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Corruption Risks in Hungary 2011

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*Atlantic
Ocean*

North Sea

*Bay
of
Biscay*

Corruption Risks in Hungary 2011

National Integrity Study

Black Sea

Mediterranean Sea

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Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, TI raises awareness of the damaging effects of corruption. It works with partners in government, business and civil society to develop and implement effective measures to tackle the problem.

Transparency International Hungary (TI-H) is the Hungarian chapter of TI. As an independent professional organization Transparency International Hungary contributes to mitigating corruption, promoting transparency and accountability in the public sphere of decision making processes as well as in the allocation of public funds, in addition to improving the accessibility of public interest information. To achieve our goals party and campaign financing, public procurement, the protection of whistleblowers, judicial corruption, advocacy issues and the transparency mechanism in the business sector are in the focus of our activities.

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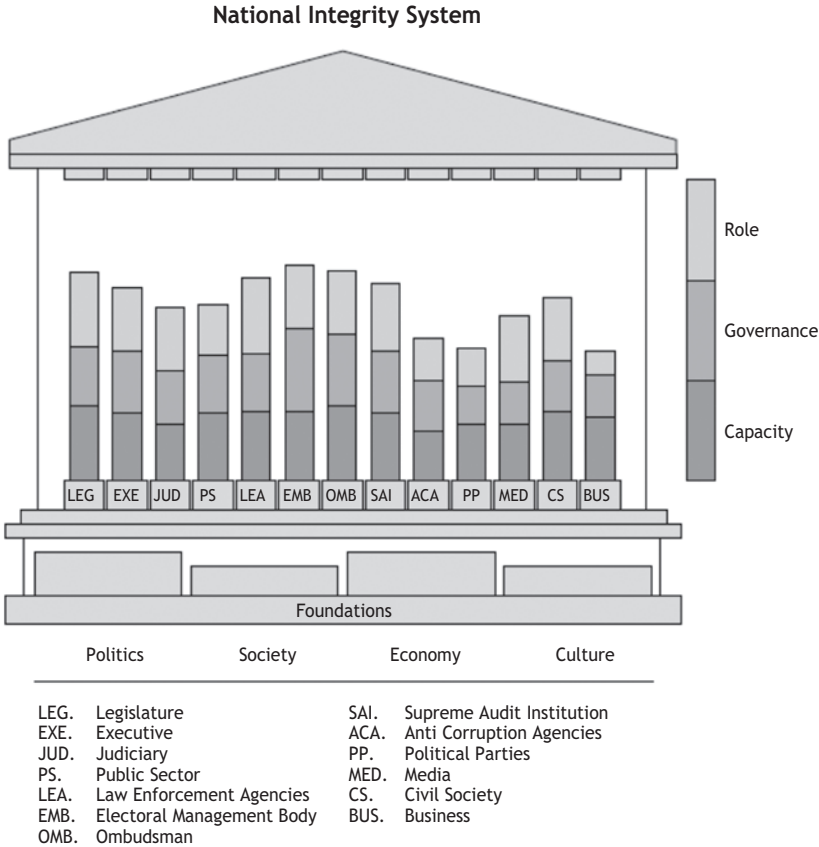
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EXECUTIVE SUMMARY



Hungary, as a member of the European Union has a democratic system with an institutional setup meant to guarantee checks and balances by law. In practice, however, the possibility to exercise political influence over these institutions has increased significantly since the last elections in 2010 when the government obtained a two-thirds majority in Parliament.

In order to ensure independence some laws and appointments require the super majority of Parliament. When the parliamentary majority contains more than two-thirds of the parliamentary seats, the purported aim of the super majority requirement falls short of guaranteeing the non-partisan election of persons. It is merely up to the self-restraint of the ruling parties whether it takes into account the opinion of the opposition or not.

Even though the regulations generally provide sufficient grounds for independence, the independence of control institutions is questionable in practice. Some judges of the Constitutional Court, top officials of the State Audit Office, the Prosecution and the National Media Agency have an explicit political background. The Chief Judge is currently being dismissed in the middle of his term on the grounds of reorganization. The possibility of the re-election of heads of control institutions also weakens their independence.

