



Civil participation in the decision-making process

Fact finding visit in Hungary

20-22 NOVEMBER 2016

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Introduction

The Conference of INGOs of the Council of Europe visits the Member States in order to better understand the cooperation between NGOs (foundations and associations) and decision-makers, notably the public administration and elected officials in the political decision-making process. Discussion and exchange of experiences during the visits of the Council of Europe delegation are part of a wider analysis of the effectiveness of various forms of civil society participation in decision-making. Each of the visits is followed by a report which highlights the important issues for the NGOs in that specific moment and specific socio-political context. The final recommendations are also formulated to improve the effectiveness of cooperation between NGOs and representatives of the public authorities.

In Budapest, the Conference of INGOs held an official visit on 20-22 November 2016, hosted by Transvanilla Transgender Association which organised the logistic support and the meetings with NGOs, active in the field of human rights, civil society development and democracy. Tranvanilla Transgender Association is the only organisation which since 2011 represents the rights of transpeople in Hungary. It is a community based organisation which in addition to advocacy action, provides legal assistance and psychological support to the concerned persons¹.

The meetings with public authorities were organised by the Permanent Representation of Hungary to the Council of Europe with collaboration of the Ministry of Foreign Affairs. During the visit, our delegation met the representatives from the following public authorities: Ministry of Human Capacities, Prime Minister's Office, Ministry of Justice, representative of Hungarian PACE delegation. We thank Mr Attila Pokol, Head of the OSCE-CoE Section from MFA who accompanied us to these meetings.

The delegation of the Conference of INGOs was composed of Anna Rurka (President of the Conference), Cyril Ritchie, President of the Expert Council on NGO Law, Julianne Lagadec, representative of Voluntary Europe, member of the Conference of INGOs, Mary Ann Hennessey, Head of the Civil Society Division of the Council of Europe.

On the basis of the collected material we present the legal context in which the NGOs are acting today, the participation experiences of the NGOs in the political decision making process, as well the position and line of the policy development in this field. The report concludes with recommendations which are addressed to the public authorities, NGOs and the Conference of INGOs.

Some developments which took place in Hungary after our visit mobilised us before the finalisation of this report, which is why we annex the published documents to this report.

¹ Tranvanilla Transgender Association <http://transvanilla.hu/>

1. General information

Hungarian legislation defines civil society as non-governmental, non-profit and non-military organisations (in 2013 the public foundations were excluded from the definition of NGO).

Article VIII of the Fundamental Law underlined that every person shall have the right to establish and join organisations. The right to freedom of association shall allow the free establishment and operation of trade unions and other representative bodies.

“General rules applicable to the legal status of associations and foundations, and their financing, are enshrined in Act No. CLXXV/2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations and Act No. 181/2011 on the Court Registration of Civil Society Organisations and the Related Rules of Procedure. There are also specific legal acts relating to certain types of civil society associations (Act No. 47/2003 on foundations assisting the functioning of political parties, carrying out scientific, awareness raising, research and educational activities, Act No. 1/2004 on Sports, Act No. 26/2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities, etc.)”.²

The main form of NGOs recognized in Hungary are associations and foundations. Additional organizational forms include non-profit companies and civil groups (without legal personality). The associations, foundations, and non-profit companies are qualified as "Public Benefit Organizations," (PBOs). Public benefit activity is defined as an activity that directly or indirectly serves the completion of public (i.e. governmental, including at the local government level) tasks, and thereby contributes to the satisfaction of the common needs of society and individuals (Act CLXXV/2011 Section 2(20)). “PBO status is regulated by Chapter VII of Act CLXXV/2011. If an NGO acquires PBO status then the organisation is subject to limitations in terms of its engagement in political activities. That organisation shall not undertake direct political activity, shall be independent from any parties, and shall not provide financial support to them”³.

According to the figures provided by the authorities during the visit, there are more than 55 000 NGOs registered in the Courts, 38 000 of them are active. “The sector of activities of the NGOs are follow : 19% leisure, 14.5% education, 14% sport, 9.5% disability sector, 5% development sector, 1.3% legal aid and 0.75% politics or similar”.

