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| CONSTITUTIONAL COURT |
| Case number: | IV/ 1 68 5 -0 /2017 |
| Received on: | 28 AUG 2017*in person* |
| Copy: | *1* | Managing office:[signature] |
| Attachments: | *25* |

Constitutional Court

1015 Budapest

Donáti u. 35-45.

Honourable Constitutional Court,

I, the undersigned, attorney at law dr. Tivadar Hüttl (1136 Budapest, Tátra utca 15/b), as the legal representative of

**Társaság a Szabadságjogokért [Hungarian Civil Liberties Union]** (court of registration and registration number: Budapest-Capital Regional Court, 01-02-0006069, registered office: 1136 Budapest Tátra u. 15/b, represented by dr. Ágota Bíró, member of the Presidential Board),

**Magyar Helsinki Bizottság [Hungarian Helsinki Committee]** (court of registration and registration number: Budapest-Capital Regional Court, 01-02-0000383, registered office: 1054 Budapest Bajcsy-Zsilinszky út 36-38. 1./12., represented by dr. Márta Pardavi, co-chair),

**Amnesty International Magyarország [Amnesty International Hungary]** (court of registration and registration number: Budapest-Capital Regional Court, 01020001273., registered office: 1064 Budapest, Rózsa utca 44. 2nd floor. 4., represented by Zoltán Ranschburg, President),

**Artemisszió Alapítvány [Artemisszió Foundation]** (court of registration and registration number: Budapest-Capital Regional Court, 01-01-0007089, registered office: 1016 Budapest, Mészáros utca 10., represented by Diana Szántó, President),

**Az emberség erejével – CUM VIRTUTE HUMANITATIS Alapítvány [With the Power of Humanity Foundation]** (court of registration and registration number: Court of Pécs, 02-01-0001551, registered office: 7621 Pécs, József u. 34., represented by András Nyirati, Chairman of the Board of Trustees),

**Autonómia Alapítvány [Autonómia Foundation]** (court of registration and registration number: Budapest-Capital Regional Court, 01-01-0000151, registered office: 1137 Budapest, Pozsonyi út 14., represented by András Nun),

**BAGázs Közhasznú Egyesület [BAGázs Public Benefit Association]** (court of registration and registration number: Budapest-Capital Regional Court, 14179, registered office: 1107 Budapest, Bihari utca 3/a., represented by Dr. Emőke Both, President),

a **Civil Kollégium Alapítvány [Civil College Foundation]** (court of registration and registration number: Budapest-Capital Regional Court, 01-01-0005308. serial number: 12.Pk.61.418/1994/56., registered office: 6090 Kunszentmiklós, Kunbábony tanya 37/2, represented by Máté Varga, Chairman of the Board of Directors),

**Cordelia Alapítvány a Szervezett Erőszak Áldozataiért [Cordelia Foundation for the Rehabilitation of Torture Victims]** (court of registration and registration number: Budapest-Capital Regional Court, 01-01-0006303, registered office: 1136 Budapest, Balzac utca 37. 2nd floor. 1., represented by Dr. Lilla Hárdi, Medical Director),

**Energiaklub Szakpolitikai Intézet és Módszertani Központ Egyesület [Energiaklub Climate Policy Institute Applied Communications]** (court of registration and registration number: Budapest-Capital Regional Court, 01-02-0006637, registered office: 1056 Budapest, Szerb u. 17-19., represented by Ada Ámon, President),

**Háttér Társaság [Háttér Society]** (court of registration and registration number: Budapest-Capital Regional Court, 01-02-0006352, registered office: 1132 Budapest, Csanády u. 4/B. 2nd floor 4, represented by Tamás Dombos, chargé d’affaires),

**Igazgyöngy Alapítvány ([Real Pearl Foundation]** court of registration and registration number: Court of Debrecen, 1285, registered office: 4100 Berettyóújfalu, Tardi u. 19., represented by: Eleonóra L. Ritók, member of the Board of Trustees),

**Jogriporter Alapítvány [Rights Reporter Foundation]** (court of registration and registration number: Budapest-Capital Regional Court, 01-01-0011863, registered office: 1032 Budapest, San Marco utca 70. 4/18, represented by Péter Sárosi, Director),

**K-Monitor Közhasznú Egyesület [K-Monitor Public Benefit Association]** (court of registration and registration number: Budapest-Capital Regional Court, 01-02-0012439, registered office: 1077 Budapest, Rózsa utca 8. 1st floor 12, represented by András Iljicsov),

**Közélet Iskolája Alapítvány [School of Public Life Foundation** (Budapest-Capital Regional Court, 01-01-0011975, Registered office: 1026 Budapest, Pasaréti út 101. ground floor 6., represented by Éva Tessza Udvarhelyi, Managing Director)

**Levegő Munkacsoport [Clean Air Action Group]** (court of registration and registration number: Budapest-Capital Regional Court, 01-02-0006775, registered office: 1085 Budapest, Üllői út 18. first floor 9/A represented by András Lukács, President),

**Magyarországi Európa Társaság [Hungarian Europe Society]** (court of registration and registration number: Budapest-Capital Regional Court, 9194/2000/12/21, registered office: 1052 Budapest, Gerlóczy utca 11. 2nd floor. 1., represented by István Hegedűs, President),

**Magyarországi Terre des hommes Alapítvány [Hungarian Terre des Hommes Foundation] "Lausanne"** (court of registration and registration number: Budapest-Capital Regional Court, 10.073, registered office: 1087 Budapest, József krt. 78. 2nd floor 7., represented jointly by Sandrine Marie-Mathilde Constant, Head of Eastern Europe Zone, and Judit Németh-Almási, Deputy Director),

**Menedék – Migránsokat Segítő Egyesület [Menedék – Hungarian Association for Migrants]** (court of registration and registration number: Budapest-Capital Regional Court, 01-02-0006321, registered office: 1081 Budapest, Népszínház utca 16. 3rd floor 3, represented by Antal Örkény, President),

**Ökotárs Alapítvány [Hungarian Environmental Partnership Foundation]** (court of registration and registration number: Budapest-Capital Regional Court, 5083, registered office: 1056 Budapest, Szerb utca 17-19., represented by Mátyás Hartman, Chairman of the Board of Trustees),

**Partners for Democratic Change Hungary Partners Hungary Alapítvány** (court of registration and registration number: Budapest-Capital Regional Court, 5385, Registered office: 1072 Budapest Rákóczi út 22. 4th floor 24.,repersented by Éva Deák, Managing Director, and dr. István Herbai, member of the Board of Trustees),

**PILnet Alapítvány [PILnet Foundation]** (court of registration and registration number: Budapest-Capital Regional Court, 18-01-0000167, registered office: 1137 Budapest, Pozsonyi 43. 6th floor 2., represented by Atanas Politov Dimitrov, Chairman of the Board of Trustees),

**Tudatos Vásárlók Közhasznú Egyesülete [Public Benefit Association of Conscious Customers]** (Budapest-Capital Regional Court, 01-02-0009978, registered office: 1123 Budapest, Győri út 6/b. 3rd floor 2., represented jointly by Emese Gulyás, President, and dr. Anikó Haraszti, Secretary),

acting within the scope of my powers of attorney attached hereto, hereby submit a

# constitutional complaint

according to Section 26(2) of Act CLI of 2011 on the Constitutional Court (hereinafter: Constitutional Court Act).

