

## Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the “Notes for filling in the application form”.

## E. Statement of the facts

- 56.
1. This Application seeks urgent relief for ongoing human rights violations caused by two 2018 Hungarian laws: the Stop Soros law (Section 353/A of the Criminal Code), which criminalises “organising activities” that “facilitate” the initiation of asylum proceedings and acquisition of residence titles, and the Soros Tax law (Section 253 of Act XLI of 2018), which imposes a 25% tax on funding for any activity or organisation that supports immigration. Having exhausted all available domestic remedies and found no relief, the Applicant, Open Society Institute Budapest Foundation (OSI-Budapest), now seeks redress before this Court.  
STOP SOROS LAW
  2. Through Act VI of 2018, which entered into force on 1 July 2018, a new section—Section 353/A, entitled “Facilitating illegal immigration” -- was added to the Hungarian Criminal Code. (Section 353/A, Annex 2, p. 87-88, “General Reasoning” of Bill T333, now Act VI, Annex 2, p. 80).
  3. Section 353/A criminalises an open-ended set of “organising activities” that facilitate initiating asylum proceedings and residence titles (“Detailed Reasoning” of Bill T333 and Section 353/A, Annex 2, pp. 80 and 87-88). Section 353/A(2) criminalises “anyone who provides material resources” for such “organising activities.”(Annex 2, pp. 87)
  4. Section 353/A includes aggravating factors imposing on individuals a one year custodial criminal penalty if: i.) the offence is committed for the purpose of financial gain; ii.) support is provided to more than one person; or iii.) the offence is committed in the border zone. The section imposes a custodial arrest for a misdemeanour even in the absence of any aggravating circumstances (Section 46.1 of the Criminal Code, Annex 2, p. 31). For legal entities, the penalties are: “a) dissolving the legal entity, b) limiting the activity of the legal entity, and c) fines.” (Section 4, Act CIV of 2001 on the Criminal Code measures against a legal person, Annex 2 p. 21). Thus, Section 353/A could potentially lead to the dissolution of an entire organisation even if only a small fraction of its work is construed by the Government as facilitating illegal asylum or titles of residence.
  5. As noted by the Venice Commission on 25 June 2018, Section 353/A goes beyond pre-existing Hungarian Criminal Code provisions “that criminalise the smuggling of illegal immigrants (Section 353) and facilitation of unauthorised residence (Section 354).” (Annex 6, p. 445)
  6. As the Commission notes, section 353/A “may apply in reality to a large number of migrants, irrespective of whether they are illegal or not.” Thus, it concludes that Section 353/A “runs counter to the role of assistance to victims by NGOs, restricting disproportionately the rights guaranteed under Article 11 ECHR, and . . . criminalises advocacy and campaigning activities, which constitute an illegitimate interference with the freedom of expression guaranteed under Article 10 ECHR.” The Commission recommended that the provision “should be repealed,” noting that its “extremely hasty adoption did not allow any actors, including the general public and experts, to engage in any meaningful discussion on the legislative package.” (Annex 6, pp. 459, 464, 465, and 443)
  7. On 25 July 2019, the European Commission referred Hungary to the Court of Justice for the European Union on the grounds that the Stop Soros law violates European Union law. (Annex 6, p. 974)
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  7. On 25 July 2019, the European Commission referred Hungary to the Court of Justice for the European Union on the grounds that the Stop Soros law violates European Union law. (Annex 6, p. 974)
- SOROS TAX LAW
8. Through Act XLI, which entered into force on 25 August 2018, Section 253 (Soros Tax law) imposes a 25% tax on financial support for “immigration supporting activity” in Hungary or to any Hungarian organisation “that carries out activities to promote migration.” (Section 253(1), Annex 2, p. 88). The penalty for failure to pay the tax is 50% of the tax deficiency. It could be increased to 200% if an organization fails to declare income that may be subject to the tax. (Section 215 (4) of Act CL of 2017, Annex 2, p. 36).

**Statement of the facts (continued)**

57.

9. The primary taxable entity is the funder, apparently, regardless of whether it is based in or outside Hungary, with respect to funding for activities implemented in Hungary and grantee organisations located in Hungary. The funder is obliged to declare to the grantee by the 15th day of the month of the grant (the last day of the deadline for tax declaration) that it paid the tax. Should the funder fail to make this declaration, the grantee (the organisation aiding immigration) becomes obliged to pay the tax. ("Section 253(5),(6),(8) and Detailed Reasoning" of Section 250, Bill T625, Annex 2 pp. 89 and 86).

10. On 14-15 December 2018, the Venice Commission noted that "the special tax on immigration constitutes an unjustified interference with the rights to freedom of expression and of association of the NGOs affected. The imposition of this special tax will have a chilling effect on the exercise of fundamental rights and on individuals and organisations who defend these rights or support their defence financially. It will deter potential donors from supporting these NGOs and put more hardship on civil society engaged in legitimate human rights' activities. For all these reasons, the provision as examined in the present opinion should be repealed." (Annex 6, p. 470)

**OSI-BUDAPEST AND THE IMPACT OF THE STOP SOROS LAW**

11. OSI-Budapest is a not-for-profit foundation registered in Hungary. It was founded in 1993 in Budapest by the Open Society Fund, Inc. represented by George Soros, to promote human rights and democracy in Hungary and internationally. OSI-Budapest consists of a board of trustees, employees, and its founder (Annex 4, pp. 228, 230-232). It is funded by entities within the Open Society Foundations ("OSF"), a global network that works to build vibrant and inclusive societies, grounded in respect for human rights and the rule of law, whose governments are accountable and open to the participation of all people. (OSF website, Annex 4, p. 233).

12. The Charter for OSI-Budapest states that the objectives of the foundation include, inter alia, "to organise and support programmes in connection with human rights (minority) problems," provide "professional, technical financial support" to "institutions and legal entities," and assist them "in their administrative and coordinative functions" in support of those objectives, among others. Other relevant objectives include to "elaborate and support legal programmes," "coordinate and support programmes related to freedom of expression, freedom of information and arts and culture" and "support initiatives aimed at social reform oriented towards an open society." (Annex 4, p. 228). These objectives encompass financial and non-financial support for migrants' rights, including in regard to asylum and titles of residence.

13. OSI-Budapest has supported migrants' and refugees' rights by, inter alia, (i) funding human rights organisations' projects in the field of migration; (ii) preparing and distributing informational materials such as statements on violations of migrants' rights, including the right to seek asylum; and (iii) building and operating networks, including by conducting meetings with Hungarian organisations for the exchange of opinions and ideas in the protection of such rights.

14. Between 1 January 2015 and 30 June 2018, OSI-Budapest funded a number of Hungarian organisations (including e.g., Hungarian Helsinki Committee) working in the field of migration, awarding them a total of over USD 2 million in grants. Moreover, OSI-Budapest and OSF have issued several public statements of public interest, advocating for migrants' and refugees' rights and criticising the Government for violating those rights (Annex 5, pp. 245-250).

15. The threats of criminal prosecution and abusive taxation imposed by Sections 353/A and 253 have prevented OSI-Budapest from preparing and distributing informational materials, issuing statements, funding organisations, and building and operating networks (including by conducting meetings with Hungarian organisations for exchanging opinions and ideas) relating to migrants' and refugees' rights. OSI-Budapest has therefore been prevented from fulfilling the objectives of its lawfully registered charter.

16. The series of Stop Soros bills (Annex 2, pp. 62-87) that culminated in the adoption of Sections 353/A and 253 (Annex 2, pp. 87-90) caused OSI-Budapest to suspend all its grants and move its Budapest-based staff and international operations out of Hungary in 2018 (Annex 4, pp. 241-242).

**POLITICAL AND LEGAL CONTEXT OF THE STOP SOROS LAW AND THE SOROS TAX LAW**

17. The two laws at issue in this case are part of the Hungarian government's sustained assault on democratic institutions and the rule of law. Indeed, since taking office in 2010, the Government has taken numerous measures to limit the independence of Hungarian courts, media, higher education and civil society. In response, the European Union and other institutions have repeatedly expressed concern, including through six European Parliament resolutions adopted between 2011 and 2017 (Annex 6, pp. 521-573 and 724-728).

18. Courts. The Hungarian government has progressively restricted the role and the independence of the courts. For example, on 5 July 2010, the selection process for Constitutional Court judges was changed to allow the Government's political party to unilaterally elect all Constitutional Court judges. In 2012, the Government adopted a national scheme requiring the compulsory retirement of judges at the age of 62, which the Court of Justice of the European Union (CJEU) held in *Commission v. Hungary*, was contrary to EU law (Annex 6, p. 758-759 and 1089). However, most judges (173 out of 229) did not return to their former positions (Annex 6, p. 1232).



**Statement of the facts (continued)**

58.

Through the 4th Amendment to the Fundamental Law, adopted in 2013, the Government reversed politically sensitive Constitutional Court decisions relating to human rights and the rule of law (Annex 6, p. 386-388 and 540-541).

