

# **Legal environment and space of civil society organisations in supporting fundamental rights**

## **Hungary**

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**Contractor: Milieu Consulting SRL**

**Authors: Júlia Mink**

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# 1 Five most significant civic space developments in 2020

## 1.1 Developments unrelated to the COVID-19 pandemic

### 1.1.1 Academic Freedom

#### a) Central European University (CEU)<sup>1</sup>

The judgment rendered on 6 October 2020 by the Court of Justice of the European Union (CJEU) in *Case C-66/18, Commission v Hungary*<sup>2</sup> deems the conditions introduced by Hungary in relation to foreign higher education institutions intending to carry out their activities in its territory, incompatible with EU law. The CJEU found that these conditions made the exercise of teaching activities leading to a qualification by higher education institutions situated outside the European Economic Area (EEA) subject to the existence of an international treaty between Hungary and the third country in which the institution concerned has its seat. In the CJEU's view, Hungary violated its obligations to ensure national treatment in accordance with the provisions of the General Agreement on Trade in Services (GATS), which prohibits discrimination between imported and domestically produced goods with respect to internal taxation or other government regulation. The CJEU also considered the said requirements contrary to academic freedom, the freedom to found higher education institutions and the freedom to conduct a business ensured by the Charter of Fundamental Rights of the European Union. Furthermore, by making the exercise of the activities of foreign higher education institutions, including institutions with their seat in another Member State of the EEA, subject to the condition that they offer higher education in the country in which they have their seat, Hungary – besides violating its national treatment commitments under the GATS - also violated its obligations as to the freedom of establishment and the free movement of services under EU law.<sup>3</sup>

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<sup>1</sup> The Central European University was founded in Budapest in 1991 and was – originally - accredited in Hungary and the United States. Homepage available at: <https://www.ceu.edu/about>.

<sup>2</sup> Court of Justice of the European Union (CJEU), *Case C-66/18, Commission v Hungary*, 6 October 2020.

<sup>3</sup> Court of Justice of the European Union (2020), *The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law*, Press Release, No 125/20, Judgment in Case C-66/18 *Commission v Hungary*, Luxembourg, 6 October 2020, available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>.

The conditions found incompatible with EU law requirements were introduced by Act XXV of 2017 on the modification of Act CCIV of 2011 on national higher education.<sup>4</sup> The alleged reason for adopting the amendments, which primarily consisted of the reform of the licensing regime applicable to foreign higher education institutions, was to guarantee the quality of higher education teaching activities. Regardless of their former recognition, higher education institutions had to fulfil new requirements, including the ones examined by the CJEU. The amendment primarily targeted CEU, which – after unsuccessful attempts to engage in negotiations and accommodate the new requirements, finally transferred the centre of its educational activities to Vienna.<sup>5</sup> A constitutional complaint concerning CEU was submitted in 2018 with the Constitutional Court (*Alkotmánybíróság*, hereinafter: CC)<sup>6</sup> but to date no decision was rendered by the CC.<sup>7</sup>

## **b) The case of the University of Theatre and Film Arts and other universities**

Act LXXII of 2020 on the Theatre and Film Arts Foundation and on transferring property to the Theatre and Film Arts Foundation and Theatre and Film Arts University (hereinafter: Act LXXII of 2020)<sup>8</sup> transferred the ownership of the University of Theatre and Film Arts (*Színház és Filmművészeti Egyetem*, hereinafter: UTFA)<sup>9</sup> to a newly set up private foundation, the Theatre and Film Arts Foundation (*Színház- és Filmművészetért Alapítvány*, hereinafter: TFA Foundation). A board of five trustees – including the director of the National Theatre (*Nemzeti Színház*)<sup>10</sup> and executive members of the Hungarian Oil and Gas

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<sup>4</sup> Hungary, Act XXV of 2017 on the modification of Act CCIV of 2011 on national higher education (*A nemzeti felsőoktatásról szóló 2011. évi CCIV. törvény módosításáról szóló 2017. évi XXV. törvény*), available at:

[http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=201413.337193](http://njt.hu/cgi_bin/njt_doc.cgi?docid=201413.337193).

<sup>5</sup> Walker, S. (2019), 'Classes move to Vienna as Hungary makes rare decision to oust university', *The Guardian*, 16 November 2019, available at:

<https://www.theguardian.com/world/2019/nov/16/ceu-classes-move-to-vienna-orban-hungary-ousts-university>.

<sup>6</sup> Constitutional Court (*Alkotmánybíróság*), homepage available at:

<https://www.alkotmanybirosag.hu/>.

<sup>7</sup> Ceu.edu (2019), Cases delicate for the Orban government are also put on ice by the Constitutional Court, no decision on a banned demonstration for two thousand days (*Az Orbán-kormánynak kényes ügyeket is jegeli az Alkotmánybíróság, kétezer napja nem döntöttek egy betiltott tüntetésről*), 25 July 2019, available at:

<https://www.ceu.edu/article/2019-07-25/az-orban-kormany-nak-kenyes-ugyeket-jegeli-az-alkotmanybirosag-ketezer-napja-nem>.

<sup>8</sup> Hungary, Act LXXII of 2020 on the Theatre and Film Arts Foundation and on transferring property to the Theatre and Film Arts Foundation and Theatre and Film Arts University (2020. évi LXXII. törvény a Színház- és Filmművészetért Alapítványról, a Színház- és Filmművészetért Alapítvány és a Színház- és Filmművészeti Egyetem részére történő vagyonjuttatásról), [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=220656.386066](http://njt.hu/cgi_bin/njt_doc.cgi?docid=220656.386066).

<sup>9</sup> University of Theatre and Film Arts (*Színház és Filmművészeti Egyetem*), homepage available at: <https://szfe.hu/en/>.

<sup>10</sup> Nemzeti Színház (*National Theatre*), homepage available at:

<https://nemzetisinhaz.hu/>.

Industry Plc. (*Magyar Olaj és Gázipari Részvénytársaság*)<sup>11</sup> – was appointed by the government, while all members proposed by the university were rejected.<sup>12</sup> In regard to this, the Ministry of Technology and Innovation (*Innovációs és Technológiai Minisztérium, hereinafter: MTI*)<sup>13</sup> claimed that human resource-related decisions are taken on the basis of “professional, higher education and artistic factors” with the “involvement of higher education partners when necessary”, without giving any specific reasons to support its selection of the board trustees in question.<sup>14</sup>

The board of trustees then claimed for itself all rights formerly vested with the senate of the university,<sup>15</sup> which is made possible in the case of privately maintained higher education institutions by – among others – Article 94 (6) of Act CCVI of 2011 on national higher education (hereinafter: Act CCVI of 2011).<sup>16</sup> This latter provision allows private higher education institution maintainers to vindicate in the institution’s founding memorandum several rights that, otherwise, would be exercised by the senate: the adoption of the budget, of the annual budgetary report and of the organisational and operational regulations, or the call for proposals for the position of the rector. According to the legal representatives of the UTFA, the fact that Act CCVI of 2011 makes it possible for maintainers of private higher education institutions to render meaningless the rights of the senate, raises constitutional concerns. This is all the more so as, under Article 12 (1)-(2) of the same act, the senate would be the leading body of higher education institutions upon whom the related constitutional rights of higher education institutions, including academic freedom, are bestowed.<sup>17</sup> They found this particularly troubling as, in the past few years, after imposing chancellors responsible for their economic management upon universities, a number of former state universities were “handed over”, with considerable public property and immense financial support, to “private” foundations similar to the TFA Foundation. At the same time, members loyal to the government and/or with no related professional background were placed by the government onto the board of trustees of these private foundations. The legal representatives of the UTFA also

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<sup>11</sup> Hungarian Oil and Gas Industry Inc. (*Magyar Olaj és Gázipari Részvénytársaság*), available at: <https://molgroup.info/en/about-mol-group/chief-executives-committee>.

<sup>12</sup> Index.hu (2020), Színművészeti: Az összes kurátor közel állni látszik egy egyértelmű politikai centrumhoz (*All board members seem to be close to an unambiguous political centrum*), 4 August 2020, available at: [https://index.hu/kultur/2020/08/04/szinmuveszeti\\_filmmuveszeti\\_alapitvany\\_kuratoriუმ\\_nemeth\\_gabor/](https://index.hu/kultur/2020/08/04/szinmuveszeti_filmmuveszeti_alapitvany_kuratoriუმ_nemeth_gabor/).

<sup>13</sup> Ministry of Innovation and Technology, homepage available at: <https://kormany.hu/innovacios-es-technologiai-miniszterium>.

<sup>14</sup> Response of the Ministry of Technology and Innovation to public data request, FEKF/20216-1/2021-ITM, 9 February 2021, p. 2.

<sup>15</sup> Reuters (2020), *Heads of Hungary's top arts university quit amid fears of state control*, 31 August 2020, available at: <https://www.reuters.com/article/us-hungary-politics-education-theatre-idUSKBN25R264>.

<sup>16</sup> Hungary, Act CCIV on national higher education (2011. évi CCIV. törvény a nemzeti felsőoktatásról), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=142941.383745](http://njt.hu/cgi_bin/njt_doc.cgi?docid=142941.383745).

<sup>17</sup> Online interview with the Student Council and legal representatives of the UTFA, 7 January 2020.

deem this as a further form of occupation or control by the government of the formerly autonomous sector of higher education.<sup>18</sup> Legislative acts ensuring the handing over of six universities<sup>19</sup> to private foundations (according to the MTI: “public utility property foundations” (*közfeladatot ellátó közérdekű vagyonkezelői alapítvány*, which are, however, regarded as a non-state maintainer)<sup>20</sup> were also adopted by the Parliament in 2020. There are further plans for handing over other universities as well to such foundations.<sup>21</sup> The MTI maintained that there are 18 state-run higher education institutions left in Hungary,<sup>22</sup> while eight higher education institutions were handed over to “public utility property foundations” (including the six universities mentioned above). Moreover, the MTI does not see constitutional concerns as to Article 94 of Act CCVI of 2011, and considers it as a possibility to provide for the “different regulation” of the various maintainers of higher education institutions, such as churches.<sup>23</sup> Furthermore, in the opinion of the MTI, academic freedom is not allocated by the Fundamental Law (*Alaptörvény*) onto certain bodies of the higher education institutions but onto the institutions as a whole.<sup>24</sup>

In August 2020, the management of the UTFA resigned in protest over the imposition of a government-appointed board and the infringement of the rights of

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<sup>18</sup> Online interview with the Student Council and legal representatives of the UTFA, 7 January 2020.

