COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Mr László KÖVÉR
Speaker of the National Assembly of Hungary

Strasbourg, 26 April 2017

Dear Speaker,

I wish to raise with you my concerns about the proposed draft law on the Transparency of Organisations Supported from Abroad (*a külföldről támogatott szervezetek átláthatóságáról, T/14967*) which as I understand was introduced before the National Assembly on 7 April.

In so far as I have been able to gather, the draft law purports to increase the transparency of civil society organisations by obliging those in receipt of a certain amount of annual funding originating from sources outside of Hungary to register as "foreign-funded" and to adopt a self-labelling practice, or be subject to fines and the possibility of dissolution. The draft law also introduces an additional, detailed administrative reporting scheme.

As you may know, in 2014 I addressed a letter to the attention of the Minister of the Prime Minister's Office, Mr János Lázár, raising concerns about the audits of a large number of Hungarian non-governmental organisations (NGOs) accompanied by stigmatising rhetoric used by some politicians. I regret to note that the present draft law is introduced against the backdrop of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labeled some NGOs as "foreign agents" based on the source of their funding and questioned their legitimacy. I have critically assessed this public stigmatization in my recent Human Rights Comment on the shrinking space for human rights organisations. I also deplore the apparent absence of any meaningful public consultation or debate preceding the introduction of the draft law to the National Assembly.

It is my understanding that the adoption of the proposed new law would lead to the automatic designation of NGOs receiving a certain amount of funding from abroad as "foreign-funded", irrespective of the origin of the funds, their percentage in an NGO's overall budget, or its area of activity. The sweeping nature of the proposed new law and its catch-all provisions mean it could have a severe impact on a large number of organisations pursuing lawful activities in human rights and many other areas of importance for Hungarian society. At the same time, according to criteria which are not immediately clear, the draft law excludes from its scope other types of NGOs such as those pursuing sports or religious activities. While the draft law does foresee the possibility for an NGO to be 'de-listed', it only makes this possible after a period of three consecutive years of not reaching the threshold of foreign funding referred to above.

The reasoning which accompanies the draft law explains that its aim is to expose "foreign interest groups" in whose interest civil society organisations allegedly aim to influence public opinion. In this way, the draft law appears to be based on the erroneous and harmful assumption that receiving foreign funding necessarily equals representing "foreign" interests that are inevitably ill-intentioned and at odds with Hungarian public interest.

I am concerned that the imposition of a standard label creates a real risk of creating negative stereotypes about organisations that receive funds from abroad as "foreign agents", discrediting such organisations and causing a chilling effect on their activities. "*Stigmatizing or delegitimizing the work of foreign-funded associations by requiring them to be labelled in a pejorative manner*" has been highlighted as a practice raising "*deepest concern*" by the OSCE and the Venice Commission in their joint Guidelines on Freedom of Association. In this regard, much of the guidance included in my opinions on the legislation of the Russian Federation on the so-called

"Foreign Agents Law" of 2012, with which the proposed draft law bears a number of similarities, may be of direct relevance.

I wish to further draw your attention to Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member States on the legal status of non-governmental organisations in Europe, elaborated on the basis of the Council of Europe Fundamental Principles on the Status of Non-Governmental Organisations in Europe, which contain minimum standards by which member states should be guided in their legislation. The Recommendation notably lays down 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.*" Also the Venice Commission, in its 2014 Opinion on the above-mentioned Russian law (ref. CDL-AD (2014)025, in para. 59), noted that since the European Court of Human Rights was reluctant to accept the "foreign origin" of an NGO as a legitimate reason for a differentiated treatment, the same reasoning would *a fortiori* also apply to mere foreign funding. The UN Human Rights Council, in its resolution 22/6 of 21 March 2013, called upon States to "*not discriminatorily impose restrictions on potential sources of funding*", while the freedom to seek and to utilise resources from foreign sources has been repeatedly stressed by UN Special Rapporteurs on the right to freedom of peaceful assembly and of association and on human rights defenders. Clearly, foreign-funded NGOs should not be penalised, stigmatised or put at any disadvantage whatsoever on the basis of the foreign origin of their funding.

