

Hungary

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**Submission by Transparency International Hungary,
Transparency International, the global coalition against
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And

K-Monitor Watchdog for Public funds

Contact details for TI Hungary:

Mr Miklos Ligeti, Head of Legal Affairs,

Email: miklos.ligeti@transparency.hu

Tel +36 1 269 95 34 , Web: www.transparency.hu

Contact details for TI Secretariat:

Mr Casey Kelso, Advocacy Director

Email: ckelso@transparency.org

Tel: + 49 30 34 38 20 52, Web: www.transparency.org

Mr Gareth Sweeney, Global Advocacy Manager

Tel: +49 30 34 38 20 51430 34 38 20 52, Web: www.transparency.org

Contact Details for K-Monitor Watchdog for Public Funds:

Mr Sándor Léderer, Executive Director,

Email: lederer@k-monitor.hu

Tel +36 1 789 50 05 , Web: www.k-monitor.hu

I. Introduction

Transparency International Hungary (TI Hungary or TIH) is an independent not-for-profit civil society organization aiming to fight corruption, promote transparency and accountability in

public and private sector, and facilitate access to information of public interest, was incorporated under Hungarian law in October, 2006 as a foundation. TI Hungary has a wide range of activities to most effectively combat corruption that consists of research, monitoring of legislation, public awareness raising, advocacy, education, providing legal aid to victims of corruption and to whistleblowers.

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 100 national chapters worldwide, and an international Secretariat in Berlin, Germany, TI raises awareness about the devastating impact of corruption and works with partners in government, the private sector and civil society to develop and implement effective measures to tackle it.

K-Monitor is a Budapest based anti-corruption NGO founded in 2007. K-Monitor strives against corruption and promotes the transparency of public spending in Hungary. The organization operates open data websites, conducts research and advocates for legal reform. K-Monitor believes that information technology can contribute to a more open, more transparent and more democratic way of governing. Therefore it develops databases and online tools by which public expenses become trackable, and decision makers can be held accountable. K-Monitor is the Local Research Country Correspondent of the EC's Anti-Corruption Report.

II. Executive summary

As a member of the European Union, Hungary has a democratic system whose institutions were originally established to respect the separation of powers and legal checks and balances. Even though institutionalized corruption has prevented democracy from developing, a political consensus existed for two decades that legislative, executive, and judicial powers need to be separated and the government needs to be controlled by independent institutions. The Fidesz – Hungarian Civic Union government, based on an overwhelming majority in Parliament resulting from successive landslide victories in national elections in 2010 and in 2014, broke this consensus and “re-engineered” the public arena to its own interests.

As a result, by 2015, the edifice of democratic checks and balances in Hungary has been disrupted and its institutional capacity to build equilibrium and pluralism in public life has been weakened. The governing Fidesz party has constructed a de-facto 'upper house' of government via appointing its own loyalists with often questionable professional careers but with an apparent political bias to key public institutions, thus thwarting the appropriate checks and balances required for good governance.

In the view of TIH, TI and K-Monitor the steps taken by the government have steered the country in the direction of a managed democracy, where the economy appears dominated by cronyism and state capitalism, and there is risk that political influence over independent institutions, business and civil society may be exercised. Hungary’s current situation can be described as a special form of ‘state capture’, characterised by the opaque symbiosis between an extensive and expansive government and powerful business groups, whose will may easily out compete public interest.

A number of examples indicates the government’s intention to grant privileges to certain economic actors by legal means, e.g. the nationalisation and subsequent redistribution of tobacco retail concessions, or the same process in the financial sector, where savings cooperatives were first nationalized by law and then re-privatized to an entrepreneur close to

the government. In these cases the regulations have been tailor-made, hurting market incumbents and favouring new players with tighter or looser links to the government.¹

In the conclusion of TIH, TI and K-Monitor, Hungary's current practice of governance places into doubt whether the fundamental rights as enshrined in the International Covenant on Civil and Political Rights (ICCPR) and in the Universal Declaration of Human Rights (UDHR) are adequately being protected to ensure their enjoyment in their entirety in the country.

