (2019). It’s Not Just About CEU: Understanding the Systemic Limitation of Academic Freedom in Hungary. *Verfassungsblog*, 2019/3/26, <https://verfassungsblog.de/its-not-just-about-ceu-understanding-the-systemic-limitation-of-academic-freedom-in-hungary/>, DOI: 10.17176/20190517-144417-0.

33 To be discussed later.

34 <https://www.bbc.com/news/world-europe-29846285>

35 Hegedűs, p. 9.

36 Closa, Carlos (2019). The politics of guarding the Treaties: Commission scrutiny of rule of law compliance. *Journal of European Public Policy*, p. 709.

37 https://www.parlament.hu/irom39/00047/00047_e.pdf

38 Halmai, Gábor (2018). Fidesz and Faith: Ethno-Nationalism in Hungary. *Verfassungsblog*, 2018/8/29, <https://verfassungsblog.de/fidesz-and-faith-ethno-nationalism-in-hungary/>, DOI: 10.17176/20180629-091745-0.

39 Again, for Krisztina Kovács’s remark on “Indefensible War Rhetoric” see Kovács (2020).

nature: loyal businesspeople and private foundations with loyal leadership bought a great share of the existing media outlets.⁴⁰ Therefore it came as no surprise that the transparency of media ownership was problematized by the 2020 Rule of Law Report of the European Commission.⁴¹

The bigger picture – Turkey

The erosion of constitutionalism has played out as a process in Turkey as well. However, unlike in Hungary, there are certain points that might be considered as real “game-changers” and the measures implemented by the authorities also differ. The process in Turkey is marked by a shift in the political tone of the ruling AKP,⁴² which, in power since 2002,⁴³ once pledged vows towards secularism and European integration.⁴⁴ Symbolics are important: in 2013, the ban on wearing a headscarf was lifted⁴⁵ – in a sense overruling the famous judgment of the ECtHR in the *Leyla Şahin* case⁴⁶ – and in 2020, the once Byzantine Basilica of Hagia Sophia in Istanbul – turned into a mosque after the Ottoman conquest and then into a museum in 1935 – was reverted to a mosque.⁴⁷

However, if we go beyond these symbolic moves and look at the legal framework, we are able to observe many of the above-stated hallmarks of constitutional erosion and the rise of an illiberal, hybrid regime. For a long time, Turkey’s constitutional structure was to be considered a parliamentary democracy. The AKP had been arguing for constitutional reforms since 2011 and when the adoption of a completely new constitution failed, it started to favor amendments that would effectuate a shift towards a presidential system.⁴⁸ In short, after the failed coup in July 2016 – to be discussed later – a number of amendments aiming at “strong leadership” were adopted by the Grand National Assembly (by the Members of the AKP and the Nationalist Movement Party⁴⁹) in January 2017.⁵⁰ In April of the same year, the amendments were endorsed by a slight

40 The case of index.hu: <https://www.bbc.com/news/world-europe-53531948>; Concerning the concentration of media outlets (KESMA) see: https://cadmus.eui.eu/bitstream/handle/1814/64284/Hungarian_media_market.pdf?sequence=1&isAllowed=y; <https://cmds.ceu.edu/article/2019-08-08/report-establishment-kesma-exacerbates-overall-risk-media-pluralism-hungary>; <https://europeanjournalists.org/blog/2019/12/03/new-report-hungary-dismantles-media-freedom-and-pluralism/>

41 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0316&from=EN>

42 Adalet ve Kalkınma Partisi.

43 <https://www.osce.org/odihr/elections/turkey?page=1>

44 <https://www.theguardian.com/world/2002/nov/04/2>; <https://www.bbc.com/news/world-europe-13746679>

45 <https://www.reuters.com/article/us-turkey-headscarf-ban-idUSBRE99708720131008>

46 *Leyla Şahin v. Turkey* no. 44774/98, Judgement [GC] of 10 November 2005. The ECtHR underlined that “[i]n its judgment of 7 March 1989, the Constitutional Court stated that, secularism, as the guarantor of democratic values, was the meeting point of liberty and equality.” Similarly, “the Grand Chamber considered that notion of secularism to be consistent with the values underpinning the Convention. Upholding that principle could be considered necessary to protect the democratic system in Turkey. [...] The Court considered that, when examining the question of the Islamic headscarf in the Turkish context, there had to be borne in mind the impact which wearing such a symbol, which was presented or perceived as a compulsory religious duty, may have on those who chose not to wear it. As had already been noted, the issues at stake included the protection of the “rights and freedoms of others” and the “maintenance of public order” in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life”, adhered to the Islamic faith. Imposing limitations on the freedom to wear the headscarf could, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since that religious symbol had taken on political significance in Turkey in recent years.” See: <http://hudoc.echr.coe.int/fre?i=001-70956>

47 Kirchmair, Lando (2020). Turning Hagia Sophia into a mosque (again) – Has international law anything to say about that? *Völkerrechtsblog*, 2020/7/21, <https://voelkerrechtsblog.org/de/turning-hagia-sophia-into-a-mosque-again/>, doi: [10.17176/20200721-235451-0](https://doi.org/10.17176/20200721-235451-0); <https://www.bbc.com/news/world-europe-53366307>

48 See Acar (2016).

49 Milliyetçi Hareket Partisi.

50 For more details, see: <https://www.aljazeera.com/features/2017/1/17/turkeys-constitutional-reform-all-you-need-to-know>

