



Hungarian Helsinki Committee



# A Constitutional Crisis in the Hungarian Judiciary

Budapest, 9 July 2019

## Introduction

“The Hungarian judiciary is facing a kind of ‘*constitutional crisis*’ since May 2018”<sup>1</sup> while “checks and balances, which are crucial to ensuring judicial independence, have been further weakened within the ordinary court system”.<sup>2</sup> These are findings by the European Association of Judges and the European Commission, both of which are following with concern the deterioration of the independence of Hungarian courts.

Beyond growing attempts by Hungarian authorities to exert political control over independent institutions, including courts, the independence of the judiciary in Hungary is severely threatened by a prolonged conflict between key judicial actors that is jeopardizing the effective oversight of court administration. The person responsible for court administration, the President of the National Judicial Office (NJO) is not cooperating with the judicial oversight body, resulting in a “constitutional crisis”. This oversight body, the National Judicial Council, found that the NJO President had breached the law multiple times regarding recruitment and promotion of judges, hence it requested the Parliament to dismiss the NJO President. However, on 11 June 2019, the Parliament’s ruling Fidesz-KDNP majority voted to keep her in office.

At the same time, the Government is planning to set up a heavily government-controlled administrative court system that will be separate from the ordinary courts. The new court system will have jurisdiction over taxation, public procurement and other economic matters, election, freedom of assembly, asylum and certain other human rights issues, as well as all kinds of decisions taken by public administrative authorities. Several domestic and international actors have expressed concerns over these changes in recent months, such as the European Commission, the Venice Commission, the Council of Europe Human Rights Commissioner and the UN Special Rapporteur on the independence of judges.

The Hungarian Helsinki Committee has reported on earlier attacks against judicial independence in Hungary, including the plan to set up special administrative courts.<sup>3</sup> This briefing paper continues this line of analyses and outlines key developments of the last 18 months in the Hungarian judiciary, both regarding the ordinary court system (Part 1) and the prospect of new administrative courts (Part 2). We also make recommendations for solving the crisis (Part 3).

## 1. The situation of the Hungarian judiciary

### a. Main actors in the judicial system

The **National Judicial Office** (“the Office” or “NJO”, also known by its Hungarian acronym “OBH”) and its President (Ms Tünde Handó) have wide powers over court administration, including the recruitment and promotion of judges, management of the judiciary’s budget and IT infrastructure.<sup>4</sup> The NJO President is elected by the Parliament for a nine-year term.

The **National Judicial Council** (“the Council” or “NJC”, Hungarian acronym “OBT”) serves as an oversight body over the NJO and the NJO President. The NJC is composed of the President of the Kúria and fourteen judges, who are elected by their peers by secret ballot for a six-year term, with 14 additional substitute members who would become full members in case of a vacancy.<sup>5</sup> The NJC has the power to scrutinize the actions of the NJO President and, in certain cases, exercise a veto (e.g. in some cases of judicial appointments). Ultimately, if the

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<sup>1</sup> Report on the fact-finding mission of the EAJ to Hungary, European Association of Judges, available: <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 5.

<sup>2</sup> European Commission Recommendation for a Council Recommendation, COM(2019) 517 final, available: <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-517-F1-EN-MAIN-PART-1.PDF>, para. 17.

<sup>3</sup> See below, at the end of Part 2, under “Further information”.

<sup>4</sup> Venice Commission, CDL-AD(2012)020, Opinion no. 683/2012, available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e), paras. 88, 93/6,7,8.

<sup>5</sup> Articles 88(3) and 91(2) of Act CLXI of 2011 on the Organization and Administration of Courts

NJO President breached her duties for more than 90 days or becomes “unworthy” of the office, the Council can request Parliament to vote on removing the NJO President from office.

