



## **REPORT**

**by the Committee established by NJC Decision 101/2018 (X.03.) to review the practice adopted by the President of the NOJ during the evaluation of applications for single judge and court management positions and the President's performance of its obligations in respect of the NJC**

28 January 2019

Approved and disclosed  
by the National Judicial Council  
on 6 February 2019

## TABLE OF CONTENTS

I. Introducing the Operation of the Committee .....	4
II Introduction and Background .....	6
1. The status of the National Office for the Judiciary and the National Judicial Council under public law .....	6
2. Sequence of events .....	7
3. The issue of the operability of the National Judicial Council .....	8
III President of the NOJ's Practice of Declaring Applications Unsuccessful .....	10
1. Legislative environment .....	10
2. Statement of facts .....	12
3. Conclusions .....	15
IV The Obligations of the President of the NOJ Relating to the Service Courts .....	17
1. Legislative environment .....	17
2. Statement of facts .....	18
3. Conclusions .....	19
V Consent to the Re-appointment of Court Managers .....	20
1. Legislative environment .....	20
2. Statement of facts .....	20
3. Conclusions .....	21
VI Expressing an Opinion on the Policies of the President of the NOJ .....	22
1. Legislative environment .....	22
2. Statement of facts .....	23
3. Conclusions .....	23
VII Performance of Obligations Relating to the Budget and Allocations .....	24
1. Legislative environment .....	24
2. Statement of facts .....	24
3. Conclusions .....	26
VIII Performing the Obligations Relating the HR Decisions .....	27
1. Legislative environment .....	27
2. Statement of facts .....	27
3. Conclusions .....	28
IX Breach of the Duty to Cooperate .....	29
1. Communication between the NJC and the President of the NOJ .....	29
2. The publication duties of the President of the NOJ in connection with the NJC .....	33
3. The Central Celebration of the Day of Judges .....	33

4 Signals by the NJC in the interest of the law ..... 34

5 The mid-term election of substitute members of the NJC ..... 34

List of Annexes ..... 37

## I. INTRODUCING THE OPERATION OF THE COMMITTEE

Invoking Section 25 of its By-laws of Organisation and Operation, the National Judicial Council (hereinafter: NJC) passed Decision No. **101/2018. (X.03.)** OBT dated 3 October 2018 to establish an ad hoc Committee (hereinafter: the Committee). [Annex 1](#)

The Committee is responsible for reviewing whether or not the President of the National Office for the Judiciary (hereinafter: NOJ): (i) altered the non-compliant presidential practices of declaring applications unsuccessful, secondment and management appointment after 2 May 2018 forward to the signals given in NJC Decisions 59/2018. (V.02.) and 60/2018. (V.02.); (ii) performed the statutory presidential obligations in respect of the NJC as demanded by the warnings set forth in NJC Decision No. 70/2018. (V.16.); (iii) responded in merit to the warnings of the NJC; and (iv) made the disclosures of information necessary for the President to perform its supervisory activities. The Committee was also responsible for analysing its findings.

**Review period:** 02 May 2018 – 31 December 2018

**Chairman of the Committee:** dr. Zoltán Rochlitz, NJC member, Chamber President at the Szolnok Regional Court

**Committee members:**  
dr. Csontos Katalin, NJC member, Judge at the Salgótarján District Court  
dr. Judit Fatalin, NJC member, Judge at the Budapest-Capital Regional Court of Appeal  
dr. Bálint Gaider, NJC member, Judge at the Zalaegerszeg District Court  
dr. Viktor Vadász, NJC member, Judge at the Budapest-Capital Regional Court

**The mandate of the Committee** was in effect until 3 January 2019, and was extended until 28 February 2019 by NJC Decision 1/2019. (I.09.).

### **The operation of the Committee:**

- The Committee held its statutory meeting on 15 October 2018, where it listed the applications declared unsuccessful after 2 May 2018, and divided the areas of review among the members of the Committee in accordance with the responsibilities of the President of the NOJ supervised by the NJC.
- The Chairman of the Committee requested, with no outcome whatsoever, the President of the NOJ to facilitate the review of presidential documents dated between 26 and 31 October 2018 relating to applications for court manager and judge positions declared unsuccessful. At its meeting held on 6 November 2018 and with a view to the former refusal to disclose information, the Committee requested the President of the NJC to call upon the President of the NOJ once again to grant permission for reviewing the documents.

- At its meeting on 11 January 2019, the Committee consolidated the available data and identified the decisions passed by the President of the NOJ in November and December 2018 as belonging to the scope of the review. At the same meeting, the Committee finalised the parts and divisions of the report and discussed any legal consequences derived from its analysis.
- Upon the members of the Committee expressing their consent, the Chairperson of the Committee forwarded the final version of the report to the NJC President on 28 January 2019 along with a recommendation to enter it for discussion on the agenda of the NJC meeting scheduled for 6 February 2019 and to deliver copies to parties entitled to participate in the deliberations. The Chairperson recommended that the President of the NOJ should be reminded to make comments in due course so that they are available before the meeting.

## II INTRODUCTION AND BACKGROUND

### 1. The status of the National Office for the Judiciary and the National Judicial Council under public law

Article 25(5) of the Fundamental Law of Hungary provides that President of the National Office for the Judiciary shall perform the central responsibilities of the administration of the courts whilst the National Judicial Council shall supervise the central administration of ordinary courts. Section 65 of Act CLXI of 2011 on the Organisation and Administration of Courts (hereinafter: AOAC) asserts that the President of the NOJ shall -while observing the constitutional principle of judicial independence - fulfil the central duties of court administration and the management duties with respect to the chapter on courts in the Act on the State Budget, and shall supervise the administrative activities of the presidents of regional courts of appeal and regional courts. Section 88 of the OACH repeats the section of the Fundamental Law quoted above: **the NJC is a supervisory body of the central administration of courts**, which also cooperates in the administration of courts over and above its supervisory duties.

When establishing the new system of justice in 2012, the Government of Hungary divided the powers exercised formerly by the National Council for the Administration of Justice (*in Hungarian: Országos Igazságszolgáltatási Tanács*) among three new public law entities: in its capacity as the head of the highest level court, the President of the Curia of Hungary is responsible for professional guidance and uniformity of law, the President of the NOJ was granted extremely wide powers in respect of central administration to be supervised by the National Judicial Council, a purely self-governing judicial body elected by judges. Forward to the 2012 recommendations of the Venice Commission, the legislator widened the supervisory powers of the National Judicial Council and granted a substantially stronger mandate for exercising control over the appointment of judges and court managers, and over HR matters.

Section 76 of the OACH lists the specific duties of the President of the NOJ relating to central administration, the appointment of judges, directing the Office, court budgets, collection of statistics, case distribution, measuring workload, HR matters, court administration, training and information. Section 103(1) a) of the OACH provides in general that **in the area of general central administration the NJC shall exercise oversight in respect of the central administrative activity of and shall, if necessary signal any problems to, the President of the NOJ**. Thereafter, Section 103 of the OACH contains several subsections laying down the details of specific areas where the NJC has the right to approve (or consent), to express an opinion or the make independent decisions.

The legislator's intent was clear to see even in the original language of the OACH, which in turn was expressed in more powerful terms in the amendments proposed by the Venice Commission. The general explanation of the Act says: *„That facilitates the establishment of an operational administrative management function capable of responding to problems immediately; the President of the NOJ vested with powerful competences and the NOJ organisation under direct management. Even the President of the NOJ does not operate without control, as the National Assembly may remove the President from office (upon a motion to that effect by the President of the Republic or the NJC) and is subordinated to the NJC in terms of its powers to express an opinion and to offer matters to the President's attention.”*

Although the powers of the National Judicial Council was granted broader powers, its set of legal instruments remained rather limited: it may send a signal to the President of the NOJ upon observing violations of law or may table a motion in Parliament to have the President of the NOJ removed from office „upon a failure to perform presidential duties for longer than 90 days due to reasons attributable to the President, and furthermore, upon being discredited in the presidential position due to an act, conduct or omission.“

## 2. Sequence of events

As the mandates of the first members of the National Judicial Council, who were elected in 2012, terminated in 2018, a delegates' meeting convened on **15 January 2018** to elected new members and substitute members. Composed of newly elected members, the NJC held its ceremonial statutory meeting on 31 January 2018, which was followed by 13 meetings convened in 2018. Due to her entitlement to participate in the deliberations, the President of the NOJ was invited to attend each of the NJC meetings, but she failed to attend any of the meetings held after 7 March 2018.

**After 13 April 2018**, 5 members and 12 substitute members of the NJC announced their resignations. The President of the NJC kept taking steps to call upon substitute members, and in turn called upon the President of the NOJ to convene all judges conferences for electing the delegates authorised to elect substitute members.

**On 24 April 2018**, the President of the NJC sent to the President of the NOJ the report of the committee of inquiry set up to respond to the questions asked by the all judges conferences of the Budapest-Capital Regional Court and the Győr Court of Appeal in early 2018, but the President of the NOJ failed to offer any comments. The review found that several of the decisions of the President of the NOJ went sharply against the provisions of cardinal acts and Decision 13/2013 (VI.17.) AB of the Constitutional Court of Hungary.

**On 27 April 2018**, the President of the NOJ informed the NJC in writing about refusing to accept the NJC as an operational entity. At its meeting held on 2 May 2018, the NJC refused to accept the legal position of the President of the NOJ – upon unanimously accepting the legal reasons presented by the President of the Curia. After a discussion of the report on 2 May 2018, the NJC sent a signal to the President of the NOJ due to declaring unsuccessful legally compliant applications filed in 2017 for judges' and court managers' positions and the NOJ's practice of secondment. [Annex 2](#)

Thereafter the President of the NOJ made no submissions whatsoever to the NJC despite the NJC signal dated **16 May 2018** asserting that the President of the NOJ may neither unilaterally declare non-compliant the operation of the body responsible for supervising the President, nor prevent that body from exercising its powers legally and from operating. Without the NJC, the central administration of the courts does not function legally, pending applications for judges' and court managers' positions may not be evaluated by exercising the right to consent, it is impossible to hand over the prizes and decorations already awarded by the NJC, there is no way to grant waiver of conflict of interest, to relieve from the duty to work during dismissal, to appoint court managers repeatedly after their second term, and the members of the Court of Judicial Discipline may not be elected without the NJC. Accepting the opinion communicated by the President of the NOJ would mean that the resignation of NJC members and substitute members could frustrate the operation of a constitutional institution, and could leave the central administration of courts without supervisory control. [Annex 3](#)

Dr. Tünde Handó, President of the NOJ called the NJC an “illegitimate body” in the media on **8 June 2018** and practically accused some members of the NJC of “treason” on **17 June 2018**.

