

# THEIR BACKS TO THE WALL

CIVIL SOCIETY UNDER  
PRESSURE IN HUNGARY

**AMNESTY**  
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**Amnesty International Publications**

First published in 2015 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2015

Index: EUR 27/001/2015  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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# INTRODUCTION

In 2014,<sup>1</sup> a number of Hungarian NGOs came under a sustained attack by the Hungarian government, which has impeded their ability to carry out their activities, had a chilling effect on the right to freedom of association and eroded the space for civil society in the country.<sup>2</sup> The targeted NGOs included prominent outspoken advocates against corruption and for human rights, including the rights of women and sexual minorities, as well as organizations administering grants for this work.

In May 2014 high-level government officials, including the Prime Minister, started accusing these NGOs of being “political activists... paid by foreign interests groups”.<sup>3</sup> These allegations have regularly been repeated since and have been echoed in hostile media campaigns, tending to discredit the NGOs and delegitimize their work in the eyes of the public. During the Spring and Summer of 2014, pressure increased significantly, with the Prime Minister’s Office ordering an audit of the implicated NGOs. The “extraordinary audit” was opened in May and 59 NGOs were subjected to it. The audit was carried out by Government Control Office (known by its Hungarian initials: KEHI), which lacks adequate safeguards to ensure its independence and impartiality, and whose legal authority to conduct the audit is seriously contested.

The dispute centers on the EEA/Norway grants NGO fund, an important source of funding for civil society organizations working on a range of topics including human rights, women’s rights, LGBT rights, anti-corruption, the environment, and others for which funding might otherwise be difficult to obtain. Many NGOs expressed the view that there was a shrinking pool of independent funding from which to draw in recent years, making the NGO fund a critical source of funding for organizations doing these types of work.

In August 2014, a criminal investigations was open into alleged financial crimes in

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<sup>1</sup> This briefing is based on Amnesty International’s monitoring of the situation with regard to the right of freedom of association, peaceful assembly and expression with a particular focus on the government’s measures towards the NGOs. In October 2014, Amnesty International carried out a field visit to Budapest during which it interviewed a number of stakeholders (representatives of Hungarian civil society organizations, independent experts, funders, academics and lawyers). The views of the Hungarian and Norwegian governments were also sought. The KEHI responded in writing to a list of concerns raised by Amnesty International.

<sup>2</sup> For a detailed chronology of events, see the timeline assembled by the Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Transparency International Hungary and the Eötvös Károly Policy Institute (in English): [http://helsinki.hu/wp-content/uploads/Timeline\\_of\\_gov\\_attacks\\_against\\_HU\\_NGOs\\_18112014.pdf](http://helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_18112014.pdf)

<sup>3</sup> Prime Minister Viktor Orbán’s Speech at the 25th Bálványos Summer Free University and Student Camp, 26 July 2014. Available at: <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>

connection with the NGO fund and in September, the police raided the offices of two of the NGOs in question, Ökotárs and DemNet, seizing computers, servers and documents. In December, four NGOs were sanctioned for alleged non-cooperation with the audit by the suspension of their tax registration numbers.

These actions against Hungarian NGOs have drawn criticism from human rights groups, including Amnesty International, as well as others. Most recently, in December 2014, the Commissioner for Human Rights of the Council of Europe, Mr. Nils Muižnieks, reiterated his earlier concern regarding the stigmatizing rhetoric used by government officials against NGOs, and declared himself “worried” about further developments, including the KEHI audit, its disputed legal basis, and the criminal complaints which had resulted from it.<sup>4</sup>

At the time of writing, several of the NGOs implicated are facing legal processes which could see their organizations closed, and even their staff criminally prosecuted. Amnesty International considers that undue audits, criminalisation and other attacks in relation to funding have put at risk the exercise of the rights to freedom of association and expression in Hungary. Under international human rights law, Hungary is bound to respect, protect and fulfil these rights and refrain from measures that may violate them.

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<sup>4</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his Visit to Hungary from 1 to 4 July 2014, p. 7, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2662996&SecMode=1&DocId=2218468&Usage=2>

# TARGETING NGOS

## BACKGROUND

In April 2014, the Minister in charge of the Prime Minister's Office wrote a letter to the Norwegian government alleging that the EEA/Norway Grants – a government-backed funding vehicle for social cohesion projects in central and southern Europe - was financing groups linked to the opposition party Politics Can Be Different (LMP).<sup>5</sup> Both the Norwegian government, as well as the NGOs concerned, have repeatedly denied these allegations.

### What is the NGO Fund?

The NGO Fund of the EEA/Norway Grants forms a small part of the overall EEA/Norway grants to Hungary. The EEA/Norway grants are grants from Norway, Liechtenstein and Iceland to 16 EU countries, mostly in the South and East of Europe. In Hungary, as in other recipient countries, the vast majority of funding goes to state projects. In Hungary, this amount is about €150 million for the current budgeting period 2009-2014.<sup>6</sup> The NGO Fund in Hungary, which is independent of the Hungarian state, amounts to about €13.5 million for the period 2009-2014.<sup>7</sup>

The NGO fund is operated by four Hungarian civil society organizations, each responsible for the management and distribution of grants in a specific thematic area. These four organizations – often referred to as “the consortium” – are Ökotárs Foundation, Autonómia Foundation, DemNet and Kárpátok Foundation. Funds for organizations awarded grants are supervised directly by the Financial Mechanism Office (FMO) – a secretariat of donor countries based in Brussels - to recipient organizations following an open tender. Evaluators of the consortium select grant recipients according to a range of criteria set out in an agreement between the FMO and the consortium.<sup>8</sup> Representatives of Hungarian government ministries participate in sessions to select grant recipients as observers, but did not have voting rights in these decisions.<sup>9</sup>

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<sup>5</sup> Minister of the Prime Minister's office, János Lázár's letter available at:

<http://www.kormany.hu/en/prime-minister-s-office/news/the-norwegian-ngo-fund-should-be-used-free-from-party-politics-with-the-broad-support-of-the-civil-society>; <http://mno.hu/belfold/lazar-levelben-tiltakozik-a-kulfoldi-bevatkozas-ellen-1220352>

<sup>6</sup> Website of the EEA/Norway Grants available at: <http://eeagrants.org/Who-we-are>

<sup>7</sup> Information about the fund available at: <https://norvegcivilalap.hu/en/about-the-fund>

