

RESEARCH ARTICLE

Hungarian Judges' Attitudes Towards the "Illiberal State"

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Abstract

The goal of this paper is to explore the attitudes of Hungarian judges towards the "illiberal democracy" project of Victor Orban - twelve years into its development. To this end, 778 anonymous responses of Hungarian judges to the 2022 ENCJ Survey of Judges have been analyzed to classify judges in terms of their attitude towards Orban cabinet. As survey lacked any explicit politics- or ideology-related questions, the perceived "respect" towards judges' independence as paid by (i) the government and (ii) the Council for the Judiciary (opposing the government of judicial independence grounds) were applied. It turns out that over one third of the judges declared "respected" by both selected institutions (group dubbed "Sanguine" Judges). Another 30% of judges declared feeling "respected" by the Council and "disrespected" by the government (group dubbed "liberals") while one in twelve judges declared the opposite (group dubbed "illiberals"). Similarities (demographics) and differences (self-assessed independence, irregularities in the case allocation, enforcement of judgments unfavorable to the government, EU membership impact on independence, disciplinary proceedings) between the groups were examined. Paper points to the frequently overlooked aspect of illiberal assaults on judicial institutions: the problem of insider cooperation — or "illiberals within" the judicial branch.

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1 Introduction

“the new state that we are constructing in Hungary is an illiberal state, a non-liberal state. It does not reject the fundamental principles of liberalism such as freedom, and I could list a few more, but it does not make this ideology the central element of state organisation, but instead includes a different, special, national approach”¹

V. Orban of Hungary, 2014

In its 2020 report V-Dem classified Hungary as “an electoral authoritarian regime” — “the EU’s first ever authoritarian regime Member State” (Lührmann et al. 2020:9).

During the parliamentary election of April 3, 2022 — twelve years into the Orban rule — over 37% of Hungarians supported his “illiberal democracy” project. Over 32% preferred another party, while 30% decided to stay home (Walker 2022). In Orban’s own words, that amounted to a victory “so huge you can see it from the Moon”.²

One of the trademarks of Orban’s “Illiberal” project is his handling of constitutionalism in general (see e.g. Scheppele 2015, Kovács and Scheppele 2018, Roznai 2022) and judicial independence in particular. The “systemic attack on judicial independence” made possible by Orban’s constitutional supermajority³ involved “change of framework for the Constitutional Court, [...] change in personnel and normative framework of the Supreme Court and general courts, and [...] the change in the courts’ administration” involving the establishment of the National Judicial Office (*Országos Bírószági Hivatal*, OBH) to bypass competences of the National Judicial Council (*Országos Bírói Tanács*) (Moliterno and Čuroš 2021, 1180).

This attack is reflected by the declining V-Dem judicial independence in lower courts indicator⁴ (left panel of Figure 1) and the specific V-Dem indicator gauging the government attacks on the judiciary⁵ (middle panel of Figure 1). Also, over one-third of the Hungarian general public — as surveyed by the Eurobarometer — has skeptical views on justice system independence (right panel of Figure 1).

Specifically, in 2022 (the year of the ENCJ survey analyzed in this paper) 43% of Hungarian respondents rated the justice system as very good or fairly good in terms of independence, while 36% assessed it as fairly bad or very bad. Thereby, the net assessment⁶ was +7% — ninetieth out of twenty seven EU Member States.⁷

¹ V. Orban’s 26 July 2014 Băile Tușnad speech. Official English translation of the speech is available at: <https://2015-2019.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>.

² As quoted in: <https://www.bbc.com/news/world-europe-60978909>, accessed 10 March 2025.

³ A new constitution — the Fundamental Law of Hungary — had been adopted April 18, 2011.

⁴ v2juncind - Codebook question: “When judges not on the high court are ruling in cases that are salient to the government, how often would you say that their decisions merely reflect government wishes regardless of their sincere view of the legal record?”.

⁵ v2jupoatck - Codebook question: “How often did the government attack the judiciary’s integrity in public?”.

⁶ Share of respondents declaring positive assessment minus share of respondents declaring negative assessment.

⁷ The EU average was net +18% (53% positive and 35% negative). The best performer was Finland (net +80%) while the worst - Croatia (net -54%). Poland plagued with a rule of law crisis recorded the third worst result (net -40%, 24% positive and 64% negative). Of other post-communist CEE countries, Czechia net assessment was +23% (57% positive, 34% negative) while Slovakia net -43% (25% positive and 68% negative). See Flash Eurobarometer 503; Perceived independence of the national justice systems in the EU among the general public.

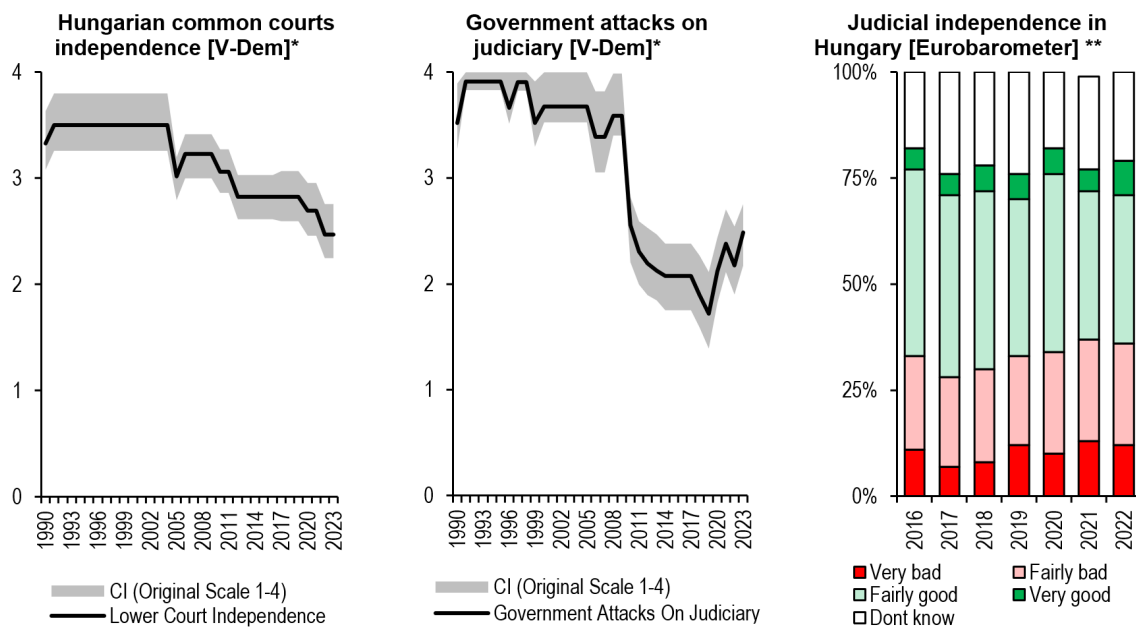


Figure 1. Selected quantitative indicators illustrating changes in Hungarian judicial independence.

