Whither Administrative Justice in Hungary? European Requirements and the Setting Up of a Separate Administrative Judiciary

Ernő VÁRNAY* & Marton VARJU**

Keywords: rule of law; judicial reform in Hungary and Poland; administrative courts; judicial independence

1 INTRODUCTION

Under the current European constitutional framework, reforming the national judiciary – irrespective of the concrete political and policy context of the changes introduced – is subject to substantial legal constraints which delimit quite significantly the choices of national governments. There are Treaty provisions of constitutional character which express clearly that the organization and operation of the national judiciary are not purely domestic issues, but are central to the governance – 'through law' – of EU integration in general as well as of individual common policies. There is also a long-established and currently still expanding and deepening body of jurisprudence from the EU Court of Justice which interferes directly with the regulation and the work of the national judicial system. With increased political attention in the EU on illiberal developments in individual Member States, for instance in Hungary, institutional changes of such nature and scale are expected to attract considerable legal and political scrutiny, and raise the possibility of being added to the list of undesirable developments monitored – and possibly sanctioned in the near future – under the EU's rule of law mechanism.

This article examines the current plan – at the time of publication supported by a legislative measure adopted by parliament – for establishing a separate system of administrative courts in Hungary. While there are multiple legal, political, organizational, and even historical reasons that may support this plan, its prospective

* Research chair, Hungarian Academy of Sciences, Centre for Social Sciences, Institute of Legal Studies. Email: varju.marton.dr@gmail.com.

** Senior research fellow, Hungarian Academy of Sciences, Centre for Social Sciences, Institute of Legal Studies.

Várnay, Ern & Varju, Marton. 'Whither Administrative Justice in Hungary? European Requirements and the Setting Up of a Separate Administrative Judiciary'. *European Public Law* 25, no. 3 (2019): 1–22.

implementation – especially in light of the political and constitutional developments of recent years – raises equally numerous concerns about the future of the judicial control of the Hungarian administration before independent courts. These concerns also bear direct relevance from the perspective of the EU rules which govern the operation of courts in the Member States, and raise worries about the judicial enforcement of EU obligations in Hungary in the years to come. Our analysis is structured as follows. First, we examine briefly the EU requirements which are applicable to the organization and operation of national courts. We will pay special attention to the recent developments before the EU Court of Justice where the alleged weakening of national judicial frameworks was put under scrutiny based on EU provisions. This is followed by an overview and analysis of the changes proposed to the Hungarian judicial system. We conclude by examining the potential conflicts that may arise between the applicable EU requirements and the perceived shortcomings of the novel system of administrative courts in Hungary.

2 EU LAW AND THE NATIONAL JUDICIARY

Since the full conception of the EU legal order as regulating obligations which are directly enforceable before national courts and which prevail, as applied in individual judicial cases, over conflicting provisions of national law, the organization and operation of national judiciaries have become a central institutional, legal as well as political issue for EU integration.[1] National courts are expected to act as courts of EU law[2] in a decentralized institutional framework, which is held together, among others, by the authority of the EU Court of Justice's judgments and the preliminary ruling procedure.[3] Their task is to oversee the national application of directly applicable EU legislation and legislation transposed into national law, enforce directly effective Treaty provisions mainly against national public authorities, and provide remedies to nationals as well as individuals from other Member States when wronged in violation of EU legal obligations.[4] They also play a key role in the operation and the legal supervision of horizontal collaborative frameworks of administration in Europe which are governed by the principle of mutual recognition in the spirit of mutual trust.[5] When carrying out these tasks, national courts

1 *See European Court and National Courts – Doctrine and Jurisprudence. Legal Change in Its Social Context* (Anne Marie Slaughter, Alec Stone Sweet & Joseph H.H. Weiler eds, Hart 1997).

2 *See* paras 41–42, Judgment of 25 July 2002, *Unión de Pequeños Agricultores v. Council*, C-50/00 P, EU:C:2002:462; paras 100 and 101, Judgment of 3 Oct. 2013, *Inuit Tapiriit Kanatami and Others v. Parliament and Council*, C-583/11 P, EU:C:2013:625.

3 *See* inter alia Takis Tridimas, *Precedent and the Court of Justice. A Jurisprudence of Doubt?*, in *Philosophical Foundations of EU Law* 307–30 (Julie Dickson & Pavlos Eleftheriadis eds, OUP 2012); Akos Toth, *The Authority of Judgments of the European Court of Justice: Binding Force and Legal Effects*, YEL 1 (1984).

4 On the extensive jurisprudence on national remedies and procedural rules, *see* Michael Dougan, *National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation* (Hart 2004).

risk serious conflicts with significant political implications with their own governments, especially when they use their prerogatives of judicial review and granting remedies against the State. Interventions by national governments in the national judicial system may, thus, be perceived as attempts at taming the influence national courts have gained from EU law and reducing the exposure of national policies and regulation to EU obligations.

The position of national judiciaries described briefly above is recognized in the current Treaty framework in Article 19 TEU.[6] It provides, in the context of regulating the judicial system of the Union, that the Member States are obliged to provide sufficient remedies for ensuring effective legal protection 'in the fields covered by'[7] EU law. The EU Charter of Fundamental Rights (hereinafter, the Charter) recognizes a number of fundamental legal requirements which regulate certain aspects of the operation of national courts in the framework set out by Article 19, such as the fundamental right to a fair trial and an effective judicial remedy. Article 19 TEU has been interpreted by the Court of Justice in recent high-profile rulings as a Treaty provision which gives concrete expression to the 'value' of the rule of law, as recognized in Article 2 TEU, and which, on that basis, obliges national courts and tribunals to ensure the full application of EU law at national level and provide judicial protection of the rights provided by the EU legal order.[8] The rule of law was then held to entrust national courts with the task of exercising their judicial review competences effectively so that 'compliance with EU law' is ensured.[9] With this background, the Court declared that the Member States bear the obligation of ensuring that national courts and tribunals 'in the fields covered by EU law' provide effective judicial protection and remedies as required by EU law.[10]

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5 *See* inter alia Evelien Brouwer, *Mutual Trust and the Dublin Regulation: Protection of Fundamental Rights in the EU and the Burden of Proof*, Utrecht L. Rev. 135 (2013); Evelein Brouwer & Hemme Battjes, *The Dublin Regulation and Mutual Trust: Judicial Coherence in EU Asylum Law? Implementation of Case-Law of the CJEU and the ECtHR by National Courts*, Rev. Eur. Admin. L. 183 (2016).

