



**Decision no. 34/2019 of 8th May of the National Judicial Council
on the proposal to deprive the President of
the National Office for the Judiciary of her office**

The National Judicial Council proposes to the National Assembly (Parliament) that dr. Tünde Handó, the President of the National Office for the Judiciary be deprived of her office.

REASONING

1. LEGAL BACKGROUND

According to Article B) Paragraph (1) of the Fundamental Law of Hungary, Hungary shall be an independent, democratic rule-of-law State.

According to Article 25 Paragraphs (5) and (6) of the Fundamental Law of Hungary the central responsibilities of the administration of the courts are performed by the President of the National Office for the Judiciary (referred to from now as President of NOJ), who is appointed by the National Assembly with a two-third majority for nine years on the proposal of the President of the Republic. Its tasks are laid down in Section 76 of Article CLXI of 2011 on the Organization and Administration of Courts (referred to from now as AOAC).

According to Article 25 Paragraph (5) of the Fundamental Law of Hungary the National Judicial Council (referred to from now as NJC) supervises the central administration of the courts. Based on Paragraph (6) the President of the Curia - who is also elected for nine years - is a member of the NJC, further members of which are elected by judges for 6 years. The tasks of the NJC are specified in Section 103 of the AOAC, most importantly highlighting its general supervisory powers: „supervises the President of NOJ's central administration and, if necessary, draws the President of NOJ's attention to the certain issue”.

Dr. Tünde Handó was appointed for 9 years from 1st January 2012 as President of NOJ by the National Assembly with its Decision no. 92/2011 (XII.14).

According to Article 28 of the Fundamental Law of Hungary „in the course of the application of law, courts shall interpret the text of legal regulations primarily in

accordance with their purposes and with the Fundamental Law. When determining the purpose of the law, it is primarily the preamble to the legislation or the explanatory reasoning of the proposal to amend or enact the legislation that has to be taken into account. When interpreting the legal regulations, it shall be presumed that they serve moral and economical purposes which are in accordance with common sense and the public good.”

According to the explanatory reasoning to the seventh amendment of the Fundamental Law of Hungary, this interpretation framework applies not only to the interpretation of the law by the courts, but also by all public authorities.

According to the general reasoning of the AOAC with the judicial administration model introduced in 2012 "a kind of operative administrative management may be set up, that is capable of responding immediately to problems; the President of NOJ with wide powers and the NOJ directly under its control. However, the President does not operate without any control since it can be removed from its office (following the proposal of the President of the Republic or the NJC) and the NJC has the right to comment and form an opinion and also has the right to indicate any problems to the President of NOJ.”

Based on Section 74 Paragraph (1) of the AOAC the term of mandate of the President of NOJ shall be terminated by deprivation of its office „in case the President of NOJ – for reasons imputable to him/her – fails to perform its duties arising from its mandate beyond 90 days, or in case the President of NOJ has become unworthy due to any of its action, conduct or omission.” The deprivation of office is proposed to the National Assembly by the President of the Republic or the NJC with a decision passed by a two-third majority of its members. According to Paragraph (2) the deprivation of office “those who are entitled to make a proposal according to Paragraph 1 may propose the deprivation of office after examining the grounds on which it is based - by stating the detailed reasons and by simultaneously attaching the documents on which the reasons are based.”

2. OBSERVATIONS FOLLOWING THE INQUIRIES CARRIED OUT BY THE NJC

2.1. The period between 1st January 2017 and 5th February 2018:

Following initiatives by the general assemblies of judges held at the Metropolitan Court and the Győr Regional Court of Appeal, on 22nd February 2018 the NOJ set up an ad hoc committee in order to examine the practice of the President of NOJ when appointing judges and leaders of the court and also when declaring applications to these positions unsuccessful. The ad hoc committee reviewed decisions taken by the President of NOJ between 1st January 2017 and 5th February 2018 and prepared an inquiry report about its findings (referred to from now as: inquiry report no.1). The

President of NOJ didn't comment on the report. On 2nd May 2018 inquiry report no.1 had been accepted by the NJC and based on its content by NJC Decisions no. 59/2018. (V.02.) and no. 60/2018. (V. 02.), they responded to the questions posed by the judges of the Metropolitan Court and Regional Court of Appeal of Győr.