## **b. Key developments in 2018-2019**

- 15 January 2018** New members were elected to the Council and pledged to exercise more rigorous scrutiny over the administration of courts. At the request of lower courts, the Council launched an investigation into the NJO President’s appointment practices and her decisions to declare calls for applications “unsuccessful”<sup>6</sup> as, in view of the Council, in a number of cases the NJO President failed to “offer proper justification”.<sup>7</sup>
- April 2018** Altogether five members and twelve substitute members of the NJC resigned.<sup>8</sup> Several members were allegedly pressured into resigning either by the NJO President or by court leaders who had been appointed by the NJO President.<sup>9</sup>
- 27 April 2018** The NJO President declared the NJC “illegitimate” arguing that the number of its members had decreased to eleven, which is below the statutory number of NJC members (fifteen) and also because administrative and labour courts were not any longer represented in the NJC due to the resignations.<sup>10</sup> The NJC rejected the reasoning,<sup>11</sup> arguing that there is no minimum for the number of members. This view is supported by the President of the Kúria (the Supreme Court), the Minister of Justice, and the national bar association, all of whom continue to participate in NJC sessions.<sup>12</sup>
- 9 October 2018** More than five months after the original request, the NJO President convened an assembly for electing the missing members of the Council. Several procedural rules were violated, including the requirement of a secret ballot vote. Eventually, no new members were elected.<sup>13</sup> Several judges reported about these irregularities in open letters<sup>14</sup> and some claimed that court leaders who had been directly

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<sup>6</sup> Report on the fact-finding mission of the EAJ to Hungary, European Association of Judges, available: <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 4.

<sup>7</sup> Report by the Committee established by NJC Decision 101/2018 (X.03.), English translation available: <https://www.dropbox.com/s/w3gv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0>, p. 12 and the NJC resolutions cited there.

<sup>8</sup> Report by the Committee established by NJC Decision 101/2018 (X.03.), English translation available: <https://www.dropbox.com/s/w3gv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0>, p. 7.

<sup>9</sup> “They Criticized Handó, Now They Are In Crosshairs”, Index.hu, available (in Hungarian): [https://index.hu/belfold/2018/07/31/birosag\\_obt\\_hilbert\\_edit\\_interju/](https://index.hu/belfold/2018/07/31/birosag_obt_hilbert_edit_interju/). Report on the fact-finding mission of the EAJ to Hungary, European Association of Judges, available: <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 4.

<sup>10</sup> Letter of 27 April 2018 of the NJO President, 2018.OBH.III.D.4/139, available (in Hungarian): <https://www.dropbox.com/s/dlzc4vmcph3h3je/2.%20sz%C3%A1m%C3%BA%20mell%C3%A9klet.pdf?dl=0>.

<sup>11</sup> Decision no 70/2018. (V. 16.) OBT, available (in Hungarian): <https://www.dropbox.com/s/n4vmqgl23nn7dbc/3.%20sz%C3%A1m%C3%BA%20mell%C3%A9klet.pdf?dl=0>.

<sup>12</sup> Report by the Committee established by NJC Decision 101/2018 (X.03.), English translation available: <https://www.dropbox.com/s/w3gv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0>, pp. 8-9.

<sup>13</sup> Report on the fact-finding mission of the EAJ to Hungary, European Association of Judges, available: <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 4. The report misstates the date of the assembly.

<sup>14</sup> See, among others (in Hungarian): <http://www.mabie.hu/index.php/1055-a-magyar-biroi-egyesulet-kozlemeny>, <http://www.mabie.hu/attachments/article/1068/A%20Gy%C5%91ri%20%C3%8Dt%C3%A9l%C5%91t%C3%A1bla%20b%C3%ADr%C3%A1nak%20nyilatkozata.pdf>, <http://www.mabie.hu/index.php/1120-a-szegedi-itelotabla-birainak-nyilatkozata>, and also: <http://www.mabie.hu/index.php/1112-a-kuria-kuldottertekezletre-delegalt-birajanak-nyilatkozata>, <http://www.mabie.hu/index.php/1118-a-kuria-kuldottertekezletre-delegalt-birajanak-nyilatkozata-2>, <http://www.mabie.hu/index.php/1120-a-szegedi-itelotabla-birainak-nyilatkozata>, <http://www.mabie.hu/index.php/1077-a-szekesfehervari-torvenyszek-biroi-tanacs-es-kuldottertekezleti-kuldottei-nyilatkozata>, <http://www.mabie.hu/index.php/1078-a-szigetvari-jarasbirosag-biraja-is-csatlakozott-a-mabie-nyilatkozatahoz>, <http://www.mabie.hu/index.php/1083-a-zalaegerszegi-torvenyszek-tanacselnokenek-nyilatkozata>, <http://www.mabie.hu/index.php/1084->



Members of the Council are subjected to continuous persecution and retaliatory actions from the NJO President and court leaders, including disciplinary actions<sup>21</sup> and labelling them e.g. “traitors” in press statements.<sup>22</sup>

