

CC judges nominated and elected unilaterally by the government majority

The governing coalition (Fidesz-KDNP) had two-thirds majority in the parliament between 2010 and 2015, which provided a privileged position in controlling the process of the nomination and election of Constitutional Court judges. In Hungary, the members of the Constitutional Court are elected by the two-thirds majority of the parliament, based on the nomination by an ad hoc parliament committee. The nomination procedure is of enormous importance, as the parliament may only vote upon the judges nominated by the relevant committee. According to the previous rules of appointment regulated by the 1989 Constitution of the Republic of Hungary, when nominating constitutional court judges, the governing majority had to make a compromise with the opposition: each political faction represented in the parliament had to delegate one member to the committee that was responsible for the nomination of CC judges. This rule was amended in June 2010 allowing the majority to appoint new members without the support of the opposition. Since then, the ad hoc committee responsible for the nomination of CC judges has consisted of MPs reflecting the proportions of political groups represented in the parliament, which means that the two-thirds majority has been able to decide alone. In 2011 the number of judges was increased from 11 to 15. After that, the governing majority increased the judicial terms from 9 to 12 years and eliminated the age limit (70 years).

As the consequence of the facts mentioned above, the proportion of judges nominated and elected unilaterally by Fidesz-KDNP showed a continuous increase. This increase may be observed in the following 10 intervals dating from the time the first judge was elected after the new appointing method entered into force in 2010 to the present days:

a) From 22 July 2010 to October 2010 [10:1]

The CC consisted of 11 members, 10 nominated and elected through compromise and 1 nominated and elected by the unilateral decision of the governing party.

[Barnabás Lenkovics; Péter Paczolay; Miklós Lévay; László Kiss; Mihály Bihari; András Holló; Elemér Balogh; András Bragyova; Péter Kovács; László Trócsányi; **István Stumpf**]¹

b) From October 2010 to 31 August 2011 [9:1]

As a result of the resignation of László Trócsányi, the number of judges changed to 10, yielding a proportion of 9 to 1.

¹ Judges nominated and elected using the method before 2010 are indicated with green colour, while the judges nominated and elected unilaterally are indicated with orange. Names highlighted in bold mean new members elected during the relevant period, strikethrough stands for termination of mandate (through retirement, expiry of mandate, or stepping down).

[Barnabás Lenkovics; Péter Paczolay; Miklós Lévy; László Kiss; Mihály Bihari; András Holló; Elemér Balogh; András Bragyova; Péter Kovács; László Trócsányi; István Stumpf]

c) From 1 September 2011 to 24 February 2013 [9:6]

Due to the amendment that increased the number of judges to 15, 5 more judges were elected unilaterally, resulting in a proportion of 9 to 6. Béla Pokol was elected with the support of Jobbik.

[Barnabás Lenkovics; Péter Paczolay; Miklós Lévy; László Kiss; Mihály Bihari; András Holló; Elemér Balogh; András Bragyova; Péter Kovács; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós]

d) From 25 February 2013 to 2 April 2013 [8:7]

Due to the retirement of a judge, the number of judges elected solely by the governing party increased to 7, yielding a proportion of 8 to 7.

[Barnabás Lenkovics; Péter Paczolay; Miklós Lévy; László Kiss; Mihály Bihari; András Holló; Elemér Balogh; András Bragyova; Péter Kovács; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós; László Salamon]

e) From 3 April 2013 to 26 September 2014 [7:8]

This was the moment when the proportion turned; judges elected with the new method gained majority in the CC with a proportion of 8 to 7. The newly elected judge, Imre Juhász was supported by Jobbik as well.

[Barnabás Lenkovics; Péter Paczolay; Miklós Lévy; László Kiss; András Holló; Elemér Balogh; András Bragyova; Péter Kovács; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós; László Salamon; Imre Juhász]

f) From 27 September 2014 to 14 November 2014 [5:10]

As the mandate of 2 more judges expired, with the election of the new judges the proportion changed to 5:10.