According to inquiry report no.1 on 2nd May 2018 the NCJ made the following observations:

- 2.1.1. Between the period 1st January 2017 and 5th February 2018 the President of NOJ failed to properly justify her decision when declaring applications to court leadership positions unsuccessful and therefore contravened Section 77 Paragraph (2) and Section 132 Paragraph (4) of the AOAC. *[pages 25-28. of inquiry report no.1]*
- 2.1.2. Between the period 1st January 2017 and 5th February 2018 the President of NOJ declared several judicial applications unsuccessful – these decisions were partly unfounded, partly lacking of justification – and therefore contravened Section 77 Paragraph (2) of AOAC and also Section 20 Paragraph (1) of Act CLXII of 2011 on the Legal status and Remuneration of Judges (referred to from now as: LSRJ) *[pages 29-35. of inquiry report no.1]*
- 2.1.3. In the years 2016-2017 the President of NOJ contravened Section 31 Paragraph (2) of the LSRJ by her inadequate decisions to appoint certain judges to another court. The reasons of these decisions were not to facilitate the equipartition of caseload nor to help the professional development of judges, but to carry out leadership tasks. *[pages 21-25. of inquiry report no.1]*
- 2.1.4. The President of NOJ by her practice of following her declaration that an application for a judicial leadership position is unsuccessful for the second time, didn't take action as soon as possible to appoint a leader but much later, contravened Section 133 Paragraph (1) of the AOAC. *[pages 21-25. of inquiry report no.1]*

Following the above on 2nd May 2018 the NCJ indicated to the President of NOJ to **fully comply with the regulations of the cardinal law during the appointment of judges, judicial leaders and when transferring judges to another court.**

2.2. Indication made to the President of NOJ on 16th May 2018:

On 27th April 2018 the President of NOJ informed the NJC that she no longer considers the Council operable and withdrew her previously made proposals concerning personnel questions.

On 16th May 2018 the NJC made an indication to the President of NOJ and drew her attention to **fully comply with the regulations stated in the cardinal law** – setting aside her legal position – and make the necessary proposals. The NCJ pointed out that it is

contrary with the rule of law if the supervised person unilaterally declares and considers the public body supervising her to be inoperative and also to the fact that the failure to comply with her legal obligations may require the initiation of deprivation of office.

Despite the indication since 27th April 2018 the President of NOJ didn't submit any proposals to the NJC, didn't attend any of its meetings, during her communication she called the body that is supposed to control her illegitimate and unlawfully operating. She repeatedly used these terms in her correspondence and also in her statements made on the central website of courts and in the media.

2.3. The period between 3rd May 2018 and 5th February 2019:

On 3rd October 2018 the NJC set up another committee in order to follow-up the practice continued by the President of NOJ regarding the evaluation of applications of judges and court leadership positions and to examine the fulfillment of her obligations towards the NJC. The committee had a dual role: primarily to analyze whether the President of NOJ changed her practice of illegitimately declaring judicial applications unsuccessful and the way of appointing judges and leaders of the courts. Secondly their role was to examine whether she fulfilled her legal obligations towards the NJC and whether she provided NJC with the information needed for its supervisory activity.

The committee conducted the examination and on its meeting held on 6th February 2019 the NJC adopted the inquiry report (*referred to form now as inquiry report no.2*).

Regarding the fact that on 4th February 2019 the President of NOJ informed the President of the NJC that she intends to comment on the draft inquiry report that was sent to her prior to the meeting, the NJC **provided an additional deadline for her comments until 22nd February 2019** – and at the same time adopted the inquiry report – **and also invited the President of NOJ to submit her proposals until the same deadline for the following questions that needed to be treated immediately:**

- to forward the documents necessary for the appointment of judges in service, and
- to take initiative regarding titles, honors and awards to be given by the NJC to judges and judicial staff.