margin of votes in a referendum.⁵¹ Under the new provisions, a “Turkish type of Presidentialism” or a “delegative democracy” was born.⁵² The directly elected President is the head of the cabinet/executive, which is composed of the vice-president and the ministers – the position of the prime minister was abolished. There no longer is any parliamentary involvement in the appointment processes. The President is vested with the authority to issue executive decrees (without parliamentary approval)⁵³ and declare a state of emergency (implementing extraordinary measures). He may further appoint judges (including members of the CCoT) and is no more independent but partisan.⁵⁴ Essentially, power is consolidated in the hands of the President “with visibly fewer checks and balances.”⁵⁵ Some commentators argue that such a concentration of power could only be compared to the sultans⁵⁶ while others claim that it fits in Turkey’s long-standing – elite – authoritarian history. Slogans such as “defending the nation” had been used even by Mustafa Kemal, and a constant threat of coercive force is not a new phenomenon either.⁵⁷ The Venice Commission adopted its Opinion on the constitutional amendments in March 2017.⁵⁸ It pointed out that while every State had the right to shift its political system from parliamentary to presidential, the principle of separation of powers and the rule of law had to be upheld. Having said that, it is a general concern that “presidentialism carries an intrinsic danger of degenerating into an authoritarian rule.”⁵⁹ The Venice Commission underlined that the amendments meant a “decisive break” with Turkey’s constitutional history and did not follow the logic of the separation of powers. There is a risk that parliamentary law-making will become marginal and the President could only be held accountable through the elections every five years. The Commission expressed its concern especially with regard to the President’s executive powers (including unsupervised appointments), the very weak impeachment system, the partisanship of the President (which creates the possibility to influence parliamentary law-making), the synchronization of presidential and parliamentary elections, and the President’s power to dissolve the parliament and to declare a state of emergency. The Venice Commission problematized the vague boundaries of the Presidential decrees, further weakening the – already weak – Turkish judiciary (while also influencing it through the composition of the Council of Judges and Prosecutors), as well as the circumstances of the adoption of the amendments (i.e., a referendum held under the state of emergency). All in all, the amendments were to be considered as a “step backwards in the constitutional democratic tradition of Turkey” and a potential degeneration towards “an authoritarian and personal regime.”⁶⁰ The Venice Commission’s Opinion was delivered after the amendments had been adopted by the Grand National Assembly, and a month before the constitutional referendum.

51 Acar, Ali (2017). The Constitutional Referendum in Turkey: A far Stretch from Right to Free Elections to Referenda? *Verfassungsblog*, 2017/6/01, <https://verfassungsblog.de/the-constitutional-referendum-in-turkey-a-far-stretch-from-right-to-free-elections-to-referenda/>, DOI: 10.17176/20170601-125314. The results of the referendum triggered mass protests, see: <https://www.euronews.com/2017/04/17/as-erdogan-declares-victory-crowds-protest-turkey-s-referendum>

52 Şirin, Tolga (2017). New Constitutional Amendment Proposal in Turkey: A Threat to Pluralistic Democracy!. *Verfassungsblog*, 2017/1/31, <https://verfassungsblog.de/new-constitutional-amendment-proposal-in-turkey-a-threat-to-pluralistic-democracy/>, DOI: 10.17176/20170131-132623.

53 Related to the executive power, but the boundaries are vague, see: Öztürk and Gözaydın (2016) and Şirin (2017).

54 See the evaluation of Öztürk and Gözaydın (2016) and Şirin (2017).

55 Cem (2019).

56 Öztürk and Gözaydın (2016).

57 Özsu, Umut (2016). Weimar Turkey?, *Verfassungsblog*, 2016/7/19, <https://verfassungsblog.de/weimar-turkey/>, DOI: 10.17176/20160719-094430.

58 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)005-e)

59 *ibid.*: Para 125.

60 *ibid.*: Para 126-133.

Parallel to this process of “de-constitutionalization,”⁶¹ decisive political events occurred, which greatly boosted authoritarianization processes. Later, these events were converted into constitutional amendments and laws. It tells a lot that the Venice Commission issued six Opinions on Turkey in 2016.⁶² However, there is an agreement between human rights defenders in Turkey – and this could be considered as a major difference when compared to Hungary – that the conduct of the Turkish authorities essentially worsened and took forms that one could not see in Hungary after protests erupted in Gezi Park in 2013. A local issue in Istanbul regarding the cutting of trees escalated into nationwide mass demonstrations against the government and violent clashes with the security forces.⁶³ That said, the game-changing event was still to come: the failed military coup attempt on the 15th of July, 2016.⁶⁴ There are contesting narratives about the coup, ranging from allegations that it was staged to assertions that it was real (and including others that consider it a mixture).⁶⁵ What is known to a certainty, is that a state of emergency was declared and upheld until July 2018. While more than 260 people had died on the day of the attempted coup,⁶⁶ hundreds of thousands were subsequently dismissed from their jobs, thousands of NGOs and media outlets were shut down, and tens of thousands – including journalists, human rights defenders, public servants, judges and so on – were detained (facing “terrorist” charges).⁶⁷ Additionally, the freedom of movement was severely restricted by canceling citizens’ passports.⁶⁸ Two examples can be cited to demonstrate the nature of the implemented measures: the impunity clauses of emergency decrees (granting impunity to those who helped suppress the coup) and sanctioning the membership in “terrorist organizations.”⁶⁹ These are only two examples; the list could be continued. It is fair to say that after the events in July of 2016, the pressure on any sort of critical voices was enhanced radically⁷⁰ and has not abated since.⁷¹ To make things worse, it seems that neither the weakened Turkish judicial system⁷² nor the European mechanism provide efficient protection against the authorities.⁷³

Besides these events, there is a long-standing conflict in Turkey that still heavily defines public discourse and the attitude of Turkish policy makers: the ethno-political clashes with the Kurdish minority. For a long time, this conflict was an internal matter within the borders of Turkey, but

61 Acar (2016).

62 https://www.venice.coe.int/WebForms/documents/by_opinion.aspx?lang=EN

63 <https://www.nytimes.com/2013/06/16/world/europe/protectors-in-turkey.html>

64 For a short explanation, see: <https://www.bbc.com/news/world-europe-36816045>

65 Özsü (2016).

66 <https://www.reuters.com/article/us-turkey-security-casualties-idUSKCN0ZW132>

67 See: Spencer, Leighann (2018). Should the ECtHR Consider Turkey’s Criminal Peace Judgeships a Viable Domestic Avenue? *Verfassungsblog*, 2018/10/10, <https://verfassungsblog.de/should-the-ecthr-consider-turkeys-criminal-peace-judgeships-a-viable-domestic-avenue/>, DOI: 10.17176/20181012-131821-0.; Öztürk and Gözaydın (2016). For more numbers see: <https://edition.cnn.com/2017/04/14/europe/turkey-failed-coup-arrests-detained/index.html>

68 Yildiz, Ali (2019b). Turkey’s Disregard for the Freedom of Movement. *Verfassungsblog*, 2019/12/11, <https://verfassungsblog.de/turkeys-disregard-for-the-freedom-of-movement/>, DOI: 10.17176/20191211-181110-0.

