

# A Constitutional Dignitary Conceived in the Orbán-Regime

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On 26 February, Tamás Sulyok, the former President of the Hungarian Constitutional Court, was [elected](#) Head of State by the Parliament. The election of Tamás Sulyok as a member of the Constitutional Court and then as its president was part of the process during which Fidesz took over the Constitutional Court. Sulyok's presidency (2016-2024) was a testimony to the fact that the Constitutional Court has become subservient to the Fidesz-dominated political branches, and there is no sign that he has actively tried to do anything against it. Based on what we have seen so far, therefore, Tamás Sulyok is part of the Orbán-regime, and nothing suggests that he will exercise greater autonomy and independence in his role as Head of State.

## The road to the Constitutional Court

The very first court curbing tactic used by Fidesz as soon as 2010 was to manipulate the composition of the Constitutional Court. To this end, the previous consensus-seeking model of nominating constitutional judges by the governing and the opposition parties was replaced by a new process that ensured that the will of the ruling party would prevail in the nomination. In parallel, the number of mandates at the Constitutional Court was increased from 11 to 15. As a [result](#) of these changes, the constitutional judges elected by the governing parties were in the majority by spring 2013.

The election of Tamás Sulyok as member of the Constitutional Court thus already took place in a highly politicised selection process, subordinated to the will of the governing parties. During the 2014/18 parliamentary term, the ad hoc committee nominating the members of the Constitutional Court was not composed based on parity but consisted of seven Fidesz and four opposition members. In September 2014, the committee nominated three lawyers from the classical legal professions to fill the three vacant seats on the Constitutional Court: András Zs. Varga, the former deputy of the Attorney General Péter Polt, Tamás Sulyok, attorney, and Ágnes Czine, judge.

In an [interview](#) published in 2019, Tamás Sulyok said, "I was supported by the opposition when I was elected constitutional judge" (translated by author). Yet, there is almost no evidence of this. In fact, the opposite can be read from the fact that the only members of the Justice Committee who were present at the [hearing](#) of the candidates held on 22 September 2014 came from the governing parties. And the only opposition member of parliament who tried to address the independence of the candidates was silenced by the chairman of the committee before he could finish his question.

During his hearing, Sulyok explicitly touched on the issues that were known to be the favourite topics of the governing parties: the dangers of the unconditional enforcement of EU law, the importance of national constitutional identity, and the significance of the constitutional complaint. He did not receive any substantive questions from the majority MPs, who simply thanked him for accepting the nomination and assured him of their support.

Not surprisingly, the two-thirds majority of Fidesz MPs elected the candidates without any problems. The [vote](#) was secret, but the results and the proportion of seats held by each party make it easy to see how widely supported each candidate was. Ágnes Czine enjoyed a demonstrable degree of acceptance among the opposition at the time, Tamás Sulyok got the vote of a few stray opposition MPs, while András Zs. Varga was elected only by the votes coming from the governing parties. In fact, if we consider both the negative and the invalid votes as protest votes, the degree of rejection of Sulyok and Varga Zs. by the opposition was almost equal.

## **The road to the presidency of the Constitutional Court**

On 1 April 2015, the then President of the Constitutional Court, Barnabás Lenkovic, appointed Sulyok as Deputy President of the Constitutional Court. And soon after that, on 22 November 2016, the Parliament elected him as President of the Court.

This promotion was also due to an invention of Fidesz: before 2010, the president was chosen by the judges themselves from among the members of the Court. Under the new rules, however, the President is elected by a two-thirds majority in Parliament. This change has further increased the risk of indirect government influence over the Court because the President, now elected by the governing parties, influences the Court's decision-making in several ways, e.g. by deciding which case should be prepared by which judge and, in the event of a tie, by casting the deciding vote.

Tamás Sulyok's elevation to the presidency came at a time when Fidesz's two-thirds majority had melted due to by-elections, but four vacancies and the seat of the President had to be filled at the Constitutional Court. Fidesz easily played the opposition parties off against each other and eventually reached an agreement with LMP (Politics Can Be Different). This agreement led to the nomination of Tamás Sulyok for the presidency of the Court.

At the time of the vote, the governing parties Fidesz and KDNP, and the opposition party LMP together had a total of 136 seats in parliament, just three more than the necessary two-thirds. In the end, the [election](#) of Tamás Sulyok as President of the Court was supported by 137 MPs. So, there was no broad opposition support in this case either. In fact, this procedure probably rather aroused resentment among the opposition parties towards the elected judges, including Sulyok, as they felt that LMP had made a deal with Fidesz.

# The Presidency of Tamás Sulyok

Tamás Sulyok was the President of the Constitutional Court for nearly seven and a half years. He has held this position for the longest time since the beginning of the Orbán-regime. He accepted both the nomination for constitutional judge and the presidency with a clear understanding that the governing parties would not tolerate any meaningful constitutional control over themselves. By then, the ruling parties had already limited the competence of the Constitutional Court and “overruled” some of its decisions by way of constitutional amendments. Even conservative [scholarly analyses](#) of the time noted that the changes to the Constitutional Court’s powers, organisation and procedure were “aimed at creating a new constitutional judiciary distanced from legislative issues politically sensitive for the governing majority” (translated by author).