The NJC also suggested that in case no such comments were received within the above mentioned deadline and the President of NOJ doesn't make any proposals requiring immediate action, the NJC would decide about the consequences of the conclusions stated in the inquiry report based on the information at its disposal and would take the necessary steps.

On 20th February 2019 the President of NOJ provided the opportunity for posterior examination of documents in regard to which on its meeting of 6th March 2019 the NJC completed the inquiry report no.2 by Decisions no. 13/2019. (III.6.) and no. 14/2019. (III.6.) and also widened the spectrum of its examination until 5th February 2019.

Based on the amended inquiry report no.2 the NJC made the following observations regarding the actions taken by the President of NOJ:

- 2.3.1. Until 20th February 2019 the President of NOJ repeatedly refused to give access to NJC members to documents concerning the operation of the NOJ, thus forbade the members of NJC to exercise their right of control and contravened Section 112 Paragraph (1) Point a) of the AOAC. [*inquiry report no.2, pages 3., 11., 13., 27., 29., 32.]*
- 2.3.2. Between 2nd May 2018 and 31st December 2018 fourteen court leadership applications were declared unsuccessful by the President of NOJ in a manner that all her decisions lacked of the reasoning part, nevertheless in eleven cases the President of NOJ gave account of the reasons on which her decisions were based in a document so called "brief" towards the reviewing bodies. Solicitous, that the dates of the decisions and indicated in the no. of the decisions – in certain cases – were different, and also the administrative registration of these briefs was also made partly in retrospect. The current fulfillment of these is impossible to follow, cannot be justified and it raises doubts. In nine court leadership application cases the President of NOJ referred to the "lack of legitimate operation of the NJC", which cannot be accepted as a legitimate reason. Referring to the lack of legitimate operation of the NJC is based on a unilateral legal interpretation, from which the President of NOJ cannot draw high-handed legal conclusions that deprive the NJC of its rights. In three cases the NJC couldn't take a position whether declaring the applications unsuccessful were legitimate because the Council still wasn't provided with the opportunity to look into the relevant files. [*inquiry report no.2, pages 8-14. and NOJ Decision no.14/2019. (III.6.)*]
- 2.3.3. As for the appointment of judges, there is a positive and substantive change in the practice of the President of NOJ, during the examined period the decisions about declaring the applications unsuccessful were legitimate. [*NOJ Decision no.14/2019. (III.6.)*].
- 2.3.4. Despite the NJC's request on 16th May 2018, the President of NOJ hasn't forwarded any proposals concerning personnel questions like shorter time of renouncement, release from work or to lay down rules different from the statutory on the working hours for the period of release from work and therefore deprived the NJC from its competences regulated in Section 103 Paragraph (2) points k) and l) of the AOAC. [*inquiry report no.2, pages 25-26.*]

