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## **THE HUNGARIAN JUDICIAL SYSTEM – AN OUTLINE**

Quentin Coppieters 't Wallant

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## **1. Foreword**

HUNGARY's legal and judicial environment is founded on the Civil Law system. As a consequence, although this report is written in English, the legal terminology used shall be regarded, unless specified, as referring to Civil Law concepts and not Common Law ones.

## **2. Historical introduction: before and after 1989**

In the Middle Ages, the feudal justice was highly centralised in the hands of an almighty king of divine right. For specific areas of law there was also a parallel ecclesiastical judicial system. After the birth of the Austro-Hungarian monarchy, the judicial system was unified.

More recently, as most can expect, the judicial system was biased in favour of the totalitarian socialist regime during the Soviet decennia. The major events of November 1989 and the change of regime led to reforms in all areas. That was also the case of the judiciary environment.

The Constitution of the Republic of HUNGARY (*Magyar Köztársaság Alkotmánya*, hereafter « CRH ») dates from the socialist era (Act n. 20 of 1949) but has been « cleaned » through a number of new Acts after the collapse of the Soviet Union. This in order to democratise the country and to get in conformity with the European Union admission criteria. The most dramatic changes in that sense were adopted end of the nineties.

The above-mentioned Acts focussed on separating the judiciary from the executive, democratise and reorganise the judicial system, thereby establishing a three-tier system with four jurisdictional levels.

Also, new legal codes arose from the reforms.

This report will start with a few words on the principles of the judicial system in HUNGARY. Two more extensive chapters will follow with an overview and analysis of the judicial architecture of HUNGARY and the actors of justice. Finally we will speak about the new legal codes and some legal challenges of HUNGARY's entry into the European Union.

### **3. Principles of the judicial system**

All Hungarian courts are competent for reviewing the legality of administrative decisions (art. 50 CRH.). There are no specific administrative jurisdictions.

Article 57 CRH also briefly sets a few fundamental principles including:

- Everyone may seek legal remedy [...] to judicial, administrative or other official decisions, which infringe on his rights or justified interests.
- The rights of defence and the presumption of innocence shall be ensured and everyone has a right to be judged in a just, public trial by an independent and impartial court established by law.

The court hearings are public. Exceptions can be made on grounds provided by law only. Decisions on the other hand are always public.

### **4. The Judicial Architecture of HUNGARY**

#### 4.1. The « classic » pyramid of jurisdictions

The pyramid of jurisdictions is relatively classic. It has four levels of jurisdictions (Article 45 CRH). One must however stress that it is actually a three-tier system, be it with four jurisdictional levels.

In principle, cases should be settled at the lowest level, the closest to the people.

#### **4.1.1. The Local Courts (*Helyi és Munkaügyi Bíróság*)**

##### 4.1.1.1. Description

The ca. 130 Local Courts are of two types: Town Courts and Labour Courts. The former count for 5/6 of the Local Courts, the latter for the remaining ones. They are established in the communes having the size of a city. Local courts have no own legal personality.

#### 4.1.1.2. Competence

The Town Court has the competence of trying civil and criminal matters in first instance. The Labour Court is in charge of the matters related to labour relations and of other specific tasks.

At least once a week a « day of complaint » is arranged: trained clerks give « [free] legal assistance in any legal matters from oral information until the preparation of petitions »<sup>1</sup>.

### **4.1.2. The County Court (*Megyei Bíróság*)**

#### 4.1.2.1. Description

The second level of jurisdiction encompasses the ca. 20 County Courts and the Metropolitan Court of BUDAPEST.

#### 4.1.2.2. Competence

This Court judges in first instance matters determined by law. It also handles appeals against decisions of the local courts.

### **4.1.3. The Appeal Court (*Ítéltábla*) (new)**

#### 4.1.3.1. Description

There should be five appeal courts. Three of them are already effectively created (BUDAPEST, SZEGED and PÉCS). They constitute the new third jurisdictional level in between the County Courts and the Supreme Court. One should actually speak of a return: there were already four jurisdictional levels in the system *before* 1948. The Appeal Court enjoys the legal personality.

