

**1. How does the Constitution, or other laws of your country, if there is no written Constitutional document, regulate relations between the judicial power on one side, and the executive and legislative powers on the other side?**

The Constitution (Fundamental Law) establishes a general framework for the independence, organization and functioning of the judiciary. Article C (1) pronounces that the State is based on the principle of the separation of powers. Judges are independent and only subordinated to law, they shall not be instructed in relation to their judicial activities; they may not be members of political parties or engage in political activities [Article 26 (1)]. Judges are appointed by the President of the Republic on the proposal of the President of the National Office for the Judiciary (see below) and may be removed from office only for reasons and in a procedure specified in a cardinal Act (i.e. an Act adopted by two-thirds of the votes cast in the National Assembly) [Article 26 (1)-(2)]. The President of the Curia (the highest judicial organ) is elected for nine years from among the judges on the proposal of the President of the Republic by the National Assembly with the votes of two-thirds of its members [Article 26 (3)].

The tasks of the central administration of the courts are performed by the President of the National Office for the Judiciary. The President of the National Office for the Judiciary is elected for nine years from among the judges on the proposal of the President of the Republic by the National Assembly with the votes of two-thirds of its members [Article 25 (6)]. The central administration of the courts is supervised by a National Judicial Council composed of the President of the Curia and elected judges [Article 25 (5)-(6)].

Detailed rules for the organization and administration of courts, for the legal status and remuneration of judges are laid down in cardinal Acts: Act CLXI of 2011 on the organization and administration of courts, and Act CLXII of 2011 on the legal status and remuneration of judges.

**2. Is there now, or has there been in the last 10 years, any important discussion in your country on this topic, either in the political/legal field, in university/academic circles, by NGOs, or in the media?**

The adoption of the new Fundamental Law of Hungary in 2011, its subsequent amendments and the cardinal laws related to the judiciary stirred widespread debate in Hungary and had some international implications as well. The main issues of contention are well identified in the relevant opinions of the European Commission for Democracy Through Law (Venice Commission): Opinion no. 621/2011 on the new Constitution of Hungary (June 2011); Opinion no. 663/2012 on Act CLXII of 2011 on the legal status and remuneration of judges and Act CLXI of 2011 on the organization and administration of courts (March 2012); Opinion no. 683/2012 on the cardinal acts on the judiciary that were amended following the adoption of opinion CDL-AD(2012)001 (October 2012); Opinion no. 720/2013 on the fourth amendment to the Fundamental Law of Hungary (June 2013).

The most important criticism expressed in various opinions targeted the very wide and mostly discretionary powers of the President of the National Office for the Judiciary as regards staff management, appointment of court leaders, transfer of judges and cases as well as the inadequacy of the National Judicial Council to effectively supervise such activities. Most of this criticism has been addressed through repeated amendments of the relevant legislation that significantly strengthened the National Judicial Council and removed some discretionary powers from the President of the National Office for the Judiciary.

Another issue of contention has been the sudden reduction of the upper-age limit for judges foreseen by Article 12 of the Transitional Provisions for the Fundamental Law. With certain exceptions, these provisions required judges who reached the retirement age (62 years at the time but gradually increasing to 65 years) to actually retire regardless of the upper-age limit for judges (70 years). The European Commission contested the early retirement of around 274 judges and public prosecutors, and the

Court of Justice of the European Union upheld the Commission's assessment that this mandatory retirement is incompatible with EU equal treatment law. In July 2012, the Hungarian Constitutional Court also declared these provisions unconstitutional. According to subsequent legislation dismissed judges with a few exceptions had a choice between reinstatement to their previous positions with their previous benefits or a considerable monetary compensation. Most of the judges involved chose the second option.

**3. Has there been any significant debate on the issue of “judicial restraint” or “judicial moderation” with regard to the exercise of the judicial function vis-à-vis the other powers of the state? In particular, are there examples where public opinion and/or the other powers of state have suggested that the judiciary (or an individual judge/court in a particular decision) has impermissibly interfered in the field of executive or legislative power or discretion?**

Other powers of state have so far not suggested that the judiciary has impermissibly interfered in the field of executive or legislative power and this issue has never been a major concern for the public opinion. However, there is an ongoing debate in the legal academia whether some of the instruments available for the Curia to ensure a uniform interpretation and application of law by the courts and the actual use of such instruments go beyond the prerogatives of the judiciary and are legislative in nature.

