

The quality of justice in Hungary: Executive summary

Mátyás Bencze, Ágnes Kovács, Zsolt Zódi

1. Judicial structure overview

In Hungary a four-level judicial system operates. The system is unitary, i.e. there are no specialized courts outside of the ordinary courts. There is a horizontal division of labor amongst judges in each court. This kind of division of labor is reflected in the horizontal organization of the judicial administration: in higher courts criminal, civil, economic as well as administrative and labor judicial departments operate. The departments organize and support judges adjudicating in one of the aforementioned branches of the law.

The **Curia of Hungary** is the highest judicial authority in Hungary. It decides appeals and reviews final decisions of lower courts if these are challenged through an extraordinary remedy (the Curia has no right to select the cases to be dealt with). Besides, the Curia publishes judgements and delivers ‘uniformity decisions’ in order to guarantee the coherence of the judicial practice at national level. Uniformity decisions are binding for all courts.

The **President of the National Office for the Judiciary** (NOJ) who is elected by the Parliament carries out the functions of **central administration** of the courts under a weak supervision of a self-elected body of the judiciary called **National Committee of Justices** (NCJ).

As for the current issues, there is an “evergreen” problem, namely the **timeliness** of the administration of justice and the **case-backlog** accumulated before 2012. A similar problem is that there have been regions in the country (Budapest and the Central Region of Hungary) which have been tackling with **disproportionally high workload**. This situation was worsened in 2012, when the legislation forced to retire almost 300 senior judges. In the past few years the NOJ initiated some amendments to the law in force and organizational changes aiming at speeding up the court procedure. As many figures show this effort has proven to be successful. Quality of judgments and understandability of judicial writing is a growing concern amongst judges and court leaders.

1. Classical judicial evaluation arrangements

Evaluation of individual judges - In Hungary usually the first step to become a judge is to work as a judge trainee within the judicial system (after graduating from a law school). Although according to the law, every person who passed the Bar Exam can apply for judgeship, the figures show that the vast majority of successful applicants start their judicial career as judge trainees. Lack of work experience outside the judicial administration can be a point of criticism. In the selection procedure of judge trainees and judges there is a growing emphasis on skills and competences (besides legal knowledge). There are some statutory criteria that determine the ranking of applicants. The minister in charge of the judicial system issued the number of points to be awarded for each of the criterion. The key actors in selection and appointment are the Local Judicial Council, the president of the affected court and the President of the NOJ. Another point of criticism may be that it is the judges’ perspective that dominates the selection process, and societal expectations toward prospective judges do not exert significant influence on it.

Judge trainees and apprentice judges have compulsory in-service trainings held by mostly senior judges focusing on competences such as understandability of judicial writing and legal

knowledge. A new development is that each apprentice judge has an **“instructor” judge** who supervises her work (while respecting the independence of the supervised judge). Judges are assessed firstly in the third and secondly in the sixth years from their appointment and after that in every eighth year. The assessment is conducted usually by the **head of the affected department** (who knows the assessed judge personally). She **evaluates** the quality of the assessed judge’s work from three aspects: the **quantitative** and the **qualitative** aspect of the judicial work as well as **judicial skills** are taken into consideration (a detailed list of assessment criteria exists). According to the relevant law and regulation the proportion of the quashed/changed judgments of the assessed judge is not an explicit quality indicator, but in practice it may have an impact on the outcome of the evaluation. If the result of the evaluation is ‘incompetent’, the judge must be dismissed (legal remedy exists against that decision). It can be said that evaluation of judges is also dominated by the perspective of judges (for example, parties’ satisfaction does not play any role in the evaluation). Besides, evaluation conducted by the immediate superior of the assessed judge can threaten judicial independence. Court leader positions are filled by the way of an application procedure. The key players of this process are the presidents of regional courts (in cases of lower court leaders) and the President of the NOJ (in cases of all other court leaders). Court presidents are not managers, they are judges, but managerial trainings are organised for them by the NOJ. It is hardly a positive phenomenon that a great proportion of the application procedures were declared unsuccessful by the President of the NOJ (in 2015 almost 20%, in 2016 36% of all calls). Some consider this tendency a sign of an increasing central control over court leaders.

Evaluation of court activities - In Hungary a heavy emphasis is put on monitoring the activity of courts. The evaluation is **highly centralized**: the aim of the evaluation is to meet those long-term strategic objectives (primarily effectiveness and productivity) that were established by the President of the NOJ, and the indicators were determined at the national level. The evaluation process is characterized by a **‘statistical approach’** which shows that courts work under strict control. A wide range of information on the activity of courts is collected at the court level and sent to the NOJ on a monthly basis. This information encompasses the number of incoming and resolved cases, the backlog (special attention is paid to the “old cases” that are pending over two years before courts) and the workload (case/judge) of courts, appeal and reversal rates, and data on the length of judicial proceedings.