One of the main aims of this new level is to reduce the workload of the Local Courts and the Supreme Court in order to allow the latter to focus on its « conceptual guidance » role.

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<sup>1</sup> OFFICE OF THE NATIONAL COUNCIL OF JUSTICE, The functioning of the Hungarian judicial system, [http://www.embajada-hungria.org/s/hun\\_pol\\_justice.htm](http://www.embajada-hungria.org/s/hun_pol_justice.htm)

#### 4.1.3.2. Competence

Its role is fundamentally that of an appeal court. The *Ítéltábla* provides for a second-level recourse against matters tried at the County Court in first instance and specifically attributed matters tried at the Local Court in first instance. This new system has been established by the Act n. 110 of 1999 and was effective 1<sup>st</sup> January 2003.

It also acts as second appeal court for cases initiated at the Town Court level, but only on legal issues (the typically French “recours en cassation”, save that here it applies to a lower jurisdiction).

#### **4.1.4. The Supreme Court (*Legfelsőbb Bíróság*)**

##### 4.1.4.1. Description

The Supreme Court is the highest jurisdiction in the Hungarian judicial hierarchy. Its president is elected by the Parliament, after the proposal of the President of the Republic. The Supreme Court has the legal personality and is established in BUDAPEST.

##### 4.1.4.2. Competence

Its mission (art. 47 CRH) is to guarantee the uniform application of law (« conceptual guidance ») and in that sense to adopt resolutions and decisions binding on all courts. These « are of general character and adopted for the future, similarly to legal rules, not affecting, in principle, a concrete case at court »<sup>2</sup>.

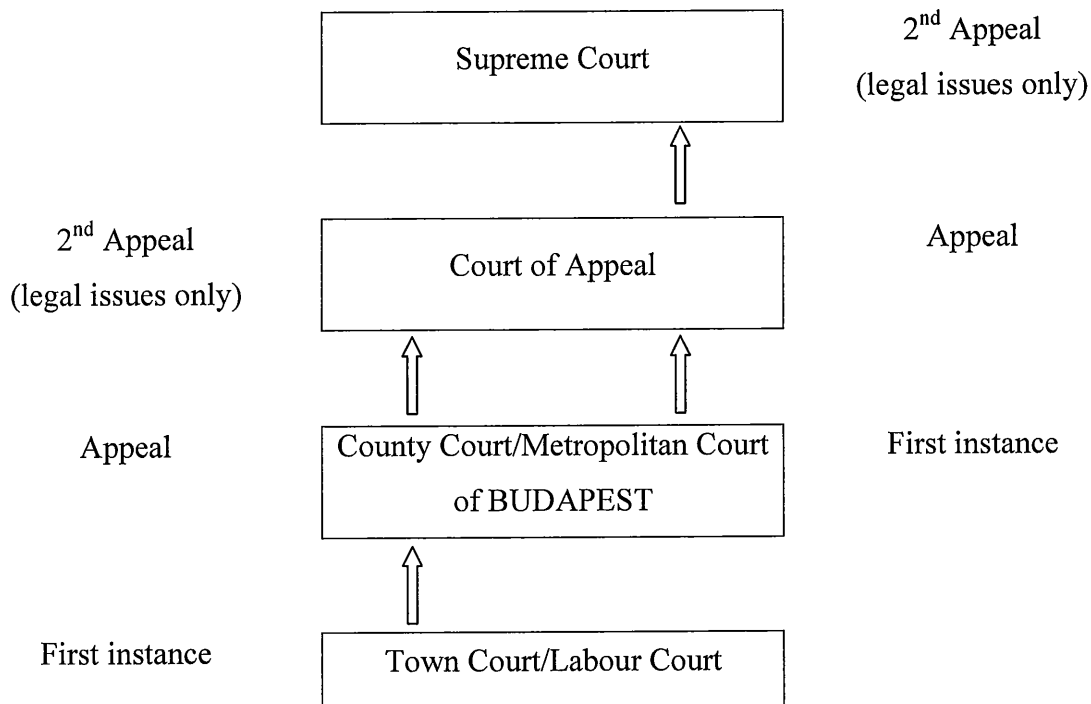
It acts as second appeal court for cases initiated at the County court level, but only on legal issues (the typically French “recours en cassation”).

