



RES IUDICATA

Judges for Social Awareness Association

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COMPLAINT

for the restitution of the institutional independence of the Hungarian judiciary

The Res Iudicata - Judges for Social Awareness Association, in accordance with the objectives of its Statute, to promote the acceptance of the values of rule of law and to increase public confidence in the judiciary, in agreement with the complaint submitted by the Hungarian judge Dr. Oláh Gaszton on the same subject, hereby

submits a complaint

to the European Commission to the restitution of the independence of Hungarian courts, complaining the inadequate national legal regulation of the Hungarian Parliament and Government, which constantly and systematically violates the institutional independence of the judiciary in a manner contrary to the EU law and violates the requirements of the rule of law.

The national legislative measures concerned by the complaint:

1) Article 25 (8) of the Fundamental Law: *"The detailed rules of the supervision of the organisation, administration and central administration of the courts, the status and the remuneration of judges shall be regulated by a cardinal (two-third) act."*

2) Article 35 (4) of Act on the Legal Status and Remuneration of Judges (Act CLXII of 2011): *"A judge shall receive a remuneration that corresponds to the dignity of his/her profession and the weight of his/her responsibilities, and which guarantees his/her independence."*

3) Article 40 (1) of Act on the Legal Status and Remuneration of Judges: *"A judge may, in addition to the performance of his duties, only be engaged in scientific, teaching, coaching, competition refereeing, artistic, copyright, editorial and technical creative work as a gainful occupation and may be employed as a foster parent...."*

4) Article 169 (2) of Act on the Legal Status and Remuneration of Judges: *"The salary base of judges' remuneration shall be determined annually by the Central Budget Bill, in a way that the amount shall not be lower than the amount of the previous year."*

5) Article 169 of Act on the Legal Status and Remuneration of Judges, Chapter XII and Annexes 2 and 3 determine the payment classification of judges, the allowances for posts and titles and for administrative leaders.

6) Chapter IX of Act on the employment of court staff (Act LXVIII of 1997), in particular the Article 97(1): *"The salary base of court employees shall be based on the salary base of judges, and it shall be determined on the basis of the salary base and the multiplication factors of each payment classification."*



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7) Article 66 on the Central Budget Bill of Hungary 2024 (Act LV of 2023): *"The salary base of judges' remuneration referred in Article 169 (2) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges shall be 566.660,- HUF in 2024."* (The amount of the salary base was the same amount according to the Section 69 (1) of Act XXV of 2022 on the Central Budget Bill of Hungary 2023 and Section 66 (1) of Act XC of 2021 on the Central Budget Bill of Hungary 2022.)

The infringed EU law and case-law of the Court of Justice of the European Union:

- 1) Article 2 and article 19 (1) second sub-paragraph of the Treaty on European Union,
- 2) Article 47 of the Charter of Fundamental Rights of the European Union,
- 3) Associação Sindical dos Juizes Portugueses judgement of the Court of Justice of the European Union, 27 February 2018. (C-64/16, EU:C:2018:117)
- 4) Escribano Vindel judgement of the Court of Justice of the European Union, 7 February 2019. (C-49/18, EU:C:2019:106)
- 5) Comission v. Poland judgement of the Court of Justice of the European Union, 24 June 2019. (C-619/18, ECLI:EU:C:2019:531)

The detailed description of the problem:

In Hungary in 2024 (likewise in 2022 and 2023) based on the above-mentioned legal background

- a) the minimum monthly gross salary for judges is 821.657.00,- HUF/2.080, EUR (monthly net 546.401.00,- HUF/1.383,- EUR, 3.415,- HUF/8.64,-EUR net per hour);
- b) the starting salary of a judicial employee, considering the guaranteed minimum wage (minimum wage for skilled workers) in 2024 is 326.000.00,- HUF/825,- EUR gross per month (monthly net 216.790.00,- HUF/548.83,-EUR, 1.355.00,-HUF/3.43,-EUR net per hour).

According to the latest statistics published in April 2024 by the Hungarian Central Statistical Office (KSH), the average gross monthly wage in Hungary is 645.300, - HUF/1.633,67,- EUR. The basic starting salary of a judge is only 1.27 multiple of this amount. This rate is one of the lowest between the member states of the Council of Europe. The remuneration of judges therefore is completely inadequate to reflect the social prestige of the judicial office.

The amount of the judicial salary base, set by the Central Budget Bill, hasn't changed in the past three years, despite the increase of the inflation rate, which was 14.5% in 2022, 17.6% in 2023, and the average inflation is already 4% in 2024 [see <https://www.ksh.hu/gyorstajekoztatok/#/hu/list/far>]. Consequently, in the past three years the salary of the judges and the court staff have lost at least 40% of its real value.