**5 June 2019** The European Networks of Councils for the Judiciary (ENCJ) voted to elect Council member Viktor Vadász to its Board.<sup>23</sup>

**11 June 2019** Parliament voted down the Council’s proposal to remove the NJO President.<sup>24</sup> On the same day, the NJO President was given the “Pro Cooperazione” (For Cooperation) medallion by the Chief Prosecutor.<sup>25</sup> According to a 24 June 2019 decision of the NJC, the NJO President should have requested the consent of the NJC before accepting the award, but failed to do so.<sup>26</sup>

### **c. Current situation and future prospects**

The independence of the judiciary in Hungary is under severe threat. The NJC<sup>27</sup> and the European Association of Judges, which carried out a fact-finding mission to Hungary on 17-19 April 2019,<sup>28</sup> both found that the NJO President violated laws on judicial appointments and obstructed the NJC’s supervisory work by denying it access to documents and not cooperating with it.

In its 2019 European Semester country report, the European Commission found that “checks and balances, which are crucial to ensuring judicial independence, have been further weakened within the ordinary court system. The National Judicial Council faces increasing difficulties in counter-balancing the powers of the President of the National Office for the Judiciary. This gives rise to concerns regarding judicial independence” and called on Hungary to “strengthen judicial independence”.<sup>29</sup>

The 2018-2019 ENCJ survey of judges found that “Hungary ... face[s] issues across a range of aspects of independence”. The survey showed that respondents in Hungary gave worrying responses on pressure experienced by judges from court leaders, recruitment of judges and promotion to leadership positions, and on the NJC’s ability to defend the independence of judges.<sup>30</sup> Not only judges but the general public and companies also signal problems: both groups reported a decrease in perceived judicial independence, according to the 2019 EU Justice Scoreboard.<sup>31</sup>

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<sup>21</sup> “She Has Time To Give Interviews But Not To Adjudicate”, available (in Hungarian): <https://demokrata.hu/blog/nyilatkozni-van-ideje-itelkezni-nincs-107566/>.

<sup>22</sup> “Handó: Judges Opposing The Government’s plans are traitors”, available (in Hungarian): [https://hvg.hu/itthon/20180617\\_hando\\_tunde\\_orzagos\\_biroi\\_tanacs\\_hazaarulok](https://hvg.hu/itthon/20180617_hando_tunde_orzagos_biroi_tanacs_hazaarulok). Report on the fact-finding mission of the EAJ to Hungary, European Association of Judges, available: <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 5.

<sup>23</sup> Members of the Board, available: <https://www.enci.eu/executive-board>, see also on Twitter by Viktor Vadász: <https://twitter.com/vadaszviktor1/status/1136295370810638336> and in Hungarian at: <https://orszagosbiroitanacs.hu/az-encj-kozgyulese-az-iranyito-testulet-tagjava-valasztotta-az-obt-kepviselojet/>.

<sup>24</sup> Proposal in relation to the mandate of the President of the National Judicial Office, S/6247, available (in Hungarian): <https://www.parlament.hu/irom41/06247/06247.pdf>.

<sup>25</sup> “NJO President dr. Tünde Handó Was Awarded with Pro Cooperazione Memorial Award”, available (in Hungarian): <https://birosag.hu/hirek/kategoria/magazin/pro-cooperazione-emlekermet-vehetett-dr-hando-tunde-az-obh-elnoke>.

<sup>26</sup> “A 2019. június 24-ei ülés összefoglalója”, available (in Hungarian): <https://orszagosbiroitanacs.hu/2019-06-24/#>, para 6. The proposed agenda of the meeting (available at the same source) refers to Article 103(3)(j) of Act CLXI of 2011 on the Organization and Administration of Courts.

<sup>27</sup> Report by the Committee established by NJC Decision 101/2018 (X.03.), English translation available: <https://www.dropbox.com/s/w3qv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0>.

<sup>28</sup> Report on the fact-finding mission of the EAJ to Hungary, European Association of Judges, available: <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, pp. 7-8, 10-11.

<sup>29</sup> European Commission Recommendation for a Council Recommendation, COM(2019) 517 final, available: <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-517-F1-EN-MAIN-PART-1.PDF>, para. 17 and Recommendation 4.

