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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

Corruption Risks in Hungary 2011

National Integrity System Country Study

Hungary 2011

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Disclaimer

The comments of reviewers have been incorporated into the study only in part and therefore the opinions expressed in this paper represent only the position of Transparency International Hungary. All material contained in this report was believed to be accurate as of 2011. Every effort has been made to verify the information contained herein, including allegations. Nevertheless, Transparency International does not accept responsibility for the consequences of the use of this information for other purposes or in other contexts.

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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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ABBREVIATIONS

ABPLWC - Advisory Body for the Public Life Without Corruption
ABH (Alkotmánybíróság Határozatai) - Decision of the Constitutional Court
ACA - Anti-Corruption Agencies
ACB - Anti-corruption Coordination Body
ACEEEO - Association of European Election Officials
AmCham - American Chamber of Commerce
AVCs - absentee voting certificates
CAO - Chief Administration Officer
CC - Act IV of 1978 (Criminal Code)
CC - Constitutional Court
CCP - Act XIX of 1998 (Act on Criminal Procedure)
CEENERGI - Central and Eastern European Network for Responsible Giving
COAEPS - Administrative and Electronic Public Services
CICP - United Nations Centre for International Crime Prevention
CIJ - Centre for Independent Journalism
CIT - corporate income tax
CM - Committee of Ministers
CPI - Corruption Perception Index
CSO - Civil Society Organisation
CSR - Corporate Social Responsibility
CUB - Corruption Research Center
DCC - Decisions of the Constitutional Court of the Hungarian Republic
DG - Directorate General
DSS - Digital Switchover Strategy
EACN - European Anti-Corruption Network
ECNL - European Center for Not-for Profit Law
EFJ - European Federation of Journalists
EFOI - Act CX of 2005 on the Freedom of Information by Electronic Means
EMLA - Environmental Management and Law Association
EMB - Electoral Management Body
ENCL - European Center for Not-for Profit Law
ENPA - European Newspaper Publishers' Association
EUTAF - Directorates General for Auditing European Funds
ETI - European Transparency Initiative
FIDESZ - Fidesz Alliance of Young Democrats-Hungarian Civic Union
FOI - Freedom of Information
GAC - Government Accountability Commissioner
GCO - Government Control Office
GDP - Gross Domestic Product
GMC - Multidisciplinary Group on Corruption
GRECO - Group of States Against Corruption (Council of Europe)
GVH (Gazdasági Versenyhivatal) - Hungarian Competition Authority
HCA - Hungarian Competition Authority
HCLU - Hungarian Civil Liberties Union
HDF - Hungarian Donors' Forum

HFSA - Hungarian Financial Supervisory Authority
HUF - Hungarian Forint
IPCB - Independent Police Complaints Board
II - International Institution
IMF - International Monetary Fund
INTOSAI - International Organisation of Supreme Audit Institutions
Jobbik - Movement for a Better Hungary
KDNP - Christian Democratic People's Party
KEF - Directorate General for Public Procurements and Services
KEHI - Government Control Office
KEK - KH Central Office for Administrative and Electronic Public Services
KIM - Ministry of Public Administration and Justice
LLM - *Legum Magister*, Master of Law
MBO - Members benefit organisation
MI - Ministry of Interior
MKIK GVI - Institute for Economic and Enterprise Research
MKKSZ - Trade Union of Hungarian Civil Servants, Public Employees and Public Service Employees
MOL Rt. - Hungarian Oil & Gas Company Plc
MJLE - Ministry of Justice and Law Enforcement
MP - Member of Parliament
MPAJ - Ministry of Public Administration and Justice
MSZP - Hungarian Socialist Party
MTE - Hungarian Content Providers
MTI - Hungarian National News Agency
MVM (Magyar Villamos Művek) - Hungarian Electricity Company
NAMS - National Audio Visual Media Strategy
NATO - North Atlantic Treaty Organization
NB - Nota Bene
NJC - National Judicial Council
NCJustice - National Council of Justice
NCO - National Civil Fund
NEC - National Election Committee
NEO - National Election Office
NG - National Gathering
NGO - Non-Governmental Organisation
Nimfea - Nature Conservation Association
NIO - National Investigation Office
NIOK - Non-profit Information and Education Center
NIS - National Integrity System
NJO - National Judicial Office
NMHH - National Media and Infocommunications Authority
NOJ - National Office of the Judiciary
NPS - National Protective Service
NRTB - National Radio and Television Board
ODIHR - Office for Democratic Institution and Human Rights
OECD - Organisation for Economic Co-operation and Development
OLAF - European Anti-Fraud Office

ORFK - National Police Department
OSCE - Organization for Security and Co-operation in Europe
OSI - Open Society Institute
PBO - Public Benefit Organisation
PG - Prosecutor General
PM - Prime Minister
PO - Prosecutors Office
POFG - Parliamentary Ombudsman for Future Generations
POS - Point of Sale
PPA - Public Procurement Act (2003)
PPAC - Public Procurement Arbitration Committee
PPC - Public Procurement Council
PPP - Public-private-partnership
PS - Public Sector
SAO - State Audit Office (ÁSZ)
SECI - South East European Co-operative Initiative
SEENPM - South East European Network for Professionalization of Media
SLAPP - Strategic Litigation Against Public Participation
SMEs - small and medium-sized enterprises
SPO - State Prosecutor's Office
UNICRI - United Nations Interregional Crime & Justice Research Institute
UNODC - United Nations Office on Drugs and Crime
TI - Transparency International
TI-H - Transparency International Hungary
VAT - Value added tax
WAN-IFRA - World Association of Newspapers and News Publishers
WB - World Bank

ABOUT THE NIS ASSESSMENT



A series of high profile corruption cases in the private and public sectors has highlighted the urgent need to confront corruption in Europe. Corruption undermines good governance, the rule of law and fundamental human rights. It cheats citizens, harms the private sector and distorts financial markets. Seventy eight per cent of Europeans surveyed for the EU Commission's 2009 Eurobarometer believed that corruption was a major problem for their country. This report is part of a pan-European anti-corruption initiative, supported by the DG Home Affairs of the European Commission. The initiative looks to assess systematically the National Integrity Systems (NIS) of 25 European States, and to advocate sustainable and effective reform, as appropriate, in different countries.

The National Integrity System assessment approach used in this report provides a framework for analysing the effectiveness of a country's institutions in preventing and fighting corruption. A well-functioning NIS safeguards against corruption and contributes to the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. When the NIS institutions are characterised by appropriate regulations and accountable behaviour, corruption is less likely to thrive, with positive knock-on effects for the goals of good governance, the rule of law and the protection of fundamental human rights. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society overall.

Stemming from the Latin adjective integer (whole, complete), integrity is the inner sense of "wholeness" deriving from qualities such as honesty and consistency of character. As such, one may judge that others "have integrity" to the extent that they behave according to the values, beliefs and principles they claim to hold.

In Western ethics, integrity is often regarded as the opposite of hypocrisy, in that it regards internal consistency as a virtue, and suggests that parties holding apparently conflicting values should account for the discrepancy or alter their beliefs.

TI's plain language guide defines integrity as 'behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions that create a barrier to corruption'

Transparency International Hungary publishes its second NIS country report after the 2007 NIS on the Public Sector and the 2008 Business Sector study. Hence we have the opportunity not only to provide a picture regarding the current status of the integrity system but to see if and how the pillars might have changed since the previous reports as far as the fight against corruption is concerned.

The NIS country report 2011 addresses 13 "pillars" or institutions believed to make up the integrity system of the country.

Government	Public sector	Non-governmental
1. Legislature	4. Public Administration	10. Media
2. Executive	5. Law Enforcement Agencies	11. Civil Society
3. Judiciary	6. Electoral Management Body	12. Political Parties
	7. Ombudsman	13. Business
	8. Supreme Audit Institution	
	9. Anti-corruption Agencies	

Each of these 13 institutions is assessed along three dimensions that are essential to its ability to prevent corruption: first, its overall **capacity** in terms of resources and legal status, which underlies any effective institutional performance. Second, its internal **governance** regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity, all crucial elements in preventing the institution from engaging in corruption. Thirdly, the extent to which the institution fulfils its assigned **role** in the anti-corruption system, such as providing effective oversight of the government (for the legislature) or prosecuting corruption cases (for the law enforcement agencies). Together, these three dimensions cover the institution's ability to act (capacity), its internal performance (governance) and its external performance (role) with regard to the task of fighting corruption.

Each dimension is measured by a common set of indicators. The assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground.

Dimension	Indicators (law, practice)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	<i>Between 1 and 3 indicators, specific to each pillar</i>

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather, it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between institutions to understand why some are more robust than others and how they influence each other. The NIS presupposes that weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars also helps to prioritize areas for reform. In order to take account of important contextual factors, the evaluation of the governance institutions is embedded in a concise analysis of the overall political, social, economic and cultural conditions, the *foundations*, on which these pillars are based.

Methodology

The NIS assessment is a qualitative research tool based on a combination of desk research and in-depth interviews. A final process of external validation and engagement with key stakeholders ensures that the findings are as relevant and accurate as possible before the assessment is published.

The assessment is guided by a set of “indicator score sheets” developed by the TI Secretariat. The sheets consist of a “scoring question” for each indicator, supported by further guiding questions and scoring guidelines for the minimum, mid-point and maximum scores. For example:

Sample indicator score sheet: Legislature <i>Capacity - Independence (law)</i>	
Scoring question	To what extent is the legislature independent and free from subordination to external actors by law?
Guiding questions	Can the legislature be dismissed? If yes, under which circumstances? Can the legislature recall itself outside normal session if circumstances so require? Does the legislature control its own agenda? Does it control the appointment/election of the Speaker and the appointments to committees? Can the legislature determine its own timetable? Can the legislature appoint its own technical staff? Do the police require special permission to enter the legislature?
Scoring guidelines	
Minimum score (0)	There are no laws which seek to ensure the independence of the legislature.
25	
Mid-point score (50)	While a number of laws/provisions exist, they do not cover all aspects of legislative independence and/or some provisions contain loopholes.
75	
Maximum score (100)	There are comprehensive laws seeking to ensure the independence of the legislature.

In total the assessment includes over 150 indicators, approximately 12 indicators per pillar. The guiding questions for each indicator were developed by examining international best practices, existing assessment tools for the respective pillar as well as using TI's own experience, and by seeking input from international experts on the respective institution. The indicator score sheets provide guidance to the researcher, but when appropriate TI Hungary has provided additional information or left some questions unanswered, as not all guidance is relevant to the Hungarian context. Due to the broad scope of the NIS assessment, the analysis of each pillar is necessarily brief and in some cases the research reveals a need for further in-depth research on specific issues which are beyond the scope of the NIS assessment. The full toolkit and score sheets are available on TI Hungary's website.

To answer the guiding questions, each author and the lead researcher relied on three main sources of information: national legislation, secondary reports and research, and interviews with key experts. Secondary sources included trusted reports by national civil society organizations, international organizations, governmental bodies, think tanks and academia.

A minimum of two key informants were interviewed for each pillar - at least one representing the institution under assessment and one expert external to it. Each interviewee had the option either to remain anonymous or consent to the publication of their identity. A full list of interviews is contained in the NIS. Full citations are included in footnotes rather than endnotes, to be as transparent as possible regarding the sources of information used to justify the conclusions and scores.

The assessment represents the current state of integrity institutions in Hungary, using information cited from the last two to three years. It reflects all major legislative changes until October 2011.

The Scoring System

While the NIS is a qualitative assessment, numerical scores are assigned in order to summarise the information and help to highlight key weaknesses and strengths of the integrity system. The sheer length of the report can obscure a holistic perspective. Thus the scores are a way to see all 13 institutions, each assessed according to 12 or more indicators, as if from an aerial viewpoint. They prevent the reader from getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts.

The scores are assigned by an in-country researcher on a 5-point scale in 25-point increments (0, 25, 50, 75, 100) validated by the in-country multi-stakeholder Advisory Group and finally vetted by TI Hungary. An aggregate score for each dimension is calculated (simple average of its constituent indicator scores) and the three dimension scores are then averaged to arrive at the overall score for each pillar. The difference in practice versus law can also be calculated at both dimension level and for an institution as a whole.

While the scoring methodology uses best practice standards in terms of expert selection, comparative anchors, transparency and validity checks, it gives the country teams the

ultimate say about the scores. This fits also with the overall purpose of the assessment, to build momentum for anti-corruption policy change in the individual country. Since there is no international board which reviews and calibrates all scores to ensure that the same information, methodology, and judgment process have been used across countries, we do not produce any country rankings and do not recommend using the raw scores for cross-country comparisons.

Consultative Approach and Validation of Findings

The NIS assessment process in Hungary had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate valid evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives. The consultative approach had two main parts: a high-level Advisory Group and a National Stakeholder Workshop.

NIS Advisory Group	
Name	Affiliation
Noémi Alexa	Transparency International Hungary
Károly Bárd	Central European University
Ákos Péter Bod	Corvinus University of Budapest
Gergely Böszörményi Nagy	Ministry of Public Administration and Justice
István Hamecz	OTP Fund Management Ltd.
András Láncki	Corvinus University of Budapest
Róbert Manchin	Gallup Europe
Ágoston Mráz	Nézőpont Institute
Péter Nizák	Open Society Institute
András Pethő	Origo
András Zs. Varga	Prosecution Service of Hungary

The members of the advisory group met twice on 12 April 2011 and 1 August 2011. The second meeting was entirely dedicated to the discussion of the key findings of the draft report and indicator scores. The meeting resulted in a number of further adjustments to scores and evidence.

On 4 October 2011, TI Hungary presented the methodology and emerging findings of the assessment at a National Stakeholder Workshop. The workshop drew significant attendance from representatives of public and key governance institutions. The second half of the workshop was dedicated to working groups, where participants interacted with TI Hungary's research team members to provide feedback on the findings of each chapter. The workshop helped to further refine the report, particularly by adding and prioritising recommendations.

Finally, the full report was reviewed and endorsed by the TI Secretariat, and as external reviewer Gabriel Partos (a member of Economist Intelligence Unit's team of analysts specialising in Central and Eastern Europe) provided an extensive set of comments and feedback.

Background and History of the NIS Approach

The concept of a “National Integrity System” originated within the TI movement in the 1990s as TI’s primary conceptual tool of how corruption could best be fought, and, ultimately, prevented. It made its first public appearance in the TI Sourcebook, which sought to draw together those actors and institutions which are crucial in fighting corruption, in a common analytical framework, called the “National Integrity System”. The initial approach suggested the use of ‘National Integrity Workshops’ to put this framework into practice. The focus on “integrity” signified the positive message that corruption can indeed be defeated if integrity reigns in all relevant aspects of public life. In the early 2000s, TI then developed a basic research methodology to study the main characteristics of actual National Integrity Systems in countries around the world via a desk study, no longer using the National Integrity Workshop approach. In 2008, TI engaged in a major overhaul of the research methodology, adding two crucial elements - the scoring system as well as consultative elements of an advisory group and reinstating the National Integrity Workshop, which had been part of the original approach.

While the conceptual foundations of the NIS approach originate in the TI Sourcebook, they are also closely intertwined with the wider and growing body of academic and policy literature on institutional anti-corruption theory and practice¹. The NIS research approach is an integral component of TI’s overall portfolio of research tools which measure corruption and assess anti-corruption efforts. By offering an in-depth country-driven diagnosis of the main governance institutions, the NIS’s main aim is to provide a solid evidence-base for country-level advocacy actions on improving the anti-corruption mechanisms and their performance. It is complemented by other TI tools, which are more geared towards raising public awareness of corruption and its consequences via global rankings (e.g. Corruption Perception Index, Bribe Payers Index) or via reporting the views and experiences of the public (e.g. Global Corruption Barometer). In addition, the NIS approach fills an important gap in the larger field of international governance assessments, which are dominated by cross-country rankings and ratings (e.g. Global Integrity Index, Bertelsmann Transformation Index), donor-driven assessments (which are rarely made public) or country-specific case studies, by offering an in-depth yet systematic assessment of the anti-corruption system, which is based on a highly consultative multi-stakeholder approach. This unique combination of being driven by an independent local civil society organisation, involving consultations with all relevant stakeholders in-country, and being integrated into a global project architecture (which ensures effective technical assistance and quality control), makes the NIS approach a relevant tool to assess and, ultimately, further anti-corruption efforts in countries around the world.

¹ See Rose Ackerman, Susan, *Corruption and Government: Causes, Consequences, and Reform*, Cambridge: Cambridge University Press, 1999; OECD *Public Sector Integrity: A Framework for Assessment*, Paris: OECD publishing, 2005; Head, Brown and Connors (eds) *Promoting Integrity*, Surrey: Ashgate, 2008; Huberts, L. W. J. C., Anechiarico, F., & Six, F. *Local integrity systems: world cities fighting corruption and safeguarding integrity*. Den Haag: BJu Legal Publishers, 2008.

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István Balázs, Head of Department of Administrative Law, University of Debrecen

Emília Rytókó, former Head of the National Election Office of Hungary (2002 - 2010)

László Majtényi, Chairmen of the Eötvös Károly Policy Institute, former Parliamentary Commissioner for Data Protection and Freedom of Information

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Kinga Pétervári, (LLM, PhD) Professor, Department of Business Law, Budapest University of Technology and Economics

Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government

Géza Finszter, Professor, National Institute of Criminology

Ferenc Kondorosi, former State Secretary of the Ministry of Justice and Law Enforcement

Géza Fazekas, Spokesperson, Central Investigation Chief Prosecutor's Office

Zoltán Ilcsik, Chief Rapporteur of the Director-General of the National Protective Service

Szabolcs Barna Gaál, Chair, Government Control Office

Gergely Karácsony, Member of Parliament, LMP (Politics Can Be Different)

Júlia Keserű, head of development, K-Monitor Watchdog Association

Balázs Gerencsér, Director, Nonprofit Information and Education Center

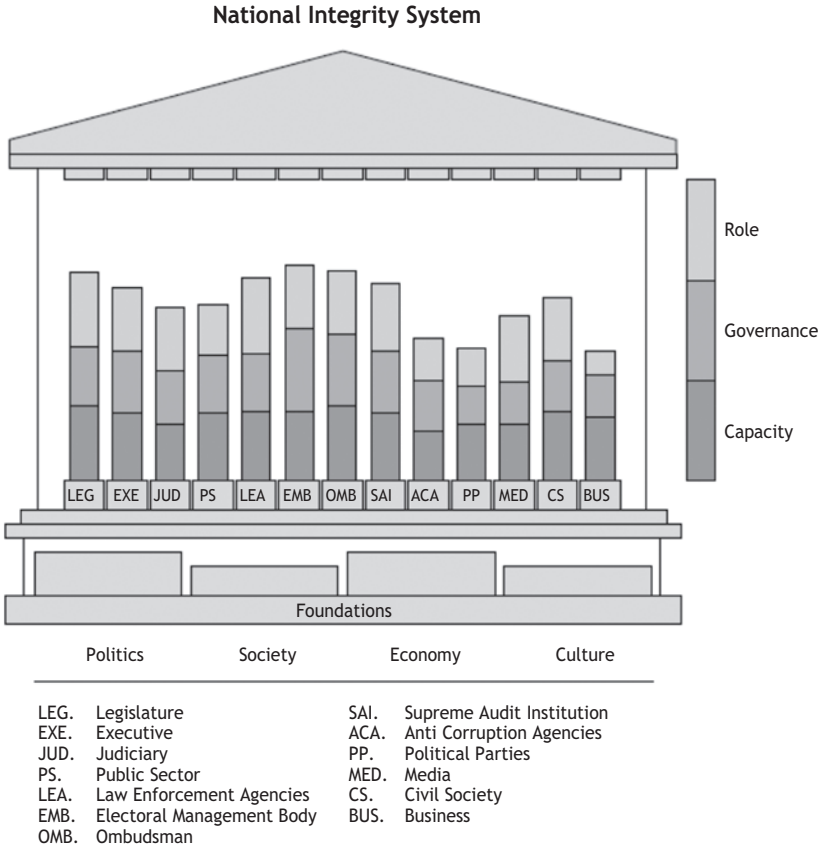
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István Fodor, Chair of the Board, City Operation Centre of Budapest

János Lukács, President, Chamber of Hungarian Auditors

Interviews with informants who wished to remain anonymous are indicated in the chapters concerned.

II. 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%A1l%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.

III. COUNTRY PROFILE - THE FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

Political-institutional Foundations

To what extent are the political institutions in the country supportive of an effective National Integrity System?

Score: 75

Hungary is a Western-style democracy with a population of approximately 10 million. Elections are held every four years when the voters elect the 386 members of the unicameral National Assembly. Then the Assembly elects both the President, who holds a largely ceremonial position, and the Prime Minister who forms and leads the government and oversees the executive branch of the government. General elections at both the national and municipal levels have been generally free, fair and transparent since the collapse of the Soviet-style communist system in 1989-1990. Hungary joined NATO in 1999 and has been a member of the European Union since 2004.

Hungary scores well on all World Bank governance indicators. The country is typically ranked in the top five among Eastern-European and Baltic nations.¹⁵ However, the scores show a downward trend in governance during the last ten years. Four of six indicator scores (Voice and Accountability, Government Effectiveness, Rule of Law, and Control of Corruption) have decreased since 2000 while two (Political Stability and Regulatory Quality) have just stayed constant.

Hungary has an independent judiciary. Courts are generally fair, and the country has made considerable progress in bringing its judiciary and legal institutions up to EU standards. Despite these efforts, the judicial system is often criticized for being slow in processing cases, and for its weak transparency, lack of accountability, and in some cases, excessive political influence over judges.^{16 17}

The strong political polarization that has characterized Hungary since the late 1990s has accelerated during recent years.¹⁸ In the April 2010 parliamentary elections, the center-right Alliance of Young Democrats-Hungarian Civic Union (Fidesz), and its junior partner, the Christian Democratic People's Party (KDNP) defeated the incumbent Socialist Party (MSZP). The Fidesz-KDNP bloc won a two-thirds majority in the National Assembly thereby allowing the coalition to amend the constitution. This has radically transformed the party system and changed the balance of power in Hungary, allowing a concentration of political power unprecedented during the last 20 years since the fall of communism.¹⁹

While the general conditions of Hungarian democracy are stable, the Fidesz-KDNP government's efforts to strengthen control over the media and to weaken the

15 <http://info.worldbank.org/governance/wgi/index.asp> [accessed 12 December 2011].

16 <http://www.freedomhouse.org/template.cfm?page=22&country=8053&year=2011> [accessed 12 December 2011].

17 Fleck, Zoltán, Judicial independence in Hungary, in: A. Seibert-Fohr ed., *Judicial Independence in Transition* (Springer, 2011).

18 http://www.sgi-network.org/pdf/SGI11_Hungary.pdf http://www.sgi-network.org/pdf/SGI11_Hungary.pdf [accessed 12 December 2011].

19 <http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Hungary.pdf> [accessed 12 December 2011].

independence of the courts and other institutions, has generated strong domestic and international disapproval. For example, widespread criticisms of the new Hungarian media legislation have been addressed by institutions such as the European Parliament, the Council of Europe, the Media Representative of the OSCE, the United Nations, and leading press and human rights organizations. Legislation passed by the Fidesz-KDNP government in January 2011 placed broadcast, print and online media under the strict supervision of a new Media Council whose members were nominated entirely by the government. The new law requires print and online media to register with the government, and also forces journalists to expose their sources for articles concerning national security or public safety issues.²⁰

Concerns about the quality of democracy in Hungary are not limited to this new regulation of media. The new Constitution was approved by the Fidesz-KDNP government without genuine public consultation, provoking strong criticisms from, the Venice Commission, Amnesty International, and the international press.^{21 22 23 24} Other steps, such as reducing the power and independence of the Constitutional Court and radically weakening the labour protections of civil servants have also increased the democratic deficit in the country.

Socio-political Foundations

To what extent are the relationships among social groups and between social groups and the political system in the country supportive an effective National Integrity System?

Score: 50

The Hungarian constitution guarantees the freedom to establish and operate associations, including trade unions and employer organizations. In 1988, the Hungarian Parliament passed a strike law that made strikes legal.²⁵ Trade union density, the percentage of trade union members among all employees, is around 17%.²⁶

Hungary's civil society is well developed and vibrant, with a large number of organizations. In 2009, approximately 130,000 people were employed by more than 60,000 non-profit organizations.^{27 28} However, due to the scarcity of private funding, the sector is heavily reliant on state and on EU resources.²⁹

20 <http://blog.freedomhouse.org/weblog/2011/12/press-freedom-a-loser-in-viktor-orb%C3%A1ns-winner-take-all-hungary.html> [accessed 12 December 2011].

21 Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th Plenary Session (Venice, June 17-18th, 2011) 102, 103 [hereafter Venice Commission Opinion] <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29016-e.pdf> [accessed 13 July 2011]

22 http://www.nytimes.com/2011/04/19/world/europe/19iht-hungary19.html?_r=1 [accessed 12 December 2011].

23 <http://www.heritage.org/research/commentary/2011/03/hungarys-new-constitution-should-be-ratified-by-the-people> [accessed 12 December 2011]

24 <http://www.amnesty.org/en/library/asset/EUR27/006/2011/en/b528abb2-32a6-4615-858a-5eef13f369f/eur270062011en.html> [accessed 12 December 2011].

25 <http://www.freedomhouse.org/template.cfm?page=22&country=8053&year=2011> [accessed 12 December 2011].

26 http://www.eurofound.europa.eu/eiro/country/hungary_1.htm [accessed 12 December 2011].

27 <http://portal.ksh.hu/pls/ksh/docs/hun/xftp/stattukor/nonprofithumanero.pdf> [accessed 12 December 2011].

28 <http://portal.ksh.hu/pls/ksh/docs/hun/xftp/idoszaki/nonprof/nonprof07.pdf> [accessed 12 December 2011].

29 <http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Hungary.pdf> [accessed 12 December 2011].

Although Hungarian women have the same rights as men, they still suffer from significant career disadvantages. In particular women aged over 50 and pregnant women face discrimination.³⁰ Hungary legalized civil partnership for same-sex couples in 2009. However, homosexuals are still targets of discrimination and violence.³¹ For example, in recent years gay pride marches took place under threats and attacks by extremists.

The constitutional and legislative framework provides adequate protection for minority groups in Hungary. The Law on the Rights of National and Ethnic Minorities, enacted in 1993, enables all recognized minorities to establish Minority Self-Governments, which provides them wide cultural autonomy and opportunities to handle their cultural and educational affairs. Hungary has also transposed the EU's equality directives and anti-discrimination laws into national law.³²

Despite these legal and institutional protections, the Hungarian Roma community, the largest ethnic minority in the country, still faces widespread discrimination. An unofficial estimate puts the number of Roma in Hungary at between 250,000 and 800,000 persons.³³ Roma children are often segregated in schools and are wrongly placed in classes for students with mental disabilities.³⁴ Roma are significantly less educated and have below average income and life expectancy compared to the rest of the national population.³⁵ In some villages Roma families still lack electricity, running water or sewage systems.³⁶

Extremist ideologies have become more popular in Hungary in recent years. According to a current survey, one third of Hungarians are openly xenophobic; however this attitude varies considerably depending on the respondent's age and education.³⁷ A new force has emerged in the parliamentary arena, a radical right-wing party called the Movement for a Better Hungary (Jobbik). Coming from nowhere, it took 17% of the vote in the 2010 general election, using an unapologetic anti-Roma, anti-Semitic, homophobic and anti-capitalist rhetoric.³⁸ The last few years have brought several attacks against Roma, including four adults and two children murdered by racists.³⁹ Melees also broke out in small Hungarian villages between groups of Roma and members of the Magyar Garda (the Hungarian Guard), the uniformed wing of the Jobbik political party.

30 <http://www.minorityrights.org/5804/hungary/hungary-overview.html> [accessed 12 December 2011].

31 <http://www.freedomhouse.org/template.cfm?page=22&country=8053&year=2011> [accessed 12 December 2011].

32 <http://www.minorityrights.org/5804/hungary/hungary-overview.html> [accessed 12 December 2011].

33 <http://www.minorityrights.org/5804/hungary/hungary-overview.html> [accessed 12 December 2011].

34 <http://www.freedomhouse.org/template.cfm?page=22&country=8053&year=2011> [accessed 12 December 2011].

35 <http://www.minorityrights.org/5804/hungary/hungary-overview.html> [accessed 12 December 2011].

36 http://www.economist.com/blogs/easternapproaches/2011/04/europes_roma [accessed 12 December 2011].

37 <http://www.tarki.hu/hu/news/2011/kitekint/20111205.html> [accessed 12 December 2011].

38 http://www.economist.com/blogs/easternapproaches/2010/06/hungary_3 [accessed 12 December 2011].

39 <http://www.errc.org/cms/upload/file/attacks-list-in-hungary.pdf> [accessed 12 December 2011].

Socio-economic Foundations

To what extent is the socio-economic situation of the country supportive of an effective national integrity system?

Score: 75

After the transformation crisis that followed the collapse of the communist system in 1989 Hungary has gradually returned to a sustained growth mainly based on Foreign Direct Investment. By the late 1990s, the country became an export-oriented and manufacturing-based economy, tightly interwoven with the Western European economic area, especially with Germany.⁴⁰ Hungary has been a member of the OECD since 1996.

The country has an open capital market and a solid banking system where 80% of the bank assets are owned by foreign capital.⁴¹ Hungary has been very successful in attracting foreign investment since the early 1990s. However, the economy suffers from a number of structural problems. There is a gap between the dynamic multinational economic sector that uses modern technology and a much weaker and backward domestic sector, dominated by small and medium-sized enterprises (SMEs) and more than a million self-employed.⁴² The proportion of economically inactive persons, and also welfare recipients, in the population is distressingly high, at 39%.

Hungary's household consumption structure has grown more similar to Western capitalist economies. However, growing consumption has been typically financed by bank loans denominated mainly in Swiss francs and Euros.⁴³ Due to the global economic crisis, the weaker exchange rate of the Hungarian forint (HUF) has severely hit indebted lower-middle-class households which borrowed in foreign currency. Their loans cost them much more whenever the Hungarian currency weakens.

During the 2000s, income inequality declined in Hungary and became similar to Western European countries. However, the economic crisis has substantially increased inequality as measured by living standards, income levels, health, education and access to public services.⁴⁴ Those who have been especially hurt by the economic downturn include the less developed north-eastern part of the country and, in particular, social groups such as the Roma, plus families with several children and single parents.⁴⁵ Hungary's child poverty rate is about one and half times the EU average. Nearly 20% of Hungarian children live in poor families (defined as below 60% of the national average standard of living).⁴⁶ About 12% of the population as a whole lives under the poverty line; however, poor people in Hungary are typically much poorer than their counterparts in the EU.⁴⁷

Hungary has a relatively diversified and solid social safety net to compensate for social risks. However, the growing number of welfare recipients and the lack of structural

40 Neumann, László and Tóth, András, Crisis of the Post-transition Hungarian Model, in: G Bosch, S. Lehndorff, and J. Rubery eds., European Employment Models in Flux, A Comparison of Institutional Change in Nine European Countries (Macmillan, 2009).

41 <http://www.bertelsmann-transformation-index.de/en/bti/country-reports/laendergutachten/eastern-central-and-southeastern-europe/hungary/> [accessed 12 December 2011].

42 http://www.sgi-network.org/pdf/SGI11_Hungary.pdf [accessed 12 December 2011].

43 http://www.socialwatch.org/sites/default/files/hungary2012_eng.pdf [accessed 12 December 2011].

44 http://www.socialwatch.org/sites/default/files/hungary2012_eng.pdf [accessed 12 December 2011].

45 http://www.sgi-network.org/pdf/SGI11_Hungary.pdf [accessed 12 December 2011].

46 http://www.socialwatch.org/sites/default/files/hungary2009_eng.pdf [accessed 12 December 2011].

47 http://www.socialwatch.org/sites/default/files/hungary2012_eng.pdf [accessed 12 December 2011].

reforms of ineffective institutions raise questions concerning the sustainability of social welfare systems. For example, although there is universal health care coverage in Hungary, the quality of the health care service is generally poor. People who want better treatment have to informally pay the doctors, nurses and other staff in health care institutions.⁴⁸ Those who cannot afford or who are not willing to pay this “extra” money must settle for a much lower quality service. In comparison with citizens in other EU member states, the health of Hungarians is poor. The mortality rate is the third highest in the EU, and Hungarian males have the highest lung cancer mortality rate in the world. High-levels of alcohol consumption, smoking, an unhealthy diet and a lack of physical activity are among the main causes of death.⁴⁹

Socio-cultural Foundations

To what extent are the prevailing ethics, norms and values in society supportive of an effective national integrity system?

Score: 50

In its contribution to the World Values Survey⁵⁰, the Hungarian TÁRKI Group conducted research in 2010 on the social and cultural attitudes of Hungarians.⁵¹ The main findings of the survey show that Hungarians are more secular, rational and individualistic and with these values are close to their Western European counterparts. However, on the dimension of openness, their very low attitude score puts them among a group of Eastern Orthodox countries such as Russia, Moldova, Ukraine and Bulgaria. Hungarians are even less open than their counterparts in the Czech Republic, Slovakia, Slovenia, and Poland. This means that they are less tolerant of other people and alternative lifestyles and that they are also less desirous of civil and political freedoms.

During decades of the communist one-party system, many Hungarians lost confidence in public institutions. Compared to other European countries, their trust in institutions such as the political parties, the government, Parliament, the media and the trade unions is extremely low, even 20 years following the collapse of communism. The World Values Survey indicates that Hungarians do not trust in each other either. Their confidence and trust typically does not extend beyond family circles.

People are deeply committed to state redistribution and many are hostile to market forces, viewing business or the market system as a war in which everybody is against everyone else. Hungarian people are also typically very suspicious regarding private wealth. Eighty percent of survey respondents believe that in Hungary nobody can become rich through honest hard work. In addition, Hungarians appear to show more tolerance towards rule-breaking than others in neighbouring countries. Most people think that corruption and breaking the rules are morally wrong, while believing that no one can become successful running only a fair and clean business. There is also a strong belief in

48 http://www.sgi-network.org/pdf/SGI11_Hungary.pdf [accessed 12 December 2011].

49 http://www.who.int/countryfocus/cooperation_strategy/ccsbrief_hun_en.pdf [accessed 12 December 2011].

50 <http://www.worldvaluessurvey.org/> [accessed 12 December 2011].

51 http://www.worldvaluessurvey.org/wvs/articles/folder_published/publication_596/files/2010-03-30-toth-en.pdf [accessed 12 December 2011].

Hungary that schooling is not an effective channel of upward mobility; success rather depends on connections, family background and fate.⁵²

Eurobarometer surveys measure changes in European public opinion. According to current Eurobarometer findings, while many Europeans have a rather positive feeling about their general life situation, Hungary is among the most pessimistic of European countries.^{53 54} In the EU, the average “current life situation” score is 3.5, measured on a scale of from -10 to +10. However, Hungary can be found at the bottom of the national rankings recording a low score of -0.3. Moreover, only 19% of Hungarians think that “things are progressing in the right direction in their country” compared to the still not too high European average of 28%.

In Hungary it is also a minority view (40%) that EU membership is beneficial, while 52% of Europeans think that their countries have benefited from EU membership. Interestingly a majority in two other Eastern European countries (73% in Poland, and 72% in Slovakia) say that EU membership has been beneficial for their country.^{55 56}

52 http://www.worldvaluessurvey.org/wvs/articles/folder_published/publication_596/files/2010-03-30-toth-en.pdf [accessed 14 December 2011].

53 http://ec.europa.eu/public_opinion/archives/eb/eb75/eb75_publ_en.pdf [accessed 12 December 2011].

54 http://ec.europa.eu/public_opinion/archives/ebs/ebs_370_en.pdf [accessed 12 December 2011].

55 http://ec.europa.eu/public_opinion/archives/eb/eb75/eb75_publ_en.pdf [accessed 14 December 2011].

56 <http://pewglobal.org/reports/display.php?ReportID=267> [accessed 14 December 2011].

IV. CORRUPTION PROFILE

The political and economic transition in Hungary has been accompanied by widespread corruption. Shortage or bad allocation of resources, an over-bureaucratized legal system and public administration⁵⁷ and networks based on mutual favours⁵⁸ have remained structural causes of corruption. Society has undergone significant changes that have undermined generally accepted norms of behaviour (anomie) and strengthened tendencies towards corruption.⁵⁹ In some sectors the change from a planned economy to a liberal market system has altered the underlying structure of corrupt behaviour. In the shortage economy of socialism, the direction of corruption was from buyer to seller as buyers sought to obtain goods and services in short supply (quality food and imported goods). After the change of regime, the direction of corruption in several sectors (business, public contracting etc.) is from seller (entrepreneur) to buyer (client).⁶⁰

Regarding the criminalization of corruption, the Hungarian Criminal Code⁶¹ is, to a large extent, in conformity with the requirements of the Criminal Law Convention on Corruption (GRECO).⁶² In the XVth Chapter of the Criminal Code, which regulates Crimes against the integrity of State Administration, the Administration of Justice and Public Life, the law punishes the passive and active *bribery of domestic public officials*.⁶³

According to the Code, “*domestic public officials*” are: “a) Members of Parliament; b) the President of the Republic; c) the Prime Minister; d) members of the Government, state secretaries and deputy state secretaries; e) constitutional judges, judges, prosecutors; f) ombudsman; g) members of local government bodies; h) notaries and assistant notaries; i) independent court bailiffs and assistant court bailiffs; j) persons serving at the constitutional court, the courts, prosecutors offices, administrative agencies, local government administrative bodies, the State Audit Office, the Office of the President of the Republic, the Office of Parliament, whose activity forms part of the proper functioning of the organisation; k) probation officers working for the national parole board under an employment relationship in the judicial system, l) persons exercising public or administrative powers in a body entrusted by law with public or administrative tasks.”⁶⁴

Active and passive *bribery of foreign public officials* are separate criminal offences under sections 258B and 258D CC. 3. “Foreign public official” shall mean: a) a person empowered with legislative, judicial, public administration or law enforcement duties in a foreign state; b) a person serving in an international organization created under international convention, whose activity forms part of the proper functioning of the organization; c) a person elected to serve in the general assembly or body of an international organization

57 Kránitz, M.: *On Corruption In: Fight Against Corruption*. IM, Budapest, 2006. p. 17., Hámori, B. *Emotions - Economics*. Kossuth, Budapest, 1998. pp. 154-160.

58 Kránitz, M.: *Corruption In: Kriminológiai ismeretek - Bűnözés - Bűnözéskezelés* (Introduction to Criminology - Criminality - Crime Control) (ed.: Gönczöl, K. - Korinek, L. - Lévy, M.). Corvina, Budapest, 1998. p. 172-185.

59 Kránitz, M.: *Corruption In: Kriminológiai ismeretek - Bűnözés - Bűnözéskezelés* (Introduction to Criminology - Criminality - Crime Control) (ed.: Gönczöl, K. - Korinek, L. - Lévy, M.). Corvina, Budapest, 1998. p. 172-185.

60 Kránitz, M.: *On Corruption In: Fight Against Corruption*. IM, Budapest, 2006. pp. 10-11.

61 Act IV of 1978 on the Criminal Code (hereafter CC)

62 http://www.transparency.hu/uploads/docs/GRECO_-_Third_Evaluation_Round_-_Theme_I..pdf [accessed 24 October 2011]

63 Section 250-255 CC

64 Section 137 point 1) CC

created under international convention; d) a member of an international court that is empowered with jurisdiction over the territory or over the citizens of the Republic of Hungary, and any person serving in such international court, whose activity forms part of the proper functioning of the court.”⁶⁵

Passive and active *bribery in the private sector* are criminal offences under sections 251, 252 (passive), 254 (active) and 258/C (foreign active bribery) of the Criminal Code.

Passive and active *trading in influence* (action taken by the “influence peddler”) is a separate criminal offence under Hungarian law as covered by section 256 CC (domestic public official) and 258/E CC (foreign public officials).

The criminal sanctions for passive bribery in the public sector range from 1 to 5 years of imprisonment and may extend to a maximum of 10 years in certain circumstances. Passive bribery in the private sector is punishable by 3 years of imprisonment, but the sanctions may go up to 10 years in particularly grave cases. Active bribery in the public sector may lead to 3 years of imprisonment and active bribery in the private sector 3 years of imprisonment, unless there are aggravating circumstances (for instance where the perpetrator induces the person taking the bribe to breach his duty) in which case these penalties may be much more severe. Furthermore, the range of sanctions appears to be in line with other comparable crimes such as embezzlement (section 317 CC) and fraud (section 318 CC).

In the last decade, the legislator amended the regulations several times, usually by implementing more severe punishments for different forms of bribery, but in some cases implementing new regulations for preventing corruption. In 2001, the Act CXXI amended the Criminal Code by constituting a new crime: *failure to report bribery*. In Section 255/B the Criminal Code says that “(1) Any public official who has learned from credible sources of an act of bribery (Sections 250-255 of the Criminal Code) yet undetected, and he fails to report it to the authorities at the earliest possible time is guilty of misdemeanor and may be punished by imprisonment not to exceed three years, work in community service or a fine.”

The regulation has been in effect since 1 April 2001, but since that time there has been no public record of anyone committing this crime.

The legislator had hopes of increasing efficiency with yet another amendment in Section 255/A of the Criminal Code which says that: “The perpetrator of a criminal act defined in Subsections (1) and (2) of Section 250, Subsection (1) of Section 251, Subsection (1) of Section 252, and Subsection (2) of Section 255 shall be exonerated from punishment if he confesses the act to the authorities at first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and reveals the circumstances of the criminal act. (2) The perpetrator of a criminal act defined in Section 253, Section 254, and Subsection (1) of Section 255 shall be exonerated from punishment if he confesses the act to the authorities at first hand and reveals the circumstances of the criminal act.” In this case the new regulation tried to strengthen the already existing plea

65 Section 137 point 3) CC

bargaining regulation of the Criminal Procedural Code which gives the right to the prosecutor to guarantee immunity to the perpetrator of a crime if he or she cooperates with the authorities by providing valuable information. Unfortunately, to date there is no evidence available which might prove the efficiency of these regulations.

As mentioned earlier, according to the second part of the 2007 National Integrity System Country Study sanctions on business crimes and corruption offences are sufficiently strict but law enforcement is, however, gravely deficient. An earlier study concerning the sanctions implemented between 2006 and 2008⁶⁶ demonstrated this fact. According to statistical data from cases in 2006, courts imposed fines in 50 bribery cases out of 354 (14%), in 2007, 49 fines out of 241 cases (20%), in 2008, 41 fines out of 271 cases (20%). This means, that in every fifth case the perpetrator of bribery was punished with a fine despite the fact that the intention of the legislator was the use of imprisonment.

Critics stating that courts are too lenient in corruption cases cannot be proved correct. According to the statistics of the Metropolitan Court of Budapest between January 2005 and April 2009, in 86 cases 74 people were convicted for active bribery, 4 received imprisonment, 66 suspended imprisonment, 1 was fined, and there were 4 who were censured. In the same cases 54 persons were convicted for passive bribery: 1 was imprisoned, 49 received suspended imprisonment and 3 were fined.⁶⁷

The results of this court illustrate the same phenomenon seen in the national court statistics - courts seemed to be too lenient. But if we take another look at the individual cases we can reach another conclusion. Among the 86 bribery cases there were 75 cases when somebody gave or offered an undue advantage in the form of money. In 41 cases (55%) the given or offered money was less than HUF 20,000 (USD 95)⁶⁸, in 24 cases (32%) it was between HUF 20,000 and 100,000 (USD 95-474), in 6 cases (8%) it was between HUF 100,000 and 1 million (USD 474 - 4,740), and just in 4 cases (5%) over HUF 1 million (USD 4,740).⁶⁹

From these information we can draw the conclusion that despite the lawmaker's intention in the vast majority of cases the law enforcement agencies are mainly really only able to catch petty offenders. Further research programs are needed to find the exact reason of this phenomenon. However, it is only in the last two years when some "large scale" cases started to reach the courts - recently a former deputy mayor received 6 years imprisonment for corruption related crimes while some former mayors and council members are awaiting their trials or sentences.

Without hard empirical facts, we can conclude, that the reason is not in the Criminal Code, nor is it in the Criminal Procedural Code,⁷⁰ or the Police Act⁷¹, because the law provides regulations for all secret operations that require judicial warrants. These

66 *Függetlenség és elszámoltathatóság az igazságszolgáltatásban*. Transparency International Hungary. <http://www.transparency.hu/uploads/docs/hack.pdf> [accessed 24 October 2011]

67 Survey conducted by Judge Ágnes Gimesi in the Metropolitan Court of Budapest. The results of the survey were published in the Krimnalexpo 2009 conference in Budapest on the 5 May 2009.

68 Official HUF/USD exchange rate of the National Bank of Hungary on 15 October 2011 was 211.09.

69 We have to add, that in all the last 4 cases the undue advantage was just offered and not given money.

70 Act XIX of 199

71 Act XXXIV of 1994

measures (including searching private premises, wire tapping, controlling mail and email, establishing traps, and using agent provocateurs etc.) may be applied in connection with a variety of serious offences, including crimes punishable by up to three years imprisonment, which includes the majority of corruption related cases.

Taking the above into account as far as the general criminal framework is concerned Hungary has proper legal instruments for combating corruption. The largest challenge for the legislation is to find a workable solution for the structural problems of the law enforcement agencies. Until now there were more than ten different organizations which were responsible for fighting corruption but no effective strategy to coordinate their efforts.

After the landslide victory of the right-wing parties on the 6 May 2010, TI Hungary published its recommendations on anti-corruption measures needed to be implemented.⁷² The statement declares: "Without reducing the risks of corruption, Hungary's economic and competitive indicators will not improve. The restraint of corruption cannot be executed without structural reforms, changing the current management of some institutions and the top level's exemplary devotedness. In the event that the two governing parties, Fidesz (Young Democrats' Association) and KDNP (Christian Democratic People' Party), dispose of the necessary parliamentary majority to execute the structural reforms there is every chance of providing effective measures against corruption." A comprehensive list of policy recommendations were issued again on the occasion of Hungary's EU presidency in January 2011.⁷³

According to the Corruption Perception Index in 2011, Hungary ranks 54 with its 4.6 score. With this result we finished below the regional average. Among the neighboring countries it is also Hungary which showed the highest downturn: 0.4 point to last years CPI. It is the indicators of the business sector that have fallen most significantly in Hungary's case. The market is impatient and demands effective governmental response as soon as possible, since overall anti-corruption measures are essential in overcoming the economic crisis and in increasing the competitiveness of the country.⁷⁴

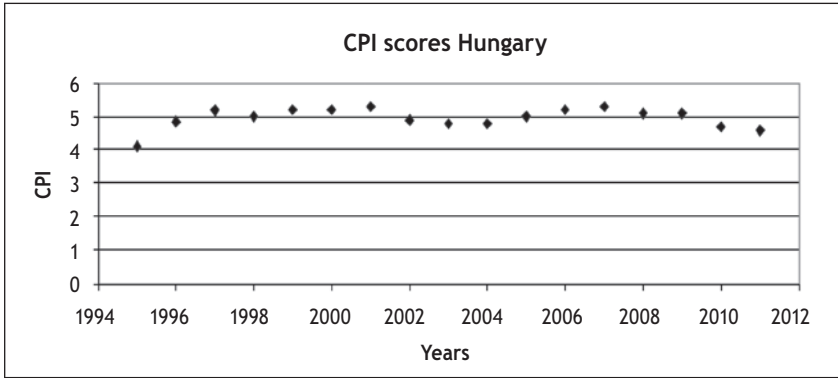
Corruption Perception Index (2011):

- Scores: 4.6 (2009: 5.1, 2010: 4.7)
- Rank: 54 (2009: 46, 2010: 50)

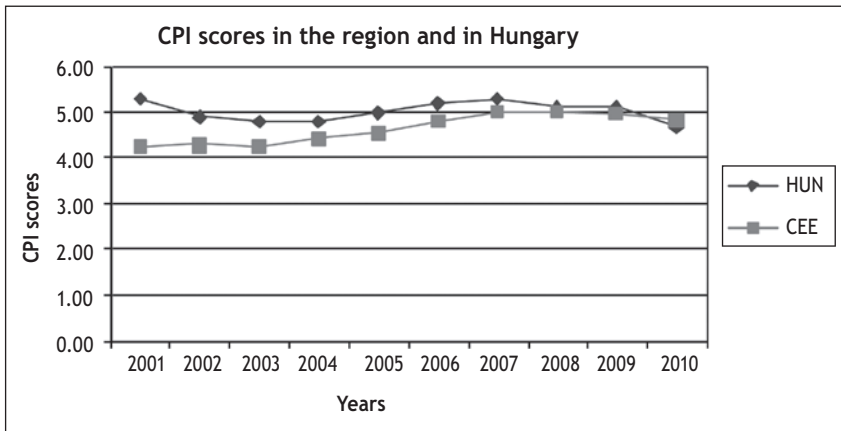
72 http://www.transparency.hu/Peter_Eigen__the_founder_of_the_worldwide_organization_of_Transparency_International_visited_Hungary?bind_info=index&bind_id=0 [accessed 24 October 2011]

73 http://www.transparency.hu/Mit_tehet_a_magyar_elnokseg_a_korrupcio_elleni_kozos_europai_fellepesert_?bind_info=index&bind_id=0 [accessed 24 October 2011]

74 http://www.transparency.hu/CPI_2010_599 [accessed 24 October 2011]



Regional comparison

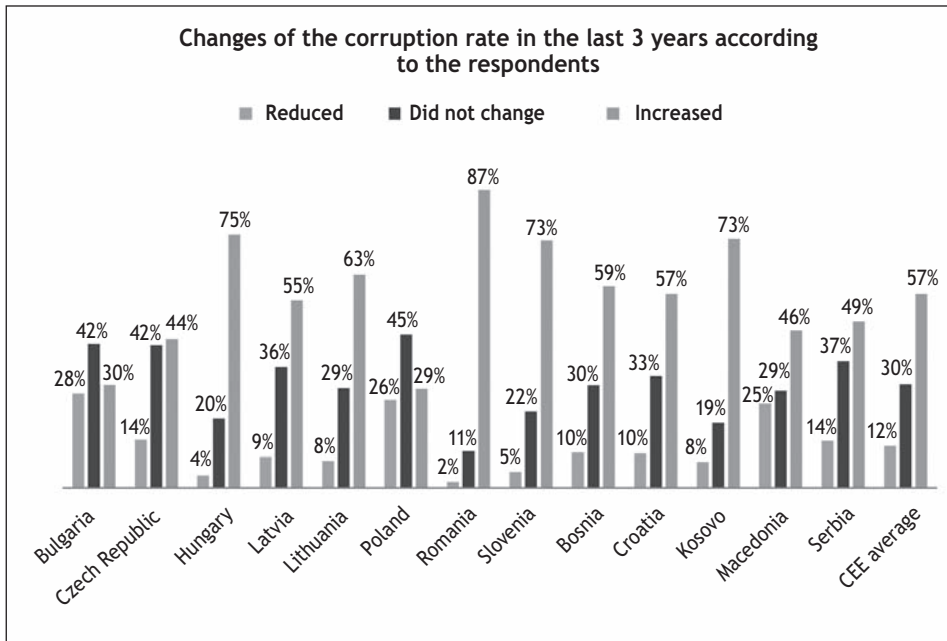
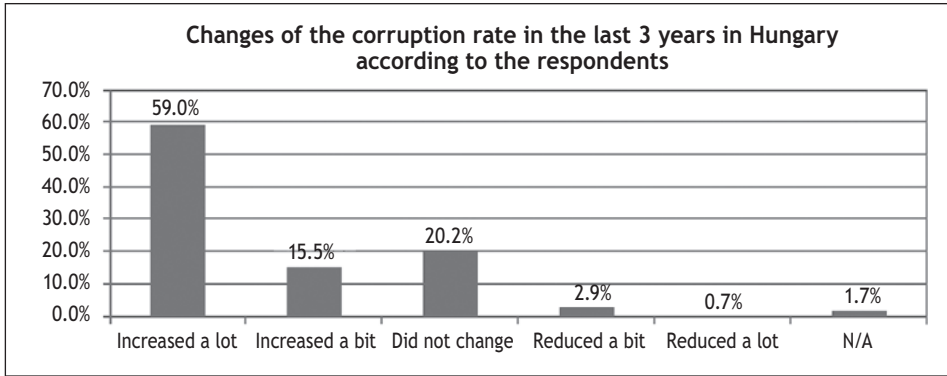


Corruption Perceptions Index

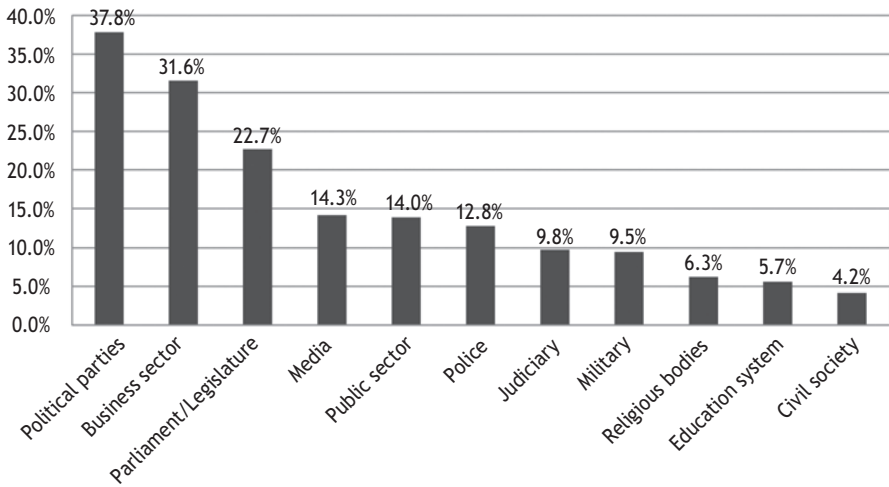
2011	2010	2009	2008	2007	2006
4,6	4,7	5,1	5,1	5,3	5,2

According to TI's Global Corruption Barometer⁷⁵ more than 75% of the respondents believed that corruption had increased in the previous 3 years, almost 60% of them saying that corruption had increased significantly.

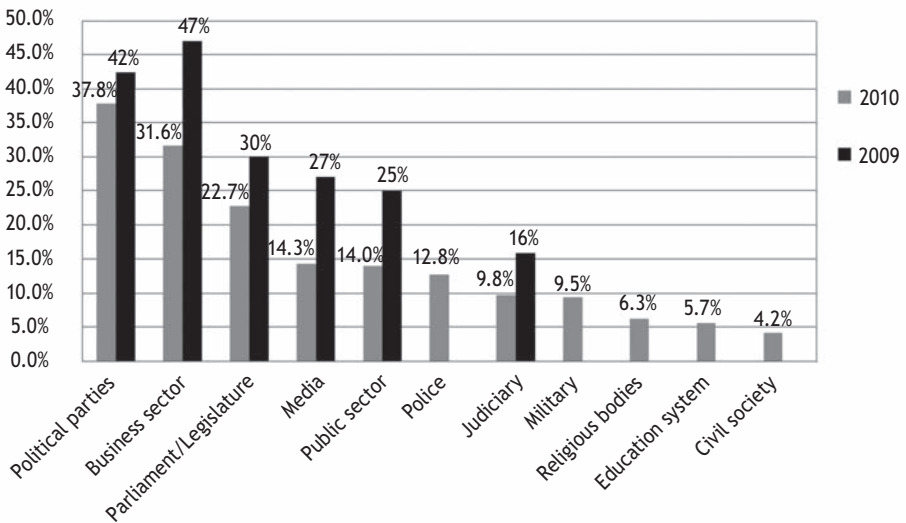
75 http://www.transparency.hu/Global_Corruption_Barometer_458 [accessed 24 October 2011]



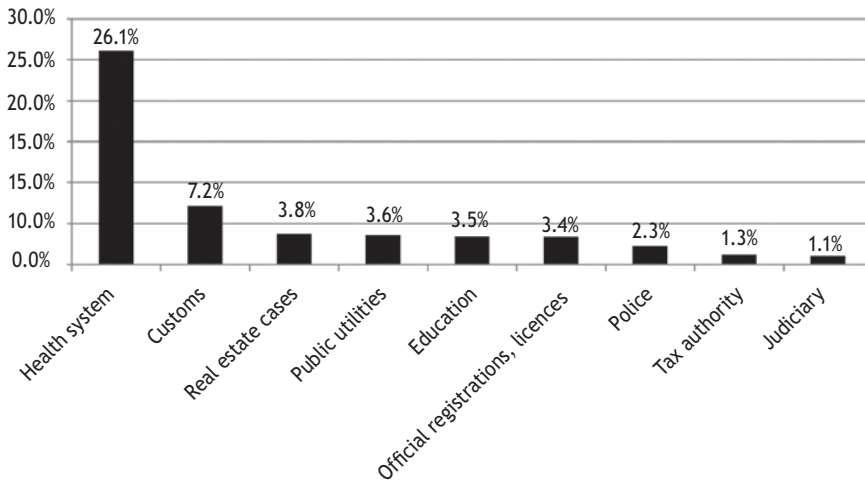
Highly corrupted sectors in Hungary according to population's perception in 2010



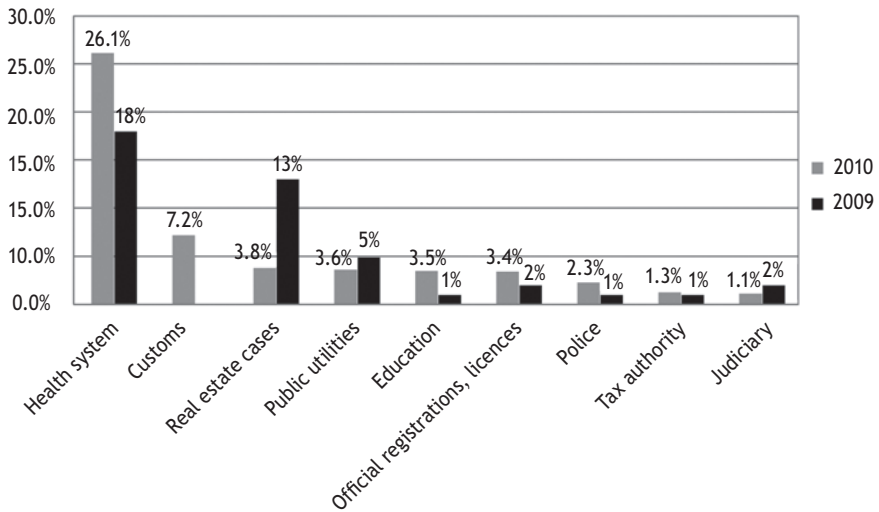
Highly corrupted sectors in Hungary according to population's perception in 2009 and 2010



Rate of bribe payers in Hungary in 2010
 Among those respondents who have been in touch with the sectors
 below in the last 12 months



Rate of bribe payers in Hungary in 2009 and 2010



World Bank - Worldwide Governance Indicators⁷⁶

Governance Indicator	Year	Percentile Rank
		(0-100)
Voice and Accountability	2009	75.4
	2004	88.9
	1998	82.2

Political Stability	2009	65.9
	2004	74.5
	1998	81.7

Government Effectiveness	2009	73.7
	2004	80.5
	1998	82.0

Regulatory Quality	2009	82.8
	2004	83.8
	1998	80.9

Rule of Law	2009	72.5
	2004	78.5
	1998	73.2

Control of Corruption	2009	70.3
	2004	75.6
	1998	76.1

If we compare our findings with the results of the Global Integrity Index 2008⁷⁷ we can find that there are significant similarities between the data. The data show, that whistleblowing protection, political financing and judicial accountability are the weakest points.

Hungary: Integrity Indicators Scorecard⁷⁸

Overall Score: 77 (+/- 1.67) - Moderate

76 Kaufmann, D., Kraay, A., and Mastruzzi, M. (2010), *The Worldwide Governance Indicators, Methodology and Analytical Issues* http://info.worldbank.org/governance/wgi/sc_chart.asp# [accessed 21 October 2011] Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

77 <http://report.globalintegrity.org/Hungary/2008/scorecard> [accessed 21 October 2011]

78 <http://report.globalintegrity.org/Hungary/2008/scorecard> [accessed 21 October 2011]

Category I	Civil Society, Public Information and Media	89	Strong
I-1	Civil Society Organizations	98	Very Strong
I-2	Media	83	Strong
I-3	Public Access to Information	85	Strong

Category II	Elections	78	Moderate
II-1	Voting & Citizens Participation	97	Very Strong
II-2	Election Integrity	94	Very Strong
II-3	Political Financing	44	Very Weak

Category III	Government Accountability	68	Weak
III-1	Executive Accountability	79	Moderate
III-2	Legislative Accountability	74	Moderate
III-3	Judicial Accountability	44	Very Weak
III-4	Budget Processes	77	Moderate

Category IV	Administration and Civil Service	64	Weak
IV-1	Civil Service Regulations	72	Moderate
IV-2	Whistleblowing Measures	15	Very Weak
IV-3	Procurement	78	Moderate
IV-4	Privatization	92	Very Strong

Category V	Oversight and Regulation	88	Strong
V-1	National Ombudsman	81	Strong
V-2	Supreme Audit Institution	99	Very Strong
V-3	Taxes and Customs	92	Very Strong
V-4	State-Owned Enterprises	87	Strong
V-5	Business Licensing and Regulation	81	Strong

Category VI	Anti-Corruption and Rule of Law	72	Moderate
VI-1	Anti-Corruption Law	89	Strong
VI-2	Anti-Corruption Agency	61	Weak
VI-3	Rule of Law	71	Moderate
VI-4	Law Enforcement	67	Weak

V. GOVERNMENTAL ANTI-CORRUPTION ACTIVITIES

According to the official brief of the Ministry of Public Administration and Justice the following governmental steps were taken in 2010-2011 with the aim of tackling corruption.⁷⁹

1. Incorporation of Anti-corruption Goals into Overarching Governmental Programs

The *Program of National Cooperation* was introduced as the government's program to Parliament. The program draws up a list of five priorities named 'national issues': reviving the economy, public order, health reform, promoting social security and restoring democratic norms. In order to combat corruption the Programme of National Cooperation enlists the following goals:

- reduction of administrative burdens and red tape
- curbing public procurement wrongdoings
- enhanced regulations and traceability on access to EU and national funds
- access to public data and information

The aim of the *Magyary Zoltán Public Administration Development Program* is to restructure and simplify bureaucracy to introduce accountability, anti-corruption and e-government measures as well as a remuneration system to reduce corruption. The program is planned to be implemented by 2013. The program also contains provisions on the introduction of codes of conducts.

2. Cooperation Agreements

On 18 November 2011 the State Audit Office, the Supreme Court, the Office of the Prosecutor General along with the Ministry of Public Administration and Justice signed a cooperation agreement expressing their commitment to fight against corruption. The agreement emphasized the importance of shifting the measures towards prevention. Any state body is free to join the cooperation by signing the agreement. The document furthermore highlights the possibility to establish bilateral and multilateral alliances between organizations already legally obliged to take part in the implementation of anti-corruption measures and other bodies in order to improve the effectiveness of the cooperation and the accomplishment of the tasks.

3. Governmental Medium-term Concept

According to Government Decree No. 212/2010. (VII. 1.) the Ministry of Public Administration and Justice is to prepare and promote a Governmental Medium-term Concept on tackling corruption. To fulfil its assignment the Ministry has initiated cooperation with the Ministry of Interior, Ministry of National Development, Ministry of

⁷⁹ The brief was the official response to Transparency International Hungary's request for a comprehensive summary of the governmental measures taken against corruption since the 2010 elections. The request was addressed to Tibor Navracsics, Minister of Public Administration and Justice. The response letter was signed by Krisztina Farkas, Deputy Secretary of State on 21 December 2011.

National Economy, the National Tax and Customs Authority, Government Control Office, National Protective Service and the National Police Headquarters (ORFK). The State Audit Office, the Hungarian Competition Authority and the Office of the Prosecutor General also take part in the preparation. The cooperating partners held two meetings in the summer of 2011 concerning the cooperation agreement mentioned above and the formulating of the underlying principles in the fight against corruption such as:

- the whole of society should take part in tackling corruption, such participation being simultaneously a right and a duty;
- stakeholders independent from the government should be drawn into the fight as they are able to approach segments of society the government cannot;
- members of society should hold individual responsibility to act against corruption.

4. Solidity Checks

From January 2011, all public sector employees are subject to a so-called “solidity check” examining their conduct while accomplishing their tasks and obligations. This measure was introduced as a governmental initiative to curb bureaucratic corruption and to maintain the integrity of all who work for the state. The check sets up ‘artificial’ situations to see how an employee reacts when a bribe is offered or being asked to abuse its official powers for certain benefits. Public prosecutors overview the checks and methods applied, resolutions (the results of the process) also need the consent of a prosecutor.

5. Development of the Prosecution Service

In 2011 the Prosecution Service received HUF 988.8 million (USD 4.7 million)⁸⁰ to cover its anti-corruption activities. The Prosecutor General set the number of prosecutors assigned with anti-corruption tasks at 55 (35 prosecutors, 20 non-prosecutors). The establishment of the anti-corruption units has commenced at the central level at the Office of the Prosecutor General. Specials units will also be established at local level in the future.

6. Anti-corruption Activity of the National Institute of Public Administration

The National Institute of Public Administration provides initial and advanced training for civil servants in public administration. It has provided a course entitled “Principles and methods in the fight against corruption; enforcement of public service ethics” since 2006. The course has been reviewed and updated in 2010 to introduce the main types of corruption and their exploration as well as legal and ethical solutions to corrupt wrongdoings.

⁸⁰ Official HUF/USD exchange rate of the National Bank of Hungary on 15 October 2011 was 211.09.

VI. THE NATIONAL INTEGRITY SYSTEM

1. LEGISLATURE

Summary

According to the Hungarian Constitution,⁸¹ Parliament (the National Assembly) is the supreme body of state power and of popular representation. The Constitution further states that in exercising the rights conferred on it on the basis of national sovereignty, Parliament shall guarantee the constitutional order of society and shall determine the organisation, orientation and conditions of government. As part of these responsibilities, Parliament adopts legislation. After the Fundamental Law (Constitution) acts are the highest source of law and Parliament is free to pass legislation on whatever subject it deems fit. In theory, the power of legislation is deemed to be exercised independently. Parliament with regard to the definition of the orientation and conditions of governance, determines the social-economic plan of the country, assesses the balance of public finances, and approves the State Budget and its implementation

The new Fundamental Law declares that “In HUNGARY, the supreme body of popular representation shall be Parliament.”⁸² Among other responsibilities, Parliament shall: enact and amend the Fundamental Law of Hungary; adopt Acts of Parliament, adopt the State Budget and approve its implementation”.⁸³

Legislature Overall Pillar Score: 69 / 100			
	Indicator	Law	Practice
Capacity 75 / 100	Resources	75	75
	Independence (can hardly be interpreted in connection with Parliament)	75	75
Governance 58 / 100	Transparency	50	50
	Accountability	75	75
	Integrity Mechanisms	50	50
Role 75 / 100	Executive oversight	100	
	Legal Reforms	50	

81 Art. 19 (3) c)-d)

82 Art. 1 (1)

83 Art. 2 (2) a)-c)

Structure and Organization

The Hungarian Parliament has one chamber with 386 representatives, elected for four year terms.⁸⁴ The electoral system⁸⁵ combines the majoritarian and the proportionate principles: 176 MPs are elected in individual constituencies (majoritary single-member districts); 152 MPs are elected in a multi-member, list proportional representation district (territorial list election). In addition, a national list was established to equalise the shortcomings of both the majoritarian and the proportionate systems to which 58 MPs can be elected.⁸⁶ MPs are organised in factions that are established by political parties that have seats in Parliament.⁸⁷ Pursuant to the Standing Order of Parliament, MPs belonging to the same party may form a faction (but only one) to coordinate their activities. Pursuant to Article 21(2) of the Constitution, Parliament is entitled to establish standing committees from among its members and may delegate a committee for the investigation of any issue whatsoever (committees of inquiry). Committees may be proportionate and of parity.⁸⁸

Standing committees are bodies of Parliament; the number and scope of tasks of standing committees conform to the structure of the Government. It is mandatory to establish committees dealing with constitutional matters, the budget, foreign affairs, European Union affairs, national defense, as well as, in the case of parity committees, with matters of immunity, incompatibility, and mandate control.⁸⁹ Meetings are open to the public, but closed meetings can be ordered, when necessary, due to interest established by legal norm. A verbatim official report, as well as all the initiatives of a committee, is available on the website of Parliament.⁹⁰ Parliament may also establish ad hoc committees and select committees to examine specific questions (via committees of inquiry).

During the parliamentary cycle of 1990-1994, Parliament set up 18 standing committees at its constituent session, while at the end of the period there were 18 functioning committees. In 1994, the constituent session created 17 standing committees, and by the end of the cycle, 19 committees were at work. At the beginning of the 1998-2002 cycle, Parliament set up 22 standing committees and later created one more committee. During the parliamentary cycle, between 2002 and 2006, the number of committees reached a peak with a total of 25 standing committees. The National Assembly created a simpler and more cost-effective committee system with 18 standing committees at its constituent session on 30 May 2006.⁹¹ From 2010 there are 20 standing committees.⁹²

84 According to the new Constitution, there will be about 200-210 members of the Parliament.

85 See more in English: Tímea Drinóczy, Evaluation of the latest amendments to Hungarian electoral procedural law, In B. Banaszak and M. Bernaczyk, eds., *Praktyczne i teoretyczne aspekty prawa konstytucyjnego* (Practical and theoretical aspects of constitutional law) Międzynarodowa konferencja, Wrocław, 16-18 marca 2006. (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2006) pp. 81-82, Tímea Drinóczy - Mato Palić: Hungarian and Croatian electoral remedies, In Tímea Drinóczy - Tamara Takács (eds.), *Cross-border and EU legal issues: Hungary - Croatia*. (Pécs - Osijek 2011), www.eunicop.eu, pp. 131-152.

86 The first two levels each require a ballot while the national compensation list uses surplus votes that have reached no mandate at other levels. See Act XXXIV of 1989 on the election of the Members of Parliament.

87 A parliamentary faction may be formed by at least ten MPs. If there are less than ten such MPs, they may still form a faction, if they belong to the same party, and if their party acquired a mandate from the list provided all MPs, who have been awarded a mandate from the list join the particular faction. (Standing Order 15).

88 Standing Orders 14 and 33

89 Standing Orders 29 (1) and 28

90 Cf. Legislature p.20. http://www.transparency.hu/uploads/docs/Full_report_NIS_2007.pdf [accessed 01 March 2011]

91 <http://www.mkogy.hu/angol/committees.htm> [accessed 02 March 2011]

92 http://www.mkogy.hu/internet/plsql/ogy_biz.biz_cimek?p_biztip=A,E&p_stilus=nyito.css&p_ckl=39 [accessed 01 March 2011]

Assessment

Resources (Law)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructural resources to effectively carry out its duties?

Score: 75

The budget of the Parliament is part of the state budget. The budget plan of the Office of Parliament is drawn up under the guidance of the Speaker of Parliament by the Financial Director General, and - with the consent of the House Committee and after hearing the advice of the Budget Committee - the Speaker of Parliament forwards it to the government to draft the budget bill. The Financial Director General shall be responsible for implementing the budget; it is controlled by the State Audit Office.⁹³

According to Article 1 of Act LVI of 1990 on the emolument of MPs, an MP is entitled to emoluments, which consist of remuneration (including a base and a supplementary fee), an electoral district pay supplement and a housing allowance. The emoluments are paid on a monthly basis. The base fee is six times that of civil servants, and it is valid from one period until the next. There is a restriction on supplementary fees: an MP may be granted a supplementary fee as a member of no more than two parliamentary committees; the chairperson and the members of the House Committee may not be awarded any supplementary fees for the work they carry out in this committee. The amount of the supplementary fee is regulated in detail in Act LVI of 1990.⁹⁴

⁹³ Standing Order 135

⁹⁴ In October 2011, Parliament started to discuss a new emolument system.

Resources (Practice)

To what extent does the legislature have adequate resources to carry out its duties in practice?

Score: 75

Expenditure of the Office of the Hungarian Parliament (1990-2010) is guaranteed by the annual budget laws that eventually are in line with inflation.⁹⁵

Year	Office of the Hungarian National Assembly
	In million forints
1990	640,0
1991	1342,7
1992	2467,4
1993	2476,6
1994	2893,2
1995	3016,2
1996	3695,6
1997	5118,8
1998	5972,3
1999	6923,9
2000	8297,5
2001	9288,6
2002	9554,8
2003	12958,7
2004	13504,0
2005	15522,6
2006	15430,0
2007	15511,8
2008	15678,1
2009	16079,4
2010	16901,3

⁹⁵ <http://www.parlament.hu/angol/append/expenditure.htm>, [accessed 02 March 2011] Provided by Cabrera Alvaro (head of division, MPs Information Centre, the Office of Parliament). Interview with Cabrera Alvaro by the author on 28 March 2011.

Distribution of the Office among the favoured costs 2010⁹⁶

Favoured statement of cost	Distribution (percentage)
Personal allowances	57%
Employer's contribution	14%
Actual costs	20%
Institutional investment costs	2%
Renewal	7%
Total	100%

Based to the information gathered during interviews with staff members,⁹⁷ the Office provides all of the technical equipment (including IT, and communication technologies, video studio, etc.) to be used by Parliament.

Independence (Law)

To what extent is the legislature independent and free from subordination to external actors by law?

Score: 75

In cases determined by the Constitution, the President of the Republic is entitled to dissolve Parliament, simultaneously with the announcement of new elections.⁹⁸ Pursuant to the Standing Order 38, Parliament has its regular sessions between 1 February and 15 June, as well as between 1 September and 15 December.⁹⁹

The orders of the day shall be proposed by the Speaker upon the advice of the House Committee. This proposal shall be sent two days in advance to the Members and the persons listed in the Standing Orders.¹⁰⁰ During its constituent session - on the motion of the faction leaders of parties represented in Parliament and on the proposal of the chair of age - Parliament elects, by secret ballot, the Speaker, Deputy Speakers and notaries of Parliament. Members of the committees are selected by Parliament. As for ad hoc committees, the Standing Orders state that not more than half of its members may be persons who are not MPs, but only MPs shall be members of the Committee of Inquiry.¹⁰¹ The Office is the operational arm of Parliament. Its duty is to guarantee the continuous operation of Parliament and to help the Members and the officers of Parliament in their activities.¹⁰² The parliamentary groups and MPs also have their own personnel. Staff employment complies with the laws in effect.¹⁰³

96 http://www.parlament.hu/angol/append/dist_office.htm, provided by Cabrera Alvaro. Interview with Cabrera Alvaro by the author on 28 March 2011. The official report concerning the financial situation of Parliament is public and it can be found with detailed information (in Hungarian) on the website of the Parliament (http://www.parlament.hu/hivatal/20100228_orszagyules_jelentes.pdf). [accessed 01 March 2011]

97 According to Cabrera Alvaro. Interview with Cabrera Alvaro by the author on 28 March 2011.

98 See Arts 28 (3) and 28/A (3) of the Constitution

99 Extraordinary session or extraordinary sitting can be called together. Standing Orders 39.

100 The House Committee is a parliamentary body; its members are the Speaker of Parliament (chairperson), the Deputy Speakers of Parliament, and the leader of each faction. Standing Orders 24(1).

101 Standing Orders 10, 35 and 36.

102 Standing Orders 144-146.

103 Relevant laws are available at http://www.parlament.hu/angol/act_lv_of1990.htm. [accessed 5 March 2011]

The chairperson maintains order during the sessions in the following manner: calling on the MP, who digresses from the point to come to the point; calling those persons to order, who are using or displaying offensive language or such expressions to the authority of Parliament or to an MP; and, cutting off those MPs, who breach the Standing Orders, which govern the order of proceedings or voting. In the event of a repeated disturbance during a parliamentary session, which makes it impossible for proceedings to continue, the Speaker may interrupt the session for a definite period of time. If the Speaker of Parliament cannot be heard, he/she leaves his/her chair; the session shall thereby be interrupted and it shall only resume when reconvened by the Speaker.¹⁰⁴ As stated in the Standing Order, the police have no access the Parliament building to maintain order.

To prevent conflicts of interest, Hungarian law regulates the following four areas: professional incompatibility, economic incompatibility, occupational incompatibility, and counter-productive lobbying. According to the Hungarian Constitution currently in effect, Members of Parliament may not simultaneously be the President of the Republic, a member of the Constitutional Court, the Ombudsman for Civil Rights, the President, Vice President or accountant of the State Audit Office, a judge or prosecutor, the employee of an administrative body (with the exception of the members of the Government and Under-Secretaries of State), nor an active member of the Hungarian Army and law enforcement agencies (i.e. *professional incompatibility*).¹⁰⁵ The Act on MPs' status (Act LV of 1990) declares several other incompatibility rules.¹⁰⁶ A Hungarian MP can be a member of the government or hold office as a mayor.¹⁰⁷ This latter privilege was strongly criticised and there were several arguments for and against the rule. In March 2011, the debate on incompatibility between majors and MPs appeared in a political communiqué.¹⁰⁸ Economic incompatibility of the MPs serves the division between economics and state politics.¹⁰⁹ These rules keep MPs away from top positions of state or local government enterprises, or from any economic association with state or local government participation. Occupational incompatibility, on one hand, protects the freedom of press and media from the direct and personnel influence of parliamentary politics; on the other hand, it guarantees the division of legislature and executive on the level of their chief representatives.¹¹⁰ According to the Act, the Speaker and the Vice-Speaker of Parliament shall not undertake gainful occupation and, with the exception of legally

104 Standing Orders 54. and 55.

105 The limits of the statutory regulation are that the regulation on incompatibility of the Constitution cannot be overruled and fundamental rights cannot be restricted without constitutional reasons. 55/1994. (XI. 10.) CC decision, ABH 1994, 300. Regarding incompatibility, see more in English: Timea Drinóczi - Nóra Chronowski, The Hungarian regulatory background of the independence of members of the Hungarian and the European Parliament. In Gerrit Manssen (Hrsg.), Die verfassungsrechtlich garantierte Stellung der Abgeordneten in den Ländern Mittel- und Osteuropas, (Frankfurt am Main, Berlin, Bern, Bruxelles, New York, Oxford, Wien: Peter Lang Verlagsgesellschaft, 2009) pp. 30-35.

106 Act on MPs' status, Art. 9. Furthermore, under the Act on the Hungarian Members of the European Parliament, a Hungarian MP shall not be the Member of the European Parliament.

107 Tilk, Péter: Az országgyűlési képviselők összeférhetlensége [Conflicts of Interest Concerning the Members of Parliament], In A képviselők jogállása 2. rész (Budapest: Parlamenti Módszertani Iroda, 2004) pp. 109-110

108 Pro argument: mayors can present useful input into the parliamentary decision-making process; counter argument: by reducing the numbers of MPs (which is uncertain, due to the provisions of the Fundamental Law and the lack of new election laws and the relevant modification of the Constitution regulation the number of MPs in the Parliament), the incompatibility rule is reasonable. <http://inforadio.hu/hir/belfold/hir-421427>

109 55/1994. (XI. 10.) CC decision, ABH 1994, 296, 299-301. The Constitution does not regulate, but the Act on MPs' status (Art. 13) declares that an MP shall not hold certain economic positions, such as chief executive official, manager, of a state enterprise, trust, company of trust, public-service company, director general of the enterprise founded by local governments etc.

110 The Act on MPs' status (Art. 11) prescribes that an MP shall not be, for instance, leader or deputy leader of the editorial staff of a political daily distributed nation-wide or regionally, leader or deputy leader of the Hungarian News Agency, leader of the nation-wide or district radio or television, etc.

protected intellectual activities, they cannot accept payment for any other activity.¹¹¹ There are further incompatibility rules against counter-productive lobbying.¹¹² An MP shall not become a legal representative of the state, of its body or institution, or a company conducting economic activities in which the state has full or majority ownership.¹¹³

According to the Constitution, Members of Parliament are granted parliamentary immunity, in accordance with the regulations of Act LV of 1990.¹¹⁴ The regulation in Hungary is not detailed, and this raises some practical problems in deciding how to deal with MPs caught red-handed in malfeasance (so-called *flagrante delicto*). In Hungary, the right to immunity is two-sided: it means that MPs both enjoy immunity from liability and they are also inviolable.