<sup>8</sup> EEA Financial Mechanism 2009-2014, Programme Area 'Funds for Non-Governmental Organisations', Guideline for NGO Programmes: <http://eeagrants.org/content/download/5247/51886/version/1/file/Guidelines+on+NGO+Programmes.pdf>

<sup>9</sup> Interviews with NGO Fund operators, October 2014;

[https://norvegcivilalap.hu/sites/default/files/dokumentumok/how\\_the\\_kehi\\_abuses\\_its\\_official\\_powers.pdf](https://norvegcivilalap.hu/sites/default/files/dokumentumok/how_the_kehi_abuses_its_official_powers.pdf)

Following the Minister's letter, several government officials continued to accuse the NGOs of serving the political interests of foreign powers and financial, even criminal, irregularities. In a speech in July 2014, the Prime Minister stated:

“...if I look at the non-governmental world in Hungary, or at least at those organisations which are regularly in the public gaze – and the recent debate concerning the Norway grants has brought this to the surface – then what I see is that we are dealing with paid political activists. And in addition these paid political activists are political activists who are being paid by foreigners. They are activists who are being paid by specific foreign interest groups, about whom it is difficult to imagine that they view such payments as social investments, and it is much more realistic to believe that they wish to use this system of instruments to apply influence on Hungarian political life with regard to a given issue at a given moment. And so, if we want to organise our national state to replace the liberal state, it is very important that we make it clear that we are not opposing non-governmental organisations here and it is not non-governmental organisations who are moving against us, but paid political activists who are attempting to enforce foreign interests here in Hungary.”<sup>10</sup>

In a speech to open the Parliament on 15 September 2014, the Prime Minister again referred to these NGOs, stating: “we are bothered by insincerity and lies, and we don't like it when someone who talks about freedom is a mercenary, or who talks about independence is a kept person.”<sup>11</sup>

Other members of the government have also made allegations regarding these NGOs, including Deputy State Secretary for Development Policy Communication Nándor Csepregyh, who reportedly referred to these NGOs as “party-dependent, cheating nobodies” - a remark for which he subsequently apologized.<sup>12</sup>

In July, in reaction to some of these statements, the Commissioner for Human Rights of the Council of Europe noted: “The stigmatizing rhetoric used in that context, with politicians questioning the legitimacy of NGO work, is of great concern to me.”<sup>13</sup>

## KEHI AUDIT

In May 2014, the Prime Minister's office ordered the Government Control Office (KEHI) to

<sup>10</sup> Prime Minister Viktor Orbán's Speech at the 25th Bálványos Summer Free University and Student Camp, 26 July 2014. Available at: <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>

<sup>11</sup> Press release following Prime Minister's speech available in Hungarian at: <http://www.fidesz.hu/hirek/2014-09-15/a-torvenyek-mindenkire-vonatkozna/>

<sup>12</sup> Reported in HVG, 30 April 2014, available in Hungarian at: [http://hvg.hu/gazdasag/20140430\\_Csepregyh\\_szelhamos\\_gittegyletek\\_kezelik/#](http://hvg.hu/gazdasag/20140430_Csepregyh_szelhamos_gittegyletek_kezelik/#)

<sup>13</sup> Letter of the Commissioner for Human Rights, 9 July 2014. Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2564455&SecMode=1&DocId=2164762&Usage=2>

carry out an audit of NGOs disbursing and receiving funds from the EEA/Norway NGO fund in order to ascertain whether the government's suspicions of unlawful activities by these NGOs were well founded.<sup>14</sup> The government alleged unlawful financial contributions to certain political parties and it was these allegations that became the ostensible aim of the audit.

The audited NGOs included the consortium – Ökotárs Alapítvány, Autónoμία Foundation, DemNet and Kárpátok Foundation – as well as 55 organizations that received funding from the EEA/Norway NGO fund. The legal authority of the KEHI to conduct such audit has been contested by the Norwegian government and the NGOs concerned.

#### KEHI'S CONTESTED LEGAL AUTHORITY

The NGOs concerned, as well as the Norwegian government, strongly objected to the KEHI audit, and contested the legal authority of the KEHI, which they say extends only to funds from the state budget. They argue that the power to audit the NGO fund is specifically allocated by bilateral agreements<sup>15</sup> to external auditors selected by the Financial Mechanism Office (FMO), based in Brussels. They also note that while KEHI arguably had the power to audit EU and other international funds under domestic law previously, this power was specifically revoked by Government Decree in 2010.<sup>16</sup> They argue that the regulation is clear that "When a programme is being operated by the FMO...the Beneficiary State bears no responsibility for the implementation of the programme, financially or otherwise."<sup>17</sup> Moreover, the provision of the Public Finance Act, which KEHI argues gives it jurisdiction over funds derived from international agreements, should apply only to such funds when they form part of the central state budget.<sup>18</sup> The NGOs and the Norwegian government, however, argue, that their interpretation of the law is textually correct and consistent with the Hungary's Fundamental Law, which states that Hungarian law must be in conformity with international law – specifically the bilateral agreements between Hungary and, Iceland, Liechtenstein and

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<sup>14</sup> Under Para. 11(3) of Government Decree 355/2011 (XII.30), KEHI may carry out an unscheduled audit on the basis of a decision of the Government, the Prime Minister or the Secretary of the Office of the President.

<sup>15</sup> Between the Republic of Hungary and Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

<sup>16</sup> Government Decree 210/2010 (VI.30) on the Directorate General for Audit of European Funds (Európai Támogatásokat Auditáló Főigazgatóság, EUTAF).

<sup>17</sup> Regulation on the implementation of the European Economic Area (EEA) Financial Mechanism 2009-2014 adopted by the EEA Financial Mechanism Committee pursuant to Article 8.8 of Protocol 38b to the EEA Agreement on 13 January 2011 and confirmed by the Standing Committee of the EFTA States on 18 January 2011, as amended on 4 January 2012, on 14 March 2013 and on 1 July 2014, Article 5.13(5), available at <http://eeagrants.org/Results-data/Results-overview/Documents/Legal-documents/Regulations-with-annexes/EEA-Grants-2009-2014>

<sup>18</sup> Article 63(1)(c) of Act CXCV of 2011 on public finance grants audit authority over "budgetary grants allocated from the central budget or that of other grants from the central subsystem of public finance – including grants and aid received under international treaties."



