



Hungarian Helsinki Committee

PROPOSED NEW LAW THREATENS JUDICIAL INDEPENDENCE IN HUNGARY – AGAIN

*Statement by the Hungarian Helsinki Committee
18 November 2019*

On 12 November 2019, the Hungarian Government submitted a Bill to the Parliament which, if adopted, will have a significant negative impact on judicial independence, however, in a much more covert and technical way than the earlier, withdrawn plan to put administrative courts under the Minister of Justice.

The [Bill](#) is substantial and amends several pieces of legislation. The most conspicuous problems are the following:

1. One of the shortcomings the Venice Commission [criticised](#) with regard to the withdrawn law on separate administrative courts was that “the legislative process [...] was not backed up by an impact study, as required under Hungarian law”, and “the consultations held by the Hungarian authorities and in particular the period of time allowed for the debate of the draft legislation – amounting to a few days – were rather short”.

The period found too short by the Venice Commission was three working days back then. This time, however, not even three days were provided: **the draft was never published on the Government's website** (although this would be required by law), the first time the wider public (including important stakeholders of the justice system) was made aware of the plans was when the submitted Bill got published on the Parliament's website. This is all the more problematic as two NGOs actively dealing with the independence of the judiciary, the Hungarian Helsinki Committee and Amnesty International Hungary, requested both Justice Minister Trócsányi (in June 2019) and Justice Minister Varga (in August 2019) to provide an opportunity for discussing plans concerning the reform of the judiciary. The NGOs have not received any response, which, as it seems now, was not due to the lack of the existence of such plans, but due to a **continued lack of will to enter into professional dialogue with civil society**.

2. If the Bill is passed, **not only private parties but state bodies will also be provided with the possibility of filing constitutional complaints with the Constitutional Court** if in their view their scope of competence is unconstitutionally limited by a judicial decision (§ 56 of the Bill). This would **enable state authorities to channel the judicial review of their decisions** outside the ordinary court system, **to the Constitutional Court, which has been rather helpful towards the Government in recent years**.

On the basis of the CJEU's recent [Torubarov-judgment](#), Hungarian judges have started to change the Hungarian asylum authority's negative decisions in cases where the authority fails to take into due account the courts' instructions in repeated proceedings that are conducted because the authority's first decision is quashed in the framework of judicial review. Since the Hungarian law still does not allow for changing the asylum authority's administrative decisions (only the quashing of unlawful asylum decisions is allowed) and this practice is based on the CJEU's interpretation of the EU acquis and the supremacy of EU law, it is perfectly possible that the asylum authority may take such a judicial decision to the Constitutional Court on the basis that the ordinary court has infringed upon its competence when it did not only quash but changed its decision. And while naturally in principle, the Constitutional Court would also be bound by the CJEU's interpretation, it would be very difficult to find an effective legal avenue to enforce this principle if the Constitutional Court annulled the ordinary court's asylum decision overruling that of the asylum authority.

3. In terms of the Bill (§§ 56 and 92), Constitutional Court judges could very easily become judges of the Curia (Hungary's Supreme Court) after their judgeship at the Constitutional Court is terminated even if they were not judges before they were elected to the Constitutional Court. This way **the ruling majority** (which – having a two-third majority in Parliament – can elect Constitutional Court justices without any participation of the opposition) **can gradually increase the number of loyal judges at the Curia.**

4. Finally, **the Bill does not contain any suggestions concerning the structural deficiencies that created the [constitutional crisis](#) between the President of the National Judicial Office (NJO) and the National Judicial Council (NJC).** It could have provided the NJC with the prerogatives that it would need to become a real check and balance of the extensive powers of the NJO President (e.g. the NJC could have been provided with legal personality and its own budget); and it could have closed the loophole through which the NJO President repeatedly circumvented the vote of the judges when appointing court presidents and other court officials. However, the Bill has done none of the above, which seems to suggest that the ruling majority is still not interested in empowering the NJC and creating a meaningful control over the actions and omissions of the NJO President.