69 *ibid.*

70 For example see: <https://www.dw.com/en/human-rights-watch-turkey-silencing-media-in-post-coup-purge/a-36788601>

71 Yildiz, Ali (2020). Continuing Violation: The Legality of Mass Arrests of Lawyers in Turkey. *Verfassungsblog*, 2020/9/28, <https://verfassungsblog.de/continuing-violation/>, DOI: 10.17176/20200928-220723-0.

72 Çalı, Başak (2018). Will Legalism be the End of Constitutionalism in Turkey? *Verfassungsblog*, 2018/1/22, <https://verfassungsblog.de/will-legalism-be-the-end-of-constitutionalism-in-turkey/>, DOI: 10.17176/20180122-182844; Mimar, Artun (2020). Recognizing Turkey’s Anti-Rule of Law System. *Verfassungsblog*, 2020/10/20, <https://verfassungsblog.de/recognizing-turkeys-anti-rule-of-law-system/>, DOI: 10.17176/20201020-113323-0.

73 Regarding the ECtHR, see: Spencer (2018).

this is no longer the case.⁷⁴ Even presenting the main aspects of this conflict would exceed the limits of this report. However, one thing should be mentioned since it also relates to how Turkish authorities approach NGOs. Turkish policy makers do not draw a clear distinction between the Kurdistan Workers' Party and the Peoples' Democratic Party (HDP). By doing so, after the local election in 2019, Turkish authorities removed elected candidates and mayors of the HDP, who were "associated with terrorism," from their offices in the municipalities in the South-Eastern regions of Turkey and appointed "trustees" instead.⁷⁵ The Venice Commission adopted an Opinion on this topic.⁷⁶ It underlined, *inter alia*, that these replacements were linked to the state of emergency measures. The Commission saw it as a cause for serious concern that although the state of emergency had officially ended before, its effects were still lingering on. In the view of Venice Commission, the measures adopted by the Turkish authorities were "incompatible with basic principles of democracy – the respect for the free expression of the will of the voters and the rights of elected officials – and of the rule of law – including legality, legal certainty, and foreseeability of the law."⁷⁷ It shall be seen later that these patterns can also be found among the measures related to NGOs.

CONSTRAINING THE WORK OF NGOS – LEGAL TOOLS AND SOME EXAMPLES

It has been said that NGOs are greatly targeted by illiberal policies as a part of silencing critical voices. Save for minor differences, buzz words and narratives greatly overlap: these organizations serve foreign interest⁷⁸ or they are affiliated with terrorist activities.⁷⁹ While NGOs in Hungary are facing are rather "soft," indirect measures, a combination of harsh direct and indirect measures can be observed in Turkey – especially after the attempted coup. In the latter case, one may observe severe restrictions such as deprivation of liberty, shutting down organizations or even criminal charges on account of membership in an organization "affiliated with terrorism."⁸⁰ This is not the case for Hungary. In what follows, an overview of some measures and phenomena observed in the two countries, respectively, will be presented, without however aiming to provide a complete evaluation.

Hungary

The first bigger clash between the Hungarian policy makers and NGOs goes back to 2014, to the case of the Norway Grants that had been managed in Hungary by the Ökotárs Foundation⁸¹ and the Foundation for Development of Democratic Rights.⁸² These were allocating the available

74 <https://www.bbc.com/news/world-middle-east-49963649>;
<https://www.nytimes.com/2019/10/09/world/middleeast/kurds-turkey-syria.html>;
<https://www.dw.com/en/explained-why-turkey-wants-a-military-assault-on-syrian-kurds/a-50731834>;
https://www.europarl.europa.eu/doceo/document/TA-9-2019-0049_EN.pdf

75 <https://www.hrw.org/world-report/2021/country-chapters/turkey#8e519f>;
<https://www.hrw.org/news/2020/02/07/turkey-kurdish-mayors-removal-violates-voters-rights>

76 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)011-e)

77 Para 73.

78 See the citation from the Hungarian prime minister above.

79 Such rhetoric can be found in other "role-model" countries, in Russia: <https://www.dw.com/en/russias-foreign-agent-bill-fore-shadows-civil-society-clampdown/a-55688505>

80 Yildiz (2020).

81 <https://okotars.hu/en>

82 Demokratikus Jogok Fejlesztéséért Alapítvány: <https://demnet.hu/en/>

funds to other civil society organizations. Articles were published in governmental friendly media outlets, stating that there were great overlaps between organizations that received support from the Norway Grants and George Soros's network. Additionally, these organizations allegedly had to be considered as liberal left activists, rather than civilians.⁸³ These narratives have been around ever since.⁸⁴ In September 2014, on accusations by the Government Control Office (GCO),⁸⁵ police stormed the offices of the above-mentioned NGOs – these raids later turned out to be unlawful⁸⁶ – looking for evidence of fraud and illegal financial activities.⁸⁷ The GCO also turned to the National Tax and Customs Administration⁸⁸ but the cases were largely dropped.⁸⁹ After a long time, in 2020, the Hungarian government came to an agreement with Norway on the allocation of the funds concerned.⁹⁰ During this period of time, the prime minister of Hungary gave his infamous speech on illiberal democracy at the 25th Bálványos Summer Free University and Student Camp. Speaking about NGOs, he argued that:

“[T]he state must obviously be supervised and lead by someone; by the leaders who have been duly elected and given the mandate to do so. But then at the periphery of state life there always appear non-governmental organisations. Now the non-governmental world in Hungary paints a very peculiar picture. Because, in contrast to professional politicians, a civil activist or community is organised from the ground up, stands on its own feet financially, and is of course voluntary. In contrast, if I look at the non-governmental world in Hungary, or at least at those organisations which are regularly in the public gaze – and the recent debate concerning the Norway grants has brought this to the surface – then what I see is that we are dealing with paid political activists. And in addition, these paid political activists are political activists who are being paid by foreigners. They are activists who are being paid by specific foreign interest groups, about whom it is difficult to imagine that they view such payments as social investments, and it is much more realistic to believe that they wish to use this system of instruments to apply influence on Hungarian political life with regard to a given issue at a given moment. And so, if we want to organise our national state to replace the liberal state, it is very important that we make it clear that we are not opposing non-governmental organisations here and it is not non-governmental organisations who are moving against us but paid political activists who are attempting to enforce foreign interests here in Hungary. This is why it is extremely justified that the Hungarian Parliament has formed a committee to regularly monitor, record and make public foreign influence so that all of us, including you, can know precisely who the real characters are behind these masks.”⁹¹

The climate became so heated that government-friendly media outlets started to publish lists of “Soros mercenaries,”⁹² which included academics, journalists, human rights activists, politicians,

83 https://www.magyarhirlap.hu/gazdasag/A_Norveg_Alapbol_meg_a_kormanyellenes_uszitasra_is_futotta;

<https://pestisracok.hu/soros-gyorgy-halojaban-aki-norvegoktol-kap-ketszer-kap/>;

https://media.mandiner.hu/cikk/20140702_bodis_andras_norveg_alap_soros_gyorgy_hadserege_is_beszallt_a_haboruba

84 <https://pestisracok.hu/norveg-penzbol-soros-gyorgy-segitsegevel-tamadjak-evek-ota-magyarorszagot/>

85 <https://kehi.kormany.hu/welcome>

86 <https://444.hu/2015/01/29/a-birosag-szerint-torvenytelen-volt-az-okotars-elleni-hazkutas/>

87 https://index.hu/belfold/2014/09/08/keszenletisek_akcioznak_az_okotarsnal/

88 <https://pestisracok.hu/mar-nav-nyomoz-norveg-alapok-ugyeben/>

89 <https://okotars.hu/en/eeanorwegian-ngo-fund-we-keep-working>; <https://okotars.hu/okotars-udvozoljuk-nav-donteset>;

<https://magyarnemzet.hu/archivum/belfold-archivum/torvenyesen-mukodtek-a-civilek-3991366/>; <https://24.hu/belfold/2020/12/21/norveg-alap-tamogatas-civilek-magyarorszag/>; https://hvg.hu/itthon/20151020_Megszuntettek_a_nyomozast_az_Okotars_elle

90 <https://hungarytoday.hu/debate-agreement-eea-norway-grants-hungary-ngos-civil/>; <https://24.hu/belfold/2020/12/21/norveg-alap-tamogatas-civilek-magyarorszag/>

91 <https://2015-2019.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>

92 <https://apnews.com/article/6fc8ca916bdf4598857f58ec4af198b2>

and so on,⁹³ or tried to reveal how these groups and individuals were all connected.⁹⁴ Politicians even put vignettes on the doors of NGOs that were thought to be supporting migration.⁹⁵ Under such an environment, two laws targeting the operations of NGOs shall be mentioned. These are the so-called “Lex NGO” and the “Stop Soros” package.

Firstly, Act LXXVI of 2017 on the Transparency of Organizations which receive Support from Abroad was adopted in June 2017. In its Preamble, the Act states that it aims to enhance “transparency” of the funding allocated to NGOs since these funds are capable of shaping the society in line with the interests of foreign donors through the work of the NGOs. It requires, *inter alia*, that organizations who receive more than a certain amount of foreign funds register at the competent court as an “organization receiving foreign funding” and also reveal (register) the name of the donors (regardless of whether they are legal or natural persons). This database is free to access. Moreover, such organizations have to indicate on their websites and also in their publications that they are “organization receiving foreign funding.”⁹⁶ The debate around the “Lex NGO” triggered mass demonstrations⁹⁷ and its adoption was met with strong resistance among civil society actors.⁹⁸ The law was challenged by the opposition parties at the CCoH. In 2018 the court, by its Ruling 3198/2018. (VI. 21.) AB, bearing in mind the procedure of the CJEU, suspended its own procedure⁹⁹ and since then has not delivered a decision on the merits of the case. Having said that, the European Commission initiated an infringement procedure against Hungary because of the “Lex NGO.” The CJEU, in its Judgment of 18 June 2020 *Commission v Hungary (Transparency of associations)* C-78/18, found that the “Lex NGO” violated Union law.¹⁰⁰ For a long period, the Hungarian government did not comply with the decision of the CJEU.¹⁰¹ However, in April 2021 the Hungarian government finally announced that the “Lex NGO” would be repealed. Instead, the National Assembly adopted the Act XLIX of 2021 on the Transparency of Civil Society Organizations capable of Influencing Public Life in May. According to the new rules, the State Audit Office¹⁰² is tasked with preparing a report on the finances of all civil society organizations – with some exceptions – if their annual budget exceeds 20 million forints (approx. 55000 Euros). NGOs welcomed the withdrawal of the “Lex NGO” but immediately protested the new regulations.¹⁰³

Secondly, there is the “Stop Soros.” Its adoption went hand in hand with the Seventh Amendment to the Fundamental Law. The latter, *inter alia*, stipulated that the protection of Hungary’s constitutional identity and Christian culture was a primary objective of the State; settlement of

93 <https://888.hu/ketharmad/a-lista-a-soros-halozat-hazai-kitartottjai-4054506/>; <https://figyelo.hu/hirek/itt-a-vegleges-lista-17881/>; <https://www.origo.hu/itthon/20180412-soros-emberei-lista.html>

94 <https://pestisracok.hu/soros-gyorgy-civil-csapjai-atfonjak-az-egesz-magyar-kozeletet/>; <https://pestisracok.hu/soros-kato-nai-mar-nem-is-leplezik-ki-penzeli-a-tunteteseiket/>

95 <https://444.hu/2018/06/12/a-migracio-annyira-sulyos-veszely-a-magyar-kormany-szerint-hogy-az-ontapados-matricakal-felszerelt-hollik-istvant-is-hajlandoak-bevetni-ellene>

