



Hungarian Helsinki Committee



Statement of human rights NGOs on abolishing the upper age limit of Constitutional Court judges

Joint opinion of the Eötvös Károly Institute, the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union

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Through Bill T/12912 “On the amendment of certain Acts of Parliament in relation to the Fifth Amendment to the Fundamental Law”, the Government of Hungary wishes to amend the Act on the Constitutional Court. It sets out that the mandate of Constitutional Court judges, including current serving judges, shall not terminate when they turn 70 years old, but they are to remain in their seats until the end of their 12-year term. Despite the title of the respective Bill, this proposal has nothing to do with the Fifth Amendment to the Fundamental Law, and the complete lack of reasoning regarding the proposal on behalf of the Minister of Public Administration and Justice submitting the Bill reveals the extent as to whether this change is necessary. Providing reasons would have been indeed hard, since this may not be justified from a constitutional perspective, as essential conditions of fulfilling a judicial mandate are amended “along the way”, thus also affecting those who are currently in office.

The rule that the mandate of Constitutional Court judges shall terminate when they turn 70 years old was introduced by the first Act on the Constitutional Court, adopted at the time of the transition in Hungary. The rule has not been revised and has been applied ever since. Earlier this year, in February 2013, the mandate of Constitutional Court judge, Mihály Bihari, terminated on the basis of this rule; he was replaced by László Salamon, former MP of the governing parties. In April 2013, the mandate of András Holló terminated also due to his age; and in order to replace him, the governing parties nominated and elected Imre Juhász, who was also supported by the extreme right-wing Jobbik party.

Abolishing the upper age limit in case of Constitutional Court judges is clearly another step of the current systematic political occupation of the Constitutional Court, which began after the change in government in 2010. The governing party, having two-thirds majority in Parliament, first changed the rules of nominating Constitutional Court judges in a way which made it possible for them to nominate without the consent of any of the opposition parties. After adopting the latter rule, they elected István Stumpf as a judge, who was one of the Ministers of the first Orbán-government (i.e. the government lead by the current governing party between 1998 and 2002), and Mihály Bihari, in order to fill the two vacant positions in the Constitutional Court. Later on,

judge László Trócsányi resigned from his post due to his appointment as ambassador, so another seat became vacant. As of 1 September 2011, the number of Constitutional Court judges was increased from 11 to 15, and, accordingly, altogether five further Constitutional Court judges were nominated and elected by the governing majority (István Balsai, Egon Dienes-Oehm, Béla Pokol, Péter Szalay, and Mária Szívós).¹ Thus, altogether, eight current members of the Constitutional Court (i.e. the majority of judges) were elected in a procedure where nomination rules ensured that exclusively those favoured by the governing parties got elected as Constitutional Court judges. Furthermore, as a result of amending the rules on the status of judges, new members of the Constitutional Court were elected for 12 years instead of nine.

The proposed new rule, on the basis of which the mandate of five of the newly elected judges will not terminate when they turn 70 years old, fits into the course of actions described above. According to the current rules, the mandate of István Balsai would have terminated on 5 April 2017, while according to the new rules it will terminate on 1 September 2023, when he will be 77 years old. Egon Dienes-Oehm would have been a Constitutional Court judge until 2 January 2015 under the original rules, but under the new ones, he will also be a judge until 1 September 2023, when he will be 79 years old. Béla Pokol would have been a member until 7 May 2020, but under the new rules he may remain a member of the Constitutional Court until 1 September 2023, when he will be 74 years old. László Salamon would have been a judge until 25 December 2017, while according to the amendment he may remain a member of the Constitutional Court until 25 February 2025, when he will be 79 years old. The mandate of Mária Szívós would have been terminated on 8 December 2019, while if the amendment is adopted, she may remain a Constitutional Court judge until 1 September 2023, when she will be 75 years old.

It is well known that the current governing majority, having two-thirds of the seats in Parliament, terminated the mandate of almost 300 ordinary judges before they turned 70 years old in a similar way; only that in their case their retirement age was *lowered* by amending the respective laws. The Constitutional Court judges, elected exclusively by the current governing party for 12 years, may now be able to decide on cases even when they will be close to 80 years.

Accordingly, the Fundamental Law of Hungary, which was adopted with only the support of the governing parties, and without political or societal support, will be interpreted and applied in the upcoming parliamentary periods by Constitutional Court judges who were elected without political consensus, and who will be held in their seats after reaching the age originally set out by law due to one-sided political considerations. This is incompatible with the requirement that a constitution shall be based on the widest consensus within the political community possible, and the integrity of judges interpreting the constitution shall be protected from any kind of political influence by real guarantees. The constitution shall not be the subject of political games; instead, the constitution is the legal document which sets out the rules of that political game. If the rules of the game are determined by one of the competitors, who also determines who shall interpret and apply those rules, then other competitors will have no reason to appreciate the rules of the game – rather, they will look at the constitution as a “technocrat set of rules”, which they may amend freely in case of a change in government, in accordance to their actual political needs.

¹ The Eötvös Károly Institute and the Hungarian Civil Liberties Union prepared the professional profile of the five new judges, which is publicly available here: http://tasz.hu/files/tasz/imce/2011/nyilvanos_jelentes_ekinttasz.pdf.