<sup>19</sup> University of Veterinary Medicine (*Állatorvostudományi Egyetem*, Budapest), University of Miskolc (*Miskolci Egyetem*), Moholy-Nagy Art University (*Moholy-Nagy Művészeti Egyetem*), John von Neumann University (*Neumann János Egyetem*), University of Sopron (*Soproni Egyetem*), István Széchenyi University (*Széchenyi István Egyetem*).

<sup>20</sup> Response of the Ministry of Technology and Innovation to public data request, FEKF/20216-1/2021-ITM, 9 February 2021, p. 1. Response of the Ministry of Technology and Innovation to public data request, FEKF/20216-1/2021-ITM, 16 March 2021.

<sup>21</sup> Szeged, Debrecen and Pécs University of Sciences, and Semmelweis University (*Szegedi Tudományegyetem*, *Debreceni Tudományegyetem*, *Pécsi Tudományegyetem* and *Semmelweis Egyetem*). See Magyar Narancs.hu (2021), ‘The universities of Szeged and Debrecen may be handed over to a foundation’ (*Alapítványi fenntartású lehet a debreceni és a szegedi egyetem*), 7 January 2021, available at

<https://magyarnarancs.hu/belpol/alapitvanyi-fenntartasu-lehet-a-debreceni-es-a-szegedi-egyetem-234925>; Szabadpecs.hu (2021), ‘The dean and the chancellor

confirmed in an internal letter that talks are under way about handing the University of Pécs over to a foundation’ (*A rektor és a kancellár egy belső levélben erősítette meg, hogy tárgyalnak a PTE alapítványi fenntartásáról*), 8 January 2021, available at:

<https://szabadpecs.hu/2021/01/a-rektor-es-a-kancellar-egy-belso-levelben-erositette-meg-hogy-targyalnak-a-pte-alapitvanyi-fenntartasarol/>. Telex.hu (2021), ‘Rectors were told in the Ministry what their request shall include’ (*A rektoroknak a minisztériumban mondták meg, mi legyen a kérelmükben*), 19 January 2021, available at: <https://telex.hu/belfold/2021/01/19/a-rektoroknak-a-miniszteriumban-mondtak-meg-mi-legyen-a-kerelmukben>.

<sup>22</sup> Still including the Szeged, Debrecen and Pécs University of Sciences, and Semmelweis University.

<sup>23</sup> Response of the Ministry of Technology and Innovation to public data request, FEKF/20216-1/2021-ITM, 9 February 2021, p. 1-2.

<sup>24</sup> Response of the Ministry of Technology and Innovation to public data request, FEKF/20216-1/2021-ITM, 16 March 2021.



the formerly autonomous senate of TFA. The university's senate maintained that it had been deprived of its right to decide on budgetary, organisational and staff issues. Leading theatre directors and professors resigned from their teaching positions, while other professors decided to go on strike as of 1 October 2020.<sup>25</sup> Representatives of UTFA gave account of the developments in the European Parliament's Culture and Education Committee on 27 October 2020.<sup>26</sup> Representatives of the UTFA also maintained that – in view of, for instance the *Berlington vs. Hungary case (2015)*<sup>27</sup> – their case has an EU law connection, considering that the UTFA accepts and hosts (even at present) students arriving from EU Member States e.g. within the framework of EU level student exchange programmes (some 1000 students so far) and also participated in joint academic programmes within the framework of the European Universities Initiative.<sup>28</sup>

The board of trustees and the newly nominated chancellor refused to engage in meaningful dialogue with the strike committee, instead they repeatedly filed complaints with the competent courts to establish the illegality of the strike. This resulted in a series of judicial decisions<sup>29</sup>, but ultimately the Municipal Court established the lawfulness of the strike<sup>30</sup> and this was reinforced at second instance by the Municipal Court of Appeal on 30 November 2020.<sup>31</sup>

In line with this, protests began to protect academic freedom, and students blockaded the main buildings of the university (refusing to let the new leadership enter), whilst continuing to attend their classes. The students defied orders from the board of trustees and the new chancellor, which aimed to end the blockade and to suspend and invalidate the ongoing university semester. In an attempt to end the blockade, the new chancellor has also shut down internet access, closed

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<sup>25</sup> Reuters (2020), 'Hheads of Hungary's top arts university quit amid fears of state control', 31 August 2020, available at: <https://www.reuters.com/article/us-hungary-politics-education-theatre-idUSKBN25R264>.

<sup>26</sup> Zalán, E. (2020), 'MEPs hear clash over occupied Hungarian drama school', Euobserver, 28 October 2020, <https://euobserver.com/political/149891>.

<sup>27</sup> CJEU, *Berlington and others vs. Hungary*, judgement of 11 June 2015, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62014CJ0098&from=DE>. See par. 25-28.

<sup>28</sup> European Universities Initiative, available at: [https://ec.europa.eu/education/education-in-the-eu/european-education-area/european-universities-initiative\\_en](https://ec.europa.eu/education/education-in-the-eu/european-education-area/european-universities-initiative_en). Information provided by the UTFA Student Council via email, 21 February 2021 and 1 March 2021.

<sup>29</sup> See e.g. Labour Chamber of the Municipal Court, Decision 22.Mpk.75.143/2020/16., 21 October 2020 (*Fővárosi Törvényszék Munkaügyi Kollégiuma, 22.Mpk.75.143/2020/16. számú végzés, 2020. október 21*) and Labour Chamber of the Municipal Court of Appeal (second instance), 2.Mpkf.35.124/2020/5, 4 November 2020 (*Fővárosi Ítéltábla Munkaügyi Kollégiuma, 2.Mpkf.35.124/2020/5. számú végzés, 2020. november 4.*)

<sup>30</sup> Second first instance decision: Labour Chamber of the Municipal Court, decision, 20.Mpk.75.155/2020/2. 13 November 2020 (*Fővárosi Törvényszék Munkaügyi Kollégiuma 20.Mpk.75.155/2020/2. számú végzés, 2020. november 13.*).

<sup>31</sup> Final decision of the Labour Chamber of the Municipal Court of Appeal, decision 2.Mpkf.35.134/2020/4., 30 november 2020 (*Fővárosi Ítéltábla Munkaügyi Kollégiuma, 2.Mpkf.35.134/2020/4. számú végzés, 2020. november 30.*)

schoolrooms<sup>32</sup> and initiated unsuccessful action for an injunction to prevent a nuisance of property against the president of the UTFA Student Council.<sup>33</sup>

Around 130 students and professors of the UTFA also filed a constitutional complaint in October 2020 with the Constitutional Court (CC) against Act LXXII of 2020<sup>34</sup> in protection of academic autonomy and academic freedom. Though the complainants asked for an urgent procedure and a constitutional judge was designated to the case on 26 October 2020, no further steps have yet been taken by the CC. The legal representative of the complainants emphasised that there is no deadline for the CC to render its decision. On the other hand, following the *Mendrei vs Hungary* (2018) case<sup>35</sup>, the European Court of Human Rights (hereinafter: ECtHR) considers the constitutional complaint procedures initiated against legislative acts as “effective” remedy under the European Convention of Human Rights, which makes it difficult for the complainants to turn to the Strasbourg court.<sup>36</sup> In spite of this, the complainants plan to take the case to the ECtHR in 2021.<sup>37</sup> In January 2021, the Parliamentary Assembly of the Council of Europe adopted *Resolution 2352 (2020) Threats to academic freedom and autonomy of higher education institutions in Europe*, which specifically called upon – among others – Hungary “to take immediate action to reverse the recently adopted legislation and/or practices that limit the respect of principles of academic freedom and institutional autonomy.”<sup>38</sup>

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<sup>32</sup> Zalán, E. (2020), ‘MEPs hear clash over occupied Hungarian drama school’, Euobserver, 28 October 2020, <https://euobserver.com/political/149891>.

<sup>33</sup> Administrative Department of the Budapest 5th District Mayor’s Office, decision VIII/B 13562/3/2020, 18 December 2020. (*Budapest Főváros V. kerület Polgármesteri Hivatal Igazgatási Osztály, végzés, VIII/B 13562/3/2020, 2020. december 18*).

<sup>34</sup> Constitutional complaint against Act LXXII of 2020 on the Theatre and Film Arts Foundation and on transferring property to the Theatre and Film Arts Foundation and Theatre and Film Arts University, IV/01777/2020, 16 October 2020, available at: <http://public.mkab.hu/dev/dontesek.nsf/0/9DF6D6BD178DCDE1C1258606005B2BDB?OpenDocument>. Pálos, M. (2020), ‘The most significant case of Hungarian academic autonomy is before the Constitutional Court’ (*Alkotmánybíróság előtt a magyar egyetemi autonómia legjelentősebb ügye*), Magyar Narancs, 22 October 2020, available at: <https://magyarnarancs.hu/belpol/szfe-alkotmanyjogi-panasz-134274>.

<sup>35</sup> European Court of Human Rights (2018), *László János Mendrei vs. Hungary*, No. 54927/15, 5 July 2018. See also: Karsai, D.A. (2018), ‘Role of the constitutional courts in the system of the effective domestic remedies – a new approach on the horizon? Criticism of the Mendrei v. Hungary decision’, 15 October 2018, Strasbourg Observers, available at: <https://strasbourgobservers.com/category/mendrei-v-hungary/> and Szabó, M.D. (2019), ‘Time stands still for the Constitutional Court’ (*Az Alkotmánybíróságon megáll az idő*), HCLU, available at: [https://ataszjelenti.blog.hu/2019/07/24/az\\_alkotmanybirosagon\\_megall\\_az\\_ido](https://ataszjelenti.blog.hu/2019/07/24/az_alkotmanybirosagon_megall_az_ido).

