



Hungarian Helsinki Committee

CREATING A PARALLEL STATE STRUCTURE I.: PUBLIC TRUST FUNDS PERFORMING A PUBLIC FUNCTION

Information Note by the Hungarian Helsinki Committee (HHC)
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In an attempt to privatise immense public wealth and public universities, the governing majority adopted legislation that establishes the concept of “public trust funds performing a public function” (hereafter: Funds) and designated 32 entities as such. The legislative framework establishes that, among others,

- **The Funds' finances are shielded from public scrutiny;**
- **Public wealth transferred for free to the Funds cannot be taken back by this or any future government, even in case the Funds cease to carry out public functions;**
- **This and any future government lose any control over the management of the Funds.**

The exact value of transferred assets (real estate, land, bonds, shares) is yet to be established, but Transparency International Hungary's estimate puts **the value of only shares of state companies transferred** to some of the entities in the range of 1000-1200 Billion HUF (cca **EUR 2,9 Billion**).¹

Most of the newly established Funds are tasked with the management of higher education institutions. The state is thus creating de facto private universities under Hungarian public law in a way that it endows them with public assets of very high value, undertakes to continue to finance them generously, while **ceding all rights to** the governing body consisting of life-long **members whose loyalty to the incumbent party is unquestionable**. Consequently, under the new legal status, these trust funds will be financed from taxpayer's money but will be practically **shielded from public scrutiny** and from any possibility of state intervention should the funds be spent on purposes other than the public interest function they were established for.

The origins of Funds

Some amendments in the package of 9th Amendment to the Fundamental Law of Hungary, adopted in December 2020 concerned the use of public funds. Article 39(3) of the Fundamental Law entrenches a new, narrower definition of public funds as “the revenues, expenditures and receivables of the State”, while Article 38(6) now reads as follows: “the establishment, operation and termination of public trust funds performing a public function (*közfeladatot ellátó közérdekű vagyonkezelő alapítvány*) as well as the performance of the public tasks of such foundations shall be regulated in a cardinal law.”²

The concept of “public trust funds” (*közérdekű vagyonkezelő alapítvány*) was introduced by Act XIII of 2019 and became the format to which a number of higher education institutions were transformed into. The most well-known example of such transformation is the case of the University of Theatre and Film Arts.³ With the introduction of the concept of “public trust funds performing a public function” into the Fundamental Law, Act XIII of 2019 was also amended to reflect the creation of this subcategory as of 1 January 2021.⁴ Annex 1 of the Act listed those 14 foundations that had been granted the status of “public trust funds performing a public function”, many of which had been endowed by the legislature with public assets of enormous value.

¹ <https://helsinkifigyelo.444.hu/2021/04/26/kozalapitvanyi-birodalom>

² More on this in HHC's Flash Report of 12 November 2020, https://helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf

³ A documentary in English on the procedure of transformation, its consequences and the ensuing student blockade: <https://www.calvertjournal.com/articles/show/12714/watch-documentary-capturing-artistic-dissidence-hungary-2020-student-blockades-szfe>

⁴ Section 11/A of Act XII of 2019 on Public Trust Funds

Of the original fourteen institutions listed in the statute as public trust funds performing a public function, eight are universities, most transformed into this status within the last year. The boards of trustees of these foundations were nominated by the responsible minister and are largely composed of Fidesz politicians with the addition of some other government-affiliated actors.

On 31 March 2021, the Minister of Innovation and Technology submitted several Bills to Parliament with the potential to strengthen these opaque structures and further remove them from public scrutiny and control. Bill T/15710 was adopted on 27 April 2021 and entered into force as Act IX of 2021 on Public Trust Funds Performing a Public Function.

To cement these structures and this legal framework, Act IX of 2021 declares itself to be a cardinal law (requiring a two-thirds majority to amend it)⁵ and establishes that any other rule or regulation that might affect material rules regarding Funds, including more general rules of civil law, are to be applied to the Funds only in case these regulations are cardinal laws as well.⁶

Management of the Funds

Members of the board of trustees and members of the supervisory board of each fund are appointed by the founder (in practice in most cases the Government). The law provides for the possibility to transfer the right to appoint members of the board of trustees and the supervisory board from the founder the boards themselves, without the possibility to revoke this transfer once it has taken place.⁷ In other words, this and future governments lose any control over these entities.

Act VIII of 2021 eases regulations of conflicts of interest in a way that allows, among others, members of the government, members of parliament, public servants, government employees, local government officials, to hold functions in public trust funds performing a public interest.⁸

Transfer of assets to and financial support of the Funds

The law authorises Funds to manage their funds completely freely and even undertake economic activities that are not directly aimed at realizing their respective public functions, which severely restricts the foundations' accountability for the ways in which they manage and use their assets.⁹ Assets transferred to the Funds, even in case the public purpose for which these were provided (for free) by the State no longer exists, can only be repurchased by the State.¹⁰ The State has a right of first refusal regarding these assets only in case that is specifically provided for in the deed of foundation.¹¹

The State has an obligation to continuously provide financial support for the purposes of the public trust funds. A framework of funding (which is essentially an undertaking by the State) has to be established for at least 15 years¹² and the State is obliged to continuously provide equal or greater funding to the public trust funds than other State and local government-run entities fulfilling similar purposes.¹³

The Funds

Annex 1 of Act IX of 2021 lists 30 newly established public trust funds performing a public function, 21 of these are to manage higher education institutions. The Annex also establishes that state joins 2 existing foundations and declares them public trust funds performing a public function.¹⁴

⁵ Section 32 (1) of Act IX of 2021

⁶ Section 2 (3) of Act IX of 2021

⁷ Section 7(1) of Act IX of 2021 on Public Trust Funds Performing a Public Function

⁸ Sections 6, 7, 19, 20, 28, 29, 31, 35 of Act VIII of 2021 on the Amendment of Certain Acts related to the Regulation of Higher Education and Related Acts, Section 15 of Act IX of 2021

⁹ Section 3 (5)-(6) of Act IX of 2021

¹⁰ Section 16 (5) of Act IX of 2021

¹¹ Section 12 (4) of Act IX of 2021

¹² Section 20 (1) of Act IX of 2021

¹³ Section 21 of Act IX of 2021

¹⁴ A list of these Funds with their respective objectives and members of the board of trustees is available in English here: <https://helsinki.hu/en/wp-content/uploads/sites/2/2021/05/List-of-Public-Trust-Funds-Performing-a-Public-Function.pdf>