Political parties remain the major corruption risk in Hungary. Campaign financing regulations do not ensure transparency and accountability which results in using illegal funds for party and campaign financing. This results in the misuse of public funds when it comes to procurements and questions all anti-corruption efforts of the government. Having a two-thirds majority in Parliament the change of the system depends only on the political will of the ruling parties.

Even though there have been several attempts and promises to ensure the protection of whistleblowers, the system does not work. The regulatory framework exists but without an institutional background it cannot fulfill its mandate.

Integrity measures have not improved significantly since the last NIS report. The protection of whistleblowers as well as a comprehensive code of ethics, including rules on conflicts of interests, gifts, hospitality and post-employment restrictions is still missing in all pillars of the NIS. Furthermore there are almost no anti-corruption training programs in the NIS, neither for the general public.

Transparency of certain public institutions remains a problem. On the top of that lawmaking has become less transparent due to a lack of lobbying rules and the new practice of initiating important legislative changes by individual MPs and parliamentary committees.

Two comprehensive anti-corruption programs have been prepared during recent years. The Anti-corruption Coordination Body of the previous government and the Council of Wise Men of the former President put together the documents. Unfortunately, none of these programs have been adopted by the government, let alone Parliament. The current government has announced several anti-corruption measures, most of them being heavily criticized by NGOs. Thus, there is no comprehensive anti-corruption program in place.

The economic crisis has hit Hungary hard, the government has imposed extra burdens on certain segments of the business sector as well as on citizens. A lack of economic resources increases corruption risks that are enhanced by an unpredictable legislation process and increased political influence on independent institutions.

Most important recommendations

- 1) Political influence on independent institutions should be reduced.
- 2) More rigorous regulation on political funding is necessary.
- 3) Effective protection of whistleblowers should be introduced.
- 4) An effective system of declarations of assets should be created.
- 5) Implementation of the proposals of the State Audit Office should be enhanced.
- 6) A code of ethics, including rules on conflicts of interests, gifts, hospitality and post-employment restrictions should be established and implemented in all pillars of the NIS.
- 7) A consistent long-term anti-corruption program should be developed and implemented with special focus on prevention and education.

A shortage or faulty allocation of resources as well as over-bureaucratisation of the legal and administrative system have remained structural causes of corruption in Hungary, notably exacerbated by changes associated with economic, political and social transition.

Hungarian anti-corruption programmes have increasingly been based on the recognition that a comprehensive arsenal of legislative and non-legislative measures needs to be developed including not only criminalisation of a broader range of behaviours, but also stricter regulation on conflicts of interest and the organisation of information campaigns. The successful implementation of these programmes however, requires a strong political will on the part of government, and a solid consensus among political parties accompanied by continuous support from civil society.

Based on the 2007 NIS report Hungary can be characterised as a country with a moderate National Integrity System overall, but with notable areas of weakness. The NIS assessment suggests that the electoral management body, and the ombudsman are the strongest pillars, while the political parties, the business sector and the anti-corruption agencies are the weakest.

These findings reflect public opinion of corruption in Hungary, which also sees political parties and the business sector as two institutions that are the most likely to be corrupt. The weaknesses in political parties' campaigning, and party financing and the total lack of transparency in the case of political financing have been well-documented and indeed have been the subject of a number of enquiries.