- 2.3.5. Despite the NJC's warning on 3rd October 2018, the President of NOJ didn't take any measures to look into the administrative decision of the President of the Szeged Regional Court by which he appointed such candidate as President of the District Court of Hódmezővásárhely – lacking of consent from the NJC – who previously already held this function twice, and therefore contravened Section 127 Paragraph (4) of the AOAC. *[inquiry report no.2, pages 18-19.]*
- 2.3.6. Despite the NJC's warning on 9th July 2018 the President of NOJ failed to provide proper information regarding the overview of the examinations of court leaders appointed by her that were carried out during the years 2017 and 2018. In addition she also failed to establish the average national workload in 2018. She also failed to properly complete the report on her practice of 2017 concerning her decisions taken about the applications for judge and court leadership positions and therefore contravened Section 76 Paragraph (4) Point e), Paragraph (6) Point c) and Section 103 Paragraph (3) Point f). *[inquiry report no.2, pages 29-30.]*
- 2.3.7. Following proposals submitted by the courts and collected by the President of NOJ, the NJC has the right to appoint the judges in service. Despite the invitation of 26th July 2018 the President of NOJ didn't forward the proposals containing data concerning the people suggested to be appointed, therefore made it impossible for the NJC to exercise its competence regulated in Section 103 Paragraph (3) Point g) of the AOAC and at the same time contravened Section 1 Paragraph 1 of the NOJ Order no. 25/2012. (XII.21.). *[inquiry report no.2, pages 15-17.]*
- 2.3.8. Between the period 21st June 2018 and 6th February 2019 the President of NOJ created and announced 11 orders that were not sent to the NJC in order to be evaluated and therefore contravened Section 103 Paragraph (1) Point c) of the AOAC and Sections 6 and 15 of NOJ Order no.10/2016. (X.26.). On 29th June 2018 the President of NOJ amended NOJ Order no. 10/2016. (X.26.) on legal instruments so that in the future the opinion of NJC is to be asked only about instructions already announced and therefore made the NJC's right to give opinion only formal and shallowed its competence provided by the statutory law. *[inquiry report no.2, pages 20-21.]*
- 2.3.9. The President of NOJ made the 2019 chapter budget proposal available to the members of the NJC only after the proposal was submitted, while her report on the implementation of the budget of the courts and its proposal for defining the detailed conditions and amount of other allowances for 2019 hadn't been sent to the NJC at all. Her proposal budget was submitted to the Government and the National Assembly without the comments and opinion of the NJC even though it is stipulated in the cardinal law. The President of NOJ therefore contravened Section 76 Paragraph (3) Point a) of the AOAC and drew the

competences of the NJC that are regulated in Section 103 Paragraph (2) Points a)-c). *[inquiry report no.2, pages 22-24]*

- 2.3.10. The President of NOJ has failed to request the NJC's opinion prior to submitting the budget proposal regarding the section dealing with NJC and later she refused to conclude the necessary cooperation agreement on the budget, which is regulated by NOJ Decision no. 122/2018. (XII.05.) on the NOJ budget for 2019. The President of NOJ hasn't remitted the expenses incurred from the operation of NJC (event participation fee, accommodation, travel, meeting expenses, etc.), therefore contravened Section 76 Paragraph (3) Point a) and Section 104 Paragraph (1) of the AOAC and also contrary to the stipulations of the fundamental law made it impossible for the NJC to carry out its constitutional role. *[inquiry report no.2, pages 22-24.]*
- 2.3.11. Since 6th December 2018 the President of NOJ has not made available neither the summary of the NJC meeting held in December 2018, neither the agenda for 2019 on the central website of courts, therefore contravened Section 108 Paragraph (1) of the AOAC. *[inquiry report no.2, page 31.]*
- 2.3.12. During the period between 2nd May 2018 and 31st December 2018 the President of NOJ in 11 cases didn't fulfill the requests and appeals of the NJC, in 3 cases the accomplishments and in 1 case she was late to carry out what she was requested to do. *[inquiry report no.2 pages 27-30.]*
- 2.3.13. On 7th January 2019 the President of NOJ appointed a judge of the Debrecen Appellate Court as the leader of the Civil Chamber of the Metropolitan Appellate Court, and on 5th February 2019 the presiding judge of the Budapest Regional Appellate Court was appointed as the leader of the Criminal Chamber of the Budapest Regional Appellate Court for one year without any application, by transferring the two judges from one court to another to perform the leadership tasks. In her decision she made reference to the section of the AOAC, which regulates the ordinary fulfillment of leadership positions exclusively by evaluating applications, i.e. appointing and transferring the applicant as court leader. The fundamental law does not regulate temporary appointments and transfers, transferring a judge from one court to another is only possible after a successful application. The aim of this measure taken by the President of NOJ was to evade the rule of appointing judges. The President of NOJ - in fact - ignored the NJC's appeal of 2nd May 2018 concerning the legitimate appointments. *[NJC Decision no.13/2019. (III.6.)]*

The President of NOJ didn't comment on the inquiry report no.2 neither until the deadline provided by the NJC (22nd February 2019), neither until the deadline she asked for (20th March 2019).

