

Statement of Melissa Hooper
Human Rights First
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Since coming to power with a supermajority in 2010, the Fidesz party and Prime Minister Viktor Orban have used their power to hollow out democratic institutions to such a degree that Hungary has been called a “Frankenstate” – an illiberal mutant composed of ingeniously stitched-together imitations of western liberal democratic elements.¹ While the Obama-era policy of limited high-level engagement precluded some of the Hungarian government’s controversial actions, it did not appear to motivate fundamental change. The Trump-era policy of warm embrace and transactional engagement devoid of values has fared no better. The U.S. should therefore reexamine its policy toward Hungary such that the administration becomes more vocal, critical, and active in imposing consequences when fundamental values are undermined – not only as an attempt to ameliorate Hungary’s flagging democracy, but also as a method of reinvigorating democratic values in the region. The U.S. government should also consider taking specific actions to hold the Hungarian government accountable and support local civil society.

I will review some of the major policies that demonstrate the extent of democratic deterioration, with an emphasis on recent developments, and note how the U.S. can bolster democracy in the region, protect its own interests, and impose consequences when movement toward authoritarian governance crosses a line.

In April 2018, Orban and Fidesz won a third election in a row, maintaining a supermajority after winning only 50 percent of the vote (largely due to recent changes to election laws that gave the ruling party significant political advantages). The OSCE, which monitored the election, criticized the xenophobic, antisemitic, and intimidating rhetoric used by the government, the undue advantage given the ruling party through the use of state-funded resources for its campaigns and messaging, the politicization of media ownership and limits on media freedom, and a lack of transparent campaign-financing.²

Since last year’s election, Orban and Fidesz have continued to undermine, hollow out, and even attack fundamental tenets of democratic governance.

Eliminating independent media and threatening journalists

Free media is nearly non-existent in Hungary, and outside the capital it is indeed extinct. Fidesz has consolidated media to an extreme degree through nefarious deals, schemes, and pressure – for example the shutdown of independent outlet Nepszabadsag through irregular and illegal procedures -- that are regularly rubber stamped by government agencies such as the media authority and anti-monopoly agency. The overwhelming majority of outlets now reside in the hands of a few close associates of the

¹ Ivan Krastev and Stephen Holmes, “Imitation and Its Discontents”, *Journal of Democracy*, vol. 29 n.3, July 2018, <https://www.journalofdemocracy.org/articles/explaining-eastern-europe-imitation-and-its-discontents-2/>.

² Office of Democratic Institutions and Human Rights (ODIHR), Limited Election Observation Mission Final Report, Parliamentary Elections, Hungary, June 27, 2018, <https://www.osce.org/odihr/elections/hungary/385959?download=true>

Fidesz government, such as Lőrinc Mészáros and Árpád Habony.³ The “voluntary” consolidation of their media holdings into a single major conglomerate did nothing to mitigate the problem. On the contrary, the consolidation allows the government to spread its propaganda efficiently (and do so with Russian disinformation as well), especially since nearly 100% of regional media is now controlled by pro-government outlets.⁴ Independent journalists, on the other hand, have been placed on a published blacklist of so-called mercenaries, labeled “threats” to the state, and banned from parliament.

Eliminating checks and balances

Upon coming to power, Fidesz rewrote the constitution to consolidate power in the executive and politicized formerly non-political offices. They also expanded the definition of “cardinal laws” that require a supermajority vote. This was, according to Orban, to bind not only the next administration, but the next ten.

Fidesz engaged in an ongoing dismantling of judicial checks and balances soon after taking power in 2010, and recently ramped up its latest phase. Early moves involved a takeover of the Constitutional Court, forcing out judges likely to disagree with the party. While the ECHR eventually ruled the forced retirements illegal, the fact that the court’s decision came a year after the retirements meant the remedy was confined to monetary damages. Orban also appointed a close associate, Tunde Handó, as the head of the National Judicial Council, giving her veto power over judicial appointments. When the Council alleged that she was abusing her power, the complaining judges suddenly left their posts in rapid succession within a single week.