<sup>30</sup> ENCJ, Independence, Accountability and Quality of the Judiciary, available: <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/2019-06/ENCJ%20IAQ%20report%202018-2019%20adopted%207%20June%202019%20final.pdf>, pp. 56, 39-41, 42, 56.

<sup>31</sup> 2019 EU Justice Scoreboard, available: [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2019\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf), pp. 44-45.

No quick solution is foreseen for the judicial crisis. Some of the most important issues flagged by the NJC were already signalled as early as 2012 by the Venice Commission in its report on the judicial reform carried out at that time.<sup>32</sup> The Venice Commission recommended, among others,

- that the possibility for the NJO President to declare the appointment procedure of judges unsuccessful without providing appropriate reasoning should be removed,
- a general reasoning obligation be incorporated, and
- the strengthening of the Council by broadening its co-decision-making powers.

Even though the Venice Commission made these recommendations seven years ago, the Hungarian Government failed to implement them. These recommendations remain relevant today, and their implementation would greatly contribute to strengthening judicial independence in Hungary.

## 2. The prospect of the new administrative courts

### a. Key developments

**29 June 2018** The Seventh Amendment to the Fundamental Law entered into force. It incorporated administrative courts into the Fundamental Law and states that administrative cases are to be decided by administrative courts as soon as these courts are established. At this time, it is the ordinary courts that issue decisions on administrative matters.

**12 December 2018** Parliament adopted the laws on administrative courts which were subsequently heavily criticised by the Venice Commission,<sup>33</sup> the First Vice-President of the European Commission,<sup>34</sup> the Council of Europe Commissioner for Human Rights,<sup>35</sup> the UN Special Rapporteur on the Independence of Judges and Lawyers<sup>36</sup> and also by thousands of protesters on the streets of Budapest and other Hungarian towns as the laws provide for wider risks of political interference in the independence of the judiciary.<sup>37</sup> The laws envisaged a new court system where “very extensive powers are concentrated in the hands of a few stakeholders and there are no effective checks and balances to counteract those powers”, as the Venice Commission put it.<sup>38</sup> The Minister of Justice (a political member of the Government) and the President of the Supreme Administrative Court (elected by the Parliament) alone could have decisive power over the recruitment and the promotion of

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<sup>32</sup> Venice Commission, CDL-AD(2012)020, Opinion no. 683/2012, available:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e), paras. 93(8),(6),(14).

<sup>33</sup> CDL-AD(2019)004, Opinion no. 943/2018, available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)004-e).

<sup>34</sup> “Opening remarks by First Vice-President Frans Timmermans at the LIBE Committee in the European Parliament on the reasoned proposal under Article 7(1) TEU regarding Hungary: state of play”, available: [https://ec.europa.eu/commission/commissioners/2014-2019/timmermans/announcements/opening-remarks-first-vice-president-frans-timmermans-libe-committee-european-parliament-reasoned\\_en](https://ec.europa.eu/commission/commissioners/2014-2019/timmermans/announcements/opening-remarks-first-vice-president-frans-timmermans-libe-committee-european-parliament-reasoned_en).

<sup>35</sup> “Commissioner calls on Hungary’s President to return to the Parliament the legislative package on administrative courts”, available: <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-hungary-s-president-to-return-to-the-parliament-the-legislative-package-on-administrative-courts>.

<sup>36</sup> “Hungary: more needs to be done to bring legislation on administrative courts in line with international standards, UN Expert says”, available: <https://www.ohchr.org/Documents/Issues/IJudiciary/InfoNoteHungary8Apr2019.docx>.

<sup>37</sup> “An Advanced Course in Court Packing: Hungary’s New Law on Administrative Courts”, available: <https://verfassungsblog.de/advanced-course-in-court-packing-hungarys-new-law-on-administrative-courts/>.

<sup>38</sup> CDL-AD(2019)004, Opinion no. 943/2018, available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)004-e), para. 113.

judges, budgeting and case allocation without a sufficiently strong judicial council to counterbalance these powers.

**5 February 2019** MPs referred the adopted laws on administrative courts to the Constitutional Court, arguing, among others, that the new laws would allow extensive government control over administrative judges and courts.<sup>39</sup> On 20 June 2019, the Court decided that the laws are in line with the constitution.<sup>40</sup>

**30 May 2019** Just one day before the deadline for the President of the Republic to nominate the President of the Supreme Administrative Courts expired, Prime Minister Chief of Staff Gergely Gulyás announced that the setting up of administrative courts would be “indefinitely postponed”.<sup>41</sup> On the same day, the Government tabled Bill T/6295 on “postponing the entry into force of the law on administrative courts” (“the Postponement Law”) in Parliament.

