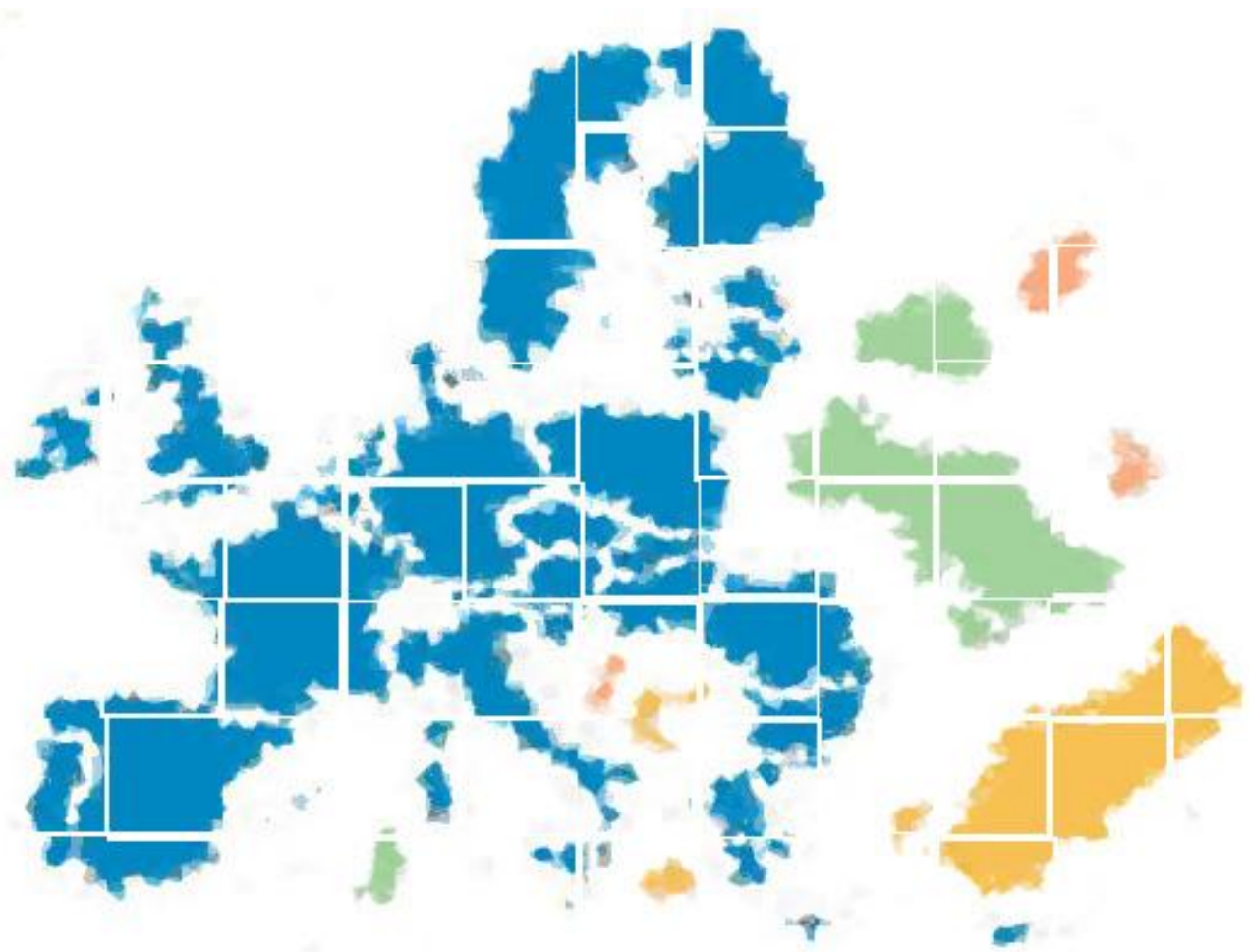


Frontiers of Democracy

From the Happiest Barrack to the Saddest Shopping Mall
Accountability, transparency and (anti-)corruption in Hungary

Anita Koncsik



Center for European Neighborhood Studies

The Center for European Neighborhood Studies (CENS) is an independent research center of the Central European University (CEU) located in Budapest, Hungary. Its main goal is to contribute to an informed international dialogue about the future of the European Union in the world, while capitalizing on its Central European perspective and regional embeddedness.

The strategic focus of the center is academic and policy-oriented research on the place and role of the European Union in its rapidly changing and increasingly volatile neighborhood. Through its research, CENS seeks to contribute to the understanding of the environment where the EU, its member states and partners need to (co)operate, and it aims at supporting the constructive development of these relations by providing opportunities for discussion and exchange. The center's geographic focus areas are Central and Eastern Europe, the Western Balkans and Turkey, Eastern Europe, the South Caucasus and Russia.

Frontiers of Democracy

Embedding Democratic Values in Moldova and Ukraine

Moldova and Ukraine, countries of the European Union's Eastern Partnership program, are undergoing complex processes of democratic transformation, but with weak embeddedness of democratic values and principles drawbacks can occur. It is embeddedness that helps to overcome the challenges of transformation and pushes countries beyond mere frontiers of democracy towards becoming strongly committed democratic communities. The goal of the [“Frontiers of Democracy: Embedding Democratic Values in Moldova and Ukraine”](#) project of the CEU Center for European Neighborhood Studies is to facilitate embedding democratic values in the societal ethos in Moldova and Ukraine by providing a forum for discussion of the difficulties of such a complex process and by drawing on the transition experience of the Visegrad countries (the Czech Republic, Hungary, Poland and Slovakia).