The Supreme Court also tries recourses for reparation against decisions of the County Court and the Court of appeal, petitions for revision and other specific matters determined by law.

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<sup>2</sup> Attila RÁCZ, Judicial Independence in Eastern Europe (with Special Reference to the Hungarian Law), 9th Annual Conference on The Individual vs the State, Institutional Independence and Integrity, Budapest, May 3-5, 2001 Central European University, <http://www.ceu.hu/legal/legal/Racz.htm>

#### 4.1.5. Scheme of the « pyramid »



#### 4.2. The special jurisdictions<sup>3</sup>

##### 4.2.1. The parliamentary ombudsmen (*Országgyűlési biztosokat*)

###### 4.2.1.1. Description

Article 32B CRH provides for the existence of two types of so-called « parliamentary » ombudsmen: one for civil rights, the other one for the rights of national and ethnic minorities.

###### 4.2.1.2. Competence

These parliamentary ombudsmen can, each in their respective areas of responsibility, investigate or initiate investigations in cases of related constitutional infringements and initiate remedies. Furthermore, everyone has the right to initiate proceedings by the ombudsman in cases specified by law.

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<sup>3</sup> There are no separate military tribunals any more. Since 1991, their jurisdiction has been taken over by military benches of ordinary courts: first instance in the County Court, second instance in the Court of appeal.

## **4.2.2. The Constitutional Court (*Alkotmánybíróság*)**

### 4.2.2.1. Description

Article 32A CRH lays the foundations of the Constitutional Court of HUNGARY. It was established in 1989 and has been effective 1<sup>st</sup> January 1990.

### 4.2.2.2. Competence

The Constitutional Court reviews, on anyone's request, the constitutionality of laws and statutes and annuls them if they are found unconstitutional (article 32A CRH). The Constitutional Court thus interprets the Constitution and supervises its respect by statutes. The Court also settles conflicts of competence between public authorities.

Its decisions are binding *erga omnes*. No appeal may be lodged against these decisions. They are published in the Official Journal.

For an in depth analysis on this Court, we kindly refer you to the report of Olivia Battard.

## 4.3. The Court of Justice of the European Communities (*Az Európai Közösségek Bírósága*)

### **4.3.1. The Court of Justice (*Bíróság*)**

#### 4.3.1.1. Description

The Court of Justice<sup>4</sup> counts 25 Judges and 8 Advocates-General. They are appointed by common accord of the governments of the Member States. Their office lasts six years and is renewable. The Advocates-General « deliver, in open court and with complete impartiality and independence, opinions in all cases »<sup>5</sup>.

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<sup>4</sup> [http://curia.eu.int/en/instit/presentationfr/index\\_cje.htm](http://curia.eu.int/en/instit/presentationfr/index_cje.htm), web site of the « Court of Justice of the European Communities »

<sup>5</sup> [http://curia.eu.int/en/instit/presentationfr/index\\_cje.htm](http://curia.eu.int/en/instit/presentationfr/index_cje.htm), web site of the « Court of Justice of the European Communities »

#### 4.3.1.2. Competence

The Court of Justice rules on:

- applications for annulment against acts of the Community institutions;
- actions for failure to act brought by a Member State or an institution;
- actions against Member States for failure to fulfil obligations;
- references for a preliminary ruling brought by a court of a Member State; and
- appeals on points of law against decisions of the Court of First Instance.

