

**In the interest of providing the public with credible information regarding ongoing events, the foundations managing the Norway NGO Fund find it important to express their opinion on the defamation campaign conducted against them for almost six months now, and to publish said opinion along with supporting documents. In the first part, you can read about the proceedings of the Government Control Office (Kormányzati Ellenőrzési Hivatal, abbreviated as KEHI in Hungarian).**

## **How the KEHI abuses its official powers**

### **I. The events leading up to the "Ökotárs case"**

The efforts to defame and cast suspicion over the consortium in charge of operating the NGO Programme (or NGO Fund) of the EEA/Norway Grants (Norvég Civil Támogatási Alap or NCTA in Hungarian) first began in June 2013, when a pro-government news portal reported – citing unverified sources – that an EU Commissioner “[planned to use Hungarian NGOs financed from abroad to sling mud at the Orbán government](#).” The portal claimed that “the Association of Liberal Youths (Liberális Fiatalok Egyesülete), which had organised an international anti-Orbán campaign, was just [at that time] on the verge of winning a grant from the EEA/Norway NGO Fund.” This information, leaked unlawfully during a grant award decision procedure, provided the basis for a governmental campaign that has been ongoing for almost 10 months now with the objective of preventing NGOs in Hungary from being able to do their work.

The documentation of the political attacks on the EEA/Norway NGO Fund is available for public review on the internet.<sup>1</sup> Various defamatory charges have been levelled against the consortium of foundations involved, ranging from embezzlement, illegal campaign funding, theft and unauthorised financial activities all the way to the most recent accusation, the misappropriation of funds. On 22 July 2014 the Ökotárs (Environmental Partnership) Foundation [filed a suit](#) against Undersecretary of State Nándor Csepreghy for defamation.

As is widely known, political declarations were soon followed by legal action. On 21 May 2014, the undersecretary of state for development policy communication, Nándor Csepreghy, informed the public that the Prime Minister’s Office was calling on the Government Control Office (KEHI) to undertake a comprehensive investigation into the use of the EEA/Norway Grants.. “The goal of the comprehensive investigation is to ascertain whether there was merit to the recently voiced *suspicious of the government* (?) that the EEA/Norway NGO Fund in Hungary was used to

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<sup>1</sup> [http://hvg.hu/gazdasag/20140430\\_Csepregyh\\_szelhamos\\_gittegyletek\\_kezelik/](http://hvg.hu/gazdasag/20140430_Csepregyh_szelhamos_gittegyletek_kezelik/)  
[www.youtube.com/watch?v=9p09q2WSr0w](http://www.youtube.com/watch?v=9p09q2WSr0w)  
<https://www.youtube.com/watch?v=mSOXhdRxejo>

indirectly subsidize political organizations and NGOs affiliated with them.”<sup>2</sup> On 26 May, dr. Barna Szabolcs Gaál, the KEHI’s president, informed Ökotárs’ director in a letter that an audit and an onsite investigation had been initiated and enclosed an 11-point list of the documents that he argued Ökotárs would be obliged to present when the audit began on 2 June.

## II. What is the KEHI and what are the limits of its legal mandate to perform audits?

The Government Control Office is the government’s own control authority, which performs public financial control upon the *instruction* of the government, the prime minister or a minister. According to the Public Finance Act,<sup>3</sup> the KEHI’s legal mandate to perform audits only extends to non-budget institutions, such as foundations like Ökotárs, if those avail themselves of budgetary funds or other support from the central subsystem of the central budget, including subsidies and aid disbursed based on international agreements. One need not be trained as a lawyer - it is sufficient to be knowledgeable in the Hungarian language - to understand: Funds managed pursuant to international agreements only fall into this category if they are allocated through the central subsystem of the central budget, that is, when they are distributed by Hungarian administrative bodies. Yet that is not the case of the Norway NGO Fund: Based on the agreement concluded between the Financial Mechanism Office (FMO) in Brussels, which coordinates the grants, and the Ökotárs Foundation, grants are allocated to recipient organisations directly from the FMO’s bank account without coming into contact with either the Hungarian budget or Ökotárs.