*- Point estimate and confidence bands on the original 1-4 scale

**-. The question is formulated as follows: “From what you know, how would you rate the justice system in Hungary in terms of the independence of courts and judges? Would you say it is very good, fairly good, fairly bad or very bad?”

Source: V-Dem dataset, available at: <https://www.v-dem.net/data.html>; for the latest EB data see Flash Eurobarometer 503; Perceived independence of the national justice systems in the EU among the general public.

As observed by Bencze (2021) “the Hungarian judiciary has reacted to the political change of recent years in a twofold way. Some judges have resisted political pressure and decided cases according to the law and their conscience, while others, showing the signs of judicial populism, have deferred to the interests of the government”. In this context, it is particularly interesting to examine the views of Hungarian judges on their independence. Do they feel that their independence is threatened by government or do they agree with the right-wing illiberal agenda of the government — including its assaults on the judicial independence? Judges face the dilemma that they are beholden to international principles on the independence of the judge, such as the Bangalore principles,⁸ but that they also have their own political preferences (for the literature on the judicial preferences, see Posner 1993; Cameron and Kornhauser 2024). Another dilemma is that they will generally strive to be in tune with the society which they serve. A democratically elected parliament and government can be expected to reflect, at least to some extent, the preferences of society, assuming elections are fair and free. However, attempts to dismantle key institutions enshrined in the constitution, like judicial independence, can be expected to be viewed as a threat to the very principle of popular sovereignty that populists invoke (see Corso 2022). A further dilemma is between principles and career consequences.

⁸ ‘A judge shall exercise the judicial function independently on the basis of the judge’s assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason’ (Judicial Group on Strengthening Judicial Integrity 2002, Article 1.1).

To understand the developments in Hungary it is important to have insight in these views of judges. At the same time, this insight is of broader relevance, as rule of law backsliding is not confined to Hungary and lessons can be learned. The unique dataset produced by the European Network of Councils for the Judiciary (hereafter ENCJ)⁹ — the European Survey of Judges carried out, most recently, in 2019 and 2022 — allows rare glimpses into judicial perception.

This paper analyses 788 Hungarian judges' responses to the 2022 ENCJ Survey (the response rate was 29%).¹⁰

The survey concerns the independence of the judiciary, as it is experienced and perceived by the judges. Unfortunately for our study, its respondent's background information block (although substantially expanded over the four waves of the survey) lacks politically loaded questions (like voting intentions, left-right self-identification, or support or opposition to the sitting cabinet), or questions related to personal philosophy or ideology (liberalism or conservatism, attitude towards conflicting constitutional values).

Moreover, it is not self-evident that the overall philosophical or ideological orientation of a judge implies sympathy towards Orban's "illiberal democracy" project in general, and undermining of the judicial independence in particular.

As we are particularly concerned with the resilience of the judiciary against government attacks on judicial independence, we focus our research on what we called "illiberals within" — the judges who approve the weakening of judicial independence by the illiberal government of V. Orban. Such a group — if it exists and is sufficiently large — would facilitate insider cooperation during the populist takeover.

To identify this group, we employed the European Survey of Judges question about perceived "respect" towards judges' independence, as paid by various political and institutional actors. Given the political situation in 2022 Hungary, two institutions were selected to provide a reasonable "litmus test" for a judge's attitude towards the Orban's "illiberal democracy" project: the Orban's government itself and the Council for the Judiciary (*Országos Bírói Tanács*) — a choice explained in section 3 of the paper. Specifically, we addressed the following research questions:

1. What percentage of Hungarian respondents of the European Survey of Judges declare their independence is respected/disrespected by the Orban's government and by the National Judicial Council?
2. Given the assumptions underlying our classification (see section 3), what are the demographic differences, if any, between respondents classified as "liberal" and "illiberal" judges.
3. What are the differences, if any, between respondents classified as "liberal" and "illiberal" judges in terms of their assessment of the judicial independence and its breaches in Hungary?

⁹ The European Network of Councils for the Judiciary (ENCJ) unites the national institutions (Councils of the Judiciary) in the Member States of the European Union which are independent of the executive and legislature, and which are responsible for the support of the judiciaries in the independent delivery of justice. The Hungarian National Judicial Council (*Országos Bírói Tanács*) is one of its members, see <https://www.encj.eu/>, accessed 10 March 2025.

¹⁰ The response rate had been calculated using the number of judges based on CEPEJ data on total professional judges in 2018, and updated by Councils for the Judiciary and other governing bodies. As stated in the ENCJ (2022: 10) report, "An ambitious target was set at 20% responding judges (the target of the previous survey was 15%). This target was not reached in six countries. Still, the absolute number of respondents is deemed sufficient to retain all countries in the results, where only the outcomes for Slovakia and Italy need to be treated with extra caution".

4. What are the differences, if any, between respondents classified as “liberal” and “illiberal” judges in terms of their assessment of the judicial appointment and promotion process?

Thereby, our goal differs from that of Puleo and Coman (2023) — another recent attempt to survey judges in backsliding democracies. These authors aimed at ‘understanding the motivations behind’ judges’ opposition (Puleo and Coman 2023, 6). To that end, they distributed the survey via associations of judges, as they were likely to reach precisely the judges engaged in the opposition activities.¹¹ On the contrary, we attempt to paint a picture of Hungarian judiciary as a whole, ‘targeting’ both, opponents and supporters of Orban’s project — as well as those disengaged. Thereby, we are not seeking to document the overall effects of Orban’s illiberal policies on judicial perceptions, or compare his cabinet to the previous ones. Instead, we use these perceptions — as expressed in a specific moment in time (2022) and political context (after Orban’s attacks on judicial independence) — to gauge judges’ attitude towards the “illiberal democracy” project.

The rest of the paper is organized as follows. Section 2 discusses what is known or assumed about the political attitudes of judges in general and Hungarian judges in particular. Section 3 introduces the approach towards the clustering of Hungarian judges who responded to the ENCJ questionnaire, with particular emphasize on identifying “illiberals within” the judicial branch. Section 4 reviews similarities and differences across the identified clusters, with respect to their view on judicial independence. Section 5 concludes.

2 Attitudes of Judges

As far as the design of the judiciary is concerned, the most basic choice seems to be between so called career judiciaries and recognition judiciaries (Georgakopoulos 2000; Garoupa and Ginsburg 2011). The former, typically associated with continental Europe, involves recruitment of the would-be judges at relatively young age, and offering them an entire career path within the bench. After World War II, in some career judiciaries powerful Councils of the Judiciary, aimed at shielding judicial appointment and promotion from the influence of the politicians, were established. Although some European countries — most notably Germany — have not embarked on this path, Councils became part of the standard democratic package recommended to the newly democratizing countries, including post-communist Hungary.