The report overall concluded that as a result of the above breaches of law, the NJC is not able to properly perform its supervisory duties as stipulated in the Fundamental Law, and that **the President of NOJ continues to exercise certain functions without the rule of law, contrary to their purpose, and by some of her measures infringes the rights of citizens to a lawful judge.** Among the consequences of the breaches of law, it should be noted that, partly due to the high number of applications declared to be unsuccessful despite the support of the judges of the judiciary, and partly due to breaches of the relevant procedural deadlines regarding many senior management positions within the authority of the President of NOJ - like several Presidents of Courts of Appeal, Deputy Presidents, Heads of College, and also Presidents, Deputy Presidents of the Regional Courts and Heads of College - as of January 1, 2019 and currently - are not filled in by appointment. *[inquiry report no.2, pages 13-14.]*

2.4. The period following 5th February 2019:

Following the preparation of the inquiry report no.2 and also the last day (5th February 2019) of the period examined by the report, the President of NOJ **took further measures and is responsible for omissions by which she ignored the NJC's previous legality indications:**

- 2.4.1. Although the President of NOJ repeatedly refused the members of NJC to look into certain court documents concerning the central administration or to receive information on certain measures on 25th January 2019, after all she "allowed access" to the documents dealing with unsuccessful (judge and court leadership) applications for 20th February 2019. However, she informed the NJC about this opportunity only on 30th January 2019 by setting a time limit. The members of NJC didn't receive the full documentation, so the NJC couldn't comment on three court leadership applications.
- 2.4.2. The President of NOJ allowed access to documents in two other cases in such a way that despite being notified by due time, she only informed the NJC on the last working day and set a very short, one-and-a-half hour limit for the examination of documents: she informed the NJC on 14th March 2019 that they had been allowed access to the court proposals for Andor Juhász prizes for 18th March 2019 from 14 o'clock until 15.30 o'clock and she informed the committee examining the incompatibility of judges on 26th March 2019 that they can examine the documents on 27th March 2019 from 14 o'clock until 15.30 o'clock. The President of NOJ didn't allow access to the documents about the judges in service not even following the second request.
- 2.4.3. The President of NOJ has not made available on the central website of courts the summaries of NJC meetings of February, March and April nor the agenda for 2019, therefore contravened Section 108 Paragraph (1) of the AOAC.

- 2.4.4. Despite the appeals of the NJC – in which the NJC also called her for the elimination of the unlawful situation - of 6th March 2019 (see Point 2.3.13.) concerning the unlawful temporary appointments, the President of NOJ didn't take any measures and didn't respond to the appeals of the NJC.
- 2.4.5. Despite the NJC's invitation of 6th February 2019 the President of NOJ didn't forward the documents necessary for the appointment of judges in service and did not make any submissions regarding titles, honors and awards to be given by the NJC to judges and judicial staff, despite the fact that the members of the NJC during the examination of files verified that the Presidents of Regional and Appellate Courts sent their proposals to the President of NOJ.
- 2.4.6. Despite her previous intention (on 4th February 2019), the President of NOJ didn't give comments on inquiry report no.2.
- 2.4.7. Despite the NJC's request made on 6th April 2019 the President of NOJ didn't take measures to call together once more the assembly of electors who were supposed to elect the alternate members.

Chronologically it must be added that on 18th March 2019 the Ombudsman for Fundamental Rights proposed the interpretation of Article 25 Paragraphs (5) and (6) of the Fundamental Law by the Constitutional Court in order to solve the "constitutional problem" affecting the operation of the NJC. Evidently the motion did not suspend the operation of the NJC and, in another sense, did not create a contingency in the public law system.

3. FAILURE OF FULFILLING LEGAL OBLIGATIONS BEYOND 90 DAYS

By her behavior described in inquiry reports no.1 and 2, the President of NOJ failed to fulfill her statutory obligations until the date of the adoption of this decision. Among these, **the following obligations weren't accomplished for more than 90 days**. In the case of these obligations she failed to accomplish her tasks or to do what she was requested from earlier than 7th February 2019.