Unfortunately, there are very few areas where we can see a real breakthrough since the last NIS. Consequently, some of our recommendations still echo many previous ones. The 2007 NIS Study stated: "Hungary's multiparty system lacks a proper and comprehensive set of financial regulations. Spending on electoral campaigns has been soaring, and for several years it has been an open secret that party expenditure exceeds the outdated limit. The State Audit Office only examines invoices submitted by the political parties, and does not assess real expenditure by using other sources of information. Financial accounts in their present form do not give a reliable picture of the parties' financial management, and there are no sanctions for delay in submission or for inclusion of false data. Comprehensive reform in this area, based on a political consensus of government and opposition parties is strongly advisable."²

Strongest Pillars

Election Management Bodies (Score: 72)

Both election management bodies - namely the National Election Office (NEO) and the National Election Committee (NEC) - are acknowledged and supported by Hungarian society. This study finds that the operations and performance of the managing body is not only in line with the law regulation, but it also transmits information to citizens, in

² Corruption Risks in Hungary 2007 p.10.
http://www.transparency.hu/uploads/docs/Full_report_NIS_2007.pdf [accessed 5 October 2011]

practice, thereby exceeding preliminary expectations. The National Election Committee's role can be assessed during referenda and electoral periods, and in cases of legal remedies. However, this nation-wide web does not weaken the effectiveness of the superior bodies. Integrity mechanisms are poorly regulated by the laws, but in practice they function effectively. Every activity is strengthened by a strong electoral administration that operates in a highly transparent and accountable manner. The weakest part of the law regulation is the campaign finance regulation: the most recent OSCE/ODIHR³ report identified important gaps that do not allow the election management body to act and react effectively.

Ombudsman (Score: 69)

In Hungary the ombudsman has no priority function in the fight against corruption, but the tasks of the ombudsman on data protection and freedom of information are of vital importance for the transparency of governance. However, this system is completely revamped by the Fundamental Law bringing about substantial changes to the legal guarantees and to its structure, including several aspects of the institution. Firstly, the current autonomous, multiple ombudsmen system, in which the four independent ombudsmen have cooperated with each other only at professional level, are changed. The new structure establishes a centralised, hierarchical ombudsman structure in which the specialised ombudsmen are likely to be diminished to a subordinated position. The Fundamental Law creates one general ombudsman and two deputy ombudsmen. Though all of them should be elected by a two-thirds majority of the Parliament, the one general ombudsman shall, in all likelihood, have a commanding role over the deputies, i.e. by leading the office of ombudsmen. The general ombudsman shall also be renamed as "Commissioner for Fundamental Rights"⁴. The Fundamental Law abolishes the institution of the Parliamentary Commissioner for Data Protection. Instead, the Fundamental Law establishes an administrative authority to protect the constitutional right to data protection and that of the freedom of information. The level of protection of a fundamental right is closely linked to the level of independence of the institution that is assigned to protect it. An administrative authority is by definition part of the executive branch, notwithstanding the fact that its independence is declared by law. Therefore the outcome of the abolishment of an independent data protection and freedom of information ombudsman and its impact on the fight against corruption is yet unclear.

3 OSCE/ODIHR Election Assessment Mission Report, Parliamentary Elections April 11th, 2010, Republic of Hungary. (Warsaw: OSCE/ODIHR August 2010), p. 9.

4 The proposal to centralise the ombudsmen system came from the general ombudsman in position, Máté Szabó [cf. the recommendation made by him for the ad-hoc committee established for the preparation of the new Constitution http://www.parlament.hu/biz/aeb/info/allampolgari_jogok_biztosa.pdf [accessed 02 May 2011] as well as the annual report of the year 2009, p. 11. However, constitutional law experts have argued against the centralisation. Interview of László Majtényi, Chairman of the Eötvös Károly Policy Institute, and former Commissioner for Data Protection (1995-2001) with authors, April 26th, 2011. Bernadette Somody: Az ombudsman típusú jogvédelem. ELTE Eötvös Kiadó, Budapest, 2010. p. 91, interview of László Sólyom with Origo, available in Hungarian at <http://www.origo.hu/itthon/20110729-interju-solyom-laszloval.html> [accessed August 31 2011].

Weakest Pillars

Political Parties (Score: 44)

Political parties remain the major corruption risk in Hungary. Campaign financing regulations do not ensure transparency and accountability which results in using illegitimate funds for party and campaign financing. This results in misuse of public funds when it comes to procurements and questions all anti-corruption efforts of the government. Holding a two-thirds majority in Parliament the change of the system depends only on the political will of the ruling parties.

