

Systemic Problems regarding the Independence of the Judiciary in Hungary

Statement by Amnesty International

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Amnesty International wishes to draw the attention of the Organization for the Security and Cooperation in Europe (OSCE) to systemic problems regarding the appointment and promotion of judges and court leaders in Hungary as well as the inability of the judicial self-government to exercise their constitutional duties and oversee the central court administration.

The independence of the Hungarian judiciary has long been at risk since multiple government initiatives and laws aimed at taking stricter control over the judiciary since 2011.

Despite high inflation rates in the past few years, the salaries of judges and court staff have not been increased, jeopardizing judicial independence. There are also systemic problems within the court system that allow to appoint and promote judges and court leaders outside of a transparent and foreseeable application procedure. Although a judicial reform in 2023 strengthened the supervising competences the National Judicial Council (NJC) over the central court administration, deficiencies of effective control still exist. Attacks in the media or by government figures have continued against judges speaking out for their independence, and even the new Code of Ethics granting wider freedom of expression for judges in line with international standards has been challenged by the Kúria President (Supreme Court) at the Constitutional Court.

All the below-described problems represent grave challenges in relation to the observance of the right to a fair trial, including to an independent and impartial court and are in breach of Hungary's human dimension commitments, including the Moscow Document and the Kyiv and Warsaw Recommendations.

1. SYSTEMIC PROBLEMS WITH APPOINTMENT AND PROMOTION OF JUDGES AND COURT LEADERS

The 2023 Judicial Reform (Act X of 2023) established stronger powers for the National Judicial Council (NJC) to control judicial appointments, secondments and promotion of judges and court leaders, which is generally conducted by the central court administration (most notably the President of the National Office for the Judiciary and the Kúria President).¹

However, there are still deficiencies and systemic problems with judicial appointments and promotions, as follows:

- Legal provisions continue to allow the President of the National Office for the Judiciary (NOJ) to grant the position of presiding judge **without an application procedure**,² for example after the termination of the secondment of judges or after being temporarily appointed to the NOJ or to an administrative organ, allowing them to obtain a judicial leadership position circumventing the normal application system.³
- The scoring system of applicants for judicial positions **favours experience gained in public administration** against experience gained at courts. By not introducing transitional rules that guarantee the effective application of the new powers of the NJC in the 2023 Judicial Reform package (see also Section 2 below), the Government can keep up the distorted points system for an indefinite period.⁴
- The 2023 Judicial Reform radically limited the pool of potential judge candidates for the position of the Kúria President by introducing a new condition that requires the Kúria President to *“have at least two years of experience as a Kúria judge”*.⁵
- The 2023 Judicial Reform also leaves open the possibility that Constitutional Court (HCC) justices (who have already been appointed judges without an application procedure) may be transferred to the ordinary court system (although not to the Kúria, but to the Court of Appeal), maintaining the serious rule of law concerns raised by ad hominem judicial appointments by the ruling majority.⁶
- The **practice of secondment**⁷ **extends far beyond its legal objectives** and may be used to circumvent the guarantees of judicial appointments in regular application procedures.⁸ (Any judge

¹ See in more detail: <https://www.amnesty.hu/joint-assessment-of-hungarys-judicial-reforms/>

² Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 8 (1)

³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 58 (3)

⁴ https://www.amnesty.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf p. 6-7.

⁵ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 114(1)

⁶ https://www.amnesty.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf p. 8.

⁷ Judges can be seconded to another court for two reasons: for their professional advancement and to manage the workload at the courts. Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 31.

⁸ See for example the subsequent extension of the secondment of a judge to the Kúria: first from 15 January 2019 to 31 December 2019 <https://birosag.hu/sites/default/files/2019-01/10.e.pdf> ; than from 1 January 2020 to 31 December 2020

<https://birosag.hu/sites/default/files/2020-02/618.e.pdf>; and finally, from 1 January 2021 to 31 December 2021.