**31 May 2019** Although he would have been obliged by the existing law to nominate the President of the Supreme Administrative Court, President Áder informed the Speaker of the House that “in the absence of any suitable candidate” he would refrain from doing so.<sup>42</sup> Hence, the President followed the request of the government rather than comply with his legal obligation, which raises serious questions about the prospective independence of all actors, should the Government decide to relaunch the administrative court project.

**2 July 2019** Parliament adopted the Postponement Law, and it entered into force on 9 July 2019 as Act LXI of 2019.<sup>43</sup>

## **b. Current situation and future prospects**

The hasty adoption of the Postponement Law on 2 July 2019 is a signal of a quickly-made decision that lacked consultation with affected parties and undermines legal certainty, as now it remains fully unclear if and when the public administrative court system will ever enter into force. The government has not made any publicly available statement to date about new plans regarding the public administrative courts.

Despite the adoption of the Postponement Law, the Fundamental Law of Hungary as amended in June 2018 remains unchanged and still obliges the state to establish administrative courts in the future. Article 25(1) sets out that “Courts are ordinary and administrative courts.” Article 25(3) adds that “administrative courts decide administrative disputes and cases referred to in laws. The highest authority of administrative courts is the Supreme Administrative Court”.<sup>44</sup> For this reason, the Government is obliged by law to establish administrative courts, otherwise, it would violate a constitutional obligation. Thus it is believed that “postponing” the introduction of the administrative court system will not mean that the Government has given up on setting up special courts with less oversight and increased risk of political interference.

If the Fundamental Law remains unchanged and administrative courts are not established for a longer time, the Constitutional Court has the power to find a violation of the Fundamental Law and order Parliament to set up

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<sup>39</sup> The case details are available at (in Hungarian):

<http://public.mkab.hu/dev/dontesek.nsf/0/1FFF3A097A029452C1258398005F4EA2?OpenDocument>.

<sup>40</sup> Case II/242/2019. Available (in Hungarian): [https://alkotmanybirosag.hu/uploads/2019/06/sz\\_ii\\_242\\_2019.pdf](https://alkotmanybirosag.hu/uploads/2019/06/sz_ii_242_2019.pdf).

<sup>41</sup> “Hungarian Government Postpones The Introduction Of Administrative Courts Due To International Pressure”, available: [https://index.hu/english/2019/06/03/administrative\\_courts\\_postponed\\_hungary\\_fidesz\\_government\\_eu\\_epp/](https://index.hu/english/2019/06/03/administrative_courts_postponed_hungary_fidesz_government_eu_epp/).

<sup>42</sup> [https://www.keh.hu/pic/upload/files/20190531\\_level\\_hazelnoknek.pdf](https://www.keh.hu/pic/upload/files/20190531_level_hazelnoknek.pdf)

<sup>43</sup> Act LXI of 2019 on the postponing of the entry into force of the laws on the public administrative courts was promulgated in the Official Journal on 8 July 2019 and entered into force on 9 July 2019.

<sup>44</sup> The Fundamental Law (in Hungarian) is available: <https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV>.

the administrative courts.<sup>45</sup> While this is not likely to happen in the near future, in the long run, either the Fundamental Law must be amended, or administrative courts must be established in a way that fully meets the requirement of legal certainty. In order to fully restore the independence of the judiciary in administrative matters, we recommend that Parliament amend the Fundamental Law and delete the provisions on administrative courts.

### **c. Further information**

The following analyses by the Hungarian Helsinki Committee contain further information on emerging threats to the Hungarian judiciary and the proposed laws on administrative courts:

- June 2018**      [Attacking the Last Line of Defence: Judicial Independence in Hungary in Jeopardy](#) containing background information on the general state of the Hungarian judiciary and the prospect of new administrative courts.<sup>46</sup>
- December 2018**      [Blurring the Boundaries: New Laws on Administrative Courts Undermine Judicial Independence](#) on the laws on administrative courts as it was submitted.<sup>47</sup>
- March 2019**      [Update](#) detailing why the amended laws on administrative courts still do not meet the Venice Commission's recommendations.<sup>48</sup>

## **3. Recommendations**

**The Hungarian Helsinki Committee and Amnesty International Hungary call on the Hungarian authorities to take urgent action to restore judicial independence.**

- ▶ The Fundamental Law should be amended and the reference to administrative courts should be deleted. Any such changes should only be introduced after an open and widespread public debate about the judicial system and judicial independence.
- ▶ As a first step, the missing members of the National Judicial Council should be elected as soon as possible in order to restore full supervision of the NJO President. Hence the NJO President should call an election of the Council members.