6 EU law's own right to effective judicial protection had provided traditionally the constitutional and conceptual basis for interfering with the operation of courts in the Member States. *See* para. 39, *Unión de Pequeños Agricultores v. Council*, C-50/00 P. Recalled in para. 35, Judgment of 27 Feb. 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, as inherent not only in Art. 47 of the Charter but also in Art. 19 TEU.

7 This term has been interpreted as not constrained by the qualification given in Art. 51(1) of the Charter of Fundamental Rights which restricts the national impact of the Charter to instances when the Member States implement EU law, para. 29, *Associação Sindical dos Juízes Portugueses*, C-64/16.

8 Para. 50, Judgment of 25 July 2018, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU, EU:C:2018:586; para. 32, *Associação Sindical dos Juízes Portugueses*, C-64/16; para. 36, Judgment of 6 Mar. 2018, *Achmea*, C-284/16, EU:C:2018:158.

9 Para. 51, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU; para. 36, *Associação Sindical dos Juízes Portugueses*, C-64/16.

10 Para. 52, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU; para. 37, *Associação Sindical dos Juízes Portugueses*, C-64/16.

The place of national courts in the EU legal and judicial order, as determined by Article 19 TEU and the rule of law principle, was defined further in the so-called *Portuguese judges* judgment. The Court held that the rule of law requires that individual parties can 'challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act'.[11] Repeating partially the earlier mentioned interpretative clause, it then ruled that the rule of law provides the basis of the responsibility of national courts and tribunals – alongside the Court of Justice – 'for ensuring judicial review in the EU legal order' (as set out in Article 19 TEU).[12] The Court also raised that the general task regulated in the same TEU provision for the EU judiciary to ensure 'that in the interpretation and application of the Treaties the law is observed' is a joint duty of national courts and tribunals as well as the Court of Justice, which must act 'in collaboration'.[13] These obligations were given further constitutional weight when the Court referred to the principle of loyalty under Article 4(3) TEU which was interpreted as requiring the Member States 'to ensure, in their respective territories the application of and respect for EU law'.[14]

The general principle of mutual trust among the Member States, and in particular among 'their courts and tribunals',[15] has also been relied upon in the jurisprudence to define and anchor the European tasks and responsibilities of national courts. The broader basis of that principle was found by the Court in the legally relevant general political presumption that the Member States share certain common values 'with all the other Member States', which was then interpreted as requiring that national courts give effect to cross-border mutual recognition when exercising their jurisdiction and, thus, expose national law to the authority of the legal system of another Member State.[16] In the Court's view, expressed in the so-called *Polish judicial system* case, participation in such horizontal frameworks of cooperation comes, however, with certain obligations for the national judiciary. It ruled that in order for mutual trust to prevail in the EU and for EU common policies to remain operable in their cross-national dimension[17] the courts of each Member State are expected to adhere and give effect to the EU's common values and comply with the EU legal provisions which

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11 *Ibid*., para. 31. The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law, *ibid*., para. 36.
12 *Ibid*., para. 32.
13 *Ibid*., para. 33.
14 *Ibid*., para. 34.
15 *Ibid*., para. 30.
16 Paras 35–37, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU; para. 34, *Achmea*, C-284/16; para. 30, *Associação Sindical dos Juízes Portugueses*, C-64/16.
17 In the Court's view, mutual trust and mutual recognition allow an area without internal borders to be created and maintained.

implement those values.[18] On this basis, the Member States have to ensure that (courts in) other Member States can regard them (and their courts), without having the prerogative to carry out examinations to this effect, as complying with EU law and the fundamental rights protected therein, including the right which impacts national judiciaries perhaps the most extensively, the right to a fair trial.[19] As stated by the Court, a procedure launched under Article 7 TEU for the violation of the EU's common values, in particular the rule of law, can provide an important indication of whether this is the case.[20] In such instances, as a result of the systemic or generalized deficiencies investigated in that procedure, the national judiciary may be deemed unworthy of mutual trust by the other Member States and their courts.[21]

In connection with the specific instrument of the European Arrest Warrant (hereinafter, EAW),[22] the operation of which is premised on mutual trust among national authorities and courts, the Court made it clear that horizontal judicial cooperation among the Member States necessary for the execution of EAWs issued by another Member State, because of the weight of the prevailing principles of mutual recognition and mutual trust can only be suspended in quite extreme circumstances.[23] This approach is perhaps more accommodating in regard to concerns with the organization and the operation of national judiciaries than the earlier mentioned general jurisprudence setting out the general responsibilities of national courts under EU law. The difference is explained foremost by the circumstance, as noted by the Court, that the EAW framework operates with the strong presumption[24] that national court decisions relating to EAWs are attended by all the guarantees appropriate for judicial decisions, for example those inherent in the principle of effective judicial protection and the fundamental requirement of judicial independence.[25] Nevertheless, there are limits as to what the Member States may get away with under this presumption. The Court held

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18 Paras 35–37, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU.

19 *Ibid*.

20 Paras 69–74, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU.

21 *Ibid*.

22 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ 2002 L190/1.

23 Paras 40–42, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU. The Court of another Member State, when addressing such claims, is obliged to collect objective, reliable, specific and properly updated material and assess, on that basis, the operation of the system of justice of the Member State concerned (i.e. the existence of systemic or generalized deficiencies) having regard the relevant standards of EU law, *ibid.*, paras 61–62. This must be followed by a specific and precise assessment of whether, in the particular circumstances of the case, there are substantial grounds for believing that the individual concerned will be exposed to a 'real risk' of violation of its fundamental rights, *ibid.*, para. 68.

