

Civil society review report

Self-Assessment Survey on the United Nations Convention against Corruption

1. About Transparency International Hungary and the aim of this report

Transparency International Hungary is an independent civil society organisation committed to cooperating with a wide range of governmental, non-profit and for-profit corporations and organisations. It is democratic, politically independent and impartial in its work. Its goal as an independent professional organisation is to contribute to mitigating corruption, promoting transparency and accountability in the public sector, and making processes as well as decisions on allocation of public funds public by improving accessibility of public interest information and accountability of office-holders.¹

This report relates to the current review of the implementation in Hungary of the United Nations Convention against Corruption (UNCAC). It is based on the self-assessment document and the accompanying information submitted to TI Hungary by the Ministry of Justice and Public Administration in March 2013. However, recent regulatory steps influencing the effectiveness of acts and measures essential to fight corruption mean our report now extends beyond the core content and scope of the governmental document.

TI Hungary puts forward that the self-assessment report generally refers correctly to criminal law provisions on corruption. However, the government paper fails to provide an account for both the fact that and the reasons why enforcement of these criminal provisions are extremely ineffective. Only a couple of hundred corruption offences (graft, abuse of public power, influence in trading etc.) are uncovered each year, whereas the number of offences registered in a year amounts to half a million. Clearance and conviction rates are even more disappointing, as due to a high rate of attrition most cases uncovered are terminated reasoned by lack of evidence. Meanwhile anti-corruption stakeholders of the state administration show considerable reluctance to seriously address the issue of ineffectiveness. This parallel report draws attention to the consequences of such reluctance.

2. Corruption in Hungary – the general spectrum

The general information given in the self-assessment document on the legal, institutional and political system of Hungary (A.1. General information) has to be viewed in the light of the status of corruption in the country. In 2012, Hungary scored 55 points on Transparency International's Corruption Perception Index, putting it in 46th place among the 176 countries examined. Though Hungary performs reasonably in the region, outranked only by Estonia, Slovenia and Poland, among the 27 EU member states it ranked only 19th, finishing in the bottom part of the list. The recent result shows that Hungary is still severely affected by corruption and performs poorly compared to other EU member states. Establishing accountability and fighting corruption is still a serious political, legal and economic challenge in Hungary.²

Hungary, as a member of the EU, has a democratic system with an institutional setup designed to guarantee checks and balances by law. In practice, however, the possibility to exercise political influence over these institutions has increased significantly since the last

¹ <http://www.transparency.hu/en>

² [http://www.transparency.hu/Governments should hear the global outcry against corruption?bind_info=page&bind_id=322](http://www.transparency.hu/Governments%20should%20hear%20the%20global%20outcry%20against%20corruption?bind_info=page&bind_id=322)

elections in 2010 when FIDESZ – Hungarian Civic Union obtained a two-thirds majority in Parliament. Even though the regulations generally provide sufficient grounds for independence, the professional autonomy of control institutions is called into question in practice as, among others, some judges of the Constitutional Court, top officials of the State Audit Office and the Public Prosecution have explicit political backgrounds.

Consequently, Hungary's system of checks and balances has been weakened significantly. At the same time, due to the control institutions' inability to limit the government's power, private interests prevail over public interest. Even where legislation enacted provides adequate grounds for independence it is doubtful whether control institutions such as the State Audit Office or the bodies of judicial administration can operate free of interference in practice. Corruption risks arising from the symbiotic relationship between the political and the business elite, commonly-voiced doubts regarding the independence of control institutions, and the lack of transparency as well as the clear involvement of private interests in the legislative process, together signal that the state in Hungary has been captured by powerful groups.³

The sectors that face the most alarming corruption risks are political parties and the business sector. While the lobbying act has been repealed with no intention of re-regulation, rules on party and campaign financing do not ensure transparency and accountability, with the result that political parties finance their operations through funding obtained from opaque, unidentified sources. In the business sector, the economic crisis and the fast paced legislative process have created an even more chaotic environment for companies than was previously the case, as they face a heavy regulatory burden and unpredictable state interventions.