[Barnabás Lenkovics; Péter Paczolay; Miklós Lévy; László Kiss; Elemér Balogh; András Bragyova; Péter Kovács; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós; László Salamon; Imre Juhász; Tamás Sulyok, András Varga Zs.]

g) From 15 November 2014 to 23 February 2015 [4:11]

The proportion changed to **4:11** as a result of another expiring mandate. From this time on, all ratio changes are the result of expiring mandates, thanks to the fact that the governing party lost its two-thirds majority.

[Barnabás Lenkovics; Péter Paczolay; Miklós Lévy; László Kiss; ~~Elemér Balogh~~; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós; László Salamon; Imre Juhász; Tamás Sulyok, András Varga Zs.; **Ágnes Czine**]

h) From 24 February 2015 to 9 March 2016 [3:11]

[Barnabás Lenkovics; ~~Péter Paczolay~~; Miklós Lévy; László Kiss; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós; László Salamon; Imre Juhász; Tamás Sulyok, András Varga Zs.; **Ágnes Czine**]

i) From 10 March 2016 to 20 April 2016 [2:11]

[Barnabás Lenkovics; Miklós Lévy; ~~László Kiss~~; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós; László Salamon; Imre Juhász; Tamás Sulyok, András Varga Zs.; **Ágnes Czine**]

j) From 21 April 2016 to nowadays [0:11]

4 mandates are still vacant. All the judges were nominated and elected without compromise.

[~~Barnabás Lenkovics~~; ~~Miklós Lévy~~; István Stumpf; István Balsai; Egon Dienes-Oehm, Béla Pokol, Péter Szalay; Mária Szívós; László Salamon; Imre Juhász; Tamás Sulyok, András Varga Zs.; **Ágnes Czine**]

CC decisions (May 2010 – September 2016)

Out of the Constitutional Court decisions passed between May 2010 and September 2016 we focused on 45 decisions that can be considered as having key importance with a view to bringing certain government policies into effect.² We chose these decisions to see to what extent the newly elected judges, who were unilaterally nominated and elected by the governing majority, can fulfil their constitutional function of counterbalancing government power. In cases marked with ✔ the decision complied with the assumed interests of the government, while in cases marked with ✘ the decision went at least partially against government interests. We examined only whether the decisions of our choice were in line with assumed government interests or not. Other aspects were not the subject of our investigation, therefore, we did not analyse, for instance, whether the decisions met constitutional requirements or not. A part of the table and analysis is a follow up and continuation of an earlier study written by Eötvös Károly Policy Institute, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee.³

Out of the 45 decisions examined 24 served government interests and 21 did not, however, there is a clearly identifiable turning point in April 2013 when judges appointed according to the new rules outnumbered those appointed according to the earlier rules. From that time on decisions matching government interests outnumbered decisions running counter to them. While before April 2013 only 20% of decisions passed in high-profile and politically sensitive cases were in line with the assumed interests of the government, after the unilaterally elected judges became the majority and then the only members of the body, this number rose to 70%. This increase by 50% shows that the Constitutional Court can no longer meet its constitutional function: it does not counterbalance the legislative and executive powers.

BEFORE 2 April 2013		AFTER 2 April 2013	
✔ 3	✘ 12	✔ 21	✘ 9

² Due to similarity of subject matter, out of the two decisions passed simultaneously on the rights of MPs to express an opinion, only one was taken into account in our calculations.

³ *Egyárti alkotmánybírák a kétharmad szolgálatában. Az egyárti alkotmánybírák 2011-2014 között hozott egyes döntéseinek elemzése.* <http://ekint.org/alkotmanyossag/2015-03-17/az-alkotmanybirosagot-kisajatitotta-a-fidesz-kdnp>

For the executive summary in English see: <http://ekint.org/en/constitutionality/2015-03-17/fidesz-kdnp-captured-the-constitutional-court>