We primarily request the honourable Constitutional Court to conclude that the entire Act LXXVI of 2017 on the Transparency of Organisations Receiving Foreign Funds (hereinafter: Act) is contrary to Article VI (1), Article VIII (2) and Article IX (1) and (2) of the Fundamental Law and, having regard to of the rights granted in these articles, to Article XV (1) and (2), and to annul it or, if it does not deem the nullification of the entire Act to be justified then,

secondly, we request the honourable Constitutional Court to conclude that Section 1 (1), Section 2 (1), (2), (3), (4) and (5) as well as Section 3 of the Act and Sections 94 (1) h) and 95 e) of Act CLXXXI of 2011 on the Court Registration of Civil Society Organisations and the Related Rules of Procedure (hereinafter Civil Society Registration Act) adopted as a result of the amendment of the Act which, also in view of Article I. (3) and (4) of the Fundamental Law, are contrary to Articles VI (1) and (2), VIII (2) and IX (1) and (2) of the Fundamental Law and, having regard to the rights granted in those articles, to Article XV (1) and (2) and to nullify them.

According to our position, the regulatory concept of the entire Act is also contrary to the Fundamental Law and therefore we primarily request the nullification of the entire Act. It is especially true in relation to the discriminatory nature of the Act, which is a violation of the Fundamental Law and may be remedied primarily by the nullification of the entire Act. At the same time, we also wish to note that if the Constitutional Court nullifies only the sections referred to in our secondary request, the provisions remaining in the Act would become meaningless.

We wish to present the following in support of our petition.

## I. Petitioner’s entitlement and admissibility

I.1. We submit our petition pursuant to Section 26 (2) of the Constitutional Court Act, according to which a person or organisation affected may initiate Constitutional Court proceedings pursuant to Section 24 (2) c) of the Fundamental Law if, due to the application of a legal provision contrary to the Fundamental Law or when such a legal provision becomes effective, rights were directly violated, without a judicial decision, and there is no procedure for legal remedy designed to repair the violation of rights, or the petitioner has already exhausted the possibilities for remedy.

The Constitutional Court relied on the dogma developed by the German Federal Constitutional Court in the interpretation of the statutory requirement of being affected, when it specified the criteria of being affected *through its personal, direct and actual* attributes. Accordingly, in relation to a constitutional complaint, a party is directly affected when the contested legal regulation alters the petitioner’s position, according to the fundamental right, even without the adoption of any further legal act. Consequently, when the legal regulation does not become effective on its own but by the application of other individual acts based on the contested legal regulation, and thus leads to the violation of individual fundamental rights, the petitioner must wait for the adoption of the particular individual act and to seek legal remedy against it. However, the interpretation of being directly affected is not so restrictive in the German practice, when the individual act that must be waited for entails a consequence, the toleration of which could not be expected from the petitioner. [Examples in the German practice: BVerfGE 122, 342 (355), BVerfGE 20, 283 (290); 46, 246 (256); 81, 70 (82); 97, 157(165),]

The case law of the European Court of Human Rights proceedings in petitions also submitted due to the violation of individual rights also brings us to the conclusion that, in similar cases, the petitioner’s being affected applies even if the rule violating the fundamental right had not been actually applied at the time when the petition was submitted. In terms of admissibility, the Court took the position that the petitioner’s being affected may be accepted if the alleged infringement will definitely take place in the near future. The Court considers such petitions admissible, especially when the petitioner’s interests would be irreparably damaged without them, as in such cases their admission is required for the effective operation of the set of institutions for judicial protection under the Convention. (See e.g., *Segi and Others,* Decision of 23 May 2002.)

The Constitutional Court follows the above interpretation in its legal interpretation of the personal, direct and actual attributes of being affected [see primarily Constitutional Court Order 3007/2012 (VI. 21.) [4], Constitutional Court Order 3114/2012 (VII. 26.) [5] and Constitutional Court Decision 24/2014. (VII. 22.)], Constitutional Court Decision 33/2012 (VII. 17) suggests the same, in which the Constitutional Court takes a position on the issue of being affected by stating that a person can also be considered to be affected when no actions serving the purpose of applying or enforcing the legal regulation have taken place yet, but the force of the law has resulted in a legal situation from which it is evident that the violation of rights complained of will inevitably take place within a directly foreseeable time frame [Paragraph 66]

The petitioner organisations are directly affected by the legal restrictions imposed by the contested Act. Pursuant to Section 1 (1) of the contested Act, associations and foundations which receive funding as specified in paragraph (2), shall be regarded as organisations receiving foreign funds. For the purposes of paragraph (2), regardless of its legal title, any financial or other economic support originating directly or indirectly from abroad which, individually or in total, reaches twice the amount specified in Section 6 (1) (b) of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing in a year, shall be regarded as financial support.

All petitioners satisfy the above criteria. They all operate as a foundation or association and received foreign funds as referred to in the Act in 2017 in the amount of HUF 7.2 million or more.

The existence and organisational structure of the petitioners (foundation or association) are certified by the data of the civil society organisations registered in authentic public registers. The fact that they received foreign funds of HUF 7.2 million or more in the current year is certified by copies of bank account statements and support contracts attached to the petition, copies of notifications submitted pursuant to Section 2 (1) of the Act, data accessible in court records and the list of civil society organisations receiving foreign funds, accessible via the Civil Information Portal. These documents are submitted as attachments to the petition.

On the basis of the above, the petitioners fall within the scope of the Act pursuant to Section 1 (1) of the contested Act and the Act already deems them to be organisations receiving foreign funds and they already have all the obligations that are imposed on them in the Act. Of the petitioners, Cordelia Alapítvány a Szervezett Erőszak Áldozataiért, Igazgyöngy Alapítvány, Magyarországi Terre des Hommes Alapítvány “Lausanne”, Tudatos Vásárlók Közhasznú Egyesülete, PILnet Alapítvány, Levegő Munkacsoport Országos Környezetvédő Egyesület, BAGázs Közhasznú Egyesület and Menedék – Migránsokat Segítő Egyesület had already submitted the notifications required under Section 2 (1) of the Act before this petition was submitted. We certify this with the printed version of the list published on the Civil Information Portal and with separate documents relating to the individual organisations.

In our opinion, the organisations would be personal, direct and actually affected after the entry into force of the Act, even if otherwise they did not receive foreign funds of at least HUF 7.2 million in 2017. As the organisations operate either as associations or foundations, they fall within the scope of the Act. The Act attaches legal consequences causing an infringement of the law to the receipt of any foreign funds of at least HUF 7.2 million and thereby forces the organisations falling within the scope of the Act to choose: not to accept the foreign funds due to the entry into force of the Act and thereby impose a threat to their operation and survival or to accept the funds and thereby expose themselves to the detrimental legal consequences specified in the Act. As such, for the purposes of this Act, each foundation and association is clearly affected because the obligations and the status of being organisations receiving foreign funds deter them from accepting foreign funds. Nevertheless, each petitioner has already received HUF 7.2 million in foreign funds and therefore they are also affected on that basis.