Norway.<sup>19</sup>

The KEHI, in a written response to Amnesty International, argues that they “unquestionably” have the right to audit the EEA/Norway NGO grants “regardless of whether or not the fund is part of the state budget.”<sup>20</sup> They argue that the distinction between funds that form part of the state budget and other funds is irrelevant as under article 5(1)(c) of the Public Finance Act, “funds from grants which are not part of the state budget qualify as state budgetary income,” and thus should form part of the budget.<sup>21</sup> In addition, they argue their authority under the Act on State Budget to audit the implementation of government decisions also confers authority for such an audit.<sup>22</sup> Lastly, they argue that the Hungarian State is “authorised and obliged to audit compliance with liabilities stipulated in international treaties.” Specifically, they refer to the requirements of transparency, accountability and cost-efficiency included in the Memorandum of Understanding between Hungary and Norway.<sup>23</sup>

#### KEHI LACKS SAFEGUARDS FOR INDEPENDENCE AND IMPARTIALITY

Amnesty International is concerned that the KEHI lacks adequate safeguards to ensure the independence and impartiality of the audit. These concerns relate to both organizational independence - as the President of the KEHI can be appointed or dismissed by the Prime Minister, on the suggestion of the minister in charge of the Prime Minister’s Office<sup>24</sup>- and operational independence, as the KEHI can be – and indeed was - ordered to audit specific organizations by the Office of the Prime Minister, or other government officials, many of whom had already made public statements asserting the guilt of the organizations prior to the commencement of the audit.<sup>25</sup>

The KEHI stands outside the usual framework for regulating the legal compliance of non-profit organizations, which is governed by the Law on Freedom of association, non-profit

<sup>19</sup> An overview of these arguments is available on the website of the EEA/Norway grants: [https://norvegcivilalap.hu/sites/default/files/dokumentumok/how\\_the\\_kehi\\_abuses\\_its\\_official\\_powers.pdf](https://norvegcivilalap.hu/sites/default/files/dokumentumok/how_the_kehi_abuses_its_official_powers.pdf)

<sup>20</sup> Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

<sup>21</sup> Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

<sup>22</sup> Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

<sup>23</sup> Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

<sup>24</sup> Government Decree 355/2011 (XII.30), Article 4(1); Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

<sup>25</sup> Government Decree 355/2011 (XII.30), Article 11(3).

status, and operation and support of NGOs (Law CLXXV of 2011).<sup>26</sup> Under this law, legal and financial aspects of NGOs' work are regulated by the tax authority, prosecutors and the courts. Many of the audited NGOs stressed that they had never understood the KEHI to have jurisdiction to audit their activities, and viewed this as unprecedented.

In response to Amnesty International's concerns on this point, the KEHI emphasized that it is politically independent. In support of this they point to their budgetary independence, the oaths sworn by KEHI associates, their security clearance, rules and monitoring standards followed, as well as personal qualifications and the fact that its President and Vice-President are not members of political parties. They also point out that they had previously audited 150 NGOs in 2007 and 2010. These audits, however, related to funds to NGOs from tax revenue and/or the National Civil Fund, which are within the state budget.<sup>27</sup>

Amnesty International remains concerned that the factors enumerated by the KEHI, above, provide insufficient safeguards to guarantee impartiality and independence. International bodies and standards provide examples of practical safeguards for independence and impartiality. These should include functional or operational independence – the discretion to exercise powers without influence of outside actors.<sup>28</sup> Fixed terms of service for people in leadership roles, or other protections against discretionary removal, are in many contexts a crucial safeguard against political influence.<sup>29</sup>

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<sup>26</sup> [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100175.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100175.TV)

<sup>27</sup> Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

<sup>28</sup> See, *mutatis mutandis*, United Nations Office on Drugs and Crime, Handbook on Police Accountability, Oversight, and Integrity, p. 49, "the independent body should have complete discretion in the performance or exercise of its functions and not be subject to the direction or control of a minister or any other party"

<sup>29</sup> See, *mutatis mutandis*, United Nations General Assembly (1993) Principles relating to the status and functioning of national institutions for the protection and promotion of human rights (Paris Principles) annexed to UN General Assembly Resolution on national institutions for the promotion and protection of human rights (A/RES/48/134, 85th Plenary Meeting on 20 December 1993), "In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate"; UN Basic Principles on the Independence of the Judiciary, Principle 12, "Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists"; Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/HRC/20/19, para. 67 - 68, "The Special Rapporteur believes that security of tenure for prosecutors is an important element that reinforces their independence and impartiality... Another important element that should exist within their conditions of service is the irremovability of prosecutors"; Inter-American Commission on Human Rights, Guarantees for the Independence of Justice Operators: Towards strengthening access to justice and the rule of law in the Americas (2013), para. 196, "In the specific case of the guarantee of independence, the Inter-American Court has written that the following guarantees are derived from judicial independence: an adequate appointment process, tenure in the position, and the guarantee against external pressures"; Council of

## CONDUCT OF AUDIT

Shortly after the announcement of the KEHI audit, auditors appeared on-site at the offices of Ökotárs, Autonómia and DemNet. They demanded that the organizations turn over large amounts of data related to the NGO fund.<sup>30</sup> The audit would eventually reach 59NGOs, covering 63 projects supported from the EEA/Norway fund from 2005. The Norwegian government reacted strongly to the Hungarian government's actions, calling them “attempts to limit freedom of expression,” and noted that if the Hungarian government wished to have access to NGO fund documentation, “they are to contact the Financial Mechanism Office in Brussels.”<sup>31</sup>

Several of the audited organizations strongly opposed the audit, but with no legal route to oppose the demands for documents, could only write letters demanding to know the legal basis by which the KEHI was authorized to conduct the audit (see above).<sup>32</sup> Several complained that the responses of the KEHI were inadequate, or that the KEHI in reply simply demanded further documents. Organizations complained that the deadlines for requested documents were impossibly short – often only a few days. In addition, they often demanded vast quantities of documentation. One such request for documentation seen by Amnesty International gave effectively a two-day deadline to provide an extensive list of documents including grant proposals, all relevant invoices and receipts, funding contracts, budgets and modifications, contributions by volunteers, email exchanges, photos and attendance sheets relevant to events from the project, correspondence with funders, protocols of invoicing, and other documents. NGOs – many of which employ only a few staff, or depend on volunteers – complained that several staff members had to spend days at a time compiling the requested documentation. Some NGOs worried that confidential data could be revealed.<sup>33</sup> As one audited NGO commented, “You get a few working days to collect, in some cases, a huge amount of documents; compiling, scanning, all take a lot of working hours. It left the

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Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 49, “Security of tenure and irremovability are key elements of the independence of judges”.

