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[CommDH(2014)16]

Mr János LÁZÁR
Minister of Prime Minister's Office

Strasbourg, 9 July 2014

Dear Minister,

As part of my mandate, I carried out a visit to Hungary last week to examine a number of human rights issues, focusing in particular on media freedom, the right to non-discrimination and the human rights of migrants, including asylum seekers. While I intend to follow up on these issues in a report to be prepared later this year, I should like to take the opportunity to raise with you a number of issues with regard to the situation of non-governmental organisations (NGOs) in Hungary. During my visit, several interlocutors informed me of a number of audits which have been recently carried out by the Hungarian Government Control Office (*Kormányzati Ellenőrzési Hivatal*). According to the information I have received, these audits concern 58 NGOs so far, all of which are beneficiaries from the Norwegian Civil Fund (the so-called NGO Fund).

I have noted that this Fund, which has been set up in Hungary and other EU member states with the aim of strengthening civil society, with special focus on issues such as democratic values, rule of law, transparency, gender equality and vulnerable groups, is managed by an independent consortium.

I understand that the audits carried out follow public allegations by government officials whereby this consortium had ties to the opposition and the Norwegian NGO Fund was used to support political activities in Hungary.

The stigmatizing rhetoric used in that context, with politicians questioning the legitimacy of NGO work, is of great concern to me.

NGOs play a central role in a democratic society. They should be able to pursue their public watchdog function in an environment conducive to their work, without undue interference in their internal functioning, unless there are objective reasons for doing so. The case-law of the European Court of Human Rights on the role of NGOs in democratic society is clear: when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press.

I should like to recall the European Court's considerations in the 2007 case of *Zhechev v. Bulgaria*, in which the Court noted that: "[a]n organisation may campaign for a change in the legal and constitutional structures of the State if the means used to that end are in every respect legal and democratic and if the change proposed is itself compatible with fundamental democratic principles [...]. The mere fact that an organisation demands such changes cannot automatically justify interferences with its members' freedoms of association and assembly." In this case, the Court had to examine the registration refusal of an NGO on the grounds of pursuing "political goals". Noting that this term was inherently vague and could be subject to largely diverse interpretations, the Court considered that any goals which are in some way related to the normal functioning of a democratic society could be labelled as "political".

I therefore urge the Hungarian authorities to refrain from any stigmatizing statements and to ensure an enabling environment for NGOs in Hungary. Imposing additional administrative requirements on a selected number of NGOs, solely based on their supposed or actual activity, is simply inadmissible.

Several interlocutors have shared with me their serious concern about the legal basis for these audits. I understand that, according to its mandate, the Government Control Office is competent for any matter relating to the use of Hungarian public money. However, the question arises of whether Norwegian financing used through the NGO Fund could be considered as Hungarian public money. During my meeting with the Commissioner for Fundamental Rights of Hungary, Dr. László Székely, I was informed that some complaints relating to that question have been submitted and that his Office is therefore looking into the matter.

I understand that NGOs which refuse to cooperate with the Government Control Office might be sanctioned by the suspension of their tax number or can be fined. In view of these potentially serious consequences, I call upon your authorities to revise their position which is at the origin of the launching of these audits. As a first step, the suspension of all on-going audits until the legal basis for such audits has been clarified should be considered.

Lastly, I draw your attention to the Council of Europe Committee of Ministers' Recommendation (2007)¹⁴ on the legal status of non-governmental organisations in Europe, which clearly states that NGOs should be free to solicit and receive funding "not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties."

As Commissioner for Human Rights of the Council of Europe, an important aspect of my work consists in protecting human rights defenders, including NGOs, and developing an enabling environment for their activities. I therefore call upon your authorities to continue to give effect to the Council of Europe standards in this area.

I look forward to receiving your reply and to continuing a constructive dialogue and co-operation with you and your government.

Yours sincerely,

Nils Muižnieks