

# The evaluation and development of the quality of justice in Hungary

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## 1. The institutional context

### 1.1. Judicial structure overview

In Hungary a four-level judicial system operates. The system is unitary, i.e. there are no courts (specialized courts) outside of the courts hierarchy described below. However, there is a horizontal division of labor amongst judges in each court (a judge has to deal with cases only from a given branch of the law). The main dividing line is between judges who adjudicate in criminal cases and those who deal with non-criminal cases (civil, economic, and administrative and labor cases). This kind of division of the labor (specialization on the level of individual judges) is reflected in the horizontal organization of the judicial administration: in higher courts criminal, civil, economic as well as administrative and labor judicial departments (sections) operate. The sections organize and support judges adjudicating in one of the before-mentioned branches of the law.

On the lowest level of the hierarchy the district courts and the administrative and labor courts take place.<sup>1</sup> There are 112 **district courts** in Hungary. The district courts proceed only as first instance courts. Separated from the general district courts there are 20 specialized courts in the first level of court hierarchy: they are **administrative and labor courts** located in the seat of regional courts.

District courts and administrative and labor courts are led by a president. These courts are not legal entities; however they have some limited autonomy in their external relationship under the control of the president of the regional court they belong to. As for the general administration of district courts presidents and judicial councils of the regional courts play a central role.

**Regional courts** constitute the second level of the courts, there is one in each of the 19 counties of Hungary and one in Budapest. The regional courts operate as first instance courts in some types of cases of greater significance, and decide in appeal cases lodged against the decisions of district courts and administrative and labor courts. Regional courts are led by a president, and these courts are legal entities.

**Regional courts of appeal** are at the third level. Regional courts of appeal decide as a second or third instance only in appeal cases submitted against the decisions of regional courts. Regional courts of appeal are led by a president, and they are also legal entities.

The **Curia of Hungary** (Supreme Court) is the highest judicial authority in Hungary. Horizontally, it is divided into three departments: criminal, civil, and administrative and labor law departments. The Curia decides appeals submitted against the decisions of the regional courts and the regional courts of appeal in certain types of cases and reviews final decisions of lower courts if these are challenged through an extraordinary remedy.

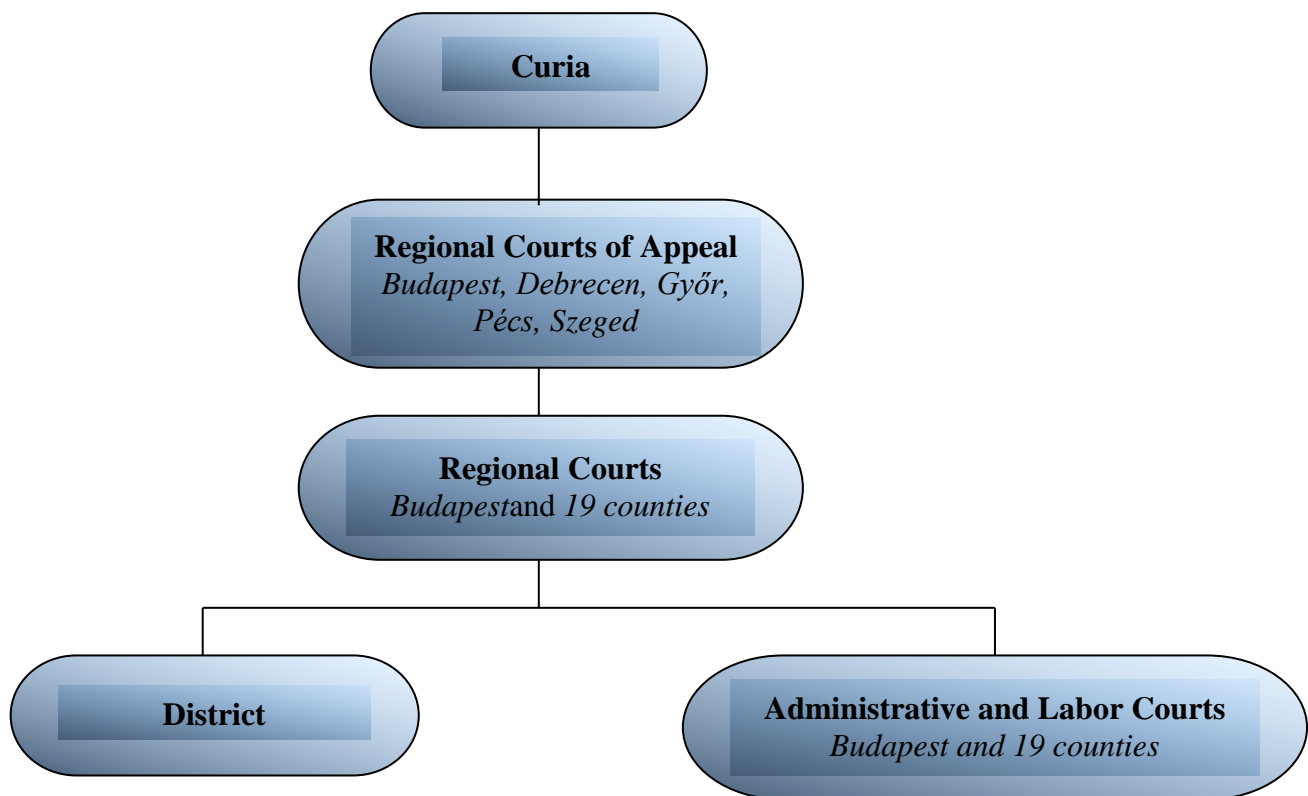
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<sup>1</sup><http://birosag.hu/en/information/hungarian-judicial-system>

