Executive and Legislative Organs of Hungary Disobey Court Rulings

Dániel G. Szabó

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After the historic triggering of Article 7 TEU by the European Parliament against Hungary, one aspect of the Hungarian rule of law deficiency remains surprisingly underreported: the failure of state organs to comply with and enforce binding domestic judgements in the area of freedom of information. Freedom of information, or the right to know, is a heavily used tool of journalists and NGOs in Hungary, where the government increasingly disregards questions from journalists and bars journalists from accessing the subjects of their inquiries (for illustration, see these two submissions, here and here, to the European Court of Human Rights). Unlike a journalistic question, freedom of information is a right protected by the courts and the Constitutional Court – but in some cases, even in very high profile cases, the process stops there. The judgement is not enforced, and the right to know remains theoretical and illusory, rather than practical or effective. As I will show below, enforcement is increasingly eroded, which demonstrates the weakness of the Hungarian rule of law state.

Dutch MEP Judith Sargentini's report on the Hungarian rule of law situation mentions the problem of non-execution of judgements, but not on the domestic level. The report lists a number of not-yet-executed rulings of the European Court of Human Rights against Hungary on the systemic discrimination of Roma people, excessive length of civil procedures, the freedom of expression of the former President of the Supreme Court, unchecked state surveillance, freedom of religion, the detention of migrants et.al. That should not come as a surprise: according to the Parliamentary Assembly of the Council of Europe, Hungary is among the states with "the highest number of non-implemented [ECtHR] judgments and still face(s) serious structural problems, some of which have not been resolved for over ten years".

But the same is happening in the domestic level: There are several binding and final judgements not enforced by Ministries, state authorities, and, at least in one instance, even by a Committee of the Hungarian Parliament. Hungary, as it seems, leads the way of disregarding court judgements, too.

It is a crime

I contribute to the work of *Átlátszó.hu*, an investigative journalism NGO working excessively with right-to-know cases, so I would like to start with some personal experiences. It was a widely discussed topic in 2015 that the government office managing all public schools (KLIK) did not pay the salaries of teachers on time: Some of them did not receive their monthly salary before Christmas, causing hardships for the holiday. We requested data on the exact magnitude of the problem, but the office refused to reply. We sued and during the litigation the KLIK offered to hand over the data, it even issued a press release promising the release. The litigation was, therefore, put on stay. As time passed, it turned out that the KLIK was not at all that benevolent: the government office breached its word and did not comply. The litigation re-started and the judge ordered in 2017 in a final judgement the office to fulfill our request. The KLIK this time breached not only its promise, but the law: It did not disclose the data to date. A report was submitted to the police, because in Hungary it is a crime to withhold public data once a court ordered otherwise in a final and binding judgement. The investigation is currently underway.

Under Section 220 of the Criminal Code, "any person who … refuses to disclose public information in spite of being ordered to do so by a final court ruling

… is guilty of a misdemeanor punishable by imprisonment not exceeding two years." Note that the wording has no grace period and the crime is already committed if the judgement is disobeyed even for one day. Beside the criminal law, general tools of judicial enforcement may also be used to obtain data. For its strength, the criminal procedure is generally preferred by those seeking data.

The first ever use of the criminal provision was in 2016 when a mid-level bureaucrat of the state broadcasting company was reprimanded after two years of investigation by the prosecutor's office for not disclosing the data on time, only after two months. This was the first and to my knowledge the only instance that the criminal provision was actually applied and someone was sanctioned, even though it was the lightest penalty possible. The practice changed substantially after this first occasion.

Neither prosecuted, nor punished

Fast track to 2018, to the highest profile case involving the Economic Committee of the Hungarian Parliament. A newspaper seeked data back in 2015 from the Economic Committee which administered the infamous Hungarian residency bond program for wealthy third-country citizens to obtain residency permits allowing free movement in the EU. The program was and still is severely criticized for corruption and its exploitation by shady figures, involving the Russian intelligence elite. The journalist sued the Committee and won with the help of Transparency International Hungary (TI) but still has not received the data and had to take recourse to judicial enforcement and criminal law. After publishing that the news portal reported the Committee to the prosecutor's office for disobeying the court order, the requested data was disclosed. The criminal procedure was then discontinued by the Prosecutor General's Office, claiming that the journalist got what he asked for, which is a reasoning not supported by the text of the Criminal Code.

The same reasoning is to be found in other cases where a public body revealed the data under the threat of a criminal investigation. *Átlátszó.hu* wished to get information on state advertising since 2013 and the court ruled in February that some of the data has to be revealed. The state-owned company ignored the judgement for some time, and our NGO requested a criminal proceeding. The police discontinued the investigation this summer stating that the company ultimately disclosed the data, but the police did not take into account the delay. My colleague, on the contrary, argues that according to the Criminal Code, the crime is already committed when the judgement is disobeyed and the later disclosure should be taken into account at the determination of the punishment only. The story is even more astounding, as the exact same company faced judicial enforcement last year for not disclosing another set of data.

Other high-level organs disobeying binding judgements are the Ministry of Human Capacities and the Ministry for National Economy. The two ministries did not disclose data on a special tax scheme for companies to support sport teams, primarily football clubs, despite the *Curia*, the supreme court of Hungary ordered them to do so. The ministries were sued in 2016, the ruling of Hungary's highest judicial organ was delivered in October 2017, but the ministries refused to disclose the data to date. The Ministry for National Economy (now called Ministry for Finance) was reported by TI to the police, which discontinued the investigation this September claiming that the data are not to be found at the Ministry, therefore it is impossible to disclose. It was not taken into account that a government regulation orders the Ministry to collect the exact same data: In other words, the Ministry can get away with a crime because it does not follow another law.

More examples includes a local municipality of Budapest's inner city on contracts for legal work. It is apparent that the disobedience of binding court judgements is widespread in Hungary from the Legislative to the Executive and from local to the country level. The Hungarian rule of law state struggles with some serious difficulties as Ministries and even an organ of the Parliament disrespects court orders.

The opinions expressed here are that of the author and do not necessarily reflect the opinion of Átlátszó.hu.

ABOUT THE AUTHOR

Dániel G. Szabó
Dániel G. Szabó is a Research Officer at Democracy Reporting International.

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