



FEARING THE UNKNOWN

HOW RISING CONTROL IS UNDERMINING JUDICIAL
INDEPENDENCE IN HUNGARY

AMNESTY
INTERNATIONAL



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GLOSSARY

WORD	DESCRIPTION
ALSRJ	Act CLXII of 2011 on the Legal Status and Remuneration of Judges
AOAC	Act CLXI of 2011 on the Organisation and Administration of Courts
CHAMBER	Either a single judge or a group of judges adjudicates in the name of the court, depending on procedural rules. In case of a group of judges it is called a chamber.
CLERK	a person helping the administrative work of judges (e.g. by transcribing court hearing minutes)
COLLEGE	special groups of judges based on their field (e.g. civil law, criminal law, administrative law) at regional courts, regional courts of appeal and at the Kúria that professionally monitor the adjudicating practise of courts
COURT SECRETARY	After serving as a trainee judge and having passed the legal professional exam, a lawyer can start to work at the courts as a court secretary with limited decision-making competences (in Hungarian: bírósági titkár)
DISTRICT COURT	lowest level of ordinary courts
GROUP	at all courts, within colleges, groups may be formed to deal with certain types of cases within a field (e.g. law enforcement within criminal law)
HCC	Hungarian Constitutional Court. Its members in this report are called "HCC justices."
JUDGES' PLENARY MEETING	The general assembly for judges working at the Kúria, at a regional court of appeal or in a county either at the regional court or at the district courts in the county. The judges' plenary meeting is convened a few times per year and comprises of all judges, where they may discuss various topics, give opinions (for example, about leadership candidates), and elect the local judiciary councils and the electors for the NJC electoral meeting.
JUDICIARY COUNCIL	Judges' local institution for self-governance at the regional courts, regional courts of appeal and at the Kúria. It has a role in the judges' application procedure and gives its opinion on the court's budget and case allocation scheme.
KÚRIA	the Supreme Court of Hungary, the highest-level ordinary court
MIA	Hungarian Academy of Justice (in Hungarian: Magyar Igazságügyi Akadémia), a centralized institution for judges' education
NJC	The National Judicial Council (in Hungarian: Országos Bírói Tanács) supervises the operations of the NJO and in some cases its approval is needed for an NJO decision.

WORD	DESCRIPTION
NJC ELECTORAL MEETING	Judges' plenary meetings elect representatives (electors) from themselves who elect the members of the NJC on the NJC electoral meeting.
NJO	National Judiciary Office (in Hungarian: Országos Bírósági Hivatal) is the central administrative organ for courts that is led by the NJO President. When mentioning the "NJO President" in this report, Amnesty International refers to Mrs. Tünde Handó, who served as NJO President between 1 January 2012 and 30 November 2019, ¹ unless otherwise specified.
REGIONAL COURT REGIONAL COURT OF APPEAL	ordinary courts one level higher than the regional courts. There are 5 regional courts of appeal.
TRAINEE JUDGE	After graduation in law school, lawyers can start their court career as a trainee judge (in Hungarian: bírósági fogalmazó).

¹ <https://www.parlament.hu/irom41/08095/08095.pdf>

EXECUTIVE SUMMARY

What are judges afraid of when not speaking up? “I have no idea – and I think those who dare not to speak don't know either.”

A judge from a district court

Since 2010 the governing majority in Hungary has been systematically weakening checks of the executive power and undermining the rule of law. The governing majority has either restricted established powers of independent institutions that exercise control over the executive or have appointed political loyalists to key positions. As a part of this process, since 2012, an ongoing institutional reform has centralized court administration.

The Venice Commission has warned against such centralization and the concentration of significant powers in the hands of the President of the National Judiciary Office (NJO) in 2012. As the European Association of Judges and the European Commission have found in 2019, *“the Hungarian judiciary is facing a kind of ‘constitutional crisis’ since May 2018”* while *“checks and balances, which are crucial to ensuring judicial independence, have been further weakened within the ordinary court system.”*

Members of the judiciary interviewed during this research² believed that their decisional independence remained largely intact, though in danger. However, they believed that the institutional independence of the judiciary was being severely undermined and that the judiciary as a separate branch of power was under attack from the courts’ central administration (NJO) and from other branches of power (executive, legislative). Those interviewed have also felt that attacks on the judiciary by the government-aligned media³ had also intensified recently.

In 2018–2019, an ever-escalating conflict evolved between the President of the National Judiciary Office (“NJO President”) and the National Judicial Council (“NJC”), the judicial self-administration body that should oversee the NJO President’s work. With an unexpected move on 4 November 2019, the governing majority in Parliament elected the NJO President as a member of the Constitutional Court and, consequently, elected a new NJO President. In contrast to their predecessor, the newly elected NJO President does not question the legitimacy of the NJC that unanimously supported the NJO President’s appointment. Since January 2020, there has not been any signs of conflict between the two institutions in the mainstream media. However, this present research uncovers systemic problems caused by the ineffective supervisory powers of the NJC and other weaknesses in the institutions of judicial self-governance which will not be solved simply by a change of NJO President.

² Interviews were conducted between November 2019 and January 2020.

³ Amnesty International refers to „government-aligned media” when speaking about those media outlets that are directly or indirectly controlled by the Hungarian government and/or the ruling party. According to [atlatszo.hu](https://english.atlatszo.hu/2019/06/30/data-visualization-this-is-what-the-pro-government-news-media-looks-like/), an investigative journalism website, *“112 newspapers, online media outlets, outdoor advertising companies, radio and TV stations belong to the media empire serving the Hungarian government.”*
<https://english.atlatszo.hu/2019/06/30/data-visualization-this-is-what-the-pro-government-news-media-looks-like/>

Amnesty International's analysis found that the concentration of power in the hands of one single NJO President causes systemic problems. The institutions of judicial self-governance (including the NJC, local judiciary councils or judges' plenary meetings) remain weak. As a consequence of the institutional set-up established in 2012, Mrs. Tünde Handó NJO President from 2012 to November 2019, has formed a system in which all court presidents are obliged to the NJO President and any incumbent NJO President has the power to do the same. Through this mechanism, the NJO President can basically exert administrative influence on almost all levels of court presidents. Court presidents have influence on the selection and career of judges and their evaluation. They also have significant powers in case allocation, allowing them to impact how the right to a fair trial is upheld. The newly elected NJO President has not yet made any alterations to this system.

Amnesty International believes that the case allocation system also seriously threatens the right to a fair trial in Hungary. This is because the system operates in a way that a client, or even a judge, does not know why a case has been allocated or re-allocated to a specific judge. Such a system gives the case allocator the opportunity to interfere and allocate a case to a judge that he/she thinks will decide the case with a desirable outcome and exclude or withdraw certain judges from adjudicating sensitive cases.

Even if case allocation is not tampered with, the severe limitations of organizational independence and the endangered individual independence of a judge mean that respect for fair trial rights depends almost exclusively on the integrity and moral compass of the individual judge.

The research found that external factors, including attacks through mass media and newly introduced institutional and legal developments⁴ have increased external pressure on the judiciary. The government is trying to introduce new tools to curb judicial independence: earlier, with the idea of the administrative courts, now with the adoption of the so-called omnibus bill. This new law adopted in December 2019 has opened ways for Constitutional Court justices to easily transfer to the Kúria (Supreme Court) as chamber presidents. This is problematic because, as earlier research⁵ has shown, the Constitutional Court is an institution that has previously been packed with loyalists to the governing majority and has failed to resist direct or indirect political pressure in significant human rights related cases.

Individual or decisional independence is in better shape compared to institutional (organizational) independence. The research found that, in general, an individual judge can still adjudicate without direct outside influence. However, it is in danger, due to several reasons.

Judges are afraid that the negative trends regarding institutional (organizational) independence will eventually have a negative impact on individual independence. The lack of institutional (organizational) independence makes many judges "adapt and bend" to the expectations of leaders of court administration, and this mentality might transpire to the judge's decisional (individual) independence, too. The NJO together with court presidents have already put severe administrative pressure on a judge during or following a procedure or judgement in which expectations were not met. Furthermore, due to legislative changes passed on 17 December 2019, there is a higher risk that the Kúria will hinder a judge's professional autonomy at lower level courts e.g. new regulations require judges to provide reasons for departing from non-binding jurisprudence made or published previously by the Kúria.

Over recent years, judges have experienced an increase in the number and severity of attacks from political figures and the media against individual judges and judgements. Due to the chilling effect of the institutional changes described above, judges are scared away from speaking up in defence of their opinion, which results in only weak signs of solidarity within the judiciary and between judges and other legal professions. Moreover, members of the judiciary Amnesty International talked to had the impression that there are an increasing number of judges with a bureaucratic mentality (several judges called them "bureaucrat judges"), especially among newly appointed judges. This is partly the result of the changes in the selection criteria of newly appointed judges; of socialization at the NJO; of an application system that does not necessarily favour strong skills in legal argumentation or experience in adjudication. It also stems from the fact that career advancement requires loyalty towards court leadership appointed by the NJO President. Based on the interviews, Amnesty International's understanding was that bureaucrat judges are less resilient against attacks on individual judicial independence and can be more open to outside pressures that influence judgements.

Amnesty International concludes that attacks on judicial independence have resulted in a palpable chilling effect amongst judges. Judges reported a very bad atmosphere at various courts, where most judges do not dare to speak openly and freely; cliques have formed and there is mistrust among judges. The interviewees mentioned that the chilling effect materializes in a fear amongst judges that prevents them from speaking up or protesting

⁴ Legal developments contained in the so-called omnibus bill allowing HCC justices to transfer to the Kúria or requiring judges to provide reasons for a decision in case of departing from the non-binding jurisprudence published by the Kúria.

⁵ https://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf

administrative decisions and pieces of legislation affecting the judiciary. The judges that Amnesty International interviewed said that judges are afraid of potential threats of disciplinary proceedings, disadvantageous case allocation, bad evaluation results, financial consequences, consequences related to family members, and repercussions on professional training and development. A good illustration of the chilling effect is that sometimes judges do not even know what they are afraid of: they are fearing an abstract potential future consequence, or they are fearing the unknown. Yet, this indirect and subtle consequence of the chilling effect may influence their thinking and decision making.

RECOMMENDATIONS

TO THE GOVERNMENT OF HUNGARY

KÚRIA'S POWERS AND COMPOSITION

1. The provisions of the omnibus bill⁶ analysed in Amnesty International's previous briefing⁷ that may result in curbing judicial independence and violating the right to fair trial and other human rights should be immediately withdrawn, especially the following:
 - 1.1. that allow HCC justices to become chamber presidents at the Kúria;⁸
 - 1.2. that impose the obligation on the individual judges to provide reasons for a decision that departs from the non-binding jurisprudence published by the Kúria;⁹
 - 1.3. that entitle public authorities to file a constitutional complaint with the HCC on the ground that their competences have been unconstitutionally constrained.¹⁰

CASE ALLOCATION

2. The government should reform the case allocation system and introduce new and effective measures to ensure that courts have case allocation policies for allocating and re-allocating cases in a way that is transparent for both judges and clients.

JUDGE APPLICATION SCORING SYSTEM

3. The government should reform the rules on judge application scoring system in a way that gives more advantage to applicants having more adjudicating practice.

FUNCTIONS AND STATUS OF THE NJC

As has been suggested earlier by the Venice Commission¹¹ and the Council of Europe Commissioner for Human Rights¹², the role of the NJC should be strengthened in order to balance the powers of the NJO President effectively. Amnesty International suggests the following means, some of which were included in the Bill proposal¹³ of the NJC published in 2018:

4. The NJC should be provided legal personality and greater budgetary autonomy in order to effectively carry out its tasks determined by the Fundamental Law of Hungary.
5. The NJC should have broader powers and tools to take the necessary measures if the NJO President fails to carry out his/her statutory obligations and follows an unlawful practice despite the notice made by the NJC about the irregularities.

6 Act CXXVII of 2019

7 Nothing ever disappears, it only changes https://www.amnesty.hu/data/file/4721-nothingeverdisappearsitonlychanges_independenceofjudiciary_amnesty_hungary_20191119.pdf?version=1415642342

8 Articles 88 (3) and 3 (4a) together with Article 58 (3) of the ALSRJ

9 Effective from 1 April 2020, Article 346 (5) of Act CXXX of 2016 on the Code on Civil Procedure and Article 561 (3) g) of Act XC of 2017 on the Code of Criminal Procedure

10 Article 27 (1) a) of Act CLI of 2011 on the HCC

11 Para. 32 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e)

12 Para. 128 <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>

13 <https://orszagosbiroitanacs.hu/wp-content/uploads/2018/10/2018-10-03-Az-OBT-javaslat-a-a-b%C3%ADr%C3%B3s%C3%A1gok%C3%A9rint%C5%91-jogszab%C3%A1lyok-m%C3%B3dos%C3%ADt%C3%A1s%C3%A1ra-PDF-mell%C3%A9klet.pdf>

6. A new rule of conflict of interest should be introduced to prevent court leaders directly appointed by the NJO President and their relatives becoming members of the NJC.
7. Members of the NJC should be protected more effectively against procedures targeting their immunity or initiated on the ground of incompetence such as: disciplinary proceeding, extraordinary evaluation procedure, examination procedure relating to incompetence. These should only be initiated against an NJC member upon NJC's prior consent. These measures would be aimed to guarantee that NJC members can exercise their statutory rights and obligations of safeguarding judicial independence and integrity through, among others, formulating and disseminating critical opinions on the administration and independence of the judiciary without any undue interference.
8. NJC members should be provided more effective protection against intimidation, attacks on their reputation, as well as retaliatory administrative and other measures.

RELATIONSHIP BETWEEN THE NJO PRESIDENT AND THE NJC

The co-decision-making powers between the NJC and the NJO President should be regulated in a way that strengthens the position of the NJC and requires consensus from both parties upon disagreement:

9. The consent of the NJC should be required for a judge's application procedure to be declared unsuccessful, and strict deadlines should be set for these purposes. If the NJO President declares a judge's application procedure unsuccessful, the law shall prescribe a deadline for the NJO President to publish a new call so that selection procedures are not unnecessarily delayed.
10. The following legal measures should be taken in order to challenge the NJO President's potential unlawful practices in declaring a court leadership appointment procedure unsuccessful:
 - 10.1. if the majority of the judges' plenary meeting or the majority of college judges supported the candidate for court leadership position, the NJC should be given a right to consent to the NJO President declaring the appointment procedure unsuccessful; and
 - 10.2. if the NJO President declares a court leadership application procedure unsuccessful, the law shall prescribe a deadline for the NJO President to publish a new call so that court leadership selection procedures are not unnecessarily delayed.

GENERAL RECOMMENDATIONS REGARDING THE JUDICIARY

11. Before passing any new piece of legislation affecting the judiciary, the government must have a meaningful and substantial consultation with all parties affected. The Hungarian Association of Judges (MABIE), the NJC, and civil society shall be included in all consultation.
12. The government should immediately condemn any public harassment, intimidation, or retaliation against judges, and communicate clearly that while public criticism of jurisprudence as a part of a debate is necessary in a pluralistic society, personal attacks against judges are unacceptable.