- declaring judge and court leadership applications unsuccessful illegally, without reasoning or inadequate reasoning before 7th February 2019 (2.1.1., 2.1.2., 2.3.2.);
- refusing to comply with the NJC's right of access to the relevant documents or providing inadequate access on 25th May 2018 and in further cases (2.3.1., 2.4.1., 2.4.2.);
- failing to forward the proposals concerning the service of judges despite the indication made on 16th May 2018 (2.3.4.);

- failing to take any measure regarding the reappointment of the President of the District Court of Hódmezővásárhely in the lack of consent, despite the indication of 3rd October 2018 *(2.3.5.)*;
- failing to provide information related to conducting an examination of court leaders appointed under the authority of the President of NOJ, data on determining the average national workload, and information related to the practice continued in 2017 regarding the applications for judge and court leadership positions, despite the NJC's indication of 9th July 2018 *(2.3.6.)*;
- failing to make a proposal regarding the appointment of judges in service despite the request of 26th July 2018 *(2.3.7.)*;
- failing to submit 11 NOJ orders to the NJC to comment and announcing these from 21st June 2018 without the opinion of the NJC *(2.3.8.)*;
- failing to send the NJC the report on the execution of the budget of the courts and the proposal for other benefits and also presenting these reports lacking the opinion of the NJC before the Government and the National Assembly *(2.3.9.)*;
- refusing to sign the NJC's budget *(2.3.10.)*;
- failing to publish the summary of NJC's meetings and the agenda on the central website of courts *(2.3.11.)*;
- not responding properly, or responding inadequately or being late to respond to the NJC's invitations and requests, furthermore ignoring legality indications and notices during this period *(2.3.12., 2.4.5.)*.

Moreover, according to Section 76 Paragraph (8) Point a) of the AOAC the President of NOJ informs the NJC about her activities on a semi-annual basis in the scope of her information duties. In 2018 and in 2019 so far, the President of NOJ has never done so. That is, she didn't provide the Council with statutory information, therefore the failure to comply with this obligation is also beyond 90 days.

It is also beyond 90 days that the President of NOJ failed to meet the obligation to call together once more the electoral meeting in order to elect the alternate members of the NJC since the electoral meeting of 8th October 2018.

Some additional legality indications - in particular the failure to comply with the facts described in Point 2.4.4 - didn't yet reach the 90 days since the notification of the NJC, nevertheless even in these cases the breach of the law happened more than 90 days ago.

4. THE IMPUTABILITY OF BREACHES OF DUTY

The President of NOJ when performing her statutory duties didn't act as it would be expected in a given situation (see detailed description above). In this regard it is of particular importance that she didn't adjust her practice to the regulations of the fundamental law despite the fact that **the NJC submitted eight legality indications until 6th March 2019**. These were the following in chronological order:

- on the 2nd May 2018 due to declaring the applications for judge and court leadership positions unsuccessful and appointing certain people illegally;
- on 16th May 2018 in order to fulfill her obligations towards the NJC: submitting proposals, responding to requests and providing information requested by the NJC;
- on 9th July 2018 due to conducting illegally the examination of court leaders, failure to determine the average national workload, and providing inadequate information related to the practice continued when deciding about the applications for judge and court leadership positions;
- on 3rd October 2018 due to the appointment of the President of the District Court of Hódmezővásárhely in the lack of consent;
- on 7th November 2018 due to the refusal to examine documents;
- on 5th December 2018 due to the breach of the legal obligation regarding the annual report and the execution of the budget of the courts;
- on 6th February 2019 due to the failure for submitting documents necessary for the appointment of judges in service and for submitting proposals for titles, awards and honors given by the NJC;
- on 6th March 2019 due to the temporary transfer of judges entrusted with leadership duties.

Although the above mentioned indications clearly set out the duties of the President of NOJ and how these duties should be complied with, she apparently didn't change her practice or even deliberately ignored her supervising NJC's warnings. Since the President of NOJ repeatedly denied the NJC's right of access to documents laid down in Section 112 Paragraph (1) Point a) for months, she only changed her practice from 20th February 2019 in a way that was unworthy to the NJC's supervisory role and she only provided access partially, incompletely and by setting a very short time limit.