The latter model, recognition judiciary, is typically associated with the USA and involves appointments at later stages of professional careers, in a recognition of previous achievements. In many cases, such recognition is performed by elected politicians, and ideological views of the candidates play an important role. The federal courts and the Supreme Court of the United States are the most iconic examples.

It has been suggested that Hungarian judges traditionally have a bureaucratic and hierarchical mentality that stops them from contesting internal and external authority (e.g., Puleo and Coman 2023). They perceive their career to be determined by their superiors. Kovacs (2022) characterizes the Hungarian judiciary as “a highly hierarchical and apolitical judiciary where submissive attitudes are more rewarding for career advancement than autonomy and assertiveness”. This was already the case before Orban started his campaign. His persistent onslaught on the independence of the judiciary has aggravated the situation. It has, for instance, led to the taking over of the top positions in the judiciary by supporters of

¹¹ Furthermore, their survey failed in Hungary, as will be discussed later.

Orban (Kovacs 2022). This take-over increases the risks for judges to actively reject government decisions (Kovacs 2023). As observed by Bencze (2021, 1297), the Hungarian “bureaucratic model of the judiciary is not necessarily a negative phenomenon [...] Yet, the subjective elements of the bureaucratic control over judges in Hungary can incentivize some members of the judiciary to please the immediate superiors who evaluate them and decide on their career within the judiciary. This can represent a threat to autonomous decision-making. The submissive mentality, together with the “populist Zeitgeist” may have a detrimental effect on judicial autonomy”. Puleo and Coman (2023, 17) conclude that judges seem to be reluctant to oppose governmental decisions on the rule of law and judicial independence and see a strong contrast with the behavior of judges in Poland facing populist capture of the National Council of the Judiciary, used to appoint so called “neo-judges” (Szwed 2023). The exception is the Council for the Judiciary — as of 2022 the main voice in defense of judicial independence.

Although the various jurisdictions differ in placing formal and informal red lines to judicial political engagement (for current European practices and standards, see CCEJ, 2022 and ENCJ 2024), it is uncommon to openly manifest political affiliations or leanings.

Vast empirical literature on the ideology of the US judges is available. Among other, ideology is quantified using judges’ voting behavior (see famously the Martin and Quinn 2002 index), writing patterns (McGuire et al. 2009) and press reporting (Segal and Cover 1989). All in all, the view that judges’ decisions vary according to their ideology seems both well-established empirical conclusion (Harris and Sen 2019) and conventional wisdom.

In contrast, continental legal thought seems still to emphasize doctrines rooted in legal formalism. These shape the *esprit de corps* of European judges and the institutional framework of judging. The most vivid example is that Martin-Quinn sort of empirical research (ideal point estimates for specific judges) is unfeasible in much of the European courts. Contrary to the US, where views of the specific members of the adjudication panel are known, in much of the continental Europe panels of judges deliberate in secrecy (although justices who disagree with the majority could voice their objections in separate opinions). As a consequence, it is hard to measure the ideology of European judges using such a toolkit. However, survey research had been employed to shed a light on judicial attitudes.¹²

An online survey carried out in 2008 and referred to by Bencze (2021, 1292) “found that the judiciary could be divided into two groups. One of them, to put it simply, can be called “liberals” who think that the main justifying principle of judicial activity is the defense of the individual liberties of citizens, while judges in the other group “conservatives” hold that the primary aim of judicial work is to maintain the social order”.

Obviously, adhering to a set of values that has been classified by researchers as “conservative” by no means implies willingness to accept — or even endorse — illiberal assault on judicial independence. As the views of the judges determine the resilience of the judiciary against attacks on independence, it is important to examine whether there are judges who approve the weakening of judicial independence by the illiberal government. Such a group of “illiberals within” — if it exists and is sufficiently large — would create insider cooperation during the populist takeover.

¹² Such efforts had been made even under the communist rule, see Kurczewski’s (1971) study of Polish judges’ personality traits, “penal” attitudes and sentencing behaviour.

3 Sorting Judges

As the ENCJ questionnaire is sanitized of any politically flavored questions, the classification of judges applied in this paper has to be based on indirect indications of attitudes towards Orban's "illiberal state". Moreover, it is not self-evident that overall philosophical or ideological orientation of a judge implies sympathy towards Orban's "illiberal democracy" project in general, and undermining of the judicial independence in particular.

As a consequence, the questionnaire has been screened searching for items that, given the political realities in 2022 Hungary,¹³ could be reasonably mapped onto the continuum ranging from "illiberalism" to "liberalism", thereby offering a "litmus test" identifying "illiberals within" — the judges who approve the weakening of judicial independence by the illiberal government of V. Orban.

The best suited to do this job is a question formulated as follows: "During the last three years I believe that my independence as a judge has been respected by..." with a battery of 12 stakeholders encompassing (as ordered in the questionnaire):

1. Association of Judges;
2. Constitutional Court;
3. Council for the Judiciary;
4. Court Management incl. Court President;
5. Government;
6. Lawyers;
7. Media (i.e. press, television and radio);
8. Parliament;
9. Parties;
10. Prosecution;
11. Social Media (for example Facebook, Twitter and LinkedIn);
12. Supreme Court.

Respondents expressed their answers using a five-item Likert scale (strongly disagree; disagree; not sure; agree; strongly agree).¹⁴ Thereby, one could reasonably assume that:

¹³ Importantly, the later controversies regarding judicial salaries and the '2024 "Agreement" concluded by judicial leaders, the National Judicial Council and the government were not an issue back in 2022. This is confirmed by the answers to the question dealing with judicial working conditions — 83% of Hungarian respondents disagree with the sentence that "during the last three years changes occurred in my working conditions that negatively influenced my independence" — category: "Pay, pensions, retirement age", while 9% agreed and 8% picked "not sure" answer.

¹⁴ With sixth option of "does not exist" — respondents indicating the lack of Council for the Judiciary in Hungary were removed from the sample.

1. Judges with a positive attitude towards the “illiberal” project of Orban (including their approval to policies curbing judicial independence, implemented by his cabinet), would feel respected by institutions under his control, among which the Government seems emblematic, at the same time feeling disrespected by institutions openly contesting his actions towards constitutionalism and the judiciary (the Council of the Judiciary – described by Gyöngyi (2024) as “a main organised and visible centre for judicial resistance against some Executive attacks”).¹⁵
2. Judges holding negative attitude towards the “illiberal” project would feel disrespected by its proponents (the Government) but respected — indeed, supported — by stakeholders openly contesting it (the Council of the Judiciary).