<sup>36</sup> Online interview with the Student Council and legal representatives of the UTFA, 7 January 2020.

<sup>37</sup> Information provided by the UTFA Student Council via email, 21 February 2021.

<sup>38</sup> Parliamentary Assembly, Council of Europe (2021), *Resolution 2352 (2020) Threats to academic freedom and autonomy of higher education institutions in Europe*, 7 January 2021, par. 10. Available at: <https://pace.coe.int/en/files/28881/html>.



A complaint was also filed with the Office of the Commissioner for Educational Rights (*Oktatási Jogok Biztosának hivatala, hereinafter: OCER*)<sup>39</sup> and with the Office of Education (*Oktatási Hivatal*).<sup>40</sup> On 14 November 2020, the Office of Education refused to acknowledge the client status of the community of students of the UTFA, so they decided to initiate administrative judicial proceedings against the Office of Education.<sup>41</sup> On the other hand, on 27 November 2020, the OCER established in his interim/partial report, on the basis of the documentation produced by the students and teachers, that education is conducted within the institution in line with the legal requirements and that the appointed board of trustees had no legal basis for hindering or suspending the semester. The OCER also called upon the board to fulfil their tasks in line with legal requirements and to respect the constitutional rights of students. The report emphasised that it is the duty of the state to ensure for students admitted to the university the freedom of education, as prescribed by Article X (1) and (3) of the Fundamental Law and the operation of the university.<sup>42</sup> The report established that the suspension of education is not in line with the legally set purpose of the board of trustees (which is to ensure the operation of the institution and education) and severely harms the fundamental rights related to the freedom of education/learning of students and the freedom of education/teaching of teachers.<sup>43</sup> However, the reports of the OCER are non-binding and have not yet been taken into consideration by the government or the board of trustees of the TFA Foundation.

Instead, Government Decree 522/2020. (XI. 25.) on certain rules relating to higher education during the period of state of danger (hereinafter: GD 522/2020

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<sup>39</sup> Office of the Commissioner for Educational Rights (*Oktatási Jogok Biztosának hivatala*), available at: <https://www.oktbiztos.hu/>.

<sup>40</sup> Hvg.hu (2020), 'UTFA community initiates administrative judicial proceedings against the Office of Education' (*Közigazgatási pert indítanak az SZFE polgárai az Oktatási Hivatal ellen*), 14 November 2020, available at: [https://hvg.hu/kultura/20201114\\_Kozigazgatasi\\_pert\\_inditanak\\_az\\_SZFE\\_polgarai\\_az\\_Oktatasi\\_Hivatal\\_ellen](https://hvg.hu/kultura/20201114_Kozigazgatasi_pert_inditanak_az_SZFE_polgarai_az_Oktatasi_Hivatal_ellen).

<sup>41</sup> Hvg.hu (2020), 'UTFA community initiates administrative judicial proceedings against the Office of Education' (*Közigazgatási pert indítanak az SZFE polgárai az Oktatási Hivatal ellen*), 14 November 2020, available at: [https://hvg.hu/kultura/20201114\\_Kozigazgatasi\\_pert\\_inditanak\\_az\\_SZFE\\_polgarai\\_az\\_Oktatasi\\_Hivatal\\_ellen](https://hvg.hu/kultura/20201114_Kozigazgatasi_pert_inditanak_az_SZFE_polgarai_az_Oktatasi_Hivatal_ellen).

<sup>42</sup> Fundamental Law (*Alaptörvény*), [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=140968.376083](http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.376083).

<sup>43</sup> Hvg.hu (2020), 'According to the Ombudsman for Education it is illegal to threaten UTFA students with suspending their academic year' (*Az oktatási ombudsman szerint jogsértő, hogy az SZFE hallgatóit a tanév felfüggesztésével fenyegetik*), 27 November 2020, available at: [https://hvg.hu/itthon/20201127\\_oktatasi\\_ombudsman\\_biztos\\_szfe\\_szinmuveszeti\\_tanitas](https://hvg.hu/itthon/20201127_oktatasi_ombudsman_biztos_szfe_szinmuveszeti_tanitas).

(XI.25)<sup>44</sup> gave further powers to the maintainers of higher education institutions during the state of danger proclaimed by the Government on 3 November 2020.<sup>45</sup> On the basis of Article 1 of GD 522/2020 (XI. 25), the maintainers of higher education institutions may establish, after informing the Office of Education, that due to reasons related to public health, public safety, natural disaster or an unavertable situation directly jeopardising the order of the semester and student's rights (extraordinary situation), the legal requirements for the recognition of the educational duties are not fulfilled, may not be ensured and may not be controlled by the maintainer. Filing a judicial complaint with suspensory effect against this decision is not possible and the decision takes effect immediately unless the court grants interim protection. Due to such a decision, the students lose their credits for the semester concerned. GD 522/2020 (XI.25) took effect on 26 November 2020, on the basis of which, the board of trustees suspended the education at UTFA on 28 November 2020.<sup>46</sup> Despite court decisions declaring the suspension of the semester unlawful (as it would cause irreversible damage to the students of the UTFA, and, even if related judicial processes are won, the students could not be effectively remedied) the board of trustees attempted repeatedly to suspend and annul the semester, which, ultimately, proved to be unsuccessful.<sup>47</sup> In January 2021, there were around 13 ongoing legal proceedings related to the situation of UTFA.<sup>48</sup> According to updates provided by the UTFA Student Council in February 2021, the Municipal Court suspended its judicial proceedings and turned to the Constitutional Court requesting the examination of the constitutionality of GD 522/2020 (XI.25)<sup>49</sup>, and in a separate judicial referral, the examination of the

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<sup>44</sup> Hungary, Government Decree 522/2020. (XI. 25.) on certain rules relating to higher education during the period of state of danger (*522/2020. (XI. 25.) kormányrendelet a veszélyhelyzet idején a felsőoktatást érintő egyes szabályokról*), available at: [http://njt.hu/translated/doc/J2020R0522K\\_20201208\\_FIN.pdf](http://njt.hu/translated/doc/J2020R0522K_20201208_FIN.pdf).

<sup>45</sup> By Government Decree 478/2020. (XI. 3.) on the declaration of state of danger (*478/2020. (XI. 3.) Korm. rendelet a veszélyhelyzet kihirdetéséről*), available at: [http://njt.hu/translated/doc/J2020R0478K\\_20201104\\_FIN.pdf](http://njt.hu/translated/doc/J2020R0478K_20201104_FIN.pdf).

<sup>46</sup> Magyar Narancs (2020), 'The TFA Foundation Board would invalidate the semester based on the new government decree' (*A friss kormányrendeletre hivatkozva érvénytelenítene a félévet az SZFE kuratóriuma*), 28 November 2020, available at: <https://m.magyarnarancs.hu/belpol/a-friss-kormanyrendeletre-hivatkozva-ervenytelenitene-a-felevet-az-szfe-kuratoriuma-135307?pageId=9>.

<sup>47</sup> See e.g. Municipal Court decision 105.K.708.006/2020/3. 18 December 2020 (*Fővárosi Törvényszék, végzés, 105.K.708.006/2020/3. 2020. december 18*). Municipal Court, Decision 105.K.708.006/2020/3, 18 December 2020 (*Fővárosi Törvényszék, végzés, 105.K.708.006/2020/3. 2020. december 18*). Statement of the management of the UTFA, 21 December 2020, available at: <https://szfe.hu/hirek/az-szfe-vezetoinek-kozlemenye/>.

<sup>48</sup> Online interview with the Student Council and legal representatives of the UTFA, 7 January 2020.

<sup>49</sup> Information provided by the UTFA Student Council via email, 21 February 2021. Municipal Court, Decision 105.K.708.006/2020/24. February 2021. (*Fővárosi Törvényszék, végzés, 105.K.708.006/2020/24. 2021. Február 9*).

constitutionality of Article 94 (6) of the Act LXXII of 2020.<sup>50</sup> In the case of such judicial referrals, the Constitutional Court has 90 days to render a decision.

In response to a public data request on the possible concrete steps which the MTI may plan to take in order to restore the legal operation of the TFA Foundation and the UTFa in view of the related court judgments and the findings of the OCER, the MTI maintained, in general, that it “ensures the conditions of legal operation and – at the same time – also demands these from higher education institutions.” However, it did not comment specifically on the case of UTFa.<sup>51</sup>

### 1.1.2 Foreign funding of NGOs

In June 2020, the CJEU’s judgment rendered in *Case C-78/18, Commission v Hungary* established that Act LXXVI of 2017 on the transparency of organisations which receive support from abroad (Articles 1-4; hereinafter Act LXXVI of 2017),<sup>52</sup> was not in compliance with EU law.<sup>53</sup> In order to increase transparency and fight money-laundering, Act LXXVI of 2017 obliged NGOs receiving “foreign funding” over 7.2 million forints (€21,615) per year from abroad to register and label themselves as foreign-funded organisations or face sanctions. These NGOs were also obliged to list foreign sponsors giving them more than 500,000 forints (€1,500) annually. Related NGOs, such as the Hungarian Helsinki Committee (*Magyar Helsinki Bizottság*, HHC)<sup>54</sup> and the Hungarian Civil Liberties Union

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<sup>50</sup> Judicial referral in relation to Article 94 (6) of the Act LXXII of 2020 on the Theatre and Film Arts Foundation and on transferring property to the Theatre and Film Arts Foundation and Theatre and Film Arts University (academic autonomy, academic freedom, 18 February 2021, III/00384/2021 (*A Színház- és Filmművészetért Alapítványról, a Színház- és Filmművészetért Alapítvány és a Színház- és Filmművészeti Egyetem részére történő vagyonyjuttatásról szóló 2020. évi LXXII. törvény és a nemzeti felsőoktatásról szóló 2011. évi CCIV. törvény 94. § (6) bekezdése elleni bírói kezdeményezés (egyetemi autonómia, tudományos élet szabadsága)*), available at: <http://public.mkab.hu/dev/dontesek.nsf/0/4E462DD04C8970C4C125868400611A5D?OpenDocument>.