### **4.3.2. The Court of First Instance (*Elsőfokú Bíróság*)**

#### 4.3.2.1. Description

The Court of First Instance<sup>6</sup> is made up of 25 Judges, at least one from each Member State. They too are appointed for a renewable term of six years by common accord of the Member States. There are no Advocates-General.

#### 4.3.2.2. Competence

Its main characteristic is that it deals with actions brought by individuals and undertakings against decisions of the Community institutions. In that sense, the Court of First Instance rules on:

- actions for annulment against acts of the Community institutions;
- actions for failure to act against inaction by the Community institutions;
- actions for damages for the reparation of damage caused by an unlawful act of or failure to act by a Community institution;
- actions in the field of contractual liability disputes concerning contracts in public or private law concluded by the Community;
- actions in matters concerning the civil service disputes between the Community and its officials and other servants; and
- cases concerning contracts in public or private law concluded by the Community which contain an arbitration clause.

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<sup>6</sup> [http://curia.eu.int/en/instit/presentationfr/index\\_cje.htm](http://curia.eu.int/en/instit/presentationfr/index_cje.htm), web site of the « Court of Justice of the European Communities »

#### 4.4. The European Court of Human Rights (*Az Európai Emberi Jogi Bíróság*)

##### **4.4.1. Description**

The European Court of Human Rights<sup>7</sup> is composed of a number of judges equal to that of the Contracting States (currently forty-five). Judges are elected by the Parliamentary Assembly of the Council of Europe for a term of six years, half of the judges being renewed every three years. HUNGARY is a Contracting State since the end of 1992.

The Court is divided into four Sections, which composition, fixed for three years, is geographically and gender balanced and takes account of the different legal systems of the Contracting States

##### **4.4.2. Competence**

The European Court of Human Rights provides protection for the rights defined in the European Convention on Human Rights. Any Contracting State or individual claiming to be a victim of a violation of the Convention may lodge « an application alleging a breach by a Contracting State of one of the Convention rights »<sup>8</sup> directly with the Court in STRASBOURG.

#### 4.5. The International Court of Justice (*Nemzetközi Bíróság*)

On 22 October 1992, HUNGARY recognised as compulsory the jurisdiction of the International Court of Justice. However, this recognition is made on condition of reciprocity and is subject to exceptions.<sup>9</sup>

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<sup>7</sup> <http://www.echr.coe.int/Eng/EDocs/HistoricalBackground.htm>, web site of the « European Court of Human rights »

<sup>8</sup> <http://www.echr.coe.int>, web site of the « European Court of Human rights »

<sup>9</sup> <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicdeclarations.htm>, web site of the « International Court of Justice »

## **5. The actors of justice**

### 5.1. The judge

A whole range of measures has been taken in order to ensure the independence of the judiciary (cf. below). Its role is fundamentally perceived as to render service to the public.

#### **5.1.1. Career**

Since 1997, a new selection system has been brought in with much stricter conditions than before. Judges are not only selected on the basis of their legal qualification – and a competition – but also after inquiry on their personality, their health and their physical and psychical condition.

Many commentators think that the psychological test is only useful for detecting serious psychic troubles and is not going far enough.<sup>10</sup>

The National Council of Justice proposes the candidates to the President of the Republic.

The succeeding judge will start with three years as junior assistant clerk and at least one year as court secretary. He can then be appointed for life. Before the reform, a lawyer could be appointed judge after only two years of legal practice, thus of experience. This was regarded as too short and therefore prolonged by two years minimum. The judge's work will be evaluated twice every six years.

Postgraduate training is both a right and a duty.

According to Attila BADÓ, notwithstanding the reforms' aim of objective and impartial recruitment and promotion, personal relations do still play an important role in that respect.

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<sup>10</sup> Attila Badó, La justice hongroise dans le cadre de l'intégration européenne, under the direction of Jean-Claude NÉMERY, Paris: L'Harmattan, 2002, p. 181.