It was on **9 October 2018**, more than five months after being called upon that the President of the NOJ convened the meeting of delegates to elect substitute members, which was boycotted by the administrative managers she had appointed, and failed therefore to elect new substitute members.

#### [Annex 4](#)

The President of the NOJ should have reached an accord with the President of the NJC on the budget of the NJC **by 31 December 2018**, which is an amount to be segregated from the budget of the NOJ, but the President of the NOJ refused with reference to the Council not being operational.

### **3. The issue of the operability of the National Judicial Council**

The President of the NOJ put forth the following arguments in her position dated 27 April 2018, which was also published at the central website of the courts on 3 May 2018. *“The National Judicial Council counts 15 members. The cardinal act also requires that it should have a specific number of members from all levels of adjudication. At present the NJC falls short of 15 members and the representation of various levels of court is not secured, which is why the operation of the Council cannot be considered legitimate.”*

On 16 May 2018, the NJC explained in detail that the opinion of the President of the NOJ is based on an incorrect interpretation of law, and also pointed out the following:

1. No single entity of public law, including the President of the NOJ, **may unilaterally declare unlawful the operation of the public law body entrusted with its supervision**, or prevent it from legally exercising its powers and performance of work. The operability of any entity of public law regulated by legislation is deemed to exist in a state subject to the rule of law as long as the entity authorised to do so declares the contrary.
2. The cardinal act contains no provision to the effect that the NJC may not operate unless its membership is full, nor does the cardinal act provide that the representation of all levels of court is a condition precedent to operability or the quorum. “Representation by levels”, as invoked by the President of the NOJ, only appears among the provisions governing the election of members to specify the maximum number of members and substitute members to be elected to represent a certain level. The cardinal act [Section 91(1) of the OACH] sets forth a provision on capping the number of members delegated from various court levels and the total number of members, but it does not exclude the eventuality of operating with fewer members.
3. The cardinal act [Section 92 of the OACH] sets forth a single legal consequence of the failure of the NJC to reach full membership or to ensure the representation of all court levels, namely a meeting to elect substitute members must be held but only in case the number of substitute members falls short of 5 members or the smooth operation of the NJC is no longer feasible. The absence of a member adjudicating at the administrative/labour court level alone would not trigger holding a meeting to elect an substitute member, since **as long as there are at least 5 substitute members, the act disallows the holding of substitute member elections even if certain levels of court remain unrepresented**. Smooth operations are threatened when the number of members has dropped below 10, because the quorum expressed in terms of the full membership of 15 judges is no longer attainable.



4. The President of the NOJ suggests that the regulation is not life-like, hence it **violates the principles of common sense and public good enshrined in Article 28 of the Fundamental Law**. The legislator had no intention to confer upon the President of the NOJ a power whereby the President could consider the body supervising her office inoperable or non-existent. Moreover, if the office of the President of the Curia, who is an *ex officio* member of the NJC, were to be unfilled for any reason, the lack of representation of the Curia would, in line with the interpretation of the President of the NOJ, bar the NJC from continuing to operate, hence a non-operational body would in no way be capable of expressing an opinion on the person nominated to act as the President of the Curia, without which the President of the Curia could not be elected. To use another example, our 200 strong National Assembly is not rendered inoperable when the mandate of a constituency happens to become unfilled, which leaves the citizens of that constituency temporarily unrepresented.

One needs to emphasize, furthermore, that the legitimacy of the NJC has not been called to doubt by no entity or public figure other than the President of the NOJ: the President of the Curia continues to attend NJC meetings, where the Minister of Justice and the presidents of the Hungarian Bar Association and the Hungarian Chamber of Civil Law Notaries are both represented and the representative of the Prosecutor General keeps excusing himself for staying away due to other business. Dr. László Trócsányi, Minister of Justice said an interview on 18 November 2018: *“it is my impression that both the NOJ and the NJC are operational, the latter holds meetings where the Ministry of Justice is represented each time. If there are personal conflicts, settling them is no duty of my portfolio. The two institutions are doomed to cooperate by virtue of the Fundamental Law.”* ([https://hvg.hu/itthon/20181118\\_Trocsanyi\\_Laszlo\\_le\\_fogom\\_gyozni\\_a\\_bizalmatlansagot](https://hvg.hu/itthon/20181118_Trocsanyi_Laszlo_le_fogom_gyozni_a_bizalmatlansagot))

The Minister of Justice repeated the same statement during a subsequent interview published on 28 January 2019: *“I am obliged to regard the operation of the NJC legitimate until a judicial forum declares otherwise.”* ([https://nepszava.hu/3023230\\_trocsanyi-laszlo-a-politikai-hiszteriat-kikerem-magamnak](https://nepszava.hu/3023230_trocsanyi-laszlo-a-politikai-hiszteriat-kikerem-magamnak))

Although the President of the NOJ indicated the potential differences in interpreting the language of laws in a press statement issued as early as 3 May 2018, and said the Constitutional Court might be the forum to adopt an official opinion on this matter of law, she took no steps to that end until 16 November 2018. The data published on the central website of the courts suggest that the President of the NOJ contacted the Commissioner of Fundamental Rights to initiate Constitutional Court proceedings in relation to the interpretation of the Fundamental Law and the legitimacy of the operation of the NJC.

**Forward to her arbitrary legal interpretation, the President of the NOJ regards the NJC as ‘non-existent’ since 27 April 2018.**

### III

#### PRESIDENT OF THE NOJ'S PRACTICE OF DECLARING APPLICATIONS UNSUCCESSFUL

##### 1. Legislative environment

Act CLXI of 2011 on the Organisation and Administration of Courts (OACH) provides as follows about **the appointment of court managers**:

*Section 130(1) Court management positions shall be filled via applications unless the present Act or the Act on the status and remuneration of judges provides otherwise.*

*Section 132(2) Upon considering the application dossier, the interview with the applicant and the letter of recommendation of the advisory body authorised to express an opinion, the appointing entity determines the outcome of applications by either appointing the applicant or by declaring the application proceedings unsuccessful.*

*(4) The appointing entity takes into account the recommendation put forward by the advisory body. The appointing entity is not bound by the recommendation of the advisory body, but shall offer detailed written justification of decisions departing from the recommendation.*

*(5) Where a decision departs from the recommendation of the advisory body, or advisory bodies in the case of a head of college, the President of the NOJ and the President of the Curia shall inform the NJC of the reasons for the departure in writing and shall give account of the reasons at the next subsequent NJC meeting. The information provided to the NJC by the President of NOJ and the President of the Curia in writing and orally at the next subsequent NJC meeting shall not affect the appointment of the court manager.*

*(6) Seeking to appoint an applicant who failed to obtain majority support from the advisory board, the President of the NOJ or the President of the Curia shall obtain the prior opinion of the NJC about the applicant before the appointment. The appointment of such an applicant requires the approval of the NJC.*

*Section 133(1) An applications procedure is declared unsuccessful if the appointing entity refuses to accept any of the applications. If applications are unsuccessful, new applications shall be invited.*

*(2) Where a new applications procedure fails to fill a position, the appointing entity may fill the management position by engagement for no longer than a year.*

*(3) If the president and vice-president of a court are simultaneously prevented from performing their duties for more than 2 months, including the case where these offices are unfilled, the President of the NOJ may engage a one of the managers of the given court to attend to the presidential or vice-presidential duties for maximum of 6 months.*

*Section 77(2) The decisions of the President of the NOJ shall be communicated to those concerned in writing promptly, but no later than in 8 days The President of the NOJ shall offer justification of presidential decisions as necessary.*

Act CLXII of 2011 on the Legal Status and Remuneration of Judges (LSRJ Act) provides as follows about **the appointment of judges**:

*Section 7(1) Except as set forth in Section 8, applications shall be invited for vacant judge positions.*

*(2) In the course of the selection procedure, guarantees shall be upheld to ensure that the position of judge shall be awarded to the most suitable applicant as a result of public application proceedings providing equal opportunities for all applicants satisfying the statutory conditions as well as the conditions determined in the invitation of applications, as regulated in the present Act.*

**Section 8(1)** *No applications need to be invited in the cases specified in*

- a) Section 3(4) [judge must be reinstated following a labour dispute]*
- b) Section 23(3) [persons requesting to be re-appointed as judges within 30 days upon the termination of their position in an international organisation or their engagement as the rector or head of research at a research institute]*
- c) Section 24(3) [judge appointed for a fixed term is suitable for tenure]*
- d) Section 34(2) [new position offered upon winding up a court or the reduction of competence or territory of jurisdiction]*
- e) Sections 58(3) and (4) [cessation of office]*
- f) Section 62(3) [cessation of ministerial office]*
- g) Section 64(2) and [cessation of office at the Curia]*
- h) the case specified in Section 97 (3). [military judge requests re-assignment to a different judicial position upon cessation of service relationship with the Hungarian Defence Forces]*

*(2) There is likewise no need for inviting applications in cases where, based on the Act on the organisation and administration of courts, the President or Vice-President of the Curia, the President or Vice-President of the NOJ or the manager of any other court is re-assigned to an actual judicial position following the cessation of their mandate.*

*(3) If a Member of Parliament or a Member of the European Parliament or a national minority spokesperson, acting as a judge before being elected, puts forward at the end of the parliamentary term a request to be re-appointed as judges, and satisfies the conditions precedent to being re-appointed (not including participation in a professional aptitude test), the President of the Republic will, upon request and based on the recommendation of the President of the NOJ, appoint that person as a judge for an indefinite term. Thereafter, the President of the NOJ assigns the judge to an actual judicial position or, if reasonable, to act as the president of a chamber at a place of employment, which corresponds to or is at least of the same level as that filled by the judge prior to being elected, and is preferably located at the judge's place of residence.*

**Section 20(1)** *Application procedures are unsuccessful if*

- a) no application is received, or the president of the court has rejected all applications in accordance with the provisions of Section 13 of LSRJ, or*
- b) the appointing authority, namely the President of the NOJ or the President of the Curia in respect of applications for a position in the Curia refuses to award the position to any of the applicants because:
  - ba) appointing the applicant would give rise to conflict of interest as envisaged in Section 41 of the LSRJ;*
  - bb) the participants involved in the assessment process breached procedural rules during the assessment procedure;*
  - bc) the judicial council failed to comply with its obligation to give reasons as laid down in Section 15(2) and (2a) of the LSRJ;*
  - bd) changes in work organisation, workload or budget arising after the publication of the call**