Immunity from liability¹¹⁵ is guaranteed for life and it widens a Hungarian MPs' freedom of speech, during parliamentary sessions and within the parliament building.¹¹⁶ The only restrictions on MPs freedom of speech are state secrets, defamation, libel and accountability under civil law. According to the Hungarian law, it is an exception under culpability.¹¹⁷ Inviolability, according to the Act on MPs' status, means that MPs can only be arrested in case of *flagrante delicto*. Criminal or legal charges for petty offences against MPs can only be pressed and pursued with the Parliament's prior consent. This prior consent is also required for enforcing the law against MPs during criminal procedures.¹¹⁸ The principle of inviolability ensures that an MP receives conditional exemption from criminal processes during his/her time in office.¹¹⁹ Until an indictment is submitted, the Chief Public Prosecutor submits a request to suspend parliamentary immunity to the Speaker of Parliament. After the indictment is submitted, (in criminal cases, these indictments are initiated by private motion), the court submits the request to the Speaker of Parliament. This request must be submitted immediately in cases of *flagrante delicto*. Immunity cases are dealt with by the Committee of Immunity, Incompatibility and Mandate Examination. Final decisions are made by Parliament.¹²⁰ The purpose of this institution is to protect Parliament from arbitrary interventions by the executive. For this reason, MPs cannot resign their parliamentary immunity, except in cases involving legal procedures for petty offences. If their parliamentary immunity is violated, MPs are obliged to inform the Speaker of Parliament immediately.¹²¹ Parliamentary immunity comes into

111 The Prime Minister, the Minister or the Political State Secretary shall not be Speaker, Vice-Speaker, Clerk of Parliament nor a member of a Committee of Parliament. Act on MPs' status, Art. 12 (1)-(2)

112 An MP shall not accept any fee as office-holder or member of the managing organ of the public foundation established by Parliament or the Government or the board of representatives of the local governments. Act on MPs' status, Art. 10

113 Act on MPs' status, Article 15 Section (1). There are further rules, because incompatibility may not be declared on the basis of them. See Act on MPs' status, Art. 20 Section (6), Art. 15 Section (2), Art. 15 Section (3), Art. 16 and 17

114 Constitution, Article 20 Section (3). See more on the issue in English: Chronowski - Drinóczi, 2009 pp. 38-40.

115 Act on MPs' status, Art. 4

116 However, in the Standing Orders a limitation can be found: In the building of Parliament, factions, other groups formed outside of factions, and Members may inform the organs of mass communication only in connection with the activities of Parliament. Standing Order 18(2)

117 Petréttei József, *Magyar Alkotmányjog II.* [Hungarian Constitutional Law II], (Budapest - Pécs: Dialóg Campus Kiadó, 2005) p. 50

118 Act on MPs' status, Art. 5 (1)

119 Petréttei, 2005 p. 50

120 Act on MPs' status, Art. 5 (2)-(7)

121 The Speaker of Parliament shall take the necessary actions without delay. Act on MPs' status, Art. 6

effect on the day that the MPs are elected.¹²² The MP loses his/he right to inviolability upon leaving office. However, immunity from liability does not end, because it is a right that MPs have for life.¹²³

Independence (Practice)

To what extent is the legislature free from subordination to external actors in practice?

Score: 75

Ideally, the legislature is entirely independent from external influences, as well as from interference by external actors (eg. government, judiciary, etc.), and this is necessary, because the legislature is the main source of legislative initiatives. In a parliamentary system, the government proposes the majority of the legislative bills, and the judiciary may influence the content of these bills, which reflects the dialogue that exists between the most important branches of government.¹²⁴

According to the laws in Hungary, the government (i.e. the executive), an MP, a parliamentary committee as well as the President of the Republic might propose legislation. In practice, the President of the Republic does not usually initiate laws. Between 2006 and 2010, the Parliament (which was composed of a Socialist/Liberal majority) adopted 587 laws; 474 of these laws were proposed the government, 90 by MPs, and 23 by committees.¹²⁵ The new Parliament, which has a conservative majority, had by the end of 2010 adopted more than 150 laws since it was formed; 70 were proposed by the government, 75 by MPs, and five by committees.¹²⁶ This underscores the importance of the independence of the MPs and as such, the independence of the entire legislative process. It is possible for an MP, as stipulated by the Constitution, to submit a bill, or a motion to modify a bill, without the prior involvement of the government. However, this practice may be interpreted as a misuse of the parliamentary powers of the MPs. Important laws, such as constitutional amendments and laws governing churches¹²⁷ have been initiated by MPs without having gone through the necessary and obligatory consultation process as required by law. Another recurring problem is that sometimes when a committee formally submits a motion, often the original source of the motion remains unclear. This was the case with the so-called "anti-smoking law", as well as with the new rules on the right to counsel in criminal cases. This practice represents an abuse of power and the questions of the essence and the logic of the parliamentary governmental system. It may raise the problem of the undue influence of strong lobby groups. There are examples of passing bills that have been passed against the explicit

122 Persons registered as candidates running for parliamentary seats during parliamentary elections must be considered as MPs as for right to immunity, but a decision concerning the suspension of parliamentary immunity shall be decided by the National Electoral Board and not by Parliament and its Committee of Immunity, Incompatibility and Mandate Examination. A request to this effect must be submitted to the Chairman of the National Electoral Board. Act on MPs' status, Article 7.

123 See more in Drinóczi, Tímea - Petréttei, József, A képviselői mentelmi jogról de lege ferenda. [About the Right to Immunity of the MPs de lege ferenda], 6 *Jogtudományi Közlöny* (2002) pp. 257-270

124 According to the person interviewed at the Office of Parliament, because of the fact that the Budget Act ensures the financial independence of Parliament there is no need for any external interference.

125 <http://www.mkogy.hu/adatok/38/intlap21.htm> [accessed 4 March 2011]

126 <http://www.mkogy.hu/adatok/2010/intlap21.htm> [accessed 4 March 2011]

127 Act C of 2011

will of the executive,¹²⁸ and as a result of possible undue interference. There has been no instance of undue influence in the last 21 years;¹²⁹ however, this seems to be changing: when a bill and/or an amendment is submitted by an MP and/or parliamentary committee, often the real “author” remains unknown.¹³⁰

In practice, the incompatibility and immunity rules (both substantive and procedural) guarantee the independence of MPs and hence the entire Parliament (incompatibility rules), and protect the legislative power from the undue influence of the executive, by removing its members (immunity rules), and thereby bringing parliament to a standstill. The list of incompatibility cases, that is available on the website, is well known before the nomination procedure for election. During the certification of the mandate, elected persons have to make a declaration of the existence of any incompatibility. In the majority of cases, the issue of incompatibility is promptly resolved, and unless these issues are resolved by the deadline, the MP cannot exercise his/her power, he/she receives no payment, and he/she is removed from office.

The technical staff (i.e. experts and office personnel) support the activities of the factions. They are nominated by the faction leaders and employed by the Director General. The Director General must accept the proposals of the faction leaders on the staff. The only exception to this is if the proposal violates the law.¹³¹ Staff working for parliamentary groups are civil servants; however, their status, and eventual employment, heavily depends on the outcome of the elections, and thus on the size of the parliamentary group. If a party cannot gain seats in Parliament or its size is cut down, this is likely to affect its civil servants. In practice, civil servants working for a parliamentary group cannot be seen as politically independent staff, because this would not be a realistic expectation. The same is true for those who are employed by individual MPs. Each MP is allocated a set amount of money for employing staff, such as ad hoc experts or permanent personnel. Staffing is the personal choice of individual MPs. Data on staff employment, including staff turnover, the number of managers hired, and the costs involved in staffing is transparent and available on the website.¹³²

128 Parliament can modify the original text of the bill submitted by anyone who is entitled.

129 Interview with an academic.

130 See the case of the modification of some elements of the criminal procedure; there are rumors that the Public Prosecutor's office is the true “author”.

131 Standing Orders 144-146

132 <http://www.parliament.hu/hivatal/hivatal.htm> [accessed 4 March 2011]

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Score: 50

Parliamentary openness, from a constitutional law perspective, has two forms: openness towards the public and openness towards the media.¹³³ It enables the possibility for following the decision-making process, to monitor and control the work of MPs, and to check the growth of assets of MPs.

The Standing Orders state that parliamentary sessions must be public; however, Parliament may also hold closed sessions.¹³⁴ The original minutes of the public sessions of Parliament must be made available to the public at the Library of Parliament and through the library's archives, including the database of registered voters. The minutes of the public sessions held in Parliament, as well as the documents discussed during the sessions, and the relevant voters' list must also be published on the internet. The Library of Parliament must also facilitate the viewing of videos of parliamentary debates. The MPs who are eligible to vote must be informed of the time, date, venue and agenda of the closed sessions, and this is required by the Constitution. It is up to the discretion of the MPs whether or not to disclose the contents of the session held behind closed doors.¹³⁵

During a public session, the audience, which includes the media, may only sit at the designated seats in the gallery, and must abstain from expressing their opinion in any form. Should a member of the audience disturb a session, the Speaker may expel the person, or dismiss the entire audience.¹³⁶ This participation, however, cannot be considered as a subjective right; the conditions of a concrete participation should be determined rationally and without any discrimination. The media cannot be limited under any circumstances.¹³⁷ There is no law to govern the manner in which the Speaker of Parliament keeps order in the House to disturbances from non-members during sessions, and this raises some serious legal questions. There is no adequate regulation to govern the extent of the Speaker's powers, rights and responsibilities.¹³⁸

To roll back corruption, lobbying activities should be transparent.¹³⁹ Act XLIX of 2006 on lobbying used to ensure that transparency, as it required lobbyists to register and established clear rules for lobbying, including the rights and responsibilities of the lobbyist. This Act, however, was repealed and replaced by Act CXXXI of 2010 on social

133 See Szente, Zoltán: 23. § Az Országgyűlés [Art. 23. National Assembly]. In Jakab András (ed.): *Az Alkotmány kommentárja*, (Budapest: Századvég Kiadó, 2009) p. 791.

134 Upon petition by the President of the Republic, the Government or any Member of Parliament and with the assent of two-thirds of its Members, Parliament may decide to hold a closed sitting. Art. 23 of the Constitution

135 See Szente, 2009 p. 797. and Art. 42 (3) of the Standing Orders

136 Standing Order 41

137 Szente, 2009 p. 792 and 793.

138 Szente, 2009 p. 791.

139 See Petréttei, József, *Jogalkotás és korrupció* [Legislation and corruption], In Csefkó Ferenc - Horvát Csaba (ed.), *Politika és korrupció*, (Pécs 2010) p. 175.

participation.¹⁴⁰ Act CXXXI of 2010 does not contain provisions comparable with that of the Act on Lobbying. Therefore, the transparency of influence on the content of any proposal has become questionable. If the legislative process (including the pre-parliamentary and parliamentary processes) is transparent, changes made to the content of bills can be traced to the original source, thereby allowing accountability rules to prevail, and for unauthorized, undue interferences to be recognised and excluded. Corruption could thus be reduced. Since those involved in corrupt practices try to cover-up their activities, the most effective step would be to trace these individuals in order to achieve transparency and openness. In addition, laws can be screened to ensure that they are consistent and coherent; checking to ensure that the legislative process is open and transparent; ensuring that the rules governing this process can be enforced (if not, there can be no accountability).¹⁴¹ As it stands, these elements of good quality legislation are missing from the Hungarian regulatory system.

Legislative decisions must be published; otherwise, they are not valid. The Constitution (Art. 26) states that the President of the Republic must ratify all laws before they are submitted for promulgation; moreover, it states that the law must be published in the Official Gazette. According to Act XC of 2005 on the freedom of electronic information, the legislative process must be open and legislation must be made available electronically. Laws must be available on the internet in the same form in which it has been published in the Official Journal.¹⁴²

Since 1997, MPs have been obliged to submit declarations of interests, income and assets, including those of their close relatives with whom they share the same household. Act LV of 1990 on the Legal Status of MPs governs the asset declarations of MPs.¹⁴³ The system of asset declaration for MPs has benefits and drawbacks, which are the same as the system for government officials: on the positive side, MPs' asset declarations are public, and subject to inspection by the the Immunity, Incompatibility and Mandate Supervision Committee; if the MP fails to declare his /her assets, he/she cannot receive any allowance or exercise his/her rights as an MP.

As stated by the Constitution, Parliament is not accountable to any other body. Its activities, as a political body, are judged by the electorate during a general election. Nevertheless, Parliament must respect and comply with the laws governing the disclosure of information of public interest. In essence, this means that Parliament must publish information on the laws it has passed, the laws that regulate its own activities parliamentary procedures, and others.

¹⁴⁰ These changes were also emphasised by the person interviewed at the Office of Parliament, and he underlined that currently, there is insufficient experience regarding the efficiency of this new statute.

¹⁴¹ Petrétei, 2010 p. 175., 176. and 177.

¹⁴² Art. 12 (1) of Act XC of 2005. The person interviewed at the Office of Parliament raised no problem with respect to the public disclosure of information within the Parliament.

¹⁴³ Art. 19 of Act LV of 1990

Transparency (Practice)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

Score: 50

Parliament may hold in-chamber meetings only in exceptional cases, according to the Constitution, in order to ensure the transparency of the activities of Parliament. Only three in-chamber meetings of the plenary were held during the past 15 years. A verbatim transcript of the minutes must be published on the Parliament website. Plenary meetings are broadcast live on national television and the radio. One station, Radio Kossuth, broadcasts plenary meetings from beginning to end. The sessions are broadcast live on the website of Parliament. The enforcement of the rule of law ensures that the decision-making process is made public and accessible. Parliamentary decisions are also published in the Hungarian Official Journal. The press may sit in to listen to parliamentary debates while the committees are in session, which also ensures transparency of Parliament's work. The Speaker of the House holds regular press conferences. He/She goes over the agenda of the plenary meeting of the following week and responds to questions from the audience. Press conferences also help shed light on the behind the scenes activities of Parliament. Factions of the political parties also hold regular press conferences to express their views on draft bills, issues of national or international importance, or any other parliamentary affair.¹⁴⁴

The existing assets declaration system lacks any form of checks and balances, and as such, it is unable to prevent corruption. The current rules are adequate in ensuring that declarations are submitted on time. Before the new rules introduced in 2001, there were only two cases of late submissions, (the MPs had submitted their declarations one day after the deadline). Consequently, one day's payment was deducted from their pay. According to the staff interviewed¹⁴⁵, in addition to this financial penalty for not submitting on time, it is actually the media that plays a vital role in ensuring that declarations are submitted by the deadline, because it is the media that releases information concerning the asset declarations the day after the due date. Should the MP fail to submit the declaration on time, this is recorded on his/her data sheet. It is common practice for the staff of the Office and the parliamentary groups to continuously try to establish contact with those MPs who have not already submitted the declaration. According to one political analyst, the only way that asset declaration can have some impact in ensuring transparency is if the MP is politically committed to obeying the rules, and if there are watchdogs and proper journalists to reveal wrongdoings. Without these mechanisms, it is impossible to tell whether or not the MP has provided false information or engaged in some shady deal in the background (eg. going on expensive holidays, hunting, using official cars for personal use, etc.).¹⁴⁶

The website of Parliament (<http://www.parlament.hu/>) gives a full picture of Parliament's activities and provides some insight into life behind the stage. Among other things,

144 Based on information found at <http://www.parlament.hu/angol/publicaccess.htm> [accessed 4 March 2011]

145 Interview with Cabrera Alvaro; 14 June 2011.

146 http://kuminszerint.blog.hu/2011/02/01/mennyi_ertelme_van_a_kepviseloi_vagyonbevallasnak [accessed 4 March 2011]

visitors may learn about the processes whereby laws are adopted, the types of questions, or interpellations that MPs raises, or how Parliament voted on a given issue. Visitors can also search for information on past, present and future events. As a recent development, in addition to the minutes of the plenary sessions, the minutes of committee sessions are also accessible on the Internet. The English language version has also been extended to include the new bills introduced during the previous parliamentary semester; however, it does not provide up-to-date information on the various activities and decisions.¹⁴⁷

The list of incompatibility cases as well as information on immunity and incompatibility procedures and the declaration of assets can also be found on websites.¹⁴⁸ Should questions arise for which answers cannot be found online, the Office of Parliament is able to provide information upon request, in accordance with the the laws governing the freedom of information.

Published legislation can be found free of charge on the following websites: (www.magyarszag.hu, www.magyarokozlony.hu). However, neither of these sites is user-friendly. These laws can also be found on government websites.

The Standing Orders attribute a considerable role of the Library of Parliament in providing public access to information. Until they became available electronically through the internet, parliamentary proposals, minutes of the plenary sessions and results of the votes have been made accessible by the library.

It is important for citizens and independent groups to be able to monitor Parliament's activities. A project called e-Parliament was launched (including a video server, live webcasts of the plenary sessions, e-archives, minutes, a document digitizing system, electronic courier, legislative program and the next month's sitting schedule), which was an important development in giving the public access concerning Parliament's activities.¹⁴⁹ In addition, Parliament has maintained a citizen telephone and e-mail service from 1997 in the Information Centre for Members of Parliament. New interactive participatory methods are missing from the practice of Parliament (eg. e-forum, e-petition, social media tools, etc.).

147 The opinion of the academic expert is that regal regulation on transparency is adequate; practice is not.

148 Statistics of immunity cases for the year of 2010 as available: <http://www.parlament.hu/adatok/2010/intcili5a.htm>; for prior cycles, see [link data/adatok](http://www.parlament.hu/adatok/2010/intcili5d.htm). The same data is available for parliamentary groups: <http://www.parlament.hu/adatok/2010/intcili5d.htm> and for MPs: <http://www.parlament.hu/adatok/2010/intcili5c.htm>. [accessed 4 March 2011] Declaration of assets can be found: at the internet page of the MPs; here one can read up on whether the MP submitted the declaration on time. Incompatibility cases can be followed on the website of the competent Committee and if the case is deliberated by Parliament, it can be found on the Parliament website. The website of the competent Committee is, however, not updated.

149 Based on the interview with personnel at the Office of Parliament.

Accountability (Law)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

Score: 75

Since the Constitution addresses the legal status of Parliament only briefly,¹⁵⁰ there are only a few limits to its power. When discussing the issue of accountability, one has to distinguish between political and legal accountability. As a supreme state governmental body, Parliament cannot be held legally responsible, in a traditional meaning of the word, for any of its actions. Within the realm of 'legal responsibility or accountability' one may find the constitutional responsibility or accountability. For example, if the Constitutional Court finds that an Act is illegal, this has legal consequences (ie. annulment of the law). Similarly, if the President of the Republic decides so, the ex ante norm control procedure and the annulment decision of the Constitutional Court may be interpreted as a form of legal responsibility. However, it can never be equal to any form of personal accountability. In the case of ex-ante norm control, the Constitutional Court reviews the law, upon the request of the President of the Republic, who submits the bill to the Constitutional Court for supervision.¹⁵¹ The ex-post norm control is an *actio popularis* procedure. The result of the constitutional review may result in the annulment of the act. The Constitutional Court may also establish the unconstitutional omission in legislation calls upon Parliament to take legislative action. Parliament, however, modified the ex post norm control competence of the Constitutional Court (see new Art. 32/A. (2)-(3) of the Constitution). This has caused a situation in which public finance laws cannot be constitutionally reviewed by the Constitutional Court, except whereas it violates human dignity, the right to personal data protection, or freedom of religion and citizenship rights.

Political accountability is ensured when, following an election, the majority in Parliament changes, voters can hold the politicians politically responsible. In Hungary, MPs elected to office receive a so-called free mandate, which means that MPs cannot be revoked. Another example of political accountability is the veto power of the President of the Republic, which means that the President can veto bills during the legislative process. After a bill is passed by Parliament, it is signed by the Speaker of Parliament, and he/she subsequently sends it to the President of the Republic. The President ensures that the bill is published.¹⁵² Using the suspensive veto, the President returns the bill, along with his/her comments, to Parliament for reconsideration, before promulgation if s/he does not agree with it or with any of its provisions.¹⁵³ Parliament continues to debate the bill, and proceeds to vote on the bill again. The President of the Republic subsequently signs and publishes the bill.

¹⁵⁰ Parliament is the supreme body of state power and popular representation in the Republic of Hungary. Art. 19(1)

¹⁵¹ Art. 26 (4) of the Constitution mentions "unconstitutionality" and Art. 35 of Act XXXII of 1989 on the Constitutional Court mentions acts considered 'to raise concerns'. This right of the President of the Republic results in a form of preliminary norm control. See Decision 66/1997. (XII. 29.) of the Constitutional Court, ABH 1997. 397 (405 and the following).

¹⁵² Art. 26 of the Constitution

¹⁵³ See Art. 26 (2) and (3) of the Constitution

In addition to the mechanisms described above, and the incompatibility and immunity rules, there is no specific complaint mechanism against actions of the entire legislature, or individual MPs, because this would go against the principles of a parliamentary democracy. Openness and transparency before the public are the tenets of accountability.¹⁵⁴

The Standing Orders do not provide detailed rules as to how the consultation process should be conducted in Parliament. The only guideline available for this purpose is Article 97 (2) of the Standing Orders, which stipulates legislators must point out the estimated social and, (if possible, quantifiable) economic impact of a proposed bill or amendment. In practice, during the parliamentary phase, this provision is not normally implemented. It should be mentioned that recently the preparation of important bills has shifted to the MPs from the central administration. This is problematic, because the central administration must comply with the regulations of Act CXXXI of 2010 on Social Consultation (hereafter Social Consultation Act), and this bill has yet to mature. The consequence of this shift has been less transparent and a non-consultative legislative process. In essence, this goes to show that although Parliament is independent; however, there is no proper regulation in place governing its legislative activities. This jeopardises both the notion of open legislation, and the accountability of the actors involved in the legislative processes, which represent problems for a parliamentary system of government.

Accountability (Practice)

To what extent do the legislature and its members report on and answer for their actions in practice?

Score: 75

As stated by the Constitution, Parliament has no obligation to report to any other body. It is the electorate that can judge the quality of the work of Parliament during a general election. Since 1990, and with the exception of the 2006 elections, the parliamentary majority in all elections changed by popular vote (in 1994, 1998, 2002, and 2010).

According to Hungarian laws, the right of suspensive veto of the President of the Republic does not seem sufficiently justified. In a sense, the suspensive veto of the head of state is an intervention to parliamentary decision making so it should be used only when the head of state participates in the exercise of executive power and presents his/her objections with regard to the implementability of the Act.

The Constitutional Court has in several cases declared legislation unconstitutional on grounds of omission, which means that Parliament has to regulate a certain topic. Parliament is still in omission, twelve cases are still pending in Parliament on grounds of omission.¹⁵⁵ There is no constitutional law (i.e. public law) to deal with the consequences of this situation. When the Constitutional Court annuls a statute, because it is deemed unconstitutional, the statute loses effect and it can no longer be applied. In practice,

¹⁵⁴ For details, see the section on Transparency.

¹⁵⁵ <http://www.mkab.hu/index.php?id=mulasztasok1> [accessed 5 March 2011]

there are no problems with this. The problem arose when the competences of the Constitutional Court were restricted in 2010¹⁵⁶. This change is enshrined in the Fundamental Law¹⁵⁷ and implications of this change are severe, especially with respect to defending human rights and ensuring a constitutional review, both of which become more difficult to achieve. The Constitutional Court can no longer review acts that are financial in nature, which results in a situation where Parliament and the political majority cannot be held accountable for human rights violations.

The Constitutional Court with its decision of 61/2011 (VII. 12.) drew Parliament's attention toward an evolving practice that does not fully comply with the requirements of the principle of the rule of law. An overwhelming majority of bills submitted by MPs were omitting, *inter alia*, the consultation mechanism, mandatory for the Government to undergo when drafting a bill. Meanwhile, the parliamentary majority has not paid heed to this warning. Consequently, voters have not been informed of this issue properly.¹⁵⁸

In practice, the opinion of the State Audit Office, given in the process of preparing and adopting the budget law, is not binding. As elsewhere during the decision-making process (eg. the preparation phase), here again, professional considerations have been often disregarded for political considerations.¹⁵⁹ The Budgetary Council heavily criticised the draft bill, before the Budget Regulatory Bill was introduced. The Budgetary Council, as a repercussion to its criticism, faced cuts in its budget and staff.¹⁶⁰ It has no staff and it is required to review the draft budget. According to the Fundamental Law, the Budgetary Council is a constitutional body that reviews the draft budget and it has veto power in the budgetary process to some extent. Moreover, the Budgetary Council checks to see whether the draft budget complies with the constitutional rule that prohibits raising the national debt. Its members are the President of the Hungarian National Bank and the President of the State Audit office. The President of the Budgetary Council is nominated by the President of the Republic. In light of the current political situation (ie. the practice of nominating individuals, who are politically affiliated with those of the majority¹⁶¹), it is doubtful that the Budgetary Council can become truly independent and able to carry out its roles and responsibilities properly.

156 See Act CXIX of 2010 on the modification of the Constitution and Act CXX of 2010 on the modification of Act XXXII of 1989 on the Constitutional Court.

157 Fundamental Law of Hungary - Magyarország Alaptörvénye (25 April 2011) Magyar Közlöny 2011. évi 43. sz. 10656.

158 One reason might be the rather biased media system in Hungary.

159 Ld. pl. Drinóczi, *Tímea: Minőségi jogalkotás és adminisztratív terhek csökkentése Európában*. HVG-Orac Kiadó, Budapest 2010. p. 294.

160 <http://www.origo.hu/uzletinyegyed/20101206-megszavastak-a-koltsegvetesi-tanacs-tamogatasanak-lenullazasat.html> [accessed 5 March 2011]

161 <http://www.origo.hu/uzletinyegyed/hirek/20110218-jarai-zsimondot-nevezi-ki-a-koztarsasagi-elnok-a-koltsegvetesi-tanacs.html>. [accessed 5 March 2011] Zs. Járai, previous Minister of Finance of the first Orbán government, was nominated as the head of the Budgetary Council.

Integrity Mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Score: 50

Rules to prevent a conflict of interest (i.e. incompatibility) are regulated by the Act on the legal status of Members of Parliament.¹⁶² This Act specifies the different types of conflicts of interest, which are professional, economic, occupational and others, such as counterproductive lobbying. It serves as a guideline for MPs on how to behave when encountering a case of conflict of interest, or incompatibility: if an MP is found to breach the rules of incompatibility, he/she will be removed from office.

With respect to laws that govern the declaration of assets, the Act on the legal status of Members of Parliament should be mentioned, because it includes a regulation on gifts. Article 16 stipulates that in his/her official capacity as an MP, a person shall not receive a present, or a so-called "gratis grant" exceeding (in each individual case), two months' worth of the MP's current base salary. If a present or gratis grant is below this value, the MP must file a report together with his/her declaration of assets.

These rules do not apply to allowances and salaries received by MPs from Parliament, parliamentary groups, the MP's own party, foundations supporting legislation, or being associated with any of these groups; however, the MPs must file a report on this income as a part of his/her declaration of assets.¹⁶³ In addition to this rule, legislators are not required to record and/or disclose details of the contacts they have with a lobbyist.

The Act provides a sample for the declaration of assets of MPs and spouses and child(ren). The declaration has five sections: 1) declaration on property (real estate, personal property of high value, debts, other); 2) declaration on revenues (taxable ones other than MP's remuneration); 3) declaration on economic interest; 4) declaration on allowances and; 5) declaration on gifts. The declaration of assets is made public immediately after the submission deadline has passed.

There is no Code of Ethics in the Hungarian Parliament, nor does the law require that Parliament adopt such a code. According to the Standing Orders, the Speaker of Parliament shall guarantee the exercise of the rights of Parliament. The parliamentary groups (for example, factions) have their own rules,¹⁶⁴ but they are not available over the internet. However, some rules of the Act are ethical in nature, but incompatibility cannot be ascertained and declared. These are as follows:

- if the MP abuses of his/her status as an MP, by unlawfully obtaining or using confidential information;
- if the MP receives a gift, or a gratis grant that in each individual case exceeds two months' worth of his/her current base salary.

¹⁶² This statute can be reached from the English language website: <http://www.parlament.hu/angol/legalstatuslaw.pdf>. [accessed 5 March 2011] See about it in more detail above.

¹⁶³ Upon termination of mandate, these things can no longer be part of the property of the MP free of charge.

¹⁶⁴ Information based on interviews.

Integrity Mechanisms (Practice)

To what extent is the integrity of legislators ensured in practice?

Score: 50

The integrity of Parliament is guaranteed, in practice, by ensuring that parliamentarians comply with legally and ethically binding rules on incompatibility and immunity, and also that they submit their declaration of assets in a correct manner. For instance, if a legal, ethical, or political issue emerges, the above mentioned mechanisms (immunity, incompatibility procedure) can be applied. Compliance with these rules is scrutinized by the media as well as by politicians. Conflict of interest cases attract the interest of the public. People want to know whether or not, for instance, the fact that a particular politician holds a position as a special director of a state company represents a case of conflict of interest.¹⁶⁵ Another example that has generated a long-standing debate is whether a municipal government representative should be able to simultaneously serve as an MP.¹⁶⁶ Currently, there is no case of conflict of interest available on the Parliament website. When conflict of interest is established, the MP is removed from office. Since MPs are not legally obliged to disclose information about the contact they have with lobbyists, MPs normally do not provide this information, unless they face pressure from the media, and this usually leads to gossiping, which does little to foster integrity.

Executive Oversight

To what extent does the legislature provide effective oversight of the executive?

Score: 100

The main roles and functions are manifested in the Constitution.¹⁶⁷ Most recently, by way of the 2010 constitutional amendments, some new heads of new constitutional bodies were appointed, which have not been within the jurisdiction of Parliament. The head of the National Media and Infocommunications Authority, the regulatory and supervisory body of the electronic communications market of Hungary, is appointed by the Prime Minister. The head of the Hungarian Financial Supervisory Authority, the body responsible for oversight, monitoring and regulation of the financial intermediation system of Hungary, is appointed by the President. According to the new Fundamental Law, the heads of autonomous regulatory bodies (i.e. those mentioned above) shall be appointed by the Prime Minister, or the President on the recommendation of the Prime Minister, and for the term defined by a cardinal Act. The heads of autonomous regulatory bodies shall appoint one or more deputies. The problem with this regulation is the question of legitimacy, because these individuals are not elected by popular vote, and hence they are not accountable to the citizenship, which raises questions regarding the quality of democracy. Under the new constitution, there will be no ombudsman for data protection and freedom of information, in its stead, an authority will be established. In effect, this means that an administrative body will control the executive (administration) and not an external body of Parliament.

165 http://zipp.hu/belfold/2011/02/22/mszp_osszeferhetetlen_sebestyen_laszlo_igazgatoi_es_kepviseloi_allasa [accessed 5 March 2011]

166 http://atv.hu/belfold/20110321_osszeferhetetlen_lehet_a_polgarmesteri_es_a_kepviseloi_allas [accessed 5 March 2011]

167 Art. 19

It is Parliament that controls the executive. According to the Constitution, Parliament has effective measures to do so via interpellations, questions, immediate questions and setting up committees of inquiry. When such a committee investigates an issue concerning the ruling government, someone from the opposition heads the committee to conduct the inquiry.

A strongest indicator for the ability of Parliament to control and hold the executive accountable is the constructive motion of no-confidence: this with an absolute majority of Parliament can change the Prime Minister.¹⁶⁸ However, it is doubtful whether the role of controlling the executive can be effectively exercised under the New Fundamental Law. For instance, a two-thirds majority is required for establishing that there is a conflict of interest concerning the Prime Minister, and this would remove his/her government from power.

The right to draft the budget is one of the classical powers of Parliament and a cornerstone of parliamentary law. Parliament must approve the annual Budget Act, the supplementary budget and perhaps most importantly, the so-called Final Accounts Act on budget implementation. This law is among the most important pieces of legislation and it also serves as an important tool for Parliament to exercise control over the government and the entire administration. The Public Finances Act establishes the deadline for submitting the budget bill and regulates the budgetary procedure. It also guarantees that the bill is passed in due time, despite the relatively long, multi-step debate period. The Standing Orders¹⁶⁹ have developed a process of debate and of adopting resolutions that accommodate the peculiarities of the bill. There is a rule which states that a budget bill cannot be debated in a rushed manner, or in an extraordinary procedure. The order of debate for a budget bill differs from the general rules for legislation on several counts. Parliament votes on the draft amendments (by November 30th) and it decides on the principal amounts in individual chapters, as well as on the budget as a whole. This includes revenue, spending and the deficit. In a recent debate, it was agreed that only those draft amendments can be submitted that change the provisions within individual chapters. For this reason, these do not affect the approved principal amounts. The committee that drafts the budget bill is also unusual. Unlike in the case for all other bills, every standing committee is involved in debating the budget bill, and they are involved in the correspondence on the chapters of the bill that fall under their scope of powers, the only exception being the Committee on Immunity. The Budget Committee summarises the opinions of the committees for the general debate, and delivers this summary during the plenary session.

During the plenary session, the participants listen to the committee presenter, as well as the opinion of the minority groups (i.e the opposition).¹⁷⁰ They subsequently debate the budget, together with the final statements. The Budgetary Council was established in 2008 under Article 7 of Act LXXV of 2008, following negotiations with the IMF, and

168 See the election of Gordon Bajnai on 14 April 2009 based on a constructive motion of no confidence submitted against Ferenc Gyurcsány.

169 Resolution 46/1994 (IX.30.) OGY on the standing orders of the Parliament of the Republic of Hungary

170 Each committee debates the draft amendments that fall under its competences, but only the Budget Committee takes a position on all of them. The role of the Budget Committee is also significant, because from among all the committees it is the one whose draft amendments have the greatest chance of being passed by Parliament.

until it was modified in 2010, the Budgetary Council had adequate resources. However, following this modification, the Council lost a significant part of its resources. The role of the Budgetary Council is to deliver an opinion on the draft budget; however, its opinion is not binding and it must be made public (see more Accountability (Practice) point 3).

Between 2006 and 2010, fifteen committees of inquiry were established. The new Parliament, elected in April 2010, has already established five ad hoc committees and two committees of inquiry.¹⁷¹ By 24 July 2011 the new Parliament set up three committees of inquiry. The opposition proposed the establishment of another committee on 29 November 2010, but this proposal is still being discussed.¹⁷²

There is a problem with the legal regulation of committees of inquiry. Art. 21(3) of the Constitution states: "Everyone is obliged to provide Parliamentary Committees with the information requested and is obliged to testify before such committees". In practice, this provision presents the following problems: it expresses an obligation without providing sanctions that specify how this obligation is to be enforced, which rules should be applied,¹⁷³ and making a distinction between state functions. The latter reference means that there is no settled legal regulation for the following event: a parliamentary committee, as a political body, can raise only political questions and responsibilities, but it is not entitled to declare any legal accountability of anybody without the suspicion that it interferes with the competences of other powers. The problem is that the legislative arm has not been given any specific lower level regulatory power (for instance, in the Standing Orders) in this matter. Therefore, the committees of inquiry cannot carry out their functions.¹⁷⁴

Legal Reforms

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

Score: 50

Parliament has not paid much attention to issues of accountability and anti-corruption, because it has been preoccupied with other legal reforms, first and foremost, the ongoing and abrupt amendments to the Constitution, the adoption of the new Fundamental Law, and the cardinal acts required for implementing the new Fundamental Law. Parliament has not dealt with the campaign and party financing issues that have been on

171 By the finalisation of the first draft of this report: 28 March 2011.

172 2 out of the 3 inquiry committees was initiated by the majority and one by the opposition. See http://www.mkogy.hu/inter-net/plsql/ogy_irom.irom_lekerd?P_CKL=39&P_FOTIP=null&P_FOTIP=H&P_TIP=null&P_TIP=Q [accessed 5 March 2011]

173 For instance, whether the acts on civil and criminal procedure are to be applied.

174 In order to function most effectively, a more specified and detailed legal regulation should be approved on establishing a committee, the decision on the initiation creating a committee, components of the committee, how it convenes, the condition under which it operates and the work that it produces, rights and responsibilities of its members and the person under investigation, procedural rules of investigation and the termination of the procedure. Suggested by Péter Tilk and József Petréttei in 2001. The situation has not changed so much at all. See Tilk, Péter - Petréttei, József, *A parlamenti vizsgálóbizottságok a magyar kormányzati rendszerben - de lege lata és de lege ferenda*. 7 *Magyar Jog* (2001) pp. 385-400. As an illustration of the problem see *Legislature* p.20. http://www.transparency.hu/uploads/docs/Full_report_NIS_2007.pdf [accessed 1 March 2011]

the agenda for years.¹⁷⁵ Until a modern, high-quality regulation to resolve this matter is adopted, the fight against political corruption cannot be successful. In a modern democracy that is governed by a constitution, all elements of party financing must be transparent, stable and calculable: it must always be clear what or who the source of the money is, for what purpose and how these funds are used, and what type and how much funding political parties receive from the state on a regular basis. Moreover, it must be ensured that no financial support, whose origins are uncertain, can be traced to any political party, and also that the funding has been acquired legitimately. As the Hungarian regulation in force does not comply with these requirements sufficiently, the relevant provisions of the Party Act and the Act on Electoral Procedures currently in force should be amended.

In the beginning of 2011, Parliament adopted the modification of acts on civil servants and public sector employees (Act XXIII and Act XXXIII of 1992¹⁷⁶) in order to prevent corruption in public life, by allowing preventive surveillance and solidity tests measuring, without informing the servant, whether he or she complies with the rules. The latter may even involve attempted criminal activity. Civil and public servants must consent to undergoing a possible surveillance test, according to the law, and this consent is a precondition for entering and remaining in the public or civil service. As this is a new measure, it is too early to evaluate its effectiveness. Considering that the Lobby Act was annulled, and the Social Consultation Act¹⁷⁷ was introduced, it seems that ¹⁷⁸ it should include politicians, who should also be subject to this surveillance and testing, if the fight against corruption is to be comprehensive. Yet there is no evidence to suggest that steps are being taken in this direction.

The Lobby Act was unsuccessful, and its drawbacks became visible when it was applied. One of its main weaknesses was that only those registered lobbyists were allowed to engage in lobbying activities. Complying with this act was next to impossible, because a minister is free to hold consultations with anyone, and he/she cannot refuse to consult with anyone based on this list of registered individuals. Fighting political corruption is a delicate matter and it requires a deeper commitment of political decision-makers to fight corruption within their own circles. Some positive developments have been achieved in the area of white collar crime in the public and civil services within those employee groups who work at the professional level. However, some of these have been criticised on human rights grounds.

175 See Bill: Bill T/237 (Drinóczi, Tímea - Petrétei, József: On the issue of the financing of Hungarian political parties. In: Die Finanzierung von politischen Parteien in Europa. Bestandsaufnahme und europäische Perspektive. Regensburger Beiträge zum Staats- und Verwaltungsrecht. Hrsg. Gerrit Manssen. Peter Lang GmbH Frankfurt am Main 2008 97-121. o.), Bill T/4190 (Drinóczi, Tímea - Petrétei, József: Financing political parties in Hungary (Bill T/4190). ICL Online Journal, Vienna Online Journal on International Constitutional Law, Vol. 3. 2/2009. pp. 109-120. <http://www.internationalconstitutionallaw.net/download.php?da33d3b9341a885704a3088567fffc11>, Hack, Péter: A pártfinanszírozás átláthatóvá tételéről szóló T/4190 sz. törvényjavaslatról, és a hozzá kapcsolódó módosító indítványokról. <http://kepmutas.hu/wp-content/uploads/2009/03/torvenyjavaslatrol.pdf> 22, http://www.transparency.hu/PARTY-_AND_CAMPAIGN_FINANCING [accessed 5 March 2011]

176 See especially Arts 7 and 20, respectively. See also Act XXXIV of 1994 on the Police that contains detailed rules for the surveillance and test, and allows the controllers to commit specified crimes and offences.

177 This cannot be considered as a substitute for the Lobby Act, as they are different in scope.

178 Based on an interview with an academic.

2. EXECUTIVE

Summary

This chapter describes the constitutional and political characteristics of the Hungarian executive - including that of the current administration itself - from the viewpoints of capacity, governance and role. Since 2010, Hungary has undergone innumerable changes, for instance, Fidesz-KDNP gained a qualified majority in Parliament and the new Fundamental Law and other basic regulations have been adopted. As such, presenting the current state of affairs and discussing the implications of these recent changes coming into effect in 2012 is not an easy task. The new Fundamental Law which replaced the existing Constitution as of 1 January 2012 does not change or broaden the authority of the executive. Nevertheless, the recent changes do affect the role of the executive. First, here is a brief overview of the Hungarian executive.

The new Hungarian Fundamental Law states explicitly that “The Prime Minister defines the general politics of the Government”.¹⁷⁹ This statement declares that the Prime Minister is indisputably the head of the government.¹⁸⁰ In other words, the Hungarian parliamentary democracy is effectively a so-called form of “prime ministerial” or chancellor-styled form of government. This system evolved during the constitutional reform of 1989-90 based on the German constitutional model. The most important feature of this model is the interlocking role of the prime minister and the government. It is different from the classic British parliamentary system, because the prime minister can be removed only by a so-called “constructive vote of confidence”.¹⁸¹

The Constitution currently in effect and other relevant laws state that the prime minister’s term in office ends when the ruling government’s term ends.¹⁸² Moreover, the government’s policies can be considered as the policies of the prime minister, because they are presented by the (future) head of government to Parliament before the government is inaugurated. The prime minister acts with full powers to select and dismiss the ministers. According to the Constitution, it is the government that directs the ministries; however it is the prime minister who presides over governmental meetings and ensures that government decrees and resolutions are implemented.¹⁸³ Finally, the prime minister determines the duties of the ministers.¹⁸⁴ However, the head of government is more than first among equals. The prime minister is responsible for the actions of the government. As a result Parliament cannot overthrow individual ministers. In most cases, the Members of Parliament (MPs) of the governing party’s faction(s) depend on the prime minister politically. That said, the prime minister can put pressure on the entire party organisation, especially if he/she is both the president of the party and the prime minister.¹⁸⁵

179 Fundamental Law of Hungary. 25 April 2011 (hereinafter *Fundamental Law*)

180 Act XLIII of 2010 on Central State Administration Organizations and the Legal Status of Members of the Government and State Secretaries (hereinafter referred to as Public Administration Act)

181 A constructive vote of no confidence is initiated at least by 1/5 of the MPs and a new candidate for PM must be named at the same time.

182 Act. XX of 1949 on Constitution of the Hungarian Republic (hereafter *Constitution*), Art. 33/A (b), Public Administration Act, Art. 22 (1)

183 Constitution, Art. 35 (1) c); Public Administration Act, Art. 16 (2)

184 Public Administration Act, Art. 18 (2)

185 Five out of nine Hungarian MPs after 1990 kept their party-leader positions during their terms (Viktor Orbán resigned as Fidesz’s President in 2001, Ferenc Gyurcsány was President of MSZP only during his second term, between 2007-09).

Legal experts of constitutional law claim that the relationship between Parliament and the Government is controversial. Other experts argue that the executive is subordinate to Parliament: it executes the bills passed by Parliament, hence the term “executive”.

Meanwhile the executive is the head of the executive branch of government, as stated by the Constitution: “the Government is the supreme director of the public administration”.¹⁸⁶ This regulation has been included in the new Fundamental Law, and as such, the importance of this regulation will be increased from the level of a simple law to a constitutional law. The current regulation stipulates that the government is the central body with general authority over *public administration*.¹⁸⁷ The new Fundamental Law would express this as follows: “the Government shall be the general body of *executive power*, and its responsibilities and competences shall include all matters not expressly delegated by the Fundamental Law or other legislation to the responsibilities and competences of another body”.¹⁸⁸ Moreover, since the activities of the Government are hardly definable by the means of written law¹⁸⁹, the new Fundamental Law does not specify the roles and responsibilities of the government. Rather, it transfers the regulation based on “the principle of the rest”, which means that the competence of the Government includes everything that is not otherwise delegated to another body. However, the current Constitution that is still in effect clearly states that the government has such position, without a general clause. Moreover, the current Constitution states that the ministers are to manage those branches of public administration that fall within their respective portfolios, as well as leading those public organs over which they are responsible. Furthermore, the government has the power to place any branch of public administration under its direct supervision and establish special bodies for this purpose.¹⁹⁰

Executive Overall Pillar Score: 64 / 100			
	Indicator	Law	Practice
Capacity 67 / 100	Resources	-	75
	Independence	75	50
Governance 63 / 100	Transparency	75	50
	Accountability	75	50
	Integrity Mechanisms	75	50
Role 63 / 100	Public sector management	50	
	Legal System	75	

186 Zoltán Magyary: A közigazgatás legfőbb vezetése szervezési szempontból (*The Supreme Direction of Public Administration from the Aspect of Organization*). In: Statisztikai Közlemények (*Statistical Publications*), 1936. 1.

187 Public Administration Act, Art.16 (1)

188 Fundamental Law, Art.15 (1)

189 Kukorelli, 2007 p. 425.

190 Constitution Art. 35 (1); 37 (2); 40 (3)

Assessment

Resources (Practice)

To what extent does the executive have adequate resources to effectively carry out its duties?

Score: 75

The structure of the Hungarian government and public administration has been stable since 1990; however each government that came to power since has introduced changes over the years. The centre-right political forces that won the 2010 elections promised to radically change this structure. They made significant modifications to the structure of the government, by initiating public administration reform.

One outcome of this reform has been the creation of a system of integrated ministries: in effect decreasing the total number of portfolios from fifteen to eight. Another important feature of this system is that individual portfolios now oversee three to four professional fields, rather than just one field.¹⁹¹ For example, the same ministry is responsible for public health, education, culture and welfare policies (i.e. the Ministry of National Resources); another ministry concurrently handles matters including development, energy, transport and infocommunication (i.e. the Ministry of National Development). Another change has been the establishment of the post of “Deputy Prime Minister”, introduced via a constitutional amendment.¹⁹² The duties and competences of the ministries are detailed in the so-called “decree of charter”.¹⁹³ Some professional fields are managed by secretaries of state, who are quasi-ministers of the certain departments, depending on their political weight. The Prime Minister’s Office has been eliminated, and its duties have been divided into two: The body supporting the Prime Minister (PM) is the Office of the PM, directed by one of the state secretaries. Though the total number of staff working in this office is smaller than it was previously, the informal importance of this office is much greater.¹⁹⁴ The Office of the PM is now directed by Mihály Varga - former Minister of Finance - and the spokesperson, the press department of the PM, and the commissioners of the PM also belong to this office. In September 2011, the government re-organised the way in which it communicates. As a result, the government spokesperson is now also a member of the Office of the PM’s professional staff.¹⁹⁵

The further duties of the former Prime Minister’s Office have been delegated to the new Ministry of Public Administration and Justice (“KIM”). This ministry is responsible for the coordination of governmental activities. The head of this ministry is now also one of the deputy PMs. The former Gyurcsány government, which was formed by a coalition between the Hungarian Socialist Party (MSZP) and the Alliance of Free Democrats (SZDSZ), and which was in power until 2008, thereafter serving as a minority government until

191 Act XLII of 2010 on the Ministries of the Hungarian Republic

192 Tibor Navracsics, Minister for Public Administration and Justice, is also responsible for the structure of public administration and for ensuring that it operates efficiently. Zsolt Semjén coordinates and guides the work related to nationality policy and church affairs, and officially he is the General Deputy to the Prime Minister.

193 Government Decree No. 212/2010. (VII.1.) on the Objectives and Spheres of Authority of the certain Ministers and of the State Secretary Directing the PM’s Office

194 The number of the staff in the Prime Minister’s Office was above 600 after 2006. This number was decreased to 94 in 2010, then to 128. Gov. decisions 2104/2006. and 1030/2011.

195 PM decision 71/2011. Originally, both the State Secretariat for Government Communication and the Office of the Government’s Spokesperson held positions in KIM. However, the government’s communication has become polyphonic in some cases. That said, the Prime Minister and several ministries have their own spokespersons or press secretaries.

Gyurcsány's resignation in early 2009, modified the system of state secretaries. However, the cabinet elected in 2010 annulled this modification. It introduced a two tier system of leaders: 1) political leaders, including the Prime Minister, the cabinet ministers and those secretaries of state mentioned above; 2), professional leaders, including the secretaries of state responsible for public administration and all the deputy secretaries of state.

The Ministry of Public Administration and Justice designed and introduced the public administration reform to be implemented in 2013 and 2014, as planned.¹⁹⁶ The first step of this reform was introduced in September 2011, when Parliament put an end to the unconstitutional status that had existed since 2008, in which local governments had been operating without control of legality.¹⁹⁷ County-level offices of the public administration were re-established and granted full authority.¹⁹⁸ These offices have been operating as Governmental Offices since 1 January¹⁹⁹ 2011 and they integrate seventeen professional authorities that until now have been operating separately.²⁰⁰ The client service offices now provide the so-called "single window administration". The professional leadership of the office is administered by a Director-General appointed by the minister; the political leadership is administered by a Government Representative appointed by the PM. Presumably, the system of the so-called 'járás' (a special Hungarian administrative district of the executive) will operate as of 2013. This specific Hungarian administrative unit would cover the territory of several settlements. However, it will not have local governmental duties, but rather, state administrative ones.

The current state budget includes the budgetary resources, the allocation of government revenues, and the budget of the entire executive.²⁰¹ The budgetary resources have been revised several times, because of the economic crisis, and usually the resources have been trimmed. For the first time, the government froze HUF 40 billion (USD 188 million)²⁰² in June 2010, and thereafter, in February 2011, it froze another HUF 190 billion (USD 943 million) of the budget of the ministries and its subordinate bodies. (This sum amounts to approximately 19% of the 2011 modified budget deficit goal).²⁰³ All of these measures were taken to reach the imposed budget deficit target. Experts anticipate that the negative effects of the budget cuts was only to be felt during 2011. Needless to say, these cuts affect the ability of the entire government to function, curbing the operational activities of bodies such as the the Directorate General for Public Procurements and Services ("KEF") as well as the Central Office for Administrative and Electronic Public Services (KEK KH).²⁰⁴

196 The Magyar Program - Strategy for the Development of Public Administration was published in June 2011 <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/kozigazgatasi-allamtitkarsag/hirek/a-haza-udvere-es-a-koz-szolgalataban> [accessed 18 May 2011]

197 Decisions 90/2007 and 131/2008 of the Constitutional Court of the Hungarian Republic (hereafter DCC)

198 Public Administration Act, Art. 77

199 Act CXXVI of 2010

Transparency International indicated possible risks of corruption as Government Representatives (political leaders of the government offices) can operate as MPs concurrently. *Corruption risks in the New Constitution*, Transparency International Budapest, April 11th 2011 http://www.transparency.hu/Corruption_risks_in_the_New_Constitution?bind_info=index&bind_id=0 [accessed 19 May 2011]

200 Gov. decision 1191/2010; Government Decree No. 288/2010

201 Act CLXIX of 2010 on the State Budget of the Hungarian Republic

202 Official HUF/USD exchange rate of the National Bank of Hungary on 15 October 2011 was 211.09.

203 Gov. decisions 1132/2010 and 1025/2011. The Government also obliged the ministries to freeze their residues of HUF 577 billion (USD 2.7 billion) on 19 September 2011. See Gov. decision 1316/2011.

204 Gov. decisions 1132/2010 and 1025/2011. The Government also obliged the ministries to freeze their residues of HUF 577 billion (USD 2.7 billion) on 19 September 2011. See Gov. decision 1316/2011.

Independence (Law)

To what extent is the executive independent by law?

Score: 75

The Hungarian state is based on the rule of law and the principle of the separation of powers, enshrined in the Constitution and exercised by the way in which the government is organized and structured.²⁰⁵ As such, the three classic branches of political power are separate and independent.

Indeed, because of the way the parliamentary system works, the relationship between (the functions of the) political powers is not so much one of mutual independence, but rather of mutual control.²⁰⁶ The PM is elected by Parliament, and the government is accountable to Parliament; it however, cannot be instructed directly.²⁰⁷ The Constitutional Court reviews the provisions of law, but the rules relating to the Constitutional Court are voted and implemented by the legislative power.

As such, independence can be granted via transparent elections. During the inaugural sitting of Parliament, the President of the Republic nominates the PM, who must be a Hungarian citizen with a clean record and eligible to vote. The Prime Minister must be elected by Members of Parliament with a simple majority, and Parliament elects the Prime Minister and votes on the government's program. Subsequently, the elected PM takes an oath or pledge. However, at this point, the government has yet to be formed. The elected PM nominates the ministers, who are appointed by the President of the Republic, following compulsory hearings before the parliamentary committees. The Government must be formed by appointing the cabinet ministers.²⁰⁸

Other laws aim to guarantee the independence of government. For historical reasons, the Constitution states that political parties may not exercise public power directly. As such, no political party may exercise exclusive control over any governmental body.²⁰⁹ This does not mean that members of the government, or Parliament, or political leaders of the state administration (i.e. ministers, state secretaries, etc.) cannot be members or leaders of political parties. The governmental officers and public servants are under a stricter regulation: they operate "party-neutrally", which means that they cannot occupy a position within a political party, and they cannot appear in public on behalf of a party.²¹⁰ Yet some legal experts²¹¹ suggest that it would be reasonable to allow professional members of the police, the army and the national security services to hold "simple" party membership.²¹²

205 DCC 2/2002

206 Jakab, András (ed.), *Az Alkotmány kommentárja* (Commentary of the Constitution) Budapest: Századvég 2009, p. 206

207 Although Parliament should oblige the Government in form of an act (eg. oblige it to implement executive orders). Interview with András Jakab Phd., Budapest, March 26 2011

208 Constitution, Art. 33 (3)-(5)

209 Constitution, Art. 3 (3)

210 Act XXIII of 1992 on the Legal Status of Public Servants § 21 (6) c) (hereafter *Public Servants Act*)

211 Interview with Dr. LLM. András Jakab Phd., Budapest, 26 March 2011

Cf. the decision of the European Court of Human Rights in the case *Rekvényi v. Hungary*

http://halmaigabor.hu/dok/298_revkenyi_kontra_mo..pdf [accessed 25 May 2011]

212 Professional members of the Hungarian Defence Forces, the Police and the national security services may not be members of political parties. Constitution, Art. 40/B (4)

Independence (Practice)

To what extent is the executive independent in practice?

Score: 50

In theory, Montesquieu's' principle of the division of powers should work; however, in modern parliamentary systems, it is almost impossible to achieve. This most certainly holds true for the relationship between the executive and legislative powers of government. The Constitutional Court in 1993 had already expressed this challenge: "in the parliamentary system the legislative and the executive power are interlocked politically, so practically the separation of powers here means the division of the scope of activities".²¹³

Three political forces, where political power is vested, often emerge in what might be referred to as the process of governance: the government, parliamentary groups, and the governing parties and their leadership. However, these clusters are formally independent from one another, yet there are overlaps between them and for this reason, they constantly interact, and hence inevitably influence one another. One example of such interaction is the event in which powerful politicians of certain parties are also members of the government. Another example might be the case when government is formed by experts or non-party members, as a result of which real decision-making takes place during the meetings of the governing party leaders'. (See *Transparency (Practice)*)

Therefore, the government cannot be instructed²¹⁴; the government also establishes its statute independently. However, other political actors might also influence this process and the work of the cabinet, as well as the Constitutional Court or the State Audit Office (SAO), such as lobby groups, unions and chambers.

Transparency (Law)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

Score: 75

The Constitution currently in effect states the following: "*In the Republic of Hungary everyone shall have the right to receive and impart information of public interest*", and will not change in the future Fundamental Law.²¹⁵ The Constitutional Court had already put it on record in 1994 that the open, transparent and controllable activity of the public power, in general the practice of the state organs and the executive power in the limelight of publicity is the fundament of the democracy.²¹⁶

213 DCC 38/1993

214 Jakab, 2009:1381

215 Constitution, Art. 61 (1); Fundamental Law, Art. V (2)

216 DCC 34/1994

The Protection of Personal Data and Disclosure of Information of Public Interest Act discusses the information of public interest separately. It states that a public body, whether it is an organ of a local government or any other governmental body, must ensure that information is open and available to the general public.²¹⁷ It stipulates that this obligation must be enforced by the court as a last resort and the disclosure of information shall be restricted only in cases when public interest prevails for non-disclosure, e.g. in the case of classified information. The Commissioner of Data Protection safeguards the constitutional right to disclose information of public interest. It is expected that this post of commissioner will be replaced by an independent authority under the new Fundamental Law, and this measure has been heavily criticised by the current Parliamentary Commissioner for Data Protection and Freedom of Information as well.²¹⁸

According to the Act on Legislation,²¹⁹ all laws, normative instructions and resolutions must be published in the Hungarian Gazette. Draft bills and decrees must be publicised on the internet within the framework of "public consultation".²²⁰ The regulation governing electronic public services states that governmental websites, such as www.magyarorszag.hu, must be operated separately from other websites, where different public services are available.²²¹ Governmental bodies are also obliged to publicise certain information (e.g. information pertaining to organisational and personnel details; operation and functioning, administration, etc.).²²²

A significant dispute arose over the question of whether or not the sound recordings and minutes of governmental meetings should be made public. There was a debate about the fact that this field is only regulated by laws at the lower level. The Constitutional Court finally resolved the issue by obliging the legislator to regulate this field in an Act²²³. Events took an unexpected turn after the change of government in 2010.

According to the regulations governing the Members of Parliament, the PM, the minister and the secretary of state must file a declaration of assets as well.²²⁴ The declaration of assets is public; it must include the declaration of assets of the spouse or domestic partner, as well as the person's children.²²⁵ The records, according to the law, must be managed by the Ministry of Public Administration and Justice, if the person in question is not a Member of Parliament.²²⁶

In theory, the purpose of the Acts that govern the use of public funds and public procurement is to ensure transparency. A separate secretary of state exists for this purpose, who reviews high-priority state contracts and government subsidies managed by the Ministry of National Development. The State Audit Office (SAO) is authorised to control and to conduct an inquiry over the entire administration, including the government

217 Act LXIII of 1992 on the Protection of Personal Data and Access to Information of Public Interest, Art. 19-22

218 Fundamental Law, Art. V (3) http://abiweb.obh.hu/abi/index201.php?menu=efomenu&dok=sajtokozl2011_20110330111834 [accessed 25 May 2011]

219 Act CXXX of 2010, Art. 26 (1)-(2)

220 Act CXXXI of 2010 on the Public Participation in the Process of Legislation, Art. 5-15

221 Act LX of 2009 on the Electronic Public Utility Services § 21 (1); Government Decree No. 225/2009, Art.7

222 Act XC of 2005 on the Freedom of Electronic Information, Art. 3-6

223 DCC 32/2006

224 Public Administration Act, Art. 12

225 Act LV of 1990 on the Legal Status of the Members of Parliament, Art. 19 and 22

226 Act XXIV of 2003 and Act CXXIX of 2003

and all governmental bodies. The SAO and the Budget Council provide an opinion on the State Budget Bill, which is submitted to Parliament by the Finance Minister. Upon submission, the bill becomes public, the deadline for submission is 30 September; during an election year, it is October 31.²²⁷

The proposed innovative feature of the new Fundamental Law is the inclusion of a detailed chapter on public funds, which is meant to ensure fiscal transparency and prevent the increase of public debt. In essence, the level of public debt, according to this new regulation, shall not exceed 50% of the GDP.²²⁸ This new regulation will give significant powers to the Budget Council: the body will have the right to veto the next state budget proposal, if it does not meet the requirements of reducing state debt. State finances can operate also on the basis of the previous state budget (indemnity); however, if Parliament cannot adopt the “new” State Budget Act until 31 March, the President of the Republic has the optional right to dissolve the legislation.²²⁹

Transparency (Practice)

To what extent is there transparency in relevant activities of the executive in practice?

Score: 50

Several laws exist to ensure transparency. Problems persist, however, with the implementation of these laws. The lack of sanctions to ensure the enforcement of these laws is the main reason behind these implementation problems. For instance, in the case of asset declaration, the regulation does not specify what type of information must be given. In practice, this means that it is up to individual politicians to determine what kinds of assets they wish to declare.

A considerable portion of the legislative documents of the executive is available on the internet (see Transparency (Law), second paragraph). However, respecting the rules governing the expenditure of public funds is more difficult. The law stipulates that all governmental agreements and contracts for works must be published on the relevant ministry’s website, and this includes contracts below HUF 5 million (USD 23,697).^{230, 231} The new official website called kormany.hu, established for this purpose and launched in early 2011, has not solved the problem of finding information, which was a major problem with the previous unintegrated website system. Rather than facilitating a search, it is even more difficult to find contract, decrees and other documents on this new website, the full version of which now operates.²³²

Governments meetings are – as a matter of course – not open to the public, and the list of possible (governmental) participants are laid down in the Standing Orders of the

227 Act XXXVIII of 1992 on Public Finance, Art. 52 (1)

228 Fundamental Law, Articles 36-37 “Parliament may not adopt a State Budget Act which allows state debt to exceed half of the Gross Domestic Product [...] As long as state debt exceeds half of the Gross Domestic Product, Parliament may only adopt a State Budget Act which contains state debt reduction in proportion to the Gross Domestic Product”.

229 Fundamental Law, Art. 3 (3) b) It is important to note, that neither the Fiscal Council, nor the Government is interested in an unacceptable state budget-proposal - because of reasons of trustworthiness.

230 Official HUF/USD exchange rate of the National Bank of Hungary on 15 October 2011 was 211.09.

231 Government Decree No. 85/2010

232 http://www.hirado.hu/Hirek/2011/01/15/08/Elindult_az_osszkormanyzati_portal.aspx [accessed 1 June 2011]

Government (for public openness of official reports see Transparency (Law)).²³³ The governmental or prime ministerial spokesperson holds an official press conference after every meeting of the government. The spokesperson informs the press about the actual course of action that the government has agreed to take, and the government decides on which measures it will make public during these press conferences. All official decisions, announcements, legislative issues or news are accessible on the government's website, in the form of communiqués, though only a parliamentary group of them are translated into English or any other international language. The work of the national news agency ("MTI") is important, because MTI has up-to-date information and news coverage on almost all current affairs issues.

The Public Finance Act regulates the preparation of the budget proposal in detail (see Transparency (Law)). The "guiding principles" of the annual budgets are submitted to the government by the finance minister by 15 April every year. The minister subsequently submits the detailed budget proposal to the government by 31 August, after a "draft letter" has been circulated within the administration. The bill becomes public when submitted to Parliament.²³⁴

Accountability (Law)

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

Score: 75

According to the Constitution, the government is accountable to Parliament. The government must report to Parliament regularly.²³⁵ Secretaries of state are accountable to the minister and the PM.²³⁶ Two types of accountability mechanisms are to be distinguished: political (parliamentary) and legal (judicial). The responsibility set out in the Constitution has a clear political nature.²³⁷ In addition, there are other forms of accountability, based on criminal law, civil law or labour law. Political accountability is determined by parliamentary majority. As the Constitutional Court has stated, the accountability of government is ensured via the obligation of reporting and the constructive vote of confidence.²³⁸ However, this does not mean that the government is subordinate to Parliament, because this would violate the principle of the separation of powers. That said, bills passed by Parliament supercede government decrees.

Consequently, Parliament can oust the government with a constructive vote of confidence. The government can propose a vote of confidence against itself. These measures affect the government as a whole, and individual ministers cannot be removed by Parliament. However, in addition to these extreme measures, there are other parliamentary methods of accountability. Members of Parliament, according to the law, "may direct an interpellation or a question to the Government or any of the Members of

233 Government Decree No.1144/2010, Art. 59-60

234 Act XXXVIII of 1992 on Public Finance, Art. 50-53/B.

235 Constitution, Art. 39 (1)

236 Public Administration Act, Art.11 (1)

237 DCC 3/2004

238 DCC 50/1998

the Government on any matter which falls within their respective competence”.²³⁹ In addition, Parliament may delegate a committee to conduct an investigation into “any issue whatsoever”. The Standing Orders, which must be adopted with a two-thirds majority of the votes the MPs present, contain detailed rules as to how this investigation should be conducted.²⁴⁰ Moreover, Parliament has power in matters related to European integration and the government is obliged to disclose information. Acts regarding these must also be enacted by a two-thirds majority vote of the MPs present.²⁴¹

Separate acts govern public participation in the legislative process.²⁴² According to those acts, the government drafts bills and the minister subsequently prepares the draft documents for circulation. These drafts must be publically reconciled and the author of the bill must inquire into what the possible effects of the bill might be.

The State Audit Office and the Parliamentary commissioners (i.e. the “ombudsman”) have no sanctioning power. They nonetheless play an important role, by exercising their power of control and survey, and their powers extend to the entire state apparatus. Moreover, as a preventive mechanism, SAO is obliged to freeze financial resources and suspend the further use of liquid assets when necessary. The Constitutional Court can annul governmental and ministerial resolutions, as well as public organisational regulatory instruments, used in cases of unconstitutionality and where a conflict with a law at a higher level emerges. The Constitution that is currently in effect stipulates that everyone has the right to seek legal remedy, in accordance with the provisions of the law, against administrative decisions infringing rights or justified interests.²⁴³ The courts have the power to review the legality of decisions made by the public administration.²⁴⁴ The Office of the Public Prosecutor has the right to supervise the legality of the laws issued by the lower-level public administrative bodies of the government and of the public organisational regulatory instruments. An objection against the above must be submitted to the specific body or in the last resort to the court.²⁴⁵

Accountability (Practice)

To what extent is there effective oversight of executive activities in practice?

Score: 50

Accountability²⁴⁶ can be marked by the fact that there has been only one example for so-called “constructive vote of confidence” and one for the vote of no-confidence since 1990.²⁴⁷ Moreover, it was actually initiated by the then Prime Minister Ferenc Gyurcsány against himself in 2009.

239 Constitution, Art. 27

240 Resolution of Parliament No. 46/1994 (hereinafter referred to as *Standing Orders*)

241 Constitution, Art. 36/A, Act LIII of 2004 on the Cooperation of Parliament and the Government in Cases regarding the European Union

242 Act CXXXI of 2010 on the Public Participation in the Process of Legislation

243 Constitution, Art. 57 (5)

244 Constitution, Art. 50 (2)

245 Act V of 1972 on the Prosecution Service of the Republic of Hungary, Art. 13-15

246 Jakab, 2009 p.1381.

247 Ferenc Gyurcsány’s Government proposed a vote of confidence against itself on 6 October 2006. Gyurcsány’s minister, Gordon Bajnai replaced his predecessor as a result of a “written motion of no-confidence against the Prime Minister” (vote of no-confidence) on 14 April 2009.

Parliament has other methods for holding the ruling government accountable. These methods are, among others, the process of interpellations. However, this method is often ambiguous, because there are no serious consequences if a minister refuses to respond to an interpellation. The answer of the government for an interpellation can be refused by Parliament - which happens rarely - still it has no serious consequence. In such cases, a committee of experts discusses the matter, and then devises at least a "proposal of measures".²⁴⁸ The committees for investigation act similarly. However, the Constitution states that everyone is obliged to appear before the committees, it does not specify what the legal consequences are for not appearing.²⁴⁹ Thus, in a sensitive political situation, the implicated politician simply does not appear at the sitting of the committee. A good example of this being the incident where Mr. Ferenc Gyurcsány refused to appear in front of the subcommittee investigating police attacks against the demonstrators, that occurred between 2006 and 2010, or when the subcommittee investigating the "red sludge catastrophe" of Kolontár.²⁵⁰ The new Fundamental Law states that: "The supervisory activities of parliamentary committees and the obligation to appear before any committee shall be regulated by a cardinal Act".²⁵¹

The scandals over corruption charges during recent years focused on ascertaining the civil and criminal responsibility. Politics influenced the audit conducted by the Prime Minister's Representative investigating the role of the commanders who were in charge during the acts of police brutality in 2006 against the anti-government demonstrators. In April, 2011, the PM's Representative, Mr. István Balsai, who is a former Fidesz MP, and who is currently a member of the Constitutional Court, presented a report to Prime Minister Viktor Orbán on the "bloody October of 2006".²⁵² The report accuses particular individuals for the acts of violence that occurred, and suggests that the political leadership, who was at the helm of government in 2006, is responsible for these crimes. Despite the explicit claims made by the report, the report sank into oblivion after a few months, although the PM requested the Speaker of the Parliament in September 2011 to submit the document to the MPs. Meanwhile, the Military Prosecution Office of Budapest ordered an investigation to be carried out over the police abuses of 2006. Mr. Péter Gergényi, Chief of the Budapest Police Force in 2006, was also questioned by the military prosecution and held as a suspect this year as part of an investigation launched as a result of the complaint issued by Mr. Gergely Gulyás (Fidesz MP).²⁵³ In another case, which is still being handled as a state secret - the public prosecutor held two former leaders of the secret services suspect and the former minister responsible for the services in July 2011.²⁵⁴ The investigation is still in process and it is being conducted behind closed doors.

248 Standing Orders, Art.117 (4)

249 Constitution, Art. 21 (3)

250 http://www.nol.hu/archivum/gyurcsany_ferenc_nem_jaru_a_vizsgalobizottsag_ele [accessed 23 September 2011]

http://index.hu/belfold/2011/09/21/gyurcsany_nem_ment_el_a_kolontar-bizottsag_ulesere/ [accessed 23 September 2011]

251 Fundamental Law, Art. 7 (3)

252 <http://www.origo.hu/itthon/20110412-mar-orbannal-van-a-2006-oszevel-foglalkozo-balsajjelentes.html> [accessed 23 September 2011]

253 http://www.magyarhirlap.hu/belfold/kitolodott_az_elevulesi_hatarido.html?utm_source=mandiner&utm_medium=link&utm_campaign=mandiner_201109 [accessed 23 September 2011]

254 <http://www.origo.hu/itthon/20110703-gyanusított-laborc-sandor-korabbi-nemzetbiztonsági-fonok.html> [accessed 4 September 2011]

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

Score: 75

Currently, there is no uniform code of conduct for the employees in public administration; however, individual institutions have such (separate) codes (e.g. certain ministries, the courts, the public service broadcasters, etc.). The status of employees in the public administration is currently governed, among others, by the act on the governmental officials and the public servants. These acts also regulate the cases of conflicts of interest. These regulations, as well as the Public Administration Act, distinguish *political* leaders (e.g. PM, ministers, state secretaries) from *professional* leaders (e.g. state secretaries for public administration and their deputies). Political leaders are as so-called “state leaders”, and they perform their duties according to laws governing public service; professional leaders, by contrast, govern based on the laws on governmental officials and on public servants.²⁵⁵

According to the Public Servants’ Act, only those with clean police records may carry out public service activities. In addition, employees must undergo and satisfy a security clearance, because their professional activities are, as the act states, “important and confidential”. Moreover, a public servant must obtain permission from his/her employer in order to be employed under contract with another employer. Furthermore, the person is only allowed to be a member of the management or the supervisory board of a state- or municipally-owned company. According to the law, public servants may not perform work that is unworthy of his/her office. He/She must not hold a position in a political party, nor accept a public role in favour of a political party. If the public servant does not leave his/her post in the case of a conflict of interest within 30 days, despite official notice of his employer to this effect, his/her legal status as a public servant will be terminated (see the rules for political leaders in Transparency (Law)).

Public servants involved in decision-making processes, or those who hold positions of leadership, such as the Prime Minister, the ministers, the secretaries of state or deputy secretaries of state, must file a declaration of assets following strict guidelines, and which are not regulated in the act on public service employees, but since 2008, in a separate act.²⁵⁶ Employment in the public service is unconditional upon satisfying this obligation. Receiving gifts and hospitality is not regulated in the laws above. Rather, they are regulated under general criminal law, through the statutory definitions for maladministration, bribery and influence peddling.

Integrity (and accountability) is also ensured by the rules relating to the conflict of interests of members of the government.²⁵⁷ A political leader must hold no other position than his mandate; however, he/she can perform scholarly and scientific activities, he/she may also be a Member of Parliament. A conflict of interest involving the PM must be declared by more than half of the Members of Parliament. The cabinet minister and the

²⁵⁵ Public Administration Act, Art. 7 (2)-(3)

²⁵⁶ Act CLII of 2007 on Obligation for Declaration of Assets, Public Administration Act, Art.12

²⁵⁷ Public Administration Act, Art.10 (1)-(2)

secretary of state found violating the laws on incompatibility must be dismissed, because cases of conflict of interest of the professional leaders, which includes the administrative and the deputy secretary of state, are governed by the laws on civil and public servants. These rules are somewhat lighter, but also slightly and more severe: a professional leader can be the member of the management or the supervisory board of a company owned by the state or a municipality, but he/she may not hold a position in a party nor shall he/she exercise an “unworthy behavior”.²⁵⁸ Moreover, he/she cannot be a member of Parliament. If the (deputy) secretary of state does not leave office due to a conflict of interest within 30 days, he/she shall be dismissed by the President of the Republic upon the recommendation of the PM.

Creating a code of conduct for public service has long been a pressing issue within Hungarian public life. The previous text of the Public Service Act contained a factual provision for this: an alliance of unions introduced its proposal in 2002 further to this provision.²⁵⁹ In 2003, the Prime Minister himself raised the issue of drafting a code of conduct just for the government, but the project vanished into thin air.²⁶⁰ In 2009, in the midst of the refusal of the then-opposition, Parliament adopted a resolution on the fundamental ethical requirement of the public service.²⁶¹

Integrity (Practice)

To what extent is the integrity of members of the executive ensured in practice?

Score: 50

Civil service reforms regarding the status of governmental- and public servants triggered widespread criticism.²⁶² A recent law, passed in 2010, dramatically changed the public service, and sparked heavy criticism. Essentially, the law gave employers the right to dismiss employees without justification. The Constitutional Court declared this unconstitutional.²⁶³ Critics argued that the annulled regulations would jeopardize the jobs of public servants and the integrity of the entire civil service.

The phenomenon of “revolving doors” is an issue in Hungary. The individual professional careers of many politicians continue in the private sector after the politician leaves office with the change of government, only to return to government during the subsequent election. There are no laws in place to control this phenomenon.

At the same time, Parliament has on a number of occasions amended the composition or regulation of some independent government supervisory bodies. A former senior representative of the ruling party, an economist, became the head of the State Audit

258 Public Servants Act, Art. 21-22

259 <http://www.kszs.org.hu/archiv/etika.html> [accessed 27 March 2011]

260 <http://www.origo.hu/itthon/20030225barandy.html> [accessed 27 March 2011]

<http://www.mhu/portal/141604> [accessed 27 March 2011]

261 Resolution of Parliament No. 105/2009

262 Act CLXXIV of 2010 on the Amendment of the Public Servants Act, Art. 1; Public Administration Act, Art. 17 (1)

263 DCC 8/2011 and DCC 111/B/2011

Office.²⁶⁴ Currently, the ruling party holds a majority in the parliamentary committee that is responsible for nominating the judges in the Constitutional Court. In 2010, one of the ministers of the former centre-right government was appointed to the Constitutional Court as a judge in 2010, as was a governing MP in the same year, and a former MP in 2011.²⁶⁵ Meanwhile, in another development, the powers of the Constitutional Court itself have been curtailed in reviewing the cases on the state budget, central taxes, stamp and customs duties, and contributions.²⁶⁶ A wave of heavy criticism followed this decision. However the criticisms were not taken into consideration, and as a result, the new laws governing the powers of the Constitutional Court will be enshrined in the new Fundamental Law. This states that if the level of national debt exceeds half of the GDP only, the Constitutional Court may review the acts on the state budget and its implementation, the central tax type, duties, pension and healthcare contributions, customs and the central conditions for local taxes, to abide with the Fundamental Law. Otherwise, the Constitutional Court (CC) may annul the laws on grounds that they violate the right to life and human dignity, the right to the protection of personal data, freedom of thought, conscience and religion, and Hungarian citizenship rights. On the other hand, CC have the unrestricted right to annul the related laws for non-compliance with the Fundamental Law's procedural requirements for the drafting and publication of such legislation.²⁶⁷

Whistleblower protection laws have been part of the Hungarian legal system since as early as 1977.²⁶⁸ However, these laws remain fragmented within the current legal framework²⁶⁹, the Hungarian Criminal Code, for instance, barely mentions the fact that whistleblower harassment is a misdemeanour. In 2009, the minority government led by the Socialist Party introduced a comprehensive anti-corruption package to Parliament²⁷⁰ to ensure the protection of fair methods and procedures, as it also proposed to establish the so-called Office for Public Procurement and Public Interest Protection.²⁷¹ Nevertheless, while the former did in fact come into force, the MPs rejected the latter.²⁷² Therefore a preposterous situation occurred: on one hand, regulations regarding whistleblowers were (and are) in effect; on the other hand, an office responsible for whistleblower protection has not been established.²⁷³

264 László Domokos was elected as the President of ASZ in June 2010. His also newly-elected deputy is Tihámér Warvasovszky, who was a member of the MSZP-faction in Parliament between 2001-2010, and served as the mayor of Székesfehérvár between 2002-2010.

265 István Stumpf (Minister of the Prime Minister's Office 1998-2002) was elected as judge of the Constitutional Court on 22 July 2010, István Balsaithe acting Chairman of the Constitutional Committee of Parliament, and Bela Pokol former Chairman of Constitutional Committee (1998-2002), was elected in 2011.

266 Act CXIX of 2010 on the Amendment of the Constitution

267 Fundamental Law, Art. 37 (4)

268 Act I of 1977 on report of public interest (not in effect)

269 Public Administration Act, HCC, Criminal Procedure Act, Protection Programme for Aiders of Jurisdiction, Equal Treatment Act, Labour Safety Act

<http://www.k-monitor.hu/eszkozatar/whistleblowing/whistleblowing> [accessed 27 March 2011]

270 <http://www.origo.hu/itthon/20091025-korrupcioellenes-csomaggal-allt-elo-a-kormany.html> [accessed 27 March 2011]

271 Act CLXIII of 2009 on the Protection of Fair Procedures, Bill T/11025 of 2009

272 <http://www.origo.hu/itthon/20100219-megsem-all-fel-a-kozbeszerzesi-es-kozerdekvedelmi-hivatal.html> [accessed 27 March 2011]

273 <http://www.alternativenergia.hu/a-kornyezetvedelem-korrupcios-ugyeit-nehez-bizonyitani/18686> [accessed 27 March 2011]

Public Sector Management (Law and Practice)

To what extent is the executive committed to and engaged in developing a well-governed public sector?

Score: 50

In 2010, as an innovation²⁷⁴, the government made the Ministry of Public Administration and Justice (“KIM”) responsible for coordinating governmental activities, and for setting standards for public administration and human resources. As Tibor Navracsics (Minister of Public Administration and Justice), stated in the presentation of the programme for public administration development: *“It is the common goal of us all that there should be public administration which befriends citizens.”*²⁷⁵ The ministry’s motto was a way for the new government to advertise the commitment to build a well-governed public sector.²⁷⁶ The ministry ultimately coordinates the work of the integrated ministries and it manages official negotiations within the public administration. As such, the minister has additional responsibilities, specifically to settle conflicts and disputes that arise among certain ministries or what might be called “political headquarters”. In general, the press departments of the governing parties Fidesz and KDNP also communicate separately. The KIM’s state secretary for regional state administration organises and directs the activities of government offices, operating as the regional public administrative body with the general authority of the government. Yet not only the Minister of Justice, but all ministers can motivate their public servants with various official acknowledgements. Moreover, public servants’ payment can be raised by fifty per cent after the end of their first year in service.²⁷⁷

The Government Control Office (“KEHI”) is the internal control body of the government.²⁷⁸ The Minister of Public Administration and Justice governs KEHI. The KEHI supervises the state budget organisations and state-owned companies, as well as the implementation of governmental decisions, including human resources policies.²⁷⁹ The office reports annually on its activity to the government. The allocation of certain EU funds is supervised by the Directorates General for Auditing European Funds (EUTAF), placed under the control of the Ministry for National Economy.²⁸⁰

274 Government Decree No. 212/2010, Art. 2-9

275 <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/the-magyar-programme-for-public-service> [accessed 29 August 2011]

276 <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/kozigazgatasi-allamtitkarsag/hirek/a-haza-udvere-es-a-koz-szolgalataban> [accessed 26 August 2011]

277 Public Servants Act, Art. 43 (4)

278 Government Decree No. 312/2006 on the Government Control Office

279 Act XXXVIII of 1992 on Public Finance, Art. 120/B-120/C; Government Decree No. 212/2010, Art. 6 (7) f)

280 Government Decree No. 210/2010

Legal System

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

Score: 75

The current government has made efforts to fight corruption and it has also kept its promise to publish a completely new public procurement law, which was passed by Parliament in July 2011.²⁸¹ However, several NGOs have criticised the government's anti-corruption measures.²⁸² Though anti-corruption campaigns have almost become a tradition in Hungary, they have achieved little. Recently, in 2008, the Anti-Corruption Coordinating Board set up by the former Ministry of Justice was disbanded, and the external experts quit.²⁸³

Since government changed in 2010, public procurement and public property legislation has been modified several times.²⁸⁴ The communiqué issued by the cabinet argued that the amendments foster transparency and simplify public procurement rules and utilisation of public property.