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The opinions expressed here are those of the author.

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About the author

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Anita Koncsik, dr. has been working as the head of the data protection and freedom of information program of the Hungarian Civil Liberties Union since 2016, where she does advocacy and impact litigation for the prevalence of fundamental rights (right to privacy and right to freedom of information). She also devotes attention to anti-corruption and transparency issues, since a transparent state is crucial for public accountability and the effective exercise of rights. Between 2014 and 2016, she was working as a lawyer and senior researcher at K-Monitor Public Benefit Association, where she did advocacy management and legal research. Within the frame of advocacy activities, she regularly monitored Hungarian legislative proposals on political finance, public procurements and freedom of information issues devoting special attention to Central and Eastern European examples and EU-level challenges. She also coordinated development of IT tools for anti-corruption, the latest of which was a redflag-tool introduced in 2015 that strengthened independent procurement risk monitoring in Hungary. In 2010, she became lecturer at Faculty of Law of the Eötvös Loránd University of Sciences (ELTE). She is currently writing her PhD-thesis on modeling legal and social phenomena with the help of AI (artificial intelligence).

From the Happiest Barrack to the Saddest Shopping Mall Accountability, transparency and (anti-)corruption in Hungary

Hungary came a long way during the past 25 years: from an eminent up-comer to the evolved form of state capture. As constitutional lawyer György Kolláth noted in 2010,¹ Hungary became, from being the happiest barrack, the saddest shopping mall. This means that in spite of being a great white hope, Hungary has failed to bring about real democratic change. The main characteristics of the transition can be described by the lack of lustration, impeachment and real social consultations, while the accelerated privatization and rushed switch to capitalist market structures threw the adaptability skills of the country off balance. Another remarkable feature of the newly established system showed itself within the ranks of the top-level decision makers where many members of the former communist elite have been present since the transition.

Top-down transitions have always required thorough monitoring and challenging the status quo from the perspective of citizens, who (as taxpayers) provide the utmost financial base for reforms affecting deeply their everyday life. K-Monitor is a grass-root watchdog NGO that puts emphasis on anti-corruption and advocacy in every case when taxpayers' money is at stake.

In order to tackle the biggest challenges a watchdog NGO faces in nowadays Hungary, let a brief summary of the most significant milestones marking Hungary's ride down the slope stand below, assessing the changes from an anti-corruption perspective.²

Characteristics of corruption in the last 25 years in Hungary

Compared to the former communist establishment before 1989, where the prevailing form of corruption was rather scarcity-driven petty corruption³

¹ György Kolláth. "Független döntéshozók helyett sok a szolgáló" [Servants instead of independent decision-makers] Interview. *Népszava* August 23, 2010. <http://nepszava.hu/cikk/338389-fuggetlen-donteshozok-helyett-sok-a-szolga?print=1>

² Corruption means, in this context, the abuse of entrusted power for private gain. It affects both the public and private sector, but mostly aims at reallocating and redistributing public goods. Corruption is also an economic indicator, since during its manifestation, balance on the market is distorted. It cannot just ruin but can boost economies for the mid-term. It is also a cultural phenomenon: social attitude toward corruption cannot be left out of consideration.

³ György Andory. "Közösségi gazdaságtan" [Community Economics] Lecture for Community Economics at Budapesti Műszaki Egyetem, 2013. http://www.uti.bme.hu/tantargyak?p_p_id=TantargyLista_WAR_bmeuti&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column:1&p_p_col_count=1&TantargyLista_WAR_bmeuti_action=showTantargy&TantargyLista_WAR_bmeuti_id=5316 [Accessed 10/07/2016]

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rooted in the deficiency of certain goods and services (e.g. paying bribe for getting a better car or getting it faster), the hallmark of the transitional period and the period until 2010 became a mostly supply-driven corruption meaning that big, multinational companies hunted for state contracts (e.g. consulting contracts,⁴ purchasing trams⁵ and construction of motorways⁶) while avoiding fair competition. The seeds of the problems were growing in the soil of unregulated political financing and the lack of a strict asset declaration system between 1990 and 2010. The unclear accumulation of wealth of political parties or politicians was deliberately unregulated,⁷ and loopholes in the regulatory framework enabled the lack of proper monitoring and sanctions for illicit secrecy.⁸ During this period, the political elite recognized the importance of party finance and fought for grey zone state transfers for their cronies and clientele.⁹ Meanwhile, public procurement became the most important payout channel enabling the allocation of state funds to government-friendly economic players. According to a statement published by two investigative journalists,¹⁰ and also re-emphasized by Ibolya Dávid (then leader of the Hungarian Democratic Forum, MDF) in 2004,¹¹ the two big parties (the Hungarian Socialist Party (MSZP) and Fidesz) at this time shared the financial gains from over-priced state investments (including constructing works and procurements) in a ratio of 70-30 percent. This statement also referred to a hidden agreement between leading parties to maintain a political (and economic) equilibrium even on the local level affecting local municipalities, council members and mayors. Little wonder that fragmented state capture manifested itself first on the local level, and real estate panamas of the 6th and 7th district of Budapest became infamous hallmarks of a scandalous epoch in the middle of the 2000s.¹²

⁴ Ildikó Koczó. "Az évtized top 30 magyar botránja" [Top 30 Hungarian scandals of the decade] *Manager Magazin* <http://www.vg.hu/manager-magazin/az-evtized-top-30-magyar-botranya-348132> [Accessed 10/07/2016]

