

**REMARKS BY HUNGARY TO THE REPORT OF THE
CONFERENCE OF INGOs OF THE COUNCIL OF EUROPE**

“Civil participation in the decision-making process

Fact finding visit to Hungary”

28 June 2017

INTRODUCTION

While we appreciate the efforts of the Council of Europe and particularly of Conference of INGOs, and therefore – in the air of openness and in a cooperative spirit – it was an honour to host the delegation in Hungary in November 2016, we regret to see an unbalanced report coming out as a result.

First of all, it is hard to determine the nature of the Report. If it is a political document, it may only be of a subjective nature. In this case, as we assess the facts differently, we cannot agree with the Report and much to our regret we have to refuse certain allegations of the President of the Conference of INGOs. There are political forums where it is possible to discuss our different political views as equal partners.

If it is a legal document, in this case we regret to see that it is not legally accurate and well-founded. The report raises questions as to the fundamental rights, but instead of their legal assessment, it draws unsubstantiated and controversial conclusions and carries out a political assessment. Although the report underlines the efforts of the Hungarian Government to make the registration of NGOs and access to fund easier, it still gives an unfounded – deliberately and mainly negative – impression of the situation in Hungary.

Hungary has always been – also testified by the visit – and will remain open for discussion with the Council of Europe.

With our comments below we are trying to highlight some of the inaccurate allegations of the report.

ERRORS OF FACT

The following section contains suggestions for corrections.

Page 4, paragraph 5

“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.”

Note: As regards the number of CSOs in Hungary, we can provide more up-to-date statistics than those mentioned in the report. Based on data received from the Hungarian Central Statistical Office there are 62.152 foundations and non-profit organisations in Hungary. (among these 54.401 are considered classic civil society organisations: foundations - 19.917, associations 34.484). Based on the focus of activities: leisure and recreation (15.7%), sport (14,3%) culture (14.2%), education (13.2%), social services (9.1%), community development (5.5%), professional, economic advocacy (5.5%), health care (4.4%), other (16,4). Only 0.6 % of the organisations work in politics and 1.1 % in the field of protection of rights.

Furthermore, we would like to note that one of the cited legal acts was referred by the wrong number: Act No. 206/2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities is the precise number of the law.

Page 4, paragraph 6

“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.”

Note: Due to the delegation met with Mr. Pál Völner, State Secretary Responsible for Parliamentary Affairs, the Chairman of the Human Rights Working Group, we kindly ask to correct this sentence.

Page 4, paragraph 6

“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.”

Note: Act CLXXIX of 2016 on the amendment and speeding up of proceedings regarding the registration of civil society organizations and companies has entered into force on 1 March 2017. As other changes of the legal environment that have taken place since the visit are mentioned in the Report, we kindly ask to emphasise this – entirely positive – amendment as well. Please find more details about the new legislation at page 4.

Page 7, paragraph 6

“Since 2011 the corporations can also transmit 1% of the 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 representatives of the NGOs [...] So the tax donation provides small founding[...] 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.”

Note: The National Cooperation Fund (hereinafter referred to as „Fund”) is a financing tool designed to support the operation and activities of self-regulatory civil bodies, to reinforce their national cohesion and their role in the completion of the common good. Support from the Fund may be granted to the benefit of associations (not including trade unions and political parties) and foundations. The fact is that that according to available data the revenues income of the Fund has increased between 2012 and 2017 from 3.38 billion HUF to 5.267 billion HUF.

Page 12, paragraph 1

„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.”

Note: The Human Rights Roundtable holds its meetings in thematic sub-working groups. Each thematic working group and the Human Rights Working Group (which was established with Government Decision 1039/2012 (II.22) in 2012) should have at least 2 meetings per year. NGOs and the Government usually jointly establish the agenda of the meetings. In some thematic working groups, only proposals of civil representatives are discussed, but there is usually co-operation in that regard.

GENERAL COMMENTS ON THE REPORT

Comments on the structure of the Report

The Report is not following a clear and well-founded structure, therefore it can be considered as a political declaration instead of a legal analysis on the situation of NGOs in Hungary. We regret to see that in this document every section has a paragraph or sentence which has no connection with its content.

Section 2 of the Report – unlike its title – shortly summarizes the legal framework for participation of NGOs in the law making and public decision making process, but it contains a paragraph about the national consultation which has no connection with the title or the legal environment. It should be emphasised that this consultation is in line with the practice of other European countries. It is hard to determine why the guidelines of the Office for National Economic Planning are mentioned in this Section as it bears no relevance in this case.