Under the banner of anti-corruption, the justice system has been significantly reorganised, whereby a special anti-corruption department within the Central Prosecution Service for Investigation was created, by increasing the financial support of the prosecution service.²⁸⁵ Intelligence tools may now be used by the prosecution service during the investigation of malpractice.²⁸⁶

A so-called "accelerator package" has been established to accelerate the court's legal procedures in court. For the same reason, legal secretaries may also assume the competence of the local courts and the prosecutorial clerk may preside over cases²⁸⁷. The National Protective Service, under the new Ministry of Interior, now controls the internal crime prevention and investigation of the organisations belonging to the Ministry of the Interior.²⁸⁸ According to the latest announcements, the government aims to draft a new Criminal Code with stricter anti-corruption regulation, as well as a new public procurement bill.²⁸⁹ In late 2010, Hungary joined the International Anti-Corruption Academy as a founding member. These measures, however, like many others, received heavy criticism, criticism which is aimed against the "legislation fever" embodied by

281 <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/kormanyzati-kommunikacioert-felelos-allamtitkar-sag/hirek/kormanyzati-intezkedesek-a-korrupcio-ellen-osszefoglalo-a-december-9-i-korrupcioellenes-vilagnap-alkalmabol> [accessed 30 March 2011]

http://www.magyarhirlap.hu/gazdasag/zavaros_kozbeszerzesek_hazankban_.html [accessed 30 March 2011]

Act CVIII of 2011 on Public Procurements

Transparency International's stand: http://www.transparency.hu/A_kozbeszerzesek_ketharmadat_nem_szabalyozza_az_uj_kozbeszerzesi_torveny?bind_info=tag&bind_id=14 [accessed 27 March 2011]

282 http://www.transparency.hu/uploads/docs/2010_06_Kbt.doc [accessed 30 March 2011]

http://www.transparency.hu/Korrupcios_kockazatok_az_Alaptorvenyben [accessed 12 April 2011]

283 <http://index.hu/belfold/antikorr3307/> [accessed 30 March 2011]

284 Act LXXXVIII of 2010 and Act XCIX of 2010 on the Amendment of the Act CXXIX of 2003 on Public Procurement; Act LII of 2010 on the Accountable Management of State Property

285 <http://www.mhu/portal/772334> [accessed 30 March 2011]

286 Act V of 1972 on the Prosecution Service of the Republic of Hungary, Art. 9/A-9/D

287 Act CLXI of 2010 on the Amendment on Certain Criminal Laws; Constitution, Art. 46 (3)

288 Acts LXXXVI and CXLII of 2010

289 <http://fidesz.hu/index.php?Cikk=161031> [accessed 5 April 2011]

Fidesz-KDNP, a broader context in which the ruling coalition is in a rush to draft and pass as many bills as possible.

Corruption cases involving the politicians during the Socialist governments in power between 2002 and 2010 was of the utmost importance for the centre-right victory during the 2010 general elections. Criminal proceedings were instituted against several leading politicians, including the president of the youth organization of the MSZP, and the former deputy mayor of the capital Budapest; however, most of these proceedings started well before 2010. Since the change of government, a special commissioner of the Government has been investigating corruption cases committed under the previous government, sometimes causing heated discussion in public affairs.²⁹⁰

²⁹⁰ Gyula Budai (Fidesz MP) is the Commissioner of the Government supervising the coordination of the impeachment process and anti-corruption. He is also the Commissioner of the Government investigating the unlawful privatization of national lands.

3. JUDICIARY

Summary

The new Fundamental Law has changed the constitutional regulations regarding the judiciary²⁹¹. The Venice Commission has emphasized that: “The new Constitution only establishes a very general framework for the operation of the judiciary in Hungary, leaving it to a cardinal law to define ‘the detailed rules for the organisations and administration of courts, and of the legal state and remuneration of judges’”.²⁹² On 12 October 2011 the Ministry of Public Administration and Justice published two proposals for the draft on the organisation and administration of the judiciary, and the legal status and remuneration of judges, and on 21 October, the Government presented the two drafts to Parliament, and on 28 November the Parliament adopted the new laws (New Laws).²⁹³ 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 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 instead, the President of the National Office of Judiciary (NOJ).²⁹⁴ The new regulations are not sufficient to exclude political interference in the operation of the judiciary.

In the existing legal frameworks the President of the Supreme Court is the head of the National Council of Justice. The new law will separate the functions and create a new administrative position, while the President of the Curia (the new name of the Supreme Court) will lead the organisation of the highest court. The New Laws regulate the establishment of a national consultative self-governing body of the judges, the National Judicial Council (NJC). Both the present Constitution and the new Fundamental Law declare judicial independence both in procedural as well as institutional terms.²⁹⁵ According to the law, judges are independent and answerable only to the law. Act LXVI of 1997 on the Organisation and Administration of Courts clearly establishes the independency of the judges. Their primary responsibility is the application of law in line with their conviction. They shall not be influenced or instructed in their judgments. Judicial independence is also expressed by the right to a fair trial, i.e. a right enshrined in the Constitution. According to the right to fair trial, in the determination of his/her civil rights and obligations or of any criminal charge against him/her, everyone is entitled to a fair and public hearing within a reasonable period of time by an independent and

291 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 refer to the Prosecutors Office as a semi judiciary institution. The corruption risks regarding the PO would be the subject of another research.

292 Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-19 June 2011) 102, 103 [hereafter Venice Commission Opinion] <http://www.venice.coe.int/docs/2011/CDL-AD%2B2011%29016-e.pdf> [accessed 13 July 2011]

293 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%3CB3s%3CA1gok%20szervezet%3CA9r%3C5%91l%20%3CA9s%20b%3C%ADr%3CA1k%20jog%3CA1ll%3CA1s%3CA1r%3CB3l_t%3CB6rv%3CA9nyjavaslat.pdf#1 Document-Browse [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]

294 A főbíró Orbánék reformjáról: teljeseen hiányoznak a fékek. [hvg.hu http://hvg.hu/itthon/20111023_Baka_interju_birosagi-reform](http://hvg.hu/itthon/20111023_Baka_interju_birosagi-reform) [accessed 24 October 2011]

295 Art. 50 Act XX of 1949, Art. 26 (1) of the Fundamental Law

impartial tribunal established by law.²⁹⁶ The new regulations raise concerns with regard to the independence of the judiciary as it increases the risk of political influence through the appointment, promulgation and remuneration of judges. The regulations which allow the Prosecutor General, and the President of the NOJ to choose a court for the procedures is considered a violation of international treaties. The fast paced process of passing the legislation is highly problematic as well.

Judiciary Overall Pillar Score: 58 / 100			
	Indicator	Law	Practice
Capacity 56 / 100	Resources	75	50
	Independence	50	50
Governance 54 / 100	Transparency	75	50
	Accountability	50	50
	Integrity Mechanisms	50	50
Role 63 / 100	Executive Oversight	75	
	Corruption Prosecution	50	

Structure and Organisation

The institutional framework of the judiciary was essentially described in the Constitution. The chapter entitled “Judiciary” provided four levels for the establishment: (1) the Supreme Court of the Republic of Hungary; (2) the regional appellate courts (located in five major cities of Hungary); (3) the Metropolitan Court of Budapest and the 19 county courts; and (4) local courts. The Constitution also provided for special tribunals for labour affairs²⁹⁷. Act LXVI of 1997 on the Organisation and Administration of Courts provides specific and detailed rules with regard to structure and the administration.

Regarding the new Fundamental Law the Venice Commission highlighted that “provisions concerning the system of courts are of very general nature. Article 25 (4) states only that ‘the judiciary shall have a multi-level organization’ and their detailed regulation is relegated to a cardinal law. In the absence of transitional provisions in the new Constitution, it is difficult to understand not only what ‘multi-level organization’ means, but also whether all existing courts will be maintained and how the future structure will affect the status of judges.”²⁹⁸ According to the New Law there will be four levels of the judiciary (three of them with new names), plus the labour and administrative courts.²⁹⁹

The present regulations were adopted as part of the judicial reform in 1997. The acts which were adopted on 8 July 1997 established the National Council of Justice (NCJustice), which took over the Ministry of Justice’s responsibilities in the administration of the courts. This has been seen as a cornerstone of the institutional reform for judicial

296 Art. XXVIII, Fundamental Law

297 Art. 45 (1), Act XX of 1949

298 Venice Commission Opinion: 105

299 Art. 16 a)-e) Act on Organisation

independence. Although the ministry retains certain policy-setting powers, such as the right to propose new legislation to regulate the court-system, until the end of the year 2011 the management of the courts was under the sole responsibility of the NCJustice. The NCJustice was responsible for, inter alia, nominating judges, deciding on promotions, drafting the courts' budget proposal, initiating legislative proposals on the work of the courts and regulating and supervising court operations. The powers of the NCJustice had also included providing training to judges. The NCJustice ensured the impartiality of judges, functioned as the central administrative body of the courts and supervised the administrative activities of the presidents of the regional appellate courts and of the county courts. The President of the Supreme Court, who was elected by qualified majority by the MPs for six years, chaired the NCJustice. The NCJustice was composed of nine judges, elected indirectly by plenary sessions of judges. The NCJustice also had six non-judicial members: the Minister of Public Administration and Justice, the Minister of National Economy, the General Prosecutor, two delegates sent by two parliamentary committees and the President of the Hungarian Bar Association.³⁰⁰

The new Fundamental Law does not contain any reference to the National Council of Justice, the body entrusted by the present Constitution (Article 50 §1) with the administration of the courts. According to the Venice Commission "it is therefore not clear whether this body will continue to exist, which solutions will be found to ensure adequate management of courts until the justice reform is effectively implemented and which mechanism will be put in place by the reform".³⁰¹ The Venice Commission also underlined that the rather vague and general provisions entail "a significant degree of uncertainty with regard to the content of the planned reform and gives reason for concern as it leaves scope for any radical changes."³⁰²

From the New Laws it has become clear that it was not accidental that the Fundamental Law failed to mention the NCJustice. Parliament abolished the self-governing body of the Judiciary and shifted the competence of the Council to the President of the National Office of Judiciary (NOJ). The President of the NOJ should be a judge, and is elected for nine years, by two-thirds majority votes in Parliament, following the nomination of the President of the Republic.³⁰³

According to the previous law, the Office of the National Council of Justice operates the administration of the judiciary. This office had a staff of approximately 130 people, many of whom are judges. The administration was further supported by self-governing bodies representing judges. After adopting the new rules, the National Office of Judiciary will serve the administration.

In the criminal justice system (where corruption cases are handled), cases whose adjudication is particularly difficult, either because of the facts or laws involved, are first tried in county courts. The regional appellate courts hear appeals in these cases; where a second appeal is allowed, the Supreme Court decides. Local courts decide all

300 At the end of 2010, Parliament amended the law regarding the composition of NJC, and delegated plus one member of the Government to the Council. Act CLXXXIII of 2010

301 Venice Commission Opinion: 106

302 Venice Commission Opinion: 104

303 Art. 66-67, Act on Organisation

other cases, and appeals in those cases go to the county courts; where a second appeal is allowed, regional appellate courts decide. Extraordinary requests for legal remedies, i.e., procedures other than appeals, are dealt with by the regional appellate courts or by the Supreme Court.

The Supreme Court ensures the uniform application of the law, mainly through the so-called legal uniformity procedure. Its decisions are binding on all courts. Within one county or region, the decisions of the courts of second instance have a certain informal value as “precedent” while the courts of first instance take them into account to avoid overruling. Strictly speaking, there is no system of legal precedents in Hungary. Since the establishment of the regional appellate courts, in practice the Supreme Court’s ability to ensure legal uniformity through decisions handed down in the final instance has considerably decreased.

The Supreme Court has a staff of 329, of whom 81 are judges, assisted by ten legal clerks. Judges are assigned to the criminal, civil or administrative collegiums. The Metropolitan Regional Appellate Court has 85 judges, while others, operating in major cities, only have 15-25 judges in office. Other courts vary according to the number of the population in the area of competence. In some local courts only two or three judges’ deal with criminal cases; this number in itself might increase the risk of outside influence in a criminal procedure.

Assessment

Resources (Law)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

Score: 75

The salary of judges is regulated by law.³⁰⁴ The lowest salary level of the judges is regulated in the annual budget, and it cannot be lower than the previous year’s amount³⁰⁵, which regulation obviously does not protect the judges from the negative effects of inflation. The law regulates those elements that influence the salary of an individual judge, depending on the time that the judge has served in the bench, and the position which she/he fulfills (i.e. president of local court, or district court, judge in the second instance court, etc.). The only way to reduce the salary of a judge is by the decision of the disciplinary council, which consists of three judges, and there is a possibility to appeal against the decision to the second instance disciplinary council.³⁰⁶ One of the possible disciplinary sanctions is the reduction of the salary of the judge by one salary-class.³⁰⁷ In the case of extraordinary high quality work, for the recommendation of the collegiums, twice during her/his tenure of office, the president of the court can promote a judge to one level higher salary-class.³⁰⁸ These regulations will not change according to the New Laws.

304 Art. 101-120, Act LXVII of 1997

305 Art. 103 (3), Act LXVII of 1997

306 Art. 62/B-80, Act LXVII of 1997

307 Art. 79 (1) b), Act LXVII of 1997

308 Art. 105, Act LXVII of 1997

During the preparation process of the state budget bill, the National Council of Justice negotiated the sum required for the functioning of the judiciary before submitting their official “budget proposal” to the government. The government included this proposal in the state budget bill every year and presented it to Parliament. The preparation of the budget of the judiciary will be changed in the new law, so that the President of the NOJ will prepare the budgetary plan for the judiciary³⁰⁹, the National Judicial Council will comment on the draft without legal consequences, and supervise the execution of the budget of the judiciary.³¹⁰ The Government will be obliged to present the draft to Parliament, but the legislature can, and will be able to change the proposal. According to the previous law, the President of the NCJustice was responsible for the apportionment of the budget of the judiciary,³¹¹ and he has to report annually to the NCJustice, to the presidents of the regional appellate courts, the presidents of the Metropolitan Court of Budapest and the 19 county courts³¹². Formally in this case as well according to the New Laws the judiciary will participate in the process of apportioning the budget, but it will practically mean that only one person will make all the relevant decisions.

Resources (Practice)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Score: 50

The judiciary is underfinanced compared to the West European courts. According to Professor Zoltán Fleck from Eotvos University, Budapest, the budget of the judiciary is not properly distributed. At some level of the system, both the salaries, and the working conditions are much above the general situation (especially in the case of the newly established regional appellate courts), while in some other places (for example in the Pest County Court, and some local courts) the working conditions of the judges are extremely poor.³¹³ Another interviewee, who is a senior judge with significant administrative experience, says that 82-86% of the budget for the judiciary goes in salaries, and just 18% for other expenses, and for development. As such, the judiciary has an interest in not filling vacant positions, because they can then rearrange resources for development.³¹⁴

Until now the NCJustice prepared the draft of the budget of the judiciary, Parliament adopted the final version, and the NCJustice was responsible for apportioning the budget. According to the New Laws, the President of the National Office of the Judiciary will assume all of these responsibilities. The annual budget of the judiciary for 2011 is as follows: HUF 74,838.3 million (USD 354.7 million)³¹⁵ is planned for expenses, of which HUF 5,526.6 million (USD 26.2 million) is covered by the judiciary’s own income (i.e. income occurring from financial penalties that is collected by the courts) and a further HUF

309 Art. 73 (3), Ministry Proposal

310 Art. 103 (2), Ministry Proposal

311 Art. 46 d-e), Act LXVI of 1997

312 Art. 46 f), Act LXVI of 1997

313 Interview with Professor Zoltán Fleck Head of Legal Sociology Department of Eotvos University Budapest with author on 9 March 2011

314 Interview with a senior judge having about two decades administrative practice with the author on 9 March 2011

315 Official HUF/USD exchange rate of the National Bank of Hungary on October 15th, 2011 was 211.09

69,311.7 million (USD 328.5 million) is covered by the state.³¹⁶ Parliament votes annually on the judicial budget, as part of the state budget. The Act on the Organisation and Administration of Courts states that court financing shall be provided in a separate chapter of the central state budget. The State Audit Office monitors expenditure.

In practice, salaries are determined by law.³¹⁷ The salary levels for judges and prosecutors are not competitive when compared to the top salaries in the private sector or to those of practicing lawyers, but they are above the salary of public servants, and police officers. The salaries are not so low that there would be strong economic reasons for resorting to corruption. According to the interviewees, one of the largest problems in the Hungarian judiciary is the lack of an adequate number of clerks, library resources and general technological resources. Although there has been a grand program to provide modern computer equipment for judges, the further development of this programme is quite slow. There is a significant fluctuation among the staff, especially in Budapest and in larger cities.³¹⁸ There are no sufficient training opportunities for the staff of the judiciary.

Since 2006, the Hungarian Judicial Academy, which was established with the financial support of the EU, commenced training judges.³¹⁹ Until now the judges took part in the training on a voluntary base. The New Laws are about to change this system and from 2012 there will be an obligatory training system for the judges. In previous years, TI Hungary took part in this training.³²⁰ As part of the reforms the Judicial Academy was subordinated to the government, and according to the plans, in the future it will serve the training purposes of prosecutors as well.

Independence (Law)

To what extent is the judiciary independent by law?

Score: 50

The Fundamental Law states that “the supreme judicial body shall be the Curia.”³²¹ The “Curia shall ensure uniformity in the judicial application of laws and shall make decisions accordingly, which shall be binding on courts.”³²² The Fundamental Law guarantees the independence of judges³²³, and declares that “every person shall have the right to have any charge against him or her, or any right and duty in litigation, adjudicated by a legally established independent and impartial court in a fair public trial within a reasonable period of time.”³²⁴ In the old Constitution, the President of the Supreme Court should be a judge, who was elected by a two-thirds majority of Parliament, after the nomination of the President for six years.³²⁵ The President of the Supreme Court was the President of the NJC as well.

316 Act CLXIX of 2010

317 Art. 101-120, Act LXVII of 1997

318 Interview with a senior judge with the author on 9 March 2011

319 http://mba.birosag.hu/engine.aspx?page=mba_aloldal1_1 [accessed 5 October 2011]

320 http://www.transparency.hu/JUDICIAL_ACADEMY [accessed 5 October 2011]

321 Art. 25 (1), Fundamental Law

322 Art. 25 (3), Fundamental Law

323 Art 26 (1), Fundamental Law

324 Art. XXVIII (1), Fundamental Law

325 Art. 48 (1), Act XX of 1949

The new laws duplicate the position of the head of the judiciary by separating the position of the President of the Curia, and President of the National Office of Judiciary. The former will lead the highest court; the latter will be responsible for the administration of the judiciary. Both of them will be elected by a two-thirds majority of Parliament, after the nomination of the President of the Republic. Because of the two-thirds majority of the governing parties in Parliament, the ruling parties can decide who will fulfill these positions. The nomination and the election process does not rule out the possibility of political influence, and by depriving the self-governing bodies from all of its competence, the person who will be elected as President of NOJ will act without any real control.³²⁶

The Constitution and the new Fundamental Law might be amended by a two-thirds majority as well, and as far as Hungary has an election system which favours the winner of the election, it is quite easy to reach the two-thirds majority in Parliament. (Over the last twenty years, the present government is the second one that has obtained a qualified majority.) According to Act LXVII of 1997 on the Legal Status and Remuneration of Judges, as a rule, judges are selected through an open application procedure, organised by the President of the county court (for local and county courts), the President of the regional appellate court or the President of the Supreme Court (Curia). By law, the invitation for applications must specify all requirements for the position. At the end of 2010, Parliament amended the law; according to the new regulations, the President of the NOJ is allowed to invite applications. In this process the applicant has to go through an interview in the court where he/she will serve as the judge after the appointment, and he/she must also undergo a detailed psychological examination. The law regulates the different elements, which have to be considered in the process, and according to the law the Minister of Justice regulates a scoring system in the process. After the scoring, the president of the court presents his recommendation to the President of the NCJustice. If the President of the NCJustice agrees with the recommendation, he forwards it to the President of the Republic. If the President of the NCJustice does not agree with the recommendation, he brings the appointment to the National Council of Justice. In this case the NCJustice votes on the recommendation.³²⁷ As such, judicial appointments are made by professionals (or by the president of the court and the President of NCJustice, or by NCJustice as a body). This regulation generally provides constitutional protection for the appointment of the judges. There is no room for the participation of civil society in appointment proceedings (e.g. public hearings). The existing regulations are much more normative than the previous one.

The new regulations, which were adopted at the end of 2011, have increased the uncontrolled right for the President of the newly established NOJ to promote candidates who do not obtain the highest scores. The only limitation being that the President of the NOJ has to reason his/her decision before the National Judicial Council, but the Council does not have the right to overrule this decision.³²⁸ After the decision of the president of the relevant court to nominate the candidates, judges are appointed (and if necessary, recalled) by the President of the Republic. Act LXVII of 1997 on the Legal Status and

326 On the 13 of December 2011 Parliament elected Tünde Handó for the President of the National Judiciary Office, and Péter Darák to the President of the Curia. Mrs. Handó's election was criticised by the opposition parties in Parliament because she is the wife of a FIDESZ founding member, and EMP, Mr. József Szájer, who was one of the drafters of the new Fundamental Law.

327 Art. 55, Act CLXXXIII of 2010

328 Art. 18 (4), Act on Status

Remuneration of Judges specifies the grounds for removal from office. Those related to the actions of the judge are as follows: inability to perform the functions of a judge for an extended period of time, final criminal conviction involving imprisonment, and removal as a result of a disciplinary procedure.³²⁹

If there is any indication that a judge is unable to function as a judge for an extended period of time, the president of the court makes a written request for the judge to resign from office within 30 days. This notice specifies the reasons for the judge's inability to perform. If the judge refuses to resign and the case is related to health, the judge is required to take a medical examination and further steps are taken accordingly. If he/she is unsuitable for other reasons, a special evaluation is conducted. A special Services Court can remove a judge from his position.³³⁰ The members of the Services Courts are appointed by the NCJustice, after the nomination of the presidents of the courts.³³¹

Judges are first appointed to a three-year term; subsequently, they are appointed for an indefinite term. Judges are thus protected from removal by law. According to the previous law, there was a possibility to transfer a judge to another court without his/her consent once in a three-year period and for a maximum of one year, if it serves the interest of the justice system. While this might be seen as a source of potential risk for influence, such practice would be considered to be a misuse of powers, hence it seldom occurs. Judges seldom receive training specifically focusing on the prosecution of corruption cases. Such training opportunities have only been available for a few judges and at irregular intervals. This lack of training has been criticised by international organisations, including GRECO of the Council of Europe. The Hungarian Judicial Academy was founded in 2006 as a training center for the judiciary. The Judicial Academy intends to provide regular training in the future, but under the supervision of the government. Sufficient case law exists in relation to corruption. All decisions are accessible for judges through their internal computer system. Furthermore, since July 2007, under the Freedom of Electronic Information Act, all judicial decisions by the regional appellate courts and the Supreme Court must be made publicly available by the NJC.

Independence (Practice)

To what extent does the judiciary operate without interference from the government or other actors?

Score: 50

In its previous NIS TI Hungary criticised the recruitment system. It stated that "one of the areas with the greatest negative impact on the independence and impartiality of the judiciary is the system of recruitment". Since then, the situation regarding the appointment of judges has significantly improved. In the first step, the National Council of Justice adopted regulation No. 5/2006 which centralized the nomination process. Later on the previously mentioned law in 2010 amended the existing law, created more normative regulations, larger transparency for the appointment process, and introduced more professional criteria.

329 Art. 57

330 Art. 62/A-82, Act LXVII of 1997 modified by Act CLXXXIII of 2010

331 Art. 62/A (3), Act LXVII of 1997

The New Laws should be considered as a retrograde step in this process by providing unlimited authority to the President of the NOJ to appoint judges with smaller scores.³³² This regulation does not guarantee that judges are appointed based on clear professional criteria. Until recently, judges were rarely removed from their position before the end of their term. The governing parties under the parliamentary debate of the new Fundamental Law presented an amendment to the text, in which they broke the more than one hundred years tradition of the retirement age of the judges. As stipulated by Article 26 (2) of the Fundamental Law, the general retirement age will also be applied to judges. With this decision the legislator lowered the judges' retirement age from 70 to 62. The Venice Commission found this measure questionable in the light of the core principles and rules pertaining to the independence, the status and immovability of judges. This provision entails that 274 of the most experienced judges will be obliged to retire within a year. Correspondingly, 274 vacancies will need to be filled. According to the Venice Commission and the President of the Hungarian Supreme Court, this may undermine the operational capacity of the courts and affect continuity and legal security and might also open the way for undue influence on the composition of the judiciary.³³³ Further questions were raised in December 2011, when it turned out that the parliamentary majority is not allowing the President of the Supreme Court to complete his mandate.

Judges have not been transferred or demoted due to the content of their decisions, and there is no credible evidence for undue external interference in judicial proceedings. There is a general consensus among legal scholars and practicing lawyers that the 1997 Judiciary Reform has not helped to increase the efficiency of the judiciary, and while it was efficient to guarantee the independence of the judiciary, at the same time, it has not increased its accountability.

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Score: 75

Disclosure of assets is compulsory for judges and their family members. Under Act LXVII of 1997 on the Legal Status and Remuneration of Judges, in order to enforce fundamental rights and commitments in an unbiased and objective way, to prevent any form of immoral conduct on the part of public officials and to help the fight against corruption, judges are required to file their asset declarations. There is an initial procedure for those entering office, and a subsequent obligation to declare assets every three years thereafter after which they must update their previous declaration to reflect any change in the amount and/or source of personal wealth. While an asset declaration is a precondition for becoming a judge, there is no sanction for a family member who refuses to disclose his/her assets. The asset declaration must be submitted to the President of

332 Art. 18 (4), Act on Status

333 hvg.hu interview with András Baka, President of the Supreme Court http://hvg.hu/itthon/20111023_Baka_interju_birosagi_reform [accessed 22 October 2011] Opinion of the Venice Commission, 108.

the county court (in the case of local or county court judges), the President of the regional appellate court or the President of the Supreme Court. The asset declaration is not public; the information is only accessible to those permitted by law.

Transparency (Practice)

To what extent does the public have access to judicial information and activities in practice?

Score: 50

Since July 2007, under the Freedom of Electronic Information Act, the National Judiciary Council must make all judicial decisions of the regional appellate courts and the Supreme Court publicly available. The decisions must not contain personal information, but otherwise they must be reproduced in full on the website of the NCJustice³³⁴. The records of hearings are not public. In 2009, the Eotvos Karoly Institute conducted a detailed research program on the Publications of Court Judgments in Hungary, and they found that the practice does not properly serve the legislative purposes, it is extremely difficult to search the documents, and among those practicing lawyers who were interviewed by the Institute, 44% were totally unsatisfied with the system.³³⁵ Although since 2010 NCJustice has published much more information on its website³³⁶ than earlier, the site is absolutely not user-friendly, and citizens can hardly obtain information from this database. The appointment and the remuneration procedures are not transparent for the public, and the reasoning of the decisions is not known for the judges either.

Accountability (Law)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Score: 50

The laws require judges to give reason for their decisions. If a judge fails to justify the decision, the second instant court can overrule the case. It could form the basis for a disciplinary procedure if a judge regularly breaches the procedural obligations. Accountability rules are defined in Act LXVI of 1997 on the Organisation and Administration of Courts and Act LXVII of 1997 on the Legal Status and Remuneration of Judges. The performance of judges is regularly evaluated under the conditions and for the reasons specified by law. The evaluation shall include an assessment of the application of material, procedural laws and the administrative aspects of the activities of a judge. A judge may be rated excellent, competent, or not competent based on the evaluation. The latter rating, however, is not sufficient to remove a judge from office. The evaluation tends to overestimate the success rate of a judge in terms of statistics (i.e. the number of cases finished). While the length of procedure in itself is an important aspect of justice, judges working in courts of first instance, generally complain about the uneven workload, which prevents them giving their best to their work. It is not uncommon,

334 <http://www.birosag.hu/engine.aspx?page=anonim> [accessed 12 June 2011]

335 http://www.ekint.org/ekint_files/File/tanulmanyok/bhgy/birosagok_nyilvanossaga_20090909_vegleges.pdf [accessed 12 June 2011]

336 http://www.birosag.hu/engine.aspx?page=OIT_dontesei [accessed 12 June 2011]

especially in large cities, for a new judge to receive over 200 files, and even specialised knowledge is not taken into account in assignment of cases. While this is not so much of a problem of independence or impartiality, it is reasonable to presume that such a heavy workload does not help to produce timely judgments or afford the necessary consideration for each case. The evaluation is therefore seen as a necessary means of assessing personal performance that should focus more on factors, rather than statistics.

The new law on Legal Status and Remuneration of Judges requires more evaluation of the work of a judge. The new regulations declare that in every eighth year there must be a regular evaluation³³⁷, and if a judge fails to take part in regular training, or breaches his procedural obligations, the president of the court can order extra (out of turn) evaluations. According to the interviewed senior judge, the evaluation process of judges' performance should involve a non-local judge instead of (or in addition to) the head of the relevant court.³³⁸

Justifiable criticism related to judicial accountability arises from the fact that the judicial members of the National Council of Justice - which controlled the activity of court presidents - were mainly county court presidents themselves. Given that those controlled and those exercising control might be one and the same, true control over the senior figures of the judicial system is questionable. Improvement of accountability should include strengthening transparency in internal election processes, giving more power to democratic bodies, such as judicial councils. The New Laws are about to solve this problem by abolishing the NCJustice, and thereby undermining the role of the county court presidents, but at the same time - according to the critics - it establishes an uncontrolled position for the President of the NOJ, without proper guarantees to exclude political influence. (According to the legislator, the fact that the President of the Republic can nominate candidates only among judges is sufficient guarantee to exclude political influence, because judges are not allowed to be members of political parties).

The new law on the Organisation and Administration of Courts establishes a stronger accountability mechanism in the case of the President of the NOJ. The law makes it possible for Parliament to deprive the President of the NOJ from his/her position if he/she fails to fulfill his/her tasks for more than 90 days, or in the case of indignity. In these cases, either the President of the Republic, or the National Judicial Council can propose the decision of Parliament with a two-thirds majority of the Council.

The law regulates several possibilities for citizens to make complaints against judges' decisions - all the procedural laws (civic, criminal, administrative, and labour) make it possible for citizens to lodge complaints (to propose exclusion of a judge, or appeal against an improper court decision). The law on Legal Status and Remuneration of Judges regulates the disciplinary procedure against judges³³⁹. The disciplinary procedure can be initiated by the president of the court, and every citizen has the right to propose complaints to the president. In addition, it is possible for the president to initiate an ethical procedure.³⁴⁰

337 Art. 67, Act on Status

338 Interview with a senior judge with the author 9 March 2011

339 Art. 101-130, Act on Status

340 A Magyar Bírói Egyesületnek a bírói viselkedés irányelveit meghatározó Etikai Kódexéről http://www.birosag.hu/engine.aspx?page=jogszabalyok_tara [accessed 12 June 2011]

Accountability (Practice)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Score: 50

Judges must give reasons for all their decisions, usually in written form. Detailed rules are prescribed by the Criminal Procedure Act and the Civil Procedure Act. Practice follows what law prescribes. Internal disciplinary proceedings are rarely used. Few cases lead to sanctions and there is no data concerning the misuse of such proceedings. Those sanctions that have been applied are mainly due to non-compliance with the terms prescribed by law, such as delays in the writing and signing of decisions due to personal negligence. According to the existing law, there is no regulation that guarantees the transparency of the disciplinary or the ethical procedures, and there are not such regulations in the new law either.

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Score: 50

Disclosure of assets is compulsory for judges and their family members, under Act LXVII of 1997 on the Legal Status and Remuneration of Judges. However, there has been no known case when a president of a court initiated a procedure to evaluate the assets declarations.

The criminal and civil procedural codes provide for conflict of interest regulations. According to Article 22 of Act LXVII of 1997 on the Legal Status and Remuneration of Judges, judges may not be members of any political party and may not engage in political activities. Furthermore, they may not be Members of Parliament, representatives of local governments or mayors. They may not become members of the government or hold leading positions, such as state secretary, or state undersecretary in the public service. Judges may not be members of arbitration tribunals. According to Art. 23 of the same act, judges may not engage in any activity for profit with the exception of scientific, artistic, literary, educational, and design activities. Even these activities are limited: they may not jeopardise objectivity or impartiality, give the appearance of impropriety, or interfere with a judge's official responsibilities. Judges may not hold any executive office or membership in the supervisory board of a business association. They may not become members of a business association requiring personal involvement or unlimited liability. The act provides for a clear obligation to report any conflicts of interest immediately. If a judge wishes to be a candidate in general elections, he/she must inform the president of the court. From that moment, he/she is suspended from office until the results of the elections are made public. If elected, he/she immediately ceases to hold office, according to the law.

The law does not define post-employment restrictions. A former judge may work in any legal or other field, but cannot act as an attorney for two years in the court in which he/

she was previously a member. The procedural codes also prohibit serving as an attorney in a case in which the person has already served as member of the judiciary.

Integrity (Practice)

To what extent is the integrity of members of the judiciary ensured in practice?

Score: 50

The members of the judiciary generally comply with the rules on conflicts of interest. In theory, judges are not allowed to accept gifts and hospitality regardless of their value. Under the Criminal Code, such gifts constitute “undue advantage”. Thus, accepting such gifts is considered bribery under Art. 250 of the Criminal Code and is punishable by imprisonment for a term of one to five years. The Criminal Code strictly forbids accepting gifts of small value; however it would improve clarity if an ethical code for the judiciary clearly stated the precise steps to follow when such a situation occurs.

Prosecution of corruption within the judiciary is extremely rare. Only one case, allegedly under investigation, has been launched against a county judge in the recent past. There are no provisions protecting the interests of whistleblowers as such. Judges have immunity rights similar to Members of Parliament. This immunity may be suspended by the President of the Republic on the initiative of the President of the NCJustice, or by Parliament in the case specifically of the President of the Supreme Court.

Effective mechanisms protect witnesses in criminal procedures, as defined by the criminal procedure act, a specific act, and other regulations. These mechanisms include secrecy of personal data of the witnesses, closed hearings, hearings through audio or video network, etc. Act LXXXV of 2001 established the Protection Programme for persons participating in the criminal procedure and those assisting criminal justice. Persons eligible include witnesses as well as judges. Although a special protection is available for the judiciary, this type of protection is not often requested. Access to justice for citizens is reasonably facilitated. Procedural fees for court hearings are generally not so high as to represent a significant burden. The costs of the criminal procedure are entirely paid by the state or by the accused, depending on the outcome of the proceedings. Anyone may report cases of corruption or any other offences to the police free of charge, even if his or her own interests are not involved. The police then must examine whether the charges have some foundation and launch an investigation. Thus, in relation to corruption cases, citizens are not likely to face a financial burden that would constitute an obstruction of justice.

Executive Oversight

To what extent does the judiciary provide effective oversight of the executive?

Score: 75

Courts oversee administrative decisions, which include those concerning the highest levels of government. In administrative matters, this is a form of reliable and effective

review; such decisions are binding on everyone. According to the Fundamental Law, Courts - in addition to criminal matters, civil disputes and other matters defined by laws - shall decide on the legitimacy of administrative decisions; the conflict of local ordinances with other legislation and their annulment, and the establishment of a local government's neglect of its statutory legislative obligation.³⁴¹

Corruption Prosecution

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Score: 50

According to a recent survey conducted by the State Audit Office the judiciary is in the 6th position within 18 institutions according its Original Endangerment Index.³⁴² Within the last 20 years the yearly average of corruption related crimes were 684, in 2010 the number of such crimes significantly declined (from 963 in the previous year to 481).³⁴³ According to a recent survey "we can draw the conclusion that despite the lawmaker's intention, in the vast majority of the cases the law enforcement agencies are, in the main, really only able to catch the small fry. Further research programs are needed to find the exact reason for this phenomenon. (And we have to admit that in the last two years some "large" cases have began to come before the courts - only recently a former deputy mayor received six years imprisonment for corruption related crimes, and some former mayors, and council members are awaiting their trials, or sentences.)"³⁴⁴

The judiciary does not specifically target corruption as an internal problem. From time to time, individual cases of corruption within the judiciary emerge in the press. According to one senior judge interviewed, the largest risk could be detected in cases where there is a lack of transparency of the judicial activities, such as in the case of arrest in criminal cases, and in the liquidation processes in civil cases. In the latter case, the lack of contradictory parties opens the way for corruption, legislation has taken some steps to prevent this possibility.³⁴⁵ The judiciary works in close co-operation with the prosecutions service, within the framework of the criminal procedure code. Judges must rely on the evidence that is brought before them in most criminal cases by the prosecutions service. As an external problem judges have to rely on the evidence that is brought before them. Because serious cases of corruption start at county level (first instance), it may be reasonably assumed that sufficient attention is devoted to dealing with those cases.

341 Art. 25 (2), Fundamental Law

342 Integritás Jelentés 2011 a magyarországi költségvetési szervek működésében rejlő korrupciós kockázatokról "Korrupciós kockázatok feltérképezése - integritás alapú közigazgatási kultúra terjesztése". Állami Számvevőszék Projectiroda. 2011. június. p. 7. http://integritas.asz.hu/uploads/doktar/asz_integritas_jelentes_2011.pdf [accessed 11 September 2011]

343 Tájékoztató a bűnözésről 2010. <http://www.mklu.hu/cgi-bin/index.pl?lang=hu/> [accessed 11 September 2011]

344 Hack, Péter: Anti-corruption legal instruments: European Criminal Bar Association Contribution. In: Europena Criminal Bar Association: The fight against corruption and the reality of defence in these cases. Budapest, Hungary http://www.ecba.org/extdocserv/conferences/budapest2011/Legalinst_final_HACK.pdf [accessed 11 September 2011]

345 Interview with a senior judge having about two decades administrative practice with the author on 9 March 2011

4. PUBLIC SECTOR

Summary

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 appointed in 2010. The overall stated aim is to establish more flexible working conditions for public sector employees. Reducing staff numbers has been one of the top priorities of the government; however, some statistics show discrepancies between the goals of the government and the growing size of several public service institutions. 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 resolution of the phenomenon of “revolving doors” in employment, reducing politicians’ ability to accept gifts, improving public education on the importance of fighting corruption, and making the consultation process with stakeholders, including the civil sector, more effective.

Public procurement is one of the most corruption-prone fields in Hungary, because of the vast sums of money involved, the fact that there are no effective control and monitoring mechanisms, and that there are many players on the Hungarian market with diverse interests. Despite the fact that a sound regulatory framework is in place, the implementation process suffers from serious setbacks.

Public Sector Overall Pillar Score: 58 / 100			
	Indicator	Law	Practice
Capacity 67 / 100	Resources	-	75
	Independence	75	50
Governance 58 / 100	Transparency	75	75
	Accountability	75	50
	Integrity Mechanisms	50	50
Role 50 / 100	Public Education	50	
	Cooperation with public institutions	50	
	Public Procurement	50	

Structure and Organisation

Since the transition to democracy in 1989, public sector employment (both at central and local levels) has been regulated by two acts: 1) the legal status of the civil servants, is prescribed in Act XXIII of 1992; and 2) Act XXXIII of 1992, which contains the regulations for public employees. In 2010, the newly-appointed right wing FIDESZ-KDNP government adopted Act LVIII of 2010 on the Legal Status of Government Officials. The declared aim of this bill was to create more flexible employment conditions for ministry officials and regional governmental bodies.³⁴⁶ This act extends to all employees within ministries and governmental bodies. By contrast, the Civil Service Act regulates the activities of mainly those civil servants who work for autonomous public sector bodies and local governments.

Public sector employment is undergoing significant changes as the government has set out to restructure the entire public sector. After radically reducing the number of ministries from fifteen to eight, the government established county level offices with more powers extending from the center, over the local governments, which otherwise were autonomous.³⁴⁷ The act on local governments is also revised. A new, regional level of administration, couched between local level and the county, was introduced, the so-called "járás". As a result, the majority of current local government employees (now civil servants) will be classified as government officials under the new act.³⁴⁸ According to the plans of the government, by 2013, public sector employees are to be employed under a system based on the scope of their activities (i.e. job functions) and the necessary skills for performing the tasks.³⁴⁹

According to the official statistics, the public sector in 2009 had a total of 747,900 employees, while in 2010 the number grew to 772,400 and reduced to 734,000 by the autumn of 2011.³⁵⁰ Reducing the number of public sector employees has been one of the top priorities of the newly elected government; however, some public institutions were rather expanding than cutting their size.³⁵¹ The government also intends to lower public employment by not replacing all retiring staff.³⁵² Public employment is significantly decentralised, and almost two-thirds of public employees work at the sub-national level, as the large number of smaller local governments and its specialised bodies and institutions perform a wide range of responsibilities.³⁵³ Education and health care as well as social and cultural sector workers are typically employed under the Public Employees Act.

346 <http://www.jogforum.hu/hirek/23198#axzz1QUt01kl7> [accessed 5 July 2011]

347 <http://www.fidesz.hu/index.php?Cikk=159350> [accessed 5 July 2011]

348 http://index.hu/belfold/2011/06/28/szazezernel_is_tobb_kormanytisztviselo_lesz/ [accessed 5 July 2011]

349 <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/kormanyzati-kommunikacioert-felelos-allamtitkar-sag/hirek/juniusban-indul-az-uj-kormanytisztviseloi-eletpalya-modell> [accessed 5 July 2011]

350 http://portal.ksh.hu/pls/ksh/docs/hun/xstadat/xstadat_evkozi/e_qi006.html [accessed 18 November 2011]

351 For example, the National Development Agency ("NFÜ"), responsible for the use of EU funds, dismissed 117 employees within one year after the newly elected government appointed its new board in 2010. However, it also hired 173 new employees within the same period. http://hvg.hu/karrier/20110517_117_ember_kirugas_nfu [accessed 5 July 2011]

352 Government at a Glance 2011 - Country Note: Hungary. OECD, 2011. <http://www.oecd.org/dataoecd/59/63/48214236.pdf> [accessed 5 July 2011]

353 Ibid.

Assessment

Resources (Practice)

To what extent does the public sector (PS) have adequate resources to achieve its goals in practice?

Score: 75

While the financial resources provided for the public sector have been constantly shrinking, it was not the reduction of the available money that caused most difficulties but the misallocation of funds. Resources enabling civil servants to carry out obligatory tasks were cut. Meanwhile, employee benefits (e.g. meal vouchers or the use of office cars) were actually increased, though these benefits should have been the first ones to be removed.³⁵⁴

Public sector employment in general is not regarded to be well paid, but just enough to provide for a “dignified” standard of living, depending on where the public sector employee lives and works.³⁵⁵ Senior public sector employees are paid reasonably well, compared to the average income in Hungary. The average gross monthly income in Hungary is HUF 206,400 (USD 978); for public sector employees, it is HUF 198,800 (USD 942); in the business sector it is HUF 210,400 (USD 997).³⁵⁶ However, wages paid in the business sector are notably higher.³⁵⁷ According to trade union estimates, since 2010 approximately half of the public sector employees have suffered from a decrease in their net income.³⁵⁸

Civil servants are paid from the budget of the agency for which they work, and because of their status, they cannot receive unaccounted funds. This rule, however, is not fully implemented in practice. Individual contracts under civil law are often used to grant extra payment for tasks carried out by civil servants, which makes the career based payment schedule less rigid. Hiring external experts for basic public sector jobs, outlined in the laws governing public sector organisations, also significantly increases the risk of corruption. For example, external law firms are hired to draft laws and other legal materials, in lieu of using the resources available internally for this purpose.³⁵⁹ The law prohibits public employees from having additional jobs in addition to the public service work they do.³⁶⁰

The appeal of working in the public sector varies and largely depends on the occupation of the applicants. While lawyers (due to the high number of legal graduates) find the public sector a worthwhile place for beginning their careers, other experts, such as IT experts, are usually difficult to recruit, because public sector wages are much lower than the wages that these experts could earn in the private sector.³⁶¹ The government

354 Interview with István Balázs, Head of Department of Administrative Law, University of Debrecen, 14 June 2011

355 Interview with a senior civil servant of the Ministry of Public Administration and Justice, 27 July 2011

356 http://index.hu/gazdasag/magyar/2011/04/19/a_halaszok_februarban_is_rosszul_kerestek/ [accessed 10 July 2011]

357 Interview with István Balázs, 14 June 2011

358 http://www.napi.hu/magyar_gazdasag/kiket_rugnak_ki_a_kozszferabol_indoklas_nelku_itt_a_felmeres.486475.html [accessed 10 July 2011]

359 Integrity Report 2011 on the corruption risks within the operation of Hungarian public budgetary organisations. State Audit Office of Hungary, 2011. http://integritas.asz.hu/uploads/doktar/asz_integritas_jelentes_2011.pdf [accessed 10 July 2011]

360 Public Employees Act, Art. 42

361 Interview with a senior civil servant of the Ministry of Public Administration and Justice, 27 July 2011

plans to introduce a new remuneration system for the public sector. This system will be differentiated and more efficient. Salaries will depend on the job's added value to the organisation, the time spent in service, and the results of an annual performance evaluation.³⁶²

Independence (Law)

To what extent is the independence of the public sector safeguarded by law?

Score: 75

In general, there are special provisions in place to protect public employment from political interference. The rules governing public administration are stricter than those governing the broader public sector. Civil servants are only entitled to exercise executive, administrative, control and supervisory functions on behalf of public institutions. It is assumed that all civil servants carry out their duties in a neutral fashion required to be professionally loyal to their superiors.³⁶³ Civil servants are not allowed to hold positions in political parties or appear publicly on behalf of the party.³⁶⁴ Public employees and civil servants, with the exception of those working for the police, intelligence service, etc., may participate in organised strikes, though this right is subject to special agreements between the government and the trade unions concerned.³⁶⁵

Public sector employees, as a general rule, are appointed for an indefinite period of time, although many positions are contractual and limited to a certain period. The law outlines general employment requirements and the terms of reference or job description for each position must be announced. The system of contractual hiring of employees usually causes uncertainty for civil servants, while for many, one of the most attractive features of a career in the public sector is job stability and predictability. Concerning the conditions of employment, the six months' probation period is important, because it is during these months that either party may terminate the contract. Previously, it was more difficult to dismiss civil servants. The Civil Servants Act stated that civil servants were only allowed to be dismissed in the following cases: a) when the entity exercising employer's authority has discretionary jurisdiction³⁶⁶ or b) if it was compulsory to dismiss the civil servant³⁶⁷. The employer had to provide a justified explanation for dismissing a civil servant, and this had to be displayed in a visible location. However despite these clear rules, public servants have been dismissed without official justification because of loopholes in the 2010 Government Officials Act. Though this law aimed to make employment more flexible, it generated controversies in its stead. The Constitutional

362 <http://mhu/portal/796117> [accessed 10 July 2011]

363 Civil Service Act, Art. 37/A

364 Civil Service Act, Art. 21 (6) b)

365 Act VII of 1989 on strike, Art. 3 (2)

366 Until 2010, the public service legal relationship might have been (so the entity exercising employer's authority has discretionary jurisdiction) terminated upon dismissal if: a) a work-force cut has to be implemented and the further employment of the public official is not possible for this reason; b) the activity of the public administration agency within the scope of which the public official was employed is terminated; c) the position has become unnecessary due to re-organisation; d) the public official is eligible for old-age pension.

367 The public service legal relationship was to be terminated upon dismissal if a) the public administration agency is terminated without legal successor; b) the public official proves to be incapable of fulfilling the responsibilities; c) after withdrawing senior official assignment there are no vacant positions for the public official or if the public official does not give consent to the transfer to such position.

Court abolished both regulations and emphasised that it is a duty of the government to guarantee protection for the public service employee against the employer's arbitrary measures.³⁶⁸

The Constitutional Court required that the government amend both of these acts, as new legislation came into force in June, 2011. According to the amendments, civil servants may be dismissed a) in the case of a reduction in staff numbers (when a public entity is abolished, reorganised, retirement age is changed); or b) if the employee does not carry out his/her duties properly, upon the request of the employee after an unilateral modification of his/her job, or if he or she is not able to fulfil his/her obligations for health reasons. Reasons for dismissal must be submitted in writing.³⁶⁹ However, the government also introduced two new grounds for dismissal: 1) indignity; 2) and loss of confidence. Both of these conditions are defined in the relevant laws and they have been subject to heavy criticism for imprecision. Neither is a reliable category as a management tool for public sector employment.³⁷⁰

The Act XLIX of 2006 on lobbying was abolished in 2010 with no specific regulation to replace it. Hence, there is no regulation in force to cover influencing how public funds are spent public money or how government decisions are made.³⁷¹

Independence (Practice)

To what extent is the public sector function free from external interference in its activities?

Score: 50

According to a recent survey on corruption risks and controls in public sector organisations, of the institutions that responded, only 18% claim to select candidates through open competition, while 2% never advertise vacant positions. Exams or other tests measuring competence are only applied by every 20th organisation. Of the surveyed institutions 2% never interview candidates. A recent amendment to the act was passed, which allows for the use of wide discretionary powers to invite candidates to apply for positions, and as such, this situation is unlikely to change.³⁷²

In practice, the appointment of senior staff has "shifted higher and higher", which means that while front line and junior positions have mostly remained professional, political appointees have become members of the cabinets or personal staff within ministries and other public organisations. Nevertheless, the most significant problem of public sector recruitment is not the system itself or the transparency in the openness of the application procedures, but the lack of applicants' professional qualifications. The move towards centralisation and the tendency for unifying appointments has also been seen as the

368 Decision 8/2011. (II. 18.) AB of the Constitutional Court; Decision 111/B/2011. AB of the Constitutional Court

369 Government Officials Act. Art. 8; Civil Service Act, Art. 17

370 Government Officials Act, Art. 8/A-8/C; Civil Service Act, Art. 17/C-17/E. Interview with István Balázs, 14 June 2011

371 Transparency International Hungary has been advocating for the passing of a new regulation for example on the occasion of the Hungarian EU presidency. http://www.transparency.hu/uploads/files/static/nemzetkozi_ajanasok.pdf [accessed 11 July 2011]

372 Integrity Report 2011 on the corruption risks within the operation of Hungarian public budgetary organisations. State Audit Office of Hungary, 2011. http://integritas.asz.hu/uploads/doktar/asz_integritas_jelentes_2011.pdf [accessed 11 July 2011]

over-bureaucratisation of competitions thereby making the recruitment process longer and more complicated.³⁷³

From January 2011, all public sector employees are subject to a so-called “solidity check”. This measure was introduced as a governmental initiative to curb bureaucratic corruption and to maintain the integrity of all who work for the state.³⁷⁴ The check sets traps to see how an employee reacts when a bribe is offered or being asked to abuse its official powers for certain benefits. Checks are conducted by the National Protection Service.³⁷⁵ The employees examined are not notified about the start of the procedure, but they do receive a notice about its outcome, even if they were proved to be clean. Complaints might be raised if a check violates dignity. In practice, all public employees are expected to sign a declaration stating that they approve of the solidity check; however, trade unions have claimed that such measures only increase mistrust within the public sector. Moreover, experts, NGOs and trade unions heavily criticised the measure, arguing that the scope of intervention to the work and life of public employees, without adequate control and oversight, might overstep constitutional boundaries.³⁷⁶

There are no exact statistics on the total number of public employees that were dismissed without official justification, during the period in which public sector organisations were not legally obliged to provide justification. The Trade Union of Hungarian Civil Servants, Public Employees and Public Service Employees (“MKKSZ”) estimates that about 5000 workers were dismissed on the initiative of the employer, and 90% of those who were dismissed received no official justification for losing their jobs.³⁷⁷ However, from the perspective of practicality, the previous strict regulation on dismissals created a rigid environment. Managers found that their hands were tied when they wanted to replace inefficient workers with more qualified staff. The new regulation gives greater flexibility to senior officials for selecting staff, though lessons of the new system have still to be learned.³⁷⁸

In public sector employment there are certain tendencies to be observed according to the level of hierarchy within an organisation and geographical differences. Younger employees often work for ministries and centralised agencies to build their CVs and to gain professional experience, leaving after a few years to pursue careers elsewhere. By contrast, at the regional level, staff fluctuation is much smaller, because employees there aspire to remain in the public sector long-term.³⁷⁹ The numbers show this skewed tendency at the central level: there are many young people in the public sector at the very beginning of their professional lives (ages 25 to 35), and there are much fewer workers representing the more experienced, “middle generation” (ages 40 to 50), because of the fact that many young people are leaving the sector, meanwhile the number of older employees remains relatively high.³⁸⁰

373 Interview with István Balázs, 14 June 2011

374 http://index.hu/belfold/2011/02/24/megbizhatosagi_vizsgalat_kifogastalan_eletvitel_csapdatat_allitanak/ [accessed 11 July 2011]

375 <http://www.rszvsz.hu/megbizhatosag> [accessed 11 July 2011]

376 <http://www.transparency.hu/uploads/docs/3476956789.pdf> [accessed 11 July 2011]

377 http://www.napi.hu/magyar_gazdasag/kiket_rugnak_ki_a_kozszferabo_indoklas_nelkul_itt_a_felmeres.486475.html [accessed 12 July 2011]

378 Interview with a senior civil servant of the Ministry of Public Administration and Justice, 27 July 2011

379 *Ibid.*

380 Magyary Zoltán Közigazgatás-fejlesztési Program (MP 11.0), p. 43. <http://www.kormany.hu/download/8/d0/40000/Magyary%20K%C3%B6zigazgat%C3%A1s-fejleszt%C3%A9si%20Program.pdf> [accessed 11 July 2011]

Transparency (Law)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Score: 75

The Constitution and the new Fundamental Law establishes the right of access to information that public authorities hold. Both Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Information of Public Interest, as well as the recently passed new law on informational self-determination and freedom of information³⁸¹, stipulate that as a main rule, all documents held by public authorities must be made available to the public, and they also guarantee the right to appeal denials of access to information. Act XC of 2005 on Freedom of Electronic Information has also been incorporated into the new law that covers the duty of disclosure of public information (e.g. annual budget, report on annual budget, etc.) on the website of the public administrative bodies. Transparency via the internet includes the obligation to publish draft bills to allow for e-consultations.³⁸²

Since 2008 an act has been regulating the obligation of public sector officials to declare their assets in a unified structure.³⁸³ One of the underlying aims of passing the law was to provide clarity in public life and the prevention of corruption. Public sector employees, civil servants and government officials working in jobs enlisted by the act all have to declare their assets when entering and leaving their positions.³⁸⁴ The declaration of asset contains not only the information on their income, interests and assets but of their relatives' who live in the same household where they do.³⁸⁵ Those who deny declaring their assets have to face that their employment is terminated and will be forbidden to establish public sector work relationship for further three years.³⁸⁶ The person who is responsible to guard the declarations (namely the employer in most cases) has the power to launch an investigation in a year after the position has been terminated, and if a report has indicated that the income deriving from the job or other legal sources known by the employer cannot cover the growth of the asset.³⁸⁷

According to a recent amendment to the Civil Servants Act, both junior and senior positions within the public sector may be filled through invitation and open competition.³⁸⁸ In the case of an invitation, the employer carries out the hiring procedure individually, whereas in an open competition, job advertisements must be published in a database on a centralised public sector recruitment website.³⁸⁹ The government is determined to connect the recruitment system with a yet to be established reserve staff list to replenish staff internally and as such, enhancing flexibility within the public sector.³⁹⁰

381 <http://www.parlament.hu/irom39/03586/03586-0047.pdf> [accessed 12 July 2011]

382 Act CXXXI of 2010 on Social Participation in Drafting Legislation

383 Act CLII of 2007 on certain obligations to declare assets

384 Act CLII of 2007, Art. 5

385 Act CLII of 2007, Art. 8

386 Act CLII of 2007, Art. 9 (1)

387 Act CLII of 2007, Art. 14 (1)

388 Civil Service Act, Art. 10

389 www.kozigallas.gov.hu [accessed 15 July 2011]

390 <http://mhu/portal/796117> [accessed 15 July 2011]

Transparency (Practice)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Score: 75

Electronic transparency provisions are not fully implemented in practice and most of the websites in the public sector do not meet these requirements, though increasingly, there are examples of compliance.³⁹¹ The previous recruitment regulation concentrated on the website “kozigallas”³⁹² on which all positions had to be published. The current website has become secondary to the new unified government website www.kormany.hu.³⁹³ However, the latter site is not user-friendly and advertised positions are difficult to find.

Accountability (Law)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Score: 75

There are two basic types of controls within and over the public administration: a) the internal control within the system of public administration itself; and b) the external control carried out by the judicial or other bodies, such as the ombudsmen and State Audit Office. The internal control can mean exercising direct control within the hierarchical structure. The superior bodies or departments have strong powers to influence, determine and instruct how a dependent body functions, which is common practice in the central public administration. On the other hand, control over the public service is limited to supervision, because the main job of superior entities is to examine the legality of the decisions of the public service providers and to intervene in legal, budgetary and organisational matters. However, they do not intervene in the daily operations of the institutions. According to the rules of administrative procedure, any person whose rights are affected by an administrative decision may file a complaint with the authority that issued the decision.

The Ombudsman (together with the still existing Commissioner for Data Protection and the Commissioner for Minority Rights) is also responsible for monitoring violations of rights committed by public administrative bodies. Though he/she is not entitled to bring binding decisions on the institutions concerned, the statistics show that the citizens often turn to his/her office with complaints. Most applicants seek redress for the following reasons: administrative decision, the non-responsiveness of the administrative body, or if errors are found in the procedure.³⁹⁴ The State Audit Office audits and

391 <http://www.ekint.org/ekint/ekint.news.page?nodeid=226> [accessed 15 July 2011]

392 www.kozigallas.gov.hu [accessed 15 July 2011]

393 Interview with a senior civil servant of the Ministry of Public Administration and Justice, 27 July 2011

394 In the previous years the ombudsman received most applications on alleged violations of the police (in 2005: 427, in 2006: 342), local governments (in 2005: 1119, in 2006: 837), and public service providers as, inter alia, public transport, heating, post or electricity (in 2005: 361, in 2006: 284). However, the 2010 annual report of the ombudsman contains no such explicit data on the claims concerning the violations of the specific public sector bodies. <http://www.obh.hu/allam/index.htm> [accessed 15 July 2011]

evaluates the financial operation of public institutions. Its reports and recommendations in most cases are covered by the media and other concerned entities. It is obliged to inform the investigative authorities concerned about criminal cases found during its audits.

According to the Civil Servants Act, the civil servant *must* refuse an order from a superior if the order would: (a) constitute a breach of law; or (b) mean a serious and direct threat to the others' life and health. The order *may be* refused if it would endanger his /her life or health.³⁹⁵ It can be requested that the order be put in writing if the carrying out of the order causes a breach of law, damage, or have detrimental consequences for the civil servants or others concerned. This dissenting opinion questioning the order may be attached to the file. However, civil servants are given no other mechanisms for questioning orders, and as such, the options and safeguards, such as reporting incidents of corruption, are rather limited. Nevertheless, the Criminal Code stipulates that the functionaries, i.e. most civil servants, who fail to report a yet undisclosed bribery, must be convicted.³⁹⁶ That causes a rather controversial situation, because the obligation to report bribery, together with an absence of a reporting culture, is likely to result in "over-reporting" of all alleged or suspected violations of law, as noted by the GRECO's report on Hungary.³⁹⁷ The problem is similar within the public sector, where there are even less regulations on reporting.

A new regulation on whistleblowing, the Act on the Protection of Fair Procedures, came into force on April 1st, 2010 and it aimed to provide effective protection for employees who submit information on violations of public interest.³⁹⁸ Originally, another act was meant to accompany this law, in order to establish an institution called the Public Interest Protection Office to handle cases resulting from breaches of fair procedures, and also to coordinate a comprehensive anti-corruption policy.³⁹⁹ The idea of establishing a distinct body was seriously criticised by the then parliamentary opposition (and now governmental) parties, the Parliamentary Commissioner for Civil Rights⁴⁰⁰ and NGOs.⁴⁰¹ The President of the Republic vetoed the law on various grounds, and as such, it never came into force. Consequently, the current Act on the Protection of Fair Procedures has no institutional backing to provide the protection that is guaranteed by law, and neither have any concrete steps been taken to resolve this matter.

Citizens may receive redress by means of their 'complaints' and 'announcements of general interest', which they may file at state or local bodies, according to an act adopted in 2004.⁴⁰² The act does not cover the complaints that fall under judicial or public administrative procedures. An 'announcement of general interest' draws attention to situations that should be solved for the sake of a community or society and may also contain recommendations concerning the issue at stake. The public administrative bodies have 30 days to resolve the matter. As historical background, the act is based on

395 Civil Servants Act, Art. 38

396 Act IV of 1978 on the Criminal Code, Art. 255/B

397 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)4_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)4_Hungary_EN.pdf) [accessed 15 July 2011]

398 Act CLXIII of 2009 on the protection of fair procedure and its related amendments to acts. Interest Protection Office' to handle procedures deriving from breaches of fair procedures and coordinate a comprehensive anti-corruption policy in general.

399 http://index.hu/belfold/2009/10/25/bajnai_korrupcio_ellenes_csomagot_jelentett_be/ [accessed 15 July 2011]

400 <http://www.obh.hu/allam/aktualis/htm/kozlemany20090325.htm> [accessed 15 July 2011]

401 http://www.transparency.hu/uploads/docs/sajtohirek_whistleblowing.pdf [accessed 15 July 2011]

402 Act XXIX of 2004

regulations dating from 1977 that protected the announcers while obliging the entities to record and maintain a log of the record of the cases lodged.⁴⁰³ It operated poorly: there was hardly any evidence of records on complaints, or recommendations received under the act. However, the option to turn to public institutions has been upheld along with one of its greatest achievements, the protection provided for announcers of general interest in the Criminal Code.⁴⁰⁴

Accountability (Practice)

To what extent do public sector employees have to report and be answerable for their actions in practice?

Score: 50

During the last decade, there were very few whistleblower cases in Hungary. There were only two legitimate cases in which whistleblowers faced retaliation according to the court; its decision was based on labor law claims.⁴⁰⁵

The situation of whistleblowing is complex, and it is best assessed by describing society's overall attitude towards whistleblowing. In a survey, the majority of the respondents said that they would report corruption, but most of them were not sure where to turn. At the same time, only 6% of the respondents reported that they experienced corruption in the past. The reasons for refusing to acknowledge that they experienced corruption are diverse, but the main reasons are: "fear and/or disliking the police" (11% of the participants mentioned it as a second reason) "fear of reprisal from the public institutions" (10%, second reason); and many respondents argued that it "was not worth reporting" (8%, first reason). The survey results proved that there is a lack of awareness in society and that there is no effective reporting system.⁴⁰⁶ The situation within the public sector is also rather complex. A comprehensive change in both the legal and administrative culture is needed in order to convince public employees about the necessity of taking risks involved with whistleblowing. Courts exercise external judicial control, because the Constitution entrusts the courts with exercising control over administrative decisions.⁴⁰⁷ In 2010, 14,360 public administration cases were filed in the county courts of first instance, which shows a growing tendency compared to previous years.⁴⁰⁸ (The Hungarian court system does not operate a separate system for administrative courts, and these courts are built in the structure of the judiciary.) The most common types of cases are tax and customs problems, decisions over building permits, decisions of local governments and resolutions brought in connection with competition law, public procurement, immigration and asylum law, etc.⁴⁰⁹

403 Act I of 1977 on announcements, recommendations and complaints of general interest

404 Criminal Code, Art. 257

405 In one case the Supreme Court, and in another case the Metropolitan Court made the decision. <http://www.whistleblowing-ccc.org/countries/hungary/research/#51> [accessed 15 July 2011]

406 Anti-corruption Strategy (draft version 6.0 as of June 11th, 2008). Ministry of Justice and Law Enforcement. http://www.irm.gov.hu/korruptcio_elleni_strategia/cikk/Korruptcio_Elleni_Strategia_munkaanyagoK_letoltheto.htm [accessed 15 July 2011]

407 Constitution, Art. 50 (2)

408 The number of cases filed in 2009 is 13,496 and in 2008 is 12,928. http://www.birosag.hu/engine.aspx?page=Birosag_Statiztikak. [accessed 15 July 2011]

409 http://www.fovarosi.birosag.hu/evk2001/5biroit_2001.htm [accessed 16 July 2011]

There are no exact statistics on disciplinary, police or judicial measures taken against civil servants for corrupt activities. Nevertheless, the number of known crimes reported to the police is one indicator of these measures, although the data contains all investigations launched against other officials, including judges, MPs, notaries and local government representatives, etc., in addition to the civil servants.⁴¹⁰ Between 2005 and 2008, the number of registered bribery cases involving officials was under 300; by 2009, it had increased to 549.⁴¹¹

Integrity Mechanisms (Law)

To what extent are there provisions in place to ensure the integrity of public sector employees?

Score: 50

The Civil Servants Act includes provisions to avoid any financial or other interest that could interfere with the ability of civil servants to perform their public duties. Civil servants are not allowed to hold office in political parties, or belong to the local council as a member. This is to prevent political conflicts of interest. A civil servant working in the central administration may not be a representative in a local government.⁴¹² Public officials may only engage in additional activities, such as literary or educational ones upon the consent of their superior. Law requires that written reports be made of any situation that may give rise to a conflict of interest. Failure to resolve the situation of conflict of interest can lead to the termination of employment, although the civil servant in question is always able to avoid dismissal by explaining the reason for the situation. Civil servants may not hold senior positions in a company. While serving as a local government representative is explicitly forbidden for civil servants, there is no such ban on public employees.

There are no special provisions that prevent public officials from moving to the private sector and abusing their network of professional contacts and knowledge acquired during their employment as public officials. In addition, there are no rules forbidding the public from receiving gifts, although all gifts must be registered in the declaration of assets. A general Code of Conduct for Civil Servants has been under preparation for several years. The need for approval of a code has been mentioned as a recommendation in the Second Evaluation Round Report of GRECO (Council of Europe)⁴¹³ and its Compliance Report⁴¹⁴ Hungary mentioned in its recommendation that Hungary should approve this code; however, Hungary has yet to do so. According to the program of the government, the purpose of restructuring the public service is to introduce a unified Code of Conduct for the entire sector.⁴¹⁵ Professional and ethical requirements, such as loyalty, commitment, dignity and neutrality, as well as the obligation for senior staff to demonstrate by

410 Criminal Code, Art.137

411 2010 data were not available. <http://crimestat.b-m.hu/Bűnözési%20helyzetértékelés.pdf> [accessed 16 July 2011] Estimated only upon the registered cases in the official criminal statistics - in 2009 the overall actual damage corruption caused was HUF 1.2 billion (USD 5.7 million). Official HUF/USD exchange rate of the National Bank of Hungary on 15 October 2011 was 211.09.

412 Act XCVI of 2000 on several question on the legal status of local government representatives, Art. 5

413 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2\(2005\)5_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2(2005)5_Hungary_EN.pdf) [accessed 16 July 2011]

414 [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval2\(2005\)5_Hungary_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval2(2005)5_Hungary_EN.pdf) [accessed 16 July 2011]

415 Magyar Zoltán Közigazgatás-fejlesztési Program (MP 11.0), p. 49. <http://www.kormany.hu/download/8/d0/40000/Magyar%20K%C3%B6zigazgat%C3%A1s-fejleszt%C3%A9si%20Program.pdf> [accessed 16 July 2011]

example, are to be enshrined in the code. The main goal of this code is to prevent corruption.⁴¹⁶

Integrity Mechanisms (Practice)

To what extent is the integrity of public sector employees ensured in practice?

Score: 50

There has been a growing tendency among public sector organisations to start creating their own codes of conduct (though this is limited to certain professions), such as the Code of Ethics of Social Work⁴¹⁷ or the Code of Ethics of the Police Profession.⁴¹⁸ The public sector is diverse, and as such, the fact that different professions within the sector are drawing up separate codes is logical. Yet from a practical perspective, codes of conduct only work if they provide actual help, instead of adding additional layers of red tape on public sector employees.⁴¹⁹

Ethical values are not mentioned in official appointment documents, but they are mentioned in the oath each employee is obliged to take (or in practice, sign) when entering public service. However, its traditional significance is fading. As a result, some have suggested that codes should be replaced with e.g. a confidentiality agreement more suitable for younger generations.⁴²⁰

According to the survey on corruption risks and controls within public sector organisations, 30% of the respondents had already set up external whistleblower systems, and 27% of them are running internal ones. However, only 8% of the organisations have adopted special regulations on whistleblowing.⁴²¹ Overall, 17% of the organisations participating in the survey indicated that they have regulations on the acceptance of gifts, invitations and travel. The survey suggests that while local governments and health sector entities are less likely to have internal rules on accepting gifts (i.e. only 8% replied that they do), over half of the central government bodies and social care institutions have such regulations in place. Statistics also show discrepancies in the area of conflict of interests: 75% of the central governmental bodies oblige their employees to declare other (potential) conflicted interest they may have, and for local governments, it is 53%.⁴²²

416 <http://mhu/portal/796117> [accessed 16 July 2011]

417 http://www.cssk.hu/downloads/szakmai_anyagok/etikaikodex.pdf [accessed 16 July 2011]

418 <http://www.police.hu/magyarendorseg/etikaikodex> [accessed 16 July 2011]

419 Interview with a senior civil servant of the Ministry of Public Administration and Justice, 27 July 2011

420 Ibid.

421 Integrity Report 2011 on the corruption risks within the operation of Hungarian public budgetary organisations. State Audit Office of Hungary, 2011. http://integritas.asz.hu/uploads/doktar/asz_integritas_jelentes_2011.pdf [accessed 16 July 2011]

422 Ibid.

Public Education

To what extent does the public sector inform and educate the public on its role in fighting corruption?

Score: 50

There is no general program on educating the public about corruption. On one hand, the comprehensive government program on the restructuring of the public sector emphasises that social sensitivity towards corruption and that public demand for the government to end corruption are high. The public sector restructuring program includes several anti-corruption measures. According to the document, the government aims to highlight the importance of personal responsibility and enhance cooperation with the public sector organisations to investigate and punish cases of corruption.⁴²³

Cooperation with public institutions, CSOs and private agencies in preventing/addressing corruption

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

Score: 50

Cooperation between public institutions and civil society organisations (CSOs) is limited and fragmented, and it depends on the intentions of the board of the organisations. Transparency International Hungary has signed a partnership agreement with the National Police Department ("ORFK") and it has participated in several meetings with government officials on different anti-corruption initiatives. However, official governmental consultations on draft laws are rather limited: MPs and parliamentary committees submit important draft bills to Parliament to avoid the consultation procedure as required by law in the Act on Social Participation in Drafting Legislation.⁴²⁴ Such bills produce rushed legislation. Examples of this include the Media Act⁴²⁵, as well as the amendments that reduce the powers of the Constitutional Court.⁴²⁶

423 Magyar Zoltán Közigazgatás-fejlesztési Program (MP 11.0), p. 37. <http://www.kormany.hu/download/8/d0/40000/Magyar%20K%C3%B6zigazgat%C3%A1s-fejleszt%C3%A9si%20Program.pdf> [accessed 17 July 2011]

424 Act CXXXI of 2010

425 Act CLXXXV of 2010, originally submitted by Antal Rogán MP (FIDESZ) http://www.parlament.hu/internet/plsql/ogy_irom.irom_kepv?P_CKL=39&P_AZON=r008&P_ONALLO=I&P_NEMONALLO=I&P_FOTIPUS=null&P_FOTIPUS=T&P_TIPUS=null&P_ALLAPOT=z&P_TARGYMOD=null&P_NONFOTIP=null&P_NONTIPUS=null [accessed 17 July 2011]

426 Originally submitted by János Lázár MP (FIDESZ), http://www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ekl=39&p_izon=1446. [accessed 17 July 2011]

Reducing corruption risks by safeguarding integrity in public procurement

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

Score: 50

Vast sums of money are spent on public procurement (5.66% of Hungarian GDP in 2010⁴²⁷), and there are neither effective controls, nor monitoring mechanisms⁴²⁸ for public procurement. In addition, there are several players on the market with diverse interest, and as such, public procurement (PP) is one of the most corruption-affected fields in Hungary. Research shows that in Hungary, corruption affects 65 to 75% of all tenders, and overall, systematic corruption raises the cost of procurements by 25%.⁴²⁹ However, Hungarian PP legislation scored high for compliance in the region, according to the EBRD 2010 assessment.⁴³⁰ Meanwhile, Hungary scored relatively low for efficiency and economy of the PP process, because there are insufficient regulatory instruments in the pre- and post-tendering phases that are not adopted, and there are significant gaps in implementing integrity safeguards in practice.

The current Public Procurement Act (PPA) entered into force in 2004⁴³¹ and has been amended over 40 times. In addition, contracting authorities must comply with twenty other executive decrees.⁴³² Since May 2010, after the change of government, the Ministry of National Development became responsible for codifying PP.⁴³³ After several amendments Parliament adopted a new act⁴³⁴ in July 2011, applying the basic principles of simplification and flexibility. The new act will come into effect on 1 January 2012. TI raised some concerns, mostly over the elements in the new act that distort competition⁴³⁵ and over the so-called “freely-developed procedure”⁴³⁶, which allows a specific procedural regime to be created and used for national procedures, increasing the likelihood of abuse.⁴³⁷

427 Position Paper of Transparency International Hungary - 23 February 2011

http://www.transparency.hu/uploads/docs/Kevesebb_a_kozbeszerzes.pdf [accessed 20 July 2011]

428 Report of the State Audit Office about the monitoring of the public procurement system, September 2008 [http://www.asz.hu/ASZ/jeltar.nsf/0/EF2A44F5115DD750C12574C5004E1461/\\$File/0831J000.pdf](http://www.asz.hu/ASZ/jeltar.nsf/0/EF2A44F5115DD750C12574C5004E1461/$File/0831J000.pdf) [accessed 20 July 2011]

429 Corruption and Public Procurement in Hungary, 2009. (A korrupció és a közbeszerzési korrupció Magyarországon) http://kozbeszerzes.hu/static/uploaded/document/Korrupcios_kozbeszerzesi_kutatás_Magyarországon_I_kötet.pdf [accessed 16 July 2011]

430 EBRD 2010 Regional Assessment of Public Procurement Legal Frameworks, 19 May 2011

http://www.kozbeszerzes.hu/static/uploaded/document/EBRD_Annual_Meeting_Publication_print.pdf [accessed 16 July 2011]

431 Act CXXIX of 2003 on Public Procurement

The English translation of the act is available on the website of the Public Procurement Council http://www.kozbeszerzes.hu/nid/PP_Act [accessed 16 July 2011]

432 http://kozbeszerzes.hu/nid/koz_b_trv2 [accessed 16 July 2011]

433 Before May 2010, the Ministry of Justice and Law Enforcement was responsible.

434 Act CVIII of 2011 on Public Procurement

435 Transparency International Hungary collected the competition-distorting elements of the PPA in April 2011.

http://www.transparency.hu/uploads/docs/competition_distorting_eng_small.pdf [accessed 16 July 2011]

436 Section 123 of Act CVIII of 2011 on Public Procurement

437 TI published several position papers during the codification process of the new PPA: Position Paper about the bill of the new PPA, June 2011 <http://www.transparency.hu/uploads/docs/T3502.doc> [accessed 16 July 2011]

Position Paper about the draft of the new PPA, May, 2011 http://www.transparency.hu/uploads/docs/TI_allasfoglalas_Kbt_20110530.doc [accessed 16 July 2011]

The current PPA ensures compliance with EU directives. It divides the procedures into two regimes based on the value of procurement.⁴³⁸ Contract award procedures may be open, restricted, negotiated procedures or competitive dialogue. In 2010, 61% of the tenders above the EU threshold were open procedures and 66% of the tenders below the community threshold were publicly announced.⁴³⁹ TI Hungary criticized a new, special type of tendering, the so-called three-bid negotiated procedures, which do not actually entail real competition with the publication of a notice and may jointly lead to such contracts essentially being agreed to under non-competitive circumstances.⁴⁴⁰

In Hungary, an autonomous administrative body, the Public Procurement Council (PPC), is responsible for PP policy issues representing the three stakeholders in equal proportions: tenderers, contracting entities, and people representing public interests.⁴⁴¹ The PPC collects statistical data, issues guidelines, lists the approved contractors and the official consultants, publishes the PP Bulletin⁴⁴² and operates the remedy system with the support of its administrative body, the PPC Secretariat. The PPC is solid structure, according to the OECD⁴⁴³; however, TI highlighted several corruption risks in the system and the potential governmental influence on the operation of the PPC.⁴⁴⁴

All disputes arising from public procurements fall within the competence of the Public Procurement Arbitration Board (AB), the first instance review body. The AB can impose fines not only on contracting authorities, but on liable individuals as well. Anyone whose rights are harmed by the decision of the AB is entitled to bring an action before the court for judicial review.⁴⁴⁵ The supervision of PP is done by the State Audit Office, the Government Audit Office, the Public Procurement Council, and, in the case of EU funds, governing authorities, contributing organisations, and the National Development Agency. The PP of government authorities is reviewed by the Ministry of National Development.⁴⁴⁶

Transparency is a sufficient tool to reduce corruption risks in PP. The law defines a wide range of disclosure requirements⁴⁴⁷ (annual procurement plan and statistical summary, signed contracts, remedy documents) on the website of the contracting authorities, but, due to the lack of monitoring and controlling mechanisms, these are not providing

438 There are two threshold values in Hungary: the national threshold value and the EC threshold value. The national threshold values for 2011 are as follows: *Public sector*: public supply: HUF 8,000,000 (USD 37,898); public works: HUF 15,000,000 (USD 71,059); public work concessions: HUF 100,000,000 (USD 473,731); public services: HUF 8,000,000 (USD 37,898); and public service concession: HUF 25,000,000 (USD 118,432). *Utility sector*: public supply: HUF 50,000,000 (USD 236,865); public works: HUF 100,000,000 (USD 473,731); and public services: HUF 50,000,000 (USD 236,865). (Official HUF/USD exchange rate of the National Bank of Hungary on October 15th, 2011 was 211,09)

439 Press Release of the Public Procurement Council - 23 February 2011 http://www.kozbeszerzes.hu/static/uploaded/document/sajtotajekoztato_2011.02.23.doc [accessed 16 July 2011]

440 Art. 7 of Section 122 of Act CVIII of 2011 on Public Procurement

441 According to the new PPA, a Public Procurement Authority will be established: see Section 167-178 of Act CVIII of 2011 on Public Procurement

442 It is obligatory to publish the procurement notices in the Official Journal of the European Union and in the PP Bulletin. The Bulletins are available on the website of the PPC: <http://kozbeszerzes.hu/nid/KE> [accessed 16 July 2011]

443 "Central Public Procurement Structures and Capacity in Member States of the European Union", *Sigma Papers*, 40. 2007. 10.1787/5kml60qdqq0n-en [accessed 16 July 2011]

444 Public Procurement and Transparency 1. (Közbeszerzés és átláthatóság 1.) Transparency International Hungary, 2011 http://www.transparency.hu/uploads/docs/kozbeszerzes_es_atlathatosag.pdf [accessed 16 July 2011]

445 For more details about the remedy system, please see: (2007), "Central Public Procurement Structures and Capacity in Member States of the European Union", *Sigma Papers*, 40. 10.1787/5kml60qdqq0n-en [accessed 16 July 2011]

446 Government Decree No. 46/2011. (III.25.)

447 Art. 5, 17/C, 99/A (3) of the Act CXXIX of 2003 on Public Procurement and Art 31 of the Act CVIII of 2011 on Public Procurement

effective transparency in practice.⁴⁴⁸ All notices initiating and terminating PP procedures are accessible on the website of the PPC, which also contains information on the winners and the consideration, among other important details, but a PP e-database providing all the relevant information for the proceedings is still under construction.