96 For more details, see: <https://helsinki.hu/wp-content/uploads/NGO-Bill-HU-short-analysis-0411-final.pdf>

97 <https://444.hu/2017/04/12/ezrek-tuntetnek-a-ceu-es-a-a-civilek-mellett-a-hosok-teren>

98 <https://civilizacio.net/en/news-blog/ngos-were-here-to-stay-and-to-continue-our-work>

99 <http://hunconcourt.hu/announcement/in-the-spirit-of-the-european-constitutional-dialogue-the-constitutional-court-suspended-its-procedures-in-the-cases-related-to-the-act-on-national-higher-education-and-the-act-on-ngos>

100 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=227569&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=793222>; See also the press release: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

101 In December 2020, civil society representatives urged the EC to enforce the CJEU’s judgment. See: https://helsinki.hu/wp-content/uploads/Policy_note_CJEU_ruling_HU_NGO_Law.pdf

102 According to Article 43 (1) of the Fundamental Law “(1) The State Audit Office shall be the organ of the National Assembly responsible for financial and economic audit. Acting within its functions laid down in an Act, the State Audit Office shall audit the implementation of the central budget, the administration of public finances, the use of funds from public finances and the management of national assets. The State Audit Office shall carry out its audits according to the criteria of lawfulness, expediency and efficiency.”

103 <https://helsinki.hu/en/repealing-the-lex-ngo-important-step-but-more-is-needed/>

foreign populations in Hungary was prohibited just like taking up residence in public places. The “Stop Soros” (Act VI of 2018) actually modified a set of different acts. According to the official explanatory memorandum, the amendments aimed to assert the will of the Hungarian nation – expressed in the invalid “quota” referendum¹⁰⁴ and national consultations that were not legally binding – and prevent Hungary from becoming an “immigrant” country. This “will” is binding for the government, prompting it to take firm action. After all, it is the Hungarians’ will they are putting into effect. Within the provisions of the “Stop Soros”, the amendment made to Act C of 2012 on the Criminal Code shall be highlighted. According to the new Section 353/A, *inter alia*:

“(1) Any person who is engaged in the pursuit of organizational activities:

a) with a view to initiating an asylum procedure in Hungary on behalf of a person who is not subject to persecution on the basis of race or nationality, his/her alliance with a specific social group, religious and/or political conviction, or whose fear of being subject to direct persecution is unfounded in his or her native country or the country of his or her habitual residence, or the country through which he or she travelled in transit; or

b) with a view to obtain the right of residence for a person who entered or resides in the territory of Hungary illegally, insofar as the act did not result in a more serious criminal offense, is guilty of misdemeanor punishable with custodial arrest.

(2) Any person who provides material assistance for the criminal act defined in Subsection (1) or who is engaged in the pursuit of the organizational activity on a regular basis shall be punishable by imprisonment for up to one year”.

Besides this amendment of the Criminal Code, Act XLI of 2018 is another legislative novelty recently adopted. Section 253 of the Act regulates the special immigration tax, imposing a 25% tax on financial support to activities supporting immigration and on the financial support to the operations of an organization with a seat in Hungary that carries out activities supporting immigration. Both the “Stop Soros” package and the immigration tax were heavily criticized, not only by Hungarian NGOs¹⁰⁵ but also by European institutions.¹⁰⁶ The European Commission initiated an infringement procedure against Hungary because of “Stop Soros,” which is still ongoing.¹⁰⁷ Meanwhile, Advocate General Rantos issued his Opinion on the case in February 2021, claiming that “Stop Soros” violated Union law.¹⁰⁸ In the meantime, Amnesty International Hungary challenged the amendment of the Criminal Code at the CCoH. The court, in its Decision 3/2019. (III. 7.) AB, did not annul the challenged regulation but formulated a constitutional requirement regarding its application: “the relevant provision shall not extend to the altruistic conducts not related to the prohibited aim specified in the statutory definition, provided that they perform the obligation of helping the vulnerable and the poor.”¹⁰⁹

As it has been indicated, Hungarian NGOs face less severe restrictions than their Turkish counterparts. However, in the bigger picture, illiberal policies constantly target and stigmatize NGOs, labelling them as organizations which conduct their activities in the interests of their foreign donors, above all George Soros. Such an atmosphere creates a great deal of distrust

104 Halmai, Gábor (2016). The Invalid Anti-Migrant Referendum in Hungary. *Verfassungsblog*, 2016/10/04, <https://verfassungsblog.de/hungarys-anti-european-immigration-laws/>, DOI: 10.17176/20161005-093026.

105 <https://helsinki.hu/en/bread-and-water-how-the-hungarian-government-plans-to-lock-up-its-ngo-critics/>

106 For example, the Venice Commission issued an Opinion on both cases, see: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)013-e); [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)035-e)

107 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=238177&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1597529>

108 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=238177&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=771255>

109 [http://public.mkab.hu/dev/dontesek.nsf/0/db659534a12560d4c12583300058b33d/\\$FILE/3_2019_EN_final.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/db659534a12560d4c12583300058b33d/$FILE/3_2019_EN_final.pdf)