In this regard the President of NOJ – as a supervised person – would have acted as expected in a given situation if she had provided the NJC with proper information or had attended the meetings of the NJC or had provided sufficient and complete information by allowing access to the documents for a proper length of time and extent. Also she could have reported on her activities in the given period of time, acted

in accordance with the warnings and indications, she could have complied with her duty of cooperation and could have changed her law-abusing practice with a truly law-following intention. These were not only obligations arising from the supervisory legal relation, but also from specific legal norms which, despite repeated warnings, were deliberately not fulfilled.

The position of the President of NOJ, referring to the lack of operability of the NCJ, cannot be accepted as an excuse for imputation, as she arbitrarily and unilaterally labeled the operation of the Council illegitimate, while, moreover, it was clear for her that no other public actor in the judiciary shared this legal argument. The President of NOJ has no authority to label the operation of the public body supervising her as illegitimate. In this regard the NJC has repeatedly stressed out that the body should be considered legally operating as long as the judicial forum for this purpose (Constitutional Court) doesn't determine it otherwise. The Minister of Justice, representing the Government of Hungary has recognized the operation of the NJC as legitimate throughout on the same basis. Therefore, the President of NOJ may not be relieved of her statutory obligations by simply claiming that her supervising body is incapable of operating and its decisions have no binding force, but she cannot even claim that the matter is pending before the Constitutional Court.

After the resignation of NJC members and alternates in the spring of 2018, the President of NOJ called the meeting of electors - in order to vote for the new alternate members of the NJC - only for 8th October 2018, despite the fact that the general court meetings of delegates were held until 1st July 2018. Also since 8th October - when the alternate election ended without any results - the President of NOJ didn't take any measures in order to elect alternate members to the NJC. **Therefore, the President of NOJ also refers to the result of her own omission when she unilaterally disputes the legality of the NJC's operation.**

5. INDIGNITY

Contrary to the legislator's intention to exercise controlled authority and the principle of cooperation between the public actors required by the rule of law, the President of NOJ has demonstrated by numerous measures and omissions that **she deliberately avoids the control of her activities and tries to prevent the NJC's efforts from doing so.** Since 2nd May 2018 the President of NOJ, considering the NJC as "non-existent", has **been exercising her own powers without constitutional control,** and refuses to cooperate effectively with the NJC, whose role would be to control her.

Her behavior is unacceptable because the justice cannot function without internal self-control according to the Fundamental Law and other cardinal laws, which is embodied in the NJC at the level of the central administration. The behavior of the President of NOJ made the operation of the central administration impossible, which is described in the inquiry report no.2 through numerous factual examples.

It is clear from the conclusions of the inquiry report no.2, that **the President of NOJ's process of appointing court leaders** – in which the NJC has important decision-making and supervisory rights – **is still not transparent, not controllable and it is not in conformity with the requirements of the cardinal law.** Several presidents of the court of appeal and court of justice, vice-presidents and leaders of chambers took their position in the lack of appointment. The President of NOJ filled the significant part of these vacant positions with fixed term commissions and by this practice she transformed the exceptional solution into a general rule in several major courts. The Metropolitan Court, which is the greatest court in Hungary, has been operating for more than two years now without appointed leader of the Criminal Chamber and for more than a year without appointed president, although there have been numerous applications for both positions where applicants have received the support of the consultation body. The other major court in the central region, the Budapest Environment Regional Court, also operates without appointed leaders in several positions. The declaration of leadership applications unsuccessful in a non-transparent way affected numerous courts of appeal and regional courts as well. In the light of the above it can be established that the President of NOJ by her unilateral acts – i.e. assignments – intended to place persons into leadership positions without providing the possibility to the judicial bodies of hearing them and giving them the possibility to form an opinion on these persons' abilities.