Besides the related criminal law regulation⁴⁴⁹, the PPA itself defines several anti-corruption elements, such as rules about conflict of interest⁴⁵⁰ and equal treatment.⁴⁵¹ According to the law, Integrity Pacts⁴⁵² were also obligatory for a limited period in 2010⁴⁵³ above a certain high purchasing limit. The PPC was to appoint a person to monitor this and as a result, the civil element began to disappear from this structure; however, TI offers them on a voluntary basis, and organizations have had positive experiences using them.⁴⁵⁴

448 Public Procurement and Transparency 1. (Közbeszerzés és átláthatóság 1.) Transparency International Hungary, 2011 http://www.transparency.hu/uploads/docs/kozbeszerzes_es_atlathatosag.pdf [accessed 16 July 2011]

449 Art. 250-255/A, 255/B., 256., 257. 258/B-D, 258/E., 225, 244, 300 and 319-320 of Act IV of 1978 on the Criminal Code

450 Art. 10 of Act CXXIX of 2003 on Public Procurement and Art. 24 of Act CVIII of 2011 on Public Procurement

451 Art. 1 (3) of Act CXXIX of 2003 on Public Procurement and Art. 2 (2) of Act CVIII of 2011 on Public Procurement

452 http://www.transparency.org/global_priorities/public_contracting/integrity_pacts [accessed 16 July 2011]

453 from 10 March 2010 till 15 September 2010

454 http://www.transparency.hu/ATLATHATOSAGI_MEGALLAPODASOK [accessed 16 July 2011]

5. LAW ENFORCEMENT AGENCIES

Summary

Law enforcement agencies investigate and prosecute corruption-related offences. Other bodies or agencies also play a significant role in the detecting of bribery and related offences. There is no central body solely for the investigation and prosecution of these offences. The legal framework for the law enforcement agencies is appropriate, but it has 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 the enforcement, although considerable concerns have been raised around this issue. 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 the 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 since the transition"⁴⁵⁵ and poor career prospects and the lack of transparency of the recruitment process still remains a problem.

Law Enforcement Agencies Overall Pillar Score: 67 / 100			
	Indicator	Law	Practice
Capacity 69 / 100	Resources	75	50
	Independence	75	75
Governance 58 / 100	Transparency	75	50
	Accountability	75	50
	Integrity Mechanisms	50	50
Role 75 / 100	Corruption prosecution	75	

Structure and Organisation

Law enforcement agencies include the National Security Services, the Police, the National Tax and Customs Administration, the Prosecution Office, the National Protective Service and the Prison Service. The National Directorate of Disaster Management, the Authority for Supervision of Public Areas, the Civil Protection and the voluntary fire departments also exercise some authority.

The National Security Services are divided into five agencies⁴⁵⁶, all of them under the direction of the government.⁴⁵⁷ The Office of Constitution Protection and the Special

455 As reported in the 2007 TI's NIS study, p.8. http://www.transparency.hu/uploads/docs/Summary_report_NIS_2007.pdf [accessed 16 June 2011]

456 Art. 1 of Act CXXV of 1995 on the National Security Services

457 Art. 2 of Act CXXV of 1995 on the National Security Services

Service for National Security (operative) are under the direction and supervision of the Minister of the Interior.⁴⁵⁸ The Military Intelligence Office (intelligence agency) and the Military Security Office (military counter-intelligence) is directed and supervised by the Minister of Defence.⁴⁵⁹ The latter two bodies merge after 1 January 2012. The Minister of Foreign Affairs directs and supervises the Information Office (foreign intelligence).⁴⁶⁰ The parliamentary control of the services are fulfilled through the Defence and Law Enforcement Committee and the National Security Committee⁴⁶¹, in addition the Parliamentary Commissioners for Data Protection and the Parliamentary Commissioner for Civil Rights⁴⁶² have relevant control powers. By employing methods of secret and open collection of information, the services aim to protect the country's constitutional order and sovereignty.

The police department is directed by the government through the Minister of the Interior.⁴⁶³ The police department is the general investigative agency.⁴⁶⁴ It is the "body for general police activities", the inner crime prevention and investigation body, and the body for counter-terrorism.⁴⁶⁵ The National Tax and Customs Administration was set up on 1 January, 2011 following the integration of the Hungarian Tax and Fiscal Control Administration and the Hungarian Finance and Customs Guard. The government through the minister designated by the Prime Minister directs the new authority.⁴⁶⁶ It has investigative powers also (but not solely) in corruption cases (e.g. tax fraud, money laundering, etc.). The Constitution states that the Prosecution Office of the Republic of Hungary is independent.⁴⁶⁷ The Prosecutor General is recommended by the President and elected by Parliament.⁴⁶⁸

Assessment

Resources (Practice)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Score: 50

The annual budgets of the law enforcement agencies are set by Parliament in the annual budget.⁴⁶⁹ The Hungarian State Treasury covers the majority of the income of the agencies, and the operations of the agencies also yield some income. The total income of the National Security Services is around HUF 44 billion (USD 208.5 million)⁴⁷⁰. The

458 Art. 10 of Act CXXV of 1995 on the National Security Services and Art. 2 (1) m) of Act 42 of 2010 on the enumeration of ministries of the Republic of Hungary

459 Art 10 of Act CXXV of 1995 on the National Security Services

460 Art 10. of Act CXXV of 1995 on the National Security Services and Art. 2 (1) m) of Act 42 of 2010 on the Enumeration of Ministries of the Republic of Hungary

461 Art. 14 Art 10. of Act CXXV of 1995 on the National Security Services

462 Art. 16 and 29 of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights

463 Art. 4 (3) of Act XXXIV of 1994 on the Police

464 Art. 36 (1) of Act XIX of 1998 on the Criminal Procedure.

465 Art. 4 (2) of Act XXXIV of 1994 on the Police

466 Art. 1 on the National Tax and Customs Administration

467 Art. 51-53 of the Act XX of 1949 on the Constitution of the Republic of Hungary

468 Art. 52 of the Act XX of 1949 on the Constitution of the Republic of Hungary

469 For 2011 in the Act CLXIX of 2010 on the Budget for 2011 for the Republic of Hungary

470 Official HUF/USD exchange rate of the National Bank of Hungary on 15 October 15th, 2011 was 211.09.

detailed budget of the Office of Constitution Protection is not publicly available. Therefore, no information on the budget of anti-corruption activities is available.⁴⁷¹

The total income of the police is HUF 228 billion (USD 1080.6 million)⁴⁷², from which around HUF 30 billion (USD 142 million) are the expenditures of the National Police Headquarters. The total staff of the police is around 45,500, one third of these working in the criminal division.⁴⁷³ The police employed 1161 staff in 2009 in their departments for economic protection nationwide. At local police HQ, no special divisions for the investigation of bribery are established, and every inspector may be involved in bribery investigations. No data is available on the total expenditures of these investigations.⁴⁷⁴

The National Tax and Customs Administration receives HUF 125.5 billion (USD 594.8 million) from the Hungarian State Treasury. The previous Finance and Customs Guard employed some 7000 staff⁴⁷⁵ of which twenty-two members were employed by the department responsible for anti-corruption. The total cost in 2009 was HUF 134.7 million (USD 0.64 million). The former Tax and Fiscal Control Administration employed some 15,600 staff from which around 5,500 employees are involved in control activities.

Other law enforcement agencies employ fewer staff. In 2011, the Prison Service had 7,786 staff members on 31 December 2009⁴⁷⁶ and received around HUF 41 billion (USD 194.3 million) from the Hungarian State Treasury.⁴⁷⁷ The National Protective Service was set up on January 1st, 2011 based on the former Protective Agency of the Enforcement Services which had 239 staff and a budget of HUF 1.6 billion (USD 7.6 million).⁴⁷⁸ Since 2011, the Service has a total staff of around 500.⁴⁷⁹ Their task is the internal control of some law enforcement agencies and staff of selected ministries. Some 100,000 employees are under the control of the National Protective Service.

The expenditures of the Prosecution Office are around HUF 32 billion (USD 151.6 million). There is no reliable data available on the expenditures of the investigation and prosecution of bribery and related offences, since it is the obligation of every prosecutor to participate in anti-corruption. The department of special cases at the Chief Prosecution Office employed ten prosecutors, the County Chief Prosecution Offices employed 103 prosecutors and 12 trainee prosecutors for the investigation of selected bribery offences. The Central Investigative Prosecution Office employed 25 staff for the investigation of serious bribery cases.⁴⁸⁰ For the prosecution of such offences (but not only these), 260 staff (mainly prosecutors) was employed nationwide. In November 2010, the government

471 Schedule 1 of Act LXV of 1995

472 Act of CLXIX of 2010 on the Budget for 2011 for the Republic of Hungary. (Official HUF/USD exchange rate of the National Bank of Hungary on 15 October 2011 was 211.09.)

473 For 1 January 2010. Yearbook of the Police for 2009. http://www.police.hu/data/cms673756/Rend_urs_g_2009_03_rendorseg_helyzete_mukodese.pdf [accessed 16 June 2011]

474 Györfi, Gyurkó, Földes: Állami szervek korrupcióellenes kapacitása. In: Vig Dávid (ed.): Globalizáció kihívásai - kriminálpolitikai válaszok, Magyar Kriminológiai Társaság, 2010, p. 225.

475 Vám- és Pénzügyőrség 2009. évi Költségvetési alapokmánya, <http://vam.gov.hu/loadBinaryContent.do?binaryId=25776> [accessed 16 June 2011]

476 Yearbook of the Prison Service for 2009: http://www.bvop.hu/download/bv_szervezet_evkonyve_2009.pdf/bv_szervezet_evkonyve_2009.pdf [accessed 16 June 2011]

477 Act CLXIX of 2010 on the Budget for 2011 for the Republic of Hungary

478 Act CXXX of 2009 on the Budget for 2010 for the Republic of Hungary

479 See the homepage of the Service, <http://www.rszvsz.hu/bemutakozas>

480 The data refers to 2009. See Györfi, Gyurkó, Földes: Állami szervek korrupcióellenes kapacitása. In: Vig Dávid (ed.): Globalizáció kihívásai - kriminálpolitikai válaszok, Magyar Kriminológiai Társaság, 2010, p. 226.

announced that⁴⁸¹ in 2011 the prosecution office would employ some additional fifty-five staff to combat corruption more effectively. For financial reasons, this has not happen until the making of this report.⁴⁸²

As such, it is not the general lack of financial or technical resources, or personnel that is the most pressing issue, but the lack of well-experienced and educated investigators, who have considerable experience in the fields of corporate finance and accounting.⁴⁸³ In a sense, the funding of the national security agencies is more than adequate, which could result in the overuse of these services.⁴⁸⁴ Income of the agencies as set in the annual budgets respectively between 2008 and July 2011, in billion HUF:

	2008	2009	2010	2011	modified budget ⁴⁸⁴
national security services	48,3	45,3	42	44	41,6
police	211,8	189,3	195,1	228	213
national tax and customs administration ⁴⁸⁵	115,6	111,2	127,6	125,5	119,3
prison service	36	33,7	38	41	38,5
prosecution office	29,9	29,3	28,4	32	32
annual inflation ⁴⁸⁶	106,1	104,2	104,9	103,9 ⁴⁸⁷	32

Independence (Law)

To what extent are law enforcement agencies independent by law?

Score: 75

The Prosecution Office has the highest level of independence in law amongst the law enforcement agencies mentioned above. This body is stated in the Constitution. The prosecution service is independent from the executive power as it is subordinate only to the Constitution and other statutes.⁴⁸⁸

481 http://www.fn.hu/belfold/20101130/korrupcios_ugyekre_spezializalodik_ugyeszseg/ [accessed 16 June 2011]

482 Interviewee (3) a senior law enforcement official working at the Prosecution Office

483 Interviewee (2) previous police officer, now working in the private security sector

484 Interviewee (1) a previous senior police officer now working on police research

484 The budget was amended and modified by Parliament in July 2011

485 Between 2008 and 2010 the data is the aggregated data for the previous taxation and customs agencies.

486 The data is provided by the Hungarian Central Statistical Office (KSH): http://portal.ksh.hu/pls/ksh/docs/hun/xstadat/xstadat_eves/i_qsf001.html [accessed 16 June 2011]

487 The prediction was made by the Hungarian National Bank (MNB) http://www.mnb.hu/Root/Dokumentumtar/MNB/Kiadvanyok/mnbhu_inflacio_hu/inflacios_jelentes_201106_hu.pdf [accessed 16 June 2011]

488 'Among others, this is one reason why the Constitutional Court was petitioned a few years ago to examine the Prosecutor General's political responsibility and obligation to respond to interjections. In its Decision 3/2004 (II. 17.), the Constitutional Court . . . as summarized by Dezső, Somody, Novoszádek. See further explanations in Dezső, Somody, Novoszádek (2010): The Legislature, In: Constitutional Law in Hungary, Dezső, Somody, Vincze, Bodnár, Novoszádek, Vissy: Hungary, Wolter Kluwer, p. 147.

The head of the Prosecution Office is the Prosecutor General (PG), elected by Parliament with a two-thirds majority for nine years.⁴⁹⁰ The President nominates the candidate. The responsibility of the PG before Parliament is also stated in the Constitution and the PG has to report to Parliament on the work of the Prosecution Office.⁴⁹¹ Previously, the PG could be interpellated before Parliament. The prosecutor may not be a political party member, nor can he/she be engaged in political activities.⁴⁹² The Prosecutor General enjoys high levels of immunity.⁴⁹³ The regulations on immunity govern the immunity of both the PG and the Members of Parliament. Parliament shall decide on its suspension. Every prosecutor enjoys immunity, and it is the PG who may suspend the immunity of individual prosecutors.⁴⁹⁴ The Venice Commission stated: "it is important that the method of selection of the general prosecutor should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession. Therefore professional, non-political expertise should be involved in the selection process. However, it is reasonable for a Government to wish to have some control over the appointment, because of the importance of the prosecution of crime in the orderly and efficient functioning of the state, and to be unwilling to give some other body, however distinguished, *carte blanche* in the selection process. It is suggested, therefore, that consideration might be given to the creation of a commission of appointment comprised of persons, who would enjoy the respect of the public and the trust of the Government."⁴⁹⁵

The ratification of the law on the police and the detailed rules connected with national security require two thirds of the votes of the MPs present.⁴⁹⁶ This act empowers the police. A member of the police may not be a political party member, nor can he/she be engaged in political activity. Moreover, they cannot be candidates for election to Parliament, the European Parliament or the local governments for three years following the end of their service.⁴⁹⁷ By exercising their powers, the police act without political influence.⁴⁹⁸ The police department is directed by the government through the Minister of the Interior.⁴⁹⁹ The Minister submits a list of nominees to the Prime Minister for candidates as Chief Commissioner of the Police. The Prime Minister appoints the Chief Commander.⁵⁰⁰

The government, through the ministers described above, directs the national security services. The services are lead by the directors, who are recommended by the minister

489 According to a modification of Act 80 of 1994 on the Prosecution Service and the Data Management at the Prosecution Office in December 2010. The PG is elected for 9 years. After the expiration of this term or if the PG reaches 70 years, a new PG is to be elected with a two-thirds majority. If Parliament cannot elect a new PG with this majority, the acting Prosecutor General remains in his office until the successful election of the new PG. This was highly criticised by opposition parties and some NGOs and in the press. See Art. 20 of the named Act.

491 Art. 51-53 of the Act XX of 1949 on the Constitution of the Republic of Hungary

492 Art. 53 (2) of the Act XX of 1949 on the Constitution of the Republic of Hungary

493 Art. 23 of the Act V of 1972 on the Prosecution Service on the Constitution of the Republic of Hungary

494 Art. 23 of the Act V of 1972 on the Prosecution Service on the Constitution of the Republic of Hungary

495 Venice Commission: Report on European Standard as Regards the Independence of the Judicial System. Part II. - The Prosecution Service, Strasbourg, 2011. p.8.

<http://www.venice.coe.int/docs/2010/CDL-AD%282010%29040-e.pdf> [accessed 16 June 2011]

496 Art. 40/A (4) of Act 20 of 1949 on the Constitution of the Republic of Hungary

497 Art. 40/B (4)

498 Art. 2 (3) of Act 34 of 1994 on the Police

499 Art. 4 of Act 34 of 1994 on the Police

500 Art. 5 (e) and Art. 6 (3) of Act 34 of 1994 on the Police

responsible and appointed by the Prime Minister.⁵⁰¹ The services are controlled by Parliament through the National Security Committee. Its president has to be an MP of one of the opposition parties. The minister regularly informs the members of the Committee (at least twice a year).⁵⁰² Both the Chief Commissioner for the police⁵⁰³ and the directors of the security services⁵⁰⁴ are heard before their appointment by a committee of Parliament. The Committee decides whether the applicant is suitable and competent to do the job.

Independence (Practice)

To what extent are law enforcement agencies independent in practice?

Score: 75

Although there is no proof or evidence of political influence on the law enforcement agencies, some experts and the media called attention to structural-institutional problems and alleged cases of political or other influence on the decision-making of the law enforcement agencies. In a recently published research report⁵⁰⁵, an interviewed attorney stated: "I don't believe that there would be orders or phone calls as to what to do, it is in the atmosphere. Everybody looks upwards and aside, pays attention to the requirements".⁵⁰⁶ An officer who was previously working for the police also stated that there is an unspoken practice to follow the perceived expectations of the political elite or other agencies.⁵⁰⁷ In another interview, a senior law enforcement officer expressed that he "has not received any political 'orders' in his professional life which means the last 32 years".⁵⁰⁸ In spite of this, there are serious allegations of the so-called "political telephone calls", in which senior government officials or politicians seek to give instructions or orders to the officials of the law enforcement agencies.⁵⁰⁹

Due to the opinions above, some law enforcement agencies are not perceived as independent and impartial bodies by some segments of the media and society. Public confidence and trust in public institutions are among the lowest compared to other EU-member countries.⁵¹⁰ Regarding the requirements of the Venice Commission cited above, this requirement does not seem to be fulfilled according to a considerable segment of the media. The opposition also argued that the previous party membership⁵¹¹ of the

501 Art. 12 (1) of Act 125 of 1995 on the National Security Services

502 Art. 14 of 1995 on the National Security Services

503 Art. 6 (3) of Act XXXIV of 1994 on the Police

504 Art. 14 (3) h) of Act CXXV of 1995 on the National Security Services

505 Földes, Ádám: Countdown to Impunity: Corruption-related States of Limitation in Hungary, Transparency International Hungary, 2011. p.14.

506 This expression refers to the political influence one might feel.

507 Interviewee (2) previous police officer, now working in the private security sector

508 Interviewee (3) a senior law enforcement official

509 Interviewee (1) a previous senior police officer now working on police research

510 The public trust in 'institutions' (parliament, judiciary, police and political parties were measured in this category) were among the lowest in the EU in a major study in 2009. See: Giczi Johanna, Sik Endre: Bizalom, társadalmi tőke, intézményi kötődés. In Tárki Társadalmi Jelentés 2009, pp.68. http://www.tarki.hu/hu/research/gazdkult/gazdkult_gici_sik.pdf [accessed 16 June 2011] The data was collected in the World Value Study survey.

Major newspapers and public actors made statements on the alleged political influence on these body's activities.

See: <http://www.mhu/portal/printable?contentID=531229&sourceType=MN> [accessed 16 June 2011]

http://www.nepszava.hu/articles/article.php?id=421929&referer_id=ezt_beszeli [accessed 16 June 2011]

511 Previously, another Prosecutor General Kalman Györgyi was also criticised, because of party membership to the Hungarian Socialist Workers Party, the ruling party before 1989.

Prosecutor General (PG) of the governing party is against this recommendation. The PG was a member of the party until 1995 and stood as a candidate for MP in the 1994 elections in this party. The PG argued that significant time has passed since his party membership.⁵¹² The influence of the agencies on each other's activity is also a highly-discussed issue. The police are often seen as an institution that follows the unspoken expectations of the Prosecution Office, which *de jure* supervises their investigations and has an overview of the process.

National security services must collect information secretly, which may be used in the criminal procedure as evidence in the event that the services issue a report "immediately" following the allegation.⁵¹³ The prosecutor does not have an in-depth overview of the collection of information that was acquired secretly and he/she has to work with the information provided by the services. As a result, the agencies that collect the information could potentially withhold this information by remaining silent, or by making their complaint later than "immediately". Thus, information might not be used as evidence in the criminal procedure before the courts. The lack of judicial oversight on these practices does not help in dispelling doubts regarding alleged political or institutional influence⁵¹⁴.

In addition to the issue of political influence, other issues are: "sometimes the local government or the mayor of a city has greater influence on the work of a city police station than the county directorate of police itself, due to the strong relations and connections between them".⁵¹⁵ The interconnection of the private security sector and the law enforcement agencies (mainly the police) is also a rarely researched issue, but is often discussed. For instance, the situation in which personal relations pose a risk that unlawful influence on the procedures might occur.⁵¹⁶

"Prosecutors act subordinate to the Prosecutor General, solely the PG or superior prosecutor shall give instructions to them".⁵¹⁷ This should refer only to the professional instructions given by a superior prosecutor.⁵¹⁸ It is not prohibited for a superior prosecutor to issue instructions in a concrete case.

512 http://www.nol.hu/belfold/20101208-csak_a_torveny_szamit_a_politikai_elvarasok_nem [accessed 16 June 2011]

513 'Immediately' in this respect is seen as a period not longer than around 2 months.

514 Interviewee 1 and Interviewee 3. Further information: Finszter Géza, Mészáros Ádám, Dunavölgyi Szilveszter (2009): *Eredményes bizonyítási eszközök a vesztegetés miatt indult eljárásokban*. Országos Kriminológiai Intézet, Budapest, 2010 (kutatási jelentés)

515 Interviewee 2

516 Interviewee 2

517 Art. 6 of Act V of 1972 on the Prosecution Office

518 Interviewee 3

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of law enforcement agencies?

Score: 75

All information controlled by a state or local government authority, or refers to its activity, and which is not personal data, is considered public information of public interest. Information of public interest is any information that is not considered to be personal data, but which is ordered to be publicly available by an act.⁵¹⁹ Freedom of information is limited in some ways, however. Among these restrictions is personal data, secrets of the states or draft documents used internally or to prepare decisions.⁵²⁰ Freedom of information may further be restricted by the law by reason of criminal investigation or procedure or state security.⁵²¹

During the criminal procedure, the media might be informed by the designated member of the investigative agency or the prosecutor until the end of the investigation, by the prosecutor until the end of the prosecution, and by the president of a court or the person designated by him until the end of the trial.⁵²² The trial is open to the public.⁵²³ Closed hearings are held for ethical reasons, in order to protect minors, parties of the trial or protected data.⁵²⁴ The judgement is always announced and it is open to the public.

Transparency (Practice)

To what extent are reports and decisions of the law enforcement agencies made public in practice?

Score: 50

The Prosecution Office publishes all relevant information set by law⁵²⁵, both on their activities and the budget of the Prosecution Office on its website. The national security services also publish their yearbook on their websites, but access to their budgets or detailed information on their expenditures is restricted, because it is seen as protected data. The information used in this assessment regarding the police is publicly available. The source of the information related to the budget and human resources is the annual budget of the police, which is published on its website. However, the information is not easily accessible, because it is somewhat hidden on the website. Moreover, it is difficult to interpret and make use of the vast amount of raw data that is available. In general, no (executive) summaries are prepared.

519 Art. 2 of Act LXIII of 1992 on Protection of Personal Data and the Freedom of Information

520 Art. 19/A of Act LXIII of 1992 on Protection of Personal Data and the Freedom of Information

521 Art. 19 (3) of Act LXIII of 1992 on Protection of Personal Data and the Freedom of Information

522 Art. 74/A of Act XIX of 1998 on the Criminal Procedure and Art 29. (2) of Act 67 of 1997 on the Status and Remuneration of Judges

523 Art. 237 (1) of Act XIX of 1998 on the Criminal Procedure

524 Art. 237 (3) of Act XIX of 1998 on the Criminal Procedure

525 Act XC of 2005 on Electronical Freedom of Information

The Ministry of Interior (MI) itself does not publish the information on its website, or on paper-based documents. Their website simply serves to inform the public of the website of the government (www.kormany.hu), which started operating on 14 January 2011, and it encompasses each individual ministry's website. As a result, the individual websites of the MI will cease to operate. The governmental webpage will publish all the information obligatory under the law. At the time of this assessment, this had only partially been achieved. The information - as well as the website of the police and the MI - is mainly in Hungarian, and no translation is provided.

Decisions of the law enforcement agencies in concrete cases are not made publicly available, but the media is informed. The court hearings are open for the representatives of the media. Although in some cases the media has questioned the decisions of law enforcement agencies, the issues were not clarified, according to the media. In the Magyar Telekom case,⁵²⁶ the concrete decision and the reasoning of the investigative body were unclear.⁵²⁷ Law enforcement agencies regularly publish the number of registered offences (e.g. bribery) on their website.⁵²⁸ Detailed information⁵²⁹ is publicly available. There is no information publicly available on specific cases, though some criminal court decisions (anonymously) can be found on the website of the Hungarian courts.⁵³⁰

Accountability (Law)

To what extent are there provisions in place to ensure that the law enforcement agencies have to report and be answerable for their actions?

Score: 75

The responsibility of the Prosecutor General (PG) to Parliament is stated in the Constitution, and the PG has to report to Parliament regarding the work of the Prosecution Office.⁵³¹ Previously, the Prosecution General could be interpellated and questioned in Parliament, but a refusal to provide a response did not have any legal consequences.⁵³² The Constitution was recently amended and an MP's right to interpellate the PG was abolished. Therefore, the PG's responsibility to Parliament is more limited. Both the MP's right to interpellate and its abolition was highly debated. In favour of the restriction, it was argued that it makes the constitutional status of the PG clearer, reduces the political influence on the PG and the MP's right to question fulfils all requirements of parliamentary control. On the other hand, some NGOs and others expressed their concern, arguing that the restriction limits the accountability of the Prosecution Office.

526 In this case law enforcement agencies investigated the acquisition of Magyar Telekom-subsiidiaries in Macedonia and Montenegro. Please see for further information: http://www.economist.com/blogs/easternapproaches/2010/08/magyar_telekom [accessed 16 June 2011]

527 For example, in the Magyar Telekom case -according to the press- it was not clear in some phases what the concrete decision of a law enforcement agency was and why the case lasted so long. See: Vajda Éva: A végnélküli vizsgálat: http://index.hu/velemeny/jegyzet/2010/11/10/a_vegtelen_vizsgalat/ [accessed 16 June 2011]

528 <http://crimestat.b-m.hu/> [accessed 16 June 2011]

529 The database is made on the information of the United Statistical System of the Investigation Agencies and the Prosecution Office. The number of registered offences, offenders, and types of offences are available for the country or for any administrative area.

530 <http://www.birosag.hu/engine.aspx?page=anonim> [accessed 16 June 2011]

531 Art. 51-53 of Act XX of 1949 on the Constitution of the Republic of Hungary

532 Art. 27 of Act XX of 1949 on the Constitution of the Republic of Hungary

According to the new Fundamental Law, which entered into force in 2012, the Prosecutor General is to report to Parliament annually.⁵³³ It only stipulates the MP's right to question the PG and not the interpellation.⁵³⁴

The other law enforcement agencies are directed and controlled by the respective minister responsible for their activities. The ministers are accountable to the government and to Parliament; they may participate in parliamentary sittings.⁵³⁵ The ministers are accountable to Parliament for their activity as a state leader.⁵³⁶ The ministers can be questioned and interpellated by an MP on any issues related to their activities.⁵³⁷ The refusal to provide a response to an *interpellation* does not have any legal consequences related to the responsibility, but there is a special procedure that may have political consequences. On the reply given to *questions*, there are no formal decisions of Parliament.⁵³⁸

The Head of the Police⁵³⁹ and the Directors of the Security Services⁵⁴⁰ are heard by a parliamentary committee before they are appointed. The committee takes a position as to whether the applicant is qualified and competent. They can be heard by the committees and they are obliged to be at the committee's disposal.

The Independent Police Complaints Board is a civil control body, established in 2007 to strengthen the external control of the police. The Board is independent of the organisational hierarchy of the police, and shall not be instructed or influenced during its work. The Board shall report every three years to Parliament on its operational and procedural experiences, and each year it must inform the Committees of Parliament competent in the field of law enforcement and human rights. The Board conducts complaint procedures in order to investigate certain measures or acts, and decides whether fundamental rights were violated. The competence⁵⁴¹ involves the following cases: obligation of the performance of police tasks and instructions, and their violation or omission, police measures or omissions, and their lawfulness, application and lawfulness of coercive means.⁵⁴²

The decisions or defaults of law enforcement agencies are controlled through complaint mechanisms.⁵⁴³ The prosecutor assesses the complaints on the decisions or defaults of the police, the prosecutor's decisions or defaults are assessed by the head of the competent prosecution office. If no arraignment in the procedure is found, the victim of a criminal offence might act as substitute civil suitor.⁵⁴⁴

533 Art. 29 of Fundamental Act of Hungary adopted on 18 April 2011

534 Art. 7 of Fundamental Act of Hungary adopted on 18 April 2011

535 Art. 39 of Act XX of 1949 on the Constitution of the Republic of Hungary

536 Art. 11 of Act XLIII of 2010 on the Central Administrative Bodies and the Status of the Members of the Government and the State Secretaries

537 Art. 27 of Act XX of 1949 on the Constitution of the Republic of Hungary

538 Art. 117 and 118 of the Parliamentary Resolution 46 of 1994

539 Art. 6 (3) of Act XXXIV of 1994 on the Police

540 Art. 14 (3) h) of Act CV of 1995 on the National Security Services

541 For further information consult http://www.panasztestulet.hu/index.php?link=en_main.htm [accessed 16 June 2011]

542 Art. 6/-6/c of Act XXXIV of 1994 on the Police

543 Art. 195 of Act XIX of 1998 on Criminal Procedure

544 Art. 229 Act XIX of 1998 on Criminal Procedure

Accountability (Practice)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

Score: 50

The minister responsible for the law enforcement agencies (excluding the Prosecution Office), may be interpellated or questioned before Parliament. A refusal to provide a response is highly unlikely, because the governing party has a majority in Parliament. However, if the majority refuses the reply, no legal consequence ensue (e.g. obligatory resignation), because it is not seen as a motion of censure against the government or its members.

There is not much use⁵⁴⁵ of the Independent Police Complaints Board (IPCB) in corruption-related investigations or procedures. The IPCB deals with hundreds of complaints annually and since the establishment of the IPCB only very few were bribery-related. The IPCB did not investigate and assess whether fundamental rights were violated, due to the more serious violations concerning a fair trial by other acts of the police. However, theoretically police corruption could be seen as a violation of the right to a fair trial⁵⁴⁶.

In bribery-related cases, there is no concrete victim of the offence (in the sense of the criminal law). Therefore, there is not much space for a substitute civil suitor. According to a senior prosecutor interviewed, there has been no such ruling of the courts in bribery-related cases in which a substitute civil suitor would have been successful.⁵⁴⁷ NGOs have had very limited success in controlling police activity.⁵⁴⁸ Considerable efforts were taken to force law enforcement agencies to publish information, which should have been public. Important court decisions forced the agencies to make a significant amount of information available.⁵⁴⁹ The national security services tend to argue that almost all information they own is protected and thus cannot be published.⁵⁵⁰ Most independent NGOs, however, see this information as information of public interest.

545 Informal questions to a member of the board.

546 Informal questions to a member of the board.

547 Interviewee 3

548 For instance, the monitoring of prison detention centres by the Hungarian Helsinki Committee.

549 For instance, the Hungarian Civil Liberties Union (TASZ).

550 See for instance the case between the HCLU and the service under <http://tasz.hu/informacioszabadsag/tasz-vs-nemzetbiztonsagi-hivatal> [accessed 16 June 2011] Even those documents that were not anymore certified as governmental secrets, were not made public by the service for FOI requests of the HCLU.

Integrity Mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of law enforcement agencies?

Score: 50

The Ethical Code of the Police of the Republic of Hungary states that the “police officer is fair and honest and refuses any attempt which aims at the deviation from the prescribed proceedings. The police officer refuses corruption and acts against every form of it. Refuses any present, advantage or favour, which may question their impartiality.”⁵⁵¹ The Ethical Code of the International Association of Prosecutors also states the importance of the independence and impartiality of prosecutors. This document is published on the website of the Association of Prosecutors. There have been some ideas on the code of conduct for the Hungarian Prosecution Office, but at the time of this study, it has not yet been adopted. The European Guidelines on ethics and conduct for public prosecutors (the “Budapest Guidelines”⁵⁵²) were developed with the participation of the Prosecution Office, which published these Guidelines in its official gazette. The ethical codes are not legal norms enforceable by law.

The Constitution prohibits the members of the police, the national security services and the Prosecution Office from joining a political party or participating in political activities. Furthermore police and security service members also for a period of three years following their service shall not be candidates for election to Parliament, the European Parliament or the local governments.⁵⁵³

In January 2011, a new National Protective Service⁵⁵⁴ was established to serve as an internal control mechanism for law enforcement agencies and other bodies, excluding the prosecution office. The Protective Service controls almost 100,000 staff members of those agencies. Apart from the law enforcement agencies, they control the Office of Immigration and Citizenship and some departments in ministries responsible for law enforcement agencies. The Protective Service detects criminal offences (e.g. bribery) committed by the members of the so-called “protected” bodies. Furthermore, the Service investigates whether the members of the controlled bodies or their applicants live a “proper life”, which makes them able to work for a highly reputable organisation. The so-called inspection of reliability is a new tool to examine the behaviour of the members of the above agencies in real life situations when they have to face the various influences on their activities (e.g. bribery).⁵⁵⁵ The oversight of the Prosecution Office on such inspections is ensured.⁵⁵⁶

Prosecutors are obliged to declare their assets, and there are also certain officers of the police who are obliged to declare their assets.⁵⁵⁷

551 Art. 2 of the The Ethical Code of the Police of the Republic of Hungary

552 http://www.coe.int/t/dghl/cooperation/ccpe/conferences/cpge/2005/CPGE_2005_05LignesDirectrices_en.pdf [accessed 16 June 2011]

553 Art. 40/B and 53 of Act XX of 1949 on the Constitution of the Republic of Hungary

554 Art. 1 (2) 14 and Art. 7 of Act XXXIV of 1994 on the Police

555 Undercover inspectors try to give bribes to officers to see whether they accept them.

556 Art. 7/A of Act 34 of 1994 on the Police

557 Art. 3 of Act CLII of 2007 on certain obligations on declarations of assets

Integrity Mechanisms (Practice)

To what extent is the integrity of the law enforcement agencies ensured in practice?

Score: 50

The recently-introduced policies for “investigation of proper life” and “inspection of reliability” aim to strengthen the internal control mechanisms at the above bodies. Despite their goals, these tools are highly debated. During this study, there were only indications available that these tools may have negative effects on the organisational culture of the “protected” agencies and the terminology used in the new legislation also raised questions on the predictability of norms. No empirical data is available on the results of such inspections.

A senior prosecutor added⁵⁵⁸ that the prosecution office makes efforts to detect and prosecute those prosecutors who have committed an act of bribery. Their goal is to show the deterrent effect of a greater punishment on those working at the prosecution office. Police corruption is not an unknown phenomenon. Although the statistical collection of data is methodologically problematic, it can be stated that annually around 30 to 50 offences⁵⁵⁹ (of bribery) are registered in the statistics committed by police officers. Offences such as forgery of administrative documents are often related to corruption. Annually, police staff committed between 25 and 62 cases per year over the last ten years.⁵⁶⁰ A former police officer⁵⁶¹ drew attention to serious institutional problems, namely the lack of protection of staff members who report bribery of their colleagues, and the conflict of interest of police commanders between detecting bribery and reporting the integrity of the police body to their superiors. It has to be stressed that although several officials have to declare their assets regularly, this has not lead to any successful investigation or prosecution in previous years, which shows that the practice of declaration of assets is inefficient.⁵⁶²

Corruption Prosecution

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Score: 75

In the previous 30 years, the number of registered offences of bribery ranged from between 400 and 1000 annually, though it never exceeded 1400.⁵⁶³ An offence is registered not when the alleged offence becomes known to a criminal justice agency. The registration requires a decision of a criminal justice agency, and as a result, the registration in the statistics takes place months after the alleged offence is reported. In

558 Interviewee 3

559 Ten years ago it was around 70-80 annually.

560 Ministry of Justice Department of Statistics and Analysis (2010): Az ezredfordulót követő büncözési helyzet, p. 27.

<http://crimestat.b-m.hu/B%C5%B1n%C5%91z%C3%A9si%20helyzet%C3%A9rt%C3%A9kel%C3%A9s.pdf> [accessed 16 June 2011]

561 Interviewee 2

562 See the article of Hack, Péter in Nepszabadsag, 16 January 2009.

http://nol.hu/velemeny/lap-20090116-20090116_korai-1 [accessed 16 June 2011]

563 For the numbers see the information at BCE Corruption Research Centre: http://www.crc.uni-corvinus.hu/download/korrupcios_buncselekmenyek_1972_2009_100428.xls [accessed 16 June 2011]

2009, the number of registered offences almost reached 1000, but in 2010 it dropped by almost 50%. This however shows not that there is effective crime prevention in the field of bribery, but rather the latency of corruption. According to the most “pessimistic” estimations, only one in every 1000 cases is prosecuted.⁵⁶⁴ A senior police researcher⁵⁶⁵ estimated that latency in economic bribery is high, but also that the number of unreported incidents of bribery by public officials is relatively low.

The number of registered bribery offences could be seen as low when compared to the corruption perception data. In a comparative survey, the levels of perceived corruption were above average in Hungary⁵⁶⁶: 90% of the population thought that corruption was a major problem in both 2003 and 2007.⁵⁶⁷

Offences of corruption are hard to detect and investigate. The criminal justice agencies in general endeavour to investigate such cases efficiently. One major problem is the lack of effective detection of the offences.⁵⁶⁸ Controlling agencies, such as the State Audit Office, the Government Control Office, the Agency for the Control of EU-Subventions, were able to detect some of the alleged corruption. However, the number of applications to police or prosecution offices remains very low. Those cases which are successfully prosecuted are mostly minor ones involving street-level police corruption. The imposed punishments - mostly suspended imprisonment- also supports this conclusion.⁵⁶⁹ In a positive development, in 2010, the media reported some major cases, which are currently being prosecuted.

564 GKI Gazdaságkutató Zrt: *Korrupció és közbeszerzési korrupció Magyarországon*, p. 8.
http://www.kozbeszerzes.hu/static/uploaded/document/Korrupci%C3%B3s_k%C3%B6zbeszerz%C3%A9si_kutat%C3%A1s_Magyarorsz%C3%A1gon_I_k%C3%B6tet.pdf [accessed 16 June 2011]

565 Interviewee 1

566 Keller, Tamás and Sík, Endre (2009): *A korrupció észlelése, gyakorlata és elfogadása*. In: *Tárki Társadalmi jelentés* pp. 167.
http://www.tarki.hu/hu/research/gazdkult/gazdkult_keller_sik.pdf [accessed 16 June 2011]

567 Antikorrupciós Koordinációs Testület jelentése 6.0. verzió, detailed results of the Gallup-study: http://www.gallup.hu/gallup/monitor/kutatas/030318_korr.htm [accessed 16 June 2011]

568 Interviewee 1. Further information: Finszter, Géza, Mészáros, Ádám, Dunavölgyi, Szilveszter (2009): *Eredményes bizonyítási eszközök a vesztegetés miatt indult eljárásokban*. Országos Kriminológiai Intézet, Budapest, 2010 (kutatási jelentés)

569 Summary of a recent study conducted by Agnes Gimesi. *Corruption and Criminal Justice* an Interview with Péter Hack.
<http://www.k-monitor.hu/eszkozta/szakertok/korrupcio-es-igazsagszolgalattas-interju-dr-hack-peterrel> [accessed 16 June 2011]

6. ELECTORAL MANAGEMENT BODY

Summary

Both bodies of the 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 for citizens, in practice, thereby exceeding expectations. The National Election Committee's role can be assessed during referenda and electoral periods, and in cases of legal remedies. The capacity of both bodies could be elevated to a higher level (both the NEO and the NEC functions at a country level, with local offices). However, this national-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.

Their independence, as the head of the office is appointed by the minister is not complete, but their operations are carried out with a focus on impartiality. Despite some light modifications in August 2010 to Act C of 1997 on Electoral Procedure, the operative functions and the means of carrying out those functions have remained the same. The weakest part of the law regulation is the campaign finance regulation: the most recent OSCE/ODIHR⁵⁷⁰ report identified important gaps that do not allow the election management body to act and react effectively. Similarly, the latest inquiry of Transparency International defined problematic points.

Electoral Management Body Overall Pillar Score: 72 / 100			
	Indicator	Law	Practice
Capacity 69 / 100	Resources	75	75
	Independence	50	75
Governance 83 / 100	Transparency	100	100
	Accountability	100	75
	Integrity Mechanisms	50	75
Role 63 / 100	Campaign regulation	25	
	Election administration	100	

⁵⁷⁰ OSCE/ODIHR Election Assessment Mission Report, Parliamentary Elections 11 April 2010, Republic of Hungary. (Warsaw: OSCE/ODIHR August 2010), p. 9.

Structure and Organisation

In Hungary, the responsibilities of the Election Management Body are divided between two different bodies. The National Election Office of Hungary (NEO) is the administrative body that is responsible for the preparation, organisation and implementation of elections; transmitting of non-partisan information of constituents, candidates, and nominating organizations; handling election information; providing necessary technical conditions and monitoring legal requirements and guarantees according to relevant regulations that are observed.⁵⁷¹ The National Election Committee (NEC) has general and specific duties and authorities. In general, the NEC is responsible for issuing a statement to ensure a uniform interpretation of the regulations and legal practice with respect to the elections; taking decisions on appeals submitted concerning the activity of the election office; taking decisions on appeals against the decisions of the regional election committees; ascertaining and publishing the results of the elections evaluated nationally and initiating the decision of the body of authority in the event of any legal violation.⁵⁷² By the regulation of Act C of 1997 on the Electoral Procedure, special duties and authorities are allocated by types of elections.⁵⁷³ In the case of national referendums, or national popular initiatives, the decision-making authority is also the NEC. In particular, the NEC takes decisions on the validation of the signature-collection sheet, or the particular question, checks the signatures submitted, approves the data content of the ballot papers of a national referendum, and then these are followed by general duties to be applied in any electoral processes (e.g. ballot counting at the polling stations, assessing the election/referendum result, issuing a report of the election/referendum, taking decision on appeals, and finally reporting on the voting process to Parliament).⁵⁷⁴

In Hungary, electoral authorities are structured on four levels: national, regional, constituency and polling station. Each level has (1) an election committee composed of elected and party-nominated members, and (2) a corresponding election office (composed of civil servants) in charge of providing logistical and administrative support to the election processes.⁵⁷⁵

On the national level, the National Electoral Committee and the National Electoral Office are the superior bodies of the regional/local ones. There are two regulations that shape the election processes and the electoral system: Act XXXIV of 1989 on the Election of Members of Parliament (hereinafter the Election Law, determining the electoral system and election methodology) and Act C of 1997 on the Electoral Procedure (hereafter Procedural Law, regulating the electoral processes' procedures and declaring the bodies who are responsible for conducting the elections). The Procedural Law⁵⁷⁶ strictly regulates the formation, powers and responsibilities of the different bodies.

571 <http://www.valasztas.hu/en/ovi/index.html> [accessed 11 May 2011]

572 <http://www.valasztas.hu/en/ovb/index.html> [accessed 11 May 2011]

573 Act C of 1997 on Electoral Procedure (abstract issue) - Chapter V, Chapter XI Art. 90/A, Chapter XII Art. 105/A B, Chapter XI/A Art. 115/J, Chapter XII/B Art. 115/P. Source: http://www.valasztas.hu/en/onkval2010/347/347_1_4.html [accessed 4 April 2011]

574 <http://www.valasztas.hu/en/ovb/index.html> [accessed 11 May 2011]

575 OSCE/ODIHR Needs Assessment Mission Report, January 27-29th, 2010, (Warsaw: OSCE/ODIHR February 2010), p. 3.

576 Chapter V, Act C of 1997.

The NEC is composed of five elected members and necessary alternate members (one for the time being), nominated by Parliament based on the recommendations of the minister responsible for conducting elections. In addition to these 5+1 members, all parties with factions in Parliament can delegate one representative to the NEC.⁵⁷⁷ Members of the NEC shall be elected and nominated 42 days prior at the latest to the polling day of the (1) general elections (parliamentary elections); the (2) European Parliamentary elections; and the (3) local elections.⁵⁷⁸ The mandate of the NEC members shall last until the statutory meeting of the next National Election Committee set up for one of the next referred to above elections (general, EP, local), although there are certain stipulated exceptions.⁵⁷⁹ The former head of the National Electoral Office highlighted during the interview⁵⁸⁰ that the mandate period of the NEC members was changed in 2010 based on a ministerial decree.⁵⁸¹ The general electoral law⁵⁸² was modified after the 2010 general elections in July 2010, and the local elections of 2010 already followed this decree. The former head of the NEO added that after the declaration of such ministerial regulations these infiltrate to the body of the general law.⁵⁸³ “The NEC is an independent deliberative body responsible for ensuring the fairness, impartiality and legality of the election process”.⁵⁸⁴ The head and the members of the NEO are nominated by the minister for an undefined period. The NEO provides the administrative management of the election processes and comes under the Ministry of Public Affairs and Justice (former Ministry of Local Government).

Assessment

Resources (Law/Practice)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

Score: 75

The Procedural Law briefly defines sources of the NEO and the NEC. Both the former head⁵⁸⁵ of the NEO and the Internal Expert of the National Election Committee⁵⁸⁶ emphasised that only the National Electoral Office is a budgetary subject in the state budget, the National Election Committee does not even have an office, and only their elected members receive some salary. In accordance with the Procedural Law, the former head of the NEO⁵⁸⁷, confirmed that the NEO is the managing body of election operations in Hungary, and the budget of the NEO is a general item of each budgetary

577 Art. 23 (4), Art. 25 (1) Act C of 1997

578 Art. 23 (6) Act C of 1997

579 Art. 26, Act C of 1997

580 Interview of Emilia Rytko with the author, Budapest April 4 2011. Mrs Rytko was the head of the National Electoral Office between 2002-2011. She resigned in March 2011.

581 4/2010. (VII. 16.) decree of the Ministry of Public Administration and Justice, source: http://www.valasztas.hu/hu/onkval2010/456/456_3_1.html [accessed 18 April 2011]

582 Chapter V, Act C of 1997

583 Letter of Emilia Rytko to the author, 9 April 2011

584 OSCE/ODIHR, February 2010:4.

585 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

586 Interview with an Internal Expert of the NEC, Budapest, 18 April 2011

587 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

period of Hungary, allocated by the government. The budget is shaped according to figures presented in advance: in addition to its electoral operations, it also includes a separate part for unforeseen and/or other operations. The Procedural Law⁵⁸⁸ states that the central budget shall cover expenses related to implementing the state's responsibilities to prepare and conduct elections, as defined by Parliament. The State Audit Office oversees and reports how this money is used.

Regarding personnel, until August 2010 the National Election Committee operated with permanent members whose mandate lasted for four years. Since August 2010, when the ministerial decree of 4/2010 (VII.16.)⁵⁸⁹, came into force, members of the NEC have been nominated/elected to only one full election period (from 42 days prior to the election day to 42 days maximum prior to the next (1) general; or (2) local; or (European Parliamentary) elections. The Internal Expert of the NEC admitted⁵⁹⁰ that this regulation may be problematic in 2014 when both local, general and European Parliamentary elections are scheduled to be held. He said it would be better to have a more permanent body, because according to this regulation the NEC of Hungary does not operate with fully permanent members. This new regulation definitely weakens the NEC in terms of sustainability and permanency, and can be considered as a step backwards instead of a development. On the other hand, the NEO's staff, including the head of the office, is nominated for an undefined period, and as such, the professional administrative body functions with a permanent staff. The staff of the NEO works within a well organised structure, managing different operations, such as administration, finances and logistical/technical issues. The former head of the NEO⁵⁹¹ mentioned that the NEO works with a well-prepared staff and the Office can contract as many persons as necessary. The staff is well educated, and gender policies are taken into account. Ethnic and minority groups are under-represented, and there is no legal regulation over this issue - our interviewees did not mention this concern either.

Regarding the issue of archiving and maintaining a transparent institutional memory, the website of the NEC and NEO (one website is dedicated to both bodies) contains very detailed information of previous elections and referendums. It collects the relevant laws, regulation and ministerial decrees, as well as guiding materials and institutional information on both the NEC and of the NEO, available in English.⁵⁹² Only the NEO offers career development, and only to some extent; training courses considered necessary are defined in the Procedural Act of 1997.⁵⁹³ Personnel of the NEO, depending on their department, can participate in national and international events (e.g. training, conferences, workshops and seminars).⁵⁹⁴

The former head of the NEO highlighted that the EMB of Hungary has sufficient facilities to conduct its work according to the legal regulations.⁵⁹⁵ The English part of the website

588 Art. 5, Act C of 1997

589 http://www.valasztas.hu/en/onkval2010/347/347_2_2.html [accessed 18 April 2011]

590 Interview with an Internal Expert of the NEC, Budapest, 18 April 2011

591 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

592 www.valasztas.hu [accessed several times, last time on 19 April 2011]

593 Art. 37 d), and Art. 153 c), Act C of 1997

594 Personal experience of the author.

595 Art. 21 and 35 (1), Act C of 1997, and 4/2010 (VII. 16.) decree of the Ministry of Public Administration and Justice, source: http://www.valasztas.hu/hu/onkval2010/456/456_3_1.html [accessed April 18 2011]

of the EMB is updated as regularly as the Hungarian one (NB: documentation on recent elections, such as the European Parliamentary elections of 2009 or local elections of 2010 is still missing). The EMB has an adequate resource base to meet its goals, both in terms of financial and human resources; however, the latest regulation, which defines that the NEC shall be renewed before each election, weakens the NEC.

Independence (Law)

To what extent is the electoral management body independent by law?

Score: 50

Neither the Procedural Law, nor the Election Law highlights the independence of the election management bodies clearly. As the head of the NEO is appointed directly by the minister, his/her independence is questionable. This issue is not on the table for the present, because the Electoral Office always reacted impartially in questionable cases, as the former head of the NEO stated in the interview.⁵⁹⁶

The Procedural Law⁵⁹⁷ regulates that only citizens with registered addresses in Hungary can be members of local/regional/national electoral committees. Members and heads of the electoral offices at every level are civil servants: at the regional and local level these offices are headed by the county and local clerks. The same law⁵⁹⁸ declares that election committees, at every level, are citizens' independent bodies subject to nothing but the law. Moreover, during the term of its operation, any election committee is deemed to be an authority and its members are considered to be public officials. "President of the Republic, public officials such as local clerk, mayors, and members of election offices, civil servants of administrative bodies or party candidates cannot be part of the election committees".⁵⁹⁹ At the national level, as parties of the parliament can delegate one member to the NEC, the situation is different. As a matter of fact, election committees for any level are independent bodies, overseen by the National Election Commission and National Election Office, as an electoral office has to operate alongside each election commission that exists in the country in order to manage logistics.⁶⁰⁰

The Procedural Law does not mention independence in these articles. It strictly defines the duties of both election bodies for each possible election (local, general and European Parliamentary). The former head of the NEO⁶⁰¹ added that the budget of the NEO is part of the budget of the Ministry of Public Affairs and Justice (former Ministry of Local Government). The actual Constitution of Hungary only describes the Basic Principle of Elections.⁶⁰²

596 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

597 Art. 21, Act C of 1997

598 Art. 21, Act C of 1997

599 Art. 22 (2) (3), Act C of 1997

600 Art. 35 (2) Act C of 1997

601 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

602 Constitution of the Republic of Hungary (abstract issue), [Act XX of 1949 as revised and restated by Act XXXI of 1989]. Source: http://www.valasztas.hu/en/onkval2010/347/347_1_5.html [accessed April 15 2011]

Naturally, as the head of the NEO is nominated by the minister, the head of the NEO is independent from the government only in some regards. The former head of the NEO admitted during the interview⁶⁰³ that this process of nomination obviously does not allow the appointed person to be completely independent from the government, as the minister chooses a professional whom he/she trusts. However, as a public officer, the head of the office is first and foremost a public servant, who serves the interests of the public, and he/she is not there to serve the interests of the government, as the unwritten policy of civil servants/officials suggests.

Operations of both the committees and offices at national and county/local/constituency level are strictly determined, and staff members demand that its operations be impartial and transparent.⁶⁰⁴ This Procedural Law also stipulates that the electoral procedure must be made public.⁶⁰⁵ Based on the above, there is a clear division of powers between electoral committees and electoral offices. Recruitment of new staff is only stated at a procedural level, and there are no professional criteria regulating it.

The Procedural Law of 1997 only partly regulates the method of dismantling a committee or dismissing a member of the committee or the elections office. It describes how the committee shall be dismantled in the event of a change of statutory conditions, and in the case of ascertained incompatibility of its members and/or resignations.⁶⁰⁶ Regarding the election offices, it only states that if any reason of exclusion were to arise against any head of any election office, the person should immediately make this reason known to the head of the superior election office, and the head of the National Election Office to the minister, who shall appoint a new head of office. Members of electoral offices shall immediately inform the heads of their respective offices if any reason for excluding them arises.⁶⁰⁷

The Procedural Law does not regulate the removal of an electoral committee or electoral office member. The Law only states that individuals, who are members of electoral committees or electoral offices are only subject to the law, and they are otherwise independent.⁶⁰⁸

Independence (Practice)

To what extent does the electoral management body function independently in practice?

Score: 75

The electoral administration of Hungary generally functions in an impartial, accountable and efficient manner, and as such is independent from politics, because the process for nominating staff is sound. The government and the minister nominate staff members, and as such, by nature leaders cannot be completely impartial.

603 Interview of Emilia Rytko with the author, Budapest, April 4th, 2011

604 Art. 38, 90/A, 105/A, 115/I, 124/A, 131/A, 143/A, 148/A, Act C of 1997

605 Art. 87, Act C of 1997

606 Art. 26 (4), Act C of 1997

607 Art. 37 (3) Act C of 1997

608 Art. 21 (1), Act C of 1997

The independence and impartiality of the election management bodies - both at regional/local/constitutional and country levels - are not questioned by the citizens, and it is mostly taken for granted. The former head of the NEO highlighted that, even though the head of the NEO is appointed by the Minister, the Office needs to carry out its work impartially.⁶⁰⁹ On the other hand, sometimes at the local levels a local clerk, who is the head of the local election office, will support a certain candidate and tries to favour him/her in order "to keep his/her position after the elections as well".⁶¹⁰ The professional operations of the NEO are controlled by the minister through the head of the Office. The head of NEO controls the operations of county/local election offices⁶¹¹ and has the right to instruct the heads of these lower level offices.

The former head of the NEO mentioned that all staff members of both the NEC, the NEO and at county/local levels respect the unwritten rules of conduct, and in most cases it guarantees impartiality in a very neutral way.⁶¹² In some cases, more so at county or local level, some bias can be detected, as people working there are more dependent on their closer and more closed social circles compared to their colleagues in Budapest. The Internal Expert of the NEC added⁶¹³ that in the case of party delegate members of the committees such impartiality does not exist, because they usually represent the interests of the body that delegates them.

Both the NEC and the NEO function in a highly professional manner and their activities are regulated by the (1) Procedural Law of 1997 and (2) by the Ministry. Senior staff is appreciated, and it is very unusual to remove them before their mandates expire, especially at the local level. The former head of the NEO could not recall any example of a case where partisan statements were issued publicly, or where committee or office members were engaged.

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Score: 100

The second chapter of the Procedural Law is dedicated to describing how the electoral procedure must be published. This regulation is an extensive provision for the election management bodies, because in essence it states that all operations and activities of the election committees are public, except for the statutory exceptions.⁶¹⁴ Some of these operations/decisions have to be published in the Governmental Gazette (e.g. names of the members and heads of the committees, etc), other information is to be sent to the citizens directly and/or must be published on the official website of the EMB. This article also

609 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

610 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

611 Art. 39 (1) and (2), Act C of 1997

612 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

613 Interview with an Internal Expert of the NEC, Budapest, 18 April 2011

614 Art. 6, Act C of 1997

states that in order to ensure the transparent operations of the electoral office, announcements to inform voters must be issued (e.g. time and venue of voting, candidates, posting of the electoral roll, method of voting, results of the election) in general. This is the article that also regulates how and when observers can be registered to observe the elections.

Electoral offices and committees must publish decisions concerning the designation of the electoral districts, and in a way that it is accessible to every citizen⁶¹⁵, for example, on the website of the NEC and the NEO. In addition, the activities and transparency regulations are binding for local/regional bodies, according to the electoral law. Electoral offices do not review issues related to party and candidate financing. In the case of legal remedies, the local, regional and/or the National Election Committee shall review the issue in the first instance. However, there is no ordinance in place that compels the NEC to publish figures related to campaign financing; it is not part of their operation. Each nominating organisation and independent candidate shall publish the amount, the resource and the method of utilisation of state subsidies and other funds, and financial support spent on the elections in the Official Gazette of Hungary, within 60 days following the second round of the elections.⁶¹⁶

Transparency (Practice)

To what extent are reports and decisions of the electoral management body made public in practice?

Score: 100

All relevant bodies strictly comply with the law regulation concerning the publicity of operations and activities of the EMB of Hungary. The official website of the EMB includes a section dedicated to the NEC and another one for the NEO. The site is also translated into English; however, the Hungarian site is more regularly updated with reports than is the English version. The former head of the NEO highlighted that the NEO has always paid great attention to publishing the necessary documents on time, because this significantly contributes to the public affirmation of the activities of the EMB.⁶¹⁷

In non-election periods, there is no need for regular press conferences, as the operation of both bodies enjoys the trust and acceptance of the public, because all of the activities can be accessed by every citizen. During an election period, or in any questionable case, both the Internal Expert of the NEC and the head of the NEO give press conferences to maintain this confidence and public trust.

The schedule of election operations are generally made public, as stipulated by the Procedural Law.⁶¹⁸ The official website of the EMB⁶¹⁹ includes all relevant information of public utility in Hungarian, such as contact information, heads of offices, NEC members,

615 Art. 10 (2), Act C of 1997

616 Art. 92 (2), Act C of 1997. Additional data sources: the official website of the EMB of Hungary - www.valasztas.hu (official reports, record of official decisions, etc.).

617 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

618 Art. 38, Act C of 1997

619 www.valasztas.hu [accessed 18 April 2011]

institutions above or below the main offices, the controlling body of the EMB, basic activities and duties of the EMB, registers of the EMB, public issues, decisions and sessions. Legal regulations, procedural changes and ministerial decrees are also available on the official website. Citizens can contact both national bodies of the EMB by phone or via email, or via post without no difficulty.

At the local level, transparency is ensured by the head of the NEO, who can instruct the head of the regional/local offices upon demand. The Procedural Law also expresses that the sessions of the NEC are open to the public, and citizens may enter and observe them.⁶²⁰ This does not apply to the operations of the NEO. The former head of the NEO added⁶²¹ that normally a NEO representative informs the NEC of the operations and activities of the NEO during these sessions.

The OSCE/ODIHR report⁶²² also states that even if it is not regulated by the Law, the NEC usually publishes the resolutions of their decision; however, they only need to inform the relevant parties of their decisions. The Internal Expert of the NEC added⁶²³ that even though there was no provision regulating the decision-making process of the NEC, they published the course of the sessions on the website, in order to inform citizens who might be interested.

Accountability (Law)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

Score: 100

By law, the Ministry of Public Affairs and Justice (former Ministry of Local Government) supervises and controls the budgetary issues, activities and operations at the highest level of the election management bodies in Hungary (National Election Committee and National Election Office).⁶²⁴ The NEC and the NEO oversees the lower level committees and offices (regional/local). In general, it is the State Audit Office that informs Parliament on the use of monetary assets allocated by Parliament to the NEC and NEO to prepare and conduct elections through the ministry.⁶²⁵

The Procedural Law regulates the general method of preparing reports on the activities of electoral committees. The electoral committees operate as a body, and minutes of all sessions have to be prepared.⁶²⁶ Decisions of the electoral committees are decrees that have to be written on the same day that they are taken (in case of complaints).⁶²⁷ The

620 Art. 6 (1), (7), Act C of 1997

621 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

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

623 Interview with an Internal Expert of the NEC, Budapest, 18 April 2011

624 Art. 153, Act C of 1997

625 Art. 5, Act C of 1997

626 Art. 29, Act C of 1997

627 Art. 29/B, Act C of 1997

electoral committee must communicate the decree in the quickest way possible to the relevant person, and the committee must also make it public.⁶²⁸

The provisions also stipulate that every electoral committee (at the polling station level) needs to prepare minutes on the counting of the ballots and the determining of the electoral district and electoral results. They must prepare two original documents signed by the members of the ballot counting committee who are present. The electoral committees can give one copy of the prepared minutes without any charge to each representative of the candidate upon request. After copying, the chairman of the committee authenticates each copy. The committee immediately transports the minutes, along with the results and all related election documents, to the local election office, and until three days after the polling day, one copy of the minutes remains at the local election office for inspection in case of an appeal (along with other election materials). After 90 days, with the exception of the minutes, all of these documents can be destroyed. Once these 90 days have passed, the local electoral office can send the minutes to the relevant archives.⁶²⁹

Appeals shall address that election committee, which adopted the contested resolution,⁶³⁰ and the committee needs to receive this appeal within two days by the latest from the adoption of the resolution. The committee has to decide the case of the appeal within two days from the receipt of the complaint.⁶³¹ Both the former head of the NEO⁶³² and the Internal Expert of the NEC⁶³³ emphasized how unlikely it was to change the regulation in August 2010. Previously, a three days period was given to investigate and decide the appeals, which was reduced to two days. This short period only makes it possible to investigate the obvious issues, because there is no time for a more intensive investigation.

At the national level, the NEC and the minister must report the electoral results and operations to Parliament.⁶³⁴ The former head of the NEO added in the interview that according to her knowledge, no supervisory instructions exist to oversee the operation of the election management bodies.⁶³⁵ Any activities of the electoral operations can be subject to complaints. Therefore, legal remedies are applicable for all bodies, for any activity, and in such cases, appeals may reach the judiciary level. As such the courts review the operations of the EMB. The Procedural Law contains provisions toward appeals and legal remedies, and it also regulates the EMB's relationship with the media⁶³⁶ referring issues during the campaign period. Only the electoral committees at the national level and the courts can participate in redressing electoral irregularities. Parties and candidates cannot participate.

628 Art. 29/C, Act C of 1997

629 Art. 74-75, Act C of 1997

630 Art. 80, Act C of 1997

631 Art. 77, Act C of 1997

632 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

633 Interview with an Internal Expert of the NEC, Budapest, 18 April 2011

634 Art. 90/A (4) m), 99/K (5) o), 105/A (4) f); 115/I (8)b); 115/P (5) j); 124/A (3) l); 153/(3), Act C of 1997

635 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

636 Art. 44 and 44/A, Act C of 1997

Accountability (Practice)

To what extent does the EMB have to report and be answerable for its actions in practice?

Score: 75

The OSCE/ODIHR election observation mission report states⁶³⁷ that “while the election administration forms a very complex structure, it enjoys public confidence and the interlocutors of the OSCE/ODIHR EAM considered the electoral management body as competent and non-partisan”.

Though the committees must handle complaints and appeals within an extremely short time (within two days they need to precede a decision⁶³⁸), the mechanism functions rather well, from low levels up to the national level of judiciary decisions. The former head of the NEO highlighted⁶³⁹ that given that the period of the decision making process is strictly limited, there is only time to deal with the most relevant cases and difficulties may arise within these mechanisms. At the lower levels, the committee may be composed of more lay persons, usually guided by the local clerk, as election committees do not have any investigative powers; they are called to decide upon complaints based solely on the evidence provided by the complainant. As a consequence, speed is sometimes the most important factor in the lowest appeals, because of this time pressure. She also added that the manner of dealing with complaints is still at a very high level, and committees and courts are effective in resolving such issues.

The NEO and NEC not only make the methods of the complaint process public on the website of the EMB, but they also publish every decision of the NEC, and these are accessible to every citizen.⁶⁴⁰ The necessary report requirements established in the Procedural Law are well kept, as the minutes are the foundation of any appeal against the decisions of any committee (also at the lower levels). According to the most recent OSCE/ODIHR report, “the vast majority of complaints filed with election administration by political parties and individual voters pertained to breaches of election campaign regulations including campaign silence”.⁶⁴¹ The NEO usually prepares a short report of the past elections, based on the information submitted to the NEC and NEO by the constitutional/local/regional electoral committees and electoral offices, despite the fact that the Procedural Law of 1997 does not stipulate this.

637 OSCE/ODIHR August 2010, p. 8.

638 Art. 77, Act C of 1997

639 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

640 www.valasztas.hu [accessed 18 April 2011]

641 OSCE/ODIHR August 2010, p. 20.

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Score: 50

At present, there is no code of conduct for electoral officials and employees of the electoral administration or committee. However, there seem to be unwritten rules of conduct for public officers/servants in most cases amongst the NEC and NEO members, as it is partly connected to the vows that the officers take, also at lower levels, according to the former head of the NEO.⁶⁴² In the meantime, the absence of such a code of conduct in some cases may end up favouring one candidate. She admitted that if such a code were to exist, questionable cases could be dealt with more effectively. The Internal Expert of the NEC also confirmed⁶⁴³ that there is an absence of such a code of conduct; however, he does not see it as a problem, because overall, the levels of integrity of both bodies are deemed satisfactory.

The Procedural Law states who can be members of the electoral committees and of the electoral offices from the lowest levels up to the national level. Only those voters who have permanent addresses in the constituency may serve as members of the election committee, and only voters having a permanent address in the town may serve as members of local electoral committees.⁶⁴⁴ The law also states that the following individuals are ineligible to be elected as members of an electoral committee: President of the Republic, state leaders, heads of administrative offices, representatives, chairmen of county general assemblies, mayors, county/capital clerks, members of electoral offices, civil servants of administrative bodies operating in the area of competence, members of organisations nominating candidates in the constituency, and relatives of candidates running for office in the constituency. Concerning electoral offices, the law states that only public officials and civil servants may be delegated to the electoral office as members.⁶⁴⁵ The following individuals are not allowed to serve as members of the electoral office: representatives, chairpersons of county general assemblies, mayors, members of election committees, candidates running for office in the constituency and their relatives, or members of organisations that nominate candidates in the constituency. The members of the electoral committee must swear an oath in the presence of the competent mayor, the mayor of the national capital, the chairperson of the county general assembly, or the speaker of Parliament.⁶⁴⁶ In terms of election offices, heads of the election offices are to take an oath in the presence of the head of the superior election office. Delegated members of the electoral office and the head of the NEO have to take an oath in the presence of the official who delegates them.⁶⁴⁷ The text of the oath is official and it is the same for both committee and office members/staff.⁶⁴⁸ In the oath, they commit to complying with the Constitution of the Republic of Hungary, and the Law of Electoral Procedures (Act C of 1997).

642 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

643 Interview with an Internal Expert of the NEC, Budapest, 18 April 2011

644 Art. 22, Act C of 1997

645 Art. 37, Act C of 1997

646 Art. 28, Act C of 1997

647 Art. 36 (2), Act C of 1997

648 Annex 1 to the Act C of 1997 on Electoral Procedure

Integrity (Practice)

To what extent is the integrity of the electoral management body ensured in practice?

Score: 75

In practice, the behaviour of members of NEO is controlled by the minister and head of the office. For example, officers are currently not allowed to report any issue without the approval of the head of the office. Ethical behaviour follows the unwritten policies of public administrators/officers. Based on the legal provisions, the electoral committees or the judiciary can apply sanctions if an appeal is proven, for example, in cases of campaign bias in the media.⁶⁴⁹ In the event of investigations, if necessary, it is possible to organise a hearing, and it is also possible to appeal the election results.

Committee and office members/staff swear to the oath under highly formal conditions, and the oath is taken very seriously.⁶⁵⁰ Public servants do not need to swear to an oath. Integrity, in practice, is mostly the same as integrity according to the law; it does not differ from the legal regulation, as “all letters of the law are kept”⁶⁵¹ by both bodies, including those at lower levels. The former head of the NEO added that the NEO provides training to the lower level election committees and office members too, in most cases via distance and/or electronic learning, and these have been successful during the last decade. Staff and members of the committees/offices are trained, and misbehaviour may be sanctioned; however, there are no existing regulations (only an unwritten code of conduct exists).

Campaign regulation

Does the electoral management body effectively regulate the candidate and political party finance?

Score: 25

Act C of 1997’s campaign regulation states that the campaign period lasts from the call of the election to the beginning of the polling day, and campaigning is prohibited on the Election Day from 0:00 hrs until 19:00 hrs.⁶⁵² It also regulates the use of radio and television and for transmitting political messages through posters. Radio and television stations, during a campaign, may publish political advertisements under equal conditions for nominating organisations and candidates. Adding an opinion or an assessment to these advertisements is prohibited.

An OSCE/ODIHR report⁶⁵³ states that the present campaign financing system “lacks fundamental elements of meaningful transparency and accountability”. In line with this OSCE/ODIHR report, the former head of the NEO⁶⁵⁴ agreed that there is an emerging consensus that the existing campaign finance system is due for a review and a renewal.

649 Art. 44/A, Act C of 1997

650 Act XXIII of 1992 on the Legal Status of Civic Servants, source: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99200023.TV [accessed 17 April 2011]

651 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

652 Art. 40, Act C of 1997

653 OSCE/ODIHR August 2010, p. 16.

654 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

In 2006, there was an attempt to change the existing regulation, but it failed, as it could not gain the necessary two-thirds majority in Parliament. The former head of the NEO highlighted that the existing situation is very ambiguous, because parties usually adjust their budgets to meet the exact ceiling of funding that they are allowed to spend according to the legal regulations. Nominating organisations and political parties must publish a report of their campaign expenditure⁶⁵⁵ within 60 days following the second round of the parliamentary elections in the Official Gazette of Hungary.

The main problem with campaign finance is that the Procedural Law sets the maximum sum⁶⁵⁶ of the campaign expenses at HUF 1 million per candidate (USD 5,394⁶⁵⁷). According to a general consensus, as well as the OSCE/ODIHR election report issued on August 9th, 2010, this amount is irrationally low, and none of the parties can stay within this limit.⁶⁵⁸ The former head of the NEO added that another reason for a lack of transparency is that there are no clear distinctions between the regular expenses of a party and the campaign budget. In addition, there are no clear provisions to determine identification of the sources of funding, and as such, using black money is not unusual in campaigning. The OSCE/ODIHR report⁶⁵⁹ suspects that these unidentifiable monies may come from foundations belonging to political parties. Parties are allowed to establish foundations after the elections to support the “development of the culture and for the enhancement of their scientific, research and educational activities”.⁶⁶⁰

The former head of the NEO⁶⁶¹ in line with the OSCE/ODIHR report admitted that undetected, unidentified funding does occur at local/county levels.⁶⁶² Unidentified donations and funding are commonly known and accepted.⁶⁶³ Parties are bound by the law to account for their finances⁶⁶⁴ only with respect to campaign expenditures⁶⁶⁴, and all other information on their finances is not public. On the other hand, the former head of the NEO highlighted that party interests may significantly influence the mass media and its relationship with the public. Even though the publication of parties’ financial data is in line with the legal regulation on local, regional and national level, gaps may occur, as minimum requirements may not be enough to inform the electorate. She concluded by saying that the media has an important role in carrying out public notifications/advertisements.

In 2007, Freedom House and Transparency International Hungary started to collaborate in order to foster the reform of the party and campaign financing with public support.⁶⁶⁵ As an important step of this joint effort, Transparency International Hungary conducted research on this topic. Professional materials and documents⁶⁶⁶, together with proposals

655 Art. 92 (2), Act C of 1997

656 Art. 92 (1) Act C of 1997

657 www.oanda.com [accessed 18 April, 2011]

658 See the campaign monitor scheme prepared by Transparency International and Freedom House to show the campaign expenditures by parties during campaign period before local elections in October 2011. Source: <http://kepmutatas.hu/kampanymonitor2/> [accessed 11 May 2011]

659 OSCE/ODIHR August 2010, p.16.

660 Act XLVII/2003 on the Foundations Helping the Scientific, Research and Educational Activities of the Parties

661 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

662 Interview of Emilia Rytko with the author, Budapest, 4 April 2011

663 Article of András Kósa: *What is the origin of the party-financing money?* source: <http://kepmutatas.hu/2010/10/01/ketmilliard-dot-illik-visszaszoztani-honnan-jon-a-penz-a-magyar-partokhoz-2/>, full article in Hungarian: http://hirszerzo.hu/belfold/20100927_partok_korrupcio_kampanyfinanszirozasi [both accessed 11 May 2011]

664 See chapter on campaign regulation here below.

665 <http://kepmutatas.hu/kik-vagyunk/> [accessed 11 May 2011]

666 <http://www.transparency.hu/uploads/docs/osszefogl.pdf> [accessed 11 May 2011]

and statements⁶⁶⁷, are available to the public on its website. The key points of the proposed campaign financing law are: 1) the introduction of a campaign-account for parties/candidates; 2) campaign periods should be shorter and more transparent in the mass media; 3) genuine monitoring and control over parties; and 4) shorter campaign periods.⁶⁶⁸

The State Audit Office (SAO) and the electoral committees review campaign and party financing reports and activities. The legal provisions pay insufficient attention to these issues, and as such, there is nothing that the SAO or any committee can do. No legal requirements exist to require the identification of the donors and this places a heavy burden on the control bodies.

Electoral Administration

Does the EMB ensure the integrity of the electoral process?

Score: 100

In August 2010, the OSCE/ODIHR published its commentary on the 2010 parliamentary elections of Hungary. They stated that “the 2010 parliamentary elections confirmed the democratic principles established over the past 20 years. The elections were conducted in a pluralistic environment characterized by an overall respect for fundamental civil and political rights, and high public confidence in the process. The competition took place on a generally level playing field, under a sophisticated electoral system. It was administered by professional and efficient election management bodies, including fully-fledged political party representatives”.⁶⁶⁹

In Hungary, there is a nation-wide population register, maintained by the Administrative and Electronic Public Services (COAEPS). COAEPS provides the IT systems of general elections since 1989, and it covers “the entire process of election events, starting from the setting up of districts and compiling electoral rolls through to determining the final legal result”.⁶⁷⁰

After an election is called, the voters’ list is compiled by the head of the local electoral offices by constituencies through the Personal Data and Address Register and the Register of Adult Disenfranchised Citizens. Based on this data, all citizens who have a registered address in the given election district will be listed on this electoral roll.⁶⁷¹ The Procedural Law indicates the necessary data that has to be included into the electoral list, which is called identification data. Forty-six days prior to the polling day, the electoral roll is publicly displayed for five days, without the personal identification codes. During this period, voters may check for their names in the voters’ list. Usually, the lists are displayed for the public on the local municipality building. In addition to this, the local electoral

667 http://www.transparency.hu/PART_ES_KAMPANYFINANSZIROZAS [accessed 11 May 2011]

668 <http://www.transparency.hu/uploads/docs/osszefogl.pdf> [accessed 11 May 2011]

669 OSCE/ODIHR August 2010, p. 1.

670 Source: http://www.valasztas.hu/en/parval2010/338/338_0.html The information technology system supporting the elections [accessed 19 April 2011]

671 Art. 12-13, Act C of 1997

office shall notify all eligible voters 45 days before the election at the latest that they were enrolled in the electoral roll.⁶⁷² Endorsement coupons, which are used for party and candidate registration, are sent to all eligible voters via post, together with this notification.

The electoral rolls can be modified upon the request of any omitted voter. The reason for the exclusion of some voters also could be that they had just reached voting age (18 years) after the completion of the voters' list, or they had just regained their voting right.⁶⁷³ Aside from this, the electoral roll is well-maintained by the head of the local electoral office. Some names may be deleted from the list, such as the names of individuals who have lost their right to vote (eg. being condemned to prison by a court), or if the voter expressed his/her willingness to vote in another electoral district, or because of an address change. According to the OSCE/ODIHR report from August 2010, before the 2010 parliamentary elections, the situation was as follows: "By the end of the update period, 271,807 modifications were introduced onto the voter lists. These included records of death, change of name, marriage, residence, citizens that were issued absentee voting certificates (AVCs), citizens that regained the right to vote after being disenfranchised and first time voters".⁶⁷⁴

Complaints by citizens can only be accepted during the five days of the public display period. Appeals have to be dealt with by the head of the local electoral office in one day, and if the head of the local electoral office dismisses the appeal, the issue is passed to the district court that must deal with the case within two days from its receipt.⁶⁷⁵

In practice, all electoral materials are counted and secured during the electoral process by the local electoral offices and committees. However, this is not regulated by the Procedural Law. It only makes reference to what must happen before and after the polling starts and during the day of polling.⁶⁷⁶ All materials, including the results, are accounted for in the minutes of the election committees/vote counting committees at polling station level. Provisions of each election process describe the necessary activities of the election committees and offices at every level, while the general process is described in Chapter IX of the Procedural Law. Accredited observers may be present during these activities: domestic, party delegated and international observers may be present, according to practice; however, there are no regulations on this issue in the Procedural Law. It only states that "representatives of the media may be present while the election committees are working, but may not disturb their activity" and discusses the case where observers from foreign representations are present.⁶⁷⁷ On the other hand, the official site of the NEC/NEO provides information for election observers (and to voters as well, of course) accessible in English.⁶⁷⁸ Election management bodies are effective and objective in validating election results. As a habit, official results are declared to the public by the head of the NEO.