⁵ Gábor Tenczer. "Atkári szerint Mesterházy a Combinót tolt" [Atkári says Mesterházy lobbied for Combino] *Index.hu* 16 November, 2011.

http://index.hu/belfold/budapest/2011/11/16/atkari_aggalyos_befolyasolasi_kiserletet_tett_az_alstom/

⁶ Brigitta Csikász. "Közbeszerzés még nem volt, a nyertes útépítő már aláírt" [Winner already signed a contract before starting tender procedure] *Hvg.hu* May 28, 2013.

http://hvg.hu/itthon/20130528_Piliscsaba_polgarmester_szerzodes_nyomoza

⁷ TI-Hungary. "TI quits negotiations on party and campaign financing law" Press release. June 1, 2012. http://transparency.hu/TI_quits_negotiations_on_party_and_campaign_financing_law?bind_info=page&bind_id=166

⁸ TI-Hungary. "Campaign spendings of the municipal elections are non-transparent" Press release. November 5, 2010. http://transparency.hu/Campaign_spendings_of_the_municipal_elections_are_non-transparent?bind_info=page&bind_id=166

⁹ Ferenc M.László. "Kampánypénzek: már támogatja a Fidesz, amit ellenzékben elutasított" [Campaign spending: Fidesz now supports what it refused in opposition] *Hvg.hu*. February 16, 2012. http://hvg.hu/itthon/20120216_Fidesz_MSZP_kampany_penzek_korrupcio

¹⁰ Attila Mong and Bence György. *Milliárdok Mágusai* [Mages of billions] Budapest: Vízkapu Kiadó, 2003.

¹¹ József Spirk and Péter Bohus. "A Fidesz be akarta perelni Dávid Ibolyát" [Fidesz intended to sue Ibolya Dávid] *Index.hu*. March 25, 2004. <http://index.hu/belfold/koverdavid03/>

¹² The panama consisted of purchasing expensive real estate by cronies much below market price who could re-sell them with great profit. The purchase itself sometimes meant explicit breach of local regulations on e.g. protection of historic buildings. In other cases, it just circumvented legal provisions leaning on legislative loopholes.

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Through the “ballot box revolution” of 2010 when, among others, the abovementioned scandals led to the victory of Fidesz, the governing party alliance of Fidesz and the Christian Democratic People’s Party (KDNP) gained a constitutional majority in the National Assembly, and started to elaborate the “real transition” using both its rhetoric and overwhelming legislative dominance as a tool for creating an evolved form of state capture. During the past six years, the legal and political system has changed profoundly in Hungary. The system of checks and balances became distorted, and the executive branch has been centralized significantly.¹³

The most important characteristic of this period is the prevalence of crony-tailored legislation, which has been used by the government more or less consistently to reshape key institutions as well as to gain total control over the redistribution of public funds in the country. For example, the National Assembly adopted and amended the Fundamental Law of Hungary several times,¹⁴ cut the competences of the Constitutional Court and put its loyal clientele into the ranks of the judicial body – a practice observable in the case of other captured institutions, as well¹⁵ (e.g. the State Audit Office,¹⁶ or the Prosecutor’s Office¹⁷). The government put great emphasis on redrawing markets (as illustrated by the case of monopolizing tobacco retail and providing licenses for trustworthy loyal friends¹⁸) that led to the spread of rent-seeking behavior supported by the state destroying fair competition.¹⁹

Another remarkable feature of the regime is the flourishing ad hoc favoritism that emerged through the transformation of eligibility criteria for nominating candidates for leading positions²⁰ and the application of hand-picked conflict

See: András Becker. “Ítélet a Hunvald-ügyben: Tyúklopási ügyé szelídült erzsébetvárosi ingatlanpanamák” [Court decision in the Hunvald-case: Erzsébetváros real estate panamas tamed into petty larceny] *ATLÁTSZÓ.HU* July 2, 2014. <https://atlatzso.hu/2014/07/02/itelet-a-hunvald-ugyben-tyuklopasi-uggye-szelidult-erzsebetvarosi-ingatlanpanamak/>

¹³ K-MONITOR. *Jobban teljesít?* [Performs better?] Evaluation report *K.BLOG*, April 2, 2014. http://k-monitor.hu/files/page/k-monitor_ciklus_pdf.pdf

¹⁴ Magyarország Alaptörvénye [Fundamental Law of Hungary] English version is available at: <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf> [Accessed 10/07/2016]

¹⁵ See footnote 15.

¹⁶ INDEX.HU “Trükközött a költségtérítéssel a számvevőszéki elnöknek jelölt Domokos” [SAO president candidate Domokos played with reimbursement] June 16, 2010. <http://index.hu/belfold/2010/06/16/trukkozott-a-koltsegtertitessel-a-szamvevoszeki-elnoknek-jelolt-domokos/>

¹⁷ Babet Oroszi and Balázs M. Tóth. “Polt Péter kinevezése óta meredeken zuhan a politikai korrupciós ügyekben indított büntetőeljárások száma” [Since Peter Polt had been appointed, number of political corruption investigations have sunk deeply] *ÁTLÁTSZÓ.HU* February 6, 2015. <https://atlatzso.hu/2015/02/06/polt-peter-kinevezese-ota-meredeken-zuhan-a-politikai-korrupcios-ugyekben-inditott-buntetoeljarasok-szama/>

¹⁸ Gergő Nagy and István M. Szabó. “Trafikmutyi: idegenek, képviselők és haverok sora” [Tobacco scam: lots of strangers, MPs and cronies] *HVG.HU*, April 25, 2013. http://hvg.hu/gazdasag/20130425_Trafikmutyi_idegenek_kepviselek_polgarmes