Recently the legislature has taken serious steps to curtail freedom of access to public information, consequently hindering the ability of non-governmental and watchdog organisations along with the media to disclose the misuse of public funds or positions.⁴ In addition, among the most crucial steps needed are to reduce political influence on independent institutions, tighten regulation of party and campaign financing, provide effective protection for whistleblowers, and to implement a comprehensive anti-corruption programme covering all sectors and institutions concerned.

3. The effectiveness of anti-corruption measures in Hungary

The measures listed in the government's self-assessment report (A.1. General information) cannot be accepted as being effective without considering their implementation. In spring 2012, TI Hungary welcomed the government's adoption of a resolution to establish clean public life and good governance.⁵ The resolution contained many initiatives that, if implemented, would make up for the existing deficiencies in corruption enforcement. However, by the time of the publication of this report (May

³ For a more detailed analysis see TI Hungary's National Integrity Study 2011. Petra Burai-Péter Hack (eds.) *Corruption Risks in Hungary 2011 – National Integrity Study*. http://www.transparency.hu/NIS_2011_english

⁴ According to the amendment of the Freedom of Information Act of CXII of 2011 adopted on 30 April 2013, a request for public information might be denied if it would hinder the operation of the public body significantly and for a long time. <http://www.parlament.hu/irom39/10904/10904.pdf>
The president of Hungary vetoed the act on 8 May 2013 – as a result this issue is now open for a third reading in Parliament.

⁵ Government Resolution No. 1104/2012 on governmental measures against corruption and adopting the government's Corruption Prevention Programme. http://korrupciomegelozes.kormany.hu/download/d/fc/50000/antikorrupcios_int%C3%A9zkedések_eloterjesztes.pdf

2013), only a few of these commitments had been fulfilled. The consultation procedure has been stalling from the very beginning, with only one-way communication with the Ministry of Justice and Public Administration coordinating the programme but no other ministries concerned.

As a result and also due to the limitations to the freedom of information legislation previously introduced, TI Hungary has quit the governmental consultation group on the anti-corruption programme. The failure to reach the government's own goals as set out in the resolution causes an even more severe situation, as the loopholes in transparency and accountability reduce the government's ability to face and tackle corruption. Consequently, as long as the goals remain unaccomplished and the necessary measures are not taken, the government lets corruption flourish.

From the tasks set out in the resolution the government has adopted the Green Book on ethical standards for public bodies. TI Hungary considered the Green Book as a very important step towards the establishment of an effective ethical regulation for the public sector. However, the draft version of the Green Book only contained recommendations concerning the adoption of codes but no actual ethical regulations, measures or institutions. Despite the comments made by TI Hungary on the draft, the final version of the Green Book as published on the government's website on corruption prevention preserved the initial format, and contained only recommendations and short descriptions with no exact scope or enforceability.⁶ The draft code of conduct for the public sector took only a handful of recommendations made by TI Hungary into consideration. Hence TI Hungary is still concerned by the lack of a comprehensive ethical system, which imposes significant corruption risks on the Hungarian public sector. According to the resolution, public bodies were to adopt their own codes before 31 August 2012 based on the principles enshrined in the Green Book.⁷ However, as the Green Book was only finalised in March 2013 the ethical process within the public sector is in serious delay.

The Hungarian government also joined the international initiative, Partnership on Open Government (OGP). Although NGOs took part in the development of the OGP Action Plan and submitted detailed and well-reasoned recommendations on measures the government should commit to in order to enhance transparency and accountability, the government did not give proper feedback on the submitted document, nor any reason why it didn't adopt the recommended measures. In the end, the final action plan is a mere repetition of the government's anti-corruption programme, a reason why TI Hungary made a strong statement about the lack of adequate dialogue in front of all assembled at the OGP intergovernmental meeting, including the UK government minister Nick Hurd. The commitments laid down by the Hungarian government are the improvement of the publicity of fiscal data, the accessibility of public procurement data, the publicity of contracts concluded for the utilisation of public property and with the use of public funds, and the introduction of an integrity control system in the public sector as well as the dissemination of information on anti-corruption and integrity. TI Hungary, along with other civil society stakeholders, emphasised that as far as the OGP accession process is concerned, the government gives something with one hand but takes away with the other since, while joining the OGP, it has also introduced severely restrictive measures hindering the fight against corruption. As the OGP Steering Committee adopted the Hungarian Action Plan, TI Hungary informed this forum about recent legislative moves,

⁶ Final version as of 1 March 2013.