In the absence of any direct data, these two institutions seem to offer a reasonable “litmus test” for judges’ attitudes towards the “illiberal democracy” project. Moreover, the two institutions are not listed one after another in the question battery, mitigating the risk created by straight-lining (Drolet and Morrison 2001; Kim et al. 2019).¹⁶ Nevertheless, the available data lacks direct information about responding judge’s ideology, voting intents, or assessment of changes implemented by Orban. Thus, at least theoretically, one cannot rule out the possibility that answers to the “respect” questions were driven by different considerations — like a personal conflict with the Council or (lack of) bad personal experience with government.

Table 1 summarizes the outcome of the classification of the 778 responses to the ENCJ Survey by judges who filled in Hungary as the country where they serve as a judge. Ten responses were discarded due to reliability concerns.¹⁷

First, it turns out that over one third of the judges declared that both selected institutions — despite the differences between them — are “respectful” towards their independence (group dubbed “Sanguine” Judges in Table 1). Such a substantial fraction of judges neglecting Orban’s cabinet assaults on judicial independence is puzzling. While we do not have a convincing explanation from our data, we refer to Puleo and Coman (2023, 17). These authors view the failure of their attempt to administer a survey of Hungarian judges using the network of the Association of Judges (*Magyar Bírói Egyesület*, MABIE) as “illustrative of the fact that judges perceive their freedom of speech as constrained”.¹⁸

Second, the judges classified as “liberals” (i.e. those feeling “respected” by the Council and “disrespected” by the government) amounted to 30%.

Third, one in twelve judges who completed the Survey was classified as “illiberal” (i.e. feeling “respected” by the government and “disrespected” by the Council), while 4% felt disrespected by both institutions (dubbed “besieged” Judges in Table 1). Due to the low absolute number of this cluster, it is dropped from the further analysis.

¹⁵ Also note, that the Hungarian Council remained a member of the ENCJ (see factsheet at <https://www.encj.eu/members>), contrary to its Polish counterpart expelled on Oct 2021, see <https://www.encj.eu/node/605>, accessed 10 March 2025.

¹⁶ Survey respondents give identical (or nearly identical) answers to items in a battery of questions using the same response scale.

¹⁷ Either due to a long time of survey completion (exceeding one day) — seven responses — or due to answering that the Council for the Judiciary “does not exist” — additional three responses.

¹⁸ Puleo and Coman (2023, 6) “did not manage to obtain any complete questionnaire” from Hungary. They quote an anonymous interviewee — a Hungarian judge — who explains that “Hungarian judges do not have the permission to give official interviews. They do not want to be involved in risky topics. They want peace, and judicial independence is very sensitive for the Hungarian government” (Puleo and Coman 2023, 17).

Table 1. Classification protocol and results (N=778 Hungarian judges)

		Perception of “respect” towards one’s independence paid by the Government	
		Positive (agree; strongly agree)	Negative (disagree; strongly disagree)
Perception of “respect” towards one’s independence paid by the National Judicial Council	Positive (agree; strongly agree)	“Sanguine” Judges [N=272, 35%]	“Liberal” Judges [N=237, 30 %]
	Negative (disagree; strongly disagree)	“Illiberal” Judges [N=65, 8%]	“Besieged” Judges [N=29, 4%]
		Others [N=175, 22%]	

Source: Own elaboration using ENCJ 2022 Survey of Judges data

Fourth, 22% of judges were not classified under these rules, as they picked “not sure” as answer for at least one out of two examined institutions.

Last but not least, judges dubbed “liberal” outnumbered those dubbed “illiberal” by more than a factor of four.¹⁹

4 Similarities and Differences among Judges

4.1 Perceived “Respect” for Respondents’ Independence

As the classification is based on two out of twelve items from the question on perceived “respect” for the respondent’s independence, it is interesting to compare how the resulting clusters of judges differed in their views on the remaining 10 stakeholders. Results are summarized in Table 2.

Starting from the biggest cluster, “Sanguine” judges offered quite rosy views of the respect for their independence — the majority of them declared feeling “respect” (typically “strongly”) from all of the listed stakeholders. The only two stakeholders that received a more critical assessment were the media — traditional and social.

In contrast, judges dubbed “Liberal” felt their independence was “respected” by the Association of Judges, the biggest of whom is MABIE (see Gyöngyi 2024), and courtroom stakeholders, while “disrespected” by traditional media and the parliament. Constitutional Court, Supreme Court and social media received mixed assessments.

¹⁹ Overall, the 2022 ENCJ survey on judicial independence found that 46% of Hungarian judges agreed that their independence has been respected by the Government (38%disagreed and 17 were “not sure”) and 77% agreed that their independence has been respected by the Council for the Judiciary (16% disagreed and 8% were “not sure”) — see ENCJ (2022, 81–82). The difference between these figures and the sums in the columns and rows of Table 1 are the result of “not sure” answers. If a respondent answered “not sure” for either respect by government or respect by the Council, or both — she was classified as “others” group (22%).

Table 2. Answers to the selected ENCJ 2022 questions among “Liberal”, “Illiberal” and “Sanguine” judges: “respect” for judges’ independence, as paid by court users (parties) and various judicial, political and media actors

		Association of Judges	Constitutional Court	Council for the Judiciary*	Court Management	Government*	Lawyers	Media	Parliament	Parties	Prosecution	Social Media	Supreme Court
"Liberal" judges	Strongly agree	64%	14%	68%	27%	0%	23%	3%	3%	26%	24%	2%	21%
	Agree	29%	25%	32%	32%	0%	48%	11%	5%	46%	43%	12%	29%
	Not sure	5%	26%	0%	13%	0%	14%	15%	15%	14%	22%	33%	21%
	Disagree	2%	27%	0%	19%	49%	14%	42%	44%	13%	6%	37%	16%
	Strongly disagree	0%	8%	0%	11%	51%	2%	28%	34%	2%	4%	16%	13%
	Does not exist	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%	1%	0%
"Illiberal" judges	Strongly agree	2%	55%	0%	69%	55%	40%	2%	74%	22%	66%	2%	92%
	Agree	3%	37%	0%	29%	45%	45%	2%	26%	55%	29%	2%	8%
	Not sure	12%	8%	0%	0%	0%	11%	34%	0%	18%	3%	29%	0%
	Disagree	31%	0%	17%	2%	0%	5%	45%	0%	5%	2%	49%	0%
	Strongly disagree	52%	0%	83%	0%	0%	0%	18%	0%	0%	0%	18%	0%
	Does not exist	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
"Sanguine" judges	Strongly agree	78%	72%	73%	72%	63%	61%	43%	63%	56%	71%	38%	72%
	Agree	21%	26%	27%	25%	37%	32%	29%	30%	35%	25%	29%	26%
	Not sure	1%	1%	0%	0%	0%	6%	11%	6%	5%	3%	17%	1%
	Disagree	0%	1%	0%	1%	0%	1%	12%	1%	3%	1%	11%	0%
	Strongly disagree	0%	0%	0%	1%	0%	1%	4%	0%	0%	0%	4%	0%
	Does not exist	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	1%	0%

*- Answers regarding the Council for the Judiciary and the government were used to define clusters of judges.