If, according to the interpretation of the Constitutional Court, from the funds received during the current year, only those funds that were received after the entry into force could be taken into account for concluding whether or not an organisation is affected, establishing which funds fall within the scope of the Act would still be a problem. This interpretation does not provide any response as to which date must be used to conclude the “funding”: the date when the funds were granted, the date of the conclusion of the funding contract or the date of the transfer of funds. It also contradicts this interpretation that the competent courts first processed and then listed the notifications of a number of petitioners submitted pursuant to Section 2 (1) of the Act, then processed and entered the submitted data into the records, i.e., the courts calculate the current year from 1 January, at least in this respect. (Obviously, only those courts that apply the Act can adopt a final decision on how the Act should be interpreted in conformity with the Fundamental Law.) However, should the Constitutional Court opt for this narrowest interpretation of being affected then, of the petitioners Magyar Helsinki Bizottság and Közélet Iskolája certify the receipt of foreign funds of at least HUF 7.2 million in the period after the entry into force of the Act, even according to the date of transfer and therefore, at least in the case of these petitioners, the criterion of being affected is satisfied even with the narrowest interpretation (which is contrary to the interpretation of the courts).

As the contested provisions take effect, the infringements challenged in the constitutional complaint will occur directly, without any judicial decision. Section 1 (1) of the Act itself deems the petitioners’ organisations to be receiving foreign funds and the status prevails based on the effect of the Act if the criteria defined in the Act are satisfied. The obligations stated in Section 2 (notification, data supply, indication and disclosure) apply to the petitioners without the mediation of any law enforcement act; the registration of the reported facts by the court keeping the records of the organisation and the Act of the Minister responsible for keeping the Civil Information Portal of disclosure of the data are also pure automatic acts. Consequently, some of the fundamental right infringements stated in the petition occur even without any further individual decision. In addition, the infringement of the fundamental right stemming from the contested threat of a sanction also applies without any law enforcement act. Among the contested provisions of the Act, only the application of a sanction requires the involvement of a judge, but the cases of petitioners who comply with their contested obligations are never submitted to court because obviously the prosecutor does not initiate any fine or the launch of any judicial oversight proceedings against them. Those petitioners who do not satisfy their obligations in violation of fundamental rights will be punished with sanctions which in theory may also lead to their cessation as legal subjects. Following an effective court decision that applies a sanction, they would no longer be able to effectively rely on a constitutional complaint against the infringement of fundamental rights, considering that a constitutional complaint submitted then would not necessarily entail the suspension of the effect of a court order. The violation of the law by the petitioners and facing sanctions may not be a prerequisite for launching a constitutional complaint because the infringement has already occurred prior to the application of the sanctions. As the infringement of the law will definitely occur *within a directly foreseeable future* and the status of an organisation receiving foreign funds and the obligations attached thereto already prevail based on the provisions of the Act, the petitioners are personally, actually and directly affected.

I.2. It is a further condition of being eligible as a petitioner that the petitioner should exhaust the available legal remedies, yet a constitutional complaint may also be submitted directly according to the Act, even if there is no legal remedy for the infringement. In this case, the petitioners cannot rely on any legal remedy against the infringement of the fundamental rights caused by their status defined and the obligations imposed in the Act. If the petitioners fulfil the obligations that cause the infringement of fundamental rights (as the petitioners indicated above did so), the infringement of fundamental rights occurs and it leaves them no legal remedy against it apart from submitting a constitutional complaint. Although the prosecutor may also initiate court proceedings against petitioners not satisfying the obligations, it may not be interpreted as a legal remedy against the direct infringement of rights caused by the obligations. We wish to refer to Constitutional Court Decision 33/2012. (VII. 17.), according to which “the requirement of exhaustion of a legal remedy which, according to the applicable legal regulations, is not suitable for remedying the infringement of the law for the petitioner cannot be recognised as a condition for submitting a complaint pursuant to Section 26 (2) of the Constitutional Court Act.” (Paragraph [66] of the Statement of Reasons). The court proceedings and the legal remedy options against them do not affect the existence of obligations that directly lead to the infringement of fundamental rights, but do so for the fines imposed for the default of performing those obligations and the legal consequences applied within the framework of judicial oversight proceedings. In these proceedings, the court may not conclude that the obligations do not apply to the affected organisations. On the basis of the above, the only procedure available for the petitioners under the Hungarian legislation to remedy their infringement of fundamental rights caused by their categorisation as organisations receiving foreign funds and the obligations imposed on such organisations is the direct constitutional complaint provided for in Section 26 (2) of the Constitutional Court Act.

I.3. Based on Section 29 of the Constitutional Court Act, Constitutional Court shall admit constitutional complaints if a conflict with the Fundamental Law significantly affects the judicial decision, or the case raises constitutional law issues of fundamental importance. Among those, in this particular case, the basis of admissibility of a constitutional complaint could be a constitutional law issue of fundamental importance. This constitutional complaint pertains to the permissibility of the restrictions involved in the acceptance of foreign funds securing the existence and operation of autonomous organisations, associations and foundations, i.e., the restriction of the freedom of association (Article VIII of the Fundamental Law) and the constitutional standards of the framework of autonomy of organisations (Article VI of the Fundamental Law). In terms of organisations active in public debates, whether or not the acceptance of foreign funds can constitutionally entail the infringement of their rights to participate in public life or their rights to the freedom to express their opinion (Article IX of the Fundamental Law) is a further issue of fundamental constitutional importance. The petition also fundamentally relates to the issue of the permissibility of any discrimination between organisations (Article XV of the Fundamental Law). The constitutional law issue affected by the petition fundamentally affects how those organisations and, through them, citizens can take part in the implementation of objectives that are important to them or reflect public interests or in shaping of public matters and whether or not they can exercise their fundamental rights: whether they must tolerate the unnecessary and disproportionate legal infringements, stemming from the restriction of their fundamental rights, that are imposed on them based on the Act due to the acceptance of foreign funds. Democratic debate is unimaginable without the involvement of active non-governmental parties in it. Any distinction between civil society organisations based on their financial background therefore may influence a pluralistic democratic debate, to which the Fundamental Law is also committed. Consequently, the constitutional complaint relates to questions of freedom of association and participation in democratic public life. These issues are constitutional law issues of fundamental importance, because intensive civil activity and active public discussions, free from any unnecessary restrictions, are indispensable conditions of a democratic state.

I.4. Section 30 (4) of the Constitutional Court Act sets a deadline for the submission of a petition. Accordingly, no Constitutional Court proceedings may be initiated by a constitutional complaint, according to Section 26 (2) of the Constitutional Court Act, after one hundred and eighty days from the entry into force of the legal regulation that is contrary to the Fundamental Law.