III. Hungary's state of play of democracy: disrupting checks and balances²

The Fidesz-led government, in office since 2010, has systematically eliminated the autonomy of many state institutions designed to control the power of the government's executive branch by "packing" them with questionable government appointees, some of whom have previously been members of the governing party's parliamentary group. This has happened in the case of, among others, the Constitutional Court, the judicial administration, the prosecution service, the Court of Auditors, the Media Board, the Economic Completion Office, the National Bank of Hungary, the National Election Committee, and the country's system of ombudspersons. In case of the Supreme Court, now called the Curia, and the former Data Protection and Freedom of Information Parliamentary Ombudsman, the government prematurely ended the term of office of these authorities' leaders and replaced them with its own appointees.

This chapter gives a short summary hereunder of how the Hungarian government's steps have undermined the independence and autonomy of three of the aforementioned authorities, the Constitutional Court, the judicial administration, and the prosecution service, placing into doubt whether these institutions have the political independence to provide a proper check and balance on the actions of the government as a whole, and, in the first place, on the executive branch of government. This paper also highlights, where the Hungarian government fails to uphold its international obligations to protect human rights, more specifically, the right to freedom of expression as enshrined in Article 19 (1) of the ICCPR, the right to freedom of peaceful assembly and association, as enshrined in Article 22 (1) of the ICCPR, and the right to a fair and public hearing by an independent and impartial tribunal established by law, as enshrined in Article 14 of the ICCPR.

1. Rewriting the Constitution, restricting the jurisdiction of the Constitutional Court

The government's determination to weaken the capacity of independent institutions entailed an instrumental approach towards legal norms, including the country's Constitution. Between the takeover by the Fidesz government in 2010 and the entry into force of the new constitution, called Fundamental Law, in 2012, Hungary's old Constitution had been amended 12 times, while the country's newly adopted Fundamental Law, though promised to a long lasting, modern constitution, has been amended five times since it came into force. These constitutional changes have always lacked any proper *ex ante* consultation and the Fundamental Law itself was prepared clandestinely, without any prior public debate. The Council of Europe's Venice Commission concluded in its opinion on the Fourth Amendment to the Fundamental Law that

¹ Transparency International Hungary's comprehensive assessment of the Hungarian lobby landscape 'Lifting the lid on lobbying: National Report of Hungary' gives a detailed explanation of how the phenomena of cronyism and favouritism evolve in the country. See, in English: http://transparency.hu/uploads/docs/lobbi2014_web_eng.pdf

² For a detailed analyses of the Hungarian government's worrisome manoeuvres to systemically weaken democratic checks and balances, see TI Hungary's parallel report attached to Hungary's Self-Assessment Survey on the United Nations Convention against Corruption. TI Hungary's report is available here:

http://transparency.hu/uploads/docs/Civil_society_review_report.pdf

and also the Fact Sheets jointly accomplished by Hungarian Civil Liberties Union, the Hungarian Helsinki Committee, Eötvös Károly Policy Institute and TI-Hungary to serve as background documentation at the [OSCE Human Dimension Implementation Meeting](#), held in Warsaw, September 22, 2014:

http://transparency.hu/uploads/docs/Hungary_fact_sheets_20140921.pdf

frequent constitutional amendments “are a worrying sign of an instrumental attitude towards the constitution.”³

The government, based on its super-majority in Parliament, has undermined the Constitutional Court’s (CC) capacity to control legislature.⁴ On the one hand, the Government has lifted ordinary legal provisions, which had been previously found unconstitutional and were annulled by the CC, to the constitutional level to prevent further CC rulings. On the other hand, the Fundamental Law restricted the CC’s power relative to legislation on the central budget, taxes, and pension and health care contributions. Moreover, the Fundamental Law declared void the CC’s decisions adopted prior to the Fundamental Law, thus calling the validity of 20 years’ constitutional adjudication into question. All but two of 14 acting CC justices⁵ have been elected by the current government’s Parliamentary majority, as a result of which the CC has been packed with politically partisan appointees, whose professional background is often questionable. This process has been topped by setting out that CC justices’ mandate shall not terminate by the age of 70 years, which means that they shall remain in their seats until the end of their 12-year term.