<sup>30</sup> Reuters, Hungary raids NGOs, accuses Norway of political meddling, 2 June 2014.

<http://www.reuters.com/article/2014/06/02/us-hungary-norway-funding-ngo-idUSKBN0ED1QW20140602>

<sup>31</sup> Norwegian government press release, Norway concerned for civil society in Hungary, 6 June 2014, available at: <https://www.regjeringen.no/en/aktuelt/civil-society-hungary/id762213/>

<sup>32</sup> See: Ökotárs letter Dr. Gaál Szabolcs Barna, President of the Government Control Office (KEHI), 4 June 2014, available in Hungarian at:

[https://norvegcivilalap.hu/sites/default/files/dokumentumok/okotars\\_level\\_kehi.pdf](https://norvegcivilalap.hu/sites/default/files/dokumentumok/okotars_level_kehi.pdf); See also: [http://www.transparency.hu/TI\\_turns\\_to\\_the\\_Ombudsman\\_regarding\\_recent\\_government\\_audit?bind\\_info=index&bind\\_id=0](http://www.transparency.hu/TI_turns_to_the_Ombudsman_regarding_recent_government_audit?bind_info=index&bind_id=0)

<sup>33</sup> Interviews with audited NGOs, Hungary, October 2014

impression that we are pushed into a crisis mode.”<sup>34</sup>

The already tense atmosphere created by the audit was amplified by the hostile statements of politicians and negative reports in the media, especially media outlets perceived as pro-government. Hostile media reports continued to be posted in the newsfeed of the KEHI's website during the audit, which many of the NGOs perceived as evidence of bias.<sup>35</sup> Ökotárs have also alleged that confidential information obtained by the authorities in the course of the audit has been leaked to the media, and that NGOs felt “trapped in a media campaign to discredit them.”<sup>36</sup> They announced in October that they would bring a legal complaint – which they subsequently did – over the alleged leaking of the NGO's internal correspondence to media outlets.<sup>37</sup>

Some of the organizations from whom the KEHI requested documents chose to register their protest by posting the requested documents on their websites, sometimes partially redacted to protect confidentiality or privacy, accompanied by letters of protest challenging the legality of the audit. By this, they hoped to register their protest against what they perceived to be an illegal, politically-motivated audit, while at the same time showing the public that they had nothing to hide.<sup>38</sup>

#### IMPACT OF THE AUDIT ON CIVIL SOCIETY

While the threat of criminal sanctions and the closure of their NGOs still hangs heavy over many civil society leaders, what they feared most was the broader threat to the freedom of association from the arbitrary and politically motivated actions of the Hungarian government.<sup>39</sup>

Many of the NGOs targeted by the audit expressed the sentiment that the combination of the KEHI audit, government accusations and hostile media reports had rendered them “toxic,” and scared away potential funders, collaborators or clients, and even lawyers to represent them, who feared becoming involved in a political dispute.

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<sup>34</sup> Interview with Hungarian NGO, by phone, December 2014.

<sup>35</sup> See <http://kehi.kormany.hu/kereses#category=all&search=%C3%96kot%C3%A1rs>.

<sup>36</sup> Civicus, Hungarian civil society shocked at the pace of increasingly restrictive measures: an interview with Veronika Mora of Ökotárs Foundation, 27 August 2014 available at: <http://civicus.org/index.php/en/link-to-related-newsresources2/2100-hungarian-civil-society-shocked-at-the-pace-of-increasingly-restrictive-measures-an-interview-with-veronika-mora-of-the-okotars-foundation-hungarian-environmental-partnership-foundation>

<sup>37</sup> On the 28 Sept 2014 a daily newspaper, Magyar Nemzet published an article that contained quotes from internal emails between the consortium members. Ökotárs reported the incident and the suspicion of an unlawful leak of internal emails – to the police on the 1 October 2014. The article is available in Hungarian: <http://nol.hu/belfold/most-az-okotarson-a-sor-visszaeles-miatt-tettek-feljelentest-1490147>

<sup>38</sup> Interviews with audited NGOs, Hungary, October 2014.

<sup>39</sup> Interviews with audited NGOs, Hungary, October 2014.

Others lamented the significant amount of time they had spent rebutting the allegations related to the NGO fund “scandal” at the expense of their core work.

To many, the harm they perceived to their reputation was particularly worrying. A common complaint was that NGOs were being branded as “political” actors, which ignored or denigrated the work they did on behalf of clients or Hungarian society. One staff member of an NGO noted, “under previous governments, we were also critical...in the early 2000’s we were criticized as pro-Fidesz. It is a very binary way of thinking: it must be about the party, not a particular policy. Any kind of criticism is considered as serving the opposition rather than serving the clientele of the NGOs or the beneficiaries of the NGO.”<sup>40</sup>

## CRIMINAL COMPLAINTS AND POLICE RAIDS

Throughout the summer of 2014, tensions continued to build, with disputes over the obligation to turn over documents to the KEHI continuing, and the threat of sanctions for alleged non-cooperation being made against the consortium and several recipient NGOs by the KEHI. In addition, two criminal complaints were lodged – one by the KEHI, for misappropriation of assets, and another by a private individual – which though they related to the NGO fund, did not name specific suspects.<sup>41</sup>

In response to these criminal complaints, , dozens of police officers from the National Bureau of Investigation raided the offices of Ökotárs and DemNet, their accountant and IT provider as well as the home of a staff member in September 2014. The police seized computers, servers and documents, and accompanied one staff member to her home to seize her personal computer.

The raided NGOs claimed that the police seemed to be seeking information on a specific list of 13 NGOs who received grants from the NGO fund. This raised speculation that the raids were targeting a list of NGOs colloquially referred to by some as the “dirty 13,” which had earlier been discussed in the press.<sup>42</sup> A Reuters news report from June had also claimed that the Hungarian government provided it with a list of NGO fund grant recipients considered problematic for their alleged “leftist political ties.” These included Transparency International, the Hungarian Civil Liberties Union and the investigative news website Atlatzso.hu.<sup>43</sup>

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<sup>40</sup> Interview with Hungarian NGO, by telephone, December 2014.