TO THE NJO

The NJO President

13. should ensure that he/she respects the NJC's prerogatives including but not limited to the NJC members' right to supervise the operation of the NJO President,¹⁴ the NJC's right to consent with regard to judges' and court leaders' applications¹⁵, and complies with the NJC's resolutions and requests;
14. should build a relationship with NJC members based on transparency, accountability, mutual respect and trust;
15. should review the NJO President's orders and repeal any regulations that unnecessarily restricts judges' right to freedom of expression;
16. should make clear that the NJO President's so-called integrity policy respects the judges' right to freedom of expression, and judges may freely discuss topics and questions related to judicial independence;

¹⁴ Section 103 (1) a) of the AOAC

¹⁵ Section 103 (3) c) and d) of the AOAC

17. should ensure that the missing members of the NJC are elected without further delay, according to the law and without any outside interference;
18. should immediately condemn any public harassment, intimidation, or retaliation against judges, and communicate clearly that while public criticism of jurisprudence as a part of a debate is necessary in a pluralistic society, personal attacks against judges are unacceptable.

TO THE EUROPEAN COMMISSION

19. Make full use of infringement proceedings and other applicable tools to continue holding the government of Hungary accountable for breaches of EU law, in particular:
 - 19.1. the values of respect for human dignity, freedom, equality, the rule of law and respect for human rights enshrined in Article 2 TEU;
 - 19.2. the obligation to ensure effective legal protection in the fields covered by EU law as required by Article 19 TEU in conjunction with Article 47 of the Charter of Fundamental Rights.

TO THE MEMBER STATES OF THE EU

20. Use the dialogue with Hungary under the Article 7.1 TEU procedure effectively, including through the adoption of concrete recommendations within the framework of the procedure and commit to assessing the implementation of the recommendations in a timely manner in order to reach a final determination under the procedure.
21. Urge the government of Hungary to address the problems highlighted in this report.
22. Demand that the government of Hungary amends the legislation on the judiciary to bring it in line with the EU's founding principles under Article 2 TEU.

TO THE EUROPEAN PARLIAMENT

23. Continue to closely monitor the situation of rule of law and human rights in Hungary.
24. Continue holding the EC and the Council accountable for their actions taken with regard to violations of the EU's founding principles in Hungary.

PREVIOUSLY ON... HUNGARIAN JUDICIAL INDEPENDENCE

From 2012, under the judiciary reform, the administration of courts became centralized under the President of the newly established National Judiciary Office. The new laws granted extensive powers to the NJO President over the court administration (e.g. recruitment and promotion of judges, management of the court system's budget, etc.). The law also established the National Judicial Council to provide checks and balances over the NJO.

It was the Minister of Justice who initiated the new judiciary administration system in 2012, and according to his official reasoning,¹⁶ the new laws intended to solve the problems of the old administrative system, amongst others the following: i) the previous National Judiciary Council's members were usually court leaders so the National Judiciary Council supervised its own members or – in other words – the court leaders were supervising themselves; ii) the previous National Judiciary Council was only convened once monthly that hindered effective operation; iii) Council members could not concentrate on their Council duties as they also had other administrative duties; iv) there were a lot of protracted cases (especially in the central region of Hungary), lawsuits not meeting deadline rules, problems with disproportionately distributed workload, all of which the old system could not handle.

With the new system, the Minister of Justice stated, an operative institution (the NJO) with strong powers was to be created that could handle problems immediately and would decide about how to reduce disproportionate workload between courts by setting aside local interests. The centralized administration would not work without a control as the NJO President could be removed from office by the Parliament and also because of the supervision by the NJC. According to the reasoning of the Government, it was an advantage that the Kúria would be responsible for the professional guidance whereas the NJO President would decide in all administrative matters, so professional and administrative competences are separated.

Various international organizations expressed concerns over the new system. The UN Human Rights Committee¹⁷ was concerned about “*transferring administrative authority over the judicial system from the National Judicial Council to the National Judicial Office. In addition, the Committee notes with concern the premature termination of the mandate of the former President of the Supreme Court, Judge Baka, allegedly for having criticized reforms of the judiciary.*” In 2017, the UN Special Rapporteur on the situation of human rights defenders after his mission to Hungary stated that “*constitutional changes have [...] led to the centralization and*

¹⁶ <https://www.parlament.hu/irom39/04743/04743.pdf>

¹⁷ Para 11. of the Concluding Observations on the Sixth Periodic Report of Hungary (CCPR/C/HUN/CO/6) (“HRC Concluding Observations”) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsm97%2BRfSonZvQyDICMC7to7IkIHViwiffCrjxJVYr7AYGd1bD3LqpWwx7fjwdowp0XO09j1KeHx2S0%2Be4%2FGUZf4WEtz0X6rsDTnt6FAcrQ>

tightening of government control over the judiciary, [...]” and he also noted “the concerns shared by local and international observers about the weakening of the independence of the judiciary”.¹⁸ Referring to the case *Baka v. Hungary*¹⁹, the UN Special Rapporteur on independence of judges and lawyers stated in connection with judges’ freedom of expression that “the content of the impugned statement and the context in which it is delivered assume special relevance with regard to cases concerning the exercise of freedom of expression as part of a public debate.”²⁰

Various European institutions also criticized the judiciary reform since 2012. The Venice Commission in its latest related report²¹ from October 2012 stated that “the powers of the President of the NJO remain very extensive to be wielded by a single person and their effective supervision remains difficult.” The Council of the European Union in its recent 2019 recommendation²² to Hungary pointed out that “checks and balances, which are crucial to ensuring judicial independence, are seen to be under further pressure within the ordinary courts system.” In 2019, the Commissioner for Human Rights of the Council of Europe²³ observed that “a series of reforms of the judiciary in Hungary during the 2010s have drawn concern about their effects on the powers and independence of the judiciary”. Council of Europe’s GRECO group in its latest, December 2018 GRECO report²⁴ on Hungary concluded that “no further progress has been reported” regarding the remaining non-implemented recommendations the GRECO had earlier made. The European Association of Judges in its report²⁵ on the fact-finding mission to Hungary in 2019 found that “the competences of the NOJ, which are vested in one person, the president, are much too large, almost comprehensive [...] On the other hand, the jurisdiction of the NJC is too restricted almost nonexistent and can easily be neutralized [...]”.

In 2012, the new laws also abruptly lowered the mandatory retirement age of judges from 70 to 62. Consequently, 57 older, experienced court leaders from the total of 373 court leaders²⁶ in judicial administration were removed from their positions. The Court of Justice of the European Union (CJEU) concluded²⁷ that the law had violated EU laws on equal treatment in employment and occupation. However, leaders over 62 were not reinstated into their previous leadership positions and new leaders were appointed instead.

In 2012, the President of the Supreme Court, András Baka, was removed from his office, before the expiry of his term. In 2014, the European Court of Human Rights ruled that the early dismissal of Mr. Baka had violated the European Convention on Human Rights as his right to access to a court and also his freedom of expression had been violated.

In 2018–2019 the conflict between the NJO and the NJC resulted in a constitutional crisis²⁸ in the Hungarian judiciary. In early 2018, new NJC members were elected by the judges. In May 2018, the NJC’s reports²⁹ of the NJO President’s decisions in previous years revealed unlawful practices of the NJO President. The NJO President claimed that the NJC was illegitimate because it did not represent all types of court and refused to cooperate with the NJC. The NJC rejected³⁰ the NJO President’s claim. In May 2019, the NJC presented a motion³¹ with detailed reasoning to the Parliament, requesting the removal of the NJO President on the grounds that she had breached her duties and had become unworthy of the office. The Parliament voted down the NJC’s motion. It was called “constitutional crisis”³² because the institution designated by the Fundamental Law of Hungary to supervise the operation of the NJO, the NJC, was prevented from doing so by the NJO President. The NJO

18 Para. 18 and 72 of the Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary (A/HRC/34/52/Add.2) (“SRD Special Rapporteur Report”) https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/52/Add.2
19 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-163113%22%5D%7D>

20 Para. 42 of the Report of the Special Rapporteur on the independence of judges and lawyers dated 29 April 2019 (A/HRC/41/48) <https://undocs.org/A/HRC/41/48>

21 Para. 88 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e)

22 Para. 17 <https://op.europa.eu/hu/publication-detail/-/publication/421552eb-cffd-11e9-b4bf-01aa75ed71a1/language-en>

23 p. 5. <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>

24 Para. 40 <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483>

25 p. 10. <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>

26 <https://birosag.hu/hirek/kategoria/birosagokrol/27-biro-ismetelt-kinevezese>

27

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=47BE6CE8F3FFB2A968FDC47239C86389?text=&docid=129324&pageIndex=0&oclang=EN&mode=lst&dir=&occ=first&part=1&cid=12775028>

28 See Amnesty International’s and the Hungarian Helsinki Committee’s joint report at <https://www.amnesty.hu/data/file/4586-a-constitutional-crisis-in-the-hungarian-judiciary-09072019.pdf?version=1415642342>

29 The reports amongst others concluded that the NJO President followed some unlawful practices in 2017-2018 according to the NJC: i) the NJO President seconded judges to courts to fulfill leadership tasks that is not allowed by the law; ii) did not give any reasoning or did not give well-grounded reasoning prescribed by the law in personnel matters (e.g. reasoning for the invalidation of leadership applications) <https://orszagosbiroitanacs.hu/2018-05-02/>

30 <https://www.dropbox.com/s/w3gv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0>

31 <https://orszagosbiroitanacs.hu/2019-05-08/>

32 A term used by the European Association of Judges <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>

President refused to cooperate and provide data on request to the NJC and did not participate in the NJC meetings. At the NJO President's motion, in March 2019, the Hungarian Ombudsperson³³ referred a question to the HCC on the functionality of the NJC in its reduced capacity. The case is still pending.

Pressure on individual judges has further increased. Government-aligned media has continued to target and discredit individual judges, including members of the NJC and other judges who publicly criticised the judicial administration.

Throughout 2018-2019, the governing majority in Parliament had planned to set up a separate administrative court system that would have jurisdiction over taxation; public procurement and other economic matters; as well as elections, freedom of assembly, asylum, and other human rights issues. In March 2019, the Venice Commission in its opinion³⁴ found that the *"major drawback"* with regard to the new law is *"that very extensive powers are concentrated in the hands of a few stakeholders and there are no effective checks and balances to counteract those powers"* in the system. The First Vice-President of the European Commission,³⁵ the Council of Europe Commissioner for Human Rights,³⁶ and the UN Special Rapporteur on the Independence of Judges and Lawyers³⁷ also criticized the proposed system of administrative courts. The Hungarian parliament first postponed, then dropped the new law in November 2019.

Although the Commissioner for Human Rights of the Council of Europe urged the Hungarian Parliament to modify the draft bill,³⁸ on 12 December 2019, Parliament adopted a 200-page so-called "omnibus bill," amending various legal provisions pertaining to the court system and the status of judges. Amnesty International's analysis³⁹ showed that the "omnibus bill" was designed to guarantee judicial decisions favourable to the government in politically sensitive cases even without setting up a separate administrative court system.

33 <https://www.ajbh.hu/-/az-alapveto-jogok-biztosa-az-alkotmanybirosaghoz-fordult-az-orszagos-biroi-tanacs-mukodeset-erinto-alkotmanyjogi-problema-megoldasa-erdekeben?inheritRedirect=true>

34 Para 113. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)004-e)

35 <https://www.liberties.eu/en/news/rule-of-law-ep-debate-hungary-jan-2019/16931>

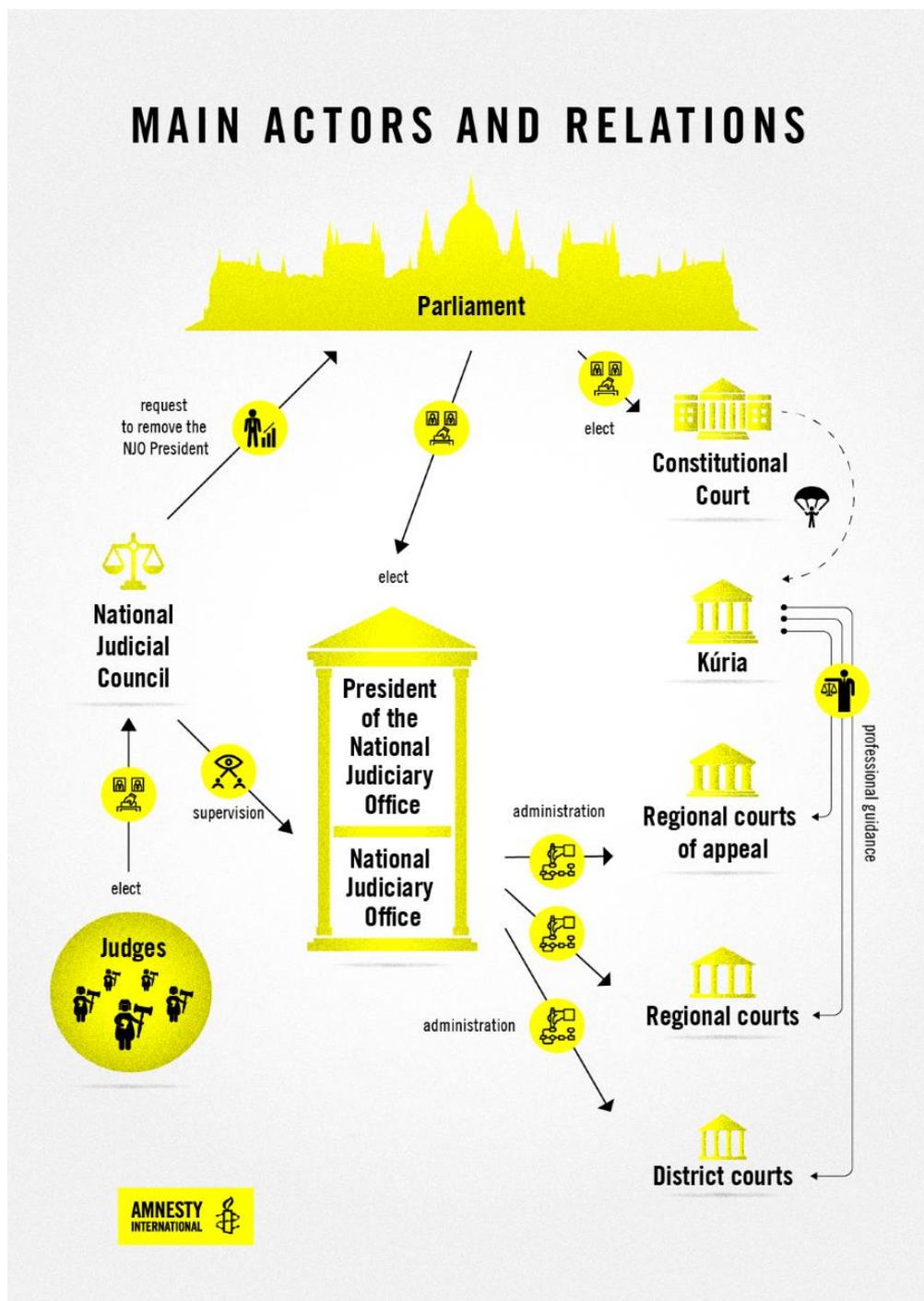
36 <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-hungary-s-president-to-return-to-the-parliament-the-legislative-package-on-administrative-courts>

37 "Hungary: more needs to be done to bring legislation on administrative courts in line with international standards, UN Expert says" , available: <https://www.ohchr.org/Documents/Issues/IJudiciary/InfoNoteHungary8Apr2019.docx>

38 <https://www.coe.int/en/web/commissioner/-/the-commissioner-urges-the-hungarian-parliament-to-modify-a-bill-affecting-the-independence-of-the-judiciary>

39 https://www.amnesty.hu/data/file/4721-nothingeverdisappearsitonlychanges_independenceofjudiciary_amnesty_hungary_20191119.pdf?version=1415642342

ILLUSTRATIVE SCHEMATIC PICTURE OF THE HUNGARIAN COURT SYSTEM AND JUDICIARY ADMINISTRATION



1. SEVERELY LIMITED ORGANIZATIONAL JUDICIAL INDEPENDENCE

The judiciary is widely considered by the general public, media, and constitutional law experts alike to be “*the last line of defence*”⁴⁸ of human rights and the rule of law as a state institution exercising control over the overpowered executive in Hungary. Based on this research, Amnesty International concluded that judges consider the courts as the last state institution in Hungary to retain its autonomy, but they are also pessimistic. Many said that the system is having structural and leadership problems too.