The consequence of the packing of the CC is demonstrated by the fact that it upheld tailor made legislations, which had been adopted in an endeavour to promote government cronies’ economic interests. Even though both the nationalisation and subsequent redistribution of tobacco retail concessions, and the reshaping of the financial sector by the nationalisation and the posterior corporatisation of savings cooperatives have been achieved by the deprivation of existing ownership rights of incumbents, the CC found⁶ that these restrictions of proprietary rights were in conformity with the Fundamental Law. In the judgment of TIH, TI and K-Monitor, this means, that the sanctity of property is not always adequately protected in the country.

The CC’s jurisdiction is not limited to the abstract supervision of legal norms, but it makes rulings on appeals in individual litigations as a judicial forum of last resort, where litigants may turn with constitutional complaints. Restricting the CC’s jurisdiction, and in the first place, packing of the CC with questionable appointees thus puts at risk the enforceability of persons’ entitlement to a fair and public hearing by a competent, independent and impartial tribunal established by law, as enshrined in Article 14 of the ICCPR, as it undermines one of the institutional safeguards designed to protect this fundamental right.

Recommendation: States should call upon Hungary to

- (i) repeal the Fourth Amendment to the Fundamental law, which declared void the CC’s decisions adopted prior to the Fundamental Law;**
- (ii) decrease CC justices’ age limit to 70 years.**

³ For the related criticism of the Venice Commission, see: *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, Strasbourg, Council of Europe, 17 June 2013, www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e.

⁴ For the related criticism of the Venice Commission, see: *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, Strasbourg, Council of Europe, 17 June 2013, www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e.

⁵ The number of CC justices established by law is 15, but one of the CC justice position has been in vacancy since September 2014, when former CC justice Péter Kovács’s mandate expired.

⁶ See, in Hungarian, the CC’s decisions No. 3192 of 2014

(<http://public.mkab.hu/dev/dontesek.nsf/0/CA19F68E1E13F17AC1257CDA00587911?OpenDocument>) and 3194 of 2014 (<http://public.mkab.hu/dev/dontesek.nsf/0/A3FED588AED2CD7FC1257BBF001BAD97?OpenDocument>).

2. Threatening the independence of the judicial system

As a result of the government's steps, the independence and the autonomy of the judiciary are also at risk.⁷ Newly adopted laws re-regulated the judicial administration and established the National Judicial Office (NJO) for the administration of law courts. This re-regulation served also as a ground for the early termination of the mandate of the then-President of the Supreme Court.⁸ In its decision on this matter issued in May 2014 the European Court of Human Rights⁹ found that the premature termination of the President's mandate had violated the right of access to a tribunal because it could not be challenged.

The President of the NJO now exercises extensive powers over the court system, which used to include the right to distribute caseload and apportion cases to different courts upon its own decision. The Venice Commission found that the transferring of individual cases, as the law failed to exclude that this might be based on arbitrary or politically motivated considerations, was a positive violation of the right to a lawful judgement and thus clearly contradicted the fair trial principle.¹⁰ The Hungarian CC¹¹ also ruled that these legal provisions were unconstitutional. The possibility of transferring cases was abolished in 2013.

The President of the NJO plays also a decisive role in the appointment of judges, even though the consent of the National Judicial Council, a self-governing body of elected judges, is also required to appoint a judge. However, the President of the NJO may cancel the application procedure and call for a new one.¹²

Parallel to the redesigning of the judicial administration, the Fundamental Law lowered the mandatory retirement age of judges from 70 to 62 years. This provision made it possible for the government to replace almost the entire leadership of the judiciary in 2012, as a significant number of senior judges and members of law court's leadership were dismissed. The Court of Justice of the European Union delivered a judgment on the matter,¹³ concluding that Hungary has failed to fulfil its obligations under Council Directive 2000/78/EC.¹⁴

It should be noted that law courts' performance has so far not reflected these institutional changes and bottlenecks. According to the World Economic Forum (WEF), a reputed international think tank to assess competitiveness including institutional factors¹⁵ in line with

