

Justice Committee of the National Assembly

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...../2019 () Decision of the National Assembly

The National Assembly acting within the scope of its rights laid down in Section 70 Paragraph (2) of Act CLXI of 2011 on the Organization and Administration of Courts does not deprive

dr. Tünde Handó

President of the National Office for the Judiciary from her office.

Reasoning

1. The Justice Committee of the National Assembly – with competence and jurisdiction – (referred to from now as Committee) in the course of its procedure respects the legal provisions regulating the powers of the National Assembly laid down in Section 70 Paragraph (1) Point f) and Paragraph (2) of Act CLXI of 2011 on the Organization and Administration of Courts. Therefore, the Committee does not wish to take a stand in the question of the operation and legitimacy of the National Judicial Council (referred to from now as NJC) since in this matter the Constitutional Court has the right to decide – also taking into account the initiative of the Ombudsman for Fundamental Rights. Accordingly, taking a decision in the NJC’s petition in the aspect of legitimacy doesn’t suggest a stance or acknowledgement, and may not be considered as reference later on.

2. According to Articles XXIV and XXVIII of the Fundamental Law of Hungary, the common requirement for any law enforcement procedure is the fair treatment; that is handling the affairs impartially, fairly and without favoritism. This requires also that no one concerned should be involved in the decision making.

At least two members of the NJC took part in preparing the NJC Decision and the reports on the practice of the President of the National Office for the Judiciary (referred to from now as NOJ) who applied unsuccessfully for higher judicial position or for court leadership position earlier and at least one member of the NJC brought a court proceeding against the President of NOJ.

Two members were directly concerned in the adjudication of legality of NJC Decision no. 60/2018 (05.02.) since stating that the decision breached the law as a result of omission attributable to the President of NOJ generates rights to them – in case of real legal consequences.

As it was stated in an earlier decision of the Constitutional Court, ‘a fundamental constitutional right to an impartial tribunal imposes a requirement of non-prejudice and impartiality on the court throughout the proceeding. On one hand it is required from the judge, the behavior and attitude of the judge. On the other hand it is an objective criteria for the procedural rules applicable: all situations should be avoided that are leading to doubts about the impartiality of the judge.’ [Constitutional Court Decision 67/1995 (XII.7.)].

In all cases, the judges have a moral and professional ethical duty - even in the absence of a specific legal requirement - to avoid the possibility not only of bias but also appearing to be partial in the context of their proceedings. The fairness of the proceedings can therefore be assured if the judge

concerned, who is directly concerned by the case giving rise to the initiative, is not involved in the decision-making process at all. In contrast, in the discussion of reports prior to the decision of the OBT, and in the adoption of the report, these biased judges were actively involved, voted and also took part in the decision to deprive the president of the OBH of his post. On the contrary, these biased judges were actively involved in the discussion of reports prior to the NJC Decision, and also in the adoption and passing of the report. These judges also took part in preparing the decision to deprive the President of NOJ of her office.

Article R) of the Fundamental Law of Hungary not only stipulates that the Fundamental Law shall be the foundation of the legal system of Hungary but also that the Fundamental Law and legal regulations shall be binding on everyone. It is clear from the above that its provisions - including those relating to impartial, fair administration - must also be respected by the NJC. The NJC breached the regulations of Articles XXIV and XXVIII of the Fundamental Law by members participating in the NJC's procedure who were individually concerned.

It is an important circumstance that if those members – in accordance with the requirement of a fair trial – had not participated in the decisions, the legal condition necessary for the decision of the NJC – even in the case of the NJC's own procedural interpretation – would not have been fulfilled.

3. Furthermore the Committee states that the President of NOJ has provided the NJC with detailed responses in connection with her decisions taken and also provided justification for these decisions in each and every question raised. At the same time the NJC didn't examine, evaluate, consider and did not address the answers and references of the President of NOJ in its decision, therefore this fact alone raises the lack of impartiality of the NJC. In the Committee's point of view the NJC's objections to the President of the NOJ are unfounded. The Committee considers that the President of NOJ clarified the controversial issues in a reassuring way during the Committee's hearings when discussing her reports submitted to the Committee. In the Committee's point of view, the additional issues raised by the NJC are therefore unfounded, and are resulting from a false and prejudicial motivation.

4. Thus, the Committee proposes to the National Assembly that dr. Tünde Handó should not be deprived of the office of President of the National Judicial Office.

Budapest, 7th June 2019

Dr. Imre Vejkey
President