Ref: TG EUR 27/2014.002

Index: EUR 27/006/2014

Dr. Gaál Szabolcs Barna
President, Government Accountability Office
1126 Budapest
Tartsay Vilmos utca 13.
Budapest, 1538 Pf. 535
Hungary

AMNESTY INTERNATIONAL

AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT
Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom
T: +44 (0)20 7413 5500 F: +44 (0)20 7956 1157
E: amnestyis@amnesty.org W: www.amnesty.org

20 November 2014

SUBJECT: EEA/NORWAY GRANTS

DEAR DR. GAÁL,

Amnesty International has noted with concern recent actions of the Hungarian government with regard to the disbursal of the EEA/Norway Grants NGO fund. I am writing to seek your input regarding several questions which arise in connection with this, so that the viewpoint of the Government Accountability Office (KEHI) may be fairly reflected in Amnesty International's public work on this issue.

As you know, the right to freedom of association is guaranteed by Hungarian law and by international and regional treaties to which Hungary is a party. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, has noted that the ability to access foreign or international funds is central to the realization of the right to freedom of association, and called on states "[t]o adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received."[1] In addition, the UN Human Rights Council – in a resolution co-sponsored by Hungary - has called on states "to ensure that provisions on funding to civil society 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 rights and ability to solicit, receive and utilize resources for its work."[2]

THE INVESTIGATION

Amnesty International understands that in June 2014, the Prime Minister's Office ordered the KEHI to carry out an audit of NGOs involved in distributing and receiving the EEA/Norway NGO grants. Both the Norwegian government and the NGOs in question contested the legality of the audit, since the funds are not part of the Hungarian state budget and authority to conduct or order audits of the grants is allocated to a Financial Mechanism Office in Brussels under bilateral agreements between Hungary and Norway.[3] In September, the KEHI initiated procedures to suspend the tax numbers of the four NGOs involved in distribution of Norway Grants. The Government Control Office justified these measures with reference to the groups' alleged non-cooperation with the government-imposed audit. The NGOs denied

[1] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, [hereinafter Special Rapporteur's Report] http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf.

[2] HRC Resolution on Civil Society Space, A/HRC/27/L.24, para. 10.

[3] Source: https://norvegcivilalap.hu/sites/default/files/dokumentumok/how_the_kehi_abuses_its_official_powers.pdf

these allegations. In October, the KEHI released a report based on its audit, and announced it would seek criminal sanctions against several NGOs.

SEEKING CLARIFICATION

We would like to seek clarification on the following issues:

- The Prime Minister, as well as members of his office and the government, have made numerous statements alleging that NGOs involved with the EEA/Norway grants are paid political activists serving the interests of foreign powers, or of specific opposition political parties in Hungary. Given that the KEHI undertook its audit due to an order from the Prime Minister's Office (under Para. 11(3) of Government Decree 355/2011) and that the President of the KEHI may be appointed and dismissed by the Prime Minister's office (under Para. 4.1 of the same Decree), what guarantees exist to safeguard the independence of the audit and to protect against undue political influence, or the appearance thereof?

- Certain aspects of the written audit report also raise questions about the impartiality of the audit. In places, evidence of seeming wrongdoing is presented, but publicly-known evidence to the contrary is not mentioned. For example:
  - An audit by the firm Ernst & Young is cited four times as having found irregularities in the disbursal of funds, or potential conflicts of interests. However, the audit report nowhere indicates the conclusion of this report – which is publicly available - that despite "some issues," the selection of sub-projects was transparent.
  - 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 disbursal of the EEA/Norway grants. Despite this, publicly reported information that would seem relevant to these charges, such as that the Ökotárs foundation reportedly notified the Financial Supervisory Authority of this practice, was not included in the audit report.
  - In light of the above – what rules or practices exist to ensure the impartial presentation of audit findings by the KEHI? Are there rules or policies which mandate equal treatment and public disclosure of evidence that tends to show wrongdoing as well as that which tends to disprove or mitigate wrongdoing?
- Under international human rights standards, restrictions on the right to freedom of association must be the least intrusive option among those available. The KEHI states that it has initiated the suspension of tax registration numbers of organizations which have allegedly failed in their duty to cooperate with the audit under Para. 65(1) of Act CXCV of 2011. However, this paragraph envisages a less severe – and thus less intrusive – sanction for non-cooperation, specifically the imposition of a fine.