*for applications make it administratively unreasonable to fill in the position;  
be) a circumstance arose after publishing the call as a result of which the position needs to be filled without inviting applications (Section 8), as foreseen in the act.*

*(2) The reasons for invalidity specified in Section (1) a) and indents ba)-bc) of sub-section b) trigger the obligation to invite new applications.*

Provisions regarding the **invitation and evaluation of applications for management positions** in NOJ Instructions 6/2015. (XI. 30.) concerning the policy determining the administration of courts:

***Section 16** (1) The appointing authority specified in Sections 128(2)-(5) of the OACH shall take steps to invite applications for filling the vacancy 90 days prior to the end of term of a court manager's appointment or the foreseeable termination of a management position due to any other reason, and shall take such steps promptly as envisaged in Section 130 (2) of the OACH upon any unexpected termination attributable to the reasons laid out in sub-sections 138 b)-e) and g) of the OACH.*

***Section 17** (3) Where an application is submitted without the required documents, the appointing authority calls upon the applicant to furnish missing documents in eight days.*

***Section 19** (1) Once the deadline set for applications and for furnishing missing documentation expires, the judges assigned to the affected court or unit of organisation, including permanently absent judges, express an opinion of the applications received as envisaged in Section 131 of the OACH.*

***Section 20** (1) The appointing authority has thirty days after interviewing applicants to pass a resolution on the appointment.*

## 2 Statement of facts

The National Judicial Council ascertained in its Resolutions 59/2018. (V.02.) OBT and 60/2018. (V.02.) OBT dated 2 May 2018 **the illegality of the practice followed by the President of the NOJ** whereby the President fails to offer written justification to the advisory body of decisions in her competence declaring applications for court management positions unsuccessful.

- The NJC ascertained that the President of the NOJ **failed** despite her statutory and constitutional obligations **to offer proper justification** for presidential decisions made in respect of certain HR matters during 2017. No reasons indicated in writing that fail to serve as legal grounds for declaring applications unsuccessful under the OACH could be deemed to constitute proper reasons for declaring applications unsuccessful.
- The NJC ascertained, furthermore, the **inability to verify compliance with the duty to inform** applicants and advisory bodies and the non-timely and non-formal nature of information actually provided.
- The process of evaluating applications for management positions lacks transparency owing in part to the failure to observe the duty to inform and in part to the reference to unfounded reasons. It was not possible to ascertain that the work organisation or other reasons that arose subsequently actually existed at the time applications were invited for the position and truly served as a basis for the President of the NOJ to declare applications unsuccessful. ([Annex 5](#))

The NJC reminded the President of the NOJ in the aforementioned resolutions emphatically of the guidance given by the Constitutional Court in its Decision No. 13/2013 (VI.17.) AB, which says “*as an indispensable component of the rule of law, legal certainty imposes, among other requirements, the duty on bodies with public powers and applying the law to act in and make decisions on issues in their competence in a legally regulated, recognizable and predictable manner. The existence of legally regulated procedural guarantees is predestined to force the appliers of law to operate predictably in a manner to ensure the enforcement of the constitutional principle of legal certainty. Procedural guarantees of this nature also include securing for the affected parties the right to legal remedy against decisions affecting their rights or legitimate interests. One of the conditions of enforcing this right, which is also granted by the Fundamental Law, requires that the holder of the right be given the opportunity to become familiar with the factual and legal reasons behind any decisions affecting the holder, that is to say whenever bodies vested with public powers act upon their powers and duties, they should be obliged to offer rational and exhaustive justification, taking also into account the right of the affected party to legal remedy.*” With the above in mind, **the NJC signalled to the President of the NOJ on 2 May 2018** that she should offer written justification in the future of her decisions declaring applications unsuccessful also for the advisory bodies.

The Committee established by NJC Decision 101/2018 (X.03.) accepted the obligation to review whether or not the President of the NOJ changed her practice of declaring applications for judicial and court managerial positions unsuccessful after 2 May 2018.

On 16 October 2018, the chairperson of the Committee **requested the President of the NOJ to furnish the NJC with presidential documentation relating to applications declared unsuccessful up to that date** for the purposes of a review to be conducted by the members of the Committee in the NOJ building between 26 and 31 October 2018. The review of the documentation would have covered looking into the following facts:

- Did the President of the NOJ observe legally binding deadlines during the applications procedure?
- Can written justification of the reasons for declaring the procedure unsuccessful be located?
- Do the reasons comply with the provisions of the cardinal act?
- Did the President of the NOJ override or challenge the points ascertained by the judicial council in respect of applications for judicial positions?
- Have there been any instances of repeating applications for court managerial positions?

In the warning, the chairperson of the Committee laid special emphasis on the entitlement of NJC members to inspect documents relating to the operation of the NOJ for the purposes of performing their official duties, and may request the President of the NOJ to provide data and information. ([Annex 6](#))

The President of the NOJ did not respond to the warning and failed to grant the statutory right to inspect to the members of the Committee. In a letter dated 6 November 2018 and addressed to the President of the Curia with copies to certain members of the NJC, the President of the NOJ informed the recipients of her intention not to provide the members of the NJC with an opportunity to inspect documents forward to her position regarding the legitimacy of the operation of the NJC. ([Annex 7](#))

The NJC sent to the President of the NOJ a signal in the interest of the law in its Decision No. 115/2018. (XI.07.) adopted at its meeting on 7 November 2018 and reminded her to provide NJC members with an opportunity for inspecting the documents in line with the former warning by 20 November 2018. This warning also failed to reach the desired effect. ([Annex 8](#))

Publicly available data ascertain that the President of the NOJ **decided to declare unsuccessful altogether 20 applications for judicial and 21 applications for court managerial positions between 3 May 2018 and 31 December 2018.** Based on data published in the Judicial Gazette, the following facts can be stated in respect of the aforesaid decisions of the President of the NOJ:

**a) Applications for judicial positions declared unsuccessful**

Number and date of Decision	Description of place of employment	Reason for declaring the procedure unsuccessful
476.E/2018. (VI.22.) OBHE	Pest Central District Court 1 civil judge	No justification
478.E/2018. (VI.22.) OBHE	Pest Central District Court 1 civil judge	No justification
480.E/2018. (VI.22.) OBHE	Pest Central District Court 1 civil judge	No justification
482.E/2018. (VI.22.) OBHE	Pest Central District Court 1 civil judge	No justification
539.E/2018. (VII.18.) OBHE	Pest Central District Court 1 civil judge	No valid application received
603.E/2018. (VIII.21.) OBHE	Székesfehérvár District Court 1 criminal judge	Filled without application - termination of office
716.E/2018. (X.11.) OBHE	Székesfehérvár District Court 1 civil judge	No valid application received
721.E/2018. (X.16.) OBHE	Érd District Court 10 civil and 4 criminal judges	Filled without application
722.E/2018. (X.16.) OBHE	Dunakeszi District Court 1 judge	Filled without application
723.E/2018. (X.16.) OBHE	Dunakeszi District Court 1 judge	Filled without application
724.E/2018. (X.16.) OBHE	Szigetszentmiklós District Court 1 judge	Filled without application
725.E/2018. (X.16.) OBHE	Pest Central District Court 1 judge	Filled without application
726.E/2018. (X.16.) OBHE	Pest Central District Court 1 judge	Filled without application

**b) Applications for court management positions declared unsuccessful**

Number and date of Decision	Description of place of employment	Reason for declaring the procedure unsuccessful
357.E/2018. (V.22.) OBHE	Head of Civil College of the Győr Regional Court of Appeal	No justification
384.E/2018. (V.28.) OBHE	Chair of the Budapest-Capital Regional Court	No justification
437.E/2018. (VI.19.) OBHE	Head of Mid-Danube Valley Regional Administrative and Labour College	No justification
439.E/2018. (VI.19.) OBHE	Head of the Civil, Economic, Administrative and Labour College of the Zalaegerszeg Regional Court	No justification
441.E/2018. (VI.19.) OBHE	Vice-President of the Zalaegerszeg Regional Court	No justification
515.E/2018. (VII.3.) OBHE	President of the Balassagyarmat Regional Court	No justification
523.E/2018. (VII.6.) OBHE	Deputy Head of the Administrative and Labour College of the Budapest-Capital Regional Court	No application received
525.E/2018. (VII.6.) OBHE	Vice-President of the Budapest Environs Regional Court	No application received
527.E/2018. (VII.6.) OBHE	Head of the Criminal College of the Szolnok Regional Court	No justification
529.E/2018. (VII.6.) OBHE	Head of Economic College of the Budapest Environs Regional Court	No justification

611.E/2018. (VIII.28.) OBHE	Head of the Civil College of the Budapest-Capital Regional Court of Appeal	No justification
632.E/2018. (IX.4.) OBHE	President of the Pécs Regional Court of Appeal	No justification
666.E/2018. (IX.21.) OBHE	Head of Mid-Danube Valley Regional Administrative and Labour College	No application received
667.E/2018. (IX.21.) OBHE	Deputy Head of the Administrative and Labour College of the Budapest-Capital Regional Court	No application received
727.E/2018. (X.16.) OBHE	Head of Economic College of the Budapest Environs Regional Court	No justification
732.E/2018. (X.17.) OBHE	Vice-President of the Zalaegerszeg Regional Court	No justification
760.E/2018. (X.31.) OBHE	President of the Balassagyarmat Regional Court	No justification
765.E/2018. (XI.6.) OBHE	Head of the Civil College of the Budapest-Capital Regional Court of Appeal	No application received
802.E/2018. (XI.21.) OBHE	Head of the Civil, Economic, Administrative and Labour College of the Győr Regional Court	No application received
864.E/2018. (XII.18.) OBHE	Head of the Criminal College of the Budapest-Capital Regional Court	No justification
877.E/2018. (XII.19.) OBHE	Head of the Civil, Economic, Administrative and Labour College of the Győr Regional Court	No application received

### 3 Conclusions

The President of the NOJ failed to secure the statutory right to inspect documents to the members of the Committee. Accordingly, the NJC could not exercise full oversight of the practice of the President of the NOJ concerning the declaration of applications unsuccessful, and **it was not possible to establish whether or not the President of the NOJ exercised her power due to legitimate reasons and by keeping the affected persons and bodies appropriately informed.**

The President of the NOJ simultaneously contravened the law by **denying the members of the NJC the right to review conferred upon them in a cardinal act.** Regardless of the position the President of the NOJ expressed about the operability of the Council, the right to inspect documents inures to each member of the NJC individually, and denying it limits the right to oversight.