<https://birosag.hu/sites/default/files/2021-01/446.e.pdf> altogether for an uninterrupted 3 years.

may be seconded even against their will up to one year, in each 3-year period of time.) In the first half of 2022, altogether 451 justices were seconded with 14 secondments taking place to the Kúria.⁹

- Judges dealing with **administrative cases shall explicitly be assigned for this task** within the ordinary court system.¹⁰ Assignments are granted based on the proposal of court presidents, but the final **decision is taken by full discretion of the NOJ President** (or the Kúria President with respect to judges serving at the Kúria).¹¹ The 2023 Judicial Reform’s positive amendment was that the President of the NOJ may only terminate the assignment upon the consent of the assigned judge or upon the NJC’s consent.¹²
- Regarding appointments of judges at the Kúria, the President thereof has decisive competences. An example of irregularities emerged in 2022 when news reported that the **Kúria President has improperly appointed judges to the Kúria**.¹³ By arbitrarily determining the order in which the applications were evaluated, the President made it possible that a former State Secretary from the Ministry of Justice could be appointed as a Kúria judge without any previous judicial experience. Despite this case, **no legislative amendment has been adopted** to regulate multiple applications (when several calls for applications for judicial posts are published simultaneously) and the order of considering such applications **in order to exclude the possibility of determining** (through the arbitrary order of deciding on applications) **the outcome of applications and to circumvent the right to consent by the NJC in a non-transparent manner**.
- The 2023 Judicial Reform, while formally states that the Kúria President cannot be re-elected, does not change the **current rules that allow a one-third minority of the Parliament to keep the Kúria President in office** after its mandate expires (as the Kúria President remains in office as long as their successor is not elected by a two-third majority). The new rules further narrow the pool of potential candidates for the President’s position by modifications not required by the relevant EU milestone.¹⁴
- As a general rule, if a court leader is unlawfully dismissed and their reinstatement is subsequently ordered by the court deciding on the matter of the dismissal, they **can only be reinstated into their leadership position if that has not been filled in the meantime**.¹⁵

2. DEFICIENCIES OF JUDICIAL SELF-GOVERNMENT

⁹ See: <https://birosag.hu/beszamolok/az-orszag-os-birosagi-hivatal-elnokenek-2022-i-felevi-beszamolaja>
<https://birosag.hu/beszamolok/az-orszag-os-birosagi-hivatal-elnokenek-2020-evi-beszamolojap>. 28.

¹⁰ Act CLXII of 2011 on the Legal Status and Remuneration of Judges Article 30.

¹¹ Assigned judges shall grant their consent to the assignment. Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 30 (6).

¹² Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 103(3)(o) and (p)

¹³ <https://helsinki.hu/en/tribunal-established-by-sleight-of-hand/>

¹⁴ https://www.amnesty.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf p. 7.

¹⁵ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 145 (4).

Effective from 1 June 2023, the 2023 Judicial Reform significantly improved the legal status and competences of the NJC, the self-governing body of judges, which is a step in the right direction.¹⁶

After establishing stronger powers for the NJC – so it can effectively exercise its constitutional role in supervising the central administration of courts – it is also extremely important to safeguard the independence of the NJC by ensuring that its composition represents the will of the judges and is free from any formal or informal pressure. Only an independent NJC may fulfil its constitutional role in line with its newly strengthened powers. On 8 January 2024 the 128 judge-delegates elected the 14 new NJC members. Subsequently, 14 new substitute members were also elected on 15 January. The election process lasted between September 2023 and 15 January 2024. The NJC members were elected by delegates, that had been elected by judges at their respective courts. While Amnesty International have not found evidence that would indicate that the election process of the NJC as a whole was seriously damaged, **several factors demonstrate that political and administrative pressure was exerted on the election process of the new NJC.**¹⁷

The 2023 Judicial Reform fails also to ensure via transitional rules the effective exercise of the powers of the NJC to give a motivated binding opinion on regulations affecting the judiciary. The **law does not ensure the effective exercise of this power** by providing, among the transitional provisions, for a maximum initial period during which the NJC could be able to review the regulations in question and exercise its right to consent.