672 Art. 14, Act C of 1997

673 Art. 15 Act C of 1997

674 OSCE/ODIHR August 2010, p. 11.

675 Art. 20/E, Act C of 1997

676 Chapter VIII, Act C of 1997

677 Art. 7 and 7/A, Act C of 1997

678 NEC/NEO official page, Information for observers - http://www.valasztas.hu/en/onkval2010/373/373_1.html [accessed 19 April 2011]

Only the NEO carries out some voter education programs; the NEC is not included to such activities. In 2009, prior to the European Parliamentary election, the NEO launched a website for first time voters⁶⁷⁹, together with a competition: the winners could spend a few days in Brussels. There are also some public materials, such as booklets and flyers that were prepared to inform young voters and encourage them to participate in the electoral process. Beside these activities, civic and non-governmental organisations play a very important role in reaching, informing and educating first-time voters.⁶⁸⁰

679 <http://www.elsovalasztto.hu/> [accessed 19 April 2011]

680 For example: youth programs of the Association of European Election Officials (ACEEEO) <http://www.aceeoo.org/en/special-projects/youth-voters-education> [accessed 19 April 2011]

7. OMBUDSMAN

Summary

The Hungarian multi-ombudsman system was an important constitutional achievement following the political transition. The general goal was clear: enhancing the mechanism for protecting citizens' rights. The number of specialised ombudsmen grew from the initial two to three by the enactment in 2007 of the Commissioner for Future Generations. Moreover, the institutional protection of information rights, data protection and the freedom of information, was a genuine constitutional innovation in Europe. The Data Protection Ombudsman was enacted before the European Law made the effective protection mandatory. This institutional set turned out to be a success that subsequently inspired other European countries' legislation, such as the United Kingdom.⁶⁸¹

The Hungarian Constitution that is currently in effect provides for the institution of one general and three specialised ombudsmen (also known as parliamentary commissioners). Apart from the Parliamentary Commissioner for Civil Rights (i.e., an ombudsman with general competence regarding fundamental rights), there are three specialised ombudsmen responsible for overseeing specific constitutional rights: the Parliamentary Commissioner for National and Ethnic Minority Rights, the Parliamentary Commissioner for Data Protection and Freedom of Information, and the Parliamentary Commissioner for Future Generations.⁶⁸² One of the interviewees, a former Data Protection Commissioner, described the situation as a "healthy combat between autonomous institutions".⁶⁸³

The Parliamentary commissioners are responsible for investigating cases involving the infringement of constitutional rights which come to their attention, and for initiating general or specific resolutions. The general and the specialised ombudsmen are equal and autonomous, and there is no hierarchy among them. However, this system is to be completely reshuffled by the new Hungarian Fundamental Law meant to come into force on 1 January 2012.⁶⁸⁴ The new Fundamental Law will bring about substantial changes to the legal guarantees and to its structure, involving 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, is to be 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

681 <http://www.ico.gov.uk/> [accessed 2 May 2011].

682 The Parliamentary Commissioner for Future Generations oversees the protection of the right to a healthy environment. [Act LIX of 1993, Art. 27/A para. 1].

683 Interview of László Majtényi, Chairman of the Eötvös Károly Policy Institute, and former Commissioner for Data Protection (1995-2001) with authors, 26 April 2011.

684 The new Fundamental Law is available in English at: http://www.mkogy.hu/angol/alaptv_angol_fidesz.pdf [accessed 2 May 2011].

role over the deputies, i.e. by leading the office of ombudsmen. However, as explained below, this should be clarified by law. The general ombudsman shall also be renamed as the “Commissioner for Fundamental Rights”.⁶⁸⁵

Second, the Fundamental Law shall abolish the sixteen year old institution of the Parliamentary Commissioner for Data Protection. Instead, the Fundamental Law establishes an administrative body 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 body is by definition part of the executive branch, notwithstanding the fact that its independence is declared by law. The lack of independence vis-à-vis the government of the administrative body charged with the protection of data is susceptible to go counter to the European law as well.⁶⁸⁶ It should be highlighted that the abolishment of an independent data protection and freedom of information ombudsman is a very negative change in the fight against corruption.

Ombudsman Overall Pillar Score: 69 / 100			
	Indicator	Law	Practice
Capacity 75 / 100	Resources	75	75
	Independence	75	75
Governance 71 / 100	Transparency	75	50
	Accountability	100	50
	Integrity Mechanisms	75	75
Role 63 / 100	Investigation	50	
	Promoting good practice	75	

Assessment

Resources (Law/Practice)

To what extent does an ombudsman or its equivalent have adequate resources to achieve its goals in practice?

Score: 75

According to the act on ombudsman-institutions (hereinafter: the Act), the operational costs of the ombudsman and of his/her office organisation, as well as the number of employees thereof shall be determined in a special chapter of the state budget.⁶⁸⁷ In

685 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 2 May 2011] as well as the annual report of the year 2009, p. 11. However, constitutional law experts have argued against the centralisation. Cf. 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 31 August 2011].

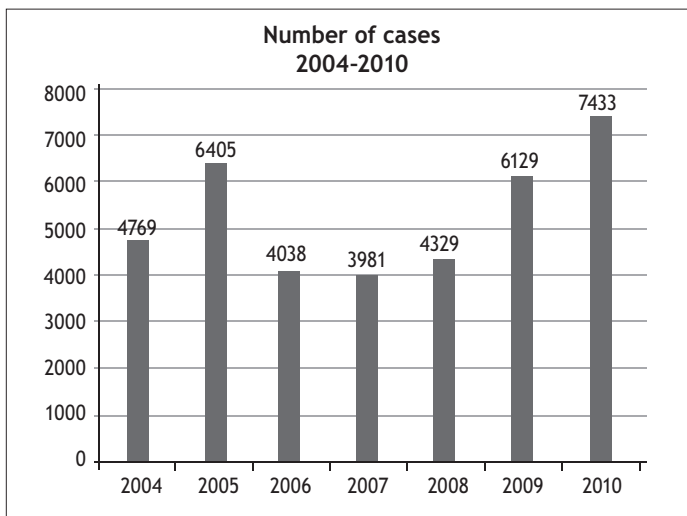
686 The Data Protection Commissioner raised this issue publicly after the adoption of the new Constitution. Cf. http://index.hu/belfold/2011/04/30/jori_mar_most_eu-s_jogot_sert_az_allam/ [accessed 2 May 2011].

687 Art. 28 (3), Act LIX of 1993

2011, the budget of the Parliamentary Commissioners' Office (the common office of the four ombudsmen) approved by Parliament was HUF 1.6 billion (USD 7.6 million).⁶⁸⁸ The remuneration of ombudsmen is adjusted to ministers' pay at the time.

As for human resources, in 2010 the Parliamentary Commissioners' Office had a staff of 168.⁶⁸⁹ The members of staff are civil servants (except for administrative and physical workers who are public employees), but they are entitled to remuneration supplement, and thus earn higher salaries than the average in the civil service.⁶⁹⁰ The vast majority of the staff hold a university degree (64% of the overall staff not including maintenance service employees).

According to one of the interviewees, there is no regular professional staff training in place.⁶⁹¹ Apart from those who joined the Office after the establishment of the Parliamentary Commissioner for Future Generations in 2008, there has been no significant change in the number of co-workers in the Office since 2004, even though the number of complaints has dramatically increased over the past few years: the number of cases registered in 2010 exceeded the number of complaints investigated in 2004 by 67%.⁶⁹² This tendency has resulted in such a heavy caseload (an average of 200 cases per co-worker over a one year period)⁶⁹³ that it became barely manageable with the human resources available.⁶⁹⁴



688 Budgets of Parliamentary Commissioners' Office in the recent years: HUF 1.3 billion (USD 6.2 million) in 2007 and 2008, HUF 1.6 billion (USD 7.6 million) in 2009, HUF 1.5 billion (USD 7.1 million) in 2010. (Official HUF/USD exchange rate of the National Bank of Hungary on October 15th, 2011 was 211,09.)

689 Report on the activities of the Parliamentary Commissioners for civil rights in the year of 2010, p. 25, available at http://www.obh.hu/allam/2010/pdf/ajob_beszamolo_hu_2010.pdf [accessed 29 April 2011].

690 Art. 44 (5), Act XXIII of 1992

691 Interview of Attila Láposy, legal advisor of the Parliamentary Commissioners' Office with authors on 29 April 2011.

692 According to the annual reports, 4,992 investigated cases were registered in 2004, while this number in 2010 reached 7,433. Cf. Report on the activities of the Parliamentary Commissioners for civil rights in the year of 2010, p. 1345. Available at http://www.obh.hu/allam/besz_hu.htm [accessed May 2nd, 2011].

693 Ibid. p. 27.

694 Interview of Beáta Borza, Head of Department of Investigation of Complaints, Parliamentary Commissioners' Office with authors on 29 April 2011.

Number of co-workers in PCs' Office				
2006	2007	2008	2009	2010
143	138	168	166	168

In contrast to the limited human resources, the material conditions (including the electronic equipment, office supplies as well as the library set-up) might be deemed satisfactory.⁶⁹⁵

Independence (Law)

To what extent is the ombudsman independent by law?

Score: 75

The ombudsmen are elected as commissioners responsible exclusively to Parliament. The Act on ombudsman institutions also declares that ombudsmen shall be independent in the course of their proceedings, and they shall take measures exclusively on the basis of the Constitution and of the relevant laws. The ombudsman institutions operate independently of the executive power that they are supposed to review.

One of the main guarantees of independence is the system of election of ombudsmen. According to the Constitution, the parliamentary commissioners are elected by a two-thirds majority of MPs, on the basis of a nomination by the President of the Republic.⁶⁹⁶ An ombudsman is elected for six years and may be re-elected for one further term.⁶⁹⁷ The requirement for a two-thirds majority of the Members of Parliament and the fixed and long term of office (longer than the term of Members of Parliament) are considered traditional guarantees of independence. However, 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 ombudsmen. It is merely up to the self-restraint of the ruling parties whether it takes into account the opinion of the opposition or not. On the other hand, the possibility of a re-election runs counter to this aim, because it gives incentives to the commissioners in office to secure the support of parliamentary parties for their re-election.

The Act prescribes that anyone who, during the four years preceding the proposal for election has been a Member of Parliament, President of the Republic, member of the Constitutional Court, member of the government, secretary of state, deputy secretary of state, member of the local government council, notary, public prosecutor, professional member of the armed forces, the police and the police organs, or the employee of a party, may not be elected as ombudsman. There are further preconditions of appointment to ensure that the selection is based on merit. According to the Act, Parliament shall elect the ombudsman from among lawyers with outstanding theoretical knowledge or lawyers having at least ten years professional practice who have considerable experience in the conduct, supervision or scientific theory of proceedings concerning constitutional

⁶⁹⁵ Ibid.

⁶⁹⁶ Art. 32/B (4), Act XX of 1949 on the Constitution

⁶⁹⁷ Art. 4 (5), Act LIX of 1993

rights, and who are highly respected. There are appropriate differences in the rules concerning the specialised ombudsmen. The Data Protection Commissioner is elected from among Hungarian citizens with a university degree, a clean criminal record and outstanding academic knowledge, or at least ten years of professional practice, who are widely esteemed persons with significant experience either in conducting or supervising proceedings involving data protection or the scientific theory of data protection.⁶⁹⁸

The ombudsmen are elected for a fixed six-year period. Their mandate may be terminated before the expiry of the term of mandate, by death, resignation, declaration of conflict of interest, discharge and removal from office. In the case of a declaration of conflict of interest, discharge and removal from office, Parliament decides on the termination of the mandate. The votes of two-thirds of Members of Parliament are necessary for termination. The mandate may be terminated by discharge if the ombudsman is unable to perform his/her duties arising from his/her mandate for more than ninety days through no fault of his/her own. The mandate may be terminated by removal from office if the ombudsman does not meet his/her duties arising from his/her mandate through his/her own fault, if he/she intentionally fails to comply with his/her obligation to make a property declaration, or intentionally makes an untruthful declaration on essential information or facts, or if he/she commits a criminal offence established by a final judgement or becomes unworthy of his/her office in any other way.⁶⁹⁹

In sum, the ombudsmen are hardly removable. Their mandate terminates only for the reasons stated above and set down in the Act. This guarantees that the ombudsman will not be dismissed for political reasons or because the results of his/her investigations have offended those in political power in the legislative body. In practice, the mandate of previous ombudsmen has been terminated either simply by expiry of the term or by resignation. Three former ombudsmen have resigned before the expiry of the term in order to become, respectively, a member of the Constitutional Court, member of the government and General Prosecutor.

As far as the independence from both executive power and other ombudsman-institutions is concerned, the budgetary process is considered as a weak point both in law and in practice as well. The annual budget is approved by Parliament in the form of an act. The budget bill is drawn up and introduced by the government. There is no special element in the process whereby the ombudsmen could influence the chapter relating to their own office. Since the budget of the Parliamentary Commissioners' Office strongly depends on the government, in this respect the ombudsmen's independence seems to be vulnerable. Moreover, the structure of the budget endangers independence between the ombudsmen as well. The chapter of the state budget includes the costs of all the four ombudsmen, but it is controlled only by the general parliamentary commissioner, meaning that the specialised ombudsmen are vulnerable to the pressure of the general commissioner. The ombudsman institutions have no access to off-the-books funds. According to the Act, the specialised ombudsmen have the right to take independent measures in their respective fields. There is no hierarchical relation between the general and specialised ombudsmen.

698 Art. 23 (1), Act LXIII of 1992

699 Art. 15, Act LIX of 1993

However, the new Fundamental Law that was voted on and signed into law by the President of the Republic in April 2011 will substantially reshuffle the current ombudsmen system. First, the current legal environment is conceptualised, after the new legal regulation is outlined. In sharp contrast with the current constitutional regulation, the new Fundamental Law shall only require a simple majority law⁷⁰⁰ (one half of the MPs present at the parliamentary session) for the regulation of the Parliamentary commissioners. It means that from 2012 even the basic regulation of the institution will not require the agreement of political parties in Parliament, merely the will of the majority of MPs. It is a deplorable modification that will decrease the level of independence of the ombudsmen. The ombudsman institution as a state watchdog necessitates an increased level of autonomy and independence from the two main branches of the government, the legislative power and the executive power. Requiring a simple majority vote of MPs for the detailed regulation of ombudsmen is equated to a constant threat of influence from the ruling parliamentary majority.

The new structure introduced by the Fundamental Law is hierarchical and it is a single ombudsman system.⁷⁰¹ The general ombudsman shall have his/her subordinated deputies, and the Parliamentary Commissioner for Data Protection and Freedom of Information shall be completely abolished (cf. below). According to the new Fundamental Law, the Commissioner for Fundamental Rights shall have two deputies, who will also be elected upon two-thirds approval vote of the Members of Parliament. In contrast to the current constitution, the new Fundamental Law introduces a new post of a "deputy" as a subordinate to the system of ombudsmen. The Parliamentary Commissioner's deputies shall be responsible for the protection of minority rights and future generations.⁷⁰² In this sense, they will replace the former special ombudsmen of minority rights and that of the future generations. They will be elected separately by a two-thirds majority of MPs. The creation of the ombudsman system introduced by the Fundamental Law virtually coincides with the proposal for rearranging the ombudsman structure submitted by the general ombudsman in position, Máté Szabó. In support of a new system, Prof. Szabó argued that "the implementation of a uniform institution of parliamentary commissioners which is spreading globally (...) would proceed towards a more effective and transparent as well as cheaper work and also in a 'Euro-conforming' direction".⁷⁰³ Furthermore, Prof. Szabó also frequently supported the concept of a uniform institution of commissioners by referring to the unitary state structure of Hungary, which would require a unique ombudsman system - in contrast to the federal states.⁷⁰⁴

A multiple ombudsmen system, where each commissioner looks after a particular field of rights autonomously, works as follows: the ombudsmen are responsible for the field of basic rights independently from each other's field. The advantage is that the competences are shared, hence accountability is increased. In a system of institutional subordination, the personal responsibility fades away. Moreover, the professional work level might be damaged due to the Parliamentary Commissioner's interference. As a matter of fact, the

700 Fundamental Law, Art. 30 (5)

701 Fundamental Law, Art. 30 "The Commissioner for Fundamental Rights".

702 Art. 30 (3), Fundamental Law

703 Annual Report of the Parliamentary Commissioner for Civil Rights in the Year 2009, p. 11. Available in English at <http://www.obh.hu/allam/eng/2009/index.htm> [accessed 31 August 2011]

704 <http://nol.hu/belfold/lap-20090324-20090324-17> [accessed 31 August]

Parliamentary Commissioner, by its special role, does not have administrative or enforcement power that would require hierarchical coordination among different ombudsmen. The hierarchical structure might adversely influence the professional work of special ombudsmen.

Independence (Practice)

To what extent is the ombudsman independent in practice?

Score: 75

In practice, the election of ombudsmen shows that the selection process may in fact be subject to political influence by parties and/or may be counterproductive. The qualified (two-thirds) majority requirement means that a candidate can only be elected if the governing parties and at least part of the opposition support the candidate. Consequently, the factions have either distributed the posts of general and specialised ombudsmen among themselves, or selected persons who are perceived as not presenting a threat to any of the parties. On the other hand, if the President of the Republic proposes a candidate without having first secured the unofficial agreement of political parties, the candidate may be rejected at the vote. The first such situation occurred in 2001, and the second in 2007.

Recently, at the last several ombudsman appointment rounds, Parliament rejected the nominees of the President of the Republic five times.⁷⁰⁵ However, the assessment of this stalemate and its reasons are open to diverse interpretations. Political parties complained about the lack of consultation by the President of the Republic on the subject of nomination. The President of the Republic insisted upon the practice of autonomous nomination, in order to enforce the multiple-level appointment process, by excluding the political parties in the first phase of the process. Some experts explained that Parliament's rejection was equated to a sort of retribution against the President of the Republic. The President's interpretation, however, was certainly not contrary to the Constitution.

Several former ombudsmen hold, or used to hold, high-ranking posts after the termination of their mandate. Three ombudsmen resigned expressly in order to become, respectively, a member of the Constitutional Court (elected by a majority of two-thirds of the votes of the Members of Parliament, based on the recommendation made by the Nominating Committee, which consists of one member of each political party represented in Parliament), a member of the government (appointed by the President of the Republic, based on the recommendation made by the Prime Minister) or General Prosecutor (elected by a majority of one-half of the votes of the Members of Parliament present, on the recommendation of the President of the Republic).⁷⁰⁶ The provisions cited from the

705 László Majtényi (nominated by the President on 23 May 2007, rejected by Parliament on 11 June 2007), Boldizsár Nagy and Péterfalvi Attila (nominated by the President on 6 December 2007, rejected by Parliament on 17 December 2007), Attila Péterfalvi again (nominated by the President on 13 May 2008, rejected by Parliament on 26 May 2008), Ágnes Mészáros Bogdányiné and Gábor Attila Tóth (nominated by the President on 17 March 2008, rejected by Parliament on 14 April 2008).

706 Respectively, Barnabás Lenkóvics, Parliamentary Commissioner for Civil Rights, became judge on the Constitutional Court in March, 2007; Albert Takács, Deputy Commissioner for Civil Rights became Minister of Justice and Law Enforcement in June 2007; Péter Polt, Deputy Commissioner for Civil Rights became Chief Public Prosecutor in 2000.

Constitution show that appointment to the latter posts depends on the governing parties, which have recently changed the rule that govern the election of the judges to the Constitutional Court and of the Chief Prosecutor.

The period that followed the 2010 general elections, the newly elected governing parties openly committed themselves to adopting a new constitution. During the period that led to the final vote of the new Fundamental Law, the institutions and persons in charge had to deliver on their duty knowing that the constitutional institutions they serve are in question. This almost one year long uncertainty had an impact on the ombudsmen's public positions, especially on their investigation practice. (For more details see the chapter: "Investigation (Practice)".) However, it is likely that the external influence which the majority of the government is able to exert remains once the new Fundamental Law enters into force, given that it fails to strengthen the independence of the institution.

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?

Score: 75

The law does not contain far-reaching provisions that would ensure sufficient transparency of the operation of ombudsmen. The only relevant provision of the Act prescribes that the annual report of the ombudsman shall be published in the Hungarian Official Gazette after the Parliament has passed the resolution on it.⁷⁰⁷ The ombudsmen are entitled but not obliged to publish the conclusions of their enquiries.⁷⁰⁸

The Parliamentary Commissioners' Office, as one of the addressees of the Act on Electronic Freedom of Information, is required to provide continuously on-line access to information concerning the organisation, staffing, operation, activities, and financial management of the institution specified in the publication schemes of the EFOI Act.⁷⁰⁹ Thus, fundamental information such as contact details, the organisational structure, the basic legal regulations pertaining to the tasks, power, area of competence and fundamental activities shall be disclosed without individual requests for information. According to the Act, each ombudsman shall make a declaration of assets within 30 days following his election then in every three year period.⁷¹⁰

707 Art. 27 (2), Act LIX of 1993.

708 Art. 18 (6), Act LIX of 1993

709 Act CX of 2005 on the Freedom of Information by Electronic Means

710 Art. 5/A (1), Act LIX of 1993

Transparency (Practice)

To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?

Score: 50

The current disclosure practices of ombudsmen commonly go beyond the normative obligations prescribed in the relevant legal provisions discussed above; however, the level of proactive transparency provided by the parliamentary commissioners is inadequate. Firstly, apart from the official publication, it is a general practice to publish the annual reports in the form of a book as well as on the website of the Parliamentary Commissioners' Office.⁷¹¹ The annual reports include adequate details on the work performed (e.g. number of complaints submitted to the office, statistics showing the proportion of complaints according to their subject as well as the proportion of recommendations accepted by the addressees, evaluations of the situation of certain fundamental rights investigated more profoundly in the given year). Due to the amount of quantifiable data, the annual reports are commonly accompanied with diagrams and charts for illustration purposes. The main chapters of reports are available in English as well.⁷¹²

Each ombudsman maintains his/her respective website⁷¹³, where the general public can find a range of information and materials concerning the operation and activities of ombudsmen. In addition to basic information such as contact information, relevant legal regulations, studies, communications etc., those who seek further information can also access the recommendations made by ombudsmen. However, the practice of the general and specialised ombudsmen somewhat differs in this respect. While the Data Protection Ombudsman and the Minority Ombudsman publish only certain recommendations of greater importance on their websites,⁷¹⁴ the Civil Rights Ombudsman maintains an online database where the public has access to all of his/her recommendations at full length.⁷¹⁵ (NB: In compliance with the data protection regulation, cases involving personal data should be published anonymously). In this respect, the specialised ombudsmen's practice falls short of the requirement for transparency. This situation is particularly regrettable in the case of the Data Protection Ombudsman, who is also responsible for the protection of freedom of information.

A recent study examined the extent to which public bodies fulfil their duties to publish information, from the aspect of compliance with the provisions of the EFOI Act, as well as the extent to which these organs satisfy requests for information of public interest held by them. It found the practice of the Office of Parliamentary Commissioners to respond to requests for information of public interest unsatisfactory.⁷¹⁶

711 Reports are available at http://www.obh.hu/allam/besz_hu.htm [accessed 31 August 2011]

712 http://www.obh.hu/allam/eng/besz_en.htm [accessed 31 August 2011]

713 All of them are available at www.obh.hu. [accessed 31 August 2011]

714 Selected cases of the Data Protection Ombudsman are available at <http://www.adatvedelmibiztos.hu/abi/index.php?menu=aktualis> [accessed 31 August, 2011], cases handled by the Minority Ombudsman are published on the website of <http://www.kisebbségiombudsman.hu/kateg-283-1-jelentesek.html>. [accessed 31 August 2011].

715 See at <http://www.obh.hu/allam/jelentes/> [accessed 31 August 2011]

716 Fulfilling the requirements of the EFOI Act of Hungary, Eötvös Károly Policy Institute, 2007-2008, <http://www.ekint.org/ekint/ekint.news.page?nodeid=231> [accessed 2 May 2011]

The activities of ombudsmen are closely connected to the mission of non-governmental organisations, since both want to make their voices heard on human rights issues. Moreover, the current ombudsman, Máté Szabó, made it clear from the outset of his mandate that he intends to place special emphasis on regularly involving civil society in his work as well.⁷¹⁷

However, in TI Hungary's opinion, despite the aspiration of the general ombudsman to involve civil society organisations, hardly any visible cooperation has developed so far with these groups. A positive example might be the environmental ombudsman, who has spoken many times against environmental issues that civil organisations also criticised, and he has involved environmental protection NGOs in resolving ongoing environmental debates.⁷¹⁸ Nevertheless, according to one of the interviewees, the Head of the Department of Investigation of Complaints, the general ombudsman maintains close links with NGOs in the background, especially in the pro-active projects.⁷¹⁹

Accountability (Law)

To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?

Score: 100

As stated above, Parliament elects the ombudsmen as independent commissioners. They are elected by Parliament; however, they are legally independent from Parliament, which means that they are neither responsible to Parliament, nor revocable by the Legislature on a political basis. The only responsibility of the ombudsmen vis-à-vis Parliament is the obligation to submit the annual report. According to the Act, each ombudsman must prepare annual reports to Parliament on his/her activities, and in this framework he/she must report on the situation regarding the protection of constitutional rights in connection with official proceedings, as well as on the reception of their initiatives, recommendations and on the results of these activities.⁷²⁰ The reports must be submitted to Parliament by the end of the first quarter of the calendar year, following the year concerned.⁷²¹ The report is debated in parliamentary committees as well as in plenary sessions, which is followed by a vote on the annual report.⁷²²

According to the Constitution, any member of parliament may put questions to the Minority and the Civil Rights ombudsmen. Interpellation may also be submitted.

717 Interview of Beáta Borza, Head of Department of Investigation of Complaints, Parliamentary Commissioners' Office with author, 29 April 2011. See also the Annual Report of the Parliamentary Commissioner for Civil Rights in the Year 2009, available at <http://www.obh.hu/allam/eng/2009/index.htm>. [accessed 31 August 2011]

718 As the Report on the work of the Parliamentary Commissioner for Future Generations to the Parliamentary Committee on Environmental Protection (11 May 2009) states: „(...) we consider environmental protection NGOs as our prominent constituency, we have had three civic meetings, (...) the agenda of the meetings is taking shape, we discuss the details of our working program at the beginning of the year and the draft annual report at the end of the year. Cf. <http://jhu/en/?doc=20090930> [accessed 31 August 2011]

719 Interview of Beáta Borza, Head of Department of Investigation of Complaints, Parliamentary Commissioners' Office with author, 29 April 2011.

720 Art. 27 (1) Act LIX of 1993

721 Art 27 (1) Act LIX of 1993

722 Resolution 46/1994 (IX.30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary, Art. 95 (1), Art. 114 (1)-(2)

Parliament does not vote on acceptance or rejection of the answer. In sum, the legal frameworks provide a proper balance between accountability and independence: the forms of accountability cannot lead to the termination of the mandate of ombudsmen. The mandate is protected, and the ombudsmen cannot be dismissed.

Accountability (Practice)

To what extent does the ombudsman report and is answerable for its actions in practice?

Score: 50

Parliament is always in arrears when it comes to discussing annual reports, and this weakens the efficiency of these reports as instruments of accountability. Therefore, the parliamentary vote on the annual reports is frequently deferred for years, and thus a number of issues and records lose their importance by the time they are debated. To illustrate this situation, annual reports submitted to Parliament after 2007, by both the general and the specialised ombudsmen, had not been entered into the Parliament's agenda by May 2011. This practice sheds serious doubts on the credibility of the process, and might undermine the whole institution of ombudsmen in the eyes of the public.

Integrity Mechanisms (Law)

To what extent are there provisions in place to ensure the integrity of the ombudsman?

Score: 75

According to the Act, the mandate of the ombudsmen is incompatible with any other state, local government, social or political office or mandate. Ombudsmen may not engage in any other paid employment, and may not accept any remuneration for other activities except for scientific, educational, artistic activities, activities falling under the protection of copyright, or proof-readers' and editor's activities. The ombudsmen may not be senior officials of an economic association or members of the supervisory board of such an association, nor serve as a member of such an association with any obligation to co-operate with it personally.⁷²³

Beyond the tasks arising from their sphere of authority, the ombudsmen may not pursue any political activity, and may not make any political declaration. This is one of the strictest regulations on conflict of interest in the Hungarian legal system. If a conflict of interest arises in connection with the person of the ombudsman in the course of his/her activity, he/she is obliged to resolve it.⁷²⁴ Parliament shall pronounce on the existence of conflicts of interest by a resolution (on the basis of a two-thirds majority of Members of Parliament). If the ombudsman does not resolve the conflict of interest within ten days of the passing of this resolution, Parliament shall - upon the motion of any member of Parliament - terminate the mandate of the ombudsman. The relevant statutory provisions of the Criminal Code can be applied to the misconduct of the ombudsmen and their staff (eg. cases of the abuse of authority, bribery, etc.).

723 Art. 5, Act LXIII of 1992

724 Art. 15 (6), Act LXIII of 1992

The ombudsmen, in accordance with the regulations related to the Members of Parliament, must submit asset declarations at the time of their election and subsequently every three years. These declarations of the ombudsmen are public. The mandate of an ombudsman may be terminated by his/her removal from office if the ombudsman intentionally fails to comply with the obligation to make an assets declaration, or intentionally makes an untruthful declaration on essential information.⁷²⁵ There is no code of ethics, neither for the persons holding the ombudsman title, nor for the employees. Subsequently, there is no rule on the gifts offered to the ombudsmen or to the office. Information on the practice of gift receiving or other ethical conflict is not available.

Integrity Mechanisms (Practice)

To what extent is the integrity of the ombudsman ensured in practice?

Score: 75

During the first period, to date, the issue of incompatibility or that of political activity has never seriously occurred. It was only in the case of the first general deputy ombudsman (Péter Polt) that this problem might have occurred. He was a former parliamentary candidate of the right wing conservative party (Fidesz) in 1994, but did not become an MP. In 1995, he became deputy general ombudsman with the support both of the left-wing parties and right-wing parties. His nomination as deputy ombudsman did not go literally counter to the law that only states: "Anyone, who during the four years preceding the proposal for election has been a member of Parliament (...) shall not be elected ombudsman".⁷²⁶ Due to this definition, former parliamentary candidates are not excluded from the position. However, it is clear that the aim of the very strict above-mentioned eligibility rule is to exclude persons who might be politically compromised.

Thus far, conflict of interest cases have not occurred. The majority of ombudsmen came from academic circles, and as a result, they were allowed to continue pursuing their scientific and scholarly activities, such as proof-reading, editing, etc.⁷²⁷ With regard to the above-mentioned assets declaration, to date all of the ombudsmen have complied with the assets declaration requirement, and their property declarations can be downloaded from the Parliament's website.⁷²⁸

725 cf. fn. 36.

726 Art. 3 (3), Act LIX of 1993

727 Art. 5 (2), Act LIX. of 1993

728 The following is the general research engine for declarations of assets on the website of the Parliament: http://www.mkogy.hu/internet/plsql/webpar.paramform?p_modul=KEPV_KOME [accessed 16 May 2011].

Investigation

To what extent is the ombudsman active and effective in dealing with complaints from the public?

Score: 50

The complaints and enforcement mechanisms are enacted into the Act. Generally, they are simple and flexible. In theory, the ombudsman's decisions are binding, but non-enforceable. The parliamentary commissioners' powers to investigate individual complaints against the authorities are especially important, due to the fact that the Hungarian legal system still fails to provide any whistleblower protection. Anybody may apply to the ombudsman if in his/her judgment, he/she has suffered an injury in consequence of the following: conduct of any authority or public service body, or its decision (measure) taken in the course of the proceedings and/or its failure to act or decide properly in connection with his/her constitutional rights ("impropriety relating to fundamental rights"); or if a direct danger of such injury exists, provided that he/she has exhausted the available possibilities of administrative legal remedies and that no legal remedy is available.⁷²⁹ The same regulation applies, respectively, to the competence of the Minority Rights, as well as of the Data Protection ombudsmen with the provisions that he/she only protects the rights of national and ethnic minorities, the fundamental right to healthy environment, and the right to data protection and freedom of information. Moreover, each ombudsman has the power to conduct an investigation *ex officio*. Based on this provision, *inter alia*, the Commissioner for Civil Rights proceeded to provide in-depth analysis of human rights issues, such as the practice of the police concerning the right to assembly, the rights of children and the human rights concerns related to homelessness.

The procedure of ombudsmen is free of charge, and anyone may file a petition to the ombudsmen. The ombudsmen are obliged to investigate the petition, except where the purported impropriety is of minor importance.⁷³⁰ In addition, the act prescribes that if the petitioner requests so, his/her identity should not be revealed by the ombudsmen. According to law, no one should suffer any prejudice, because of his/her reporting to the Commissioner. The only major material exception to the power of ombudsmen concerns cases where court procedure was launched for review of an administrative resolution, or where a final court order was already issued (cf. above).

The ombudsman lacks the authority to impose binding decisions; however, as a compensation, the ombudsmen have a wide range of investigative powers.⁷³¹ Ombudsmen are entitled to request any information from authorities, as well as to access the localities of the authority, even to those used by the Hungarian Army, the police and other law enforcement authorities.⁷³² The ombudsmen are empowered to summon officials in charge for a hearing, or request written explanations connected to the investigation.⁷³³ One important provision of the Act is that of so-called "qualified secrets", or state

729 Art. 16 (3), Act LIX of 1993

730 Art. 17, Act LIX of 1993

731 Art. 16-26, Act LIX of 1993, "Proceedings and Measures of the Ombudsman".

732 Art. 18, Act LIX of 1993

733 Art. 18 (2)-(4), Act LXIII of 1992

secrets, which should not impede the investigation of the ombudsmen.⁷³⁴ At the end of the investigation, the recommendation is issued by the ombudsmen, and the authority responds, or the supervisory body is concerned with the investigation.⁷³⁵ The authority concerned might not accept the recommendation, though it is bound to reply, and should not ignore it.⁷³⁶ Thus, the ombudsmen are entitled to use their most important tool, publishing its findings, given that the results of his/her investigation are not secret. Unfortunately, not every recommendation of every commissioner is accessible over the internet (see above).

In terms of the binding force of his/her decisions, the Data Protection Commissioner has additional powers to those of the other ombudsmen. According to Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Information of Public Interest (hereinafter: Data Protection Act), the Data Protection Commissioner may issue binding decisions to ban the unlawful processing of personal data.⁷³⁷ However, this is a narrowly-tailored exception to the general mechanism of the investigation of ombudsmen.

As has been mentioned above,⁷³⁸ the current changes in the constitutional system were accompanied by considerable uncertainties about the future of individual constitutional institutions. This had an obvious impact on the ombudsmen's public positions and investigation practice. First, the ombudsmen have failed to take a public stand on some crucial issues that involved serious fundamental violations of rights. This happened in 2010 when the Commissioner for Civil Rights failed to criticise the retroactive extra tax of 98% on certain revenues (including severance payments), and again he failed to do so after the Constitutional Court annulled the law. The ombudsman also remained silent when the Hungarian Parliament passed the controversial media law, which were wildly criticised by key international human rights institutions, including: the Commissioner for Human Rights of the Council of Europe,⁷³⁹ the OSCE Representative on Freedom of the Media,⁷⁴⁰ and the UN Special Rapporteur on Freedom of Speech.⁷⁴¹ The Data Commissioner could also have had issued an opinion on the matter, especially since the freedom of information was at stake. Unfortunately, none of the ombudsmen issued any substantial criticism or comment on that matter.

However, the Data Commissioner issued an important decision against the mayor of Hódmezővásárhely, who was at the same time the leader of the parliamentary group of Fidesz, the main ruling party. The mayor illegally published a list of names and addresses of people who had requested, but eventually had not received municipal aid claiming a clear breach of the data protection law. The Data Protection Commissioner issued a binding decision, ordering the deletion of the illegal list from the municipality's website. However, the mayor refused to comply with the decision.⁷⁴² The Data Protection Commissioner declined to pursue the matter, although by law, he had a right to pursue an investigation.

734 Art. 18 (5), Act LXIII. of 1992

735 Art. 20 (1), Act LXIII. of 1992

736 Art. 20 (2), Act LXIII. of 1992

737 Art. 25 (2)-(5), Act LXIII of 1992

738 See 'Independence (Practice)'

739 Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of the Council of Europe standards on freedom of the media, available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> [accessed 1 May 2011].

740 Analysis of the Hungarian Media Legislation conducted by the Organization for Security and Co-operation in Europe, Office of the Representative on Freedom of the Media, available at <http://www.osce.org/fom/75990> [accessed 1 May 2011].

741 See <http://www.un.org/apps/news/story.asp?NewsID=38009&Cr=rapporteur&Cr1> [accessed 2 May 2011].

742 See http://abiweb.obh.hu/abi/index201.php?menu=hatarozat&dok=hatarozat_20101206105903 [accessed 2 May 2011].

The timing of some decisions gave space for further criticism. For instance, the Parliamentary Commissioner for Civil Rights issued a critical assessment of the private pension fund system after the government introduced the bill to nationalise the private pension fund system, after it had curbed the power of the Constitutional Court.⁷⁴³ Timing the public announcement of a decision is up to the ombudsmen; the timing of the recommendation in this case favoured the government. In another example, the Data Commissioner, András Jóri, attacked the newly-adopted state secret law⁷⁴⁴ before the Constitutional Court almost one year after it had entered into force. A coalition of the leading legal reform groups brought the law to the Court immediately after being adopted by Parliament in 2009. In 2011, by the time the Data Commissioner had lodged his petition at court, the law had become a low-profile issue in the Hungarian media.

Promoting Best Practice

To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

Score: 75

There is a regulation that states that the same ombudsman is responsible for the enforcement of data protection and freedom of information. This is one of the best examples for the respect for transparency. The Data Protection Ombudsman plays a key role, since as Commissioner for the Freedom of Information, he/she also guarantees transparency. The Data Protection Commissioner supervises compliance with the law on information of public interest, on request as well as *ex officio*. The rules governing the types of information, whether private or public, show that data protection, as well as freedom of information, indicates that there is a balance between transparency and confidentiality. In the Hungarian model, the commissioner must determine this balance on an individual case basis. This regulation was praised internationally as an important legal innovation that inspired several European countries regulation (United Kingdom, some German federal states ("*Länder*"⁷⁴⁵ etc.). For this reason, is it incomprehensible that the new Fundamental Law should abolish the institution of Data Protection Commissioner and replace it with an administrative authority. This change is a serious set-back in terms of the promotion and protection of transparency. As Transparency International (TI) has argued, "if the position of Data Protection and Freedom of Information Commissioner ceases to exist and its competence taken over by an authority, this step will mean a severe blow to the freedom of information". The anti-corruption organisation emphasised that restricting the freedom of information is a natural obstacle in the prevention and prosecution of corruption. If it is more difficult to access information, then there is less chance to discover a decision-makers' abuse of entrusted power for private gain."⁷⁴⁶ The ombudsman, as an institution, relies fundamentally on using the tool of making information public and his or her professional reputation.

743 <http://www.obh.hu/allam/aktualis/htm/kozlemeny20101117.htm> [accessed 16 May 2011]

744 Namely, the Act CLV of 2009 - on the protection of qualified data.

745 Cf. for instance the Brandenburg State Commissioner for Data Protection and Access to Information: http://www.lida.brandenburg.de/sixcms/detail.php?id=97044&template=start_e_lda [accessed 31 August 2011].

746 Corruption risks in the New Constitution. Available at http://www.transparency.hu/en/news_events?nid=560 [accessed 31 August 2011].

8. SUPREME AUDIT INSTITUTION

Summary

The Hungarian supreme audit institution, the State Audit Office (SAO) was established in 1989 by Act XXXI of 1989 (Constitutional Amendment) and Act XXXVIII of 1989 (1989 SAO Act). The SAO is the financial and economic audit organisation of Parliament. Its main task is to audit and evaluate the operation of public finances. In essence, the new Fundamental Law regulates the SAO similarly to the existing Constitution. An important new provision is that the President of the SAO will become a member of the Budget Council, which examines the feasibility of the state budget.⁷⁴⁷ The SAO also has a wide mandate to audit local government finances.⁷⁴⁸

According to the Fundamental Law, “the detailed rules for the organisation and operation of the State Audit Office shall be defined by a cardinal Act”.⁷⁴⁹ Accordingly, Parliament adopted Act LXVI of 2011 (new SAO Act) on 20 June 2011, this coming into force on 1 July 2011. The regulations on the SAO provide the foundations for its independence - necessary for the SAO to serve its financial watchdog function. However, the legislation does not set sufficient professional standards for the SAO staff⁷⁵⁰ (including senior officeholders and auditors) making the SAO highly vulnerable to political influence and to staffing decisions if not based on merit or professionalism. On the other hand, in practice, the SAO does not always use possibilities provided by law to conduct audits. In general, the SAO operates transparently, but in many respects it is bound to create its own rules, which is of concern in some cases, especially when these rules are not made public.

The SAO, as the audit body of Parliament, 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 such, within the public sector, it is the most suitable body to screen for abuses, even if these abuses are infringements or inefficiencies. By law the SAO is independent from the government in order to carry out its role without any political interference. These goals might be achieved if the SAO operates transparently. The SAO needs effective tools to promote and enforce the findings of its audits while audited bodies also have the opportunity to address the findings concerned. In this respect, the new Act on the SAO also contains good initiatives, such as the clause on mandatory action plans for the audited bodies.

In turn, it is risky in terms of independence if the top senior officers of the SAO (President and vice-President) have explicit party politician background, because the suspicion of political commitment may fall on the SAO. This may also hurt the fight against corruption. The possibility to re-elect the President and the vice-President is equally harmful and is not excluded by the new Fundamental Law and the new Act on the SAO. Therefore, it would be necessary to reconsider the regulation on the legal status of the top senior officers of the SAO.

⁷⁴⁷ Art. 44 (1) and (4) of the Fundamental Law. However, according to Article. 7 (2), Act LXXV of 2008 on Cost-efficient State Management and Fiscal Responsibility, the Budget Council comments on the draft of the State Budget.

⁷⁴⁸ Art. 5 (2) of the new SAO Act

⁷⁴⁹ Art. 44 (4) of the Fundamental Law

⁷⁵⁰ See Resources (Practice)

Supreme Audit Institution Overall Pillar Score: 67 / 100			
	Indicator	Law	Practice
Capacity 67 / 100	Resources	-	75
	Independence	75	50
Governance 63 / 100	Transparency	75	75
	Accountability	50	50
	Integrity Mechanisms	50	75
Role 63 / 100	Effective financial audits	75	
	Detecting and sanctioning misbehaviour	50	
	Improving financial management	75	

Assessment

Resources (Practice)

To what extent does the supreme audit institution have adequate resources to achieve its goals in practice?

Score: 75

The SAO compiles the draft of its own budget which is submitted to Parliament by the government. The SAO constitutes an independent chapter in the central budget.⁷⁵¹ However, the SAO must convince the government about the necessary budget; it usually succeeds in doing so. In general it used to receive the requested amount, but the regular budget support has decreased since the global economic crisis in 2008. The thirteenth and the fourteenth month wages - as set by the 1989 SAO Act - could only be paid from the reserve.⁷⁵² There is no precedent indicating that the SAO has applied to Parliament for additional resources, but the possibility cannot be excluded, although there is no such mechanism allowing the SAO to apply for such funds. Overall, during the past few years the budget was sufficient for the SAO to fulfil its tasks⁷⁵³; however, an independent expert claims that these resources have been not sufficient for auditing local governments.⁷⁵⁴

Between 2009 and 2010 the SAO had no president, while between 2002 and 2010 it had no vice-presidents as the government and the opposition failed to agree on common candidates (two-thirds of the votes were necessary and the government had no such majority). This situation did influence the smooth and lawful operation of the SAO, because neither the Secretary General, nor any other senior officers were able to exercise some of the essential presidential powers in the absence of a president as

⁷⁵¹ Art. 1 (3) and (4) of the new SAO Act

⁷⁵² Interview with a senior officer of the SAO. Art. 11 (14) of the 1989 SAO Act stipulated the thirteenth and fourteenth month wage (these were extra wages in practice), but the new SAO Act does not mention it.

⁷⁵³ Ibid.

⁷⁵⁴ Interview with Kinga Pétervári PhD, Budapest University of Technology and Economics

approving the annual audit plan (that was approved by the president stepping down at the end of 2009).⁷⁵⁵ All of these issues, particularly the absence of the president, lead to uncertainties amongst the staff.

Otherwise, the SAO staff is relatively stable, in recent years its number was around 600 with an average age of about 50 years.⁷⁵⁶ However, the frequent changes to pension rules have recently affected the staff. As a result, from 2008 about 40 employees left the SAO per year. Some of them have been replaced but many vacancies were not filled during the period 2009 to 2010 when senior officers had no information about the plans of the then yet to be elected president.⁷⁵⁷

The only professional qualification required for auditors is to hold a higher education degree.⁷⁵⁸ Most auditors are economists, around 200 of them are chartered auditors, while others are engineers, and a few others are lawyers. According to the SAO's Strategy 2011-2015 it is a priority to ensure the increase of competence through high-standard training and structured education. The entrants are trained focusing on the INTOSAI (International Organisation of Supreme Audit Institutions) standards. The training of the entrants and the auditors is based on an annual plan, but that plan is not public.⁷⁵⁹

The auditors are civil servants and they are hired based on a system mostly regulated by the Civil Service Act.⁷⁶⁰ Auditors' salaries are higher than those of the average civil servant. The SAO is allowed to employ freelance experts for audits. The new SAO Act allows it in case "special expertise is needed that the auditors do not have".⁷⁶¹ In sum, the SAO has autonomy over budgetary and personnel matters. It has power over its own budget, but it has no legal or other instrument at its disposal in the event that it disagrees with the government over the budget, which makes it very vulnerable. The professional background of the staff seems to be sufficient, however, professional requirements are rather low (higher education degree), while training standards are not published.

Independence (Law)

To what extent is there formal operational independence of the supreme audit institution?

Score: 75

The SAO was established by the Constitution of the Republic of Hungary⁷⁶² and originally, in Act XXXVIII of 1989 on the State Audit Office. The Constitution (and currently the Fundamental Law) regulates only the main aspects of the legal status of the SAO, while the acts on the SAO lay down the details. According to the Constitution, a majority of

755 Art. 13-13/A of the 1989 SAO Act

756 Between 2005 and 2010 the number was reduced from 607 to 534. For details see the SAO's Annual Report 2010. <http://www.parlament.hu/irom39/03137/03137.pdf> [accessed on 12 May 2011]

757 Interview with a senior officer of the SAO

758 Art. 14 (3) of the 1989 SAO Act; Art. 15 (1) of the new SAO Act

759 Interview with a senior officer of the SAO. SAO's Strategy 2011-2015, p. 9. [http://www.asz.hu/ASZ/nemzetk.nsf/0/7F04ACBA114AEC96C12573230027C399/\\$File/SAO_strategy_2011-2015.pdf](http://www.asz.hu/ASZ/nemzetk.nsf/0/7F04ACBA114AEC96C12573230027C399/$File/SAO_strategy_2011-2015.pdf) [accessed on 12 May 2011]

760 Act XXIII of 1992 on the legal status of civil servants

761 Interview with Kinga Pétervári. See Article 22 (1)-(4) of the new SAO Act.

762 Art. 32/C of the Constitution

two-thirds of the votes of the Members of Parliament present is required to pass the law on the organisation and basic principles of operation of the SAO.⁷⁶³

The Constitution has no specific rules on the independence of the SAO, but it emphasises that the SAO is the organ of Parliament responsible for financial and economic auditing.⁷⁶⁴ On the other hand, the 1989 SAO Act underlined that the SAO is subordinate only to Parliament and the laws. The new SAO Act also emphasizes the subordination to Parliament and the independency from all other organs.⁷⁶⁵ The relationship between the SAO and Parliament is close. According to the Constitution, the SAO presents Parliament with a report on the auditing activities it has carried out, and the report must be made public. Furthermore, the President of the SAO presents Parliament with the audit report on the final accounts together with the final accounts draft bill.⁷⁶⁶

The Fundamental Law regulates independence similarly to the Constitution.⁷⁶⁷ However, a substantive difference between the two is that the Fundamental Law does not require the parliamentary reports of the SAO to be made public. The Constitution also establishes the rules on the main office-holders of the SAO. Parliament elects the president and the vice-presidents with the majority of two-thirds of the votes of the Members of Parliament.⁷⁶⁸

As a result of the close interaction between Parliament and the SAO, Parliament can influence the SAO's audit plan as it has the right to order the SAO to carry out an occasional audit.⁷⁶⁹ The government, NATO, the European Union and all international organisations are expressly entitled to lodge requests for audits as well.⁷⁷⁰ Information and signals might still be addressed to the SAO to initiate audits.⁷⁷¹ There are other state organs, which might notify the SAO about any infringement, such as the Public Procurement Arbitration Board or any cabinet minister. The President of the SAO determines the Audit Plan of the SAO.⁷⁷² The audits are carried out on the grounds of the Audit Manual and the methodological guidelines of the SAO.⁷⁷³

The other important aspect of the independence is the legal status of the staff, including senior staff, office-holders and other employees. As mentioned previously, there is only one clear professional criterion for recruitment to the SAO - auditors must hold higher education degrees. There are no specific professional criteria for the president, the vice-presidents, the secretary general or the director generals according to the laws, including the Constitution, the SAO acts, or the SAO's Organisational and Operational Regulation. However, the rules on the nomination and election of the president and vice-presidents of the SAO have remained clear. Parliament establishes a Nomination

763 Ibid (4)

764 Ibid (1)

765 Art. 1 (1) Act of the 1989 SAO Act. Also see Art. 1 (1) and (2) of the new SAO Act.

766 Art. 32/C (2) of the Constitution

767 Art. 43 of the Fundamental Law

768 Ibid. (3)

769 Art. 17 (4) of the 1989 SAO Act

770 Ibid. (6)-(7), Article 3 (4) of the new SAO Act

771 Art. 23 (2) of the new SAO Act

772 Art. 13 (2) b) of the new SAO Act

773 See http://www.asz.hu/ASZ/www.nsf/ellenorzesi_kezikonyv.html and http://www.asz.hu/ASZ/www.nsf/modszertani_dokumentumok.html [accessed on 12 May 2011]

Committee (with eight members), which nominates the president and the vice-presidents. The candidates are heard by the competent committees of Parliament, after which Parliament elects them with a majority of two-thirds of the votes of the Members of Parliament.⁷⁷⁴ The term of office of the president and the vice-presidents is 12 years and they might be re-elected.⁷⁷⁵ The Fundamental Law and the new Act on the SAO regulates the term of the office and the re-election in the same way.⁷⁷⁶

Rules governing conflict of interest concern the activities of other state bodies as well. The President, the vice-President, the Director General, other executive officers and auditors

- may not be Members of Parliament at the same time;
- may not be an executive officer at interest representatives;
- may not be elected representatives of local governments;
- may not hold a position in a body, which receives funding from the state budget;
- except for scientific, educational, literary or artistic activities, they may not pursue any gainful employment;
- may not be relatives of one another, nor of the members of government or members of parliamentary committees responsible for SAO matters.⁷⁷⁷

In addition, members of the government or elected executive officers of central bodies of political parties, who served in that capacity during the four years before the election, may not be nominated as SAO President or vice-President.⁷⁷⁸

The auditors are civil servants. Therefore the compound regulation governing conflict of interest in the Act on Legal Status of Civil Servants also applies to them.⁷⁷⁹ The main rules for the auditors are the following:

- they may not be officers of political parties, but they can be members;
- they may not be elected representatives of a local government;
- they may not be executive officers of companies;
- with the exception of scientific, educational, literary or artistic activities, they may only pursue gainful employment with the consent of the employer.

The rules on removal are also very important as far as independence is concerned.⁷⁸⁰ The president and the vice-presidents might be dismissed or expelled. Their mandates might be terminated by dismissal if the president or a vice-president is unable to perform his/her duties for imputable reasons. The mandate may terminate by expulsion if the president or a vice-president fails to perform his/her duties for reasons, or if he/she commits a criminal offence, as stated by a final judgment, or otherwise becomes unworthy of the office.

774 Art. 7 (1) and (2) of the 1989 SAO Act, Art 32/C (3) of the Constitution

775 Art. 8 of the Act on the SAO

776 Fundamental Law Art. 43, Art. 9 (5) of the new SAO Act

777 Art. 10 (1) (2) and (4) of the 1989 SAO Act; Art. 18 of the new SAO Act

778 Art. 10 (3) of the 1989 SAO Act; Art. 9 (2) of the new SAO Act. There are other rules on conflict of interest in other acts, e.g. Members of Parliament (Art. 9 of the Act LV of 1990), Members of the European Parliament (Art. 8 of the Act LVII of 2004), mayors (Art. 33/A of the Act LXV of 1990).

779 Art. 21-22 of the Act XXIII of 1992

780 Art. 12 of the 1989 SAO Act, Article 11 of the new SAO Act

The mandate of the president and the vice-presidents may also end if a conflict of interest is established. Parliament terminates their mandates, if the president or the vice-president fails to eliminate a situation of conflict of interest.⁷⁸¹ Auditors, being civil servants, might be dismissed for several causes, such as if the assignment for which the auditor was employed comes to an end, or if the scope of the auditor's work became unnecessary due to a reorganisation. These are objective reasons and justification is always required. There are some cases when a civil servant must be dismissed, for example, if he/she is unworthy of his/her position; if his/her work is not appropriate; in the case of a disability and for medical reasons; or if he loses his/her superior's trust. Justification is always required in those cases as well. There are definitions of unworthiness, inappropriate work and loss of trust in the Civil Service Act, but these definitions are very flexible, and as such, any auditor might be dismissed at any time.⁷⁸² The Act on the SAO provides immunity for the president and the vice-Presidents against prosecution. This immunity is the same as the immunity for Members of Parliament.⁷⁸³

In sum, the Constitution, the Fundamental Law and the new SAO Act basically provides independence for the SAO, but in practice the provisions might be inadequate. In several cases it seems to be pointless for the government to request the SAO to carry out audits while having its own body for this purpose, the Government Control Office.⁷⁸⁴ Meanwhile this measure provides the government an opportunity to influence the SAO's work, especially its audit plan.

The problems relating to the staff are more serious. First of all, the only special professional condition is a tertiary degree for the auditors, and even for senior officers no further professional qualifications are required.⁷⁸⁵ This makes the staff particularly vulnerable, because anybody can be appointed without any specific professional qualification or entry examination. Furthermore, the president and the vice-presidents may be re-elected for another twelve-year-term exposing them to political influence and further to corruption risks. The rules governing staffing are also problematic as the auditors and the civil servant senior officers might be dismissed on highly subjective grounds.

781 Art. 11 (3) of the new SAO Act

782 Art. 17, 17/C-17/E, Civil Service Act (Act XXIII of 1992)

783 Art. 9 of the 1989 SAO Act, Art. 10 of the new SAO Act, Act LV of 1990 on the Legal Status of the Members of Parliament, Art. 4 and 5. That means that active or former presidents and vice-presidents cannot be accountable before court or by any other authority for their votes or fact and opinions stated in the course of the duration of the mandate (there are exceptions). They can be only arrested in case of flagrante delicto. Criminal procedures or legal procedures for petty offences against them can only be started and pursued with prior permission given by Parliament. Whatsoever, these rules apply to the case when a president or a vice-president commits something without the framework of carrying out his duties.

784 According to Kinga Pétervári, who says that the Government usually asks the SAO for a review for political reasons (the work of the Government Control Office is not public).

785 The appointed senior officers (eg. secretary general) must have passed a civil service exam, which is a general obligation for all senior officers in the civil service.

Independence (Practice)

To what extent is the supreme audit institution free from external interference in the performance of its work in practice?

Score: 50

No direct political pressure on the SAO could be observed in recent years. Nevertheless, some harmful events occurred. Between 2002 and 2010, no vice-president was appointed, while between 2009 and 2010 there was no president (see Resources). Subsequently, Parliament elected László Domokos as the President of the SAO and Tihamér Warvasovszky as the vice-President on 28 June 2010. Neither of the two is incompatible by law, but as former professional politicians they have had explicit political preferences.⁷⁸⁶ In general, it has been neither common for the staff to be removed from their position before the end of their term without relevant justification or for political reasons, nor for the president and the vice-president to be reappointed. Incompatible activity has not been experienced either.⁷⁸⁷

In conclusion, though direct political impact has not been experienced at the SAO's work and activities, politics can keep the SAO in uncertainty by not filling vacancies or filling them with former professional politicians. These staffing decisions cannot be separated from politics, but clear and strict professional criteria could make the entire SAO more professional. The criteria should elevate the standards and qualifications necessary to be hired. For example, candidates should hold specialised degrees, and have specific work experience to be eligible.

Governance

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Score: 75

The transparency of the SAO's activity is based on the Constitution, which states that "the State Audit Office shall present Parliament with a report on the auditing activities it has carried out. Its report shall be made public".⁷⁸⁸ The report is annual and presented by the President of the SAO.⁷⁸⁹ The Fundamental Law also requires the submission of the report, but it does away with the requirement of making it public.⁷⁹⁰ There are special reports highlighted by the Act on the SAO: on the well-groundedness of the Budget Bill

786 László Domokos was a Member of Parliament between 1998 and 2010, and he was the Chairman of the Békés County Assembly between 1998 and 2002 and between 2006 and 2010, throughout as the representative of the Fidesz, the current ruling party. He has a university degree in Economics, but he gained experience in economics largely as a politician. Tihamér Warvasovszky was the Mayor of Székesfehérvár City and a Member of Parliament between 2001 and 2010 as a member of the Hungarian Socialist Party (MSZP). He has university degrees as an Electrical Engineer and an Economic Engineer, and he worked as Chief Financial Officer of the Fejér County Police between 1990 and 1994. Though he has significant professional work experience his political background is also clear.

787 Interview with a senior officer of the SAO. On the fluctuation of the staff see 'Resources'.

788 Art. 32/C (2) of the Act XX of 1949 (Constitution)

789 Art. 18 (1) of the 1989 SAO Act, Art. 4 of the new SAO Act

790 On the other hand, the Fundamental Law stipulates that the report is annual, see Art. 43 (3).

and the Final Accounts prepared on the execution of the central budget. The President of the State Audit Office used to countersign the agreements on loans, however, the new SAO Act does not contain such a provision.⁷⁹¹ There is no such law stating that Parliament must debate these reports, but the President of the SAO may attend and take the floor during plenary sessions of Parliament.⁷⁹²

The State Audit Office shall compile the central budget chapter “State Audit Office” and the report on the execution thereof. Both documents shall be submitted by the Government to Parliament as part of the Budget Bill, respectively of the Bill on “Final Accounts”.⁷⁹³ According to the general governmental operation regulation, the responsible ministers or other governmental bodies must send the SAO all legislation and other drafts concerning the SAO.⁷⁹⁴ A special case: the ministers and other central governmental bodies submit their reports on the financial state of their sector before every parliamentary election. Before the submission, they must to send the SAO the draft of the report for comment.⁷⁹⁵

The Act on the SAO includes provision on the transparency of the SAO’s organisation and staff. The President and the Vice-Presidents file asset declarations, in accordance with the regulations on the Members of Parliament, at the time of their election and then annually. The Secretary General, the senior officers and the auditors, in accordance with the regulations on civil servants, file these declarations at the time of their appointment, and then biennially. The property declarations of the Secretary General, senior officials and auditors are not public.⁷⁹⁶ Furthermore, the SAO must publish all information on its website about its organization, operation and finances as do all state organizations. The published information should include e.g. senior officers, contact information, regulations, contracts, budget, salaries.⁷⁹⁷

In sum, the law provides a sufficient level of transparency of the SAO. The main concern is the almost entire lack of deadlines for the reports that are submitted by the SAO to Parliament. On the other hand, the law does not require Parliament to discuss the reports and vote on them, therefore they can be ignored.

Transparency (Practice)

To what extent is there transparency in the activities and decisions of the supreme audit institution in practice?

Score: 75

The SAO meets the legal transparency requirements when submitting the required documents to Parliament. In addition, it has a detailed, up-to-date website (www.asz.hu), which contains the most information required by the Act on the Freedom of

791 Art. 2 (1)-(2) of the 1989 SAO Act

792 Art. 45 (1) Resolution 46/1994. (IX. 30.) on the Standing Orders of Parliament of the Republic of Hungary

793 Art. 1 (4) of the 1989 SAO Act, Article 2 (2) of the new SAO Act

794 Art. 21 Resolution No. 1144/2010. (VII. 7.) on the Rules of the Government’s Procedure

795 Art. 50/A (2)-(3) of the Act XXXVIII of 1992 on Public Finances

796 Art. 10 (5) and (6) of the 1989 SAO Act, Article 19 of the new SAO Act

797 Act XC of 2005 on the Freedom of Electronic Information

Electronic Information. The SAO also operates a specialized news portal (www.azshirportal.hu) with relevant, up-to-date information on the daily operation of the body. Other special information is also available on its main website, including reports, the Audit Manual, etc. However, according to a research paper on institutional transparency some information were missing:

- the senior officers' name and contact information are not available under the level of deputy general directors (Annex I. 3.);
- public findings of audits and inspections carried out at the SAO in relation to its core activities (Annex II. 11.);
- indicators used for describing the output and capacity of the task performance of the SAO, those used for measuring its efficiency and effectiveness, values and changes in time of the values of such indicators (Annex II. 12.).

Some codes and regulations have not been published, for example the code on the auditors' training as the law does not require that these codes be made public. The study concluded that the SAO carries out its activities transparently and rarely breaks the rules on transparency.⁷⁹⁸ The website is up-to-date and the information is accessible. It would be useful if all available codes were made public, especially the code on training, because the only professional requirement that the law prescribes in relation to auditors is a higher education degree.

Accountability (Law)

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

Score: 50

The SAO is legally obliged to submit a public report on the audits to Parliament. The report used to be annual.⁷⁹⁹ The new SAO Act does not require the annual submission anymore, however, the Fundamental Law does.⁸⁰⁰ There are no deadlines and legal requirements on the content of the reports. The Organisational and Operational Rules only regulate the procedure of the preparation of the reports, and the content requirements are in the Audit Manual, which is public.

The financial management of the SAO has to be scrutinised by a chartered accountant commissioned by the Speaker of Parliament through a competition. A chartered accountant with budgetary qualifications of the Chamber of Hungarian Auditors might be authorized to conduct the financial audit.⁸⁰¹ There is no regulation governing to whom the auditor shall submit the report and whether the report is public.

798 A think tank analysis has also named the SAO as an example of one of the best practices of public sector transparency on the internet. http://ekint.org/ekint_files/File/tanulmanyok/az_e_infoszabadsag_tv_hatalyosulasanak_vizsgalata.pdf [accessed on 12 May 2011]

799 Art. 13 e) of the 1989 SAO Act

800 Art. 43 (3) of the Fundamental Law

801 Art. 2 (4) of the new SAO Law

The audited body has several rights regarding the audit report - that is an important aspect of accountability. The SAO sends the audit findings to the head of the audited body, which might make written comments within 15 days. The SAO replies within 30 days and gives reasons if it disregards the comments of the audited body.⁸⁰²

The Act on the SAO stipulates the personal responsibility of the President and the auditors. The President is responsible "towards Parliament for the authenticity and validity of the data and statements of fact contained in the report he has submitted".⁸⁰³ The auditor, or the person performing audits on behalf of the State Audit Office, shall be responsible for a) performing the audit task in accordance with the contents of the audit programme; b) establishing (revealing) and recording in writing all the important facts in the field specified in the audit programme; c) the validity and factual justification of the findings".⁸⁰⁴ Nevertheless, there are no legal sanctions in the event that these regulations are violated. On the other hand, the auditors are civil servants, and as such, they hold liability for their disciplinary offences according to the Civil Service Act. As a result of this process, the auditor might even be dismissed from his/her office.⁸⁰⁵

While the basic guarantees of accountability are provided, they are also incomplete. The underlying audit standards (as the aforementioned INTOSAI standards) should be sufficiently detailed by the Audit Manual and the SAO strategy, which is approved by the SAO itself. As the SAO regulates its own activities, the report is the main source of making information about the professional work of the SAO public, while standards should provide stable foundations on which to rely.

Accountability (Practice)

To what extent does the SAI have to report and be answerable for its actions in practice?

Score: 50

The SAO provides a comprehensive annual report on its work. The report contains the audits' findings, information on how the audits have been utilised, the research and development work related to the audit activities, the improvement of the quality of the audit work and institutional operation and financial management.⁸⁰⁶ These reports are submitted by the SAO, while Parliament debates and votes on them. The annual report usually contains the main statements of the chartered accountant. Up to now it has always found everything in order. As no such document exists amongst Parliament's documents the chartered accountant apparently submits its external report to the SAO. Similarly, the institutions concerned usually do not challenge the results of the audits. Entitled bodies are apparently not keen on using their legal power against the SAO, though having plenty of opportunities to challenge the SAO's audits and reports. The parliamentary debate on the SAO's report is usually quite formal. The report of the external chartered accountant audit is not published; therefore the public might obtain information only from the SAO's report, which is likely to provide a narrower picture.

802 Art. 29 of the new SAO Act

803 Art. 19 (1) of the 1989 SAO Act, Article 32 (2) of the new SAO Act

804 Art. 19 (2) of the 1989 SAO Act, Article 25 (4) of the new SAO Act

805 Art. 50-56 of the Civil Service Act

806 According to Annual SAO Report 2009.

Integrity Mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Score: 50

Apart from the legal regulations governing conflict of interest⁸⁰⁷ rules are also included in the Organisational and Operational Rules. Auditors who have worked over the previous three years at the audited body, or a relative of the audited body's head or an individual who is otherwise biased cannot participate in the audit.⁸⁰⁸ There are no post-employment regulations prescribed. This is a significant corruption risk, because the auditors obtain lots of important information about the operation and financing of state bodies.

The new SAO Act does not mention independence, impartiality or objectivity in connection with the auditors and their work. However, the Audit Manual repeatedly emphasises these values. It declares that "without limitation to forbidden benefits listed under incompatibility rules in the Act on the SAO, the auditor must not request or accept any benefits that may influence his/her impartiality or his/her actions; he/she must not use his/her public position to gain illegal benefits for himself/herself or others, or to cause any disadvantage to others".⁸⁰⁹

Integrity Mechanisms (Practice)

To what extent is the integrity of the supreme audit institution ensured in practice?

Score: 75

The rules on integrity are sufficient; they ensure integrity in many ways, despite some deficiencies noted above. However, there is almost no information about the implementation of these rules. For example, there has never been any known ethical procedure launched against an auditor.⁸¹⁰ The SAO does not organise any particular training on integrity for its staff.

807 See Independence (Law).

808 Art. 36 Organisational and Operational Rules. [accessed on 12 May 2011]

809 Audit Manual Book 2. Ethical requirements p. 35. [http://www.asz.hu/ASZ/nemzetk.nsf/0/A7434BAE3227BF89C125732B004A7206/\\$File/SAO_Audit_Manual.pdf](http://www.asz.hu/ASZ/nemzetk.nsf/0/A7434BAE3227BF89C125732B004A7206/$File/SAO_Audit_Manual.pdf) [accessed on 12 May 2011]

810 Interview with a senior officer of the SAO.

Role

Effective Financial Audits

To what extent does the supreme audit institution provide effective audits of public expenditure?

Score: 75

The SAO carries out regularity audits. According to an independent expert⁸¹¹ this often only means the regular accomplishment of assignments, and as such, the audits are very formal. By contrast, a senior officer of the SAO emphasised that carrying out regularity audits is the SAO's main task, not audits of expediency, because the latter often has a political feature and the SAO has nothing to do with political issues. On the other hand, performance audits are very important. The latest annual plan of 2011 contains such audits, e.g. on the reorganisation of the educational system into the Ministry of National Resources.⁸¹²

It should be noted that when dealing with the financial management of political parties and parliamentary groups as well the use of funds provided for security services and churches the SAO might carry out audits only upon legal aspects.⁸¹³ According to critics auditors often work with preconceived notions when looking at the responsible person causing the faults, rather than the reasons for the problem.⁸¹⁴ They frequently work using merely documents and interviews. The interviewees are usually not well-prepared to answer the questions adequately. Each audit report is submitted to Parliament. In sum, there is a greater emphasis on audits of legality due to the fact that the SAO carries out less audits of expediency. Possible mistakes of the auditors should be examined.

Detecting and Sanctioning Misbehaviour

Does the audit institution detect and investigate misbehaviour of public officeholders?

Score: 50

The Act on the SAO provides the SAO with the necessary tools for detecting misbehaviour.⁸¹⁵ As such, the auditor might request deeds and other documents, and he/she may gain insights, enter the premises of the audited body, and request verbal or written information from any employee of the body. To prevent the occurrence of further loss, the SAO might request the superior authority to freeze budgetary funding and financial assets if the audit discloses wasteful financial management at the audited body.⁸¹⁶ The SAO has expressed on

811 Interview with Kinga Pétervári

812 About the types of the SAO's audits: "(...) the SAO audits can be divided into two major categories, regularity audits and performance audits. While in the case of regularity audits, auditors examine compliance with, conformity to and respect of legislation and other requirements or regulations related to the operation and financial statements of the audited organisation (activity, programme), during performance audits they examine the quality - economy, efficiency and effectiveness - of task implementations, i.e. performance." SAO Audit Manual p. 171. ([http://www.asz.hu/ASZ/nemzetk.nsf/0/A7434BAE3227BF89C125732B004A7206/\\$File/SAO_Audit_Manual.pdf](http://www.asz.hu/ASZ/nemzetk.nsf/0/A7434BAE3227BF89C125732B004A7206/$File/SAO_Audit_Manual.pdf)) [accessed on 12 May 2011] These two types of audit "can be seen as attacking corruption from different approaches. (...) Regularity auditors assess whether the accounts are fair and assess if the internal control system is functioning. Performance auditors assess the three E's, economy, efficiency and effectiveness. All problems related to deficiencies in economy, efficiency and effectiveness do not have their roots in corruption, but in doing our assessments we need to understand which forces are contributing to corruption and which aren't." in: Bengt Sundgren: *Corruption and Auditors role in the fight against corruption*. <http://www.performanceaudit.afrosai-e.org.za/content/corruption-and-auditors-role-fight-against-corruption> [accessed on 12 May 2011]

813 Art. 16 (2) Act of the 1989 SAO Act, Art. 5 (11) of the new SAO Act. The SAO audits biennially the financial management of the parties that receive subsidies from the state budget on a regular basis, see Art. 10 (3) of the Act XXXIII of 1989 on the Operation and Financial Management of Political Parties. These audits can be found at the SAO's annual reports.

814 Interview with Kinga Pétervári

815 Art. 27 of the new SAO Act

816 Art. 31 (1) of the new SAO Act

several occasions that experience shows that audited bodies often hinder the work of auditors, and that auditors frequently obtain information only from public databases and on the premises. On several occasions, the mayor failed to inform the City Council of the findings of an audit.⁸¹⁷ Therefore the new SAO Act prescribes “duty to cooperate” for the audited bodies and their employees and to submit all information and documents requested within 5 days in the course of the audit.⁸¹⁸ If they fail to act accordingly or they do not send a plan regarding their actions to be taken following the audit report of the SAO the President of the SAO might initiate criminal or disciplinary procedures.⁸¹⁹

In the past the SAO’s mandate could be characterized as very limited when sanctioning misbehaviour, while the new SAO aims to take a different direction. Consequently, the tools for detecting misbehaviour appear to be sufficient.

Improving Financial Management

To what extent is the SAI effective in improving the financial management of government?

Score: 75

The SAO’s audit reports always contain recommendations for the audited bodies on how to correct faults and avoid them in the future.⁸²⁰ Since the end of 2010 a Good Practices Database is available on the SAO’s website, which contains the best practices of local governments.⁸²¹ As mentioned beforehand, the SAO - as the follow-up of the audits - requests action plans from the audited bodies and calls on the heads of the budgetary chapter to disclose information on the measures that have been taken to improve the use of public funds. All audits for each budget chapter begin with examining the measures that have been taken compared to the previous ones.⁸²² Some experts claim that this follow-up system is often very formal, because the SAO did not used to be proactive enough when applying the legal measures it is legally entitled to take.⁸²³

The SAO launched an EU funded project in order to map out corruption risks and to strengthen integrity within public administration. Its goal was to map, classify and analyse corruption risks within the public sector, to develop the integrity approach in the audit practice and the administration as a whole and also to find a solution for operational deficiencies”.⁸²⁴ The project was based on the results of a twinning light project that was completed successfully with the Netherlands Court of Audit in 2008. It must be underlined that this project refers to the Hungarian public administration as a whole and not to the SAO.

In sum, the SAO’s strongest tool is making information public, which might force the audited bodies to improve their financial management. In this area, however, the SAO could be more assertive improving the implementation of its recommendations and advice presented in the reports and through the exemplary Good Practices Database.

817 Interview with a senior officer of the SAO. However, the new Act on the SAO requires the Mayor or the President of the County Assembly to do this [Article 32 (6)].

818 Art. 28 of the new SAO Act

819 Art. 33 (3) of the new SAO Act

820 See Audit Manual p. 314

821 http://www.asz.hu/ASZ/www.nsf/legjobb_gyakorlatok.html [accessed on 12 May 2011]

822 Interview with a senior officer of the SAO

823 Interview with Kinga Pétervári

824 The homepage of ‘Integritás Projekt’ http://www.asz.hu/ASZ/www.nsf/corruption_risks.html [accessed on 12 May 2011]

9. ANTI-CORRUPTION AGENCIES

Summary

The institution of the Government Accountability Commissioner is the only one that exclusively deals with anti-corruption in Hungary. Previously, the Anti-corruption Coordination Body (ACB) was the state's anti-corruption body. Nevertheless, the ACB was dissolved de facto during the former administration. There was a plan to set up the Public Procurement and Public Interest Protection Office, but the bill was not passed in its original form, and a state institution for such a purpose has not been established since. Another important body is the Government Control Office (GCO) responsible for controlling public expenditure in addition to the State Audit Office, described in another chapter. The relevant chapter of Hungary's 2007 National Integrity System country study dealt mostly with the Anti-corruption Coordination Body and the Government Control Office. As the ACB dissolved shortly after all the civic participants and some of the experts left the body, this chapter does not analyse the ACB in detail.⁸²⁵ It is, however, still important to recall how the mechanism operated and how it was disbanded, in order to compare it with other agencies. In addition to the ACB, this chapter primarily analyses the institution of the Government Accountability Commissioner, as well as the Government Control Office, and two departments of the Office of the Prosecutor General: the newly planned anti-corruption unit of the Central Investigation Chief Prosecutor's Office; the National Protective Service (NPS). There are other anti-corruption agencies to control different sectors of the economy, such as the Hungarian Competition Authority and the Hungarian Financial Supervisory Authority.⁸²⁶

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 and therefore they cannot be regarded as politically impartial or independent. Some of the organisations lack genuine institutional and financial resources, while others work without any transparency. Most of the 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. His job to enhance the investigative work of the law enforcement agencies 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. Hungarian anti-corruption agencies have a relatively strong investigative role. However, they have no real investigative power. Since the Anti-corruption Coordination Body was disbanded, there has been no established anti-corruption education or systematic prevention, and there do not seem to be any plans to fill this gap.

⁸²⁵ However, additional information on how the body was disbanded will be discussed in more details later in this chapter.

⁸²⁶ This chapter will touch upon these institutions as well. For more information on the State Audit Office, the Prosecutor General, the Chief Prosecutor Office and the Central Investigative Authority see the relevant chapters of the NIS.

Anti-corruption agencies Overall Pillar Score: 47 / 100			
	Indicator	Law	Practice
Capacity 50 / 100	Resources	75	50
	Independence	25	50
Governance 50 / 100	Transparency	25	50
	Accountability	50	50
	Integrity Mechanisms	75	50
Role 42 / 100	Prevention	50	
	Education	25	
	Investigation	50	

Structure and Organization

The Anti-corruption Coordination Body was set up by a government decree in 2007 as the successor to the Advisory Body for Public Life without Corruption. The ACB was created within the organisational structure of the Ministry of Justice and Law Enforcement (MJLE), and since 2010, the duties of this ministry are divided between the Ministry of Public Administration and Justice and the Ministry of Internal Affairs. The body began its work on 6 September 2007.⁸²⁷ According to the law, the ACB was meant to support governmental decision-making, offer expert opinion, draw up proposals and coordinate the fight against corruption. The main roles of the body were to “propose effective instruments and methods against corruption”, as well as “help to draw up expert materials on anti-corruption strategy, organizing its implementation, co-ordination and monitoring, and also coordinating the anti-corruption activities of its members”.⁸²⁸ The most important task of the ACB was to create the Anti-Corruption Strategy, as well as to create and coordinate the Anti-Corruption Action Program for 2008-2010. The ACB has formally fulfilled its main role and created an Anti-Corruption Strategy, as well as an Anti-Corruption Action Plan.⁸²⁹

However, the body dissolved after its last meeting, when all the representatives of NGOs and some of the experts decided to leave it, claiming that the work of the ACB became irrelevant and insignificant. According to the NGOs (Transparency International Hungary and the Hungarian Civil Liberties Union), the Anti-Corruption Strategy providing the fight against corruption through a systematic and holistic approach did not make its way to the government and thus the work of the body became useless.⁸³⁰ The reason for this might have been - according to the external experts - the lack of genuine commitment from the government.⁸³¹

827 Government Decree No. 1037/2007 (VI. 18) on tasks concerning the fight against corruption

828 Corruption Risks in Hungary - National Integrity System, Country Study, I. Hungary 2007, p. 122-123.

829 The 2007 report of the ACB: http://www.irm.gov.hu/antikorrucios_koordinacios_testulet/cikk/AKT_jelentes_20080131.htm [accessed 10 March 2011]

830 <http://index.hu/belfold/antikorr3307/>, [accessed 10 March 2011] http://www.piacessprofit.hu/tarsadalom/belfold/korrupcio_csak_latszatzmegoldas_a_kormany_intezkedese.html, [accessed 10 March 2011] http://www.transparency.hu/hirek_esemenyek?nid=443 [accessed 10 March 2011]

831 Interview with Géza Finszter, Associate Professor, National Institute of Criminology, Budapest, 29 March 2011

The ministry claimed that civic participants from civil society gave up on the cooperation too early in the process and they did not have sufficient patience to await the government's reaction to the Anti-Corruption Strategy.⁸³² According to Ferenc Kondorosi, former State Secretary of the Ministry of Justice and Law Enforcement, the NGOs wanted to deal with greater issues and could not, or were not, willing to adapt to the formal agenda set by the Ministry. In the opinion of Kondorosi, the institution of the ACB could only serve as a forum for exchanging information and experiences, but it was not able to compensate for the lack of political responsibility and it obviously was not meant to be a decision-making body.⁸³³

In the summer of 2010, the new government decided to set up the institution of the Government Accountability Commissioner, because investigating corruption cases of the previous administration was one of the victorious party's most important electoral campaign promises. According to the current commissioner, the prosecution service and law enforcement were "weightless" when investigating corruption cases of the previous cabinet.⁸³⁴ The commissioner's task is to detect dubious affairs, and in case of suspicion, to press charges at the prosecution service, as well as to harmonise the anti-corruption duties of the government. Based on a government decree⁸³⁵, an institution in the form of a commission was established to harmonise the anti-corruption activities of the government and to be responsible for accountability. The government first appointed Ferenc Papcsák⁸³⁶, then Gyula Budai as commissioner for two years, to examine the economic, legal, and professional aspects of documents concerning the financial management of central budgetary authorities and their bodies, as well as companies where the Hungarian state hold the majority share of ownership. It is likely that after the two-year mandate expires, the institution will cease to exist. The government decree governing the Government Accountability Commissioner's legal competence does not cover the examination of the local governments' management. Rather, the institution focuses exclusively on the activities of the cabinet of the previous government. According to the commissioner, the commission has no capacity to examine local governments in any case.⁸³⁷

The Government Control Office is the governmental audit organ of the Hungarian Government.⁸³⁸ For the time being, the main tasks of the GCO are to supervise and monitor the implementation of governmental decisions, and the expenditure of budgetary authorities, as well to fulfil other control duties ordered by a governmental decision, the Prime Minister or the Minister of Public Administration and Justice. The Minister of Public Administration and Justice governs this office. In addition to supervising the implementation of government decisions and the expenditure of budgetary authorities, the GCO is responsible for controlling the operation of the central budget,

832 <http://index.hu/belfold/antikorr3307/> [accessed 10 March 2011]

833 Interview with Ferenc Kondorosi, former State Secretary of the Ministry of Justice and Law Enforcement, Budapest, 2 March 2011

834 Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

835 Government Decree No. 1236/2010 (XI.16) on the government commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government

836 Ferenc Papcsák had to resign due to conflict of interest after he was elected as mayor of the 14th district of Budapest.