The Act entered into force on 27 June 2017, and the deadline for the submission of a constitutional complaint will expire on 24 December 2017. Accordingly, the petitioners submit the constitutional complaint within the applicable deadline.

I.5. The Constitutional Court has not yet made any decision on the conformity of the Act concerned with the Fundamental Law on the basis of any constitutional complaint or judicial initiative, and therefore the limitation included in Section 31 of the Constitutional Court Act does not prevent the submission of a petition, either. The Constitutional Court proceedings would not be impeded either by any decision adopted by the Constitutional Court in the meantime in other proceedings, including a posterior norm control procedure conducted on the basis of the initiative of 25 per cent of the members of the National Assembly, because the *res judicata* rules laid down in Section 31 of the Constitutional Court Act are limited only to previous proceedings conducted on the basis of a constitutional complaint or a judicial initiative.

## II. Material provisions of the Act which are contrary to the Fundamental Law

II.1. *Declaring the status of an organisation receiving foreign funds*, Section 1 (1)-(2). Foundations and associations falling within the scope of the Act that receive financial or other economic support originating directly or indirectly from abroad in one particular fiscal year which, individually or in total, reaches twice the amount specified in Section 6 (1) b) of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing, are declared organisations receiving foreign funds by the Act. (The amount stated in Section 6 (1) b) of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing is three million, six hundred thousand forints, thus seven million, two hundred thousand forints is twice as much.)

Funds from the European Union paid to an association or a foundation through a budgetary institution according to a separate law shall not be taken into account for the amount of the funds.

The scope of the Act does not extend to associations and foundations that are not regarded as civil society organisations (such organisations include political parties, trade unions, mutual insurance associations, public foundations and party foundations), or associations falling within the scope of Act I of 2004 on sports or organisations pursuing religious activities, or ethnic minority organisations and ethnic minority associations falling within the scope of Act CLXXIX of 2011, as well as the foundations that are, based on their deed of foundation, engaged in activities directly related to the protection and representation of the interests of a given ethnic minority or to the cultural autonomy of the ethnic minority.

II.2. The Act imposes the following obligations on civil society organisations falling within its scope if they are regarded as organisations receiving foreign funds under the Act based on what is stated in Paragraph II. 1:

II.2.1. *Notification obligation,* Section 2 (1). An organisation receiving foreign funds must notify the court competent according to its registered office of its status as an organisation receiving foreign funds within fifteen days of its establishment. From that time onwards, the organisation is registered as an organisation receiving foreign funds and the Minister responsible for managing the Civic Information Portal arranges for the publication of the status of the organisation receiving foreign funds on the electronic portal designed for such purposes.

II.2.2. *Data supply obligation,* Section 2 (2) and (3), Annex 1. During the fulfilment of the notification obligation and then annually, when the reporting obligations are fulfilled, each organisation receiving foreign funds must submit to the Court of Registration the total funding received from abroad; the total funding, the amount of which was less than HUF 500,000 by donor; and each support amount of HUF 500,000 or higher by donor: the amount per transaction, indicating the exact source and, in the case of natural persons, the name, country and town and, in other cases, the name and the registered address. The supplied data are added to the data of the association or foundation in the register of civil society organisations. These data, i.e., the foundation and association submitted to the court, are part of the public domain pursuant to Section 86 (3) of the Civil Society Registration Act, they can be viewed and notes may be taken of them by anyone.

II.2.3. *Disclosure and indication obligation, obligation to bear the title,* Section 2 (5). Following the notification submitted pursuant to sub-paragraph a) the organisation receiving foreign funds shall publish immediately on its website and shall indicate its status as an organisation receiving foreign funds in its press products and in any other publications.

II.3. Section 6 of the Act also amended the Civil Society Registration Act, where the new subparagraph h) of Section 94 (1) states for foundations and the new subparagraph e) of Section 95 states for associations that the records of the organisations also contains the fact that these organisations are regarded as organisation receiving foreign funds. These data are data contained in the records of civil society organisations and are part of the public domain pursuant to Section 86 (2) of the Civil Society Registration Act.

II.4. If the above obligations are not fulfilled, the Act imposes the following *legal consequences* (Section 3):

II.4.1. As the first step after becoming aware of this fact, the public prosecutor shall *call upon* the association or foundation to fulfil the obligations under the Act within 30 days following the communication of this call.

II.4.2. If the organisation receiving foreign funds does not fulfil its obligation specified in the public prosecutor’s call, the public prosecutor shall send a *repeated call* to the organisation to fulfil its obligations under the Act, setting a 15-day deadline.

II.4.3. If the deadline stated in Paragraph II.4.2 passes without any result, the public prosecutor may initiate that the court registering the organisation imposes a fine on it. The fine may vary between HUF 10,000 and HUF 900,000; its application and amount are decided by the court.

II.4.4. If the deadline specified in Paragraph II.4.2 expires without a result, the public prosecutor shall apply the provisions of Act CLXXXI of 2011 on the Court Registration of Civil Society Organisations and the Related Rules of Procedure, according to which the public prosecutor may initiate judicial oversight proceedings. In those proceedings, the court may adopt a number of decisions, of which the following are relevant:

- it may impose a fine from HUF 10,000 to HUF 900,000 on the organisation or, if it may be established that the judicial oversight proceedings were triggered by the representative of the organisation, on the representative,

- it may assign a supervisory commissioner for a term of no more than ninety days if the legality of operation of the organisation cannot be restored in any other way or when it is especially justified based on the operation of the organisation or some other circumstance and this measure is likely to lead to a result,

- it may terminate the organisation.

## III. Infringement of the Fundamental Law by the Act

The Act infringes fundamental rights as explained below.

The obligations stated in the Act themselves are contrary to the provisions of the Fundamental Law and infringe the rights of the petitioners granted in the Fundamental Law, with special regard to the sanctions applied in the case of any default in the fulfilment of the obligations. In addition, the entire Act discriminatorily restricts rights granted in the Fundamental Law.

III.1. Reputation and privacy

By regarding the petitioners as organisations receiving foreign funds in Section 1 (1) and imposing obligations on them in Section 2 (1) for notification, in Section 2 (3) for data supply and in Section 2 (5) for disclosure and indication of information and by ordering them to state this fact in public records pursuant to Section 2 (2) and (4) of the Act and Section 94 (1) h) and Section 95 e) of the Civil Society Registration Act, the Act infringes their right to respect for their good reputation granted in Article VI of the Fundamental Law and the right to the respect of their private life and family life, home and communications, summarised under the title of privacy rights and the right to the protection of their personal data. Pursuant to Article I (4) of the Fundamental Law, these rights are also granted to legal entities established pursuant to the Act.

