



Hungarian Helsinki Committee

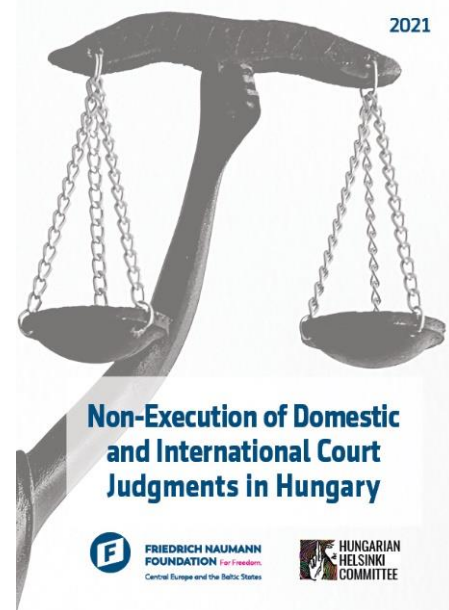
Non-execution of domestic and international court judgments in Hungary

Research report summary
December 2021

Hungary has been failing to implement judgments of the Strasbourg and Luxembourg courts, and Hungarian authorities are repeatedly disregarding the judgments of the country's own domestic courts as well. A new research paper by the Hungarian Helsinki Committee, titled "Non-Execution of Domestic and International Court Judgments in Hungary", shows just how deep this phenomenon, being another sign of the country's rule of law backsliding, runs.

The implementation of domestic and international court judgments is one of the cornerstones of the rule of law. Without it, the systems will crumble. This is all the more so when state agencies are the ones that defy compliance with the judgments handed down by their own domestic courts, or when states start to tear up the fabric of international agreements by not complying with the judgments of international courts. Non-compliance with court judgments is not only a sign of and, at the same time, a factor contributing to the deterioration of the rule of law, but also leads to human rights violations that are left without remedy and that are possibly even recurring. The unwillingness of state authorities to accept domestic court rulings is not only detrimental to the independence of the judiciary, but also creates a perception in the public that judgments can be disregarded, which undermines general trust in the force of fair adjudication.

The new research paper by the Hungarian Helsinki Committee, supported by the Friedrich Naumann Foundation for Freedom, shows just how deep the phenomenon of not executing court judgments runs in Hungary: it provides a snapshot of the state of execution of judgments by Hungary and by the Hungarian authorities by looking at decisions issued by domestic courts, Hungary's Constitutional Court, the European Court of Human Rights, and the Court of Justice of the European Union.



The non-execution of domestic court decisions

As a warning signal of disrespect towards the rule of law, there are instances of state authorities manifestly resisting the execution of binding domestic court decisions imposing obligations on them, often in areas directly linked to democratic decision-making and voters' ability to make decisions based on credible information. Judgments obliging state authorities or bodies to disclose public interest data are often not complied with, and it is hard to enforce these decisions. Not disclosing the data in defiance of a court decision is a criminal offence, but in practice, omissions never lead to indictments: between 2013 and 2018, none of the related criminal reports resulted in pressing charges. Another problematic group of cases are press rectification and personality rights cases, which have gained particular importance in recent years because both the public service media and government-affiliated media outlets regularly publish materials about opposition politicians, NGO workers, activists or even academics that contain false statements and violate the personality rights of the persons concerned, with the aim of discrediting them. In the press rectification and personality rights lawsuits launched against the government-affiliated media, damages awarded by the courts are mostly paid, but rectifying statements

and apologies are rarely issued. In the past years, the non-implementation of court decisions has become an issue in another politically sensitive area as well: the asylum authority has also been disregarding court decisions in certain scenarios.

There are no publicly available detailed statistics on the number of cases when decisions are not executed, nor on the number of cases where it is a state authority or institution that does not execute the decision of a Hungarian court. Enforcement is undermined by practical shortcomings of the enforcement process that should be solved, and the sanction system for non-compliance and the courts' practice in this regard is inadequate and so has no deterrent or dissuasive effect.

Another way of not complying with ordinary court judgments is state authorities avoiding execution by "using" the Constitutional Court. This is possible since in 2019, a new form of constitutional complaint was introduced that allows public authorities to challenge final court decisions before the Constitutional Court by claiming the violation of their rights. Thus, constitutional complaints can be used not only to protect people's rights against state powers, but also to provide constitutional protection to public authorities in their lawsuits vis-à-vis individuals. This enables the state to channel the review of unfavourable court decisions in politically sensitive cases out of the ordinary court system, to the already packed Constitutional Court. It does not diminish the dangers posed by this new possibility that so far, public authorities have not been particularly successful in making use of this new type of constitutional complaint: as of the end of September 2021, the Constitutional Court reached a decision in 13 cases where a constitutional complaint was put forward by a public authority, and the challenged court decisions were quashed in only two of them. However, recently, the Government used this new type of complaint to override a decision of Hungary's highest ordinary court and to validate a transphobic national referendum question proposed by the Government.