Any contraventions of law committed by the President of the NOJ relating to applications for judicial and court managerial positions amounts to a material breach of the principle of legal certainty enshrined in Section 1) of Article B) of the Fundamental Law. The gravity of the consequences is not mitigated in any way whatsoever by the actual percentage of the total number of judicial applications affected by illegitimate decisions. Effective oversight by NJC over this activity of the President of the NOJ, the NJC publishing its opinion of the President's practice relating to the determination of applications and the ongoing control over appointments as practised by the President of the NOJ are obvious constitutional interests.

The following managerial positions, which are subject to the President of the NOJ's power to appoint, remain unfilled on 1 January 2019 partly due to the high number of applications for court managerial positions declared unsuccessful recently despite the support expressed by advisory bodies and in part owing to applications invited for court management positions with delay or by not observing procedural time-limits.

- Head of the Civil College of the Budapest-Capital Regional Court of Appeal

- President of the Szeged Regional Court of Appeal
- Vice-President of the Szeged Regional Court of Appeal
- President of the Pécs Regional Court of Appeal
- Vice-President of the Pécs Regional Court of Appeal
- Vice-President of the Győr Regional Court of Appeal
- Head of Civil College of the Győr Regional Court of Appeal
- President of the Balassagyarmat Regional Court
- Vice-President of the Balassagyarmat Regional Court
- Vice-President of the Budapest Environs Regional Court
- Head of the Civil College of the Budapest Environs Regional Court
- Head of the Economic College of the Budapest Environs Regional Court
- President of the Budapest-Capital Regional Court
- Head of the Criminal College of the Budapest-Capital Regional Court
- Head of Civil College of the Győr Regional Court
- Vice-President of the Pécs Regional Court
- Vice-President of the Szeged Regional Court
- Vice-President of the Zalaegerszeg Regional Court



## IV

### THE OBLIGATIONS OF THE PRESIDENT OF THE NOJ RELATING TO THE SERVICE COURTS

#### 1 Legislative environment

Act CLXII of 2011 on the Legal Status and Remuneration of Judges (LSRJ Act) provides as follows about disciplinary judges:

***Section 101** Cases of judicial discipline, related damages and violation of personal rights cases as well as any legal disputes arising from the professional evaluation of a judge's work and managerial efforts, and any conflict of interest proceedings specified in Sections 42(6)-(8) shall be subject to the competence of the first instance service court next to the court of appeal operating the territory of Budapest (hereinafter referred to as „first instance service court”) and the second instance service court next to the Curia (hereinafter referred to as „second instance service court”, hereinafter collectively referred to as „service courts”).*

***Section 102 (1)** The president and members of the service court shall be appointed by the NJC from among the judges of the Curia, the courts of appeal and regional courts. The vice-president of the service court shall be appointed by the chair of the given court of discipline.*

*(2) The members of the service court shall be nominated by the plenary meeting of the Curia and the all judges' conferences of courts of appeal and regional courts.*

*(4) Members of the service court shall be entitled to remuneration in proportion to their activities in that capacity. The detailed rules of remuneration shall be determined by the President of the NOJ.*

***Section 103 (1)** The first instance service court shall be comprised of maximum 75 persons, while the second instance service court shall consist of maximum 15 persons.*

*(3) Judges of the service courts shall be appointed for a term of 6 years calculated from the date of appointment.*

***Section 104/A (1)** The order of business of the service courts shall set forth the composition of proceeding councils and the rules of case distribution.*

*(2) The NJC has the competence to approve the order of business adopted by a service court.*

*(3) The NJC publishes at its website the order of business of service courts.*

***Section 104/B (1)** Service courts shall inform the NJC in writing each year about whether or not court operations complied with the courts order of business during the previous year. The information thus provided shall contain the number of cases filed with, completed by and left pending before the service courts in the previous year, the penalties imposed by the court along with the number and nature of complaints lodged with the service courts.*

*(2) The NJC discusses and approves the annual reports of service courts in the first quarter of each year.*

*(3) The NJC publishes approved reports on the Internet.*

Act CLXI of 2011 on the Organisation and Administration of Courts (OACH) provides as follows about **the administrative duties relating to the courts of judicial discipline and disciplinary judges**:

*Section 103 (1) In the area of general central administration, the NJC:*

*(d) approves and publishes at its central website the order of business of service courts and approves and publishes on the Internet the report drafted by service courts about the previous year's case flow and adjudication practice;*

*(3) In the area of human resources, the NJC:*

*g) appoints the president and members of service courts.*

Order 25/2012. (XII.21.) by the President of the NOJ on the **rules of appointing and remunerating the members of courts of judicial discipline**:

*Section 1 (1) The Curia and the presidents of regional courts of appeal and regional courts shall, upon being contacted by the President of the NOJ send to the President of the NOJ the nominations regarding members of the service courts determined by the plenary session of the Curia and the all judges conferences of regional courts of appeal and regional courts. The President of the NOJ shall submit the nominations to the NJC to facilitate the appointment of the members of the service courts.*

## 2 Statement of facts

At its meeting on 7 March 2018, the National Judicial Council approved the report about case flow and adjudication practice of the service courts in 2017. The President of the first instance service court next to the regional court of appeal operating in the territory of Budapest and the Vice-President of the second instance service court next to the Curia warned the NJC in their reports of major redundancies expected after June 2018 with the terms of appointment of 39 first instance and 9 second instance disciplinary judges terminating, which could lead to functional disturbances at both levels of the courts of judicial discipline and demands swift action as soon as possible to appoint new judges to replace those leaving. They also pointed out that the capacity as a judge and hence as a disciplinary judge of the former president of the second instance court of discipline attached to the Curia terminated in December 2017, which demanded that a new president of the second instance court of discipline should be appointed promptly to ensure uninterrupted operations. Regarding the latter issue, the NJC issued its Decision 41/2018. (IV.04.) and determined forward to the recommendation by the President of the Curia to appoint Dr. Katalin Farkas, Judge of the Curia, to act as the President of the second instance service court next to the Curia between 5 April 2018 and 4 April 2024.

On 01 July 2018, the headcount of the first instance service court dropped to 34, and that of the second instance court of discipline fell to 6 persons. The President of the second instance service court notified the President of the NJC in a letter dated 18 July 2018 that the major reduction of the headcount of the court of discipline led to **functional disturbances in the operations of the court of discipline**. ([Annex 9](#))

Seeking to remedy the situation, appoint new disciplinary judges as soon as practicable and to eliminate the functional disturbances, the President of the NJC contacted the President of the NOJ on 26 July 2018, who failed to respond, and has not up to the present day submitted to the NJC the nominees to be appointed as disciplinary judges, despite her awareness of the threat of functional

disturbances and the submission by the courts of their recommendations for the members of the service courts. ([Annex 10](#))

The President of the Curia sent the list of nominees to be appointed as members of the second instance service court directly to the NJC, in response to which the NJC appointed 5 judges of the Curia to act as members of the second instance service court on 5 September 2018 and also appointed the President of the second instance service court on 3 October 2018. That improved somewhat the poor headcount of the second instance service court and the number of proceeding councils rose to 3.

### Headcount of the first and second instance courts of discipline on 1 January 2019:

	Statutory number of judges	Actual number of judges	Actual number of councils and investigators	Annual cases filed
First instance service court	75	32	8	31
Second instance service court	15	9	3	11

### 3 Conclusions

The drastic reduction of the headcount of the service courts is the natural consequence of the simultaneous termination of the mandate of judges appointed earlier on and the failure to reappoint them or to appoint new disciplinary judges to replace the outgoing judges. The latter reason, namely the failure to make new appointments, is attributable to how the President of the NOJ proceeded in this case. **The courts made their decisions about the persons nominated to act as disciplinary judges in due course and sent their decisions to the President of the NOJ, who failed to forward the nominations to the NJC despite being explicitly warned to do so.** Unaware of the actual nominees, except for those communicated to the NJC directly by the President of the Curia, the NJC is in no position to make a decision on the appointment of disciplinary judges.

It is worth noting that the President of the NOJ acted without legislative authorisation and surpassed her powers by issuing NOJ Decision 25/2012. (XII.21.), since in addition to regulating the remuneration of disciplinary judges, she also laid down detailed rules concerning their appointment, whereby she vindicated powers, particularly powers of submission to herself. All of that runs contrary to the provisions of the cardinal act [LSRJ Section 102(4)], which authorises the President of the NOJ to do nothing more but regulate remuneration. Using her newly vindicated power and the opportunities presented by reporting lines, the President of the NOJ held back the nominations of the organs of judicial self-governance and thereby prevented the NJC from exercising the right conferred upon it in a cardinal act [Section 103(3) g) of the OACH]. In addition to depriving the NJC of its power, the inaction of the President of the NOJ also **threatens the uninterrupted operation of the service courts.**

Section (1) of Article 26 of the Fundamental Law enshrines the legal guarantees of judicial independence, and judges are only subordinated to law, they shall not be given instructions as to their adjudication activities and may only be removed from office for the reasons and in a procedure specified in a cardinal act. The operation of appropriately staffed courts of judicial discipline with competence over any disciplinary and compensation cases involving judges and the legal disputes arising from the professional evaluation of court managers is one of the significant guarantees of judicial independence.