¹⁹ Roland Baksa. “Földöntúli nyereséget hozott a trafikozás” [Tobacco retails resulted in enormous profit] *HVG.HU*, November 13, 2015. http://hvg.hu/gazdasag/20151112_Ezert_erte_meg_a_trafikmutyiMultimilliom

²⁰ E.g. Lex Töröcskei [Motion Bill nr.T/4656 on acts establishing the central budget of Hungary in 2012 [available at: <http://www.parlament.hu/irom39/04656/04656.pdf>] enabled István Töröcskei to become

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of interest rules for state subsidy, public procurements, etc.²¹ This power configuration resulted in an evolved state capture, the reinforced pillars of which are the Prosecutor's Office, the Central Bank of Hungary²² and the centralized Prime Minister's Office.²³ Execution of power shows similarity on many levels with medieval feudalism, e.g. in the rise and fluctuation of oligarchs close to the government. The case of Lajos Simicska (college friend of Prime Minister Orbán, former central figure of the economic hinterland of Fidesz, media mogul and owner of a major construction company) provides a colorful example how fractures between old fellows can also lead to severe economic consequences and that challenging the hierarchy of the food chain is not recommended. Simicska's flagship company, Közgép, was one of the top construction companies in 2014, but remained without almost any new contracts after his conflict with the Prime Minister in 2015.²⁴ The company was even banned from public procurements by the Public Procurement Authority for submitting false information (although the court eventually annulled this decision, stating that it was in the public interest that the company could apply on public tenders).²⁵ Still, figures showed that it has not won almost any public tenders last year.²⁶ At the same time, removing officials (earlier believed to be untouchable henchmen of Simicska) could be observed, and the only retaliation was harsh media criticism by formerly pro-government press organs owned by the mogul. In addition, statements by influential thinkers close to the government showed that dubious actions of the government shall be interpreted as the final touches of the transition of 1989, and are in fact manifestations of rediscovering the national interest.²⁷ András Láncki, de facto chief ideologist of Viktor Orbán and chairman of the Board of Trustees of Századvég Foundation (a think tank awarded with public contracts for "policy research and advisory services" worth of billions of

head of Government Debt Management Agency by applying less strict conflict of interest rules affecting the position, and thus allowing him to remain also president of Széchenyi Bank.

²¹ See the Tiborcz case investigated by OLAF – András Pethő and Anita Vorák. "Rácuppant Brüsszel Orbán vejének ügyeire" [Brussels went off on the cases of Orbán's son-in-law] *direkt36.hu*, November 18, 2015. <http://www.direkt36.hu/2015/11/18/huracuppant-brusszel-orban-vejenek-ugyeire/>

²² Mihály Kasnyik. "Ezt a birodalmat akarta eldugni előlünk Matolcsy" [This empire was intended to be hidden by Matolcsy] *444.hu*, April 21, 2016, <http://444.hu/2016/04/21/ezt-a-birodalmat-akarta-eldugni-elolunk-matolcsy>

²³ HVG.HU "Az OLAF még nem vizsgálja Orbán falujának kisvasútját" [OLAF is not investigating the dinkey line of Orbán's village, yet] HVG.HU, June 22, 2016. http://hvg.hu/gazdasag/20160622_az_olaf_meg_nem_vizsgalja_orban_falujanak_kisvasutjat

²⁴ 444.HU. "Új klán lép Simicska Lajos helyébe, mikor véget ér a csatájuk Orbánnal" [Simicska will be replaced by a new clan after ending the war with Orbán] *444.hu* September 1, 2014, <http://444.hu/2014/09/01/uj-klan-lep-simicska-lajos-helyebe-mikor-veget-er-a-csatajuk-orbannal/>

²⁵ Péter Magyar. "Bíróság: Közérdek, hogy a Közgép újra éljen" [Court: It is of public interest that Közgép can live again] *444.hu*, September 16, 2015. <http://444.hu/2015/09/16/birosag-kozerdek-hogv-a-kozgep-ujra-eljen/>

²⁶ Yvette Szabó. "A számokon is látszik a Simicska-Orbán háború" [Even numbers show the war between Simicska and Orbán] VS.HU, February 11, 2015, <http://vs.hu/gazdasag/osszes/a-szamokon-is-latszik-a-simicska-orban-haboru>

²⁷ Gellért Rajcsányi. "Orbán Viktor valósítja meg a rendszerváltást" – Tellér Gyula és Láncki András az orbáni útról [Viktor Orbán is accomplishing the regime change - Gyula Tellér and András Láncki about the Orbánian way] MANDINER.HU, July 6, 2015. http://mandiner.hu/cikk/20150702_orban_viktor_valositja_meg_a_rendszervaltast_interju_lanczi_andras_teller_gyula

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forints on a regular basis) stated openly that what people nowadays call corruption is practically the most important policy of Fidesz. According to his interpretation, the word ‘corruption’ underwent a broad extension and the expression became equal with the absolute refusal of the Orbanian politics.²⁸ In the meantime, a hibernated and incompetent opposition just observes changes (in some cases happening at breakneck speed). There is therefore an increased need for watchdog NGOs and civic engagement.

The biggest anti-corruption challenges for an NGO in Hungary

The biggest challenges for a watchdog NGO under the described circumstances – besides sometimes struggling for its pure existence – are compiled in the Anti-Corruption Report (ARC)²⁹ of the European Union.³⁰ The following subchapters will emphasize the core features of these challenges (referring to their current institutional and regulatory framework) and will describe what K-Monitor does to improve transparency in the given field.