837 Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

838 Government Decree No. 312/2006 (XII. 23) on the Government Control Office

the Social Security funds and budgetary authorities, monitoring the use of government subsidies (except in the case of parties), as well as supervising the operation of companies in which the state is a majority owner. The office has no competence to examine the operation and financial management of Parliament, the Office of the President of Hungary, the Constitutional Court, the Parliamentary Commissioners' Office of Hungary, the State Audit Office of Hungary, the courts, the Prosecution Service of the Republic of Hungary, the Hungarian Competition Authority, the Hungarian Academy of Sciences and the National Bank of Hungary. According to an amendment to the law in effect since 12 March 2011, the GCO controls the operation and financial management of private pension funds before portfolios are handed over.⁸³⁹ In the event of rejecting cooperation necessary for its data supply or control work, the office might impose fines as well.⁸⁴⁰

Based on Government Decree No. 312/2006, the GCO was responsible for monitoring subsidies originating from the European Regional Development Fund, the European Social Fund and the Cohesion Fund and monitoring other EU and international subsidies. However, according to a new government decree from 2010, these tasks are now performed by the Directorate General for Audit of European Funds since 1 July, 2010. The Directorate General emerged from the Government Control Office and it is in view of its tasks the successor of the GCO but subordinated to the Ministry for National Economy.⁸⁴¹

In 2009, the previous government introduced a *bill on the protection of fair procedure* and its related amendments to acts, a resolution on ethical standards for the public sector and a bill on the Public Procurement and Public Interest Protection Office.⁸⁴² This latter bill aimed to establish an independent institution (the Office) controlled by Parliament and it was sent back to Parliament by the President of Hungary for reconsideration and the new government withdrew it on 17 May 2010. However, Act CLXIII of 2009 on the protection of fair procedure and its related amendments to acts entered into force on 1 April 2010 and set the investigative powers of the Office as well as introduced the protection and financial reward of whistleblowers.⁸⁴³ Since the Office was not established, according to the Ministry of Public Administration and Justice, the police, the public prosecutor and the judiciary are in charge of starting and executing a criminal procedure.⁸⁴⁴ Despite the Act, in practice there is no possibility to financially reward a whistleblower.

A directive of the Prosecutor General⁸⁴⁵ united two departments, by establishing the Public Interest Protection Department on 1 February 2011. According to the Prosecutor General, the establishment of the new department puts a greater emphasis on the protection of public interest.⁸⁴⁶ The Department of Priority Affairs, which consists of the Division of Criminal Cases and the Division of Organised Crime and Corruption Affairs, is also part of the Office of the Prosecutor General and belongs to the Criminal Division of

839 Art. 120/B, Act XXXVIII of 1992 on Public Finance

840 Art. 120/C, Act XXXVIII of 1992 on Public Finance

841 Government Decree No. 210/2010 (VI. 30) on the Directorate General for Audit of European Funds

842 Act CLXIII of 2009 on the protection of fair procedure and its related amendments to acts

843 <http://www.jogiforum.hu/hirek/22658#axzz1xlBa8Ub> [accessed 18 March 2011]

844 E-mail from the Ministry of Public Administration and Justice sent to K-Monitor Watchdog for Public Funds on 6 December 2010.

845 Prosecutor General's Directive 2/2011 (I.28.) on the amendments to the Prosecutor General's Directive 25/2003 on the organization and operation of the Prosecution Service of the Republic of Hungary

846 <http://inforadio.hu/hir/belfold/hir-408580> [accessed 18 March 2011]

the Office. As far as its anti-corruption activity is concerned, the Department investigates cases violating public scrutiny as well as economic crimes.⁸⁴⁷ The Office did not give any further information on the exact tasks of the department.⁸⁴⁸ The Prosecutor General was due to establish an anti-corruption unit in April 2011 as a body of the Central Investigation Chief Prosecutor's Office. The institution was expected to consist of 55 members and receive HUF 1 billion (USD 4.7 million).⁸⁴⁹

The National Protective Service was established in 2010 as a successor to the Protective Service of Law Enforcement Agencies. The main role of this body is to protect almost 100,000 employees of the civil intelligence services, law enforcement and the public sector from their "dishonest colleagues".⁸⁵⁰ By law, it is authorized to prevent internal crime and detect crime.⁸⁵¹ The tools of the institution in its fight against corruption are defined in Act CXLVII of 2010.⁸⁵² The main functions of the body are collection of classified information, as well as reliability and immaculate conduct (solidity) tests. The service might use a wide range of tools during its work.

László Sólyom, the previous President of Republic founded the Committee of Wise Men in November 2008, as an independent board of highly-recognised experts to give general advice on how to fight corruption over the long term. The four members of the committee were appointed by the President himself and they had approximately one year to publish their suggestions. Their report entitled '*Wings and Weights*' was released in January 2010, but its recommendations regarding corruption have not been implemented by the current government. However, some elements (e. g. founding an anti-corruption unit at the Office of the Prosecutor General) appear in the new government's policy as well.⁸⁵³

The subject of analysis in this chapter is therefore the above-mentioned institutions as a representation of the whole Anti-corruption Agency landscape. The scores represent an aggregate assessment of the performance of these institutions on the various indicators, concentrating primarily of the Government Accountability Commissioner and the Government Control Office.

Assessment

Resources/structure (Law)

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

Score: 75

As for the most important existing anti-corruption agencies, the Government Accountability Commissioner has no budget of its own, while the GCO is an autonomously-managed budgetary institution. There are some objective indicators for determining

847 Establishment and Operation By-law, In: <http://www.mklu.hu/repository/mkudok7267.pdf> [accessed 12 March 2011]

848 For further information on the Prosecutor General, see the chapter on Law Enforcement Agencies.

849 Telephone interview with Géza Fazekas, spokesperson of the Central Investigation Chief Prosecutor's Office, Budapest, 25 March 2011.

850 <http://nvsz.hu/bemutakozas> [accessed 5 September 2011]

851 Government Decree No. 293/2010 (XII.22) on the appointment of the crime prevention and crime detection organ of the Police as well as ascertaining the fulfilment of its duties and the detailed rules on immaculate conduct and the reliability tests

852 Act CXLVII of 2010 on the amendments of regulations concerning law enforcement and related issues

853 Csermely, J. - Fodor, I. - Joly, E. - Lámfalussy, A.: *Wings and weights*. "Committee of Wise Men" Foundation 2009, Available in English at: http://mek.oszk.hu/07900/07999/pdf/wings_and_weights.pdf [accessed 12 March 2011]

budgetary changes and formal guarantees of fiscal stabilities (e.g. in the case of the GCO, the planned unit at the Prosecutor General or the NPS); however, not all of the institutions analysed are independent fiscally and possess satisfactory guarantees for their stable operation. Major anti-corruption agencies have no significant opportunities to receive external funding besides the state budget. The Government Accountability Commissioner (GAC) is directed by the Prime Minister, and he/she is responsible to the Prime Minister. A seven-member secretariat at the Ministry of Public Administration and Justice (MPAJ) support the commissioner.

The institution does not have a separate budget. The commissioner receives the same payment and allowance as a secretary of state. Once a minister or a secretary of state is appointed as government commissioner, he/she receives additional allowances, provided that his/her new scope of duties does not cover his/her original scope of duties.⁸⁵⁴

According to the law, the Government Control Office is an autonomously managed central budgetary organisation with public authority and chapter rights. Its budget forms a separate title in the chapter of the Ministry of Public Administration and Justice.⁸⁵⁵ Since the Public Interest Protection Department is part of the Civil Division of the Office of the Prosecutor General, the department has no autonomous budget and it is financially part of the Office of the Prosecutor General. As already mentioned, the Prosecutor General was due to establish an anti-corruption unit in April 2011 as a body of the Central Investigation Chief Prosecutor's Office. The institution was expected to consist of 55 members and receive HUF 1 billion (USD 4.7 million). The amount is part of the central budget of the Prosecution Service of the Republic of Hungary. The structure and operation of the body is not yet disclosed.⁸⁵⁶ The National Protective Service is part of the Hungarian Police. The central state budget funds the NPS.⁸⁵⁷

Resources/structure (Practice)

To what extent does the ACA have adequate resources to achieve its goals in practice?

Score: 50

The budget of the GCO is relatively small compared to other relevant institutions, despite the fact that it could play a leading role as an anti-corruption agency due to its competence, professional capacity and experience. The Government Accountability Commissioner believes that not even a team twice the size would be able to deal with all the tasks it receives. Staff members appear to be adequately educated and have sufficient work experience in all the institutions analysed and some also frequently receive training; however, the recruitment process is not sufficiently open. Most of the employees of the Government Accountability Commissioner are lawyers. All members of the staff are employed by the MPAJ, who were invited to join the team by Gyula Budai,

854 Art. 31, Act CLXVIII of 2009 on central administrative institutions, as well as the legal status of the members of the government and the Secretaries of State.

855 Tasks of the GCO, Available at: http://www.kehi.gov.hu/hivatal_feladatai.htm [accessed 7 March 2011]

856 Telephone interview with Géza Fazekas, spokesperson of the Central Investigation Chief Prosecutor's Office, Budapest, 25 March 2011

857 Act CLXIX of 2010 on the 2011 Budget of the Republic of Hungary. (Here, NPS is still referred to as the Protective Service of Law Enforcement Agencies.)

due to their former acquaintance. Gyula Budai's seven-member crew is fully competent in completing its tasks, however, not even a team twice the size would be able to deal with all the tasks it receives. All employees passed the C-level national security check and as such, they have access to classified information.⁸⁵⁸ As already mentioned, the institution does not have a separate budget; only the commissioner has a HUF 20,000 (USD 95) monthly representational expenditure frame.

The Code of Conduct and organisational structure, as well as the Establishment and Operation By-law of the Ministry of Public Administration and Justice, applies to the employees of the commissioner, who designated all of them. The Government Accountability Commissioner does not provide any professional training for its workers.

In practice, the Ministry of Finance published a position paper in May 2010 as a supplement to the hand-over documentation on the GCO under its supervision. As a result of the position paper, the office was not provided with financial resources sufficient for its operation, which increased its dependence on the Ministry of Finance. In addition, another government decree made it impossible for the office to employ the sufficient number of people.⁸⁵⁹ The budget of the GCO decreased from HUF 1.3 billion in 2010 (USD 6.2 million) to HUF 800 million (USD 3.8 million) in 2011, while the number of employees showed a similar trend (it dropped from 174 to 120), mostly due to the separation of the European Directorate General for Audit of European Funds.⁸⁶⁰

A priority duty of the GCO in 2011 is to control the allocation of social security funds and therefore a new department was established within the office in order to fulfil this task. According to the chair of the office, the organisation lacks sufficient human and financial resources to fulfil their new tasks. As such, they will turn to the relevant decision-makers to enable them to change the situation.⁸⁶¹ Prospective employees of the GCO must undergo a C-level national security check and meet several professional requirements. The institution mostly employs people with legal and/or economics degrees and the GCO regularly sends its workers on professional training courses.⁸⁶²

The financial source of the NPS was HUF 3,845.5 million (USD 18.2 million) for 2011. The independent fiscal institution has 376 employees. The employees of the NPS are professional members of the police, government clerks and public servants. The requirements are five years of paid professional law enforcement experience, a psychological and health test and C-level national security check. The requirements must be repeated as follows: national security check every five years, psychological test every two years and a health test every year.⁸⁶³

858 Interview with Gyula Budai, government commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

859 http://kehi.gov.hu/docs/PMatadas/KEHI_atadas_atveteli_jegyzokonyv.pdf [accessed 7 March 2011]

860 Information from Szabolcs Barna Gaál, chair of the GCO

861 Information from Szabolcs Barna Gaál, chair of the GCO

862 Information from Szabolcs Barna Gaál, chair of the GCO

863 Telephone interview with Zoltán Ilcsik, chief rapporteur of the Director-General of the National Protective Service, Budapest, 29 March 2011

Independence (Law)

To what extent is the ACA independent by law?

Score: 25

None of the anti-corruption agencies analysed can be regarded as politically independent, since they are all more or less subordinate to the government. The government commissioner itself is a political position, directed by the Prime Minister, while the Government Control Office is also completely subordinate to the government. Although there are certain professional recruitment criteria in some of these institutions, there are no legal restrictions on the political neutrality of directors or any legal protection from removal without relevant justification. The Government Accountability Commissioner is nominated by the Minister of Public Administration and Justice. He is directed by the Prime Minister and cannot be instructed by anybody else. The government commissioner cannot be regarded as independent, because the institution itself is a political position directed by the Prime Minister. There are no special rules or criteria for his appointment.

On one hand, the office of the commissioner does not specify any special written criteria (beyond those for public officials) that employees must meet. On the other hand, lawyers help the work of the commissioner. The Government Control Office cannot be regarded independent either, because it is subordinate to the government. Since the elections in 2010, the GCO has been governed by the Minister of Public Administration and Justice instead of the Minister of Finance. The chair of the office is appointed by the Prime Minister, based on the proposal of the Minister of Public Administration and Justice, while his/her deputy is nominated by the chair of the office and appointed by the Minister of Public Administration. The President of the GCO and his/her deputy must be a Hungarian national, have at least five years' administrative and professional practice, five years' practice in a senior position and meet the requirements of a government decree on the internal control of budgetary authorities.⁸⁶⁴ By subordinating the GCO to the Ministry of Public Administration and Justice, the possibilities of the office have broadened, according to its chair. He takes part in the meetings of the administrative Secretaries of State as a permanent guest and has a right to object in personal matters in the case of controllers of the ministries.⁸⁶⁵

As far as independence is concerned, the departments of the Office of the Prosecutor General are part of the institution and the head of the Office is the Prosecutor General. The departments have no special competence in comparison to the other departments.

According to the law⁸⁶⁶, the NPS is a national competence body, according to the act on the professional members of the armed forces.⁸⁶⁷ A lack of independence of the body is a result of the structure and operation of the institution. The leader is appointed by the Minister of Internal Affairs and its conductive body is the Ministry of Internal Affairs. It is the government's duty to elaborate the scope and regulation of the NPS. The minister approves the Establishment and Operation By-law.

⁸⁶⁴ Government Decree No. 193/2003 (XI. 26) on the internal control of budgetary authorities

⁸⁶⁵ Decree No. 19/2010 (IX.2) of the Ministry of Public Administration and Justice on the issue of the Establishment and Operation By-law of the Government Control Office

⁸⁶⁶ Government Decree No. 293/2010 (XII.22) on the appointment of the crime prevention and crime detection organ of the Police as well as ascertaining the fulfilment of its duties and the detailed rules on immaculate conduct and the reliability tests

⁸⁶⁷ Act XLIII of 1996 on the service of the professional members of the armed forces

Independence (Practice)

To what extent is the ACA independent in practice?

Score: 50

Neither of the major anti-corruption agencies (the Government Accountability Commissioner or the Government Control Office) operates in a non-partisan manner, nor are they seen as politically impartial. As their names show, these institutions are completely subordinate to the government, and not only by law, but in practice as well. The office of the accountability commissioner de facto cannot examine cases in which the actual cabinet has been involved. However, these institutions are quite independent, in terms of investigation and their leaders are not frequently removed. In the case of corruption within the current ruling political parties, the Government Accountability Commissioner declares it and informs the relevant ministry in charge. As already mentioned, his mandate does not cover examining the current government and he also added that examining the period between 1998 and 2002 (the first administration of the currently ruling party) is not assigned to him, because that task was already examined by László Keller, the previous Secretary of State of Public Funds, and even those investigations proved futile.⁸⁶⁸ LMP, the smallest opposition party in the Hungarian Parliament, demanded that the commissioner's examination competence be extended to the local governments; however, this has not been done.⁸⁶⁹

As a result, it is impossible to examine cases concerning the current ruling parties with the commissioner's present mandate. While interviewing the commissioner, the authors of this chapter brought up three cases that concern the former government's operation, and both sides of the political spectrum are involved, according to the media. These cases are the Gripen case, the planned state subvention of the Balatonring highway and the affairs of the MVM Group.⁸⁷⁰ Budai believes that he has no competence in the Gripen case, since it has already been examined by the Gripen Committee⁸⁷¹, and as far as the Balatonring affair is concerned, thus far he has not been contacted by anyone. However, the commissioner and the Central Investigative Authority are both investigating the MVM case.⁸⁷²

According to the chair of the GCO, the direct connection with the government is relevant for the work of the office from several aspects: on one hand, it raises the respectability of the institution so that the willingness to cooperate from the part of other organisations might significantly increase; on the other hand, the office might be able to communicate its needs more easily towards the body that defines its tasks and responsibilities. The chair of the GCO regularly consults with the Government Accountability Commissioner in order to avoid the duplication of efforts. For the time being, the office examines mainly cases concerning the previous cabinet, however, there are some affairs which also involve the current administration. The number of the latter cases will probably increase in the future.⁸⁷³

868 Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

869 <http://lehetmas.hu/sajtokozlmenyek/11469/nemzeti-egyuttmutyzasi-rendszer-szentendren/> [accessed 16 March 2011]

870 For more details on the Gripen case, the state subvention of Balatonring and the MVM case see: http://index.hu/belfold/2010/valasztas/meg_13_ugyet_ajanlunk_a_fidesz_figyelmebe [accessed 12 March 2011]

871 <http://m.hvg.hu/hvgfriss/2007.33/200733HVGFriss33> [accessed 12 March 2011]

872 Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

873 Information from Szabolcs Barna Gaál, chair of the GCO

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

Score: 25

None of the main institutions analysed are legally restricted when it comes to publishing information on their activities, reports or operations. There is no requirement to prepare documents for the public and only the Protection of Personal Data and Disclosure of Information of Public Interest Act⁸⁷⁴ stipulates deadlines for making information public. The transparency of the work of the Government Accountability Commissioner is not regulated by any specific law. None of the activities of the commissioner are required to be made publicly available, even if the current commissioner tries to make as much information publicly available as possible. As for the Government Control Office, there are no legal requirements for the organisation to publish any of its reports. Although provisions on the freedom of information of the institution have already been rewritten, the disclosure practice has not changed.⁸⁷⁵

The Hungarian Civil Liberties Union (HCLU - TASZ) filed a lawsuit against the GCO in 2007, in which it tried to make one of the office's reports from 2005, on the failures of administrative modernisation, public. The Metropolitan Court rejected the suit referring to the fact that reports on the preparation of governmental decisions are not public. The decision was reviewed by the Metropolitan Court of Appeal obliging the GCO to make its report public. In the end, however, the Supreme Court passed a judgement in favour of the decision of the Metropolitan Court and rejected the suit of the HCLU.⁸⁷⁶ According to the judgement, publishing the GCO reports depends solely on the willingness of the government. Information of public interest on the operation of NPS is public upon the law, and the new website of the organization contains fundamental information about the duties of the NPS, as well as basic documents and the main budgetary figures of the institute. Nevertheless, there are no detailed documents related to the activity of the NPS available on their website.

Transparency (Practice)

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

Score: 50

In practice, the transparency of the anti-corruption agencies analysed is quite controversial. The Government Accountability Commissioner has no website of its own, but uses every opportunity to obtain publicity for his activities through the media. The Government Control Office operates a website, but the public has no access to the real activities of the institution, not even through freedom of information requests. Even

874 Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest

875 Corruption Risks in Hungary - National Integrity System, Country Study, I. Hungary 2007

876 <http://www.jogiforum.hu/hirek/17678> [accessed 24 March 2011]

when they meet their legal requirements, anti-corruption agencies can by no means be regarded as fully transparent. In practice, the institution of the Government Accountability Commissioner does not have a website yet and, as a result, no information is available for the public about its activities. The Commissioner plans to launch a website by the end of 2011. The Commissioner informs the public mainly through press conferences where he reports on recent investigations and denunciations. Apart from the oral presentations, journalists are provided with documents at these media conferences. However, the Commissioner believes that their operation is totally transparent, since all information is given concerning their work when requested.⁸⁷⁷ The Commissioner gave a detailed response to the written information request of the authors of this chapter within the time limit established by the law.

The actual activities of the Government Control Office are completely unavailable to the public. The website of the office - established after the Data Protection and Freedom of Information Commissioner published a report on the transparency of the GCO⁸⁷⁸ - informs visitors about the background, basic activities and the management of the office, but there is no information on the actual investigations and activities. Due to the position of the GCO, publishing the reports would be equivalent to a decline in their quality and effectiveness, since documents made only for internal use tend to be much more honest and critical. The lack of publicity serves as the protection of controllers ensuring that their detailed and honest opinion will not make them vulnerable. On one hand, this approach may be helpful in providing the government with detailed information in its fight against corruption. On the other hand, the complete lack of publicity and transparency makes it impossible to find out whether or not the office does a thorough and efficient job, and whether the government uses any sanctions against activities criticised in the GCO reports. However, the office gave a detailed response to the written information request of the authors of this chapter within the time limit established by the law.

Regarding transparency, the website of the Office of the Prosecutor General gives an overview of the structure of the whole organisation. The Establishment and Operation By-law defines the responsibilities of all units.⁸⁷⁹ However, no other information is available on the exact operation or the tasks completed by the two relevant departments on the website. The authors of this chapter contacted the office, but the office did not feel obliged to give any official response to the questions concerning the number of personnel, the spending of these two departments, as well as the number of the new division's personnel.

As already mentioned, the operation of the NPS is public according to law. The new website of the organisation gives an overview of the goals, as well as the structural and operational regulation of the body. The National Security Committee of Parliament is still to decide whether the obligatory annual report made by the executive director should be disclosed publicly.⁸⁸⁰ The work done by the body is still not available.

877 Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest March 23rd, 2011

878 Corruption Risks in Hungary - National Integrity System, Country Study, I. Hungary 2007 p. 127

879 Establishment and Operation By-law, In: <http://www.mklu.hu/repository/mkudok7267.pdf> [accessed 12 March 2011]

880 Telephone interview with Zoltán Ilcsik, chief rapporteur of the Director-General of the National Protective Service, Budapest, 29 March 2011

Accountability (Law)

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

Score: 50

Although some provisions exist governing the accountability of anti-corruption agencies (e.g. the reporting requirements and external audit system of the Government Control Office), they do not cover all the institutions analysed, or every aspect of accountability. None of the major anti-corruption agencies have to publish their reports on their websites, or make any provisions to protect whistleblowers, and none of them are controlled by a citizen oversight committee. The Government Accountability Commissioner is not obliged to give a report and he does not have to inform the public proactively about his work. There is no institutionalised civil control over his office and it neither provides any protection to whistleblowers or external informants (due to the lack of a legal framework).⁸⁸¹

The chair of the Government Control Office must report the disclosed failures, deficiencies, infringements and irregularities to the government through the Minister of Public Administration and Justice. There is no requirement for the GCO to consult the public.⁸⁸² The State Audit Office exercises the power of oversight over the GCO and the reports of the SAO are publicly available. According to the chair of the GCO, the SAO is currently running an investigation into the office. The last report of the SAO is available on the website of the GCO as well.⁸⁸³

The leader of the NPS is obliged to present a report at least once a year to the Minister of Internal Affairs and to the ministers in charge of the institutions monitored by the service. The public prosecutor carries out legality supervision over the body that executes crime prevention and detection, according to the act on the Hungarian Police.⁸⁸⁴

Accountability (Practice)

To what extent does the ACA have to report and be answerable for its actions in practice?

Score: 50

Although the formal reporting systems of the anti-corruption agencies towards the government seem to work in practice, none of the institutions analysed are effectively controlled by the public, or have a working whistleblowing policy. The office of the Government Accountability Commissioner tries to notify everyone about the outcome of the reported cases, but neither the commissioner, nor the GCO have internal channels or inform the public proactively about their activities.

881 Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

882 Government Decree No. 312/2006 (XII. 23) on the Government Control Office

883 http://www.kehi.gov.hu/docs/KEHI_kulso_ellenorzesek_2009.htm [accessed 28 March 2011]

884 Act No XXXIV of 1994 on the Police

As for the institution of the Government Accountability Commissioner, one report was made last year at the end of December to the Prime Minister, and its content has been shared with the media. The Commissioner has received 736 reports in 2010 and 417 this year up to September 2011. Over a hundred cases were examined and 33 of them are now analysed thoroughly by the Commissioner's office. Furthermore, the Commissioner has pressed charges at the Prosecutor General in 38 cases. Lacking a website, the Commissioner receives mainly written reports. While the former government commissioner disclosed an electronic form on the website of the Ministry of National Development, in order to facilitate reports, it is no longer available. The public disclosures are filed by the office and informants are always notified about the outcome of their cases.⁸⁸⁵

The GCO is obliged to submit its annual supervision plan to the government for approval by 15 December of the previous year and report about its activities within six months of the following year. Besides the regular supervision plan, the chair of the office may order extra investigations if a government decision, the Prime Minister or the Minister of Public Administration and Justice orders it. The operating website of the NPS does not provide a special channel for whistleblowers or informants; however, it provides email addresses and phone numbers.

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

Score: 75

Most of the anti-corruption agencies are regulated by a code of conduct: either internally or through the Ministry to which they belong. The greatest problem with these codes of conduct is that the rules - though quite comprehensive - are not sufficiently detailed. The code of conduct is the legislation in force concerning conflict of interest, receiving gifts and the internal regulation of the Ministry of Public Administration and Justice and it applies to the institution of the Government Accountability Commissioner. The GCO has an internal code of conduct, which applies to all GCO employees and contains rules regarding conflict of interest, gifts and hospitality, as well as post-employment restrictions. According to the Code of Conduct, all employees must study these rules and sign that they have read and understood the document. The code strictly regulates cases of violation and sanctions must be applied, according to the law on public employees.⁸⁸⁶ No official information was provided on whether there is a special code of conduct that regulates the two departments of the Office of the Prosecutor General, or whether the units simply have to apply to the regulations concerning the whole body of the Prosecution Service. The departments have no independent websites. The information and documents concerning their functioning are not disclosed proactively. The NPS is working on its own code of conduct and on establishing rules of conflict of interest, declaration of property concerning the members of the police apply to the members of the NPS as well.⁸⁸⁷ For more information see the relevant chapter of the NIS.

⁸⁸⁵ Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

⁸⁸⁶ Act XXIII of 1992 on the Legal Status of Public Employees

⁸⁸⁷ Telephone interview with Zoltán Ilcsik, chief rapporteur of the Director-General of the National Protective Service, Budapest, 29 March 2011

Integrity (Practice)

To what extent is the integrity of members of the ACA(s) ensured in practice?

Score: 50

None of the interviewed employees working in the anti-corruption agencies had any knowledge of violation of their respective codes of conduct. Therefore, it is difficult to estimate how these integrity mechanisms work in practice. The staff is not regularly trained on integrity issues. As such, even if codes of conduct do exist, they are presumably hardly effective in ensuring ethical behaviour among the staff.

Roles

Prevention

To what extent does the ACA engage in preventive activities regarding fighting corruption?

Score: 50

Since the dismissal of the Anti-corruption Coordination Body, there has been no established education or systematic prevention in this field, and there seem to be no plans either to fill this gap. The Government Accountability Commissioner has a limited but existing corruption-prevention competence, while that of the GCO might increase in the future.. He participates in the legal preparatory work and transmits his proposals as well as his observations to the Government and the governmental decision-preparatory bodies. He has the right to express his views on the governmental bills, on the reports of the central public administration's examination reports and on the draft orders of the ministers. In addition, he contributes to the legal work related to the development, enlargement, alienation and privatisation of the treasury of the state and local governments. Moreover, he has the right to participate in the elaboration of the legal frameworks and regulatory concepts of the legal, effective and transparent utilisation and control of the subsidies deriving from the central state and municipal budget, and the European Union's budget.⁸⁸⁸

In practice, the Commissioner participates in the legal preparatory work of the Ministry of Public Administration and Justice and presents his own proposals to the government concerning his operation. According to its Commissioner, the role of the Government Control Office in the fight against corruption could increase, because he participates in the meetings of the administrative Secretaries of State as a permanent guest and he is thus able to influence decision-making.

The NPS plans to take part in education and corruption prevention by organising conferences and workshops with NGOs and other organisations. According to their spokesman, the NPS might involve those interested in giving some abstract ideas - such as good conduct - concrete definitions. The NPS is open to cooperating with organisations and other NGOs concerning corruption.⁸⁸⁹ Through data collection - besides other means - the NPS carries out crime detection.

⁸⁸⁸ Government Decree No. 1236/2010 (XI.16) on the government commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government

⁸⁸⁹ Telephone interview with Zoltán Ilcsik, chief rapporteur of the Director-General of the National Protective Service, Budapest, 29 March 2011

Education

To what extent does the ACA engage in educational activities regarding fighting corruption?

Score: 25

Since the dismissal of the Anti-corruption Coordination Body, there has been no established anti-corruption education. The Government Accountability Commissioner has no educational competence, while neither the Commissioner, nor the Government Control Office has sufficient research capacity. The accountability commissioner has no researchers or educational competence, in contrast to the ACB. Lacking the necessary competence and capacity, he does not carry out scientific work, but participates in such events.⁸⁹⁰ The Government Control Office has training courses for experts supervising different ministries; however, this is only a small part of the activities of the GCO, due to a lack of capacity. The office participates in professional consultations with controllers from the SAO, HFSÁ, etc. The GCO has no research capacity.⁸⁹¹

Investigation

To what extent does the ACA engage in investigation regarding alleged corruption?

Score: 75

Though far from independent or comprehensive, Hungarian anti-corruption agencies have a relatively strong investigative role. However, the major institutions have no real investigative power. As the Accountability Commissioner does not have investigative competence in the event of suspicion, he transmits the cases to the Prosecutor General. The Prosecution Service is responsible for all further acts. Neither has the Government Control Office investigative power, but it can reserve documents and media storage, as well as impose a fine on institutions restraining access to information during the investigation.⁸⁹² In the case of public reports, the GCO collects information and responds to them as well, but these reports do not determine the agenda.

Since the Public Interest Protection Department is part of the Civil Division of the Office of the Prosecutor General, the unit does not carry out criminal investigations.⁸⁹³ Besides other functions, it carries out legality supervision over the body executing crime prevention and detection according to the Act on the Police, and starts civil legal and non-litigation proceedings, according to the law.⁸⁹⁴ In protecting employees from dishonest colleagues, the NPS focuses on three fields: the civil intelligence services, the institutions of the public sector, and the law enforcement agencies. The NPS does not have investigative power and in the event of suspicion, NPS informs the investigative bodies.⁸⁹⁵

890 Interview with Gyula Budai, Government Commissioner responsible for accountability and harmonisation of the anti-corruption duties of the government, Budapest, 23 March 2011

891 Information from Szabolcs Barna Gaál, chair of the GCO

892 Information from Szabolcs Barna Gaál, chair of the GCO

893 Establishment and Operation By-law, In: <http://www.mklu.hu/repository/mkdok7267.pdf> [accessed 12 March 2011]

894 Act XXXIV of 1994 on the Police

895 <http://nvsz.hu/> [accessed 5 September 2011]

10. POLITICAL PARTIES

Summary

Hungary is a parliamentary democracy, and since the transition of 1989/1990, political parties have played a dominant role. During the transition, democratisation was a *top-down process*, with the political parties as major actors. As the totalitarian system did not allow grass-root organisations or a strong middle-class for almost 40 years, civil organisations had limited (organisational and financial) backing. Political parties (especially parties in Parliament), on the other hand, colonised the state's resources and gained an even greater advantage. The major rules for political competition were set during this time, and they took shape in so-called *cardinal laws*. Changing the Constitution requires a two-thirds majority of all Members of Parliament, and a consensus in the ruling coalition. The party Fidesz, which was in opposition during the previous administration, won the last elections with an overwhelming majority.

In 2009-2010 two national parliamentary elections took place (including the European Parliamentary election as well) along with a referendum in 2008 with no change in the underlying rules since the 2008 NIS report. European and Hungarian media reported frequently on political finance (corruption) scandals and abuse of power by some leading politician while the public demanded new, stronger rules and penalties. Domestic and international civil organisations took over a major part in pointing out suspected corruption.⁸⁹⁶ As a result of the 2010 general elections, the new government gained a two-thirds majority in Parliament.⁸⁹⁷ The new government has loosened the system of checks and balances by limiting the power of veto players (e.g. the Constitutional Court) and enhances the power of Parliament (majority).

On April 25th, 2011 a new Constitution⁸⁹⁸ (Fundamental Law) was adopted coming into effect on 1 January 2012, which includes 39 cardinal laws.⁸⁹⁹ The new Act LXVI of 2011⁹⁰⁰ on the State Audit Office (SAO) empowers it to audit the political parties and their parliamentary groups' financial reports. As the fresh OECD report shows, "soft" criteria, such as, for example, voter participation and consultation on rule-making are increasingly taken into consideration.⁹⁰¹ In Hungary parties with more than 1% electoral support at the general elections are eligible for budget funding. Eligible parties receive funding from a general budget, around HUF 2.5 billion (USD 11.8 million) annually. One quarter of this amount is reserved for the parliamentary parties with more than 5% voter support distributed equally among these parties. The remaining 75% is distributed among the eligible parties, according to their share of the votes. Since 2008, every party with more than 1% electoral support can furthermore count on an annual HUF 1.3

896 E.g. (HCLU) TASZ sued the consortium reconstructing the Budapest Margaret Bridge to disclose its contracts, such as those of public companies. The first instance Pest County Court ruled that the consortium is not a public service provider and is therefore not subject of public transparency laws.

897 The two-thirds majority allows the Fidesz-KDNP alliance to change and introduce cardinal laws by its own, even without consensus among the majority of parliamentary parties.

898 <http://www.kormany.hu/download/0/d9/30000/Alapt%C3%B6rv%C3%A9ny.pdf> [accessed 25 May 2011]

899 http://www.fn.hu/belfold/20110422/ezek_sarkalatos_torvenyek/ [accessed 4 July 2011]

900 <http://www.parlament.hu/irom39/03109/03109.pdf> [accessed 5 July 2011]

901 <http://www.oecdbetterlifeindex.org/topics/governance/> [accessed 5 July 2011]

billion (USD 6.2 million) budget support for a foundation to conduct scientific research and education. As the system started in 2003, only parliamentary parties were eligible, but the Constitutional Court ruled in favour of a unification of the two budgets, starting from the third quarter of 2008. Further financial and infrastructural support for parliamentary party groups is provided by the office of the Parliament.⁹⁰² Financing is not automatic, but subject to a vote. Therefore, the parliamentary party groups agree on this amount and vote, usually unanimously, on it. The exact amounts can be found in the first supplement of the state's budget⁹⁰³, in the chapter of the Parliament's office expenses (Title 7 for eligible political parties, Title 8 for foundations).

The major question for Hungarian political finance is the obsolete legislation from the year 1989, which is not meet to the demands and needs of the 21th century. Under closed eyes of the media⁹⁰⁴ and public opinion, fair and transparent political finance regulations in Hungary cannot be tackled, until one general question is answered - where should the money come from, and how should the parties be allowed to spend it.

Political Parties Overall Pillar Score 44 / 100			
	Indicator	Law	Practice
Capacity 56 / 100	Resources	75	50
	Independence	50	50
Governance 38 / 100	Transparency	25	50
	Accountability	25	25
	Integrity Mechanisms	50	50
Role 38 / 100	Interest Aggregation & Representation	50	
	Anti-corruption Commitment	25	

902 E.g. postal services (letter and phone), access to data basis and expertise, certain staff paid for by Parliament, company car, etc.

903 http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A1000169.TV [accessed 5 July 2011]

904 The homepage www.index.hu publishes from September 2009 on all available documents on the public financed reconstruction of the Margaret Bridge in Budapest. http://index.hu/belfold/budapest/2009/09/11/megszamoljuk_a_hidpenzt/ [accessed on 30 June 2011]

Resources (Law)

To what extent does the legal framework provide an environment conducive to the formation and operation of political parties?

Score: 75

The legal framework for setting up political parties is based on the freedom of association and it is regulated in the cardinal laws on political parties⁹⁰⁵ and on social organisations⁹⁰⁶ from 1989, and the election law⁹⁰⁷ from 1997. Their core did not change for the last two decades, parliamentary parties and new formations adopted their tactics to this legal environment. As many authors⁹⁰⁸ point out, political parties are - according to the present Constitution⁹⁰⁹ - entitled "to take part in shaping and manifesting the will of the people". This stipulates special responsibilities for political parties, especially for the parties represented in Parliament.

As an unwritten rule, the conditions for setting up parties and the election rules should not change in the year before elections, to provide predictable conditions for the party competition. In June 2010, the new Parliament majority changed⁹¹⁰ the election law for the local municipalities: the number of local council members was cut by half; the campaign period was shortened from 72 to 60 days; and the required number of supporting voter signatures increased.

The rules for party competition are liberal. After 40 years of single party rule in Hungary, the founding fathers of the democratic Constitution introduced low thresholds for civil engagement. Ten eligible voters can establish a political party or a civil organization, based on Act II of 1989 on the Freedom of Association.⁹¹¹ The Constitution bans the pursuit of single-party rule in Hungary. Political parties have to register at one of the 19 counties, or the capital's courts, and present their rules of procedure, names of their elected leadership and other required basic information. Parties must furthermore present their financial report about a fiscal year by 30th of April of the following year to the SAO and to publish this information in the official bulletin and on their website.

There are no clear regulations on the amount of time that parties have for publishing their financial reports on their websites. The reports are presented often late or formally, which does not offer a detailed picture of the financial activities of the respective party. Some parties, e.g. Fidesz before the scheduled 2008 SAO audit, reshuffle reports. As the law contains no deterrents or punishments for delays or incomplete reports, parties face no real consequences, except bad publicity in the media.

905 Act XXXIII of 1989

906 Act III of 1989

907 Act C of 1997

908 e.g. Zsuffa, 2006: 137

909 Art 3 (2) Act XX/1949, Art. VIII (3), Fundamental Law

910 http://www.fn.hu/belfold/20100621/elfogadtak_valasztasi_torvenyt/ [accessed 5 July 2011]

911 http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=9890000TV [accessed 5 July 2011]

If a political party is not able to run at least one single district candidate during two consecutive general elections, the registration court removes the party from the list of political parties.⁹¹² After the 2010 elections, the State Prosecutor's Office (SPO) initiated the dissolution of 50 parties from the registered 141, because they did not manage to meet this criterion.⁹¹³ These parties can continue their public and political activities as civil organisations and can also run candidates at the local elections. As election comes closer, political parties begin to flourish. There are no limitations on the formation of new parties in the law on political parties. Only the name giving is limited, parties have to choose a name, which differs from the name of previous and existing parties. Even parties that are removed from the list of registered parties can re-establish themselves, by meeting the formal criteria and registering at one of the designated courts.⁹¹⁴

Parties can appeal all decisions at the court of the electoral bodies and the State Prosecutor's Office. The SPO is only entitled to check that the parties' internal behaviour corresponds with its own rules of business, presented at the time of registration (or after changes) to the court or the laws. During an election period, one can appeal the decisions of the election bodies within three days of recognised faults or frauds. Second instances and courts of third instance are to decide on election related issues within at least three days.⁹¹⁵

There are restrictions for political parties in the law on political parties (e.g. party groups are forbidden at working places⁹¹⁶) and the electoral law (e.g. campaign activities are forbidden in public buildings, public transport facilities and work places). Donations from foreign states and public owned or financed enterprises, as well as anonymous donations, are forbidden.⁹¹⁷

After the 2010 elections, the new government launched an electoral law proposal (T/18)⁹¹⁸ for the scheduled 2014 elections. According to this draft bill, the seats in Parliament should be reduced from 386 to 200 and the additional 13 seats for the ethnic minorities should become optional. The basic system will not change, but according to Art 4 (2) the 176 single election districts will be transformed into 90. Instead of the present 152 county territorial seats, there will be nationwide only 78, and the current number of 58 compensation mandates will shrink to 30. The major opposition party (MSZP) launched its own electoral law proposal (T/20)⁹¹⁹ with the existing number of 176 single election districts and 23 compensation mandates. This and other proposals seek to meet public and media-driven demand to reduce the costs of politics. The incumbent (and as a special interest group, the Parliament) parties as a whole are interested in keeping their status as parliamentary (i.e. ruling) parties.

912 According to Art. 3 (3) of the law on political parties Act XXXIII of 1989.

913 <http://www.origo.hu/itthon/20110106-otven-part-megszunteteset-kezdemenyezte-az-ugyesszeg.htm> [accessed 5 July 2011]

914 The most notorious example is the *Humanista Párt* (Humanist Party), which was dissolved in 2002 by the Budapest Court. As the party appealed, the High Court (Legfelsőbb Bíróság) ruled 2003, that if the party meets the formal criteria of party registration, the Budapest Court has to register the party. http://hu.wikipedia.org/wiki/Humanista_Párt [accessed 5 July 2011]

915 <http://tasz.hu/politikai-szabadsagjogok/reszvetelijogok/jogorvoslat> [accessed 5 July 2011] Especially Art 79 and 80.

916 Art. 2 (1) Act XXXIII of 1989

917 Art. 4 (3) Act XXXIII of 1989

918 <http://www.parlament.hu/irom39/00018/00018.pdf> [accessed 5 July 2011]

919 <http://www.parlament.hu/irom39/00020/00020.pdf> [accessed 5 July 2011]

A detailed description of the campaign money regulation can be found in various studies.⁹²⁰ During the transition period, the budget support for political parties aimed to close the gap between the resources of the then incumbent ruling party (MSZMP - MSZP) and the newly established parties. This goal was met, with the first free elections in 1990 in which seven parties gained seats in Parliament. The original intention (leaning towards the German model) of the political finance regulation was to keep parties close to their members, who can take over campaign activities or cover the costs of party activities via membership fees.

After the first free elections, clear rules were set for budget finance, but none for campaign spending. Consequently, parties were free to determine how much money to spend. One of the first decisions of the free Parliament was to ban a ceiling for the budget support, set at 50% of the party's total income, composed of member fees, donations, earnings from economic activities, etc. In this first period the loose legislature enabled parties to seek various forms of funding. Party enterprises were used to channel money towards profit oriented activities. The 1997 electoral law introduced a spending ceiling of HUF 1 million (USD 4,740) per candidate, but it did not include strict sanctions for violations. This law only regulates the general elections. There is no such spending limit for local elections and the elections for the European Parliament.

A change of the party finance regulations⁹²¹ was introduced after the German, Austrian and other models of political foundations. In the original regulation, only parliamentary parties were entitled to name a foundation eligible for an extra budgetary support. This extra source of funding allowed parliamentary parties to outsource some functions, especially scientific research and education of party and staff members. The general rules for operating political foundations are similar to those for foundations. They cannot accept anonymous donations and major donors' names must be revealed in the financial report.⁹²² All spending (especially scholarships and donations) of the foundation should be conducted in a way that allows the identification of the source. The distribution of the budget funding starts with a basic allowance for each eligible political party, and it benefits smaller party foundations. A second part is distributed according to the votes obtained during the last elections.

Resources (Practice)

To what extent do the financial resources available to political parties allow for effective political competition?

Score: 50

The Hungarian electoral system is heavily candidate-oriented, so if a party is not able to run candidates at least in Budapest and the major counties, there is little chance for it to get into Parliament. Therefore, money alone is not sufficient to run candidates; a

920 Zsuffa, 2006:138-139

921 Act XLVII of 2003 http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0300047.TV [accessed 5 July 2011]

922 Art. 3 (3) and (4) says, that donations should be transferred via bank accounts. Foreign donations of more than HUF 100,000 (USD 473), and domestic donations of more than HUF 500,000 (USD 2,369) should be mentioned in the financial report. The report has to be published until 30 June of the following year.

party needs the infrastructure (or grass-root organisation allies) to collect the requisite minimum of 750 signatures for all of its single election district candidates. In Hungary, one can identify - from a financial perspective - three major groups of political parties. First, several parliamentary parties are eligible for almost all official (visible) sources of public funding. One can assume that this funding covers their expenses for the political party to conduct "business as usual". In the second group are parties with more than 1% of the votes gained during the last election, eligible for a moderate budget funding for their political and scientific (research and education) activities. The third (and most numerous) group consists of all the remaining parties (with less than 1% voter support) or new parties, formed between two general elections.

Sustainability in funding⁹²³ is only provided for the parliamentary parties. Until the 2010 elections, the shrinking elite circle of parliamentary parties remained the same.⁹²⁴ The parties nowadays seldomly use the diversity of funding sources for which they are eligible based on the party law. The tools of the 1990s, such as party owned enterprises, have almost all been eliminated.⁹²⁵ Foundations were used in the early 1990s to pool anonymous donations and to outsource expenditure no longer attracted any more.

Using the new media and campaign techniques from the USA (e.g. the Obama-campaign), small and new parties were far more innovative than the incumbent parties.⁹²⁶ During the 2010 elections, for example, the far-right populist Jobbik party organised about 70 to 100 local meetings and rallies weekly at the grass-root level to bypass the mainstream media, which did not want to give airtime to the far-right parties (expressing anti-Roma views). The new party 'Lehet Más a Politika' (LMP) collected money on www.facebook.com and its own homepage and received an average donation of HUF 5,000 (USD 23.7). New civil organisations use this form of fundraising, while many demonstrations on a scale of 20,000 to 30,000 participants were financed by small donations. Parties avoid buying expensive airtime by so-called "media hacks". During an election, LMP activists, for instance, held frequent performances in front of the building of the Parliament.

According to SAO reports the public funding of political parties still dominates. At the end of the last reporting period (2008), it was around 76%. It should be mentioned that this can be claimed only upon the sources declared by the parties. Observers, media and non-governmental organisations monitored campaign spending during the 2009 European Parliament and the 2010 Parliament elections. The greatest expense in the political parties' budget is campaign spending, one of the most serious problems of Hungarian political finance. Parties usually report the allowed spending limit, but non-government organisations and observers measure the visible campaign activity on an estimated market (list) price.

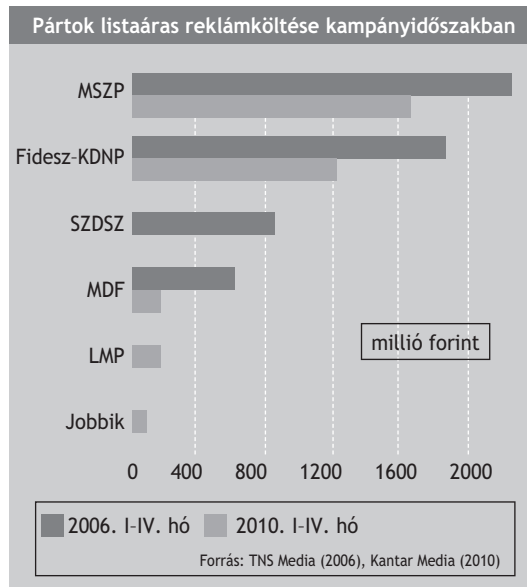
923 As Karl-Heinz Nassmacher argues for (Nassmacher, 2003).

924 The two major catch-all parties (MSZP and Fidesz) remained parliament parties, but two former dominant transition parties (MDF and SZDSZ) failed to take the 5% threshold.

925 <http://hvg.hu/hvgfriss/2005.27/200527HVGFriss188> ; http://hvg.hu/hvgfriss/2009.24/200924_Partbizniszek [accessed 7 July 2011]

926 http://kitekinto.hu/bem-rakpart/2010/04/25/jobbik_es_imp_avatarok_a_kampanyban/ [accessed 7 July 2011]

Political parties' expenditure on advertising during the 2006 and 2010 campaign periods (in million HUF):



Estimated and declared campaign spending in the 2010 general election:⁹²⁷

Party	Candidates	Amount reported to SAO	Amount estimated by TI	Difference (%)
Fidesz	386	HUF 405m (USD 1.91m)	HUF 1,289m (USD 6.1m)	+318%
MSZP	386	HUF 405m (USD 1.91m)	HUF 1,159m (USD 5.49m)	+286%
Jobbik	386	HUF 110m (USD 0.52m)	HUF 277m (USD 1.31m)	+252%
LMP	300	HUF 192m (USD 0.9m)	HUF 259m (USD 1.22m)	+135%
Independent	1	HUF 0,085m (USD 402)	n.a.	n.a.

The President can call for elections at least 72 days in advance; in 2010, it was 79 days. In the campaign period eligible parties have equal access to airtime in the public media. According to the election law, to become eligible, parties have to present a nationwide list and run candidates in at least one third of the 19 counties and the capital. Access to commercial airtime in (electronic and print) media is not regulated. It is up to the media owner's decision whether to allow for political advertising and at what cost. Usually there are no published price lists for campaign ads.

927 <http://kepmutas.hu/kampanymonitor/>; <http://kepmutas.hu/wp-content/uploads/2009/03/kepmutas-modszertan-vegleges.pdf> [accessed 7 July 2011]

According to a 2009 survey⁹²⁸, mostly elderly voters (50+) listen to public radio. Meanwhile, most undecided (45+) and first-time (18+) voters watch commercial television, as well as the majority of the 50+ generation. During election times, there are usually major TV-debates among the party-list leaders of eligible parties and a special TV-debate between the two most probable winners of the party-list leaders (PM candidates).

Political Finance Data 2010 ⁹²⁹

Party	Members	Member fee income 2010	Budget support 2010	Total income 2010
Fidesz	40,320	HUF 137 million (USD 0.649 m)	HUF 889 million (USD 4.213 m)	HUF 1.953 million (USD 9.256 m)
MSZP	33,200	HUF 46 million (USD 0.218 m)	HUF 675 million (USD 3.2 m)	HUF 1055 million (USD 5 m)
KDNP	15,500	HUF 6 million (USD 28,436)	HUF 213 million (USD 1 m)	HUF 338 million (USD 1.602 m)
MDF	n.a.	HUF 0,962 million (USD 4,559)	HUF 130 million (USD 616,114)	HUF 274 million (USD 1.298 m)
SZDSZ	537	HUF 0,421 million (USD 1,995)	HUF 109 million (USD 516,588)	HUF 167 million (USD 791,469)
Jobbik	12,430	HUF 9 million (USD 42,654)	HUF 241 million (USD 1.142 m)	HUF 358 million (USD 1.697 m)
LMP	700	HUF 3,6 million (USD 17,062)	HUF 138 million (USD 654,028)	HUF 279 million (USD 1.322 m)

As the example of Jobbik shows, parties with no seats in Parliament have a small budget and they usually “forget” to present their financial reports on time. The far-right party declared for the years 2004-2008 an annual budget average of HUF 2,120,200 (USD 10,048).⁹³⁰ Of the parties with no seats in Parliament in 2010, only Jobbik and KDNP⁹³¹ had a surplus. Membership fees and donations played a minor role in the income.⁹³² Most parties declared their financial reports on the last day.⁹³³

In an election year, many parties spend more than they can afford resulting in a huge amount of debt.⁹³⁴ Overspending is frequently covered by bank loans and mortgages on party real estates. Once a party is not able to obtain the 5% threshold to gain seats in Parliament (as was the case in the 2010 elections with MDF and SZDSZ), their budget funding declines significantly.⁹³⁵

The new government proposed in its first “*Economic Action Plan*”⁹³⁶ in June 2010, under point 21, to reduce budget funding for political parties by 15%. Later that year, parties

928 <http://www.biztositas.hu/Hirek-Infomaciok/Biztositasi-szemle/2009-majus/A-GFK-legfrissebb-tanulmányaibol.html> [accessed 7 July 2011]

929 Data collected from party finance reports.

930 <http://www.origo.hu/itthon/20100121-a-jobbik-penzugyi-beszamoloi-2004-es-2008-kozott.html> [accessed 7 July 2011]

931 <http://www.kozlonykiado.hu/kozlonyok/Kozlonyok/12/PDF/2011/33.pdf> (p. 6572) [accessed 7 July 2011]

932 http://hvg.hu/hvgfriss/2011.18/201118_2010-veszteseges_partok_elgurult_forintok [accessed 7 July 2011]

933 <http://www.kozlonyok.hu/kozlonyok/Kozlonyok/12/PDF/2011/30.pdf> (p. 5798-) [accessed 7 July 2011]

934 http://hvg.hu/itthon/20110506-veszteseges_partok-parlament [accessed 7 July 2011]

935 http://hvg.hu/hvgfriss/2010.18/201018_partmerlegek_2009_deficithalmazok [accessed 7 July 2011]

936 <http://www.alon.hu/orban-viktor-29-pontos-gazdasagi-akcioterve-oszsefoglalo-reszletek> [accessed 7 July 2011]

agreed in the budget debate⁹³⁷ on restoring the original 2010 support level. As a new suggestion, the government seeks to freeze the budget funding for political parties on the (restored) 2010 nominal value.

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Score: 50

The relevant legislation is from the transition period. According to the party law⁹³⁸, the SAO is to oversee biannually the financial activities of political parties, and the Prosecutor's Office is to examine parties' internal behaviour and their lawful practice. These rules are cardinal laws and are therefore, in theory, protected by a two-thirds majority against short-term interest changes. The criteria of the audit are published in advance, hence parties can prepare for the SAO audit. In general, the SAO only has the mandate to check whether the legal requirements were met and parties accepted and implemented the recommendations of the previous audits. The SAO has a special department to audit political funding.⁹³⁹ The SAO publishes its regular audit schedule each year. The SAO publishes its reports on its website (www.asz.hu) and presents it to Parliament and the public.⁹⁴⁰ Each report contains recommendations to the legislature and to the subject of the audit. The SAO might call the political party being examined to correct its financial report, or to make certain improvements in its book-keeping or financial behaviour. The SAO is only entitled to examine the documents provided by the parties, and it has no tools for further investigations.

Courts might ban parties, while the parties have the right to appeal against lower court decisions. For the last 21 years, no political party was banned for political reasons. Extreme anti-semitic and anti-Roma organisations were dissolved for their activities. They used a niche and re-formed after the official dissolution new organisations with a similar name. For instance, while the "Hungarian Guard" was dissolved by a court ruling, its members formed the "New Hungarian Guard".

The proposals on party financing laws or amendments have been mostly based on the text and core principles of the existing regulation aiming at tackling the most discussed issues. Legislative proposals from outside Parliament (e.g. from civil organisations) might emerge usually in two ways. Backed by strong public support (media or hundreds of thousands of signatures), the incumbent and/or parliamentary parties usually counteract to prevent serious damage to their image. The most remarkable case was 2009, when the civil organisation of Mária Seres collected 525,000 valid signatures⁹⁴¹ for a new system of covering MPs' expenses. Parliament acted promptly and introduced

937 <http://www.parlament.hu/irom39/01498/01498-0548.pdf> [accessed 7 July 2011]

938 Art. 10

939 Interview with a senior official involved in auditing and controlling political financing, Budapest, 28 April 2011

940 [http://www.asz.hu/ASZ/jeltar.nsf/0/5584D51466519A93C1257899004D2CA0/\\$File/1105J000.pdf](http://www.asz.hu/ASZ/jeltar.nsf/0/5584D51466519A93C1257899004D2CA0/$File/1105J000.pdf) [http://www.asz.hu/ASZ/jeltar.nsf/0/5584D51466519A93C1257899004D2CA0/\\$File/1105J000.pdf](http://www.asz.hu/ASZ/jeltar.nsf/0/5584D51466519A93C1257899004D2CA0/$File/1105J000.pdf) [accessed 7 July 2011]

941 http://hvg.hu/itthon/20090318_seres_maria_nepszavazas [accessed 7 July 2011]

a new system. Since January 1st, 2010, MPs's expenses are covered in cash, but they have to pay a special tax of 15% or MPs might have invoices reimbursed (which include VAT). As the result of the public protest, a two-thirds law was changed in order to prevent a referendum.⁹⁴² The new government also aims to tackle the question of MPs' expenses in a more transparent way. A ceiling of HUF two million (USD 9.748) for public servants and elected representatives was introduced, but the question of multiple office holders holding multiple expense accounts remained an object of public debate.⁹⁴³ After cases of MP's receiving 'double fundings' were published in the press, the MPs concerned were required to pay back the amount they were not entitled to.

If a proposal is not backed by at least the two major parliamentary parties, it usually fails. The tactics of parliamentary parties is not to let the proposal enter the parliamentary debate. Therefore, the proposal is voted out in the designated commission. To meet the public demand, proposals from outside Parliament are often taken over by incumbent or Parliamentary parties as their own. This was the case with the proposal for a new political finance regulation - supported by TI - before the 2010 elections, where FIDESZ did not support all of its suggested regulation. Major disputes arose around the question, whether the most costly tools (e.g. advertising in electronic commercial media) should be banned. If so, campaign costs could be reduced. Others argued that the spending ceiling should be lifted, to close the gap between the real campaign spending, as an independent observer assumes, and the declared campaign costs of the rallying parties. Parties in Parliament welcome civil proposals, and they see the civil (bottom-up) demand as an "objective and independent" verification and support for the parties' own policies. Proposals which meet the interest of the incumbent parties have better chances to become laws, compared to initiatives that opposition parties support. The SAO audits the use of financial sources provided for the organisation and to conduct various elections.⁹⁴⁴

Independence (Practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score: 50

Hungarian political parties are, generally speaking, free from external influence (e.g. military, foreign countries, special interest groups, etc.). Public opinion and the media is always suspicious if politicians seek contacts with foreign governments or special interest groups.⁹⁴⁵ Since the transition period, no party was dissolved for political reasons and there are no recorded attempts to dissolve political parties, because of political reasons. In the reporting period the Budapest Court dissolved in December 2008 the "Hungarian Guard" as a first instance. The organisation appealed and one year later, the Supreme Court confirmed the first instances decision.⁹⁴⁶

942 http://hvg.hu/itthon/20090714_nepszavazas_kepviseelok_koltsegteritese [accessed 7 July 2011]

943 <http://www.origo.hu/itthon/20110407-blikk-ujabb-fideszes-kepviseelo-kapott-dupla-koltsegteritest.html> [accessed 7 July 2011]

944 [http://www.asz.hu/ASZ/jeltar.nsf/0/6C47BEF3DFB8977BC125774A0020F295/\\$File/1005J000.pdf](http://www.asz.hu/ASZ/jeltar.nsf/0/6C47BEF3DFB8977BC125774A0020F295/$File/1005J000.pdf) [accessed 7 July 2011]

945 http://hirszerzo.hu/belfold/132169_a_moszkvai_kapcsolat_mi_koze_a_jobbiknak_pu [accessed 7 July 2011]

946 http://index.hu/belfold/2009/12/15/ervenben_marad_a_garda_betiltasa/ [accessed 7 July 2011]

The Hungarian State is keen on not interfering with the political parties' internal affairs. Only specific actions of politicians and party members are subject to investigation, and state authorities treat them generally as separate from their respective parties. The political rivals in political debates try to make general statements about the abuse of political power and the influence of other parties. Politicians, who are subject to investigation, officially enjoy immunity, but usually in a later phase of the investigation they must step down, to avoid causing damage to the public image of the party or when their immunity is removed in a parliamentary vote.

During the period in which this study was prepared two major scandals erupted on the political landscape: János Zuschlag, a young MSZP-politician, abused funds earmarked for youth organisations and activities in the early 2000s. The major question in his first instance court appearance at the Bács-Kiskun county court was whether or not he acted alone, or was part of a "mafia-like group". The prosecution convinced the court that there was a "mafia-like organisation" and in the second instance, the Szeged Regional Tribunal upheld the first instance decision, but reduced János Zuschlag's punishment of the first instance from eight and a half years to six years in prison.⁹⁴⁷

The case of the leader of Budapest's 7th district⁹⁴⁸ highlights a further perspective, The second level Budapest Regional Tribunal ruled ⁹⁴⁹, that not only the political leadership of the district, but 13 members of the district council also has to be charged for forgery of official documents. The officials concerned voted for the sale of district property for a sum - as the SPO assumes - far below the usual market price.

Transparency (Law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

Score: 25

The current regulation is from the transition period. Parties are not obliged to proof their accounts and to provide financial report forms - in the supplement of the party finance law - and this has not changed since 1993.⁹⁵⁰

The present regulation does not meet the EU's criterion of double bookkeeping, as only the bookkeeping itself, but not the financial report is proofed and signed by a bookkeeper. The party treasurer has no legal responsibility for the content and accordance of their parties report. The financial report demands only that the report in major chapters (e.g. political activities) to cover all activities, including campaign activities. No detailed listing of activities is available.

947 http://hvg.hu/hvgfriss/2011.05/201105_enyhito_zuschlagitelet_csopotkedvezmeny [accessed 7 July 2011]

948 http://hvg.hu/itthon/20110407_hunvald_gyorgy_pere [accessed 7 July 2011]

949 <http://www.mhu/portal/791049> [accessed 7 July 2011]

950 A translated version of this form in English can be found in Chapter III. point 48 of the GRECO report.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)8_Hungary_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)8_Hungary_Two_EN.pdf) [accessed 7 July 2011]

According to the electoral law, parties have to present after elections a report on their campaign spending. The reports of the parliamentary parties, or other eligible parties, usually meet the criteria and do not cross the spending ceiling of HUF 1 million (USD 4,739) per candidate, or a total of HUF 386 million (USD 1.829 million) set through the election law 1997. Parties with less than 1% electoral support (ie. those not eligible for budget funding) prepare their reports usually only in a formal way, which includes only the budget support for each candidate, circa HUF 60,000 (USD 284).

The SAO monitors these electoral reports according to the rules of the biannual control and prepares a report to Parliament, which has to vote on it. The latest report on the 2010 general elections⁹⁵¹ found no proven violation of election laws, as - mentioned in former chapters - the SAO is only entitled to examine the formal financial reports of political parties, which usually meets the (campaign spending, etc.) criteria on the election and party law.

Parties have to present their financial reports to the SAO and to publish it in the supplement of the official bulletin. Parliament and eligible parties meet this requirement, but some eligible parties - as the SAO pointed out - often do not prepare it at all, or declare only the budget funding as the only recorded source of income.⁹⁵²

The last TI NIS report (2008) and other reports on Hungary since (e.g. the Third Evaluation Round report of GRECO⁹⁵³ (2010) recommended the strengthening of the control and sanctioning power of the SAO.

The news magazine BLIKK in 2006 started a campaign and published the astonishing amount of HUF 18 million (USD 85,308), which was the highest for a single MP's expense. As a consequence the entire political elite came under fire.

The Office of the Parliament publishes the exact amount of MP's expenses and allowances on its website.⁹⁵⁴

In 2010, FIDESZ introduced the First Economic Action Plan, which is a ceiling for a public office holder (also in community owned enterprises and institutions) set at HUF 2 million (USD 9,478) per month. Government members' holidays were reduced to a basic limit of 20 days.

An MSZP MP wanted to extend⁹⁵⁵ the existing regulation for MPs, who hold public office as members of government (eg. as Prime Minister, minister or state secretary, etc.) to the Prime Minister's emissaries, or the leader of the newly-established county administration supervisory offices. Fidesz launched its own proposition, which was adopted by Parliament.⁹⁵⁶ Now the MPs, who are entitled to hold multiple public offices for more than one expense, see their other expenses reduced from their expense as Members of Parliament.

951 [http://www.asz.hu/ASZ/jeltar.nsf/0/5584D51466519A93C1257899004D2CA0/\\$File/1105J000.pdf](http://www.asz.hu/ASZ/jeltar.nsf/0/5584D51466519A93C1257899004D2CA0/$File/1105J000.pdf) [accessed 7 July 2011]

952 [http://www.asz.hu/ASZ/jeltar.nsf/0/9087FF4AA1CBDF08C12576650053C03A/\\$File/0937J000.pdf](http://www.asz.hu/ASZ/jeltar.nsf/0/9087FF4AA1CBDF08C12576650053C03A/$File/0937J000.pdf) [accessed 7 July 2011]

953 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)8_Hungary_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)8_Hungary_Two_EN.pdf) [accessed 8 July 2011]

954 http://parlament.hu/pairhelp/alap_potdij.htm (accessed 8 July 2011)

955 <http://www.parlament.hu/irom39/02225/02225.pdf> (accessed 21 June 2011)

956 <http://www.parlament.hu/irom39/02224/02224.pdf> (accessed 28 July 2011)

Transparency (Practice)

To what extent can the public obtain relevant financial information from political parties?

Score: 50

Hungarian political parties fulfill their reporting and disclosure obligations, but they are not the champions of transparency. Parliamentary parties obey the regulations, but deliver the reports often at the very last moment. As there are - aside from the public criticism - no hard consequences, on occasion some - mostly parties without seats in Parliament - delay submitting the report for years⁹⁵⁷, or publish biannual reports retroactively.

As the SAO claims, for the years 2005-2008, only an average of circa 34% of the parties reported on time, while circa 66% did not deliver an annual report at all.⁹⁵⁸ Before election years (as e.g. 2009 for the European Parliament elections), parties that wish to run candidates deliver their missing financial reports to meet the formal criteria, in order to avoid giving political ammunition to their competitors or to the press.

During the course of this study, the media reports on a broad scale about financial reports. The public can obtain detailed information through the economic weekly HVG and other journals. The information provided by the parties in their financial reports is often the starting point of investigative journalism, or further articles in the media. The sudden appearance of donors (e.g. the US citizen Richard Field, living in Hungary and who donated some HUF 17.4 million (USD 82,464) for LMP) and huge debts are the subject of questions.⁹⁵⁹

If a biannual SAO control is coming closer, parties frequently correct their previous financial reports to match figures. If a party became a parliamentary party, or - as mentioned above - elections are approaching, as the far-right Jobbik did in 2010, they prepare "forgotten" financial reports retrospectively to brush up their image.⁹⁶⁰

On the party home pages⁹⁶¹, it is sometimes difficult to find financial reports. Parliament and eligible parties usually present their reports, but there is no clear regulation as to how long they have to keep it visible on their websites. There is little proactivity to turn attention towards financial reports. Parties seem to be ashamed of their finances and want to keep a low profile.

This attitude influences the use of the internet. On MSZP's website, the financial reports are easy to find.⁹⁶² By all parliamentary parties, among the biggest donors are MEP and - in government position - members of the government or mayors of relevant cities. The Socialists received donations from two foundations - a source of anonymous donations - but only some HUF 5 million (USD 23,697). Many municipalities provided office space

957 http://mandiner.hu/cikk/ugyesszeg_vizsgalja_a_jobbik_penzugyeit [accessed 7 July 2011]

958 http://mandiner.hu/cikk/ugyesszeg_vizsgalja_a_jobbik_penzugyeit [accessed 7 July 2011]

959 http://index.hu/belfold/2010/valasztas/11_milliot_ad_az_lmp-nek_egy_amerikai_uzletember/ [accessed 7 July 2011]

960 http://hvg.hu/hvgfriss/2009.24/200924_Ballepesek [accessed 7 July 2011]

961 Fidesz: www.fidesz.hu, MSZP: www.mszp.hu, KDNP: www.kdnp.hu, Jobbik: www.jobbik.hu, LMP: www.lehetmas.hu, MDF: www.mdf.hu, SZDSZ: www.szdsz.hu. [accessed 7 July 2011]

962 <http://mszp.hu/sites/default/files/2010mszparomerlegpenzugyi.pdf> [accessed 7 July 2011]

to the party, which is mentioned at list price. This is the same with LMP, a party who published its donations and expenditure in the campaign period weekly.

The project www.kepmutatas.hu (“hypocrisy”) was launched in 2006 and it was backed by Freedom House, TI-Hungary, the weekly economic magazine HVG and major Western countries’ embassies in Budapest, since December 2007. In the beginning, political think tanks advocated over the course of a month the question of the transparency of political finance. Later, in a dialogue with the parliamentary parties, a bill was drafted and presented to Parliament. It failed in the first round, and the proposal was launched again in 2009, but only the opposition parties supported it.

On the website of the Hungarian Parliament, a detailed list of scientific and media articles for the period of 1990 - 2010 is available for further information.⁹⁶³

Some other websites, such as www.k-monitor.hu, are dedicated to the fight against corruption.

Accountability (Law)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Score: 25

The designated state control body is the SAO, which oversees the financial activities of political parties. The SAO was introduced in the cardinal law, Act XXXVIII of 1989, last modified in 2003. On 20th June 2011, Parliament voted on a new law on the SAO, which came into effect on 1st of July 2011. It strengthens the powers of the SAO by introducing a new offence in the criminal code of “violating the compulsory cooperation with the SAO”, and if subjects of control activities do not cooperate or disobey recommendations and other advice of the SOA, and they face imprisonment of up to three years as a consequence.

Parties have to deliver an annual report of their financial activities and at least three months after the elections, as well as a report on campaign expenditure. The SAO monitor these reports and controls - according to an annual published control schedule - the political parties and foundations.

Parties have to describe their incomes (budget funding, donations, earnings from economic and financial activities, in-kind services, etc.) and their expenditures, as regulated in the law on political parties.

It is especially parties without budget funding that do not deliver their annual reports on time, if at all. As described in the previous paragraph, there are no effective sanctions against especially those parties and their candidates that do not hold seats in Parliament, to ensure that they follow the regulations.

963 http://www.mkogy.hu/fotitkar/frak/part_bibliogr.htm#_Toc267040663 [accessed 7 July 2011]

The obsolete regulation creates loopholes. Parliamentary parties were not interested in adapting the rules to the changing legal environment. As mentioned above, the financial reports are not signed and proofed by a bookkeeper, and the reports only have to meet formal requirements.

Since Hungarian bookkeeping standards were harmonised with EU-regulation⁹⁶⁴, enterprises and companies must keep their books according to double bookkeeping standards. If an enterprise has more than 50 employees, or an annual turnover of minimum HUF 100 million (USD 473,934) in the two previous years, it has to validate their annual record with a bookkeeper.⁹⁶⁵ The bookkeeper has to sign a clause in which he/she assumes responsibility for the accuracy, authenticity and completeness of the particular report. If a financial report does not meet the legal criteria, the bookkeeper may refuse to sign it, and/or he/she can add comments to it.⁹⁶⁶

The political finance regulations were set long before the law on accounting was introduced in 2000, and as a result, there is no binding rule for party reports for the double bookkeeping standard.

The SAO has only limited power to take sanctions against violation of the law, as the law on parties and elections have not contained effective sanctions.

It is especially campaign spending that is underestimated in the party reports: expenditure is often paid for from sources that are not mentioned in the official report. Costs are sometimes paid before, and sometimes after the reporting period.

Accountability (Practice)

To what extent is there effective financial oversight of political parties in practice?

Score: 25

The parliamentary parties, and budget-funded parties, tend to deliver their reports on time, or with some delay. These reports are formal. The biannual SAO audit and the publication of its report affect the behaviour of political parties. As such, e.g. before the SAO audit in summer 2008, Fidesz corrected its books and declared a HUF 2 billion deficit (USD 9.5 million) resulting from the 2006 election campaign.⁹⁶⁷

There is no legal, public accounting agency aside from the SAO to control or monitor political finance reports and their accuracy.

Media, civil organisations, think tanks and foreign international organisations (e.g. OSCE) focus during an election on campaign financing, examining whether there is a huge gap between the declared spending and the obvious expenditure. During the 2006 general elections, citizens who were interested in the matter searched for information to explain this difference.

964 Act C of 2000

965 Art. 155 (3) a-b of Act C of 2000

966 Art. 158 (1) and (3) of Act C of 2000

967 http://hvg.hu/itthon/20080719_fidesz-penzugyu_beszamololo [accessed 7 July 2011]

Integrity (Law)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Score: 50

Any party has to prepare a code of business, elect its officials and leading bodies and present this basic information to the registration court. If any change occurs, the court has to be notified.

The candidate-selection differs in the parties, depending on size, structure, membership, etc. Hungarian parties are structured - according to the logic of the election law - on a territorial basis, with local and regional organisations. The local organisations elect the delegates for party congress, who decide as members of the highest decision-making body on the party leadership and major questions (e.g. coalition with other parties, etc.).

Fidesz reorganized its party structure, and introduced a new system of so called election district manager in 2003. They are responsible for the coordination of the local party groups within the election district. A regional district manager coordinates on a next higher level the work of the local district managers. Local managers are usually mayors or MPs, while regional managers are usually MPs.

Integrity (Practice)

To what extent is there effective internal democratic governance of political parties in practice?

Score: 50

There are many academic papers⁹⁶⁸ on the internal structure of Hungarian parties, which deliver a detailed picture of decision-making in the parties. Party leadership is selected from the most active party members at usually biannual party conferences. Most parties consist of formal regional or informal internal groups (eg. mayors, lobbyists for a certain special interest group, union members, etc.). These groups control party or - in a governing position - state resources that they can exploit. The strongest or most influential groups may delegate members to the party leadership.

As a grass-root level oriented party, LMP conducts a participation-based model of internal decision making and candidate selection process. Decision-making is therefore longer and more complicated.

968 E.g. Machos, Csilla, 2000 evaluated the internal structure of the parliamentary parties in the period 1990-1999.

Interest Aggregation and Representation

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

Score: 50

The Hungarian political and party system can be described as very stable. It is unique among the transition countries that the same catch-all parties (Fidesz and MSZP) have remained in the positions of incumbent and challenger for quite a long period. The two catch-all parties from the early 1990s, MDF and SZDSZ joined forces, but were unable to gain the 5% threshold at 2010 elections to enter Parliament.

During the period covered by this report, the major cleavage in Hungarian society has remained the division between post-Socialism, represented by MSZP, and anti-Communism, represented by FIDESZ, which has divided the country. During the 2010 elections, Fidesz, as a single party, had the support of about between two and two and a half million voters within the electorate, while the Socialists only had between one and one and a half million supporters.⁹⁶⁹

These two dominant parties are catch-all parties, and this means that they are able to absorb new social interests or groups. There are no ethnic parties. The number of parties with more than 1% electoral support is declining: in 1990 there were six parties, while during the 2006 and 2010 elections there were only two parties.

Twenty-two years after the first free elections, most Hungarians are disappointed with the system of a multi-party democracy.⁹⁷⁰ In the public mind, the last era of general welfare was during the Communist era of a single-party state, or almost 30 years ago.⁹⁷¹

Parties offer promises in their election campaigns that would be of benefit to the electorate, but these promises are difficult to fulfill, and as a result, disappointment in all parties is very high. The 2006 campaign was heavily disappointing for pensioners, in which the parties promised to allocate 14th and 15th month pension payments for the elderly. In Hungary the average living standard is still far below the Western-European level.

The voter turnout is around 65%, which is still high compared to neighbouring countries. Hungary joins the European tendency of low voter turnout during European Parliament elections. After elections, as promises are not fulfilled and disappointment spreads, the polls shows shrinking support for the coalition parties, and as election comes closer, growing support for opposition parties.

Swing voters tend to cast protest votes against incumbent parties.⁹⁷²

969 http://m.hvg.hu/itthon/20100425_valasztoi_demografia [accessed 7 July 2011]

970 <http://pewglobal.org/reports/display.php?ReportID=267> [accessed 14 December 2011].

971 http://en.wikipedia.org/wiki/Goulash_Communism [accessed 7 July 2011]

972 http://www.tcd.ie/Political_Science/staff/michael_marshall/Democratization.pdf [accessed 7 July 2011]

Anti-corruption commitment

To what extent do political parties give due attention to public accountability and the fight against corruption?

Score: 25

Corruption awareness has an increasing importance. Globalisation makes the flow and the standardisation of information for decision-makers faster and more sophisticated. Aside from civil society, INGOs and state agencies are key figures in turning attention towards the fight against corruption.

As such, websites focus attention on cases of suspected corruption, and they raise public awareness about the abuse of taxpayers' money.

Corruption became a "soft" factor and indicates whether the given state is able to provide stable and fair conditions to allow for market competition. Private companies adopt their tactics to the given political environment. Newly-introduced corruption and fraud reports (e.g. by Ernst & Young)⁹⁷³ provide a guide for investments.

States are also aware of this and introduce programmes and campaigns to show their anti-corruption commitment. The SAO introduced an integrity map⁹⁷⁴, indicating the greatest danger that municipalities face.

There is a battle for symbolic and rhetoric expressions. Political parties and civil organisations name their proposals and campaigns in a way which enhances their commitment in the fight against corruption. As such, the draft bill of the LMP is called "proposal for more transparency in campaign finance".⁹⁷⁵

One major source for corruption is the public procurement procedure, especially exclusive or closed procedures, to which usually only three competitors are invited. Sometimes the lowest price wins, but often during the contracts activities, some "extra" works are ordered afterwards by the contractor, and the contract's total amount reaches or exceeds that of the original bid.

Once the public, media, think tanks or civil organisations discover such an abuse of tax payers' money, politics closes one loophole, but opens others. Remarkable examples were contracts of the publicly-held Budapest Transport Company or for road-construction. Legal civil organisations, such as (HCLU) TASZ and others, pressed charges against the publication of contracts, in order to prove that the contract sums were accurate.

The EU and major foreign countries and companies also make allegations concerning the abuse and sometimes corrupt practice of the parties and local, governmental organisations. Nine Western European and North American countries' embassies campaigned in November 2009 in an open letter to Parliament for more transparent procurement rules.⁹⁷⁶

973 [http://www.ey.com/Publication/vwLUAssets/European_Fraud_Survey_2011_PDF/\\$FILE/EY%20EUROPEAa%20FRAUD%20SURVEY%202011%20FINAL%20PDF%20050611.pdf](http://www.ey.com/Publication/vwLUAssets/European_Fraud_Survey_2011_PDF/$FILE/EY%20EUROPEAa%20FRAUD%20SURVEY%202011%20FINAL%20PDF%20050611.pdf) [accessed 7 July 2011]

974 <http://integritas.asz.hu/> [accessed 7 July 2011]

975 T/30 <http://www.parlament.hu/irom39/00030/00030.pdf> [accessed 7 July 2011]

976 <http://www.privatbankar.hu/html/eujatek/eu.php?kommentar=33198&tol=7> [accessed 7 July 2011]

11. MEDIA

Summary

With their two-thirds majority, the governing parties may change not only acts that need the vote of the majority of the Members of Parliament, but other key laws as well that need a two-thirds majority. Concerning the media, the Constitution states⁹⁷⁷ that two-thirds of the votes of the Members of Parliament present is required to pass a law on the supervision of public radio, television and the public news agency, as well as for the appointment of respective directors, on the licensing of commercial radio and television, and on the prevention of monopolies in the media sector. The freedom of the press is also guaranteed in the Republic of Hungary by the Constitution, which states that “everyone has the right to freely express his opinion, and furthermore to access and distribute information of public interest.” The Republic of Hungary also recognises and respects the freedom of the press.

After adopting new media regulations on 10 March 2011 the European Parliament called upon the Hungarian authorities⁹⁷⁸ to restore the independence of media governance and stop state interference with freedom of expression and “balanced coverage”. It also expressed the belief that the over-regulation of the media is counterproductive, jeopardising pluralism in the public sphere. The European Parliament also calls upon the Hungarian government to review the media law further, based on the comments and proposals of the European Parliament, the Commission, the OSCE and the Council of Europe Commissioner for Human Rights.

Media			
Overall Pillar Score: 55 / 100			
	Indicator	Law	Practice
Capacity 56 / 100	Resources	75	75
	Independence	50	25
Governance 42 / 100	Transparency	50	25
	Accountability	25	50
	Integrity Mechanisms	50	50
Role 67 / 100	Investigate and expose cases of corruption practice	50	
	Inform public on corruption and its impact	75	
	Inform public on governance issues	75	

977 Art. 61 (4), Act XX of 1949

978 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN> [accessed 7 July 2011]

Structure and Organisation

Most of the politicians and researchers agreed that, given the technological and political changes that have occurred, Act I of 1996 on Radio and Television (hereafter referred to as the old Media Act) was outdated and needed to be revisited. The future of Act II of 1986 on the press (hereafter referred to as the old Press Act) was questioned as well, because (although it was amended at the time of the change of regime from communism to a democracy) many politicians, especially from the political right, considered that it does not serve the journalists and democracy sufficiently. Without a real social debate, the governing parties in the summer/autumn of 2010 started to change the media regulations. They amended the Constitution⁹⁷⁹, amended Act II of 1986, passed the so-called "Media Constitution" which outlines the general principles of the media legislation and finally Parliament adopted Act CLXXXV of 2010 on media services and mass media at its session on 20 December 2010 (hereafter referred to as the Media Act).

The opposition stated before and after the Media Act was passed that it would represent a threat to the freedom of press. The controversial act generated heated discussions at home and abroad. Many Hungarian leading newspapers published a blank front page⁹⁸⁰ to protest against the regulation. One of Hungary's leading newspapers, *Népszabadság*, published a front-page editorial claiming that freedom of the press in the country has ended.⁹⁸¹ The headline "The freedom of the press in Hungary comes to an end" was published on the cover page of the 3 January 2011 edition in all 23 official languages of the European Union. Several European politicians protested against the law, too. European associations also gave voice to their concerns. Aidan White, the General Secretary of the European Federation of Journalists (EFJ)⁹⁸² said: "This law draws the media under the power of a body whose authority and legitimacy are questionable. Its powers over the whole spectrum of the Hungarian media represent a serious threat to the fundamental human right of the freedom of expression".⁹⁸³ The European Newspaper Publishers' Association (ENPA)⁹⁸⁴ and the World Association of Newspapers and News Publishers (WAN-IFRA)⁹⁸⁵ have also expressed their concern that the new legislation would impose extensive fines on journalists and publishers if they refuse to disclose their sources, or if they publish information considered inappropriate by the government. Civilians organised several demonstrations, while later on, the European Union also raised concerns.