Darker shades of green denote higher percentages.

Source: Own elaboration using ENCJ 2022 Survey of Judges data

Judges labeled “Illiberals” felt “disrespected” by the Association of Judges and — to a lesser extent — by traditional and social media, while “respected” the most by the Supreme Court and parliament (also by court management and prosecution). The table shows mirror images of the Hungarian institutions as to their view on the illiberalism project. “Illiberals” feel respected in their independence by the apex courts, in particular the Supreme Court, Parliament and court management, including the court presidents, and disrespected by the Association of Judges, while “Liberals” feel the reverse. Only the prosecution and parties are respectful to both, although the prosecution more so to “Illiberals”.

4.2 Demography

Continuing the analysis, it is of interest to compare the demographic characteristics of the identified clusters of Hungarian judges who responded to the ENCJ 2022 Survey (Table 3).

The biggest cohort — over one-fourth — of “Liberal” as well as “Sanguine” judges have more than 25 years of experience.²⁰ In case of “Liberal” judges, the second largest cohort (19%) involves judges with 11–15 years of experience. These judges started their careers during the left-wing cabinet before Orban’s return in May 2010. For “Illiberal” judges the biggest cohort are those with 21–25 years of experience (i.e. those who entered the bench during the first Orban cabinet: July 1998–May 2002). Nevertheless, in all clusters the vast majority (between 70 and 80%) of judges entered the bench before 2010, and had the opportunity to compare realities before and after Orban’s return (i.e. “Illiberals” are not recent appointees).

It is interesting to compare levels of judicial hierarchy occupied by respondents clustered in the three groups. “Liberals” and “Sanguine” judges are very similar in this respect, while more “Illiberals” occupy the upper tiers of the judicial system. “Illiberals” are also much more likely to adjudicate administrative cases, while they are also more likely to be members of the Association of Judges. Intriguingly, over 80% of “illiberals” declared that the Association was not respecting their independence (see Table 2). As observed by Gyöngyi (2024, 176), the biggest Hungarian Association, MABIE, “centered on remuneration questions. The association established a strategic partnership with the Ministry of Justice and co-operated with the National Judicial Office in this sense. [...] regarding attacks against judicial independence, the association made only indirect and general comments”. This differs strongly from the Polish Association *Iustitia*, whose activities were presented by Bojarski (2021). However, some of the most prominent Polish “illiberals within” were active members of *Iustitia* prior to 2015.²¹ Summing up, the relation between attitudes towards “illiberal democracy” and membership of the Associations of Judges seems far from straightforward, and the politics of judicial associations offers a very interesting field for further inquiry.

4.3 Perception of Judicial Independence

Contrary to the broadly similar demographics, glaring differences between the identified clusters of Hungarian judges emerge when it comes to perceptions of judicial independence.

Asked to quantify their own independence on a 0-10 Likert scale, the “Liberal” judges provided an average rating of 8.3 (with few answers below the mid-point of 5), while “Sanguine” judges 9.8 (with just five answers lower than 8) and 64 out of 65 judges classified as “Illiberal” rated themselves at 10.

Similar differences emerged when judges were asked to provide an overall picture of the independence of the Hungarian judiciary. The average score provided by “Liberals” was 6.6, while “Sanguine” judges gave a score of 9.1 and “Illiberals” again assigned a score of almost 10.

²⁰ Unfortunately, the survey does not spot judges that started their careers during the communist period.

²¹ Including a deputy Minister of Justice in Law&Justice cabinet - former vice-president of *Iustitia*, finally expelled from the association, see: <https://www.pap.pl/aktualnosci/news%2C1283333%2Cwiceminister-sprawiedliwosci-kukasz-piebiak-ostatecznie-usuniety-z-ssp-iustitia.html>, accessed 10 March 2025.

Table 3. Answers to the selected ENCJ 2022 questions among “Liberal”, “Illiberal” and “Sanguine” judges: Demography

Gender				Years of service as a judge			
	"Liberal" judges	"Illiberal" judges	"Sanguine" judges		"Liberal" judges	"Illiberal" judges	"Sanguine" judges
Female	57%	43%	65%	0-5 yrs	10%	11%	13%
Male	39%	38%	33%	6-10 yrs	11%	15%	15%
I identify otherwise	0%	3%	0%	11-15 yrs	19%	17%	14%
Refuse to answer	4%	15%	2%	16-20 yrs	16%	15%	13%
				21-25 yrs	16%	25%	18%
				over 25 yrs	27%	17%	28%
Level of court system hierarchy				Type of adjudicated cases			
	"Liberal" judges	"Illiberal" judges	"Sanguine" judges		"Liberal" judges	"Illiberal" judges	"Sanguine" judges
Court of first in- stance	73%	49%	77%	Civil (including family) cases	51%	42%	55%
Appeal court	25%	34%	21%	Criminal cases	41%	37%	37%
Supreme Court/ Court of Cassation	2%	17%	2%	Administrative cases	4%	22%	7%
				Civil and criminal cases in equal measure	3%	0%	1%
				Civil, administra- tive and criminal cases in equal measure	0%	0%	0%
Membership in an association of judges							
	"Liberal" judges	"Illiberal" judges	"Sanguine" judges				
Yes	50%	60%	42%				
No	50%	40%	58%				

Source: Own elaboration using ENCJ 2022 Survey of Judges data

Finally, there is a striking difference between the assessments of the independence of the National Judicial Council (however, one has to keep in mind that the perception of the Council was applied to identify clusters). While nearly half of the “Sanguine” judges assessed the Council’s independence at 10 (average 8,5), 42% of “Illiberals” gave it 0 (average 1.6). “Liberals” were the most nuanced, providing an average score of 8.1. The distribution of the score is given in Table 4.

Also, the identified clusters of judges diverged in terms of the perceived time trend of their independence since they started as judges. While 84% of the “Sanguine” judges declared no change, 53% of the “Liberals” observed a deterioration of their independence, and 72% of the “Illiberals” its improvement.

It should be emphasized that a score below 10 on personal independence does not necessarily imply that the judge succumbs to external and/or internal pressure and diverges from a judgment that she perceives as right. On the contrary, a judge may follow her conscience but may be subjected to disciplinary procedures afterwards regarding the content of her decision or procedural aspects such as timeliness. Also, a judge may be forced to abandon the procedure she deems appropriate for a fair trial, due to lack of resources, but

still decides the case on her own terms. Alternatively, some judges could use this item to express a general view that the domestic institutional environment does not meet the European standards of judicial independence.