During the visit, the Minister of Justice mentioned the project of the new legislation on NGO registration, which should allow to make the registration easier. The new bill would remove the role of the prosecutor and leave it to judges and include a new form for application.

² Venice Commission Preliminary Opinion on the Draft Law On the Transparency of Organisation Receiving Support from Abroad. Opinion 889/2017 2 June 2017

³ Expert Council on NGO Law (December 2015). Regulating political activities of non -governmental organisations. Thematic study prepared by Katerina Hadzi -Miceva Evans on behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe.

2. Legal framework for participation of the NGOs in the law making and public decision making process

The authorities are obliged to publish draft laws. This obligation is specified in the Act CXXXI of 2010 on Public Participation in Developing Legislation from 2010. The Freedom of Information Act, adopted in 2011, does not contain such a provision. Article 19 of the Act on Legislation (Act CXXX/2010) stipulates that in case the law provides explicit right to any state, local government or other organisation to comment on a draft legal regulation affecting their legal status or responsibilities, the drafter of the legal regulation shall ensure that the affected entity can exercise its right. The detailed rules are laid down in the Act on the social participation in the preparation of legal regulations (Act CXXXI/2010). The rules of procedure of the Government may determine further regulations as well. According to the Act on the social participation in the preparation of legal regulations, the drafts and motivation of all laws, government decrees and ministerial decrees shall be the subject of consultation. However, according to the scope of the Act it applies only to those legal regulations which were drafted by one of the ministries. Consequently, if a Member of Parliament submits a draft law directly to the Parliament, it can circumvent the requirement of consultation.

The two main forms of consultation are: general consultation and direct consultation. General consultation means the disclosure of the draft legal regulation on the website of the ministry and the possibility to send comments via e-mail. Direct consultation refers to a closer cooperation with organisations based on a partnership agreement. A partnership agreement may be concluded with organisations which are ready for mutual co-operation and represent broader social interest or undertake scientific activity in the given field of law. Strategic partners can be especially civil society organisations, churches, professional and scientific organisations, public bodies, national minority self-government trade unions, higher education institutions. In addition, several ministries have introduced specific procedures for working with NGOs and have established consultative bodies in their respective fields. Through these cross-sectoral advisory bodies (i.e., councils) NGOs can follow and analyse the development of the specific field (environment, disability etc.); inform the Government of the situation; share their opinion related to the proposed measures and the draft legal regulations; and propose specific decisions, programmes and legal regulations. The efficiency of such councils, however, depends on political will and interest to take these opinions into consideration.

In addition, NGOs, including PBOs, may submit position papers, opinions, policy papers, analyses, and recommendations to members of the Parliament at any time. NGOs, including PBOs, may also organise campaigns and protests for or against a legislative initiative, including freely mobilising their members to write letters, send emails, join a protest event, or any other campaign activity relating to a certain piece of legislation.

NGOs in Hungary are free to conduct a workshop or a conference to educate the public on an issue of importance with or without taking a position on the issue. For example, during the government's campaign for EU accession, there were NGOs which campaigned in support of the accession; there were others that held workshops, conferences, and public events about why people should vote against accession; and there were NGOs which aimed to present a fair assessment of the arguments of both sides and organised educational events to discuss advantages and disadvantages of joining the EU"⁴.

In April 2017, the Hungarian Government conducted a national consultation, under the general title "Let's Stop Brussels". The consultation process as well as the formulation of the questions seems oriented on the expected by the organisers results. The citizens received six questions relating to the alleged interference in the Hungarian domestic affairs by the European Union or by other foreign actors. One of the questions was focused on organisations receiving foreign funding: "More and more foreign-supported organisations operate in Hungary with the aim of interfering in the internal affairs of our country in an opaque manner. These organisations could jeopardize our independence. What do you think Hungary should do? (a) Require them to register, revealing the objectives of their activities and the sources of their finances. (b) Allow them to continue their risky activities without any supervision."