<sup>51</sup> Response of the Ministry of Technology and Innovation to public data request, FEKF/20216-1/2021-ITM, 9 February 2021, p. 2.

<sup>52</sup> Hungary, Act LXXVI of 2017 on the transparency of organisations which receive support from abroad (*A külföldről támogatott szervezetek átláthatóságáról szóló 2017. évi LXXVI. törvény*), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=202598.340054](http://njt.hu/cgi_bin/njt_doc.cgi?docid=202598.340054).

<sup>53</sup> Court of Justice of the European Union (CJEU), *Case C-78/18, Commission v Hungary*, 18 June 2020, available at <http://curia.europa.eu/juris/document/document.jsf?jsessionid=A187A86A6D7FE895503127AE687C4F58?text=&docid=227569&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=491726>; CJEU (2020), *The restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law*, Press Release, 18 June 2020, available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>.

<sup>54</sup> According to their homepage, “The Hungarian Helsinki Committee is a non-governmental watchdog organisation that protects human dignity and the rule of law through legal and public advocacy methods”. See <http://www.helsinki.hu/en/>.

(*Társaság a Szabadságjogokért*, HCLU)<sup>55</sup> refused to abide by the requirements set forth in Act LXXVI of 2017,<sup>56</sup> and submitted a constitutional complaint with the CC.<sup>57</sup> Fourteen NGOs also filed a complaint with the ECtHR,<sup>58</sup> and Act LXXVI of 2017 was seen by NGOs<sup>59</sup> and experts as an attack on NGOs and part of a wider governmental campaign against the so called “Soros network organisations”.<sup>60</sup> In its judgment, the CJEU ruled that Hungary “introduced discriminatory and unjustified restrictions [...] by imposing obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold [...in breach of its obligations under Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union’ and violating the free movement of capital”.<sup>61</sup>

The government said it would respect the ruling, though they maintained that the CJEU found only the “method” unacceptable, so the government may still choose

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<sup>55</sup> According to their homepage, the Hungarian Civil Liberties Union (HCLU) is “active in protecting the rights of citizens against undue interference by those in a position of public power. The HCLU monitors legislation, pursues strategic litigation, conducts public education and launches awareness raising media campaigns”. See <https://hclu.hu/en/about-us>.

<sup>56</sup> Hvg.hu (2017), ‘Parliament passed the NGO law, the targeted organisations vow to resist’ (*Elfogadták a civiltörvényt, a célba vett szervezetek ellenállást hirdetnek*), June 2017, available at: [https://hvg.hu/itthon/20170613\\_Megszavaztak\\_a\\_civiltorvenyt\\_Orbannal\\_tiltakozott\\_Szabo\\_Timea](https://hvg.hu/itthon/20170613_Megszavaztak_a_civiltorvenyt_Orbannal_tiltakozott_Szabo_Timea).

<sup>57</sup> Hungarian Helsinki Committee (2017), We submitted a joint constitutional complaint against the anti-NGO law (*Közös alkotmányjogi panaszt adtuk be a civilelles törvénnyel szemben*), 30 november 2017. available at: <https://www.helsinki.hu/kozos-alkotmanyjogi-panaszt-adtuk-be-a-civilelles-torvennyel-szemben/>.

<sup>58</sup> Horváth, B. (2018), ‘Fourteen NGOs turned to Strasbourg because of the law against NGOs’ (*Tizennégy civil szervezet fordult Strasbourghoz a civilek ellen hozott törvény miatt*), 444.hu, 29 January 2018, available at: <https://444.hu/2018/01/29/tizennegy-civil-szervezet-fordult-strasbourghoz-a-civilek-ellen-hozott-torveny-miatt>.

<sup>59</sup> Hungarian Civil Liberties Union (2020), ‘All that you need to know on the NGO law’ (*Minden, amit a civiltörvényről tudnod kell*), available at: <https://tasz.hu/minden-amit-a-civiltorvenyrol-tudnod-kell>.

<sup>60</sup> Inotai, E. (2020), EU Court Orders Hungary to Change Law on NGOs, Balkaninsight.com, 18 June 2020, available at: <https://balkaninsight.com/2020/06/18/eu-top-court-rules-breaches-in-hungarys-foreign-funded-ngos/>.

<sup>61</sup> Court of Justice of the European Union (CJEU), Case C-78/18, *Commission v Hungary*, 18 June 2020, available at <http://curia.europa.eu/juris/document/document.jsf?jsessionid=A187A86A6D7FE895503127AE687C4F58?text=&docid=227569&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=491726>. CJEU (2020), ‘The restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law’, Press Release, 18 June 2020, available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>.

another way to achieve the goal of the legislative act in question.<sup>62</sup> However, the press soon reported the case of the Power of Humanity Foundation (*Emberség Erejével Alapítvány*, hereinafter: PHF),<sup>63</sup> which was formerly attacked by FIDESZ politicians for being a “Soros Centre”,<sup>64</sup> also refused to register itself as a foreign-funded NGO. The Power of Humanity Foundation submitted a grant application requesting about 72,000 Euro under the EU Erasmus+ support programme coordinated and supervised by the Tempus Public Foundation (*Tempus Közalapítvány*) in Hungary.<sup>65</sup> During the application process, in August 2020, the Tempus Public Foundation demanded that PHF to fulfil an “extra condition” in view of the original call for proposal and certify their compliance with the transparency criteria set by Act LXXVI of 2017. As the PHF refused to do so, relying among others on the related CJEU judgment, they were excluded from the grants. PHF submitted a letter of complaint, to which the Tempus Foundation responded that, in their view, despite the relevant CJEU ruling, Act LXXVI of 2017 is still in force.<sup>66</sup>

In relation to this case, the HHC remarked that, until 2020, Act LXXVI of 2017 was not put in practice in Hungary, and it seems that, instead of revoking or amending the provisions deemed unlawful by the CJEU, the application in practice of the related provisions has started after the CJEU judgment. Therefore, at present, the HHC (Hungarian Helsinki Committee) and the HCLU (Hungarian Civil Liberties Union) do not see the prospect of a change without further EU implementation measures.<sup>67</sup> The HCLU had a concurring opinion on the possible impact of the

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<sup>62</sup> Pósfai, O., Bogatin, B. (2020): ‘Gulyás on Gyöngyöspata: „When the money arrives to that settlement, it will be easy to see”’ (*Gulyás Gyöngyöspatáról: „Ha arra a településre megérkezik a pénz, az látványos lesz”*), merce.hu, 18 June 2020, available at: <https://merce.hu/2020/06/18/gulyas-a-jarvany-bebizonyította-hogy-az-ellenzek-nelkul-is-letre-tud-jonni-a-nemzeti-egyseg/>.

<sup>63</sup> According to their website, the Power of Humanity Foundation (*Emberség Erejével Alapítvány*) works for a liveable world for all, where human rights, equal opportunities and democracy prevail. Their important values are openness, community, action, autonomy, humanity. See <https://www.emberseg.hu/en/who-we-are/>.

<sup>64</sup> Babos, A. (2020), ‘The Power of Humanity Foundation, falsely said by FIDESZ politicians to be a Soros-centre possibly lost grant money because of the NGO law’ (*A Civil törvény miatt bukhatta a pályázati pénzt a fideszes politikusok által Soros-központnak hazudott pécsi Emberség Erejével Alapítvány*), szabadpecs.hu, 28 September 2020, available at: <https://szabadpecs.hu/2020/09/a-civil-torveny-miatt-bukhatta-a-palyazati-penzt-a-fideszes-politikusok-altal-soros-kozpontnak-hazudott-pecsi-emberseg-erejevel-alapitvany/>.

<sup>65</sup> Tempus Public Foundation (*Tempus Közalapítvány*), homepage available at: <https://tka.hu/>.

<sup>66</sup> Tempus Public Foundation (2020), ‘Response to the complaint registered under No. TKA-00135-002/2020’ (*Válasz a TKA-00135-002/2020 nyilvántartási számú panaszra*), 27 October 2020, available at: <https://www.emberseg.hu/wp-content/uploads/2021/01/valaszlevel-tka-panasz.pdf>. See also: Horváth. B. (2020), ‘An NGO lost EU grant money, because it wouldn’t confirm or deny foreign funding’ (*EU-s pályázati pénzt bukkott egy civil szervezet, mert nem volt hajlandó igazolni, hogy külföldről támogatott-e*), 444.hu, 28 September 2020, available at: <https://444.hu/2020/09/28/eu-s-palyazati-penzt-bukott-egy-civil-szervezet-mert-nem-volt-hajlando-igazolni-hogy-kulfoldrol-tamogatott-e>.