Party finance and lobbying

The legislative framework for political finance in Hungary consists of two pillars: namely, the Act on Party Finance³¹ and the act on the electoral campaign costs of MPs.³² The scope of the latter does not cover the municipal and the European Parliamentary elections, opening space to create a non-transparent playground for parties. Political parties in Hungary get most of their financing from direct state funding. Contributions from entities benefiting from state support, from foreign states and from anonymous donors are banned. The reporting duty of the parties, however, is handled with generosity by the auditing agencies. The State Audit Office (SAO) is tasked with verifying the financing of political parties, carrying out a legality check every second year. It is also endowed with the power to conduct in-depth investigations related to the electoral campaign spending of parties,

²⁸ István Czirják. “Lánczi András: Viccpártok színvonalán áll az ellenzék” [András Lánczi: The opposition is on the level of a joke party] *Magyar Idők*, December 21, 2015.

²⁹ *EU Anti-Corruption Report*, Report from the Commission to the Council and the EP, Brussels, 2014. http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

³⁰ K-Monitor is a local correspondent for the ACR, which means it provides updates for the content of the Hungarian chapter on a regular basis. The Hungarian chapter is available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf

³¹ 1989. évi XXXIII törvény a pártok működéséről és gazdálkodásáról [Act XXXIII of 1989 on the Operation and Financial Management of Political Parties], available at: http://www.valasztas.hu/en/parval2010/296/296_2_3.html [Accessed 10/07/2016]

³² 2013. évi LXXXVII. törvény az országgyűlési képviselők választása kampányköltségeinek átláthatóvá tételéről [Act LXXXVII of 2013 on the Transparency of Campaign Costs related to the Election of the Members of the Parliament] available at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=161284.243512 [Accessed 10/07/2016].

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but in practice, it just examines formal legal compliance with the rules, and it does not require factual evidence for identifying the accurate source of incomes.³³

As for the electoral campaign, the new law regulated the eligibility criteria for being entitled to a maximum amount of state aid (both in the case of individual candidates and their nominating organizations), and maximized the amount of disburseable campaign costs. During the electoral period of 2014, it could be observed that the new campaign financing mechanisms allowed for dozens of parties without tangible social support (so-called sham parties) to apply for massive state campaign funds.³⁴ The joint research of transparency NGOs suggested that campaigns were still characterized by overspending - not reflected in the official reports of the parties.³⁵

K-Monitor teamed up with other NGOs and created a tool to visualize the results of a civil campaign monitor (CCM)³⁶ that aimed at trying to estimate parties' real campaign costs both on local and national level. Figures showed that, for example, in contrast to the self-declaration of Fidesz (i.e. 3 million EUR, an amount unchallenged by the SAO³⁷) the party might have spent 4 times more. The estimate included the costs of the campaign of the government's self-promotion and the activities of the Civic Collaboration Forum (CÖF), a GONGO actively involved in the electoral campaign on the side of the governing party.

On the local level, the incumbent party alliance also outspent the other parties fivefold.³⁸ Besides, investigative journalists also excavated and reported on vote-buying, and evidence was provided³⁹ that public employment positions were used as illegal campaign incentives in smaller municipalities

³³ GROUP OF STATES AGAINST CORRUPTION [GRECO]. Second Compliance Report on Hungary available at:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2014\)10_Second_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2014)10_Second_Hungary_EN.pdf) [Accessed 10/07/2016].

³⁴ ÁTLÁTSZÓ, K-MONITOR AND TI-HUNGARY. *Magyarországon a kampánykorrupció jobban teljesített* [Campaign corruption performed better in Hungary]. Online report, 2014, available at: http://www.transparency.hu/Magyarorszagon_a_kampanykorrupcio_jobban_teljesített [accessed 10/07/2016].

³⁵ See previous footnote.

³⁶ ATLÁTSZÓ.HU, K-MONITOR, POLITICAL CAPITAL and TI-HUNGARY. *Képmutatás I-II.* [Hypocrisy I-II.]. Online chart 2014 (I) 2015 (II), available at: <http://kepmutatas.hu/> [Accessed 10/07/2016].

³⁷ *Az Állami Számvevőszék jelentése: Kampánypénzek ellenőrzése – a 2014. évi országgyűlési képviselő-választási kampányokra fordított pénzeszközök elszámolásának ellenőrzése a képviselőlethez jutott jelölő szervezeteknél* [SAO report on the audit of campaign funds – audit conducted on nominating organizations obtaining parliamentary representation] Online report, 2015, available at: <https://www.asz.hu/storage/files/files/%C3%96sszes%20jelent%C3%A9s/2015/15057j000.pdf?download=true> [Accessed 10/07/2016]

³⁸ Benjámín Novák. "With gov't help Fidesz outspent opposition 5 to 1 in October elections." *The Budapest Beacon*, November 21, 2014. <http://budapestbeacon.com/politics/with-govt-help-fidesz-outspent-opposition-5-to-1-in-october-elections/>

³⁹ ATLÁTSZÓ.HU, K-MONITOR, POLITICAL CAPITAL and TI-HUNGARY. *Szegények voksa: közmunka és a választás tisztaságának kockázatai* [Vote of the poor: Public employment and the risks of fair elections] Online report, 2015 available at: http://atlatszo.hu/wp-content/uploads/2015/02/PC-Atlatszo-TI-KM_ASzegenyekVoksaKozmunkaEsAValasztasTisztasaganakKockazatai_150219-1.pdf [Accessed 10/07/2016].