towards NGOs. This is precisely why the holistic approach by the CJEU in the “Lex NGO” case, looking at the combined effects (generalized climate of mistrusts, deterrent effect) of the law in question,¹¹⁰ is a very welcome move. Interestingly, the Hungarian government in both cases (Lex NGO, Stop Soros) claimed that the measures had not been implemented. Not just the CJEU in its “Lex NGO” judgment, but also Advocate General Rantos in paragraph 36 of his Opinion on “Stop Soros” highlighted that “criminalizing assistance provided to applicants for international protection could have a particularly significant deterrent effect on all persons or organisations.”¹¹¹ The latter is what Hungarian NGOs claim to be the most pressing problem regarding their work. It is true that for example “Stop Soros” or “immigration tax” have not yet been applied. However, the shifting context and the threat posed by the new legislation¹¹² were enough to daunt donors or lead state authorities to cease their cooperation with NGOs. The latter phenomenon is another general issue. Members of Hungarian NGOs claim that communication with the state (such as with prisons) has basically ground to a halt so that the only way left was the judicial one. However, there might be another problem that they may be facing and not having the power to solve: the unwillingness of the Hungarian authorities to comply with judicial decisions, whether these be domestic or European. Two examples could be made in this regard. The first concerns the long-standing problem of segregation of Roma children in schools. Courts found violations of the principle of equal treatment, obliging the state to pay compensation.¹¹³ While authorities did not want to pay money but to award compensation in other ways, the Kúria (the supreme court), in May 2020, ruled that for such violations paying due money was the only legal option.¹¹⁴ The government contested the judgment, labelled it as unjust¹¹⁵ and initiated by “Soros organizations,” and proclaimed that it sided with the “working Hungarians,”¹¹⁶ refusing to pay the compensation (“giving money for nothing”).¹¹⁷ The same issues arose regarding the poor conditions in prisons and related lawsuits brought to the ECtHR. The government regarded these NGO activities (litigation) as “prison business” and suspended the compensations by law.¹¹⁸ These could have been central topics in 2020 but the COVID-19 pandemic intervened to overshadow them. Another aggravating factor is Hungary’s non-compliance with the CJEU’s Judgement of 17 December 2020 *Commission v Hungary* C-808/18 (the “transit zone” case). The CJEU found that Hungary had failed to fulfil its obligations under Union law in the area of procedures for granting international protection and returning illegally staying third-country nationals.¹¹⁹ Hungarian

110 Bárd, Petra (2020). The Hungarian “Lex NGO” before the CJEU: Calling an Abuse of State Power by its Name. *Verfassungsblog*, 2020/1/27, <https://verfassungsblog.de/the-hungarian-lex-ngo-before-the-cjeu-calling-an-abuse-of-state-power-by-its-name/>, DOI: 10.17176/20200127-230141-0.

111 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=238177&pageIndex=0&doclang=EN&mode=req&dir=&occ=-first&part=1&cid=1597529>

112 On this matter, see Amnesty International’s report “Hungary: Living Under the Sword of Damocles”: <https://www.amnesty.org/download/Documents/EUR2739682021ENGLISH.PDF>

113 <https://www.equalitylaw.eu/downloads/4957-hungary-second-instance-court-decision-on-damages-for-segregation-in-education-pdf-86-kb>

114 <https://www.kuria-birosag.hu/hu/sajto/gyongyospatai-szegregacios-nem-vagyoni-karok-megteritesenel-karterites-megitelesenek-egyetlen> For an evaluation of this topic, see: Farkas, Lilla (2020). The EU, Segregation and Rule of Law Resilience in Hungary. *Verfassungsblog*, 2020/3/08, <https://verfassungsblog.de/the-eu-segregation-and-rule-of-law-resilience-in-hungary/>, DOI: 10.17176/20200308-214541-0.

115 <https://hungarytoday.hu/govt-finds-court-ruling-on-school-segregation-of-romas-unfortunate-refuses-to-pay-compensation/>

116 <https://444.hu/2020/01/09/orban-szerint-igazsagtalán-hogy-karteritést-kaptak-a-roma-gyerekek-akiket-eveken-at-elkulonítottak-az-iskolában>
<https://444.hu/2020/02/05/egy-honap-alatt-elerte-a-kormány-hogy-ne-az-oktatasrol-hanem-eroszakos-roma-gyerekekrol-beszeljünk>
<https://hungarytoday.hu/orban-on-gyongyospata-case-govt-sides-with-decent-working-hungarians/>

117 <https://hungarytoday.hu/govt-finds-court-ruling-on-school-segregation-of-romas-unfortunate-refuses-to-pay-compensation/>

118 Györy, Csaba (2020). Fighting Prison Overcrowding with Penal Populism – First Victim: the Rule of Law: New Hungarian Law “Suspends” the Execution of Final Court Rulings. *Verfassungsblog*, 2020/3/12, <https://verfassungsblog.de/fighting-prison-overcrowding-with-penal-populism-first-victim-the-rule-of-law/>, DOI: 10.17176/20200312-123245-0.

119 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-12/cp200161en.pdf> For the full text of the judgment, see: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=EN&mode=lst&dir=&occ=-first&part=1&cid=14158678>

NGOs report that despite this judgment, Hungarian authorities continued with the activities declared unlawful by the court. It tells something about the willingness of the Hungarian government that it initiated an abstract interpretation of the Fundamental Law at the CCoH, asking whether compliance with the CJEU's judgment would violate Hungary's (constitutional) identity.¹²⁰

Turkey

The process of “de-constitutionalization” in Turkey unfolded in more severe forms than it did in Hungary. The measures that have been implemented since the failed coup attempt in 2016 greatly concern not only the work of the NGOs but also quite literally their very existence and the personal freedom of their members. If we narrow our focus on legislation that directly targets NGOs, one law that should be mentioned is the Law No. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction (Omnibus Law), which entered into force on 31 December 2021. The Omnibus Law – officially aiming to ensure compliance with Turkey's international obligations¹²¹ – amended existing legislation, such as Law No. 5253 on Associations (Association Law) and Law No. 2860 on Collection of Aid (Law on Collection of Aid).¹²² The amendments to the Law on Collection of Aid, inter alia, “[r]equire a government permission to launch online aid campaigns and impose heavy penalties for violation of the law (double the administrative fines for unauthorized offline money collection campaigns)” and “[o]blige all natural persons and legal entities, including banks to provide any requested information by the responsible authorities.”¹²³ Moreover, it authorizes “the provincial governorship or the Ministry of Internal Affairs to request that the relevant content or hosting provider remove internet content related to the unauthorized collection of monetary donations. If the content is not removed within 24 hours of the notification, the governorship or the ministry may request that a court block the content. The court must rule on the request within 24 hours and without a hearing.”¹²⁴ The amendments made to the Association Law, on the other hand, have the following implications:

“A new provision stipulates that persons who were convicted of crimes provided in Law No. 6415 on the Suppression of the Financing of Terrorism; the crimes of producing and trading in narcotics or psychotropic substances [...]; or the crime of laundering the assets acquired from such offenses [...] are now banned from holding positions as officers in organs of civil associations other than the general assembly, even if the regular period of suspension of civil privileges of persons convicted of an intentional crime [...] (which is generally coterminous with the prison term) has ended [...]. Furthermore, the minister of internal affairs is authorized to temporarily suspend persons who are indicted for these crimes in pending criminal procedures from their roles as officers in civil associations. The minister is authorized to temporarily suspend the operations of a civil association in cases where the suspension of the relevant person alone is insufficient and immediate action is necessary. The minister must apply to a court within 48 hours of his or her decision to suspend the operations of the association; the court will either quash the decision or sustain it and continue adjudication under [...] the Turkish Civil Code, which authorizes a court to suspend the operation of or dissolve civil associations whose purposes have become illegal [...]. Lastly, the amendments regularize financial audits of civil associations that were previously done on an ad hoc basis, and authorizes inspectors to request the disclosure of information and documentation related to the

120 <http://public.mkab.hu/dev/dontesek.nsf/0/1DAD915853CBC33AC1258709005BB1A1?OpenDocument>

121 See about the objectives in Chapter I of the Omnibus Law here: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2021\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)035-e)

122 See the laws here: <https://www.venice.coe.int/webforms/documents/?opinion=1028&year=all>

123 <https://ecnl.org/news/turkey-law-amendments-stifle-philanthropy>

124 <https://www.loc.gov/law/foreign-news/article/turkey-parliament-passes-law-to-suppress-financing-of-weapons-of-mass-destruction-proliferation/>

audits from relevant public and private institutions, including banks, which are now charged with a duty to disclose.”¹²⁵

In this connection, it is utterly important to highlight one more aspect: the Minister of Interior is allowed “to replace board members of associations with trustees [...] if members are being prosecuted on terrorism charges.”¹²⁶

The Omnibus Law was adopted rapidly, without wider consultation,¹²⁷ against the warnings of the Rapporteurs of the Parliamentary Assembly of the CoE,¹²⁸ and instantly triggered criticism and protests in Turkey¹²⁹ and abroad.¹³⁰ In the light of the amendments, “[o]rganizations disliked by the government for their work on human rights and rule of law issues in Turkey will especially be at risk.”¹³¹ In January 2021, Freedom House highlighted that the law, “which ostensibly addresses terrorism financing, instead places onerous restrictions on civil society and threatens to silence its leaders through terrorism charges.”¹³² The United Nations Human Rights Council’s Special Rapporteurs underlined that the Omnibus Law seriously concerned Turkey’s international obligations, such as those stemming from the International Covenant on Civil and Political Rights. They emphasized the lack of consultation of NGOs and expressed concerns that the Omnibus Law – masked as tool to combat terrorism – set restrictions on NGOs. They also underlined the vagueness of the term “terrorism” as defined under Turkish legislation, noting that this ambiguity, in combination with the new regulations, could pose a serious threat to civil society. The rapporteurs further criticized the permanent deprivation of rights for association members and raised their concerns regarding the arbitrary use of the new regulations and the chilling effect they could potentially have.¹³³ In February 2021, the Commissioner for Human Rights of the CoE followed suit and also raised her concerns against the Omnibus Law. The Commissioner highlighted that some parts of the law threatened the mere existence of NGOs. She criticized the way the law had been adopted and the powers it gave to the Minister of Interior to suspend members of associations and to appoint trustees to replace them. The Commissioner also expressed her concerns about the introduction of a permanent ban on individuals who have been convicted on terrorism-related charges from taking executive positions in associations, the introduction of heavy administrative fines for organizations who carry out unauthorized fundraising activities (including the threat that funds collected this way will be confiscated) and the vague criteria regarding the expansion of auditing powers over NGOs.¹³⁴ It has been also discussed that the Omnibus Law did not only violate Turkey’s international obligations but also its own Constitution.¹³⁵

Members of Turkish NGOs argue that the Omnibus Law poses another serious threat to their everyday work, adding to those that they were already facing, including direct threats to their

125 <https://www.loc.gov/law/foreign-news/article/turkey-parliament-passes-law-to-suppress-financing-of-weapons-of-mass-destruction-proliferation/>

126 <https://www.dw.com/en/turkey-tightens-control-over-ngos-to-combat-terrorism/a-56088205>;
see also: <https://stockholmcf.org/controversial-new-bill-gives-turkish-govt-more-control-over-ngos/>

127 <https://ecnl.org/news/turkey-law-amendments-stifle-philanthropy>

128 <https://pace.coe.int/en/news/8147/rapporteurs-urge-turkish-parliament-not-to-adopt-new-restrictions-on-ngos->

129 See the manifesto of Turkish NGOs: <https://siviltoplumsusturulamaz.org/>

130 <https://stockholmcf.org/controversial-new-bill-gives-turkish-govt-more-control-over-ngos/>
<https://www.hrw.org/node/377519/printable/print>

131 <https://www.hrw.org/news/2020/12/24/turkey-draft-law-threatens-civil-society>

132 <https://freedomhouse.org/article/turkey-passage-ngo-law-strips-away-fundamental-rights-and-freedoms>

133 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26004>

134 <https://rm.coe.int/letter-to-mr-suleyman-soylu-minister-of-interior-of-the-republic-of-tu/1680a18d4c>

135 <https://www.fidh.org/en/issues/human-rights-defenders/turkey-new-law-seriously-threatens-freedom-of-association-and-must-be>