<sup>41</sup> KEHI had lodged a complaint regarding “misappropriation of assets” against Ökotárs during the course of the audit, State Audit Office (KEHI), Audit of the institutional system of EEA and Norwegian Financial Mechanisms and of the beneficiaries of the Financial Mechanisms and the funding received from the Financial Mechanisms, and of the application of other domestic and international funding paid out to management organisations, 15 October 2014, p. 11, available at: <http://kehi.kormany.hu/download/2/b2/c0000/Audit%20Report.pdf> (hereinafter KEHI Audit Report).

<sup>42</sup> <http://atlatzso.hu/2014/09/08/a-pizkos-tizenharomra-vadaszott-a-rendorseg-az-okotarsnal-es-a-demnetnel/>; See also <http://blacklistedhungarians.eu/>

<sup>43</sup> <http://www.reuters.com/article/2014/06/02/us-hungary-norway-funding-ngo->

The raids were condemned by international human rights organizations<sup>44</sup> and the Norwegian government, who called the raids “unacceptable.”<sup>45</sup> Amnesty International called on the government not to “use these raids to intimidate and harass Hungarian civil society organizations, or to attempt to discredit them in the eyes of the public.”<sup>46</sup>

## TAX REGISTRATION NUMBER SUSPENSION

A few days after the police raid, Ökotárs received notice that the KEHI audit had expanded to cover also grants from the Swiss-Hungarian Cooperation Programme, and funds allocated to NGOs from tax revenue. Meanwhile, hostile political pronouncements continued apace, including the Prime Minister’s speech to open the Parliament, referring to the NGOs as “mercenaries” (see above).

Later in September, as a sanction for alleged non-cooperation with the audit, the KEHI requested that the Tax Authority initiate proceedings to suspend the Tax registration numbers of the four consortium NGOs: Ökotárs, Autonomia, DemNet and Kárpátok. While this process is subject to appeal before the courts, it has the possibility of resulting in the termination of Tax registration numbers and effectively paralysing the organisations concerned. The consortium NGOs – even those also facing criminal investigations – stated that the suspension of their tax registration numbers was their most pressing concern.<sup>47</sup>

As this briefing went to press, all four NGO members of the consortium had lost appeals at the administrative level against the decisions, which have not yet come into effect, to suspend their tax numbers, and had begun the process of appealing this denial before the courts.

KEHI had previously warned several NGOs that the suspension of tax registration number was a potential sanction for non-cooperation with the audit. Ökotárs and others have repeatedly insisted that they cooperated fully with the audit, and turned over or otherwise made available all required documentation. However, the law provides no mechanism by which to challenge the KEHI’s demands for documents.

Several consortium NGOs complained of being placed in an impossible situation - torn between the conflicting demands of the KEHI, their funders and their obligations to clients and others. The KEHI could decide to request suspension of their Tax registration numbers if they failed to completely meet every demand for documentation by the KEHI, but besides arguing that the entire audit lacked legal basis, they argued that many of the documents they

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<sup>44</sup> See Human Rights Watch, Hungary’s Police Raids Squeeze Civil Society, 8 September 2014, <http://www.hrw.org/news/2014/09/08/dispatches-hungary-s-police-raids-squeeze-civil-society>

<sup>45</sup> [https://www.regjeringen.no/en/aktuelt/raid\\_eea/id2000182/](https://www.regjeringen.no/en/aktuelt/raid_eea/id2000182/)

<sup>46</sup> Amnesty International, Hungarian Government Must End its Intimidation of NGOs, EUR 27/004/2014, 10 September 2014.

<sup>47</sup> Interviews with audited NGOs, Hungary, October 2014.

were required to provide contained privileged or confidential information, which they were duty bound not to disclose. In fact, the Financial Mechanism Office in Brussels – with whom the NGO consortium had entered into a formal agreement regarding disbursement of funds - had specifically asked Ökotárs to refuse KEHI's requests for documents on the grounds that some of the requested information “would possibly harm basic civil rights.”<sup>48</sup>

It is notable that the law which gives the KEHI the power to request the suspension of tax registration numbers also envisions a less severe penalty for failing to comply with auditing requirements – that of a fine.<sup>49</sup> A fine, rather than the more severe penalty which could ultimately lead to the closure of the NGOs in question, would seem more in keeping with the requirement of international human rights law that restrictions on rights be the least intrusive option available to meet a legitimate aim of securing compliance with auditing requirements. When asked why they resorted first to the most severe penalty, the KEHI responded that “it is for the Office [KEHI] to decide which sanction to apply,” and noted that the NGOs were “acting in bad faith”, adding that the sanction served the goal of “enforcing of a culture of compliance.”<sup>50</sup>

## THE KEHI AUDIT REPORT AND FURTHER CRIMINAL ALLEGATIONS

On 15 October 2014, the KEHI released the report of its audit.<sup>51</sup> The report contains numerous allegations of malfeasance, some of which it alleges amount to criminal wrongdoing, including unlicensed financial activity, misappropriation of assets, and fraud, which carry punishments including imprisonment. Releasing the report, KEHI announced it would make additional criminal complaints against Ökotárs, as well as potentially other unnamed NGOs.

Reacting to the release of the report, János Lázár, the Minister in charge of the Prime Minister's Office, stated that “Ökotárs abused the confidence of the Norwegian government.”<sup>52</sup> The ostensible victim – the Norwegian government - for its part, rejected the findings of the audit, noting “We don't attach a lot of credibility to that report, to put it

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<sup>48</sup>[https://norvegcivilalap.hu/sites/default/files/dokumentumok/7\\_1\\_sz\\_levelre\\_masodik\\_valasz\\_az\\_fmotel\\_2014\\_06\\_17.pdf](https://norvegcivilalap.hu/sites/default/files/dokumentumok/7_1_sz_levelre_masodik_valasz_az_fmotel_2014_06_17.pdf)

<sup>49</sup> Para. 65 of Act CXCV of 2011.

<sup>50</sup> Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

<sup>51</sup> State Audit Office (KEHI), Audit of the institutional system of EEA and Norwegian Financial Mechanisms and of the beneficiaries of the Financial Mechanisms and the funding received from the Financial Mechanisms, and of the application of other domestic and international funding paid out to management organisations, 15 October 2014, available at: <http://kehi.kormany.hu/download/2/b2/c0000/Audit%20Report.pdf> (hereinafter KEHI Audit Report).