979 On 6 July 2010: Amendment to the Hungarian Constitution, facilitating the adoption of the upcoming new media laws, on 10 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).

980 <http://nepszava.com/files/2011/01/ures-cimlapok-qpr1.jpg> [accessed 7 July 2011]

981 <http://www.origo.hu/itthon/20110103-cimlapon-tiltakozik-a-mediatorveny-ellen-a-nepszabadsag-es-a-nepszava.html> [accessed 7 July 2011]

982 <http://europe.ifj.org/en/articles?search=hungary> [accessed 7 July 2011]

983 <http://europe.ifj.org/en/articles/efj-warns-hungary-over-threats-to-media-as-parliament-votes-on-new-law> [accessed 7 July 2011]

984 http://www.enpa.be/en/news/hungarian-media-law-fuels-international-concern_50.aspx [accessed 7 July 2011]

985 <http://www.wan-press.org/article18748.html> [accessed 7 July 2011]

Assessment

Resources (Law)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

Score: 75

The new regulation claims that the market concentration of media service providers offering linear media services may be limited within the framework of the Act, in order to maintain the diversity of the media market, and to prevent the formation of information monopolies. A new category was created in the Act: the so-called media service providers with substantial market influence.⁹⁸⁶ These media services are supposed to take more burden as they reach a larger audience and assume more social responsibility. As most of the Hungarian audience gets its news from these broadcasters, these broadcasters should broadcast news programmes, or a general information programme of at least fifteen minutes on every business day between 7:00 a.m. and 8:30 a.m., and a news programme of at least twenty minutes on every day between 6:00 p.m. and 9:00 p.m. without interruption. There is a new kind of regulation, too, stating that news content, or reports of a criminal nature, which do not provide information to the democratic public opinion, shall not last longer on an annual average than twenty percent of the duration of the news programme. The politicians claimed⁹⁸⁷ that such criminal reports could have a depressing, frightening and negative effect on society, and as such, the air time for them should be limited. As there is no accurate definition of what could be described as "depressing" to society, the regulation is ambiguous and could pose the threat of censorship on a journalists' work.

Linear media service provided by a media service provider with a registered office in the territory of the Republic of Hungary shall commence subsequent to application for registration and administrative authorization by the National Media and Infocommunications Authority (hereafter referred to as the Authority). State-owned analogue linear media services using limited resources will continue to provide media coverage, as an exception. These media services will be selected by way of a tender that is to be announced and managed by the Media Council. The winner will enter into an agreement with the Council. A media product published by a publisher with a registered office (domicile) in the territory of the Republic of Hungary shall be registered with the Authority. Though it is automatic, the Authority shall keep an administrative register about all these. Those authorised for analogue linear radio media service provision, based on a public contract or broadcasting agreement shall have the right to simultaneously provide one national analogue linear radio media service, two regional and four local analogue linear radio media services, or twelve local analogue linear radio media services at most.⁹⁸⁸

986 Sometimes used in the official English translation of the Act as "media service providers with significant powers of influence".

987 <http://www.jogiforum.hu/hirek/24342#axzz1HRB04AoQ> [accessed 7 July 2011]

988 Art. 71 (1), Act CLXXXV of 2010

Resources (Practice)

To what extent is there a diverse independent media providing a variety of perspectives?

Score: 75

Since 1996, many European media scholars have considered the funding of community media services in the Hungarian media system to be a good example. The new Media Act introduced the term “community media”, which replaced the old term “non-profit broadcaster”. The old name was indeed not the one best possible, as it showed only one - financial or business - aspect of the third tier of a democratic and modern media field. The new regulation for community media seems to be corresponding to the European recommendations, especially Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content⁹⁸⁹ and the Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue.⁹⁹⁰ Different media organisations exist in and outside Budapest though the print media outside the capital are mainly owned by four big foreign investors.⁹⁹¹

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Score: 50

For journalists (especially investigative journalists), the protection of their sources of information is a question of utmost importance. Democratic legislation should provide guarantees and protection for the sources of information to prevent political or business influence. As the “Media Constitution” states, the media content provider and any person employed by, or engaged in, any other legal relationship intended for the performance of work with the media content provider has the right to keep the identity of its informant confidential. The first problem is that this right is not applied to the protection of sources disclosing classified information unlawfully. Some say⁹⁹² that all governments classify data even when it is unnecessary. They usually do this with all the information that should in fact be public. Moreover, in exceptionally justified cases, courts or authorities may - in the interest of protecting national security and public order or uncovering or preventing criminal acts - require the media service provider, and any person employed by, or engaged in, any other legal relationship intended for the performance of work with the media content provider, to reveal the identity of the informant. It is less of a problem if it is the court that requires this, but if it is an authority that requires this, it could represent a difficulty without a special cause for the media content provider and as well as for the journalists. The law itself does not define what kind of authority could require this, and it neither does it define the scope of “interest of public order”.

989 <https://wcd.coe.int/ViewDoc.jsp?id=1089699> [accessed 7 July 2011]

990 <https://wcd.coe.int/ViewDoc.jsp?id=1409919> [accessed 7 July 2011]

991 http://www.nol.hu/archivum/20110126-videken_a_helyzet_valtozatlan [accessed 7 July 2011]

992 Interview with an academic by the author on 27 June 2011

By law, there is no censorship in Hungary, but a concentration of ownership of broadcast and print media is clearly visible just before and after the change of the government. According to the legislation, the licensing process is not political, but deals not only with technical aspects, but content, too.⁹⁹³ The law states that public service broadcasting's operations are independent both from the state and from business influence⁹⁹⁴, its system ensures accountability and the existence of social control, and its operations are financed primarily from the joint voluntary contributions of those living in the Republic of Hungary, with public funding.

Independence (Practice)

To what extent is the media free from unwarranted external interference in its work in practice?

Score: 25

An important and always heated, ongoing debate during the last two decades concerned the financing of the public service media. Though no accurate figure is available on how much funding was spent on public service broadcasting since the change of the regime, the total sum is probably very high.⁹⁹⁵ Moreover, the problem is not the sum itself, but the way in which the funding was provided.⁹⁹⁶

The new Media Service Support and Asset Management Fund is an isolated asset management and monetary fund and - among others - it is responsible for promoting the structural transformation of public media services, community media services and public media service providers, the production and production support of public service programmes. A Media Council operates the Fund and the full range of employer's rights vis-à-vis the Fund's Director General are exercised by the Chairman of the Media Council. All these strong connections could be considered as ways of hiding transparency and accountability. The Hungarian public service broadcasters remained separate (Hungarian Television, Duna Television and Hungarian Radio), but almost all employees' (journalists, reporters, etc.) employers in the legal sense changed.⁹⁹⁷ From this point on, their employer is the Media Service Support and Asset Management Fund and the public service broadcaster only orders programmes from the Fund that they cannot prepare themselves.

Recently, the "Hungarian WikiLeaks" portal (www.atlatszo.hu) lead by Hungarian investigative journalist Tamás Bodoky appeared in the news. After publishing an article about the hacking of Brokernet website, Bodoky was cited by the Hungarian Police as a witness, and was questioned about the sources of his information and a hard disk was confiscated.⁹⁹⁸

993 One recent debate is about the state of the license of popular Klubrádió: http://hirszerzo.hu/belfold/20110608_Klubradio_frekvenciapalyazat [accessed 7 July 2011]

994 Art. 82, Act CLXXXV of 2010

995 Interview with a professor done on 5 July 2011

996 http://www.mediakutato.hu/cikk/2010_04_tel/01_kozszolgalmati_televizio_unio/01.html [accessed 7 July 2011]

997 http://index.hu/kultur/media/2010/12/13/ma_bejelentik_az_onallo_kozmedia_megszunestet/ [accessed 7 July 2011]

998 http://nol.hu/belfold/20110718-a_nyilvanossag_vedhet_meg_ [accessed 7 July 2011]

Transparency (Law)

To what extent are there provisions to ensure transparency in the activities of the media?

Score: 50

As the media is a very important sector in society in the fight against corruption, its legislation is a crucial question. In the Hungarian media system, the new legislation brought huge changes. The law which was passed with 256 votes in favour, and 87 votes against, made the old legislation, such as the old Press and Media Acts⁹⁹⁹ obsolete. According to the Act media services may be provided and media products may be published freely, information and opinions may be transmitted freely through the means of mass media, and media services in Hungary and abroad intended for the general public may be accessed freely in the Republic of Hungary. The content of the media service and the media product may be determined freely, but the media service provider and the publisher of media products must comply with the provisions of this Act. The Act follows the path of the European media legislation in that it defines three types of media providers: commercial, public service and community providers.¹⁰⁰⁰

Transparency (Practice)

To what extent is there transparency in the media in practice?

Score: 25

Chapter IV of the Act deals with the provisions on the procedures by the Media Council. In establishing the facts of a given case the Authority has the right to inspect, examine and make duplicates and extracts on any and all media containing data, document and deeds¹⁰⁰¹ – even if containing secrets protected by law – related to the media service provision, publication of a media product or broadcasting. The Act covers any and all information, even if it contains secrets protected by law. In particularly justified cases, the Authority has the right to resort to the deeds, information, documents and other means of evidence generated in the course of particular proceedings also for the purposes of other proceedings. This aims to reduce the procedural burden on clients or for proper and effective law enforcement. The secrets protected by law may be used in basically any other proceeding to help reduce the burden.¹⁰⁰² Information on the ownership of print and broadcast media is now always accessible to the public. Investigative journalists recently tried to disclose all of this information in articles.¹⁰⁰³

⁹⁹⁹ The new Act states: "Parliament, upon recognition of the interests of the community and the individual, with a view to the promotion of the integrity of society and with a view to fortifying the appropriate functioning of democracy and the national and cultural identity, upon respecting the Constitution, the constitutional principles, and the norms of international law and the European Union, by taking into consideration the circumstances ensuing from technological development, by preserving the freedom of expression and the press, by recognizing the prominent cultural, social and economic importance of media services and the importance of ensuring competition on the media market, has adopted the following Act on media services and mass media"

¹⁰⁰⁰ In Hungarian it is usually referred to as 3K-system with their starting letters: közösségi, kereskedelmi, közszolgálati. 1001 Art. 155 (2), Act CLXXXV of 2010

¹⁰⁰² http://www.emasa.hu/muhely/nehaz_posony_marton.pps [accessed 7 July 2011]

¹⁰⁰³ <http://www.mancs.hu/index.php?gcPage=/public/hirek/hir.php&id=24252> and <http://www.mancs.hu/index.php?gcPage=/public/hirek/hir.php&id=24344> [accessed 7 July 2011]

Accountability (Law)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

Score: 25

The old media authority's members (National Radio and Television Board, hereinafter referred to as NRTB) were nominated by the parliamentary parties in equal proportions (each faction was able to nominate one member, but if there was only one faction on the governing side or the opposition side, then that faction could have nominated two members). In fact, the members used to represent political party positions and as a result, the NRTB was a heavily politicised body¹⁰⁰⁴, dominated by party deals and not by a consistent vision of public policy.¹⁰⁰⁵

The National Media and Infocommunications Authority is an autonomous administrative agency.¹⁰⁰⁶ The Authority contributes to implementing the Government's policy in the area of frequency management and telecommunications. The Chair is appointed by the Prime Minister for a term of nine years, but following the end of his/her term, the Chair may be re-elected. The powers of the Chair are quite broad. As such, most critics agree that it is a problematic field of media legislation.¹⁰⁰⁷ It should be mentioned that the Chair of the Authority may regulate the media field by decree, which was made possible by the amendment of the Constitution. The Media Council is an independent body of the Authority reporting to Parliament and possessing the status of a legal entity. The Media Council is the legal successor of the NRTB, the old Authority. The Chairman and four members of the Media Council are elected by Parliament - with a two-thirds majority of the votes of MPs present - for a term of nine years by simultaneous electronic voting. The Chair of the Authority, who is appointed by the Prime Minister, shall become a candidate for the Chairmanship of the Media Council by virtue and from the moment of appointment. In essence, the Prime Minister elects the Chair as well as the Chairman of the Media Council. The Media Council - among others - shall oversee and guarantee freedom of the press, ensure and evaluate the bidding process for broadcasting titles are made available for media services and using state-owned limited resources. Moreover, it shall express its opinion regarding draft legislation on the media and telecommunications, and initiate proceedings with respect to consumer protection and the prohibition of unfair market practices.

The Media Council has the right to apply legal consequences on parties that infringe regulations on media administration. The Act underlines¹⁰⁰⁸ that in applying the legal consequences, the Media Council - under the principle of equal treatment - shall act in line with the principles of progressivity and proportionality. Furthermore, it shall apply the legal consequence proportionately in line with the gravity and rate of re-occurrence of the infringement, taking into account all of the circumstances of the case and the purpose of the legal consequence.

1004 Gosztonyi, Gergely: A közszolgálati médiafelügyelet Európában és Magyarországon, p. 3-25., 2003, In: JEL-KEP 2003/4.

1005 More information could be found in previous Transparency International reports.

1006 The National Media and Info-communications Authority and its points of connection in the Media Act: <http://nmhh.hu/dokumentum.php?cid=24931&letolt> [accessed 7 July 2011]

1007 Interview with a professor made on 5 July 2011.

1008 Art. 185 (2), Act CLXXXV of 2010

When the infringement is of minor significance and no re-occurrence is established, the Media Council - on noting and warning on the fact of the infringement - may request that the infringing entity discontinue its unlawful conduct, refrain from infringement in the future and act in a law-abiding manner. In the event of repeated infringement, the Media Council has the right to impose a fine, and not only on the media service, but on the senior officer of the infringing entity as well. The amount of the fine shall not exceed HUF 2 million (USD 9,479). In addition, in these cases the Media Council - among others - may use different legal consequences. It may exclude the infringing entity from participating in tenders published by the Media Service Support and Asset Management Fund (hereinafter referred to as Fund) for a definite period. It may impose a fine on the infringing entity up to HUF 200 million (USD 947,867)¹⁰⁰⁹ for the media service providers with a substantial market influence, for all the rest the sum is up to HUF 50 million (USD 236,967). For a newspaper of nationwide distribution and an online media product, the fine shall not exceed HUF 25 million (USD 118,483); for a weekly periodical of nationwide distribution the limit is HUF 10 million (USD 47,393). It may suspend the rights of the media service to provide its services for a specific period of time. Usually, this suspension lasts from 15 minutes up to 24 hours, and in the case of a grave infringement, it may last from one hour up to 48 hours. In the case of repeated and grave infringement, it may last from three hours up to one week. Lastly, it may delete the media service from the registry.

These sums are high compared to the average income and expenditure of a Hungarian media service provider, and as such, in many interviews, the interviewees expressed their fear that the one-sided Media Council could “kill” any provider with such fines. As stated in Article 163, no appeal shall go against the official decision of the Media Council acting in its capacity as Authority of the first instance. The official decision of the Media Council can only be challenged at court by claiming infringement of the law within thirty days upon announcement of the official decision, and by lodging a petition against the Media Council. As such, it seems that the Media Council has the deciding word, because the court may be involved only in a case of infringement of the law. The submission of the petition to the court does not have the power to delay the execution of the decision. The court may be requested to suspend the execution of the challenged decision. The other serious problem is that there is no detailed description of what could be considered as such infringement in the Act.¹⁰¹⁰

1009 For comparison: the average salary in Hungary in January 2011 is 210,200 HUF. <http://www.vg.hu/gazdasag/makrogazdasag/210-ezer-forintra-nott-az-atlagkereset-343702> [accessed 7 July 2011]

1010 http://tasz.hu/files/tasz/imce/tasz_allasponnt_media.pdf [accessed 7 July 2011]

Accountability (Practice)

To what extent can media outlets be held accountable in practice?

Score: 50

A serious problem¹⁰¹¹ with the election of the Media Council is that all the four members of the Media Council can be associated with the government and the political right-wing, while in the old system at least some members of the opposition were represented in the authority. However, the old electoral system was not adequate either, because it resulted in highly politicised discussions and political deals between major parties¹⁰¹², but the new system might easily produce a one party-influenced decision. If all members and the Chair itself are connected to the government or to the Prime Minister, it will raise questions even after decisions of best intention are taken.¹⁰¹³

An integral part of the Authority is the Commissioner for Media and Communications (hereafter referred to as the Commissioner) acting on its behalf. The Commissioner contributes to the promotion of rights and equitable interests of all kind of consumers resorting to electronic news services or media services, as well as the readers of printed press materials in electronic communications, media services and media products.¹⁰¹⁴ The Commissioner shall be appointed and recalled by the Authority's Chair, who shall also exercise the employer's powers over him/her. Any person affected by the damage to interests, or who is exposed to the direct danger of such damage to interests has the right to resort to the Commissioner's Office with its complaint. Is it important that the damage should not constitute the breach of the provision of electronic communication services. Moreover, it should not fall outside the scope of competence of the Media Council, the Chair and the Authority but is, or may be suitable for causing damage. First, the Act states that the proceedings of the Commissioner shall not be deemed as administrative proceedings. Second, the Commissioner shall not have the right to exercise the powers vested with authorities. Yet the Commissioner has the right to request data, information or representations related to the damage to interests from any media or communications service provider or publisher of a printed press material.¹⁰¹⁵ Moreover, the provider shall furnish the Commissioner with the requested information even if the particular information are deemed secrets of the trade.¹⁰¹⁶ The practice is unknown yet, though in an interview the new Commissioner stated¹⁰¹⁷ that he would like to receive many complaints.

1011 <http://www.mancs.hu/index.php?gcPage=/public/hirek/hir.php&id=21687> [accessed 7 July 2011]

1012 <http://www.jogiforum.hu/mediajog/blog/8#axzz1OR0gA4na> [accessed 7 July 2011]

1013 Interview with an academic, 27 June 2011

1014 The first Commissioner was appointed by the Authority's Chair on 22 March 2011. <http://nmhh.hu/?id=hir&cid=13806> [accessed 7 July 2011]

1015 http://hvg.hu/itthon/20110331_mediabiztos_mobil_panaszok [accessed 7 July 2011]

1016 Art. 142 (1), Act CLXXXV of 2010

1017 <http://www.bombahir.hu/hirek/az-uj-mediabiztos-tobb-panaszt-szeretne> [accessed 7 July 2011]

Integrity Mechanisms (Law)

To what extent are there provisions in place to ensure the integrity of media employees?

Score: 50

According to the new legislation, the Media Council should cooperate¹⁰¹⁸ with the professional self-regulatory bodies and alternative dispute resolution forums. When needed, the Authority holds a public hearing involving the media service providers, the publishers of media products, the broadcasters, the self-regulatory professional organisations, civil associations and others. All media service providers should make available to the public - amongst others - the name and address of the professional self-regulatory bodies authorised by the media service provider to proceed against it.

The Media Council may conclude a public administration agreement in writing for an indefinite period with the self-regulatory bodies. This agreement could give rights to those bodies for administering cases, settlement of disagreements and legal disputes, and supervision of the operation of member entities. The Authority may provide financing for the self-regulatory body to perform these tasks.¹⁰¹⁹ The public administrative agreement concluded by the self-regulatory body and the Media Council will include a professional code of conduct as a substantive part. The self-regulatory procedure on the part of the self-regulatory body has priority over the administrative procedure of the Media Council. The Media Council has the right to act in relation to the members of the self-regulatory body in administrative cases, defined in the public administration agreement, and when in its opinion the action of the self-regulatory body does not comply with relevant legislation or the provisions of the public administration agreement concluded by the parties.

When the Media Council establishes that the decision of the self-regulatory body does not comply with the provisions of the public administration agreement concluded with the self-regulatory body and in particular the provisions of the code of conduct, it starts an administrative procedure. The Media Council is not bound by the procedure and decision of the self-regulatory body when supervising the activities of the self-regulatory body under the public administration agreement.¹⁰²⁰

Integrity Mechanisms (Practice)

To what extent is the integrity of media employees ensured in practice?

Score: 50

One of the fundamental principles of the Media Act states that the professional self-regulatory bodies comprising the media service providers, publishers of media products, intermediary service providers and broadcasters, as well as the various self- and co-regulatory procedures applied play an important role in the field of media regulation. These bodies and procedures shall be respected when applying the Media Act.

1018 Art. 190 (1), Act CLXXXV of 2010

1019 Art. 190 (2), Act CLXXXV of 2010

1020 <http://tasz.hu/szolasszabadsag/12-pont-mediaszabalyozasrol> [accessed 7 July 2011]

The most notable self-regulating body in the Hungarian media field is the Association of Hungarian Content Providers (MTE).¹⁰²¹ It was founded in 2001 by Hungarian internet content providers in order to be able to participate in the development of the Hungarian internet business market and provide a tool of self-regulation. These providers created a professional code of internet content provision and also a code of ethics that describes the generally accepted system of ethical norms for internet content provision in Hungary. In 2007, the Center for Independent Journalism¹⁰²² with the Open Society Institute Network Media Program (OSI) and the South East European Network for Professionalization of Media (SEENPM) initiated the draft of the first nationwide code of ethics for all kinds of media, but the program did not reach its goals in setting up an independent self-regulating body. The Centre for Independent Journalism (CIJ) held a conference on June 23rd, 2011¹⁰²³ on the topic, where all participants agreed to the need for such a code of ethics. The following self-regulatory bodies have thus far concluded public administration agreements: Association of Hungarian Content Providers (MTE)¹⁰²⁴, Hungarian Advertising Self Regulatory Board¹⁰²⁵, Hungarian Newspaper Publishers' Association¹⁰²⁶ and Hungarian Electronic Content Providers' Association.¹⁰²⁷

Investigate and Expose Cases of Corruption Practice
To what extent is the media active and successful in investigating and exposing cases of corruption?

Score: 50

Journalists may not be held liable for any breach of law committed in connection with obtaining information of public interest. However, journalists must prove that the particular piece of information could not have been obtained otherwise, or if the difficulties endured while obtaining such information are "disproportionate". The problem with this provision is yet again the lack of clarity of the terminology: it states that the journalist may be held liable in the previous case, if the breach of law constitutes a disproportionate or serious violation and the information was obtained disregarding the Act on the protection of qualified data. The term "disproportionate or serious violation" of the breach of the law is sufficiently broad to be used against journalists and, as we stated above, almost all "awkward" information is considered qualified data. Neither the protection of the identity of informants, nor the protection of the journalists themselves is adequately transparent.¹⁰²⁸ The recommendation 1950 (2011)¹⁰²⁹ of the Parliamentary Assembly of the Council of Europe about the protection of journalists' sources was adopted by the Assembly on January 25th, 2011. Section 4 of this law states that "referring to the new Press and Media Law of Hungary (Law CIV of 2010 on the freedom of the press and the fundamental rules on media content), the Assembly expresses its concern that limits to the exercise of media freedom fixed by Article 4.3

1021 http://www.mte.hu/eng_egyesulet.html [accessed 7 July 2011]

1022 <http://www.cij.hu/hu/info/programok/media-onszabalyozas/etikai-iranyelvek/etikai-iranyelvek-masodik-tervezet-2008> [accessed 7 July 2011]

1023 <http://www.cij.hu/hu/media-onszabalyozas-etika-es-minoseg-nemzetkozi-konferencia> [accessed 7 July 2011]

1024 http://mte.blog.hu/2011/07/01/tarsszabalyozasi_megallapodast_kotott_az_mmte_es_a_mediahatosag [accessed 7 July 2011]

1025 http://www.news4business.hu/kozlemenyek/press_release.php?id=12769 [accessed 7 July 2011]

1026 http://www.news4business.hu/kozlemenyek/press_release.php?id=12790 [accessed 7 July 2011]

1027 http://www.news4business.hu/kozlemenyek/press_release.php?id=12873 [accessed 7 July 2011]

1028 <http://tasz.hu/szolasszabadsag/mediatorveny-elemzese-elso-resz> [accessed 7 July 2011]

1029 <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/EREC1950.htm> [accessed 7 July 2011]

and the exceptions to the right of journalists not to disclose their sources stipulated in Article 6 of this law seem to be overly broad and thus may have a severe chilling effect on media freedom. This law sets forth neither the procedural conditions concerning disclosures nor guarantees for journalists requested to disclose their sources.” The European Parliament resolution of March 10th, 2011 on media law in Hungary also stated that “erosion of the protection of journalists’ sources” could be taken into consideration.¹⁰³⁰

The recent launch of the “Hungarian WikiLeaks”, www.atlatszo.hu is the start of media that focus on investigative journalism. In addition, an independent award (For Quality Journalism Award)¹⁰³¹ is given every month to a Hungarian journalist mainly for investigative work.

Informing the Public on Corruption and Its Impact
To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Score: 75

One of the key questions is the issue of political advertisements in the media. In each electoral campaign period, Hungarian parties spend more funds than they are allowed to spend, according to the relevant regulations. Even civic organisations forced a reform in this respect,¹⁰³² because the current legal framework regulating campaign financing is clearly inadequate to ensure transparency and accountability. Addressing this issue, the Act says that during electoral campaign periods, political advertisements may only be published in accordance with the provisions of Acts on elections. Outside of electoral campaign periods, political advertisements may only be published in the case of referendum that have been already ordered. The media service provider shall not be responsible for the content of political advertisements. If the request for the publication of the political advertisement complies with the provisions of the Act on election procedure, the media service provider shall publish the advertisement without discretion.

Informing the Public on Governance Issues
To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Score: 75

Almost all recent analyses¹⁰³³ showed that since the summer of 2010, the parliamentary opposition had a share of about only 17 to 30% of airtime in the public service media evening news programmes, whilst the government coalition had a share of 70-83 percent.

1030 :<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN> [accessed 7 July 2011]

1031 <http://www.minosegiujsagiras.hu/main.php> [accessed 7 July 2011]

1032 Joint initiative for a more transparent campaign financing system, <http://www.kampanyfinanszirozas.hu/index.php?oldal=inglish> [accessed 7 July 2011]

1033 Index.hu (one of the leading Hungarian news portals): http://index.hu/kultur/media/2010/12/10/ketharmados_fidesz-uralom_az_mtv-ben [accessed 7 July 2011]

Republikon Institute: <http://www.republikon.hu/news.php?id=141> [accessed 7 July 2011]

The analysis of Policy Solutions, a political research and consultancy institute¹⁰³⁴, showed that the government coalition is over-represented in television coverage, and there is only one national television station where the opposition received more airtime than the government coalition. They found that in the public service media evening news programmes the ratio was 82:18% in favour of the coalition, and in the two leading national commercial television stations the ratio was basically the same (TV2: 84:16%, RTL Klub 62:28%).

Shortly after the Act was passed by Parliament, Neelie Kroes, European Digital Agenda Commissioner wrote a letter to the Hungarian government and requested that the Hungarian government demonstrate within two weeks that the new media law does, in fact, follow EU regulations. The Hungarian government did not intend to publish the letter, but it has been leaked to the Hungarian daily *Népszabadság*, which made it public.¹⁰³⁵ To Brussels it seemed that the new law violates the principle of free expression as laid down by the European Union's Charter of Fundamental Rights, as the law required all broadcasters and digital media services to provide "balanced coverage" in their news reporting. Reporters Without Borders urged the European Parliament to pass a resolution condemning Hungary's new media law as "this media law strips Hungarian citizens of the legitimate and fundamental freedom to receive and impart news and information. The letter identified only three areas for "clarification": the obligation of balanced coverage applicable to all audiovisual media services, the country of origin principle and the registration requirements.¹⁰³⁶ In its response, the Hungarian government confirmed its willingness to carry out negotiations on the new law. Finally, the Hungarian Parliament adopted the amendments of the Media Act with all changes requested by the European Commission.

Consequently, the previously criticized notion of "balanced reporting" no longer applies to on-demand services (including blogs); the Media Council can no longer fine foreign-based media services; while the registration procedures have become more visible and accountable. However, criticism continued: Reporters without Borders issued a statement emphasizing once more¹⁰³⁷ that despite the amendments the main controversial questions remained unsolved.

As far as practical issues are concerned, we can generally state that investigative journalism is a resource-consuming genre and thus in many cases considered too expensive for editorials especially in the light of the potential risks (see below). The current ways of news consuming as well as the speed of information flow result in the fact that the invested time, money and work doesn't always seem to pay off for the media. This is especially true for editorials with insufficient resources such as the local media, blogs or radio channels. However, the reputation arising from detecting corruption and disclosing scandalous stories especially in the case of political corruption still keeps investigative journalism alive.

1034 http://www.policysolutions.hu/hireink-olvas/_egyedulalkodo_a_fidesz_a_hiradokban [accessed 7 July 2011]

1035 http://nol.hu/archivum/amit_a_kormany_el_akart_titkolni_neelie_kroes_levele [accessed 7 July 2011]

1036 In the letter, the European Commissioner underlined that some parts of the new Act could create an obstacle to the freedom of establishment and free provision of services guaranteed in European Treaties, some parts may constitute disproportionate restrictions and those obstacles do not seem to be justified. The letter concludes with the statement that "Commission services have serious doubts as to the compatibility of the Hungarian legislation with Union law". <http://en.rsrf.org/hungary-european-parliament-urged-to-pass-31-12-2010,39200.html> [accessed 7 July 2011]

1037 <http://en.rsrf.org/hongrie-hungary-s-media-law-is-08-03-2011,39721.html> [accessed 7 July 2011]

As for Hungary specifically, the situation seems even more difficult due to the following reasons: even though the Hungarian FOI law in effect until the end of 2011 provides the media with a relatively strong tool in their fight for public interest disclosures, the eventuality and slowness of jurisdiction makes the results of public interest litigation somewhat erratic. Furthermore it seems from research and experiences that only the larger and more established editorials are aware of the investigative potential of the FOI law and the situation will be more difficult even for them with the new regulation in effect from next January. The same goes for the new media law which has reactivated evident self-censuring methods in the daily news-editing practices of the Hungarian media. However, these issues rather concern publishing and not investigating. It's even more pervasive in fraud-related stories where the possibility of defamation keeps editorials away from disclosing dubious cases.¹⁰³⁸

It shall also be mentioned that information of public interest which might serve as a basis for investigative journalism (budget information, financial figures, procurements, state tenders, etc.) are hardly available and difficult to analyze; there are no government databases which meet open data standards. Company registry information is available in the form of paid services, however, in cases of offshore companies journalists often tend to stop working on their cases due to the difficulties in getting more information. The revisiting of cases is ad hoc and journalists tend to follow up their stories only where there's a strong chance of disclosing something scandalous. Major Hungarian NGOs to help investigative journalists are the following: the Hungarian Civil Liberties Union, Centre for Investigative Journalism, Transparency International Hungary and K-Monitor Watchdog for Public Funds.

We shall state that the general interest of the Hungarian media in corruption cases is enormous and evident, however, the selection of cases and the value added by journalists is rather questionable.

As for the new media regulation we shall state that not only the mistakable and legally dubious paragraphs on source protection or the missing definition of public interest but also the very fear of getting sued for defamation - which is especially pervasive in corruption-related cases - makes editors very cautious in their investigative and especially publishing practice. Similar self-censorship is detectable when it comes to large companies mostly due to the strong dependence of the Hungarian media on advertisers. The other very evident and well-known dependence is the financial or ideological subservience on political parties which enhances the political polarization of the media - especially in the case of publishing fraud-related stories. Therefore the selection of cases becomes quite erratic.

It shall also be mentioned that the lack of thorough fact-checking is a strong shortage in the Hungarian media not only when it comes to publishing but also in the case of investigations. (This is mostly due to the above described specifics of the new ways of news consuming and thus the lack of time and resources.) Local newspapers are lacking resources even more desperately and so they tend to concentrate rather on national

1038 Interview with Júlia Keserű, K-Monitor Public Watchdog Association on 15 October 2011

scandals instead of investigating and publishing local stories. They are usually also much more dependent on local governments which results in similar dependency problems as in the case of the national media and political parties and/or advertisers. Last but not least, most of the journalists are not specialized in any specific area (tenders, financial matters, health care and agriculture) which makes their work even more difficult when it comes to elaborating corruption-related cases or professional background materials. The latter ones are mostly provided by research institutes and NGOs.¹⁰³⁹

¹⁰³⁹ Interview with Júlia Keserű, K-Monitor Public Watchdog Association on 15 October 2011

12. CIVIL SOCIETY

Summary

Hungarian civil society underwent significant developments over the last two decades, and it plays an important role in many domains of public policy and public affairs, as well as operating 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 with a serious dependence on public (state and European Union) sources. Another problem is the lack of strong and supportive constituencies. However, 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. As a result, civil society scored around medium on most practice indicators, and somewhat better on the legal ones.

Civil Society Overall Pillar Score: 60 / 100			
	Indicator	Law	Practice
Capacity 69 / 100	Resources	75	25
	Independence	100	75
Governance 50 / 100	Transparency	-	75
	Accountability	-	25
	Integrity Mechanisms	-	50
Role 63 / 100	Hold government accountable	75	
	Policy reform	50	

Basic characteristics

According to the latest statistical report in 2009, there are 66,145 non-profit civil society organisations (CSOs) in Hungary, over one third of them are foundations (23,667) and the rest are various types of associations (42,478).¹⁰⁴⁰ However, this number should be treated with some caution, as it is widely held that many legally registered CSOs are in practice defunct or dormant. The majority of registered CSOs work as service providers in various fields: 32% of foundations are active in the field of education, 16% in social care and 14% in culture, while in the case of associations which are dedicated to recreation and hobbies (26%), sport (16%) and again culture (14%) are the predominant activities. CSOs with a primarily human rights, civil liberties and advocacy focus represent a minority within the whole sector (around 2000 and 3000 organisations).¹⁰⁴¹

1040 Statisztikai Tükör, 2010/138, Central Statistic Office, Budapest, 23 December 2010.

http://portal.ksh.hu/portal/page?_pageid=37,1030058&_dad=portal&_schema=PORTAL [accessed 5 June 2011]

1041 *ibid.*

According to research carried out in 2004-2005, approximately 40% of the adult population has been engaged in some activities for the common good, beyond the narrowly defined private sphere, and this trend had been improving, compared to the previous decade.¹⁰⁴² However, only a smaller share of this voluntary work is carried out within the framework of organized civil society: according to the statistical office, more than 400,000 volunteers help CSOs in 2009 (4% of the population). This relatively low number is probably linked to the general lack of trust of Hungarian society in CSOs. Social capital surveys demonstrated that CSOs are among the best trusted institutions in Hungary, the figure on the index is at 2.5 (on a scale of 4), which is just on the border between distrust and trust. Distrust decreases the willingness to participate in public policy. According to the same survey, the majority of respondents do not believe they can make a difference in public affairs, and more than half of them had not engaged in any such activity in the year prior to the survey.¹⁰⁴³

Assessment

Resources (Law)

To what extent does the legal framework provide an environment conducive to civil society?

Score: 75

The basic legal environment of civil society in Hungary conforms to internationally-accepted democratic principles and standards. Article 63 (1) of the Constitution¹⁰⁴⁴ stipulates the right of any person to form or join organisations. Article VIII. (1) of the new Fundamental Law, which is to enter into force on January 1st, 2012 reformulates the wording of this right, but its essence remains the same.

Specifically, the Act on the Right to Associate¹⁰⁴⁵, passed as one of the first basic pieces of legislation during the process of political transition, establishes that any natural or legal person can establish associations for any purpose, according to the Constitution, with two basic limitations:

- associations cannot be established with a goal or intention to commit crimes and they cannot result in limiting the rights and freedoms of others;
- associations cannot be established with a primarily economic or business (for-profit) goal.

An association is to be registered if a minimum of ten founding members request this. (It may be noted that this is among the highest minimum numbers in Europe¹⁰⁴⁶, and there does not seem to be any rational justification or reasoning behind this particular number,

1042 Kuti, Éva - Czike, Klára: *Önkéntesség, jótékonyág, társadalmi integráció*, Nonprofit Kutatócsoport és Önkéntes Központ Alapítvány, Budapest 2006

1043 Péterfi, Ferenc: *Példátlanul alacsony szinten a közbizalom - Gyorsjelentés 2009, Közösségfejlesztők Egyesülete*, <http://kozossegefejlesztes.hu/> [accessed 5 June 2011]

1044 Act XX of 1949 on the Constitution

1045 Act II of 1989 on the Right to Associate

1046 Bullain, N. - Móra, V. - Holchacker, P.: *Civil Jövőkép - Átfogó nonprofit jogi reform koncepció* (Civil Vision - Comprehensive nonprofit legal reform concept), Ökotárs Alapítvány, Budapest 2004

other than tradition.) Courts cannot deny registration (except for the reasons above) and cannot examine the “necessity” or level of justification for establishing an organisation. Furthermore, the act stipulates that associations are self-governing and autonomous.

Foundations may be established under paragraph 74/A of the Civil Code¹⁰⁴⁷ (since its amendment in 1987). The rights and limitations are similar to the case of associations. There is no legally prescribed minimum amount of founding endowment; however, court practice has by now introduced HUF 200,000 (USD 948) as the usually required minimum. In theory, the registration process is cheap and simple: the registration itself is free of charge and there is no obligatory requirement to include a lawyer in the process. However, in practice it often is a lengthy and demanding procedure, especially in the case of CSOs with a public benefit status. After the documents (statutes and minutes of the founding meeting) are submitted, the court has 30 days to issue the decree or to call up the organisation to make changes or include additional regulations in its statutes. In most cases, the latter happens: a CSO is rarely registered in “one go”. These conditions are often formal in nature, e.g. a widely prescribed and questionable condition is to literally quote legal provisions in the statutes (instead of a simple reference to the relevant paragraph), leading to excessively long and complicated documents, which most members often do not understand. Furthermore, the practice of county registration courts is not consistent: both the numbers and types of conditions prescribed differ widely.¹⁰⁴⁸ The introduction of a unified electronic registration system could be the eventual solution to these problems, and the government is working on developing it; however, progress is slow. Usually, founders have 30 days to reconvene the founding assembly and pass the required changes in the statutes. If they fail to do this, the registration of the organisation is rejected (actually, this is the most frequent reason for rejection); however, the founders can re-start the process basically at any time. Thus, with patience and endurance, eventually any CSO can become registered.

De-registration - besides the CSO itself - may be initiated by the prosecutor (which has the legal oversight) if the organisation’s operation is found to be in breach of law. In such cases, the decision may be appealed under the regular rules and procedures of civil law. However, hardly any cases of such de-registration are known. Indeed, the estimated large number (>10,000) of dormant CSOs points to the contrary, i.e. many CSOs continue existing on paper after they ceased to conduct any activity (dissolving a CSO would require the efforts of its governing body, while in most cases the reason for dormancy is exactly the lack of interest and activity on the side of the members).¹⁰⁴⁹ Unregistered CSOs or groups may exist; however, they are not regulated in any way and have no legal standing, and as such, in practice, they are “invisible”. Therefore, CSO experts and scholars have for years advocated the introduction of such an organisational form¹⁰⁵⁰; however, the new draft of the planned nonprofit law (see Independence) does satisfy this need, but their rights remains unclear.¹⁰⁵¹

1047 Act IV of 1959 on the Civil Code

1048 Dr. Fülöp, Sándor: *Az egyesületek bírósági nyilvántartásba vételi gyakorlata - Összehasonlító elemzés a Nonprofit Szektor Analízis 2005-ben végzett felmérése alapján*. EMLA Környezeti Management és Jog Egyesület, Budapest, 2005

1049 Bullain, N. - Móra, V. - Holchacker, P.: *Civil Jövőkép - Átfogó nonprofit jogi reform koncepció* (Civil Vision - Comprehensive nonprofit legal reform concept), Ökotárs Alapítvány, Budapest 2004

1050 Ibid. Dr. Bíró, Endre: *Hol tartunk? A civil nonprofit szervezetek jogi szabályozásának problémái*. Jogismeret Alapítvány, Budapest, 2010

1051 <http://www.kormany.hu/hu/dok?source=3&type=302#!DocumentBrowse> [accessed 5 June 2011]

CSOs have no special taxes and are generally exempt from corporate or local taxes (the exemption only applies if the CSO's business activities do not exceed 10% of its overall income¹⁰⁵²). Some types and activities of CSOs (typically charity or donation related) may also be exempt from paying VAT. Furthermore, CSOs are exempt from paying fees in administrative or court procedures¹⁰⁵³ - a favour especially important to advocacy groups. The exemptions and benefits apply to all types of CSOs; however, they are not exempt from the related administrative burdens, i.e. the obligation to submit declarations to the tax authority. Another important aspect of taxation from the CSO point of view is the benefit that (corporate or private) donors receive. The scope of these have continuously narrowed over the past half decade: in 2010, income tax benefits following private donations were eventually completely abolished¹⁰⁵⁴ (NB: earlier, it was 30% of the donation with a progressively diminishing upper limit). Corporations entering long-term donor partnership with a CSO of public benefit status can decrease the base of their corporate tax by 20%.

Resources (Practice)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Score: 25

The weakest aspect of CSO operations is certainly the issue of financing. During the decade after the political changes in the early 1990s, international (private or inter-governmental) sources played a key role in contributing to the development of civil society. While these sources have after the turn of the century (and particularly since joining the EU) largely pulled out, no other types of funding could fully fill the gap they left behind, and it is especially true for advocacy CSOs.¹⁰⁵⁵ In 2009, the overall total income of non-profit organizations reached HUF 114 billion (approximately USD 5.4 million). From this amount "classic" CSOs (i.e. associations and foundations) received HUF 418.4 billion (approximately 1.98 billion USD). This amount is very unevenly distributed among the individual organisations, with 44% of them working with an annual budget of HUF 500,000 (USD 2,369) or less. On the other end of the spectrum, 65% of state funding went to public foundations and non-profit companies, which are also included in nonprofit statistics, strongly distorting its data. State sources generally play an important role in the income structure of CSOs, comprising 31% of their income, while private sources only contributed 13% to their budgets.¹⁰⁵⁶

At present, Hungarian NGOs rely heavily on state sources, as well as on funding from European Union Structural Funds. State sources comprise 31% of CSO income, and since 2004, mainly in the form of grants of the National Civil Fund (NCF), as well as those of the ministries (and normative support in the case of service providers). While the distribution of the NCF is largely transparent, the same cannot be said for the latter. The majority of NCF monies (minimum 80%) are distributed through open calls for proposals,

1052 Act LXXXI of 1996 on Corporate and Capital Tax

1053 Art. 5 (1), Act XCIII of 1990 on Fiscal Charges

1054 Act XXXV of 2009 on the Amendment of Certain Tax and Related Laws

1055 Interview with Balázs Gerencsér, Nonprofit Information and Education Center, 25 May 2011

1056 Statisztikai Tükör, 2010/138, Central Statistic Office, Budapest, 2010. December 23.

and their selection and evaluation is carried out by the so-called colleges, composed mostly of elected civil society representatives. On the other hand, ministry sources of funding (defined in the budget act for any given year) fall within the exclusive competence of the minister: he/she can decide by decree on both the procedures for, and the beneficiaries of' funding.¹⁰⁵⁷ Open calls for proposals in this area are more of an exception than a rule, and seem to correlate with the advocacy capacities of the given types of CSOs (e.g. environmental groups have already in the mid-1990s successfully pressed "their" respective ministry to distribute the funds through open calls).

Ministry sources of funding normally only fund projects and specified tasks; the NCF is the only source that funds general operational costs. Since its launch in 2004, it has become the source with the largest number of beneficiaries, with more than 12,000 CSOs receiving support¹⁰⁵⁸ every year. In theory, the size of the NCF is linked to the amount of 1% income tax donations (for more information about this mechanism see below). According to the law¹⁰⁵⁹ it should be equal, however, in practice this was only the case in its first year of operation. Ever since then, the NCF has disbursed approximately HUF 7 billion (USD 33.2 million) annually, but in 2011, the present government suddenly cut back to less than half. This came to CSOs rather as a shock as they had no time to prepare for the likely consequences. With the passing of the planned new nonprofit law, the government promises that the NCF will be replenished from next year onwards; however, the structure of funding is also likely to change somewhat (its effects are not possible to estimate at this point). At the same time, ministry sources have also gradually deteriorated - e.g. in the case of the environment, from nearly a billion HUF (USD 4.74 million) in the late 1990s funding shrank to HUF 500 million (USD 2.37 million) in 2003 and to barely HUF 100 million (USD 473,934) in 2007¹⁰⁶⁰ and this trend continues.

Prior to and around the time of joining the EU high expectations surrounded the opening of the Structural Funds. However, these proved to be only accessible to a limited circle of large and institutionalised NGOs and even those NGOs sometimes caused more problems than they solved, due to the excessive administrative demands attached and the liquidity issues, stemming from post-financing and the regular delays in due payments. Thus, EU funds did not improve the financial circumstances of the sector as a whole.¹⁰⁶¹ Another important, quasi -financing mechanism is the institution of 1% income tax donations (also known as "percentage philanthropy"), whereby taxpayers can direct this amount to a CSO or cause of their choice. This possibility has existed since 1997¹⁰⁶², and over the last decade it became obvious that child and child health care, as well as animal welfare organisations are the most attractive to donors, and these organisations receive the largest amounts from this source¹⁰⁶³. It is practically impossible to change this trend, as donation for privacy reasons is anonymous. Thus CSOs cannot target their campaigning to special audiences, because they have no information as to which social groups

1057 Government Decree No. 292/2009 on the Operative Rules of Public Finance

1058 12,370 in 2010: http://nca.hu/?page=news/details&hir_id=599 [accessed 30 May 2011]

1059 Act L of 1993 on the National Civil Fund

1060 Móra, Veronika: *A zöldek (környezet-, természet- és állatvédő szervezetek) Civil éves jelentés 2006-2007*, Civil Szemle, 14-15. szám (V. évfolyam 1-2. szám), Budapest 2008

1061 Arató, K. - Bartal, A. Mm. - Nizák, P.: *A civil szervezetek tapasztalatai a Strukturális Alapokból finanszírozott projektek megvalósításában*, Civil Szemle, 16. szám, 2008/3, pp.79-96.

1062 Act CXXVI of 1996 on the Use of Defined Percentages of Personal Income Tax According to the Taxpayer's Provision

1063 http://www.apeh.hu/szja1_1/kozlemeny/civil_2010.html [accessed 30 May 2011]

sympathise with their goals. Therefore, those with the most emotional and largest advertisements are the most successful. On the other end of the spectrum are many small, local CSOs that benefit from smaller, but in their cases crucial, amounts as well.

Philanthropic giving - either corporate or private - is important for a limited number of CSOs, but overall it still plays a minor role in spite of developments over recent years. While corporate giving - driven by multinationals - is growing, the amount of private donations fell back by one-fifth from 2007 to 2009¹⁰⁶⁴ most probably due to the shrinking tax benefits. On the national level there are very few - around 20 - significant philanthropic donors, and they mostly also serve very specific target groups.¹⁰⁶⁵ Truly independent funds aimed at supporting advocacy activities are almost completely missing. Revenues from products and services are also not significant, at least in the case of "classical" CSOs - it may be different in the case of quasi-governmental nonprofits (e.g. nonprofit corporations). Under such circumstances, quite a number of medium and large CSOs depend on one or a few sources of funding (e.g. 1%, one private donor, normative state funding).¹⁰⁶⁶

On the more local level, the situation may be somewhat better: smaller CSOs work on the basis of receiving a little from here and a little from there. Smaller businesses tend to give some support to the organisations in their direct environment, and up to very recently, municipalities also ran grant programs for local CSOs; however, due to their increasing indebtedness, these were virtually eliminated this year.¹⁰⁶⁷

Against this financial background, non-profit organisations employ more than 130,000 workers; however, again 65% of them work at nonprofit companies. Paid staff are complemented by an estimated 427,000 volunteers who served 60 million working hours, valued at HUF 56 billion (USD 265 million).¹⁰⁶⁸ Volunteering is on the rise, especially among corporations, but also among individuals. In the case of small organisations, the estimated monetary value of voluntary work is worth twice as much as the financial income. On the other hand, many CSOs are not well prepared to receive and manage volunteers - maybe approximately 5,000 to 10,000 do it professionally.¹⁰⁶⁹ In general, experienced CSOs as workplaces are also attractive: job opportunities draw many candidates (often 50 to 150 candidates apply for a single position). Retaining qualified staff is more difficult, due to the financial hardships described above.¹⁰⁷⁰

1064 Statisztikai Tükör, 2010/138, Central Statistic Office, Budapest, 23 December 2010

1065 Personal information from Klára Molnár, director, Hungarian Donors Forum, 15 April 2011

1066 Interview with Balázs Gerencsér, Nonprofit Information and Education Center, 25 May 2011

1067 Ibid.

1068 Ibid.

1069 Ibid.

1070 Interview with Nilda Bullain, European Center for Not-for Profit Law (ECNL), 25 May 2011

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

Score: 100

As described under *Resources*, there are no limitations on the objectives of forming or engaging in organisations (except the intention to engage in illegal or criminal activities). Legal oversight over CSOs is practiced by the State Attorney, but this is limited to controlling the adherence to relevant legislation¹⁰⁷¹ (Act on the Right to Association, Civil Code, Act on Public Benefit Status) and the organisation's own statutes. Financial control is carried out by the Tax Authority and the State Audit Body at CSOs receiving state funding. The government has no specific grounds to interfere, other than those generally applying to all organisations. Similarly, there is no requirement at all for state membership or attendance in CSOs. CSOs have similar confidentiality rights as other legal persons, although Public Benefit Organisations (PBOs) must meet elevated transparency requirements, making most of their documents (including e.g. the minutes and decision of the boards) and meetings publicly accessible.¹⁰⁷²

Independence (Practice)

To what extent can civil society exist and function without undue external interference?

Score: 75

Governmental interference with CSO operation is rare and indirect. Clientele-building is more prevalent, i.e. the government establishing and primarily cooperating with its "own", friendly quasi-CSOs. According to one of the interviewees, this seemed to be more typical under the previous (social-liberal) government than the present one (conservative) which demonstrates a general disinterest and lack of vision about the role and functions of civil society as such (as seen in the general concept of the new draft nonprofit law, see also below). Respondents felt that the governing party does not have any clear picture about the role and functions CSOs could and should play and no strategies as to where they would like the sector to develop.¹⁰⁷³

The above-mentioned clientele means quasi-CSOs: formations registered in the form of associations or foundations, but obviously established by and serving political and/or business forces. (In other cases, one or the other political 'side' tends to attract real CSOs as well.) In addition to distorting both data and the overall picture of the sector, some of these have been the key players in major financial scandals, the most notable of these being the so-called Zuschlag case. The case (in which the verdict on the second instance was announced on January 31st, 2011) revealed that János Zuschlag, an ex-Socialist MP and his collaborators operated a network of organisations aimed at raising funds from different state sources for various goals (e.g. youth camps), and which instead

1071 Act V of 1972 on the State Attorney, Act II of 1989 on the Right to Associate

1072 Act CLVI of 1997 on Public Benefit Organisations, Art. III

1073 Interview with Balázs Gerencsér, Nonprofit Information and Education Center, 25 May 2011

were used by the Hungarian Socialist Party.¹⁰⁷⁴ In a similar case, the chairman (László Földesi-Szabó, a retired police officer) and collaborators of the Egymásért Egy-másért Foundation, established by high-ranking secret service officials were found, by the court of first instance, to have committed embezzlement and smuggling (Földesi-Szabó walked out of the courthouse afterwards and is still at large).¹⁰⁷⁵ The present government, at least on the level of lip service, promised to eliminate this situation and to end such misappropriations, by way of a complete overhaul of civil society legislation, and by creating one codex-like nonprofit law. This would require all CSOs to re-register in 2012, once the new legislation enters into force. This would both filter out dormant organisations, and also centralise funding mechanisms, thereby excluding possible double-funding.

In the world of genuine CSOs, there have been incidental reports of verbal intimidation of CSO activists by state officials (telephone calls etc.); however, these seem rather to be individual moves by impatient or angry people than systematic problems (anecdotal accounts can be read in some closed e-mail lists). At the same time, the litigation by corporations citing slander and defamation complaints against especially environmental CSO activists (known as SLAPP - Strategic Litigation Against Public Participation) is becoming a notable phenomenon in Hungary. Examples of such cases are the Dalerd Zrt. vs Benedek R. Sallai (of NIMFEA Nature Conservation Association)¹⁰⁷⁶ and the Auchan Magyarország Kft. vs András Lukács (of the Clean Air Action Group).¹⁰⁷⁷ Some CSOs also complain about coincidences between speaking up on a controversial issue and receiving a consequent regular audit by the Tax Authority, but direct, causal links can never be established. Still, many service-providing organisations are cautious about engaging in active advocacy for the fear of losing funding or other similar retaliation, but it is difficult to establish how justified these are or how much of it is merely a misguided perception.¹⁰⁷⁸ The acknowledgement of notifications to demonstrate are rarely denied (undue disturbance of the traffic being the typical pretext in these cases), and there are no reported cases of arrest or detention of civil society actors for the work they do.

Transparency (Practice)

To what extent is there transparency in CSOs?

Score: 75

Among CSOs, only PBOs (comprising 48% of all¹⁰⁷⁹) are legally required to produce annual reports, which include their financial accounts. However, they are not obliged to make them easily available to the public (e.g. on webpages), or to submit them to any state body (e.g. the attorney office); only PBOs with an exceptional status (6%) must publish their reports in a national newspaper. However, conformity with these regulations is not monitored in practice. Therefore, the planned new nonprofit law will require these

1074 Zuschlag-per: megszülettek a másodfokú ítéletek, Magyar Nemzet, January 31st, 2011 <http://www.mhu/portal/762822>, <http://cimkezes.origo.hu/cimkek/zuschlag-per/index.html?tag=Zuschlag-per&hits=10&offset=0> [accessed 5 June 2011]

1075 <http://www.origo.hu/itthon/20101222-itelethirdetes-az-egymasert-alapitvany-buntetougyeben.html> [accessed 5 June 2011]

1076 <http://www.vedegyelt.hu/modules.php?name=News&file=article&sid=940> [accessed 5 June 2011]

1077 http://www.greenfo.hu/hirek/2006/09/14/az-auchan-elveszített-a-pert-lukacs-andras-ellen_1158225240 [accessed 5 June 2011]

1078 Interview with Balázs Gerencsér, Nonprofit Information and Education Center, 25 May 2011

1079 Statisztikai Tükör, 2010/138, Central Statistic Office, Budapest, 23 December 2010

organisations to submit their reports to the courts. Also, the legally required form of the report is practically incomprehensible to a layperson, because it is largely quantitative and emphasises issues of accounting, and it does not include a section in which a report on the organisation's actual activities can be described.¹⁰⁸⁰ Thus, the publication of an easy-to-understand report, or reporting, by non-PBOs depends entirely on the organisation's own willingness and morale, and this is typical only for a minority of the more professional CSOs - typically those with a larger share of private donations in their income. The same applies to making information about the composition of the board and the list of paid staff publicly available - this is even less common than reporting on the general goals and activities.¹⁰⁸¹

While the vast majority of Hungarian NGOs generally adhere to the rules and operate appropriately (as demonstrated by the absence of persecution or cases of non-compliance), most NGOs are often not ready to demonstrate this publicly. They work in such a bureaucratic environment and they have to meet such a vast quantity of regulations that they fear that if they provide too much information about themselves, someone, somewhere will find a mistake or something to criticise.¹⁰⁸² Another reason is that precisely because of the excessive administrative burden they shoulder, NGOs simply lack the capacity to make efforts towards increased transparency.

Thus, while they themselves fully acknowledge its importance, the level of CSOs' transparency may be considered around or somewhat better than the average in Hungary, where in general there is very little culture of transparency and it is not practised by the other - political, business - sectors either. While the information on the individual CSOs work, results and achievements usually exists, it is not easy to find for the average person. At the same time, it is clear that donors, especially corporate donors, would like to see greater transparency. Organisations such as the Hungarian Donors Forum, or the Nonprofit Information and Education Center (NIOK) receive regular requests for help in finding "trustworthy" CSO partners. There are initiatives by these organisations to facilitate increasing transparency, but it will still take much effort and time for their message to reach the bulk of the CSOs.

Accountability (Practice)

To what extent are CSOs answerable to their constituencies?

Score: 25

The accountability of the organisations themselves may be considered another relatively weak aspect of Hungarian civil society. Registered CSOs are legally obliged to report to their boards and members. In the case of associations the general assembly - where all members have a right to participate and vote - is the highest decision making body, with exclusive powers to approve the annual financial and activity reports, the budget and activity plan. Thus, members receive information and can exercise their rights at least

1080 Bullain, N., Csanády, D. - Gazsi, A.: *Ki érdemes a „köz” bizalmára? - Elemzés és koncepció-javaslat a közhasznú szervezetekről szóló törvény és a kapcsolódó jogszabályok reformjához*, Ökotárs Alapítvány 2011

1081 Interview with Nilda Bullain, European Center for Not-for Profit Law (ECNL), 25 May 2011

1082 *Ibid.*

once a year. In the case of foundations, the board has the same responsibilities, and the individual persons who serve as the trustees are often seen as the guarantee of appropriate and quality work. The appropriate functioning of these bodies are usually observed by CSOs (and controls carried out by the state attorney attach high importance to them as well), and as such, breaches of rules by management are uncommon.

However, beyond these direct constituencies, CSOs very rarely practice accountability towards broader circles, e.g. their target groups or the local community by surveying their needs or wishes or maintaining a dialogue. The notion “to be accountable towards constituencies” in the broader sense is simply not part of the general mentality and culture. By contrast, Hungarian CSOs are held strictly accountable to their funders. In particular, state and EU financing schemes place excessive (and sometimes pointless) reporting and accounting burdens on them. This limits the capacities to be answerable to others, and it may lead to a misperception whereby CSOs think that accountability towards the funder is the most important, and, once it is done, no further efforts are needed.¹⁰⁸³

Integrity (Practice)

To what extent is the integrity of CSOs ensured in practice?

Score: 50

On the sector-wide level, there are no self-regulatory mechanisms or codes of conduct, but similar instruments do exist in some sub-segments or geographic locations. The best known among these, considered as an exemplary model, is the cooperation and delegation system of the environmental NGO movement, which has been operational for at least one and a half decades. It is based on the institution of the “National Gathering” (NG) an annual meeting of the environmental movement, organised by a different CSO each spring and approximately 120 to 150 organisations participate. What differentiates it from other such “jamborees” is that the NG has written and mutually approved rules of procedure, which sets out the goals, the modes of operation, participation and decision-making. From the self regulatory point of view, the most important elements are:

- only statements approved by a majority at the NG may be considered as the position of the environmental NGO movement as such (no organisation can claim to speak on behalf of all);
- only delegates elected by the NG are entitled to participate in various multi-party dialogue or consultative bodies as representatives of environmental NGOs;

During these elections and decisions, each registered CSO (which has the protection of environment among its main goals) attending the NG has one vote (thus, there is no bias towards the big ones).¹⁰⁸⁴

¹⁰⁸³ Interview with Nilda Bullain, European Center for Not-for Profit Law (ECNL), 25 May 2011

¹⁰⁸⁴ <http://zoldot.com/0328szmsz> [accessed 5 June 2011]

This system was developed in the mid-1990s in a rather lengthy and “organic” process, mainly in response to governmental attempts to find or appoint “the” representative of the environmental movement. It may be added that environmental CSOs are not organised under one umbrella organisation with a central leadership, but through this system they have been able to retain their diversity and strengthen their advocacy capacities.¹⁰⁸⁵ There have been attempts to adapt similar systems in other sub-sectors, e.g. among CSOs working on the rights of disabled persons and on employment. However, these self-regulatory mechanisms mainly concentrate on the professional standards of the particular area and not specifically on how individual CSOs operate. In addition, temporary alliances formed to address particular issues may also be characterised as efforts towards self-regulation, such as the joint boycott of the main CSOs working with the homeless to not participate in the calls for proposals under the Social Regeneration Operative Program (Structural Funds), due to the unrealistic conditions established by the programme.¹⁰⁸⁶

At the local and regional level, CSO roundtables or forums serve as mechanisms for cooperation and self-regulation. However, among the many there are only a few genuinely operational ones, which can fulfil this role. The most notable example of this is the city of Eger, where the first such forum in the country was organised, based on the initiative of an organisation called the Tree of Life Environmental Society.¹⁰⁸⁷ Many more similar ones followed, but many of them ceased to exist after a shorter or longer period, most due to the lack of interest on the side of the local CSOs and/or the burn-out of the original initiators.¹⁰⁸⁸ As mentioned above (under Transparency), this relative underdevelopment is not unique to the sector, but rather reflects the representative current Hungarian realities. The over-regulation of the sector is another obstacle: CSOs must adhere to so many administrative requirements that they are cautious to take on additional ones voluntarily; and they fear that they would need to break these rules in order to survive in this environment.¹⁰⁸⁹

Last but not least, there have been repeated attempts over recent years to establish a general, nation-wide “civil interest representation” to become the main civil society partner to the government. Unfortunately, these did not stem from a recognised need, but were rather the top-down initiatives of a handful of CSO leaders wishing to take up the leadership of the sector, and as such, it met lesser or greater resistance on the one hand, and disinterest on the other. Therefore, these efforts have so far not been successful. Perhaps this is fortunate, because establishing such a representative body would not have resulted in self-regulation, but in the centralisation of civil society on the one hand, and in the marginalisation of dissenting organisations on the other.

1085 Móra, Veronika: A zöldek (*környezet-, természet- és állatvédő szervezetek*) Civil éves jelentés 2006-2007, Civil Szemle, 14-15. szám (V. évfolyam 1-2. szám), Budapest 2008

1086 Interview with Balázs Gerencsér, Nonprofit Information and Education Center, 25 May 2011

1087 <http://erdekkepviselet.eck.hu/> [accessed 5 June 2011]

1088 Interview with Balázs Gerencsér, Nonprofit Information and Education Center, 25 May 2011

1089 Interview with Nilda Bullain, European Center for Not-for Profit Law (ECNL), 25 May 2011

Holding Government Accountable

To what extent is civil society active and successful in holding government accountable for its actions?

Score: 75

Hungarian CSOs have fairly good legal foundations for holding their government accountable: access to broadly defined public information is guaranteed since 1993.¹⁰⁹⁰ Meanwhile since 2005, governmental bodies, as well as local governments, have been obliged to publish their draft regulations and decisions on their webpages, and also providing opportunity for members of the public to submit comments. However, according to the project "jogalkotas.hu", breaches of this obligation were not uncommon, and even when drafts are published, ministries often only provide a few days for public consultation, using the option of urgent procedure (without any particular basis).¹⁰⁹¹ The system of on-line consultation has also been upheld by the new Act on Public Participation in Legislation¹⁰⁹², which added a new institution of the so-called "strategic partnership". According to the relevant provisions, ministers may invite CSOs - among other types of organisations - to become strategic partners with which they carry out direct consultations, based on a written understanding. While this may be interpreted as a "privilegist" stance, in the absence of practice (as of writing this, the author is not aware of any such partnerships made), it is not yet possible to draw conclusions.

Besides the above legal provisions, more corporative consultative forums exist in most sub-sectors, in the form of various committees and other bodies with mixed government-civil society membership (e.g. Council of Senior Citizen Affairs, Civil Employment Workshop, National Environmental Council). Normally, these only have advisory powers, and not all of them are mandated by legislation. They are more often than not only seen as talking shops and do not have any real impact on decision-making. While CSOs with a primarily advocacy focus comprise a minority of the sector in terms of numbers, there are good and visible examples of such work. Advocacy capacities vary significantly across thematic areas, and it largely depends on whether there are strong organisations working in the given field. For example, in the area of human rights and civil liberties, while there are not many active organisations, the work they do is often successful and high profile, especially through litigation, e.g. in freedom of information cases (Hungarian Civil Liberties Union, Hungarian Helsinki Committee, umbrella organisations of various disabled groups¹⁰⁹³, etc.). Another and frequently-quoted example is the environmental movement - as these organisations have a client status granted by the Act on the Protection of the Environment¹⁰⁹⁴ in administrative decision-making related to the environment (e.g. environmental impact assessment procedures). It has a standing on these issues and environmental groups participate in such processes often with relative success. Conscious use of the media is another important element to effective advocacy.

In other fields where CSOs depend more heavily on state funding - particularly service-providers with normative support - advocacy is much weaker, as there is a widespread

1090 Act LXIII of 1992 on the Protection of Personal Data and the Accessibility of Public Data (to be replaced by new legislation)

1091 <http://www.jogalkotas.hu> [accessed 5 June 2011]

1092 Act CXXXI of 2010 on Public Participation in Legislation

1093 <http://www.tasz.hu>, <http://helsinki.hu> [accessed 5 June 2011]

1094 Act LIII of 1995 on the General Rules of the Protection of the Environment

fear of “not biting the hand that feeds you”. Examples are the social services and education. The same applies to the local level, where small CSOs are more or less dependent on municipal funding and on good relationships with local leaders who may view advocacy efforts as personal attacks. Generally, the lack of independent funding as well as constituency is a major obstacle in the way of developing advocacy (see *Resources*). This also limits the available professional expertise needed, as well as the capacities of advocacy organisations to monitor developments over the longer term and to speak up as and when needed.

As to the success of civil society advocacy activities, it is difficult to draw overall conclusions, because there is a lack of relevant surveys or analyses. However, both positive and negative examples may be found, and they heavily depend on the concrete issue in question and on the level of public outcry. Nevertheless, even in the case of successful advocacy, the longer-term sustainability of the results in a rapidly changing legal environment is a major problem: as was amply demonstrated after the national elections in 2010, a change in prevailing ideologies and political priorities can easily annul the results of CSO advocacy efforts with the stroke of a pen. One example is regulation of foundations: during the course of preparing the new Civil Code in 2009, CSOs coordinated by the Hungarian Environmental Partnership Foundation, successfully argued for progressive changes for the laws on foundations.¹⁰⁹⁵ Their proposals were accepted by the government and channelled into the legislative process in the form of amendments. The Civil Code was passed by Parliament in late 2009; however, it was challenged at the Constitutional Court soon after (for completely different reasons), and eventually the code did not enter into force.¹⁰⁹⁶ Proposals to introduce supported decision-making for incapacitated persons, as part of the Civil Code advocated for by the Hungarian Association for Persons with Intellectual Disabilities, met with the same fate. A similar case is that of the Parliamentary Ombudsman for Future Generations (POFG): this pioneering institution was introduced in late 2007, based on the initiative and several years of advocacy coordinated by the Protect the Future Association and other environmental groups, and as such it was considered a great success at the time. During the drafting process of the new Fundamental Law in spring 2011, the first draft versions were to eliminate the office, and only after serious civil society protest was it kept in the final text, however, only as a deputy to the general ombudsman with limited rights and competencies.

As a recent development spontaneous civic organising (with no formalised background) through the new social media can be observed in Hungary too. Examples are the “Egy milliő a sajtószabadságért!” (A million people for the freedom of the press) and other similar groups on Facebook¹⁰⁹⁷ which have organised several demonstrations during and after the parliamentary debate of the controversial new media law. It is probably too early to predict the longer term future of such initiatives: whether they would develop into more organised forms of civil activism or remain loose formations. At the same time, it underlines that it is important for more ‘traditional’ advocacy CSOs to use these tools.

¹⁰⁹⁵ <http://civiljogok.hu/tudastar/alapkerdesek-az-alapitvanyokrol-az-alapitvanyi-szabalyozas-reformjanak-szuksegesege-magyar> [accessed 5 June 2011]

¹⁰⁹⁶ Act LXXIII of 2010 on the Entry into Force of the Act CXX of 2009 on the Civil Code and Related Amendments. In 2010 the new government appointed a committee (mainly of law professors) to restart drafting the new Civil Code.

¹⁰⁹⁷ <http://www.facebook.com/ALKOTMANYOZAS?ref=ts#!/sajtozasabadsagert> [accessed 5 June 2011]

Policy Reform

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Score: 50

The number of organisations working primarily on anti-corruption is even fewer than those engaged in general advocacy. Transparency International Hungary (TI-H), Károly Eötvös Public Policy Institute, Freedom House (which closed its Budapest office in February 2011) or K-Monitor Public Benefit Association may be mentioned here.¹⁰⁹⁸ In specific cases, CSOs do contribute to uncovering suspected incidents of corruption. Examples are the undervalued sale of state land to private investors near Sukoró, or the planned motorcycle racing pit in Sávolly (near the Lake Balaton), which were initially viewed as an environmental issue as Natura2000 areas were involved. However, despite these examples, the role that CSOs play in detecting corruption is often more reactive than proactive. According to the impression of the interviewees¹⁰⁹⁹, investigative journalists seem to be more active and effective in achieving results. The draft law on political party financing prepared by TI Hungary during the course of the last election campaigns in spring 2010, was a case of proposed policy reform. As political party financing is considered to be one of the major obstacles to decreasing corruption, the proposal received much publicity; however, after the elections, the government did not initiate any real changes to this end.

¹⁰⁹⁸ <http://transparency.hu>, <http://www.k-monitor.hu> [accessed 5 June 2011]

¹⁰⁹⁹ Interview with Balázs Gerencsér, Nonprofit Information and Education Center, 25 May 2011;

Interview with Nilda Bullain, European Center for Not-for Profit Law (ECNL), 25 May 2011

13. BUSINESS SECTOR

Summary

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.

Business Sector Overall Pillar Score: 43 / 100			
	Indicator	Law	Practice
Capacity 63 / 100	Resources	75	50
	Independence	75	50
Governance 42 / 100	Transparency	50	50
	Accountability	50	25
	Integrity Mechanisms	50	25
Role 25 / 100	Anti-Corruption policy engagement	25	
	Support for/ engagement with civil society	25	

Main Characteristics of the Hungarian Business Sector

One of the most important characteristics of the Hungarian business sector is the relatively high proportion of micro and small enterprises. On the one hand, the ratio of micro enterprises that are legal entities is three percentage points higher in Hungary than the EU-27 average (94.4% and 91.8%, respectively-see Table 1). On the other hand, companies without legal personality should also be included. In Hungary, the business sector encompasses 200,000 companies without legal personality and one million registered sole proprietors as well. Thus, the number of companies per 10,000 inhabitants is 1,600 in Hungary, which is particularly high.

Another main feature of the Hungarian business sector is the dual structure: beside small and medium enterprises producing mostly for the domestic market, and functioning with low efficiency and productivity, there is a group of mainly foreign-owned big companies

with higher efficiency and capability of producing value added. This can be confirmed by data: in Hungary big companies' proportion of employment is lower than the EU-27 average (28.9% compared to 32.6%), but their ratio in value added is higher than in the EU (48.1% versus 42.1%).¹¹⁰⁰

Company size	Enterprise			Employment			Value Added		
	Number	Share %	Share EU 27 %	Number	Share %	Share EU 27 %	Billion Euro	Share %	Share EU 27 %
Micro	503 171	94.4	91.8	881 142	35.4	29.7	9	17.5	21.0
Small	25 122	4.7	6.9	479 676	19.3	20.7	8	16.2	18.9
Medium	4 125	0.8	1.1	406 302	16.3	17.0	9	18.2	18.0
Large	822	0.2	0.2	719 477	28.9	32.6	23	48.1	42.1
Total	533 240	100.0	100.0	2 486 597	100.0	100.0	49	100.0	100.0

The number of state-owned companies is insignificant (53) in the Hungarian economy, but in some sectors (in the energy sector and especially in the electricity supply sector) firms that are partly or exclusively state-owned (e.g. MOL, MVM) have a major market share.

Assessment

Resources (Law)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Score: 75

The legal framework simplifies and regulates the process of founding a new company. The general regulation of starting up and winding up firms in Hungary is in harmony with the EU standards. The same is also true for the regulation of insolvency.¹¹⁰¹ The "one window system" of bureaucratic management has already been introduced in Hungary.¹¹⁰² According to the World Bank, there were major positive changes in business regulations in two fields in 2008/2009, one field in 2009/2010 and four fields in 2010/2011 in Hungary:¹¹⁰³

¹¹⁰⁰ Data refer to the non-financial business economy (NACE C-I, K) and representative estimates for 2008. The estimates have been developed by EIM Business and Policy Research, based on 2006 Eurostat Structural Business Statistics figures. Source: *SBA Fact Sheet Hungary '09* (Eurostat, elaborated by EIM), http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/pdf/final/sba_fact_sheet_hungary_en.pdf [accessed 5 June 2011]

¹¹⁰¹ We can mention Act IV of 2006 on business companies or Act LXXXI of 2003 on Electronic Company Registration.

¹¹⁰² But at the same time according to the opinion of János Lukács, Chairman of the Hungarian Chamber of Auditors: "it would be practical to apply some preliminary filter in the sense that those already who have had a company which went bankrupt should have more strict criteria for founding a new enterprise. Such control does not exist in Hungary yet". Source: interview with János Lukács, the Chairman of the Hungarian Chamber of Auditors.

¹¹⁰³ WB Doing Business 2009 p.82., WB Doing Business 2010, p.99., WB Doing Business 2011. p.5.

2008/2009	The minimum capital requirement to start a business was reduced by around 80%, introduced online filing and made the use of notaries optional.	The time required to register property was cut from 63 to 17 days, by opening a new property registration office in Budapest and increasing cooperation among government agencies.		
2009/2010	Starting up a business was simplified, by implementing online registration and requiring confirmation of registration one hour after receipt of an application.			
2010/2011	Hungary implemented a time limit for the issuance of building permits.	Hungary reduced the property registration fee by 6% of the property value.	Hungary simplified taxes and tax bases.	Amendments to Hungary's bankruptcy law encourage insolvent companies to reach agreements with creditors out of court to avoid bankruptcy.

Due to the changes, Hungary ranked among *"The top 10 most improved in doing business"*.¹¹⁰⁴ According to this ranking, there are four fields which went through major positive changes: "Dealing with construction permits", "Registering property", "Paying taxes" and "Closing a business". Hungary rose from rank 52 to rank 46 from 2010 to 2011 in "Rankings on the ease of doing business", which included 183 countries. One can find 19 EU member countries that received better rankings and seven that ranked more poorly. Founding a new company requires four legal procedures and four days, according to the World Bank, and as a result, Hungary ranks 35th on the international rankings.¹¹⁰⁵ Based on the four day requirement for founding a new company, Hungary ranks among the top ten countries in the above-mentioned ranking of 183 countries, in terms of the speed of founding a new company (Hungary ties with Belgium at 7-8th places, which is the best position among the EU countries). The World Economic Forum also supports this ranking,¹¹⁰⁶ and it states that Hungary is at the 6th place in the international ranking (including 139 countries) in terms of the time that is required to found a new company. The responses of the interviews conducted for this study clearly support this as well.¹¹⁰⁷

1104 WB Doing Business 2011 p.71.

1105 WB Doing Business 2011 p.168.

1106 WEF Global Competitiveness Report 2011 p.179.

1107 Interview with a lawyer

Concerning the protection of the intellectual property rights, 11 national regulations and 11 international and EU-regulations are in effect in Hungary.¹¹⁰⁸ There were fundamental changes to the tax system of Hungary in 2010 and 2011. One of the most significant changes is that from January 1st, 2010, the rate of corporate income tax (CIT) rose (from 16% to 19%), and the CIT base was also broadened. Subsequently, the new Hungarian government “outlined an action programme to restore the economy and budget balance. As of 1 July, 2010, the company income tax rate of 10% generally applies to HUF 500 million (USD 2.37 million) of the tax base, above which the tax rate of 19% applies”.¹¹⁰⁹ At the same time, a single income tax rate of 16% was introduced and the 4% solidarity tax for corporations and private persons with high income was abolished. This kind of simplification of the tax system makes easier the operation of the companies, helps to boost their activities and makes tax evasion more difficult. Finally, it should be mentioned that the administrative expenses in Hungary are extremely high. In comparison with the EU average (which is 3.8% relative to GDP), for Hungary, it is 10.5%. This ratio is the highest among the EU countries. “Domestic and international measurements both prove that our country is among the laggards in Europe.”¹¹¹⁰

Resources (Practice)

To what extent are individual businesses able in practice to form and operate effectively?

Score: 50

According to the interviews and other available evidence founding a new company takes place in practice quickly involving minimal costs.¹¹¹¹ Filing for bankruptcy and liquidation, on the other hand, takes much more time and it comes with many problems. Even in the simplest case - if a company is not indebted and dissolution has been started - the procedure may take many months or even years. This justifies the emergence of a separate business type in Hungary for driving companies out of the market and there are many so called “company cemeteries” operating all over the country.¹¹¹² The “clear exit” takes at least six months. These experiences are consistent with the analyses of the World Bank, according to which Hungary is at the 62nd place of the liquidation ranking with the turnaround time of two years. The costs of the process can make up 15% of company property, and it is a high corruption risk as well.¹¹¹³ Liquidation is more complex, because no auditor is required to be present during the liquidation period (according to the changes in Act IV 2006 on companies); however, this is typically an area that requires external monitoring.¹¹¹⁴ In light of the above, it can be concluded that there are much

1108 See: <http://www.szellemitulajdonvedelem.hu/jogszabalyok> [accessed 10 July 2011]

1109 Taxation trends in the European Union (2010 edition) by the European Commission, see more details: http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_structures/2010/ntl_release.pdf [accessed 10 July 2011]

1110 Administration cuts for Hungary’s competitiveness. Red tape spending now at 10.5% of GDP by the Ministry for National Economy, February 2011. See more details: <http://www.kormany.hu/download/e/fe/10000/Administration%20cuts%20for%20Hungary%E2%80%99s%20competitiveness.pdf> [accessed 10 July 2011]

1111 According to János Lukács, the head of the Hungarian Chamber of Audits, founding a firm requires practically '0' HUF, neither cash nor subscribed capital is required: “you may take your car as a contribution in kind, you may do it via a promissory note”.

1112 In the company cemeteries, hundreds of companies declared to the same address can be driven out (dissolution) of the market. In many cases this serves to help escape public debt and supplier debt. See Lőcsei Hajnalka: A vállalatmegszűnések földrajza 2008-2009, Budapest, 2009. november, MKIK GVI, http://www.gvi.hu/data/research/csodfoldrajz_091211.pdf [accessed 10 July 2011]

1113 Alexa, Noémi - Bárdos, Rita - Szántó, Zoltán - Tóth, István János (2008): Corruption risks in the business sector National Integrity System Country Study. Part two by TI Hungary. See more details: <http://www.transparency.hu/files/p/en/490/2625261448.pdf> [accessed 10 July 2011]

1114 Interview with János Lukács, the chairman of the Hungarian Chamber of Auditors.

higher corruption risks in Hungary concerning the bankruptcy and liquidation than in founding a company.

Foreign investors emphasize that “if one wants to invest in Hungary (e.g., open an office building, a shopping or an industrial centre), then a sum running up to at least 10% of the investment shall be given as a bribe for the municipal building permit”.¹¹¹⁵ Moreover, this practice shows signs of institutionalisation: there are often companies around the municipality to manage the corruption transaction. (There are similar “solutions” in procurement cases¹¹¹⁶). Corrupt officials are referred to as “Mr. 10%”, due to the volume of the bribe. The results of a corporate survey support the practical experience finding that the average bribe in case of corrupt procurement is estimated at 13% of the total procurement value.¹¹¹⁷ Also, according to the World Bank, Hungary ranks 86th on the international ranking on construction permits (with the 31 legal procedures and 189 days required, supported by further research findings).¹¹¹⁸

The rankings of the World Bank and the World Economic Forum on property registration and protection, and contract enforcement, show mixed results. In the ranking of property registration, Hungary is in the top-middle taking the 41th place with four legal procedures and 17 working days required for the process. According to the World Economic Forum, Hungary takes the 66th place (among 139 countries) in terms of property right protection, and the 51th place in the protection of intellectual rights. In the ranking of contract enforcement, Hungary places 22nd place (35 legal procedures, 395 days). Interviews and practical experience, however, show a different picture. One of the interviewees¹¹¹⁹ reported that “practically, the law does not protect contract enforcement at all, nor does it protect employees and creditors”. In addition, business processes at the state level are very slow¹¹²⁰, while closing cases may take more than two years for half of the cases.¹¹²¹ The elected court at the Hungarian Court of Arbitration conducts business much quicker than state courts. The statistical data shows that 93% of elected court cases were closed within 2 years between 2006 and 2008.¹¹²² This means that these processes are much faster than the state course ones in Hungary.

