



LEGISLATIVE COMMENTS AND RECOMMENDATIONS OF THE NATIONAL JUDICIAL COUNCIL (JANUARY 31, 2023)

At the request of the Ministry of Justice, the National Judicial Council of Hungary makes the following comments and recommendations on the draft legislation amending certain laws on judiciary matters related to the Hungarian Recovery and Resilience Plan.

The draft legislation incorporates several elements from the previous legislative proposals of the National Judicial Council and the requirements of the 213th milestone of the EU Council Decision on the approval of the evaluation of the Hungarian Recovery and Resilience Plan, but in its current form it does not meet these demands in several points.

I. Key findings and recommendations of the National Judicial Council

1. According to the draft legislation, the National Judicial Council may only take a stand on the candidates for the position of President and Vice-President of the Supreme Court (*Kúria*) and the National Office for the Judiciary on the question of compliance with the statutory conditions. Although this would be a binding and judicially challengeable stance, it is a step backwards from the current legislation, which gives the National Judicial Council full – though non-binding – powers of opinion making. The solution of the draft is completely formalistic and does not meet common sense when it practically only makes the compliance of the applicant's curriculum vitae with the legal requirements subject to scrutiny by the National Judicial Council. The assessment of compliance with the legal conditions is not a valid alternative to a mandatory opinion on the suitability of the candidate. In fact, the examination of suitability must involve a much broader assessment of whether the candidate's known and perceived abilities, administrative and professional experience and practice, administrative management record, ability and willingness to act are such as to qualify that person to perform the central functions of the administration of the judicial organisation or to head the highest professional judicial forum. **The law should therefore fully guarantee the right of the National Judicial Council to give its opinion on the suitability of candidates, while at the same time making it binding on the admissibility of election or appointment.**
2. The draft legislation does not rule out the possibility of the National Judicial Council being composed of judicial leaders appointed by the President of the National Office for the Judiciary. In order to ensure that the members of this supervisory body are not directly dependent on the President of the National Office for the Judiciary, the law should provide that the president, the deputy president and the head of the chamber (*kollégiumvezető*) of the regional court (*törvényszék*) and the regional court of appeal

(ítélőtábla), i.e. the judicial leaders appointed by the President of the National Office for the Judiciary, subject to his powers of employment, and their relatives, should not be members of the National Judicial Council. Such a senior management position should result in a conflict of interest with elected membership in the National Judicial Council.

3. The draft contains new provisions on the National Judicial Council's right of access as a body to documents held by the National Office for the Judiciary. However, this still does not guarantee full access to the documents held by the National Office for the Judiciary. **The law must ensure that all members of the National Judicial Council have full access to all documents (i.e. all documentation, information and data, including personal data) held by the National Office for the Judiciary within 15 days of the request being made.**
4. Although the draft excludes, in accordance with the commitments, the right of legal remedy under procedural law against a judicial decision initiating a preliminary ruling procedure before the Court of Justice of the European Union, it does not affect the *Kúria* judgment Bt.III.838/2019/11, published under EBH2019.B.22., which is applicable due to the limited precedent system and which the *Kúria* upheld even after the decision of the Court of Justice of the European Union that found it to be contrary to EU law. **Therefore, the law must exclude the applicability of this judgment of the *Kúria*.**
5. **a)** The draft completely lacks the transitional provisions necessary and appropriate for the National Judicial Council to become an autonomous budgetary body and to start functioning effectively. **The law should provide that its seat, management, accounting, IT background and administration should be provided by an existing state organ for the twelve months that is necessary until the National Judicial Council sets up its own apparatus.** Without such transitional rules, the Council would be inoperative and would not be able to fulfil its statutory obligations after the entry into force of the Act.
b) According to the draft, the elected President and Vice-President of the National Judicial Council would take office only from 1 August 2023, which would mean that their term of office would be only six months, as in the current system, due to the imminent expiry of their terms of office. It also creates the possibility for the President of the *Kúria* to be simultaneously elected as the chair of the National Judicial Council. Instead, **the law should ensure that the National Judicial Council can elect its President and Vice-President from among its elected members immediately after the law enters into force, and that they take office from that moment.**

Without the full incorporation of all the above proposals, the draft does not meet the commitments made by the Hungarian Government to the European Union and the legislative intentions to strengthen the role and powers of the National Judicial Council.