Business Sector (Score: 43)

The business sector still remains one of the weakest pillars of the NIS system as no substantial progress has been achieved since the 2008 business NIS report. While steps were made towards the simplification and unification of regulations on company registration and authorization and implying EU-standards, the overall business environment proves to be rather non-transparent in the relatively small Hungarian business sector. The economic crisis and the fast paced legislation process have caused an even more erratic situation for companies facing heavy bureaucratic obstacles and unpredictable state interventions as well. High corruption risks are inherent in various business transactions such as bankruptcy, liquidation, procurements, official permits. One of the most important characteristics of the Hungarian business sector is the relatively high proportion of micro and small enterprises. In Hungary, the business sector encompasses 200,000 companies without legal personality and one million registered sole proprietors as well. However, integrity mechanisms are rather applied by multinationals.

Anti-corruption Agencies (Score: 47)

Hungary has no independent and well-established anti-corruption agencies. Ad hoc institutions and in-house departments of some bodies deal with special anti-corruption tasks. The main conclusions of this study are primarily based on the findings on the Government Accountability Commissioner and the Government Control Office. Most of the major actors in this pillar are directly subordinate to the government; hence they cannot be regarded as politically impartial or independent. Some of the organisations lack genuine institutional and financial resources, while others work without transparency. Most institutions are accountable to the government, but the public has only limited access to and control over their activities. The Government Accountability Commissioner draws constant attention to the Hungarian corruption cases from previous years. It lodges cases to the law enforcement agencies and is quite visible, although all the cases that the Commissioner examines date back to the previous government. As a result, the role of the Commissioner in preventing and examining present or future cases is rather questionable. The Government Control Office has adequate tools to tackle corruption employing qualified staff, mostly lawyers and economists. Furthermore, the Commissioner participates in the legislative process providing an opportunity to implement structures of integrity in several legislative fields. The most significant problem with the GCO is still its lack of transparency which prevents the measuring of the effectiveness of anti-corruption work of both this office and the government.

Most Controversial Pillars

Media (Score: 55)

The governing parties made substantial changes to the media regulations in 2010. The Constitution⁵, along with Act II of 1986 was amended, while the so-called "Media Constitution" outlining the general principles of media legislation was passed. Finally, Parliament adopted Act CLXXXV of 2010 on media services and mass media. The controversial act was criticized widely both at national and international level. Many Hungarian leading newspapers published a blank front page⁶ to protest against the regulation. A number of European politicians and associations protested against the law and several demonstrations took place after the passing of the Act, while the European Union also raised concerns. The new regulations were signaled to be a threat to weaken the role of the press in its fight against corruption.

Judiciary (Score: 58)

The new Fundamental Law has changed the constitutional regulations regarding the judiciary⁷. In December, 2011, Parliament adopted two laws on the organisation and administration of the judiciary, and the legal status and remuneration of judges (New Laws).⁸ Although the New Laws implement significant elements from TI Hungary's previous NIS recommendations regarding transparency and accountability, it also raises serious concerns. Critics (including the acting President of the Supreme Court) say that the law will weaken the independence of the judiciary, by practically depriving the self-governing bodies of judges from all of its significant competences, and delegating them to one person, the President of the National Office of the Judiciary (NOJ)⁹. The new regulations are not sufficient to exclude political interference to the operation of the judiciary.

Other Pillars

Public Sector (Score: 58)

The public sector in Hungary is currently in a state of flux. The government has been carrying out a comprehensive restructuring of the public sector ever since it was

5 On 6 July 2010: Amendment to the Hungarian Constitution, facilitating the adoption of the upcoming new media laws, on 10th August 2010: Law establishing the new media regulatory authority, on 2 November 2010: Further specifications on the new media regulatory authority and on 9 November 2010: The so-called "Media Constitution" (Act CIV of 2010 on the freedom of the press and the fundamental rules on media content).