<sup>67</sup> Telephone interview with the Hungarian Helsinki Committee, 4 January 2020.



relevant CJEU ruling and on the case of the PHF, whose legal representation is provided by HCLU. They also drew attention to the proposals submitted by the Civil Liberties Union for Europe (*Liberties*), with the support of the HCLU, on the measures to be taken by the European Commission to enforce the judgment.<sup>68</sup> The PHF filed a complaint with the European Commission which launched an investigation of the matter in January 2021.<sup>69</sup>

## 1.2 COVID-19 - related developments

### General background

NGOs repeatedly warned that, after the announcement of the lockdown due to the Coronavirus pandemic between March - June 2020 on the basis of Government Decree 40/2020 (III. 11) on the announcement of the state of danger (hereinafter: GD 40/2020 (III. 11.)),<sup>70</sup> and as of November 2020, on the basis of Government Decree 478/2020. (XI. 3.) on the declaration of state of danger (hereinafter: GD 478/2020. (XI. 3.)), the government used the possibilities of the special legal regime to strengthen its control over civil society by introducing a series of measures and legislative amendments, which were unrelated to the pandemic.<sup>71</sup> These measures included, among others, restrictions on freedom of assembly, freedom of speech, and on the right to access public information (see in detail below), the amendment of the rules on election or GD 522/2020 (XI.25), making possible for private higher education institution maintainers to suspend the semester (see in detail above).<sup>72</sup> The NGOs also claimed that the 9<sup>th</sup>

<sup>68</sup> Liberties (2020), 'Three Measures the European Commission Should Take to Help Restore Hungarian Democracy', 18 December 2020, available at: <https://www.liberties.eu/en/news/ngo-law-hungary/19865>. Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>69</sup> Response from the office of Věra Jourová, Vice President of the European Commission, 14 January 2021, Sc/jr/Ares (2020) 5416702, available at: [https://www.emberseg.hu/wp-content/uploads/2021/01/letter\\_from\\_vera\\_jourova.pdf](https://www.emberseg.hu/wp-content/uploads/2021/01/letter_from_vera_jourova.pdf).

<sup>70</sup> Government Decree 40/2020 (III. 11) on the announcement of the state of danger 40/2020. ((III. 11.) Korm. rendelet veszélyhelyzet kihirdetéséről), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=218449.381011](http://njt.hu/cgi_bin/njt_doc.cgi?docid=218449.381011).

<sup>71</sup> See e.g. Eötvös Károly Institute (2020), 'For what did the Orbán-regime actually use the extraordinary authorisation of the special legal regime in spring?' (*Mire használta valójában tavasszal a különleges jogrendi felhatalmazást az Orbán-rezsim?* (infografika)), 10 November 2020, available at: <http://www.ekint.org/bejegyzes/2020-11-10/mire-hasznalta-valojaban-tavasszal-a-kulonleges-jogrendi-felhatalmazast-az-orban-rezsim-infografika>;

Eötvös Károly Institute (2020), 'Preserved concentration of power: the final account of the Coronavirus' (*Átmentett hatalomkoncentráció: koronavírus-leltár*), June 2020, available at: [http://ekint.org/lib/documents/1592554960-EKINT\\_Koronavirus-leltar\\_elemzes.pdf](http://ekint.org/lib/documents/1592554960-EKINT_Koronavirus-leltar_elemzes.pdf);

Telephone interview with the Hungarian Helsinki Committee, 4 January 2020; Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>72</sup> Act CLXVII on the modification of certain acts related to elections (2020. évi CLXVII. törvény egyes választási tárgyú törvények módosításáról), available at:



Amendment of the Fundamental Law<sup>73</sup> further stigmatised LGBTIQ communities<sup>74</sup>, and the amendment of the rules of adoption practically excluded LGBTIQ parents<sup>75</sup>.

### 1.2.1 Restrictions on freedom of assembly

During the lockdown due to the Coronavirus pandemic, freedom of assembly was restricted in Hungary between March- June 2020 on the basis of GD 40/2020 (III. 11.) and as of November 2020, on the basis of GD 478/2020. (XI. 3.).

Article 4 of GD 40/2020 prohibited the participation in any event or assembly irrespective of its location and the number of participants. Religious gatherings, marriages and funerals were exempted from the general rule. Similarly, Article 5 (1) of Government Decree 484/2020. (XI. 10.) on the second phase of protective measures applicable during the period of state of danger<sup>76</sup> prohibits, in general, the holding of any assembly or the participation in any assembly apart from e.g. family gatherings, funerals, marriages held with a restricted number of participants.

The HHC and the HCLU turned to the Office of the Commissioner for Fundamental Rights (*Alapvető jogok Biztosának Hivatala*)<sup>77</sup> in October 2020, claiming that the restrictions introduced on freedom of assembly and the police measures taken in

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[http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=246477.417079](http://njt.hu/cgi_bin/njt_doc.cgi?docid=246477.417079). Telephone interview with the Hungarian Helsinki Committee, 4 January 2020, Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>73</sup> 9<sup>th</sup> Amendment of the Fundamental Law (*Magyarország Alaptörvényének kilencedik módosítása*), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=246609.418778](http://njt.hu/cgi_bin/njt_doc.cgi?docid=246609.418778). Telephone interview with the Hungarian Helsinki Committee, 4 January 2020, Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>74</sup> Polgári, E. and Dombos, T. (2020), 'A New Chapter in the Hungarian Government's Crusade Against LGBTIQI People', 18 November 2020, <https://verfassungsblog.de/a-new-chapter-in-the-hungarian-governments-crusade-against-lgbtqi-people/>. Telephone interview with the Hungarian Helsinki Committee, 4 January 2020., Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>75</sup> Articles 100-103 of Act CLXV on the modification of certain acts on justice affairs (*2020. évi CLXV. törvény az egyes igazságügyi tárgyú törvények módosításáról*), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=246475.418973](http://njt.hu/cgi_bin/njt_doc.cgi?docid=246475.418973), entry into force: 1 March 2020. Taylor, A. (2020), 'Hungary approves constitutional change to effectively ban adoption by same-sex couples', 15 December 2020, The Washington Post, available at: <https://www.washingtonpost.com/world/2020/12/15/hungary-adoption-lgbt-constitution/>. Telephone interview with the Hungarian Helsinki Committee, 4 January 2020, Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>76</sup> Government Decree 484/2020. (XI. 10.) on the second phase of protective measures applicable during the period of state of danger (*484/2020. (XI. 10.) Korm. rendelet a veszélyhelyzet idején alkalmazandó védelmi intézkedések második üteméről*), available at: [http://njt.hu/translated/doc/J2020R0484K\\_20210109\\_FIN.pdf](http://njt.hu/translated/doc/J2020R0484K_20210109_FIN.pdf).

<sup>77</sup>Office of the Commissioner for Fundamental Rights (*Alapvető jogok Biztosának Hivatala*), available at: <http://www.ajbh.hu/en/web/ajbh-en/>.

relation to the subsequent assemblies, were excessive, disproportionate and not in compliance with the right to assembly. They criticised, in particular, the general, sweeping nature of the restrictions instead of applying or prescribing, in view of the pandemic, security measures on a case by case basis, adapted to the demonstrations in question (such as the obligation of appropriate social distancing).<sup>78</sup> Reference has been made to the series of six “tooting” car-assemblies that were held at Clark Ádám square in spring in protest against the emptying of hospitals<sup>79</sup> where participants received grossly disproportionate fines for sounding their car horns and circling around (for one such offence 120.000 forints (330 euros) were imposed, while for two such offences 1,250,000 forints (3,500 euros)). The HHC and HCLU claim that these intimidating fines led to the suspension of the series of demonstrations violating the freedom of assembly and freedom of speech of the participants concerned.<sup>80</sup>

The HHC represented four journalists in cases where the police took measures to hinder their work during demonstrations, and, in two of these cases, the courts have reiterated the journalists’ right to report on demonstrations in 2020.<sup>81</sup> The HHC maintained that, at present, they provide legal representation or counselling to around 13 clients involved in cases related to the restrictions on freedom of assembly.<sup>82</sup> Out of these, seven cases were related to the so called “tooting” car assemblies.<sup>83</sup> Similarly, the HHC took to the Curia (Supreme Court) the case of

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<sup>78</sup> Hungarian Helsinki Committee (2020), ‘The government made a wrong decision, the police violated the right of association – the rights defenders turn to the ombudsman’ (*Rossz döntést hozott a kormány, gyülekezési jogot sértett a rendőrség – ombudsmanhoz fordulnak a jogvédők*), 9 October 2020, available at: <https://www.helsinki.hu/gyulekezesi-jog-ombudsmanhoz-fordulnak-a-jogvedok/>. See also: Hungarian Helsinki Committee and Hungarian Civil Liberties Union, ‘Complaint submitted to the office of the Commissioner for Fundamental Rights’, 25 September 2020, available at: <https://mail.google.com/mail/u/0/#search/p%C3%A1sztor/KtbxLthRXFjBRsGnfFRTbVWbdslvjBXbRg?projector=1&messagePartId=0.1>. Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>79</sup> Damm, P. (2020), ‘Hungary Kicks Patients Out of Hospitals to Prepare for Covid-19’, Human Rights Watch, hrw.org, 6 May 2020, available at: <https://www.hrw.org/news/2020/05/06/hungary-kicks-patients-out-hospitals-prepare-covid-19>.

<sup>80</sup> Hungarian Helsinki Committee (2020), ‘The „tooting demonstrators” seek justice in court’ (*Bíróságon keresik igazukat a „dudálás tüntetők”*), 24 September 2020, <https://helsinkifigyelo.444.hu/2020/09/24/birosagon-keresik-igazukat-a-dudalos-tuntetok>.

<sup>81</sup> Szalay, D. (2020), ‘Klubrádió reporter wins at court against police’ (*Nyert a Klubrádió riportere a rendőrséggel szemben a bíróságon*), 19 February 2020, media1.hu, available at: <https://media1.hu/2020/02/19/nyert-a-klubradio-riportere-a-rendorseggel-szemben-a-birosagon/>; Neuberger, E. (2020), ‘It can’t be a misdemeanor when a journalist reports about a demonstration’ (*Nem lehet szabálysértés, ha egy újságíró tüntetésről tudósít*), 30 June 2020, 444.hu, available at: <https://444.hu/2020/06/30/nem-lehet-szabalysertes-ha-egy-ujsgiro-tuntetesrol-tudosit>.

<sup>82</sup> Information provided via email by the Hungarian Helsinki Committee, 4 January 2020.

