

Attacking public interest: state capture in Hungary

While Hungary, in general, does not differ from the European average in terms of the weaknesses and strengths of most NIS pillars, the actual risks paint a more ambivalent picture that requires close attention. Hungary has been hit badly by the financial crisis therefore tackling corruption would be essential in order to ensure predictability in the business environment which is a must to increase investment and foster economic growth. There is high need to provide proper transparency and oversight on the use of public funds and political campaigns as party financing is still one of the weakest and electoral management system is one of the strongest pillars. At the same time the business sector is interlinked with the political sector, while we badly miss lobby regulations to cast light on the rather grey area of policy making.

What is a distinguishing feature for Hungary – and means a change since 2007 when the previous NIS study was published – is the high risk of influencing control institutions. While State Audit Institutions, Ombudspersons, Constitutional Courts, Prosecution Services and the Judiciary are strong pillar of the integrity system in most European countries, in Hungary these institutions are at significantly higher risk of undue influence endangering their independence. The head of the State Audit Office used to be deputy faction leader of the governing party's faction during its previous governing term. Two out of 15 Constitutional Court judges are clearly linked to the governing party, one of them moved directly from being an MP to the Court. The office of the ombudsman responsible for data protection and freedom of information was transformed into an authority. An administrative body is by definition part of the executive branch, notwithstanding the fact that its independence is declared by law. The lack of independence vis-à-vis the government of the administrative body charged with the protection of data is susceptible to go counter to the European law as well, as a pending infringement procedure indicates. The head of the media authority used to be an MP of the present major governing party for almost six years and worked as the media expert of them before taking up this position.

Furthermore the Judiciary was transformed in a way that the Chief Judge who had been elected by 2/3rd majority of the parliament had to leave his office in the middle of his term because of reorganization. At the same time, according to the new acts, that entered into force in January, the president of the National Office for the Judiciary has powers to designate another court based on the vague criterion of “adjudicating cases within reasonable period of time” and select judges without real control. Both powers were severely criticized by the Venice Commission of the Council of Europe. According to a recent proposal to amend the laws the Judicial Council (a self-governing body elected by the judges at each Tribunal, Court of Appeal and at the Curia (Supreme Court)) gives an opinion on the candidate selected by the President and has veto power if the President wants to appoint the second or the third best person on candidates' list instead of the first one. However, the passing of the amendment has been pending for months now. There is an infringement procedure going on against Hungary because of lowering the compulsory retirement age of judges that was introduced by the new fundamental law. In the meantime many new judges have been appointed to the places of the retired experienced judges.

The weakening control system allows for a new pattern of corruption in Hungary, where interest groups are able to influence the operation of the state in a centralized way.

Since the governing coalition has 2/3rd majority in the parliament opposition parties have only limited control over legislation and lack opportunities in committees of inquiry. Lawmaking had been accelerated considerably and often MPs submit important bills as individual proposal, as this way there is no obligation for any public consultation. In 2008 56 new acts, in 2009 72 new acts, in 2010 43 new acts, while in 2011 109 new acts were passed. For instance when the new laws on the prosecution service were drafted (almost 100 pages long) the government offered only 1 day for social consultation and submitted the draft laws to the Parliament three days later (21 October 2011). In practice there was hardly any chance to channel the results of the social consultation into the drafting process and these were by far not the only bills handled this way.

Even though the media law has been criticized severely and probably increases self-censorship, investigative journalists do a great job in Hungary. Therefore there are corruption scandals in the media. The public discourse is about cases of one company winning substantial share of public tenders; a certain group of government-close people winning high amount of agricultural subsidy and about a law on tobacco trade that was written by one of the tobacco companies and then the head of faction of the government admitted this fact and found nothing wrong in it. This calls the attention to the lack of lobbying regulations.

Regulations on party and campaign financing are impossible to keep to because the spending limit is so low that it clearly does not cover campaign costs. Parties still submit their reports with unrealistic figures to comply with the law, while the rest of their campaigns, 90% in 2006 and 75% in 2010, is financed from illegal sources. Considering that researches showed that 65% of public procurement procedures are somehow related to corruption it is an indirect but valid finding that most probably public funds are illegally diverted to finance political campaigns through transactions of the business community.

It was not the first time in April 2012 when parliamentary parties tried to get to an agreement on a new regulation; Transparency International coordinated the meetings. However, after having signed a declaration on the principles the whole exercise converted into a window-dressing action since the government coalition was not able to show up at any further meeting to negotiate about the details.

On a positive note, in 2011 the Prosecutor's Office was strengthened by 55 persons and adequate resources to investigate corruption cases. Hungary will join the Open Government Partnership and the government adopted and started to implement an anticorruption program this year. The program concentrates on central public administration, while its main elements are the establishment of the institutional system of whistleblower protection, introduction of codes of ethics in public administration and drafting new regulations on lobbying. Furthermore the program aims to introduce integrity approach within public bodies strengthening the capacity of the authorities concerned and reviewing several business and public procurement related regulations. It also concentrates special focus on awareness raising campaigns. The program, however does not invest substantial efforts in the revolving door phenomenon, and has no measures planned to tackle political corruption or local level administration.

Hungary receives 26.4 Billion euros between 2007-2013, the country's budget and economic growth are basically defined by EU funds. There are plenty of research data about the inefficient use of structural and cohesion funds in Member states because of bad planning and the administrative red tape. We also hear about corruption scandals in almost all MSs. State

capture however allows for the diversion of funds to serve private interests rather than public interest in a systemic way. I cannot say whether this really happens in Hungary, but the holes in the integrity system make it possible.

There are other European countries that due to the economic crises face immense political changes that might follow our example of power centralization and emerging new patterns of corruption. ***The Hungarian example calls the attention of the European community that anticorruption measures and institutions must be built upon democratic principles inherent in the common European values. If not, the risk of weakening institutional systems also means a risk of massive misuse of EU funds which is against economic growth and breaking out of the financial crisis.***

This is a vicious circle that can only be broken by sustainable, predictable anticorruption measures brought in a transparent way in order to achieve real impact. It is in the interest of EU citizens and taxpayers to enforce EU level oversight mechanisms not only on finances but also on institutional level, so that integrity systems in countries exposed to high economic risks are strengthened, while checks and balances are not let to be weakened. ***The European anti-corruption policy and a monitoring system shall follow and support national efforts and implement initiatives in the most democratic way.***