One can state with him: « when tribunals do not show impartiality nor objectivity [in recruitment and promotion], why would people hope to have an impartial and objective judgement ? »<sup>11</sup>

### 5.1.2. Impartiality

Judges may not be put under pressure or influence. Except when caught in act, they are immune from proceedings unless these are started with the consent of the President of the Republic.

A case shall be assigned to a judge according to objective rules of distribution. Furthermore, judges shall not deny the fulfilment of their judicial functions.

The remuneration of judges is supposed to be in adequacy with the dignity and the responsibility of their function and sufficient to ensure their independence. Beside their profession of judge, they are allowed to have some other money earning activities, *e.g.* teaching, providing this activity does not jeopardise their impartiality nor prevent the fulfilment of their activity as judges. They shall not be members of an arbitration tribunal. As a matter of fact, a lot of law school professors are also judges.

There is also a strong emphasis on the behaviour of the judges that in all situations shall be « worthy to their office »<sup>12</sup>. As regards their contacts with the media, judges must not give any information or opinion in relation to cases. This is reserved to the President of the Court.

Finally, « apart from his death, the office of judge appointed for life can only be terminated by the President of the Republic (exemption). Any judge may resign at any time without giving reasons thereof. [...] Other grounds for exemption: medical or professional disability, mandatory retirement age is reached, final disciplinary decision recommending dismissal »<sup>13</sup>.

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<sup>11</sup> Attila BADÓ, La justice hongroise dans le cadre de l'intégration européenne, under the direction of Jean-Claude NÉMERY, Paris: L'Harmattan, 2002, p. 183.

<sup>12</sup> OFFICE OF THE NATIONAL COUNCIL OF JUSTICE, The functioning of the Hungarian judicial system, [http://www.embajada-hungria.org/s/hun\\_pol\\_justice.htm](http://www.embajada-hungria.org/s/hun_pol_justice.htm)

<sup>13</sup> OFFICE OF THE NATIONAL COUNCIL OF JUSTICE, The functioning of the Hungarian judicial system, [http://www.embajada-hungria.org/s/hun\\_pol\\_justice.htm](http://www.embajada-hungria.org/s/hun_pol_justice.htm)

## 5.2. Assessors

The courts shall, unless otherwise prescribed by law, administer justice through councils (art. 46 CRH). This means that assessors take part to the decision-making. They are elected among the population for four years and enjoy the same rights and duties as professional judges do. However, unlike the latter, they cannot act alone nor chair a panel.

## 5.3. The National Council of Justice and the independence of the judiciary

As reads article 50 CRH, judges are independent and answer only to the law. They may not be member of parties nor engage in political activities.

Their independence and reorganisation as well as their revalorization were the main aims of the reforms concerning the status of judges.

Before 1 October 1997, the Minister of Justice played a key role in the administration of the courts, together with a so-called « National Council of Judges »: material conditions, administrative supervision, appointment of main heads of courts. As an exception, the Supreme Court administrated itself autonomously.

Since 1 October 1997 the administration of the courts has been withdrawn from the too intrusive powers of the Minister of Justice and exercised by a « National Council of Justice ». The Supreme Court also lost its autonomy in that new framework.

This National Council of Justice is chaired by the President of the Supreme Court and further composed of representatives of the Judiciary. The executive, the National Bar Association, and the Parliament also have *ex officio* members.

It has a wide array of competencies ranging from the appointment of the main heads of courts and the supervision of organisational and functional regulations to the preparation of the annual budget and an annual situation and activities report to the Parliament. The budget appears as a separate chapter of the national budget.

The self-administration seems to function efficiently. Still, the « involvement of the executive in the budgeting process for the judiciary has resulted in consistent under-funding and has effectively weakened its independence and capacity »<sup>14</sup>.

#### 5.4. The Office of the public prosecutor (*Ügyészek*)

The General Prosecutor (*Legfőbb ügyészt*), head of the Office, is elected by the Parliament on proposal of the President of the Republic. He is accountable before the Parliament and is consequently not part of the executive (art. 52 CRH). Complete independence of the General Prosecutor is doubtful, since his office depends on a simple majority vote in the Parliament. The current General Prosecutor, elected by a former right-wing majority, is being contested by the current left-wing majority.