24 In other words: it follows from its central idea of mutual trust.

25 *Ibid.*, paras 56 and 58.

that they are expected to ensure that the national judicial system meets the standards that allow cross-border mutual trust to prevail, and must avoid, in particular, that the operation of national courts raises a 'real risk' of violation of the fundamental rights regulated in the Charter, including the right to an independent tribunal and a fair trial.[26] Such 'real risk' of fundamental rights violation (the risk of a flagrant denial of justice) may emerge from a situation when the implementation of general judicial reform in a Member State undermines the independence of national courts.[27]

Judicial independence has been specifically identified in the case law as a legal benchmark against which the organization and operation of national courts as courts of EU law can be measured. The Court in its ruling in the *Polish judicial system* case held that in order for national courts to be able to discharge their task of providing effective judicial protection under EU law it is 'essential' that their independence is maintained as required by Article 47 of the Charter on the right to an effective remedy.[28] It added, partly repeating the earlier mentioned general principles, that from the perspective of the Union and its legal order judicial independence and the general right to a fair trial bear a value not only as fundamental rights, but also as guarantees that the rights provided by EU law, as well as the common values of the Union including the rule of law, will be protected effectively before national courts acting in the review competences available under EU law for the control of national measures.[29] It also asserted that ensuring judicial independence in the Member States is 'essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU',[30] which establishes a direct connection between the Court of Justice and courts in the Member States.[31]

By way of establishing standards for judicial independence within this framework, the Court explained in *Polish judicial system* that the independence of the judiciary 'is inherent in the task of adjudication' and presupposes that courts exercise their functions 'wholly autonomously' 'without being subject to any hierarchical constraint or subordinated to any other body and without taking

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[26] *Ibid.*, paras 43–44 and 59. *See* paras 82 and 104, Judgment of 5 Apr. 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198.

[27] As raised in the domestic legal dispute addressed in the *Polish judicial system* case.

[28] Para. 53, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU and para. 41, *Associação Sindical dos Juízes Portugueses*, C-64/16.

[29] Paras 47–48, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU.

[30] Para. 54, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU and para. 43, *Associação Sindical dos Juízes Portugueses*, C-64/16.

[31] It is a 'keystone of the EU judicial system', Order of 16 Nov. 2018, *Commission v. Poland*, C-619/18, EU:C:2018:910, para. 22.

orders or instructions from any source whatsoever'.[32] It warned that courts should be allowed to operate in a way that they are 'protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions'.[33] Impartiality as an important attribute of judicial work was also raised. It was defined as judges maintaining 'an equal distance' from the parties and their respective interests, and as requiring that judges make their assessments objectively and in the absence of 'any interest in the outcome of the proceedings apart from the strict application of the rule of law'.[34]

These standards are fairly broadly framed, and their application, as revealed by their formulation, depends on the circumstances of the given case, or on the nature and the impact of the measure introduced to interfere with the national judiciary. This nature of judicial independence as a constitutional benchmark was revealed by the Court in the *Portuguese judges* ruling. There, it decided that while the reduction of the level of judicial salaries, which constitutes an aspect of judicial independence, specifically in respect of certain judges is likely to violate that benchmark, their general reduction within a broader legitimate policy framework (i.e. government austerity) is unlikely to raise constitutional concerns, especially when it is regulated as a temporary intervention.[35] This latter assessment by the Court does not mean, however, that general measures introduced, for example in the framework of national judicial reform would automatically pass the legal test. As revealed in the *Polish supreme court* orders, examined below, the Court of Justice may decide to examine the perceived *actual impact* of the measure in question on judicial independence in a specific court, rather than being preoccupied with the issue of whether the measure was of general or individual nature.

Concerning institutional conditions within the national judiciary, the Court made it clear in *Polish judicial system* that the regulation of the judicial system, including the rules on the composition of courts, the appointment, length of service, grounds for the abstention, rejection and dismissal[36] of judges, as well as the development of the general regulatory framework itself (i.e. its reform or significant overhaul) must be able to 'dispel any reasonable doubt' as to the

[32] Para. 63, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU and para. 44, *Associação Sindical dos Juízes Portugueses*, C-64/16. This autonomy was interpreted as requiring certain guarantees 'appropriate for protecting' the judge, such as guarantees 'against removal from office', and the provision of remuneration for judges which is commensurate with the importance of the functions they carry out, para. 64, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU and para. 45, *Associação Sindical dos Juízes Portugueses*, C-64/16.

[33] Para. 63, *Minister for Justice and Equality (Défaillances du système judiciaire),* C-216/18 PPU.

[34] *Ibid.*, para. 65.

[35] Paras 46–50, *Associação Sindical dos Juízes Portugueses*, C-64/16 (it was also limited and applied to public sector employment in general).

[36] The dismissal of judges must be regulated in express legislative provisions, para. 66, *Minister for Justice and Equality (Défaillances du système judiciaire)*, C-216/18 PPU.

'imperviousness' of courts to external factors and their 'neutrality with respect to the interests before' them.[37] As a specific institutional guarantee, it also emphasized the importance of an adequately regulated disciplinary regime for the judicial profession, which – in its interpretation – must include the guarantees necessary for preventing 'any risk of being used as a system of political control of the content of judicial decisions'.[38] The rules of such frameworks must define clearly the disciplinary offences and the penalties actually applicable, the procedure before the independent disciplinary body and the guarantees that ensure that the procedure will be conducted in accordance with the right to fair trial and the rights of the defence, as well as the possibility of bringing legal proceedings to challenge the decisions of that disciplinary body.[39]

The Court continued its detailed standard-setting work in the ongoing case against Poland where it ordered as interim relief the suspension of the new measures introduced to change the composition of the supreme court. The case bears particular relevance from the perspective of the planned Hungarian changes as it demonstrates that the real risk of deviation from the relevant EU (constitutional) requirements lies in the actual implementation of the new legal provisions, in particular those which regulate the selection and employment of judicial personnel (judges). The infringement procedure launched against Poland concerned, on the one hand, the lowering of the retirement age of judges at the supreme court and the application of that measure to judges already in office, and, on the other, the power given to the president of the republic to extend, upon individual application, the period of service for judges even though they reached the newly introduced retirement age-limit. The exercise of the latter prerogative was not regulated as bound by any criteria, and the decision of the president is not open to be challenged in law. The new law also enabled increasing the number of judges at the supreme court. In the Commission's view these measures violated Article 19 TEU and Article 47 of the Charter. It argued that they together enabled an interference with the independent operation of the Polish supreme court, which interference is liable to hinder the proper functioning of the EU legal order and may undermine the mutual trust between the Member States and their courts.