Most recently, the government created a parallel justice system through development of a new administrative court that is designed to hear cases concerning designated topics. Notably, these topics are those most politically charged or expedient for the ruling party. They include civil liberties cases such as legality of assemblies, election disputes, cases involving immigration and refugee issues, police brutality, media-related issues, transparency of government information, and taxation and procurement. Tax and procurement-related irregularities have been cited by the EU anti-corruption agency – OLAF – as the source of millions in suspect deals involving Orban’s family and friends, many of which also involve Russian state actors.

On March 15, the Council of Europe’s Venice Commission expressed serious concerns about the overwhelming power given to the Minister of Justice over the new hermetically-sealed court system; of particular concern was the MOJ’s complete power over judicial selection. In response, on April 1, Fidesz passed a law that it argued vitiated these concerns. It did not. The new law modified the process for appointing judges only after a nearly year-long transition period, during which the MOJ will oversee the transfer of 1/3 of judges, and will appoint another 1/3 – so as long as the MOJ acts relatively soon, the future quasi-limitations on his power will not have a large effect.

³ “An Illiberal State in the Heart of Europe”, paper produced by the following: Eotvos Karoly Policy Institute, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, K-Monitor, Mertek Media Monitor, October 2017, https://www.helsinki.hu/wp-content/uploads/AnIlliberalState_online_final.pdf.

⁴ Attila Batorfy, “This is how government-friendly news outlets dominate the Hungarian media,” *Atlatszo*, November 22, 2017, <https://english.atlatszo.hu/2017/11/22/this-is-how-government-friendly-news-outlets-dominate-the-hungarian-media/>.

In addition, the new laws allow the MOJ to select individuals without judicial experience. In fact, a new law gives a leg up to candidates coming from public service who lack any judicial experience, making it more likely that Fidesz officials from agencies whose decisions are being challenged through this new system will be appointed to review and decide those challenges. The rule allowing appointment of individuals lacking any judicial experience also applies to selection of the chief administrative judge.

Criminalizing NGO activity

A 2017 law, given the politically-charged title of “Stop Soros” by the government, requires that NGOs register as “foreign agents” if they receive more than 24,000 Euro of foreign funds. This is similar to the infamous Russian foreign agent law passed in 2012. Another 2018 law taxes foreign funds at 25% if the organization “directly or indirectly supports immigration.” In addition, a constitutional amendment in 2018 made it illegal to “support illegal immigration” but defined the terms so broadly as to criminalize providing information regarding the legal process of seeking asylum to asylum-seekers or even preparing that information for dissemination. The same amendments made it illegal to “settle foreign populations” within Hungary. The Venice Commission roundly criticized these laws, and the European Commission of the EU launched an infringement proceeding based on their interference with freedoms of association and expression; the proceedings are ongoing.

These laws turns the work of Hungarian NGOs that assist the population in accessing rights into a false security threat, undermining trust in a significant democratic institution.

Over 60 NGOs were loudly and publicly subjected to “criminal investigations” that included home searches, police raids, and computer seizures in 2014, ordered by the Prime Minister himself. Not a single allegation resulted in an actual charge against the organizations. However, the government continues to campaign against “the Soros empire”, including as a major theme in the last election. Now NGOs that challenge the government’s stance on rule of law, treatment of civil society, and migration, believe that the next step will be to subject them to tax proceedings that could threaten their activities.

Kicking out an American university

A 2017 law – referred to as Lex CEU because it essentially applied only to the Budapest-based, dual Hungary- and U.S.-accredited institution Central European University (CEU) – required that CEU maintain a campus in the United States. After the university complied by opening a campus in New York, the Hungarian government refused to sign an agreement with the university by December 1 of last year, which would have allowed the university to remain in Hungary. CEU is now in the process of moving its campus and programs to Vienna.