No. of decision/order	Subject matter	In line with government interests?
51/2010. (IV. 28.)	Új Ptk hatályba léptetése	✓
184/2010. (X. 28.)	98%-os különadó I.	x
8/2011. (II. 18.)	Kormánytisztviselők indokolás nélküli felmondás	✓
37/2011. (V. 10.)	98%-os különadó II.	x
29/2011. (I V. 7.)	Köztisztviselők indokolás nélküli felmondás	✓
164/2011. (XII. 20.)	Az egyháztörvény közjogi érvénytelensége	x
165/2011. (XII. 20.)	Médiaalkotmány és médiatörvény	x
166/2011. (XII. 20.)	Büntetőeljárás törvény (bírók illetékessége az ügyészi vádemelés alapján, őrizet alatt a védővel történő)	x
176/2011. (XII. 29.)	Guberálást szankcionáló önkormányzati rendelet	x
33/2012. (VII. 17.)	Bírák kényszernyugdíjazása	x
38/2012. (XI. 14.)	A közterület életvitelszerű lakhatásra való használatának	x
43/2012. (XII. 20.)	Családvédelmi törvény, család-fogalom	x
45/2012. (XII. 29.)	Az Alaptörvény átmeneti rendelkezései	x
1/2013. (I. 7.) AB	Az előzetes választási regisztráció	x
6/2013. (III. 1.) AB	Egyháztörvény (egyházalapítás)	x
10/2013. (IV. 25.)	Frakcióalakítás	✓
12/2013. (V. 24.)	Az Alaptörvény negyedik módosítása	✓
13/2013. (VI. 17.)	A bíróságok szervezetére és igazgatására, illetve a bírák jogállására vonatkozó törvények	x
24/2013. (X. 4.)	Semmisségi törvény	✓
26/2013. (X. 4.)	Pénznyerő automaták	✓
3206/3207/2013. (XI. 18.)	Országgyűlési képviselők véleménynyilvánítási joga	✓



36/2013. (XII. 5.)	Bírósági ügyáthelyezések	x
7/2014. (III. 7.)	Közzszereplők bírálhatósága	x
3036/2014. (III. 13.)	Választási plakát kihelyezésének korlátozása	✓
3141/2014. (V. 9.)	Győzteskompenzáció az országgyűlési választásokon	✓
20/2014. (VII.3.)	A szövetkezeti hitelintézetek integrációja	✓
3194/2014. (VII.15.)	Trafiktörvény	✓
26/2014. (VII. 23.)	A fővárosi közgyűlés tagjainak választása	✓
29/2014. (IX. 30.)	Közérdekből nyilvános adatok minősítése	✓
34/2014. (XI. 14.)	Devizahitel – tisztességtelen szerződési feltétel	✓
35/2014 (XII. 18.)	Egyházi jogállás elvesztése	x
3013/2015. (I. 27.)	Tényleges életfogytig tartó szabadságvesztés	✓
3024/2015. (II. 9.)	Tankönyvpiac államosítása	✓
4/2015. (II. 13.)	Közérdekű adatigénylés közbeni titkosítás	x
16/2015. (VI. 5.)	Nemzeti parkok átkerülése az NFA-ba	x
17/2015. (VI. 5.)	Földforgalmi törvény módosítása – földbizottságok	✓
29/2015 (X. 2.)	Közösségi együttélés szabályainak meghatározása	✓
32/2015. (XI. 19.)	Quaestor károsultak kárrendezése	x
36/2015. (XII. 16.)	Nemzeti Földalap és a „Földet a gazdáknak!” program	✓
3/2016. (II.22.)	Közösségi együttélés szabályai – ingóságok közterületi tárolása	✓
6/2016. (III. 11.)	Közérdekű adatok megismerése – döntéselőkészítő adat	x
7/2016. (IV.6.)	Magyar Posta szerződéseinek nyilvánossága	✓
8/2016. (IV. 6.)	Magyar Nemzeti Bank alapítványai	x
3086/2016. (IV. 26.)	Levélben szavazás magyarországi lakcímmel	✓
13/2016. (VI. 18.)	Gyülekezés a miniszterelnök háza és a Kúria előtt	✓