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of underdeveloped regions.⁴⁰ According to the act on the electoral campaign costs of MPs, the Hungarian State Treasury also examined the campaign spending of political parties and individual candidates, but its investigation into whether state subsidies granted from the central budget were administered correctly was limited to matching invoices to cost items. It did not investigate all aspects of the invoices, e.g. whether there was a conflict of interest between the issuer and the candidate was overlooked, and it also did not look into other campaign resources. The Hungarian State Treasury, however, is embedded in the branch of the executive, and is not considered independent from the government. Therefore, the depth of the investigations raises certain doubts.

It is remarkable that NGOs, including K-Monitor, had to file data requests on the exact details of campaign spending disbursement reports (i.e. the so-called invoice summarizing forms handled by the Treasury), because the Treasury did not make them public. At first, the requests were denied trying to lean on the relevant freedom of information regulations,⁴¹ but the organizations then sought legal remedies and the court rendered several legally binding sentences⁴² stating that the requested information fell into the scope of data of public interest.⁴³

Comprehensive lobby or “revolving door” regulations do not exist in Hungary, in spite of the fact that according to a governmental decree, government officials have to inform their superiors about their meetings with lobbyists.⁴⁴ The existing limited regulations are rather blank and lack sanctions as well as obligations to provide basis for measuring the legislative footprint for lobbyists.

⁴⁰András Becker. “Közmunka csak a megfelelő voksért: nyílt szavazás volt Borsodban” [Public employment only for the accurate vote: open elections in Borsod] *ÁTLÁTSZÓ.HU*, October 14, 2014. <http://atlatszo.hu/2014/10/14/kozmunka-csak-a-megfelelo-voksert-nyilt-szavazas-volt-borsodban/>.

⁴¹ 2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról [Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information]. Available at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139257.262814 [Accessed 10/07/2016].

⁴² Wording of the verdicts of second instance is not at disposal yet. For the former decisions, see: FŐVÁROSI TÖRVÉNYSZÉK 37.P.22.861/2014/7. számú határozat [Decision 37.P.22.861/2014/7. of the Metropolitan Court] available at:

http://www.transparency.hu/uploads/docs/MAK_kozerdeku_adat_kiadasa_itelet.pdf [Accessed 10/07/2016]; FŐVÁROSI TÖRVÉNYSZÉK 37.P.22.861/2014/7. számú határozat [Decision 37.P.22.861/2014/7. of the Metropolitan Court] 62.P.23104/2014/5. számú határozat [Decision 62.P.23104/2014/5. of the Metropolitan Court] Available at: <http://atlatszo.hu/wp-content/uploads/2014/09/09-16-kamp%C3%A1nyk%C3%B6lts%C3%A9gek-els%C5%91fok.pdf> [Accessed 10/07/2016].

⁴³ With the exception of personal data of natural persons entering into contract with candidates.

⁴⁴ 50/2013. (II. 25.) Kormányrendelet Az államigazgatási szervek integritásirányítási rendszeréről és az érdekérvényesítők fogadásának rendjéről. [Gov. Decree No. 50/2013. (II. 25.) on the *Integrity Management System of Organs of Public Administration and on the Procedural Rules Applicable to Dealing with Lobbyists.*] <http://www.magyarokozlony.hu/pdf/16246> [Accessed 10/07/2016].

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Asset declarations

The Act on the National Assembly⁴⁵ regulates the mandatory declaration of assets of elected officials, but it leaves up to a parliamentary committee⁴⁶ to preserve the declarations of the relatives of MPs. Citizens can submit requests only about details they think would be likely to be contained in the declarations, but they cannot look into them in person.

In its 4th evaluation Report,⁴⁷ GRECO criticized - among other issues - the system of asset disclosure, noting that it does not provide effective controls and sanctions. It recalled that “the asset declarations have not being a serious and efficient tool,” as the content of the declarations is not checked by any authority ex officio, unless a substantiated complaint has been initiated; public scrutiny of the forms is difficult as these are often handwritten and/or scanned documents; declarations concerning relatives are not public at all and the authorities’ scrutiny of these is only done in relation to a complaint against an MP. The organization recommended that MPs disclose outside occupations and activities of a non-financial character; and that all declarations are made by electronic means. Moreover, it noted that “appropriate measures should be taken to ensure effective supervision and enforcement of the existing - and yet to be established - rules on the conduct, conflicts of interest and interest declarations of MPs and that adequate and proportionate sanctions be introduced to that end.” The government so far has turned a blind eye toward addressing these issues.

K-Monitor has organized an asset declaration digitizing event (the so-called Dawn of the Asset Declarations⁴⁸) 2 years in a row in order to clean and preserve data of the published (mostly handwritten and scanned) pdf documents of MPs’ asset declarations. With the help of volunteers, the event aimed at creating a database for journalists and analysts, while raising awareness about the necessity of reforms in the field.

⁴⁵ 2012. évi XXXVI. tv az Országgyűlésről [Act XXXVI of 2012 on the National Assembly]

http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=148174 English version is available at:
<http://www.parlament.hu/documents/125505/138409/Act+XXXVI+of+2012+on+the+National+Assembly/b53726b7-12a8-4d93-acef-140feef44395>

⁴⁶ Audit Committee for Immunity, Conflict of Interest, Disciplinary and Credentials

⁴⁷ GRECO’s *FOURTH EVALUATION ROUND - Corruption prevention in respect of members of parliament, judges and prosecutors* Online report, 2015.