The conclusion and the statements of the Report are unbalanced and unsubstantiated, they summarize the Hungarian legal, political and social environment in such a partial way which we are surprised to see within the framework of the Council of Europe.

Comments on the work of the Human Rights Working Group

Page 12 Paragraph 2

„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 NGOs. 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 Agent.”

As the Report points out that there is no restriction on application for NGOs, a simple request should be submitted to the Secretariat of the Human Rights Working Group. Members of thematic working groups are not selected on the basis of their opinion. Article IX Paragraph (1) of the Fundamental Law declares that “Everyone shall have the right to freedom of expression”. It is essential that the Fundamental Law has to be respected during the selection procedure of NGOs and the meetings of thematic working groups as well.

As to the participation in this Working Group, we would like to remind you that cooperation needs at least two actors – it is not quite understandable why the report considers it to be the failure of the Government whose doors are apparently open when certain NGOs do not want to cooperate. While these NGOs may be more vocal than others, they are just a few from tens of thousands of civil organisations operating in Hungary.

In this context we would like to draw attention to the fact that State Secretary Völner, the chairman of the Human Rights Working Group initiated a meeting with NGOs to discuss the main provisions of the Draft Act on the transparency of organisations receiving support from abroad. This meeting was held on 20 April 2017 and State Secretary Völner sent the report of the meeting to the Members of Parliament who introduced the Act. Beyond the members of the Thematic Working Group Responsible for Other Civil and Political Rights other NGOs were invited to this meeting (Hungarian Civil Liberties Union, Hungarian Helsinki

Committee and Transparency International Hungary) in order to provide an open and comprehensive dialogue with civil society.

Comments in connection with the registration of civil society organizations

The Act CLXXIX of 2016 on the amendment and speeding up of proceedings regarding the registration of civil society organizations and companies

Recently, in the field of judicial regulation a key aspect has been that the registration of civil society organizations and the notification and registration of the change of registered data should be made smoother than before. This has been realised by the Act CLXXIX of 2016 on the amendment and speeding up of proceedings regarding the registration of civil society organizations and companies, which aims to achieve that in civil registration proceedings the registration and amendment notification proceedings **are conducted within a reasonable time- and legal frame** in the future, as well as to **simplify state control over the operation of civil society organizations**.

- In connection with registration (amendment notification) proceedings practical feedbacks have shown that the fact that a ruling requesting missing information is delivered several times by courts as a reason of multiple amendments of requests, as well as the fact that the public prosecutor takes part in the proceedings as a quasi-opposing party, results in the prolongation of proceedings. Taking account of these facts the Act is speeding up civil society organization registration (amendment notification) proceedings in the way that from now onwards it makes clear that once a request has been submitted, it cannot be supplemented with new elements. Any additional data have to be submitted within a new request. As a result, also a ruling requesting missing information is delivered only once by the court. Time limits for court proceedings have been maximized. Like in the case of companies, in the case of civil society organizations (foundations, associations) the Act upholds the role of the public prosecutor as a guarantee of lawful operation. The public prosecutor is not any more entitled to appeal the court's decision, however where he finds that a registration is contrary to public policy, he may still contest the court's decision in a lawsuit.
- In line with the Act, in the spring of 2017 the regulation [Ministry of Justice Regulation 4/2017. (IV. 3.)] renewing the model documents which may be used in proceedings, was published. These new model documents give a choice in every important question. Accordingly, from now onwards model documents provide assistance not only to the simplest organisations. Until not later than September 2017 the National Office for the Judiciary will convert the model documents into so-called General Form Completion (ÁNYK) forms, which further strengthens the user-friendly character of the model documents.
- Powers of legal control over civil society organizations have also been renewed. Before the amendment of the Act the court exercised its power of legal control – unnecessarily – in litigation, where the public prosecutor always took part as a party; while other affected parties were not entitled to submit a request for a judicial oversight measure. By altering this scheme the Act on one hand introduces the court's opportunity of opening proceedings ex officio, that is to open legal control proceedings of its own motion, where it finds that the operation of the registered organisation does not comply with the applicable provisions. Furthermore, the Act

allows public authorities other than the public prosecutor and affected parties the opportunity to submit a request for the court's proceedings. In the future the court will conduct its legal control proceedings in a more flexible, non-contentious proceeding.