The judges interviewed for this research told Amnesty International that following the system change in 1990, they experienced a positive tendency towards improving judicial independence and developing a judicial ethos. Judges reported that this tendency has been overturned in the past years. Judges experienced attacks against their independence differently on two levels. All the judges’ general opinion was that judicial independence may still be intact on a judge’s individual level, such as on how he/she adjudicates in his/her cases. This dimension is called decisional or “*individual judicial independence*”. Nevertheless, judicial independence on an organizational level was felt to be severely limited. This dimension is described as “*organizational judicial independence*”, which should guarantee, that the court administration (including the NJO and the court leaders) does not influence how judges adjudicate individual cases. Furthermore, it means that the judiciary is not influenced by external organs, such as by other branches of government (namely the executive power and legislature). Judges interviewed experienced the erosion of their independence by both internal (Section 1.1) and external (Section 1.2) factors.

1.1 INTERNAL FACTORS ERODING ORGANIZATIONAL INDEPENDENCE

Four factors have contributed to the erosion of organizational independence internally. First, after the 2012 judicial reform, the whole judiciary system fell in line with the NJO, the central administration, on all kinds of

48 See the report of the Hungarian Helsinki Committee “Attacking the Last Line of Defence” <https://www.helsinki.hu/wp-content/uploads/Attacking-the-Last-Line-of-Defense-June2018.pdf>

levels. Based on the law, there is an NJO President with very strong powers and the NJO President has full administrative and also partial professional control over the courts.

Second, by appointing court leaders (especially regional court presidents and regional court of appeal presidents) loyal to the NJO President, the central administration's tight control can be executed at lower levels, too, hindering organizational independence further.⁴⁹

Third, the judges interviewed explained that loyalty became the main requirement to advance their career or achieve other administrative advantages (e.g. bonuses, foreign trips, getting into working groups at the NJO that gives extra remuneration, becoming a trainer in one of the education programs as educator, attending training courses, receiving special titles [e.g. "honorary regional court judge"] that also come with extra remuneration).

Finally, institutions of judicial self-governance cannot provide sufficient checks and balances to the above system.

1.1.1 TOO MUCH POWER IN THE HANDS OF THE NJO PRESIDENT

"What do you call this? Independence? I don't know."

A judge from the Kúria

International standards⁵⁰ stress that *"adequate structures within the judiciary and the courts be established to prevent improper interference from within the judiciary"*.

In the present judiciary system, the NJO President has vast powers,⁵¹ amongst others he/she: appoints and supervises the regional court and regional court of appeal presidents, deputy presidents, college leaders; may issue compulsory internal policies for judges; prepares the draft budgets of the court system; sets the nationwide headcount of judges and other judicial employees; publishes the calls for applications for judges' positions; may second a judge to the Kúria, to the NJO, or to the Ministry of Justice; in certain cases, may transfer judges between courts; and manages the judiciary's education system.⁵²

The interviews confirmed that there is a wide assumption among judges that the main political purpose of the new 2012 system was to have a one-person leadership over the judiciary. The NJO President is elected by the Parliament with a two-third majority and not elected by the judges themselves; therefore, many judges consider the NJO President to be a political appointee.

The NJO is the key actor in judicial administration with overwhelming powers. To counterbalance these wide powers, the National Judicial Council (NJC) was formed but its powers are much weaker than the NJO's and the system allows for the NJO to disregard the NJC's supervision. This systematic problem was visible during the NJO-NJC conflict in 2018-2019 when the NJO President claimed that the NJC was illegitimate. Consequently, the NJC could not effectively supervise the operation of the NJO according to the law.

A change of NJO President will not in itself solve such systemic problems. As one interviewee explained, even if the NJO President is acceptable to the majority of judges, he/she is perceived to be a part of the political system and the contemporary society. Without further guarantees, he/she may be prone to fulfil political expectations.

Several judges added that the system itself needs to be fixed, regardless of who the NJO President is. This is because i) it depends on one person, the NJO President, whether the laws on the administration of the judiciary or the rights of the NJC are obeyed or not, ii) one person alone was able to deteriorate the situation to a point where the NJO may disregard the NJC, and it took 2 years of "fierce fighting" until the NJC's legal position seemed to be restored. Despite the above, a few judges felt that a lot depends on the approach of the new NJO President, Mr. György Senyei.

49 According to one judge, at higher level courts, there are "political" figures who will be there forever ("you cannot do anything with them") and who have adjusted to the current system; if there will be another party in power, they would adjust to them – "how do you call this? Independence? I don't know."

50 Para. 103 of the Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy (A/HRC/11/41) ("2009 IJL Special Rapporteur Report") https://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41_en.pdf

51 Article 76 of the AOAC

52 The Venice Commission in its latest related report from October 2012 stated that *"the powers of the President of the NJO remain very extensive to be wielded by a single person and their effective supervision remains difficult."* [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e)

Beyond the excessive legal powers given to the NJO President, there were clear signs that the previous NJO President abused and misused these powers and there could not have been legal remedies against such misuse other than the motion for her removal at the Parliament. Significant examples of abuse or misuse of powers include:

- a) In several cases, applications for court leadership positions by candidates supported by the judges' plenary meeting got invalidated by the NJO President without a clear justification. Since the inception of the NJO and NJC in 2012, the proportion of leadership applications that have been invalidated has increased (33.33% in 2016, 50% in 2017 and 55.31% in 2018).⁵³⁵⁴
- b) Moreover, usually after such invalidation, the leadership position was filled not by regular application procedures, but through a temporarily assigned interim leader⁵⁵ already known by the NJO President and known to be loyal to her. Some judges Amnesty International interviewed also gave examples of the NJO President's practise of seconding judges for leadership roles, which is not possible under the laws.⁵⁶ For example, a regional court of appeal judge was seconded to be a college leader at the Metropolitan Regional Court.
- c) For the appointment of an interim leader, sometimes the "NJO-trampoline"⁵⁷ has been used. One judge explained to Amnesty International: "on Friday a leader was still leading a meeting at a smaller regional court, then on Saturday he/she was assigned to the NJO, then Sunday he/she worked at the NJO, then on Monday he/she was assigned to another big regional court in the morning, and later that morning he/she became the president of that regional court". There was a widespread perception among the judges interviewed and their colleagues that if somebody worked at the NJO "even for 5 minutes", his/her career could be accelerated.
- d) There was a serious problem with the NJO's non-transparent practice of invalidating judges' applications without any justification given. One judge noted, however, that the NJO President is not able to interfere with ordinary judges' applications as much as he/she would have been able to in the pre-2012 system. Also, according to a NJC report,⁵⁸ there was positive improvement on this issue in the second half of 2018 as compared to the previous period.

As described above, the NJO President's had a practice of invalidating judges' and court leadership applications in a non-transparent way and without giving clear justification. Amnesty International draws the attention to international standards requiring that "[d]ecisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity"⁵⁹ and that "promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience".⁶⁰

53 Kovács Ágnes: Ki védi meg a magyar bíróságok függetlenségét? https://jog.tk.mta.hu/uploads/files/2019_10_Kovacs.pdf

54 For example, at one regional court, there have been four invalidations in this period where candidates were supported by the NJO but not supported by the judges' plenary meeting.

55 Article 133 (2) of the AOAC

56 Judges can be seconded to another court only for two reasons: for their professional advancement and to manage the workload at the courts. Article 31 (2) of the ALSRJ

57 The NJO President may relocate any judge to the NJO and any judge working at the NJO to any court. Articles 27 (2) and 58 (4) of the ALSRJ

58 NJC Resolution 14/2019. (III.6.) March 2019

59 <https://www.dropbox.com/s/dbiq6nipgmp5b3d/14.2019%20%28III.6.%29%20OBT%20hat%C3%A1rozat%2011.2019.%20%28II.6.%29%20OBT%20hat%C3%A1rozat%20kieg%C3%A9sz%C3%ADt%C3%A9se.pdf?dl=0>

59 Para. 46 of the Recommendation CM/Rec(2010)12 of the Council of Europe on Judges: independence, efficiency and responsibilities ("CoE Recommendation on Judges") <https://rm.coe.int/16807096c1>

60 UN Basic Principles on the Independence of the Judiciary ("Basic Principles") <http://www.icj.org/wp-content/uploads/2014/03/UN-Basic-principles-independence-judiciary-1985-eng.pdf>

INVALIDATING JUDGES' APPLICATIONS



The local judiciary council sets a ranking between applicants to a judge position, which they send to the NJO President. The NJO President normally should approve the candidate ranked top by the local judiciary council. The NJO President may by law declare the application procedure invalid (if for example there are changes in the workload after the application procedure started or if there has been a procedural mistake). However, there have been cases where the NJO President declared an application invalid without providing justification. One example mentioned by the judges was Judge Csaba Vasvári who twice was not appointed to a regional court of appeal position – he filed a lawsuit against these NJO decisions but the regional court of Győr dismissed his case saying that the NJO President cannot be sued in such a case.⁶¹ Also mentioned were two other cases where the NJO refused to appoint two district court judges against the decision of the local judiciary council.



CASE STUDY – HANDPICKING COURT LEADERS IN ACTION

At a court two colleagues of one interviewee applied to be regional court president but their application procedures got invalidated by the NJO President. At the end of a new procedure, the NJO President invalidated the application procedures for the second time. The NJO President then appointed an interim president for that court, who was said to be a good friend of the NJO President. The next time, this interim president was the only applicant and their application was successful as, being tired of all these procedures, even the judges' plenary meeting voted for this person. There were examples across the country where the NJO President invalidated leadership applications until such a person applied that the NJO President was happy with.

- e) The NJO President also declared the NJC illegitimate and stopped cooperating with the very institution vested with controlling the NJO. In particular, the NJO President:
- refused to cooperate with the NJC in ensuring access to documents and thus undermined effective control over court administration;
 - prevented the NJC from appointing service court judges who have jurisdiction over judges' disciplinary and other internal cases;
 - prevented judges from electing members to the NJC to fill the missing seats;
 - circumvented the NJC's right to comment on the proposal for the courts' budget and failed to submit a report on the execution of the budget;
 - refused to sign the NJC's budget thus blocking its effective financial functioning;
 - did not submit internal regulations (orders) to the NJC for consultation prior to their publication;
 - failed to inform the NJC about the NJO President's activities on a 6-monthly basis, which is mandatory under the law.⁶²

Based on the abuses of power by the NJO President, the NJC requested⁶³ the Parliament to remove the NJO President from her position, on the basis that she had breached her duties for more than 90 days and become unworthy of the office. The ruling majority of the Parliament did not comply with the NJC's request.

Amnesty International draws attention to the international standard that judicial councils (here in a sense of institutions managing court administration, the NJO) *"should operate in a transparent way and should be accountable for their activities in the field of court administration and budget control. Transparency is an essential factor in the trust that citizens have in the functioning of the judicial system [···]. Extended financial powers for a council imply its accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis*

61 <https://birosag.hu/hirek/kategoria/birosagokrol/veritas-vincit-pert-nyert-az-orszagos-birosagi-hivatal-vasvari>

62 https://www.amnesty.hu/data/file/4742-hungary_judiciary_timeline_ai-hhc_2012-2019.pdf?version=1415642342

63 NJC Resolution 34/2019. (V.08.) May 2019 <https://orszagosbiroitanacs.hu/2019-05-08/>

the courts and the public.”⁶⁴ Moreover, the recommendation of the Council of Europe sets forth that “[t]he law should provide for sanctions against persons seeking to influence judges in an improper manner.”⁶⁵

Amnesty International’s Recommendations No. 5, 9, 10, 13, 14. are relevant to this Section 1.1.1.

1.1.2 WHAT ARE THE CONSEQUENCES OF THIS SYSTEM? – “VASSAL SYSTEM” AND “OATH OF FEALTY”

THE NJO’S POWERS TO APPOINT COURT PRESIDENTS



The NJO President appoints the regional court presidents and their deputies, the regional court of appeal presidents and their deputies, and the college leaders. Candidates for these positions need to file their application, the judges’ plenary meeting hears them and expresses its opinion on the candidates by casting a secret ballot. After this the NJO President also interviews the candidates. The consent of the NJC is needed if the NJO President would like to appoint a candidate who has not received the majority of the votes at the judges’ plenary meeting. Generally, presidents are appointed for 6 years, their tenure may be renewed once. Then the regional court presidents appoint the district court presidents and their deputies, and the group leaders and their deputies.

In 2012, the new structure of the judiciary put the NJO President on the top of the judiciary’s management hierarchy.⁶⁶ All interviewees confirmed that, consequently, the important court leader positions have been subject to the personal formal or informal approval of the NJO President. The interviewed judges thought that the main idea behind such a system was to exert control over the whole judiciary system by the NJO President. With the help of such a centralized structure, tighter control could be expected over the whole judiciary by a single person who was elected by the Parliament.

When the judges interviewed by Amnesty International spoke of their experiences of criteria used to determine appointments to higher leadership positions, strong patterns emerged. Factors such as the interests of the judges, the professional development and knowledge of an applicant or support of the local judges were hardly taken into consideration. Instead, non-meritocratic factors (such as being on good terms with or loyal⁶⁷ to the court leader or the NJO President) mattered the most and the NJO President played a central role in this culture.