<sup>52</sup> <http://www.bloomberg.com/news/2014-10-22/hungary-to-press-charges-against-ngo-as-democracy-row-escalates.html> (Mr. Lázár did not respond to Amnesty International's request for comment).

mildly.”<sup>53</sup>

Several of the audited NGOs strongly objected that the findings of the report had never been shared with the NGOs for comment – as required by the regulation – prior to being made public.<sup>54</sup> Veronika Móra, the director of Ökotárs, stated “It is really difficult to react to the generalized and unfounded charges articulated in KEHI’s report. If they found irregularities, then they should have described exactly who committed these and how much money we are talking about here.”<sup>55</sup>

Indeed, the allegations contained in the Audit report are not sufficiently detailed to draw conclusions. However, aspects of the report itself did little to dispel concerns regarding the impartiality of the audit.

The report appears exclusively focused on alleged evidence of wrongdoing, without any mention of potentially contrary evidence, even when such evidence is readily and publicly available, for instance:

- An audit of the NGO fund by the firm Ernst & Young is cited four times as having found irregularities in the disbursement of funds, or potential conflicts of interests. However, the audit report nowhere indicates the conclusion of that report – a draft of which is publicly available – that despite “some issues,” the selection of sub-projects was transparent.<sup>56</sup>
- Allegations of unlicensed financial activities – a criminal offense – are made in the audit report against the Ökotárs foundation despite there being no indication these alleged activities are related to the subject of the audit – the disbursement of the EEA/Norway grants. Additionally, publicly reported information that would seem relevant to these charges was not included in the audit report. This includes the fact that the Ökotárs foundation reportedly years ago notified the Financial Supervisory Authority of the practice – granting of loans – which gave rise to these allegations.

Findings presented as evidence of wrongdoing often provide little context, and seem to be presented in the most damning light possible – a common complaint from the audited NGOs, who argued that “The repeated and ongoing expansion of the scope of the proceedings without explanation or substantial information provide grounds for the impression that the KEHI is determined to pursue its groundless investigations until such time as it uncovers something it deems irregular.”<sup>57</sup> The report also implies that the NGOs were attempting to

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<sup>53</sup> <http://www.thelocal.no/20141101/norway-fronts-up-to-hungary-in-political-aid-row>

<sup>54</sup> Government Decree 355/2011 (XII.30), Article 33

<sup>55</sup> <http://budapestbeacon.com/featured-articles/kehi-reports-okotars-for-financial-malfesance-and-fraud/>

<sup>56</sup> A draft version of the Ernst & Young report is available online at: <http://atlatzo.hu/2014/07/01/itt-az-ernst-young-jelentes-a-norveg-civil-alap-atvilagitasarol/>

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[https://norvegcivilalap.hu/sites/default/files/dokumentumok/how\\_the\\_kehi\\_abuses\\_its\\_official\\_powers.pdf](https://norvegcivilalap.hu/sites/default/files/dokumentumok/how_the_kehi_abuses_its_official_powers.pdf)



prevent the auditors from accessing various requested documentation. At some point it even implicates the Government of Norway mentioning an alleged plan by NGOs to conceal evidence from the audit by keeping it with the Norwegian Embassy.<sup>58</sup>

Notably, evidence of unlawful links to a political party – one of the key ostensible aims of the audit – are absent from the findings of the KEHI audit report. Instead, vaguely worded allegations are made that, for example, Őkotárs provided funding to organizations whose representatives “were clearly affiliated to a political party or were clearly propagating a certain world view.”<sup>59</sup> Neither party membership nor possession of world views is contrary to Hungarian law, nor to the rules governing the NGO fund.

A good deal of the audit report dwells on allegations of biased or subjective selection of grant recipients, which János Lázár, the Minister from the Prime Minister’s Office, described as the “most serious violation”.<sup>60</sup> As evidence of bias, the audit report cites the fact that applications linked to churches were rejected – despite the fact that religious institutions expressly fall outside the definition of NGO in the regulations governing the grant.<sup>61</sup> Awarding of grants to groups “affiliated to a political party or... propagating a certain world view” (see above) was viewed as evidence of bias, despite the inherent vagueness of these terms, which do not feature in the regulations. Lawyers who spoke to Amnesty International were unanimous that there was no conceivable basis for this to form the basis of a crime, nor does the audit report appear to suggest that it does. It has nonetheless formed the basis of repeated criticism of NGOs by government officials.

Responding to concerns over the seeming lack of balance in the report’s content, the KEHI stated that where they had found evidence of “legal irregularities”, it should not be necessary

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<sup>58</sup> State Audit Office (KEHI), Audit of the institutional system of EEA and Norwegian Financial Mechanisms and of the beneficiaries of the Financial Mechanisms and the funding received from the Financial Mechanisms, and of the application of other domestic and international funding paid out to management organisations, 15 October 2014, page 7, available at: <http://kehi.kormany.hu/download/2/b2/c0000/Audit%20Report.pdf> (hereinafter KEHI Audit Report).

<sup>59</sup> State Audit Office (KEHI), Audit of the institutional system of EEA and Norwegian Financial Mechanisms and of the beneficiaries of the Financial Mechanisms and the funding received from the Financial Mechanisms, and of the application of other domestic and international funding paid out to management organisations, 15 October 2014, page 8, available at: <http://kehi.kormany.hu/download/2/b2/c0000/Audit%20Report.pdf> (hereinafter KEHI Audit Report).

<sup>60</sup> <http://www.bloomberg.com/news/2014-10-22/hungary-to-press-charges-against-ngo-as-democracy-row-escalates.html> (Mr. Lázár did not respond to Amnesty International’s request for comment).

<sup>61</sup> Regulation on the implementation of the Norwegian Financial Mechanism 2009-2014 adopted by the Norwegian Ministry of Foreign Affairs pursuant to Article 8.8 of the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014 on 11 February 2011, as amended on 15 December 2011, on 14 March 2013 and on 2 July 2014, Article 1.5(1)(m), available at: <http://eeagrants.org/content/download/7078/86259/version/2/file/Regulation+NO+FM+2009-2014+amended+02+07+14.pdf>

to “counterweight” these since NGOs should follow the law as a matter of course. They stated that their conclusions were not based on the Ernst & Young report they repeatedly cited, but arrived at independently, and that they had simply acted in conformity with their duty to report evidence of the commission of a crime.<sup>62</sup>

Despite information about the opened criminal investigation in relation to the NGO Fund published by the media, no further information on its progress has been provided by the time of writing. The NGOs in question reported that they had information on the investigation.