Finally, there have been worrying instances where specific court decisions triggered sudden and problematic legislative steps that effectively overruled the gist of those court decisions. Examples include the amendment that deprived victims of segregation in education (or any other discrimination in education) from financial compensation, in violation of the EU acquis.

The non-execution of decisions by Hungary's Constitutional Court

As a crucial element of undermining constitutionality in Hungary, the governing majority has in the past decade undermined the independence of and weakened the Constitutional Court, the guardian of the constitution. One of the techniques of the ruling majority was that they have systematically reintroduced into the constitution provisions of ordinary laws which had been previously found unconstitutional and annulled by the Constitutional Court, thereby removing them from its scope of review. This effectively meant the overriding of Constitutional Court decisions via constitutional amendments, and has been criticized by the Venice Commission as well.

The governing majority has also been reluctant to execute Constitutional Court decisions establishing a legislative omission. Between 1 January 2012, the coming into force of the Fundamental Law, and 30 November 2021, the Constitutional Court issued 44 decisions establishing an unconstitutional omission to be addressed by the Parliament. With regard to 12 of these decisions, the Parliament has failed to comply with its obligations so far, even though the deadline put forth by the Constitutional Court expired in 10 of them already, in some of them years ago. Eight of the non-executed decisions established unconstitutional omissions in relation to fundamental rights and freedoms.

The non-implementation of European Court of Human Rights Judgments

The picture is similarly bleak when it comes to the execution of regional court judgments. Hungary's record on the implementation of European Court of Human Rights (ECtHR) judgments continues to be poor. 81% of the leading cases from the last 10 years are still pending execution, which is a very high percentage as compared to other Council of Europe countries. At the beginning of December 2021, there were 55 leading Hungarian cases pending execution, meaning that currently there are more leading cases pending execution than the total number of leading cases considered as executed by the

Committee of Ministers of the Council of Europe in the past 10 years. Non-executed judgments indicate systemic and/or structural problems concerning for example the violation of and the chilling effect on the freedom of expression of judges, the excessive length of court procedures, ill-treatment of civilians by law enforcement personnel, the institution of life sentence without the possibility of parole, unchecked state surveillance, depriving religious communities of their status as churches, violations of the freedom of expression of opposition Members of the Parliament, structural deficiencies leading to undue restrictions of the freedom of assembly, the discrimination and segregation of Roma children, and many more. From the 55 leading cases, 12 are under enhanced supervision, most of them due to the fact that they concern a major structural and/or complex problem in the Hungarian legal system, and there are pending cases under standard supervision as well which concern systemic or structural issues.

While just satisfaction is always paid by Hungary, general measures that would be necessary to prevent similar rights violations are very often not taken. In addition, the Government seems to have a clear tendency to ask for case closure right away: in 35 of the 55 leading cases analysed, it only submitted an action report and no action plan, and the overall number of action reports is also much higher than that of the submitted action plans. It is also characteristic that the Government is late with submitting its first action plan/report.

The ECtHR and its judgments have been criticized publicly many times by government and governing majority representatives in the domestic arena, implicitly and in a few instances even explicitly signalling the lack of willingness to execute certain judgments. The number of staff members in the Ministry of Justice working on implementation is low, hindering effective implementation. Furthermore, the Government's approach towards the implementation of the judgments lacks transparency and inclusivity; there is no separate national structure whose explicit aim would be to bring together various actors to coordinate implementation. Meaningful parliamentary oversight is lacking. At the same time, there is low awareness of the implementation process among relevant professional groups, including attorneys. The Ombudsperson, the country's national human rights institution, has not been contributing to the implementation process either. Accordingly, in order to enhance the efficiency of planning and implementation, it would be necessary to rethink and reorganise national structures tasked with implementing the judgments and with supervising that process, and transparency and inclusivity throughout the implementation process should be ensured.

Deficiencies regarding the implementation of judgments by the Court of Justice of the European Union

As far as the Court of Justice of the European Union (CJEU) is concerned, blatant disrespect of its judgments has not been characteristic of Hungary for years. However, the Hungarian government has been resorting to a variety of methods to subdue the effect of CJEU judgments on the Hungarian legal environment. Most notably, there were instances when delayed execution meant that the CJEU's judgment and the ensuing steps could not remedy any more the damage done, such as in the case of the forced early retirement of judges, where as an ultimate result of the law that was found to be in breach of the EU non-discrimination acquis, a significant proportion of the most experienced judicial administrative leaders were removed from the system. More recently, severe problems have emerged with regard to the execution of CJEU judgments by Hungary, amounting to non-compliance. This led up to the point where the European Commission referred Hungary to the CJEU over its failure to comply with a CJEU judgment concerning push-backs on the Hungarian– Serbian border under Article 260 of the Treaty on the Functioning of the European Union in 2021.

**The research paper
"Non-Execution of Domestic and International Court Judgments in Hungary"
can be downloaded in English [here](#).**