As a ‘little constitutional court’ one panel of the Curia delivers judgments in cases where a local government decree is challenged on the ground of violation of law or where a local government fails to create regulation.

The Curia has no right to select the cases to be dealt with (a certiorari).<sup>2</sup> That is why the number of the judges at the Curia is relatively high: currently more than 80 judges are working at this court. Many of the three-member panels are specialized to a given field of law (mostly within the civil law department).

Figure 1: Organigram of the Hungarian court hierarchy



It is worth mentioning here that the Curia has (besides publishing edited and unedited judgments) some specific means in order to guarantee the coherence of the judicial practice.<sup>3</sup> First, unlike supreme courts in Western European countries the Curia can deliver decisions on the correct interpretation of the law that are binding for all courts (uniformity decisions). Second, departments of the Curia can issue “general opinions” which also revolve around questions of interpretation and application of the law. The specificity of both guiding tools is that they are not necessarily judgments delivered in a particular case. They reflect problems arising in the judicial practice in a mid-abstract level (in between the abstraction level of text of the law and that of the reasoning of a judicial decision). That is why their drafting style is somehow similar to those of the legislated law.

<sup>2</sup>The new civil procedural law (entering into force on 1 January 2018) narrows the scope of cases where the parties can turn to the Curia for extraordinary legal remedy. In order to mitigate this restriction the law authorizes the Curia to give permission to bring a case before the court if it has serious legal or social implications.

<sup>3</sup> The Venice Commission repeatedly expressed its concerns about the means guaranteed in the Hungarian legal system to ensure the uniformity of the jurisprudence. The Commission highlighted that “*the uniformity procedure and its system of supervision by the court presidents might have a chilling effect on the independence of the individual judge (paragraph 73) and that a uniformity procedure may only be acceptable if it does not have a negative influence on the career of the judges (paragraph 74).*” See Venice Commission, Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD (2012)001 on Hungary. Strasbourg, 15 October 2012, 683/2012, CDL-AD (2012)020, paragraph 52.

Although the constitutional status of these “quasi-laws” is problematic, because judges who write them rather “make” than “apply” the law, these decisions are very popular amongst judges. They cite and apply them as if they were “hard law”. This is because general opinions by providing detailed guiding rules make the sometimes too abstractly drafted legislated law “consumable” for every-day use.<sup>4</sup>

A drawback of this system of unification of judicial practice is that the published guiding decisions do not embrace all the relevant difficulties and uncertainties of the judicial practice. The Curia tends to deliver and publish guiding decisions in cases where they have to decide as a forum of legal remedy. Many difficult and widely present practical issues simply do not reach the Curia (there are only a restricted number of causes that entitle the losing party to bring the case before the Curia). The table below compiled in 2012 concerning criminal cases shows this situation:

Table 1: Proportion of guiding decisions of the Curia in some types of criminal cases

Examined period: 1980-85, 1990-95 and 2006-11	Type of delict			
	Murder (Curia ordinary forum of appeal)	Theft (Curia only extra-ordinary remedy forum)	Fraud (Curia only extra-ordinary remedy forum)	Robbery (Curia only extra-ordinary remedy forum)
Proportion of decisions published by the Curia	21,8%	13,0%	5,8%	7,4%
Proportion of the given delict within all delicts committed in a year on average	<0,1%	59,1%	8,20%	1,40%

It may be that this weakness motivated the legislation when in 2012 it established the institution of the so-called ‘jurisprudence-analysis groups’ within the Curia to address the most controversial issues of the Hungarian judicial practice.<sup>5</sup> These working groups typically consist of judges, law professors, other representatives of the legal profession, and at times other external experts as well. The subject-matters are determined every year by the President of the Curia on the proposals of the departments of the Curia, but heads of the departments on lower courts, and other representatives of the legal profession and legal scholar may also make proposals to this agenda. The groups can analyze the practice of lower level courts and can identify and resolve (on a theoretical level) legal problems which not necessary reach the Curia in the ordinary way of appeal. In their published final report the groups can make recommendations in order to improve the quality of adjudication in a certain field.