  Can you please explain, why was the decision made to resort to the more severe penalty, one which poses a greater risk to the right of freedom of association?

  We further seek clarifications on the following:

- Does the authority of the KEHI to audit the disbursal of funds by NGOs extend to funds from foreign states that do not arise as a result of treaties with Hungary? If so, under what conditions?
- Would the KEHI be authorised to audit the disbursal of funds from private donors by NGOs? If so, under what conditions?

We would like to inform you that a copy of this letter has also been sent to the Office of the Prime Minister.

We would welcome a response from you at your very earliest convenience and no later than by 8 December 2014...

Thank you very much for your cooperation.

Yours Sincerely,

John Dalhuisen
Director, Europe and Central Asia Programme

GOVERNMENT CONTROL OFFICE
PRESIDENT

Reg. no.: 23-463/628/2014.
Ref. no.: TG EUR 27/2014.002

John Dalhuisen
Director, Amnesty International
International Secretariat

London WC1X ODW
Peter Benenson House, 1 Easton Street

ENGLAND

Subject: EEA / Norway Grants

8 December, 2014

Dear Mr Dalhuisen,

First and foremost, let me render thanks for requesting my opinion in connection with the audit conducted by Government Control Office *on the operation and fulfillment of tasks of the institutional system of the Norwegian and EEA Funds*, so that the viewpoint of the Office may be fairly reflected in your report. I hope, my answers to your questions will help you in that.

With reference to what is inhered in your letter, first of all let me underline that I absolutely agree with the importance of guaranteeing freedom of association. Especially because this fundamental right roots in an almost 800-year old tradition in Hungary: that of rights guaranteed for small, self-organised communities, separated social layers, for separation, for judgement and autonomy. Also, it was only 7 years after the first written charter of liberation, the English Magna Charta Libertatum (1215) that in 1222 the Golden Bull in Hungary provided extensive rights to lesser nobility. Then, in 1848, these rights were extended to each Hungarian citizen.

In a civil law perspective, royal provisions which set forth and reinforced status, legal status and freedoms also bore special significance; these were stipulated in charters of privileges and of liberation from the 13th century on. The Hungarian State has also respected statutes of counties and royal toroughs (as special communities) at all times, from the 16th century on.

1126 Budapest, Tartsay Vilmos utca 13.
Tel: +36 1 224 6800; Fax: +36 1 224 6871

Except for the Communist Era (1945-1990), it has always respected these rights and privileges, and the Hungarian Constitution and fundamental laws now in effect also provide for the right of assembly and association, in compliance with international provisions commitments. Government control may not and does not, either, endanger these fundamental values.

As regards section „Investigation" of your letter, let me raise your attention to the fact that the Office has no authorities to investigation. The audit was ordered in May 2014, and since then the legal framework of this control scope has been communicated in detail on many occasions; to both the organisations affected and the Norwegian State, just as well as to the public.

The Office, under 63(1) c) of Act CXCV of 2011 on public finance, is authorised to conduct government control of „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* - given to commercial entities, public foundations, public bodies, foundations, regional development councils and unions, and of the use of property granted by the State gratuitously to the above-mentioned organisations for special purposes." Please remember that the above scope of authority has not changed since 1994, and no-one has ever found fault with it in any sense.

In light of the above, the Office has unquestionably authorities to audit grants under international treaties, regardless of whether or not the fund concerned is part of the state budget. The passage of the above cited provision written in italics refers specially to funds which are not part of the state budget – either national or international - , since the scope of authority for audits of funds being part of the state budget are already provided for without the need for the passage in italics.

Irrespective of the above, it must be mentioned that under Par. 5(1) c) of Act CXCV of 2011 on public finance, funds from grants which are not part of the state budget qualify as state budgetary income, i.e. funds of the Norwegian NGO grants should have been scheduled in the annual acts on budget. Why this is important to underline is that some organisations – as you have also mentioned – cite that the Norwegian NGO grants are not part of the budget, therefore the Office has no authorities to conduct such audit. This is untenable also with reference to the cited Par. 5(1) c) of the Act on public finance, since the funds of the Norwegian NGO grants are such funds that have to be part of the budget.

