**Background information on the influence of corruption on human rights in Hungary for the UN High Commissioner for Human Rights**

The Ministry of Justice of Hungary made request for information from the President of the National Office for the Judiciary, the Prosecutor General of Hungary and the Commissioner for Fundamental Rights, and used the questionnaire of the Office of the UN High Commissioner for Human Rights and all available information sources as well. On the basis of this retrieved information following can be concluded:

Question 7. The negative effect of corruption poses complex problem on the exercising of human rights. The criminal law is a specific territory of anti-corruption efforts. The wide range of comprehensive regulation of corruption acts, including the operational areas of public and private sector can be mentioned as the example of good practice of regulation. The Hungarian criminal substantive law extends the protection of criminal law from the criminality of active and passive side of public and economic corruption to the judicial, arbitral and public proceedings. (Active or passive bribery in the judicial or public proceedings can be committed in relation with the ongoing or the pending proceedings of the International Criminal Court established by the compulsory resolution of the UN Security Council, and of the Court of Justice of the European Union. The public corruption crimes can be committed in connection with foreign public officials as well.)

The Group of States against Corruption (GRECO) recognizes the definition of Hungarian substantive law of economic corruption as a good practice. This regulation of criminal protection against corruption committed in the private sector provides protection beyond the European Council’s Criminal Law Convention on Corruption (which was promulgated by the Act XLIX of 2002). This completes the Section 2 of §298 and the Sections 2 and 3 of §299 of the Criminal Code, which criminalizes influence peddling and acquisition of influence for consideration by persons working for or on behalf of an economic organization.

Good practice in the field of exploring the corruption crimes in case of an offender who helps to solve the crime – or in case of passive commitment, if the offender hands over the unlawful advantage - is to enable the unlimited reduction of penalty, or exceptionally the dismissal of penalty. (From 1st July 2015 the application of this legal instrument is also possible on influence peddling and acquisition of influence for consideration). During the exploration of these crimes the covert methods play a prominent role such as, covert investigation and covert information gathering, as well as the use of covert investigator or trap and an integrity test. In relation to the above mentioned, the good practice of using these instruments is that it bounded to specified laws and it is subject of strict conditions. The court decides whether to use them or not, and if the procedural guarantees of the execution are not kept, the acquired evidence cannot be applied.

The denunciation of corruption crimes is open to everyone, it is obligatory for public officials and since 1st July 2015 it exists in all corruption offenses.

§175 and Section 1 of §192 of the Criminal Proceedings Act (Be.) enables the dismissal of accusation and respectively the termination of the investigation, if the person, reasonably suspected of having committed the criminal offence, co-operates in the investigation or proves to contribute to the criminal case in such extent that the interests of national security or law enforcement takes priority over the interest of the state to enforce its criminal claim. On the basis of chapter XXVI of the Criminal Proceedings Act the possibility of waiver of right to trial exists if the accused persons confess before the accusation and admit their guiltiness and waivers their right to trial. In this case the duration of the imprisonment is maximized in lower length than the otherwise normative, in return for the conduct of the offender that facilitates the evidence procedure.

According to Section 1 of §74 of the Criminal Code confiscation of property is to be ordered to any financial gain or advantage resulting from criminal activities, obtained by the offender in the course or in connection with the criminal act. The obligation of confiscation prevails also in the case of corruption crimes. The regulation of confiscation declares that besides the confiscation of obtained advantage, the Criminal Code also imposes the confiscation to any given or promised unlawful gain. According to Subsection f) Section 1 of §74 of the Criminal Code, as far as the pecuniary advantage dedicated for corruption is removed from the possession of the perpetrator of active corruption, but it hasn’t entered the passive perpetrator’s possession yet, the confiscation is to be ordered against the perpetrator of active corruption on the subject of the promised financial gain.[[1]](#footnote-1)

In the course of judiciary structure’s operation the combat against corruption could be provided by proper regulation, transparency, publicity and the predominance of fundamental rights on both national and local level. The President of the National Office for the Judiciary – responsible for the administration of the judicial system – advances the predictability and transparency of the operation of the judiciary structure by drafting bylaws and recommendations, from among, the Ethical Codex (adopted in November 2014) and the integrity statute of the judges (work in progress) should be emphasized, the latter is specially dealing with corruption risk and handling of corruption.

The publicity of the courts is ensured by its central and own websites, alike with reports of the presidents of the regional court, regional courts of appeal and the National Office for the Judiciary that are available for the public. The democratically elected supreme self-governing body, the independent National Judicial Council also supports and enhances the judicial integrity.

Question 8. The State provides the efficient protection of the witnesses of corruption crimes through the complex systems of the criminal substantive law and criminal procedural law.