⁷ For further information, see the respective opinions of the Venice Commission:

Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, Strasbourg, 19 March 2012, www.venice.coe.int/docs/2012/CDL-AD%282012%29001-e.pdf;

Opinion on the cardinal acts on the judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary, CDL-AD(2012)020, Strasbourg, 15 October 2012, www.venice.coe.int/docs/2012/CDL-AD%282012%29020-e.pdf

⁸ This move has provoked harsh critics on the Council of Europe's behalf, which it voiced in Resolution 1941 (2013), para 12.4.1, see: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19933&lang=en>

The European Parliament's Tavares report upheld these critics, see:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0315&language=EN&ring=A7-2013-0229>

⁹ *Case Baka v. Hungary*, Application no. 20261/12

¹⁰ The Council of Europe's Venice Commission in its Opinion 663/2012 on *Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary*, CDL-AD(2012)001, Strasbourg, 19 March 2012, para 91, see:

<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282012%29001-e>

¹¹ The Constitutional Court's decision No. 36 of 2013. see:

<http://public.mkab.hu/dev/dontesek.nsf/0/C89E70BD4E261A16C1257ADA00524D2F?OpenDocument> (downloaded on September 1, 2015)

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

¹³ See: *Case C-286/12 (Commission v Hungary)*, Respective lower level legal provisions were also found unconstitutional by the Constitutional Court in Hungary in July 2012,

¹⁴ Equal treatment in employment and occupation

¹⁵ According to the 2014 WEF report, in the category of "judicial independence" Hungary was on the 56th place (<http://reports.weforum.org/global-competitiveness-report-2014-2015/rankings/#indicatorId=GCI.A.01>), which showed better

other relevant academic assessments¹⁶ and also TI Hungary's opinion, law courts have preserved their independence to a significant extent, or, at least, no systemic evidence has been found which would indicate any judicial bias in favour of the governing Fidesz party. Nevertheless, the government's changes put at risk the independence and the autonomy of the judiciary.

Recommendation: States should call upon Hungary to

- (i) repeal legal provisions that entitle the President of the NJO to cancel the application procedure of judges;**
- (ii) increase law court justices' age limit to 70 years.**

3. Potential to unduly influence the prosecution service

In Hungary, the prosecution service, an autonomous institution, forms part of the judicial administration. The Prosecutor General (PG), elected for nine years by a two-thirds majority vote of the Parliament, exercises a great deal of influence over the prosecution service and individual prosecutors. The PG may instruct prosecutors, and reserves the right to take over any case from any prosecutor or to reassign cases to other prosecutors at any stage of the procedure without giving any reason.¹⁷ This very wide and unchecked discretion to reassign cases and to instruct subordinate prosecutors puts the right to fair procedure at risk. Moreover, there is no independent forum where a decision by the prosecutor not to bring a case to court can be challenged. This means that decisions regarding appeals against dismissals or the termination of an investigation remain within the prosecution service.¹⁸ The possibility that the PG may unaccountably prevent law courts from adjudicating criminal cases by omitting to bring charges place the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as enshrined in Article 14 of the ICCPR and Articles 8 and 10 UDHR.

As every prosecutor is obliged by law to fully adhere to the line of command headed by the PG, the will of the latter may easily outweigh any other consideration. Moreover, no one has legal powers to instruct the PG, and, in practice, there are no legal tools to unseat the PG, unless she or he is found guilty of a felony. Should the mandate of the PG expire and the Parliament is unable to elect a replacement, the acting PG exercises his or her powers until the beginning of the mandate of a successor. As a one-third plus one group of members of Parliament can vote to positively block such an election, this provision means in practice that the acting PG can be kept in office indefinitely.

The Venice Commission has expressed concerns about "the high level of independence of the PG, which is reinforced by his or her strong hierarchical control over other prosecutors", and stated the need to establish a "sufficient system of checks and balances" within the system.¹⁹ The Group of States against corruption (GRECO) of the Council of Europe concluded that the law "increase[s] considerably the political influence in respect of the election" of the PG and therefore recommends *inter alia* that the "possibility to maintain the PG in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor

performance than in most of the EU member states joined in or after 2004, and better than the average rank of these countries. In all the other institutional factors Hungary performed worse than the regional average.