<sup>83</sup> Information provided via email by the Hungarian Helsinki Committee, 4 January 2020. See also: Hungarian Helsinki Committee (2020), ‘If sounding the horn for a wedding or

the prohibition of the car-demonstration organised by the Budapest Pride organisation on 10 December 2020. The Budapest Pride, representing the LGBTIQ community, intended to protest against the adoption of the 9<sup>th</sup> Amendment of the Fundamental Law<sup>84</sup>, as it introduced further provisions into the Constitution which the organisers felt would further stigmatise the LGBTIQ community. They also intended to demonstrate against the amendments to the regulation of adoption, which practically excluded single parents, making adoption impossible for members of the LGBTIQ community, who are barred from the possibility of marriage.<sup>85</sup>

### 1.2.2 Restrictions on freedom of speech and access to information

Article 2 of Government Decree 179/2020 (V. 4.) on the deviation from certain public data request regulations during the state of danger<sup>86</sup> (in view of the state of danger declared by GD 40/2020 for the period March – June 2020), and Article 1 of Government Decree 521/2020 (XI. 25) on the deviation from certain public data request regulations during the state of danger (in view of the state of danger declared by GD 478/2020, applicable since November 2020) restricted the possibilities of submitting public data requests to authorities.<sup>87</sup> Under the new rules, public data requests may not be submitted orally. Furthermore, instead of 15 days, the authority handling or possessing the required data has 45 days to respond, which may be prolonged once for another 45 days if the accomplishment of the data request would “endanger the fulfilment of public tasks related to the state of danger”. The HHC remarked that, in their view, the vague formulation of this latter provision and the opportunity to use it as a convenient pretext not to respond in due time, may seriously hinder the access to information, and has already made it very difficult for them to obtain public information in a timely manner.<sup>88</sup> In this regard, the HCLU emphasised the impossibility to receive timely information from the National Health Centre (*Nemzeti Népegészségügyi*

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celebrating a football victory is legal, so is it as protest’ (*Ha lagzin vagy focisikert ünnepelve lehet dudálni, akkor tiltakozásképpen is szabad*), 10 June 2020, available at: <https://www.helsinki.hu/ha-lagzin-vagy-focisikert-unnepelve-lehet-dudalni-akkor-tiltakozaskepben-is-szabad/>.

<sup>84</sup> 9<sup>th</sup> Amendment of the Fundamental Law (*Magyarország Alaptörvényének kilencedik módosítása*), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=246609.418778](http://njt.hu/cgi_bin/njt_doc.cgi?docid=246609.418778).

<sup>85</sup> Hungarian Helsinki Committee (2020), ‘Prohibition of tooting demonstration for LGBTQ rights is taken to the Curia’ (*A Kúria elé vitték az LMBTQ jogokért szervezett dudálás tüntetés betiltását*), 14 December 2020, available at: <https://www.helsinki.hu/a-kuria-ele-vittek-az-lmbtq-jogokert-szervezett-dudalos-tuntetes-betiltasat/>.

<sup>86</sup> Government Decree 179/2020. (V. 4.) on the deviation from certain public data request regulations during the state of danger (*179/2020. (V. 4.) Korm. rendelet a veszélyhelyzet idején az egyes adatvédelmi és adatigénylési rendelkezésektől való eltérésről*), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=219363.382628](http://njt.hu/cgi_bin/njt_doc.cgi?docid=219363.382628).

<sup>87</sup> Government Decree 521/2020 (XI. 25) on the deviation from certain public data request regulations during the state of danger (*521/2020. (XI. 25.) Korm. Rendelete a veszélyhelyzet idején az egyes adatigénylési rendelkezésektől való eltérésről*), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=222948.392004](http://njt.hu/cgi_bin/njt_doc.cgi?docid=222948.392004).

<sup>88</sup> Telephone interview with the Hungarian Helsinki Committee, 4 January 2020.

*Központ*)<sup>89</sup> on public data related to the Coronavirus pandemic, while the data provided by the authorities is inconsistent and insufficient.<sup>90</sup> In their view, this further deteriorates the conditions of the operation of the free press,<sup>91</sup> which had already been seriously hindered before.<sup>92</sup> The HCLU also found it highly questionable from a constitutional point of view that the Constitutional Court refused to examine in merits a constitutional complaint submitted by a Member of Parliament in regard to the restrictions on the access to public data during the first lockdown in spring, after the special legal regime was lifted. The CC claimed in its related decision that the matter lost its relevance as the “condition which formed the basis of the complaint no longer existed” and, thus, the complaint lost its relevance.<sup>93</sup> In the opinion of the HCLU, as the CC is free to choose when to decide over constitutional complaints and this way the constitutional scrutiny of any measures introduced during the special legal regime is rendered impossible so long as there could be a period of time (the time of taking its decision) when the measures in question were – at least temporarily – not in force. This way, the restrictive measures in question could be reintroduced as soon as the special regime was announced again in November 2020.<sup>94</sup>

In view of the state of danger, Article 337 of Act C of 2012 on the Criminal Code (hereinafter: Act C of 2012)<sup>95</sup> on “fearmongering” was amended by Article 10 (2) of Act XII of 2020 on the containment of Coronavirus.<sup>96</sup> After the modification, under Article 337 (1) of Act C of 2012, those who spread false news or distorted true news at a site of public danger and in front of a large audience *in relation to the public danger* which is capable of causing disturbance or unrest shall be punished for committing a crime by imprisonment for up to three years (2020 amendment in italics). Moreover, a new provision, Article 337 (2), was also

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<sup>89</sup> National Health Centre (*Nemzeti Népegészségügyi Központ*), available at: <https://www.nnk.gov.hu/>.

<sup>90</sup> Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>91</sup> Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>92</sup> Hungarian Civil Liberties Union (2020), Extensive and serious – this is how the operation of free press is hindered in Hungary’ (*„Kiterjedt és súlyos” – így akadályozzák a független sajtót Magyarországon*), 26 February 2020, available at: <https://tasz.hu/cikkek/kiterjedt-es-sulyos-igy-akadalyozzak-a-fuggetlen-sajtot-magyarorszagon>.

<sup>93</sup> Constitutional Court Decision IV/955/2020, 10 November 2020, available at: [https://alkotmanybirosag.hu/uploads/2020/11/sz\\_iv\\_955\\_2020.pdf](https://alkotmanybirosag.hu/uploads/2020/11/sz_iv_955_2020.pdf).

<sup>94</sup> Hungarian Civil Liberties Union (2020), ‘The Constitutional Court keeps silent when it would be of utmost importance to make a stand by transparency’ (*Mélyen hallgat az Alkotmánybíróság, amikor a legnagyobb szükség lenne az átláthatóság melletti kiállásra*), 26 November 2020, available at: <https://tasz.hu/cikkek/melyen-hallgat-az-alkotmanybirosag-amikor-a-legnagyobb-szukseg-lenne-az-atlathatosag-melletti-kiallasra>. Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>95</sup> Hungary, Act C of 2012 on the Criminal Code (*A büntető törvénykönyvről szóló 2012. évi C törvény*), available at:

[http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=152383.383858#foot291](http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.383858#foot291). English translation is available here: [https://njt.hu/translated/doc/J2012T0100P\\_20200331\\_FIN.PDF](https://njt.hu/translated/doc/J2012T0100P_20200331_FIN.PDF).

<sup>96</sup> Hungary, Act XII of 2020 on the containment of Coronavirus (2020. évi XII. Törvény a koronavírus elleni védekezésről), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=218767.381191](http://njt.hu/cgi_bin/njt_doc.cgi?docid=218767.381191).



inserted on fearmongering under special legal orders (such as state of danger), which provide that those, who during the period of a special legal order and in front of a large audience spread false news or distorted true news which are capable of hindering or preventing the efficiency of protection measures, shall be punished for committing a crime by imprisonment of between one to five years. The HHC claimed that the amendments impose unjustified aggravation of related criminal law consequences, while Article 337 (2) is built upon a highly uncertain formulation of the conditions delineating the crime, which could give way to a wide range of excessive interpretations. These questionable conditions include e.g. the concept of “efficiency of protection”, which is just as hard to determine as the level of “hindering” that may trigger criminal proceedings.<sup>97</sup>

Soon after the entry into force of the amendments (1 April 2020), the case of a local NGO activist living with disabilities in Gyula was reported, whose home was raided in the early morning hours by the police. The police searched his house, confiscated his laptop and smartphone, and he was taken to the local police department for interrogation as a suspect under charges based on Article 337 (1) of Act C of 2020. The charges originated in a Facebook-post, posted in a closed group, in which he claimed that „according to the news, more than 1000 beds will be freed in Gyula citing the pandemic situation, which means sending home dying patients, invalid elders and injured people requiring rehabilitation”. According to the charges, he spread false facts that were capable of disturbing public peace at a site of public danger, without the police giving any explanation as to why they considered the posted facts false or capable of inciting public unrest. Upon the suspect’s complaint against the charges, the local prosecutor office terminated the criminal proceedings due to lack of crime. At present, the HHC represents the person concerned in a complaint procedure launched against the related police measures.<sup>98</sup> Though the person concerned was acquitted, the HHC remarked that his arrest was reported by the police and received much publicity in the public media and several public media platforms. From the entry into force of the new provisions until June 2020, 134 fearmongering-related criminal proceedings were initiated by the police,<sup>99</sup> which – according to the HCLU – were predominantly terminated either by the prosecutor’s office or by the court for lack of crime.<sup>100</sup> However, in the HHC’s and the HCLU’s views, the existence and the applicability of such criminal provisions, and then, the launch of such widely publicised criminal proceedings are in themselves capable of inducing a discouraging effect and, thus,

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<sup>97</sup> Hungarian Helsinki Committee (2020), ‘Scaremongering reloaded’ (*Rémhírterjesztés újrátöltve*), 27 March 2020, [www.helsinki.hu](http://www.helsinki.hu), available at: <https://www.helsinki.hu/remhirterjesztes-ujratoltve/>.

<sup>98</sup> Hungarian Helsinki Committee (2020), ‘Courageous civilian defies scaremongering accusation during COVID-19’, [www.helsinki.hu](http://www.helsinki.hu), 17 August 2020, available at: <https://www.helsinki.hu/en/courageous-civilian-defies-scaremongering-accusation-during-covid-19/>.