"According to the methodological guidelines of the Office for National Economic Planning (Nemzetgazdasági Tervezési Hivatal – NTH) the following rules and regulations, among others, must be followed in a general public consultation (NTH, 2012):

- the consultation must be carried out at such point in the law-making process that it may influence the opinions of lawmakers;
- the planned legislative timeframe must leave room for the public to formulate useful opinions and suggestions. Experience shows that the more time is allowed, the better the feedback.
- the documentation released in conjunction with a public consultation should be easily understandable, concise and jargon-free;
- the framework must help the people quickly recognize and decide whether a specific consultation and the associated published documentation are relevant to their lives. To this end, the creation of a public information table summarizing the different consultations is necessary"⁵.

⁴ Expert Council on NGO Law (December 2015). Regulating political activities of non-governmental organisations. Thematic study prepared by Katerina Hadzi-Miceva Evans on behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe.

⁵ László Vértessy (2017). The Public Participation in the Drafting of Legislation in Hungary. DOI: https://www.researchgate.net/publication/313653800_The_Public_Participation_in_the_Drafting_of_Legislation_in_Hungary

3. Access to funding

“Hungary is one of the first country which adopted in 1996 “one percent law”, introducing a special mechanism by which every taxpayer may designate one percent of his or her paid personal income tax to a qualified beneficiary of his or her choice. There are further requirements for the NGOs to be entitled to receive the one percent designations.

- The beneficiary NGO has to be in existence for at least two years prior to the year in which the designation was made (however, in the case of prominently public benefit organizations this is only one year).
- NGOs entitled to receive designations have to be carrying out at least one type of public benefit activity (among 22 defined by law).
- NGOs also have to comply with the provision of the PBO Law that prohibits conducting direct political activity by public benefit organizations.

However, NGOs in Hungary do not need to have a public benefit organization (PBO) status to be entitled to receive the one percent designations.”⁶

Since 2011 the corporations can also transmit 1% of income tax to the NGOs. The government encourages the social responsibility of business sector. The National Cooperation Fund distributes the corporate tax revenue. This Fund is managed by a Council on which 2/3 of members are the representative of the NGOs.

The NGOs’ perception of the 1% mechanism is less optimistic. They underline that the Hungarian NGOs mostly do not have a big membership, but have networks of supporters. So the tax donation provides small funding. Most of this budget goes to schools, hospitals, animal shelters but not to increase the democracy or fundamental rights. So this mechanism requires so much investment in informing people of the NGO action for too little return. This finding is fuelled by negative public rhetoric towards NGOs.

“Act CXXXV Of 2011 On The Freedom Of Association, Public Benefit Status, And On The Operation Of And Subsidy For Non-Governmental Organisations came into force at the beginning of 2012 regulates civil organisations’ transparency, establish a freely accessible officially certified registry of civil organisations.

The law defines various types of government funding, distinguishing between the legal implications of donation, project financing and public service contract. The new law spells out the relevant financial and accounting requirements, distinguishing between various types of revenues and expenditures, and defines the rules of collecting donations.

⁶ Nilda Bullain “About Miracles and Misperceptions - Lessons from the “percentage mechanism” in Hungary” By, European Center for Not-for-Profit Law <http://www.icnl.org/research/library/files/Hungary/miracles.pdf>

According to the Law on Operation and Financing of Political Parties (Act XXXIII/1989), political parties may not accept monetary support from a foreign government”⁷. Our Expert Council noted in 2015 that such a restriction does not apply to NGOs.

The recent development shows that the governmental will is changed. The draft Act on the Transparency of Organisations Supported from Abroad (Hungarian Parliament Bill T/14967 is based on reasoning that increased transparency of the NGOs receiving funding from abroad is necessary to protect the national security, sovereignty and is in line with the efforts to combat money-laundering and terrorism financing. It means that the NGOs are seen as the potential foreign agent who constitute a threat for the national stability and security. This draft law constitute a real attack on the right to freedom of association. The Hungarian NGOs are already subject to detailed financial and narrative reporting requirements under the existing legislation. They are obliged to provide detailed reports on foreign grants perceived (including EU grants), and detailed description on the utilization of grants and donations from the central and local governments, international sources and other funders. “The reports are publicly accessible at the court registry. Besides, those NGOs that have a website must also disclose these documents on their website. This ensures the transparent operation of NGOs and insight to their activity and sources of funding”⁸. As the Expert Council on NGOs Law conclude in its opinion, the draft law is not compatible with “the international standards and best practices, particularly the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Council of Europe's Recommendation (2007)¹⁴ on the Legal status of non-governmental organisations in Europe and other recognized international standards and principles especially regarding the compatibility of the draft Act with the rights to freedom of association, expression, participation in the conduct of public affairs, rights to privacy and ability of NGOs to seek, receive and use resources”⁹. These concerns have been shared by the CoE Commissioner for Human Rights¹⁰, and the UN Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and on the situation of human rights defenders.

