



Book Review – Fair Trial And Judicial Independence – Hungarian Perspectives, by Attila Badó (ed.), Springer International Publishing Cham 2014

By Thomas de Weers¹

Abstract:

This article reviews *Fair Trial and Judicial Independence – Hungarian Perspectives*, edited by Attila Badó Springer International Publishing Cham 2014. ISBN 978-3-19-01215-5

Fair Trial and Judicial Independence – Hungarian Perspectives is the 27th volume of the series 'Ius Gentium – Comparative Perspectives on Law and Justice.' Attila Badó, a Professor of Law and the Director of the Institute of Comparative Law at the University of Szeged in Hungary, is its editor. Badó sets out the reasons for the compilation of the book in his instructive foreword. He explains that the '[a]uthors of this book were driven to conduct a comparative analysis of judicial independence and fair trial by events unfolding in Hungary in recent years.'² The aim of the study was to present an objective account of the status of the Hungarian judiciary looking at international standards and trends.

Badó explains that Hungary has been subject to several judicial reforms since the first free elections in 1990. The year of 2010 constituted a major turning point which resulted from the parliamentary election that brought a landslide victory to Victor Orbán's centre right party. This success gave Orbán the qualified majority that was needed to rewrite the Constitution and to radically reform the judicial system.

The new government took on a significant institutional restructuring of the judiciary by placing its central administration in the hands of the National Office for the Judiciary (NOJ), with a very powerful president and the National Judicial Council (NJC) as a supervisory body. The 2011 reform granted extensive powers to the NOJ, and notably its president, and left the supervisory body of the NJC without meaningful influence on actual decisions. Additionally, the political influence on the NOJ was reinforced by the fact that the current president was said to be a close friend of President Victor Orbán and his wife.

Several constitutional lawyers and journalists abroad 'declared judicial independence in Hungary dead'.³ The Venice Commission, an advisory body of the Council of Europe, was also concerned about the remarkably broad powers of the president of the NOJ. The Commission explicitly declared itself opposed to the right of NOJ's President to reassign cases from one court to another as 'a violation of the right to a lawful judge.' Furthermore, the Venice Commission had strong reservations with regard to the weak monitoring powers of the NJC.

Following the recommendations made by the Venice Commission, the government initiated some changes in the legal framework of the judiciary. The power of the President of the NOJ was limited on some points and the influence of the NJC was strengthened. Nevertheless, international organisations continued expressing concerns.

The book was composed with the abovementioned events and reforms in the background. Badó states that the book 'aims to present problems and model solutions through a Hungarian perspective using a comparative methodology in areas that currently present professional and political challenges.'⁴ The Hungarian government has attempted to deal with the criticism by pointing to other jurisdictions where similar reforms have taken place. A comparative study can therefore interesting insights on these claims.

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² Badó, A. (ed.), *Fair Trial and Judicial Independence – Hungarian Perspectives*, Cham 2014, p. 5.

³ Badó, A. (ed.), *Fair Trial and Judicial Independence – Hungarian Perspectives*, Cham 2014, p. 7.

⁴ Badó, A. (ed.), *Fair Trial and Judicial Independence – Hungarian Perspectives*, Cham 2014, p. 9.

The book consists of ten chapters written by ten different writers. These ten chapters are divided into three sections. The first section is called **Fair Trial and Judicial Independence in a Comparative Perspective** and contains three interesting contributions on organisational issues, the selection of judges and case allocation systems. The editor's contribution in chapter two on the selection system of judges is well worth reading. In this chapter the selection system of judges of several countries passes in review, giving a good overview of the existing diversity between different systems and implicitly showing the abnormality of the Hungarian judicial reform. Badó proves that the politically influenced Hungarian way of selecting judges is far from modern compared to other jurisdictions that adopted a merit-based selection process.

The second part of the book is called **A Comparative Approach to Analysing the Right to a Fair Trial in Light of Modern Political Challenges** and consists of two contributions. The first one is about fair trial standards and the second one about trial systems outside Europe. This last chapter provides an interesting insight into the Russian, Chinese and African legal systems. The author of the chapter, Márton Sulyok, describes the main problems in these countries regarding fair trial, and elaborates on power politics, illiberal state practices, lack of institutional setting, and economic factors. On the one hand, this chapter shows that the problems in Hungary can be relativized if one looks at the evident absence of respect for fair trial standards in Russia, China and Africa. On the other hand, it can also be seen as a comparative study to prove that Hungary is moving in the same direction as these countries, although Hungary is not explicitly mentioned.

The third, and last part of this book, is named **A Comparative Analysis of Some Basic Fair Trial Elements** and is composed of five chapters written on the delay of justice, the evaluation of evidence, publicity in administration of justice, double jeopardy and the right to defence. The contribution of Mátyás Bencze stands out in particular. The objective of his chapter is to 'substantiate a connection between political background of a legal system and the fair judicial evaluation of evidence as a professional issue.'⁵ Bencze starts his contribution by saying that Hungarian courts are often criticised for being too reliant on the prosecutors. The rate of successful prosecutions has been 96-97% over the past several years and this is particularly dangerous with regard to politically sensitive cases – a topic which has received increasing attention in Hungary. Bencze then goes on to compare the evaluation of evidence in various countries, focusing on 'mainstream' countries such as the United States, England, Germany, but also less obvious countries, such as Russia, Azerbaijan and China. This comparison is easy to read and contains some very interesting facts about evidence procedures in non-Western countries.

Looking at the book as a whole, the following can be concluded. *Fair Trial and Judicial Independence – Hungarian Perspectives* contains interesting articles on a wide variety of topics. The authors seem to be well-informed and they succeeded in writing contributions that are easy to understand for readers lacking in-depth knowledge on the discussed matter. The book is ideally read as a work of reference instead of a book that is read in its entirety. Some chapters might be somewhat disappointing if one has a strong interest in the Hungarian approach, as the 'Hungarian Perspective' is at times hard to find or even completely absent from some chapters. Nonetheless, this does not affect the quality of the contributions. On the whole, the book offers some interesting insights into Hungarian justice practices and provides a good background for the reforms of the Hungarian judiciary, which have been the centre of a lot of media attention over the past several years.

On the website of the publisher there is both an e-book version (€83,29) and a hard copy available (€105,99). A free pdf version can be downloaded legally on the same website. In order to find this free version, do a Google search on the title of the book and click on the second link. This will bring you to a page of the publisher's website on which the full content has been made available.



⁵ Bencze, M., 'A Comparative Approach to the Evaluation of Evidence from a 'Fair Trial' Perspective', in: Badó, A. (ed.), *Fair Trial and Judicial Independence – Hungarian Perspectives*, Cham 2014, p.163.