3. ATTACKS AGAINST INDIVIDUAL JUDGES AND THE NJC CONTINUED

Media and political attacks from mostly government politicians and pro-government outlets against individual judges continued in recent years, aiming to undermine public trust in the judiciary as the third branch of power. Despite the enhanced monitoring of the freedom of expression of Hungarian judges in the Baka case (see in Section 4 below) and the fact that elections to the NJC started in September 2023, smear campaigns against judges as members of the NJC continued throughout 2023-2024:

- On 7 July 2023, the government-aligned propaganda media released an article claiming that the NJC should be abolished for being biased. The title of the article suggested that members of the NJC are “old guttersnipes”.¹⁸
- On 5 October 2023, another smear article claimed that members of the NJC are “service staff of the empire” (hinting at the US and its Ambassador to Hungary).¹⁹
- On 20 February 2024, the National Judicial Council, the NOJ President, the Kúria and the prosecution service issued open letters²⁰ rejecting statements by an opposition party calling²¹ for

¹⁶ https://www.amnesty.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf

¹⁷ See more: <https://www.amnesty.hu/election-of-the-new-national-judicial-council-of-hungary/>

¹⁸ See the article here: <https://magyarnemzet.hu/tollhegyen/2023/07/regi-csibeszek6?fbclid=IwAR183cd9dHW957kE-SMkLzxcntul2XmAM6OISx4PkiYHKCZU2rzHVVhbF44>

¹⁹ See the article here: <https://magyarnemzet.hu/velemenyt/2023/10/a-jurisztokracia-mar-a-spajzban-van>

²⁰ <https://obt-jud.hu/az-obt-elnokenek-es-az-obh-elnokenek-nyilt-levele>

²¹ https://www.facebook.com/gyurcsanyf/posts/940419540774219?ref=embed_post

the ‘listing’ of judges and prosecutors involved in criminal proceedings against members of Parliament.

- On 20 March 2024, government-aligned media released an article²² falsely ‘accusing’ the former president of the NJC of having terminated the pretrial arrest of a person charged with possessing child pornography.

According to the European Commission, the freedom of expression of judges remains under pressure.²³

Court leaders, most notably the Kúria President (who is an ex officio member of the NJC) also continued to discredit the operation and question the integrity and independence of the NJC in recent years:

- On 2 March 2023, the Kúria President spoke²⁴ to ambassadors based in Budapest. In his speech, in relation to the draft of the Judicial Reform, he stated that NJC’s new functions and powers “*do not correspond to the European standards*”. He also commented that district court members of the NJC “*despite their lack of professional experience at the highest court level, have a say in the administrative affairs of the Kúria which is unprecedented in Europe*”.
- On 5 July 2023, the Kúria President released a public statement²⁵ on the Kúria’s official website, stating that the 2023 EC Rule of Law Report adopted “*without verification, the arbitrary opinion of the National Judicial Council on the Kúria*”²⁶. Minister Gulyás also commented publicly²⁷ that “*it is difficult not to agree with the words of the Kúria President*”, referring to the Kúria President’s earlier comment.

Overruling final and binding decisions of ordinary courts has been a practice of the Hungarian legislation to enforce the political will of the ruling majority.²⁸ At his hearing before the Justice Committee of the Parliament, the new Minister of Justice, Bence Tuzson publicly claimed that the Ministry of Justice (MoJ) will pay attention to the content of the judgments delivered at Hungarian courts and “*if the judgments do not serve the interests of Hungarian citizens and institutions*” the MoJ will amend the legislation.²⁹

4. CHILLING EFFECT AMONGST JUDGES CONTINUE TO HINDER THEIR FREEDOM OF EXPRESSION

²² <https://magyarnemzet.hu/belfold/2024/03/ime-a-biroi-csoportvezeto-akinek-beosztottja-elengedte-a-gyermekpornografiaval-gyanusított-volt-allami-vezetot>

²³ https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf p. 9.