The selection, career, rights and duties of prosecutors follow the same pattern as the one for judges, apart from the appointments and promotions procedures, which are a bit different.

As states the Constitution, the Office of the public prosecutor ensures the protection of the rights of (legal or not) persons, maintains constitutional order and prosecutes any act, which violates or threatens the security and independence of the country (art. 51 CRH). The Office has a broad scope of intervention. It is namely competent for trying irregular or illegal administrative procedures or decisions. Public prosecutors also have the exclusive prerogative of charging offenders – « monopoly of accusation ».

#### 5.5. The Official Journal (*Magyar Közlöny*)

This is the official publication for laws, international treaties, decisions and resolutions of the Parliament and the government, law integration decisions of the Supreme Court – taken in order to unify the application of law –and decisions of the Constitutional Court.

There is also a five-yearly publication of the « Collection of Legal Norms in Force ».

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<sup>14</sup> EU ACCESSION MONITORING PROGRAMS, Hungary, Judicial capacity in Hungary, [http://ftp.osi.hu/euaccession/2002\\_j\\_hungary.pdf](http://ftp.osi.hu/euaccession/2002_j_hungary.pdf)

## 5.6. The Attorney

Anyone having successfully passed the graduation examination (after five years of studies), can be admitted to the bar, where he shall start with a 3-year traineeship.

Any individual charged with an offence has a right to appoint a defence lawyer. Sometimes such a lawyer is mandatory. In civil cases, the court can appoint a *pro bono* attorney<sup>15</sup>. This happens when a party is not able to bear the costs of a legal representation and such representation is justified.

## **6. New legal codes**

As regards Civil law, the reform towards a new code is still in preparation. After 1989, the Hungarian economy has strongly changed: before, it was a planned economy (no “property” as a French lawyer would understand it); now HUNGARY has a market economy like any other western democracy. Most of the issues have been solved through modifications – enhancing privatisation, putting ordinary citizens on equal foot with the State, ... – but both the legislator and the judiciary agree there is a need for a totally new conception. A Committee composed of mainly law school professors is working on it since years. They are trying to find compromises on all the issues. Their work is still ongoing.

For the new civil procedure rules there were fewer discussions and the reform was voted earlier after 1989. In 1995 was voted a modification significantly changing the roles played by the actors of justice. This means that the parties have now more importance and are entitled to more consideration than in the old regime system. The changes of 1995 aimed at building an equitable procedure. The task of the tribunal is now much more that of an organiser and giving guidelines. There were also reforms in 1997 and 1999. One of their objectives was to make the procedures go faster.

As regards penal law, the code adopted in 1978 is still in force, despite the frequent pleadings of the political parties for a renewal. The infractions have been adapted to the new regime and it sounds like the 1978 Penal Code is not that bad. Its reform however stays on the agenda.

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<sup>15</sup> One can also appreciate the development of legal aid offices in law schools.

The previous Code of criminal procedure was Act 1 of 1973. It was clearly influenced by Marxism. Progressively though, the Code was adapted towards the respect of the rule of law and the protection of human rights. The modifications were however so important that the Code was not a logical and well-structured law any more. Therefore, a new Code of criminal procedure was voted by the Parliament in 1998 and entered into force on 1 July 1999. This new Code of 1998 (Act n. 19) was full of errors and the work needed to be done again. Eventually, a profoundly modifying act was passed this year (2004) and will enter into force on 1 January 2005.

It should have more accusatorial characteristics than before – more active parties and less active courts. This to weaken the natural inquisitorial type of a continental system. The main responsibility of the public prosecutor « will be to decide whether going to trial is possible or desirable in the light of the facts shown by the investigation. »<sup>16</sup> The main aim of the « instruction » is to look for evidence, not to establish the truth.

