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In light of the topic "*Fundamental rights under pressure*" to be discussed at the forthcoming 41st European Presidents' Conference in Vienna on 8 February 2013, we would like to summarize some of the Hungarian Government's impact on the Judiciary of the Republic of Hungary, as follows:

This short summary considers various novelties that the Hungarian Government introduced to the Judiciary, such as amendments to the provisions governing the court system, amendments to the lawyers' oath and the competence of the Constitutional Court.

I. Reform of the Court System

One of the novelties concerns the ability of the Curia (Hungary's highest appellate court) to review bylaws of municipalities in order to determine their compliance with primary legislation and (if found non-compliant with primary legislation) to nullify them. The Constitutional Court of Hungary is still the only court in Hungary which is competent to judicially review primary legislation in order to determine its compliance with the Fundamental Law, which is Hungary's constitution, and to nullify such primary legislation if found unconstitutional. As of January 1, 2012 the Curia is also competent to determine that the municipalities did not fulfill their obligations created by legislation to create bylaws.

The administration of the courts has also changed: A new authority (the OBH) has been created which provides for the administration of the court system only. The predecessor to the newly created authority (the OIT), which took care of both the administration and of certain other professional tasks, has been abolished. Therefore, the formerly unified administrative and professional branches of the old regime have been divided.

Pursuant to the new provisions, the OBH may, in a given ongoing proceeding, appoint another court to adjudicate in the matter if it is of the opinion that the court, in front of which proceedings have been commenced, is overloaded with work and another court is able to dispose of the case in a reasonable period of time. The

transfer is tied to certain conditions, e.g. the court in front of which proceedings have been initiated and which is able to apply for a transfer to another court, may apply for such a transfer within 15 days of the commencement of the proceedings. In practice, some OBH decisions for a transfer of proceedings to another court have given rise to constitutional complaints before the Constitutional Court on mostly human rights-related grounds.

II. The Lawyer's Oath

Through a modification to the Act XI of 1998 on Attorneys at Law a new obligation was included in the lawyer's oath (effective from January 1, 2012), namely to 'practice the duties and rights of the office of attorney for the benefit of the Hungarian Nation' and to 'keep and make others keep [Hungary's] laws'. There was also widespread consternation at the absence of the duty of confidentiality in the new oath.

It was argued that the duty to 'practice the duties and rights provided by the office of [a lawyer] for the benefit of the Hungarian Nation' was inconsistent with the pursuit of justice in individual cases and the nature of the lawyer-client relationship, while the duty to 'keep and make others keep [Hungary's] laws' turned lawyers from legal counsel to law-enforcement officials and was inconsistent with the lawyer-client relationship. Dissatisfaction was also expressed that the undertaking in the previous oath, that a lawyer would 'safeguard all the secrets of which I gain knowledge' in the course of his or her work, was absent from the new oath, whereas the lawyer-client confidentiality was a prerequisite of a functioning and just legal system.

Following pressure from various national and international organizations, the new oath was re-modified to restore the duty of confidentiality and to remove the duty to 'practice the duties and rights provided by the office of [lawyer] for the benefit of the Hungarian Nation' and the duty to 'keep and make others keep [Hungary's] laws'. The new oath came into force on January 1, 2013.

III. The competence of the Constitutional Court

The primary function of the Constitutional Court is to safeguard and protect the letter of the Fundamental Law by various means, such as judicial review through which it may review primary legislation for its compliance with the Fundamental Law, declare it unconstitutional and even nullify it. However, the competence of the Constitutional Court has been curtailed in the areas of tax law, budget, customs, etc., where its competence to nullify legislation is limited. The number of judges of the Constitutional Court has been raised from 11 to 15 and their mandates have been prolonged from 9 to 12 years.

Prior to January 1, 2012 it was possible for anyone to initiate judicial review of primary legislation before the Constitutional Court without much limitation. From that date on, only the Government, one quarter of the Members of Parliament and the Commissioner for Fundamental Rights may initiate such proceedings. Other

amendments pertain to constitutional complaints in the course of which a party to a litigation proceeding may now not only apply to review and nullify primary legislation upon which an administrative act in his case rests, but also to have a specific judgment against him set aside for unconstitutionality.

IV. Constitutional Complaint against certain amendments to the Criminal Procedure Rules

The President of the Hungarian Bar Association, Dr. János Bánáti, applied for judicial review and nullification of provisions pertaining to extraordinary cases, which provisions constitute a part of the amendments to the Criminal Procedure Rules. Pursuant to a part of the amendments, the court before which the prosecutor indicts a defendant (while taking certain criteria into account) has jurisdiction to hear the case.

Dr. János Bánáti deems this amendment as contrary to a provision of the Fundamental Law pursuant to which it is everybody's right during any kind of litigation proceedings that an independent judge instituted by the law adjudicates his or her case in a fair and public trial. According to dr. Bánáti, the possibility of a selection of the court by a prosecutor violates both the right to a judge instituted by the law and the requirements of equality of fighting chances. These are only short excerpts of the complaint, the outcome of which remains to be seen.

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