In 2014-2015 the NGOs receiving funds from Norway Grants were under threat and some of them were under investigation by the officials. Just before the visit of the Conference of INGOs, four Roma NGOs had to close because of the lack of funding, specifically the changes of the management of Norway Grants. After the “Norway Grants scandal”, the government

⁷ Expert Council on NGO Law (December 2015). Regulating political activities of non -governmental organisations. Thematic study prepared by Katerina Hadzi -Miceva Evans on behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe.

⁸ Expert Council on NGO Law (April 2017). Opinion on the Hungarian Draft Act on the Transparency of Organisations Supported From Abroad. Opinion prepared by the Expert Council at the request of the Conference of INGOs of the Council of Europe. Paragraph 75

⁹ Ibid. Paragraph 85

¹⁰ CommHR/NM/sf021-2017, Letter to the Speaker of the National Assembly of Hungary by Mr Nils Muižnieks, 26 April 2017.

started using the negative rhetoric against Soros foundations, accusing them of being the “background power”. The CSOs which were receiving grants from this source were put on the “black list” and continue to be stigmatised in the public opinion. The NGOs observe that the “Soros” list corresponded to the earlier lists that appeared in relation to the government attacks against the NGOs receiving support through the EEA/Norway Grants NGO Fund¹¹. It seems that by this way the policymakers try to create the common enemy who will allow them to strengthen their power in the public opinion.

The delegation of the Conference of INGOs was shocked to learn from some NGOs that they are obliged to secure themselves from eavesdropping and other surveillance (some of them found a listening device in their office). This finding can be linked to announcement made by the Vice President of the Fidesz and of the Parliament’s National Security Committee, on 26 September 2016, that he requested the National Security Committee and the national security services to inspect the organizations “cooperating with the Soros-network”. The MP stated that he identified 22 such organizations, and claimed that these organizations “openly violate Hungarian and European laws, and participate in politics unlawfully, with “black money””¹².

In the perspective of the attacks documented by the NGOs¹³, the declaration made by the authorities during our visit which underlined the collaboration between the public authorities and Soros foundations cannot be considered credible.

4. Public consultation and NGOs participation in the law making process

The NGOs note a general deterioration of the interaction with national authorities¹⁴. They note that 6-7 years ago, there was much more consultation with authorities and dialogue was much more open. Because of this, NGOs are obliged to have recourse to judicial proceedings much more often. In Hungary, only draft laws prepared by the executive power have to be published. The NGOs note that until 2010, the direct interaction with NGOs in the law making process was strong. During the period from 2010-2014, many drafts were passed

¹¹ “A lista: a Soros-hálózat hazai kitarottjai” <https://888.hu/article-a-lista-a-soros-halozat-hazai-kitartottjai>

¹² Czinkóczy Sándor « Németh Szilárd ráküldené a titkosszolgálatokat a Sorossal együttműködő szervezetekre » POLITIKA 26 September 2016 <https://444.hu/2016/09/26/nemeth-szilard-rakuldene-a-titkosszolgálatokat-a-sorossal-egyuttmukodo-szervezetekre>

¹³ Timelines of governmental attacks against NGOs <http://www.helsinki.hu/en/timeline-of-governmental-attacks-against-ngos/>

¹⁴ In this regard, it is important to note that Hungary left the Open Government Partnership in 2016, just two days before the OGP Summit in Paris. The government adopted a decree to withdraw from OGP. This was the reasoning by the Hungarian government: “Instead of discussing good governance practices the Open Government Partnership has become an arena where certain countries lecture others and where genuine dialogue does not take place, facts are misrepresented, and one-sided reports are prepared. The reports feature the opinions of so-called civil organizations that continually judge our country, while it neglected the government’s response. There is no point to maintaining our membership in such an organization which has completely drifted away from the objectives set out at the time of its founding”. http://k.blog.hu/2016/12/07/hungary_withdraws_from_ogp

through parliament directly without obligation to organize any public consultation. From the governmental side, there is the website dedicated to public consultation but the deadlines are very short. Under Article 8 (1)-(2) of Act CXXXI of 2010, “general” consultation shall always include publishing the draft Bills on the web, allowing for the submission of any opinion via e-mail. No exact deadline is set: Article 10 (1) only says that the draft Bill shall be published in a way that there is “adequate time” to assess the draft, to express related opinions and to assess the opinions and recommendations submitted.