19. Media. In 2010, the Government introduced a series of laws tightening its control over the media—through amendments to existing media laws Act LXXXI of 2010, Act CIV of 2010 and Act CLXXXV of 2010—(Annex 2, pp. 22-25). The 2010 media laws were criticised by the European Parliament, the OSCE Representative on Freedom of the Media, and the Council of Europe’s Commissioner for Human Rights (Annex 6, pp. 521-525, 976-977, and 262-278).

20. Higher education. On 4 April 2017, the Government adopted Act XXV of 2017 amending Act CCIV of 2011 on National Higher Education. Act XXV of 2017 imposed restrictive requirements on the licensing and operation of foreign universities in Hungary (Annex 2, p. 32-36) and targeted the Central European University, which was founded by George Soros. On 1 February 2018, the European Commission brought an action for infringement before the CJEU against Hungary on the basis that the law was in breach of EU and international law. (Annex 6, pp. 735-736).

21. Civil society. In 2017, the Government enacted an anti-NGO law requiring recipients of foreign funding to publicly identify themselves as such (Act LXXVI/2017, Annex 2, p. 36-40). The 2017 law, widely condemned by the international community, was adopted by the Hungarian government with only minor adjustments, despite the Venice Commission’s recommendations. (Annex 6, p. 405-430). The European Commission also concluded that the 2017 law violates EU law and on 1 June 2018 brought an action for infringement currently pending before the CJEU (Annex 6, pp. 733-734).

22. On 25 June 2018, the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) recommended that Parliament start an Article 7 procedure against Hungary for breaching fundamental values of the Union, in conformity with the Treaty on European Union (Annex 6, p. 767-787).

**GOVERNMENT STATEMENTS TARGETING GEORGE SOROS, OSI-BUDAPEST AND ITS GRANTEES**

23. For years, as part of its attacks against democratic institutions and independent voices, the Hungarian government has mounted a concerted campaign to vilify George Soros, OSI-Budapest and associated Hungarian civil society organisations (CSOs). In 2017, as Government rhetoric against George Soros surged (Annex 3, pp. 217-225), the government erected and prominently displayed thousands of anti-Soros billboards in Budapest and other major cities. The billboards, widely condemned as anti-Semitic, contained images of Soros alongside the phrase “Let’s not let Soros have the last laugh.” (Annex 3, p. 218 and Annex 7, pp.1124-1126,1098,1100,1101,1110). In April 2018, the UN Human Rights Committee found that high-ranking officials in Hungary have “nurtured conspiracy theories relating to George Soros.” (Annex 6, p. 222). In February 2019, the Government started a new billboard campaign against George Soros and Jean-Claude Juncker, alleging that they were “endangering Hungary’s safety.” (Annex 7, p. 1115-1117)

24. At least since 2017, Government officials, such as the Parliamentary State Secretaries of the Ministry of Defence and the Ministry of Justice, have issued a number of statements targeting OSI-Budapest, its civil society grantees, and their employees, as part of a “Soros network” that has to be curtailed (Annex 3, pp. 217-225). Government statements have revealed that its aims are (as recognised by the Council of Europe’s Human Rights Commissioner) “to target legitimate civil society activities related to immigration”, and “civil society organisations critical of the government.” (Annex 6, pp. 501 and 504, Annex 2, p. 80, and Annex 3, pp. 218-224).

**PROCEDURAL HISTORY AND HUNGARIAN CONSTITUTIONAL COURT DECISION**

25. On 24 September 2018, OSI-Budapest filed a challenge to the Stop Soros law before the Hungarian Constitutional Court (HUCC)(Annex 9, pp.1332-1344). On the same day, it also filed an application before this Court challenging the Stop Soros law and the Soros Tax law on the grounds that these laws violated its rights to freedom of expression and association.

26. On 13 December 2018, while OSI-Budapest’s HUCC challenge was pending, this Court ruled that the Applicant’s ECHR application was inadmissible for failure to exhaust domestic remedies Annex 11, pp.1407-1408).

27. On 25 February 2019, the HUCC dismissed Amnesty International (AI)-Hungary’s case, which (like OSI-Budapest’s challenge) had argued that the Stop Soros law was incompatible with the Hungarian constitution in light of the nullum crimen sine lege (legality) principle and the petitioner’s rights to freedom of expression and association. On 5 March 2019, the HUCC dismissed OSI-Budapest’s case on the same grounds on which it had rejected AI-Hungary’s claims (Annex 9, pp.1397-1400 (Hungarian) and 1401-1403 (English)).

28. The HUCC’s ruling did not end the violations of OSI-Budapest’s rights or provide it with any remedy. Indeed, the Stop Soros Law continues to violate the legality principle and OSI-Budapest’s rights to freedom of expression, and freedom of association(Annex 1, paras. 2-5, 25-27 and 52). The Council of Europe’s Human Rights Commissioner has stated that, despite the HUCC ruling, Section 353/A “lacks legal certainty to qualify as a penal provision.” She added that the “legislation on special immigration tax is also too vaguely worded in terms of the activities covered to ensure legal certainty.” (Annex 6, p. 501 and 504).

29. Accordingly, having exhausted domestic remedies, OSI-Budapest has filed this second application.

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

59. Article invoked	Explanation
<p>A. Violation of the right to freedom of expression (Article 10) (See more Annex 1 paras. 6-43)</p>	<p>Section 353/A interferes with OSI-Budapest's right to freedom of expression by criminalising the preparation or distribution of informational materials (Open Door v Ireland, para.7), building or operating networks, and funding of those activities (Bowman v. UK, paras. 33 and 47; Murat Vural v. Turkey, para. 53), and other unenumerated activities, including advocacy in support of asylum or titles of residence (Annex 9, pp. 1366 (Hungarian) and 1394 (English)). Section 253 interferes with OSI-Budapest's right by imposing a tax on its funding of expressive activities to promote migration and subjecting all of the Applicant's operations to a 25% tax. The laws pursue illegitimate aims (see analysis of Article 18 below), are not prescribed by law, and are not necessary in a democratic society, violating OSI-Budapest's right to freedom of expression.</p> <p>Sections 353/A and 253 are not prescribed by law, as they lack foreseeability and certainty (Goodwin v. UK, para. 31). Section 353/A criminalises an open-ended list of "organising activities" and Section 253 imposes a 25% tax upon all funding for any organisation that "carries out activities to promote migration" as well as "any programme, action or activity that is directly or indirectly aimed at promoting immigration. The HUCC's ruling did not end the violations of OSI-Budapest's rights. On the contrary, it entrenched the legal uncertainty and violations caused by the Stop Soros law (Annex 9, pp. 1365-1366 (Hungarian) and 1393-1394 (English)).</p> <p>OSI-Budapest's role, alongside its grantees, as a public watchdog (Guseva v. Bulgaria, para. 38), calls for "the most careful scrutiny" by the Court when assessing measures taken by the Government to restrict freedom of expression (Osterreichische Vereinigung Zur Erhaltung, Starkung und Schaffung v. Austria, para. 33). "The most careful scrutiny" is also applicable to prior restraints (RTBF v. Belgium, para. 105), such as Section 353/A(5)'s criminalisation of the preparation of informational materials.</p> <p>These legal provisions are also not necessary in a democratic society, on account of: (i) the nature and severity of sanctions, including criminal penalties and abusive taxation (Gra Stiftung Gegen Rassismus and Antisemitismus v. Switzerland, paras. 77-78 and Lombardo and Others v. Malta, para. 61); (ii) their uncertainty and overbreadth, e.g., Section 353/A criminalises assistance for lawful applications for asylum and residence permits (Venice Commission Joint Opinion, EXCOM-UNHCR, Ilias and Ahmed v. Hungary paras. 120-121, Guseva v Bulgaria para. 38; EU Directive 2013/32/EU, Directive 2013/33/EU, Directive 2004/81/EC, Directive 2011/95/EC, Directive 2004/38/EC; and C-127/08 Metock, 11 June 2008, para. 21.2 in Annex 2, pp. 90-213); it criminalises lawful preparatory conduct (such as the provision of legal advice) for acts that are already criminalised under Hungarian law; it criminalises lawful conduct, such as dissemination of materials, which is far removed from the result it allegedly aims to prevent; and it could lead to the dissolution of an entire organisation even if only a small fraction of its work related to migrants' rights; Section 253 targets all activities and organisations promoting migration, including legal migration;(iii) lack of evidence of national security threats (Stomakhin v. Russia, para. 85 and Case of A. and others v. UK, para. 186); and (iv) lack of public consultation (Recommendation CM/rec(2007)14, Annex 2, pp. 261; and Venice Commission Opinion 919/2018, Annex 6, pp. 443 and 456).</p>
<p>B. Violation of the right to freedom of association (Article 11) (See more Annex 1 paras. 44-56)</p>	<p>Section 353/A and Section 253 interfere with OSI-Budapest's right to freedom of association with respect to building and operating networks (including by holding meetings, Koretskyy and Others v. Ukraine, para. 40), receiving funding, and providing funding (Ramazanova v. Azerbaijan, para. 59, where the Court protected receipt and use of financial support under Article 11) for migrants' and refugees' rights. The legal provisions violate OSI-Budapest's rights under Article 11, as they pursue predominantly illegitimate aims (see analysis under Article 18 below).</p>

**Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)**

60. Article invoked	Explanation
(Article 11 Cont.)	<p>Moreover, they are not prescribed by law, as they are not “formulated with sufficient precision to enable [persons concerned][...] to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail” (Koretskyy and others v. Ukraine, paras. 46-47 and analysis of Article 10 above).</p> <p>In addition, the provisions are not necessary in a democratic society, because of their overbreadth and the nature and severity of sanctions they impose (see Article 10 analysis, and Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, paras. 67-68) Finally, Section 353/A is also disproportionate on account of lack of public consultation associated with its adoption, and lack of evidence regarding the alleged aim of protecting “national security” (United Macedonian Organisation Ilinden-Pirin v. Bulgaria, para. 61; Sidiropoulos v. Greece, para. 41).</p>
<p>C. Violation of the limitation on the use of restrictions on rights (Article 18 in conjunction with Articles 10 and/or 11) (See more Annex 1 paras. 57-66)</p>	<p>The totality of the circumstances in this case as detailed in the facts section above (Statement of Facts, paras. 1-29, above) demonstrate that Section 353/A and Section 253 were enacted predominantly for purposes other than those prescribed in the Convention (Merabishvili v. Georgia, para. 317). In reality, these laws are predominantly aimed, according to the CoE Human Rights Commissioner, to target OSI-Budapest and other civil society organisations critical of the government (Mammadov v. Azerbaijan, para. 143; Hasanov v. Azerbaijan, paras. 125-127); Navalnyy v. Russia, paras. 171) as well as legitimate civil society activities related to migration (Annex 6, pp. 501 and 504), curtailing OSI-Budapest’s rights to freedom of expression and freedom of association (United Macedonian Organisation Ilinden-Pirin v. Bulgaria, para. 83). These aims are evident from the provisions’ legislative intent (Annex 2, p. 80, and Annex 3, pp. 218-224; Freedom and Democracy Party v. Turkey, para. 37 and Tebieti v. Azerbaijan, para. 53), their overbreadth, their lack of foreseeability (Cumhuriyet Vakfi and Others v. Turkey, para. 62 and 63), the legal and political context (Statement of Facts, paras. 17-22, above), the official campaign against Soros and OSI-Budapest (Annex 3, pp. 217-225), and the official nomenclatures of Act VI and Section 253 of Act XLI (Stop Soros law and Soros Tax law, respectively).</p>



**G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention**

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

61. Complaint	Information about remedies used and the date of the final decision
Articles 10, 11 and 18.	<p>1. OSI-Budapest has exhausted all available domestic remedies. On 13 December 2018, while the Applicant's challenge to Section 353/A was pending before the HUCC, this Court summarily deemed OSI-Budapest's first ECHR application challenging Sections 353/A and 253 inadmissible for failure to exhaust domestic remedies (Annex 11, p. 1407-1408). Significantly, the Council of Europe Human Rights Commissioner has recognized that "the legislation on special immigration tax and the preceding amendment of the Criminal Code (Section 353/A) are closely related and pursue similar aims." (Annex 6, p. 501)</p> <p>2. Since that decision, however, on 5 March 2019, the HUCC dismissed OSI-Budapest's legal challenge to Section 353/A. (Annex 9, pp. 1397-1400 (Hungarian) and p. 1401-1403 (English)). Now that the HUCC has issued its decision and domestic remedies have been exhausted, this application is ripe for review.</p> <p>3. The HUCC decision did not end the violations of OSI-Budapest's rights or provide OSI-Budapest with any remedy, as the law, as interpreted by the HUCC, continues to pursue illegitimate aims, and to violate Articles 10, 11 and 18 of the Convention. Indeed, the two laws directly affect OSI-Budapest and, as recognised by the Council of Europe's Human Rights Commissioner, "exercise a continuous chilling effect on the legitimate work of NGOs even though some of the provisions are not actively implemented. The serious sanctions associated with the legislation have the potential to incur devastating consequences for the work of human rights defenders and NGOs in Hungary. Many civil society organisations are already obliged to spend a great deal of effort in defending themselves and challenging the legislation before the courts which diminishes their capacity to carry out their regular activities. Some NGOs have already ceased their activities or have relocated abroad. . . . Rather than serving a legitimate aim, the legislation appears to target civil society organisations which are critical of the government." (Annex 6, pp. 501, and 504-505). OSI-Budapest and its civil society grantees have been vocal critics of the Hungarian government's human rights and rule of law violations.</p> <p>4. The series of Stop Soros bills (Annex 2, pp. 62-87), which culminated in the adoption of Sections 353A and 253, made it untenable for OSI-Budapest to maintain global operations in Hungary. In August 2018, OSI-Budapest's staff had to move to other EU member States, which adversely affected OSI-Budapest's grant making, advocacy, network building and production of informational materials aimed at the protection of internationally and regionally recognised human rights. In sum, the two laws have led OSI-Budapest "to modify [its] conduct" (Akcam v. Turkey para 75; Dudgeon v. UK, para. 41).</p> <p>5. As such, Sections 353A and 253 impose a direct chilling effect on OSI- Budapest's rights to freedom of expression and association, even in the "absence of an individual measure of implementation." (Akcam v. Turkey para 68).</p> <p>6. The laws' chilling effects have been aggravated by (i) the Hungarian government's "intimidation campaign" (Akcam v. Turkey, paras. 74) against the "Soros network" (Annex 3, p. 222-224), which highlighted the "risk of prosecution" for those "who express unfavourable opinions" (Akcam v. Turkey, para 82); (ii) the naming of the laws after George Soros (Annex 3, p. 218-219); and (iii) recent inquiries by tax authorities to CSOs under Section 253 (Annex 7, pp. 1127-1132).</p> <p>SIX MONTH RULE</p> <p>7. This application is being filed within six months of the decision issued by the HUCC, on 5 March 2019</p>

62. Is or was there an appeal or remedy available to you which you have not used?

Yes

No

63. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

#### H. Information concerning other international proceedings (if any)

64. Have you raised any of these complaints in another procedure of international investigation or settlement?

Yes

No

65. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

66. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

Yes

No

67. If you answered Yes above, please write the relevant application number(s) in the box below.

**I. List of accompanying documents**

You should enclose full and legible copies of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You MUST:

- arrange the documents in order by date and by procedure;
- number the pages consecutively; and
- NOT staple, bind or tape the documents.

68. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found.

1.	Additional submissions	p.	1
2.	Relevant Legal Provisions (Domestic, Regional and International)	p.	21
3.	Statements by the Government of Hungary	p.	217
4.	Institutional Documents of Open Society Institute Budapest Foundation	p.	226
5.	Publications by Open Society Foundations	p.	245
6.	Intergovernmental Organisations Documents (CoE,EU,OSCE,UN)	p.	250
7.	Media	p.	1098
8.	NGO Reports and Press Releases	p.	1133
9.	Constitutional Court Complaint and Constitutional Court Decisions	p.	1332
10.	OSI-Budapest Court Registration (Proof of authorisation to act)	p.	1404
11.	ECtHR Correspondence on Admissibility	p.	1407
12.		p.	
13.		p.	
14.		p.	
15.		p.	
16.		p.	
17.		p.	
18.		p.	
19.		p.	
20.		p.	
21.		p.	
22.		p.	
23.		p.	
24.		p.	
25.		p.	



Annex 1  
Additional  
Submissions

**ANNEX 1**

**ADDITIONAL SUBMISSIONS**

**I. INTRODUCTION**

1. This case seeks urgent relief for ongoing human rights violations caused by two 2018 laws emblematic of the Hungarian government's sustained assault on democracy and the rule of law over the last nine years: the Stop Soros law and the Soros Tax law. The laws, unprecedented in the history of the European Union, have been condemned by the Council of Europe's Human Rights Commissioner, the Venice Commission, and the European Commission. Having exhausted domestic remedies and found no relief, the Applicant, OSI-Budapest, seeks redress for violations of its rights under Articles 10, 11 and 18, while requesting priority under Rule 41 (Category II).<sup>1</sup>
2. On 5 March 2019, the HUCC dismissed OSI-Budapest's case on the same grounds on which it had previously rejected Amnesty International (AI)-Hungary's challenge that argued that the Stop Soros law was incompatible with the Hungarian constitution in light of the *nullum crimen sine lege* (legality) principle and AI-Hungary's rights to freedom of expression, and association.<sup>2</sup>
3. The HUCC's ruling did not end the violations of OSI-Budapest's rights or provide it with any remedy. The Stop Soros law continues to violate the legality principle and OSI-Budapest's rights to freedom of expression and association. The HUCC erred in holding that the law did not violate the legality principle because the law's terms (i.e., "organising activity, organising border monitoring, building or operating of network") were not "incomprehensible."<sup>3</sup> There is still a breach of the legality principle, as those vague terms bar any foreseeability.<sup>4</sup>
4. The HUCC's attempts to narrow the reach of the Stop Soros law did not remove significant uncertainty about how the law could be applied to OSI-Budapest and its grantees. OSI-Budapest does not intend to facilitate illegal asylum or residence

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<sup>1</sup> Cover letter for Application for details on Request for Priority.

<sup>2</sup> Annex 9, pp. 1397-1400 (Hungarian) and 1401-1403 (English).