**We call on European Union bodies** and more specifically,

- ▶ the **European Commission**, to continue to monitor the threats against the independence of Hungarian courts and engage all necessary tools to protect the values contained in Article 2 and 19(1) of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the EU as interpreted by the Court of Justice of the European Union in *Commission v. Poland (C-619/18)* and other cases; moreover to engage fully on the ongoing Article 7(1) TEU procedure regarding Hungary by providing updated substantial information on the situation in Hungary where available to the EC, as well as support for both the Council and Hungary<sup>49</sup> on moving forward,

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<sup>45</sup> The Constitutional Court has the power to find a "constitutional omission" and set a deadline for Parliament to fulfil its obligation [Article 46(1) of Law CLI of 2011 on the Constitutional Court]. This is possible regardless of Article 27-28 of the Closing and Miscellaneous Provisions of the Fundamental Law which allows for a transition.

<sup>46</sup> <https://www.helsinki.hu/wp-content/uploads/Attacking-the-Last-Line-of-Defense-June2018.pdf>

<sup>47</sup> <https://www.helsinki.hu/wp-content/uploads/Blurring-the-Boundaries-Admin-Courts-HHC-20181208-final.pdf>

<sup>48</sup> <https://www.helsinki.hu/wp-content/uploads/Draft-Amendment-VC-Compliance-1.pdf>

<sup>49</sup> Similarly to support offered to Poland in EC's 24 June reaction to CJEU judgment in case C-619/18: [http://europa.eu/rapid/press-release\\_STATEMENT-19-3376\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-19-3376_en.htm)



- ▶ **EU Member States**, to closely follow the developments in Hungary and provide the Hungarian Government with expertise on administrative courts, as well as to express serious concerns bilaterally and publicly, in the Article 7(1) TEU procedure, in possible infringement procedures and to consider the possibility of initiating an action for failure to fulfil obligations under Article 259 TFEU before the Court of Justice of the European Union<sup>50</sup> to protect the independence of Hungarian courts,
- ▶ the **Council of the European Union**, to fully take into account the continuous deterioration of judicial independence in Hungary in the ongoing Article 7(1) TEU procedure regarding Hungary in order to protect the human rights of all EU citizens and legal entities,
- ▶ the **Government of Finland, as the President of the Council**, to push forward the ongoing Article 7(1) TEU procedure regarding Hungary by proposing practical solutions to procedural obstacles as well as an agenda that allows for proper substantial consideration of the full content of the EP report at the basis of this procedure, including concerns over the lack of independence of Hungarian courts,
- ▶ the **Members of the European Parliament**, to continue to follow the serious threats against the independence of courts and to take into account the unfolding judicial crisis where the judicial oversight body, the NJC, is unable to exercise its supervisory function and that the Fidesz-KDNP-majority in the Hungarian Parliament did not investigate nor sanction the widespread and serious violations of judicial independence, as well as the same majority protected the NJO President without refuting the serious and well-reasoned concerns of the NJC. Also to take the foregoing into account during the hearing of candidates to the next European Commission for relevant portfolios and when voting on the Commission,
- ▶ the **EU Agency for Fundamental Rights**, to engage in further research to document ways in which judicial independence is increasingly subject to assault in a growing number of EU Member States.