1115 Source: interview with János Lukács, the chairman of the Hungarian Chamber of Auditors. See also: Noémi Alexa, Noémi - Bárdos, Rita - Szántó, Zoltán - Tóth, István János (2008): Corruption risks in the business sector National Integrity System Country Study. Part two by TI Hungary, p.27

1116 Szántó, Zoltán - Tóth, István János - Varga, Szabolcs: Social and institutional structure of corruption. Some typical network configurations of corruption in Hungary. In: Networks in social policy problems (B. Vedres - M. Scotti eds.). Cambridge: Cambridge University Press, under press

1117 According to the results of the joint study by Ernst & Young Kft. and MKIK GVI (Integrity and corruption risks in the Hungarian corporate sector - 2010) the leaders of medium and large enterprises reported 13% average corruption with a 10% mean. There are other disputable estimations in Hungary concerning the price raising effect of public procurement. See for example the research by GKI which says 25%. See: <http://www.gki.hu/gazdasagpolitika/kozbeszerzesi-korruptio-magyarorszagon> [accessed 10 July 2011]

See:[http://www.ey.com/Publication/vwLUAssets/Korruptici%C3%B3s_Kock%C3%A1zatok_2011/\\$FILE/Integrit%C3%A1s_Korruptici%C3%B3s_kock%C3%A1zatok__11022011.pdf](http://www.ey.com/Publication/vwLUAssets/Korruptici%C3%B3s_Kock%C3%A1zatok_2011/$FILE/Integrit%C3%A1s_Korruptici%C3%B3s_kock%C3%A1zatok__11022011.pdf) [accessed 10 July 2011]

1118 Szántó, Zoltán - Tóth, István János - Varga, Szabolcs - Cserpes, Tünde: Types and media representation of corruption in Hungary (2001-2009). *Magyar Rendészet*, 2010/3-4. 52-72.

1119 Interview with János Lukács, the chairman of the Hungarian Chamber of Auditors

1120 According to our interview experiences the low level of the economic and financial knowledge of the judges is also a serious problem.

1121 See the opinion of Hungarian firms about the operation of state courts, MKIK GVI, 2007, Budapest. <http://www.gvi.hu/> [accessed 10 July 2011]

1122 See Tóth, István János: Sentencing times, analysis of the state courts operating at HCA 2006-2008, MKIK GVI, 2009, p. 9. <http://www.gvi.hu/> [accessed 10 July 2011]

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

Score: 75

Due to the changed legal regulation in Hungary, the procedures on company registration and authorisation are uniform, and only since 2009 might they be carried out electronically.¹¹²³ If someone establishes a company and goes to the bank to open the accounts, the bank will ask for the “electronic file” and the “registration order”. The lawyer registering the company uploads these documents to the bank’s website along with the application for company registration submitted to the registry court and the official registration order. The bank opens the account afterwards. This solution excludes nearly all discretionary legal options. The required legal entity may be formed in a few hours (registered company, enterprise, Ltd, etc.), that is bound to a legal signature. The lawyers and notaries have “e-signatures”: this is a personal, numbered, plastic card containing a chip, which is used with a POS terminal. This means that the procedure is no longer paper-based. Moreover, the secondary procedure (which until now was also paper-based) will be almost exclusively electronic as well as of 1 January 2011. The process for registering the company name and trademark should also be mentioned. This is an investigation of a state authority (based on international contracts) of the existence of conflicting trademarks. Contact with the control authority is limited; the application documents are well defined, and for this reason, the actor has no discretionary right, which almost completely excludes corruption.

Activities requiring official permits (e.g. tourism, environmental protection, construction) are not yet administered electronically. Courts suspend operations if permits are lacking, after which the applicant must try to obtain the permit from the corresponding authority. There is a large corruption risk concerning this, since substantial discretionary authority is concentrated in the hands of the corresponding authority.¹¹²⁴ Local authorities may request various documents for the evaluation of the applications, due to the different interpretation of the acts, which also increases the possibility of corruptibility. There is a complaints’ procedure for charges of maladministration. The process involves various opportunities for the complainant to appeal. However, all in all, it is a complex and confusing procedure.

Another problematic issue is that there is no regulation compensating companies suffering losses due to unauthorized external interventions. Through claiming “damage caused in administrative power” compensation might be requested and claimed if one can demonstrate the explicit cost of illegal procedures of the authority, and that there is a causal relationship between damage and the illegal demeanour of the authority (eg. travelling costs, costs of losing work, etc.). A recent measure of the government aims to

1123 See Act LXXXI 2003 on Electronic Company Registration

<http://www.complex.hu/kzldat/t0300081.htm/t0300081.htm> [accessed 10 July 2011]

1124 Investors have to consider huge corruption risks in case of greenfield investments. The administrators ask for corruption commissions in various forms with various causes for completing a case ‘on time’, or issuing a permit. Case studies show the practice of corruption. See István János Tóth (ed.): The Hungarian maze of wind turbine licensing, Corvinus University of Budapest, Corruption Research Center, 2010 June, http://www.crc.uni-corvinus.hu/download/szeleromuvek_2010_tanulmany_100602_0828.pdf [accessed 10 July 2011]

influence the wages in the business sector. The bill has already been passed¹¹²⁵; it empowers the government to regulate the employers of the business sector to raise the salaries of employees whose wages were cut last year due to changes to the tax system. The bill was heavily criticised, because it violates the independence of firms and companies.

Independence (Practice)

To what extent is the business sector free from unwarranted external interference in its work in practice?

Score: 50

According to the interviewees¹¹²⁶ “the private sector is highly exposed to the authorities”. For example, if a rentable company has a tax bill, the complexity of the process and chances that a company can be dissolved, possibly unfairly, can leave companies in a precarious position. The solution in this case is to sue the business court, or turning to the media but both are costly and the outcome can be uncertain. This phenomenon is also supported by the fact that business leaders think it is important to form good “personal relationships” with the officials while obtaining permits or settling disputes.¹¹²⁷ Without the help of these relationships, they are unable to meet deadlines and regulations. Thus, it is not surprising that corruption cases related to obtaining permits are among the most frequent.¹¹²⁸

In the last few years, the state took action to facilitate electronic administration; however, the innovations only made companies’ operation more difficult. For example, nowadays, pecuniary claims can only be made electronically.¹¹²⁹ This has somewhat narrowed the opportunities, because business leaders have to know precisely how to make claims. Based on further experiences, this report concludes that sometimes not even legislation is free of corruption risks: case studies show that some laws introduced recently in Hungary probably aim to establish monopolistic or rent-seeking positions. As such, the network of some members of the business and political elite distorts market competition.¹¹³⁰ Interviewees¹¹³¹ also claimed that if a multinational firm has a good relationship with the

1125 Act XCIX 2011 on raising the salaries of employees with low income <http://www.complex.hu/kzldat/t1100099.htm/t1100099.htm> [accessed 10 July 2011]

1126 Interview with a lawyer

1127 These kinds of problems can be eased by means of a corporate Code of Ethics which contains detailed regulations of the firm-authority relations. This solution is however not widespread in Hungary but one can find few examples such as: Szabolcs Varga: How to prevent corruption? Useful recommendations and information for Hungarian business persons. Swiss Contribution Office - Budapest Corvinus University - Transparency International Hungary, 2010, second revised edition.

1128 It must also be mentioned that there may be significant corruption risks in those situations where different types of control by authorities are exercised, such as in the field of labour inspection by the Hungarian Labour Inspectorate. This statement can be confirmed also by the results of the following media analysis:

Szántó, Zoltán - Tóth, István János - Varga, Szabolcs - Cserpes, Tünde: Types and media representation of corruption in Hungary (2001-2009). *Magyar Rendészet* 2010/3-4. 52-72.

1129 See: Act L 2009 on the Order for Payment Proceedings. <http://www.jogiforum.hu/torvenytar/tv/2009/L> [accessed 10 July 2011]

1130 See Szántó, Zoltán - Tóth, István János - Varga, Szabolcs - Cserpes, Tünde (2010): *Gazdasági érdekcsoportok, szabályozási kudarcok, járadékvadászat és korrupció.* (Business interest groups, regulation failures, rent-seeking and corruption). CUB Corruption Research Center, Budapest and István János Tóth (ed.) (2010) : *Szabályozási kudarcok, járadékvadászat és korrupciós kockázatok a magyar villamosenergia-szektorban.* (Regulation failures, rent-seeking and corruption risks in the Hungarian electricity sector) CUB Corruption Research Center, Budapest.

1131 Interview with a lawyer

authority issuing licenses, and there is any error concerning a product of a competitor, which affects the firm negatively, the reaction of the firm is often quite surprising. It will agree to anything except for filing a legal remedy against the legal authority, because it is afraid of upsetting the good relationship. The company would much rather approach the competitor to revoke the license application to make the authority comply with this request. Practically, if the authority makes a mistake, there are required legal procedures in place to resolve the issue. However, the harmed party does not want to apply these procedures in order to preserve its good relationship with the authority. The fear of exposure to the authorities is so high that firms would rather choose other means than to file a lawsuit against the authorities. Furthermore, survey results show 30% of the Hungarian business leaders wouldn't refuse a bribe offer.¹¹³²

Transparency (Law)

To what extent are there provisions to ensure transparency in the activities of the business sector?

Score: 50

The standards and regulations concerning financial auditing are quite strict.¹¹³³ There is a regulation which forces enterprises to conduct an external annual audit. Reporting obligations differ, and they depend on the type of the enterprise; much stricter rules apply to companies with supervising committees, audit committees and auditors, of over HUF 100 million (USD 4.74 million) annual income. The Hungarian Financial Supervisory Authority also audits firms on the stock market. Firms must make the results of the audits public. The basic and public information of companies has to be published on the internet on the website called "Céginfo"¹¹³⁴, as well as on the websites of business courts the individual companies and the ministry. There is a legally defined code of conduct for auditors, and auditors must also respect the regulations of the international finance-audit standards. Analysis of the World Economic Forum supports the rigor of regulations concerning financial audits. The Global Competitiveness Report 2010 also places¹¹³⁵ Hungary at the 37th place in the "Strength of auditing and reporting standards" international ranking (among 133 countries) with 5.3 points. In 2011, Hungary improved six places on this scale with 5.4 points, and it is currently at the 31th place.¹¹³⁶ Taking all results into consideration, Hungary lands in the highest quarter of the international rankings.

1132 See for example the results of a latest joint survey by Ernst & Young and MKIK GVI titled: *Integritás és korrupciós kockázatok a magyar vállalati szektorban - 2010* (Integrity and corruption risks in the Hungarian firm sector - 2010). For the details see: [http://www.ey.com/Publication/vwLUAssets/Korrupci%C3%B3s_Kock%C3%A1zatok_2011/\\$FILE/Integrit%C3%A1s_Korrupci%C3%B3s_kock%C3%A1zatok__11022011.pdf](http://www.ey.com/Publication/vwLUAssets/Korrupci%C3%B3s_Kock%C3%A1zatok_2011/$FILE/Integrit%C3%A1s_Korrupci%C3%B3s_kock%C3%A1zatok__11022011.pdf) [accessed 10 July 2011]

1133 For detailed and specific information about the obligation of reporting and book-keeping of the participants in the economy see the Act C of 2000 on Accounting and Act IV of 2006 on business companies:

http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0000100.tv [accessed 10 July 2011]

http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0600004.tv [accessed 10 July 2011]

1134 See: <http://ceginformacioszolgalat.kim.gov.hu/> and <http://www.e-cegjegyzek.hu/index.html> [accessed 10 July 2011]

1135 WEF, *Global Competitiveness Report 2010* p.362.

1136 WEF, *Global Competitiveness Report 2011* p.383.

Transparency (Practice)

To what extent is there transparency in the business sector in practice?

Score: 50

The reporting obligation pertains to the double-entry bookkeeping companies. Currently, there are approximately 240,000 such registered companies in Hungary. The regulations of financial audits and reporting can be applied well in practice, but there are some difficulties. If there is an irregularity, the auditor does not authenticate the company papers.¹¹³⁷ Of course, there are extreme cases as well when the auditor might still authenticate the papers.¹¹³⁸ The general practice of the auditing procedures is the following: the first auditor is the manager, the second is the owner, and the third one is the auditor acting as the “lengthened arm of the owner”. The ownership structure of the companies is publicly accessible through the “Céginfo” website where all important company information is available. However, off-shore companies are problematic, because their ownership structure is unknown.¹¹³⁹

Anti-corruption measures applied by firms are controversial. Despite some positive examples, most companies are not interested in uncovering and tackling corruption, since in many cases they get requests for business through bribery. According to a survey 43% of the interviewed business leaders of 53 Hungarian big companies thought that their competitors paid bribes for gaining business contracts.¹¹⁴⁰ The state and municipal investments, procurements and PPP constructions are especially risky as far as corruption is concerned.¹¹⁴¹ Among Hungarian medium-and large-scale enterprises, only a few pay attention to preventing corruption through integrity and apply measures that help decrease corruption risks (eg. ethical code, ethical hotline, compliance branch, identification and special handling of assignments with high corruption risks, compliance investigations). Research showed that only 11% of the companies operate an ethics hotline and 81% of the companies do not operate a compliance department at all.¹¹⁴²

Other anti-corruption measures include preliminary filtering of partners, creating competition involving more bidders.¹¹⁴³ According to the legal regulations in force decisions on internal auditing are at the disposal of the company leadership.¹¹⁴⁴ In the

1137 Interview with János Lukács, the chairman of the Hungarian Chamber of Auditors

1138 Interview with János Lukács, the chairman of the Hungarian Chamber of Auditors

1139 Interview with János Lukács, the chairman of the Hungarian Chamber of Auditors

1140 According to the survey by PriceWaterhouse Coopers. See: Gazdasági bűnözés a gazdasági világválság idején (Business crimes during the global economic crisis) 2009

http://integritas.asz.hu/uploads/files/PwC_GECS_2009_HU_final.pdf [accessed 10 July 2011]

1141 Csermely, Péter - Fodor, István - Joly, Eva - Lámfalussy, Sándor (2009): Wings and Weights. Proposals for rebuilding the education system of Hungary and combating corruption. Budapest, Committee of Wise Men” Foundation

1142 See the joint study by Ernst & Young Kft. and MKIK GVI (Integrity and corruption risks in the Hungarian corporate sector - 2010). According to this research for example 11% of the companies apply ethical hotline and 81% of the companies do not operate a compliance department.

[http://www.ey.com/Publication/vwLUAssets/Korrupci%C3%B3s_Kock%C3%A1zatok_2011/\\$FILE/Integrit%C3%A1s_Korrupci%C3%B3s_kock%C3%A1zatok__11022011.pdf](http://www.ey.com/Publication/vwLUAssets/Korrupci%C3%B3s_Kock%C3%A1zatok_2011/$FILE/Integrit%C3%A1s_Korrupci%C3%B3s_kock%C3%A1zatok__11022011.pdf) [accessed 10 July 2011]

1143 Important research results and recommendations can be found in the latter field under the following report by TI Hungary: Competition Culture Survey 2010 Results, lessons.

http://www.transparency.hu/uploads/docs/Competition_Culture_Survey_2010_ppt.pdf [accessed 10 July 2011]

1144 Interview with János Lukács, the chairman of the Hungarian Chamber of Auditors

international ranking based on the Opacity Index¹¹⁴⁵ by Kurtzman Hungary is in the middle. In 2009, corruption scored a value of 51, dysfunctions of the legal system scored 34, enforcing economic rules scored 37, audit standards and company management scored 13, and the regulations scored 12.¹¹⁴⁶ This data shows that the value of 30 given by the aggregate index (which got Hungary to its current 30th place and the 25th place in 2009) was degraded because of corruption, and improved by audit standards, corporate management and regulations significantly.¹¹⁴⁷

Accountability (Law)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Score: 50

The Hungarian Competition Authority (“Gazdasági Versenyhivatal” or “GVH”) was established by Act LXXXVI of 1990 on the prohibition of unfair market practices, and started its operation on 1 January, 1991. The Competition Act, which is currently in force, is Act LVII of 1996 on the prohibition of unfair and restrictive market practices. The Act entered into force on 1 January, 1997. In addition to the provisions on competition, the Act determines the legal status of the Authority and it regulates its basic structure and operation, as well as the procedures it conducts. By Hungary’s accession to the European Union, the GVH became a member of the European Competition Network that consists of the national competition authorities of the EU Member States and the DG Competition of the European Commission. As from the same time, the GVH is required to apply EC competition law under certain conditions.¹¹⁴⁸ Since the end of 2005, the Competition Act determines the role of the GVH in the development and dissemination of competition culture. The completion and coordination of works connected to the development of competition culture, and the identification of needs for this to develop are the tasks of the Competition Culture Centre (GVH VKK), which is a specialised unit within the Authority.¹¹⁴⁹

The Hungarian Financial Supervisory Authority is the independent constitutional body that is responsible for the supervision, control and regulation of the financial intermediary system of the Republic of Hungary. Pursuant to Section III/3 of Appendix 2 of Act CXII of 1996 on Credit Institutions and Financial Enterprises “good business reputation” means the existence of the conditions that prove that the managers of the financial and payment institutions, as well as their owners with qualifying influence, are suitable for managing and owning the financial and payment institutions.¹¹⁵⁰

1145 The Opacity Index is a measure of five components that may be thought of as “negative social capital.” These are Corruption, Legal system inadequacies, economic Enforcement policies, Accounting standards and corporate governance, and Regulation. Together, these five factors spell CLEAR. The Index ranges from 1 to 100. A high score on the Index indicates higher levels of opacity in each of these areas.

1146 These values show the results at these areas. The smaller the value the better the current situation is.

1147 Opacity Index 2009 p. 3.

1148 See: http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=96&m19_act=4 [accessed 10 July 2011]

1149 See: http://www.gvh.hu/gvh/alpha?do=2&st=1&pg=54&m5_doc=2380&m90_act=5&m5_lang=en [accessed 10 July 2011]

1150 See: <http://www.pszaf.hu/en/> [accessed 10 July 2011]

The standards of the regulation of monitoring the business sector in Hungary are similar to those in Europe. The enacted corporate governmental provisions are mostly comprehensive; they accurately describe managers' reporting obligations towards owners. The operation of the stock market¹¹⁵¹ is regulated by the unified stock market law since 2002. The Procurement Act, on the other hand, is a negative example, because it is unable to fulfil its role, due to its complexity. Thus, the corruption risks accompanying procurement and state orders arise continuously.¹¹⁵² The revision of the Procurement Act - which was amended frequently in the past few years - as a completely new Act is currently on the agenda.¹¹⁵³

According to one interviewee¹¹⁵⁴, it is practical to distinguish between the external (governmental) and internal (in the company) level of regulation of the business sector, and among small and medium enterprises within the latter. There are major differences between different actors depending on the industry, company size, and the director. Concerning regulations in the company, the large - international and Hungarian - companies have developed principles in regulations similar to the international practice which work well.¹¹⁵⁵ However, in the case of small and medium enterprises, such regulation is mostly formal, or absent in many cases.

According to the World Economic Forum¹¹⁵⁶, Hungary is placed 37th on the ranking "Strength of auditing and reporting standards" in 2009/10 (among 133 countries). In November 2010, the country reached the 31th position (among 139 countries) showing some improvement and assuring Hungary's place in the top 30%. However, in the same analysis, Hungary took the 74th place in the "Protection of minority shareholders' interests" ranking in October 2009 (among 133 countries), and the 78th place in November, 2010. That was an evident decline placing Hungary below the average.

Accountability (Practice)

To what extent is there effective corporate governance in companies in practice?

Score: 25

The task of the GVH, in relation to freedom of competition, is to enforce the competition rules for the benefit of the public in a way which increases long-term consumer welfare and competitiveness. Furthermore, it promotes competition in general and, where no competition exists on the market, the GVH endeavours to create competition or promotes appropriate state regulation to be put in place. The activities of the GVH, in connection

1151 For details see the recommendations of the Budapest Stock Exchange: Corporate Governance Recommendations of the BSE. <http://www.bse.hu/topmenu/issues/corporategovernance> [accessed 10 July 2011]

1152 Csermely, Péter - Fodor, István - Joly, Eva - Lámfalussy, Sándor (2009): Wings and Weights. Proposals for rebuilding the education system of Hungary and combating corruption. Budapest, 'Committee of Wise Men' Foundation, p. 139-142.

1153 The standpoint of the TI Hungary can be found here: Competition Distorting Elements in the Effective Public Procurement Act. (15 April 2011) http://www.transparency.hu/uploads/docs/competition_distorting_eng_small.637.pdf [accessed 10 July 2011]

1154 Source: interview with István Fodor, former chair-director of Ericsson Hungary, present chair of the board of the Budapesti Városüzemeltetési Központ (City Operation Centre of Budapest).

1155 This is primarily true for those firms that are present in the stock exchange. For the details see for example the "Corporate Governance Recommendations" of the Budapest Stock Exchange which fits to the EU standards: <http://www.bse.hu/topmenu/issues/corporategovernance/cgr.html?query=regulation> [accessed 10 July 2011]

1156 WEF Global Competitiveness Report 2010 and 2011

with the safeguarding of competition, rest on the following three pillars: 1) competition supervision proceedings - the enforcement of the national and the Community competition law; 2) competition advocacy - the GVH tries to influence state decisions; 3) competition culture - the objective of the GVH is to contribute to the development of competition culture by the dissemination of knowledge about competition policy in order to raise public awareness of competition issues, and by promoting the development of competition-related legal and economic activities of public interest. Besides safeguarding competition, the GVH fulfils other law enforcement tasks provided by other legal acts such as the Trade Act.

Compliance with the regulation depends typically on the environment. The country of activity determines the multinational companies operating in an international environment. If compliance characterises the country in general (or its lack), this affects the business behaviour of companies and sets the standards. The spreading of responsible corporate governance practices were delayed by the decline of business culture in the past few years, because different stakeholders of the economy did not observe the rules adequately.¹¹⁵⁷ Such business environment is rarely suitable for responsible corporate governance. This also applies not just to the connections between the state and the business sector, but also to those within the business sector (e.g. media, wholesale).¹¹⁵⁸ Despite these trends, there are several big companies in Hungary that apply the principles of responsible corporate governance.

In Hungary the state tries to encourage companies to carry out anti-corruption activities and publish corruption related information; however, the initiative has been controversial. The previous government launched an anti-corruption campaign with hardly any solid results.¹¹⁵⁹ There was no comprehensive anti-corruption strategy in this period, and the plans that were accepted were mostly experiments without any practical consequences. The lack of sustainable solutions were mirrored in international rankings as well. According to the analysis of the World Economic Forum¹¹⁶⁰ Hungary was placed 84th on the ranking of "Efficacy of corporate boards" in 2009/10 (133 countries), and 68th in November 2010 (among 139 countries) ensuring Hungary's place in the middle of the leading countries.

1157 See for example: REJTETT GAZDASÁG. Be nem jelentett foglalkoztatás és jövedelemeltitkolás - kormányzati lépések és a gazdasági szereplők válasza (Hidden economy. Undeclared employment and non-reported income: government policies and the reaction of economic agents) edited by András Semjén and István János Tóth. MTA Közgazdaságtudományi Intézet Budapest, 2009

1158 Source: interview with István Fodor, former chair-director of Ericsson Hungary, present chair of the board of the Budapesti Városüzemeltetési Központ (City Operation Centre of Budapest)

1159 See for example: Former Prime Minister Gordon Bajnai had announced a Hungarian anti-corruption legal package (from January 1st, 2010), which was based on the US system. <http://www.investhungary.com/2009-10/pm-bajnai-announces-anti-corruption-package> [accessed 10 July 2011]

1160 WEF Global Competitiveness Report 2010 and 2011

Integrity Mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Score: 50

As far as the legal framework is concerned, the OECD Progress Report 2011¹¹⁶¹ underlines the following: "The framework is generally adequate. Under Section 33 of the Criminal Code, the period of limitations for bribery and trading in influence varies from between three to ten years, depending on the gravity of the offence".¹¹⁶² However, the OECD highlighted inadequacies in the enforcement system: "The absence of a central authority for strategic planning or for the coordination of enforcement has been problematic, as more than ten national authorities are involved in anticorruption work, and training for investigators is insufficient." Whistleblower protection is inadequate as the law on whistleblowers cannot be enforced due to legislative shortcomings. There is also no systemic collection of data on the number of whistleblowing disclosures, or on the proportion of cases that result in legal action.¹¹⁶³

Another important conclusion of the OECD report is that according to recent developments, there were "a number of reforms in 2010 that aimed to improve anti-corruption efforts in Hungary. The Central Investigative Prosecution Office based in Budapest received significant funds to improve the investigation and prosecution of corruption cases, though it is still early to determine the effects of this increase. The Act on Public Procurement was modified, and some of the changes may decrease the risks of corruption, but others may result in less transparency".¹¹⁶⁴

Codes and principles govern the behaviour of industrial actors.¹¹⁶⁵ These appear in most of the corporate advocacy alliances and they are "discussed, upheld and efforts are made to enforce them as well".¹¹⁶⁶ Multinational companies and mixed chambers play a leading and initiating role in these activities. At the same time, the situation is quite different at the corporate level. While assuring corporate integrity is common among large companies present at the stock market (those that have mostly foreign ownership and whose behaviour is basically regulated by other acts, such as the Foreign Corrupt Practices Act (US) or the Bribery Act (UK), this is not common among smaller Hungarian firms.¹¹⁶⁷ Nearly all of the ones in the former category have a code of conduct, ethical hotlines, compliance departments monitoring integrity, but those in the latter group

1161 OECD Progress Report 2011. Enforcement of the OECD Anti-Bribery Convention. See: http://www.transparency.hu/uploads/docs/Progress_Report_on_OECD_Convention_Enforcement_July2011.pdf [accessed 10 July 2011]

1162 OECD Progress Report 2011. Enforcement of the OECD Anti-Bribery Convention, p.40

1163 OECD Progress Report 2011. Enforcement of the OECD Anti-Bribery Convention, p.40

1164 OECD Progress Report 2011. Enforcement of the OECD Anti-Bribery Convention, p.40

1165 See for example the Code of Conduct of Trade and Commerce of the National Association of Entrepreneurs and Employers, the Code of Conduct of the Hungarian Pharmaceutical Manufacturers Association or the Code of Conduct of the Association of Information Technology, Telecommunication and Electronic Firms. See:

http://vosz.hu/?pid=34&c2_7_goarticle=1619 [accessed 10 July 2011]

<http://www.magyosz.org/rovathu.phtml?rovathu=allasfhu> [accessed 10 July 2011]

http://ivsz.hu/hu/-/media/OldResources/Files/i/IVSZ_Etikai_Kodex [accessed 10 July 2011]

1166 Interview with a lawyer

1167 See the results of the joint research by Ernst & Young Kft. and MKIK GVI (Integrity and corruption risks in the Hungarian corporate sector - 2010).

only have these occasionally. Based on the experiences of the interviewees of this study: “there is a code of conduct, a code of ethics, and a compliance department, etc., at the corporate-level within large companies... Moreover, they refer to them in labour disputes. (...)”. These documents of foreign owned companies are “always translated and published in Hungarian”.

Integrity Mechanisms (Practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 25

The practical applications of regulations that facilitate integrity are rare at the national level in Hungary. For example, one interviewee has rarely heard about public announcements uncovering corrupt transactions.¹¹⁶⁸ In the last few years, corruption was only occasionally uncovered by the report of a third party. There is no generally accepted code of ethics for public servants, nor are there rules to govern behaviour in situations when the customer offers a bribe. However, several public sector institutions have adopted their own codes of ethics. Also, there is no public registration to record the date when the process of revealing the corruption crimes started (e.g. related to a revision, public announcement, or report of a party involved in corruption, etc.).

It is common to step up against corruption by raising the costs of corruption for the corrupting party (company) as well. An effective way of doing this is publishing the “blacklist” of the companies involved in corruption. The tax authority maintains a taxation “blacklist” in Hungary but there is none on corruption. Specific lists might be found in different subfields such as labour inspection, windup procedures or competition controls. There are hardly any anti-corruption programmes at the corporate level, and ethical procedures are also rarely carried out. According to the chairman of the Hungarian Chamber of Auditors, “there are only attempts in practice”. Many initiatives to create a “club of non-corrupt companies” failed, because of the lack of interest among the companies.¹¹⁶⁹ An important exception is the Corporate Supporters Forum of TI Hungary with ten members (for example E-On, Pfizer, Ernst&Young and British-American Tobacco).

The tools to counter integrity-based corruption might be found almost exclusively at multinational firms at corporate level. In these companies codes of ethics are applied, procedures on ethical misconduct are initiated with their results published.¹¹⁷⁰ The corruption risks of various posts are assessed, anti-corruption training courses are held for employees working in higher positions. In smaller firms, however, there are less examples of practical steps taken to prevent corruption.¹¹⁷¹

1168 This is further amplified by the fact that Hungarian legislation does not consider the losses of Hungarian companies abroad.
Interview with a lawyer.

1169 Interview with János Lukács, the chairman of the Hungarian Chamber of Auditors

1170 See for a general overview of big companies applying codes of ethics: <http://etikai-kodexek.linkkalauz.hu/> [accessed 10 July 2011]

1171 Interview with a lawyer

Anti-Corruption Policy Engagement

To what extent is the business sector active in engaging the domestic government on anti-corruption?

Score: 25

The role of the business sector has several dimensions when it comes to how effectively it can influence the anti-corruption actions of the central administration and local governments. Many firms do not feel comfortable operating in a corrupt environment. Nevertheless, if corrupt methods spread, a certain contra-selection develops, honest market players disappear and bribe-paying companies remain in business. The interviewees¹¹⁷² mentioned several examples when a double standard attitude might be observed. Such controversial business actors generally emphasize the importance of fighting against corruption, but many of them are involved in corruption at the same time - especially in procurement cases. However, companies frequently draw the public's and the government's attention to the high level of corruption and the need to take steps against it. They also suggest action plans for this purpose.

Despite all efforts the business sector has mostly had partial success stories when it was influencing the anti-corruption actions of the government. While the required anti-corruption actions are discussed in governmental meetings with organisations and chambers incorporating larger firms, the practical impact of the initiatives was rather limited. For example, the American Chamber of Commerce (AmCham) recommended in 2007 the establishment of an independent bureau that would be supported by a special investigative body. It drew attention to the fact that for years the chamber had been urging the establishment of a whistleblower legal framework initiated first by TI Hungary. It supported its arguments by providing international case studies and best practices.¹¹⁷³ The suggestion was enacted in 2010 as a separate act and later it was partly overruled.¹¹⁷⁴

Support for/engagement with Civil Society

To what extent does the business sector engage with/ provide support to civil society in its task of combating corruption?

Score: 25

The actions of civil society against corruption are strongly related to its level of culture, organisation, and efficiency.¹¹⁷⁵ Civil society plays a greater role in introducing corruption to public discourse in Hungary, and it receives more and more attention from the media.¹¹⁷⁶ The activity of the non-profit sector increased especially after 2008. Multiple events took place annually, which focused the attention of the public on various forms

1172 Interview with István Fodor, former chair-director of Ericsson Hungary, present chair of the board of the Budapesti Városüzemeltetési Központ (City Operation Centre of Budapest)

1173 Source: <http://www.amcham.hu/implementation-is-the-key> [accessed 10 July 2011]

1174 Other foreign chambers are also organizing special training against corruption for their members, for example the British Chamber of Commerce or the German-Hungarian Chamber of Industry and Commerce.

1175 Interview with István Fodor, former chair-director of Ericsson Hungary, present chair of the board of the Budapesti Városüzemeltetési Központ (City Operation Centre of Budapest)

1176 Szántó, Zoltán - Tóth, István János - Varga, Szabolcs - Cserpes, Tünde: Types and media representation of corruption in Hungary (2001-2009). *Magyar Rendészet*, 2010/3-4. 52-72.

of corruption, its destructive social effects, and methods of countering them. However, it must be noted that the majority of these initiatives are associated with a few organisations (as TI Hungary's Corporate Supporter's Forum); voluntary initiatives are only present in lower numbers. One example is the 2009 Transparent State Civil initiative, established as an initiative of a number of social scientists, which runs annual research projects and aims to aid the transparent operation of the government (see for example <http://atlathatoallam.hu>). The financial support of Hungarian entrepreneurs and firms enabled the completion of the projects.

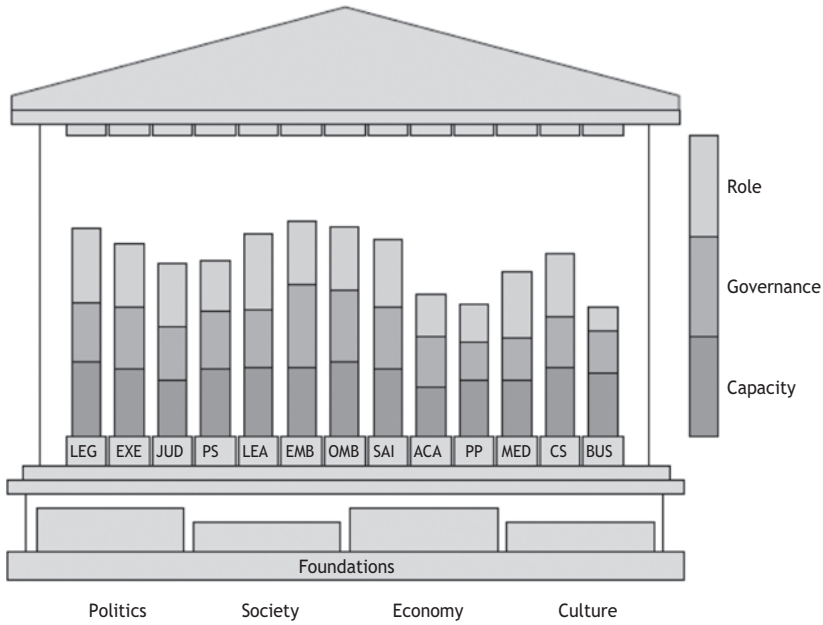
Transparency International Hungary has carried out the majority of the Hungarian non-governmental initiatives in cooperation with other civil organisations such as Freedom House, Eötvös Károly Institute, Corruption Research Centre of the Corvinus University of Budapest, Századvég Foundation, Hungarian Democratic Charta, Transparent State Civil Initiative, Hungarian Civil Liberties Union, K-Monitor, and the Council of Wise Men. Some initiatives were supported by the private sector as well.

It is also important to mention the role of the Transparency Working Group. It consists of the ambassadors of countries representing 85% of foreign investors in Hungary. They keep the issue of transparency and the fight against corruption continuously on the agenda in cooperation with TI Hungary and with the American Chamber of Commerce, the British Chamber of Commerce in Hungary, the Canadian Chamber of Commerce, and the German-Hungarian Chamber of Industry and Commerce.¹¹⁷⁷

¹¹⁷⁷ See for example the list of supporters of TI Hungary: http://www.transparency.hu/CORPORATE_SUPPORTERS_FORUM_247 [accessed 10 July 2011], Among the supporters you can find OTP Alapkezelő, E-On Hungária, GlaxoSmithKline, Pfizer, British American Tobacco Hungary or Ernst & Young Kft.

VII. CONCLUSION

National Integrity System



LEG.	Legislature	SAI.	Supreme Audit Institution
EXE.	Executive	ACA.	Anti Corruption Agencies
JUD.	Judiciary	PP.	Political Parties
PS.	Public Sector	MED.	Media
LEA.	Law Enforcement Agencies	CS.	Civil Society
EMB.	Electoral Management Body	BUS.	Business
OMB.	Ombudsman		

Dimension	Score
Electoral Management Body	72
Ombudsman	69
Legislature	69
Law Enforcement Agencies	67
Supreme Audit Institution	65
Executive	64
Civil Society	60
Public Sector	58
Judiciary	58
Media	55
Anti-corruption Agencies	47
Political Parties	44
Business Sector	43

The preceding chapters and temple graph demonstrate strengths and weaknesses within each NIS institution and also highlight imbalances in Hungary's overall National Integrity System. 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 ombudsman, and the electoral management body 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 business sector as two institutions that are the most likely to be corrupt. The weaknesses in the political parties' campaigns, and party financing, 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 real breakthrough since the last NIS, so some of our recommendations are still echoing the ones concluded in the 2008 NIS. That document stated what we have to underline again: "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."¹¹⁷⁸

1178 Corruption Risks in Hungary 2008. http://www.transparency.hu/uploads/docs/Full_report_NIS_2007.pdf [Accessed 10 October 2011]

PRIORITIES AND RECOMMENDATIONS

We have indicated the strengths and weaknesses and listed detailed recommendations for each pillar of the NIS (see below).

The most important ones are the following:

- 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, lobby 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.

Legislature

	Strengths	Weaknesses
Legislature	Stable regulatory framework with proper institutional setup ensures independence Informative website ensures access to information about functioning.	Legislative process lacks transparency and adequate consultation mechanisms due to missing lobbying regulations and due to frequent misuse of two-third majority voting bills submitted by individual MPs MPs' remuneration system is overcomplicated and difficult to follow Lack of codes of ethics and post-employment restrictions

- 1) The transparency of the legislative process should be improved. Stricter rules targeting more openness should be implemented in the case of individual legislative drafts.
- 2) MPs' declaration of assets is dysfunctional in its present form. There is a need for a code of ethics for MPs.
- 3) The new practices of presenting amendments right before the final vote is questionable, and seriously undermine the transparency of the legislation.
- 4) Although the law requires it, a significant part of the legislation is to be accepted without proper impact studies.
- 5) In order to avoid wrongful influence or pressure on policy-making or legislation, an effective regulation creating a transparent and accountable lobbying system has to be enacted.

Executive

	Strengths	Weaknesses
Executive	<p>Appropriate rules of functioning</p> <p>High-quality legislation on access to information</p>	<p>Certain independent institutions are lead by political appointees (SAO, NMHH)</p> <p>Lack of uniform codes of ethics including regulations on gifts, hospitality and post-employment restrictions</p> <p>Lack of sanctions for non-compliance with transparency regulations</p> <p>Missing institution for the protection of whistleblowers</p>

- 1) Codes of conducts should be adopted in each public sector organisation with due regard to the specific demand, characteristics and corruption risks within the given body. The adoption process should rely on the staff's active participation.
- 2) The codes should imply, inter alia, the conditions and circumstances for participating in different interest groups, the accessibility of information related to the job of employees (wages, tasks, etc.) and rules for receiving gifts.
- 3) The career track of public sector employees should be retraceable and transparent, while cases of conflicts of interest are to be regulated and enforced in an effective way.
- 4) Changing jobs between the public and private sector (so-called 'revolving door' phenomenon) shall be settled accordingly, in order to prevent the misuse of inside information obtained in the previous positions.
- 5) An effective system for the declaration of assets should be created. A higher level of transparency and consistency is needed to hinder corruption risks while taking the necessary data protection standards into account.
- 6) The current regulation has to be re-examined and restructured to enable a well-functioning and secure reporting system that supports public sector employees when informing about wrongdoings in good faith.

Judiciary

	Strengths	Weaknesses
Judiciary	Previous legislation provided independence both on procedural and institutional terms	Lack of control over the President of the National Office of Judiciary Uneven distribution and/or lack of resources Poor transparency of court decisions and the functioning of the judiciary Poor evaluation and promotion system Lack of proper codes of ethics and whistleblower system Chief judge can be reelected

- 1) The latest judicial reforms raise concerns over the independence of the judiciary. The decision making process of the new judiciary administration should be fully transparent, and should be based on normative standards.
- 2) The workload of judges should be more balanced; the evaluation of the efficiency of judges should be normative, and proportionate to the workload.
- 3) The organizational structure of the administration of the judiciary, and the courts, as well should be more transparent
- 4) A unified code of ethics should be adopted, and should be enforced in a transparent way.
- 5) The whistleblower protection in the judiciary is still an unresolved problem, which should be addressed by the legislation.
- 6) The practice of the courts should be unified. There is a need to establish a transparent scientific research practice for the judiciary to ensure the unified implementation of the law.
- 7) Within the training of the judges anti-corruption training should be a priority.
- 8) The outdated regulation of judicial information should be replaced by a modern one which increases the openness of the trials, improves the possibility of the scientific research and creates more transparency in the administration of the judiciary.

Public Sector

	Strengths	Weaknesses
Public Sector	<p>Special provisions intend to prevent corruption</p> <p>Regulations on access to information are satisfactory</p>	<p>Political interference cannot be excluded in the public sector (loose dismissal rules, solidity checks)</p> <p>Lack of transparency in decision making and public spending</p> <p>Proper regulation on lobbying is missing</p> <p>Lack of proper integrity mechanisms (codes of ethics, protection of whistleblowers)</p> <p>Non effective control and monitoring mechanisms in the public procurement system</p>

- 1) All changes in the career system within the public sector - concerning recruitment, promotion and conditions of dismissal - should be executed with due regard to maintaining the necessary stability and predictability of civil service employment.
- 2) Public sector accountability cannot work without a functioning whistleblowing structure, therefore the current regulatory framework has to be revised both at local and central level.
- 3) Codes of conducts with guidelines covering post-employment regulations and receiving gifts should be adopted in each public sector institution.
- 4) Public sector institutions have to play a bigger role in educating and disseminating information about the importance of stepping up against corruption, increase openness and cooperate closer with the NGO sector as well as other stakeholders.
- 5) The public procurement act should be reviewed to avoid restrictions on competition and not to regulate certain highly important missing subjects, only in decrees. Amendments should be done only in exceptional cases in order to hinder legal uncertainty due to frequent changes.
- 6) Due to the greater flexibility granted by the public procurement act and the regulatory options of the contracting authorities, monitoring activity should be reinforced. At the same time a monitoring system for public procurement procedures and contract performance should be developed.
- 7) Guarantees for the independence of the Public Procurement Arbitration Committee should be strengthened. Tendering companies should be obliged to implement a code of ethics.

Law Enforcement

	Strengths	Weaknesses
Law Enforcement	Appropriate regulations for the governance of law enforcement agencies	Serious concerns about political influence Poor transparency, accountability and integrity provisions, protection of whistleblowers is missing Inadequate number of appropriately trained investigators Significant internal corruption within Police

- 1) The professionalism of the police, and prosecutors should be improved.
- 2) The recent constitutional changes of the legal status of the Prosecutor General increased the constitutional independence of the office without preventing political influence in the practice and without establishing proper accountability regulations.
- 3) As the prosecution service has become the most important anti-corruption agency, there is a need to provide more transparency within the office, and the access to prosecution documents should be made easier.

Election Management Body

	Strengths	Weaknesses
Election Management Body	Impartial, professional, trusted and well functioning electoral management Transparent electoral management system	Poor regulations on independence and integrity (appointment of head and missing codes of conduct) Ineffective electoral sanctions Campaign financing system lacks fundamental elements of meaningful transparency and accountability

- 1) The election committees should operate according to unified principles.
- 2) The sanctioning system in election procedures should be revised because in practice it is not effective.

Ombudsman

	Strengths	Weaknesses
Ombudsman	<p>Trusted institution</p> <p>Enough investigative power</p>	<p>Questionable independence of the new ombudsman institution</p> <p>Position of data protection and freedom of information ombudsman abolished</p> <p>Poor transparency requirements, lack of code of ethics</p> <p>Ombudsmen's decisions are not necessarily observed</p> <p>Ombudsman can be reelected</p>

- 1) Particular attention must be paid to the restructuring of the ombudsman system, so that the abolishment of the so far well-functioning ombudsman positions and office does not weaken the integrity system and the anti-corruption efforts.
- 2) Financial resources have to be adequately provided to ensure independency and the implementation of all tasks of the institution.
- 3) Due regard shall be granted to post-employment restriction of ombudsmen and the ban on re-election.
- 4) As the success of the ombudsman's activities largely depends on the publicity and social awareness of its work, it is highly important that the ombudsman maintains active and transparent communication channels with the media. All documents and cases should be published in an easily accessible and searchable structure.
- 5) Integrity failures as well as wrongdoings should be targeted and tackled in cooperation with NGOs. It is suggested to establish stronger alliances between the ombudsman and the non-profit sector.

State Audit Office

	Strengths	Weaknesses
State Audit Office	<p>Regulations provide the foundations for independence</p> <p>Transparent functioning</p> <p>Sufficient tools for detecting misbehavior</p>	<p>Top senior officials have explicit party background</p> <p>Staffing decisions are not based on merit and professionalism</p> <p>President can be re-elected</p> <p>Rules of dismissal allow subjectivity</p> <p>SAO’s reports and findings are not necessarily acted upon</p> <p>Accountability does not operate sufficiently in practice</p> <p>Missing post-employment restrictions</p>

- 1) The professional requirements and experiences for auditors and senior auditors to get appointed should be stricter.
- 2) The possibility of re-electing the President of the SAO should be eliminated.
- 3) More transparency and easier accessibility is needed in the publication of internal regulations and decisions.
- 4) More effective confidentiality obligations should be accompanied with adequate regulations on post-employment restrictions (revolving door).
- 5) The SAO should use its experience, powers and authorities to further promote good practices and strengthen anti-corruption efforts among public sector bodies.

Anti-corruption Agencies

	Strengths	Weaknesses
Anti-corruption Agencies	<p>The anti-corruption agencies have important investigative role</p> <p>A new anti-corruption unit is to be set up within public prosecution</p>	<p>No independent anti-corruption agency exists</p> <p>Lack of transparency of the work of the Government Control Office</p> <p>Missing whistleblower protection mechanisms</p> <p>Lack of anti-corruption prevention and education programs</p>

- 1) It is not necessary to establish a centralized Anti-Corruption Agency, but there is a need to establish a proper solution for whistleblower protection.
- 2) There is a need to establish a government institution, which will be responsible for anti-corruption education, information, and prevention.

Political Parties

	Strengths	Weaknesses
Political Parties	Regulations ensure party competition and free operation of political parties	<p>Party and campaign financing regulations are impossible to keep to and lack basic elements of transparency and accountability</p> <p>Significant off-the-book funds spent on campaigns</p> <p>No sanctions on late or incomplete financial reports</p>

- 1) A new, effective, transparent and rigorously enforced regulation of campaign and party financing should be the top priority. The operational costs (salaries, expenditure, etc.) of parties should be public.
- 2) The disclosure of campaign costs should be far more detailed to enable effective monitoring of revenues and expenditures.
- 3) There should be a limit to the advertising costs of the parties.
- 4) Third-party payment of campaign costs should be banned.
- 5) The SAO should be authorised to conduct actual investigations of parties' finances, the new party law should establish financial transparency for the political parties.
- 6) Stricter conflict-of-interest rules for local government representatives should be introduced (at a minimum, comparable to those applying to MPs).
- 7) Binding limits and disclosure rules on hospitality should be introduced and monitored.
- 8) Rules on gifts should introduce annual caps as well as reduce the value of gifts acceptable per occasion.

Media

	Strengths	Weaknesses
Media	<p>Wide range of diverse media providers exists</p> <p>Media services and contents can be provided freely according to the law</p> <p>Investigative journalism is on the rise</p>	<p>NMHH is politically not independent</p> <p>Uncertainty of regulations as well as non-transparent procedural rules give grounds for abuse</p> <p>Source of information of journalists is not protected properly</p> <p>Prohibitive fines</p> <p>Government coalition is over-represented in television coverage</p>

- 1) National Media and Infocommunications Authority (NMHH) should provide more detailed information about its operations and should cooperate with the stakeholders.
- 2) The financing of the public media and advertising from public money should be more transparent.
- 3) For strengthening the role of the media in combating corruption there is a need to give legal and financial help for investigative journalism.
- 4) The application of new media law needs to be unified.
- 5) More transparency is needed concerning the occasions when the Authority exercises its controlling power over the media.
- 6) A comprehensive review of the Authority's internal governance structure, competencies and responsibilities should be initiated.
- 7) Court procedures should be more consistent so that all parties (journalists, lawyers, judges) have a clear picture on the application of existing regulations.

Civil Sector

	Strengths	Weaknesses
Civil Sector	<p>Legal environment conforms internationally accepted principles</p> <p>Many CSOs exist</p> <p>Good legal foundations for holding the government accountable</p>	<p>Worsening funding environment, dependence on EU and state sources</p> <p>Extreme administrative burden on CSOs</p> <p>Lack of easily understandable public information about CSOs' activities</p> <p>Weak accountability mechanisms, no sector wide codes of conduct</p> <p>Very few anticorruption CSOs</p>

- 1) There is a need to supervise, and redefine the term of "non-profit".
- 2) The management and the audit of civil society organizations need supervision and stricter reporting obligations.
- 3) Public advocacy work of the civil sector should be more transparent. New lobby act is to be introduced to establish clear guidelines.
- 4) The registration process of non-profit organizations needs development.

Business

	Strengths	Weaknesses
Business	<p>Simple and uniform regulations for company registration and authorization</p> <p>EU-conform regulatory framework for the operation of the business sector</p>	<p>Small market, difficult to compete</p> <p>Businesses' exposure to the public authorities is high</p> <p>High corruption risks in various business transactions such as bankruptcy, liquidation, procurements, official permits</p> <p>Integrity mechanisms only applied by multinationals</p> <p>Unpredictable state intervention</p>

- 1) More predictable application of laws is necessary in the business sector.
- 2) More information shall be published and transparency should be strengthened in public procurement.
- 3) Organizations using public money should be audited more thoroughly.
- 4) Comprehensive blacklists of corrupt companies and "white" lists of good examples should be issued.
- 5) Best practices, especially concerning the small and medium-size undertakings should be highlighted.
- 6) There is a need for educational programs about ethical business conduct.

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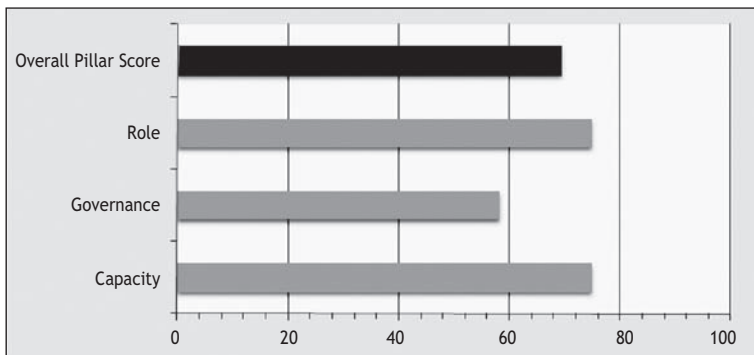
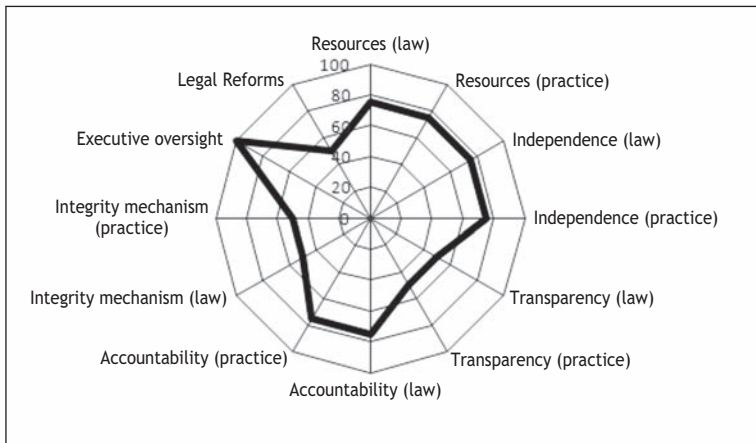
ANNEX

Summary tables of NIS pillars

Dimension	Score
Electoral Management Body	72
Ombudsman	69
Legislature	69
Law Enforcement Agencies	67
Supreme Audit Institution	65
Executive	64
Civil Society	60
Public Sector	58
Judiciary	58
Media	55
Anti-corruption Agencies	47
Political Parties	44
Business Sector	43

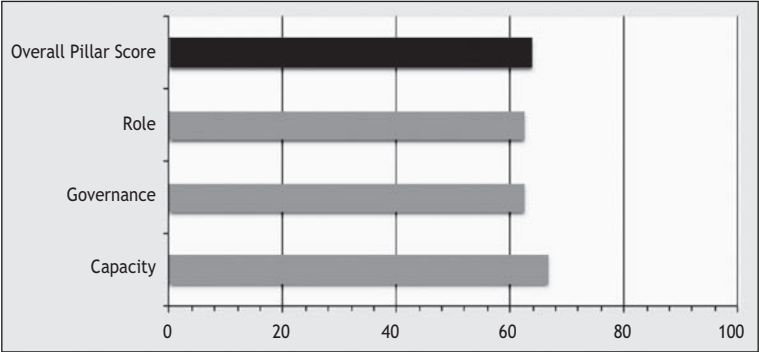
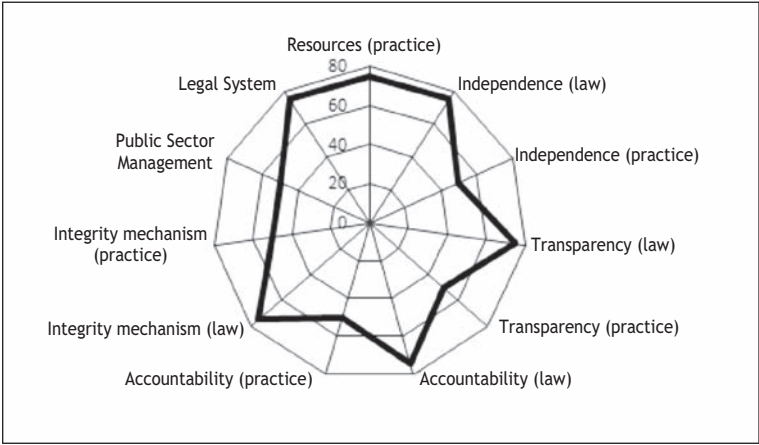
Legislature

Legislature Overall Pillar Score: 69 / 100			
	Indicator	Law	Practice
Capacity 75 / 100	Resources	75	75
	Independence	75	75
Governance 58 / 100	Transparency	50	50
	Accountability	75	75
	Integrity Mechanisms	50	50
Role 75 / 100	Executive oversight	100	
	Legal Reforms	50	



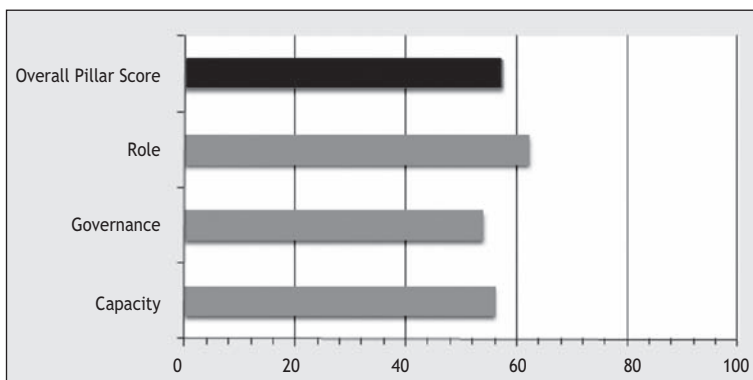
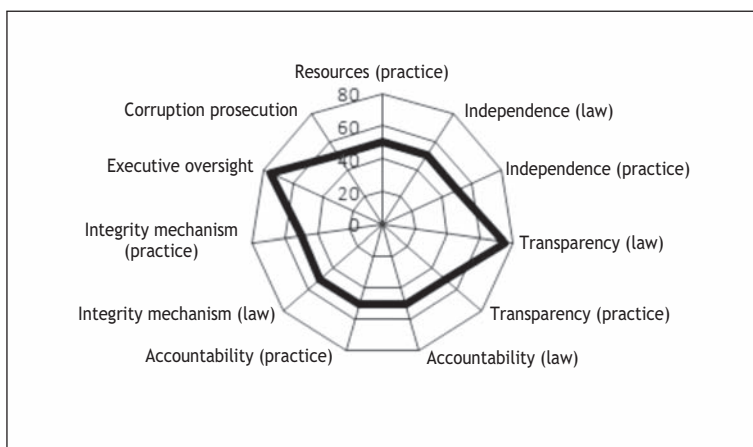
Executive

Executive Overall Pillar Score: 64 / 100			
	Indicator	Law	Practice
Capacity 67 / 100	Resources	N/A	75
	Independence	75	50
Governance 63 / 100	Transparency	75	50
	Accountability	75	50
	Integrity Mechanisms	75	50
Role 63 / 100	Public Sector Management	50	
	Legal System	75	



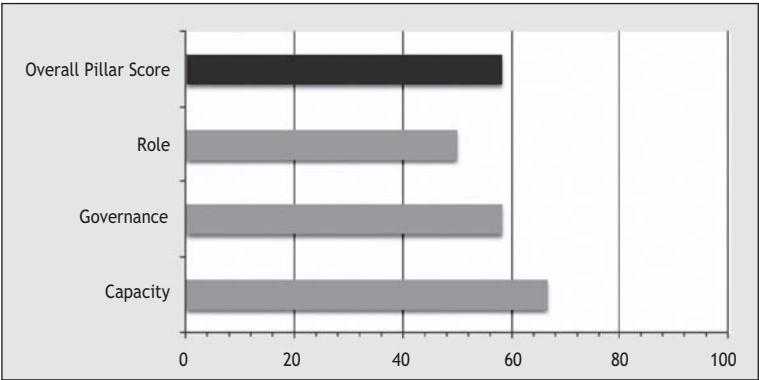
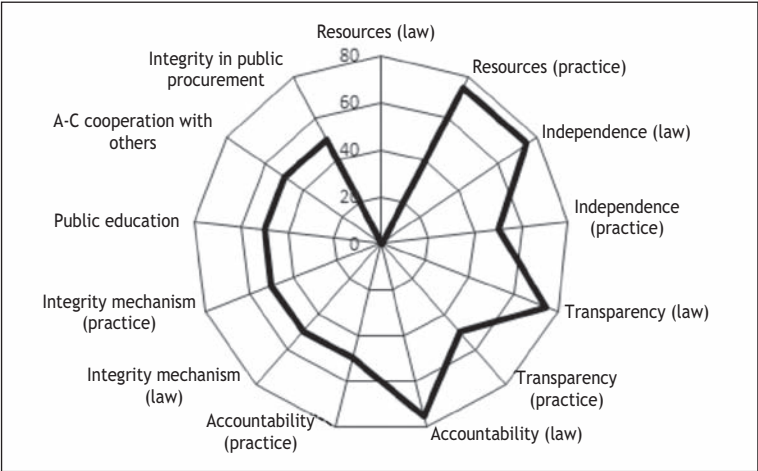
Judiciary

Judiciary Overall Pillar Score: 58 / 100			
	Indicator	Law	Practice
Capacity 56 / 100	Resources	75	50
	Independence	50	50
Governance 54 / 100	Transparency	75	50
	Accountability	50	50
	Integrity mechanisms	50	50
Role 63 / 100	Executive oversight	75	
	Corruption prosecution	50	



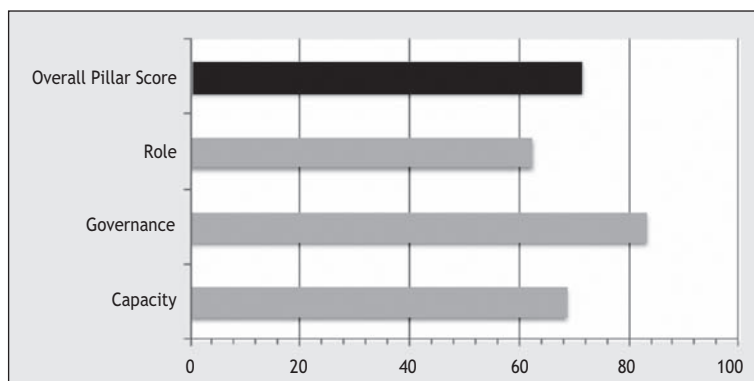
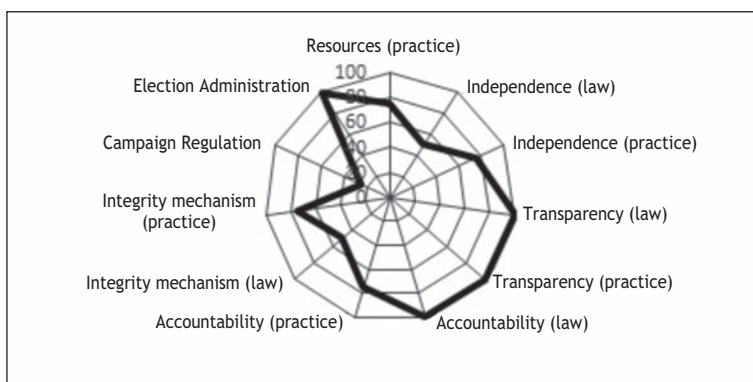
Public Sector

Public Sector Overall Pillar Score: 58 / 100			
	Indicator	Law	Practice
Capacity 67 / 100	Resources	N/A	75
	Independence	75	50
Governance 58 / 100	Transparency	75	50
	Accountability	75	50
	Integrity Mechanisms	50	50
Role 50 / 100	Public education	50	
	A-C cooperation with others	50	
	Integrity in public procurement	50	



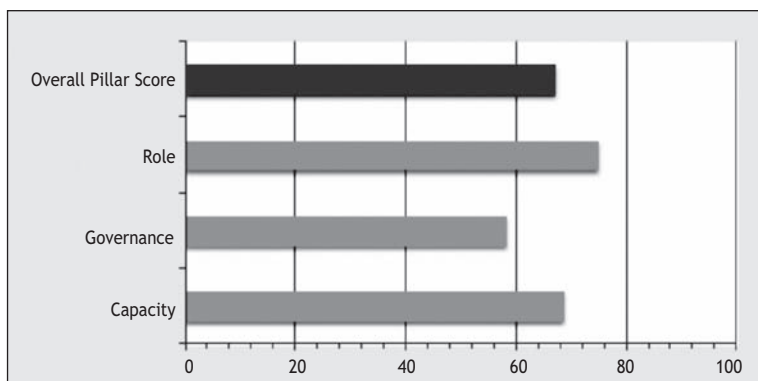
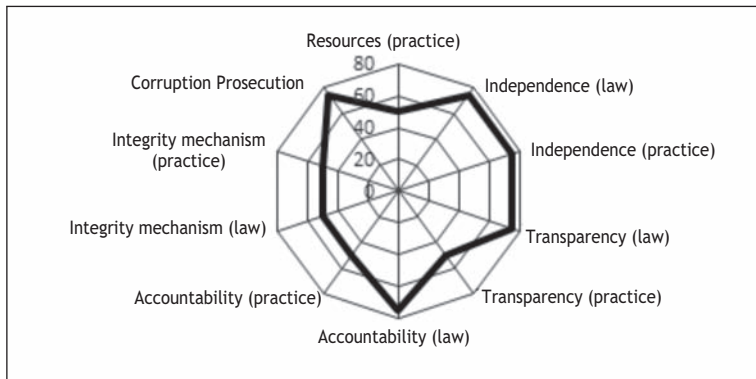
Electoral Management Body

Electoral Management Body Overall Pillar Score: 72 / 100			
	Indicator	Law	Practice
Capacity 69 / 100	Resources	75	75
	Independence	50	75
Governance 83 / 100	Transparency	100	100
	Accountability	100	75
	Integrity Mechanisms	50	75
Role 63 / 100	Campaign Regulation	25	
	Election Administration	100	



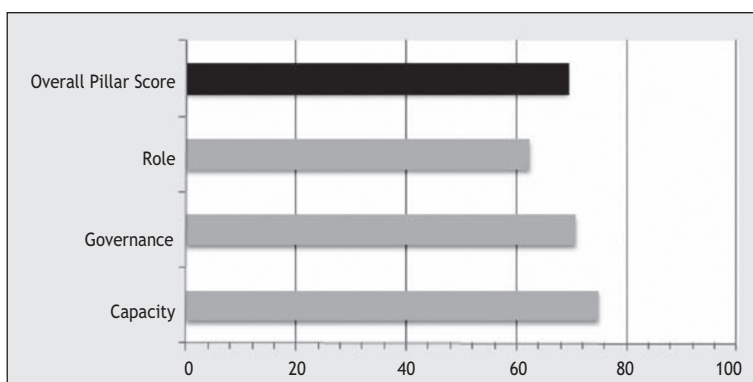
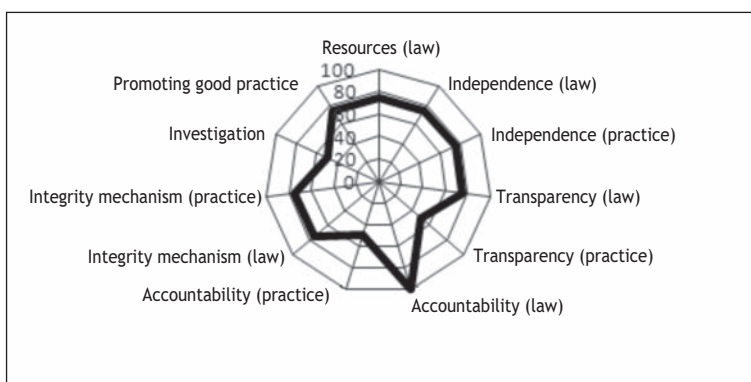
Law Enforcement Agencies

Law Enforcement Agencies Overall Pillar Score: 67 / 100			
	Indicator	Law	Practice
Capacity 69 / 100	Resources	75	50
	Independence	75	75
Governance 58 / 100	Transparency	75	50
	Accountability	75	50
	Integrity Mechanisms	50	50
Role 75 / 100	Corruption Prosecution	75	



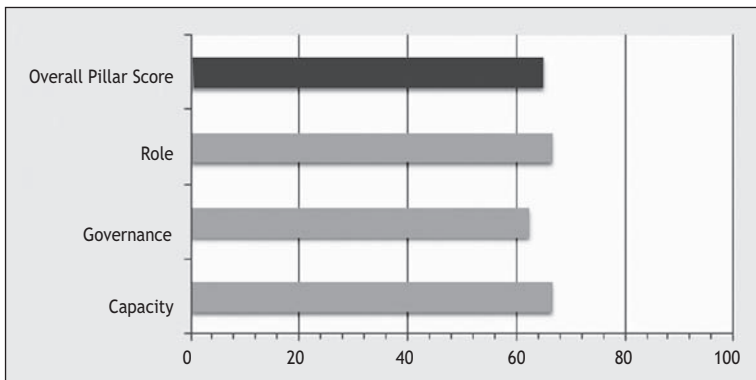
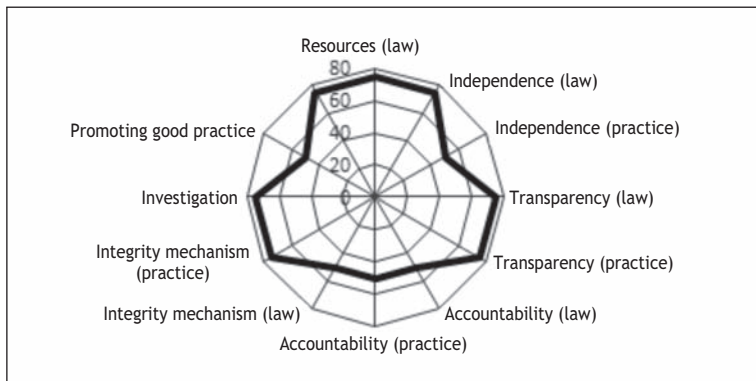
Ombudsman

Ombudsman Overall Pillar Score: 69 / 100			
	Indicator	Law	Practice
Capacity 75 / 100	Resources	75	75
	Independence	75	75
Governance 71 / 100	Transparency	75	50
	Accountability	100	50
	Integrity Mechanisms	75	75
Role 63 / 100	Investigation	50	
	Promoting good practice	75	



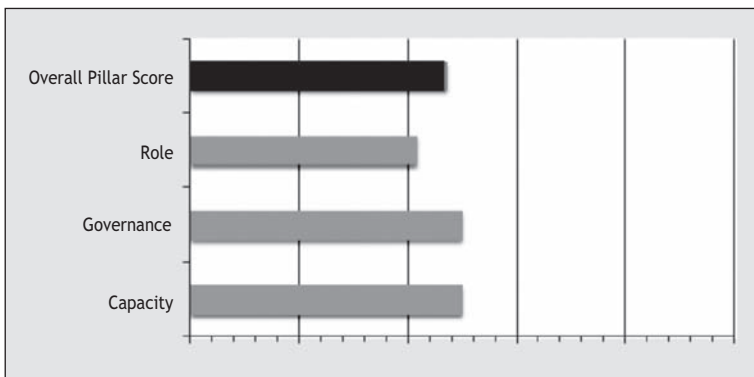
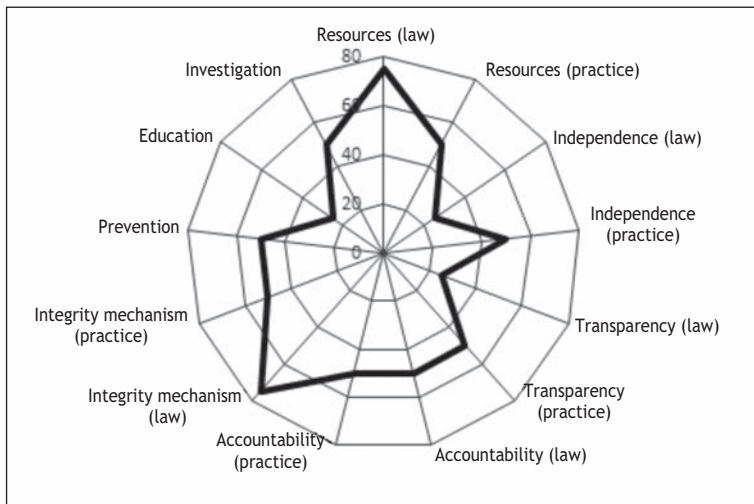
Supreme Audit Institution

Supreme Audit Institution Overall Pillar Score: 65 / 100			
	Indicator	Law	Practice
Capacity 67 / 100	Resources	N/A	75
	Independence	75	50
Governance 63 / 100	Transparency	75	75
	Accountability	50	50
	Integrity Mechanisms	50	75
Role 67 / 100	Effective Financial Audits	75	
	Detecting and Sanction	50	
	Improving Fin. Management	75	



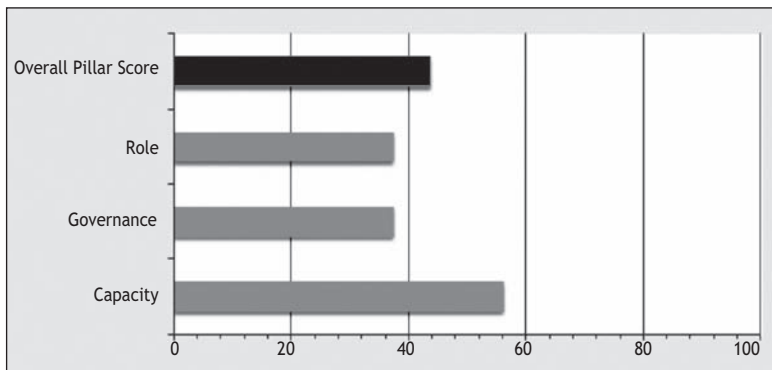
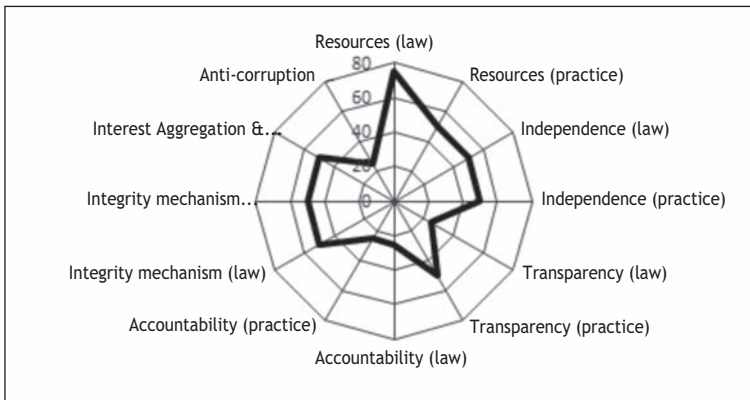
Anti-Corruption Agencies

Anti-corruption agencies Overall Pillar Score: 47 / 100			
	Indicator	Law	Practice
Capacity 50 / 100	Resources	75	50
	Independence	25	50
Governance 50 / 100	Transparency	25	50
	Accountability	50	50
	Integrity Mechanisms	75	50
Role 42 / 100	Prevention	50	
	Education	25	
	Investigation	50	



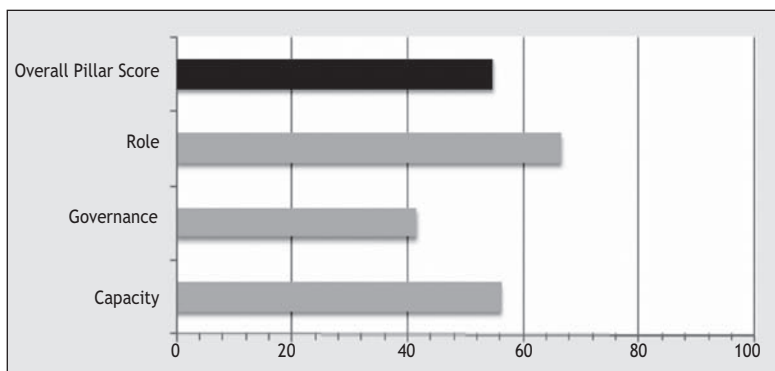
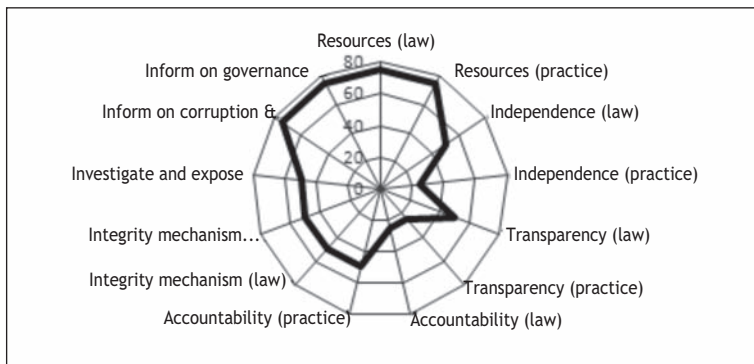
Political Parties

Political Parties Overall Pillar Score 44 / 100			
	Indicator	Law	Practice
Capacity 56 / 100	Resources	75	50
	Independence	50	50
Governance 38 / 100	Transparency	25	50
	Accountability	25	25
	Integrity Mechanisms	50	50
Role 38 / 100	Interest Aggregation & Representation	50	
	Anti-corruption Commitment	25	



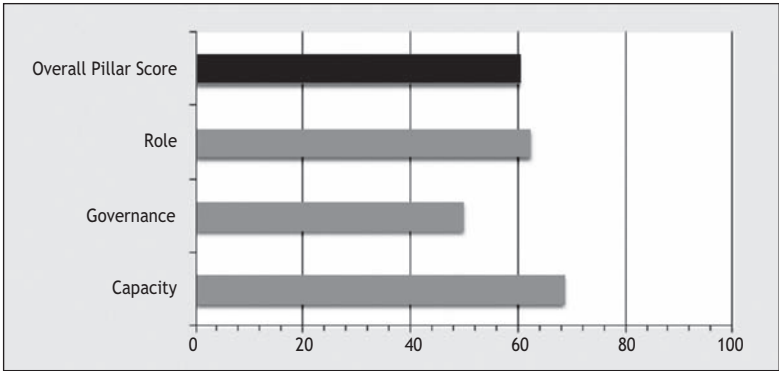
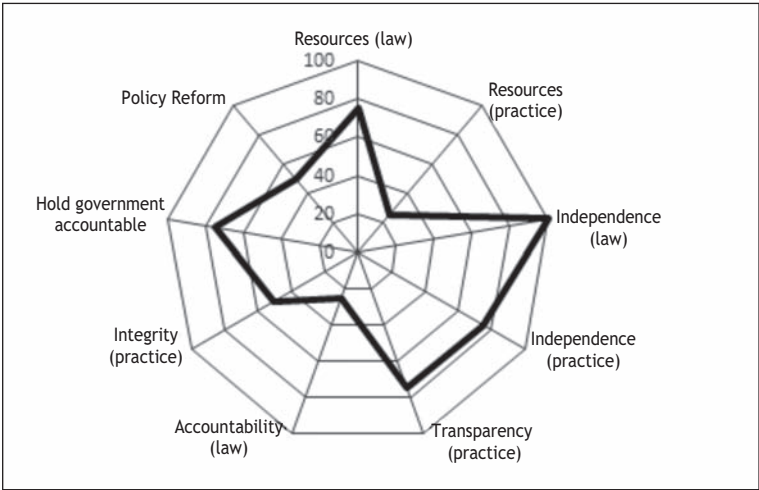
Media

Media Overall Pillar Score: 55 / 100			
Indicator		Law	Practice
Capacity 56 / 100	Resources	75	75
	Independence	50	25
Governance 42 / 100	Transparency	50	25
	Accountability	25	50
	Integrity Mechanisms	50	50
Role 67 / 100	Investigate and expose cases of corruption practice	50	
	Inform on corruption and its impact	75	
	Inform on governance issues	75	



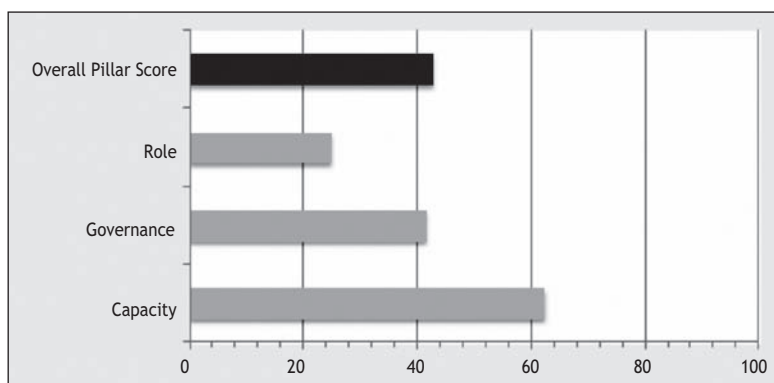
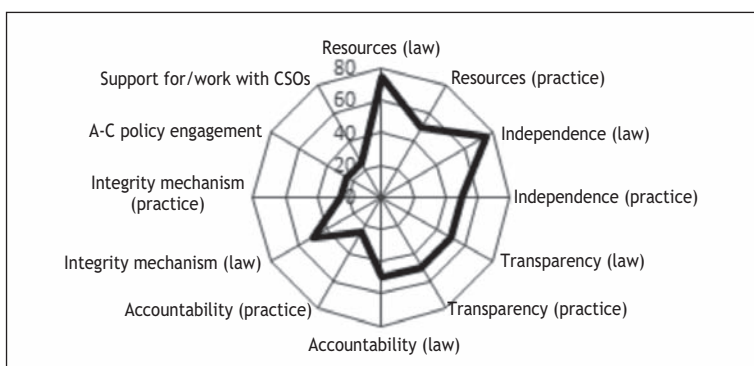
Civil Society

Civil Society Overall Pillar Score: 60 / 100			
	Indicator	Law	Practice
Capacity 69 / 100	Resources	75	25
	Independence	100	75
Governance 50 / 100	Transparency	N/A	75
	Accountability	N/A	25
	Integrity	N/A	50
Role 63 / 100	Hold government accountable	75	
	Policy Reform	50	



Business

Business Sector Overall Pillar Score: 43 / 100			
	Indicator	Law	Practice
Capacity 63 / 100	Resources	75	50
	Independence	75	50
Governance 42 / 100	Transparency	50	50
	Accountability	50	25
	Integrity Mechanisms	50	25
Role 25 / 100	A-C policy engagement	25	
	Support for/work with CSOs	25	



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