As a result of the abrupt compulsory retirement of judges over 62 in 2012, 57 older, experienced court leaders from the total 373 court leaders⁶⁸ in judicial administration were removed from their positions. Now, practically all regional court and regional court of appeal presidents have been replaced by judges loyal to the central administration, all having been entrusted by the NJO President.⁶⁹ An interviewee said that an “oath of fealty” must have been a precondition for their assignment.⁷⁰ Another interviewee said the NJO President regarded the leaders as “her orders’ executioners”. The court presidents hope they will be reappointed for another six years, so they do not dare to criticize “above their pay grades” and do not dare to make any comments about higher levels of court administration. As one judge put it: “they have been socialized not to have any individual thoughts, ideas, decisions, they look for instructions from the NJO even in the slightest things”. According to one interviewee, the most frightening part is that these leaders do not just follow the NJO’s orders, but “they know exactly what is expected from them” and voluntarily act upon this, sometimes they even overcompensate.⁷¹ Moreover, the NJO President used the leaders’ loyalty to put pressure on the NJC. One judge expected that if the court presidents feel empowered to sign such “outrageous” letters “in the name of all judges” with which they

64 Para. 59 of the Report of the Special Rapporteur on the independence of judges and lawyers, on judicial councils A/HRC/38/38 (“JL Special Rapporteur Judicial Council Report”) https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/38

65 Para. 14 of the CoE Recommendation on Judges

66 About appointment of court leaders, see Articles 127-128 of the AOAC

67 Who were the “loyal” people? According to the interviewees, “the loyal people have been those known not to resist, not to cause problems, not to contradict when there should be no contradiction”. To be an administrative leader, from the first moment, people know what to do: to express loyalty and to participate in activities expected by the person who will eventually decide about the leadership application.

68 <https://birosag.hu/hirek/kategoria/birosagokrol/27-biro-ismetelt-kinevezese>

69 See more on this: https://www.amnesty.hu/data/file/4742-hungary_judiciary_timeline_ai-hhc_2012-2019.pdf?version=1415642342

70 Many judges referred to the so-called farewell letter signed by court presidents and addressed to and praising the stepping down NJO

President Mrs. Handó as an illustration of the extreme loyalty towards Mrs. Handó:

https://index.hu/belfold/2019/11/29/hando_tunde_birak_birosagok_bucsuztatasa/

71 An example of such overcompensation: after the October 2018 NJC electoral meeting, lots of judges signed open letters of protest that were uploaded to the MABIE’s website. A regional court president demanded that the MABIE take down these open letters

<https://www.mabie.hu/index.php/1345-az-egri-torvenyszek-elnokenek-levele-a-magyar-biroi-egyesulet-elnokehez>

demanded the resignation of NJC members,⁷² then next they would be telling the judges how to pass their judgements too.

The interviewed judges reported that after all new court presidents were appointed, this mentality of loyalty vis-à-vis the NJO trickled down to the lowest level of court leader, even to deputy group leaders. Some judges assumed that the NJO President had increased the total headcount of administrative court leaders, so that through them, the courts could be more easily instructed by the central administration.

Certain judges have also been intimidated by the NJO or the courts' leadership. There have also been so-called "Cui prodest" articles written in internal NJO publications by NJO employees vilifying certain NJC and MABIE members. One interviewee said that the court president, deputy court president, and former NJC members had vilified certain judges at some court meetings and also pushed NJO propaganda during the NJO-NJC conflict.

All this resulted in counterselection:⁷³ the most respected and the most experienced judges could not become court leaders; only those who had been more loyal could. In contrast, international standards strongly recommend that *"when it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned."*⁷⁴

Through this, a modern "vassal-system" was formed. As one judge put it: *"The president of all courts was the NJO President."* The NJO President can administratively control the higher courts (except for the Kúria) via the court presidents, then higher courts can administratively control the lower courts via the district court presidents, and then the district court presidents can administratively control the lower court leaders. On the level of ordinary judges, many interviewees noted that those who supported the court presidents (e.g. by taking on extra administrative tasks) were rewarded, and they were the "favorites." In fact, judges wishing to advance their career have been expected to support the local court leadership.

Amnesty International's Recommendation No. 10 is relevant to this Section 1.1.2.

72 After the October 2018 NJC electoral meeting did not elect new members to the NJC, presidents of the regional courts and regional courts of appeal made a public statement in which they called for the resignation of the existing NJC members.

<https://szegeditorvenyszek.birosag.hu/hirek/20181011/itelotablaik-es-torvenyszeki-elnoki-ertekezeslet-resztvevoinek-nyilatkozata>

73 For example, the judges interviewed gave an example of

a district court judge was "elevated" to be a college president with only 3 years of experience. He/she was not supported by the college judges or by other judges – he/she however emphasized loyalty (in the leadership application he/she mentioned "active listening") and had an experience as a coach, so Mrs. Handó liked him/her.

74 Para 4.1 of the Council of Europe's European Charter on the statute for judges <https://rm.coe.int/16807473ef>

1.1.3 DANGERS TO THE RIGHT OF FAIR TRIAL – CASE ALLOCATION IN THE “VASSAL SYSTEM”

THE CASE ALLOCATION SYSTEM



The excessive powers of the NJO President and the above described “vassal system” does not only concern judges but everyone. One way an individual may be affected by this is through the so-called case allocation system. When cases arrive at a court, they are distributed/allocated amongst judges in a pre-determined way.

The idea of the law⁷⁵ is that a case should be allocated based on pre-determined rules included in a so-called case-allocation policy that is approved for each court. Usually, the cases are allocated by one court leader (e.g. a court president or his/her deputy, a group leader at bigger courts). Different criteria and any combination thereof may be used in the case allocation policy devised for each court to determine which judge will get a case: for example, alphabetical order of a defendant’s name, time of arrival, even and odd numbers, etc.

According to international standards, “plans need to be as detailed as to prevent manipulation in the allocations of cases”⁷⁶. Withdrawing a case should be “taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary” and “allocation of cases within a court follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge”⁷⁷. Moreover, “to enhance impartiality and independence of the judiciary”, the Venice Commission highly recommends that “the order in which judges deal with the cases be determined on the basis of general criteria. This can be done for example on the basis of alphabetical order, on the basis of a computerised system or on the basis of objective criteria such as categories of cases”.⁷⁸

An individual’s case should be allocated to a judge impartially, without any predilection. Amnesty International cannot say 100% that this is the case in Hungary.

In Hungary, the allocation system operates in a way that a client or even a judge does not know why a case has been allocated or re-allocated to a specific judge. Such a system allows the case allocator (a court leader) to manipulate allocations to pick a judge he/she thinks will decide the case with a desirable outcome, and also not to allocate a case to certain judges. Adding that the case allocator may be under the informal influence of a court president and/or the NJO President, the case allocation system seriously threatens the right to a fair trial in Hungary.

Eventually the system allows the case allocator wide discretion to decide whom to allocate a case. It is a serious hindrance to the right of fair trial if a client’s case is allocated or re-allocated to a judge based on political or other inappropriate motivation.

The judges Amnesty International interviewed confirmed there are serious problems with the case allocation system. One of them called it one of the biggest problems in the court system. The problem is especially felt in courts where more important or potentially politically sensitive cases are dealt with. Judges at lower court levels or at courts where cases are not relevant from a political perspective, however, did not feel that there are major problems with the case allocation scheme.

Most of the interviewees, though, told that deviations from the case allocation policy (that are allowed by the law) happen regularly, which results in a system where the case allocator may manually decide case-by-case about the allocation of the case. This is possible because the law permits the use of any combination of different case allocation criteria simultaneously.

ARBITRARY CASE ALLOCATION

A judge shared that it is a regular practice at his/her court, that in case of a politically sensitive or media-sensitive case, the court president gives a telephone call to the leader responsible for case allocation that an important case has arrived, and the group leader should pay attention to its allocation and to who gets it, as not everyone can get that case. In key cases, the phone call even comes from the NJO to the college president and

75 Articles 8-11 of the AOAC

76 Para. 47 of the 2009 IJL Special Rapporteur Report

77 Para. 9 and 24 of the CoE Recommendation on Judges

78 Para. 80 of the Venice Commission’s Report on the Independence of the Judicial System, Part I: the Independence of Judges (CDL-AD(2010)004) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e)

then the college president “*knows his/her job.*” In smaller courts, especially outside of Budapest and outside of major cities, where only a few judges work in one group, the college president or the group leader has more sophisticated information on whom to assign the case to.

Another interviewee said that if a political leader wants to have influence on a case, they will manage the case allocation in a way that the case falls into the hands of the “*appropriate judge*”. The interviewee recounted a specific case when he/she was the case allocator and rejected an attempt by the court leadership to persuade him/her to deviate from the case allocation policy and put another judge on the case. The interviewee believed the motivation was most likely that the preferred judge would have delivered a more desirable outcome for the government.

The interviewees believed judges could become “stigmatized” and never receive a politically or otherwise sensitive case in the future if they for example: delivered an “inappropriate” judgement, which was “not preferable to the system” in a politically sensitive case; or did not agree with the legal opinion of the prosecutor in a sensitive case; or if the judge asked a question from the HCC or filed a preliminary ruling request to the European Court of Justice.

A judge explained that if a chamber president wants to make sure the “right” judgement is passed he may allocate a case to a rapporteur judge who shares his mindset or approach. Also, at higher court levels, it is known that different chambers have different professional stances and a case allocator may choose a chamber for a case based primarily on the similarity of their professional views. Similarly, a judge told Amnesty International that at a higher court, a chamber president decided whether a case is allocated to him/her or another judge, after asking both of them how they would decide in the specific, politically sensitive matter.⁷⁹

NON-TRANSPARENT CASE ALLOCATION

Oftentimes, the operation of the case allocation system is not transparent. If cases are allocated in a non-transparent way, or cases are re-allocated without justification or in a non-transparent way, the client’s right to fair trial may be violated. Judges pointed out that a client does not get notified about the re-allocation of his/her case, and they cannot challenge such re-allocation. Another judge added that there is no formal resolution on deviation from the allocation policy; so, sometimes even the judges don’t know the reason for the re-allocation. “*You do not know about every case why a judge received it.*” As another judge put it, “*the wisdom of the college leader is the basis of the case allocation.*”

Moreover, a judge noted that at their court, decade-old, informal ways of influencing prevailed through which judges attempted to be on good terms with the case allocators and let them know their preferences.

Amnesty International’s Recommendation No. 2 is relevant to this Section 1.1.3.

1.1.4 WEAKNESS OF JUDICIAL SELF-GOVERNANCE

One of the tools that, in theory, may provide appropriate checks and balances to the vast powers of the NJO President is the strong and functioning self-governance of judges.

Judges told Amnesty International that self-governance had never been strong, but it has become even weaker after 2011, and the 2-year-long NJO-NJC conflict has put judges’ self-governance into a crisis.

⁷⁹ The interviewee did not know if the chamber president was instructed by someone else, if the president was responding to a type of inducement or threat, or why this happened.

WEAK COMPETENCES OF THE NJC AS OPPOSED TO THE NJO

REMIT AND COMPOSITION OF THE NJC



According to the law⁸⁰ NJC is the supervising organ of the courts' central administrative system and also manages administrative tasks. The NJC has 15 members: the president of the Kúria and 14 members elected by judges at the NJC electoral meeting by secret ballot. The NJC electoral meeting must elect 1 judge from regional courts of appeal, 6 judges from regional courts and 7 judges from district courts. A judge must have at least 5 years of tenure to become elected as NJC member.

The remit of the NJC includes: supervising the administrative operation of the NJO President; giving opinions on the NJO President's internal policies; approving the Judges' Code of Ethics, appointing the members of the service courts;⁸¹ giving its consent if the NJO President wants to appoint a candidate for court president who has not received the support of the judges' plenary meeting; giving its consent if the NJO President wants to appoint a candidate for an ordinary judge position who is ranked second or third; giving its consent if a court president or deputy court president wants to apply for the presidency for a third time; giving its prior opinion about the candidates for the NJO President and the president of the Kúria.

According to the Venice Commission⁸² *"the powers of the President of the NJO still clearly prevail over those of the NJC, also because the current Council, composed exclusively of judges, cannot enjoy a true autonomy and independence from the NJO."*

One interviewee said that even if the NJC had been let to work fully according to the laws, that would still not have been enough to counterbalance the vast powers of the NJO. Most of the judges agreed that the self-organization should have more room to operate; the NJC needs to have more powers while the NJO President's competences should be reduced.

Interviewees agreed that competences of the NJC are very weak,⁸³ and if the NJO does not cooperate with the NJC, the NJC cannot even exercise those already weak powers as it was visible during the NJO-NJC conflict.⁸⁴

Still, the majority of judges interviewed considered the NJC as the only somewhat effective institution of self-governance within the system of judicial administration.

JUDICIARY COUNCILS – "WORKING FINE BUT WEAK"

Most of the interviewees mentioned that local judiciary councils are working fine but they have weak powers and are weightless. They can only give opinions on the budget, the court's deeds of foundation and disciplinary proceedings. They only have a minimal role⁸⁵ in the judges' application procedures and even that minimal role can be set aside.⁸⁶

A judge told Amnesty International that the competence of the judiciary council is more formal than meaningful, but it also depends on the approach of the individual council: they can make statements in national cases, and about the judiciary system, they can hold meetings on every question—and there are some active judiciary councils that do so. Sometimes, though, even a brave judiciary council's stance can mean nothing.⁸⁷

According to one interviewee, however, judiciary councils across the country do not do much and they only give their opinions according to their competence. This is typical because *"the majority of judges withdraw into this*

80 Article 88 of the AOAC

81 Service courts comprise of judges and deal amongst others with disciplinary proceedings against judges or with appeals against the results of an evaluation procedure.

82 Para. 32 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)020-e)

83 In its recent, 2019 recommendation to Hungary within the European Semester Framework, the Council of the European Union stated that *"[c]hecks and balances, which are crucial to ensuring judicial independence, are seen to be under further pressure within the ordinary courts system. The [NJC] faces increasing difficulties in counter-balancing the powers of the [NJO President]. Questions have been raised regarding the consequences of this for judicial independence."* <http://data.consilium.europa.eu/doc/document/ST-10170-2019-REV-2/en/pdf>

84 For more on this conflict, see the joint report by Amnesty International and the Hungarian Helsinki Committee:

<https://www.amnesty.hu/data/file/4586-a-constitutional-crisis-in-the-hungarian-judiciary-09072019.pdf?version=1415642342>

85 The interviewees said that the subjective points judiciary councils are entitled to give within scoring criteria for applicants have been reduced to 10 from 20, meaning that they rarely have the possibility to really decide on judges' applications.

86 One judge said that sometimes the NJO President illegally overruled the judiciary council's decision on allocation of points to an applicant, stating that the council had misinterpreted something.

87 As a sign of protest against the NJO's unlawful practice in applications, the Szombathely (countryside county capital) judiciary council resigned in 2015. According to a judge, the newly elected judiciary council was filled up with NJO loyalists, so the mass resignation had no effect. https://www.nyugat.hu/cikk/lemondott_vas_megyei_biroi_tanacs

comfortable passivity”, saying “*we want peace*”, “*we do not want any trouble, let us leave alone, we go back to our little office and do our job, and that’s it.*” This interviewee had the opinion that most of the local judiciary councils think that their job is solely to decide about the maximum 10 points in the judges’ application procedures.

JUDGES’ PLENARY MEETINGS

According to judges, judges’ plenary meetings do not have strong competences either.

One of the judges’ plenary meeting’s strongest weapon is to block an application to a leadership position. However, it cannot block an interim assignment made by the NJO President. This has resulted in several regional courts which have a president who is not supported by the judges’ plenary meeting but has been appointed temporarily by the NJO President as interim president. Moreover, there were cases where the NJO President extended the same leader’s temporary appointment,⁸⁸ effectively circumventing the maximum-one-year-rule.

