



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

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**Tibor Navracsics**  
**Minister of Public Administration and Justice**  
1055 Budapest, Kossuth tér 4.

### Dear Minister,

You have sent a letter to the President of the Curia in relation to the judgment in the Cozma case, indicating that the sanctions imposed are too light and asking the President to take all necessary measures in order to ensure that judicial judgments correspond with the expectations of society.

Having read the letter sent to the Hungarian Civil Liberties Union<sup>1</sup> by your spokesperson in which you wrote that you were only requesting information, primarily in relation to the Cozma case, first of all we think it is important to state that it is difficult to interpret your letter as one that is not aimed at putting pressure on the judiciary by the executive.

In the beginning of the letter you state that as a result of the inconsequential or too mild criminal sanctions, a public outcry has unfolded which the Ministry of Public Administration and Law Enforcement has also noted. You then warn the president of the Curia that this problem – which cannot be rectified by law-making – may undermine the trust of society in the justice system. Following such an introduction comes a rather transparent inquiry into the standpoint of the President of the Curia, then – in a way revealing your ultimate intention – you advise the president of the Curia that “if he also (!) finds it important to make judicial decisions better correspond with the expectations of society, then he should take the necessary steps to achieve this.” No matter what your spokesperson wrote to the HCLU about the “request for information”, the message of your letter is obvious: the executive clearly informs the judiciary that it expects the adjudicating judges to take into consideration the expectations of society in high-impact cases.

With this context in mind, we find it crucial to call your attention to some important points.

Article 26 (1) of the Fundamental Law of Hungary provides that “judges shall be independent and **subordinate only to the law**, and may not be instructed in relation to their judicial activities”. Article 3 of the Act 2011 CLXI on the organization and administration of courts sets forth that “judges are independent, they shall render their **decisions based on the law in accordance with their convictions**; they **may not be influenced** or instructed in relation to their activities in the administration of justice.”

The provision “subordinate only to laws” means that – contrary to the view expressed in the letter written by your spokesperson, which presumably reflects your own standpoint – the opinion of society is irrelevant when rendering judicial decisions. Taking into consideration how “well-informed” members of society generally are with regards to the details of a particular case, to the doctrine of criminal law and to its sanctions (e.g. the real conditions of imprisonment), and bearing in mind that 68 percent of Hungarian society is in favour of capital punishment,<sup>2</sup> it is perhaps not necessary to elaborate on why this is so. (It is not by chance that “népítélet” – or “mob rule” – means what it means.)

However, in your letter to the President of the Curia you criticise the judicial decision for not paying due attention to the expectations of the public, an irrelevant factor which is not to be taken into consideration under the Criminal Code. Societal expectations are irrelevant both with relation to the classification of the given crime and to sentencing decisions. In other words you are calling on the President of the Curia to take measures in order to ensure that judges consider factors not prescribed by law when deciding cases, that is, to make unlawful decisions.

<sup>1</sup> [http://ataszjelenti.blog.hu/2012/05/17/navracsics\\_tibor\\_levellet\\_megirta#more4522215](http://ataszjelenti.blog.hu/2012/05/17/navracsics_tibor_levellet_megirta#more4522215)

<sup>2</sup> <http://www.tarki.hu/adatbank-h/kutjel/pdf/a556.pdf>



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It is difficult to decide which possibility is more alarming: that you are not aware of the above, or that you are, but choose to ignore these issues in the interest of presumed political gains. Nonetheless, believing in the value of rational debate employing actual arguments, I would like to ask you some questions in this open letter. I would appreciate if you gave substantive answers to them.

1. In light of the legal provisions cited above, judges may not be instructed or influenced in the course of their judicial activity. Bearing this in mind– and especially taking into consideration that the milder sanction at the second-instance court in the Cozma case was the result of a disagreement with the first-instance court as to the classification of the crime – what do you think the President of the Curia could lawfully do even if he agreed with you concerning the gravity of the judgment in question?

2. Based on the judicial practice of the past twenty years, do you really think that a judgment imposing almost twenty years of imprisonment in a high-security regime is unjustifiably mild? If so, what is the reasoning behind this standpoint?

3. Since you became the minister responsible for justice, the Nullification Act was adopted; the power of the Constitutional Court was restricted; legal provisions held unconstitutional by the Constitutional Court were written into the Fundamental Law (e.g. the ability of the chief public prosecutor to select the adjudicating court in a given case); the President of the Supreme Court was removed years before the end of his mandate; you submitted a proposal to adopt a Parliamentary Resolution saying that judgments of the European Court of Human Rights with which the government does not agree should not be abided by; and finally, some days ago, in relation to a concrete judicial decision, you called on the President of the independent judiciary review judicial practice. I would like to ask you to inform us, legal defenders and those who are perplexed by these governmental measures, with which of the conceptions of rule of law, constitutionality and judicial independence that you teach at the university as a professor of law are these measures compatible? Many of the voters would like to know this, because Fidesz promised in its 2010 platform to strengthen the rule of law in Hungary, and it would be useful to know what was meant by this concept by those formulating the platform.

Budapest, 18 May 2012

Sincerely yours,

András Kristóf Kádár  
co-chair  
Hungarian Helsinki Committee