<sup>4</sup>Zsolt Zódi: Citations of Previous Decisions, and the Quality of Judicial Reasoning, *Acta Iuridica Hungarica*, 56, No 1, pp. 129–148 (2015)

<sup>5</sup> Article 29 and 30 of the Act CLXI of 2011 on the Organization and Administration of Courts (hereinafter AOAC).

The publication of the judicial decisions is a starting point of all efforts to reach legal unity. In this respect the situation in Hungary is quite controversial. We have to differentiate between three types of document (or decision-) groups, where accessibility and searchability is quite different.

1. In the case of the first group of documents (cca. 50-60 documents per year), the overall situation is quite good. These documents are accessible for free, in the form of a searchable database on the website of the Curia. This group of documents comprises uniformity decisions<sup>6</sup>, departments' general opinions<sup>7</sup>, reports of the jurisprudence analysis groups<sup>8</sup>, and some 10% of the edited ('headnoted') leading cases<sup>9</sup>.
2. The second group of documents, the vast majority of the edited decisions (cca. 400 document per year) are not accessible for free. The publication right (copyright) of these decisions had been transferred at the beginning of the '90-s to a private publishing company<sup>10</sup> which is publishing these decisions in a journal called 'Kúriai Döntések' (Decisions of the Curia)<sup>11</sup>. The publisher has also the exclusive right of giving re-publishing rights to other publishing companies, including the most popular database publisher<sup>12</sup>.
3. The third group of decisions are the un-edited (anonymized) decisions (some 10.000 decisions per year). These documents are accessible in a searchable format on the website of the NOJ.<sup>13</sup> Though there is a search engine on the site, there are ongoing complaints concerning the user friendliness of the site. No wonder that bigger database publishers are all offering paying services, where these documents are published with a user friendly search engine.

Hungarian judiciary includes judges only, prosecution office is a separate branch of the justice system. Thus, prosecutors are recruited separately from judges and they have a different career line. Nonetheless, there is an opportunity for any legal practitioner (including prosecutors) to apply for judgeship as the Bar Exam in Hungary is exactly the same for every legal profession.<sup>14</sup>

The following tables show the change of numbers of court staff in Hungary in the past few years.

Table 2: Number of judges in Hungary (based on the information provided by the president of the NOJ)

	Approved status	Actual
<b>2011</b>	2.937	2.889
<b>2012</b>	2.897	2.782
<b>2013</b>	3.024	2.914
<b>2014</b>	2.929	2.839
<b>2015</b>	2.932	2.840
<b>2016</b>	2.937	2.846

<sup>6</sup><http://www.lb.hu/hu/jogegysegi-hatarozatok>

<sup>7</sup><http://www.lb.hu/hu/kollvel>

<sup>8</sup><http://www.lb.hu/hu/joggyakorlat-elemzo-csoportok-osszefoglaloj>

<sup>9</sup><http://www.lb.hu/hu/elvi-birosagi-hatarozatok>; <http://www.lb.hu/hu/elvi-birosagi-dontesek>

<sup>10</sup>HVG-ORAC, <http://www.hvgorac.hu/>

<sup>11</sup>[http://hvgorac.hu/folyoiratok\\_csoport/kuriai\\_dontesek\\_kiadvany](http://hvgorac.hu/folyoiratok_csoport/kuriai_dontesek_kiadvany)

<sup>12</sup>Wolters Kluwer's Jogtár product: <https://uj.jogtar.hu/>

<sup>13</sup><http://birosag.hu/ugyfelkapcsolati-portal/birosagi-hatarozatok-gyujtemeny>

<sup>14</sup> The Bar Exam consists of one written exam (resolving a case which includes a legal problem), and three oral exams, one in each major branch of law. The oral exams are focused on the examinee's knowledge about the substance of the laws and not on her legal skills and competences.