Some judges mentioned that sometimes when judges initiated convening a judges’ plenary meeting,⁸⁹ the court leadership prevented the meeting from happening. Thus, even this weak tool of judiciary self-governance cannot operate.

INTERIM ASSIGNMENT OF REGIONAL COURT/REGIONAL COURT OF APPEAL PRESIDENTS BY THE NJO PRESIDENT



According to the law, the NJO President may decide that he/she does not accept the opinion of the judges’ plenary meeting on the court president applications. In such cases, a new application procedure must follow. If the NJO President once again does not like the applicant supported by the judges’ plenary meeting, the NJO President may assign an interim court president for one year maximum.

MABIE – THE ROLE OF THE JUDGES’ ASSOCIATION

Several interviewees had the opinion that MABIE has always been a weightless organization and its leaders are generally trying to be on good terms with the NJO President.

Some pointed out, though, that if the tensions reach a breaking point, things can change at MABIE. There have been cases when the MABIE tried to be more active; for instance, they published a public statement⁹⁰ condemning the October 2018 NJC electoral meeting⁹¹ and the subsequent letter by court presidents, and they also published letters of protest from various courts and judges.⁹²

Many judges missed the strong supportive messages from MABIE in cases where individual judges came under attack by the media or by politicians.⁹³

Amnesty International’s Recommendations No. 4-8., 13., 14. and 17. are relevant to this Section 1.1.4.

88 For example, since 5 October 2018 the NJO President has temporarily appointed the president of the Pécs Regional Court of Appeal three times already. (NJO Resolutions 705.E/2018. (X. 2.) OBHE; 201.E/2019. (III. 26.) OBHE; 509.E/2019. (IX.24.) OBHE)

89 At the Debrecen Regional Court of Appeal, in November 2018, court president Lajos Balla did not convene a judges’ plenary meeting even though one-third of the judges legally initiated to convene it. The president claimed the questions on the agenda does not belong to the competence of the judges’ plenary meeting. (https://nepszava.hu/3044104_nem-lat-hivatali-visszaelest-az-ugyeszseg)

In another case at another court, judges wanted to have a judges’ plenary meeting after the NJC electoral meeting in October 2018. The regional court president first convened the meeting, opened it but then announced that according to the law the meeting could not be held and dismissed the meeting, resulting in a loud quarrel. The interviewee said that the court president’s popularity suffered such that subsequently the judges’ plenary meeting did not support the deputy the court president wanted).

90 <https://www.mabie.hu/index.php/1055-a-magyar-biroi-egyesulet-kozlemenye>

91 This electoral meeting was convened to elect the missing members of the NJC. Court presidents and other judges effectively blocked the election of new NJC members, and some participants claim that several procedural laws were violated on the meeting. Afterwards, in an open letter, court presidents called for the resignation of NJC members in the name of all judges.

92 <https://444.hu/2018/10/19/hando-kritikusait-akartak-lemondadni-de-visszafele-sulhet-el-az-akcio>

93 For example, the MABIE has not spoken up in case of the attacks on the adjudicating judge in the Borsodnádásd homicide case, <https://pestisracok.hu/kocsis-mate-a-borsodnadasdi-gyilkossagrol-verlazito-a-birosagi-itelet/>

1.2 EXTERNAL FACTORS PRESSURING ORGANIZATIONAL INDEPENDENCE

1.2.1 POLITICALLY APPOINTED HCC JUSTICES MAY TRANSFER TO THE KÚRIA

Following the adoption of the “omnibus bill” in December 2019, judges are increasingly worried about the Kúria, when talking about judicial independence.

According to Amnesty International’s previous briefing,⁹⁴ the omnibus bill makes it possible for newly elected HCC justices, and for those already on the bench, to become judges simply on their request. HCC justices may be appointed to judicial positions “without an application process.”

This rule raises concerns, as the law normally requires different competences to qualify as an ordinary judge than to become an HCC justice. Legal scholars with high-level professional knowledge (university professors or doctors of the Hungarian Academy of Sciences) may become HCC justices while, for a judicial appointment, a candidate needs practical experience as a judge, a court secretary, or as a legal professional in other fields. HCC Justices will not be required to prove this kind of experience or to compete with other experienced candidates for the prestigious posts of chamber presidents at the Kúria. This is because, effective from 2020, HCC justices may also request not just to be ordinary judges but to immediately become chamber presidents at the Kúria. In practice a person may be appointed HCC justice, then may resign after 6 months, and may become a Kúria chamber president for decades. Several judges saw this possibility as concerning, since judges consider HCC justices as political figures. Reports from civil society⁹⁵ have shown, that since 2010, the governing majority in the Parliament has appointed HCC justices without any consultation or the bipartisan agreement which used to be the practice before 2010, and this resulted in a clear increase in the number of HCC decisions favoring the Government’s position.

Amnesty International’s Recommendation No. 1.1. is relevant to this Section 1.2.1.

1.2.2 NJO PRESIDENT UNDER POTENTIAL POLITICAL INFLUENCE

The NJO President is elected by a two-thirds majority of members of Parliament, for a period of 9 years. One judge had the opinion that organizational independence is also hindered by this this, since the NJO President is chosen by the ruling political party in the legislature.⁹⁶

The interviewees also pointed out that the MIA—under the tight control of the NJO—adopted the Hungarian government’s standpoint in ending invitations to independent NGOs to hold trainings for judges. For example, a few years ago there were still sensitivity programs with Hungarian NGOs—then after the 2018 elections these programs were terminated.

1.2.3 ACCESS TO JUSTICE RESTRICTED

Several recently implemented measures negatively impact on the relevance of the judiciary and people’s access to justice. All these aimed at lowering the number of cases that reach the courts in several fields. A few judges mentioned that the new Code of Civil Procedure⁹⁷ and the new Code of Criminal Procedure⁹⁸ have decreased the

94 Nothing ever disappears, it only changes https://www.amnesty.hu/data/file/4721-nothingeverdisappearsitonlychanges_independenceofjudiciary_amnesty_hungary_20191119.pdf?version=1415642342

95 <https://www.helsinki.hu/en/hungarys-government-has-taken-control-of-the-constitutional-court/>

96 As one judge commented on a different topic, “Mrs. Handó spoke with the voice of László Kövér [speaker of the Parliament]”.

97 Act CXXX of 2016 on the Civil Procedure Code

98 Act XC of 2017 on the Criminal Procedure Code

number of cases reaching the courtroom. Judges mentioned that it became overly complicated for people to submit statements of facts in civil cases, which has negatively impacted the number of submitted court cases.

Also, the omnibus bill introduced new regulations on the jurisdiction of cases of public administration. Prior to the changes the public administration procedure had two instances and the laws provided for judicial review after the second instance decision. According to the omnibus bill, there is no internal review within the public administration system, hence if a client wants to appeal against a public administration decision, he/she must go to a regional court residing in the county capital, instead of going to a local government authority as before.

Amnesty International's Recommendation No. 1. is relevant to this Section 1.2.3.

1.2.4 POLITICAL, MEDIA ATTACKS

“...politicians should refrain from expressing opinions especially in pending trials. I feel this is a very serious problem.”

A judge from a district court

According to the judges interviewed, public statements from the political sphere and media attacks can indirectly harm judicial independence. Judges feel that these attacks are getting worse.

One interviewee said that judicial independence “*looks okay on paper*”; but the practice is oftentimes different. Judges’ experience really depends on the context and political environment, such as how the speaker of the Parliament or even the opposition parties speak about the courts.

ILLUSTRATIVE EXAMPLES: WHAT THE MAIN REPRESENTATIVE OF THE HUNGARIAN LEGISLATURE THINKS ABOUT JUDICIAL INDEPENDENCE



Speaker of the Hungarian Parliament, László Kövér made a speech on a conference⁹⁹ commemorating the 150th anniversary of the Act guaranteeing the independence of the Hungarian judiciary. On this occasion he said that “*judicial power cannot be independent from the State as it is also a part of it.*” On a different occasion, he articulated¹⁰⁰ that “*the system of checks and balances—I don’t know what you learn about that—is crap; forget about it because it has nothing to do with a country of law and democracy.*”

WHAT IS THE PROBLEM?

The problem is when, during a trial, even slanderous attacks¹⁰¹ aimed at the judge appear in the news. In media-sensitive cases, media has personally targeted judges. According to one judge, it is the government-aligned media that harasses judges, not the independent media.¹⁰² A few judges also claimed that some of the discrediting articles were “ordered” and some information leaked to the press by the NJO. Amnesty International cannot verify these claims.

There have been political and media attacks when the judgement was attacked and when the judge personally was attacked. In both instances, special media attention can put tremendous pressure on a judge, an interviewee told Amnesty International.

Some judges stressed that in cases with political interests or where the public is otherwise interested, the media has a big responsibility. They said there had been press coverages with huge factual mistakes that seemed to be

99 https://nepszava.hu/3033652_kover-laszlo-a-biroi-fuggetlenség-napjan-kovetelt-engedelmesseget-a-biroktol

100 https://index.hu/belfold/2019/10/23/kover_laszlo_valasztas_ellenzek_rendszervaltas/

101 E.g. publishing photos of judges, revelations about private life or the use of derogative permanent adjectives (e.g. “that is the judge, whose subordinate let the killer of handball player Marian Cozma on parole” <https://www.echotv.hu/hirek/2018/10/09/meglepo-fordulat-lemondasra-szolitotta-fel-a-biroi-kar-az-oroszagos-biroi-tanacsot>)

102 A recent case has also been mentioned, though, where an opposition mayor mentioned a possibility to list government-friendly judges on a website called „verbiro.hu” („blood judges”) has also been mentioned.

https://index.hu/belfold/2019/12/09/transparency_international_evzaro_korrcpio_ezaminimum/

aimed at firing up the public against the courts. Judges felt it was unfortunate that courts have been slow in responding to such media coverage.

LATEST EXAMPLES OF POLITICAL ATTACKS ON JUDICIAL INDEPENDENCE



The latest example of the political sphere questioning judicial independence is a case about Roma children being segregated in a public school in Gyöngyöspata between 2004-2017, where Hungarian Prime Minister Viktor Orbán and the ruling party together with government-aligned media attacked the court's judgement of awarding HUF 99 million in damages to the affected students to be paid by the state.¹⁰³ Another recent example is that the Hungarian government has suspended the pay-outs for prisoners that were ordered by Hungarian courts as compensation for the poor conditions in which they were detained.¹⁰⁴ Finally, Gyula Budai, a ruling party MP said in an interview¹⁰⁵ that the Hungarian government's next "national consultation" will include a question about whether people support sensitivity trainings for courts and less severe judgements in criminal cases.

NEGATIVE EFFECT ON JUDICIAL INDEPENDENCE AND INTEGRITY

Many of the judges interviewed said told that although judges cannot totally separate themselves or cut off from political and media influence, they try to do so and in the end such influence does not influence them when they pass their judgements. Most judges are socialized in a way that they think that political and media influence should not matter. One judge's colleagues were outraged by the prime minister's recent statements (see above), but all of them thought that this would not influence their work.

There were some judges who differed: a judge said that the above trends totally influence the decisions of a judge, because he/she is afraid and might overcompensate in his/her judgement; another judge said that these attacks will eventually affect that judge indirectly, i.e. leading to self-adaptation in the judge's next court case.

It seems that judges' resistance against pressure from the media and politics has been quite strong so far. A judge believed this was evidenced by the fact that the government is trying to introduce new tools to curb judicial independence: with the idea of the administrative courts and the adoption of the omnibus bill.

Nevertheless, judges still think that these political and media attacks may potentially affect judicial independence and integrity negatively:

- One judge explained that after being discredited by the media, a judge cannot pass judgements without the stain the attacks have left on them. And then the court's interest is to appoint another person for the case who is not "discredited"—even though the "discredited" judge would have been able to adjudicate independently and impartially. A judge also told Amnesty International that after being targeted in a political case and attacked by the media – they resigned from a judiciary position because they did not want to provide a possibility to attack the court through their person; they commented that the media campaign was successful in a way because they succeeded in influencing their decision.
- One judge condemned any criticisms coming from the political sphere saying that if the politicians articulate their expectations in a politically sensitive case, after a while, the judge will obviously reflect upon what outcome the political figures would be happy with —*"this is not healthy at all"*. Another judge agreed and said that *"politicians should refrain from expressing opinions especially in pending trials. I feel this is a very serious problem."*
- A district court judge said that if government leaders criticise the judgements too much, soon there will be atrocities in the local courtroom, because the consequences will be felt at the lowest part of the judiciary.
- One judge felt that government figures, members of Parliament, political party members (not just from the governing party) articulating critical voices is very harmful and undermines the respect for judiciary. When the media create a negative atmosphere around the judiciary this may deliver a message that courts cannot be trusted, which also curtails judicial independence.
- A judge at a higher court thought that in such politically sensitive cases judges are helpless, they cannot defend themselves. So, what they do is avoid these cases: *"But this is the end. So, everyone will throw these cases away like hot potatoes?"* Another judge agreed: *"There are a lot of brave judges but many*

103 <https://insighthungary.444.hu/2020/01/09/orban-says-fidesz-must-take-a-new-direction-if-epp-is-unable-to-change>

104 <https://hungarytoday.hu/govt-prison-business-suspend-compensation-poor-conditions/>

105 <http://www.atv.hu/belfold/20200309-budai-gyula-nem-minden-biro-komcsi>

judges escape from these cases.” There are only a few who can really cope with such cases psychologically.

- Judges attacked in person might not dare to initiate a defamation proceeding. In one case mentioned by interviewees, the judge decided against pursuing one as they were about to apply for a chamber president position.

HOW HAS THE JUDICIARY ORGANIZATION DEALT WITH THESE ATTACKS?

Interviewees mostly agreed that the organization right now does not provide enough support for judges in these cases. They say that in the early 2010s, there were still NJO statements rejecting media or political attacks, but these have stopped in the past few years. If there is an attack, the organization may only issue a dry-language press release even though the attacks are gradually getting worse. If there is a high-profile case, the judge is left alone¹⁰⁶—the only thing he/she can do is to consult with the press department.

One judge said that previously, it worked just fine; an administrative leader or the press secretary of the court would step up and say that the decision had been made by an independent judge and they refute all attacks. Since 2018, that is no longer the case. For example, there was a case¹⁰⁷ where Judge Erzsébet Tóth at the Metropolitan Regional Court was attacked by several government-aligned media outlets because she had said at a court hearing that the pending criminal case against a minister from the former government had a political nature. The interviewee said that nobody from the organization came out to defend her, *“because the presidents thought that they acted right if they pleased Mrs. Handó and indirectly the politicians.”* However, one interviewee pointed out that in cases that were not politically sensitive the organization might still defend the judge. At one judge’s court, the court leadership did show support towards judges in such situations.

OTHER ATTEMPTS TO INFLUENCE ADJUDICATING ACTIVITIES

In criminal cases there has been a new mentality influencing a judge i.e. adjudicating according to the prosecutors’ charges has become a virtue and acquittals are not “liked” by the prosecutor and the state. If there is an acquittal on the first instance, one of the interviewees felt that the second instance court and the prosecutor joins forces to amend the judgement and/or convict the defendant. A judge colleague of an interviewee brought a lot of acquittals or judgements that were considered by the prosecutors not to be strict enough, and consequently, he/she allegedly made a lot of enemies and eventually left the judiciary.