§96 of the Criminal Proceedings Act enables – if requested – the confidential treatment of personal data of the witnesses, this way only the proceeding authority has access to that. If the confidential treatment is requested, the copies of documents containing the personal data of the witness may only be given to the participants in the criminal proceedings without the personal data. The confidential treatment may only be terminated with the consent of the witness. The investigating judge can place the witness under special protection on the basis of Subsection d) of Section 1 of §207 of the Criminal Proceedings Act and in case of fulfillment of the conditions listed in §97 of the Criminal Proceedings Act. The witnesses can be placed under special protection if their testimony relates to substantial circumstances of a particularly serious case, the evidence expected by their testimony cannot be substituted, their identity, their place of stay and the fact that they are intended to be heard by the prosecutor or the investigating authority is not known by the accused and the defence counsel, and the exposure of the identity of the witnesses would seriously jeopardize their own or their relatives’ life, physical integrity or personal freedom. Based on the Section 1 of §98 of the Criminal Proceedings Act, in exceptionally justified cases the chairperson of the panel of the court proceeding, the prosecutor or the investigating authority may initiate special protection for the following participants of the court proceeding: the defendant, the defence counsel, the victim, the other interested parties, the representative of the victim or the other interested parties, furthermore the witness, the expert, the advisor, the interpreter, the official witness, or any other person, taking into consideration the list above. If the personal protection alone cannot guarantee the protection of the person or witness in threat then the protection should be provided through the Protection Program. In this case, the place of residence or stay, name or identity could be changed.[[2]](#footnote-2)

According to Section 1 of §4 of Act CLXV of 2013 on complaints and public announcements, the public announcements can be made also through a secured electronic system. The Office of the Commissioner for Fundamental Rights operates and maintains the electronic system that serves for publishing and registering the public announcements. Therefore the electronic system should be configured that way that the authorities can keep contact with public announcer based on the unique identification number and the password given by the announcer.[[3]](#footnote-3) At the same time the announcers can request that their personal data may only be available to the Commissioner and the Office of the Commissioner for Fundamental Rights.[[4]](#footnote-4) The Commissioner for Fundamental Rights analyzes the practice of handling the public announcements by other authorities in compliance with the law on complaints and public announcements, and if requested, the proper management of certain public announcements. The Commissioner for Fundamental Rights maintains the electronic system that serves for publishing and registering the public announcements.[[5]](#footnote-5) The employees of the Office of the Commissioner for Fundamental Rights dealing with the direct examination of the public announcements exercise their functions under security clearance and possess personal security certification.

The Office of Justice – under the governance of the Minister of Justice – provides victim protection. In this framework, the Office provides information about the rights and possibilities of the victims of criminal acts and offences against property. It provides emotional support; facilitates the vindication of interest; provides legal assistance, if required even an attorney. In case of crisis, it can provide immediate financial aid if the request submitted within 5 days of perpetration.

The witness protection and victim assistance is the priority of the President of the National Office for the Judiciary (NOJ) and it has become a nationwide program. More information about the program and the current accomplishments and the reports of the President of NOJ are available on the webpage of the NOJ (http://birosag.hu/en). The courts publish the contact information of caretakers’ of witnesses on that webpage as well. The training of professionals has particular importance; separate programs exist to improve sensitivity of judges towards the victims and members of vulnerable groups. One of the strategic goals of the President of the NOJ is to facilitate the accessibility of courts, raise awareness of the clients and costumer contact information. The structures of the courts together with their official webpages are designed by prioritizing these viewpoints. These webpages advance the citizens’ legal awareness by providing comprehensive information which is one of the foundations of the fundamental rights.

Question 10. Due to the right of supervision, the Prosecutor can monitor the execution of the sanctions and restrictions of rights anytime and anyplace, as well as the treatment of prisoners, and the application of the protection of rights of prisoners defined by the law. Monitoring the legality of prisoners’ treatment at all detention places is a priority task of the prosecutor, in accordance with the recommendation of the Council of Europe anti-torture Committee.

During the inspection, the supervisor prosecutors take extra care of the exploration of illicit relationships between the prisoners and prison staff and that of corruption crimes. The regular monitoring contributes to the exploration of the corruption crimes in connection with the abusive treatment of the prisoners: supervisor prosecutors check twice every month that the detention circumstances are adequate to the relevant law. During the monitoring of the treatment of the prisoners, the prosecutor holds auditions not only for prisoners who applied for a hearing, but also for randomly selected prisoners. If a randomly selected prisoner submits a request, the prosecutor prepares a note of the hearing. If the prosecutor suspects criminal activity, then the note is sent to the competent investigating authority with the required jurisdiction. The regulation and practice of the supervising prosecutors serve effectively the prevention and exploration of corruption crimes.

In 2011, under the supervision of the minister of interior, the National Protective Service (NPS) was established to contribute to the integrity of the administrative organizations. The NPS serves as an internal crime prevention and exploration authority. The NPS monitors and ensures whether the lifestyle of the applicants and the staff of the law enforcement agencies, is impeccable. Besides, the NPS tests the integrity of the staff member of protected organization and its duty is to explore the crimes specified by the relevant law, which are committed by or against that staff members. The aim of the integrity tests is to check up on the reaction of the staff members in ‘created situations’ and to sort out the corrupt public servants. The integrity test and the following procedure is approved and supervised by the prosecutor for the lawful execution of the test. The integrity test results in a general prevention effect. The main aim of the prosecutor’s control is to ensure the protection of fundamental rights in compliance with the regulations of the integrity test.

1. LB 78/2009. BK. opinion on ordering confiscation of property in corruption crimes [↑](#footnote-ref-1)
2. Section 16 of §1 of Act LXXXV of 2001 on Protection Program of the participant of criminal proceedings, the helpers of justice [↑](#footnote-ref-2)
3. Section 3 of §5 of Act CLXV of 2013 on complaints and public announcements [↑](#footnote-ref-3)
4. Section 1 of §6 of Act CLXV of 2013 on complaints and public announcements [↑](#footnote-ref-4)
5. Section §38/A-38/D of Act CXI of 2011 on the Commissioner for Fundamental Rights [↑](#footnote-ref-5)