<http://korrupciomegelozes.kormany.hu/download/e/0b/60000/Z%C3%B6ld.pdf>

⁷ Government Resolution No. 1104/2012. Point 7.

voicing its deepest concerns.⁸

As mentioned above, there is no comprehensive lobby regulation in force in Hungary. The government passed a decree on the order of accepting “promoters of interests”, that is, at least in theory, to provide regulation for more transparency upon a commitment enshrined in the anti-corruption programme.⁹ However, the decree only prescribes that public officials are to report meetings of such nature to their superiors.¹⁰ The solution neither establishes a transparent lobby system, nor enhances the accessibility of information on the background of policy decisions and public spending, or the accountability of public officials. Thus lobbying remains an opaque area in Hungarian public life.

4. The Hungarian judicial system

While the government’s self-assessment report contains a detailed introduction to the structure of the Hungarian judicial system (A.1. General information), the recent fundamental changes also have to be considered as they have had a serious impact on the operations of this system. In 2012, new Fundamental Law and the acts on the status of judges entering into force have brought about the restructuring of the Hungarian judicial system. The self-administrative body of the judiciary, the National Council of Justice, was abrogated; instead, all substantive decisions regarding the judicial administration were given to one person, the head of the newly established National Judicial Office who is elected by a two-thirds majority of MPs. A lurking threat is that the nomination and election process of the likely-to-be president of the National Judicial Office does not exclude political influence of parties in Parliament. TI Hungary, along with other watchdog NGOs and international bodies such as the Venice Commission of the Council of Europe, heavily criticised the lack of checks and guarantees limiting the administrative power and giving it high potential influence on judicial decisions in the new system.

Due to the demand of the organisations concerned, the laws have been amended providing certain boundaries to the power of the president of the National Judicial Office by granting more weight to the decisions of the National Judicial Council, a self-governing body of elected judges. However, this amendment has done nothing to resolve several problems relating to the operation of the judicial system, as the president of the National Judicial Office is still empowered to distribute caseload and apportion cases to different courts upon its own decision.¹¹ Although the president takes the recommendations of the National Judicial Council into account when making decisions about reassigning cases, the final say remains with her. Even though parties to the case being apportioned may appeal against the decision, such an appeal, heard by the Supreme Court (‘Curia’), may only contest the formal unlawfulness of the appealed decision and shall not result in a ruling that limits the margin of appreciation of the president of the National Judicial Office. This means that the decision is still a sole one with hardly any accountability attached, which could severely damage the right to fair procedure. As far as the appointment of judges is concerned, while under the previous legislation the appointment of judges and senior judges depended almost completely upon the decision of the president, due to the amendment the consent of the National Judicial Council is now also

⁸ http://k.blog.hu/2013/05/07/az_ogp-nek_is_irtunk_az_infotv_modositasa_kapesan
http://www.transparency.hu/Government_closing_in_on_freedom_of_information?bind_info=index&bind_id=0
http://www.transparency.hu/uploads/docs/BACKGROUND_The_coming_dark_age_of_democratic_governance_in_Hungary_final.pdf

⁹ Government Resolution No. 1104/2012. Point 5

¹⁰ Government Decree No. 50/2013. (II. 25.); § 10

¹¹ Act CLXI of 2011 on the organisation and administration of courts, § 62-63

required to appoint a judge. However, the president still has the right to cancel the application procedure and call for a new one.¹²