External actors are involved to a very limited extent in the process of court evaluation: the use of customer satisfaction surveys is in its infancy.

Recently, new methods for workload measurement have been developed: case weights and so-called ratio tables have been introduced. **Case weights** are used in the process of case allocation and aim to make the workload of judges within one court more balanced. The figures of **ratio tables** (incoming cases per authorized judicial staff in each court) provide information about the workload of courts and are meant to be used when decisions need to be made on staff allocation (filling vacancies). The Hungarian judiciary is constantly facing the problem of huge workload imbalances between the central region and other parts of the country: the primary tool for reducing pressure on judges adjudicating in courts belonging to the central region is **judicial secondment**.

There is no direct link between court evaluation and the allocation of financial resources. Only temporary national projects provide some extra resources for well-performing courts. It is the court president who bears responsibility for the performance of the court. The president of the court can be subjected to disciplinary proceedings in case of serious malfunctions in the court.

Resources allocation to courts -The annual budget of the court system in 2017 is cca. 321 millions of euros which is 0,67 percent of the annual state budget. Though in the last few years

there has been a slight increase in the amount of the budget of the court system, budgetary support for Hungarian courts is rather low compared to the general European level.

The budget of the courts is a separate “chapter” within the state budget in Hungary. The ‘external’ budgeting (i.e. the determination of the main figures) is **formally the task of the President of the NOJ**, who prepares the budget plan independently from the government. However, de facto it is determined mainly by the previous year’s budget (**‘base approach’**), the political bargains behind the scenes, and other determinations, like, that more than 70% of the total budget is spent on salaries, and taxes.

The allocation of the freely expendable resources (vacant positions, and some 20% of the budget) within the organisation (‘internal budgeting’) is nearly **entirely in the hand of the President of the NOJ**. She is deciding on the filling or the reallocation of the vacant positions, as well as all other minor budgetary issues, like renovations, extra remuneration etc.

2. Innovative practices

1) As a recent development in Hungarian courts a **mentor-judge** network operates. **Junior judges** that need **legal-professional support** may turn to senior judges registered as “mentors”. Unfortunately, we have no data on the number of junior judges who use this opportunity.

2) Since 2012 a special organization is functioning under the umbrella of NCJ, the network of EU law consultant judges. Their main task is the **consultation Locally in legal matters affected by EU law**. This system is not only a tool for improving the judges’ performance, but is also gives a territorial and per court **overview on the everyday EU legal problems** of the courts as well.

3) In 2013 a jurisprudence-analysis group was set up to deliver inquiries into the **drafting practice of the Curia judges** in civil and administrative cases. A similar group was created in criminal matters a year later. Since the structure of decisions and their linguistic and stylistic level varied from one judge to another to a great extent, the objectives of the working group were to **improve the drafting-style, the uniformity and the comprehensibility of judgments** in order to meet the expectations of the general public. Their report suggested, inter alia, the standardization of the description of the subject-matters of the cases, the rationalization of citing previous decisions, the introduction of an internal numbering to the reasoning part, or compliance with the linguistic demands of the heterogeneous target audience. The report also proposed some changes on the **substance of the reasoning**, but some of them – for instance, avoiding reference to legal literature or the establishment of novel legal doctrines, and refraining from addressing the parties’ arguments which do not affect the decision – were highly surprising. The “Stylebook” which contains some samples for drafting was published only on the intranet of the judiciary in 2016. The ‘Stylebook’ is not a compulsory tool.

4) In recent years, a new strategy aiming to improve the timeliness and the quality of adjudication has been developed in the District Court of Debrecen in cases belonging to the criminal branch. The project was launched in the early 2014 in a **bottom-up way** and is built on three pillars: (1) timely and effective administration of justice, (2) staff satisfaction and (3) customer satisfaction. The project targeted a comprehensive change in the attitude of the staff, in all segments of the functioning of the court. A novel method of case allocation was introduced to provide incentives for judges to complete cases and make their work more effective. The former scheme was based on the system of “case equalization” in the level of individual judges: each judge had to deal with the same number of cases which meant that judges were not motivated to resolve cases as the more cases they resolved, the more they got. This scheme was replaced by a case allocation system which builds on the idea that judges receive the average number of incoming cases in every month with special emphasis on the different difficulty of the cases to be assigned (the guiding principle is “**equal number of cases with equal weight**”). Besides, a complex **motivational system** has also been elaborated which is directly linked to

the performance of the judges. Statistical data reveal that the number of cases pending over 2 years **has dropped significantly** since the model was introduced, namely from 8,6 % to 2,79% in a two-year time.