## **7. Some legal challenges of the accession to the European Union**

The integration of the communautarian « acquis » was estimated to be sufficient for the accession of HUNGARY. However, Hungarian courts have still an important role to play, in two ways: participate to the harmonisation process, as an auxiliary body with its coercive power and interpret internal law in conformity with communautarian law<sup>17</sup>. The courts have to integrate that EU law reflex. This is certainly not the easiest part, as EU law is a complete stranger to most of the local courts.

As regards the harmonisation process, the Constitutional Court has considered – despite the principle of primacy of EU law, that the Hungarian Constitution is superior, with respect to EU regulations. However, until now the Constitution has always been modified in due time and legal contradictions have been avoided.

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<sup>16</sup> Attila HARMATHY, Introduction to Hungarian law, The Hague: Kluwer Law International, 1998, xxiv, p. 209.

<sup>17</sup> Attila BADÓ, La justice hongroise dans le cadre de l'intégration européenne, under the direction of Jean-Claude NÉMERY, Paris: L'Harmattan, 2002, p. 223.

It is also important to recall the direct effect of EU regulations and of EU directives' articles, which are sufficiently clear and precise and in that sense require no additional internal measure to be implemented. Furthermore, the principle of effectiveness commands that the judicial system of every member state provides the citizen with adequate protection of communautarian law.

## 8. Conclusion

HUNGARY's legal and judicial environment is founded on the Civil Law system. The major events of November 1989 and the change of regime led to reforms of that environment: the constitution has been cleaned and acts and legal codes adopted in order to democratise and westernise the country.

After seeing a few principles of the judicial system, we have been through the judicial architecture of HUNGARY. The major change brought to this architecture has been the return of the Court of Appeal. This will hopefully enable the Supreme Court to focus on the conceptual guidance of the application of law. At the same time, we shall not forget the importance of European and international courts.

A second major change of the reforms was the step towards a remarkable, yet imperfect, independence of the judiciary.

Also, new legal codes have been adopted while others are still in preparation. Reforms are still ongoing.

Finally, we would like to draw the attention to the fact that textual changes do not *in se* guarantee changes in practice. The judicial culture has to adapt to those reforms. This should be facilitated with the authority of European law and case law, at least as soon as the European reflex is sufficiently integrated by teachers and practitioners.

## 9. Bibliography

- Zsuzsanna ANTAL, Introduction to Hungarian law research, <http://www.llrx.com/features/hungarian.htm>
- Attila BADÓ, La justice hongroise dans le cadre de l'intégration européenne, under the direction of Jean-Claude NÉMERY, Paris: L'Harmattan, 2002, 328 p.
- Károly BÁRD, Country Report: Hungary, Parker School Journal of East European Law, Vol. 5 1998 Nos. 1-2, Access to Legal Aid for Indigent Criminal Defendants in Central and Eastern Europe, <http://www.pili.org/publications/jeel1998/hungary.htm>
- Attila HARMATHY, Introduction to Hungarian law, The Hague: Kluwer Law International, 1998, xxiv, 263 p.
- Attila RÁCZ, Judicial Independence in Eastern Europe (with Special Reference to the Hungarian Law), 9th Annual Conference on The Individual vs the State, Institutional Independence and Integrity, Budapest, May 3-5, 2001 Central European University, <http://www.ceu.hu/legal/legal/Racz.htm>
- EU ACCESSION MONITORING PROGRAMS, Hungary, Judicial capacity in Hungary, [http://ftp.osi.hu/euaccession/2002\\_j\\_hungary.pdf](http://ftp.osi.hu/euaccession/2002_j_hungary.pdf)
- OFFICE OF THE NATIONAL COUNCIL OF JUSTICE, The functioning of the Hungarian judicial system, [http://www.embajada-hungria.org/s/hun\\_pol\\_justice.htm](http://www.embajada-hungria.org/s/hun_pol_justice.htm)
- UNIVERSITY OF BERN, English translation of the Constitution of the Hungarian Republic: [http://www.oefre.unibe.ch/law/icl/hu\\_indx.html](http://www.oefre.unibe.ch/law/icl/hu_indx.html)
- [www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc\\_id=5521](http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=5521), web site of the « International Helsinki Federation for Human Rights », report on Hungary.
- <http://www.curia.eu.int>, web site of the « Court of Justice of the European Communities »
- <http://www.echr.coe.int>, web site of the « European Court of Human rights »
- <http://www.icj-cij.org>, web site of the « International Court of Justice »