While the Hungarian government claims that CEU may continue to operate in Budapest without this agreement, this is true for only 20% of the university’s programs, which are Hungarian accredited. The remaining 80% of American accredited programs, presumably the more sought-after, cannot operate in Budapest absent the agreement.

During a March meeting in Budapest, Manfred Weber, the leader of the European People’s Party in the European Parliament of which Fidesz is a member, suggested that University of Munich and BMW may

offer support to the University, restructuring it as a European institution no longer subject to Lex CEU.⁵ This development is still in process.

Spreading government-sponsored xenophobia and antisemitism

Orban and Fidesz have repeatedly relied on state processes and funds to implement antisemitic and racist campaigns and so-called “national consultations” that involve mailing questionnaires containing disinformation to nearly every household in the country.

During the most recent presidential election in April 2018, Orban campaigned on an anti-migration and anti-refugee platform, referring to a mythical “Soros plan” which alleges that Hungarian-American financier George Soros aims to overwhelm Hungary with migrants and “Muslim invaders”; he conveniently then declared himself the protector of “Christian Europe.”⁶ Campaigns like this easily saturate the geographic space outside the capital where independent media does not exist to counter this messaging. Orban openly threatened non-governmental watchdog groups, and personally targeted Soros, stating that after the election Fidesz will “take revenge – moral, political and legal” against real and perceived enemies of the Hungarian state.

In April 2018, pro-government magazine Figyelo published a list of 200 anti-government “mercenaries” whose goal is allegedly to topple the government. The list included a number of investigative journalists, academics from CEU, entire staffs of watchdog organizations such as Transparency International, and members of NGOs that challenge the government’s limitations on freedom of assembly and rule of law. The “Soros mercenaries” phrase has been in regular use in government rhetoric for the last several years where it is used to discredit NGOs that criticize state policy.

A second blacklist was published in June that highlighted academics considered a threat to Hungary. Most were affiliated with the Academy of Sciences. This was followed by a defunding of the Academy itself in 2019, a move that was met with significant protests.

The magazine publishing these lists was purchased by Maria Schmidt, a longtime friend of Orban, in 2016. Since then, as with most formerly-independent media, it has adopted a decidedly pro-government tone. Schmidt, a controversial historian labeled by many credible academics as a distorter of Holocaust history, has also been awarded stewardship of the government-backed “House of Fates” museum. Yad Vashem, the U.S. Holocaust Memorial Museum, and the leaders of Hungary’s Jewish community have each warned that the “House of Fates” appears to be a concerted effort on the part of Schmidt and the Hungarian

⁵ Florin Zubascu, “EU Presidential hopeful Manfred Weber behind push to keep Central European University in Budapest,” *Science Business*, March 14, 2019, <https://sciencebusiness.net/news/eu-presidential-hopeful-manfred-weber-behind-push-keep-central-european-university-budapest>.

⁶ Joanna Kakissis, “Hungary has a xenophobia problem”, *NPR*, April 27, 2018, <https://www.npr.org/sections/parallels/2018/04/27/602375067/hungary-has-a-xenophobia-problem>; Griff Witte and Jason Aldag, “Once fringe Soros conspiracy theory takes center stage in Hungarian election,” *Washington Post*, March 17, 2018, https://www.washingtonpost.com/world/europe/once-fringe-soros-conspiracy-theory-takes-center-stage-in-hungarian-election/2018/03/17/f0a1d5ae-2601-11e8-a227-fd2b009466bc_story.html?utm_term=.aa905efcc991

government to rewrite the country's WWII-era history, in order to absolve the Hungarian people of their role in the Holocaust.⁷

Orban is currently campaigning in the European Parliament elections on a platform that seeks, in his view, to preserve "Europe for Europeans." As in the past, he has employed a billboard campaign depicting the image of George Soros to convey the threat posed by outsiders and immigrants, this time the billboard inexplicably links Soros to European Commission President Jean Claude Juncker. On the billboard, Juncker's nose has been altered to look larger and presumably more Jewish.