Table 3: Number of administrative employees in Hungary (based on the information provided by the president of the NOJ)

<b>Number of court clerks</b>	<b>Approved</b>	<b>Actual</b>
<b>2011</b>	614	605
<b>2012</b>	794	736
<b>2013</b>	793	783
<b>2014</b>	817	798
<b>2015</b>	861	833
<b>2016</b>	887	851
<b>Number of judge trainees</b>	<b>Approved</b>	<b>Actual</b>
<b>2011</b>	359	256
<b>2012</b>	359	239
<b>2013</b>	359	239
<b>2014</b>	359	260
<b>2015</b>	283	237
<b>2016</b>	254	218
<b>Number of other administrative court employees</b>	<b>Approved</b>	<b>Actual</b>
<b>2011</b>	6.902	6.786
<b>2012</b>	7.016	6.920
<b>2013</b>	7.091	6.963
<b>2014</b>	7.261	7.167
<b>2015</b>	7.298	7.141
<b>2016</b>	7.326	7.189

One can see that while the number of the judges and judge trainees has not changed significantly, there has been a remarkable increase in the number of clerks and administrative staff.

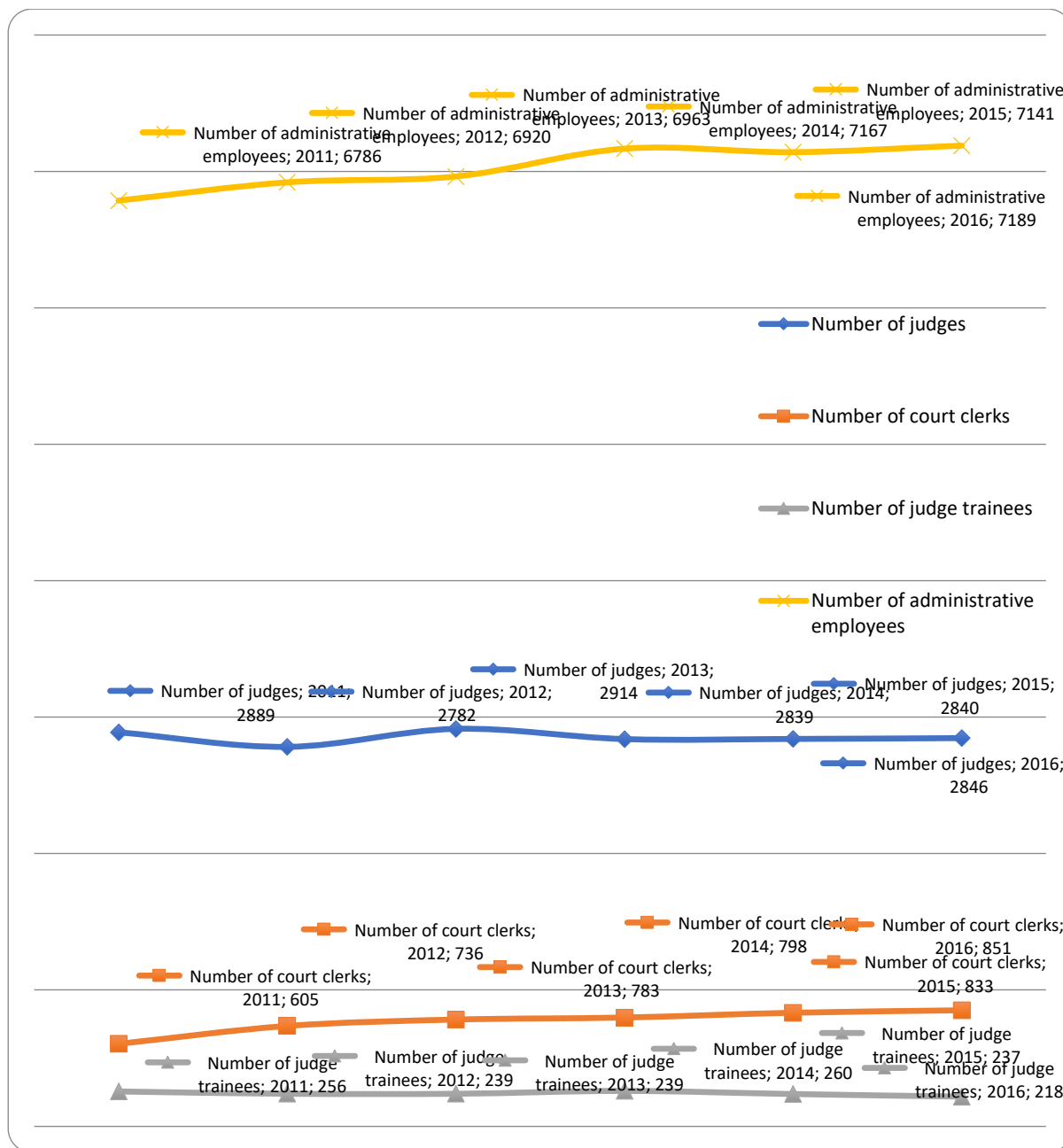
Usually the first step to become a judge is to work as a judge trainee within the judicial system. Theoretically, every person who passed the Bar Exam can apply for judgeship, but (as we later discuss it) the figures show that the vast majority of successful applicants starts his/her judicial career as a judge trainee. Trainees cannot make decisions, they can prepare draft-resolutions, can give advice to court users who cannot hire a lawyer and they attend trials in order to learn the work of a judge.