In its interim order (*Polish supreme court* order I), the Court observed that as a result of the application of the new measures a large number of judges, including senior judicial officers, had already been forced to retire, and with the increasing of the number of supreme court judges from 93 to 120, forty-four new judicial

[37] *Ibid.*
[38] *Ibid.*, para. 67.
[39] *Ibid.*

positions were opened.[40] In its assessment, this situation had led to a deep and immediate ('*profonde et immédiate*') recomposition of the Polish supreme court.[41] It asserted that in such a situation it is not guaranteed that the judgments delivered by the supreme court, which exercises final jurisdiction in Poland and bears '*l'autorité de chose jugée*',[42] would meet the guarantees enshrined in the right to an independent tribunal under Article 47 of the Charter.[43]

In the 2018 December final order (*Polish supreme court* order II), the Grand Chamber of the Court observed that it cannot be excluded that the Polish reform has the effect of undermining the operation of the supreme court as an independent court of EU law required to provide effective judicial protection for the rights derived by individuals under EU law.[44] It referred, in particular, to the potential problems that may arise from the application of the new retirement age rule to judges already in office as well as from the prerogative granted to the Polish president to extend judicial appointments beyond that age-limit. In assessing the impact of the Polish measure and the damage it may cause, the Court repeated the findings of the interim order, in particular that the composition of the Polish supreme court has already been altered quite significantly upon the application of the new rules.[45] It then declared that these changes pose a significant threat to the independent operation of the supreme court as a court entrusted with the enforcement of EU law, and may, thus, put the Union legal order, and with that the rights individuals derive from EU law and the fundamental values of the Union, in particular the rule of law, to jeopardy.[46] It also added that from the perspective of the enforcement of EU law in the Member States national higher courts bear special relevance as any threat to their operation as courts of EU law may have an impact on the operation of the entire national judicial system.[47]

As the interim order, the final order of the Grand Chamber placed emphasis on the circumstance that the Polish supreme court, which exercises final

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40 Para. 18, Order of 19 Oct. 2018, *Commission v. Poland*, C-619/18 R, EU:C:2018:852.
41 *Ibid.*
42 *Ibid.*, para. 22.
43 *Ibid.*, para. 19. The Court's Nov. order, which dealt with the request for an expedited procedure, indicated that the 'actual composition and working conditions' of a national supreme court are matters of special constitutional and legal importance in the EU, para. 25, Order of 16 Nov. 2018, *Commission v. Poland*, C-619/18 R. *See also* para. 15, Order of 26 Sept. 2018, *Zakład Ubezpieczeń Społecznych*, C-522/18, EU:C:2018:786.
44 Paras 43–46, Order of 17 Dec. 2018, *Commission v. Poland*, C-619/18 R, EU:C:2018:102. It recognized, nevertheless, that the question of whether the exercise of national competences in developing and reforming the national judicial system is compatible with Art. 19 TEU and Art. 47 of the Charter requires a careful and thorough judicial assessment, *ibid.*, para. 39.
45 *Ibid.*, paras 62–63 (twenty-two judges were forced to retire and from the twelve judges applying for an extension of service only five were given permission by the president).
46 *Ibid.*, para. 68.
47 *Ibid.*, para. 69.

jurisdiction in the country, delivers judicial decisions under both national and EU law, which have '*l'autorité de chose jugée*' and which, as a result, may bring about irreversible legal effects in regards the Union's legal order.[48] In this connection, it also raised that the supreme court is entrusted with the task of monitoring and controlling the lawfulness and the unity of judicial practice within the entire Polish judicial system, in particular that concerning the interpretation of national measures enacted for the national implementation of EU obligations.[49] It was also of relevance that the decisions of the supreme court, including those which clarify legal interpretation as well as the applicability of national measures in cases with an EU law dimension, bind lower courts in law. The Court of Justice asserted in this regard that it is this legal authority of supreme court decisions which may convince the other Member States and their courts that, based on concerns about the independence of the supreme court, they can no longer trust the Polish judicial system and that the rule of law will be upheld in that country.[50] This possibility that mutual trust and mutual recognition, as fundamental EU requirements, may no longer be presumed *vis-à-vis* Poland and the Polish judicial system led the Court to conclude that the Polish reforms may seriously undermine the orderly functioning ('*fonctionnement régulier*') of the Union legal order, especially in the domain of cooperation in civil and criminal matters.[51]

3 ESTABLISHING A SEPARATE SYSTEM OF ADMINISTRATIVE COURTS IN HUNGARY

After the victory in the elections of 2018, the Hungarian government decided to revisit quite swiftly its earlier plan[52] of restructuring the national system of administrative justice, in particular by taking jurisdiction in administrative cases away from the current uniformly administered system of ordinary courts and bestowing it upon a newly established, separately instituted and administered system of administrative courts. Politically, this was not an unexpected move as judicial review remains almost the only practical opportunity to oppose and control an executive which has total control over parliament and which seems to consider that nearly every social, economic, cultural etc. issue ought to be available for

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48 *Ibid.*, para. 71.
49 *Ibid.*, para. 72.
50 *Ibid.*, paras 72–73.
51 *Ibid.*, paras 74–75. More specifically, it held that the threat for the EU legal order follows from other Member States declining the recognition and the enforcement of judicial decisions issues by Polish courts, *ibid.*, para. 76. In support of this assertion, it referred specifically to its earlier *Polish judicial system* ruling, *ibid.*, para. 77.
52 *See* inter alia Ildikó Bartha, *(Jog)állami bíróság? A közigazgatási bíráskodás magyarországi reformja 2016-ban*, Jogtudományi Közlöny 575 (2016).

political decision-making unshielded by independent institutions, or by a broader notion of constitutionalism.[53] Despite the immediate and rather significant political gains that may arise from a judicial reform of such scale and nature, the government proceeded perhaps more carefully than in the earlier instances of post-2010 institutional overhauls. Its slight hesitation can be explained, in part, by the intensifying pressure arising from the EU under its rule of law mechanism, and the perceivable risks posed by the changes for judicial independence[54] and the rule of law itself, which can both be closely monitored under common European requirements. Nonetheless, the unfolding of the Polish judicial system saga before the Court of Justice in the summer and autumn of 2018 does not seem to have made an impact on the Hungarian government's plans.[55]

