



National Office for the Judiciary

President

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Mr. José Igreja Matos

European Association of Judges
President

Dear Mr. President,

With regard to the report published by the Study Commission of the European Association of Judges (EAJ) set up at the Marrakesh General Assembly in order to assess the Rule of Law in Hungary, I would like to make the following comments.

The report states that the monitoring procedure of the European Association of Judges (EAJ) was initiated by the Hungarian Association of Judges (MABIE). It is unfortunate that the Hungarian National Office for the Judiciary (NOJ) first received information only from the press about the formation of the study commission and about the issues to be explored and examined by the commission. This was particularly surprising given that the Hungarian Association of Judges (MABIE) had not previously reported any anomalies or suggestions on how to tackle these problems to the NOJ in the topics concerned, although this would have been possible at any time in the course of cooperation.

It is contrary to the principle of fair procedure that until date the MABIE has not made a clear statement regarding the launch of a monitoring procedure and thus did not inform us about the lawfulness of the commission's mandate, which I already indicated in my letter of 26th November 2018 addressed to Mr. President. In fact, it is clear from the MABIE's letter dated 25th September 2018, addressed to you that the EAJ had first contacted MABIE, so there was no initiation of proceedings by the Hungarian member organization, but only answers to questions raised by the EAJ. Unfortunately, there was no chance to clarify this legal uncertainty at the meeting with members of the commission, since MABIE's representative did not attend.

The NOJ was officially informed briefly only on 25 February 2019 about the exact date of the Commission's visit and the agenda. However, there were no specific questions, preliminary remarks, or any request for work material from the commission's side, nor did they send such request later. That is why it is surprising to us that the report

criticizes the fact that the presentation of the NOJ delegation primarily focused on the operation of the Hungarian court system, caseload data, IT developments, judicial training system, measures to ensure the welfare of judges, and the achievements in these fields, whereas the conflict between the NOJ and the National Judicial Council was not mentioned.

Since the NOJ did not have any prior information on how much the members of the EAJ delegation know about the Hungarian judiciary, it was quite reasonable to assume that the Commission as an interest representation body shall focus their attention on examining the circumstances affecting the welfare and interests of judges. Therefore the NOJ delegation concentrated on these topics at the meeting. I am really sorry that - in spite of all my efforts - the members of the commission, as they have indicated in the report, considered the issues that really affect Hungarian judges to be only secondary.

The report deals extensively with the relationship between the NOJ and the Council and the interpretation of the legality concerns raised in relation to the operation of the Council. First and foremost, I would like to draw your attention to the fact that the Commissioner for Fundamental Rights has initiated proceedings before the Constitutional Court. I hope that the decision of the Constitutional Court will settle these matters, which will also be comforting for the judicial association.

However, the report lists a number of factual errors and incorrect legal conclusions regarding the relationship between the NOJ and the Council. These incorrect conclusions could obviously have been avoided if the commission had turned to the NOJ in the preparation phase, at least to get to know the related law.

It is a mistake that the NOJ did not react in any way to the Council's requests or made it difficult for the Council to operate. Despite concerns about the legality of the Council's operation, the NOJ has continuously provided technical support for the Council, has always fulfilled data requests by ensuring the study of documents, by publishing semi-annual and annual reports, by uploading on-demand materials on the central website of courts available also in English, by sending letters to the Council, its members, its current president or the President of the Curia of Hungary as the official member of the Council.

It is a mistake that there is no control over the work of the NOJ President due to concerns about the legality of the Council's operation. The reality, on the other hand, is that the NOJ is one of the most controlled public entities. Since its president - unlike the National Judicial Council - shall report annually to the National Assembly and shall report twice a year to the Justice Committee of the National Assembly. The NOJ President publishes semi-annual and annual reports also electronically, and regularly publishes information on the operation of the judiciary on the central website of courts.

The report's finding that all the judges interviewed during the commission's visit admitted that there was a constitutional crisis in Hungary is misleading. This is quite strange because all members of the NOJ delegation who were present at the meeting are appointed judges in Hungary, and I made this clear to the leader of the commission

at the visit. It is a very important guarantee of judicial self-government, a topic also discussed in the report, that in Hungary court leaders are judges themselves, they know and understand the interests and needs of the judiciary. The report's findings in this field are merely based on the opinion of a critical minority, the professional position of the opposing party has been suppressed, which means that the requirements of a fair procedure have not been met.

It is misleading that the report, while addressing and analyzing professional issues such as the appointment of judges and court leaders, the 'relocation' of judges, the NOJ President's powers to appoint, or the constitutional structure of courts' central administration, does not mention that these issues have previously been examined by the European Commission and were found to be in line with European standards.

It is particularly astonishing to read in the report, under *established facts* that the NOJ President – besides anticipating disciplinary proceedings – called upon dr. Sándor Szabó, Secretary General of the Hungarian Association of Judges to resign from the Council. Such accusations, which completely lack reality and are not supported by evidence, are not worthy of the judicial profession or its principles. The Council member named above – according to our information – turned to the press and you with a request to correct the false statement.

On the basis of the above, the factual mistakes in the report – listed here only as examples but still quite a few in number – and the lack of knowledge about the Hungarian judiciary confirm that the work of the commission was not well prepared and well-founded. It is also unfortunate that the report was drawn up in the context of a procedure which lacks the European standards repeatedly called for by the commission, the principle of fair procedure, the requirements of independent and impartial decision-making. In this context, I find it particularly worrying that the NOJ only received information about the content of the report from the press since the NOJ did not receive the draft report from the EAJ in order to be able to make comments, and there was no official notification on putting it on the agenda either.

If the EAJ considers it important to conduct a study based on true facts, knowledge of related laws and the legal environment, we would be happy to provide the opportunity for members delegated by the EAJ to come as observers and really get to know Hungarian judges and the judiciary, the challenges that we are facing, things that we have achieved so far. With this, the bangalorian principles – according to which judges must perform their work impartially, free from bias or prejudice – now absent from the commission's work – could be compensated for.

Yours sincerely,


*

dr. Tünde Handó