



Last-minute, makeshift solutions cannot resolve long-standing rule of law concerns

8 December 2023

Less than one week before the scheduled decision on compliance with the judicial super milestones by the European Commission, the Hungarian government launched last-minute legislative amendments to cover at least part of the [outstanding deficiencies of the judicial reform passed in May 2023](#). The solutions adopted, including their method of adoption, are makeshift and breach relevant laws and bylaws, as well as rule of law principles. Despite explicit expectations for public consultation in the process, and the legal obligation to do so, there were no public consultations about the adopted modifications, nor do they reflect Hungarian civil society organisations' proposals in addressing [fundamental deficiencies](#) of the adopted reform.

As assessed by Amnesty International Hungary and the Hungarian Helsinki Committee, the last-minute modifications

- take illusionary steps to remove the obstacles to preliminary references,
- do not resolve persisting problems of the case-allocation system at the Kúria and
- leave intact all remaining deficiencies in compliance, including the possibility of cementing the Kúria President in position despite the requirement to exclude re-election.

The makeshift solutions offered by the Hungarian government cannot resolve long-standing rule of law concerns and should not serve as a ground for the European Commission to legitimise the remaining shortcomings of the judicial reform.

No public consultation and parliamentary debate despite earlier commitments

In the evening of 7 December 2023, two legislative amendments were published affecting the Hungarian judiciary. (i) At 5:51 pm, the proposal for an omnibus amendment to the Bill on the amendment of certain acts to strengthen the links between universities and research institutes, and the economy, and on the amendment of certain acts related to adult education and culture was published on the Hungarian Parliament's website. [The proposed amendment](#) containing the modification of the Code on the Criminal Procedure (CP) was tabled by Parliament's supercommittee, the Committee on Legislation, that may introduce any amendment to any proposal immediately prior to the plenary vote. (ii) At 7.43 pm, a modification of MoJ Decree No. 14/2002 (VIII.1.) on the Rules of Court Administration (MoJ Decree) was published in the [National Gazette](#) amending the

rules of case allocation at the Kúria. Both legislative amendments pertain to the Hungarian judiciary and fall within the scope of undertakings by Hungary to get access to frozen union funds.

Despite the fact that the super milestones required the Hungarian government to provide 15 days for stakeholder consultation before tabling draft laws required for the implementation of the judicial reform, [similar to the adoption of the reform act in May 2023](#), public consultation was circumvented once again. The MoJ Decree amendment has already been promulgated, while the Bill that contains the amendment to the CP is expected to be rammed through the Parliament within a couple of days, in breach of the laws governing the lawmaking process and in contradiction with the principles of transparent, accountable, democratic, and pluralistic law-making.

Block on preliminary references remain

The proposed legislative amendment rewrites Section 490 (1) of the CP once again. While the new wording omits the formula that explicitly limits the scope of preliminary references, it does not eliminate the block on preliminary references established in the jurisprudence of the Kúria according to which turning the Court of Justice of the European Union (CJEU) for a preliminary ruling can be deemed as unlawful under Hungarian law. In order to remove all obstacles to preliminary references, the applicability of the precedential decision of the Kúria should be expressly excluded. Neutralizing the legal effect of the precedential decision of the Kúria necessarily implies legislative amendments that expressly counter its content.

- (i) Besides the CP, all other procedural laws, including civil and administrative, should be amended, as the current precedent also applies beyond the CP, to all branches of adjudication.
- (ii) Procedural laws should expressly claim that requesting a preliminary ruling from the CJEU is a right of Hungarian judges, the exercise of which falls within their judicial discretion and cannot constitute a breach of the law.

As long as the legislation or a new precedential decision does not expressly claim the contrary, the legal force of the precedential decision will prevail, according to which exercising the right to preliminary references may qualify as unlawful under Hungarian law. As long as the legislation does not explicitly terminate the legal effect of the precedential decision, it will exert a chilling effect on judges at the moment they weigh turning to the CJEU, especially when it comes to politically sensitive issues.

At the same time, the proposal would introduce a new procedure related to preliminary ruling requests, whereby the Hungarian Constitutional Court would adopt a pre-preliminary ruling should the preliminary ruling request submitted by a judge relate to, among others, national identity, sovereignty, fundamental rights recognised by the Fundamental Law. This has the potential to become a new obstacle in practice, either by exerting a chilling effect on judges, and/or by furthering the potential to ignore judgments of the CJEU based on the Constitutional Court's previous [finding that paves the way for Hungary to selectively implement CJEU judgments](#).

Case allocation at the Kúria remains deficient

The modifications to the provisions on case allocation at the Kúria provide further detailed rules that guarantee proper implementation of the milestones, but implementation remains deficient. With effect of 6 February 2024 the MoJ Decree will introduce new rules ensuring that: (i) case numbers will be assigned in an automated way, without any human intervention, and (ii) the case logs published by the Kúria will include additional information (e.g. on the composition of the bench hearing the case and on the date and time of assigning a case number and assigning the case).

Despite the fact that the new rules improve the current legal framework, the main concerns - detailed in [our May 2023 assessment](#) and [Hungarian CSOs' November 2023 assessment](#) - remain.

- The legislation only provides for automation until a case number is assigned. The case allocation thereafter (i.e. to a chamber hearing the case and then to the members of the bench hearing the case) allows the intervention of court leaders on the basis of discretionary decisions lacking objective criteria without legal guarantees.
- There will still be no objective criteria for the establishment of the chamber hearing the case (which is not per se the same as the bench hearing the case according to the judicial package, the latter being the panel of judges who will eventually adjudicate the case), which makes it possible to manipulate the final composition of the bench hearing the case.
- Although the logging of cases will now include the composition of the bench, it will not be transparent under what objective rules and by what electronic system the assigning court leader has allocated the case to a chamber hearing the case and the judges themselves. The [Case Allocation Scheme of the Kúria](#) will still provide for a non-transparent case allocation system, in which, amongst others, there are various possibilities to deviate from the main rules. The case logs do not explain the reasons for deviation from the case allocation scheme.

Rules allowing de facto re-election of the Kúria President remain

The modifications leave intact the laws that allow the de facto re-election of the Kúria President. The reform adopted in May 2023, while formally stating that the Kúria President cannot be re-elected, does not change the rules that allow a one-third minority of the Parliament to keep the Kúria President in office (as the Kúria President remains in office with full powers as long as their successor is not elected by a two-thirds majority). The new rules further narrow the pool of potential candidates for the President's position by modifications not required by the milestone.

* * *

With regards to further deficiencies of the judiciary reform, we refer to earlier assessments prepared by Hungarian civil society organisations:

- Amnesty International Hungary, Eötvös Károly Institute, Hungarian Helsinki Committee: [Assessment of Hungary's judicial reform](#), 23 May 2023.
- Hungarian Helsinki Committee: [Fundamental Deficiencies of the Hungarian Judicial Reform](#), 30 October 2023.