But in case you have any lingering doubts, it is worth recalling that up until *30 June 2010* KEHI was indeed entitled to audit the use of EU funds and funds stemming from international support mechanisms. The effective government decree<sup>4</sup> on the KEHI at the time also expressly referred to audits related to the Norwegian Financial Mechanism and to control functions related to the Swiss Hungarian Cooperation Programme (Article 6. (f) and (g)). This authority was terminated, however, by *Government Decree 210/2010 (VI.30) on the Directorate General for Audit of European Funds* (Európai Támogatásokat Auditáló Főigazgatóság, EUTAF).<sup>5</sup> It did so by transferring the *entire scope* of controlling responsibilities related to Union and other international funds to this Directorate General (EUTAF). Article 5 (f) and (g) of the effective government decree on EUTAF explicitly refers to audits involving the Norwegian Financial Mechanism and to control functions related to the Swiss Hungarian Cooperation Programme. Moreover, this decree also states that the Directorate General - as an organization which was established as a split-off from the Government Control Office - qualifies as the legal successor of

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<sup>2</sup> [http://hvg.hu/itthon/20140521\\_A\\_Kehi\\_vizsgalja\\_majd\\_a\\_Norveg\\_Alapot](http://hvg.hu/itthon/20140521_A_Kehi_vizsgalja_majd_a_Norveg_Alapot)

<sup>3</sup> According to Article 63 (1) (c) of Act CXCV on the Central Budget “the control authority of the state control body extends to the *audit of financial support provided from the budget and other support paid through the central subsystem of the national budget - including support and aid provided pursuant to international agreements - to business organizations, public foundations, foundations, regional development councils and associations -*, as well as to audits of the use of state assets that the aforementioned organizations use free of charge.” See: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=142897.270429](http://njt.hu/cgi_bin/njt_doc.cgi?docid=142897.270429)

<sup>4</sup> Article 6 of Government Decree 312/2006. (XII. 23.) on the Government Control Office.

[http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=104910.148639](http://njt.hu/cgi_bin/njt_doc.cgi?docid=104910.148639)

<sup>5</sup> [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=133387.269668](http://njt.hu/cgi_bin/njt_doc.cgi?docid=133387.269668)

the Government Control Office with respect to auditing responsibilities related to European Union and international funds (Article 15 (2)).

It is important to note that the EUTAF, though it is a central government authority that is subject to the control of the minister responsible for the central budget, *enjoys functional independence in the pursuit of its auditing activities (Article 6 (2))*, which translated into plain language means that it is professionally autonomous in deciding how it proceeds *and may not be instructed by the government*. It decides on its own about the control strategy it pursues, the annual audit plans and their implementation, the method whereby it exercises its control activities, and it establishes the conclusions that derive from its investigations and draws up its recommendations independently of outside organs.

The Memorandum of Understanding<sup>6</sup> (MoU) which Hungary concluded with Iceland, Liechtenstein and Norway regulates who is entitled to audit the funds provided by these three countries, and how this audit may be performed. In compliance with the relevant domestic statutory provisions, Section 3 of the Agreement's Appendix A provides that the *Directorate General for Audit of European Funds* (EUTAF) assumes the role of the Control Authority. Its responsibilities are laid down in the Regulation<sup>7</sup> published by the donor countries, and it discharges these functions in compliance with international control standards and the relevant European laws. Yet the EUTAF's auditing mandate does not extend to all programme areas listed in the Agreement: It can only audit those nine out of 12 areas whose programme operator is a domestic public authority (the former National Development Office or another organization, for example a public foundation).

In the case of the EEA/Norway NGO Fund the programme operator of the Agreement is not a Hungarian body but the FMO, the Brussels-based secretariat of the donor countries.

Logically the MoU cannot regulate all elements of the entire grant scheme. The other legal norms that need to be applied in conjunction with the MoU's provisions are listed in Article 2. Among other things, Article 2 requires that the provisions of the MoU be read in conjunction with the Regulation. The MoU refers to various points in the Regulation on several occasions. Section 5.13 establishes that if a programme area is operated by the FMO, then special rules apply to the programme's preparation, implementation and auditing. In the case of the NGO Fund these are laid out in the agreement between the FMO and the Ökotárs Foundation. This agreement establishes that the FMO, external auditors commissioned by the latter or the EFTA Board of Auditors are authorised to perform audits. In these cases the beneficiary country bears neither financial nor any other type of responsibility for the implementation of the programme. Regular

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<sup>6</sup> Government Decree No. 235/2011. (XI. 15.) on the promulgation of the cooperation agreement concerning the implementation of the EEA Financial Mechanism 2009–2014 between Iceland, the Principality of Liechtenstein, the Kingdom of Norway on the one hand, and the Republic of Hungary on the other.