The following example mentioned by NGOs show the public authorities' interpretation of the term "adequate time" foreseen in the law : A planned amendment of the Asylum Act (17 pages, consisting of 45 articles), which concerned an issue being central in the Government's communication at that time and which contained important amendments, was published on 19 June 2016 on the website of the Government, the deadline given for submitting related comments being the same day, i.e. 19 June 2016.

One way to avoid public consultation is to submit Bills via MPs or parliamentary committees instead of the Government. The Hungarian Helsinki Committee which monitors the law making process noted two examples of such proceedings used by the governing majority after the elections in 2010:

- Even though the closing provisions of the Fundamental Law (the new constitution of Hungary, in force since 1 January 2012) set out that the Bills necessary for the enforcement of the Fundamental Law shall be submitted by the Government¹⁵, the Bill on the Constitutional Court¹⁶ was submitted by the Parliamentary Committee for Constitutional, Justice and Procedural Matters, while the Bills on the freedom of religion and churches¹⁷ were submitted by MPs of the governing coalition.
- Out of the 12 amendments of the old Constitution adopted between the elections in 2010 and 31 December 2011, nine amendments were submitted by individual MPs of the governing party¹⁸.

The NGOs continue to comment on drafts, but feedback on the comments from the authorities is not provided. They do not see their contributions having any effect on the legislators. That's why they prefer to present their opinion in the media, rather than send their proposals to the government.

¹⁵ Fundamental Law, Closing provisions 4.

¹⁶ Act CLI of 2011 on the Constitutional Court

¹⁷ Act C of 2011 on the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Denominations and Religious Communities (First Freedom of Religion and Churches Act); Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (Second Freedom of Religion and Churches Act)

¹⁸ Hungarian Helsinki Committee Communication

The NGOs see the real difference between the ministries and specifically in regard to their openness to consultation. They underline the openness of the Ministry of Justice, contrary to the Ministry of Human Capacities and the Ministry of Interior.

Obviously, we have found contrary opinions. One of them was presented by The National Association of Large Families (NOE). This NGO has a strategic partnership signed with the Ministry of Human Capacities and according to this partnership agreement, this organization has to be consulted on issues related to family policy, early childhood education and care, schooling, disability, dependent care, social benefits, pension rights, aid policy, etc.. The NOE have this positive experience of collaboration with Ministry of Human Capacity and note that its contributions are taken into account.

For the NGOs, the Parliament has opaque procedures and restricted access for the NGOs. The parliamentary committees should use the list of “interest” organisations. In reality the MPs have to invite specifically and directly chosen NGOs and then the committee votes on this participation. This means that the NGOs should be “connected” to the MPs, be known and recognized by them. This fact opens up the possibility of the instrumentalization by the political parties. The NGOs note also that the agendas of the parliamentary committees are not published in time.

A lot of interaction between authorities, public institutions and NGOs is based on the individual contacts and mutual recognition of the work done. But this kind of dialogue presents the risk of clientelism and does not provide for a permanent and transparent structure.

During our meetings with authorities, the representatives of the government declared themselves as very committed to take account of the NGO positions, through statutory, formal consultation.

The NGOs noted two positives examples of public consultations:

- the preparation of the provisions of the new Criminal Code on hate crimes in 2012.
- Throughout 2015 and 2016, the Ministry of Justice invited human rights NGOs to contribute to the drafting process of the new Code of Criminal Procedure

Despite this fact, the NGOs observe strong politicization of some judicial institutions, including the Constitutional Court which seems to be “government friendly”¹⁹, so not independent.

