The significance of freedom of information tools in fighting corruption

Ligeti Miklós
Transparency International Hungary
Miklos.Ligeti@transparency.hu

Data, Public Goods, Public Interest and Good Governance
Budapest, 18 April, 2019
overview

democratic checks & balances

shrinking civic space

accessibility of public data & hindrances of transparency

transparency in practice: our FOI-litigations
state of play of checks & balances
Hungary: an illiberal state beyond rule of law (?)

democratic checks & balances disrupted
almost no state player to keep gov’t under control
tailor made regulations
preferential legislations, discretionary enforcement
„worrying signs of an instrumental attitude towards the constitution” → 19 constitutional amendments since 2010 (1 rejected but reintroduced & adopted)
party state capture → gov’t and oligarchs form a symbiotic power conglomerate
disruption of democratic checks & balances

questionable appointments = „court packing / packing of institutions”
  o Constitutional Court
  o ombudspersons
  o freedom of information institution
  o judicial administration / Supreme Court (Curia)
  o prosecution service
  o Court of Auditors (State Audit Office)
  o election administration
  o media board

restriction of jurisdiction
  o Constitutional Court
  o law courts

expansion of jurisdiction
  o prosecution service
  o judicial administration
shrinking civil society space

gov’t has disliked critical NGOs ever since

massive anti-NGO (rhetorical) campaign starts in 2013

2014: gov’t audits Norwegian civil funding, audit stands on shaky legal grounds

gov’t: clandestine service information shows NGOs behind (alleged) invasion of irregular migrants

gov’t legislation1: NGOs with foreign funding in excess of HUF 7.2 Million have to register → Foreign Funded Organisation (‘FFO’) → foreign = treasonous

gov’t legislation2: criminal sanctions applicable to the promotion of illegal migration

gov’t legislation3: punitive surtax levied on organisations that promote migration
accessibility of public information
why is transparency important?

transparency is rewarding and pays off

denial of wrongdoing more difficult

(but does not stop corruption)

makes power more careful

more accountable public expenditure
why is transparency bad?

gov’t: a hindrance in the way of efficiency

SOEs’ business secrets

servicing data requests consumes time & money

CSOs / journalists obstruct gov’t
accessibility of public data – the theory

3 milestones since 1990


→ 2011/2012: Fundamental Law / public finance clause, offshore ban

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disruption of the FOI institution I.

the Fidesz gov’t undermines institutions to guarantee access to public information

2012

→ FOI ombudsman replaced by a gov’t authority

2013

→ statutory limitations to hinder large scale data requests

→ limitation of business secrecy removed from Civil Code
disruption of the FOI institution II.

the Fidesz gov’t undermines institutions to guarantee access to public information

2015

→ tax exempt sport donations (business secret)
→ Paks II. investment full secrecy
→ costs of data request charged on requestor
→ copyright regulations

2016

→ expansion of business secrecy to SOEs
→ Central Bank’s foundations exempted (aborted attempt)
TI-HU’s FOI litigations

approx. 3 dozen court cases ("litigation streams")

strategic relevance

- large sums of public money at stake
- high level abuse
- everyday corruption (easy to understand locally)
systemic & legalised corruption
Hungary’s Central Bank establishes 6 private foundations & endows them with public funds worth approx. 267 billion HUF ($960 million) - almost one percent of GDP

extensive conflicts of interest on foundations’ boards

favouritism in foundations’ investments

possible infringement of EU monetary financing rules (foundations buy gov’t bonds worth 197 billion HUF)

foundations do not issue public tenders for purchases → no public procurements

parliament adopts law to retroactively prevent the foundations’ expenses and operations from becoming public → CC annulled this law

TI-H files a criminal complaint against the Central Bank → PG’s Office declines to investigate suspected wrongdoings (no written explanation) → PG’s wife is Central Bank’s HR director & sits on the board of more foundations
an invitation to rich migrants: Hungary’s golden visa business

300,000 EUR buys access to EU’s Schengen Zone
“wannabe” Schengen Visa holder buys a Gov’t residency bond
no “Gov’t → Investor” transaction
bonds are brokered by intermediary companies
bond remains with intermediary company
investor gets intermediary company’s paper (“proof of payment”)
intermediary companies licensed by Parliament Economic Committee → unusual process, no transparency
intermediary companies are off-shores (one exception) → proprietary background unclear
intermediary companies’ enrichment

residency bonds are zero coupon bonds → nominal: 300.000 EUR → discount price: 271.000 EUR

intermediary companies’ lucre:

EUR 29.000 / bond → yields & interests payed by Gov’t, in advance

6,621 bond packages (as of June 30, 2017)

6,621X29.000 = EUR 192 Million → comes from Hungarian public money

economic disadvantages

gov’t pays EUR 178 million to get EUR 1.666 Billion → standard gov’t bonds would have been EUR 66.5 million cheaper
tao (not the absolute principle underlying the universe, but corruption)

a form of tax exempt sports donations
corporations divert a portion of their CIT to a sports associations / sports clubs

2011-2017: 441 Billion HUF diverted from state treasury
2018: 80 Billion HUF anticipated

average soccer club to receive HUF 26 million in a year
donors and donations by corporations a tax secret

Supreme Court ruling: tax exempt (sports) donations are public funds, details to be revealed
disruption of democratic checks & balances
instrumental attitude towards legislations
oligarchs and elites form a political clique / camarilla
critical civil society groups under pressure
FOI tools serve to monitor the gov’t & public spending
transparency shed light on wrongdoing, but does not prevent it

conclusions: is this the end of democracy in Hungary?

Hungary: a managed / vulnerable democracy with signs of state capitalism
thank you for your attention

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