

## THE ADMINISTRATIONAL REFORM OF THE JUDICIAL SYSTEM IN HUNGARY

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**ABSTRACT:** *The Hungarian Constitution created the National Council of Justice as a constitutional organisation to reinforce of the independence of justice. It started its activities in 1997 and its basic regulation is the Act No. 66 of 1997 on the organisation and administration of the Courts. According to this act, the „National Council of Justice shall fulfill the central duties of administration of courts with the observation of the constitutional principle of judicial independence and exercise supervision of the administrative activities of the presidents of the courts of appeal and county courts.” In order to reinforce the independence of judiciary, the National Council of Justice is a fully independent legal entity, with its own, by the Parliament approved budget, the proposal which is submitted directly to the Parliament by its president, without the consent of the Government.*

*The Parliament accepted in 2011 the new Constitution of Hungary which will come into force in 2012. New acts will regulate the administration and organization of the judiciary system. The reason of this, that the present system has some advantage but many rightful criticism arose. For example the system is very bureaucratic, expensive, do not assure the readiness of the cases, but gives too much power for the leaders of the courts which infringe the independence of the judges. Frequent criticism that the present administration and system do not assure the prevention of the justicemords. The necessity of the reform is out of doubt, and the devise of the best conception is the object of the year 2011.*

**KEY WORDS:** *judicial reform, public administration of the courts*

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The transformation of the organization of judicial courts, according to the requirements of separation of power, begun with the constitutionalism of 1989. The process lasted, in terms of legal continuity, until 1993 with modifications of the previous

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law of judicial organizations, and during that time the requirements of separation of power had been mostly fulfilled.

The next change in the judicial organization can be connected to the court reform of 1997. According to the new organization, judicial courts occupy a special place in the separation of power, in the system of mutual balancing and restriction between the branches of power. The reform, by going back to such a predecessor as Montesquieu, established a judicial system that represents the judicial power of the courts in a special way, compared to the legislative and executive branches of power. The personal independence of the professional judge is violated somewhat while being established in other branches (executive branch, head of state), and the independence of the judicial organization is violated by the acknowledgement of the administrative rights of the executive branch (Minister of Justice).

The organizational reformation of the court and, within its scope, the requirement of judicial independence had been defined, in fact, against the executive branch of power. The system of connections that draws up, according to the separation of power, the legal status of the government compared to the courts requires organizational guarantees. The government's job is, on the one hand, to organize the shaping and execution of the policies of justice, and on the other, to ensure the personal and objective requirements necessary for the operation of the judicial organization. In the system of separated powers, it is usually accepted to fulfill this governmental obligation within the frame of justice administration, namely, by usually investing the Ministers of Justice with the so-called external right of justice administration. The establishment of external administration at the organization of executive power may theoretically be justified by the fact that justice administration is not equal to judging, the guarantees of judicial independence are not necessary for its fulfillment, and it can be practiced if the judicial independence is duly respected.

In the years following the Political Transformation, for the sake of establishing the organizational independence of courts, the rights of the Minister of Justice had been reevaluated, limited and finally, abolished.

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The National Council of Justice has 15 members, the President of the Supreme Court is *ex officio* its president. The Council has 9 judge members who are elected for 6 years by the judiciary through delegates, another three members the Minister of Justice, the Chief Public Prosecutor, the President of the National Bar Association, and two additional members of the Parliament.

The most important duties of the Council are:

- To appoint and relive the presidents and vice presidents of the regional court of appeals, the county courts, as well as the heads of the judicial colleges,
- to make recommendations to the President of the Republic of Hungary on the nomination or relive of judges,
- to prepare and submit to the Parliament its proposal for the next annual budget in respect of the Chapter of the Justice,
- to be responsible for the implementation of the separate chapter of the National budget as adopted by the Parliament,
- to guide and oversee the administrative activities of the presidents of courts,
- to exercise the central duties of training of judges,
- to exercise its employer's and personal authority as stipulated in the law,
- to specify the basic principles underlying the organisational and operating rules and regulations of the courts,
- to perform, and organize the central duties related to the collection and processing of judicial statistical datas,
- to arrange the legal representation of the courts,
- to manage the activities of the Office of the National Council of Justice.

Within the National Council of Justice and under its administration an Office has been established, whose task is basically to prepare the meetings of the Council, to implement its decisions, as well as to control the execution thereof, so the Office is the executive organ of the Council.<sup>1</sup>

The judicial reform of 1997 is known by its unexpected timing and incompleteness. The legislative branch established an institute with a new frame and scope called National Council of Justice, a central corporate body fully practicing justice administration. At the time of its creation, neither the founders, nor the scientific public knew too much about the newly formed organization. It had been introduced as a central administrative body, the constitution and legal stand of which is similar to those existing in some European countries (Italy, France, Spain, Portugal), where the improvement of legal systems is mostly done via the so-called Latin method. Since then, scientific analysis pointed out roots of the institute reaching to the United States as well. From the viewpoint of constitutional law, one can say that the consequences of the jurisdictional reform of 1997 may influence the theoretical requirements of the separation of power. The administrative role has a greater value, compared to its previous function. This may result in that the judicial administration, as part of the judicial power, might claim the full system of guarantees of the judicial independence to be able to function, which system is otherwise a distinctive feature of litigation. Typically, prior to the creation of reform laws, the analysis of the experiences derived from the workings of similar organs did not happened. According to certain opinions, the reform had been partial because it only settled the relation between the judicial organization and the executive branch, but did not