III.1.1. Reasons constituting the infringement of good reputation

The Act regards these organisations as “organisations receiving foreign funds”. The organisations affected must identify themselves as an “organisation receiving foreign funds” and submit a notification on that status, must register themselves in a public and authentic register among civil society organisations as an organisation receiving foreign funds and must also indicate that title in their websites and publications. In the present Hungarian political sphere, a title indicating the receipt of foreign funds is capable of undermining the authenticity of the organisations and the trust of the community vested in them on the basis of their public benefit activities. Although originally and essentially the Constitutional Court adopts judgment on the constitutionality of norms, it cannot be blind to social reality. As on the basis of the “living law” doctrine, the Constitutional Court relies on the interpretation actually applied and “turned into a norm” during law enforcement; it cannot disregard the actual meaning of the term “receiving foreign funds” in the current political context, especially in a case which relates to the infringement of good reputation. If the Constitutional Court does not take that into account, then it will judge the constitutionality of the norm based on an interpretation and meaning that has nothing to do with its real meaning in society.

The Act and its reasoning both confirm the stigmatising and degrading nature of this label. According to the preamble, the purpose of the Act is to “see and disclose which organisations are organisations receiving foreign funds” and to create “an opportunity to make it clear to the public the interests based on which the individual organisations intend to influence the opinion and conduct of the Hungarian state and its citizens”. In the preamble to the Act, the legislators used the assumption that “foreign interest groups may use the social influence of these organisations to enforce their own interests rather than community objectives in the political and social life of Hungary,” which “may impose a threat to the political and economic interests of the country and to the operation of statutory institutions without any undue influence”. The Act establishes the legal restriction with the title of an organisation receiving foreign funds and the obligations entailed by it on the basis of national security, the protection of national sovereignty, the fight against money laundering and the prevention of terrorist financing.

Without any available evidence, the Act relies on the assumption that organisations undertaking a role in public life and financed partly from foreign funds cannot have their own views and may not pursue the objectives of their organisations but in fact serve the interests of their donors. As the Act also declares EU funds to be foreign funds when they are transferred directly from an agency of the European Union, the Act also identifies the European Union as one of the listed sources of threats. In addition, it refers to threats to national security, national sovereignty and the risk of money laundering and terrorist financing without any facts. By stating that these organisations must be labelled as organisations receiving foreign funds and imposing an obligation on them to register themselves as such and to use that title because of the above threats, the Act creates a totally unfounded impression that these organisations are a threat to national security, national sovereignty and that they have ties with money laundering or terrorism. With this statutory restriction, which is capable of achieving its objectives, the Act creates distrust in the affected organisations and builds suspicions around them.

The government’s rhetoric only confirms that, by regarding the activities of organisations receiving foreign funds as risky and interference in internal matters in its questionnaire sent to each Hungarian household in the course of the “national consultation” conducted under the title of “Let’s Stop Brussels!”. The questionnaire contains the following question: “There are more and more organisation receiving foreign funds in Hungary which operate with the intention of interfering in the internal matters of our country in a non-transparent way. Their operation imposes a threat to our independence. What do you think Hungary should do?” The two options: a) “We should oblige them to register themselves, disclosing the country or organisation giving their mandate and the purpose of their operation” and b) We should let them continue pursuing their risky activities without any checks”

On this basis, the title of “organisation receiving foreign funds” is not a neutral, descriptive title, neither according to the preamble of the Act and its reasoning, nor also according to the confirmation in the government’s rhetoric concerning civil society organisations.

The infringement of good reputation entailed by this title is the result of an unsuitable and disproportionate restriction explained above and therefore does not satisfy the requirement laid down in Article I (3) of the Fundamental Law, according to which a fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.

III.1.2. Reasons constituting the infringement of the right to the protection of privacy and personal data

The privacy rights granted in Article VI of the Fundamental Law, i.e., the right to the respect for private life and family life, home and communications and to the protection of personal data, is also granted to the affected organisations and their members. From that it follows that each measure ensuring the control or transparency of the organisations must be proportionate to the objective pursued, may not be unreasonably invasive and may not demand more from these organisations than from any other private organisation.

According to a statement of the European Court of Human Rights, civil society organisation may not be obliged in general to disclose the names and addresses of their members because that would infringe their right to the protection of their private lives *(National Association of Teachers in Further and Higher Education* *v.* t*he United Kingdom,* application no. 28910/95, decision of 16 April 1998). The same also applies to the private life of the donors, i.e., the disclosure of the data of the donors is not capable of achieving any legitimate legal restrictive objective; it is not necessary, and is not proportionate to it. The list of private individuals supporting a particular organisation could disclose the connections, opinions, world outlook and beliefs of the respective donors. The support itself may also suggest the political opinion of the parties affected and, considering that the conclusion drawn from such data about the party affected is also personal data, with this requirement the Act demands the disclosure of special data. Furthermore, the Act also deprives the organisations of treating the data of private individuals supporting them as their own private data. Such a degree of transparency of support infringes the right of the individuals to their freedom to support any civil society organisation according to their views and beliefs, without disclosing their names if they choose not to, as by complying with the Act their data may be disclosed. If therefore an individual intends to support an organisation anonymously, the publicity can deter them from doing so, as a result of which the civil society organisation itself may lose support.

This restriction does not satisfy the requirements of the restriction of a right expressed in Article I (3) of the Fundamental Law.

Accessibility of the data of the identity of the donors by the public agencies and the disclosure of those data constitute an unnecessary restriction of the privacy rights of both the organisations and their supporters. The supporters and donors do not and may not have any dominant influence on the activities of a foundation or an association that may call for the mandatory accessibility of their data by the public agencies and the general public. The regulation does not distinguish between institutions providing support, parties supporting the implementation of a particular project and parties generally supporting an organisation with private donations, yet there are significant differences in the obligations involved in the various forms of support in terms of the activities of the organisation (whether they enter into a support contract, define the indicators of implementation of the project, whether there is an obligation to report on the project during its implementation term and subsequently, etc.). The lack of need for the restriction of rights is most obvious in the case of private donations, which are generally granted by private individuals or organisations to organisations pursuing a particular objective but not for a specific project or an activity. As such, this kind of support does not entail any indicator or reporting mechanism and therefore, apart from the fact that it secures the existence and operation of the organisation, it does not in any way legally influence an organisation in its activities or their timing. Such support does not constitute legal obligations but opportunities for the organisations to pursue their activities.

The Act nevertheless distinguishes between donors providing support of less than, or HUF 500,000 or more a year, because the former must be reported on an aggregated basis and the latter on an individual basis, most probably in order to respect the privacy of supporters making smaller donations. However, this solution clearly indicates that the restriction of the privacy of donors and organisations granting higher amounts is not capable of achieving the purpose. If the purpose of the restriction of the right is truly to ensure the transparency of organisations operating in public life and to combat terrorist financing and money laundering, then such a restriction is not suitable for that objective because by making donations in a number of instalments through various persons the objective of disclosing the names of donors can easily be avoided in money laundering or terrorist financing and for any other donor intending to hide for any other reason. With this solution, which is totally unsuitable for its objective, the Act only imposes a restriction on those who do not apply this simple trick.

