

Hungary: more needs to be done to bring legislation on administrative courts in line with international standards, UN Expert says.

GENEVA (5 April 2019) – The Hungarian Parliament has recently amended the laws on administrative courts, adopted in December 2018, in order to bring them in line with international standards.

At that time, the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, addressed a communication to the Government ([AL HUN 8/2018](#)) to raise concerns about two laws establishing a new system of administrative courts, with its own high court (the future Supreme Administrative Court) and its own judicial council (the future National Administrative Judicial Council, or NAJC).

Under the new system, which will enter into force in January 2020, the new administrative courts will have jurisdiction on a number of human rights related issues, such as human rights violations perpetrated by the police and other law enforcement officials, asylum, the legitimate exercise of the right to peaceful assembly and they might also end up having jurisdiction on political elections and freedom of information. The courts would also adjudicate on matters with significant economic relevance.

“I fear that the new administrative court system would be placed under the control of the Minister of Justice, which might undermine the principles of judicial independence and the separation of powers,” said the UN expert at the time. In particular, the Special Rapporteur raised concerns about the wide-ranging powers of the Minister with regard to the appointment and promotion of administrative judges, the determination and allocation of budgetary resources to administrative courts, and the internal organization of regional administrative courts. The expert also noted that the new National Administrative Judicial Council (NAJC) would have no real power over judicial organization or administration, since all the important powers are vested either with the Minister of Justice or with the President of the Administrative High Court.

“If implemented in its current form, the new legislation would undermine the independence of the judiciary in Hungary, since it paves the way for the

Government's political interference with the actual composition and functioning of the new administrative courts," concluded Mr. García-Sayán. The Special Rapporteur requested the Government of Hungary to respond to his communication within 60 days. To date, his letter has received no response.

In March 2019, the European Commission for Democracy through Law (the "Venice Commission") adopted an [opinion](#) on the new administrative justice system. Back in November 2018, the Minister of Justice said that it would assess the Venice Commission's opinion, and carry out corrections to the law if required.

The opinion assesses the new court system in the light of existing principles and standards relating to the independence of the judiciary and the separation of powers, which are key components of the rule of law. The opinion concludes that the new system presents some of the same drawbacks that the Venice Commission outlined in the past in relation to the reform of the ordinary court system. The major drawback – the Commission said – is that "very extensive powers" are concentrated in the hands of a few stakeholders, and there are "no effective checks and balances to counteract those powers".

The Special Rapporteur welcomes the decision of Hungarian authorities to review its legislation on the administrative justice system in light of the recommendations made by the Venice Commission. However, he notes with concern that according to the information received from civil society organizations, these amendments only address a fraction of the recommendations made by the Venice Commission.

"The proposed amendments address some of the concerns of the Venice Commission in relation to the recruitment procedure of administrative judges, but only with regard to the 'regular' recruitment procedure. During the transitional period prior to the entry into force of the administrative court system, the powers of the Minister of Justice will continue to be unfettered," said the Special Rapporteur. This potentially may affect the selection of up to 180 judges, thus the majority of judges working in the new court system. Current judges reported on a climate of "fear".

The Minister would choose candidates from a list provided by an ad hoc committee consisting of the President-elect of the Supreme Administrative Court, six randomly selected judges and four other members nominated by the Parliamentary Committee for Justice, the Chief Prosecutor, the Minister responsible for the Public Administration and the President of the Bar Association. The Minister would be able to disregard the ranking of applicant judges presented by the ad hoc committee and de facto recommend any person on the list for appointment by the President of the Republic. The President would not have power to vet or change the appointment, he or she would have to sign and accept the proposal presented.

"I urge the Hungarian Government to review the selection procedure for the appointment of administrative judges in light of the recommendations made by the Venice Commission. This is particularly important with regard to the initial selection,

since the widespread interferences in the selection of administrative judges may have long-lasting adverse effects on the independence of the administrative justice system,” concluded Mr. García-Sayán.

In relation to the system of judicial self-governance, the expert considers that the proposed amendments fail to address the concerns expressed by the Venice Commission with regard to the strengthening of the national judicial council. “Despite the changes proposed by the Government, the powers of the National Administrative Judicial Council in relation to the selection of administrative judges, heads of court and the President of the Administrative High Court remains extremely limited,” warned the Special Rapporteur.

“Additional guarantees would need to be developed to strengthen the independence and autonomy of the NAJC, and appropriate measures need to be adopted to counterbalance the broad powers entrusted by the legislation on administrative courts to the Minister of Justice and the President of the Supreme Administrative Court,” he concluded.

Finally, the Special Rapporteur emphasized that any reform of the judiciary should aim at strengthening the independence and impartiality of the judiciary, not at bringing the judicial system under the control of the executive and legislative branches.

“The review of the legislative package on the administrative justice reform should be the result of an open, fair and transparent process, involving not only the parliamentary majority and the opposition, but also the judiciary itself and civil society actors. It should be carried out in accordance with existing norms and standards relating to the independence of the judiciary, the separation of powers and the rule of law, as enshrined in the Hungarian Constitution and in a vast array of international and regional treaties to which Hungary is a party. The recommendations made by international and regional human rights mechanisms, such as the Venice Commission, should be taken into account in the development and implementation of a new administrative court system that is independent, impartial and effective,” said Mr. García-Sayán.

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Mr. Diego García-Sayán took up his functions as UN [Special Rapporteur on the independence of judges and lawyers](#) in December 2016. Mr. García-Sayán was formerly a judge of the Inter-American Court of Human Rights for two consecutive terms. During his tenure, he was elected Vice-President of the Court (2008-2009) and President of the Court (2009-2013). He has long-standing experience working on human rights issues in a variety of settings, including for the United Nations and the Organization of American States.

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