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<sup>62</sup> Letter from Dr. Gaál Szabolcs Barna, President, KEHI, to Amnesty International, 8 December 2014 (on file with Amnesty International).

# INTERNATIONAL STANDARDS

## THE RIGHT TO FREEDOM OF ASSOCIATION UNDER INTERNATIONAL LAW

The right to freedom of association, and the closely related rights of freedom of expression and of peaceful assembly, are guaranteed under numerous international and regional treaties binding on Hungary. These include the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (European Convention).

The right to freedom of association includes the right to form NGOs and other civil society organizations, which are widely recognized for their essential contribution to the protection of human rights and the rule of law.<sup>63</sup>

While these rights may be subject to restrictions, such restrictions must be prescribed by law and necessary (which entails a requirement of proportionality) in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others.<sup>64</sup>

## FOREIGN FUNDING AND RESTRICTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION

The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai, has made clear that “The ability of [civil society organizations] to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association.”<sup>65</sup>

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<sup>63</sup> Fundamental Principles on the Status of Non-Governmental Organizations in Europe, “NGOs make an invaluable contribution to the achievement of the aims and principles of the United Nations Charter and of the Statute of the Council of Europe”; Council of Europe Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, “Aware of the essential contribution made by non-governmental organisations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies; Taking into consideration the invaluable contribution also made by NGOs to the achievement of the aims and principles of the United Nations Charter and of the Statute of the Council of Europe”; Venice Commission, Opinions No. 716-717/2013, Opinion on Federal Law N. 121-FZ on non-commercial organisations (‘Law on Foreign Agents’) on Federal Laws n.18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on making amendments to the criminal code (‘Law on Treason’) of the Russian Federation, para. 18, “Non-governmental organizations (NGOs) play a crucial role in modern democratic societies, allowing citizens to associate in order to promote certain principles and goals”; HRC Resolution on Civil Society Space, A/HRC/RES/27/31, 3 October 2014, “Recognizing the crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels, which is indispensable for building peaceful, prosperous and democratic societies”.

<sup>64</sup> International Covenant on Civil and Political Rights, Art. 22(2).

<sup>65</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 20, [hereinafter Special Rapporteur’s Report]

Among the measures that the Special Rapporteur considers violate the right to freedom of association include: “stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labelled as ‘foreign agents’ or other pejorative terms” and “initiating audit or inspection campaigns to harass CSOs.”<sup>66</sup>

In addition, “In recent years, the protection of State sovereignty or of the State’s traditional values against external interference has also been increasingly invoked to restrict foreign funding or to launch slander offensives against those [NGOs] receiving foreign funding.”<sup>67</sup> However, he notes that “The protection of State sovereignty is not listed as a legitimate interest in the Covenant,” and thus may not be invoked to justify restrictions on the right to freedom of association. Moreover, such restrictions cannot be justified by “‘the interests of national security or public safety’ or even ‘public order’. Affirming that national security is threatened when an association receives funding from foreign source is not only spurious and distorted, but also in contradiction with international human rights law”.<sup>68</sup>

In addition, the UN Human Rights Council – in a resolution co-sponsored by Hungary - has called on states “to ensure that domestic provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underlines the importance of the ability to solicit, receive and utilize resources for their work.”<sup>69</sup>

Similarly, the Venice Commission<sup>70</sup> has noted: “Foreign funding of NGOs is at times viewed as problematic by States. There may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights.”<sup>71</sup>

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[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf);

See also Council of Europe, Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Principle 50 (“NGOs may solicit and receive funding – cash or in-kind donations – from another country, multilateral agencies or an institutional or individual donor, subject to generally applicable foreign exchange and customs laws”); Council of Europe Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, para. 50; United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), A/RES/53/144, Article 13, “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration”

<sup>66</sup> Special Rapporteur’s Report, para. 20.

<sup>67</sup> Special Rapporteur’s Report, para. 27.

<sup>68</sup> Special Rapporteur’s Report, para. 30.

<sup>69</sup> HRC Resolution on Civil Society Space, A/HRC/RES/27/31, 3 October 2014, para. 10.

<sup>70</sup> The Council of Europe’s advisory body on constitutional matters.

<sup>71</sup> Venice Commission, Opinions No. 716-717/2013, Opinion on Federal Law N. 121-FZ on non-

While measures aimed at combatting financial fraud and other similar concerns serve a legitimate aim, they will be lawful only if they also meet the requirements of necessity and proportionality, which means they must be the least intrusive means to achieve the goal.<sup>72</sup>

The activities of NGOs should be presumed lawful in the absence of contrary evidence, and “In most instances the interests of third parties can be adequately protected by enabling them to bring the relevant matter before the courts; there should generally be no need for a public body to take any other action on their behalf.”<sup>73</sup>

In addition, “All reporting and inspection shall be subject to a duty to respect the legitimate privacy of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality.”<sup>74</sup>

The European Court of Human Rights has also repeatedly noted that restrictions on rights for political reasons, or other reasons not stipulated in the European Convention on Human Rights, are contrary to Article 18 of the Convention.<sup>75</sup>

In criminal matters, it is important that government officials refrain from public statements prejudging the guilt of defendants, which undermines the presumption of innocence.<sup>76</sup>

Significantly, it is not only those against whom laws are directly applied who may suffer violations of human rights, because problematic applications of the provisions of criminal law can also have a chilling effect—as human rights defenders, journalists, and activists may self-censor out of fear that the law will be used against them. This is problematic for the

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commercial organisations (‘Law on Foreign Agents’) on Federal Laws n.18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on making amendments to the criminal code (‘Law on Treason’) of the Russian Federation, para. 67.

<sup>72</sup> Special Rapporteur’s Report, para. 35.

<sup>73</sup> Council of Europe Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, para. 67, and explanatory memorandum, para. 120.

<sup>74</sup> Council of Europe, Fundamental Principles on the Status of Non-Governmental Organizations in Europe, Principle 63; Council of Europe Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, para. 64.