In February 2012 the Hungarian government founded the Human Rights Working Group whose aim is to monitor the implementation of human rights in Hungary, “consulting with civil society organisations, representative associations, professional organizations and constitutional bodies, as well as promoting professional communication regarding human

¹⁹ See more <http://www.helsinki.hu/en/rule-of-law/>

rights”²⁰. At the governmental level, the members represent almost all public policy sectors (inter-ministerial character of the group). The Working Group also operates a Human Rights Roundtable to carry out discussions with civil society, representative associations and professional organizations examining the implementation of human rights. The Roundtable also makes recommendations in connection with the activities and tasks of the Working Group. Its members discuss current human rights issues and write proposals for the decision makers in 11 thematic workgroups²¹. Each group sets its own agenda and brings issues to government attention. In 2012 the basic rules were established, each group should have at least 2 meetings per year (groups and the roundtable as a whole). The government provides a report to the workgroup, the members can propose agenda points to discuss.

In 2012, the members of the Human Rights Roundtable were selected through an application procedure. Today, the NGOs wanting to join this body are invited to make a simple request to the Ministry of Justice. The NGOs noted that in some Working Groups the governmental oriented NGOs are overrepresented: those NGOs are directly funded by the representatives of the government. The lack of balance excludes all contradictory discussion with the authorities. Some critical and independent NGOs left the Round Table following the government attacks on NGOs²². In this respect, it should be noted that even if Hungary didn't adopt the “foreign agent law”, in public sphere some NGOs are publicly labelled Foreign Agent²³. This negative rhetoric was the object of two letters sent to the Hungarian Ambassador by the President of the Conference of INGOs of the Council of Europe after the visit.

The Commissioner for Fundamental Rights, an ombudsman-type institution responsible for the protection of fundamental rights in Hungary has in his mandate the obligation to support vulnerable groups and make recommendations on the discrimination issue. The Ombudsman can initiate constitutional review by the Constitutional Court on draft bills, and did finally submit one on the unlimited pre-trial detention for certain categories of person. However, the NGOs noted his refusal to launch an investigation on the use of violence in the treatment of refugees and asylum seekers. The Ombudsman seems to be supportive for the LGBTQI rights and of the actions combating violence against women. However, the actions aiming to strengthen women's rights do not include all of them. Some pro-choice NGOs lost public funding and the EU funds are channelled to pro-governmental and pro-life organisations.

²⁰ Website of the Ministry of Justice Human Rights Working Group <http://emberijogok.kormany.hu/human-rights-working-group> <http://emberijogok.kormany.hu/human-rights-working-group>

²¹ Website of the Ministry of Justice Human Rights Working Group <http://emberijogok.kormany.hu/human-rights-working-group> <http://emberijogok.kormany.hu/human-rights-working-group>

²² The HHC left the Human Rights Roundtable in September 2014, as a protest against governmental attacks against NGOs, in particular a police raid of an NGO office. Shortly thereafter, the European Roma Rights Centre, the Legal Defence Bureau for National and Ethnic Minorities and the Hungarian Civil Liberties Union also left the Human Rights Roundtable, due to the same reasons as the HHC

²³ United Nations Office of the High Commissioner for Human Rights. End of mission statement by Special Rapporteur on the situation of human rights defenders, Visit to Hungary 8 - 16 February 2016 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17048&LangID=E>

The anti-Soros rhetoric also fuelled an anti-migrant discourse and led to the restriction of pro-migrant civil society activities. Only some of the NGOs such as Caritas, ICRC and Helsinki Committee had (in November) access to the Transit Zone.

5. The LGBTQI rights, hate speech and hate crime

The Human Rights Roundtable mentioned previously has a thematic working group on LGBTQI rights. It is a first formalized consultative forum with LGBTQI NGOs in Hungary. According to NGOs' point of view the LGBTQI working group is one of the most active ones. However, the NGOs are obliged to advocate to recognise the gender based discrimination. On another point, the NGOs are working strongly on the legal gender recognition of the transgender persons (only male or female). In this context, there is a need to have a transparent and accessible procedure based on self-determination for legal gender recognition.