V  
CONSENT TO THE RE-APPOINTMENT OF COURT MANAGERS

## 1 Legislative environment

Act CLXI of 2011 on the Organisation and Administration of Courts (OACH) provides as follows about **the re-appointment of court managers**:

*Section 127 (1) Court management positions may only be filled by tenured judges; an appointment to act as a court manager shall be valid for a term of 6 years, except as set forth in Paragraph (2).*

*(2) Heads of chambers shall be appointed for an indefinite term.*

*(3) Presidents and vice-presidents of courts may be appointed to act in the same court management position on a maximum of two occasions, except as set forth in Paragraph (4).*

*(4) If a president and a vice-president of a court has already served two terms in the same court management position, re-appointment to the same position shall be conditional upon the prior consent of the NJC.*

*Section 103 (3) In the area of human resources, the NJC:*

*e) has the power to make decisions on the re-appointment of presidents and vice-presidents of regional courts of appeal, regional courts, administrative and labour courts and district courts case the president or the vice-president has already served two terms in the same position.*

## 2 Statement of facts

On 26 April 2018, the President of the NOJ submitted a proposal to grant consent to the re-appointment of **applicant** dr. Csaba Németh as **the President of the Mosonmagyaróvár District Court**, given that the applicant had already served two terms in the same position. The President of the Győr Regional Court personally recommended granting the consent. The submission says the judge, who was the only applicant for the presidential position, had already acted as the senior executive of the district court, but was replaced for two years by another person serving in that position. In her submission, the President of the NOJ also requested the NJC to interpret first of all the provision of the cardinal act to determine whether or not consent is required in cases where an applicant who had already served two terms seeks to be appointed to a managerial position after an intermission, i.e. no longer in the capacity of president. The President of the NOJ withdrew her submission prior to the meeting scheduled for 2 May 2018, given she no longer regarded the operation of the NJC legitimate. ([Annex II](#))

Dr. Babett Tárkány Szűcs, President of the Szeged Regional Court invited applications by 31 May 2018 to fill the presidential position of the Hódmezővásárhely District Court, and in turn **appointed** dr. József Zsurzsa, a judge of the Hódmezővásárhely District Court to act **as President of the Hódmezővásárhely District Court** from 1 September 2018 to 31 August 2024, although she did not hold the consent of the NJC to the appointment. Dr. József Zsurzsa had already served three terms as the President of the District Court between 1997 and 2013, moreover the President of the Szeged Regional Court had contacted the NJC seeking to re-appoint dr. Zsurzsa as the President of the Hódmezővásárhely District Court, but the NJC refused to grant consent in its Decision 114/2014. (IX.09.) at the time.

The NJC signalled to the President of the NOJ in NJC Decision 108/2018 (X.03.) that the President of the Szeged Regional Court had appointed Dr. József Zsurzsa, district judge to act as President of the Hódmezővásárhely District Court once again without seeking the prior consent of the NJC, and hence the appointment is null and void. **The NJC warned the President of the NOJ to act upon her administrative power to promptly take the necessary measures and to provide notification of the outcome. The President of the NOJ failed to respond to the signal and warning of the NJC, and the NJC possesses no information as to any measures that have been taken.** ([Annex 12](#))

### 3 Conclusions

As the President of the NOJ indicated in her submission in April, the power to interpret the legislation on re-appointment rests with the NJC as the holder of the power to decide in such matters. No court manager is entitled to arbitrarily adopt a narrow interpretation of the rules of re-appointment and deprive the NJC of that power.

Mention should be made of Act CLXXXIII of 2010, which introduced the currently effective rules, which correspond to those set forth in Sections 69(3)-(4) of Act LXVI of 1997 on the organisation and administration of courts, which was in force earlier. The explanation of the legislator claims that the amendment of the Act was driven by the need to appoint the most suitable applicants to managerial positions, to avoid the stalemate of positions of power and to ensure proper rotation. In the event there is no need to procure the consent of the NJC to the re-appointment of a former president after (however brief) an intermission in serving as president, it would be fairly easy to go around the cardinal act, as it would require no more than inviting applications after the term of the former manager expires or re-appointing the former manager in the framework of applications invited after declaring the first round unsuccessful.

**The President of the NOJ contravened the law by failing to scrutinize the administrative decision of the Szeged Regional Court** and remaining indifferent in the face of the invalidity of the appointment of the Hódmezővásárhely District Court under public law.

**VI**  
**EXPRESSING AN OPINION ON THE POLICIES OF THE PRESIDENT OF THE NOJ**

**1 Legislative environment**

Act CLXI of 2011 on the Organisation and Administration of Courts (OACH) provides as follows about **exercising regulatory powers**:

***Section 76 (1)** Acting in a general central administrative capacity, the President of the NOJ:  
b) draws up mandatory policies applicable to courts – in the form of normative instructions – in line with legal provisions and adopts recommendations and decisions in order to perform its administrative duties;*

***Section 103 (1)** In the area of general central administration, the NJC:  
c) shall express opinions on the policies and recommendations issued by the President of the NOJ.*

Order 10/2016. (X.26.) by the President of the NOJ **on the policies issued by the President of the NOJ**, which was in effect **before 29 June 2018**:

***Section 6 (1)** Phases of developing and modifying policies:  
a) the need to issue or amend a policy arises;  
b) drafting an action plan;  
c) preparing the concept of regulation;  
d) composing the draft and performing codification control;  
e) inviting internal opinions;  
f) inviting professional opinions;  
g) inviting the NJC to express an opinion;  
h) presentation for signature;  
i) publication.*

***Section 15 (3)** Once familiar with the opinion of the NJC, the President of the NOJ makes a decision on issuing the policy or instructs to drafter to modify the draft or decides to ignore the policy. If the opinion of the NJC is neglected, the NJC shall be informed about the reasons.*

Order 10/2016. (X.26.) by the President of the NOJ **on the policies issued by the President of the NOJ**, which was in effect **after 30 June 2018**:

***Section 6 (1)** Phases of developing and modifying policies:  
a) the need to issue or amend a policy arises;  
b) drafting an action plan;  
c) preparing the concept of regulation;  
d) composing the draft and performing codification control;  
e) inviting internal opinions;  
f) inviting professional opinions;  
g) presentation for signature;  
h) publication;  
i) inviting the NJC to express an opinion.*

***Section 15 (4)** The President of the NOJ sends submissions to the NJC for expressing an opinion at regular intervals.*

## 2 Statement of facts

The President of the NOJ **promulgated the following orders** after 2 May 2018:

- NOJ Order 3/2018. (VI.21.) on amending NOJ Order 6/2016. (V.31.) on the integrity policy
- NOJ Order 4/2018. (VI.29.) on amending certain NOJ orders due to the entry into force of Act XC of 2017 on Criminal Proceedings
- NOJ Order 5/2018. (VI. 29.) on amending NOJ Order 17/2014. (XII.23.) on the uniform management of court documents
- NOJ Order 6/2018. (VI.29.) on amending certain NOJ orders
- NOJ Order 7/2018. (VII.11.) on the rules of procedure relating to whistleblowing and complaints
- NOJ Order 8/2018. (VII.26.) on amending NOJ Order 11/2013. (XII. 31.) on the by-laws of organisation and operation of the National Office for the Judiciary
- NOJ Order 9/2018. (XII.13.) on amending NOJ Order 3/2016. (II.29.) on the rules of recruiting clerks
- NOJ Order 10/2018. (XII.19.) on evaluating the performance of justice employees
- NOJ Order 11/2018. (XII. 19.) on amending NOJ Order 17/2014. (XII.23.) on the uniform management of court documents
- NOJ Order 12/2018. (XII.19.) on amending NOJ Order 6/2015. (XI. 30.) on the policy regulating the administration of courts
- NOJ Order 13/2018. (XII.21.) on the statistical activities conducted by the National Office for the Judiciary and the courts

Although the President of the NOJ failed to send the policies listed above for an opinion to the NJC, the NJC, acting *ex officio*, expressed an opinion at its meeting on 3 October 2018 on each of the orders issued and promulgated by the President of the NOJ after 21 June 2018.

## 3 Conclusions

Forward to Sections 6 and 15 of NOJ Order 10/2016. (X.26.) issued by the President of the National Office for the Judiciary, the NJC should express its opinion in retrospective of promulgated policies which are already in effect and even applied in practice, which renders this activity of the NJC absolutely weightless. The NJC is in no position to attend to its duties effectively, it plays no role of any significance in the process of drafting regulations since it is only informed about the outcome of the regulatory process after promulgation has occurred.

By adopting policies and practices, the President of the NOJ deprived the NJC of the powers granted to it in the cardinal act, reduced the performance of its duties to a mere formality and vacated the supervisory power vested in the NJC by the Fundamental law in this regard.

## VII PERFORMANCE OF OBLIGATIONS RELATING TO THE BUDGET AND ALLOCATIONS

### 1 Legislative environment

Act CLXI of 2011 on the Organisation and Administration of Courts (OACH) provides as follows about **exercising powers relating to the budget**:

*Section 76 (3) As regards the duties relating to the budget of the courts, the President of the NOJ shall:*

- a) compose a presidential proposal concerning the budget of the courts and a report on implementing the budget – upon requesting and communicating the opinion of the NJC about the chapter of the act on the budget on the courts and the NJC, and the opinion of the President of the Curia about the Curia – which the Government submits unchanged to Parliament as part of the bill on the central budget and the bill on the related implementing provisions;*
- d) exercise the duties relating to the financial management of the chapter on the courts,*
- f) determine the annual budget for fringe benefits in collaboration with interest representation organisations, and*
- g) determine the detailed conditions and levels of other benefits in collaboration with interest representation organisations.*

*Section 103 (2) Regarding the budget, the NJC:*

- a) shall express its opinion on the budget of the courts and the report on the implementation thereof,*
- b) shall examine the economic and financial management of courts, and*
- c) shall express opinions on the detailed conditions and levels of other benefits.*

*Section 104 (1) The NJC determines its budget in advance for each year and thereafter reaches an accord about the budget with the President of the NOJ. The budget of the NJC is laid out separately as part of the budget of the NOJ. The NOJ ensures the technical conditions for the operation of the NJC*

### 2 Statement of facts

#### **a) Fiscal planning of the chapter on the courts:**

In a transcript dated 25 May 2018 and sent to all members of the NJC, the President of the NOJ wrote that the Minister responsible for public finances had developed the schedule, framework and requirements of content of fiscal planning for 2019 and sent the proposed allocation limits of the chapters by allowing three business days for communicating any needs for additional allocations. As 24 May 2018 was set as the deadline for preparing a proposal, she was left without an opportunity to coordinate separately between the institutions and **sent to the Ministry of Finance the requested additional allocation**, determined in three business days **without waiting to receive the opinion of the NJC**. In turn, the President of the NOJ informed NJC members in a letter about having completed co-ordinations with the Ministry, which resulted in modifications of the additional allocations requested for IT and for upgrading salary scales. She also mentioned having given information about the additional allocation requested for the chapter at the Government Meeting on 5 June 2018.