¹⁶ See for example: János Kornai (2015): Hungary's U-turn. *Capitalism and Society* Volume 10. Issue 2, pp. 1-24. Kornai writes: "What is sure, however (and encouraging), is that the ruling regime has not managed to subjugate the judiciary to the same extent as they have done in other spheres." (p. 5.) http://www.kornai-janos.hu/Kornai_Hungary's%20U-Turn.pdf

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

¹⁸ Private prosecution – that is, prosecution brought independently of the prosecution service – is only available to individual victims of offences. As most corruption offences are understood in Hungary as offences without individual victims, there is no way to circumvent a prosecutorial decision to dismiss a corruption case.

¹⁹ Venice Commission opinion on Acts CLXII and CLXIV of 2011 (CDL-AD(2012)008, paragraph 87.

be reviewed by the Hungarian authorities.”²⁰ GRECO also asserted that the decisions on the removal of cases “ought to be guided by strict criteria and be justified in writing in order to avoid arbitrary decisions”.²¹

Recommendation: States should call upon Hungary to

- (i) repeal legal provisions that enable the possibility to maintain the PG in office after the expiry of his/her mandate;**
- (ii) create a mechanism that allows for the judicial review of a prosecutor’s decision not to indict;**
- (iii) require the PG and superior prosecutors to instruct subordinate prosecutors exclusively in written form, and to give a written justification in order to avoid arbitrary decisions on removal of cases.**

IV. Restricting accessibility of public interest information

Hungary was the first country in the post-Soviet to adopt a stand-alone Act on Freedom of Information (Act on FOI), and to guarantee the accessibility of public interest information. The country used to have robust freedom of information oversight institutions, headed by a Parliamentary ombudsman. Since 2012, however, Hungary’s track record of freedom of information has been weakened by repeated amendments to the regulatory framework that endeavour to impose limitations on accessibility of public interest information. The new Act on FOI, which entered into force in January 2012, led to the early termination of the country’s Freedom of Information Parliamentary Ombudsman’s term and transferred his tasks to the newly established National Authority for Data Protection and Freedom of Information. As this is an administrative body, it does not comply with the requirement of full independence, as enshrined in the European Union’s 95/46/EC directive on data protection. On April 8, 2014 the Court of Justice of the European Union ruled²² that Hungary’s early termination of the former parliamentary data commissioner’s term was a violation of the *acquis communautaire*.

In June 2013, the government’s Parliamentary majority adopted an amendment to the Act on FOI at breakneck speed without any prior consultations, which prohibits citizens from submitting requests for an “overarching, invoice-based,” or “itemized” audit of the “management of a public authority.”²³ These restrictions permit state institutions with data management responsibilities excessive latitude to reject requests for public information.²⁴ TIH turned to higher authorities²⁵ asking them in vain to petition the amendment to the Act on FOI

²⁰ The Greco Fourth evaluation round report on Hungary on corruption prevention in respect of members of Parliament, judges and prosecutors (July 2015), page 42, para 177, see: [www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2014\)10_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2014)10_Hungary_EN.pdf) (downloaded on August 5, 2015)

²¹ The Greco Fourth evaluation round report on Hungary on corruption prevention in respect of members of Parliament, judges and prosecutors (July 2015), page 44, para 190, see: [www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2014\)10_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2014)10_Hungary_EN.pdf) (downloaded on August 5, 2015)

²² See case C-288/12.

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=125053&pageIndex=0&doclang=HU&mode=req&dir=&occ=first&part=1&cid=880384>

²³ <http://www.publicfinanceinternational.org/news/2013/05/hungarian-ngos-attack-curbs-freedom-information> It should be noted that Act CXXIX of 2015 amended this section of the Act on FOI, however did not repeal the restriction embedded therein.