II. Further comments and recommendations of the National Judicial Council

Act ... of 2023 amending certain laws on judiciary matters related to the Hungarian Recovery and Resilience Plan (hereinafter referred to as the “**Draft Legislation**”) § 9

It is justified to add to the persons entitled to the roster allowance provided for in § 105 (1) of the Act on Status of the Judicial Appointees (Iasz.) the assistant appointed for the member of the National Judicial Council from among the judicial staff of the court with legal qualifications, since the actual performance of the duties of the court secretary (*bírószági titkár*), trainee judge and assistant working at the National Judicial Council will not be substantially different.

Draft Legislation § 10

It would be advisable to establish indicators similar to those already defined by the National Office for the Judiciary for the donation of titles, and to ensure budgetary coverage.

Draft Legislation § 17

It is desirable that this regulatory concept should apply at all levels of the courts, and the lack of clear rules on which chamber's (*kollégium*) opinion prevails in the event of the involvement of more than one chamber may cause difficulties of interpretation.

Draft Legislation § 18

It would be desirable to regulate the principles of case allocation at all court levels in a similar way to the *Kúria*.

Draft Legislation § 20

It is recommended that the person nominated for the post of President of the National Office for the Judiciary should have at least 10 years of judicial service. We also recommend that the nominee for the position of President of the National Office for the Judiciary should have at least 6 years of judicial leadership experience and we recommend that the judicial examination condition be waived.

Draft Legislation § 21

We recommend using the word application (*pályázat*) instead of candidature (*jelentkezés*). Otherwise, we maintain our general opinion (point I.1).

Draft Legislation § 22 (8)

It is proposed to add the provision for the National Judicial Council to have decision-making powers.

Draft Legislation § 23 (3)

It is proposed that only a person with the status of a judge should be eligible for appointment as Vice-President of the National Office for the Judiciary. The conditions of appointment should be the same as those set out in our comment to § 20.

Draft Legislation § 25

It is proposed that the legislation clearly states that the National Judicial Council is a legal entity.

Draft Legislation § 26

It is proposed to amend the amendment so that only elected members of the National Judicial Council are eligible for election as President and Vice-President of the National Judicial Council. The President and the vice-President shall be eligible for re-election.

Draft Legislation § 27 (4)

It is proposed that the period of inactivity for the President and Vice-President of the National Judicial Council be set at 60 days.

Draft Legislation § 28 (1)

It is proposed to delete the word "general" from § 103 (1).

Draft Legislation § 29

It is proposed that, in line with the milestone undertaken, the members of the National Judicial Council should have access to all documents, information and data (including personal data) relating to the administration of the courts.

Draft Legislation § 31

It is recommended that this section be omitted in the light of our other comments.

Draft Legislation § 32

It is proposed that the Vice-President of the *Kúria*, acting in the capacity of President of the *Kúria*, should not have the right to vote at the meeting of the National Judicial Council.

Draft Legislation § 33

We propose to replace § 108/A (1) with the following paragraph:

"The National Judicial Council may appeal to the Constitutional Court if the President of the National Office for the Judiciary or the President of the Kúria fails to fulfil its statutory obligations towards the National Judicial Council. The application for legal remedy must be

submitted within 15 days of the expiry of the time limit for the fulfilment of the obligation, as laid down by law or, failing that, by the National Judicial Council."

It is proposed to replace § 108/B (1) with the following paragraph:

"The President of the National Office for the Judiciary or the President of the Kúria may appeal to the Constitutional Court if the National Judicial Council fails to fulfil its statutory obligations. The application for legal remedy shall be submitted within 15 days of the expiry of the time limit for compliance with the obligation laid down by law."

Draft Legislation § 34

It is proposed that no person subject to the powers of appointment of the President of the National Office for the Judiciary and their relatives should be a member of the National Judicial Council. We also propose that point (gb) should apply to the appointment of the president of the judicial panel (*tanácselnök*).

Draft Legislation § 34 (2)

It is proposed to specify the president of the regional court or the regional court of appeal of the place where the member of the National Judicial Council is appointed to instead of the president of the court of his/her place of employment.

Draft Legislation § 36 (1)

It is proposed that the appointment of the President of the *Kúria* should be conditional on at least 10 years of judicial service, and that the words "or a theoretical lawyer of outstanding knowledge (university professor or doctor of the Hungarian Academy of Sciences)" should be omitted. It is proposed that experience gained as a senior adviser in an international judicial organisation, as a judge of the Constitutional Court or as a senior adviser in the Office of the Constitutional Court should not be counted as judicial experience.

Draft Legislation § 38 (2)

It is proposed that the terms of appointment should be the same as those set out in our comment to § 36.