Some judges mentioned that the Kúria’s deputy president said in a radio interview¹⁰⁸ that a judge must take into consideration a set of values and society’s expectations. Judges felt that a judge should not take into consideration society’s expectations, only the law and his/her consciousness.

Amnesty International’s Recommendation No. 12. is relevant to this Section 1.2.4.

1.2.5 DIRECT RETALIATION FOR JUDGEMENTS DELIVERED?

While most interviewees reported, that there has not been any retaliation, a few have reported cases where a judge would face consequences directly because of his/her judgement.

One interviewee gave an example of unlawful retaliation experienced by his subordinate who was adjudicating in a critically important case. The court president imposed a sanction that was seen as clearly connected to the adjudication decision: the judge was withdrawn from providing educational activities for trainee judges and removed from a course trainers’ list.

Another case reported by several judges was Csaba Vasvári’s case where a disciplinary proceeding was initiated because of his decision to request a preliminary ruling from the European Court of Justice (see Section 3.4). Eventually the court president withdrew the request for the disciplinary proceeding.

¹⁰⁶ There was only one interviewee who told Amnesty International that in a high-profile case, where the judge who was under heavy attacks (there were even threats against the judge), the court leadership supported and offered their help to the judge.

¹⁰⁷ https://hvg.hu/gazdasag/20180614_Politikai_felhangokrol_beszelt_Gyurcsany_minisztereknek_felmentesekor_a_biro

¹⁰⁸ The audio record (the quote is from 1:32:55) of the radio interview in Hungarian is available at <https://nava.hu/id/3530918/>

2. “I CAN IMAGINE ANYTHING MAY HAPPEN” INDIVIDUAL JUDICIAL INDEPENDENCE IN DANGER

“Judicial independence is not for the sake of the 3,000 judges but for the sake of 10 million people for whom it is important that an independent judge sits there.”

A judge from a district court

The majority of judges interviewed said that no direct, concrete influence had been exerted on them or their peers in the judiciary by outside players involved in individual cases (i.e. by political parties, court leaders). Some added that in the case of their peers this is more of a hope than first-hand experience. The research confirms that influence may be exercised by other means than direct interference in an ongoing adjudication. Judges working at district courts outside of Budapest and major cities, where classical politically sensitive cases are not present and media coverage is also very rare, could not elaborate on the question of external (e.g. political, media) pressure much. Other judges, who work on higher level courts shared factors or actions that they felt try to influence or put pressure on the judiciary.

One judge, however, said that several years ago he/she would have thought that a Kúria judge's decision being influenced by a circumstance outside of the law was impossible, but now this judge *“can imagine anything.”*

Another judge said that nobody wanted to interfere with his/her adjudicating work, and if somebody had tried that, he/she would have rejected it without any problem. If a judge wants to adjudicate only and does not want

more, he/she is protected, and this cannot be taken away from the judge. This judge thinks that is the case with most of the judges.

Another judge commented that although there is no pressure from a professional point of view on how a judge decides in a case, the question still arises whether a judge voluntarily adjusts himself/herself to expectations when passing a judgement? And that is not caused by a pressure put personally on that individual judge, but by the general things happening around him/her within the judiciary.

One judge had the opinion that right now, only the judges' internal conviction and moral values can be trusted as the organizational independence is severely damaged and the individual independence is also under attack. Amnesty International finds it concerning, that due to the lack of institutional guarantees, it may rest solely up to the integrity and moral compass of an individual judge whether a client's case will be tried by an impartial and independent judge, and whether such person's right to a fair trial will be respected.

2.1 LACK OF ORGANIZATIONAL INDEPENDENCE MAY HINDER INDIVIDUAL INDEPENDENCE

All judges Amnesty International interviewed said that they and their colleagues around them still have their individual independence i.e. they can still pass their judgements without any direct outside influence.

One judge articulated that the notion of independence is deeply rooted in every judge and if there is an attempt at influencing a judge in his/her adjudicating work, their alarm immediately rings. That is why one judge told that he/she does not know of any case when an administrative leader would have tried to make direct influence on a judgement in the slightest way.

Nevertheless, many of them said that the structural problems detailed in Section 1 affect their mood very negatively, and affect the clients, too. For example, they said that *"the court has no prestige, zero."*

Also, they had valid fears that the negative trends regarding organizational independence will eventually have a negative effect on individual independence, too. The NJO together with court presidents can already put administrative pressure on a judge (see Sections 1.1.1 and 1.1.2), plus now, there is a higher risk that the Kúria will hinder a judge's professional autonomy (see Section 2.2.1). Not to mention the increasing political and media attacks (see Section 1.2.4.) where there are only weak signs of solidarity within the judiciary organization (see Section 3.5).

With the regional courts and presidents losing their integrity and independence (see Section 1.1.2), some judges' vision on what judicial independence is has also change. One judge explained that not just the leaders, but many judges also have fallen in line: *"one needs to adapt and bend,"* the political and sociological structure makes judges adjust themselves to the system. Those who are in the system know their place and know what to do. *"This is an automatic system already."* And one judge articulated the thinking of many: *"when will a judge follow this organizational adaptation in his/her professional adjudication, too?"*

2.2 PROFESSIONAL AUTONOMY DECREASED

"Will there be a judge at Pécs to grant asylum to an asylum-seeker, if he/she is afraid that the Immigration Authority will go to the Constitutional Court?"

A judge from a district court

If there is no professional autonomy,¹⁰⁹ judicial independence is also weak, because then the judge is more prone to be controlled in his/her adjudicating work. So far, judges thought the courts have been devastated administratively, and one judge predicted that now they will also be devastated professionally, via the Kúria. One interviewee explained that until recently he/she thought that “*sitting alone in his/her office after closing the office door*”, he/she could adjudicate freely, and nobody wanted to influence him/her. Now it feels different.

2.2.1 THE OMNIBUS BILL

Almost all judges criticized the omnibus bill¹¹⁰ and saw it as a threat to judicial independence, especially regarding their professional autonomy.

The Kúria will have more significant influence on professional work. The new bill tries to formalize and limit an individual judge's professional decisions. The judges felt that influence is exercised indirectly. According to the new rules, judges must provide an additional judicial reasoning if they depart from a non-binding legal argument previously published by the Kúria. This will very much discourage a judge to depart from the Kúria's decision.

According to the omnibus bill, even public administration organs have the right to turn to the HCC if they claim that their constitutional rights have been violated by the decision of the ordinary courts which ruled in favour of the individual. One judge regarded the possibility for public administration organs to file constitutional complaints at the HCC as nonsense and a piece of legislation that indeed stomps on judicial independence. “*Will there be a judge at Pécs to grant asylum to an asylum-seeker, if he/she is afraid that the Immigration Authority will go to the Constitutional Court?*” A judge called this possibility a further step to alter judgements to the taste of the government. Another interviewee thought that the government's intention with enabling administrative organs to file constitutional complaints was to channel cases from the Kúria to a more reliable institution i.e. to the Constitutional Court.

Judges' salaries (and especially, as criticized by the interviewees, court leaders' salaries) were raised by the omnibus bill. One judge summarized it this way: the omnibus bill has been used as a Trojan horse: for higher salary the judges get less independence.

Amnesty International's Recommendations No. 1.2. -1.3. and 11. are relevant to this Section 2.2.1.

2.2.2 JUDGES' EDUCATION

According to judges, there are serious problems with the quality of the judges' education system. This has a more indirect but still negative effect on professional autonomy because if a judge is not educated and trained properly, he/she is more inclined not to follow his/her own legal thinking and instead to follow the legal approach of second instance courts, the Kúria, the prosecutor or the HCC.

The judges identified the following main concerns regarding the judges' education system:

- The interviewed judges' general comments were that the education system is not up-to-date at all and is outdated: “*there is no education basically*”; “*this is horrible*”; “*I would not call it an education.*”
- According to several judges, MIA's education programme has been deteriorating recently. The MIA has been under the close control of the NJO which has instructed the MIA on who, in what form, and what can be taught.
- Judges agreed that the quality of trainings at regional level has also deteriorated significantly. Many labelled them “*useless*” because i) they do not teach important topics that would be needed for their cases, ii) they can only talk about the same problems that they had already discussed with their local colleagues, and iii) educators are counter-selected by the NJO, only “*trustful*” cadres and not necessarily the most capable may teach.

109 For the purposes of this report, professional autonomy means a judge's ability to decide in a case based on his/her own legal thinking and own legal interpretation of the law.

110 See Amnesty International's detailed analysis “*Nothing ever disappears, it only changes*” on the omnibus bill https://www.amnesty.hu/data/file/4721-nothingeverdisappearsitonlychanges_independenceofjudiciary_amnesty_hungary_20191119.pdf?version=1415642342

2.3 BUREAUCRAT JUDGES ON THE RISE

...the independence of the judiciary depends on whether “the system comprises of judges with a strong sense of vocation. In this respect, a long socialization at the court is of huge importance, whether a trainee judge sees judges around him/her who have autonomous thinking, who make brave decisions in difficult cases, who can pass unpopular judgements, who stay away from all kinds of influences.”

A judge from a district court

2.3.1 BUREAUCRAT JUDGES OR INDEPENDENT-THINKING JUDGES?

The judges’ ethos has changed in the past years. Judges’ ethos refers to a special approach judges take towards their vocation: what is the job of the judges and what main principles do judges have to take into consideration during their work.

In this regard, many judges had the opinion that there are now two types of judges: “*bureaucrat judges*” and “*independent-thinking judges*”.¹¹¹ Based on the interviews, it is Amnesty International’s understanding that independent-thinking judges can be more resilient against attacks on individual judicial independence.

2.3.2 INDEPENDENT-THINKING JUDGES

Independent-thinking judges are those who have socialized in the judiciary system earlier. One judge said that those who finished university between 1990 and 2010 are more typical to belong to this group, more experienced judges who are not beginners yet. According to a 2019 survey by the European Network of Councils for the Judiciary, freshly appointed judges (with 0-5 years of experience) do not think that the level of judicial independence has deteriorated much, while older judges think that it is getting worse.¹¹²

An ideal independent-thinking judge follows only the laws and his/her consciousness, dares to make his/her own judicial decisions, and does his/her job based on the principles of autonomy, independence, and impartiality. One can also say that they possess the judges’ ethos in a good sense.

All the interviewees said that the above judges’ ethos is deteriorating and is no longer being passed on to the new generations of judges. The old respected judges from whom judges learned the judges’ ethos are gone, higher courts work with young employees lacking merit who were “parachuted” there with the help of the NJO. The system has facilitated the creation of so-called bureaucrat judges. So far that has been met with a pushback because most judges are still independent-thinking and autonomous judges.

111 Another interviewee used two other, but similar categories: the “*defender of rights*”-type and the “*defender of the state*”-type judges.

112 2019 survey by the European Network of Councils for the Judiciary (“2019 ENCJ survey”) <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Projects/ENCJ%202019%20Survey%20on%20the%20Independence%20of%20judges.pdf>

2.3.3 BUREAUCRAT JUDGES

Many of the interviewees said that the new generation is being socialized in a bureaucratic mentality. There is significant pressure to adapt to these expectations both administratively and professionally and new generation judges tend to adapt. For example, the young judges know about the possibilities in the system and they seek employment at the NJO to be a court secretary and build connections there.

According to one interviewee, for new judges, the “good judge” has not been the autonomous judge, but the bureaucrat judge: who keeps the deadlines, has excellent performance according to the official statistics, is effective and timely—these are the main values the NJO has promoted. The emphasis has been on timeliness and effectiveness and not on adjudicating quality. One judge said that it is a good thing to reduce old and long cases, but what is not good is when this turns into a “*work competition*” between regional courts, for example. The whole system went into a technical, bureaucrat-like direction. Those judges who “only” do their high-quality adjudicating job are not appreciated enough.

As described by judges, the new judges tend to work to please the second instance; they want their judgements approved by the second instance, even if that contradicts their own judgement. Also, annulment of their judgement is a “black mark” at the evaluation procedure and, according to one judge, the fear of annulment brings judicial independence into question. They also think differently about judicial independence, as illustrated by the latest ENJC survey mentioned above. Those younger judges who consider their workplace as a higher-level administrative office may be more inclined to accept direct orders from their superiors which may affect their adjudication. There are doubts whether independence is important for the beginners: e.g. they did not take the NJO-NJC conflict seriously, or when the MABIE was under attack, many court secretaries left MABIE thinking a membership would look bad for their careers.

On the reasons why there are bureaucrat judges, the interviewees gave different explanations. First, the dysfunctionality of the judges’ appointment system (see next section on the application scoring system) makes it possible that some of the new judges are counter-selected “Janissaries” socialized at the NJO. Also, through the various NJO programs at the court and education at the NJO, the trainee judges internalize a bureaucrat judge-mentality from the NJO. Moreover, the independent-thinking judges’ ethos is no longer passed on by the court leadership. Finally, the judiciary has become an organization controlled from above whereas it used to be organized from below where the judges decided who were the best to represent them. Now, the representatives are appointed at the top based on loyalism and who can be a good vassal, as well as who can execute central orders on the judges and other workers—these all contribute to a bureaucrat-judge mentality.

The interviewees stressed, however, that this is not the fault of young judges rather that of the system.

Some added that a judge coming from the public administration lacks the mentality of a judge taking responsibility for their own judgement, and such different mentality cannot be changed from one day to another. It requires more bravery to remain an independent and autonomous judge now than 10 years ago and there are doubts whether a judge coming from the public administration can be that brave.

Also, as public administration leaders become court leaders this may hurt organizational judicial independence, because they bring with them the bureaucrat mentality towards issues and follow orders.

Many people think of the court as a simple workplace and say, “*I come in, I do my job, I go home, that’s it.*” They only want to deal with adjudicating. They have been socialized to believe that organizational issues of the courts and matters beyond their individual adjudications are not their business. According to one of the judges, the majority does not have the need to express their opinion.

A peer told an interviewed judge that his/her job is not to make statements in the NJO–NJC conflict, but to decide on the cases. According to this attitude, the judge should not pay attention to the constitutional environment he/she is working in. This interviewee thinks that it is indeed important for not just the judge, but also for the people.

2.3.4 APPLICATION SCORING SYSTEM ENHANCING BUREAUCRAT MENTALITY

THE JUDGES' APPLICATION PROCEDURE



The application system is roughly the following. In Hungary, any lawyer with a legal professional exam¹¹³ can apply to be a judge. The conditions of the application procedure are included in a minister's decree¹¹⁴ which includes a detailed application scoring system. (For example, an excellent grade at the legal professional exam is awarded 10 points or a high level C1 complex language exam is worth 5 points.) It is the NJO that puts out a call for applications and then people apply. The applications are valued based on the scoring system, points are given, and a ranking is set by the local judiciary council. The judiciary council then forwards the top 3 applicants to the NJO who should choose the top-ranking candidate, unless they have the approval of the NJC to do otherwise. Then the winner is selected.