In future research, qualitative techniques, like cognitive interviews (Gimbel and Newsome 2018) could be applied to examine how respondents understood the survey questions and what information they intended to convey in their answers.

Table 4. Answers to the selected questions among "Liberal", "Illiberal" and "Sanguine" judges: Perception of Judicial Independence (0-10 scale)* and change in respondents' own independence over her judicial career

Of the respondent (As a judge I)			Of the Hungarian Judges		
"Liberal" judges	"Illiberal" judges	"Sanguine" judges	"Liberal" judges	"Illiberal" judges	"Sanguine" judges
0	0%	0%	0	0%	0%
1	0%	0%	1	0%	0%
2	2%	0%	2	3%	0%
3	1%	0%	3	4%	0%
4	1%	0%	4	5%	0%
5	6%	0%	5	18%	1%
6	5%	0%	6	9%	2%
7	12%	0%	7	24%	5%
8	15%	0%	8	27%	18%
9	24%	2%	9	10%	27%
10	33%	98%	10	1%	47%

The Council for the judiciary			Since I started to serve as a judge my independence		
"Liberal" judges	"Illiberal" judges	"Sanguine" judges	"Liberal" judges	"Illiberal" judges	"Sanguine" judges
0	1%	42%	Improved much	0%	52%
1	1%	26%	Improved a little	2%	20%
2	2%	17%	Stayed the same	45%	28%
3	0%	6%	Deteriorated a little	28%	0%
4	1%	0%	Deteriorated much	25%	0%
5	8%	2%			1%
6	7%	2%			
7	9%	0%			
8	16%	0%			
9	22%	0%			
10	32%	6%			

*- Where 0 means "not independent at all" and 10 means "the highest possible degree of independence".

Source: Own elaboration using ENCJ 2022 Survey of Judges data

4.4 Threats and Opportunities for Judicial Independence

Given the substantial differences among the identified clusters of Hungarian judges discussed above, it is important to examine their views on the specific mechanisms threatening (or supporting) judicial independence (Table 5).

It turns out that a vast majority of judges in all three clusters deny (except “Liberals” — strongly deny) to have personally experienced inappropriate pressure aimed at influencing their decisions in individual cases. This is to be expected as in the vast majority of court cases there is no reason for direct political interference. 8% of the “Liberal” judges report pressure, while 0% of the “Illiberal” judges. 4% of the “Liberals” has met disciplinary measures or the threat thereof and again 0% of the “Illiberals”.

In addition, a substantial number of “Liberal” judges indicated irregularities in the case assignment, aimed at influencing their outcomes (a belief not shared by “Illiberal” and “Sanguine” judges).²² If that indeed is the case, there is simply no need to apply “sticks and carrots” on judges to influence their decisions (and risk their ineffectiveness or inconvenience resulting from public disclosure of such methods). A much safer way to secure outcomes of “important” cases (perhaps those with “political” or “personal” dimensions) would be to funnel them to “trustworthy” judges who adjudicate them in line with expectations (and perhaps in line with their own sincere convictions).

Moreover, 42% of the “Liberal” judges believe that judgments that went against the interests of Orban’s government were usually not implemented and enforced and 38% raise doubts.²³ Also, 28% of the “Sanguine” judges were “not sure” as well.

Not surprisingly, the identified clusters of judges disagreed in their assessment of the impact of EU membership on the independence of Hungarian judges. While “Liberals” and “Sanguine” judges saw EU membership as strengthening independence, “Illiberals” were not sure or sceptical. This difference echoes findings from the literature on ‘globalist’ and ‘localist’ judges with different experiences and interests (Mak et al. 2018), arguing that in the European Union a common culture does not exist within the judiciaries of the Member States and definitely not across judiciaries.

Also, the assessment of the effectiveness of the disciplinary system varied across clusters. 78% of “Illiberals” strongly agreed that “judicial misconduct is effectively addressed by the judicial authorities”. Only 24% of “Sanguine” and 3% of “Liberal” judges shared this opinion. Interestingly, a substantial number of judges from these groups preferred to pick the answer “not sure”, indicating at least some doubts regarding the disciplinary system.

²² Specifically, they agreed with the following statement: “I believe during the last three years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case”.

²³ Specifically, they disagreed with the following statement: “In the last three years, I believe judgments that went against the interests of the government were usually implemented/enforced in my country”.

Table 5. Answers to the selected ENCJ 2022 questions among “Liberal”, “Illiberal” and “Sanguine” judges: Threats and Opportunities for Judicial Independence

Incidence of “inappropriate pressure” to take a decision in a specific way (during last 3 years)				Threat of, or actual, disciplinary or other action because of how a case was decided (3 yrs)			
	“Liberal” judges	“Illiberal” judges	“Sanguine” judges		“Liberal” judges	“Illiberal” judges	“Sanguine” judges
Strongly agree	2%	0%	0%	Strongly agree	3%	0%	0%
Agree	6%	0%	1%	Agree	1%	0%	0%
Not sure	5%	0%	1%	Not sure	2%	0%	0%
Disagree	31%	0%	8%	Disagree	21%	2%	4%
Strongly disagree	56%	100%	90%	Strongly disagree	74%	98%	96%
Management of my court has exerted pressure to decide individual cases in a particular way (3 yrs)				Cases have been allocated to judges in order to influence the outcome of particular case (3 yrs)			
	“Liberal” judges	“Illiberal” judges	“Sanguine” judges		“Liberal” judges	“Illiberal” judges	“Sanguine” judges
Strongly agree	1%	0%	0%	Strongly agree	16%	0%	1%
Agree	5%	0%	1%	Agree	27%	0%	3%
Not sure	6%	0%	1%	Not sure	23%	3%	9%
Disagree	29%	2%	8%	Disagree	18%	2%	19%
Strongly disagree	59%	98%	91%	Strongly disagree	16%	95%	67%
Judgments that went against the interests of the government were usually implemented (3 yrs)				Independence of the Hungarian judiciary is strengthened by being part of the European Union			
	“Liberal” judges	“Illiberal” judges	“Sanguine” judges		“Liberal” judges	“Illiberal” judges	“Sanguine” judges
Strongly agree	0%	54%	24%	Strongly agree	41%	5%	22%
Agree	20%	34%	38%	Agree	28%	12%	32%
Not sure	38%	0%	28%	Not sure	19%	49%	19%
Disagree	31%	0%	4%	Disagree	6%	12%	9%
Strongly disagree	11%	12%	6%	Strongly disagree	4%	9%	8%
				Not applicable	1%	12%	10%
Judicial misconduct is effectively addressed by the judicial authorities							
	“Liberal” judges	“Illiberal” judges	“Sanguine” judges				
Strongly agree	3%	78%	24%				
Agree	35%	20%	51%				
Not sure	43%	0%	22%				
Disagree	14%	2%	3%				
Strongly disagree	5%	0%	1%				

Source: Own elaboration using ENCJ 2022 Survey of Judges data

4.5 Judicial Nominations and Promotions

If “Liberals” are correct in indicating irregularities in the case assignment (next to and instead of overt pressure on judges in specific “political” or “personal” cases) as a strategy to influence court judgments, then the issue of judicial nominations and promotions is particularly relevant. Specifically, installing likeminded judges in the top tiers of the court system could enable correction of “inconvenient” judgments via the appeal procedure. Table 6 summarizes how different clusters of respondents assessed the judicial nominations and promotions during the last three years.