<sup>99</sup> Communication Service of the National Police Headquarters (2020), ‘Statistics of criminal cases in connection with the new Coronavirus situation; (*Az új koronavírus-helyzettel összefüggő büntetőügyek statisztikái*)’, 15 July 2020, <http://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/bunugyek/az-uj-koronavirus-helyzettel-osszefuggo>.

<sup>100</sup> Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

can lead to self-censorship of journalists, media platforms and citizens.<sup>101</sup> However, the CC in a related constitutional complaint procedure found the amendments in line with the Fundamental Law.<sup>102</sup>

The Hungarian Civil Liberties Union also mentioned, as a negative development, the first GDPR case in Hungary in relation to an investigative article of *Magyar Narancs* on a private entrepreneur, whose publication in its entirety was prevented by an injunction of the court upon the complaint submitted by the private entrepreneur on the basis of the article revealing sensitive data. The injunction was upheld at second instance too. In HCLU's view, this practice could also lead to further self-censorship.<sup>103</sup>

## 2 Example(s) of promising practice

During the Coronavirus pandemic, in May 2020 the Hungarian Helsinki Committee launched its online (roundtable) discussion series, with the participation of related experts. So far, fifteen podcasts were released in relation to current issues, governmental measures, legislative amendments with an impact on human rights' protection or constitutional values, e.g. four dealing with questions concerning the rule of law in Hungary.<sup>104</sup> The HHC claimed that, at first during the Coronavirus

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<sup>101</sup> Telephone interview with the Hungarian Helsinki Committee, 4 January 2020, Telephone interview with the Hungarian Civil Liberties Union, 13 January 2020.

<sup>102</sup> Constitutional Court Decision IV/00699/2020 (VI.16).

<sup>103</sup> Hungarian Civil Liberties Union (2020), 'GDPR weaponized – Summary of cases and strategies where data protection is used to undermine freedom of press in Hungary', 23 November 2020, available at: <https://hclu.hu/en/articles/gdpr-weaponized-summary-of-cases-and-strategies-where-data-protection-is-used-to-undermine-freedom-of-press-in-hungary>. Related court decisions: Municipal Court, Decision 17.Pk.22.488/2020/9., 20 September 2020 (*Fővárosi Törvényszék 17.Pk.22.488/2020/9. számú végzés, 2020. szeptember 20.*); Municipal Court of Appeal, Decision 2.Pkf.25.949/2020/2., 8 December 2020 (*Fővárosi Ítéltábla 2.Pkf.25.949/2020/2. számú végzés, 2020. december 8.*).

<sup>104</sup> The list of podcasts is available at:

<https://www.facebook.com/pg/helsinkibizottsag/events/>. The related podcast videos are available at, e.g.: Hungarian Helsinki Committee (2020), No.15: Truncheon of the Fundamental Law (*Helsinki Hangadó 15: Az Alaptörvény mint a politika furkósbotja*), 18 December 2020,

<https://www.facebook.com/122159141138679/videos/1140509626365878>, Hungarian Helsinki Committee (2020) No. 14: How to Care for Your Human Rights (*Helsinki Hangadó 14.: Így gondozd emberi jogaidat!*), 10 December 2020, available at:

<https://www.facebook.com/122159141138679/videos/797107310849520>; Hungarian Helsinki Committee (2020), No. 11: Is Hungary still a state under rule of law? Checks, balances, civil society (*Helsinki Hangadó 11.: Jogállam-e még Magyarország (4)? Fékek, ellensúlyok, civilek*), available at:

<https://www.facebook.com/122159141138679/videos/988312991580852>; Hungarian Helsinki Committee (2020), Nr. 10: Is Hungary still a state under rule of law? Media under pressure (*Helsinki Hangadó 10.: Jogállam-e még Magyarország (3.)? Prés alatt a sajtó*), 16 October 2020, available at:



pandemic, they intended to substitute the former live public roundtable discussions organised by the HHC; however, the podcasts proved to be very successful and had a wider public reach than the live public events. Due to Facebook, the events may be reached later on too, so HHC will consider continuing the series after the end of the pandemic. The costs of the series are not considerable, including Facebook advertisements, which were provided by the HHC's own resources and the communication budget of other running projects, so they also deem the project sustainable in the future.<sup>105</sup>

### **3 Any other developments: withdrawal of state funding for public tasks undertaken by civil actors promoting equality of impoverished segments of society**

In late August 2020, it was announced that the state will cut the funding of the educational institutions maintained by civil organisations, like the Dr Ámbédkár School (*Dr Ámbédkár Iskola*)<sup>106</sup>, the Real Pearl Foundation (*Igazgyöngy Alapítvány*)<sup>107</sup> or the Hungarian Evangelical Fellowship (*Magyarországi Evangéliumi Testvérközösség*, hereinafter: HEF).<sup>108</sup> In the case of the Real Pearl Foundation and HEF, as of September 2020 (school year of 2020/2021) the state withdrew half of their former funding, while as of September 2021 (school year of 2021/2022) no more state funding will be available for their work. The Dr Ámbédkár School announced that its public education contract expired on 31 August 2020, which the Ministry of Human Resources will not renew, and they will not enter into a new contract either with the school administration, so they lost

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<https://www.facebook.com/122159141138679/videos/2657442474571710>, Hungarian Helsinki Committee (2020), Nr. 9: Is Hungary still a state under rule of law? Has the maffia state arrived? (*Helsinki Hangadó 9.: Jogállam-e még Magyarország(2.)? Már itt a maffiaállam?*), 9 October 2020, available at:

<https://www.facebook.com/122159141138679/videos/716440695888076>; Hungarian Helsinki Committee (2020), Nr. 8: Is Hungary still a state under rule of law? Is the judiciary still independent? (*Helsinki Hangadó 8.: Jogállam-e még Magyarország? Független-e még a bírászkodás?*), 2 October 2020, available at:

<https://www.facebook.com/122159141138679/videos/352036429179953>.

<sup>105</sup> Information provided by the Hungarian Helsinki Committee via email, 5 January 2020.

<sup>106</sup> The Dr Ámbédkár School was established in Sajókaza in 2007 with the help and support of the Jai Bhim Community to provide secondary education to highly disadvantaged Roma students. Homepage available at: <http://www.ambedkar.eu/>.

<sup>107</sup> The Real Pearl Foundation has been operating since 1999 for equal opportunities and social integration for the poor, striving for the abolishment of child poverty and the endless cycle of extreme poverty for the next generation. The Real Pearl Foundation operated within the ten poorest regions of Europe, in Hungary's Northern Great Plain region (Berettyóújfalú). Homepage available at:

<https://igazgyongyalapitvany.hu/en/home/>.

<sup>108</sup> Hungarian Evangelical Fellowship (*Magyarországi Evangéliumi Testvérközösség*), available at: <https://metegyhaz.hu/en/home-3/>.

all government funding around 30,000,000 forints (cc. 84,000 euros) with immediate effect.<sup>109</sup>

The alleged reasons for these measures and the withdrawal of state support was the crisis situation related to the Coronavirus pandemic, the government not finding the “return of investment” on the work done by HEF “adequate”, while allegedly there were parallel payments in the case of the Real Pearl Foundation.<sup>110</sup> Contrary to this, the work of the Dr Ámbédkár School, the Real Pearl Foundation and the HEF is renowned, they are considered to play a stop-gap role with their educational and related institutions in the most impoverished segments/regions of society, including children from the poorest social background and/or children with disabilities.<sup>111</sup> Among others, the Oltalom Charity Association (*Oltalom Karitatív Egyesület*),<sup>112</sup> which is a civil association closely attached to the HEF and led by HEF’s president, received the European Citizen Award of the European Parliament.<sup>113</sup> Besides, the HEF and its institutions (including the John Wesley Theological College (*Wesley János Lelkészképző Főiskola*, hereinafter: JWTC) have a strong democratic and social commitment and have publicly confronted the government e.g. on exclusionary social policies, the criminalisation of homelessness, treatment of refugees or academic freedom.<sup>114</sup> The president of HEF is often asked to participate as a speaker at demonstrations against

<sup>109</sup> Csendes-Erdei, E. (2020), ‘It will remain their eternal shame’ (*Örök szegyenük marad*), 10 October 2020, [magyarnarancs.hu](https://magyarnarancs.hu/belpol/orok-szegyenuk-marad-133016), available at: <https://magyarnarancs.hu/belpol/orok-szegyenuk-marad-133016>.

<sup>110</sup> Hvg.hu (2020), ‘The government withdraws complementary funding from the Ivanyi organisations’ schools’ (*Megvonja Iványi Gáborék iskoláinak kiegészítő támogatását a kormány*), 29 August 2020, available at: [https://hvg.hu/itthon/20200829\\_ivanyi\\_gabor\\_magyar\\_evangeliumi\\_testverkozosseg\\_iskola\\_ovoda\\_tobblettamogatas\\_emmi](https://hvg.hu/itthon/20200829_ivanyi_gabor_magyar_evangeliumi_testverkozosseg_iskola_ovoda_tobblettamogatas_emmi); Bocatin, B. (2020), ‘Foundations for disadvantaged children lose government funding one after the other’ (*Sorra veszítik el az állami támogatást a hátrányos helyzetű gyerekekkel foglalkozó alapítványok*), 31 August 2020, [merce.hu](https://merce.hu/2020/08/31/nehany-napon-belul-ket-hatranynos-helyzetu-gyerekekkel-foglalkozo-szervezet-tamogatasat-is-visszanyeste-az-emmi/), available at: <https://merce.hu/2020/08/31/nehany-napon-belul-ket-hatranynos-helyzetu-gyerekekkel-foglalkozo-szervezet-tamogatasat-is-visszanyeste-az-emmi/>.