Besides, in accordance with Par. 63(1) a) of the Act on state budget, the Office has authorities of the audit of the implementation of government decisions. Having regard to the fact that agreements on financial mechanisms have been promulgated in government decisions and government decrees (Nr. 201/2005, Nr. 235/2011 and Nr. 236/211), the Office is authorised to audit the implementation of tasks stipulated in these.

According to principles laid down in Article 10 of the Memorandum of Understanding concluded by Norway and Hungary on the implementation of the Norwegian Financial Mechanisms in the period 2009-2014, in each phase of the implementation the highest level of transparency, accountability and cost-efficiency shall be achieved. It is also made possible that the conduct of NGO Funds is audited by a competent government authority, without any more specification. Having regard to this, the Hungarian State is authorised and obliged to audit compliance with liabilities stipulated in international treaties, via a competent state authority. This was the reason for the Office being ordered to conduct the audit.

Based on the above facts, I definitely object to you contesting the legality of the audit. The scope of authorisation is legally provided and protected under international treaties as well, it has not infringed neither the rights of affected NGOs, nor the provisions of the above agreement concluded with Norway.

As in all constitutional states, the operation of various NGOs, their application to the grants, their gaining of and the use of funds granted must be in total compliance with national and international laws. The default thereof may create the opportunity of not only the entitled applicants winning the projects, of the misuse of funds granted, etc, which result in chopped interests of both the donor and the beneficiary organisation. The right to assembly and association, and the practice thereof, may not mean exemption from legal obligations.

In connection with the audit conducted by the Government Control Office, it must be underlined that it only affected 63 NGOs out of the 60 000. In my viewpoint, presenting an audit which only affects one thousandth of the NGOs as an attack of the non-governmental sector and the restriction of the right of freedom to association is a rather irresponsible approach. It should be stressed that previously the Office has been examined NGOs regularly: among others the Office conducted system inspections concerning nearly 150 NGOs in 2007 and 2010, it detected serious infringements concerning the control of the offered 1% of personal income tax. In the latter case not only criminal proceedings were initiated but also bank accounts has been blocked. Curiously none of these controls and measures was questioned by a single human rights organisation.

The tax ID numbers of the four foundations contributing in the fund allocations were suspended, because the foundations, violating the legislation applying to all, violated by fault their obligation to report data and to cooperate. Despite the numerous requests of the Office, the concerned foundations were not sending documents that were of particular importance for the purposes of the conduct of inspection for more than 3 months'. It should be noted that these data were open public by public interest according to the legislation in force and the National Authority for Data Protection and Freedom of Information which is independent from the government, therefore they should have been made also available to every citizen.

Thus the goal of the initiation of the tax ID number suspension is not to undermine the foundations, but to enforce a culture of compliance: in a rule of law it's not admissible to organisations that decide over several billion HUF of public funds to violate intentionally and persistently the legislation and not to cooperate with public bodies acting within their respective powers. This is even less acceptable considering the fact that the NGO-employees attend public offices, similarly to those controllers employed by the Office who examine the proper disbursal of funds.

The sanction for the above infringement is, according to Par. 65(2) b) of the Act on public finance, is the initiation of the suspension of the tax ID number application by the Office. On the basis of the initiation of the Office, the tax authority, in accordance with Par. 24/A (1) d) of Act XCII of 2003 on the rules of taxation, took the decision to suspend the tax ID number.

In case of an infringement of 65(1) of Act on public finance, it is for the Office to decide which sanction to apply from the sanctions based on Par. 65(2) of Act on public finance so to set a procedural fine or initiate the suspension of the tax ID number application at the tax authority. Regarding that the concerned NGOs infringed their legal obligations by fault, acting in bad faith, despite numerous requests, the application of this sanction was justified. I want to emphasise that the Office in every case and now also initiated the above sanctions in an equal procedure and individually specified, equal manner against the law infringing NGOs considering the gravity of the case and the goal to achieve (the enforcing of the culture of compliance), and the available evidences, and taking into consideration all relevant aspects.