In August 2018, the Hungarian government stopped giving food to asylum-seekers it has placed in detention while they appeal their cases. The government also prohibited others from delivering food to asylum-seekers, and prohibited them from purchasing their own food, essentially attempting to starve them until they abandoned asylum proceedings.⁸ This decision was just the latest in a string of policies that violates Hungary's obligations with respect to treatment refugees under international law. An infringement proceeding regarding Hungary's policies related to migration is ongoing (instituted in December 2015), and the ECHR issued an emergency decision to require that the government provide food to those it detains.

In September 2018, the European Commission finally launched a proceeding against Hungary under Article 7 of the Lisbon Treaty. However, the lack of forceful negotiations between the EU and Hungary in the past are likely to make this proceeding ineffective. More success may be seen in the EU's attempt to restructure its upcoming budget for 2021 through 2027 such that compliance with rule of law will be linked to state budgetary awards. Infringement proceedings in the European Court of Justice also present an opportunity, as has been seen in the case of Poland.

U.S. interest and U.S. influence

Despite these concerning, and in some cases decidedly authoritarian policies, the Trump administration has maintained a relationship of non-criticism of Hungary, often citing the need for solidarity against foes such as Russia and China. The U.S. government has expressed "concern" regarding the NGO law that is similar to Russia's foreign agent law and the law that criminalizes assistance to refugees. It expressed "disappointment" when CEU was forced out of the country. However, the government then continued to reward Orban and Fidesz with high-level visits that legitimized their policy decisions, and with gas and defense deals that underscore this legitimacy. For his part, David Cornstein, current U.S. ambassador in Budapest, issued a public statement that he had not seen in Hungary any evidence of democratic backsliding, and had not been told of any, this was after he had met with prominent members of Hungarian civil society who had described exactly that. He has also gone on the record to say that no one in Hungary has complained of antisemitism. The administration's former Assistant Secretary for Europe

⁷ Human Rights First, Factsheet: "Why is the Hungarian Government Promoting a New Ahistorical Holocaust Museum Designed by a Holocaust Distorter?", November 2018, <https://www.humanrightsfirst.org/sites/default/files/House-of-Fates-Fact-Sheet%20.pdf>.

⁸Camila Domonoske, "Hungary Intentionally Denying Food to Asylum-Seekers, Watchdog Groups Say," *NPR*, August 22, 2018, <https://www.npr.org/2018/08/22/640849555/hungary-intentionally-denying-food-to-asylum-seekers-watchdog-groups-say>

was seen as such a champion of the Hungarian government that last week he was given an award by the Hungarian Ministry of Foreign Affairs.

In October 2017, in light of a dangerously deteriorating situation for media freedom in the country, Charge d’Affaires David Kostelancik devoted an entire speech to the issue.⁹ Following this speech, the U.S. State Department Bureau of Democracy, Human Rights, and Labor (DRL) announced a Notice of Funding Opportunity for \$700,000 to “support media outlets operating outside the capital in Hungary to produce fact-based reporting” and promote independent media.¹⁰

However, this funding opportunity was cancelled in July 2018, without explanation. While Secretary Pompeo mentioned during his February 2019 trip to Budapest that the U.S. is providing mentorships and training for journalists in the region, and last May reportedly told his Hungarian counterparts that a vibrant civil society is important, there is no evidence of any U.S.-supported programs operating in Hungary that support independent journalism or civil society, and my own contacts in civil society reported that they know of none. The U.S. commitment to its values of a free press, rule of law, and protection for democratic institutions in the region has been, at best, unclear.

Having not expressed any alarm regarding the Hungarian government’s movement toward authoritarian governance, Orban and his associates now believe that limiting free speech and assembly, erasing checks and balances of government power, and employing rampant corruption linked to NATO foes is perfectly acceptable to its ally the U.S. This in turn communicates to other NATO allies that these actions are acceptable within NATO, setting a dangerous precedent in light of broadening attacks on democratic institutions and governance structures by Turkey, Poland, Romania, and others. In order to retard or even reverse this progression, the U.S. must take decisive action to send a message that these policies are unacceptable when instituted by a democratic ally of the U.S. though admittedly it must do so while continuing to engage.