²⁴ <http://www.opengovpartnership.org/blog/sandor-lederer/2013/05/02/while-joining-ogp-hungary-weakens-its-foi-legislation>. See also the Country Report on Human Rights Practices in Hungary for 2014, issued by the United States Department of State, Bureau of Democracy, Human Rights and Labour, page 39 (<http://www.state.gov/documents/organization/236744.pdf>)

²⁵ see: http://transparency.hu/Transparency_International_turns_to_higher_authorities?bind_info=index&bind_id=0

to the CC, as in our assessment these vaguely defined legal concepts open the door to the risk of wrongfully refusing public interest data requests without giving any proper explanation.

A further amendment to the Act on FOI, adopted in an extraordinarily expeditious procedure in July 2015 without any prior consultations, imposes further restrictions on access to public interest information. The amendment, expected to enter into force in October 2015, enables state bodies controlling public information, *inter alia*,²⁶ to charge those requesting information for “the labour input costs associated with completing the information request.” The amendment permits such charges if servicing the information request would require “a disproportionate use of the labour resources required to fulfil the basic functions” of the state organ controlling the public interest information. The new regulation would leave it entirely to the data controlling bodies to determine the necessary labour input, and also gives them a free hand in specifying what constitutes a disproportionate use of their labour resources, thus making the payment for costs - the size of which is not available *ex ante* - a prerequisite for servicing public interest information requests.

In the judgement of TIH, TI and K-Monitor, embedding legal regulations with uncertain content into the Act on FOI, as well as allowing for an arbitrary interpretation of the law, enables the restriction of the fundamental right of access to public interest information and runs contrary to the right to freedom of expression, which, as set out in Article 19 (2) of the ICCPR, encompasses the right to seek, receive and impart information.²⁷ Setting new barriers to accessing public data restricts the degree to which this fundamental right can be enjoyed, and therefore finds itself in an irreconcilable conflict with Article 19 UDHR as well. TIH, TI and K-Monitor are convinced that these amendments to the regulatory framework of freedom of information are a major slide on a slippery slope, at the bottom of which one finds full state control of public information. This is why TIH has called²⁸ international attention to this worrisome trend.

Recommendation: States should call upon Hungary to

- (i) reinstate a freedom of information parliamentary ombudsman, to be voted by a two thirds majority vote of the legislature and commission this office with the tasks to warrant for the accessibility of public information;**
- (ii) repeal legal provisions that prohibit citizens from submitting requests for an “overarching, invoice-based,” or “itemized” audit of the “management of a public authority;**
- (iii) repeal legal provisions that empowers state organs to claim an *ex ante* refund of their labour costs associated with completing information request;**
- (iv) repeal legal provisions that entitle public organs to refuse access to public data, the disclosure of which they judge endangers future government decision.**

²⁶ Further to empowering state organs to claim an *ex ante* refund of their labour costs, the 2015 amendment to the Act on FOI also says that data that can be found in documents that are protected by copyrights can be only examined in the future, but making copies will be prohibited, which seriously restricts the freedom to receive information with regard to government ordered studies. Last but not least, public organs that hold data will be entitled to refuse to provide access to certain public data the disclosure of which it finds endangering future government decision-making. Prior to the amendment the law allowed for data holders only to exclude accessibility of public interest data vis-à-vis an explicitly specified and existing decisions, related to which the requested data was essential. According to the newly adopted amendment, any future government decisions may, as a ground of refusal, prevent the proper servicing of public interest data requests.

²⁷ It should be noted that Article 10 of the European Convention on Human Rights and Fundamental Freedoms, to which Hungary is a signatory, also provides for the same fundamental right.