²⁴ Kúria President, Dr. Varga Zs. András, a Kúria elnökének köszöntő beszéde a 2023. március 2-i nagyköveti villásreggelin [Dr. Varga Zs. András Varga, Kúria President, in his welcome speech at the opening ceremony of the 2 March 2023 Ambassador’s Brunch], 2 March 2023, https://kuriabiroasag.hu/sites/default/files/sajto/20230302_varga_zs_a_koszonto_eloadas_hu.pdf

²⁵ Kúria President, A Kúria elnökének közleménye [Statement of the Kúria President], 5 July 2023, <https://kuriabiroasag.hu/hu/sajto/kuria-elnokenek-kozlemenye-2>

²⁶ “[T]he chapter on Hungary in the European Commission’s 2023 Rule of Law Report regrettably adopted, without verification, the arbitrary opinion of the National Judicial Council on the Kúria, which is without any factual basis, that has been repeatedly refuted with data, and violates the personal integrity of many judges. It can be stated that not a single word of the findings is true.”

²⁷ <https://magyarnemzet.hu/belfold/2023/07/hamarosan-kezdodik-a-kormanyinfo-kovesse-nalunk-eloben-2>

²⁸ See more at: Hungarian Helsinki Committee, Non-Execution of Domestic and International Court Judgments in Hungary, December 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_NonExecution_of_Court_Judgments_2021.pdf, p. 20.

²⁹ See: <https://444.hu/2023/07/03/tuzson-bence-mar-a-miniszterjelolti-meghallgatasan-nyomas-ala-helyezte-abiroasagokat>.

As regards the effect of the violations in the ECtHR Baka case³⁰ on the freedom of judges to express their views on matters of public interest concerning the judiciary, on 13 June 2024, **the Council of Europe’s Committee of Ministers reiterated serious concern that the Hungarian authorities had not produced their announced evaluation of the domestic legislation** on the status of judges and the administration of courts.³¹

In 2023, the Committee of Ministers (CM) monitoring the execution of judgments by the European Court of Human Rights (ECtHR) put on its agenda the execution of the judgment in the Baka v. Hungary case in March³² and subsequently in December³³ again. In its decisions passed, the **CM reiterated its utmost concern** about the lack of information in response to Interim Resolution CM/ResDH(2022)47³⁴ and **the absence of progress**, more than seven years after the Baka judgment became final. The CM urged the authorities to present an evaluation of the guarantees and safeguards protecting judges from undue interferences, to enable *“a full assessment as to whether the concerns regarding the ‘chilling effect’ on the freedom of expression of judges caused by the violations in these cases have been dispelled”*. The CM invited the authorities to provide information on developments in the proceedings before the Constitutional Court initiated by the Kúria President with respect to the new Code of Ethics for Judges.³⁵ **The Hungarian Government has not provided with any evaluation requested by the CM.**

At its meeting on 2 March 2022, the NJC adopted the new Code of Ethics for judges, which unlike its predecessor, explicitly states that a judge may participate in *“public events organised in accordance with the law”*, but their participation should not create the perception of political commitment. An important development is that the Code also states that judges are free to express opinions on *“laws, the legal system and the administration of justice”*, which previously was equivocal ground for a very restrictive interpretation. On 27 May 2022, the Kúria President – an ex office member of the NJC – challenged³⁶ the constitutionality of the Code before the Hungarian Constitutional Court (HCC) and the law allowing the NJC to adopt it. While **the challenge in front of the HCC** did not legally hinder the new Code’s entry into force, the ongoing dispute and the chilling effect that it delivers to the NJC and the judges **will continue to have a negative impact on judge’s freedom of expression and participation in professional debates.**

In February 2024, the Kúria President launched an investigation³⁷ into the publication in the January issue of the Kúria’s professional journal of a Kúria judgment that later triggered the so-called “pardon scandal”.

³⁰ Judgment of the European Court of Human Rights of 23 June 2016, Baka v Hungary, 20261/12. The Court found that the impugned measures had a ‘chilling effect’, discouraging not only the applicant, but also *“other judges and court presidents [...] from participating in public debate on [...] issues concerning the independence of the judiciary”* (§ 173).