Based on the above, the NJC – taking into account all the circumstances detailed in inquiry report no.2 and the established case-law on dignity (Doctrinal Judicial Decision EBH2018.M.2., Supreme Labour Court Decision 31/2016) – stated that **dr. Tünde Handó due to her behavior, omissions and her exclusive pursuit of unrestricted power in the court administration has become unworthy of her office, and therefore depriving her of her office is justified also for this reason.**

It is clear from the events described that in some cases the President of NOJ changed her practice by which she was breaching the law (she didn't declare applications for judge positions unsuccessful unlawfully after 2nd May 2018), in some cases she partially changed her practice (for ex. instead of refusing access to documents entirely, she provided limited access), or instead of some unlawful practices, she developed other ones (for ex. such as evading the legal institution of appointing by giving people fixed-term commissions, which is also illegal). With this she occasionally seemingly responds to some statements of legal supervision, however, the consequence and purpose of her conduct is the same. She wishes to exercise her power without any control, which is unacceptable in the field of justice in a constitutional state, and also contradicts the text and spirit of the law.

The repeatedly indicated contraventions – which remained without substantive response - of the President of NOJ might also jeopardize the public faith in the jurisdiction. The achievements of the judicial system – especially the judges – over the past seven years and the excellent results in several aspects of the central

administration cannot compensate the undignified conduct of the President of NOJ, since they are questions of legality instead of efficiency.

6. THE REASON IT IS NECESSARY TO APPLY TO THE NATIONAL ASSEMBLY

The NJC is depositary and is therefore responsible for controlling the central administration of ordinary courts. The NJC's only tool besides giving an indication based on Section 103 Paragraph (1) Point a) is making a motion to deprive the President of NOJ of its office. There is no other legal instrument to restore the rightful operation of the jurisdiction.

The NJC **has sent eight warnings altogether** to the President of NOJ, and on 16th May 2018 and on 6th February 2019, the NJC also drew her attention to the possible consequences caused by her contraventions in the public law system.

In June 2018 the NJC **asked the Presidents of Curia and the Hungarian Judges Association to intervene** between them and the President of NOJ in order to ensure that she does not abolish the centuries-long tradition of the 'Courts Day' with reference to the lack of legitimacy of the NJC; unsuccessfully.

In September 2018 the NJC **has made a legislative proposal** to the Minister of Justice – in accordance with the law, through the President of NOJ – in order to eliminate the unlawful practice they discovered by amending the law; unsuccessfully.

In October 2018 the President of NJC **asked the President of the Republic in a letter to intervene** in order to restore the legal operation of the central administration of the judicial organization. In his reply, the Office of the President of the Republic indicated that the President of the Republic has no normative opportunity to participate, but the relative regulations of the AOAC provide proper cooperation between the President of NOJ and the NJC.

Like the legality indications, other requests were also unsuccessful. The President of NOJ is currently still arguing the legality of her controlling body, the NJC's operation and obligations towards her. The NJC – three months after the adoption of the inquiry report no.2 and following the recent foreshadowing of public law consequences, after the expiry of the deadline for substantive comments – considers the application of 'the last resort' laid down in Article 74 of the AOAC inevitable.

Turning to the National Assembly in this situation is proportional to the number and seriousness of breaches of law, and is also suitable to the extent of indignity. The NJC doesn't have any other means left to ensure that the central administration of justice operates as intended by the legislator, in accordance with the rule of law.

In the NJC's point of view, the regulation of the cardinal law in case the conditions are met, makes the application to the National Assembly an obligation at the same time. In case the breaches of duty and the indignity of the President of NOJ can be established, – however, the NJC would not apply the legal consequence – it would itself be responsible as a supervisory body for the breaches of law, omissions and irregularities, as well as for the situation resulting from the unworthy conduct of the President of NOJ.

The detailed reasons determining the failures to comply with the obligations set out in the Decision, the presentation of the process of becoming unworthy, and the detailed arguments of the reasons are all presented in the Annexes to the Decision: inquiry report no.1 dated 23rd April 2018 and adopted on 2nd May 2018, amended inquiry report no.2 dated 28th January 2018, adopted on 5th February 2019 and amended on 6th March 2019 and the documents attached to them.

Budapest, 8th May 2019

Dr. Judit Fatalin

President of the National Judicial Council