²⁸ http://transparency.hu/uploads/docs/Letter_On_Hungarian_Restrictions_on_FoI_2015.07.03..pdf

V. Vexatious moves against civil society organisations

The Hungarian government, contrary to UN General Assembly Resolution A/RES/53/114 adopting the Declaration on Human Rights Defenders,²⁹ as well as the rights to freedom of assembly and association as provided by Articles 21 and 22 of the ICCPR, persists in creating a hostile environment for civil organisations critical of the government's poor performance on anti-corruption, human rights and rule of law.³⁰ On 14-15 August, 2013 the pro-government weekly 'Heti Válasz' claimed³¹ that NGOs receiving funds from organizations close to György Soros' Open Society Foundation were "serving foreign interests" and stated that the "Soros-crew" had an "outstanding role" also in distributing grants in the framework of the EEA/Norway Grants NGO Fund. Allegations contained in this article rapidly spread through the pro-government media and have been echoed widely. From that time forward the government repeatedly labelled European Economic Area³²/Norway Grants³³ NGO Fund recipient organisations as 'problematic' and accused them of representing their donors' foreign interests in exchange for funding.

On 8 April, 2014, the head of the Prime Minister's Office claimed in a letter³⁴ to the Norwegian government that 'Ökotárs' Foundation, the leader of the civil society consortium³⁵ that operates and distributes EEA Norway Grants NGO Fund, is in his view closely linked to an opposition party.

Prime Minister Viktor Orban called civil society organisations that regularly criticise the government 'paid political activists who attempt to promote foreign interests' in a speech he delivered on 26 July, 2014 in Tusnádfürdő, Transylvania, Romania.³⁶

The government, in an endeavour to substantiate these unfounded accusations, commissioned the Government Control Office (GCO) to launch a series of financial audits of the members of the NGO consortium that operates the EEA/Norway Grants NGO Fund and the fund's recipient NGOs during spring and early summer 2014. Most of the audited civil society organisations coincided with the ones described by pro-government media outlets as politically biased and

²⁹ See <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

³⁰ An updated timeline of government's hostile moves against civil society in Hungary shall be enclosed to this report.

³¹ An excerpt in Hungarian of the article concerned is available here: <http://valasz.hu/itthon/soros-felmilliardot-adott-orban-ellenfeleinek-67174> (downloaded on 10, September 2015)

³² The European Economic Area (hereinafter referred to as EEA) member countries are Iceland, Liechtenstein and Norway. For more information see: <http://eeas.europa.eu/eea/>

³³ The European Economic Area/Norway Grants are distributed by Iceland, Liechtenstein and Norway, for more information see: <http://eeagrants.org/News/2014/Funding-for-Hungarian-NGOs>

³⁴ The Hungarian government's letter to Norway, dated April 14, 2014, is available only in Hungarian, see: <http://2010-2014.kormany.hu/download/8/61/41000/L%C3%A1z%C3%A1r%20J%20C3%A1nos%20levele%20%20Vidar%20Helgesenek.pdf>. In Norway's answer of April 24, 2014, the Royal Norwegian Ministry of Foreign Affairs refers to Hungary's "concerns for the selection process of the NGO fund operator", which is accessible here: https://www.regjeringen.no/globalassets/upload/ud/vedlegg/brev/svar_lazar.pdf

³⁵ Members of non-governmental organisations' consortium that operates the EEA/Norway Grants NGO Fund are: Ökotárs Foundation, DemNet Foundation, Carpathian Foundation and Autonómia Foundation.

³⁶ The incriminated part of the PM's speech reads as follows: "Now, the Hungarian NGO landscape shows a very particular image. Ideally a civil politician, as opposed to professional, is an individual who is organizing from the bottom up, financially independent, and the nature of his work is voluntary. If we look at civil organizations in Hungary, the ones in the public eye, debates concerning the Norwegian Fund have brought this to the surface, then what I will see is that we have to deal with paid political activists here. And these political activists are, moreover, political activists paid by foreigners. Activists paid by definite political circles of interest. It is hard to imagine that these circles have a social agenda. It is more likely that they would like to exercise influence through this system of instruments on Hungarian public life. It is vital, therefore, that if we would like to reorganize our nation state instead of the liberal state, that we should make it clear, that these are not civilians coming against us, opposing us, but political activists attempting to promote foreign interests." This is an amicable translation of the PM's speech, available at the Budapest Beacon's website (<http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592>)

