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COMMITTEE

## An Effective Anti-Corruption Framework Needs An Independent Judiciary

Budapest, 12 September 2022

**The little that is known about the ongoing negotiations between the Hungarian government and the European Commission over the systemic improvements Hungary should implement for accessing EU funds suggest that until now, the government has made no commitments regarding the independence of the judiciary. This stands in stark contrast with the worsening reality on the ground. The Hungarian Helsinki Committee's recent investigation shows that the President of the Kúria, Hungary's supreme court, accelerated the executive's take-over of the judiciary. If the systemic issues enabling these steps described below remain unaddressed, no new anti-corruption authority or working group<sup>1</sup> could ensure an effective anti-corruption framework because the adjudication of cases would be left to newly occupied courts.**

Elected by the Parliament in October 2020, András Zs. Varga became President of the Kúria through the adoption of a series of *ad hominem* acts, which enabled him to first be appointed a judge, then to serve immediately at the highest court, then finally to become eligible to be elected its president. The European Commission, among others, also criticized these steps in its annual Rule of Law Reports. In parallel, the role of the Kúria expanded as it gained wider judicial competencies, and a semi-precedent system was introduced in July 2020<sup>2</sup> and the powers of the Kúria President also grew.

Beyond being vested with additional powers when adjudicating cases, the Kúria President is in charge of the administration of the Kúria, including judicial appointments. Becoming a judge at the Kúria can take place primarily through either of the following procedures: following an open call for applications, the President selects a new judge for appointment, or a judge is seconded temporarily from another court. In case of new appointments, the President can set special requirements that prospective applicants should meet, such as requiring experience in adjudicating cases at the appellate level. In case of secondments, either the Kúria President or the President of the National Office of the Judiciary can take a decision on a particular judge's temporary transfer, depending on the legal basis of the secondment.

**During his first year in office, the new President appointed 11 new judges to the Kúria. Five of these judges had been appointed in a manner that failed to comply with the law.** The National Judicial Council, the self-governing body of judges tasked with supervising the administration of courts, noticed the unlawful practice during its examination of the President's appointments in July 2022. The Hungarian Helsinki Committee obtained the summary of the application procedures through a freedom of information request based on which the entire unlawful practice was revealed in detail.<sup>3</sup> Under the law, applicants for a vacant post must be ranked by a panel of judges (judicial council). The President then selects the first-ranking candidate to be appointed to the post. Should the President wish to appoint the second or third ranking candidate instead, the express consent of the National Judicial Council must be secured. A candidate who was ranked lower than third place cannot be appointed under any circumstances, not even with the consent of the National Judicial Council. Data obtained by the HHC shows that out of the 11 judicial appointments in 2021, the President selected four judges who had been ranked in second or third place without seeking consent from the National Judicial Council. In one case, the President selected the fourth ranked candidate.

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<sup>1</sup> Telex, [Hungarian government to set up anti-corruption authority](#), 6 September 2022. See the [joint assessment](#) of K-Monitor, TI Hungary, and the Hungarian Helsinki Committee, 12 September 2022.

<sup>2</sup> Hungarian Helsinki Committee, [New law threatens judicial independence in Hungary – again](#), January 2020, p. 5.

<sup>3</sup> Hungarian Helsinki Committee, [Tribunal Established by Sleight of Hand](#), 4 September 2022.

**Four of the unlawfully appointed judges are currently members of judicial panels that hear cases in the administrative law section of the Kúria, where one of the parties to the legal dispute is a state authority.** Such cases include, for example, disputes related to elections, allocation of media frequencies, freedom of information requests, omissions of state authorities, licences to operate, etc. which are potentially politically sensitive topics.

No remedies are available against the unlawful judicial appointments and the judges continue to serve at the Kúria.

The President's unlawful appointment practice cannot be considered merely a formal transgression. Rules on judicial appointments are essential elements of the fundamental safeguards for judicial independence and the right to a lawful judge. Judicial appointments that are made in severe breach of these safeguards may constitute a breach of the right to a tribunal established by law.

Further concerns exist as regards the second pathway to serve as a judge at the Kúria, when a judge is transferred to the Kúria by way of temporary secondment. This can either happen for the purpose of relieving the workload at the court, when the transfer decision will be taken by the President of the National Office of the Judiciary, or to "facilitate the professional development" of a particular judge when the secondment is initiated at the sole discretion of the Kúria President.

During the first eight months of 2022, until 1 September, seven judges had been appointed to the Kúria, four of whom had already been seconded there prior to their appointment, on the legal ground of facilitating their professional development. In 2021, out of the 11 judicial positions that became vacant at the Kúria, six posts had been filled by judges who have already been seconded there prior to their appointment with the aim of facilitating their professional development.

There are several concerns regarding the legal framework of seconding judges and its practical implementation.<sup>4</sup> The high correlation between a prior secondment and a final appointment as a judge confirms the assumption that secondments are used as a disguised probationary period for lower-tier judges who are hand-picked by the Kúria President for a future application procedure. **Of special relevance to appointments at the Kúria is that through unjustified and non-transparent secondments initiated by the President, then setting special requirements in calls for applications for permanent appointments, it becomes possible to create tailor-made positions for individuals.**

The body entrusted by the Fundamental Law with supervising the administrative actions of the President, the National Judicial Council, has no tools at its disposal to sanction the problematic secondments or the outright unlawful appointments to the Kúria. Unlawful appointments not only put the right to a tribunal established by law in jeopardy, but those installed in tailor-made positions will likely make tailor-made decisions as well, including in those corruption that would finally reach the courts. The strengthening of the National Judicial Council is a decade-old recommendation of EU and Council of Europe institutions, formulated most lately in the European Commission's 2021 Annual Rule of Law Report.<sup>5</sup> Thus, **at a minimum<sup>6</sup>, the National Judicial Council should be able to initiate an impeachment proceeding against the President, similarly to its right to do so against the President of the National Office for the Judiciary in case the appointment practice is found to be in breach of law.**

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<sup>4</sup> Hungarian Helsinki Committee, [Background Paper on Systemic Deficiencies of the Legal Framework and Practice of the Secondment of Judges in Hungary](#), 6 September 2022, esp. p. 2.

<sup>5</sup> European Commission, [2021 Rule of Law Report Country Chapter on the rule of law situation in Hungary](#), p.2.

<sup>6</sup> See also the [joint recommendations of the Hungarian Helsinki Committee, K-Monitor, and TI Hungary to strengthen the anti-corruption framework and to restore the independence of the judiciary](#), 12 September 2022.