The following problems in the application system also enhance the bureaucrat mentality amongst judges, especially for newly appointed ones:¹¹⁵

- the application scoring system one-sidedly rewards qualities that are not essential or are even irrelevant to a judges' everyday adjudicating work. For example, a lot of so-called objective points may be gained for language exams, diplomas, publications, lawyers' specialist trainings¹¹⁶. As a result, the judges interviewed by Amnesty International believed that trainee judges and court secretaries do not concentrate on their core work, but spend a lot of time accumulating such points rather than developing professional experience, problem solving capacities or independent thinking;
- people coming from public administration are disproportionately favoured (especially those having a public administration leadership role, a great evaluation, a public administration special exam, or having given opinions on pieces of legislation);
- the system gives too many points for activities at the NJO or connected to the NJO,¹¹⁷ which means young lawyers are socialized according to the norms of the NJO that a judge called "*Janissaries education*."

Amnesty International's Recommendation No. 3. is relevant to this Section 2.3.4.

113 In Hungarian: szakvizsga

114 7/2011. (III. 4.) Decree of the Minister of Justice

115 According to the 2019 ENCJ Survey, roughly half of the Hungarian judges agree or strongly agree with the statement that "*judges in my country have entered the judiciary on first appointment / have been appointed to the [higher courts] other than solely on the basis of ability and experience during the last two years*". The judges interviewed agreed that the system is distorted and for different reasons it is not the most qualified lawyers who become judges today.

116 A judge explained that it is basically impossible to become a judge without 1 or 2 of these special lawyers' trainings (in Hungarian: szakjogász képzés), which are several hundred thousand forints [approx. EUR 1500-2000] each. Since these must be self-funded, this pushes the system towards elitism, too.

117 From the total number of 172 points, 30 points can be collected by pursuing activities at the NJO or connected directly or indirectly to the NJO: e.g. participating at a training of the MIA or the NJO (NJO delivered trainings are not open access for all), foreign professional trips (usually supported by the NJO), working on central administrative tasks assigned by the NJO, teaching activities (usually approved by the NJO). (Point 6, Point 9, and Point 10 of Appendix 1 of 7/2011. (III. 4.) Decree of the Minister of Justice)

3. CHILLING EFFECT AT COURTS

3.1 “I DO NOT WANT TO GET INTO ANY TROUBLE” – THE PATTERNS OF THE CHILLING EFFECT

Interviewees described that as a result of the factors described above, there is a chilling effect felt at the courts. Judges might talk about issues of judicial independence and share critical thoughts face-to-face to each other, but not on bigger fora. There is a general attitude to avoid “trouble.” At events organized by the court administration, judges feel that they need some courage to speak up, they fear speaking up and this is considered to be a problem in itself. The chilling effect impacts informally and gets under the judges’ skin.

For example, there is a perception that if a judge signs a petition or an open letter¹¹⁸, the name of these judges “are remembered” by their peers and court leadership and this atmosphere has a chilling effect. The patterns of chilling effect may be captured in the following spheres.

3.1.1 THE GENERAL ATMOSPHERE

“Fraudulent fear is governing us – now at the courts too”

Gabriella Ficsór, judge at the Debrecen Regional Court of Appeal

The judges interviewed had a general feeling that in the past years the atmosphere and morale at the courts have changed significantly for the worse, “*it is very bad, tense*” now, “*critically bad.*” This tension was mainly a result of the NJO-NJC conflict, and the last two years were especially poisonous.¹¹⁹

As a result of the deteriorating atmosphere, talented judges have left the bench recently. Partly due to fact that remuneration of judges is non-competitive as assessed by the interviewees,¹²⁰ partly because of the worsening general atmosphere. There is a palpable moral crisis at the courts. A judge, who has since quit service, reported that towards the end of his/her judicial career, there were regular, weekly talks between colleagues about the breaking point when they would or should resign: “*when the judge gets influenced in an individual case? When a*

118 <https://444.hu/2018/10/19/hando-kritikusait-akartak-lemondadni-de-visszafele-sulhet-el-az-akcio>

119 The NJC-NJO conflict impinged on the life of many ordinary judges, who did not want to deal with administrative questions. As a consequence, Amnesty International was told, people started working behind closed doors, both physically and symbolically (sometimes judges did not even see each other for weeks, one judge told us). If there is a fight, some of the people “leave the battlefield” and try to distance themselves from these debates. Moreover, the judges’ peer-group has polarized into cliques, mainly along the lines of the NJO-NJC conflict.

120 One judge mentioned that a cashier at ALDI may earn more than a court secretary.

judge in the next room gets influenced? When judges in all neighbouring rooms get influenced? These conversations alone are evidence of the moral crisis.”

Judges also mentioned that Mrs. Handó’s attitude contributed to building a cult of personality around her and this destroyed morale further. For example, judges reported that they had to thank the NJO President personally for new electronic devices and IT developments, including tablets, and laptops. *“But did she alone give us these? And did she make the money for that? How come we had to thank her?”* – a judge lamented. Also, on one occasion the purple flower bouquet had to be replaced because Mrs. Handó did not like the colour. She reportedly instructed that during her visits to courts, high-level persons should greet her, and her car door could not have been opened by the chauffeur but someone higher in the hierarchy, at least a court judge.

3.1.2 CLOSING DOORS – DEVELOPING A CLIMATE OF MISTRUST

Uncertainty combined with the dysfunctions of court administration has led to increasing mistrust among judges which may undermine solidarity. As promotions are not always based on experience or acumen in adjudication, nobody knows who will soon be promoted or seconded. As one interviewee put it, colleagues have become mistrustful towards each other as they are afraid about whom they are on good terms with, or whether a colleague is marked out as “renitent”¹²¹.

When judges meet at sports or other events or stop to talk in the court’s corridor, they check who is nearby, who can hear them talking. There is a paranoia amongst some. Instead of talking, some judges keep in touch online.

To illustrate this mistrust, multiple judges said they think there are so-called “spies” at their court: *“there was an actual case where the regional court president asked a person to report if he/she hears something about this or that”* – that person declined this request and eventually left the court. In another example, judges claimed that a court leader loyal to the leadership was appointed to one court building so that the leadership could have an eye there, too. Informal meetings (e.g. wine tasting) stopped two years ago when a “spy” joined the department – nobody wanted to attend if eventually the leaders would know who spoke about what at such events.

It seems some courts’ leaderships are trying to exacerbate the poisoned atmosphere. A judge related an incident when some judges signed a declaration of protest against their leaders and the two youngest judges were summoned afterwards by the court president in order to convince them to withdraw their signatures. All non-judge court workers were also summoned and were told by the court’s leadership to stand in line and not to do anything (with the words of the interviewee: *“those who can’t walk in step, won’t get strudel in the evening”* – a Hungarian saying).

A once collegial, even familial relationship among judges has been atomized with informal gatherings decreasing. From 2012 MIA stopped organizing centralized professional events, and most of the judges interviewed agreed that it was in order to stop judges across the country from sharing information about their situation and problems.

3.1.3 UNCERTAIN FEAR – “I HAVE NO IDEA”

Finally, a good example of the above-mentioned chilling effect is that some judges told Amnesty International that some judges cannot even articulate what they are afraid of. The trickling down of the NJO’s expectations affected the court’s morale so they are afraid to express their opinion, and they cannot even articulate what concrete consequence could happen. As an interviewee put it: *“I have no idea – and I think those who dare not to speak don’t know either.”*

A judge said that while nobody would get harmed, most of the people have decided not to express opinions publicly because that’s the 100% safe option. One judge commented that it works like under socialism: judges do not go beyond a certain limit and they do not pay attention to certain things because *“it is for the better.”*

¹²¹ There has been a case where one of the interviewees saw that his/her name and another “renitent” (i.e. critical to the central administration) judge’s name was written differently than other colleagues’ names on a simple court administration list. He/she does not know the concrete reason but supposes that “renitent” persons were marked differently. [Amnesty International has seen the photo of such a list as evidence.]

3.2 “THERE IS SILENCE” – DO JUDGES DARE TO EXPRESS THEIR OPINION?

INTERNATIONAL STANDARDS GRANT FREEDOM OF EXPRESSION TO JUDGES, TOO



of the judiciary.”¹²²

According to international standards, judges also have the right to freedom of expression, in accordance with the Universal Declaration of Human Rights. *“Members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence*

Another major sign of the chilling effect holding sway at the courts is that most interviewees answered “no” or “in a limited way” to the question “Do judges dare to express their opinion?”. “There is silence,” one judge commented.

- The interviewees said that judges think twice before speaking up; they could technically speak at court meetings, but do not. Nor is it typical to speak up on a judges’ plenary meeting. Only one of the interviewees said they spoke at judge’s plenary meetings along with their chamber president and one or two others supporting them, but that was all.
- Whilst the majority do not speak up at judges’ plenary meetings, they do usually show their true opinion (e.g. if they are not content with a leadership candidate) when casting their secret ballot.¹²³ This applies to college meetings as well according to one judge.
- One interviewee rated their freedom of expression 1 out of 10 and said the general mentality was that one shouldn’t express an opinion because “*you are not there to do that.*” A judge can only adjudicate the individual cases and that is it.
- One interviewee who had been outspoken received calls from judges saying “*yes, we are with you, hold your ground, we support you, but please do not tell anyone that I called you.*” Amnesty International was told that the majority of judges tell judiciary council members that “*you go ahead, we will stand behind*”, but nothing more, they say “*we do not want to get into any trouble.*” A judge did not know why judges do not speak up in cases where judiciary self-governance has come under attack: “*out of fear or cowardice?*”
- Expressing one’s opinion even on professional fora was curtailed; for example, in the preparation group of the new Civil Code, the NJO President had participating judges sign a declaration saying they would only follow the directives of the NJO.
- Judges told Amnesty International that they think that in bigger cities and higher courts judges tend to be more active (e.g. by signing protest letters against the 2018 electoral meeting outcome) than in smaller cities and lower courts. According to another judge, in Budapest, they dare to speak up against the court leadership but in the countryside they don’t, because there, especially at smaller courts, “*the court president is the ruler of life and death,*” and “*who dares to speak up against him?*”

¹²² Para. 8 of the Basic Principles

¹²³ For example, the judges’ plenary meeting of the Metropolitan Regional Court repeatedly voted down leadership candidates supported by the NJO.

A TOOL TO SILENCE – THE NJO’S INTEGRITY POLICY



The NJO President issued a so-called “Integrity Policy”¹²⁴ that prescribes how a judge may conduct any activities outside of their adjudication job. In 2017, some parts of the Integrity Policy were deemed unconstitutional even by the HCC¹²⁵ partly because of a provision stating that “integrity” shall also mean the complying with the values and principles contained in the recommendation of the NJO President.

Amnesty International understands that the Integrity Policy is used as a tool to silence judges who would want to speak up in defence of their judicial independence, by saying that this topic is political and/or an activity that infringes their integrity.

The Integrity Policy, for example, contains a catch-all provision saying that “*other activities [...] endangering the judicial independence or impartiality of a judge*”¹²⁶ may also infringe integrity, which provision is open to interpretation of the NJO President. Moreover, the judge must report to the court president any fact or event that may affect his/her tenure or integrity. A few judges mentioned that they considered the Integrity Policy when deciding whether to accept an interview with Amnesty International. In the end, none of them thought it was a violation of the Integrity Policy. A judge told us that he/she knows a high-profile court leader who thinks that even talking about judicial independence in public is an infringement of the Integrity Policy.

Many judges mentioned the overwhelming communication dumping and often very aggressive communication style of the central administration, the NJO. A judge explained that this made them feel threatened and as if they are in the 1950s—and that goes against independence, too. The judges’ Intranet (i.e. internal IT communication system) is strictly regulated, and only personnel authorized by the administration may post there. The regional court’s intranet has been one-sidedly filled with NJO-led communication e.g. letters from NJO President or regional court president supporting the NJO President’s decisions.

3.3 CONSEQUENCES JUDGES MAY FACE AS A RESULT OF BEING ACTIVE, SPEAKING UP, ETC.

“a mistake can be found in everybody's work”

A judge from a district court

One interviewee told that in recent times, before speaking up at a court meeting, he/she needed to take a deep breath and think over what could happen the next day. Judges told Amnesty International that the potential consequences of speaking up included the following.

124 <https://birosag.hu/obh/szabalyzat/62016-v31-obh-utasitas-az-integritasi-szabalyzatrol-0>

125 [http://public.mkab.hu/dev/dontesek.nsf/0/b8b4a549c5c37b1fc1257ff0005876c0/\\$FILE/33_2017%20AB%20hat%C3%A1rozat.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/b8b4a549c5c37b1fc1257ff0005876c0/$FILE/33_2017%20AB%20hat%C3%A1rozat.pdf)

126 Article 7 (2) of the Integrity Policy

3.3.1 DISCIPLINARY PROCEEDINGS

INTERNATIONAL STANDARDS ON DISCIPLINARY PROCEEDINGS



International standards provide guidelines about the cases when disciplinary procedures may be initiated against judges. According to the UN Basic Principles on the Independence of the Judiciary, “judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties”¹²⁷ and “all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct”.¹²⁸ The UN Special Rapporteur recommends that legislation should be adopted “giving detailed guidance on the infractions by judges triggering disciplinary measures, including the gravity of the infraction which determines the kind of disciplinary measure. Disciplinary measures must be proportional to the gravity of the infraction”.¹²⁹ According to the Council of Europe’s recommendations, “the interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence”, disciplinary sanctions should be proportionate, and “judges should not be personally accountable where their decision is overruled or modified on appeal”.¹³⁰

While this was not felt by interviewees from smaller courts outside of the capital, judges, mainly based in Budapest and bigger courts, reported disciplinary proceedings that had been initiated against judges based on non-justifiable legal grounds. A small number of judges also reported cases where judges were threatened with the possibility of a disciplinary proceeding.

One judge had a strongly negative opinion, saying that regional court and court of appeals presidents were increasingly using the threat of potential disciplinary proceeding as a “whip” to discipline “renitent” judges.

Another judge agreed and said that to avoid any unjust, unfair disciplinary proceeding, a judge had to stay away from any expression of opinion, any critical voices aimed at the central administration and the court leadership.

One interviewee pointed out that these threats of disciplinary proceedings were used to intimidate the judges and to show other judges how to behave. Few proceedings had really been initiated, as there were not many resistant judges.

Disciplinary proceedings the interviewees cited as examples of repression included:

- the case of criminal judge Mr. Csaba VASVÁRI, a district court judge working at the Central District Court of Pest who was also an NJC member. A disciplinary proceeding was initiated against him which the judges believed was in retaliation for a preliminary ruling request he filed to the CJEU. In this request Judge Vasvári raised questions regarding compliance with the principle of judicial independence under the Treaty of the European Union, in particular the appointment procedures for court presidents, and remuneration for judges, as well as questions regarding the right to interpretation in court.
- A judge told Amnesty International that there was a disciplinary proceeding against him/her that resulted in a written warning. He/she got it because there had been a minor mistake committed by a court secretary who had already left the judiciary, and somebody had to be held responsible. This judge thought that the proceeding was initiated against him as someone’s act of revenge.
- There was a disciplinary proceeding initiated against another interviewee on several legal grounds. Eventually the service court decided that only one ground was valid, for which the sanction was an ascertainment of disciplinary offence but no further legal consequence. The interviewee believed the disciplinary proceeding was initiated because he/she did not follow the usual “shut up and be quiet, be happy with your judge salary” rule, and articulated some problems at the court.