## **10. Sommaire (French summary)**

Le droit hongrois repose sur un système de droit civil, par opposition à un système de Common Law. Les événements majeurs de novembre 1989 et le changement de régime ont conduit à des réformes également dans le monde judiciaire : la constitution a été nettoyée de ses aspects soviétiques et des lois et des codes ont été adoptés afin de démocratiser et occidentaliser le pays.

Après un bref arrêt devant les principes du système judiciaire en HONGRIE, nous étudions son architecture. Le principal changement apporté à cette architecture a été le retour de la Cour d'Appel, insérée entre la Cour Départementale et la Cour Suprême. Cela devrait permettre à la Cour Suprême de se concentrer sur sa fonction de direction conceptuelle de l'application du droit. En même temps nous ne pouvons oublier l'importance des cours européennes et internationales.

Un deuxième changement majeur introduit par les réformes fut le pas vers une remarquable indépendance du pouvoir judiciaire, fut-elle imparfaite.

De même, de nouveaux codes ont été adoptés alors que d'autres sont en cours de préparation. Les réformes sont toujours en cours.

Enfin, nous souhaitons attirer l'attention sur le fait que des changements textuels ne garantissent pas en soi des changements dans la pratique. Encore faut-il que la culture juridique s'adapte à l'esprit de ces réformes. Cette adaptation devrait être facilitée par l'autorité du droit et de la jurisprudence européens, du moins dès que les enseignants et praticiens du droit auront suffisamment intégré le réflexe européen.

## 11. Samenvatting (Dutch summary)

Het Hongaars recht berust op een systeem van burgerlijk recht in tegenstelling tot een systeem van Common Law. De bepalende gebeurtenissen van november 1989 en de bewindsverandering hebben tot hervormingen geleid. Dit geldt ook voor de gerechtelijke wereld: de grondwet werd van zijn Sovjetaspecten schoongemaakt en wetten en wetboeken werden goedgekeurd teneinde het land te democratiseren en te verwestersen.

Na een kort overzicht van de principes van het gerechtelijke systeem in HONGARIJE, bestuderen wij de structuur van dit systeem. De voornaamste wijziging die aangebracht werd, is de terugkeer van het Hof van Beroep dat tussen het Departementale Hof en het Hooggerechtshof is opgenomen. Dit zou het Hooggerechtshof moeten toelaten om zich op haar functie van conceptuele leiding van de toepassing van het recht te kunnen concentreren. Tegelijkertijd mogen wij het belang van de Europese en internationale hoven niet vergeten.

Een tweede belangrijke verandering die door de hervormingen werd doorgevoerd, was de stap naar een opmerkelijke onafhankelijkheid van de rechterlijke macht, zij het onvolmaakt.

Eveneens werden nieuwe wetboeken goedgekeurd terwijl anderen in voorbereiding zijn. De hervormingen zijn nog steeds aan de gang.

Uiteindelijk willen wij de aandacht vestigen op het feit dat tekstuele veranderingen veranderingen in de praktijk op zich niet garanderen. Ook de juridische cultuur moet zich immers aan deze hervormingen aanpassen. Het gezag van het Europees recht en van de Europese rechtspraak zou deze aanpassingen moeten vergemakkelijken, tenminste van zodra de leraren en de gebruikers van het recht zich voldoende de Europese reflex eigen gemaakt hebben.