personal liberty. The legislation revolves around “terrorism,” which, according to experts, is specified in rather vague terms, thus allowing for arbitrary application: “[t]error charges in Turkey often target dissidents as a way to quash civil-society activists, journalists and politicians. Thousands of journalists, lawyers, opposition politicians and others remain in prison without any concrete evidence. Hundreds of NGOs were closed during emergency rule after the coup attempt.”¹³⁶ To make things worse – bearing in mind how far constitutionalism has already been dismantled – there is little hope to get remedies within the country. It has also been noted that success with international mechanisms – especially the ECtHR – is not guaranteed either.¹³⁷ Even so, just as in Hungary, there is the question of the willingness of Turkish authorities to comply with an unfavorable decision (narrowly speaking, of the ECtHR). A sad example could be the case of Osman Kavala. In short, Kavala, a human rights defender, was arrested in 2017 for his alleged involvements with the Gezi Park events and with the failed coup in 2016. He has been held in pre-trial detention ever since.¹³⁸ His case ended up in Strasbourg and the ECtHR, in its *Kavala v Turkey* no. 28749/18 Judgement of 10 December 2019, found violations of the European Convention of Human Rights. Moreover, the ECtHR called upon Turkey to take all necessary measures to put an end to Kavala’s detention and to release him. This has not happened as of yet. Turkey’s conduct has triggered strong criticism¹³⁹ and the Committee of Ministers of the CoE raised this issue as well.¹⁴⁰ This says a lot about the general state of affairs. In its judgment, the ECtHR had expressed the following considerations: “[i]n the Court’s view, the inclusion of these elements undermines the prosecution’s credibility. In addition, the prosecution’s attitude could be considered such as to confirm the applicant’s assertion that the measures taken against him pursued an ulterior purpose, namely silence him as an NGO activist and human rights defender, to dissuade other persons from engaging in such activities and to paralyse civil society in the country.”¹⁴¹ Besides these, it should be also mentioned that human rights defenders in Turkey greatly agree that the serious restrictions on the right to the freedom of assembly also prevent them from conducting their work. The Law 7145 on the Amendment of Some Laws and Emergency Decrees, *inter alia*, gives power to the local governors (appointed by the president¹⁴²) to ban public assemblies,¹⁴³ “to prohibit the entry and exit of specific persons into and from specific places in a city for 15 days. They have also been given the authority to declare curfews and ban vehicles to go out in traffic at certain places and times without an end time. This signifies the authority to declare a curfew on one’s own.”¹⁴⁴ In the light of these rules, it could therefore be said that the state of emergency has become permanent.¹⁴⁵ Similar concerns were also expressed by the Commissioner for Human Rights of the CoE.¹⁴⁶ Lastly, there is also an agreement between Turkish NGO members that the withdrawal¹⁴⁷ from the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)¹⁴⁸ might be just the first step. Is the European Convention of Human Rights next?

136 <https://www.dw.com/en/turkey-tightens-control-over-ngos-to-combat-terrorism/a-56088205>

137 See: Spencer (2018).

138 For details see: <https://strasbourgobservers.com/2019/12/12/osman-kavala-v-turkey-unravelling-the-matryoshka-dolls/>

139 <https://www.hrw.org/news/2020/09/07/turkey-release-osman-kavala>

140 <https://www.coe.int/en/web/portal/-/implementing-echr-judgments-council-of-europe-urges-turkey-to-release-osman-kavala>; https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809f62cd

141 *Kavala v Turkey* no. 28749/18 Judgement of 10 December 2019, para 224.

142 <https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency>

143 <https://amnesty-tuerkei.de/2019/02/turkeys-state-of-emergency-ended-but-the-crackdown-on-human-rights-continues/>

144 <https://ihd.org.tr/en/regarding-law-no-7145-regulating-permanent-state-of-emergency/>

145 <https://amnesty-tuerkei.de/2019/02/turkeys-state-of-emergency-ended-but-the-crackdown-on-human-rights-continues/>

146 <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>

147 <https://voelkerrechtsblog.org/turkeys-withdrawal-from-the-istanbul-convention/>

148 <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

CONCLUSION

In the light of the contexts in which NGOs in Hungary and Turkey have been working over the last years, the question arises how they can cope with the direct and indirect pressure created by illiberal policies. The answer, if there is any, is likely to be diverse. That said, based on the discussions between the representatives of Hungarian and Turkish NGOs, the following aspects should be taken into consideration:

- It has been presented that illiberal policies tend to use similar tools. As such, it is fair to say that strategies trying to resist the pressure these policies impose on NGOs might be similar as well. This means, as a very first step, that an exchange of experiences and strategies between members of NGOs (narrowly speaking, from Hungary and from Turkey) could be vital. Regular meetings, both formal and informal, could be taken into consideration.
- The state of political and legal affairs should be considered worse in Turkey than it is in Hungary. In the latter case, being a member of the Union – even if the Union’s value defence mechanisms have not shown greater success – is definitely a factor to bear in mind. Drinóczi underlined that “[i]t seems to be evident that there is not only a quantitative, but also a qualitative difference between Hungary, on the one hand, and [...] Turkey, [...], on the other. [...] Nevertheless, there is a weak but tacitly existing constitutional constraint on public power, which exists because of EU law, even though it has partly failed: its value defence mechanisms have not worked so far. The mere existence of EU law and its admittedly flawed implementation at the legislative level by the everyday application by adjudication bodies may have influenced and kept away the illiberal politicians from leading their countries into authoritarianism even faster.”¹⁴⁹ However, both countries are members of the CoE and its mechanisms are available, especially the ECtHR. Using the remaining legal means, so to say, whether these are national and international, is essential. This approach should include not just strategic litigation but also “everyday” cases.
- Lastly, shifting approaches – or a diversification of focuses – might be another viable strategy. For example, in Hungary, NGOs started to focus on not just individual human rights violations but also the bigger picture. More and more projects¹⁵⁰ focus on rule of law issues and the Hungarian NGOs contributed to the Rule of Law Report of the European Commission in 2020¹⁵¹ and 2021.¹⁵² Expanding issue-based activism is an avenue also suggested by Turkish NGO members. In Turkey for example, social movements have started to make their voice heard by the greater public. This happened when women fiercely protested the Turkish withdrawal from the Istanbul Convention.¹⁵³ Increasing engagement with such social movements would help NGOs to address societal issues, move beyond “compartmentation” and reach wider audiences. The latter is vital since promoting the values of constitutionalism and raising awareness of “de-constitutionalization” might be the key. This is the case because it is rather difficult to defend such values if society does not embrace them.¹⁵⁴

149 Drinóczi (2019): p. 8.

150 <https://www.amnesty.hu/jogallam/>; <https://helsinki.hu/en/activities/rule-of-law/>; <https://tasz.hu/section/rule-of-law>

151 https://helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf

152 https://helsinki.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf

153 <https://www.bbc.com/news/world-europe-56516462>

154 See Jakab’s comment on the connection between upholding a Western legal system and sharing Western values, Jakab (2020): p. 771.

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