



## RECOMMENDATIONS

### AIMED AT RESTORING THE INDEPENDENCE OF THE JUDICIARY IN HUNGARY

2019

Judicial independence is being systematically undermined in Hungary. The series of attacks that began in 2012 with the mandatory retirement of senior judges are aimed at extending political influence over the judiciary. After the plans to set up a separate administrative court system under close control of the Justice Minister were recently cancelled, some might have thought that this process has come to a halt. However, Bill T/8016 submitted to Parliament on 12 November 2019 would, if adopted, enable the Government to circumvent the ordinary court system in politically sensitive cases.<sup>1</sup> The Bill was submitted to the Parliament without any consultation with key stakeholders and the public. Furthermore, it does not contain any remedies to the structural deficiencies that created the [constitutional crisis](#) within the system of judicial administration between the President of the National Judicial Office (NJO)<sup>2</sup> and the National Judicial Council (NJC).<sup>3</sup> The Fidesz-led government is still disinterested in empowering the NJC and in enabling it to exercise meaningful oversight over the NJO President. The [Council of Europe Commissioner for Human Rights](#) "is of the opinion that the Bill in its current form may have a negative effect on the internal independence of courts and judges and fair trial guarantees for individuals".

The present situation calls for urgent steps to both prevent the immediate threat posed by the Bill and to remedy the long-standing systemic deficiencies of the system,<sup>4</sup> thus restoring and safeguarding judicial independence.

Hence, Amnesty International Hungary (AI Hungary) and the Hungarian Helsinki Committee (HHC) recommend that

- **Bill T/8016 should not be adopted in its current form.**
- In order to address the long-standing structural problems, **the laws on the judiciary should be amended to ensure compliance with international standards and specific recommendations on the situation of the Hungarian judiciary by international bodies**, such as the [Venice Commission](#), the [Council of the European Union](#), the [Council of Europe Commissioner for Human Rights](#), or [GRECO](#).
- **Any further legal reform concerning the judiciary should be preceded by an extensive and meaningful public consultation with the legal profession, academia, civil society and the general public.**

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<sup>1</sup> The analysis of Bill T/8016 by Amnesty International Hungary is available [here](#); the analysis of the Hungarian Helsinki Committee is available [here](#).

<sup>2</sup> According to the Fundamental Law, the "central responsibilities of the administration of the ordinary courts shall be performed" by the President of the National Judicial Office (also referred to as National Office for the Judiciary), who is elected by the Parliament without the involvement of any judicial body.

<sup>3</sup> The National Judicial Council is a judicial self-governing body comprised of judges elected by their peers and vested with the task of controlling how the President of the NJO exercises his/her rights. According to the Fundamental Law, the NJC shall "supervise the central administration of the ordinary courts".

<sup>4</sup> In a series of analyses, Hungarian NGOs have outlined in detail the long-standing systemic problems of judicial administration undermining judicial independence. See: [A Constitutional Crisis in the Hungarian Judiciary](#); [Attacking the Last Line of Defence: Judicial Independence in Hungary in Jeopardy](#).

## RECOMMENDATIONS ON THE STRUCTURE OF COURT ADMINISTRATION

1. **Reduce the extensive powers of the NJO President**, with special regard to the appointment of judicial leaders.
2. **Reinforce the NJC structurally**, in order to ensure that the NJC can effectively carry out its task set by the Fundamental Law, and be able to supervise and counterbalance the powers of the NJO President. To that end, among others,
  - (a) the co-decision-making powers shared between the NJC and the NJO President should be regulated in a way that strengthens the position of the NJC and requires consensus;
  - (b) the NJC should have broader powers and tools to take the necessary measures if the NJO President fails to carry out his/her statutory obligations or misuses her powers;
  - (c) the NJC should have legal personality and full budgetary autonomy;
  - (d) the NJO President should not be involved, in any form, in the process of electing the members and substitute members of the NJC, i.e. the body that is supposed to supervise him/her.
3. **Restore and ensure the NJC's proper and effective functioning** to allow for effective supervision over the NJO President, among others, by
  - (a) ensuring that the NJO President takes all measures within his/her power to organize an election of NJC members as soon as possible, in order to elect the missing members of the NJC;
  - (b) setting a clear deadline for electing the substitute members of the NJC;
  - (c) ensuring that the NJO President respects the NJC's prerogatives and complies with the NJC's resolutions and requests;
  - (d) reforming the current system of rotating presidency within the NJC to enhance the efficiency of its supervisory powers, e.g. by ways that the chair of the NJC does not change every six months but only after longer time periods;
  - (e) guaranteeing, on a statutory level, that NJC members are provided with court clerks and other administrative assistance to facilitate the efficient performance of their activities;
  - (f) reducing the workload of the NJC members in judicial decision-making to the extent necessary to allow them to carry out their tasks in the NJC.
4. **Protect the integrity of the NJC's judge members** by taking effective measures to guarantee that they can exercise their statutory rights and obligations of safeguarding judicial independence through, among others, formulating and disseminating critical opinions on the administration and independence of the judiciary **without any undue interference**. More effective protection should be ensured against intimidation, attacks on their reputation as well as retaliatory administrative and other measures.
5. Introduce a new **conflict of interest** rule to prevent judicial leaders who are appointed directly by the NJO President and their relatives from becoming NJC members.

## RECOMMENDATIONS ON JUDICIAL LEADERSHIP APPOINTMENTS

6. In order to challenge the NJO President's practices in declaring application procedures for judicial leadership positions unsuccessful without any substantive reason, that was found by the NJC unlawful, and to strengthen the collective approach in the appointment process,
  - (a) **the NJO President's power to annul calls for application for judicial leadership positions and declare the application procedure unsuccessful without the consent of any judicial body should be abolished in its current form**, along with the NJO President's right to appoint an interim judicial leader in such cases;
  - (b) the NJC's consent should be required for an application procedure to be declared unsuccessful if there is at least one candidate who is supported by the respective judicial body;

- (c) the law should prescribe a deadline for the NJO President to issue a new call if he/she declares the application procedure unsuccessful;
  - (d) additional safeguards should be introduced so that the NJO President's powers to appoint interim judicial leaders could not be abused;
  - (e) the applying judges' right to effective legal remedies should be created against the NJO President's decisions concerning calls for application.
7. The law should be amended in a way that if a judicial leader challenges their dismissal by launching a lawsuit, and if the judge is reinstated legal guarantees should make sure that the judge may be reinstated to their former leadership position, e.g. by making sure that the position could only be filled temporarily.

### RECOMMENDATION ON ADMINISTRATIVE COURTS

8. Amend the Fundamental Law and **remove** from it the **reference to administrative courts**. Ensure that any related legal reform or constitutional change is introduced only after an open and inclusive public debate about the judicial system and judicial independence.

### RECOMMENDATIONS ON AN ENABLING ENVIRONMENT

9. The Government of Hungary should immediately condemn any public harassment, intimidation or retaliation against judges, and communicate clearly that while public criticism of jurisprudence as a part of a debate is necessary in a pluralistic society, personal attacks against judges are unacceptable.
10. The salary of judges should not be lower than that of public prosecutors in the respective level of seniority.

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