I was astonished to read in your letter that you think that initiating the suspension of the tax ID number would mean restriction of right of freedom to association. Again, I would like to draw your attention to the fact that in Hungary there are nearly 60 000 NGOs operating, and only 4 of these, who have unequivocally violated the law, have been inflicted by this sanction. I do not think that the fundamental right of freedom to association may give exemption from compliance with law and bearing sanctions for violating them. Pursuant to the right of freedom to association, each person in Hungary has the right to establish or join organisations or communities, nevertheless laws should be complied with, both by the organisation or by the members. In default of this, they will have to bear legal sanctions imposed.

According to Article XXVIII Paragraph 7 of the Fundamental Law of Hungary everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates their rights or legitimate interests. The affected foundations certainly have as well the right of legal remedy, since the National Tax and Customs Administration has passed the resolution regarding the suspension of the use of their tax number and against which the organisations can turn to the principal tax authority, in case of keeping the first instance decree in force they can turn to Hungarian court with revisionary petition for annulling the decree.

In connection with the part of your letter „Application for clarification", I would like to point out, that political statements do not have any influence on the work of the Office, every public service clerks, employed by the Office provide their tasks as a profession, expertly and according to the relevant legal provisions.

Associates working at the Office, who have been appointed before 1 January 2012 have made an oath to be loyal to their fatherland, the Hungarian Republic and its people; to keep the Constitution and constitutional law of our country; to keep aggravated data; to fulfill their magisterial obligations without fear or favor, conscientiously, trustworthily, according to legal provisions, precisely, ethically, with respect of the dignity of the human being, to the best of their knowledge, by serving the interest of their nation; they act inside and outside the office exemplary and take efforts to promote the growth and increment of intellectual and material property of the Hungarian Republic. The associates appointed after 1 January 2012 in turn have made an oath to be loyal to Hungary and its Fundamental Law, to keep its legal provisions and make it be kept by others, to provide their function in the interest of the Hungarian nation.

Towards the associates of the Office it is a strict expectation prescribed in law and also expected by the Office to provide their tasks in the interest of the public according to legal provisions and professional ethical principles, with the generally expectable competence and diligence, evenly and rightfully, on basis of cultivated administration. The associates went through the most severe ("Type C") state security sparks, which also constitutes a guarantee that the governmental control is fulfilled by blameless and faultless colleagues. Besides, this law declares strict incompatibility rules for government controllers in interest to widely ensure the impartial and objective conduction of the controls.

To ensure the neutrality of the supervisions the legal provisions relevant for the operation of the Office and for the conduction of controls expressly state that the governmental controller is liable to investigate the documents and circumstances to deliver objective statements, further to put down the statements in writing impartially and concrete and to confirm them with necessary evidence. The Government Control Handbook regulating the detailed procedure of the supervisions of the Office, which is obligatory for every controller of the Office, separately also declares that the controller is responsible for the exactness of the disclosed data, for the solidity of the statements and for confirmation with evidence, further for the professionalism of their statements.

Besides the relevant legal provisions we also continuously apply the international IIA norms applicable for monitoring, as well as the INTOSAI monitoring standards.

Concerning your fears regarding my assignment firstly I would like to inform you, that in your letter you quoted the Government Decree Nr. 355/2011 (XII.30) on the Government Control Office (hereinafter referred to as Government Decree Nr.

355/2011 (XII.30) incorrectly, namely the president of the Office is not appointed by the Prime Minister's Office - but on the basis of the suggestion of the minister leading the Prime Minister's Office, the prime minister appoints and relieves the president. To dissolve your anxiety in connection with my independence, I would like to inform you that Dr. Tibor Navracsics minister for administration and justice, who is now commissioner of the European Union, suggested me for president of the Office, so the current minister leading the Prime Minister's Office had no influence on my appointment.

In addition to this, I am informing you that Par. 4(3) of Government Decree Nr. 355/2011 (XII.30) specifies strict qualification and professional conditions for the appointment of the president and the vice-president: jurisprudential doctor's degree or licensed economist degree, further at least five years of experience in administration and at least five years of leading experience.

I have been working at the Office – except for a short interruption – since 2001, at first as associate, later as mid-manager. Therefore, my appointment is due to my professional activity and not due to political activities. Similarly to me, you have also surely gone through the echelon, and your present position is due to years of tough and persistent professional work. Presumably, you would also not want anybody questioning your proficiency and independence, ignoring your professional past.

