



Comments on the proposal of OBH President to adopt a new structure of National Judicial Council

29/10/2018

The National Judicial Council of Hungary (OBT) turned to Tünde Handó, the President of the National Office for the Judiciary (OBH) on 03/10/2018 to propose the amendment of the Act 161 of 2011 on the structure and administration of courts. According to Article 103 Paragraph (1) point b) OBT does not have the right to propose legislation to the Minister of Justice directly, but to recommend the proposal to OBH President.

On the last week OBH President circulated her proposal to the courts for preliminary opinion and this was also mentioned in a press statement thus OBT is also aware of the legal draft. Unfortunately, the recommended amendments would weaken the council and elevate the power of OBH President nevertheless the legal draft is titled: "enhancing the legitimate operation of OBT". The proposal modifies the current model of judicial administration without coherent and global conception as follows:

1. The number of members of the Council would be raised from 15 to 26.
2. New members would be delegated straight from regional courts and regional courts of appeal, one member each, by a secret ballot of the judicial conference.
3. The president of the Council would be the President of Kúria (Supreme Court of Hungary), vice president shall be elected by the Council.
4. The proposal erases the limitation of five years judicial practise for the elected members. All judges appointed for indefinite time would become candidates.
5. The proposal abolishes substitute members. If a member falls out the affected court would delegate new member within ninety days.

The National Judicial Council would like to draw the attention to the following anomalies and risks:

- Any legal amendments that causes directly or indirectly the dismissal of the legitimate judicial council before the end of their mandate is unconstitutional and seriously violates the principles of rule of law and judicial independence guaranteed by international agreements. The Council decided to react to the proposal just because of its illegitimate underlying aims.
- A board with 26 members is ineffective especially if it only operates in plenary sessions not in chambers or sections. There are no such examples in the public law and international public law.

- The proposal does not support the proportionate representation of the lower courts (district courts) notwithstanding the legislative intentions of the Parliament. The previous system of judicial administration from 1997 until 2012, when the presidents of county courts as elected members of the National Council of Justice had an overwhelming influence on central judicial administration, was abrogated due to its incapability to solve the decades-old problems of the central-region courts regarding large backlog, prolonged judgements and overall ineffectiveness.
- The proposal does not prevent that all regions can delegate court presidents, vice-presidents and leaders of collegiums who are appointed and employed by the OBH President thus a large number of council members, who suppose to supervise her actions, are in a relationship with her of interdependence through her competence to instruct, remunerate, reward and discipline them. The scandalous electoral assembly in October 2018 signals Tünde Handó's aims to create a situation like this where the supervisory council shall not fulfil its constitutional duty effectively.
- The proposal disregards the fact that in Hungary there is a large disparity between courts in the view of the number of judicial positions. Opposing its justification this makes the proposal highly anti-democratic. As it is well-known by the National Office for the Judiciary 800 judges are working on the largest court of Hungary, more than one fourth of all judges in the country, vis-à-vis some courts where this number is lower than 50. According to the proposal each court shall delegate one member.
- In the drafted system the Council representing judicial self-governance is presided by the President of Kúria however he is not elected by judges but selected by the Parliament. It must be also noted that the legislation wanted to clearly separate administration from adjudication in 2011, the position of OBH President with a historically and internationally unprecedented wide competence was developed for the same reason.
- In the model proposed by the OBH President if any elected member falls out, the represented court needs to delegate new member within 90 days. This solution seems is unambiguously surprising since she argued that the present Council is temporarily not legitimate since a level of courts (administrative and labour courts) are not represented with an elected member. Nevertheless, her attention was drawn many times to the normative failure of this interpretation, the inconsistency and hidden risks of the proposal must be noted. The President of OBH might call such a new council illegitimate more frequently.

For the reasons mentioned above the National Judicial Council objects to the proposal of the OBH President and reserves its original proposal delivered on 3rd October 2018. According to our view the original legal draft provides a constitutional solution to support and enhance the operation of the OBT. The cornerstones of our proposal are as follows:

- The independent and effective functioning of OBT shall be based on legal entity granted to the Council.
- There shall be a limitation that court presidents appointed and directed by OBH President are not allowed to become members of the Council.
- The law should provide more safeguards and support for Council members.
- The OBT shall elect its own president and vice-president.