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The wage of the employees of the Hungarian public administration, the legislative and the executive branches is linked to the average monthly gross national earning of the calendar year preceding the reference year, so if the average earning increases, the wage adjustment follows it automatically. However, the judicial branch - including prosecutors and prosecution staff too - is an exception. In this branch, there is no statutory mechanism to ensure that salaries are maintained automatically in real terms, independently of the discretionary decision of another branch of government, based on objective and verifiable criteria. **Any change of the remuneration of the judicial branch entirely depends on the political will of the executive and the legislature.**

The remuneration of the judicial branch is disproportionately low comparing to the other two branches and unlike them, it does not change:

- i. the monthly remuneration of a Member of Parliament is the triple of the average gross national earning (Article 104 of the Act XXXVI of 2012) and the monthly remuneration of the Speaker of the House is 2,7 multiple of the remuneration of an MP (Article 120 of the Act XXXVI of 2012).
- ii. the salary base of parliamentary civil servants shall also be linked to the average gross national earning (Article 124/G of the Act XXXVI of 2012).
- iii. the monthly remuneration of the Prime Minister shall be equal to the remuneration of the Speaker of the House (Article 25/A of the Act XLIII of 2010).
- iv. the monthly remuneration of a Ministry Commissioner, of a Head of a Governmental Office, of a Head of a Central Administrative Office, and of their deputies may be up to ten times as much as the average gross national earning (Article 7 of the Act XLIII of 2010).

The legislation on the salaries of judges and court staff is incompatible with the principle of judicial independence for the following reasons:

- i. It does not ensure that Hungarian judges and judicial employees receive a remuneration that corresponds to the significance of the judicial profession.
- ii. There is no such a correction mechanism that guarantees the conservation of the real value of the remuneration of judges and judicial staff.
- iii. It does not ensure the separation of the judicial branch from the other two branches of power, because it makes the determination of the remuneration entirely dependent on the political will of the executive and the legislature.
- iv. It is contrary to the requirement of the balance of powers, given that it provides a significantly lower remuneration for judges than for the members of both the executive and the legislature.

One of the fundamental guarantees of judicial independence is an appropriate remuneration. If ensuring the conservation of the value of the remuneration of judges is a favour of the other



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two branches of government, the judicial control over the government and the legislature possibly weakens, and there is a probability that financially motivated judicial decisions are made. The present legislation jeopardises the independence of the judiciary on an institutional level and gives the possibility to the executive and the legislature to exert recurring and permanent pressure on the judiciary through the fixation of the remuneration.

Discreditably low remuneration directly threatens the functioning of the judicial system due to the leave of court staff caused by the low amount of their monthly payment. The lack of decent pay and working conditions, including an appropriate number of judicial staff, is a real threat to judicial integrity and impartiality, and raises serious concerns about the independence of the judiciary. At the same time, the undue remuneration is objectively capable of raising reasonable doubts in the minds of outside observers regarding the possibility of political or other pressures and the lack of influence of Hungarian judges.

The current Hungarian regulation regarding the remuneration of judges and judicial staff infringes the following EU standards:

- the principle of democracy, the rule of law, respect for human rights and justice (Article 2 TEU),
- the principle of judicial independence enshrined in the second subparagraph of Article 19 (1) TEU,
- the fundamental right to a fair trial enshrined in Article 47 of the Charter, which includes as a cornerstone the principle of judicial independence,
- the case-law of the CJEU, especially the requirements laid down in judgments C-64/16 and C-49/18 concerning the remuneration of judges.

The present complaint seeks a remedy to the unlawful situation described above, which is contrary to the EU law and caused partly by the action and partly by the failure to act of the national authorities. The remuneration of judges and court staff is regulated by law initiated by the Government and adopted by the Parliament. Similarly, Hungary's annual budget is stated by law. **In consequence the evolution and the maintenance of the unlawful situation is the result of the actions and the failure of action of both the Government and the Parliament.**

All documents and evidence supporting the facts and legal arguments on which this complaint is based are publicly available.

Comparative data and rates on judicial salaries are available in the reports of the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) on the Evaluation of the European judicial systems:

<https://rm.coe.int/rapport%E2%80%91evaluation%E2%80%91partie%E2%80%911%E2%80%911franca%20is/16809fc058>, page 67., and <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279> page 80., and the EU Justice Scoreboard, <https://rm.coe.int/hungary-eu-scoreboard-country-fiches2022-data/1680b065f7>.



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Data on the rates of inflation and average domestic earnings are available on the KSH website:
<https://www.ksh.hu/gyorstajekoztatok/ker/ker2404.html>

The problem has already been discussed publicly and some actors in the judicial system has already called for action before the present complaint was lodged:

- the National Council of Judges has regularly discussed the situation regarding the remuneration of judges at its meetings since June 2023 (www.obt2018.hu and www.obt-jud.hu),
- The Hungarian Judges' Association (www.mabie.hu), the Judges' Career Expert Panel (BÉSZT) and the Trade Union of Judicial Employees (BDSZ) regularly communicate the problem,
- the Res Iudicata Judges Association has published a [communication](#) on its website addressing the problem to the international community.

Having regard to the above, we request the Commission to register and to investigate the complaint and take the necessary legal action.

Budapest, 17 July 2024.

Yours sincerely:

Res Iudicata - Judges for Social Awareness Association