**4. a) In your country, in the last 10 years, have there been any changes in the constitution/law regarding the judiciary (in the widest sense: structure, courts, judges) which have, arguably, affected the relationship between the judiciary and the other powers of the state or the separation of powers in your country?**

As mentioned above, the adoption of the new Fundamental Law of Hungary and related legislation has resulted in fundamental changes in the structure and administration of the judiciary. The most important changes concerned the central administration of the judiciary. Previously, such tasks were entrusted to a National Council for the

Administration of Justice presided by the President of the Supreme Court. Besides the President, the membership of the National Council included nine elected judges, the Prosecutor General, the Minister of Justice, the President of the Hungarian Bar Association, and two MPs representing the parliamentary committees responsible for constitutional and financial matters. The main reasons cited in favour of the revision of this arrangement were its lack of external accountability and transparency as well as its inefficiency.

Even though the Constitutional Court has long held that it has the right to review the constitutionality of binding instruments available for the Curia to ensure a uniform interpretation and application of law by the courts, and it has on several occasions annulled such instruments, the legal and institutional relationship between the Constitutional Court and the Curia is far from settled. The new Fundamental Law and Act CLI of 2011 on the Constitutional Court now authorizes the Constitutional Court to review, on the basis of a constitutional complaint, the constitutionality of individual court judgments independently of the constitutionality of the law applied. These provisions reopened some of the issues related to the separation of powers.

**b) In your country, are there any current proposals for changes in the law as referred to under a)? In each case, please indicate the “official” reason for the changes or proposed changes.**

The re-codification of Hungarian civil procedure is under way, and this process might result in some structural changes for the judiciary on the level of both institutions and personnel. However, these changes are not likely to affect the relationship of the judiciary and other state powers in general.

**c) In your country, are there any serious discussions or debates (in political circles, by the public generally or in the media) with a view to introducing changes in the law as referred to under a)?**

At the moment, there are no serious discussions with a view to introduce significant changes in the system of checks and balances.

**5. In your country, have there been any significant comments by politicians or other relevant groups with respect to the role of the judiciary/courts in their capacity as the third power of the state? If so, please briefly identify their nature and content and indicate the reaction of the public or media reporting of “public opinion”.**

From time to time, MPs and government officials express their dissatisfaction with individual judgments in both civil and criminal matters and occasionally these statements receive a wide media coverage. In 2014, the Minister of Justice announced that the Ministry will start a systematic analysis of jurisprudence and case law but it remains to be seen what implications this exercise will have on its relationship with the courts.

**6. To what extent, if at all, is the proper administration of justice affected by the influence of the other state powers (e.g. the ministry of finance with respect to administering budgets, the relevant ministry with respect to information technology in courts, the cour de compte, parliamentary investigations etc. or any other external influence by other powers of the state)?**

Since the central administration of the budget for the judiciary is the prerogative of the President of the National Office for the Judiciary, consequently the Ministry for National Economy or the Ministry of Justice has practically no leverage on its implementation. The President of the National Office for the Judiciary also has the right to submit a draft budget for the judiciary in the framework of budgetary planning, and this draft budget must be tabled by the Government to the National Assembly without modifications. The legality and economic feasibility of the courts' financial management is monitored by the Court of Auditors. The President of the National Office for the Judiciary and the President of the Curia is required to report annually to the National

Assembly but there is no further room for the National Assembly to exert direct influence on the administration of justice: MPs may not address interpellations or questions to the President of the National Office for the Judiciary and the President of the Curia, and the activities of the judiciary are outside the authority of parliamentary committees of inquiry. The right of inquiry of the Commissioner for Fundamental Rights does not extend to the judiciary either.

**7. Do you have any other comments to make with regard to the relations between the judiciary and the other powers of state in your country?**