The President of the NOJ **allowed access** for the members of the NJC to her proposal concerning the draft budget for 2019 **only after the submission of the proposal and also failed to submit the proposal to the NJC for expressing its opinion in retrospective**. Nevertheless, the NJC issued Decision 75/2018. (VI.06.) using any documentation available to it to express its supporting opinion (without receiving a formal submission) about the additional allocation requested for Chapter VI on the Courts in the Budget for 2019 by the President of the NOJ.

***b) Report on the implementation of the budget:***

The President of the NOJ failed to deliver the report on the implementation of the budget for the year 2017 to the NJC, and thereby **prevented the Council from exercising the right to express an opinion conferred upon in in the cardinal act**. In October 2018, the NJC warned the President of the NOJ specifically about her duty to send the report to the NJC for an opinion. ([Annex 13](#))

Despite all of these efforts, the President of the NOJ failed to abide by her statutory obligation, which led on to the NJC **sending a signal to the President of the NOJ on 5 December 2018**, asserting therein that the President of the NOJ had failed to comply with her statutory obligations relating to the annual report of her activities and the report on the implementation of the budget of the courts. The NJC had indicated earlier that delivering documents to individual NJC members by their employer and positing documents on the central website did not amount to meeting the obligation to report. ([Annex 14](#))

***c) Determining the detailed conditions for and the level of other benefits:***

The President of the NOJ **failed to send the NJC any submissions, accounts or aggregations** about the determination of the detailed conditions for and the level of other benefits in 2018, thereby preventing the Council from exercising its right to express an opinion granted to it in the cardinal act.

Prior to 7 November 2018, the President of the NJC reminded the President of the NOJ to send an aggregation of other allocations, but the President of the NOJ failed to send any documentation about other benefits, and lacking the submission of the President of the NOJ about the matter, the NJC was prevented from expressing an opinion on the determination of the detailed conditions for and the level of other benefits allocated to judges at its meeting on 5 December 2018, despite being obliged by law to do so. ([Annex 13](#))

***d) The Budget of the National Judicial Council for 2019:***

The President of the NOJ **failed to seek the opinion of the NJC** about the section of the budget relating to the NJC **during the submission of the chapter of the budget on the courts**. The NJC discussed and determined its budget for 2019 at its meeting on 5 December 2018. The proposed budget including an invitation to the meeting was delivered to the President of the NOJ, who failed to respond or object to the proposal. The President of the NJC sent to the President of the NOJ NJC Decision 122/2018. (XII.05.) on the Budget of the National Judicial Council for 2019 along with the draft of the agreement to be concluded between the President of the NOJ and the President of the NJC, as required by law. ([Annex 15](#))

On 7 January 2019, a month after the adoption of the budget by the NJC, the NOJ raised content related objections and refused to conclude the agreement with reference to the illegitimate operation of the NJC, noting that the courts engaged in a service relationship with NJC members will ensure the coverage for the conditions necessary for the operation. ([Annex 16](#))

### 3 Conclusions

The **President of the NOJ failed to perform her duties** relating to the report on implementing the budget for 2017, the determination of the detailed conditions for and the level of other benefits and partially as regards the proposal for the Chapter on the Courts in the 2019 Budget **as laid down in the cardinal act**.

The President of the NOJ failed altogether to send to the NJC the financial report and the submission concerning other benefits thereby rendering the expression of an opinion impossible. In an objectionable manner, she provided access to the proposed budget only after submitting it to the Government. Despite the brevity of time, the President of the NOJ could have proposed voting in written form to avoid forcing the NJC to express an opinion about a proposal which was already submitted.

It is the duty of the NOJ to ensure the technical conditions for NJC operations and the NOJ holds no right of control over the National Judicial Council. The President of the NOJ has the duty to facilitate the operation of the NJC from the budget allocated to the NJC rather than from the budget allocated to the courts where NJC members are employed to serve. **By refusing to sign the agreement and to disburse payments directly, the President of the NOJ contravened the provisions of the cardinal act and prevented the NJC from attending to its constitutional duties.**

## VIII PERFORMING THE OBLIGATIONS RELATING THE HR DECISIONS

### 1 Legislative environment

Act CLXI of 2011 on the Organisation and Administration of Courts (OACH) provides as follows about **the powers exercised in relation to the HR matters**:

*103 (3) In the area of human resources, the NJC:*

*k) may upon the resignation of a judge grant permission to reduce the resignation period below 3 months and may exempt the judge from the duty to perform work for the whole duration or a part of the resignation period, and*

*l) shall upon the retirement of a judge or a judge reaching the age specified as the reason for release, determine, with reference to the Act on the Legal Status and Remuneration of Judges, the period during which the judge is excused from having to perform work related duties during the period of release.*

Act CLXII of 2011 on the Legal Status and Remuneration of Judges (LSRJ Act) provides as follows about **the period of release and resignation of judges**:

*Section 93 (1) A judge may resign his office in writing at any time.*

*(2) In the event of a judge's resignation, the resignation period is 3 months. The President of the NJC may, at the judge's request, consent to a shorter resignation period and may further exempt the judge from the duty to perform work for the duration or a part of the resignation period.*

*Section 94 (3) The period of release shall be 6 months when judges retire or reach the age specified as the reason for release. Judges shall be exempted from the duty to perform work for 3 months. The NJC may, at the judge's request, consent to shortening the release period below 3 months and may, at the judge's request, decide not to exempt the judge from the duty to perform work.*

### 2 Statement of facts

Not counting Curia judges, **the service relationship of altogether 63 judges terminated** between 2 May 2018 and 31 December 2018 due to the reasons listed below: Judge's resignation in 18 cases, request to be retired in 36 cases and reaching the age limit specified for judges in 9 cases. **The President of the NOJ did not forward a single human resources proposal** seeking to shorten the resignation period, to exempt the judge from work duties or to establish work conditions during the period of release in departure from statutory rules. There are no data available concerning the cases from among the above where the consent of the NJC would have been required. ([Annex 17](#))

The NJC could exercise its powers relating to HR matters in three cases only due to the lack of central proposals.

- Forward to the judge's application delivered to both the President of the NOJ and the NJC, the National Judicial Council adopted NJC Decision 96/2018. (IX.21.) to exempt dr. István Keviczki, resigning judge of the Budapest-Capital Regional Court, from the duty to perform work as of 1 November 2018.

- Forward to a direct proposal received from the President of the Budapest Environs Regional Court, the National Judicial Council adopted NJC Decision 117/2018. (XI.22.) to exempt dr. Katalin Kasa, resigning Monor District Court judge and titular regional court judge from the duty to perform work as of 22 November 2018.
- Forward to a direct proposal received from the President of the Budapest-Capital Regional Court, the National Judicial Council adopted NJC Decision 125/2018. (XII.05.) to allow shortening the period of resignation of dr. István György Szondy, Budapest-Capital Regional Court judge and exempted him from the duty to perform work as of 1 February 2019.

The presidential transcript forwarded by Judge Dr. István Keviczki to the NJC serves as legal grounds to the assumption that the presidents of regional courts and regional courts of appeal resolved to grant consent autonomously, which would amount to depriving the NJC of the powers granted to it in the cardinal act. ([Annex 18](#))

### 3 Conclusions

**The President of the NOJ should have forwarded to the NJC all HR related submissions put forward by the judges.** The power of consent designated for the NJC in the cardinal act may not be exercised by either the President of the NOJ or any managers appointed by the President.

**IX**  
**BREACH OF THE DUTY TO COOPERATE**

**1 Communication between the NJC and the President of the NOJ**

The National Judicial Council in its capacity as a public body and the President of the NOJ **called upon and contacted the President of the NOJ** repeatedly seeking to have certain measures taken and to be provided with information. These occurred in the following temporal sequence:

<b>Date</b>	<b>Subject matter of the warning</b>	<b>Legal basis</b>	<b>Performance</b>	<b>Outcome</b>
02/05/2018	The NJC called upon the President of the NOJ to take measures promptly to facilitate the election of substitute members	Section 92 of the OACH	delayed	On 31 May 2018, the President of the NOJ took steps to issue calls to presidents to convene all judges' conferences and also determined the date of the meeting of delegates (09.10.2018) with substantial delay
02/05/2018	The NJC asked the President of the NOJ to consider the experiences of maintaining electronic contact during criminal proceedings and infringement procedures and make a submission to the Ministry of Justice.	no explicit legal basis	none	The President of the NOJ didn't answer.
16/05/2018	The NJC called upon the President of the NOJ to promptly act upon the statutory duty show owes to the council, make the necessary submissions, respond to NJC calls in merit and provide the NJC with the information needed for acting in line with its supervisory duties. The NJC warned the President of the NOJ of the potential consequences under public law.	Sub-section 103(1) a) of the OACH	none	After 2 May 2018, the President of the NOJ did not send any submissions to the NJC and typically failed to respond to calls addressed to her
12/05/2018	The President of the NJC called upon the President of the NOJ to provide access for the NJC members to the files relating to applications filed in 2017 for judicial and court managerial positions for the purposes of an inspection of documents.	Sub-section 112(1) a) of the OACH	none	The Presidential Cabinet of the NOJ refused to grant access for the NJC members to documents for inspection. (25/05/2018)
02/06/2018	The NJC requested information from the President of the NOJ about performing a review in 2017 of court managers the President has powers to appoint.	Sub-section 76 (6) c) of the OACH	none appropriate	The NJC ascertained on the basis of data made available that the President of the NOJ failed to review the vast majority of appointed managers. (09/07/2018)
02/06/2018	The NJC requested information about the performance by the President of the NOJ of her duty to measure national work load of each level of the courts annually.	Sub-section 76(4) a) of the OACH	inappropriate	The President of the NOJ did not provide sufficient data to facilitate a full review. (09/07/2018)
02/06/2018 18/06/2018	The NJC requested the President of the NOJ to provide information about her practice in relation to the evaluation of applications for judicial and court managerial	Sub-section 103(3) a) of the OACH	inappropriate	Despite repeated requests, the President of the NOJ failed to provide or provided incomplete information about the timeliness of evaluating applications, which