Although TI Hungary warned on several occasions about the corruption risks embedded in the wide discretion regarding reassigning judicial procedures, the fourth amendment to the Fundamental Law reposed the right to do so into the constitution as well.¹³ Consequently, the president of the National Judicial Office, a government appointee, now has the constitutional power to decide on the distribution of cases in the law courts, involving severe corruption risks concerning lobbying and channelling special interests or even government intervention. TI Hungary also urged the EU to take steps against the fourth amendment.¹⁴

It also has to be noted that the fourth amendment to the Fundamental Law undermined the competences and jurisdiction of the Constitutional Court as well. Though the Constitutional Court is not an inherent part of the judicial system, it used to be an essential element of the checks and balances operating on the Hungarian democracy. According to the newest legislative moves, the Constitutional Court may assess only procedural aspects of amendments to the Fundamental Law, while it may not express an opinion or pass a ruling on central budget, tax, or social contributions. A number of its latest rulings have been overturned as a result of amendments to the Fundamental Law. The curtailing of the competences of the Constitutional Court annihilates control over the government administration and Parliament, significantly decreasing their accountability.¹⁵

5. Public prosecution

When assessing the prosecution of corruption cases (III.30. Prosecution, adjudication and sanctions), the institutional as well as the legal framework has to be taken into consideration. The Prosecutor General, elected for nine years, holds a very strong influence over the regulations enshrined in the Fundamental Law.¹⁶ While accountability is only guaranteed through the obligation to report annually on the work of the prosecution service, previously the Prosecutor General could also be challenged by interpellations and questions in Parliament. Parliament's refusal to accept the Prosecutor's answer could have consequences, such as further examination by standing committees of Parliament. Now, with the right to bring interpellations to the Prosecutor General having been abolished, the Prosecutor General's responsibility to Parliament has become more limited. Accountability has also been narrowed by allowing very wide discretion concerning reassigning cases. According to the act on public prosecution, a superior public prosecutor might withdraw and reassign cases to other prosecutors at any stage of the procedure without giving any reason.¹⁷ Such wide discretion puts the right to fair procedure as well as the accountability of law enforcement at high risk. Moreover, there is no forum independent from the prosecution service where an appeal can be presented against a decision of the prosecutor not to bring a case to court. This means that decisions on appeals against dismissals or termination of the investigation remain within the

¹² Act CLXII of 2011 on the legal status and remuneration of judges, § 17-18

¹³ § 14 of the proposal. <http://www.parlament.hu/irom39/09929/09929-0055.pdf>; § 27 (4) of the Fundamental Law

¹⁴ According to recent newspaper articles the EU is about to "warn" the Hungarian government concerning this measure. <http://www.welt.de/politik/ausland/article115735021/Ungarn-fuerchten-Privatkrieg-mit-EU-Kommissarin.html>

¹⁵ § 12 of the proposal. <http://www.parlament.hu/irom39/09929/09929-0055.pdf>; § 24 of the Fundamental Law

¹⁶ § 29 (4) of the Fundamental Law

¹⁷ Act CLXIII of 2011 on public prosecution, § 13 (1)

prosecution. As every prosecutor is obliged by law to fully adhere to the line of command headed by the Prosecutor General, the will of the latter may easily outweigh any other consideration. This gives rise to corruption concerns.

6. Whistleblowing – protection of reporting persons

Hungary has no operating whistleblowing system (III.32. Protection of witnesses, experts and victims; III.33. Protection of reporting persons), although a regulation on the issue, the Act on the Protection of Fair Procedures, entered into force on 1 April 2010, aimed at providing effective protection for employees who submit information on violations of public interest.¹⁸ Originally, another act was meant to accompany this law in order to establish an institution called the Public Interest Protection Office to handle cases resulting from breaches of fair procedures, and also to coordinate a comprehensive anti-corruption policy. The president of the republic vetoed the law on various grounds, and as such it has never been put into action. Consequently, the current act has no institutional backing to provide the protection that is guaranteed by law.