- The **action brought by the public prosecutor** remains in existence in cases where the right to freedom of association arising from the Fundamental Law of Hungary would be seriously harmed, thus the public prosecutor is still entitled to bring action for the **dissolution of the association**.
- The Act also includes the **amendment of Act V of 2013 on the Civil Code** (Ptk.) to a small extent. The aim of the Ptk.'s amendment is to make clear which ones of the **provisions governing associations** are mandatory and which ones are optional.

Entry into force of the amendments concerning the registration proceedings and the Act CLXXIX of 2016 was 1 March 2017.

Entry into force of the amendments of the Ptk. and of the Act CLXXVII of 2013 on Transitional Provisions and Authorizations Connected to the Entry into Force of Act V of 2013 on the Civil Code (Ptké.): 1 January 2017.

Comments on the role advisory bodies in the law making and public decision making process

The National Economic and Social Council

The National Economic and Social Council represents a well-known forum of a wide range of actors of the Hungarian society to discuss and negotiate about topical issues of great importance. The Parliament adopted Act XCIII of 2011 on the **National Economic and Social Council**, in recognition of the role of economic and social dialogue, in order to discuss strategies of national economy and social policy and to promote a consensus among various interest groups of society. The Council is a consultative, proposal-making and advisory body independent from Parliament and the Government. The Council has over thirty member organisations, representing the Hungarian society, creating the following sides:

- **Side of Representatives of Economy:** advocacy groups and organisations of employers, national business chambers;
- **Side of Employees:** advocacy groups and organisations of employees;
- **Side of CSOs:** CSOs active in the field of national policy;
- **Side of Representatives of Sciences:** Hungarian representatives of academia;
- **Side of Churches** representing the most well-known religious communities;
- **Side of Representatives of Arts,** representing renowned personalities of the artistic life, from the various fields of arts;

The President of the Council is elected from the representatives of the sides. The Presidency is based on the rotation of the sides. The sides providing the President take turns every six months. Representatives of the Government are permanent invitees to the meetings of the Council.

Comments on the Act of transparency of organisations receiving support from abroad

We would like to draw attention to the fact that the new legislation aims at ensuring transparency and does not limit the substantive content of the freedom of association. It does not establish a new register and does not create a substantial additional administrative burden; the conditions on entering and removal from the register are clearly defined. We deem that the new legislation complies with the respective recommendations of the Venice Commission and observes the principles of necessity and proportionality. It is not discriminative and not stigmatizing NGOs and we refute that it is a “foreign agent law”. The terms used in the norm are entirely neutral. We would like to recall paragraph 39 and 52 of Opinion 889/ 2017 of the Venice Commission on the Draft Law on the Transparency of Organisations Receiving Support from Abroad:

“39. Preventing financing of terrorism and money laundering are legitimate aims. In its 2013 Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, the Venice Commission explicitly acknowledged that “there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing” and that “it is justified to require the utmost transparency in matters pertaining to foreign funding”. Ensuring transparency is also a legitimate aim.”

„52. The Venice Commission considers that it is legitimate for States to monitor, in the general interest, who the main sponsors of civil society organisations are. It could also be legitimate, in order to secure transparency, to publicly disclose the identity of the main sponsors.”

The Parliamentary Assembly requested the preliminary opinion of the European Commission for Democracy through Law about the Draft Act of transparency of organisations receiving support from abroad. It is important to note that out of five recommendations of the Venice Commission three were considered and the Committee on Legislation introduced an amendment to the Draft Act in line with these recommendations. The Hungarian National Assembly adopted this amendment.

We would like to draw your attention to the fact that contrary to what the report states, transparency of funds received from the central budget is assured in Article 39 of the Fundamental Law:

“(1) Subsidies, or payments under contract, may be provided from the central budget only to an operator who is able to satisfy the requirement of transparency in terms of ownership structure, organization, and the activities for which aid is provided.

(2) Every organization managing public funds shall publicly account for the management of those funds. Public funds and national assets shall be managed according to the principles of transparency and of corruption-free public life. Data relating to public funds or to national assets shall be recognized as data of public interest.”

Comment on LGBTOI rights

We refuse the allegation on the gender based discrimination. The Hungarian legal framework is in line with the European standards and the case law of the European Court of Human Rights.