blacklisted by the government³⁷ as ‘problematic.’ Besides conducting exhaustive financial examinations of EEA/Norway Grants NGO Fund recipient NGOs, the GCO made a complaint to the police about members of the NGO consortium operating the EEA/Norway Grants NGO Fund. Based on GCO’s report, and in response to a formal complaint on the part of a Fidesz politician accusing a non-specified perpetrator of embezzlement, the police opened a criminal investigation into alleged misappropriation of funds and unlicensed financial services. On September 8, 2014, in the frame of this criminal investigation, the offices of the civil society consortium members that operate the EEA/Norway Grants NGO Fund have been raided by the riot police, and their bookkeeping and other financial documents have been seized. A district court of Budapest ruled on January 23, 2015 that the police raid of the offices of the civil society consortium members that operate the EEA/Norway Grants NGO Fund was unlawful.³⁸ On September 16, 2014, the Hungarian tax administration, on GCO’s request, suspended the operator organisations’ tax identification because of their alleged non-compliance with the GCO audit.³⁹ As a consequence of the suspension, members of the consortium are no longer eligible for budgetary support, including from EU funds, tax recoveries or deductions, nor are they entitled to manage and distribute foreign grants.

On June 26, 2014 TI Hungary, also summoned in the framework of GCO’s audit, wrote an open letter⁴⁰ to the country’s ombudsperson, asking him in vain to turn to the CC and request CC’s opinion about the laws that govern GCO’s audits. TI Hungary and K-Monitor, in line with many other civil society organisations, overtly opposed the government’s hostile moves and assert that these proceedings are politically motivated and stand on questionable legal grounds.⁴¹

In the moment of drafting the present report, the criminal investigation initiated by the GCO is still open and the suspension of the tax identification of the civil society consortium members that operate the EEA/Norway Grants NGO Fund has still not been repealed. It should also be noted, however that GCO’s report⁴² on the use of EEA/Norway Grants NGO Fund by its recipients, including TI Hungary and K-Monitor, went public on October 15, 2014 without any further consequences.

Recommendation: States should call upon Hungary to

- (i) immediately halt any criminal and administrative proceedings commenced against EEA/Norway Grants NGO Fund operator NGOs and repeal the decision on suspension of their tax identifications;**
- (ii) halt any smear campaigns against civil society organisations that are overtly criticizing the government’s anticorruption, human rights and rule of law performance.**

³⁷ An online news portal acquired a list of these NGOs from the Prime Minister’s Office, which turned out to match exactly the 13 human rights and watchdog NGOs cited in the August 2013 *Heti Válasz* article, see: <http://444.hu/2014/05/30/itt-a-kormany-listaja-a-szervezetekrol-akik-miatt-nekimentek-a-norveg-alapnak/>

³⁸ <https://norvegcivilalap.hu/en/node/11139>

³⁹ The Carpathian Foundation (‘Kárpátia Alapítvány’), a member of the civil society consortium that operates the EEA/Norway Grants NGO fund, successfully challenged the government in court for the suspension of this organisation’s tax identification, sustaining that the tax identification suspension ordered by the GCO and the Government Decree on GCO’s operation conflict the Fundamental Law. As a result of this, the Administrative and Labour Court of Eger decided to petition this case to the Constitutional Court, asking an opinion on the legitimacy of the Government Control Office audit.

⁴⁰ See:

http://transparency.hu/TI_turns_to_the_Ombudsman_regarding_recent_government_audit?bind_info=index&bind_id=0

⁴¹ A more comprehensive overview of the Hungarian government’s smear campaign against civil society groups critical of its performance is presented in the Country Report on Human Rights Practices in Hungary for 2014, issued by the United States Department of State, Bureau of Democracy, Human Rights and Labour, page 41-43.

⁴² See in Hungarian: http://kehi.kormany.hu/download/a/51/c0000/NCTA_jelentes.pdf

VI. Request to states

Transparency International Hungary, Transparency International and K-Monitor request that states call on the Hungarian government to take the following actions, as listed above, to reinstate democratic checks and balances, strengthen the independence of the judiciary, improve the accountability of prosecution, reaffirm accessibility of public information and create a friendly environment for civil society organisations with a critical tone of government's performance.