6 <http://nepszava.com/files/2011/01/ures-cimlapok-gpr1.jpg> [accessed 24 October 2011]

7 In this chapter under the term of "judiciary" we will deal with the situation of the courts and judges, although there are scholars (and in some decisions even the Constitutional Court) who have referred to the Prosecutors Office as a semi judiciary institution. The corruption risks regarding the PO would be the subject of another research.

8 Proposal for the Organisation and Administration of the Judiciary, and the Legal Status and Remuneration of Judges October 11th, 2011. <http://www.kormany.hu/download/6/ea/50000/A%20b%3C%ADr%3C%B3s%3C%A1gok%20szervezet%3C%A9r%3C%91l%20%3C%A9s%20b%3C%ADr%3C%A1k%20jog%3C%A1ll%3C%A1s%3C%A1r%3C%B3l%3C%B6rv%3C%A9nyjavaslat.pdf#!DocumentBrowse> [accessed on 13 October 2011]; Act CLXI of 2011 on the Organisation and Administration of the Judiciary [hereafter Act on Organisation] (T/4743 Draft Act <http://www.parlament.hu/irom39/04743/04743.pdf> [accessed 22 October 2011]), and Act CLXII of 2011 on the Legal Status and Remuneration of Judges [hereafter Act on Status] (T/4744 Draft Act) http://parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=4744 [accessed 22 October 2011]

9 A főbíró Orbánék reformjáról: teljesen hiányoznak a fékek. [hvg.hu http://hvg.hu/itthon/2011023_Baka_interju_birosagi_reform](http://hvg.hu/itthon/2011023_Baka_interju_birosagi_reform) [accessed 24 October 2011] The new National Office of the Judiciary in some articles referred to as the National Judicial Office.

appointed in 2010. The overall stated aim is to establish more flexible working conditions for public sector employees. Cutting back on staff numbers has been one of the top priorities of the government; however, some statistics show discrepancies. Though the financial resources available for the public sector have been constantly shrinking, it was not the cutting of funds that caused difficulties, but rather, the misallocation of these funds. Given that the whistleblower protection and assets declaration systems in place function poorly, and that a code of conduct is yet to be introduced, several steps need to be taken to promote integrity and accountability within the public sector. These include the resolving of the phenomenon of "revolving doors" in employment, regulating the acceptance of gifts, improving public education on the importance of fighting corruption, and making the consultation process with stakeholders, including the civil sector more effective.

Civil Society (Score: 60)

Hungarian civil society has undergone significant developments over the past two decades. It plays an important role in many domains of public policy and public affairs, and, in general, operates in an acceptable legal environment. Serious constraints limit its ability to conduct its work on advocacy, watchdog and transparency issues. The most important constraint is the worsening funding environment resulting in serious dependence on public (state and European Union) sources. Another problem is the lack of strong and supportive constituencies. At the same time, civil society organisations themselves should make efforts and improve their performance regarding transparency and accountability, because they rarely go beyond the minimal, legally binding obligations.

Executive (Score: 64)

Although the government is politically responsible to Parliament, the executive has become the most powerful branch of the constitutional system. Hungary has undergone innumerable changes since 2010 when Fidesz-KDNP gained qualified majority in Parliament and since the new Fundamental Law and other basic regulations have been adopted. The new Fundamental Law which replaces the existing Constitution as of 1 January 2012 does not change or broaden the authority of the executive. To put effective limits on the dynamic growth of the Government, internal control mechanisms (declarations of assets, conflicts of interest) need to be strengthened, and a comprehensive code of conduct for civil servants needs to be adopted. The external control mechanisms provided by organisations independent of the government and political parties (the State Audit Office [SAO], Budgetary Council, Prosecutor's Office, judiciary) has been weakened since the 2010 elections.