<sup>75</sup> See *Mammadov v. Azerbaijan*, No. 15172/13, 13 October 2014; *Tymoshenko v. Ukraine*, No. 49872/11, 30 April 2013; *Lutsenko v. Ukraine*, No. 6492/11, 19 November 2012; *Cebotari v. Moldova*, No. 35615/06, 13 November 2007; *Gusinskiy v. Russia*, No. 70276/01, 19 May 2004.

<sup>76</sup> Human Rights Committee, General Comment 32, para. 30, “It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused”; African Commission on Human and People’s Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle N(6)(e)2, “Public officials, including prosecutors, may inform the public about criminal investigations or charges, but shall not express a view as to the guilt of any suspect.”

exercise of human rights since “[a] threat of criminal prosecution has the distinct tendency to cause persons to forgo conduct that the law does not prohibit, particularly if the statutory language is unclear.”<sup>77</sup> This chilling effect – or self-censorship – is relevant in determining whether a restriction on rights is proportionate, and thus lawful.<sup>78</sup>

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<sup>77</sup> UN Committee on the Elimination of Racial Discrimination, *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, Communication No. 48/2010, Individual Opinion of Mr. Carlos Manuel Vazquez (dissenting) para 11, U.N. Doc. CERD/C/82/D/48/2010 (4 April 2013) (emphasis in original). “Criminal punishment is the most severe form of punishment the State can impose. A threat of criminal prosecution has the distinct tendency to cause persons to forgo conduct that the law does not prohibit, particularly if the statutory language is unclear. [ . . . ] [A]n aggressive approach to enforcement can deter people from exercising their right to engage in speech that *is* protected”; See also *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, Conclusions and Recommendations emanating from the four regional expert workshops organized by OHCHR in 2011 and adopted by experts in Rabat, Morocco on 5 October 2012, paras. 11,15, available at [http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf); See also Joint submissions by Mr. Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief; Mr. Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Mr. Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the four workshops, available at <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Statements.aspx>.

<sup>78</sup> European Court of Human Rights, *Cumpana and Mazare v. Romania* No. 33348/96, Grand Chamber, 2004, paras. 113-4, “Investigative journalists are liable to be inhibited from reporting on matters of general public interest...if they run the risk... of being sentenced to imprisonment or to a prohibition on the exercise of their profession. The chilling effect that the fear of such sanctions has on the exercise of journalistic freedom of expression is ... This effect, which works to the detriment of society as a whole, is likewise a factor which goes to the proportionality, and thus the justification, of the sanctions imposed”; ECHR *Otegi Mondragon v. Spain*, No. 2034/07, 2011, para. 60.

# CONCLUSION

The events of 2014 escalated quickly from allegations by politicians against NGOs to the initiation of legal processes that could ultimately lead to the closure of these groups, or even to the imprisonment of their staff. Indeed, it may be far from over. In December 2014, Prime Minister Viktor Orbán supported the idea to impose more stringent controls on NGOs receiving foreign funding, including an obligation to register with the government.<sup>79</sup>

However, as this story continues to unfold before the courts, it is important to emphasize that the human right to freedom of association is not violated only when activists are jailed and NGOs closed down. The impact of high-profile government denunciation, hostile media campaigns, high-profile police raids and politically-motivated audits are already being felt in Hungary. NGOs are likely to be wary of the NGO fund, an important source of funding for the work of NGOs, knowing that their every expense and action may be painstakingly scrutinized for anything that be construed as illegal.

More broadly, that these processes have targeted NGOs known for their independence, and advocacy of causes associated with women's rights, LGBTI rights, anti-corruption and human rights more generally, sends a message to others to tread carefully when speaking out on these important subjects.

The effects of the events of 2014 continue to be felt. As one NGO staff member put it, there is a "general sense of being worried, looking behind our shoulders all the time. It's not over... It's always there on the horizon that this can come up again." Expressing the worry that the government would continue to target NGOs, he noted that for the government, in the absence of international pressure, "There is no downside to it."<sup>80</sup>

Ultimately, the price of harassment and intimidation of NGOs working in the field of human rights and other areas of public interest is paid by the people served by these NGOs. Victims of domestic violence, members of marginalized minority groups and those defending the rights of others, to name a few will have less support. Society in Hungary and other member states of the EU will be worse off if critical voices are silenced.

It is crucial that the Hungarian authorities desist from their campaign against independent voices in civil society and that the EU, and the international community more broadly, loudly insist that they do so.

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<sup>79</sup> <http://www.bloomberg.com/news/2014-12-15/hungary-premier-orban-sticks-to-maverick-path-as-u-s-ties-sour.html>

<sup>80</sup> Interview with Hungarian NGO, by telephone, December 2014.

# RECOMMENDATIONS

## To the Government of Hungary

- Ensure, in law and in practice, an enabling environment for the exercise of the right to freedom of association.
- Fully respect the right to freedom of association, including access funding and resources from domestic, foreign and international sources.
- Ensure that public officials do not make public statements defaming or stigmatizing NGOs for their work, seeking to undermine the legitimacy of civil society, or which may undermine good reputation of NGOs.
- Ensure that any audits, investigations or other measures against NGOs are conducted only by authorities possessing adequate safeguards to ensure the independence and impartiality of these processes, and subject only to laws and regulations generally applicable to other legal persons.
- Ensure that any sanctions imposed on NGOs comply with international human rights law and standards, including the requirement of proportionality, and are not set at a level that would deter people from exercising their right to freedom of association or expression.
- Extend an invitation to the Special Rapporteur on the rights to freedom of peaceful assembly and of association to conduct a country visit to Hungary.

## To the European Union

The EU must take action to ensure that Hungary does not impede human rights, in line with its obligation to uphold the Union's common values as enshrined in Article 2 of the Treaty on European Union.

In particular:

- The European Parliament must continue to speak out against attacks on freedom of association and freedom of expression in Hungary and hold other EU institutions to account for their action in response.
- The Commission must continue monitoring the human rights situation in Hungary and take appropriate action as required under its Framework to strengthen the Rule of Law (COM(2014)158 final) taking into consideration the findings in this report on attacks on freedom of association.
- The Council must address human rights concerns in Hungary and consider discussing attacks on freedom of association in the context of its future dialogue among all member states to promote and safeguard the rule of law (Conclusions of the General Affairs Council on respect for the rule of law, 16 December 2014).