



Hungarian Helsinki Committee



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HUNGARIAN CIVIL LIBERTIES UNION

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DEVELOPMENTS CONCERNING THE LOWERING OF THE MANDATORY RETIREMENT AGE FOR JUDGES

1. The Fundamental Law **has lowered the mandatory retirement age of judges to 62 years** from 70 years as of 1 January 2012. This affected the **majority of judges holding higher judicial positions**.
2. More than one hundred-and-fifty affected judges submitted applications to the European Court of Human Rights, claiming a violation of the Convention.
3. On 16 July 2012, **the Constitutional Court (CC)** reached a decision on the constitutionality of the related provisions of the cardinal law on the legal status of judges, which set out that judges shall be forced to retire if they have reached the applicable retirement age. **The CC found the provisions unconstitutional and abolished them with a retroactive effect from 1 January 2012.** However, **the related provisions of the Fundamental Law and of the Transitional Provisions of the Fundamental Law remained in force.** The CC also stated in its decision that **former judges may not be re-instated solely on the grounds of the decision.**
4. **Approximately 150 lawsuits claiming unlawful dismissal have been initiated by affected judges since the CC's decision.** So far, three first instance court decisions were reached, all of which established that the dismissal of judges was unlawful. The National Judicial Office has already appealed one of the decisions. Whether and in what manner judges, having won a case, may be reinstated remains an open question. (Appointments are normally issued by the President of Hungary.)
5. On 7 September 2012, the **Government submitted two draft Bills** on the amendment of the Transitional Provisions of the Fundamental Law of legal provisions pertaining to the mandatory retirement age, **which aim to resolve the lingering questions emerging from the CC's decision.** The Bills contain the following changes:
 - If a person receives a retirement pension, he/she may not become/remain a judge. This provision will come into effect on 1 November 2012. Judges who already receive retirement pensions will have 30 days from the law's coming into effect to terminate this "reason for disqualification", i.e. to waive their pension until they hold judicial office.
 - The new mandatory retirement age for judges is 65 until 1 January 2022. (After this date the general pensionable age will also be 65.) The Transitional Provisions will set forth that a judge's mandate shall be terminated with a dismissal (by the President of the Republic) when he/she turns 65.
 - Judges who turn (or have turned) 65 before 1 January 2014, shall be dismissed by the President with effect from 31 December 2013. This means a transitional period of over one year.
 - With the exception of the President of the Curia and the National Judicial Council, no higher judicial position (meaning management positions within the judiciary) may be filled by judges over the age of 62.
 - The same mandatory retirement age will pertain to some other legal professions.
 - The Bills do not contain any provisions as to those who have already been dismissed on the basis of unconstitutional legal provisions.