	positions in 2017.			prevented performing a full review. (09/07/2018)
02/06/2018	The NJC invited the President of the NOJ to evaluate the option to hold the central ceremony of the “Day of Courts” in July 2018.	no explicit legal basis	none	As the President of the NOJ did not change her former decision, the central ceremony was cancelled in 2018, and the prizes offered by the NJC were actually handed over by court presidents upon instructions received from the President of the NOJ.
26/07/2018	The President of the NJC invited the President of the NOJ to submit proposals for the appointment of disciplinary judges based on the nominations received from the courts.	Sub-section 103(3) g) of the OACH	none	The President of the NOJ failed to make a submission to the NJC about the appointment of disciplinary judges.
18/09/2018 17/10/2018	The NJC invited the President of the NOJ to send to the NJC the circular letter addressed to the presidents and leaked to the media, which requests court presidents to “record at least three aspects of illegality” relating to the operation of the NJC along with the answers received from the presidents.	no explicit legal basis	none	The President of the NOJ did not grant the request and did not even bother to answer the letter of the President of the NJC.
24/09/2018	The President of the NJC called upon the President of the NOJ to remit the costs incurred by participating in the 2018 Convention of Lawyers.	Section 104 (1) of the OACH	none	The President of the NOJ refused to pay the costs. She has not remitted funds to cover expenses since 4 December 2018 despite requests received from the President of the NJC.
03/10/2018	The NJC called upon the President of the NOJ to forward the NJC’s proposed legislative amendment to the Minister Responsible for Justice.	Sub-section 102 (1) b) of the OACH	none	The NJC has no official knowledge of whether or not the request has been granted, as the President of the NOJ didn’t answer.
03/10/2018	The NJC called upon the President of the NOJ to promptly take the necessary measures in response to a purported contravention the President of the Szeged Regional Court of the provisions of Section 127(4) of the OACH committed by re-appointing a person applying for the fourth time to act as president of a district court without seeking the prior consent of the NJC.	Sub-section 103 (1) a) of the OACH	none	The NJC has no official knowledge of any action in response to its warning to restore compliance, as the President of the NOJ didn’t answer.
03/10/2018	The President of the NJC called upon the President of the NOJ to start an internal investigation into repeated tempering (prior opening) the sealed mail addressed and sent by the courts of judicial discipline to the NJC Office.	Section 104 (1) of the OACH	Yes	The President of the NOJ forwarded the statement made by dr. János Cserni, head of decision, to the effect that the mail items had been opened by mistake by NOJ staff. (07/11/2018)
16/10/2018	The President of the NJC called upon the President of the NOJ to convene the Expert Board on Judicial Careers as required under an agreement signed on 2 April	based on an agreement between several organisations	none	The President of the NOJ didn’t answer.

	2015			
29/10/2018	The President of the NJC called upon the President of the NOJ to discharge the annual report and invited her to attend the meeting	Sub-section 103 (1) a) of the OACH	none appropriate	The President of the NOJ did not act upon the invitation invoking the report published on the website.
07/11/2018	The NJC called upon the President of the NOJ to provide information regarding the report on the implementation of the 2017 budget of the courts and the determination of the detailed conditions for and the level of other benefits.	Sub-sections 103 (2) a) and c) of the OACH	none	Information was forwarded via the President of the Curia, but was not suitable for serious review. (05/12/2018)
07/12/2018	The President of NJC contacted the President of the NOJ to conclude the agreement on the budget.	Section 104 (1) of the OACH	none	The President of the NOJ refused to conclude the agreement.

After 24 April 2018, the President of the NOJ no longer communicated with the NJC in its capacity as a public body regarding its questions and warnings and sent the following responses to the NJC President or “the remaining members of the NJC”:

- In her letter addressed to the members of the NJC dated 23 May 2018, the President of the NOJ mentioned in respect of the subject matters covered in the communication dated 18 May 2018 “*that she wished to offer to the attention of the NJC members the website [birosag.hu](http://birosag.hu), where all information disclosed by the President of the NOJ is publicly accessible.*” ([Annex 19](#))
- On 25 May 2018, the President of the NOJ informed NJC members that an extraordinary event occurred at the NJC office, where members of the NJC arrived to inspect documents, which she thought was tantamount to breach of discipline by the NJC members. She also notified NJC members that she was unable in the future to ensure the provision of any administrative assistance on behalf of NOJ officials for the NJC office. ([Annex 20](#))
- In a letter dated 31 May 2018, the President of the NOJ informed the President of the NJC that she would no longer provide the NJC with administrative assistants due to the extraordinary event that occurred on 25 May 2018. She requested that the President of the NJC take care of operating the office independently. ([Annex 21](#))
- In a letter dated 5 June 2018, the President of the NOJ informed the members of the NJC about the subject matters relating to the proposals tabled for the meeting on 6 June 2018. The letter says that information about the evaluation of applications for judicial and court managerial positions is also available at the website. She posted information on the website about the work load of judges starting 19 May 2018, which NJC members were also permitted to view. She remarked regarding the information about the evaluation of managers that it was also available on the website for NJC members to view, and classified the request by NJC members to inspect documents “*impossible to interpret and superfluous*”. She insisted that it was common knowledge that there are several hundred meters of documentation stored by the NOJ, which renders it difficult to present the documentation indicated and requested in the rogatory letter. She also informed the members of the NJC that she could not provide the NJC office with administrative staff and had asked the President of the Curia to second a justice employee employed to provide services at the Curia to attend to the administration of the NJC. ([Annex 22](#))

- In a letter dated 4 July 2018, the President of the NOJ informed the President of the NJC that the requested documentation was available at the website [birosag.hu](http://birosag.hu) for the members of the NJC, the judiciary and the general public as regards the evaluation of applications for judicial and court managerial positions, the work load of judges and the training and evaluation of managers. She also pointed out that publication on the Internet is equivalent to electronic delivery. Otherwise she provided general information about measuring the work load of judges, adding that the NOJ keeps addressing the issues of case-flow and individual work load and identified the reduction of work load and ensuring proportional work load for each judge as objectives, with latter being a high priority project in the Sustainable Development Program. She attached three pages on the practice followed in the course of reviewing managerial activities and shared the protocol of upcoming managerial audits of presidents of regional courts of appeal and regional courts. She also mentioned that although the model of auditing management activities is fairly recent, that does not mean there has been no monitoring of the activities of managers since their appointment. She argued in her disclosures regarding the applications declared unsuccessful in 2017 that those applications represented a small fraction of the total number. ([Annex 23](#))
- On 28 August 2018, the President of the NOJ forwarded to the members of the NJC the letter she sent to the president of the first and the vice-president of the second instance court of discipline to notify them that the headcount of the first instance court of discipline had dropped to 31, which is why she considered it practical to modify the procedure of case distribution to ensure uninterrupted operation, and informed the presidents that “*she would make the submissions concerning the appointment of new disciplinary judges once the legitimate operation*” of the NJC “*is restored*”. ([Annex 24](#))
- In a letter addressed to the President of the Curia dated 6 November 2018, the President of the NOJ stated her case about the illegitimate operation of the NJC since 24 April 2018 and therefore called upon the President of the Curia to “*inform fellow members of the Curia that the NOJ places particular emphasis on transparency in administration, discloses to the public and the judiciary the process of decision support and decision making in a great variety of forms and interfaces and the members of the NJC can obtain information from the internal and external websites.*” Regarding the agenda of meetings, she stated that the proposed legislation on Act XC of 2016 on the implementation of the 2017 budget of Hungary was available at the website [parlament.hu](http://parlament.hu), and the training plan for 2019 was available for studying at the central intranet site. ([Annex 25](#))
- In another letter addressed to the President of the Curia with the same date, she explained with reference to the request by the Chairperson of the Committee to grant access to documents for inspection that it was impossible to present the files identified as the subject matter of the review and instead she enclosed two attachments containing the records taken of applications for judicial and court managerial positions declared unsuccessful up to 31 October 2018 and the information written to the advisory bodies about applications for managerial positions declared unsuccessful due to other reasons. She noted that “*info-graphic disclosure documents had also been prepared*” in that regard. ([Annex 7](#))
- In November 2018, the managers of courts serving as the place of employment of certain NJC members informed those members of the NJC upon instructions received from the President of the NOJ about the electronic interfaces they could use to obtain information about matters relating to their duties, including the central websites of Parliament and the courts.



- On 20 November 2018, the head of the Economics Division of the NOJ stated that “she had no means to pay” the invoices of accommodation costs incurred by members arriving from outside Budapest on the day preceding the NJC meeting, and invoices should be sent for payment to the court where the member is employed. ([Annex 26](#))

## 2 The publication duties of the President of the NOJ in connection with the NJC

Despite being sent to the President of the NOJ along with a request, the decisions of the NJC were no longer published in the Gazette of the Judiciary after September 2018, which runs contrary to long years of practice.

The President of the NOJ **deleted all of the decisions and all data relating to the operation of the NJC simultaneously with upgrading the central website of the courts.** The NJC had received no information about the termination of the former website and was given no opportunity to backup data uploaded earlier. The administrative associate of the NJC noticed on 6 December 2018 that she was unable to log on to the central website of the courts in order to upload the summary of the meeting on 5 December 2018 and the meeting schedule for 2019. She contacted the NOJ IT Division and was informed that her access rights to the website had been deleted upon a special request. The President of the NJC called upon the President of the NOJ on 11 December 2018 to publish the NJC meeting schedule along with the summaries of meetings, but the request remained unanswered. ([Annex 27](#))

The current central website of the courts contains no data about the composition of the NJC, its members and decisions, or its by-laws of organisation and operation. **Likewise, the summary of the meeting on 5 December 2018 or the meeting schedules for 2019 are not displayed,** regardless of the fact that the publication of these documents is required by a cardinal act [Section 108(1) of the OACH].

As the NJC has not been given an opportunity since its establishment to post its position about certain matters or its communications on the central website of the courts, the members have decided to bear the costs of operating a website starting 8 October 2018 to be able to reach out and forward communications to the judges who elected them and to publicly display the activities, decisions and minutes of the NJC. That, however, does not exempt the President of the NOJ from living up to her publication obligation as set forth in the cardinal act.