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep%282014%2910_Hungary_EN.pdf [Accessed 10/07/2016].

⁴⁸ For a description of the event, see:

http://k.blog.hu/2016/01/31/tegyel_atlathatova_egy_kepviselot_ma_ejjel_vegvel_reszt_a_vagyonnyilatkozatok_hajnaljan_online

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Freedom of information

The act on the Right of Informational Self-Determination and on Freedom of Information⁴⁹ was adopted in 2011, but this regulatory framework has been deteriorating step by step ever since.

The most important milestones on this road were:

- In 2013, a motion proposal made it possible to withhold data from the public, when it was enacted that “*the requests for data with the purpose of a comprehensive, account level as well as an itemized control of the financial management of the body with public service functions were regulated in specific relevant laws,*”⁵⁰ not allowing to file public data requests related to them. This provision basically narrowed the scope of public audit in cases of financial management data of public bodies –in reaction to former comprehensive requests submitted by investigative journalists.
- In 2015, a legislative package amended the act aiming at discouraging people from filing public data requests.⁵¹ According to the modified legal provisions, data owners were entitled to easily and arbitrarily charge data requesters not only for copying, processing and sending data, but also for fulfilling data requests as such. Under this regulation, it is up to their estimation (i.e. discretion) if they consider the fulfillment of requests disproportionate work.⁵² Data owners could also deny requests relying on the argument that the requested data is a “preparatory document” that could also be used in the future during the preparation of a certain – closer non-definable – decision,⁵³ or could restrict the fulfillment of the request based on copyright issues. The amended provisions were harshly criticized by watchdog NGOs that considered the modification of the law unconstitutional.⁵⁴

⁴⁹ 2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról [Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information].

http://njt.hu/cgi_bin/njt_doc.cgi?docid=139257.262814. [Accessed 10/07/2016].

⁵⁰ Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information https://www.naih.hu/files/Act-CXII-of-2011_EN_23June2016.pdf [Accessed 10/07/2016].

⁵¹ T/5404. számú törvényjavaslat az információs önrendelkezési jogról és az információszabadságról szóló

2011. évi CXII. törvény, továbbá egyes más törvények módosításáról [Bill nr. T/5404 on the amendment of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information and other related acts] <http://www.parlament.hu/irom40/05404/05404.pdf> [Accessed 10/07/2016].

⁵² The executive decree on the detailed implementation of the law is still missing.

⁵³ To emphasize the severity of the problem: based on these new questionable provisions, data on the Daimler-investigation in 2010 could not become public. The data owner first tried to argue using the same reasons, namely the report on the internal investigation conducted by the Hungarian National Asset Management Inc. (HNAM) might be used for further – currently non-definable – investigations in the future. But the act in effect allowed K-Monitor to win the lawsuit against the data owner. See: K-MONITOR. “Pert nyertünk, ki kell adni a Daimler-ügyről készült jelentést” [Successful lawsuit – the Daimler report has to go public] *K.BLOG*, April 10, 2015. http://k.blog.hu/2015/04/10/pert_nyertunk_ki_kell_adni_a_daimler-ugyrol_keszult_jelentest

⁵⁴ K-MONITOR and TASZ, “Nyílt level- Felszólítjuk Áder Jánost, hogy forduljon az Alkotmánybírósághoz!” [Open letter - Áder János is called upon to turn to the Constitutional Court]

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- In addition, sectoral laws also contain serious restrictions on the scope of freedom of information when it comes to strategic investments⁵⁵ or state-owned enterprises.⁵⁶ The attempt to withhold information about the contracts and spending of the foundations of the Central Bank of Hungary stand as such a – failed – example.

Concerning the freedom of information (since the prevalence of this fundamental right is essential for the work of an open data NGO), K-Monitor thoroughly monitors the legislation and advocates, usually in cooperation with other NGOs, the withdrawal or abolishment of unconstitutional provisions of laws restricting transparency.⁵⁷ In brief, the outcome of the government forgetting about the provision enacted in the Fundamental Law,⁵⁸ namely that “everyone shall have the right [...] to access and disseminate data of public interest.”

Public procurements, open contracting

Public procurement in Hungary is the most important public pay-out channel, it is therefore one of the most corruption-prone areas. It also accounts for a significant proportion of the Hungarian economy.⁵⁹ In November 2015, new legislation entered into force.⁶⁰ The draft proposal was adopted by the National Assembly without proper social consultation and was strongly criticized by K-Monitor⁶¹ e.g. for:

- still setting vague conflict of interest rules;
- lacking guarantees for the independence of the Public Procurement Authority;

July 8, 2015. <http://tasz.hu/informacioszabadsag/felszolitjuk-ader-janost-hogy-forduljon-az-alkotmanybirosaghoz> [Accessed 10/07/2016].

⁵⁵ Here, we would like to refer to the secrecy around the business and technical information of the planned nuclear power plant extension in Paks that raised concerns on European level, as well (e.g. omitting proper procurement procedures, the compliance of the act with Directive 2003/4/EC, the transparency of state aids, and certain stipulations of the agreement impugned by the Euratom and the EC).

⁵⁶ Legislators have lately tried to classify information about the operation and expenditures of state-owned businesses and foundations by entitling data owners to refuse fulfilling public data requests referring to vaguely formulated business interests.

⁵⁷ E.g.: it was the case with the legislative package in footnote 50, or signing an amicus curiae letter for the Constitutional Court in the Paks II case. See ÁTLÁTSZÓ.HU, ENERGIAKLUB, K-MONITOR, TASZ and TI-HUNGARY. *Amicus curiae levél* [Amicus Curiae letter] June 9, 2015. http://transparency.hu/uploads/docs/amicus_c.pdf [Accessed 10/07/2016].