It is also important to bear in mind that associations and foundations do not exercise any public power and obtaining public power is not among their objectives either. Their operation as civil society organisations *a priori* precludes the possibility of gaining public power. Consequently, the regulations pertaining to them must be different to those applicable to agencies exercising public power or political parties because the status of civil society organisations is not comparable to the status of such organisations. Civil society organisations try to pursue their objectives by exercising the fundamental rights granted to everyone. These objectives may be private objectives or social objectives, in which sense they may be deemed political objectives. However, as civil society organisations do not pursue their objectives by exercising public power or by trying to put their candidates into positions of public power through elections but exercise fundamental rights granted to everyone, their influence or importance in public life does not under any circumstance justify the same transparency requirements as applicable to institutions exercising public power or political parties intending to achieve public power. Furthermore, any potential influence of organisations abroad does not entail the risk that would arise if an agency or a political party exercising public power fell under foreign influence. In the possession of public power, the former bodies may adopt decisions binding on others and gaining influence over the latter bodies is risky because, with their candidates put into public power positions through elections, a party expressly intends to directly shape public power decisions. That is why the requirements for the transparency of support provided to public power agencies and political parties cannot be applied to the supporters of civil society organisation established as private autonomous institutions. What is therefore justified for the transparency of support granted to public power agencies and political parties is not so in the case of civil society organisations.

Finally, we also note that the Act requires the identification of the donor, even if they are private individuals, for any support of at least HUF 500,000 received from abroad. No five hundred thousand forints (HUF 500,000) of foreign support (equivalent to seven billionths of the GDP) to an organisation that does not have or intend to have any public power may impose any threat to the sovereignty of Hungary, the GDP of which equals approximately HUF 35,000 billion (35,000,000,000,000 forints). Without public power, national sovereignty cannot be shaken by such an amount. Consequently, the restriction is not suitable for achieving its objective.

III.2. Grounds on which the infringement of the freedom of opinion is based

Furthermore, by regarding the petitioners as organisations receiving foreign funds in Section 1 (1) and imposing obligations on them in Section 2 (1) for notification, in Section 2 (3) for data supply and in Section 2 (5) for disclosure and indication of information and by ordering them to state this fact in public records pursuant to Section 2 (2) and (4) of the Act and Section 94 (1) h) and Section 95 e) of the Civil Society Registration Act, the Act infringes their right to the freedom of opinion stated in Article IX of the Fundamental Law by creating distrust in the affected organisations as described in paragraph III.1.1. and thereby unnecessarily and disproportionately intervening in how they may take part in democratic public debates.

The petitioners are active participants in public debates. According to the Articles of Association and Foundation Memorandum presented in the attachment of the petition, their organisational objectives relate to public matters. The petitioners pursue various activities but, in order to achieve their objectives, almost all of them offer training on topics relating to their activities, prepare information brochures, organise discussions and conferences, report on their activities on their websites, in newsletters and in the social media and regularly inform the press of their views. The typical activities of the organisations also include proposals for new legislation, the amendment of existing legislation or changing the practice of applying the law and calling attention to the enforcement of social, environmental or human rights aspects. They pursue that activity by exercising their right to the freedom of opinion in important public matters, using legislative instruments.

On the basis of the freedom of opinion, civil society organisations can freely take part in democratic debates, irrespective of whether or not they agree with the current government or parliamentary majority or whether their position is aimed at modifying the legal regulations. Participation in public life and resolving social and political problems through a dialogue among members of society is a specific feature of democracies. In a democratic society, the state considers the members of society to be citizens, capable of making decisions on their private life and also on public life. All citizens have a right to decide which opinion to accept and which to oppose. A debate is democratic if citizens can choose on the basis of the persuasiveness of the various positions expressed in the “market” of opinions.

The Act involves itself in that situation in an unnecessary and disproportionate manner by discrediting certain opinions with the attribute of “supported from abroad,” as it intends to exclude the organisations affected and the positions represented by them from public debate with the help of the label of “supported from abroad”, as if such opinions were harmful or illegitimate.

As also described in Paragraph III.1.1, the attribute of “receiving funds from abroad” is not neutral and not descriptive. Its stigmatising and degrading nature is confirmed by the Act itself and its reasoning. According to the latter, the purpose of the Act is to “see and disclose which organisations are organisations receiving foreign funds” and to create “an opportunity to make it clear to the public the interests based on which the individual organisations intend to influence the opinion and conduct of the Hungarian state and its citizens”. When read with this preamble, the Act states that funds and support from abroad also entails the representation of foreign interests. The preamble states that “foreign interest groups may use the social influence over these organisations to enforce their own interests rather than community objectives in the political and social life of Hungary,” which “may impose a threat to the political and economic interests of the country and to the operation of statutory institutions without any undue influence”. Furthermore, without any available evidence, the Act relies on the assumption that organisations undertaking a role in public life and financed partly from foreign funds cannot have their own views, may not pursue the objectives of their organisations but in fact serve the interests of their donors. It refers to threats to national security, national sovereignty and the risk of money laundering and terrorist financing without any basis of facts. By stating that these organisations must be labelled as organisations receiving foreign funds and imposing an obligation on them to register themselves as such and to use that title because of the above threats, the Act creates a totally unfounded impression that these organisations are a threat to national security, national sovereignty and that they have ties with money laundering or terrorism. With this statutory restriction, which is not capable of achieving its objectives, the Act creates distrust in the affected organisations and builds suspicions around them. In relation to the fact that the content of this attribute or label prevailing in the current political context is not neutral, we wish to refer again to the issue of the questionnaire sent to each Hungarian household in the course of the “national consultation” conducted under the title of “Let’s Stop Brussels!” quoted above, which regards the activities of organisations receiving foreign funds as risky and interference in internal matters.

Section 2 (5) also obliges the organisations expressing their opinion to indicate that label on the medium carrying their opinion, on their website and in each publication. Among the positions competing in the market of opinions, their opinion is therefore immediately at a disadvantage due to the intervention of the Act. The position of the petitioners will be shown in each of their publications and on their websites, together with the message discrediting their activities, stemming from the government’s communication and also confirmed by the preamble and reasoning of the Act, according to which the source of such opinion serves interests other than the interests of the Hungarian nation.

In that context, it is important that, according to the petitioners, the main issue is not that it would not fall under the freedom of opinion of anyone to apply the same attribute that is triggered by the label contested in this complaint – also in view of the reasoning of the Act – to some or even all of them. According to the views of the petitioners, the essential difference is that any particular opinion can be freely expressed about them and that they are obliged to apply the same category to themselves pursuant to the Act. If anyone other than the petitioners has a right, protected by Article IX of the Fundamental Law, to describe and classify the activities of the petitioners then the petitioners have the same right to dispute that label and its connotations. The contested Act deprives them of that right.

