

Lack of necessary guarantees for the functioning of the legal profession in Hungary

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Summary

The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers are able to carry out their professional duties independently of the government and political pressure.

Since the second UPR cycle, the situation of lawyers in Hungary has not improved. Hungary does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the United Nations Basic Principles on the Role of Lawyers. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

Independence of the legal profession

i. Harassment of lawyers

The adoption of the so-called “Stop Soros” legislation in 2018 by the Hungarian Government has restricted the right of lawyers to carry out their professional duties independently and curtailed their freedom of association (L4L and IBAHRI submission §10). In February 2019, the Hungarian Constitutional Court ruled the so-called “Stop Soros” legislation, which criminalized the legal assistance provided by the immigration lawyers and legal NGOs and associations to undocumented

migrants, to be not unconstitutional (L4L and IBAHRI submission §11). The legislation came up from the current far-right government to basically effectively ban the work of all lawyers, NGOs or other legal associations that support asylum seekers and refugees in the country. The fear and hate campaign towards immigrants that the government has been engaged in, directly affected lawyer’s rights to work independently or by joining/establishing associations for the human rights causes (L4L and IBAHRI submission §11 and12).

ii. Legislation and legislative initiatives impacting the judicial independence

Even though the Orbán administration announced a suspension of the in December 2018 tabled legislation separating the administrative courts from the rest of the judicial system, herewith allowing external interference of ministerial agencies (L4L and IBAHRI submission §14). Nevertheless, in December 2019 the Hungarian government adopted a new law to target the independence of the judicial system (L4L and IBAHRI submission §15).

The law granted public authorities the possibility of filing constitutional complaints with the Constitutional Court, if their fundamental rights have been violated or if their scope of competence has been unconstitutionally limited by an ordinary court decision. However, as the

independence of the Constitutional Court has been seriously undermined by the governing majority, the Court has been reluctant to hold authorities accountable for their wrongful acts (L4L and IBAHRI submission §15).

Moreover, through this new law Constitutional Court judges after their retirement could almost automatically become judges of the Hungarian Supreme Court. This would allow the ruling majority, which currently needs two-third majority in Parliament to elect Constitutional Court justices, to indirectly select and have so-called 'loyal judges' at the Supreme Court as well (L4L and IBAHRI submission §16). This might have a direct effect on further eroding impartiality principle.

iii. Public rhetoric against lawyers and judges

According to our information, media resources have been widely used in Hungary to target, discredit, and demonize lawyers and judges that criticize the government, and uphold human rights (L4L and IBAHRI submission §18). Prime Minister Viktor Órban heavily criticized several judicial decisions that awarded compensation to Roma children segregated in Hungarian schools and to prisoners that complained about the inhumane conditions in prisons throughout the country (L4L and IBAHRI submission §18). He also openly and harshly attacks lawyers who provide legal aid to undocumented migrants and detainees. Lawyers are portrayed as the enemies of the Hungarian State and Hungarian people who defend terrorists and criminals (L4L and IBAHRI submission §19). The government's discourse is that these lawyers grab money of taxpayers.

Moreover, it has been reported that the two biggest television companies in Hungary

have a very close alignment with the government, which facilitates the spread of pro-governmental and anti-human rights discourse and hinder any narrative that aims to disapprove governmental acts and policies (L4L and IBAHRI submission §19).

Recommendations

- **Respect the freedom of expression and association of lawyers and judges in order to allow them to accomplish their work to provide access to justice and tackle discrimination, crime, impunity and oppression.**
- **Preserve the right to people to access justice, and then preserve lawyers' mission to guarantee that.**
- **Safeguard and guarantee a full and effective independence of the judiciary in Hungary; stop any sort of harassment and persecution, including criminal prosecution, of judges who speak up against governmental policies or acts, or who adopt rulings that overrule the decisions of the government.**
- **Safeguard and guarantee a full and effective independence of lawyers, by ensuring that they can perform their professional duties without any fear of reprisals, intimidations, threats, or criminal prosecution.**
- **Enhance collaboration with the Special Rapporteur on Independence of Judges and Lawyers and with the civil society in general to ensure compliance with international standards relating to the independence of judiciary and the legal professions.**