Table 6. Answers to the selected ENCJ 2022 questions among “Liberal”, “Illiberal” and “Sanguine” judges: Judicial Nominations and Promotions

Hungarian judges have entered the judiciary not only on the basis of ability and experience (3 yrs)				Supreme Court/Cassation appointment not only on the basis of ability and experience (3 yrs)			
	"Liberal" judges	"Illiberal" judges	"Sanguine" judges		"Liberal" judges	"Illiberal" judges	"Sanguine" judges
Strongly agree	44%	0%	8%	Strongly agree	65%	3%	13%
Agree	30%	2%	15%	Agree	22%	2%	18%
Not sure	15%	0%	22%	Not sure	9%	0%	26%
Disagree	7%	11%	22%	Disagree	3%	14%	22%
Strongly disagree	3%	88%	33%	Strongly disagree	1%	82%	21%

Promotions/appointments to another position not only on the basis of ability and experience (last 3 yrs)			
	"Liberal" judges	"Illiberal" judges	"Sanguine" judges
Strongly agree	38%	0%	8%
Agree	35%	5%	15%
Not sure	15%	0%	25%
Disagree	9%	8%	27%
Strongly disagree	3%	88%	24%

Source: Own elaboration using ENCJ 2022 Survey of Judges data

“Liberals” generally agreed that judges are appointed,²⁴ promoted,²⁵ and entered the Supreme Court²⁶ “other than solely on the basis of ability and experience”. On the contrary, “Illiberals” typically ruled out such possibility. Interestingly, “Sanguine” judges provided quite dispersed answers (with a relatively large share of “not sure”), with the most skepticism towards the Supreme Court appointments.

²⁴ “I believe judges in my country have entered the judiciary on first appointment other than solely on the basis of ability and experience during the last three years”.

²⁵ “I believe judges in my country have been appointed to the Supreme Court/Cassation other than solely on the basis of ability and experience during the last three years”.

²⁶ “I believe judges in my country in first instance and appeal courts have been promoted /appointed to another position other than on the basis of ability and experience during the last three years”.

4.6 Patterns of Completing the Survey

As already indicated, the presented analysis is based upon 788 responses of Hungarian judges provided to the 2022 ENCJ Survey, amounting to a relatively high response rate of 29%.²⁷ The survey distribution process had been designed in order to reach the entire population of judges in a given country. However, self-selection of the respondents might still occur. As a consequence, we can tell a lot about “liberals” and “illiberals” in our sample, but one should be cautious with extrapolating the percentages from the sample to the entire population of Hungarian judges.

In this context, it is useful to examine the patterns of completing the survey, as revealed by paradata — measurements related to the process of collecting survey data (Kreuter 2013; Schenk and Reuß 2024) — collected by the online survey tool.

Obviously the ENCJ Survey of judges had been administered in a way guaranteeing anonymity.

However, indicators like timestamps marking start and completion of the questionnaire provide additional information about the judges classified into the three clusters (see Table 7). First, it turns out that “Liberals”, who, for example, provided quite nuanced 0–10 independence scores (Table 3), needed the most time to complete the survey. “Sanguine” judges required slightly less time, while “Illiberals” were the quickest. One way of interpreting this pattern is that “Illiberals” had clearer convictions, whereas “Liberals” needed to think the questions through. Another could be that “Illiberals” responded in greater hurry or less interest, thereby investing less effort in careful understanding the questions and recalling past events to provide reliable answers (in other words, provided lower quality answers). Finally, differences could correspond with personality styles (see Yan and Tourangeau 2008; Wood et al. 2017).

Table 7. Duration of Survey (minutes)

	“Liberal” judges	“Illiberal” judges	“Sanguine” judges
25 Percentile	00:07:23	00:04:53	00:07:15
Median	00:09:00	00:06:19	00:08:50
75 percentile	00:11:48	00:07:26	00:11:06

Source: Own elaboration using ENCJ 2022 Survey of Judges data

Apart from time devoted to answer the survey questions, it is also interesting to look at the moment in time when judges from various clusters started to answer the questions (top panel of Figure 2). First, it is visible that “Liberals” and “Sanguine” judges tend to start their surveys during the workday (8 a.m. – 4 p.m. – 82 and 88% of them respectively). On the contrary, 38% of “Illiberals” started the survey after 7 p.m.

²⁷ The response rate had been calculated using the number of judges based on CEPEJ data on total professional judges in 2018, and updated by Councils for the Judiciary and other governing bodies. As stated in the ENCJ (2022: 10) report, “An ambitious target was set at 20% responding judges (the target of the previous survey was 15%)”.

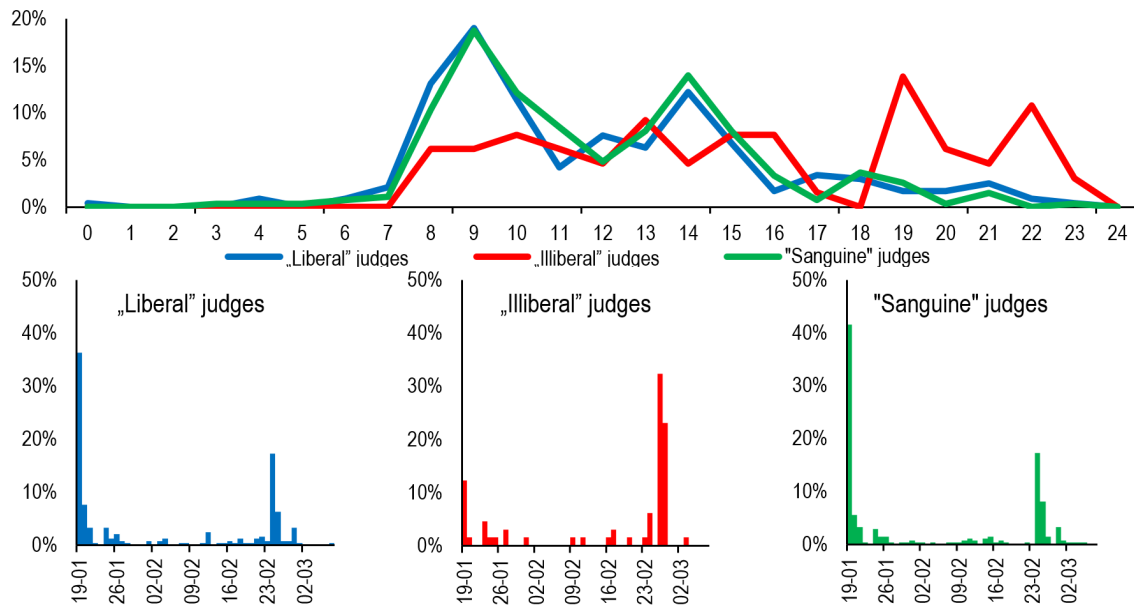


Figure 2. Time (top panel) and date (bottom panel) of Survey start.