As common with legal reform in post-1989, and more so in post-2010 Hungary, justification for setting up a separate system of administrative courts was found in historical – pre-1945 – precedent.[56] While the narrative of some kind of historical continuity may sound comforting to some, neither the political, constitutional, social, economic etc. context, nor the institutional design of administrative courts in the former Kingdom of Hungary seem suitable to justify such a fundamental overhaul of the judicial system in the political and economic environment of contemporary Hungary. The argument of experimenting with another, possibly more efficient model for administering the judiciary[57] is perhaps more convincing, and being part of a smaller system of judicial administration than the current quite large unified framework may hold some benefits for the future administrative courts. Nonetheless, the proposed new framework for administering administrative courts does not, at this point, appear much less complex, and the prospect of administrative courts being subjected to the administrative, budgetary and personnel prerogatives of the minister for justice is unlikely to dissolve the already existing concerns about judicial independence in Hungary. The claims that administrative adjudication is a special, constitutionally exposed branch of the judiciary, which therefore needs to be separated from ordinary courts, and that it may be dispensed better and more effectively by expert judges, possibly with considerable experience in (specialized areas of) public administration, again seem

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53 *See* Kriszta Kovács & Kim Lane Scheppele, *Hungary's Post-Communist Administrative Law Revolutions*, in *Comparative Administrative Law* 119–38 (Susan Rose-Ackerman & Peter Lindseth eds, Elgar 2017).

54 *See* Judgment of 6 Nov. 2012, *Commission v. Hungary*, C-286/12, EU:C:2012:687 and the earlier analysed Polish cases.

55 It is difficult to say whether the adoption of the act by Parliament in late 2018 was rushed in order to pre-empt potential external challenges. The process followed its own timetable set out early summer 2018. It remains a fact, however, that the promise to wait with the adoption of the legislation for the opinion of the Venice Commission was not kept.

56 For a short history of administrative courts in Hungary, *see* point 3.1.

57 On the different models of judicial administration in post-1989 Hungary, *see* Herbert Küpper, *Magyarország átalakuló közigazgatási bíráskodása*, MTA Law Working Papers 2014/59.

to refer to valid considerations. However, without sufficient guarantees, especially those that are able to prevent the exposure of the administration as well as the new administrative court system to direct political preferences, their implementation holds considerable risks for the independence of the judiciary.

3.1 Historical overview

The history of the judicial review of the administration commenced in Hungary in 1883 when the Financial Administrative Court was set up. This was followed by the creation of the Royal Administrative Court in 1896, which was a specialized court with general jurisdiction to hear administrative cases. The system remained in place until 1949 when judicial review was abolished, only to be reinstated as a very restricted, only formally available institution within the communist legal system. In this period, legal redress against administrative action was provided, as a norm, in the form of appeals within the administration. In 1989, as a cornerstone of the new democratic state based on the rule of law the amendment of the Constitution introduced the constitutional basis of administrative justice in post-communist Hungary by declaring the prerogative of Hungarian courts to review the legality of administrative decisions and the right of individuals to seek legal redress for the violation of their rights by the administration.[58] An early, 1990 decision of the newly set up Constitutional Court confirmed that the judicial review of administrative action had become a fundamental principle of the Hungarian legal order.[59]

The post-1989 constitutional framework did not provide for the establishment of a separate system of administrative courts. Jurisdiction for judicial review was exercised by ordinary courts within the uniformly administered judicial system. This was slightly changed in 2011 when first instance final jurisdiction in judicial review was given to the newly set up administrative and labour courts, which were, nonetheless, part of the ordinary judicial system. Their judgments can be challenged in extraordinary review procedures before the administrative and labour division of the *Kúria* (the Hungarian supreme court). In the post-1989, as well as in the post-2010 Hungarian constitutional system, courts are declared to enjoy full legal independence. The appointment of judges and their removal from office can be ordered by the president of the republic only, their rights, obligations and responsibility are regulated in an act of parliament, and the administration of the judicial system falls within the competence of the National Office for the Judiciary. The operation of the National Office is supervised by the National Judicial

[58] Act 1989:XXXI, ss 50(2) and 57(5).
[59] Decision of the Constitutional Court 32/1990, ABH 1990/145.

Council, which is a body of elected representatives of judges. The budget of the National office is regulated separately within the annual government budget.[60]

The reshaping of the Hungarian judicial system by setting up a system of administrative courts separate from ordinary civil and criminal courts has become part of the politico-constitutional agenda of the post-2010 political regime only recently. After a failed first attempt in 2016, its constitutional basis was created in 2018 when the seventh modification of the 2011 Fundamental Law was adopted by the new parliament. The Fundamental Law now holds that the Hungarian judicial system consists of ordinary and administrative courts. According to Article 25(3), the jurisdiction of the latter covers 'administrative adjudication', and the top forum within the separate system of administrative courts is the Supreme Administrative Court (*Közigazgatási Felsőbíróság*). In autumn 2018, a legislative bill for establishing the separate system of administrative courts and a bill regulating transitional institutional arrangements in the judicial system were put before parliament.[61] The ministerial reasoning for the first bill made a marked effort to indicate that the new system will comply with international and European standards, especially the relevant recommendations of the Venice Commission.[62] The two acts[63] were adopted on 12 December 2018. Act 2018:CXXX on administrative courts will enter into force and the new courts will commence their operation on 1 January 2020.

3.2 The proposed changes

According to the new legislative provisions, future administrative courts will have jurisdiction to hear cases in administrative adjudication (basically, judicial review). General first instance jurisdiction was given to local administrative courts and review jurisdiction will be exercised by the Supreme Administrative Court. The Supreme Administrative Court will also hear the cases referred to it concerning the legality of local government legislation. The main remedies to be served by administrative courts include the annulment (quashing), the denying of the legal force, and the changing (reformation) of unlawful administrative decisions. If

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60 In the past few years, the relationship between the National Office and the National Judicial Council became rather tense as the Judicial Council openly criticized the president of the Judicial Office for overstepping the legal limits of her powers. Over the autumn of 2018, the operation and the legitimacy of the Judicial Council were both put to jeopardy by a failed attempt to replace its previously retired members.

61 Bills T/3353 and T/3354.

62 *See* the Rule of Law Checklist adopted by the Venice Commission at its 106th Plenary Session (Venice, 11–12 Mar. 2016), CDL-AD(2016)007.