127 Para 18. of the Basic Principles

128 Para 19. of the Basic Principles

129 Para. 98 of the 2009 IJL Special Rapporteur Report

130 Para. 66-71. of the CoE Recommendation on Judges

- Another example mentioned was the disciplinary proceedings initiated against former regional court president and NJC member Ms. Edit Hilbert¹³¹ allegedly in order to prevent her becoming an elector at the NJC electoral meeting.¹³²

Some of the judges gave examples of threats of disciplinary sanction:

- On a personal “rapport” in front of the whole regional court leadership, one interviewee was told that “*a mistake can be found in everybody’s work.*” They clearly hinted at the possibility of a disciplinary proceeding (that eventually did not happen). This interviewee says the rapport was about his/her activities in the judiciary council.
- A colleague of one of the judges in a bigger countryside city allegedly had to “flee” his/her court because of a threat of a disciplinary proceeding—Amnesty International’s source said that the proceeding would have been initiated for non-culpable acts i.e. activity in an NGO.



CASE OF JUDGE GABRIELLA FICSÓR

Judge Gabriella Ficsór has been working at the Debrecen Regional Court of Appeal and although she was not subjected to disciplinary proceedings, a lot of colleagues thought that she would get one after publishing an article at MABIE about judicial independence. In 2012, she also wrote open letters to the whole judiciary on the topic of compulsory retirement of elderly judges – after that her court president told her on three separate occasions that she may face a disciplinary proceeding (though that never happened). When Amnesty International asked her if she is afraid of anything, she replied “*What should I be afraid of?*”

3.3.2 CASE ALLOCATION AS A TOOL OF SUPPRESSION

Some judges told Amnesty International that the case allocation system has been or may be used as a tool of suppression against judges.

A few judges were told that whomever the court leadership wants to pick on will be “flooded” by cases and then they “*will not have the time to be lenient*” or, it turns out, that they have made a mistake and a disciplinary proceeding or bad evaluation may follow.

An ex-judge remembered that case allocation was the classical tool of retribution and that judges could be “destroyed” by case allocation, for example, through receiving expeditious (urgent) cases again and again. This ex-judge also claimed to have received lots of expeditious procedures just before his/her evaluation.



CASE OF JUDGE ISTVÁN KEVICZKI

Judge István Keviczki was a criminal judge who left the Metropolitan Regional Court in 2018. He told Amnesty International that, sporadically, case allocation had been used as a tool of suppression against him. For example, the day after he sharply criticized his direct boss, he got assigned a complex, voluminous and difficult case. It was immediately obvious to him why that happened. He said that previously, case allocation as a whip had been used at courts, but recently it has been used more often, for example NJC members have also experienced such treatment regularly.

¹³¹ https://hvg.hu/itthon/20180108_kioktattak_elutasitottak_alkotmanybirak_Hando_hilbert

¹³² A judge cannot be present at the electoral meeting and thus elected as NJC member if he/she is under a pending disciplinary proceeding. Also, a judge under a pending disciplinary proceeding cannot apply for a court leadership position or receive a bonus.

3.3.3 BAD RESULTS AT REGULAR EVALUATION PROCEDURES AND OTHER CAREER CONSEQUENCES

WHAT TO KNOW ABOUT EVALUATIONS?



Judges' work is evaluated 3 years after their first fixed-term appointment. If they are deemed capable, they are appointed for an indefinite term and continue to be evaluated first after 3 years, then every 8 years.¹³³

According to a Council of Europe Recommendation, systems for assessing judges “*should be based on objective criteria. These should be published by the competent judicial authority.*”

*The procedure should enable judges to express their view on their own activities and on the assessment of these activities, as well as to challenge assessments before an independent authority or a court.”*¹³⁴ According to the Consultative Council of European Judges (CCJE) “*objective standards are required not merely in order to exclude political influence, but also for other reasons, such as to avoid the risk of a possible impression of favouritism, conservatism and cronyism, which exists if appointments/evaluations are made in an unstructured way or on the basis of personal recommendations. These objective standards should be based on merit, having regard to qualifications, integrity, ability and efficiency.*”¹³⁵

Most of the interviewees did not know of any case where a judge had been pressured by the regular evaluation.

However, some judges thought that evaluation may be a tool of retaliation against active or “renitent” judges, and there are dangerous possibilities to abuse the system. A colleague of an interviewee argued that “*I do not sign this [letter of protest] because my evaluation is just coming up.*”

Judges are afraid of irregular evaluations,¹³⁶ and remained concerned whether they would get objective regular evaluations.

One judge experienced an evaluation where his court leader intentionally appointed as examiner a person with whom the judge had an earlier conflict. This judge claimed it was due to having a “big mouth” and taking an activist role in the judiciary council.

3.3.4 FINANCIAL CONSEQUENCES

There are some financial incentives granted at the discretion of the court leader and not set out in law. A judge told Amnesty International that there was potential for a court president to withdraw a judge's language or other bonus as a tool of retribution.

Another interviewee said that judges disagreed with the NJC's activist approach vis-à-vis the NJO because they were worried about not receiving their prospective salary increase as a retaliation—this was a serious threat for them that had been communicated by the NJO via several channels.

There was a case mentioned where a “renitent” judiciary council president (who was also a college leader) received zero year-end bonus, while the other college leader received a good year-end bonus.

3.3.5 CONSEQUENCES RELATED TO EDUCATION

Some judges mentioned that they can be removed from the trainee judges' education group, or they can be put into a hat from where people are not selected to go to courses or conferences.

One judge said that after he/she strongly supported a “renitent” judge's application at a judges' plenary meeting in 2019, his/her applications for training started to fail at the NJO.¹³⁷ As nothing else changed in his/her

133 Article 68 of the ASLRJ

134 Para. 58 of the CoE Recommendation on Judges

135 Para. 31 of the CCJE Opinion No. 17 on the evaluation of judges' work, the quality of justice and respect for judicial independence
https://rm.coe.int/09000016807481ea#_ftn66

136 Between two regular evaluations, serious professional mistakes can be examined under so-called irregular evaluations. Article 69 of the ASLRJ

137 For example, the interviewee wanted to go abroad to study to become a legal special expert, and asked for financial support for a course, which was denied.

circumstances, and before that (even three weeks earlier) these types of applications had been successful, he/she could only surmise that speaking up changed the situation.

Two of the interviewees spoke of the same consequences: many applications for foreign training trips are decided by the NJO, but they never win now. One of them was informally told that there was no use trying. Almost every time, the same people go.

Allegedly, Metropolitan Regional Court judges were prevented from attending a legal professional exam as examiners.

Also, one interviewee for a period could not participate in the central education program of the EJSZH¹³⁸ because he/she was known to be critical.

3.3.6 CONSEQUENCES FOR FAMILY MEMBERS

One judge mentioned that there are a few judges whose family members work in the judiciary system. They do not express their opinion for fear of future disadvantages to their family.

One of the judges interviewed alleged that their spouse was once refused a business deal because the interviewee's name had appeared in the news speaking up against the central court administration.

3.4 ARE THESE FEARS JUSTIFIED? DO THESE CONSEQUENCES REALLY HAPPEN?

One judge told Amnesty International that retaliations are disguised rather than used in an open manner. For example, when the consequence can be the denial of foreign training trip, of course nobody can prove anything.

Moreover, in lots of cases, nothing happens. For example, another interviewee regularly tells his/her (higher) court president what he/she thinks about the kind of role the president plays in the system and that he/she cannot identify with this. Still, this judge received assignments that showed they have the respect of the leadership.

There are cases when judges do openly express their critical opinion, for example, at a *“quite memorable”* judges' plenary meeting when a lot of people expressed their disagreement regarding a criminal college leader's application, demanding professionalism to be respected. A source said that the people speaking up at this judges' plenary meeting did not face any retaliation.

An interviewee told Amnesty International: *“What happens if judiciary council members do more? Nothing. Look at their case: nothing happened.”* If a judiciary council does not approve something, the court president immediately must report it to the NJO and that causes trouble for him/her because the more reports there are, the more signs there are that prove *“the county is not working well.”* So, to avoid this, the president comes and communicates with the judiciary council, negotiates, makes concessions or requests, and accepts a lot of things.

138 Network of European Law Experts (in Hungarian: Európai Jogi Szaktanácsadói Hálózat)

A JUDICIARY COUNCIL MEMBER “ON RAPPORT”



Another interviewee, however, recalled that he/she was put under pressure by the court leadership to resign from membership of the judiciary council because of his/her activities there. The regional court president sat down with him/her and said it would be better to take another position at the court instead, for extra money. He/she did not accept. After that, car and fuel allowances stopped being granted so he/she pays for the trips himself/herself to attend the judiciary council meetings. Also – in the presence of the regional court's president and deputy president, all the district court presidents and deputy presidents and all the college leaders – he/she was questioned about how he/she votes in the judiciary council, why he/she does not report to them on that, what are the judiciary council's press relations like, etc. They also wanted to change his/her opinion in a question regarding the NJO-NJC conflict. *“It was like a rapport”*.

3.5 SOLIDARITY

One judge pointed out that the judges are not afraid of critics, but they are afraid of the listing, personal attacks, when their Facebook pictures get out, or pictures of their house get released on the internet. Amnesty International's question was: “if a judge comes under an attack, will they be defended by other judges, or will there be a sign of solidarity?”

The consensus of the judges is that solidarity is not typical in the Hungarian judiciary. The judges step aside, do not deal with a colleague under attack, and don't speak up; it is their habit, it is more comfortable. Even if they think that it is a pity that something bad happened to a judge, they will not say so.

One interviewee had a pessimistic view on the question of solidarity: *“It is pathetic. Everybody else is happy that he/she is not the one hunted down, and the tension is released that they are not affected.”*

The atmosphere is not good for any solidarity, not even in the smallest cases: a trainee judge liked by many judges was not appointed court secretary, although it is quite automatic in other cases. The trainee wrote a letter to the court leadership asking for information and asking for his/her appointment; some judges were talking about signing the trainee's letter in support but at the last minute only one judge signed. When asked why they had not signed, the judges said: *“they would remove a judge's position from the court and therefore we would work more”*—these were not justified reasons according to the source.

A few judges mentioned a missed opportunity for solidarity back in 2012, when the elderly judges suffered compulsory retirement¹³⁹ The judges did not react or think to protest or organize a demonstration. With hindsight, many judges consider this was a mistake.

Solidarity is not typical, but it still happens. For example, some judges wrote a letter to the President of the Republic calling on him not to sign the compulsory retirement decisions. Another example mentioned was when the judge adjudicating in a nationwide case [red mud slide] was attacked, one interviewee, together with many other judges, sent supporting letter to this judge.

There was a feeling that at bigger courts (e.g. Metropolitan Regional Court), the colleagues stick together and stand up for each other more. At smaller courts this is not typical, because there is a stronger informal relationship to and dependency on the local court leadership.

Some pointed out that judges are working in the same society as other people, in a society where those standing up have not been defended by their peers. There is no solidarity within the court because there is none in the society either.

Amnesty International's Recommendations No. 14-16. are relevant to this Section 3.

139 https://index.hu/belfold/2012/11/06/elkaszaltak_magyarorszagot_a_birak_kenyszernyugdijazasa_miatt/

METHODOLOGY

This report is based on Amnesty International's research carried out continuously from November 2019 until January 2020.

Amnesty International's research concentrated mainly on how Hungarian judges themselves think about selected elements of organizational and individual judicial independence.

Individual cases presented in this report are based on interviews with judges. Before conducting the interviews, Amnesty International consulted with academics and other judge expert on issues affecting judicial independence in Hungary to map the topics and the main issues to be covered in interviews. These were the following topics: conditions of service and tenure, qualifications, selection and training, evaluations and discipline, the rights to freedom of association and freedom of expression, atmosphere at the workplace, independence of the judiciary, adjudication, and case allocation.

Amnesty International has conducted a qualitative research based on semi structured interviews with:

- 14 judges (including two ex-judges),
- 8 male and 6 female judges,
- from all levels of courts: from district courts (4), from regional courts (7), from regional courts of appeal (2), from the Kúria (1),
- from civil law (6), criminal law (7), and administrative law (1) departments,
- from both Budapest (4) and the countryside (10).

The criteria for interviewees was to work or to have worked at a Hungarian court as a judge for at least one year in the new judiciary system effective from 2012. Their period of tenure as a judge was as follows: two had worked as judges for 1-5 years, nine for 6-20 years and 3 for 21-40 years.

To reach the interviewees, Amnesty International used existing contacts and completed with the snowball method. Hence the sample is limited to judges who are open to speak with Amnesty International and intended to speak about judicial independence.

The interviewed judges gave their opinions and thoughts on the operation of the judiciary administration system under the NJO presidency of Mrs. Tünde Handó who had been the NJO President until 30 November 2019.¹⁴⁰ As a consequence, Amnesty International stresses that it cannot and does not make any conclusions regarding the activities of the new NJO President, Mr. György Senyei in this report.

Conclusions of this report has been shared with the Hungarian Ministry of Justice, the National Judicial Council and the National Judiciary Office of Hungary. We have not received any comments from them.

Some judges featured in this report are referred to by their full names and some anonymously, all with their informed consent. Interviewees Szilvia DARVASI, Gabriella FICSÓR and István KEVICZKI agreed to publish their names in the report.

Amnesty International would like to thank all the individuals in Hungary who cooperated in the course of the research for this report, and special thanks to the interviewees.

¹⁴⁰ https://www.parlament.hu/egy-kepviselo-adatai?p_p_id=hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&_hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=/internet/cplsql/ogy_kpv.kepv_adat?p_azon=h069

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FEARING THE UNKNOWN

HOW RISING CONTROL IS UNDERMINING JUDICIAL INDEPENDENCE IN HUNGARY

The present research found that Hungarian judges think institutional judicial independence is being severely undermined in Hungary. Although on paper the judiciary is a separate branch of power, this principle has come under attacks from the courts' central administration and other branches of power.

The concentration of power in the hands of the National Judiciary Office's President causes systemic problems. The NJO President and court leaders under his/her influence can exert administrative pressure directly and indirectly on the judiciary.

The overall view of the judges interviewed was that an individual judge can generally still adjudicate freely, without direct outside influence. However, this freedom is in danger. Right now, it is up to the integrity and moral compass of an individual judge whether someone's case will be tried by an impartial and independent judge.

Attacks on judicial independence have resulted in a palpable chilling effect amongst judges. Judges reported a poisonous atmosphere at various courts, where most judges do not dare to speak openly and freely and there is mistrust among judges. Due to this chilling effect, judges are scared away from speaking up in defence of their opinion. This results in only weak signs of solidarity within the judiciary and among judges and other legal professions.

The case allocation system lacks transparency and allows a court's case allocator wide discretion over which judge to allocate a case. The judges interviewed described an allocation system that seriously threatens the right to a fair trial in Hungary.

The report proposes solutions on how to strengthen judicial independence and protect the right to a fair trial.