³¹ CM/Del/Dec(2024)1501/H46-15.

³² 1459th meeting, 7-9 March 2023 (DH), decision CM/Del/Dec(2023)1483/H46-17
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa7338

³³ 1483rd meeting, 5-7 December 2023 (DH), decision CM/Del/Dec(2023)1483/H46-17
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ad3fd0

³⁴ Interim Resolution CM/ResDH(2022)47 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5c339

³⁵ <https://helsinki.hu/en/ngos-turn-to-the-constitutional-court-in-support-of-judicial-independence/>

³⁶ Available in Hungarian:

[http://public.mkab.hu/dev/dontesek.nsf/0/b1e83afc8b10b1d2c125885b005b3b7e/\\$FILE/II_1285_0_2022_ind%C3%ADtv%C3%A1ny.002.pdf/II_1285_0_2022_ind%C3%ADtv%C3%A1ny.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/b1e83afc8b10b1d2c125885b005b3b7e/$FILE/II_1285_0_2022_ind%C3%ADtv%C3%A1ny.002.pdf/II_1285_0_2022_ind%C3%ADtv%C3%A1ny.pdf)

³⁷ <https://kuria-birosag.hu/hu/sajto/kuria-kozlemenye-5>

38 The decision of the Kúria President to suspend the publication of the Kúria’s official court reports could have a chilling effect on judges with consequences for the content of their decisions.

Chilling effect among judges has been clearly shown by a survey³⁹ among judges conducted by the Hungarian Association of Judges in late 2023. According to the survey, 8 out of 10 judges do not think it a reality that *“judges may participate in public debates on legislative reforms affecting the application of the law and the judiciary, and on issues relating to judicial independence in general, even if such debates have political implications”* and 6 out of 10 judges do not think it a reality that *“judges are free to express their opinions on the law, the legal system and the administration of justice, and in particular to publish, lecture and teach”*. Two-third of judges responding has not expressed their opinion publicly *“on issues concerning the organisation of the judiciary, judicial independence, law, the legal system and the application of the law”*.

5. LOW SALARIES JEOPARDIZE JUDICIAL INDEPENDENCE

The salary of judges and court staff is critically low in Hungary, does not commensurate with the status, dignity and responsibility of the judicial office and endangers the independence of the judiciary. The legislation does not guarantee the periodical review of judicial salaries to overcome or minimize the effect of inflation. The salary increase for judges made in previous years was discontinued for the year 2024. The base salary of both judges and prosecutors has been raised from gross HUF 507,730 (ca. € 1,418) for the year 2021 to HUF 566,660 (ca. € 1,538) for the year 2022 – but remained at this level both for 2023 (when the annual inflation exceeded 15%) and for 2024 (when the annual inflation exceeded 17%). Salaries for court staff barely reach the minimum wage and do not substantially increase for staff with significant work experience.⁴⁰

The NJC continuously and repeatedly called upon the Government to address the situation it called “acute” for judges and “hyper-acute” for court staff:

- NJC Resolution No. 46/2023 (VI.7.) aimed to immediately increase the salaries of judges and judicial staff at least in line with inflation from 1 September 2023 at the latest, that the NJC also communicated⁴¹ to the Ministry of Justice,
- NJC Resolution No. 20/2024 (II.26.)⁴² aimed to increase the salary base of judges by 35% from 1 January 2024, and to introduce an annual indexation of judges’ salaries to 150% of the average national salaries of the previous year, effective from 1 March 2025, and to increase the judges’ salaries at lower level and appeal courts.

38 <https://www.bbc.com/news/world-middle-east-68264363>

39 https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf

40 See in more detail: <https://www.amnesty.hu/hungarian-csos-contribute-to-the-european-commissions-2024-rule-of-law-report/> Question I.13.