I would like to note that in the history of the Office since 1993, it is now the first time that the Office is led by a president and vice-president who have not been or are not currently members of political parties.

As to the management of the Office, it is a central budgetary organ operating and managing individually with budgetary licenses, which operates individually with budget estimates ensured by the budgetary legal act accepted by the Parliament. This ensures besides the professional independence financial independence for the Office as well.

According to the above in my opinion the non-political, professional operation of the Office cannot be questioned, and I expressly reject any contradictory assumption in the name of my associates and of myself.

In connection with the report prepared by Ernst & Young Kft. about the transaction of the first period of the implementation of funds of the Norwegian NGO grants, which was also mentioned in your "Application for clarification", it is necessary to point out that it contains such facts (for example the names of the persons contributing in the course of the consideration of the tender), for which the documents have not been handed over despite the request of the Office several times. (Perhaps it was not a coincidence that these documents have been concealed which already been disapproved by Ernst & Young.) Therefore the Office monitored the relevant questions by the help of other evidences, and based on these the Office

found similar irregularities like those revealed by Ernst & Young. The report in question was only because of this of an interest (namely the irregularities already existed since years), it is not the task of the Office to review statements of other organisations laid down during their procedure.

Referring to your question in connection with equal treatment requirement, I would kindly like to draw your attention to that the Office proceeds in the course of every control towards every monitored organisation on basis of the same rules of procedure, calling them to account for the same legal provisions, thus keeping the requirements of equal treatment. Although I do not think that the equal treatment requirement would also mean the necessity that in case the control should experience legal irregularities, to counterweight these, the Office also demonstrates the law observing behavior of the organisations, since in case of organisation managing public funds the transparent and proper operation would be an essential requirement, the observing of legal provisions should be matter-of course.

In your letter you mentioned that the Office „accused" one of the controlled organisations with unauthorised financial activity. Firstly I have to point out that the Office has not and can even not accuse nobody, in Hungary this is the task of the public prosecutor. Although it is a fact that in Hungary only such organisations can carry out financial activity which have the license of the Hungarian National Bank, or of the Hungarian Financial Supervisory Authority, the predecessor of the National Bank. Those who carry out this activity without the license commit the crime unauthorised financial activity according to Article 408 of Act Nr. C of 2012 on the Criminal Code. Since in the course of the control it has been set out that one of the monitored organisations granted loans for years without the license of the Hungarian National Bank or its predecessor and also charged interest for this, so the commitment of the above quoted crime occurred.

According to Par. 171(2) of Act XIX of 1998 on the Criminal Procedure Code, a functionary is liable to prosecute crime which came to its knowledge in the course of its scope. Considering that the Office revealed data and facts supporting the commitment of carrying out unauthorised financial activity in the course of the control, so the Office, on basis of its liability in the Criminal Procedure Code had to prosecute the organisation at the investigation authority. Based on the denunciation the investigation authority ordered investigation since the suspicion of the commitment of the crime emerged also by the authority. According to the constitutional settlement of Hungary the disclosure whether crime has been committed, and if so for this who bears criminal responsibility shall be the task of the judicatory organs.

Referring to your question in connection with clearing the scope of the supervision, I am informing you, that the Office may not control funds of foreign state-origin which are under treaties not concluded not with the Hungarian state (unlike Norwegian NGO Grants), or which derive from individuals.

However, in case the beneficiary comes in for operational budgetary support, the Office, under Par. 63(1) j) has the right to monitor the operation and management thereof, with the aim to see whether or not the beneficiary has parallel settled accounts to the expense of another allowance, and, to make sure that the state does not support organisations with unlawful, wasting practices.

I am closing my letter in hope of having managed to dissolve your fears regarding the supervision and the exercise of the integration freedom right. Should any further questions occur, I will be certainly at your service, and, as part of that, you or the Hungarian representatives of Amnesty International may feel free to see me at the Office.

Finally I would like to inform you that a copy of this letter has also been sent to the Prime Minister's Office.

Sincerely,

dr. Gaál Szabolcs Barna

KORMÁNYZATI ELLENŐRZÉSI HIVATAL
ELNÖK