

European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

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Brussels

The situation in Hungary

The ENCJ Executive Board visited Budapest on 31 January 2025 to collect more information on the current situation. The Board met relevant bodies involved in managing the judiciary: the Council for the Judiciary of Hungary (OBT), the National Judicial Office (OBH), the Minister of Justice and the representatives of the judicial associations MABIE and Res Judicata.

High inflation has adversely affected the salaries of judges and judicial staff in Hungary. Given the lack of indexation or any rise in salary, the position of judges and judicial staff in Hungary deteriorated significantly over the last few years. This issue was further exacerbated by substantial salary increases in other sectors, including legislative and executive branches of the public sector, which led to significant disparity among different state entities. This represented a threat to judicial independence[1].

However, on the initiative of the Ministry of Justice, the eventual increase in judicial remuneration was tied to wider changes through an entry into a Quadrilateral Agreement ("the Agreement"), between the OBT, OBH, Kuria and the Ministry of Justice on 22 November 2024. The ENCJ has been critical of the Agreement as:

(1) The Agreement provides that essential restoration of the value of judicial remuneration will only happen if changes are introduced to the working conditions of judges.

(2) The Agreement is drafted in such a broad manner that it was impossible to be sufficiently clear about the precise commitments being entered into by the signatories[2].

The entry into the Agreement along with the failure to consult resulted in a forceful denunciation from the Hungarian judges. The judges of Hungary spoke out strongly and publicly on the issue of judicial independence, and the inappropriateness of using judicial salaries as a way to put pressure on judges[3].

It was against this background that the ENCJ Executive Board went to Budapest.

[1] 24 July 2024 Statement by the ENCJ Executive Board regarding the situation of judicial remuneration in Hungary
[2] ENCJ Open letter 19 December 2024
[3] *See* https://mabie.hu/berjavaslat/felhivas-velemenynyilvanitasra-csatlakozo-nyilatkozatok-megkueldesere.

On the right of judges to speak out. The prudent convention that judges should remain silent on matters of political controversy does not apply when the integrity and independence of the judiciary are threatened. Judges not only have the right to speak freely on matters concerning the administration of justice, but also a duty to speak out when the Rule of Law, including judicial independence, is in danger. There is now a collective duty on the European judiciary to state clearly and cogently its opposition to proposals from the government which tend to undermine the independence of individual judges or Councils for the Judiciary[4].

It follows that when a judge makes such statements not merely in his or her personal capacity, but also on behalf of a judicial council, judicial association, or other representative body of the judiciary, then the protection which should be afforded to that judge will be heightened[5].

The ENCJ Executive Board therefore both welcomes and supports the fact that the Hungarian Council for the Judiciary, the Hungarian associations of judges, and individual judges have decided to speak out about the need for judicial independence and the threats faced by the Hungarian judiciary. It is crucial that these issues are brought to the attention of the general public and remain the focus of such attention. The ENCJ Executive Board therefore calls on all stakeholders and the free media in Hungary to raise awareness of the situation by making these actions as visible as possible.

On proper consultation regarding reforms within the judiciary. The ENCJ delegation also learned that legislative amendments, adopted on 20 December 2024 and aimed at the implementation of the Agreement, were introduced by a Member of Parliament thereby circumventing the regular legislative procedure. The relevant Member of Parliament is also a vice minister in the Hungarian government. This resulted in a failure to consult properly either with the OBT or with the judiciary regarding the draft legislation. This was despite the fact that the proposed legislation primarily concerns the judiciary. While the reasoning of the stakeholders on the necessity to use this particular legislative procedure differs, the end result remains – a lack of proper consultation.

The ENCJ Executive Board reiterates that it is crucial for judges (and in particular for Councils for the Judiciary) to be involved at each stage of the development and implementation of proposals which concern the administration of justice. It is essential that the executive and legislature respect the independence of the judiciary and only undertake changes to the justice system after meaningful consultation with the judiciary[6].

Such consultation should allow the judiciary enough time to become familiar with any proposals and accompanying material, to discuss draft legislation in a full and informed way as well as to formulate an informed opinion on any suggested changes. The purpose of consultation would be frustrated if obtaining the opinion of the judiciary was to be regarded as a mere formality. The views of judges require therefore careful consideration by the executive and legislative branches of government, and real engagement with such views.