<sup>3</sup> Annex 9, p. 1365 (Hungarian) and 1393 (English).

<sup>4</sup> *Dink v. Turkey*, Judgment of 14 September 2010, para. 116; *Tatar v. Hungary*, Judgment of 12 September 2012, para. 31.

**OPEN SOCIETY  
JUSTICE INITIATIVE**

in Hungary. The Stop Soros law as interpreted by the HUCC is overly broad and vague, and can be used by the Government to prosecute lawful activities that fall within OSI-Budapest's mandate.<sup>5</sup>

5. The HUCC failed to correct the Stop Soros law's excessive breadth and vagueness. It also failed to recognise or cure the law's chilling effects on OSI-Budapest's rights to freedom of expression and association, as well as the law's lack of proportionality, stating that "punishment, considering custodial arrest as relatively moderate within the criminal law system."<sup>6</sup> The Council of Europe's Human Rights Commissioner has recognised that the Stop Soros law and the Soros tax law "exercise a continuous chilling effect on NGOs" with potentially "devastating consequences." The Application Form sets other relevant facts to this application.

## **II. VIOLATIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

### **A. Article 10: violation of the right to freedom of expression**

6. The Stop Soros Law and the Soros Tax law interfere with OSI-Budapest's right to freedom of expression. The laws pursue illegitimate aims, and are not prescribed by law, nor necessary in a democratic society, in violation of Article 10.

#### Interference

##### *Stop Soros Law, Section 353/A of the Criminal Code*

7. The Stop Soros law, entitled "Facilitating illegal immigration," criminalises "[a]nyone who engages in organising activities," in order (a) to "facilitate" the initiation of asylum proceedings for persons "who are not persecuted . . . or do not have a well-founded reason to fear direct persecution," or (b) "for persons entering or staying illegally in Hungary to acquire title of residence."<sup>7</sup>
8. Section 353/A (5) states that "organising activities" include, *inter alia*, "preparing or distributing information materials or entrusting another with such acts," or "building or operating a network." The "detailed reasoning" for the Stop Soros law makes clear that the term "organising activity" is open-ended and the examples of

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<sup>5</sup> The Council of Europe's Human Rights Commissioner has recognised the "exceptionally vague" and "arbitrary" nature of the two laws at issue in this case. Annex 6, pp. 501 and 504.

<sup>6</sup> Annex 9, p. 1366 (Hungarian) and 1394 (English).

<sup>7</sup> Annex 2, pp. 87-88.



**OPEN SOCIETY  
JUSTICE INITIATIVE**

such activities listed in the statute are non-exhaustive. It states that “the exact content of the organising activity cannot be fully listed, therefore . . . [the provision] . . . defines the most typical components of the organisational activities with an appropriate abstraction as an interpretive provision.”<sup>8</sup> The law also states that “[a]nyone who provides material resources for” or “carries out” on a regular basis such “organising activities” is punishable by a term of imprisonment of up to one year. Legal entities subject to the Stop Soros law could be entirely dissolved even if such “organising activities” constituted only a small fraction of their work.<sup>9</sup>

9. The Stop Soros law is fundamentally flawed in criminalising lawful civil society activity under the pretext of combating illegal migration. An individual’s failure to qualify for asylum or a title of residence does not deprive civil society organisations like OSI-Budapest of their Article 10 rights to “prepare and distribute information materials”, “build or operate networks”, conduct advocacy, or fund expressive activities that support migrants’ rights to asylum and titles of residence.
10. The HUCC erred in ruling that “freedom of speech protects primarily the words (speech), therefore other actions, such as organising activity with a purpose that promotes and assists illegal immigration may be prohibited in a way set forth by Article 353/A of the Criminal Code.”<sup>10</sup> It is well-established that Article 10 is not limited to protecting words or speech. It “protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. . . . The Court considers that the same can be said for any individual who may wish to convey his or her opinion by using non-verbal and symbolic means of expression.”<sup>11</sup>
11. The Stop Soros law as interpreted by the HUCC interferes with OSI-Budapest’s Article 10 rights by restricting it from engaging in certain “organising activities” in relation to migrants’ rights that could be construed by the Hungarian government as facilitating illegal asylum and residence titles. These organising activities include (i) preparing or distributing “informational materials”; (ii) building or

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<sup>8</sup> Annex 2, p. 84.

<sup>9</sup> Annex 2, p. 87-88 (Section 353/A (2)).

<sup>10</sup> Annex 9, p. 1366 (Hungarian) and 1394 (English).

<sup>11</sup> *Murat Vural v. Turkey*, Judgment of 21 October 2014, para. 53.

**OPEN SOCIETY  
JUSTICE INITIATIVE**

operating networks (including through conducting meetings and exchanging opinions with Hungarian organisations); (iii) funding expressive “organising activities” that help migrants apply for asylum or residence titles; and (iv) engaging in other “organising activities” including advocacy. For example, if OSI-Budapest were to prepare and disseminate informational materials, build or operate a network, and/or fund or conduct advocacy in support of migrants’ rights to legal representation, the Government could potentially prosecute these activities under the Stop Soros law, claiming that they facilitate illegal asylum or residence.<sup>12</sup>

12. If OSI-Budapest were to prepare or disseminate informational materials, build or operate a network, and/or fund or conduct advocacy arguing that the Government’s laws (including the Stop Soros law and the Soros Tax law) and/or practices relating to illegal asylum and residence were flawed, or inconsistent with EU law or international human rights principles, the Hungarian government could potentially prosecute these activities under the Stop Soros law. For example, if OSI-Budapest were to undertake such “organising activities” in support of the claim that individuals who enter Hungary via Serbia have a right under international law to asylum in Hungary, the Hungarian government could prosecute OSI-Budapest under the Stop Soros law. The Hungarian government has designated (under Government Decree no. 191/2015) Serbia as a “safe country of origin,” effectively enabling Hungary to refuse to examine almost all asylum applications made on its territory.<sup>13</sup> The Government has maintained this position despite UNHCR’s recommendation that Serbia not be considered a “safe third country”<sup>14</sup> and this Court’s observation that the Hungarian government had provided “no convincing explanation or reasons” for its position despite “the reservations of the UNHCR and respected international human rights organisations.”<sup>15</sup>

13. OSI-Budapest does not intend to facilitate illegal migration in Hungary. However, the Stop Soros law as interpreted by the HUCC is overly broad and vague. As such,

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<sup>12</sup> Although the HUCC held that the term “organising activity” does not cover “acting as a legal representative alone,” that exception does not apply to “organising activities” that support others to act as legal representatives for migrants; Annex 9, pp. 1363-1364 (Hungarian) and 1392 (English).

<sup>13</sup> *Ilias and Ahmed v. Hungary*, Judgment of 14 March 2017, paras. 39, 110 and 120. See also: Annex 8, p. 1265.

<sup>14</sup> Annex 6, p. 1020.

<sup>15</sup> *Ilias and Ahmed v. Hungary*, para. 120.

**OPEN SOCIETY  
JUSTICE INITIATIVE**

the law could be construed by the Hungarian government to prosecute lawful activities that fall within OSI-Budapest's mandate.<sup>16</sup> Crucially, even though OSI-Budapest has not yet been prosecuted under the Stop Soros law,<sup>17</sup> the very real threat that it could be the object of prosecution has and continues to chill its exercise of Article 10 rights.<sup>18</sup>

14. *Preparation*: By criminalising not only the distribution but also the preparation of information, Section 353/A(5)(b) grants the Government power to search OSI-Budapest's premises on suspicion that "information materials" that could be construed as facilitating illegal asylum and titles of residence are being prepared there, to seize the materials, and to arrest persons suspected of having prepared the materials in breach of OSI-Budapest's Article 10 rights.<sup>19</sup> This provision constitutes a prior restraint on publication, which this Court strongly disfavours and subjects to "the most careful scrutiny."<sup>20</sup>
15. *Distribution*: By criminalising the distribution of information that could be construed as facilitating illegal asylum and residence titles, Section 353/A(5)(b) interferes with OSI-Budapest's Article 10 rights.<sup>21</sup> Distributing information to migrants (including migrants in an irregular situation) about how they can avail themselves of rights is itself a right and should be protected, not curtailed.
16. *Building or Operating Networks*: OSI-Budapest builds and operates networks by conducting meetings with Hungarian organisations for the exchange of ideas on migrants' rights, a subject of significant public interest.<sup>22</sup> By criminalising such activity where the Government could construe it as facilitating illegal asylum or residence, the Stop Soros law interferes with OSI-Budapest's Article 10 rights.<sup>23</sup>
17. *Funding*: By criminalising the funding of "organising activities" that could be construed by the Government as facilitating illegal asylum or residence, the Stop

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<sup>16</sup> Annex 4, p. 228.

<sup>17</sup> *Akcam v. Turkey*, Judgment of 25 October 2011 para 68.

<sup>18</sup> *Yilmaz Yildiz and others v. Turkey*, Judgment of 14 October 2014, paras. 33 and 41.

<sup>19</sup> Annex 2, p. 88; as well as Code of Criminal Procedure, Act No. XC of 2017, Section 272, Chapter XLIV, Chapter XLIX and Chapter L (no translation available).

