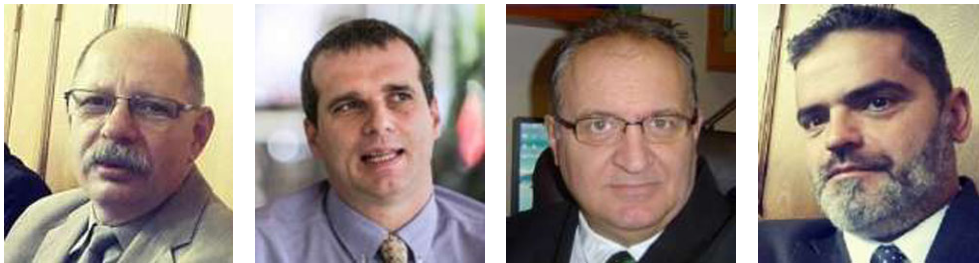


The situation of the judiciary and the justice in Hungary - 2017

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Abstract:

This short report is reflecting the common and public standpoint of Movement for Individual Judicial Responsibility, „Quailed Truth” Movement and Movement Against Judicial Arbitrariness. These movements (non-registered groups) address and counter serious deficits of the judiciary and justice in Hungary.³⁹³

Rezumat:

Acest scurt raport reflectă poziția comună și publică a Mișcării pentru Răspundere Judiciară Individuală, a Mișcării Adevărul Neînfricat și a Mișcării Împotriva Arbitrariului Judiciar. Aceste mișcări (grupuri neînregistrate) abordează și contracarează deficiențe serioase ale sistemului judiciar și ale justiției din Ungaria.

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Responsibility (Facebook page), with other supporters of the same goals, including anonymous lawyers and former (retired) judges) - <https://www.facebook.com/Egy%C3%A9ni-B%C3%ADr%C3%B3i-F%C3%BCggetlens%C3%A9g-%C3%A9s-Fel%C5%91ss%C3%A9g-F%C3%B3rum-1720290178182363/>. The audience can read the posts of the „Quailed Truth” Movement on Facebook (<https://www.facebook.com/meghunyaszkodott.igazsag/>). The writings of the Movement Against Judicial Arbitrariness are reported on Facebook (<https://www.facebook.com/BiroiOnkenyEllen/>).

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We have to nod that the Hungarian justice saved only the face of a legitimate, lawful judicial system, in simple cases the elements of the lawfulness are mostly given, but the real rule of law's guarantees are present absolutely insecurely in the litigations.

In view of the recent deterioration of the rule of law in Hungary, the palpable political influence on the judiciary, serious and regular violations of the principles of fair trial, not to mention known abuses in various branches of law enforcement the Movement for Individual Judicial Responsibility can state that justice is getting seriously flawed in Hungary.

Judicial independence is at a major risk.

The major problems, as we see it, are the following:

The National Judicial Office (Országos Bírósági Hivatal) is practically operating as a supervisor over courts. The National Justice Council (Országos Bírói Tanács) in fact did not made control over Tünde Handó, only some members of the NJ Council. The NJ Office's president, Tünde Handó has much wider de facto influence that laws seem to allow. Her decisions are often arbitrary, these decisions reflect her personal taste and opinion, some of them seems to be politically influenced. Her Integrity Code was appealed before the European Court of Human Rights. This Code can be a gun to harass judges involuntarily or by the will of lower/upper court leader (e.g. a judge was recently indicted for allowing her cousin to deliver lunch to her office). Not only the appointment of judges is entirely in the National Judicial Office's jurisdiction and the appointment of the court leaders, the appointment for court leaders of an NJ Council's Member, but even within the judicial hierarchy, direct influence to

certain cases can occur. Oft times the indirect influence arrives in the form of general professional "advice" from senior judges or other high-ranking officials.

Unlike in other European countries, there is no clear and objective system in place to measure and evaluate the quality of individual judges' work. Albeit fundamental rules of conduct are still observed, and an ethical code is maintained, in reality, there is little or no consequences if a judge diverts from them to a certain extent. Rendering judgments without regard to laws or arbitrary, capricious assessment of evidence is not viewed as a violation and occurs fairly frequently. Judges have no individual responsibility for an unlawful decision. Unlike in other European countries, there is no clear and objective regulations of disciplinary proceeding against judges and disciplinary behaviour, fault.

The principle „judge / court denominated by law” is seriously broken. The Case Distribution Orders of a concrete court are not obligatory for the court leaders, so they can divert from it by law and these Orders were not regularly accepted by the county court's judges' councils and were not published online in time in the last five years at several courts.

As a result, political influence cannot be excluded in some recent cases, particularly in criminal cases of political importance. There is no real hindrance of a possible manipulation of evidence in these cases.

In both criminal and civil cases, the duration of most proceedings exceeds any reasonable limits. It's very common for even the simplest cases to last for 2-3 years or even more. This fact, along with a stable conviction rate of around 98%,

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raise serious questions about the fairness of most proceedings.

A recurring problem in many proceedings is that judges often build a preconception while preparing the first hearing, which governs their decisions till the judgment. Pieces of evidence are often evaluated only to the level whether it supports the preconception or not. In some of these proceedings, the burden of proof is inverted and placed on the accused.

Another recurring problem is that judges tend to view police investigation findings decisive over courtroom testimonies. In many cases such evidence is allowed even if the police violated procedural regulations, ie. interrogated the accused without a defense attorney present.

It is also not uncommon for some judges to render decisions entirely against the law. In some minor cases, the Constitutional Court and the Curia have both repeatedly condemned this practice in resolutions and decisions, but never in politically exposed cases.

The greatest problem of all is perhaps the strict authoritarian mindset of the judicial hierarchy and all similar institutions in general. Criticism towards inherent deficiencies of the system are not welcome, and often viewed as a disruption. Members of our organization have already been subjected to sanctions to various extents for standing up against the aforementioned anomalies. Inherent flaws (enormously grown since 2012) and pernicious traditions prevent far-reaching reforms and changes to be implemented in the near future, even despite repeated condemnations by the European Council and other European Union institutions.

It would be important to secure better work conditions and salaries not only for judges but for court workers, law assistants. An exhausted judge can not make good judgements and has no time to read law books and law literature not harmonized with the Supreme Court Recommendations in the sort of cases serious social or political importance (e.g. foreign currency-denominated loan's cases, domestic violence cases).

The assumption that the rule of law is properly upheld in Hungary is false. The Hungarian justice system saved only the face of a legitimate, lawful judicial system. In simple cases the elements of lawfulness are mostly given, but real guarantees to the rule of law are absolutely absent from litigations.

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