A judge trainee who has already passed the Bar Exam can be appointed to a court-clerk. Clerks can take decisions in cases of less importance (minor offences, some decisions in the company registration procedure etc.) under their own name. Besides, they can also prepare draft-resolutions and provide assistance for judges. In the Hungarian judicial system working as a clerk is generally considered as a necessary step before the application for judgeship. After a minimum one year of clerkship a person can apply for judgeship.<sup>15</sup>

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<sup>15</sup> According to the law, a person who passed the Bar Exam and after that has been working as lawyer for one year can also apply for judgeship. In spite of this possibility, the typical applicant comes from the judicial system.

Figure 2: Actual number of court staff



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 (see at sub-section 2.5) budgetary support for Hungarian courts is rather low compared to the general European level. Expenditure on courts per inhabitant ranks Hungary merely at the 23<sup>th</sup> place among EU Member States.<sup>16</sup>

### 1.2. Key functions in the administration of justice

The model of judicial self-government in court management was introduced in Hungary when the National Judicial Council (Országos Igazságszolgáltatási Tanács) was set up in 1997 as the central organ of court administration. The council consisted of 15 members, of which two-thirds were judges:

<sup>16</sup> Based on data acquired from EU Justice Scoreboard 2017. Its data from the year 2015.

9 were elected by the college of judicial delegates, and the President of the Supreme Court ex officio was at the same time the president of the NJC. The remaining one-third of the council were ‘external members’, representing other legal professions and the political branch. The NJC was for the first time clearly separated from the executive; the one single institutional link between the two branches was constituted by the Minister of Justice who was a member of the judicial council, but the minister had no genuine influence on the functioning of the justice system. As many members of the NJC were at the same time court presidents charged with important administrative tasks (at times even 7 from the 9 judges were court managers<sup>17</sup>), the operation of the NJC was influenced by strong corporate interest, so the council was not interested in the strict control over the performance of courts. Or as it was regularly stated, within this framework, members of the NJC who were court presidents at the same time were not interested in the appropriate control of the court leaders’ work.<sup>18</sup> As a result, under the guise of independence, the judiciary lacked any meaningful democratic control, transparency and accountability.<sup>19</sup> Consequently, the judicial branch had to face numerous difficulties which to a large extent stemmed from the failures of the central administration.

In 2012 the National Judicial Council was disbanded, and since then the administrative government of the judiciary has exercised by the **President of the National Office for the Judiciary (NOJ)**<sup>20</sup> under the supervision of a new body called **National Committee of Justices (NCJ)**.<sup>21</sup> The president of the NOJ is elected by the Parliament by the two-third majority of the MPs for 9 years while the members of the NCJ are elected by the members of the judiciary.

According to the relevant statute, the President of the NOJ carries out the functions of **central administration** of the courts. She is responsible for strategic planning of court administration and in some areas can adopt binding guidelines and ‘soft’ recommendation for the courts. One of her most important competences is to appoint and supervise the presidents of regional courts of appeal and regional courts.<sup>22</sup>

The NCJ functions as the **supervisory body** over the activity of the President of the NOJ. In addition to its supervisory tasks, NCJ also takes part in the management of courts. The NCJ is composed of 15 members. One of them is the President of the Curia ex officio, the other 14 judge members of the NCJ are elected in a secret ballot by majority vote at the meeting of the delegated judges.

The most important rights and duties of the NCJ are:<sup>23</sup>

- determining the principles to be applied by the President of the NOJ and the President of the Curia when they select the successful applicant for judgeship and in some cases the NCJ has the right to veto the appointment for judgeship of an applicant picked by the President of the NOJ or the President of the Curia (see details under subsection 2.2).

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<sup>17</sup>[http://ekint.org/lib/documents/1479373866-biroi\\_fuggetlenseg.pdf](http://ekint.org/lib/documents/1479373866-biroi_fuggetlenseg.pdf), 95.