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<sup>1</sup> The National Council of Justice of Hungary, [www.birosag.hu](http://www.birosag.hu), October 30, 2011, Act No.66. of 1997 on the organisation and administration of the Courts (EN)

considered the other fields of separation of power, regarding, for example, the Constitutional Court, parliamentary commissioners and the prosecution.<sup>2</sup>

So it was obvious even during the reform of 1997 that in a few years the appropriate consequences would have to be drawn to make jurisdiction even more effective, so that it may become authentic and reliable in the eyes of the citizens again, who may regain the courage to turn to courts once more hoping for fast and righteous justice.<sup>3</sup>

The National Council of Justice had become the central institute for the administrative reform. It was not necessarily a good idea to provide the mixed body consisting of professional judges and representatives of the legislative and executive power, the prosecution and the lawyers a license covering everything. Many people suggested that the joint practice of functions with different aims by the same body necessarily leads to discrepancies. The same statement could be made regarding the fact that the president of the National Council of Justice and the Supreme Court had become the same person.

The National Council of Justice as a body requires the formation of an official organization of specialists for the sake of continuously being able to attend to administrative tasks. This Office undertakes the tasks of the National Council of Justice at all times. One can say though, that this administrative organ, this Office is not thoughtful of the personal independence of the judges, because of the general laws of administrative actions. During this, it is not enough just to declare judges independent.

Amongst the deficiencies of the jurisdictional reform of 1997, the lack of rethinking the controlling system of litigation is usually mentioned.

Another aim of the reform is to enhance the extent to which litigation is accepted by the society. There are, namely, unusual, unwanted symptoms felt by judicial courts as well. For example, the unusual attacks of the press against a court decision, extraordinary events, stepping up against judges and judicial buildings, demonstrations in front of court-rooms, incidents in the court-rooms from disparaging the judge to assault and battery. In such cases, one cannot completely neglect the causes and concentrate only on the security of judges and judicial buildings.

Apart from mentioning the independence of the judicial organization, many claim that the internal independence of judges is missing. A closed system of commissions, promotions and aptitude tests came to be, which does not have a counterweight, and it can be comprehended neither by those concerned, nor by the general public.<sup>4</sup>

There is also an opinion that the problem of the current organizational system is that the organizational aim defined by Law LXVI of 1997 is not built fundamentally on guaranteeing the personal independence of the judge. The Law defined the organizational aim formally as the detachment of the judicial organization, but in fact, in a concealed

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<sup>2</sup> Fűrész Klára: A bíróság szervezeti reformja. Ünnepi Kötet Sári János egyetemi tanár 70. születésnapja tiszteletére, 2008. 90-106. p.

<sup>3</sup> Pálmai Zsófia: A magyar bíróság szervezeti reformja. *Collega* 1999/5. szám, 55-58. o.

<sup>4</sup> Fűrész Klára: A bíróság szervezeti reformja. Ünnepi Kötet Sári János egyetemi tanár 70. születésnapja tiszteletére, 2008. 90-106. p.

way, it made independent judgments impossible by securing an extreme power for the presidents and by making judges easily pliable.<sup>5</sup>

So the present system has some advantage but many rightful criticism arose. The system is very bureaucratic, expensive, do not assure the readiness of the cases. The protraction of criminal procedures is in part a question of administration as well. Criminal jurisdiction cannot fulfill its role until the violated rights are not set back in a reasonable time.<sup>6</sup> Frequent criticism that the present administration and system do not assure the prevention of the justicmords. The present system gives too much power for the leaders of the courts which infringe the independence of the judges.

The Parliament of the Republic of Hungary accepted a new Constitution, or basic law, which shall come to force at January 1st, 2012. New acts will regulate the administration and organization of the judiciary system. In the same time of the acceptance of the new Constitution, legislation set itself the transformation of the judicial organization system as a target, and this reform is an ongoing one even today. It seems sure that the legislator retain the four-level judicial system, changing maybe only the names of certain levels. But there are going to be fundamental changes in the administration of courts. The highest level of administration is going to be managed by an organization called the National Judicial Office, the leader of which will be different from the president of the Supreme Court.

## CONCLUSIONS

Almost everyone is committed to the reform of the judicial organization. The necessity of the reform is out of doubt, and the devise of the best conception is the object of the year 2011. Of course, there are differences between the plans of solution. Hopefully, the Parliament will manage to realize the legislative aim to secure the judicial independence for both the judicial organization and for the judge as a person, and the judicial administration will be able to help the litigation by reducing the unnecessary administrative burdens, for the sake of solving the cases as fast and effective as possible.

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<sup>5</sup> László Ravasz – Péter Szepesházi: A possible new organizational court system (manuscript).

<sup>6</sup> Katona Géza: A bűnözés helyzete és az igazságszolgáltatás reformja. Magyar Jog. 1997. 11. szám, 641-649. p.