Draft Legislation § 42 (2)

It is proposed that the rules should apply in the same way to judicial panels of regional courts (*törvényszékek*) and regional courts of appeal (*ítélőtáblák*).

Draft Legislation § 43

It is proposed that the rules should apply in the same way to chambers (*kollégiumok*) of regional courts (*törvényszékek*) and regional courts of appeal (*ítélőtáblák*).

Draft Legislation § 44

It is proposed that the National Judicial Council should be able to elect its president and vice-president immediately after the entry into force of the law.

Draft Legislation § 44

It is proposed not to revoke point (a).

Draft Legislation § 47

It is proposed that the judges currently working at the Constitutional Court who have already applied for appointment should be assigned to the district court of their place of residence. If they were judges before they became constitutional court judges, they should be assigned to their former place of employment. Note: this does not affect vested rights, which are only assigned when they join the court.

Draft Legislation § 55

It is proposed to delete the words "in justified cases, without a call for applications for the position of president of the panel (*tanácselnök*)".

Draft Legislation § 56 (1)

It is proposed that in paragraph 1(h) the words "for outstanding performance and effective discharge of his/her duties" be deleted.

Draft Legislation § 60

It is proposed that the amendment be dropped, given that it would lead to an unjustified increase in the number of judges at the *Kúria*.

Draft Legislation § 62

It is proposed that the amendment be dropped, given that it would lead to an unjustified increase in the number of judges at the *Kúria*.

Draft Legislation § 64

It is proposed that the amendment to Section 655 (1) of the Act of Criminal Proceedings be deleted, given that it would lead to an unjustified increase in the number of judges at the *Kúria*.

Draft Legislation § 66

It is proposed that the amendment be dropped, given that it would lead to an unjustified increase in the number of judges at the *Kúria*.

III. Other proposals of the National Judicial Council not included in the draft

Amendments and additions to § 76 (1) a) point of Act on Organization and administration of the Courts (hereinafter: Bszi.):

76. § (1) *The President of the National Office for the Judiciary in his/her general central administrative role*

a) draws up and annually updates a long-term plan for the administration of justice and the conditions for its implementation, and informs the National Judicial Council thereof annually in advance;

[...]

g) attend meetings of the National Judicial Council, either in person or through his/her deputy.

Amendments and additions to Bszi. § 76 (6):

[...]

c) carries out an evaluation of the court leader under his/her employer's authority and informs the National Judicial Council annually,

Amendments and additions to Bszi. § 76 (8) a):

(8) The President of the National Office for the Judiciary in the context of his/her information duties

a) shall inform the National Judicial Council every six months of his/her activities, within the content of the information framework previously defined by the National Judicial Council,

[...]

g) provides information on measures within its remit or data relating to the courts within 15 days of a request from the National Judicial Council. The time limit may be extended once by 15 days.

Amendments and additions to Bszi. § 77 (2):

The decisions of the President of the National Office for the Judiciary shall be communicated to the parties concerned in writing without delay and in any event within 8 days. The President of the National Office for the Judiciary shall provide reasons for his decisions.

Amendments and additions to Bszi. § 88:

(1) The National Judicial Council is the independent supervisory body of the central administration of the courts. In addition to its supervisory functions, the National Judicial Council shall contribute to the administration of the courts in accordance with this Act.

Insertion of a new section at § 89/A:

89/A. § (1) President of the National Judicial Council

e) attends, as an invited participant, the meetings of the committees of the Parliament when discussing the agenda items concerning legislation directly affecting the courts.

The Bszi. § 92 clarification in two separate paragraphs:

92. § (1) If the number of substitute members has decreased below 5 and the proper functioning of the National Judicial Council or the ceilings set out in paragraph (1) of Article 91 cannot be ensured, the number of substitute members shall be increased to 14 within 60 days by holding an election in such a way that the number of members of the National Judicial Council shall be also complete.

(2) The functioning of the National Judicial Council is deemed not to be ensured if the number of its members - irrespective of the representation of the levels pursuant to paragraph (1) of Article 91 - has decreased below 10.

Amendment of Bszi. § 100:

[...]

(2) The chairman of the electoral board of delegates shall send the minutes of the meeting of electors containing the results of the election to the President of the National Office for the Judiciary within 3 days, who shall immediately forward them to the President of the Kúria, the President of the National Judicial Council and the presidents of the regional courts and regional courts of appeal.