This disadvantage cannot be legitimised by any objective to restrict a right unnecessarily and disproportionately and it does not comply with Article I (3) of the Fundamental Law. The various obligations defined in Section 2 of the Act, especially the obligation of indication and publication defined in Section 2 (5) and the fact that, in the public register of civil society organisations, the organisations are recorded as organisations receiving foreign funds pursuant to the contested provisions of the Civil Society Registration Act and that they can take part in public debates with that status restricts their freedom to express an opinion but it does not serve the objectives of transparency, the elimination of unwanted foreign influence or public action against money laundering or terrorist financing. The obligation of indication and disclosure specified in Section 2 (5) is an especially severe restriction also considering that the reports that contain the donors and support and the results achieved from the support for each supported project are available in the public court records and on the internet. The system of disclosure of reports and public benefit annexes specified in the Accounting Act provide sufficient transparency. Compared to that, the label of an “organisation receiving foreign funds” and its indication on the website and in each publication does not provide any added value towards transparency at all. The Act does not take the source of funding of a particular publication used by the organisation into account either. They need to indicate their status as an “organisation receiving foreign funds” even if a particular publication was financed only from Hungarian sources. Consequently, the obligation to indicate that status in each publication does not only fail to make these organisations more transparent, it is also misleading. This stigmatic label is misleading not only in terms of publications not financed from foreign funds; it also creates a wrong impression that acceptance of funds from abroad is a suspicious activity in itself, which calls for tight supervision.

III.3. Grounds on which the infringement of the freedom of association is based

The provisions of Section 2 (1)-(3) and (5)-(6) of the Act, and especially the sanctions described in Section 3 of the Act infringe the rights of the petitioners granted in Article VIII (2) of the Fundamental Law and are contrary to them.

Pursuant to Article VIII (2) of the Fundamental Law, everyone has the right to establish organisations and to join organisations. Although the Fundamental Law only specifies organisations and joining them, the contents of that right are much wider: it also includes the fact that organisations can freely operate in order to pursue their legitimate objectives and that they can accept funds for their operation. The same interpretation is also supported by international law documents that may be taken into account for the interpretation of the Fundamental Law. According to the European Court of Human Rights, any administrative measure that affects the funding options in terms of their activities infringes Article 11 of the European Charter on Human Rights (ECHR) (see: Ramazanova and Others v. Azerbaijan, ECtHR, Judgment of 1 February 2007, paras. 59-60; Parti nationaliste basque – Organisation régionale d’Iparralde v. France, ECtHR, Judgment of 7 June 2007, paras. 37-38). The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association also confirmed that the right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources. (UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 8.) Pursuant to the Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers (“Recommendation”), NGOs must be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors and another state’s or international agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties. According to the Guidelines on Freedom of Association issued by OSCE’s Office for Democratic Institutions and Human Rights (OSCE-ODIHR) and the Venice Commission (2014) (hereinafter Guidelines) civil society organisations must be able to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources. Similar statements were made by the UN General Assembly (UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144, 8 March 1999, Annex, Article 13.), the UN Human Rights Council (UN Human Rights Council, Resolution on Civil Society Space, UN Doc. A/HRC/32/L.29, 27 June 2016, para. 8.) and the Committee of Ministers of the CoE (Committee of Ministers of the CoE, Legal status of non-governmental organisations in Europe, Recommendation CM/Rec(2007)14, 10 October 2007, para. 50.)

The right of association is not an absolute right, but any restriction of that right may only be made in compliance with Article I (3) of the Fundamental Law. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.

The contested Act restricts the freedom of association because although it does not prohibit funds from being received from abroad, it obliges the organisations to register and report in detail on the support, which makes their operation more difficult and indicates potential sanctions to be applied in case the obligations specified as a condition of exercising the right of association are not fulfilled. The organisation is made to choose: it either accepts the foreign funds required for its operation and objectives and undertakes the statutory obligations related to such funding or to undertake the risk of being unable to raise the funds that are absolutely required for its operation and the achievement of its objectives.

## The need for the restriction is missing

The reasoning of the Act explains the need for restriction by referring to control over money laundering and terrorist financing and the prevention of any influence of foreign interest groups. As explained above, in the effective regulatory environment, the contested restrictions are unnecessary. The source of funding does not have any reasonable correlation with the listed objectives. According to the petitioners, it would clearly be absurd to claim that funds received from the European Union’s budget in a public tender represent a national security threat or would be intended for any illegitimate influence on the operation of the state. Due to the generality of this label (everything is foreign which is not national) support potentially originating from the Russian Mafia has been put into the same hat as support from the European Union or the embassy of a European country. According to the petitioners, there is no constitutional argument which would render this regulatory concept necessary and therefore legitimate.

Even if we accepted the above objectives as the legitimate aim of the restriction, the restriction still would not comply with the requirements of necessity, suitability and proportionality.

## The publicity and control of the operation of the organisations is properly guaranteed even at present and therefore there is no need for this regulation.

Even in the currently effective system, civil society organisations have numerous data supply obligations based on Act CLXXV of 2011 on the Freedom of Association, on Public-Benefit Status, and on the Activities of and Support for Civil Society Organisations (hereinafter Association Act) and Government Decree 350/2011 of 30 December on the operation of civil society organisations, the collection of donations and certain issues of the public benefit status (hereinafter Government Decree).

All registered data of associations and foundations are publicly accessible in the register of civil society organisations online and in courts. Such data include the registration number, the date of registration, the date of approval of the Articles of Association, the name, the registered address, the names and addresses of the representatives and the types of the organisations.

In addition, pursuant to Section 12 (2) of the Government Decree, the competent Minister publishes the form of submission of the public benefit annex constituting part of the annual report. The standard electronic template requires each civil society organisation to specify each individual donation or support and whether or not those funds were “international”.

On the same form, civil society organisations keeping their books according to the rules of double-entry bookkeeping must disclose detailed information on their activities, revenues and expenses for the particular year and the sources of their revenues. Each organisation with a public benefit status, which also applies to each petitioner, may keep their books only according to the rules of double-entry bookkeeping pursuant to Section 27 (2) of the Association Act. In this regulatory environment, they must indicate their revenues broken down by source, presenting resources received from the central and local government budgets, international sources and other support. The annual reports to be submitted in a manner specified in the currently effective legal regulation are published on the respective website (www.birosag.hu) even at present and are accessible to anyone free of charge.

In addition, the civil society organisations currently must also disclose their annual financial statements on their own websites even without the Act. That obligation is a satisfactory guarantee of transparency and information on their activities.

In the currently effective regulatory environment, the introduction of the attribute is not capable of increasing transparency because it coveys less information than the information the affected organisations must disclose on their operation irrespective of the contested regulation.

Concerning state control, the government’s endeavours to protect national security can clearly be achieved with the currently effective legal regulations. It is the responsibility of the national security services, the operation of which will definitely not be assisted by the introduction of the category required in this Act.

The public agencies already have wide access to the financial and operational data of non-governmental organisations. On the basis of the initiative of the public prosecutors, the court may conduct judicial oversight proceedings at civil society organisations. The State Audit Office has an audit and investigation competence regarding the absorption of budget transfers. Magyar Nemzeti Bank (National Bank of Hungary) also has information on the bank transactions and the absorption of any resources received from the European Union may be audited by the European Audit Office. If there is any suspicion of any crime, the state can have access to all tools and instruments available to Hungarian criminal justice.