As regards the additional detailed reporting requirement, principles 62 and 64 of the abovementioned Recommendation of the Council of Europe Committee of Ministers stipulate that "*NGOs which have been granted any form of public support can be required each year to submit reports on their accounts and an overview of their activities (...). All reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality*". The Explanatory memorandum to the Fundamental Principles further clarifies that *"[i]n general, foreign and national funding should be subject to the same rules, in particular as regards the possible uses of the funds and reporting requirements.*" To my knowledge, NGOs in Hungary are already required to report in full and complete transparency on their funding and activities, in accordance with the existing disclosure requirements. It is therefore difficult to grasp what legitimate purpose would be served by the additional administrative burden that the new law seeks to impose on some of them.

Of particular concern is the fact that non-compliance with the new requirements would lead to the imposition of fines and, ultimately, to the Prosecutor's action for dissolution by a court through simplified proceedings. The sanction of dissolution and striking non-compliant organisations off the court register risks destroying the very essence of the right to association protected by Article 11 of the European Convention on Human Rights. In this regard, the European Court of Human Rights has already found that in order for the dissolution of an association to be considered "*proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously*" (*Association Rhino and Others v. Switzerland*, no. 48848/07, 11 October 2011, §65) and that such a "*drastic measure requires very serious reasons by way of justification before it can be considered proportionate*" and is "*warranted only in the most serious of cases*" (*Biblical Centre of the Chuvash Republic v. Russia*, no. 48848/07, 11 October 2011, §54). It has also found that the "*mere failure to respect certain legal requirements on internal management (...) cannot be considered such serious misconduct as to warrant outright dissolution*" (*Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, §82). At the same time, it is not clear from the text of the draft law whether the NGOs concerned would be entitled to challenge their dissolution, and if so, on what grounds.

As I have already made clear on other occasions, I should like to stress again that in light of Recommendation CM/Rec(2007)14, the grounds for the dissolution of an NGO should be strictly limited to the three recognised by international standards: bankruptcy, long inactivity, and serious misconduct. These should apply equally to all types of NGOs and be subject to full procedural guarantees. Any sanctions applied can only be used as a last resort, and must be proportionate and meet a pressing social need.

Lastly, I note that one of the aims of the proposed draft law, as also mentioned in its reasoning and preamble, is to expand control mechanisms related to money laundering and the financing of terrorism. I also note, however, that the operative provisions of the law do not address this purported aim as they only refer to Hungarian legislation against money laundering and terrorism in fixing the threshold of funding that activates the application of the new law. This reinforces the impression that the new draft law seeks to establish an artificial link between receiving foreign funding and criminal activity.

Civil society organisations are of key importance for the functioning of any healthy democratic society. While they should operate in all transparency and without undue interference, any restrictions placed on them must be prescribed by law and proportionate to the legitimate aims they seek to achieve. Importantly, they should not be placed on a par with political parties or lobbyists. They have the fundamental right to peacefully debate governmental policies and to publicly express their opinions. Their transparency and accountability should not be achieved by labeling or by subjecting them to unjustified or discriminatory treatment. Indeed, as the European Court of Human Rights concluded in its *Tebieti* judgment, quoted above (in §52), "*[t]he way in which national legislation enshrines freedom [of association] and its practical application by the authorities reveal the state of democracy in the country concerned*". The far-reaching and stigmatising restrictions of this freedom, which the draft law seeks to introduce, can hardly be regarded as "necessary in a democratic society" and reconciled with the requirements of Article 11 of the European Convention on Human Rights, and other international and Council of Europe standards.

For these reasons, I strongly urge the National Assembly to reject the proposed law. I stand ready to discuss all these matters further with you and other members of the National Assembly.

I would also be grateful if you could ensure that all members of the National Assembly receive a copy of this letter.

Yours sincerely,

Nils Muižnieks