Amendment of Bszi. § 103 (1):

(1) The National Judicial Council in the field of general central administration

(a) monitors the activities of the President of the National Office for the Judiciary and, if necessary, sends an indication to the President of the National Office for the Judiciary and, where justified, may request that the President of the National Office for the Judiciary be heard by the Parliamentary Justice Committee, which shall also hear the representative of the National Judicial Council before taking its decision,

aa) may, in an individual case, request the President of the National Office for the Judiciary to provide the necessary information within 15 days and to take action, the result of which the President of the National Office for the Judiciary shall inform the National Judicial Council within the time limit specified.

[...]

c) gives its prior opinion on the rules and recommendations issued by the President of the National Office for the Judiciary,

[...]

e) develops and adopts a Code of Ethics for judges and publish it on the central website,

f) attends meetings of parliamentary committees by invitation, through its representative, when an item is on the agenda concerning legislation directly affecting the courts.

Amendment of Bszi. § 103 (2):

[...]

(2) The National Judicial Council in the budget field

[...]

b) controls the financial management of the Courts Chapter, with the exception of the Kúria, and

Amendment of Bszi. § 103 (3):

[...]

(3) The National Judicial Council in the personnel field

[...]

j) may, on the initiative of the President of the National Office for the Judiciary, confer the titles of "Honorary Judge of the Regional Court", "Honorary Judge of the Regional Court of Appeal", "Honorary Judge of the Kúria", "Councillor of the Kúria", and, in the case of judicial staff, the titles of Senior Councillor and Councillor, [and, on the initiative of the President of the National Office for the Judiciary], propose the award of a decoration, confer a prize, award a medal, award a decoration or consent to the conferring of a prize, award a medal or decoration by another person, or establish its own prize, award or decoration,

[...]

n) has a right of consent to the decision of the President of the National Office for the Judiciary if the reduction in the competence or area of jurisdiction of the court is such that the judge cannot continue to be employed there [§ 76 (5) i].

[...]

p) publishes annually its opinion on the evaluations carried out in relation to the appointment of court leaders under the employer's authority of the President of the National Office for the Judiciary.

Amendment of Bszi. § 103 (4):

[...]

(4) The National Judicial Council in the field of the trainings

[...]

c) organizes the training of the disciplinary court judges (szolgálati bírák).

The following paragraph (6) shall be added to Bszi. § 103:

[...]

(6) If the National Judicial Council finds that an act or omission by the President of the National Office for the Judiciary is in breach of the law, it may, instead of or in addition to the indication, call upon him to take the necessary action or, if possible, to change the infringing act. The President of the National Office for the Judiciary shall take the necessary action within 30 days of the call and shall inform the National Judicial Council thereof within a further 15 days.

Amendments and additions to Bszi. § 110:

[...]

(3) Disciplinary proceedings and proceedings for a declaration of judicial incompetence may be initiated by the National Judicial Council against an elected member of the National Judicial Council for his or her actions or omissions during his or her term of office within 3 years of the termination of his or her term of office.

(3a) The extraordinary evaluation of an elected member of the National Judicial Council may only be carried out with the consent of the National Judicial Council, unless the judge himself has requested it.

(3b) If the next evaluation of an elected member of the National Judicial Council falls within the period of membership of the National Judicial Council, the evaluation may only take place after the termination of the membership.

(3c) A member of the National Judicial Council may be seconded only with his/her consent.

[...]

(6) A member of the National Judicial Council may accept a mandate for an administrative task or any other remunerated activity, except for training and scientific activities, only with the prior agreement of the National Judicial Council.

Amendments and additions to Bszi. § 112:

[...]

(5) Administrative tasks, other than training and scientific activities, may only be entrusted to a member of the National Judicial Council with the agreement of the National Judicial Council.

Clarification of Bszi. § 113 (1):

113. § (1) *The substitute member of the National Judicial Council shall replace the elected member, taking into account the provisions of paragraph (1) of Article 91, in the order of the votes received per rounds of voting.*

It is also proposed that the judicial staff assisting the members of the National Judicial Council should also be employed by the National Judicial Council under the employer's authority of the President of the National Judicial Council. This would clarify the powers of the President of the National Judicial Council to give instructions and disciplinary action, ensure substitution and promotion and provide for a career allowance for the staff of the National Judicial Council. This solution would allow the establishment of a judicial staff of high quality to support the work of the members of the National Judicial Council, which would also significantly facilitate the activities of new National Judicial Council members and their integration into the work of the National Judicial Council.

These comments and recommendations were adopted by the National Judicial Council at its meeting on 31 January 2023. The original text of this document in Hungarian is available here: <https://orszagosbiroitanacs.hu/az-orszagos-biroi-tanacs-joqalkotasi-eszrevetelei-es-javaslatai/>