## 3 The Central Celebration of the Day of Judges

Forward to the instructions of the President of the NOJ, the traditional central event held in previous years to celebrate the Day of Judges was cancelled on 13 July 2018 this year. Seeking to have the event materialise, the NJC contacted the President of the NOJ in letter and simultaneously asked the President of the Curia and the Association of Hungarian Judges to intervene, but all these efforts remained unsuccessful. ([Annex 28](#))

In a document addressed to the President of the NJC dated 27 June 2018, the President of the NOJ stated that the NOJ developed the certificates of persons recognised by the NJC in a form that does not require the signature of the President of the NJC. The certificates and related publications will be handed over to the regional courts of appeal and regional courts prior to the all judges’ conferences for distribution at local ceremonies. That way, the President of the NOJ prevented the President of

the NJC from signing the certificates and from handing them over to those recognized at a central ceremony, whereby the NJC was excluded from participating in the awards ceremony of the Andor Juhász Award established by the National Council for the Administration of Justice and upheld by the NJC through NJC Decision 2/2012. (III.24.). ([Annex 29](#))

#### 4 Signals by the NJC in the interest of the law

The cardinal act provides the NJC with two instruments for cases when it observes non-compliance with legislation: it may send a signal forward to sub-section 103(1) a) of the OACH, or may, as provided in Section 74 of the OACH submit a motion to have the President of the NOJ removed from office „*upon a failure by the President of the NOJ to perform presidential duties for longer than 90 days due to reasons attributable to the President, and furthermore, upon being discredited in the presidential position due to an act, conduct or omission.*“

Since 2 May 2018, the NJC has **sent several signals in the interest of the law** to the President of the NOJ, but failed to observe any positive changes in the conduct of the President of the NOJ after any of these signals. The signals given were as follows:

- On 2 May 2018 a signal was given due to declaring applications for judicial and court managerial positions unsuccessful and secondments due to managerial appointments. ([Annex 5](#))
- On 16 May 2018, the NJC called upon the President of the NOJ to promptly act upon the statutory duty show owes to the NJC, make the necessary submissions, respond to NJC calls in merit and provide the NJC with the information needed for acting in line with its supervisory duties. ([Annex 3](#))
- On 9 July 2018 a signal was given due to the failure to conduct management reviews in compliance with the provisions of law, the failure to determine the national average work load and the incomplete disclosures made about the practice adopted for the determination of applications for judicial and court managerial positions. ([Annex 30](#))
- On 3 October 2018 a signal was given due to the appointment of the President of the Hódmezővásárhely District Court without consent. ([Annex 12](#))
- On 7 November 2018, a signal was given due to the rejection to facilitate the inspection of documents. ([Annex 8](#))
- On 5 December 2018, a signal raised the issue of the violation of the statutory duty relating to the annual report and the report on the implementation of the budget of the courts. ([Annex 14](#))

#### 5 The mid-term election of substitute members of the NJC

In response to a reminder by the NJC, the President of the NOJ stated on 15 May 2018 her intention to set the dates for the all judges' conferences to be convened for electing the substitute members of the NJC, whereby “*the legally compliant operation of the NJC could be restored*”. However, it was only on 31 May 2018 that the President of the NOJ called upon the presidents of regional courts and regional courts of appeal to take steps to convene all judges conferences to elect NJC substitute

members before the summer recess of adjudication (15 July 2018). The President of the NOJ set the date for the electors meeting to elect the substitute members without identifying a venue on the distributed invitations and in turn changed the date to 9 October. **No substitute members were elected at the delegates' meeting.** ([Annex 4](#))

Actually, the President of the NOJ never intended to replenish the headcount of the NJC. On 5 June 2018, she proposed to complement the OACH so as to ensure the legally compliant operation of the NJC by setting up a “*transitional judicial panel*” to be composed of the three youngest and the two oldest candidates not elected at the most recent delegates' meeting to attend to certain duties of the NJC while its operation is suspended. ([Annex 31](#))

On 26 October 2018, the President of the NOJ distributed to the courts seeking their preliminary opinion another proposed amendment of legislation under the title “*ensuring the legitimate operation of the NJC*”. Among others, the proposal seeks to increase the membership of the NJC to 26, to formulate new rules for the election of members (the members would be delegated by all judges conferences with each court represented by 1 member) and to eliminate the present constraint of 5 years of juridical practice as well as the position of substitute members of the NJC. Departing members would be replaced through delegation by the all judges' conference of their place of employment within 90 days. ([Annex 32](#))

At its meeting held on 7 November 2018, the NJC adopted a decision whereby it instructed the senior member of the delegates' meeting to re-convene the delegates' meeting and to have substitute members elected. Dr. Ildikó Kovács, senior member, head of council at the Kaposvár Regional Court stated in her communication posted on the central intranet on 20 November 2018 that the delegates meeting convened to elect substitute members closed without success, and accordingly she considered the additional duty assigned to the senior member to have lost effect. ([Annex 33](#))

The President of the NOJ used the central intranet on 16 October 2018 to notify judges that the operation of the NJC was not legitimate, and in order to ensure the operation of the judicial organisation in accordance with the Fundamental Law, it is necessary to have an eligible body decide a question relating to the interpretation of law emanating from the position of the NJC, which suggests that the Council continues to have the quorum, and therefore there is nothing that prevents it from operating. The Act on the Constitutional Court provides a narrow definition of the persons eligible for bringing matters relating to the interpretation of the Fundamental Law before the Constitutional Court and none of the members of the judicial organisation are eligible, which is why the President of the NOJ contacted the Commissioner of Fundamental Rights to start proceedings with the Constitutional Court to have the body authorised under public law to interpret the Fundamental Law take up a position on the legitimacy of the operation of the NJC.

The communication of the President of the NOJ, her actions and the measures she deliberately ignored to take offer sufficient ground for drawing the conclusion that **the President of the NOJ spares no effort to prevent returning the membership of the NJC to 15 once again**, as that would not allow her to argue that her supervisory authority is inoperable.

Budapest, 28 January 2019

Dr. Zoltán Rochlitz

Dr. Katalin Csontos

Dr. Judit Fatalin

Dr. Bálint Gaider

Dr. Viktor Vadász

*See the minutes, summaries and decisions of the meetings of the National Judicial Council  
and the communications of the NJC at the website: [www.orszagosbiroitanacs.hu](http://www.orszagosbiroitanacs.hu).*

## LIST OF ANNEXES

*(These original documents are only available in Hungarian.)*

<a href="#"><u>Annex 1</u></a>	Decision 101/2018. (X.03.) NJC on establishing the Committee
<a href="#"><u>Annex 2</u></a>	Letter by the President of the NOJ dated 27 April 2018 explaining her legal position about the inoperability of the NJC
<a href="#"><u>Annex 3</u></a>	Decision 70/2018. (V.16.) NJC on warning the President of the NOJ to perform her statutory duties in respect of the NJC
<a href="#"><u>Annex 4</u></a>	Minutes of the delegates meeting held on 9 October 2018 to elect substitute members
<a href="#"><u>Annex 5</u></a>	Decision 59/2018. (V.02.) NJC on responding to the questions asked by the all judges' conference of the Győr Regional Court of Appeal and Decision 60/2018. (V.02.) NJC on responding to the questions asked by the all judges conference of the Budapest-Capital Regional Court
<a href="#"><u>Annex 6</u></a>	Warning dated 16 October 2018 by the Committee regarding the inspection of documents
<a href="#"><u>Annex 7</u></a>	Letter dated 6 November 2018 by the President of the NOJ sent to the President of the Curia regarding the inspection of documents
<a href="#"><u>Annex 8</u></a>	Decision 115/2018. (XI.07.) NJC on the signal sent to the President of the NOJ for rejecting the inspection of documents
<a href="#"><u>Annex 9</u></a>	Letter by the Vice-President of the second instance court of judicial discipline dated 18 July 2018
<a href="#"><u>Annex 10</u></a>	Warning sent to the President of the NOJ to submit a proposal in respect of judges of judicial discipline
<a href="#"><u>Annex 11</u></a>	The submission of the President of the NOJ in respect of the consent to the appointment of the President of the Mosonmagyaróvár District Court
<a href="#"><u>Annex 12</u></a>	Decision 108/2018. (X.03.) NJC on the signal sent to the President of the NOJ in respect of the President of the Hódmezővásárhely District Court
<a href="#"><u>Annex 13</u></a>	Letter by the President of the NJC dated 29 October 2018 in respect of submissions by the President of the NOJ regarding the report and other matters
<a href="#"><u>Annex 14</u></a>	A summary of the meeting of the NJC on 5 December 2018 including a signal to the President of the NOJ in respect of the breach her obligation relating to the report
<a href="#"><u>Annex 15</u></a>	Letter by the President of the NJC on the agreement about the budget
<a href="#"><u>Annex 16</u></a>	Memo containing information provided by the Head of the Economic Division of the NOJ
<a href="#"><u>Annex 17</u></a>	The termination of the service relationship of judges after 2 May 2018
<a href="#"><u>Annex 18</u></a>	Transcript by the head of the presidential secretariat of the Budapest-Capital Regional Court
<a href="#"><u>Annex 19</u></a>	Letter by the President of the NOJ dated 23 May 2018 on refusing to provide data
<a href="#"><u>Annex 20</u></a>	Letter by the President of the NOJ dated 25 May 2018 on the failure to provide an official
<a href="#"><u>Annex 21</u></a>	Letter by the President of the NOJ dated 31 May 2018 on the failure to provide an official
<a href="#"><u>Annex 22</u></a>	Letter by the President of the NOJ dated 05 June 2018 on refusing to provide data and to allow the inspection of documents
<a href="#"><u>Annex 23</u></a>	Letter by the President of the NOJ dated 04 July 2018 on refusing to provide data
<a href="#"><u>Annex 24</u></a>	Letter by the President of the NOJ forwarded to NJC members on 28 August 2018 on the rejection to make a proposal in respect of the appointment of disciplinary judges
<a href="#"><u>Annex 25</u></a>	Letter dated 6 November 2018 by the President of the NOJ addressed to the President of the Curia regarding the rejection to provide data
<a href="#"><u>Annex 26</u></a>	Letter dated 20 November 2018 by the Economic Division of the NOJ on refusing to make the budget available
<a href="#"><u>Annex 27</u></a>	Letter by the President of the NJC including a call to publish meeting schedules and summaries
<a href="#"><u>Annex 28</u></a>	Letter by the President of the NOJ regarding the "Day of the Courts"
<a href="#"><u>Annex 29</u></a>	Letter by the President of the NOJ dated 27 June 2018 on handing over the awards granted by the NJC
<a href="#"><u>Annex 30</u></a>	Decision 80/2018. (VII.9.) NJC, Decision 81/2018 (VII.9.) NJC and Decision 82/2018 (VII.9.) on the signals given to the President of the NOJ
<a href="#"><u>Annex 31</u></a>	Proposed amendment by the President of the NOJ on a "transitional council"
<a href="#"><u>Annex 32</u></a>	Proposed amendment by the President of the NOJ on restructuring the Council
<a href="#"><u>Annex 33</u></a>	Decision 112/2018. (XI.7.) NJC on a warning issued to interim presidents