



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

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Brussels, 27 October 2020

Dear Vice-President Jourová,  
Dear Commissioner Reynders,

On behalf of the Executive Board, I wish to congratulate you on the recent publication of the Rule of Law report. It is an important first step towards a more systemic scrutiny of the adherence of Member States to the Rule of Law.

In light of this report we would like to draw your attention to recent developments in Hungary.

On 19 October 2020 the National Assembly has elected a new president of the Kúria. András Zsolt Varga, constitutional law professor, former deputy general prosecutor and former member of the Constitutional Court will hold this position for 9 years from 1 January 2021. On 5 October 2020 the President of Republic nominated him, and in accordance with its legal task the National Judicial Council (OBT) called a hearing on 9 October 2020. The Justice Committee of the National Assembly did not wait for the OBT hearing and interviewed the candidate a day before and supported his candidacy with the vote of the members of the governing parties. Following the hearing on 9 October 2020, the OBT voted 13:1 against the candidate and did not support his election mainly because of the lack of judicial experience of the candidate. The opinion of OBT was not binding for the National Assembly

The risk of this happening was already anticipated in the in the Rule of Law report, it states that:

*“ The number of judicial posts in the Kúria is not set by statute, but is determined by the NOJ President . Under the normal procedure, judges are appointed to the Kúria by its President, following a call for applications, on the basis of an opinion of the Kúria’s competent department and of an assessment and ranking of candidates by the Kúria’s judicial council . An ‘omnibus’ legislation introduced in December 2019 allows members of the Constitutional Court, who are elected by Parliament, to request to be appointed as a judge without an application procedure. Having obtained the status of a judge, members of the Constitutional Court can request to be appointed to the Kúria after the termination of their mandate, without the need to follow the normal appointment procedure. As a result, in practice, the election by*

*Parliament to the Constitutional Court, which does not entail the involvement of a body drawn in substantial part from the judiciary, can in itself lead to the appointment as a judge of the Kúria if requested by the judge concerned . These legislative changes have de facto increased the role of Parliament in judicial appointments to the Kúria. Moreover, the Kúria President is elected by Parliament following a proposal from the President of the Republic, from among judges – not necessarily of the Kúria – with at least five years’ experience as a judge . As of 1 January 2020, rules on selecting the Kúria President were also amended allowing time served as a senior legal secretary at the Constitutional Court or at an international court to be taken into account when calculating the ‘experience as a judge’. This widening of the eligibility criteria increases the pool of candidates that could potentially be elected as Kúria President, increasing the discretion of the President of the Republic in this regard.”*

The Board points out that it is a long established standard in Europe that the selection of judges should be conducted by an independent judicial appointment body consisting of at least a majority of judges elected by their peers. Should the other State powers or the Head of State be involved in the appointment procedure, this should not undermine the principles of independence, fairness, openness and transparency. If a recommendation by a judicial appointment body or judicial council is not followed, this decisions and the reasons should be clearly stated.

The Board agrees with the Commission that the National Judicial Council, should be strengthened. It should have more competences especially regarding judicial appointments and the resources made available should be increased, to enable it to provide the necessary checks and balances between the executive and legislative powers on the one hand and the judicial power on the other.

Furthermore, the ENCJ Board would like to point out that the most recent changes to the law that have made the appointment of the new President possible, have to be qualified as ad hominem legislation. In 2012 the Venice Commission, also in an opinion concerning judicial reform in Hungary, stated that laws that effect or seem to effect one specific person are contrary to the Rule of Law.

There is, in the view of the Board, an increasing risk of state capture of the etire judiciary in Hungary. The President of the Kuria has far reaching powers to control the functioning of the Kuria as he is in charge of the case allocation plan, composition of the chambers and the panels.

Lastly, the Kuria has recently required increased powers to promote uniformity of law as it can oblige lower level courts to follow the leading judgments of the Kuria. If not, it obliges a judge to provide a written justification why his interpretation of the law differs from a previous decision delivered by the Supreme Court. An “unjustified deviation” could have a negative impact on the career of the judge.

Taking into account the issues set out in this letter, as well as previous judicial reforms that have already weakened judicial independence, as also confirmed in the Rule of Law report of the Commission, the Board believes that adequate structures within the judiciary and the courts to prevent improper interference from within the judiciary no longer exist. The

National Judicial Council is not sufficiently equipped to protect internal and external judicial independence, nor are there any other structures in place to provide structural guarantees. In other words, the right to effective judicial protection can no longer be seen to be guaranteed in Hungary.

The recent appointment of the President of the Kuria, in the view of the Board, calls for immediate action from the European Commission to protect the Rule of Law and Judicial Independence in Hungary.

On behalf of the Executive Board,

Yours sincerely,



Filippo Donati  
President of the ENCJ

Cc:

Mr Lopez Aguilar, chair LIBE, European Parliament

Ms in 't Veldt, chair LIBE Monitoring Group on Democracy, Rule of Law and Fundamental Rights

Ms Delbos-Corfield, Rapporteur EP, Rule of Law in Hungary

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