63 Act 2018:CXXX on administrative courts and Act 2018:CXXXI on transitional measures.

necessary, the administrative authority can be ordered to conduct a new procedure in the matter affected.

There will be eight first instance administrative courts. The Supreme Administrative Court will be set up outside of Budapest, in the town of Esztergom. The choice of this location is supposed to indicate the separateness of the jurisdiction exercised by the Supreme Administrative Court from that of the *Kúria*, which will remain in Budapest. First instance courts will hear cases in judicial chambers of three judges or before the individual judge. The Supreme Administrative Court will, as a general rule, sit in judicial chambers of three judges headed by the chamber-head judge. It will have judicial review chambers and a chamber for the review of local government legislation. For operational transparency, members of the judicial chambers will be named in the annually published order of assigning cases to individual judges.[64] Supreme Administrative Court will have three divisions: a general, a fundamental rights and a financial division. As in the current framework, divisions will function primarily as professional forums for discussing matters relating to developments in the jurisprudence in a specific administrative law area, or any other professional issue affecting judicial practice.

The body for the professional self-governance of administrative judges will be the National Council for Administrative Judges (hereinafter, National Council). It will have eleven members; these are the president of the Supreme Administrative Court, the representative of each local administrative court (eight), and the two representatives of the Supreme Administrative Court. Its task will include monitoring the general situation of administrative courts, issuing opinions on legislative proposals affecting the administrative justice system, proposing such legislation before the minister for justice, issuing an opinion on the planned budget of the administrative justice system, exercising a right of consent regarding changes implemented to the annual budget, and issuing an opinion on the plans and the programme for the training of judicial personnel. The National Council will also have powers in the judicial appointment process, which we will discuss in detail below. It will also decide on forwarding to the minister the applications for senior judicial officer positions (judicial positions with senior administrative tasks), assess such applications, and propose the removal of appointed judicial officers. These powers will be exercised in practice by its Personnel Committee. The Committee will consist of the president of the Supreme Administrative Court, four elected members of the National Council, and leading academics or legal practitioners

[64] The order, which is a central guarantee of judicial independence and the fundamental right to judge, is issued by the president of the given administrative court. It must enable ascertaining, in advance and without any doubt, which chamber in what composition will hear the given administrative case. It's prepared on the basis of a set of more-or-less objective criteria, such as workload or the specialization of individual judges.

promoted (one each) by the justice committee of parliament, the chief prosecutor, the minister responsible for administration, and by the president of the Hungarian Bar Association.

The new legal arrangements give the task of the general administration of the new administrative court system to the minister for justice.[65] This means that administrative courts will leave the current unified system of administration managed by the National Office of the Judiciary. The minister will exercise the operative powers (powers of implementation) over the budget of the administrative court system, it will determine, with the participation of the president of the Supreme Administrative Court, the number of judges and judicial staff to be employed, and it will decide on the assignment of judges to courts within the system, as well as their transfer and secondment to a different court. The minister will decide also on the appointment of senior judicial officers at local administrative courts, supervise their work in the administration of their court, and it will exercise employer's rights over the presidents of local administrative courts. Its powers in the judicial appointment process will be discussed in detail below.

The involvement of the minister of justice in judicial administration is a controversial development, which in the current state of constitutionalism in Hungary should be closely followed. This is the case, in particular, at local administrative court level where matters of administration and operation fall under the considerable and direct influence of the minister, which exercises appointment powers in connection with senior judicial officer positions, including the presidents of these courts. The new legal provisions barely restrict its discretion, and with no legal recourse available against its decisions the guarantees for the independence of the future administrative judiciary, which is entrusted in the constitution with the task of controlling the executive, seem insufficient. General ministerial responsibility, which is the only express legal guarantee provided, is rather distantly positioned from the individual decisions taken, and may only be formal when the government has dominant control over parliament.

The Supreme Administrative Court's position will be somewhat different from that of local administrative courts as its president will be appointed by parliament with two-thirds of its members for nine years.[66] The appointment proposal will be made by the president of the republic, and the candidate must be selected from judges currently serving in the judicial system.[67] Only parliament

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65 *See* Ch. VIII, Act 2018:CXXX. The day-to-day administration will be the task of the presidents, vice-presidents and the registrars of the new courts. The different bodies and forums of professional self-governance (the National Council, the judicial councils of local administrative courts, the judicial council of the Supreme Administrative Court) will not be provided supervision and controlling powers over matters relating to judicial administration.

66 Fundamental Law, Art. 26(3).

67 *Ibid*.

can order the removal of the president of the Supreme Administrative Court from office. Its powers of administration will include, among others, exercising employer's rights over judges and trainee judges at the Supreme Administrative Court, determining the order of assigning cases to individual judges, proposing legislation before the minister of justice concerning the administrative justice system and issuing opinions on legislative proposals on the same matter, participating upon invitation in the committees of parliament when they discuss such legislative proposals, and evaluating annually the long-term tasks of judicial administration and the programme developed for their implementation, and participating in the implementation of that programme.

The new legislative framework regulates several formal components of independence for the new administrative courts. The personal independence of judges, as currently, will rest on Article 26(1) of the Fundamental Law. That provision recognizes judicial independence as a constitutional principle, and excludes specifically that judges are instructed in their judicial function. It also regulates the main principles concerning their removal from office. Furthermore, despite the floating of ideas of establishing a separate professional stream for administrative judges more closely modelled on that of civil servants, judges at the administrative courts will remain members of the uniform judicial profession.[68] The financial independence of administrative courts is going to be guaranteed by the separate budgetary chapter included in the annual state budget. The proposal for that chapter will be prepared by the minister for justice on the basis of the detailed proposal submitted by the president of the Supreme Administrative Court. The minister's final proposal will have to be sent to the president of the Supreme Administrative Court and the National Council for Administrative Judges for an opinion, and, after obtaining those opinions, it will need to be forwarded to parliament without any modification. The president of the Supreme Administrative Court, and in case it does not affect the Supreme Administrative Court, of the National Council has a right of consent over major modifications of the adopted budget.