According to the regulations in action, citizens may receive redress by means of their “complaints” and “announcements of general interest”, which they may file at central or local bodies, according to an act adopted in 2004.¹⁹ The act does not cover the complaints that fall under judicial or public administrative procedures. An “announcement of general interest” draws attention to situations that should be solved for the sake of the community, and may also contain recommendations concerning the issue at stake. The public administrative bodies have 30 days to resolve the matter. To give some historical background, the act is based on regulations dating from 1977 that protected the announcers while obliging the entities to record and maintain a log of the cases lodged. It operated poorly: there was hardly any evidence of records on complaints or recommendations received under the act. However, the option to turn to public institutions was upheld along with one of its greatest achievements, the criminal law protection provided for announcers of general interest, which assured that exposing reporting persons to any retribution is a base act to which criminal sanctions shall apply. Nonetheless, a law amending the Criminal Code repealed this offence. Discrimination and/or retribution against whistleblowers now only qualifies as a petty offence (bagatelle offence/contravention), due to the law in force as of 1 February 2013.

The government’s anti-corruption programme states commitment to establishing an effective whistleblowing regulation by correcting the shortcomings of the system by 30 September 2012.²⁰ In addition, ministries were called upon to establish internal whistleblowing systems by 15 November 2012.²¹ However, the deadline set in the resolution has passed without the adoption of any law, while the draft version of the code of conduct setting ethical standards for public bodies only hints at the need to regulate the guarantees and obligations concerning the protection of whistleblowers.²² The government adopted a decree on the integrity control system of public sector organisations, according to which leaders of public bodies (only) might entrust integrity advisors with receiving and investigating whistleblowing reports.²³ Furthermore, the draft code of conduct does not provide an answer on how to distinguish between breaches of ethical norms and law concerning the wrongdoings that whistleblowers must and should

¹⁸ Act CLXIII of 2009

¹⁹ Act XXIX of 2004, § 141-143

²⁰ Government Resolution No. 1104/2012. Point 3

²¹ Government Resolution No. 1104/2012. Point 4

²² <http://korrupciomegelozes.kormany.hu/download/e/0b/60000/Z%C3%B6ld.pdf>

²³ Government Decree No. 50/2013. (II. 25.); 6. § (4)

report.

The government recently published a draft law on the protection of whistleblowers, which TI Hungary judges an inadequate attempt to meet challenges in the anti-corruption arena. The draft law does not provide sufficient protection to whistleblowers; neither is there any reasonable prospect for successful and efficient anti-corruption procedures. Lack of these two aspects contributes to making corruption business as usual going unpunished. TI Hungary therefore gave a harshly critical response to the proposed law.²⁴

Lastly, it also has to be mentioned that the effectiveness of criminal law provisions on the protection of persons reporting corruption has been seriously limited. The criminal code previously provided a specific ground of justification enabling the authorities to dispense with the charges entirely, extending a kind of impunity to perpetrators of bribery who reported the offence prior to its detection by the authorities. An amendment to the criminal code, in force as of 1 January 2012, replaced the ground of justification by providing for mitigation of the punishment of reporting offenders.²⁵ This may discourage corruption offenders from co-operating with the authorities, an astonishing improvidence in a country where the law enforcement is so clearly incapable of tackling corruption.

Taking all the above into consideration, TI Hungary is still convinced that whistleblowing is not merely an ethical problem and thus requires a well-planned and comprehensive legal solution that has not yet been offered. Even the new draft on the protection of whistleblowers fails to adequately address this issue. At the same time, codes of conduct should rely on a well-functioning whistleblower protection system but do not provide a substitute for one.