Supreme Audit Institution (Score: 65)

The State Audit Office is a professional body of Parliament set up to control the legality, integrity and transparency of the public financial affairs. The SAO also plays an important role in the fight against corruption in Hungary. Amongst other public bodies, it has the most expertise in the field of public financial management (in addition to the Government Control Office). As far as the regulations are concerned the SAO is independent from the government. The SAO needs effective tools for carrying out audits and in order for

audited bodies to address the findings of the audits. In this respect, the new Act on the SAO contains good innovations, such as the clause on mandatory action plans for the audited bodies. The integrity and efficiency of the SAO could be improved by amending regulations on conflicts of interest, limitation of the practice of advance notifications and the introduction of post-employment restrictions. Governmental agencies and local governments should be urged to accept the recommendations of the SAO. One risk to independence is when the head and top senior officers of the SAO (especially the President and vice-President) have explicit political party backgrounds, because the suspicion of political commitment might fall on the SAO on the whole.¹⁰ The possibility of re-electing the President and the vice-President for another 12-year-term is equally harmful as set in the new Fundamental Law and the new Act on the SAO.

Law Enforcement Agencies (Score: 67)

Law enforcement agencies investigate and prosecute corruption-related offenses. Other bodies or agencies also play a significant role in the detection of bribery and related offences. There is no central body established solely for the investigation and prosecution of these offences. The legal framework for the law enforcement agencies is appropriate with some deficiencies. In general, the financial and technical resources are adequate, but there is some space for improvement to make training and the detection of bribery more effective. There is no proven evidence of political influence on enforcement, although considerable concerns have been raised. The governance of the agencies is appropriate as set by law, but their transparency and accountability is criticised. New legislation has been approved without taking into consideration its possible effects: the growing risks of corruption and descending accountability of enforcement. "The poor career prospects and low admission requirements together with the lack of specialised expertise have been structural causes of corruption in law enforcement agencies ever since the transition"¹¹ and poor career prospects and the lack of transparency in the recruitment process still remains a problem.

Legislature (Score: 69)

The Hungarian constitutional order established¹² a parliamentary governmental system of the prime ministerial type. Central state authorities take part in governance to a varying extent: Parliament, the Government and the President of the Republic are authorities with governance functions. According to some views, the Constitutional Court must be mentioned here due to its competence to invalidate legal norms. Therefore, we can talk about a 'quadrangle of power' in Hungary regarding governance.¹³ In the case of the governmental system of prime ministerial type the head of the government has sole power to appoint ministers and can consequently exert strong

10 However, the general practice of recruiting top senior officers of the Supreme Audit Institutions is quite diverse. In addition, some argue that the political background of top senior officers might even increase the influence of the SAO.

11 As reported in the 2007 TI-NIS survey, p.8. http://www.transparency.hu/uploads/docs/Summary_report_NIS_2007.pdf [accessed 24 October 2011]

12 This part is largely based on Chronowski, Nóra - Drinóczi, Tímea - Petréttei, József: Governmental system of Hungary. In Nóra Chronowski - Tímea Drinóczi- Tamara Takács (eds): Governmental Systems of Central and Eastern European States (Warsawa: Wolters Kluwer Polska - OFICYNA, 2011) pp. 300-66.

13 See Pokol, Béla: A magyar parlamentarizmus szerkezete - A hatalmi négyyszög súlyelosztásai [Structure of Hungarian Parliamentarism - Balances of the Quadrangle of Power], 8-9, 10 *Társadalmi Szemle* (1993)

management over the government. The roles, the weights and the power situation of central public authorities involved in governance are different: the central and definitive elements of governance are Parliament and the Government in the Hungarian system. The main task of the Government is to prepare and implement governmental decisions since the Government disposes of the necessary material, technical and personal prerequisites. The decision-making power of the head of state is subordinated to the type of the governmental system (prime ministerial type) and the majority of his decisions necessitate countersignature by a minister or prime minister. The Constitutional Court participates in governance by examining the constitutionality of decisions in the forms of legal acts (and decrees) (norm control) and by stating cases of unconstitutionality by omission indicating the failure to take certain measures in relation to governance.¹⁴

¹⁴ Though, its competences were substantially restricted and this restriction is upheld in the draft of the new Fundamental Law. See T/2627.

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