The most important, and from the perspective of the applicable EU requirements perhaps most controversial provisions of the 2018 act concern the filling of judicial positions at the new courts.[69] Their application, especially in the months leading up to the setting up of the new administrative court system in 2020, can have significant implications for the composition of administrative courts, in particular that of the Supreme Administrative Court. We saw in the case of the Polish changes that the composition of national higher courts can play a central role in the assessment of whether the national judicial system – as a whole – meets

[68] S. 64, Act 2018:CXXX.
[69] Ss 67–72, Act 2018:CXXX.

fundamental EU standards and can be said to pose no threat to the integrity of the EU legal order. The system of judicial appointments to the administrative court system has a number of components. First, as mentioned earlier, the number of judges who will serve at the administrative courts is not determined by legislation, but will be established – later in 2019 – by the minister and the president of the Supreme Administrative Court. Second, judges currently in office have been given the opportunity of requesting their transfer to the new administrative court system without being required to submit a formal application for a new judicial appointment. Their transfer will take place by virtue of the legislative provisions themselves – and not subject to a discretionary decision – on 1 January 2020.[70] Third, new judicial appointments will be made in an appointment framework which provides far-reaching discretionary powers for the minister of justice.

In the appointment framework for new judicial appointments, the call for applications will be published by the minister for justice.[71] Applications will have to be submitted to the president of the administrative court where the position is advertised. Applicants will be interviewed by the personnel committee of that court, the opinion of which will be forwarded to the Personnel Committee of the National Council. The applications will be evaluated by the Personnel Committee, which can use 80% of the points to be given to evaluate the professional competences of the applicant and 20% to evaluate the applicant's personal suitability (e.g. dedication, personal preparedness). After interviewing the candidates, the Personnel Committee will establish a ranking of candidates and forward the best applications in that ranking (those which surpassed 85% of the highest score) to the minister of justice. The minister will make the final appointment decision. In making that decision, it will not be bound by the raking of the Personnel Committee. Modifications to the Personnel Committee's ranking must, however, be supported by adequate reasons. The minister also decides on the place of service of the appointed judge.

According to the ministerial reasoning, this regulation of the appointment process will guarantee a balanced distribution of powers and responsibilities among the participating institutional actors, namely the professional bodies of the judiciary and the minister. It asserted, in particular, that the minister's use of its discretion will be sufficiently constrained by its obligation to make the judicial appointment from the pool of candidates forwarded by the Personnel Committee (the ranking), the duty to provide reasons for abandoning the raking established by the Personnel Committee,

[70] S. 2, Act 2018:CXXXI.

[71] The call for applications for trainee judge positions will also be published by the minister of justice. Applicants will be interviewed and evaluated by the personnel committee of the administrative court in question and the president of that court will make a proposal to the minister on that basis, who will then appoint the person proposed. It seems, therefore, that the presidents of administrative courts will play a decisive role in admitting individuals to the judicial profession. Their powers are unfortunately not subject to any visible limitations or controls.

and also by the rule which permits the minister to abandon an ongoing appointment process only when the National Council makes an express proposal to that effect. The ministerial reasoning concluded that the appointment powers of the minister are, thus, subject to strict institutional and procedural controls, and it is excluded that considerations extraneous to the process influence judicial appointments.[72] However, it is difficult to share the optimism of the government's position. Even though the choices open to the minister have been delimited by these legislative provisions, they are alone insufficient to prevent the abuse of ministerial appointment powers, especially when that involves appointing a politically preferred candidate. As currently regulated, the minister's appointment decisions, unless it follows the decision of the Personnel Committee, are not subject to objective criteria (as is the case with the choices made by the Personnel Committee) against which their legality (rationality) could be measured. The failure to introduce such objective criteria, which the minister would have to take into consideration, also makes the obligation to give reasons for changes made in the Personnel Committee's ranking an empty, only formally binding guarantee.

The potential concerns about the integrity of the process for new judicial appointments in the new administrative court system must also be assessed in light of the openly declared aim of the government to fill judicial positions with candidates with a recognizable civil service or similar 'administrative law' background.[73] Even though such personnel policy priority seems justifiable in general, and its realization may have benefits in terms of the professional competence of administrative judges, its implementation in the appointment process as regulated currently may exacerbate further the risk of abuse in the exercise of the minister's discretionary powers. There is a possibility that experience in central or other administration will be indicated in the statement of reasons given by the minister when giving preference to a candidate ranked lower by the Personnel Committee, which can be used to justify, without revealing the true reasons, the appointment of a politically trustworthy candidate. The rationale as well as the limits exposed in the ministerial reasoning of the new act for this particular personnel policy aim are not particularly reassuring. It merely referred to the vague notion of the 'public interest' in support of filling the judicial profession with former civil servants or similar, and made the rather ambiguous declaration that with its implementation judicial decision-making will be connected more directly to 'real life' and will be influenced more intensively by the consideration 'practicability'. None of the latter sound too convincing, or particularly relevant.

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[72] Judicial appointments in Hungary have a history of being influenced by non-merit considerations, and even by nepotism, *see* Attila Badó, *Political, Merit-Based and Nepotistic Elements in the Selection of Hungarian Judges. A Possible Way of Creating Judicial Loyalty in East Central Europe*, International Journal of the Legal Profession 259 (2016).

[73] *See* e.g. ss 65–66, Act 2018:CXXX.

4 ASSESSMENT

On a general level, the legislative foundation introduced for the new, separate system of administrative courts in Hungary seems adequately prepared. It regulates an institutional and substantive legal framework which can be expected to secure the delivery of the proposed outcome of a more effective, professionally better qualified administrative judiciary. This is an outcome which is in harmony with EU law's central requirement that the Member States ensure the effective judicial enforcement of EU obligations/the effective judicial protection of rights derived from EU law. However, there are number of details in the new legislative framework, which, especially when given effect in practice, may – individually, or as an effect of their joint application – risk violating the applicable requirements of EU law, in particular those developed in recent jurisprudence concerning national judiciaries. Necessarily, the extent of this risk may only be fully assessed when the new courts are set up and begin their operation in 2020, and, even then, the assessment must be carefully performed as EU law's requirements have not been applied to such extensive modifications of the national judicial system. Nevertheless, it remains a fact that altering the system of administrative courts in Hungary is an extremely sensitive issue under Article 19 TEU and the related general principles and 'values', in particular, because these courts have served since EU accession as the main forum for the enforcement of EU law, often in high-profile litigation affecting core government policies and interests. They have also been responsible for the majority of preliminary references made by Hungarian courts to the EU Court of Justice requesting the interpretation of EU legal provisions.