The amendment made in 2013 to the Criminal Code included hate speech and hate crime provisions motivated "by the sexual orientation and gender identity in its hate speech and hate crimes provisions (Art. 332 and 216, respectively). A network of hate crime investigators was set up at the police increasing dialogue between the police and LGBTQI NGOs, including training sessions conducted by these NGOs"²⁴. In addition, in 2016 the HELP (CoE) /ODIHR course on Hate Crime was launched in Budapest in cooperation with the Office of the Prosecutor General of Hungary for a first pilot group of 31 prosecutors and judges. One public prosecutor per county has been selected by the Office of the Prosecutor General in order to appoint and train a Hate Crime expert per county. This kind of training is indispensable for the adequate data collection, to measure the phenomena and to conduct the public policy action at national and at local level.

Conclusion and recommendations

We understood that Hungary is able to have a constructive framework in which the open dialogue can be held with NGOs. We understood also that it depends more on the political intentions, which at the present time are more destructive than constructive, than on the structural or legal framework and capacities of the public authorities and NGOs. We remain concerned by the situation of freedom of association in Hungary. The rights defenders increasingly work in a rather polarised and politicised environment. The negative rhetoric and attacks are undermining the capacities of the NGOs to contribute to democratic society. Consequently the social mistrust between society and NGOs and between the NGOs and policymakers and public institutions is increasing. In this regard, we recommend to the government:

²⁴ LGBTQI RIGHTS IN HUNGARY joint submission by the Hungarian LGBT Alliance, Transvanilla Transgender Association, Háttér Society, Budapest Pride, and Labrisz Lesbian Association Hungary, UPR 2nd cycle, September 2015

- Immediately stop the public rhetoric against NGOs which are part of the international umbrella organisation or those which receive the financial support from abroad.
- Take into consideration that any measure aiming to increase the transparency related to funding should concern all stakeholders, including the financial support provide by the government and other public institutions to the NGOs in the country and abroad.
- Ensure the access to foreign and national funding for NGOs without stigmatisation and discrimination of the donors and of NGOs which receive the funding.
- Ensure effective consultation and participation of NGOs at all stages of the drafting of primary and secondary legislation which affects their status, financing or spheres of operation. The questions addressed to the NGOs must be formulated in the objective, not politicised manner.
- Develop the civic education and non-formal education on human rights
- Avoid any measure discriminating the minorities and LGBTQI rights in the public civic space.
- Facilitate the awareness raising against homophobia and transphobia.

We recommend to NGOs to

- Create a platform for collecting the evidence based to monitor the decisions taken by administrative and judicial authorities in relation to NGOs (allocation or not of grants, asking for consultations, or denial of consultation, etc.).
- Monitor attentively the threats and attacks against human rights defenders and report them to the judicial authorities.
- Strengthen the solidarity between the NGOs, whether small or large ones.
- Contribute to the civic education and non-formal education on human rights
- Facilitate the awareness raising against homophobia and transphobia.

We recommend to the Conference of INGOs of the Council of Europe to

- Facilitate the access of Hungarian NGOs to information and support at international level
- Draw international attention to constructive citizen initiatives and the attempts to freedom of association in Hungary.
- Strengthen actions aiming to reinforce the public image of the NGOs as the independent organisation and democratic essential player.

Sources

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LGBTQI RIGHTS IN HUNGARY A joint submission by the Hungarian LGBT Alliance, Transvanilla Transgender Association, Háttér Society, Budapest Pride, and Labrisz Lesbian Association Hungary, UPR 2nd cycle, September 2015

Hungarian Helsinki Committee "Timelines of governmental attacks against NGOs"

<http://www.helsinki.hu/en/timeline-of-governmental-attacks-against-ngos/>

United Nations Office of the High Commissioner for Human Rights. End of mission statement by Special Rapporteur on the situation of human rights defenders, Visit to Hungary 8 - 16 February 2016

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17048&LangID=E>

[Venice Commission Preliminary Opinion on the Draft Law On the Transparency of Organisation Receiving Support from Abroad. Opinion 889/2017 2 June 2017](#)

Annex

[Statement by the President of the Conference of INGOs and the President of the Expert Council on NGO Law regarding the statements made by certain Hungarian policymakers and information reported by the media, labelling some non-governmental organisations \(NGOs\) as foreign agents based on the source of funding.](#)