41 <https://obt2018.hu/download/az-obt-illetmenyemelest-celzo-jogszabalytervezete-targyaban-az-igazsagugyi-miniszternek-megkuldott-atirata/?wpdmdl=2611&refresh=6495dde4536231687543268>

42 <https://obt-jud.hu/sites/default/files/hatarozatok/2024-05/20-2024-II-26-OBT-hatarozat.pdf>

- NJC Resolution No. 48 (III.19.)⁴³ aimed to increase the salary base of judges to gross HUF 765 000/month,
- NJC Resolution No. 49/2024 (III.21.)⁴⁴ aimed to introduce an annual indexation of judges’ salaries,
- NJC Resolution No. 50/2024 (III. 27.)⁴⁵ aimed to introduce, as from 1 May 2024, an increase in the remuneration of court clerks, court secretaries, clerks and clerks of the courts of 10 per cent of the judicial salary base,
- in its press statement⁴⁶ dated 3 May 2024 the NJC stated that *“this situation is a threat to the functioning of the courts”* and reiterated *“the urgent need to regulate the remuneration of judges and judicial staff, and calls on the legislator to take the necessary to take the necessary measures without delay”*,
- NJC Resolution No. 104/2024 (VI. 19.)⁴⁷ aimed to increase the remuneration of judges and introduce an annual indexation of salaries

The NJC did not receive any positive reply from the Government representative at the NJC meetings or from the Government in any form to these calls.

The European Network of Councils for the Judiciary (ENCJ) also released a public statement,⁴⁸ in which the ENCJ’s Executive Board observed *“with great concern that challenges to judicial independence in Europe persists. The current situation in Hungary reveals that the earlier salary increases of judges and prosecutors have been adversely affected by high inflation. Consequently, the financial situation of judges and of court staff has deteriorated significantly in the last number of years”*.

The European Commission also took note of the situation and in its latest, 2024 Rule of Law Report recommended that Hungary should *“[t]ake structural measures to increase the remuneration of judges, prosecutors, and judicial and prosecutorial staff, taking into account European standards on remuneration for the justice system”*.⁴⁹

The structure of salaries of public prosecutors is the same as judges’ salaries, and these have not been increased since 3 years. According to news reports⁵⁰, workers in the public prosecutor sector are also complaining about their salaries and the leadership for the Chief Prosecutor’s office is negotiating with the Government about a salary increase.

6. CASE ASSIGNMENT

⁴³ <https://obt-jud.hu/sites/default/files/hatarozatok/2024-05/48-2024-III-19-OBT-hatarozat.pdf>

⁴⁴ <https://obt-jud.hu/sites/default/files/hatarozatok/2024-05/49-2024-III-21-OBT-hatarozat.pdf>

⁴⁵ <https://obt-jud.hu/sites/default/files/hatarozatok/2024-05/50-2024-III-27-OBT-hatarozat.pdf>

⁴⁶ https://obt-jud.hu/sites/default/files/sajtokozlemenyek-mellekletek/2024.OBT_III_4.-Sajtokozlemeny-javadalmazas-targyaban.pdf

⁴⁷ <https://obt-jud.hu/sites/default/files/hatarozatok/2024-07/104-2024-VI-19-OBT-hatarozat.pdf>

⁴⁸ <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/2024-07/%20Executive%20Board%20statement%2024%20July%202024.pdf?BCIocAH7DzlwRK6gua5boZ2cyNMhGs8w>

⁴⁹ https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf

⁵⁰ <https://24.hu/belfold/2024/09/24/ugyesz-illetmeny-fizetesemeles-panasz-legfobb-ugyeszseg/>

The rules of case allocation (assignment) at the Kúria were amended by the 2023 Judicial Reform, but concerns remain with respect to the proper implementation of the new rules. Amongst others, the existence of an electronic system guaranteeing the automated case allocation without human intervention is questionable. Based on the answers provided to freedom of information requests, neither the Kúria nor the NOJ could provide proof that a proper IT system guarantees the due application of the new rules on case allocation at the Kúria.⁵¹