<sup>20</sup> *RTBF v. Belgium*, Judgment of 29 March 2011, para. 105.

<sup>21</sup> *Open Door and Dublin Well Woman v. Ireland*, Judgment of 29 October 1992, para 7; Application, para. 12-13, 15, Section F, A; and Annex 4, p. 228.

<sup>22</sup> Application, paras. 4, 6, 12, 13, 15, 24, and Section F, A.

<sup>23</sup> *Lindon, Otchakovsky-Laurens and July v. France*, Judgment of 22 of October 2007, para. 48.



**OPEN SOCIETY  
JUSTICE INITIATIVE**

Soros law (Section 353/A(2)) interferes with OSI-Budapest's right under Article 10 to provide financial support for expressive activities (e.g., preparing or distributing materials, building and operating networks, advocacy and dissent). This Court has recognised that Article 10 protects financial contributions to produce "publications and other means of communication" directed at promoting electoral candidates during an election period."<sup>24</sup> It has also recognised "that there exists a strong public interest in enabling . . . groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest."<sup>25</sup> Accordingly, financial contributions directed at expressive activity promoting the human rights of migrants (including migrants in irregular situation) an issue of "general public interest," should also be protected under Article 10. Moreover, Article 10 protects OSI-Budapest's funding for migrants' rights (including migrants in irregular situation) as a form of protest or "expression of opinion" against the Government's violations of those rights.<sup>26</sup>

18. *Other activities including advocacy and criticism of the Government on matters of public interest:* Since the law's detailed reasoning makes clear that the aforementioned activities are only illustrative and non-exhaustive, the Stop Soros law prohibits OSI-Budapest from engaging in additional Article 10 protected activities such as advocacy and criticism of the Government on migrants' rights, where such criticism could be construed by the Government as facilitating illegal asylum or residence.<sup>27</sup>

*The Soros Tax law: Section 253 of Act XLI of 2018*<sup>28</sup>

19. The Soros Tax law imposes a 25% tax on (1) "financial support of an immigration supporting activity" in Hungary; and (2) "financial support to the operations of an organisation with a seat in Hungary that carries out activities to promote migration." The detailed reasoning for this section states that "the taxable entity is primarily the organisation granting the financial support."<sup>29</sup>

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<sup>24</sup> *Bowman v. United Kingdom*, Grand Chamber Judgment of 19 February 1998, paras. 33 and 47.

<sup>25</sup> *Steel and Morris v. United Kingdom*, Judgment of 15 February 2005, para 89.

<sup>26</sup> *Hashman & Harrup v. United Kingdom*, Judgment of 25 November 1999, para. 28 (Article 10 protects not only the substance of ideas and information but also the form in which they are conveyed).

<sup>27</sup> *Arslan v. Turkey*, Grand Chamber Judgment of 8 July 1999, para. 46; and Annex 2, pp. 84 and 87-88 and Application, para. 3 and Section F, A.

<sup>28</sup> Annex 2, pp. 88-90.

<sup>29</sup> Annex 2, p. 86.

**OPEN SOCIETY  
JUSTICE INITIATIVE**

20. This provision interferes with OSI-Budapest's Article 10 rights by (i) imposing a tax on financial contributions it makes to organisations that engage in expressive activities to promote migration;<sup>30</sup> and (ii) potentially subjecting funding for all of OSI-Budapest's operations (including non-migration-promoting activities) to a 25% tax, if OSI-Budapest continued to engage in expressive activity promoting migration (such as "building and operating networks" or "propaganda activities that portray immigration in a positive light," or funding others to engage in expressive activity). The law therefore restricts OSI-Budapest's ability to engage in such expressive activity.<sup>31</sup> It also restricts OSI-Budapest from funding others to engage in "migration promoting" activities including "carrying out and participating in media campaigns and seminars," "organising education," "building and operating networks," or engaging in "propaganda activities that portray immigration in a positive light."<sup>32</sup> In the past, OSI-Budapest has engaged in the latter two forms of speech, "building and operating networks" and "portraying immigration in a positive light", and funded most of them.<sup>33</sup> On 22 July 2018, István Hollik, Spokesperson of Fidesz-KDNP parliamentary group, stressed that "Soros-organisations will be heavily charged, if they conduct any kind of activities supporting migration, and if they receive funding for such aims from anyone."<sup>34</sup>
21. The Soros Tax law is an additional financial burden in a not-for-profit field where governments typically grant tax exemptions precisely to encourage activity in the public interest. The Council of Europe's Committee of Ministers has recommended exempting NGOs from such taxes.<sup>35</sup>

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<sup>30</sup> *Bowman v. United Kingdom*, paras. 33 and 47.

<sup>31</sup> Annex 2, pp. 88-89.

<sup>32</sup> Annex 2, p. 89.

<sup>33</sup> Annex 8, pp. 1276-1288, and 1306-1307.

<sup>34</sup> Annex 7, pp. 1111-1112, 1118-1121, 1127-1128, and 1131; and Annex 3, p. 219.

<sup>35</sup> Annex 6, p. 259 (Council of Europe Committee of Ministers, Recommendation CM/Rec(2007)14, para. 57). The creation of a new tax aimed at restricting the work of human rights organisations brings Hungary closer to countries like Egypt, Kazakhstan and Russia. Annex 6, pp. 1060-1061 (OHCHR: "Egypt NGO law: UN expert warns about growing restrictions on civil society"). Annex 8, pp. 1326-1328 (Amnesty International: "Kazakhstan: Persecution of NGO for 'failure to pay taxes' as authorities again clamp down on dissent"), and p. 1153 (Human Rights Watch, Human Rights Watch on Russia: An Uncivil Approach to Civil Society).

22. Pursuant to the Soros Tax law, Hungarian tax authorities have already started to interrogate civil society organisations.<sup>36</sup>

*The interferences are not justified*

23. OSI-Budapest has spent significant time and resources to understand how the Stop Soros law and the Soros Tax apply to its activities, as well as those of its grantees, among other Hungarian civil society organizations. In addition, the introduction of both the Stop Soros law and the Soros Tax law caused OSI-Budapest to suspend all its grants, and move its Budapest-based staff and international operations out of Hungary in fear of criminal prosecution and abusive taxation.<sup>37</sup>
24. The interferences by the Stop Soros law and the Soros Tax law are not justified by Article 10, as they pursue predominantly illegitimate aims (paras. 57-66), are not prescribed by law, and are disproportionate.

Not prescribed by law

25. Article 10 requires that the “relevant law must provide a clear indication of the circumstances when such restraints are permissible.”<sup>38</sup> The overbreadth of legal provisions reduces the foreseeability of their application.<sup>39</sup> As the Stop Soros law criminalises an overly broad and open-ended list of “organising activities” (including “preparing or distributing informational materials” and “building or operating a network”), it does not allow affected individuals and organisations to “foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”<sup>40</sup> The detailed reasoning of the law readily concedes that the list of “organising activities” is non-exhaustive.<sup>41</sup>
26. The HUCC erred in failing to recognise the law’s lack of foreseeability<sup>42</sup> and by ruling instead that the law’s terms (i.e., “organising activity, organising border monitoring, building or operating of network”) are not “incomprehensible.”<sup>43</sup>

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<sup>36</sup>Annex 7, pp. 1127-1132.

<sup>37</sup> Annex 4, pp. 241-242.

<sup>38</sup> *Gaweda v. Poland*, Judgment of 14 March 2002, para. 40.

<sup>39</sup> *Dink v. Turkey*, Judgment of 14 September 2010, para. 116; *Tatar v. Hungary*, Judgment of 12 September 2012, para. 31.

<sup>40</sup> *Goodwin v. The United Kingdom*, Judgment of 27 March 1996, para. 31.

<sup>41</sup> Annex 2, p. 84.

<sup>42</sup> *Dink v. Turkey*, para. 116; *Tatar v. Hungary*, para. 31; *Goodwin v. The United Kingdom*, para. 31.

<sup>43</sup> Annex 9, p. 1365 (Hungarian) and 1393 (English).



**OPEN SOCIETY  
JUSTICE INITIATIVE**

27. The Soros Tax law similarly lacks foreseeability, because it is not clear (i) when an organisation becomes, or ceases to be, one that “carries out activities to promote migration such that funding for all of the organisation’s operations are taxed at 25%;<sup>44</sup> and (ii) when a “programme, action or activity ... is directly or indirectly aimed at promoting immigration.”<sup>45</sup>

Illegitimate aims

28. The predominant aims of Act VI of 2018 (the Stop Soros law) and Act XLI of 2018 (Soros Tax law) are illegitimate (paras. 57-66, below).

Not necessary in a democratic society

29. Even if this Court were to find that the Stop Soros law and the Soros Tax law were enacted pursuant to a legitimate aim, the means adopted by the Government are disproportionate and not necessary in a democratic society. Because OSI-Budapest is a public “watchdog,”<sup>46</sup> “the most careful scrutiny” should be applied to the two laws and a narrow margin of appreciation should be afforded to Hungary.<sup>47</sup>

30. *Nature and Severity of Sanctions*: This Court has consistently ruled in the context of the right to freedom of expression that “the nature and severity of the sanctions imposed are ... factors to be taken into account when assessing the proportionality of the interference,”<sup>48</sup> and that the chilling effect of a provision is relevant to its proportionality.<sup>49</sup> Even the imposition of a mild administrative sanction can “have an undesirable chilling effect on public speech.”<sup>50</sup> The Soros Tax law and the Stop Soros law fit this test. What is more, this Court has also recognised that criminal penalties for political expression or expression on matters of public interest that do not incite violence or hatred are disproportionate.<sup>51</sup> In prescribing criminal

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<sup>44</sup> Annex 2, Section 253(1), p. 88.