On this basis, the fact that if the unnecessary statutory obligations are not fulfilled, the Act indicates the potential sanctions of a fine which may be imposed many times and, ultimately, the termination of the organisation by court, which ultimately leads to the elimination of the right of association, is definitely a disproportionate restriction of a fundamental right. It applies whether the Act threatens with a fine, the amount of which is so high that it may render the operation of the organisation impossible or a set of sanctions, also including the termination of the organisation in the event of the failure to fulfil the obligations under the Act, representing unnecessary and disproportionate restrictions. This threat disproportionately restricts the freedom of association even if a court must proceed in compliance with the requirement of proportionality in all cases.

III.4. Grounds on which the infringement of the principle of no discrimination is based

As, according to the position of the petitioners, the entire regulatory concept of the Act is discriminatory in view of the reasoning presented below, the entire Act is contrary to Article XV (2) of the Fundamental Law. Should the Constitutional Court not declare the entire regulatory concept to be contrary to the Fundamental Law, the petitioners request the annulment of the exceptions included in Section 1 (3) and (4) of the Act based on their violation of Article XV (2) of the Fundamental Law.

Pursuant to Article XV (2) of the Fundamental Law, Hungary shall guarantee the fundamental rights to everyone without any discrimination, in particular on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.

Within the homogeneous group of civil society organisations “receiving foreign funds,” the Act applies discrimination because the organisations receiving funds pursuant to Section 1 (3) of the Act and the organisations referred to in Section 1 (4) of the Act do not have the obligations specified therein. The additional obligation imposed on the respective civil society organisations represents a less favourable treatment and therefore a disadvantage for them compared to other civil society organisations in a comparable situation.

As explained above, that discrimination is applied in terms of fundamental rights (right to good reputation, right to privacy, freedom of speech, right of association), the conformity of which to the Fundamental Law may be concluded by a necessity-proportionality test pursuant to Article XV (1)-(2) of the Fundamental Law {Constitutional Court Decision 14/2014. (V. 13.), Statement of Reasons, Paragraph [32]}. However, even if the Constitutional Court ruled that the contested provisions are not compatible with fundamental rights, the discrimination may lead to non-conformity with the Fundamental Law according to the rationality test.

III.4.1. In terms of transparency as a constitutional objective, there is no reasonable explanation for the statutory provision that receiving funds from the European Union does not constitute a basis for the “receiving foreign funds” legal title if the funds are received through budgetary agencies. Transparency does not have any constitutional law connotation with what agency provides the support, because the purpose of transparency is to make the information on the revenues of a civil society organisation accessible to anyone. Consequently, by exempting certain civil society organisations receiving support from the obligation to notify the legal status of “receiving foreign funds” and registration in a public register in Section 1 (3) of the Act, the legislator applied discrimination towards the civil society organisations that are subject to that obligation, which violates Article XV (1) and (2) of the Fundamental Law and is therefore contrary to the Fundamental Law of Hungary.

III.4.2. On the basis of Section 1 (4) a) of the Act, a party, a trade union, a mutual insurance association, a public foundation and a party foundation cannot be deemed to be a civil society organisation “receiving funds from abroad”. These exceptions may not be justified in relation to any constitutional objective (transparency or elimination of any effort violating the political and economic interests of the country and the operation of statutory institutions free from any influence) or in the interest of enforcing any other fundamental right.

The transparency and the elimination of any effort violating the political and economic interests of the country and the operation of statutory institutions without any influence may also be applied to these legal persons and, in the case of parties and party foundations, there is an even stronger constitutional interest in their transparent finances than in the case of the civil society organisations falling within the scope of the Act. Parties, party foundations and trade unions are involved in the discussion of public matters because it is included in their activities and therefore the elimination of any foreign influence is a significantly more important constitutional objective in relation to them than in the case of the civil society organisations falling within the scope of the Act (irrespective of whether or not the registration of the legal status in a public authentic register is capable of achieving that objective). Considering the constitutional function of the parties, according to which they are involved in shaping and expressing the intentions of the people and send representatives to public power institutions, and therefore they are indirectly involved in the exercise of public power, even greater transparency should be required of them than for civil society organisations. The contested Act also imposes obligations on civil society organisations (e.g., with the term of indirect support or the category wider than capital contribution in relation to the method of support) which do not apply even to parties based on the Party Act, as under the Act, even indirect foreign support is deemed foreign, and it is not the case in the Party Act.

With the fact that, by exempting certain civil society organisations receiving support from the obligation to notify the legal status of “receiving foreign funds” and registration in a public register in Section 1 (4) a) of the Act, the legislator applied discrimination towards those civil society organisations that are subject to that obligation, which violates Article XV (1) and (2) of the Fundamental Law and is therefore contrary to the Fundamental Law of Hungary.

III.4.3. In the case of the exceptions referred to in Section 1 (4) b)-d) of the Act, discrimination is also arbitrary. Whether or not a particular civil society organisation pursues sports or religious activities or represents the interests and rights of nationalities, the reasons explained in the reasoning of the Act and *a priori* disputed by the petitioners as indicated above still equally apply in the case of foreign support: it is unclear why these organisations could not serve foreign interests and why the concerns about national security or public sovereignty would not also apply to them and why should they not fall under the scope of this Act in view of all the other reasons listed in the Act.

III.4.4. If the reasoning behind the regulatory concept were true (the supported organisations serve the interests of their donors), the introduction of the category of foreign supporter would be discriminatory, even if there were no exception from the scope of the Act. This is because according to the approach, which is otherwise unacceptable as it denies the possibility of autonomous action based on values and thereby totally ignores the image of the people behind the regulatory concept of the Fundamental Law, each organisation should indicate all funds equivalent to HUF 7.2 million. As an example, when a civil society organisation protecting fundamental rights received HUF 500 million from a state-owned company, it is not clear why it should not disclose that support received from public funds within the framework of the regulatory concept of the Act. Another reason why the Act is discriminatory is that it ties a statutory category to an absolute limit (HUF 7.2 million), yet the room for manoeuvre of an organisation is determined by the ratio and not the amount of its funding. It is obvious that if an organisation has HUF 1 billion in funds a year and only HUF 7.2 million of it originates from a source deemed suspicious according to the Act, the regulation cannot serve the objective specified as the purpose of the Act (“to see and disclose the interests behind the organisations”). It is impossible to prove the statement that seven thousandths of the funding would make any organisation serve any financier. Similarly, when an organisation receives funding from 15 foreign sources (in a particular case from different continents, different international organisations, between which there is no relationship), it may not be claimed that the organisation serves foreign interests because it is impossible to say which of the 15 donors is served by the respective civil society organisation. The statutory category is insensitive to all such differences, i.e., it classifies all organisations into a homogeneous group that do not belong there according to the concept of the Act.

## IV. Publicity of the petition

Pursuant to Section 52 (5) of the Constitutional Court Act, in constitutional complaint proceedings, the petitioner must provide a declaration concerning the management of their data. Pursuant to Section 57 (a) and Section 68 of the Constitutional Court Act, the Constitutional Court discloses the constitutional complaint when the petitioner grants consent to it. The petitioners consent to the disclosure of their full petition and even their legal representative does not request the redaction of his data. The petitioners request the Constitutional Court not to disclose the bank account statements, support contracts and other documents submitted as certificates as attachments to their petition.

Budapest, *25* August 2017

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