[http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=140042.203625](http://njt.hu/cgi_bin/njt_doc.cgi?docid=140042.203625)

<sup>7</sup> Regulation on the implementation of the Norwegian Financial Mechanism 2009-2014 adopted by the Norwegian Ministry of Foreign Affairs pursuant to Article 8.8 of the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014 on 11 February 2011, as amended on 15 December 2011, on 14 March 2013 and on 2 July 2014.

<http://eeagrants.org/Results-data/Results-overview/Documents/Legal-documents/Regulations-with-annexes/EEA-Grants-2009-2014>

audits are performed by the FMO on the basis of the four-monthly financial and annual narrative reports submitted by the Ökotárs. A halftime external audit of the programme is also just underway.

In summary, we can state the following: the KEHI's reasoning that it has the authority to audit the NGOs that manage the Norway NGO Fund is not only contrary to domestic legal regulations but also constitutes a violation of the relevant international agreement concluded by Hungary, and consequently also of Article Q (2) of Hungary's Fundamental Law (the Hungarian constitution), which states that "*[i]n order to comply with its obligations under international law, Hungary shall ensure that Hungarian law be in conformity with international law.*"

### **III. Procedural objections**

At the 2 June audit, the directors of Ökotárs and its partner foundations protested against the KEHI's proceedings both orally and then also in a [letter](#) to the KEHI's president. They argued that both the onsite audit and the request to submit documents had been unlawful, and asked the KEHI's president to provide a detailed justification on the rules governing the scope of the KEHI's mandate. Instead of a justification, on June 16 the KEHI [sent](#) another long list of documents that the Control Office wished to review, which it asked to be delivered electronically *within 3 days*. It did so despite the fact that the director of the FMO in charge of operating the Norway NGO Fund (as a so-called programme operator), Stine Andresen had sent a copy of her [letter](#) of 3 June addressed to Minister János Lázár to the KEHI's president as well. In that letter she referred to her previous letter of 28 May and objected forcefully to the KEHI's actions, pointing out that the FMO is in charge of operating the NGO Fund and emphasizing that the KEHI must address all its questions and data requests to the FMO rather than Ökotárs.

Ökotárs and its partners published all public data about the grant award procedures already previously on the programme's continuously updated website ([www.norvegcivilalap.hu](http://www.norvegcivilalap.hu) – e.g. the documents relating to the application procedures and information about the projects that had been supported by the Fund). At the same time, these organisations refused to provide further information in their response to the KEHI dated 16 June, with reference to the abovementioned publicly available information. It was not only because of the KEHI's lacking legal mandate to perform such an audit but also because - as the FMO pointed out in [another letter](#) - it would be contrary to the rules governing the grant award procedures and would entail a violation of privacy and other rights.

### **IV. Threats and actions**

The story then took a new turn when in a letter dated 3 July, the official in charge of the KEHI's *Department Responsible for Overseeing National Property* (!) once again [called on](#) the director of Ökotárs and its partner foundations to turn over comprehensive sets of information, but once more did not explain where its legal mandate to perform an audit stemmed from. This time the demand was coupled with a warning that a refusal to cooperate with the authority might carry a fine of 500,000 HUF, and that the KEHI is entitled to ask the tax authority to suspend the Foundation's tax identification number. The exchange of letters between the KEHI and Ökotárs continued in July and August. Complaining on numerous occasions about the KEHI's unlawful

proceedings, the NGO only handed over a portion of the requested information, specifically the following:

- Ökotárs's detailed proposal to operate the programme and the related documents (for both funding periods<sup>8</sup>);
- the agreements between Ökotárs and the Financial Mechanism Office and the appendices of these agreements (for both funding periods);
- the internal rules and procedures relating to the implementation of the programme;
- all financial and narrative reports sent by Ökotárs to the FMO (for both funding periods);
- the reports of all the evaluations and audits concerning the operation of the Norway NGO Fund until now (including the draft report on the audit performed by Ernst & Young concerning the first funding period);
- the cooperation agreements between the Foundation and its consortium partners;
- statements on the operating costs of the operator foundations in connection with the implementation of the Norway NGO Fund, including contracts of employment and wage sheets, and also office costs, as well as supporting financial documents (invoices, contracts, etc.) for the sample selected by the KEHI;
- the financial documents relating to the final research and case study publication concluding the previous period (contracts, invoices);
- the basic data on all projects funded by the Norway NGO Fund, including the names of the organizations funded, their addresses, the amounts of the awards, the status of the projects (concluded or in process) - for both funding periods (with the data content requested by the KEHI).

On 10 September Ökotárs received [another letter](#), this time from the KEHI's Financial Support Review Department. Dr. Beatrix Tari, the head of the department, unexpectedly sent notice that the scope of the audit “had been expanded” on 31 July 2014 - in other words almost one and a half months earlier. Without providing any justification, the notice states that the audit now also extends to the management of the Swiss-Hungarian NGO Block Grant and Scholarship Funds, as well as to – this is astonishing –the uses of the so-called “1% donations,” namely the funds that the foundations received from citizens’ income taxes based on the taxpayers choice to support an NGO of their liking. The letter’s appendix contained another vast docket of documents, for whose submission the head of the department set a deadline of three days. (The letter was dated 8 September, but since it was only delivered on the 10th, in effect the deadline was limited to a single day.)

(In the meanwhile, in parallel with the KEHI review, based on charges filed with the police, the National Bureau of Investigation began its own investigations against persons unknown on the suspicion of embezzlement (which was later changed to misappropriation) already in mid-August. It then conducted a search of the premises on 8 September in the offices of Ökotárs itself, the organization's accountant, its IT experts, the DemNet Foundation's offices and, finally, the home of an Ökotárs board member. The search was conducted without prior notice and in a raid-like manner, using an excess number of police to intimidate the subjects. The search resulted in the seizure of documents and IT equipment. We will also publish a full factual account and the relevant documentation in the near future).

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<sup>8</sup> First period: 2008-11, second period: 2013-16.

Ökotárs's most recent response [letter](#) to the KEHI shows that the harassment by the authorities is straining the Foundation to the limits of its endurance: "Despite the events of the past weeks, and despite the search of premises conducted on 8 September 2014 - which had an apocalyptic character to it - Ökotárs Foundation reiterates its willingness to cooperate with all organizations, thus including the KEHI's proceedings. The Foundation has nothing to hide. It would, however, like to give voice to its expectation that the investigations be conducted in compliance with the requirements of the rule of law and the principles of fair proceedings; it also calls on the authorities to make sure that the investigation no longer be conducted in a harassing manner. In this context it emphatically requests that the various bodies involved in the investigations enter into contact with one another and that they - very simply - exchange the documents and data that certain official institutions have already taken with them, and that they obtain the data available in public databases from said public sources, because that is the way such things ought to be handled in a system based on the rule of law. The parallel data requests - sometimes granting deadlines of a single day - render the organization inoperable and impose massive burdens on the lives of its staff and employees. They also have an adverse impact on the NGOs it supports. All the above may result in a situation where NGOs are deprived of grants from the fund and suffer damages in discharging their daily activities. Ökotárs Foundation will naturally seek compensation for the damages stemming from this situation, and will also provide assistance to any corresponding efforts by NGOs that have also suffered damages. Ökotárs Foundation expects the same level of respect from the authorities - including the KEHI - that it has always displayed towards the authorities, even in the course of this destructive investigation."