<sup>45</sup> Annex 2, Section 253(2), pp.88-89.

<sup>46</sup> *Guseva v. Bulgaria*, Judgment of 17 February 2015, para. 38

<sup>47</sup> *Animal Defenders International v. The United Kingdom*, Grand Chamber Judgment of 22 April 2013, para. 102.

<sup>48</sup> *Baka v. Hungary*, Grand Chamber Judgment of 23 June 2016, para. 160; *Guja v. Moldova*, Grand Chamber Judgment of 12 February 2008, para. 95, and *Morice v. France*, Grand Chamber Judgment of 23 April 2015, para. 127; *Cumhuriyet Vakfi and Others v. Turkey*, Judgment of 8 October 2013, paras. 62-63.

<sup>49</sup> *Lombardo and Others v. Malta*, Judgment of 24 April 2007, para 61; *Lewandowska-Malec v. Poland*, Judgment of 18 September 2012, para.70 and *Gra Stiftung Gegen Rassismus und Antisemitismus v. Switzerland*, Judgment of 19 January 2018, paras 77-78.

<sup>50</sup> *Tatar and Faber v. Hungary*, para 41.

<sup>51</sup> *Stern Taulats and Roura Capellera v. Spain*, Judgment of 13 March 2018, paras. 36, 40-42.

**OPEN SOCIETY  
JUSTICE INITIATIVE**

penalties (including imprisonment and dissolution) for expressive activities relating to migrants' rights, the Stop Soros law is clearly disproportionate and not lawful in a democratic society. The HUCC erred in failing to recognise this disproportionality. In concluding that the Stop Soros law did not violate the right to freedom of expression, the HUCC observed (contrary to this Court's jurisprudence) that "punishment, usually custodial arrest, is considered relatively moderate within the criminal law system."<sup>52</sup>

31. *Overbreadth*: The Soros Tax law is overly broad because it targets all activities and organisations promoting migration, including legal migration. Its effects are disproportionate because even if a funder provided financial support to an organisation for activities other than promoting migration, the entirety of that financial support could be subject to the 25% tax as long as that organisation "carrie[d] out" any "activity," however miniscule, and at any point in time after the Soros Tax law entered into force, to "promote migration."
32. The Stop Soros law is overly broad and disproportionate because it (i) criminalises support for applications for asylum and residence permit applications, which are lawful under international and EU law; (ii) criminalises civil society activities that are at the core of article 10 protected activities that do not have a sufficient causal connection with illegal immigration; (iii) could lead to the dissolution of an entire organisation even if only a small fraction of its work related to migrants' rights; and (iv) lacks an effective humanitarian exception.
33. (i) *Criminalisation of lawful activities*: The "general reasoning" for the Stop Soros law states that one of its aims is "to combat illegal immigration and activities that facilitate it."<sup>53</sup> Even if that were the actual aim of the law, the Stop Soros law criminalises support for applications for asylum and residence permits which are lawful under international and EU Law. Accordingly, the HUCC's holding that the Stop Soros law only criminalises organising activities carried out "in order to" facilitate asylum for those "not entitled to asylum in Hungary" or residence permits for those entering or residing illegally in Hungary<sup>54</sup> does not reduce the law's

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<sup>52</sup> Annex 9, p. 1366 (Hungarian) and 1394 (English).

<sup>53</sup> Annex 2, p. 87.

<sup>54</sup> Annex 9, p. 1363 (Hungarian) and 1392 (English).

**OPEN SOCIETY  
JUSTICE INITIATIVE**

disproportionality, because the Government’s position on who is “not entitled” to asylum or residence titles in Hungary violates international and EU law.

34. The Stop Soros law criminalises support for asylum seekers who have not been persecuted “in the country through which they arrived in Hungary.” But, as the Venice Commission (VC) emphasised: “the mere fact that a person has arrived from or through a safe (third) country cannot be considered as proof that this person does not have reasons to fear persecution.”<sup>55</sup> The VC has warned that the Stop Soros law “could be applied with regard to persons assisting migrants who may not be considered illegal migrants, for example, because the transit country may not be considered a safe country for that particular migrant.”<sup>56</sup> Similarly, UNHCR guidance has explained that “[t]here is no obligation under international law for a person to seek international protection at the first effective opportunity”<sup>57</sup> and that “[t]he intentions of the asylum-seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account. Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another State.”<sup>58</sup>
35. The Stop Soros law criminalises activities protected under EU Law. The European Commission has referred Hungary to the CJEU on the grounds that the Stop Soros law criminalises support to asylum applicants, curtailing their right to communicate with non-governmental organisations.<sup>59</sup> A second ground for the referral is that the Stop Soros law introduces “new grounds for declaring an asylum application inadmissible by restricting the right to asylum only to people arriving in Hungary directly from a place where their life or freedom are at risk.”<sup>60</sup>
36. The Stop Soros law also criminalises support to residence permit applications that are lawful and protected under EU Law. Article 3.1 of Council Directive 2004/81/EC recognises that for “third-country nationals who are, or have been

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<sup>55</sup> Annex 6, p. 457.

<sup>56</sup> Annex 6, p. 459.

<sup>57</sup> Annex 6, p. 979 (Summary Conclusion on the Concept of Effective Protection, Lisbon Expert Roundtable, UNHCR, December 2002).

<sup>58</sup> Annex 2, pp. 213-216 (EXCOM Conclusion No 15 (XXX) ‘Refugees without an Asylum Country’).

<sup>59</sup> Annex 6, pp. 974-975 (European Commission Press Release, 25 July 2019), and Annex 2, pp. 129-184 (Directive 2013/32/EC), and Annex 2, pp. 185-212 (Directive 2013/33/EC).

<sup>60</sup> Annex 6, pp. 974-975 (European Commission Press Release, 25 July 2019), Annex 2, pp. 98-128 (Directive 2011/95/EC), and Annex 2, pp. 129-184 (Directive 2013/32/EC).

**OPEN SOCIETY  
JUSTICE INITIATIVE**

victims of offences related to the trafficking in human beings,” are eligible for residence permits “even if they have illegally entered the territory of the Member States.”<sup>61</sup> In addition, article 3.1 of Directive 2004/38/EC recognises that non-EU spouses of EU citizens are eligible for residence permits in the EU citizen’s EU country of residence regardless of how they entered that country.<sup>62</sup> If OSI-Budapest were to fund organisations that inform trafficking victims or Hungarian nationals’ spouses who had entered Hungary illegally of their rights to residence permits under these Directives, it could be criminally prosecuted under the Stop Soros law.

37. (ii) *Lack of causal connection with illegal immigration:* The HUCC decision held that the Stop Soros law “provides further protection” in addition to two pre-existing Hungarian criminal code provisions criminalising “illegal immigrant smuggling” (Section 353) and “facilitation of unauthorized residence” (Section 354), because the Stop Soros law “does not require the new criminal offence to be linked to the basic offence of illegal immigration or illegal residence (that is to the actions of illegal immigrants) in such a direct and unconditional way”.
38. The Stop Soros law as construed by the HUCC criminalises a broad swath of activities that *indirectly could* have a “stimulating, supportive effect” on illegal immigration even if those activities did not actually result in illegal immigration.<sup>63</sup> If OSI-Budapest were to fund organisations that supported migrants and refugees by informing them of their rights or helped them apply for asylum or residence titles, it could be prosecuted under the Stop Soros law on the grounds that informing these individuals of their rights *indirectly could* stimulate illegal immigration, without any showing that illegal immigration actually increased as a result of OSI-Budapest’s conduct. The Venice Commission has observed, “[s]eeking asylum or requesting a title of residence is not a crime, and thus, it should not be a crime to support a person in this position.”<sup>64</sup> By criminalising support for asylum and titles of residence applications that the Hungarian

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<sup>61</sup> Annex 2, p. 94.

<sup>62</sup> Annex 2, p. 128 (C-127/08 Metock, 11 June 2008, para. 99). Both Directives have been transposed to Hungarian law (Act II of 2007, sections 13.2, 30.1, and 29.1e).

<sup>63</sup> Annex 9, p. 1361-1362 (Hungarian) and p. 1391 (English).

<sup>64</sup> Annex 6, p. 457.

**OPEN SOCIETY  
JUSTICE INITIATIVE**

authorities view as unfounded, the Stop Soros law in effect chills civil society organisations like OSI-Budapest from supporting *lawful* applications.