<sup>18</sup>Zoltán Fleck: Jogállam és Igazságszolgáltatás a változó világban [Rule of law and administration of justice in a changing world], Budapest, Pallas Páholy – Gondolat Kiadó, 2008, 175.

<sup>19</sup>Zoltán Fleck, a leading Hungarian expert in the field of sociology of law wrote extensively on the fundamental failures and dysfunctions of judicial self-administration in Hungary between 1997 and 2011. See for example Zoltán Fleck: *Bíróságok mérlegen. Igazságszolgáltatásunk újabb tíz éve.* [Courts on Trial. 10 Years Passed], Budapest, Pallas, 2008. On the general problems of judicial self-administration in CEE countries through judicial councils see Michal Bobek & David Kosar, *Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe* 15 *German Law Journal* No. 7 (2014)

<sup>20</sup>The President of the NOJ was a former court leader who has a close family tie with one of the prominent representatives of the governmental party.

<sup>21</sup>This name is from the translation of the AOAC. This organ, however, calls itself National Judicial Council in its English website (see <http://birosag.hu/en/njc/national-judicial-council>). In order to clearly distinguish it from the disbanded Országos Igazságszolgáltatási Tanács, we use the name above.

<sup>22</sup>For the full list of competences see Annex

<sup>23</sup>For the full list of the competences see Annex

- exercising the right of consent regarding the appointment of court leaders who did not receive the approval of the competent judicial body,
- deciding on the approval to renew the appointments of presidents and deputy presidents of the regional courts of appeal, regional courts, administrative and labor courts and district courts if the president or the deputy president has already served two terms of office in the same position,<sup>24</sup>
- appointing the President and members of the service court.

Nonetheless the ‘checks and balances’ power of NCJ provided by the law is weak as:

- it does not have separate administration from the NOJ, preparatory works of the meetings is organized by the NOJ;
- it does not have a strong president (the presidential position of the NCJ operates on a rotational basis; members shall rotate every 6 months);
- the administrative superior of all members of the NCJ (with the exception of the president of the Curia) is the President of the NOJ;
- it has the right to approval in some cases of court leaders’ appointment, but it is not entitled to decide autonomously in crucial HR questions.

According to the published memos, the vast majority of motions of the President of NOJ are approved by the NCJ. However, a recent article has leaked that there are bitter debates between some members of the NCJ and the President of the NOJ.<sup>25</sup>

As for the quality of courts’ activity, a declaration published by the NCJ on the 23rd of March 2012 emphasizes that its members “want to meet the requirements of the society represented by the legislative power.” They declared as follow:

“We consider as an elemental [elementary] obligation – besides the protection of the judicial independence – to help the work of the National Office for the Judiciary with our proposals, observations, assuring the mutual interests of the efficient and timely jurisdiction.”

The functioning of the new system has also been heavily criticized. The Venice Commission actively monitored the reform of the judiciary and the transformation of court administration. The Commission objected particularly to the lack of judicial self-government: the new model established a long term of office of the President of the NOJ with extremely wide competences, without meaningful control over her activities as it provided only a negligible role for the NCJ and lacked sufficient means for accountability. The Commission found the composition of the NCJ (it is composed of judges exclusively) problematic too, “with respect to its uniformity, which can easily lead to mere introspection and a lack of both public accountability and understanding of external needs and demands, especially those of the “users” of the judicial system (advocates, civil society) or representatives of the academia.”<sup>26</sup> These criticisms were slightly addressed by the Hungarian legislator.

Beside the NCJ and the President of the NOJ, there are some other players within the court system that can more or less influence – in a formal or informal way – the functioning of the administration of justice.

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<sup>24</sup> As a general rule, in order to prevent the excessive influence of a certain person on the administration of a given court, one person can be appointed to a court president only twice in a row.

<sup>25</sup> See Erika Pálmai: ‘Közbenső ítélet’ [Interim judgment] HVG, 29/06/2017 pp. 16-18

<sup>26</sup> Venice Commission, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organization and Administration of Courts of Hungary, Strasbourg, 19 March 2012, 663/2012, CDL-AD (2012)001

The **President of the Curia** – apart from his membership in the NCJ – does not exercise administrative competencies over the court system.<sup>27</sup> Nonetheless, the Curia has relative autonomy in its own court administration, therefore the President of the Curia provides for the personnel and material conditions for the operation of the Curia from the funding available. The President directs the financial and economic activities of the Curia, and exercises the employer's rights conferred upon him by law. One of the most remarkable aspects of his autonomy is that he is entitled to hire the judicial and administrative staff without the consent of the President of the NOJ.