**We call on the Council of Europe (CoE)** and more specifically,

- ▶ the **CoE Secretary General**, to publicly voice concern about the deterioration of judicial independence, the intimidation of judges and their representatives in the NJC and to encourage Hungary to have an open and inclusive debate over any judicial reforms in line with CoE standards,
- ▶ the **CoE Parliamentary Assembly**, to follow the serious threats against judicial independence in Hungary and to continue to raise concerns and discuss the constitutional crisis emerging from circumventing the judicial council's supervisory rights at the next meeting of its Committee on Legal Affairs and Human Rights, and request an opinion of the CoE Venice Commission,
- ▶ the **CoE Committee of Ministers**, to review the shortcomings with regards to supervising the NJO President and the introduction of administrative courts with a view to compliance with CoE standards, including Recommendation CM/Rec(2010)12 on judges and CoE Plan of Action CM(2016)36 on Strengthening Judicial Independence and Impartiality, and make it a subject of urgent discussion at the earliest possible meeting, including a discussion on ways in which the CoE can assist Hungary in achieving these aims at the Deputies Level, as well as its next Ministerial session; moreover to request the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH) to provide advice on how to support Hungary in reinstating the supervision of the NJO President as well as on how to assess in an inclusive process whether separate administrative courts are needed,
- ▶ the **CoE Commissioner for Human Rights**, as part of the follow-up to the Commissioner's May 2019 report on her visit to Hungary, to continue to raise concerns with regard to the interference in the independence and impartiality of the Hungarian judiciary and recommend actions to prevent violations of the rights guaranteed by the European Convention on Human Rights,

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<sup>50</sup> The use of direct actions brought by a Member State against another was proposed by Professor Kim Lane Scheppele and detailed by Professor Dimitry Kochenov, in "Biting Intergovernmentalism: The Case for the Reinvention of Article 259 TFEU to Make It a Viable Rule of Law Enforcement Tool", available: <http://jeanmonnetprogram.org/wp-content/uploads/JMWP-11-Kochenov.pdf>.

- ▶ the **European Committee on Legal Cooperation**, to prepare an opinion concerning the specific situation of judges and judicial independence in Hungary,
- ▶ the **Consultative Council of European Judges** to provide specific guidance to Hungary with regards to the implementation of its standards, in particular Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, Opinion No. 10 (2007) on the Judiciary at the service of society, Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy and its European Charter for the Statute of Judges,
- ▶ the **Council of Europe European Commission for the Efficiency of Justice (CEPEJ)** to continue to analyse the new types of threats to the quality and efficiency of justice in Europe, as well as to advise the Hungarian Government on effective ways to increase the quality and efficiency of judicial work while maintaining the rule of law.

**We call on the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to**

- ▶ closely follow the developments with regard to judicial self-administration as well as the establishment of a separate court system for administrative justice, and provide support and assistance to Hungary to promote a system for judicial administration that is in compliance with Hungary's OSCE human dimension commitments, more specifically with OSCE-ODIHR Kyiv Recommendation on Judicial Independence, including by observing the extent to which the right to a fair trial, the separation of powers and the independence of the judiciary are safeguarded.

**We call on the United Nations institutions and special procedures, and more specifically,**

- ▶ the **Office of the High Commissioner for Human Rights (OHCHR)** to communicate, without delay, strong concern about the independence of the judiciary and the rule of law to the Hungarian government and report back to the UN Human Rights Council, and to follow the developments regarding the setting up of separate administrative courts with human rights jurisdiction in light of the rights guaranteed in UN treaties, in particular the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), and engage in a dialogue with the Government of Hungary to ensure that it adheres to the recommendations of UN bodies, including the Concluding Observations on Hungary adopted by the Human Rights Committee at its 122nd session in 2018,
- ▶ the **UN Special Rapporteur on the independence of judges and lawyers** to continue to follow the growing intimidation of judges, the lack of effective control over judicial administration and legislative steps that pave the way to political interference of the administrative branch of the judiciary and stay alerted to prevent violations of the rights guaranteed by international standards,
- ▶ the **UN Special Rapporteur on the rights to freedom of peaceful assembly and of association** to closely follow the developments with regard to the possible establishment of the administrative court system vis-à-vis its powers to adjudicate in cases in which it supervises police decisions regarding assemblies.

**We call on the member countries of the North Atlantic Treaty Organization (NATO)**

- ▶ to recommend effective methods for Hungary to protect the rule of law in the judiciary as the common heritage of NATO countries as promulgated by the North Atlantic Treaty of 4 April 1949.

**We call on all Governments that have significant economic interests in Hungary**

- ▶ to follow the situation and obtain information on the economic consequences of the lack of judicial independence in Hungary, as well as to request effective measures and legislative changes from the Hungarian Government to safeguard the impartiality and independence of Hungarian courts having jurisdiction in taxation, public procurement, civil and criminal matters with a view to protect the security of foreign investments including the interests of foreign companies and the human rights of their citizens staying or living in Hungary.