The KEHI made good on its threat: The National Tax and Customs Administration (Nemzeti Adó- és Vámhivatal, NAV) initiated the suspension of the tax identification numbers of the four foundations operating the EEA/Norway NGO Fund in Hungary. In a [decision](#) of 17 September, the NAV ordered the suspension. The foundations [appealed](#) the decision and submitted that pursuant to the effective laws the KEHI lacks a legal mandate to conduct an audit or request data in the case at hand. Among other things, they argued that the provision of the Act on the Rules of Taxation - which states that based on a corresponding request by the KEHI's president the tax authority is obliged to suspend a tax identification number - does not imply that the tax authority is not under obligation to review the legality of the request it received. Yet the tax authority failed to review the legality of the request and failed to consider that the KEHI lacked the legal mandate to conduct the audit in question. As a result, the *tax authority's decision rendered on the basis of an unlawful request constituted a violation of the law.*

## **V. Why not before?**

A wide variety of opinions have been published in the media about the underlying reasons, objectives and timing of the unprecedented attacks against Ökotárs and - through Ökotárs - against the entire *independent* civil society in Hungary. In the interest of informing public opinion, some important circumstances ought to be pointed out. The regulations of the EEA/Norway NGO Fund's evaluation rules<sup>9</sup> contain a provision stating that the National

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<sup>9</sup> <https://norvegcivilalap.hu/hu/palyazati-dokumentumok>

(governmental) Focal Point and representatives of the donor countries can participate as observers at the Selection Committee sessions. The observers may ask questions and may also make comments, though they cannot influence the decisions of the Selection Committees. Minutes of these sessions were drawn up. Representatives of the government were invited to all sessions of the evaluation committees held until now, and they attended (with a few exceptions) an overwhelming majority of these sessions. At the 16 sessions before 2010, two staff members represented the National Development Agency, while in the 32 sessions since 2013 a total of 5 different staff members of the Ministry of Human Resources attended. It can be seen in the minutes of the sessions that the representatives of the government did not raise any objections during any of these sessions, nor did they indicate the existence of any irregularities.

If there had been previously even the slightest suspicion of the rather serious charges brought out of nowhere by politicians and state authorities in the past months, then the government representatives in the Selection Committees would no doubt have had to communicate these to the programme operators. There was no such an indication, however, nor could there have been.

## **VI. Right to a fair proceeding**

The Act on Administrative Procedures states that clients are entitled to have their cases handled fairly and to have decisions rendered within the legally provided deadlines. Clients in an official proceeding have the right to equality before the law, and their cases needed to be arbitrated without differential treatment or bias. The KEHI's proceedings, by contrast, do not only contravene the law but also continuously violate the right to a fair proceeding.

- Since the very beginning of the proceedings the KEHI has failed to provide evidence of its legal mandate to carry out such an audit. Its reference to certain articles of the Public Finance Act and the corresponding government decree is unfounded and misleading. The obvious circumvention of the international agreements on the EEA/Norway NGO Fund indicates that the proceedings are politically motivated.
- The strikingly short and arbitrary deadlines for submitting data, which practically constitute harassment, evoke the atmosphere of summary proceedings.
- The repeated and ongoing expansion of the scope of the proceedings without explanation or substantial information provide grounds for the impression that the KEHI is determined to pursue its groundless investigations for as long as it uncovers something it deems irregular.
- Pursuant to the government decree on the KEHI, the Control Office is a central budgetary body that works as a central authority and is a part of the system of public administration. As such, it may be expected to operate impartially. Despite this, since May 2014 the KEHI's website has [published](#) information from various news portals – mostly pro-government portals – that contain details about the ongoing proceedings and are liable to damage the reputation of the subjects of the proceedings. There is no precedent for a control authority continuously sharing on its official website biased press reports about an ongoing case, without adding any commentary or explanation but with the obvious goal of influencing the public mood and engaging in propaganda against the institutions it is investigating. This obviously casts doubt on the fairness of the proceedings.
- A remarkable aspect of this investigation – which also raises the suspicion that the KEHI is abusing its powers – is that even as the proceedings were ongoing, pieces of

information about it ended up with certain press publications. The information in question violated the privacy rights of those affected, as was also pointed out by Ökotárs's [letter](#) of June 19. It is also strange that some parts of the [KEHI data requests](#), which are part of the case documentation, were then repeated almost verbatim in the data requests that certain pro-government media outlets ([Hír Tv](#), [Magyar Nemzet](#)) submitted to Ökotárs.

On account of all the above, Ökotárs and its partner foundation wish to avail themselves of any and all available possibilities for legal redress.

The correspondence between the Partner foundations and KEHI are available on their respective websites.