The **National Bar Association** does not fulfil any function in the governance of the administration of justice. The Bar Exam is organized by the Ministry of Justice. The members of exam panels are selected from the experienced representatives of all legal professions.

The **State Audit Office of Hungary** checks annually the fiscal management of the court system and decides on whether the accounts of the courts are true and fair.

Outside the organs described above there is no other body which plays a role in the functioning of the judicial system in Hungary. Nonetheless, judges have some non-governmental organizations. The most significant is the **Association of Hungarian Judges**. Its main goal is to represent and enforce the interest of the judiciary. Besides, its Charter declares as a goal to “improve the quality of adjudication” and it has an ethical committee which issues ethical statements in the field of judicial behavior in particular cases (without names). It is worth mentioning that female judges and lay assessors<sup>28</sup> also have their associations. The latter one is the only one amongst all judicial organizations that criticizes the current state of affairs in the Hungarian judicial system.<sup>29</sup>

Beside the central judicial administration, two kinds of local self-governing bodies exist in each regional court, each regional court of appeal and in the Curia. The **plenary session of judges** consists of all judges who work at the given court, while the member of the **Local Judicial Council** is elected by the plenary session of judges. Both organs have some competences in providing opinions and have the right to initiate inspection against local court leaders. In addition, the Local Judicial Council plays an influential role in the process of judicial recruitment (see below).

### 1.3. Current issues in the administration of justice

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 a **disproportionally high workload**. The situation was worsened in 2012 when the relevant law

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<sup>27</sup> Before 2012, the President of the Supreme Court was also the president of the NJC. The two competences (judicial and administrative) were separated as a result of the 2011 judicial reform, and this change provided one of the reasons for the government to terminate the mandate of the then President of the Supreme Court three and a half years before the end of his term of office. Later, the European Court of Human Rights found that the removal of the President from his office violated his right to freedom of expression as his mandate was terminated after his publicly expressed criticism of legislative reforms related to the judiciary. See *Case of Baka v. Hungary*, no. 20261/12, *Grand Chamber*, 23 June 2016

<sup>28</sup> In Hungary lay participation in adjudication is realized through lay assessors who are elected by the general assembly of local governments. Lay assessors are not part of the court staff. Before trial courts in cases of greater significance they adjudicate together with a professional judge as a panel. According to the law, in the trial process they generally have the same rights and duties as the professional judge. Nonetheless, as sociological studies clearly show it, their impact on the outcome of the procedure is almost zero. See Mátyás Bencze, Attila Badó, *Reforming the Hungarian Lay Justice System*. In: Cserne Péter, H Szilágyi István, Könczöl Miklós, Paksy Máté, Takács Péter, Tattay Szilárd (eds.), *Theatrum Legale Mundi: symbola Cs. Varga oblata*. Budapest: Szent István Társulat, 2007. pp. 1-13.

<sup>29</sup> See [ulnokok.hu](http://ulnokok.hu) (available only in Hungarian)

suddenly lowered the retirement age for judges from 70 to 62 years and therefore forced to retire almost 300 senior judges (around 10% of the total number of judges).<sup>30</sup>

The NOJ concentrates its effort on reducing the backlog and the time which is required to finish a case as well as leveling the workload amongst courts. 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 shows this effort has proven to be successful. What is a challenge here is to reconcile the efficiency of the court system with the fair trial requirement and access to justice.

There is also too much **administrative burden** on judges that induce a permanent need to increase the number of the competent assistance personnel. There would be a demand from the side of judges to employ legal consultants who could prepare the case for trial (including the collection of the relevant case law, academic publications, foreign legal solutions etc.).

A further challenge is the devaluation of the **judicial** (and other court employees') **salary**. In the past 10 years their salary lost 30-40 percent of its purchasing power. It is no coincidence that in the 2012 CEPEJ rating the Hungarian gross judicial average salary remains the second lowest among EU Member States.<sup>31</sup> Although a three-staged pay raise has begun from 2016 (5 percent raise in each stage), the threat has remained present that brightest law students choose job options other than judicial career.

Departing from the "internal issues" there are some "external" demands towards the courts. Decisions taken in **sensitive cases** (politically-laden or celebrities' cases) attract the attention of the public, and after a decision taken in these kinds of cases heated public debates usually start about the impartiality and professional competence of judges. That is why the leadership of the Curia and the other courts as well as the NOJ dedicate extraordinary energy to explain the important court decisions in an understandable language through their website and the media. The goal of enhancing public trust in courts also dominates the communication of the NOJ for this reason.