If the U.S. is concerned about the decline in perceived support for democracy in Hungary and the region, and seeks to “compete for positive influence”— a goal cited both by former Assistant Secretary Wess Mitchell and Secretary Pompeo himself, the U.S. response to the concerning situation in Hungary must be clear and more resolute.

The U.S. can and should act both to send a message to the Hungarian government and to practically attempt to retard the harmful effects of Fidesz rule. The U.S. should voice support for the EU as it works to hold Hungary accountable, but it can also wield its own power.

First, and most importantly, the U.S. should re-invest in democracy promotion, in Hungary and the region. Lofty speeches about democracy won’t turn things around in Budapest, Debrecen, or Pecs. And the U.S. cannot send Americans to reinvigorate democracy in these places. It must support Hungarians who are

⁹ U.S. Embassy Budapest, “Freedom of the Press: Enduring Values in a Dynamic Media Environment,” U.S. Embassy in Hungary, October 17, 2017, accessed April 5, 2019, <https://hu.usembassy.gov/slide/freedom-press-enduring-values-dynamic-media-environment/>.

¹⁰ “Bureau of Democracy, Human Rights and Labor (DRL) Notice of Funding Opportunity (NOFO): Supporting Objective Media in Hungary,” U.S. Department of State, November 7, 2017, accessed April 5, 2019, <https://www.state.gov/j/drl/p/previouscalls/275396.htm>.

already engaged in pro-democracy work such as investigative reporting of corruption, assisting victims of xenophobic violence and hate crimes to combat radicalization, and challenging threats to rule of law.

Second, in doing so, the U.S. should announce publicly that it is reintroducing support for civil society in the region, and specifically in Hungary, due to a decline in the government's ability to or interest in protecting democratic institutions. A reintroduction of democracy funding would offer support to the institutions and pro-democracy innovators that are currently resource-starved, while an announcement explaining why would send a message to the Hungarian government that the U.S. is more than "concerned" about developments in the country; it is ready to act. The recent Notice of Funding for independent media in Hungary was cancelled, at least in part, apparently because the Hungarian government expressed displeasure with the idea. Announcing the reintroduction of democracy funding will cause some bruising in Budapest, yes, but it will not rupture the relationship and I believe can strike the right tone: getting the government's attention while not driving it to disengage.

Third, Congress should be more vocal and pointed in expressing its concern and even alarm at Hungary's anti-democratic movement, and in expressing support for individuals, such as journalists or members of watchdog organizations that are targeted by government campaigns or placed on "blacklists", or suffer threats to themselves or their families due to government disinformation campaigns.

This could come in the form of a bipartisan resolution or letter to the government. Statements on the floor of Congress would also be welcomed by those that fear government targeting. Congress could also take a more active role in expressing concern to the Ambassador that his statements are out of line with objective reporting regarding factual developments in the country.

Finally, the U.S. should not shy away from applying targeted sanctions, such as via the Global Magnitsky Law, when clear lines are crossed. When visa bans were used against some officials in 2014, they hit home in Hungary, and the message reverberated both inside the government and throughout Hungarian society. Application to individuals that are taking the lead in wiping out independent media, erasing rule of law, and employing state processes for their own corrupt deals – often at the same time inviting in Russian influence – should be held up as examples of those who have crossed the line.

Conclusion

At a time when democratic norms and values face threats both from outside the EU and NATO, and from within, the United States must fully engage in reversing democratic decline where it is taking place and shore up democratic institutions. A lack of commitment to liberal democratic principles must have consequences. If the U.S. does not take more resolute and decisive action in Hungary, it may very well see any remnants of its influence in the region dissipate, to the detriment not only of U.S. interests, but the interests of democracy and the freedoms it entails.