<sup>111</sup> Csendes-Erdei, E. (2020), ‘It will remain their eternal shame’ (*Örök szegyenük marad*), 10 October 2020, [magyarnarancs.hu](https://magyarnarancs.hu/belpol/orok-szegyenuk-marad-133016), available at: <https://magyarnarancs.hu/belpol/orok-szegyenuk-marad-133016>. See also on Hungarian Evangelical Fellowship educational institutions: <https://metegyhaz.hu/intezmenyeink/oktatas/>.

<sup>112</sup> Oltalom Charity Association (Oltalom Karitatív Egyesület) was established in 1989 to support and promote the rights of socially disadvantaged people, like homeless people. Their work involves, among others, social and street social work and legal assistance. Homepage available at: <https://oltalom.hu/en/about-us/our-history/>.

<sup>113</sup> Euronews (2021), ‘Gábor Iványi’s Association received an award from the European Parliament’ (*Díjat kapott Iványi Gábor egyesülete az Európai Parlamenteől*), 16 February 2021, available at: <https://hu.euronews.com/2021/02/16/dijat-kapott-ivanyi-gabor-egyesulete-az-europai-parlamenttol>.

<sup>114</sup> See e.g.: Hungarian Evangelical Fellowship (2018), ‘Statement in relation to homelessness’ (*Hajléktalan ügyben állásfoglalás*), 20 October 2018, available at: <https://metegyhaz.hu/2018/10/24/hajlektalan-ugyben-allasfoglalas/>; Hungarian Evangelical Fellowship (2020), ‘Statement on Gyöngyospata’ (*Gyöngyöspatai nyilatkozat*), available at: <https://metegyhaz.hu/2020/01/23/gyongyospatai-nyilatkozat/>.

government policies and organised the first mass demonstration in September 2020 in support of academic freedom and the UTFA with the participation of, among others, the Real Pearl Foundation.<sup>115</sup>

According to the president of the HEF, hundreds of students, arriving from the most impoverished segments of society, could finish their studies in their schools, while they also provide family support, social work, mental hygiene support, collection and distribution of donations. For him, it was incomprehensible why these results were not sufficient for the government and it also remained unclear whether their work would be taken over by any other state or civil actor.<sup>116</sup> The HEF sees the state's related actions as part of a series of state measures against them and their institutions due to their conflicts with the state and differing opinion on a number of social and human rights issues.<sup>117</sup>

Due to the measures taken by the government, both the HEF and the Real Pearl Foundation abruptly lost half of the state funding related to the public educational tasks they undertook, which practically made the maintenance of their schools impossible, leaving the impoverished, highly vulnerable children under their care in total uncertainty. The loss suffered by HEF in the school year of 2020/2021 reached 95,000,000 forints (263,000 euros), the Real Pearl Foundation received 8,500,000 forints (23,600 euros) instead of 17,000,000 forints (47,200 euros).<sup>118</sup> Both HEF and the Real Pearl Foundation turned to the public for help and received immense public support. Within a short period of time, the Real Pearl Foundation could collect enough funding to continue its operation and the HEF also collected around 100,000,000 forints (278,000 euros) by mid-October 2020.<sup>119</sup>

Note shall be taken that the HEF, which was formerly recognised as a church from 1987 till 1 January 2012, is still having a series of ongoing legal disputes with the state due to the loss of its church status by the repealed Act C of 2011 on the

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<sup>115</sup> Neuburger, E. (2020), 'Demonstration for the independence of UTFA, freedom of education and culture' (*Tüntettek az SZFE függetlenségéért, az oktatás és a kultúra szabadságáért*), 444.hu, 4 September 2020, available at: <https://444.hu/2020/09/04/tuntetnek-az-szfe-fuggetlensegeert-az-oktatas-es-a-kultura-szabadsagaert-elo>.

<sup>116</sup> Hvg.hu (2020), 'The government withdraws complementary funding from the Ivanyi organisations' schools' (*Megvonja Iványi Gáborék iskoláinak kiegészítő támogatását a kormány*), 29 August 2020, available at: [https://hvg.hu/itthon/20200829\\_ivanyi\\_gabor\\_magyar\\_evangeliumi\\_testverkozosseg\\_is\\_kola\\_ovoda\\_tobblettamogatas\\_emmi](https://hvg.hu/itthon/20200829_ivanyi_gabor_magyar_evangeliumi_testverkozosseg_is_kola_ovoda_tobblettamogatas_emmi).

<sup>117</sup> Hungarian Evangelical Fellowship (2020), *Statement of the president of HEF*, 16 October 2020.

<sup>118</sup> Csendes-Erdei, E. (2020), 'It will remain their eternal shame' (*Örök szégyenük marad*), 10 October 2020, [magyarnarancs.hu](http://magyarnarancs.hu), available at: <https://magyarnarancs.hu/belpol/orok-szegyenuk-marad-133016>.

<sup>119</sup> Hungarian Evangelical Fellowship (2020), 'So far, we've received 104 million forints support' (*Eddig 104 millió forinttal támogattak bennünket!*), 10 October 2020, available at: <https://metegyhaz.hu/2020/10/10/eddig-104-millio-forinttal-tamogattak-bennunket/>; Real Pearl Foundation (2020), 'Thank you for the support' (*Köszönjük a támogatást*), 3 September 2020, available at: <https://igazgyongyalapitvany.hu/news/koszonjuk-nori-posztja/>.

right to freedom of conscience and religion, and on the legal status of churches, denominations and religious communities<sup>120</sup> and its practically identical successor: Act CCVI of 2011 on the right to freedom of conscience and religion, and on the legal status of churches, denominations and religious communities (hereinafter: Act CCVI of 2011).<sup>121</sup> Despite CC rulings establishing the unconstitutionality of the legislation<sup>122</sup> and the judgment rendered by the ECtHR in the *Magyar Keresztény Mennonita Egyház and others v. Hungary*<sup>123</sup> in favour of the applicants, the HEF's church status has not been restored ever since, and they operate at present as a "religious association".<sup>124</sup> This put the HEF in a difficult position, as only a proper form of "church status" could guarantee the state funding of its social and educational institutions. Since the loss of its church status, the state funding of HEF-related educational institutions had been subject to specific contracts concluded with the state which covered only parts of the related costs. As HEF did not relinquish its institutions and continued to operate them, this under-financing of HEF-maintained institutions led to the accumulation of significant debts towards e.g. public utility services (gas company) and the state tax authority. The state gas company set out to cut off gas services in institutions maintained by HEF in Budapest in September 2020, which was prevented by a blockade set up at the JWTC.<sup>125</sup> Finally, the state gas provider agreed to give HEF another six-month delay to pay its debts. However, when the HEF collected around 100,000,000 forints (cc. 285,000 euros) from public support, the state tax authority confiscated all of it in view of HEF's tax and social security arrears.<sup>126</sup> In February 2021, the

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<sup>120</sup> Act C of 2011 on the right to freedom of conscience and religion and on the legal status of churches, denominations and religious communities (2011. évi C. törvény a lelkiismereti és vallásszabadság jogáról, valamint az egyházak, vallásfelekezetek és vallási közösségek jogállásáról), available at: <https://mkogy.jogtar.hu/jogszabaly?docid=a1100100.TV>. It was quashed in its entirety by the Constitutional Court Decision 164/2011. (XII. 20) on formal grounds regarding the circumstances of its adoption.

<sup>121</sup> Act CCVI of 2011 on the right to freedom of conscience and religion and on the legal status of churches, denominations and religious communities (2011. évi CCVI. törvény a lelkiismereti és vallásszabadság jogáról, valamint az egyházak, vallásfelekezetek és vallási közösségek jogállásáról), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=143091.362995](http://njt.hu/cgi_bin/njt_doc.cgi?docid=143091.362995).

<sup>122</sup> Constitutional Court, Decision 164/2011. (XII. 20); Constitutional Court, Decision 6/2013. (III.1). The second CC decision established that the act was in contradiction with freedom of religion, the right to fair trial and the prohibition of discrimination.

<sup>123</sup> European Court of Human Rights, Nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, *Magyar Keresztény Mennonita Egyház and others v. Hungary*, 8 April 2014, paras. 102–104, 115.

<sup>124</sup> Source List of Civil Organisations, available at: <https://birosag.hu/civil-szervezetek-nevjegyzeke>.

<sup>125</sup> Józsefváros (2020), 'Iványi's people defend the gas supply at the Dankó street institution with red-white tape and a barricade' (*Piros-fehér szalagokkal és barikáddal védik Iványiék a Dankó utcai intézmény gázellátását*), 18 September 2020, available at: <https://jozsefvaros.hu/hir/75334/piros-feher-szalagokkal-es-barikaddal-vedik-ivanyiek-danko-utcai-intezmeny-gazellatasat>.

<sup>126</sup> Hungarian Evangelical Fellowship (2020), *Statement of the president of HEF*, 16 October 2020.

HEF issued a statement on the state tax authority confiscating another 250,000,000 forints (cc. 714,000 euros) in view of HEF's tax and social security arrears.<sup>127</sup> Meanwhile, the HEF also claims that the state would be obliged to pay HEF around 6 billion forints. These 6 billion forints (cc. 17,143,000 euros) would consist of those state subsidies and allowances that the HEF – as a church – would have received, among others, from personal income tax offerings of citizens only open to churches or for the maintenance of their social and educational institutions, if HEF had not lost its church status unlawfully.<sup>128</sup>

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<sup>127</sup> Hvg.hu (2021), "The National Tax Authority collected around 250 million from the account of Iványi's religions community" (*A NAV közel 250 milliót inkasszált Iványi Gáborék számlájáról*), 22 February 2021, available at: [https://hvg.hu/gazdasag/20210222\\_nav\\_terheles\\_ivanyi\\_gabor\\_jarulek](https://hvg.hu/gazdasag/20210222_nav_terheles_ivanyi_gabor_jarulek).

<sup>128</sup> Information provided by the Hungarian Evangelical Fellowship via telephone interview, 26 February 2021.