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[4] ENCJ Compendium on the Councils for the Judiciary, ENCJ Declararion of Athens on Judicial Solidarity (2022), p. 5.
[5] *Ibid*.
[6] ENCJ Declaration of Lisbon on Positive Change (2018), Declaration of Warsaw on the Future of Justice in Europe (2016), CCJE Opinion no. 10 (2007), CCJE Opinion no. 24 (2021).

Meaningful consultation is required to ensure the independence of the judiciary and to enable reforms both to be effective and to instil confidence in the judges themselves and the public at large[7]. It must also be emphasized that entry into the Agreement itself can by no means be regarded a proper consultation.

Such consultation and the provision of an opinion on the legislative amendments concerning the justice system is already one of the functions attributed to the OBT under Hungarian law (Section 103 if the Act CLXI of 2011 on the Organization and Administration of the Courts). The use of an individual Member of Parliament to introduce the recent legislation (as described earlier) completely frustrates the objective of the legislative safeguard. In order to adhere to proper standards, the ENCJ Executive Board believes that meaningful consultation on new legislation must be conducted regardless of the specific procedure chosen by the executive or legislative branches for the introduction of such proposed changes to the law.

On service courts. Service courts are an important part of the Hungarian judicial landscape. These courts deal with the disciplining of judges. Grave concerns over possible changes in respect of Service courts were raised by certain of the stakeholders during the meetings in Budapest. The ENCJ Executive Board views any possible changes in this regard as especially worrying. Disciplinary courts may be used to put pressure on judges through the use of disciplinary proceedings against individual judges who speak out on judicial independence and the rule of law. The potential for a chilling effect is clear.

The ENCJ Executive Board reiterates that disciplinary processes provide a means of ensuring that judges abide by proper professional standards, but they must not undermine the independence of the judiciary[8]. Disciplinary liability enables judges to be held accountable in cases of serious misconduct, which fundamentally undermines the public confidence in judicial impartiality and independence. Disciplinary liability must not interfere with the legitimate exercise of individual rights of judges, such as their freedom of expression. In particular disciplinary processes should not be employed to punish judges for discharging their duty to speak out when judicial independence is in danger.

The ENCJ Executive Board calls on all relevant parties to ensure that no changes to the Service court system create the potential for disciplinary proceedings to be used as a way of attacking the independence of the judiciary, diluting the right of judges to speak out, or undermining the confidence of the public in the impartiality of judges.

Regarding judicial salaries. Lastly, the ENCJ has already taken a position on the issue of inadequacy of judicial remuneration in Hungary[9] and the negative impact this may potentially have on judicial independence. While the situation has slightly improved with a 15% increase for judges of regular courts, as of 1 January 2025, this increase is not adequate to offset the effects of inflation, which led to the depreciation of salaries in the last number of years. Some increase in the coming years is foreseen in the Agreement. However, this increase is not yet provided for in legislation and the actual value of the proposed increase (such as it is) depends in great measure on the extent of

[7] ENCJ Compendium on the Councils for the Judiciary
[8] CCJE Opinion No. 27, rec. 1-2
[9] Statement of the ENCJ Executive Board statement regarding the situation of judicial remuneration in Hungary.

future inflation in Hungary. The concerns of the Executive Board therefore remain, to a large extent, unaddressed.

The ENCJ Executive Board concludes that the independence of the judiciary in Hungary currently faces serious challenges. The ENCJ supports the Council for the Judiciary of Hungary in its efforts to protect judicial independence, and in taking a clear position on issues that may infringe judicial independence. The ENCJ encourages the OBT to use all legal and practical means available to it to make the government, the legislature, and the public at large fully aware of its position on any issue which affects the independence and integrity of judges.

It is the intention of the ENCJ to monitor closely the position in Hungary and to continue to assist the judges of Hungary in any way it can. The Board highlights that the support offered is an act of judicial solidarity. The judiciary throughout Europe should actively cooperate and coordinate their efforts to assist those jurisdictions that need support. In addition, the ENCJ believes that there is collective duty on the European judiciary to state clearly and cogently its opposition to any developments that could undermine the independence of individual judges, the judiciary or Councils for the Judiciary[10].

On behalf of the ENCJ Executive Board



Madeleine Mathieu

[10] ENCJ Declararion of Athens on Judicial Solidarity (2022), p. 11.