39. (iii) *Dissolution is a disproportionate penalty*: The fact that criminal prosecution could potentially lead to the dissolution of an entire organisation even if only a small fraction of its work related to migrants' rights, where such rights could be construed by the Government as facilitating illegal asylum or residence titles, is further evidence of the law's disproportionality.<sup>65</sup>
40. (iv) *Lack of Effective Humanitarian exception*: The HUCC decision states that the Stop Soros law "may not cover selfless behaviour fulfilling the obligation to help the vulnerable and poor" but then adds that this behaviour cannot be "related to the purpose forbidden by the legislation in question."<sup>66</sup> As such, the law as construed by the HUCC is overbroad because it does not create an effective humanitarian exception. The Council of the European Union has emphasised "that a coherent, credible and effective policy with regard to preventing and countering migrant smuggling, which fully respects human rights and the dignity of the smuggled migrants as well as of those providing humanitarian assistance... [is an] essential part of a comprehensive EU migration policy."<sup>67</sup> The Venice Commission has also warned that the lack of a "humanitarian exception" together with the provision of an open-list of organisational activities criminalises "advocacy and campaigning activities, including informing individuals of their rights and legal protections."<sup>68</sup> Such activities could be prosecuted under the Stop Soros law on the grounds that they facilitate illegal immigration, the "purpose forbidden by the legislation."<sup>69</sup>
41. *Lack of necessity of a new criminal provision*: The Hungarian Criminal Code already contains standard provisions that criminalise the smuggling of illegal immigrants (Section 353) and facilitation of unauthorised residence (Section 354). There was therefore no need to enact the Stop Soros law, which criminalises activities protected by Articles 10 and 11. Significantly, according to the EU's Fundamental Rights Agency, no other EU member state's legislation explicitly

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<sup>65</sup> Annex 2, p. 21 (Act CIV of 2001, Section 4, Criminal Code measures applicable to legal entities).

<sup>66</sup> Annex 9, p. 1345 (Hungarian) and p. 1381 (English).

<sup>67</sup> Annex 6, p. 574-580.

<sup>68</sup> Annex 6, p. 464.

<sup>69</sup> Annex 9, p. 1345 (Hungarian) and p. 1381 (English).

**OPEN SOCIETY  
JUSTICE INITIATIVE**

criminalises “facilitation of illegal entry or stay” by explicitly covering “network building”, “dissemination of informational material”, or “border monitoring”<sup>70</sup>

42. *Lack of Evidence of Public Security Threats*: The Government claims that the Stop Soros law aims to protect public security,<sup>71</sup> but has not offered a single example of a public security risk to which the Stop Soros law responds. The Court has found unsubstantiated allegations of threats to national security to be insufficient.<sup>72</sup>
43. *Lack of Public Consultation*: The Stop Soros law is also disproportionate, as it was hastily adopted without public consultation with experts and civil society organisations.<sup>73</sup> The Council of Europe’s Committee of Ministers has stated that “NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.”<sup>74</sup>

**B. Article 11: Violation of the right to freedom of association**

44. The Stop Soros law and the Soros Tax interfere with OSI-Budapest’s right to freedom of association. The two provisions pursue predominantly illegitimate aims, are disproportionate and are not formulated with sufficient precision to be considered to be prescribed by law.

Interference

*The Stop Soros law: Section 353/A of the Criminal Code*

45. The Stop Soros law interferes with OSI-Budapest’s Article 11 rights by restricting it from “building or operating a network,” which could include (i) any meetings with Hungarian organisation partners on migrants’ rights to asylum or residence titles, Section 353/A(5)(c), and (ii) funding activities in support of asylum proceedings or residence titles, Sections 353/A (1) and (2). For example, in order to avoid prosecution under the Stop Soros law, OSI-Budapest had to discontinue

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<sup>70</sup> Annex 6, pp. 599-627 (European Union Agency for Fundamental Rights, EU Member States’ legislation on irregular entry and stay, as well as facilitation of irregular entry and stay, 2014, annex); Annex 6, p. 827 (Study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the PETI Committee, “Fit for purpose?” December 2018 EN); and Annex 6, pp. 719-722 (European Commission Staff Working Document, “Refit Evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package”, 2017).

<sup>71</sup> Annex 2, pp. 83-84.

<sup>72</sup> *Stomakhin v. Russia*, Judgment of 9 May 2018, para. 85.

<sup>73</sup> Annex 6, pp. 443 and 456.

<sup>74</sup> Annex 2, p 261.



**OPEN SOCIETY  
JUSTICE INITIATIVE**

funding for organisations that provide legal support (beyond legal representation)<sup>75</sup> and information for asylum proceedings. This Court has recognised in a number of decisions that “lack of access to information is a major obstacle in accessing asylum procedures.”<sup>76</sup> By criminalising “organising activities” that provide information necessary for accessing asylum procedures, the Stop Soros law makes it even harder to access such procedures. As such, even though OSI-Budapest has not yet been prosecuted under the Stop Soros law, the very real threat of prosecution chills OSI-Budapest’s exercise of its Article 11 rights.<sup>77</sup>

*The Soros Tax law: Section 253 of Act XLI of 2018*

46. The Soros Tax law interferes with OSI-Budapest’s Article 11 right by imposing a 25% tax (i) on financial support OSI-Budapest provides to organisations that engage in activities to promote migration; and (ii) potentially subjecting funding for all of OSI-Budapest’s operations (including non-migration-promoting activities) to a 25% tax, if OSI-Budapest continues to promote migration, including through “building and operating networks.” Section 253(1), (2)(c), and (3).
47. The Soros Tax law restricts OSI-Budapest from engaging in two core Article 11 associational activities consistent with its Charter: (i) “building and operating networks” in support of migrants’ human rights; and (ii) funding organisations that protect these rights. OSI-Budapest’s Charter, states, in relevant part, that one of the objectives of the foundation is “to organise and support programmes in connection with human rights (minority) problems” and provide financial support to “institutions and legal entities” to achieve that objective (among others).<sup>78</sup>
48. This Court has recognised a range of activities that comprise the right of freedom of association including, *inter alia*, the carrying-out of an organisational mandate, holding public meetings, disseminating information,<sup>79</sup> distributing propaganda,

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<sup>75</sup> Annex 9, pp. 1363-1364 (Hungarian) and p. 1392 (English).

<sup>76</sup> *Ilias and Ahmed v. Hungary*, Judgment of 14 March 2017, para. 116; *M.S.S. v. Belgium and Greece*, Judgment of 21 January 2011, paras. 301 and 304, and *Hirsi Jamaa and Others v. Italy*, Grand Chamber Judgment of 23 February 2012, para. 204.

<sup>77</sup> *Yilmaz Yildiz and others v. Turkey*, paras. 33 and 41.

<sup>78</sup> Annex 4, p 228; and Application, para. 12.

<sup>79</sup> *Koretskyy and Others v. Ukraine* (2008), para. 52. See also *Viktor Korneenko et al. v. Belarus*, Communication No. 1274/2004, para. 7.2.

## OPEN SOCIETY JUSTICE INITIATIVE

lobbying authorities, enlisting volunteers, and publishing.<sup>80</sup> In addition, the Court has recognised that receiving and using grants or other financial donations is part of the right to freedom of association.<sup>81</sup> Giving funds should equally be protected by Article 11. This Court has held that "the obligation to contribute financially to an association can resemble . . . that of joining an association and can constitute an interference with the negative aspect of the right to freedom of association."<sup>82</sup> If being forced to pay an association is a violation of the negative aspect of freedom of association, then being prevented from funding an association should be a violation of the positive aspect of the right (the right to associate with others).

49. The former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has concluded that fundraising activities are protected under Article 22 of the ICCPR, and funding restrictions that impede the ability of associations to conduct their activities constitute an interference with the right to freedom of association.<sup>83</sup> In 2016 the UN Human Rights Council passed a resolution "[r]ecognizing that the ability to seek, secure and use resources is essential to the existence and sustainable operation of civil society actors, and that *undue restrictions on funding to civil society actors undermine the right to freedom of association,*" in which it "underline[d] the importance of the ability to solicit, receive and utilize resources for their work" (*emphasis added*).<sup>84</sup>
50. OSI-Budapest has the right, under Article 11, to provide financial support to groups protecting human rights, including the rights of migrants, in accordance with its Charter. Providing funds to a group, especially consistently over time in a structured relationship, is a core way for one entity to associate, and demonstrate support for common objectives, with another entity. In this vein, OSI-Budapest has engaged, through its funding over the years, in associational activities with grantees, such as Hungarian Helsinki Foundation, aimed at achieving common objectives related to the protection of internationally recognised human rights.

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<sup>80</sup> *Koretskyy and others v. Ukraine*, para. 52. Annex 6, p. 1024 (Report to the UN Human Rights Council of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 24 April 2013, par. 8).

<sup>81</sup> *Ramazanova v. Azerbaijan* (2007), para. 59.

<sup>82</sup> *Geotech Kancev GmbH v. Germany* (2016), para. 53; *Vörður Ólafsson v. Iceland* (2010), para. 48.

<sup>83</sup> Annex 6, p. 1024.

<sup>84</sup> Annex 6, pp. 1054-1059 (UN Human Rights Council Resolution n. 32/31).

**OPEN SOCIETY  
JUSTICE INITIATIVE**

51. The Stop Soros law and the Soros Tax law violate OSI-Budapest’s right to freedom of association because they pursue predominantly illegitimate aims; they are not prescribed by law; and they are disproportionate to any aim alleged by the State.