7. Specialised anti-corruption agencies

Hungary has no independent and well-established anti-corruption agencies (III.36. Specialised authorities; III.38. Cooperation between national authorities). Ad-hoc institutions and in-house departments of several state bodies have dealt with special anti-corruption tasks in a rather fragmented system. Most of the major actors designated to fight corruption, such as the Ministry of Justice and Public Administration which is responsible for coordinating the implementation of the anti-corruption programme, are directly subordinated to the government and therefore cannot be regarded as politically impartial or unbiased. The Government Control Office is to supervise and monitor the implementation of governmental decisions, and the expenditure of budgetary authorities is also accountable to the government, but the public has only limited access to and control over its activities. The government accountability commissioner, before the position was abandoned, drew constant and highly publicised attention to corruption cases only from the previous governments' terms of office; therefore the role of the commissioner in preventing and examining other relevant cases was rather questionable. For decades there has been no established anti-corruption education or systematic prevention; now the National University of Public Service in the framework of an EU-funded project²⁶ and the aforementioned integrity advisors are planned to fill the gap.

While there are clear efforts to establish an institutional background for the implementation of the commitments enshrined in the government's anti-corruption programme, the system still remains fragmented involving many public bodies. As the initiative is financed by an EU project until 2014, there is significant risk that the loose

²⁴ http://www.transparency.hu/uploads/docs/whistleblowing_tv_tervezet.pdf

²⁵ § 11 of Act CL of 2011 on the amendment of the Criminal Code

²⁶ <http://korrupciomegelozes.kormany.hu/index>

network of bodies concerned will disintegrate once the budget runs out. Therefore there is still a need to establish a more stable, well-funded institution, which will be responsible for the coordination of anti-corruption prevention, education and dissemination of information, also advancing the system of whistleblower protection. TI Hungary is of the opinion that the prosecution service, having already assumed a number of anti-corruption tasks in the framework of its criminal law enforcement endeavours, will be designated as specialised anti-corruption agency. Thus the prosecution, besides remaining a robust player in putting crime policies into practice, would become the corruption enforcement agency in Hungary. This presupposes that the prosecution assumes non-criminal law enforcement tasks in the course of fighting corruption, such as administering the protection of reporting persons, fact finding preceding criminal investigation, sanctioning state agencies and users of public money if their organisational framework evokes corruption or the incidence thereof, paying remunerations to whistleblowers, etc. Without establishing a stand-alone state corruption enforcement agency, high numbers of uncovered corruption cases prevail and corruption remains a kind of business-incurred cost in Hungary.

8. Bank secrecy – public spending declared a business secret

As mentioned above, the business sector is at greatest risk as far as corruption is concerned, while the use of public funds is becoming less transparent due to recent legal changes (III.40. Bank secrecy). One of the most alarming regulatory steps against transparency was taken in the newly-adopted Civil Code that will enter into force in 2014.²⁷

The “old” Civil Code still in force states that governmental and municipal budgets, information on the use of funds from the European Commission, and information on the management of governmental and municipal assets shall not be declared a business secret.²⁸ However, this regulation will be excluded from the new Civil Code. Although both the Fundamental Law of Hungary and the act on freedom of information refer to the information mentioned above as “public on grounds of public interest”, the absence of the related regulation in the Civil Code could cause serious problems, since implementing bodies may presume that “business secret” as defined in the new Civil Code is an exception to the regulations providing for publicity.

However, an amendment to the law on freedom of information²⁹ includes new provisions on business secrecy, setting out that public expenditure cannot be declared a business secret, almost repeating the provision as it is included in the current Civil Code. The new law also says that if a request for information on public expenditure is denied by reason that the requested data is a business secret, the requester may turn to the administrative body supervising the denying agency. Nonetheless, the amendment does not take a clear stance as to whether the requester may or may not seek judicial review of the denial, or if the administrative review is a precondition of judicial oversight. This evokes uncertainty with regard to the right to turn to the court, a fundamental safeguard in the field of access to public interest information.

Using business secrecy as an excuse not to reveal public spending is quite widespread in Hungary. Uncertainty as to what extent business secrecy curtails access to public spending, and potential lack of judicial oversight in this field, further reduce transparency and thus increase corruption risks. Consequently, there is the risk that dozens of freedom

²⁷ Act V of 2013 on the Civil Code

²⁸ Act IV of 1959, § 80 (3)

²⁹ See footnote 4

of information litigations reach the Constitutional Court of Hungary in the form of constitutional complaints.