Patterns differed also in terms of the date of the survey (bottom panel of the Figure 2). While nearly 40% of “Liberals” and “Sanguine” judges started the survey on Wednesday Jan. 19th 2022, that was the case for only 12% of “Illiberals”. 55% of them started the survey during the weekend of Feb. 26–27 2022 — after the last reminder was sent out by the ENCJ to the courts on Friday 25 February. The peak can be explained on the one hand by the effect of the last-minute reminder. On the other hand, differences between “illiberals” and other clusters of judges²⁸ could indicate some form of mobilization of “Illiberal” judges at the last moment. Also, the percentage of “Illiberal” judges was much higher than in the 2019 ENCJ survey (see Table A1 in the Appendix for replication of our clustering exercise using 2019 data for Hungary).

The survey that took place in nearly all member states of the EU reflects a European perspective on the judiciary. “Illiberal” judges may not sympathize with this perspective and may well be disinclined to participate in the survey. A mobilization, if it took place, has reduced this selection effect. It may well be the case that “Illiberals” are still underrepresented.

5 Conclusions

The goal of this paper is to explore the attitudes of Hungarian judges towards the “illiberal democracy” project of Victor Orban twelve years into its development. To this end, anonymous, individual data collected during the 2022 ENCJ Survey of Judges have been analyzed in detail.

As the questionnaire does not contain politically loaded questions, an indirect approach was the only feasible option. Also, as we are particularly concerned with the resilience of the judiciary in the face of government attacks on judicial independence, we seek to identify what we called “illiberals within” — the judges who approve the weakening of judicial independence by the illiberal government of V. Orban.

²⁸ A substantial share of “Illiberal” respondents starting the survey during the weekend instead of working days, or after ordinary office hours, see Figure 2.

To this end, the question about the perceived “respect” towards judges’ independence — as extended by twelve various stakeholders — has been employed. Specifically, two institutions were selected to provide a reasonable “litmus test” for a judge’s attitude towards the Orban’s “illiberal democracy” project: the government and the Council for the Judiciary.

Overall, the 2022 ENCJ survey found that 46% of Hungarian judges agreed that their independence has been respected by Orban’s government (38% disagreed and 17% were “not sure”) and 77% agreed that their independence has been respected by the Council for the Judiciary (16% disagreed and 8% were “not sure”).

Judges perceiving the government as respectful — and the Council for the Judiciary disrespectful — of their independence have been classified as “Illiberals” as they seem to accept Orban’s policies limiting judicial independence, while those expressing the reverse pattern, as “Liberals”. Judges who perceived both institutions as respectful towards their independence were dubbed “Sanguine”, while those denoting both as disrespectful — “Besieged” (due to the small absolute number, that last group was excluded from further analysis). While this indirect approach offers the only opportunity to probe judicial attitudes to “illiberalism” using existing data, its results should be treated with some caution. Results indicate both similarities and differences between identified groups of judges.

Specifically, in all clusters the vast majority (between 70 and 80%) of judges entered the bench before 2010. In other words, the “Illiberals” are not recent appointees. As to the position in the judiciary structure, “Liberals” and “Sanguine” judges looked very similar, while more “Illiberals” occupied the upper tiers of the judicial system, and were more likely to adjudicate administrative cases. “Illiberals” are also more likely to be members of the Association of Judges — a quite counterintuitive finding suggesting the relation between attitudes towards the “illiberal democracy” and the membership in of the Associations of Judges is far from straightforward.

Asked to quantify on a 0–10 Likert scale the independence of themselves — as well as their peers — “Liberal” judges provided an average rating of 8.3 (with few answers below the mid-point of 5) and 6.6 respectively. “Sanguine” judges reported 9.8 and 9.1 while “Illiberals” in both questions assigned a score of almost 10.

It turns out that a vast majority of judges in all three clusters deny (except “Liberals” who strongly deny) to have personally experienced inappropriate pressure aimed at influencing their decisions in individual cases. A substantial number of “Liberal” judges indicated irregularities in the case assignment (a belief not shared by “Illiberal” and “Sanguine” judges). These responses are to be expected as in the vast majority of court cases there is no reason for direct political interference, and funneling remaining “sensitive” cases to friendly judges would be more effective than applying “sticks and carrots” to all judges (risking their ineffectiveness or inconvenience resulting from public disclosure of such methods).

While “Liberals” and “Sanguine” judges tended to saw EU membership as strengthening independence, “Illiberals” were not sure or skeptical.

“Liberals” generally agreed that judges are appointed, promoted and entered the Supreme Court “other than solely on the basis of ability and experience”. On the contrary, “Illiberals” typically ruled out such possibility. Interestingly, “Sanguine” judges provided quite dispersed answers (with a relatively large share of “not sure”).

In addition to these findings, collected paradata suggests different patterns of survey completion. In contrast to the other groups, a large part of the “Illiberal” judges responded after the last reminder, and during the weekend, suggesting some form of mobilization. In

itself, mobilization does not invalidate the survey, as it counteracts selection effects stemming from lack of motivation of “illiberal” judges to engage in European activities. These judges spent much less time answering the survey than the other judges.

Given (i) the inherent difficulties of providing anonymity to the respondents and, simultaneously, monitoring the conditions of the survey — as well as (ii) the salience and sensitivity of judicial independence issues for both supporters and opponents of Orban’s government, we can claim no more than giving a rough indication of the size of these groups. However, the documented differences across the groups seem to be much more robust to the effects of group mobilization or self-selection bias.

Importantly, the obtained results point to the frequently overlooked aspect of illiberal assaults on judicial institutions: the problem of insider cooperation — or “illiberals within” the judicial branch.

According to our empirical exercise the percentage of “illiberals” among Hungarian respondents in the 2022 ENCJ survey of judges was relatively low (8% versus 30% “Liberals”). However, the “illiberals” are overrepresented in the appeal and Supreme Court and in administrative law. We believe that the views, values, political sympathies and adjudication outcome of the different groups of judges deserve careful empirical scrutiny in future research — see for example Krzyżanowska’s (2024) work on so called “neo-judges” in Poland — as they are of particular importance for the rule of law and rights protection in the respective countries of the European Union and the European Union as a whole.

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