



HUNGARIAN
HELSINKI
COMMITTEE

MILESTONE ZERO

Full screening of the Hungarian judiciary should be the baseline of recovery

28 November 2022

Milestone zero is a must

Negotiations between the European Commission and the Hungarian Government regarding Hungary's access to the Recovery and Resilience Facility (RRF) and the conditionality procedure initiated to protect the EU budget have nearly come to an end without a single step taken to restore the independence of the [captured courts of Hungary](#). In September 2022, the Hungarian Government [undertook to guarantee](#) that “all courts in Hungary hearing civil, administrative and criminal cases including those relevant for the protection of the financial interests of the Union shall comply with the requirements of independence, impartiality and being established by law in accordance with Article 19(1) of the Treaty on European Union and the relevant EU *acquis*”. The independence of the partly captured Hungarian judiciary cannot be restored by simply [putting an end to arbitrary and uncontrolled court management powers](#). A milestone zero must be introduced to restore the damages already done.

Tribunals established by sleight of hand

By the end of 2022, a remarkable number of judges serve in the Hungarian judiciary who were appointed in blatant disregard of European standards and in some cases, even in breach of Hungarian laws. For over a decade, the systemic deficiencies of court management powers enabled a variety of manners to manipulate with judicial careers and even to circumvent the otherwise obligatory application procedures. The most outstanding examples of manipulated judicial appointments include:

- (i) Appointments created by *ad hominem* legislation. Both the [Kúria President](#) and the [Kúria Vice-President](#) gained their judicial appointment and judicial leadership positions by *ad hominem* legislation. Altogether eight Constitutional Court justices were appointed as ordinary judges based on their request without the otherwise required appointment procedure, six of them without any prior judicial practice.
- (ii) Appointments effected [in breach of the Hungarian laws](#). In 2021, five Kúria judges were appointed in a non-transparent proceeding, circumventing the obligatory consent of the National Judicial Council (NJC).
- (iii) Appointments eased by [arbitrary secondments](#) and [tailor-made application procedures](#). Since 2021, at least ten Kúria judges were appointed after being “tested” as seconded judges.
- (iv) Appointments effected by judicial leaders [without support by the relevant judicial council](#). Outstanding examples of this appointment pattern include the Kúria President and the Kúria Vice-President who were appointed disregarding the objection of their judicial peers.

The above means that in an attempt to capture the judiciary, in the past years several judges have been granted appointments and/or leadership positions through either formal breaches of the relevant laws, or using legal loopholes. Until no effective remedy is provided for these instances, there can be no true guarantees of an independent Hungarian judiciary.

Guarantee the right to a lawful judge

While a remarkable number of judges gained appointment outside the ordinary application procedure, and sometimes even in breach of the Hungarian laws, the parties to a lawsuit cannot in any manner verify whether the judge dealing with their case was appointed (or transferred) in line with the basic European standards of judicial appointments and the Hungarian laws. The Hungarian Government must guarantee that any and all courts comply with the requirements of independence, impartiality and being established by law, therefore, as a milestone zero, effective measures must be introduced to enable parties to any lawsuit to verify whether the judge dealing with their case complies with the above requirements. Parties to a case should be informed of all relevant circumstances of the appointment and promotion of the judge dealing with their case and should be allowed to request effective remedy in case of any derogation from European standards of judicial appointment.