In light of the approach followed by the Court of Justice in its scrutiny of the recent changes introduced in the Polish judicial system, the powers granted to the minister of justice in administering the new system of administrative courts and the (lack of sufficient) constraints imposed on its discretion are the most sensitive components of the Hungarian reform. The minister's use of its powers may result in a composition of administrative courts, which may then be evaluated as undermining the independence of the Hungarian administrative judiciary in a manner which raises doubts about whether the judicial enforcement of EU law in Hungary can still be trusted and whether Hungarian administrative courts, as autonomous judicial bodies worthy of mutual trust, meet the relevant EU values and constitutional principles. As raised earlier, the minister's discretion in the appointment process for new judicial positions, contrary to what the ministerial reasoning of the new act claims, has not been subjected to sufficient guarantees and safeguards, which could prevent meaningfully potential abuses of its appointment powers. While the automatic transfer (upon their request) of currently serving judges may

be able to counterbalance the undesirable impact the intake of new judges may cause on the composition and operation of the new administrative courts, the prerogative of the minister to determine the number of judges serving in the new system, and, thereby, carefully adjusting the ratio of 'old' and new judges, may cancel out any such effects.

Nonetheless, it is not entirely clear whether the legal position emerging from the Polish cases can be used to halt, or at least influence the unfolding of the changes in the Hungarian judicial system. First, the Hungarian reform only affects administrative courts. While the administrative judiciary plays a significant role in the enforcement of EU law in Hungary, it is unlikely that the conclusion – similar to that drawn in the *Polish supreme court* orders – can be made that changes in that specific judicial domain undermine the status of the entire Hungarian judicial system under Article 19 TEU and the Union 'value' of the rule of law. Furthermore, there is also the issue that the conclusion reached in the *Polish supreme court* orders is legally rather ambitious. It asserts that the personnel changes being carried out at supreme court level have the undisputable effect of undermining the trustworthiness under EU law of any court within the Polish judicial system. This is a highly contentious finding and has not been sufficiently explored in the Court's orders. T In the circumstances of the Hungarian changes, there is no guarantee that this legal assessment can be reproduced with the same content and with the same legal force. Third, it is also of importance that the Court's position in the Polish cases relied explicitly on the risks posed for judicial cooperation in criminal and civil matters, as well as for the underlying principles of mutual trust and mutual recognition, which bear less relevance in the case of administrative courts. Fourth, the Hungarian reform is quite significantly different from the Polish changes. The Hungarian measure will set up a new system of courts, the personal composition of which may not at all be measured against a previously existing arrangement. Finally, the conclusion drawn by the Court concerning judicial independence from the facts it managed to gather from the Polish changes seems rather tentative in its substance, therefore, the arrival of new judges and the departure of some of the old judges in a larger judicial apparatus, as premised by the Hungarian act, may not warrant a finding that judicial independence has been compromised. In the circumstances of the Hungarian reform, instead of changes made to the composition of courts, the lack of sufficient guarantees and safeguards constraining the powers of the minister may serve as a more appropriate ground for assessing whether the new administrative courts can be trusted as courts of European Union law.

4.1 Addendum 1

The Council of Europe's Venice Commission delivered its opinion on the changes in March 2019.[74] While it accepted that establishing a separate administrative court system, which is a sovereign decision by a State, cannot be objected per se, it raised that the 'modalities' of implementing that choice, having regard to their accumulated effect, suffer from certain insufficiencies. It pointed out, in particular, that the cumulation of organizational and management powers in the hands of a few actors, especially of the minister for justice holds considerable risks and there are insufficient checks and balances provisions in place to ensure the reduction of those risks. As specific recommendations, the opinion suggested that Hungary provides criteria for when the minister decides to change the ranking of candidates for judicial appointments, ties that decision to a consent from the National Council, allows for a judicial remedy for candidates again the minister's decision, and introduces stricter and more precise legal supervision of the conditions for when the minister declares the appointment procedure unsuccessful. It also recommended introducing guarantees in the appointment process for senior judicial officers as well as adding professional quality requirements in the appointment of the president of the Supreme Administrative Court. The opinion made it clear that the powers of the president of the Supreme Administrative Court needs to be put under control, either professional control by representatives of administrative judges, or legal control by means of providing legal remedies against certain biding decisions. As positive aspects of the reform, the Venice Commission noted that it is ensured in legislation that current administrative judges can continue their office in the new court system, and that, in general, broadening the recruitment base for administrative judges may have benefits.

The Hungarian government reacted by adopting Act 2019:XXIV on the further guarantees of the independence of administrative courts. It modified the appointment conditions for the president of the Supreme Administrative Court (including the condition of a minimum five year relevant experience), provided for a legal remedy against decisions of the president which an administrative judge believes to jeopardize his/her judicial independence (subject to an admissibility condition of direct concern), and re-regulated the involvement of the minister for justice in the judicial appointment process. In regard the latter, the new provisions hold that a change in the ranking of candidates – on grounds of the minister's assessment of the candidate's professional preparedness and communications, decision-making and analytical skills – must be supported with written reasons by the

[74] European Commission for Democracy through Law, Opinion on the law on administrative courts (Hungary), No. 943/2018, 19 Mar. 2019, CDL-AD(2019)004.

minister, which should cover the reasons for ordering the hearing of the candidate as well as the reasons for the minister's choice and decision. The minister's appointment decision can be challenged on grounds that the appointed candidate does not fulfil the conditions for judicial appointments or the conditions specified in the call for applications, or that the minister failed to discharge its obligation to give reasons or the reasons given do not meet the earlier mentioned criteria. The appointment process for senior judicial officers was also reconsidered. While the modifications did address some of the criticisms raised by the Venice Commission, it would be difficult to argue that risks that may arise from the cumulative effect of the provisions regulating the new system, especially when implemented in the current political setting in Hungary, could be dismissed. The performance of the new courts in judicial review, either under national or under European law, will tell shortly whether the executive in Hungary has managed to break the judicial branch.

4.2 Addendum 2

On 30 May 2019, after the European elections on the previous Sunday, the government announced that the introduction of the new administrative court system will be delayed for an indefinite period of time. The government reasoned its decision by pointing out that the proposed system is subjective intensive debates in Europe and at home, and the delay is an indication of its commitment to guaranteeing judicial independence.