Not prescribed by law

52. As explained in the Article 10 analysis above, the Stop Soros law and the Soros Tax law do not comply with the requirement of foreseeability and are not, therefore, prescribed by law.

Illegitimate aims

53. The Stop Soros law and the Soros Tax law pursue predominantly illegitimate aims, as stated in the section on Article 18 below (paras. 57-66). The Stop Soros law and the Soros Tax law violate Article 11.

Not necessary in a democratic society

54. Even if this Court were to find that the Stop Soros law and the Soros Tax law were enacted pursuant to a legitimate aim, the means adopted by the Government are disproportionate and not necessary in a democratic society.

55. As argued above under Article 10, both provisions are disproportionate because of the nature and severity of sanctions they impose and their overbreadth (paras. 31-40, above). In *Tebieti*, this Court reiterated that “the exceptions to freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a ‘pressing social need’; thus, the notion ‘necessary’ does not have the flexibility of such expressions as ‘useful’ or ‘desirable’.”<sup>85</sup>

56. In addition, as noted above under Article 10, the Stop Soros law is disproportionate on account of the lack of public consultation associated with its adoption (para. 43, above). Finally, as under Article 10, the mere invocation of national security, without further evidence of national security threats, does not justify Article 11 restrictions under the Stop Soros law.<sup>86</sup>

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<sup>85</sup> *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, Judgment of 8 October 2009, para. 67.

<sup>86</sup> *Sidiropoulos v. Greece*, Judgment of 10 July 1998, para. 41; *United Macedonian Organisation Ilinden – Pirin and Others v. Bulgaria*, Judgment of 24 November 2005, para 68.

**C. Article 18: Limitation on use of restrictions on Article 10 and 11 rights**

57. The “object and purpose of Article 18 ... is to prohibit the misuse of power.”<sup>87</sup> The enactment of the Stop Soros law and the Soros Tax law represent a clear abuse of power, leading to violations of Articles 10 and 11.
58. The Stop Soros law and the Soros Tax law were enacted, as part of a wider Government strategy, to pursue two illegitimate aims, as recognized by the Council of Europe’s Commissioner of Human Rights: “to target” (i) “legitimate civil society activities related to immigration”, and (ii) “civil society organisations critical of the government”<sup>88</sup> Such targeting was actually effectively aimed at curtailing OSI-Budapest’s activities.
59. In assessing Article 18 violations, the Court is not restricted to “direct proof” of the ulterior motive, and should look to the “totality” of the circumstances in the case, including “information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts.”<sup>89</sup> Relevant information will include reports and opinions by international human rights organisations.<sup>90</sup> That the Stop Soros law and the Soros Tax law are predominantly aimed at targeting legitimate immigration-related civil society activities and civil society organisations critical of the Government is evident from the following circumstances, taken in their “totality”:
60. *Legislative intent of legal provisions:* The stated aims of the Stop Soros law go far beyond combating illegal immigration. The General Reasoning for the Stop Soros law expressly states that its aim is “to prevent Hungary from becoming a migrant country,” which this Court’s Article 10 and 11 jurisprudence would not recognise as a legitimate aim.<sup>91</sup> As mentioned under Annex 3, the Stop Soros law aims to create a “homogeneous”<sup>92</sup> society, to “avoid allowing even one single migrant to

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<sup>87</sup> *Merabishvili v. Georgia*, Grand Chamber Judgment of 28 November 2017, para 303.

<sup>88</sup> Annex.6, pp. 501 and 504; Annex 2, p. 80; and Annex 3, pp. 218-224.

<sup>89</sup> *Merabishvili*, para 317 and see *Rashad Hasanov v. Azerbaijan*, Judgment of 7 June 2018, para 118, *Rasul Jafarov v Azerbaijan*, Judgment of 17 March 2016, para 162, and *Navalnyy v. Russia*, Judgment of 9 April 2019, para. 165.

<sup>90</sup> *Rashad Hasanov v. Azerbaijan*, para 125.

<sup>91</sup> Annex 2, p. 80.

<sup>92</sup> Annex 3, p. 220 (Ministry of Justice, A világlátásunkat kell megvédenünk, 14 December 2017.)

enter Hungary,”<sup>93</sup> and to assure that Europe “remain[s] a land of Europeans.”<sup>94</sup> The aim to restrict migration is even clearer from the text of the Soros Tax law, which imposes a 25% tax on activities for the mere fact that they “portray immigration in a positive light.” The targeted activities cover, therefore, activities related to legal migration. Such legal activities have been curtailed in the case of OSI-Budapest.

61. The aim to “prevent Hungary from becoming a migrant country” breaches European values of democracy and pluralism, recognised by European Union Law<sup>95</sup> and this Court. This Court has decided a number of freedom of association cases, finding that restraints on plural political parties and associations were “not necessary in a democratic society,” by unduly limiting pluralism. Pluralism, defined to include varied “cultural traditions,”<sup>96</sup> is a core element of democracy.<sup>97</sup>
62. *Overbreadth*: The overbreadth and disproportionality (paras. 31-40, above) of the Stop Soros law and the Soros Tax law, taken together with other factors, confirm that the laws have the aforementioned illegitimate aims.
63. *Absence of foreseeability*: When combined with criminal penalties and substantial tax consequences, the “lack of clarity” of the provisions, including the open-ended list of “organising activities” in the Stop Soros law and the uncertain text of the Soros Tax law (paras. 3, 25 and 26, above), also has a chilling effect on civil society organisations’ rights to freedom of expression and association.<sup>98</sup>
64. *Legal and political context of sustained attack on democratic institutions*: The laws’ adoption caps a multi-year series of Government attacks against free media, the courts, and civil society organisations. The Stop Soros law and the Soros Tax law conform to this trend by undermining civil society.<sup>99</sup>

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<sup>93</sup> Annex 3, p. 220 (Ministry of Foreign Affairs, El kell kerülni, hogy Magyarország legyen a migránsok végállomása, 30 March 2018)

<sup>94</sup> Annex 3, p. 220 (Ministry of Foreign Affairs, Az illegális bevándorlást meg kell állítani, 7 April 2018)

<sup>95</sup> Annex 2, pp. 80 and 216.

<sup>96</sup> *Freedom and Democracy Party (Özdep) v. Turkey*, Judgment of 8 December 1999, para. 37. *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, para. 53; *Gorzelik and others v. Poland*, Grand Chamber Judgment of 17 February 2004, para 92; *Case of Moscow Branch of the Salvation Army v. Russia*, Judgment of 5 October 2006, para. 61; *Zhechev v. Bulgaria*, Judgment of 21 June 2007, para 35.

<sup>97</sup> *Freedom and Democracy Party (Özdep) v. Turkey*, para. 37.

<sup>98</sup> *Cumhuriyet Vakfi and Others v. Turkey*, paras. 62 and 63.

<sup>99</sup> Application, paras. 2-24.

**OPEN SOCIETY  
JUSTICE INITIATIVE**

65. *Official campaign against Soros and OSI-Budapest.* As part of this broader assault, the Hungarian government has waged a virulent official campaign against George Soros, the representative of the founder of OSI-Budapest, and OSI-Budapest itself, including by prominently displaying in public spaces across Hungary billboards that lampoon Soros,<sup>100</sup> and issuing statements against Soros, OSF, and OSI-Budapest.<sup>101</sup> The Stop Soros law and the Soros Tax law target OSI-Budapest, due to its critique of human rights violations perpetrated by the Government.<sup>102</sup>
66. *Official Nomenclatures of Act VI and Section 253 of Act XLI:* Hungarian governmental officials refer to the Act and the Section as the Stop Soros law and the Soros Tax law respectively, confirming that they are *ad hominem* provisions, aimed at “stopping” George Soros, OSI-Budapest, and its civil society grantees from opposing the Government on its human rights record. The Venice Commission has noted with respect to the Stop Soros law that, “directing this legislation towards an individual ... is problematic from a rule of law perspective.”<sup>103</sup> The same is true of the Soros Tax law.

**III. JUST SATISFACTION AND CONCLUSION**

67. OSI-Budapest respectfully requests that the Court issue a declaration that the Stop Soros law and the Soros Tax law violate Articles 10, 11, and 18 of the Convention.
68. To end these violations, OSI-Budapest respectfully requests that the Court require the State to conform its legislation to the Convention by repealing the Stop Soros law and the Soros Tax law.
69. OSI-Budapest also requests an award of damages for the purpose of establishing a fund to protect Hungarian civil society organisations’ rights to freedom of expression, and association, including with respect to migrants’ rights.

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<sup>100</sup>Application, para 23, Annex 3, p. 218, and Annex 7, pp. 1115-1117, 1124-1126, 1098, 1100, 1101, 1110.

<sup>101</sup>Annex 3, p. 218. Also, in June 2018, the European Parliament has called on politicians to oppose anti-Semitic statements. Annex 6, p. 742.

<sup>102</sup>Annex 3, pp. 222-225 (Government statements), Annex 4, pp. 233-240 (mission and press releases), and Annex 5, pp. 245-250 (OSF publications).

<sup>103</sup>Annex 6, p. 455.