⁵⁸ Magyarország Alaptörvénye [Fundamental Law of Hungary] English version is available at: <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

⁵⁹ The total amount of procured goods, services and constructions are worth 6-8% of the Hungarian GDP.

⁶⁰2015. évi CXLI. törvény a közbeszerzésekről. [Act CXLI of 2015 on Public Procurements] http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1500143.TV

⁶¹ Anita Koncsik. “Dübörgés és Csúsztatás a Törvénygyárban – avagy itt a K-Monitor véleménye az új közbeszerzési törvény tervezetéről” [The Billfactory Steams and Blows Smoke Ahead – here it comes the position of K-Monitor on the new bill on public procurements] *K.BLOG* May 21, 2015. http://k.blog.hu/2015/05/21/duborges_es_csusztatasa_torvenygyarban_avagy_itt_a_k_monitor_velemenye_az_uj_kozbeszerzesi_torveny.

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- extended use of procedures with only 3 (crony)bidders without transparent eligibility criteria and evaluation method applied by the contracting authorities;
- omitted introduction of e-procurements, and
- not improving data standards of the hardly searchable procurement database containing data of very bad quality.

Besides monitoring legislative amendments, K-Monitor, together with other NGOs, has taken significant steps to enable effective ex ante monitoring of procurement calls and notices by developing an automatized online redflag-tool.⁶² Tailor-made procurements and their patterns can be spotted with the help of pre-programmed indicators filtering the wording of the notices and flagging all the problems according to more than 40 angles. The set of indicators contains, among others, the low number of bids, an extremely high final value of the tendered goods/works that differs from the estimated value, or tailor-made eligibility criteria meeting the demands of one peculiar bidder. The target groups of the project are investigative journalists, watchdog NGOs, (not reluctant) monitoring authorities and citizens who try to learn where their money goes. The online watchdog system has combed through almost 16.000 public procurement documents, and allowed K-Monitor to create the redflag-profiles of contracting authorities that have spent the most public funds since 2013.⁶³

Whistleblower protection

Although the European Commission did not articulate explicit recommendations in the ACR, it addressed the protection of whistleblowers and the shortcomings of the current regulation. The new act on whistleblower protection,⁶⁴ which entered into force on January 1, 2014, defines whistleblowing as an action that does not only refer to the disclosure of certain data, but reporting a problem to the responsible authority, as well. According to the regulatory and practical features of the existing system, whistleblower protection in Hungary can be described as a structural system leaning toward anti-retaliation with spurs of a bounty model.⁶⁵ The most serious risks and shortcomings of the current regulations can be addressed as follows:⁶⁶

⁶² The tool is available at: www.redflags.eu

⁶³ Anita Koncsik and Krisztina Vamos. "This is how public procurers spend your money" *K.BLOG* June 6, 2016. http://k.blog.hu/2016/06/06/redflags_english.

⁶⁴ Act CLXV of 2013 on complaints and public interest disclosures. The law is available in English at: http://corruptionprevention.gov.hu/download/7/a2/90000/KIM%20555_2013-4.pdf

⁶⁵ Anita Koncsik. "The current state of whistleblower protection in Hungary" Paper presented at *A Challenge for Czech Republic: Whistleblowing the way to protect the financial interests of the EU*. Prague, September 15, 2015. http://www.bezkorupce.cz/wp-content/uploads/2014/08/sbornik_en_web.pdf.

⁶⁶ The following points are a summary of the submission of HCLU and K-Monitor to the special rapporteur on the promotion and protection of the right to freedom of opinion and expression. See HCLU and K-Monitor. "Submission on the Hungarian legal framework and practices governing

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- Anonymous reporting is not supported by law and guarantees are missing to safeguard unbiased, professional and fair investigation of the reports.
- As for malicious reporting, detrimental measures against the whistleblower could only be justified if their misconduct is proven. In case of suspicion of wrongdoing, however, proceedings aiming to reveal a possible crime are not considered detrimental measures.
- The law does not explicitly release whistleblowers from their obligation of keeping secrets and confidential information.
- No protection is guaranteed for whistleblowers turning directly to the public, and their relatives are not protected against any kind of retaliations.
- Financial security or legal aid for whistleblowers remaining without income is not provided by law.
- Detailed executive provisions of the act have not even been drafted yet.

Hungary's political and economic system has been transformed into an evolved form of state capture, where employees of state-owned companies, oversight authorities and ministries have a first-hand experience of the rampage of the "whoever is not with us is not at all" machine. People fearing for their or for their families' existence turn a blind eye to irregularities, corruption and misuse of power, while there is a weak and holey legislation on the protection of whistleblowers depriving decent people from the hope of social justice.

Therefore, K-Monitor teamed up with Átlátszó.hu and TI-Hungary to found an alliance aiming to provide legal, financial and psychological help for people who dare to blow the whistle in today's Hungary. The alliance is called BEVÉD,⁶⁷ and its purpose is to shed light on as many instances of misuse of power as possible through helping whistleblowers to publish and transfer their evidences to the adequate recipients and get legal help if their deeds trigger retaliation. The alliance also tries to raise funds for providing financial help for whistleblowers with the purpose of securing their existence during their public ordeals.

whistleblower protection" August 2015. <https://freedex.org/resources/sources-and-whistleblowers/> [Accessed 10/07/2016].

⁶⁷ For more information, see: <http://beved.hu/>

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