At lower courts, problems with case assignment persist. The possibility to modify the case allocation scheme is unlimited in time. Modifications of the case allocation schemes are carried out on a regular basis, sometimes from one day to the other.⁵² Court presidents have an exclusive and unlimited right to establish the case allocation scheme.⁵³ Judicial self-governing bodies are not entitled to exert meaningful control over the process of adopting case allocation schemes.⁵⁴ The process of case allocation is not automated, but reliant on direct human intervention. The law provides for a wide range of exceptional rules without establishing guarantees against their inappropriate application. Parties in a court proceeding cannot verify the proper application of the scheme and whether any of the wide range of exceptional rules were applied in allocating their case. Lack of transparency of case assignment at lower level courts resulted in the European Commission to recommend improving *“the transparency of case allocation systems in lower-instance courts, taking into account European standards on case allocation”* in 2024.⁵⁵

To address the concerns, we call on the OSCE and OSCE Participating States to:

1. Continue monitoring the situation of the judges and the judiciary in Hungary and support judicial self-administrative bodies as well as members of the judiciary who face media and political attacks for publicly criticizing interference into the independence of the judiciary;
2. Urge the Government of Hungary to fully comply to its Human Dimension commitments, including the 1991 Moscow Document as well as to fully implement OSCE-ODIHR’s 2010 Kyiv Recommendations on the independence of the judiciary and the 2023 Warsaw Recommendations. Most notably, the government should be urged to

⁵¹ See more at <https://www.amnesty.hu/hungarian-csos-contribute-to-the-european-commissions-2024-rule-of-law-report/> pp. 10-12.

⁵² The case allocation scheme of the Metropolitan Court of Appeal was modified on 13 occasions in 2023. All modifications were introduced with immediate effect or within a couple of days after their adoption. See:

https://fovarosiitlotabla.birosag.hu/sites/default/files/field_attachment/a_fovaros_i_tlotabla_2023._evi_hatalyos_ugyelosztasi_rendje_10.pdf.

⁵³ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 9

⁵⁴ The recommendation of the Venice Commission remains unaddressed, according to which the opinion of the judicial bodies provided in the process of adopting the case allocation scheme should be made *“public and binding in order to ensure the transparency of the process and increase the trust of the citizens in the good and impartial functioning of the judiciary, given the reported complexity of the case allocation system”*. See: European Commission for Democracy Through Law (Venice Commission), Opinion on the amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges adopted by the Hungarian parliament in December 2020, CDL_AD(2021)036, 16 October 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)036-e), para. 66. b).

⁵⁵ https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf p. 2.

(1) make meaningful public consultations on new laws on courts inclusive and open for all affected parties (including the general public, members of the judicial self-administration bodies and civil society),

(2) guarantee that salaries are raised to an adequate level which satisfy the needs of judges for an appropriate standard of living and adequately reflect the responsibility of their profession,

(3) ensure that the Kúria President's appointment is not for an unlimited number of years and

(4) publicly condemn accusatory and labelling rhetoric against judges and independent civil society organizations who speak up for the protection of judicial independence; moreover, it should be encouraged to take proactive steps to counter discrediting of judges and human rights defenders by political leaders and the media;

3. Engage with the Government of Hungary to encourage meaningful dialogue between the Government, all affected parties within the judiciary, legal professionals and civil society, in order to ensure that institution-building, development and other programmes are human rights compliant;

4. Monitor the impact of legislation as well as other measures and related actions (including communication) by state actors and the media targeting judges, judicial self-administration and operations of civil society organizations in Hungary.

5. Implement the recommendations of the EC's 2024 Rule of Law Report without delay.

We call on the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to:

1. Closely follow the developments with regards to judicial self-administration, and provide support and assistance to Hungary to promote a system for judicial administration that is in compliance with Hungary's OSCE human dimension commitments, including by observing the extent to which the right to a fair trial, the separation of powers and the independence of the judiciary are safeguarded;

2. Review upcoming amendments to cardinal laws on the judiciary in light of Hungary's OSCE human dimension commitments and, more specifically, the OSCE-ODIHR Kyiv Recommendation on Judicial Independence and the Warsaw Recommendation.

3. Work with the Government of Hungary, civil society and judicial bodies and stakeholders to implement the 2023 Warsaw Recommendations.