In the past seven years of the Constitutional Court’s operation the most significant constitutional issues have seldom reached the Court, and even the proceedings successfully initiated have been largely unsuccessful. It is [telling](#), for example, that of the 26 cases initiated by the opposition and decided between 2014 and 2020, the Constitutional Court found partial violations of the constitution in only 2 cases, while all other motions were completely unsuccessful.

And it is a clear sign of the lack of independence and autonomy of the Court that it has almost invariably ruled in favour of the governing parties in politically sensitive cases. In an earlier article, András Jakab [wrote](#) that “it is clear that in certain cases the Court is simply afraid or unwilling to render a decision that would necessarily follow from the Fundamental Law”.

Sulyok wrote for the majority in a large number of pro-government decisions. Examples include the Decision nos. 22/2016 (XII. 5.) and 2/2019 (III. 5.) [establishing the possibility of disregarding EU law](#), Decision no. 23/2018 (XII. 28.) [establishing the admissibility of petitions based on the violation of the fundamental rights of public authorities](#) (later codified and then abolished upon the request of the EU), Decision no. 19/2019. (VI. 18.) [approving the criminalization of homelessness](#), the decisions that [delayed and then terminated the Lex CEU case](#), Decision no. 33/2021 (XII. 22.) that allowed [the referendum question on gender reassignment surgery](#) of children to be passed for government propaganda purposes, and the list could go on.

The fact that he has given his name to many highly controversial decisions without a problem can perhaps be partly explained by his understanding of his role as President, which he summed up in an earlier [interview](#) as follows:

“I can say, without modesty, that my personal strength is my contribution to finding compromise. [...] As President, it is my duty to be humble towards the majority in the Constitutional Court. My strategy is that if the majority decision is acceptable to me and does not fundamentally conflict with my principles, then I will back it.” (translated by author)

Another explanation may be that Tamás Sulyok does not really have a strong and demonstrable conviction in constitutional law. His previous articles, written in the course of his rather scant jurisprudential work, and his [PhD thesis](#) written under the supervision of László Trócsányi (former Minister of Justice of the Orbán-government and the nominee of Fidesz for the vacant seat at Constitutional Court), do not reveal any identifiable professional worldview. The most we can learn from them is that he attaches great importance to the role of attorneys in maintaining the rule of law.

Despite a significant decrease of the independence and autonomy of the Constitutional Court, it has managed to maintain the appearance of an active, professionally competent body under the presidency of Sulyok. This has been greatly facilitated by the introduction of the so-called German-type constitutional complaint in 2012, which has shifted the main focus of the Constitutional Court from the control of political powers (i.e. the review of legislation) to the supervision of the judiciary (i.e. the review of judicial decisions). Since lawyers were particularly interested in submitting petitions, the Court has soon become flooded with petitions on constitutionally less significant civil law, criminal law, administrative law, and other legal issues. The Constitutional Court's [statistics](#) show the image of a very active body.

As President of the Constitutional Court, Tamás Sulyok leaves behind a rather controversial legacy. He has previously [stated](#) that “I appreciate nothing more than professional and well-intentioned criticism [...] What I cannot deal with is criticism of a political nature, which is untruthful and unjustified.” (Translated by author.) The problem is that what the professional community and the public could not deal with was the fact that President Sulyok did not even respond to the entirely legitimate professional concerns about the independence and autonomy of the Constitutional Court and his person, and avoided all politically sensitive questions on the rare occasions when he was interviewed. So, based on what we can see, the Constitutional Court has served the interests of the Orbán-government under Sulyok's presidency.

## From presidency to presidency

Tamás Sulyok did not want to be Head of State previously. This is evidenced by the fact that János Áder, then President of the Republic, appointed him as an ordinary judge for an indefinite term in 2020, meaning that he could have left the Constitutional Court at any time at his own discretion and continued his career in an ordinary court due to another Fidesz invention aimed at [capturing the judiciary](#). This possibility ended in 2023, when he reached the general retirement age of 65 for ordinary judges. However, as no such rule applies to members of the Constitutional Court, Sulyok could easily keep his mandate, which would have expired in 2026.

But then came the [presidential clemency scandal](#) and the resignation of Katalin Novák, and Fidesz needed a new Head of State. The choice of Tamás Sulyok was perhaps surprising, but logical. He accepted the rules of the Orbán-regime when Fidesz made him a constitutional dignitary: he led the Constitutional Court in a way that did not hinder, and sometimes even helped, the government's policies. In the

meantime, however, he has maintained his image as a professional, independent of politics and has not made a fool of himself in public, which is an achievement in itself in the Orbán-regime.

Tamás Sulyok, as President of the Constitutional Court, did not feel the responsibility that falls on the actors of the system of checks and balances. As President of the Republic, he will have even less opportunity to act as a check on the Orbán-regime. But his personality suggests that Hungary will have a very jovial head of state.

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