## 2. Classical judicial evaluation arrangements

### 2.1. Introduction

One of the strategic purposes of the President of the NOJ is to guarantee timely and high-quality justice. As the excellence of the judges is considered as a crucial factor in the quality of justice, the legislature and the President of the NOJ have regulated the recruitment and evaluation procedure for judges and judge-trainees in a very detailed manner in the past few years. They mostly concentrated on the objectiveness of the selection and evaluation process as the appointment system has been criticized for a long time because it made the arbitrary selection possible.

As for the quality of judicial work, the predominant conception in Hungary is that only the peers (judges) are competent to decide on the quality of the work of a judge, a judge-trainee or on the eligibility of a judge-candidate. That is why the evaluation and recruitment procedure focuses on the 'internal (professional) values' of the judicial activity while the perspective of court users remains almost unreflected and the system is not sensitive enough to the needs and opinions of the members of the society.

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<sup>30</sup>The CJEU and the Hungarian Constitutional Court later declared that this legislation had been a violation of EU law and the Fundamental Law. After that, however, in practice most of the judges remained in retirement and those who came back were not reinstated to their court leader positions. See [http://jog.tk.mta.hu/uploads/files/14\\_Bencze\\_Matyas\\_Bado\\_Attila.pdf](http://jog.tk.mta.hu/uploads/files/14_Bencze_Matyas_Bado_Attila.pdf)

<sup>31</sup> [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf)

## 2.2. Recruitment and initial evaluation of judges

### 2.2.1. Selection bodies

In case of application for a position of a judge, the **Local Judicial Council** of the affected regional court<sup>32</sup> interviews the applicant and ranks her/him on the basis of the result of the interview and of some aspects provided by the relevant law. Members of the Local Judicial Council are exclusively judges from the court which is affected by the vacant position, and they have the biggest impact on the outcome of the selection procedure. In case of applications to a higher judicial position (regional court, regional court of appeal and Curia) it is compulsory to get and to take into consideration the opinion of the **competent department** (civil law, criminal law or administrative and labor law) of the affected court on the applicants.

Nonetheless there is a professional aptitude test carried out by a **body of forensic experts** (one general practitioner, one psychiatrist and one psychologist) designated by the minister in charge of the judicial administration, in agreement with the President of the NOJ.

The **president** of the affected court on the basis of his/her own considerations may deviate from the ranking of the Local Judicial Council, and may recommend the appointment of the second or third placed applicant (in this case reasons of re-ranking shall be given in writing). Besides, in the last phase of the selection procedure the **President of the NOJ** may also deviate from the ranking of the Local Judicial Council on the basis of the guidelines adopted by the NCJ,<sup>33</sup> and may recommend the appointment of the second or third placed applicant. In this case, the NCJ has to approve the deviation.

### 2.2.2. Selection process

Application for the position of a judge is open to any jurist who passed the Bar Exam and meets some criteria listed in the relevant law (such as no criminal record, at least 30 years of age, Hungarian citizenship, at least one year work experience after the Bar Exam etc.).

Therefore, the **selection procedure is uniform** for any applicants regardless of their professional background. Nonetheless, according to the relevant law, in the evaluation of the previous job experience the assessment aspects are different for internal and external applicants. In addition during the interview the different professional background also can be taken into consideration.

There is **no written or oral examination** on legal expertise for prospective judges. After the deadline for applications expires, the Local Judicial Council of the court where there is a vacancy **interviews** the applicants and, based on the findings of the interview and some other statutory criteria<sup>34</sup> listed below it determines 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 higher the points awarded the higher the rank of the applicant. There is also a recommendation issued by the NCJ (1/2012. (X. 15.) OBT) which interprets the activities that are assessed and scored by the Local Judicial Council. The list of criteria are as follow:

- result of the job evaluation made on the applicant's previous activity within the administration of justice (such as judge trainee, court clerk etc.);
- the previous employer's assessment for applicants with no judiciary background;
- duration of practical experience or service time after passing the Bar Exam;
- the opinion of the competent department of the affected court (in case of applications to a

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<sup>32</sup> Or the affected regional court of appeal, or the Curia if the position is vacant in those courts.

<sup>33</sup> The president of the NOJ may deviate, for example, if the second or third placed applicant has more work experience that may guarantee the more efficient reduction of the case backlog in an overburdened court. Nonetheless, the guidelines emphasize the possibility of the 'free choice' of the president. ([http://birosag.hu/sites/default/files/allomanyok/obt\\_dokumentumok/3\\_2013.pdf](http://birosag.hu/sites/default/files/allomanyok/obt_dokumentumok/3_2013.pdf))

<sup>34</sup> Par. 4 of Section 14 of Act CLXII of 2011.

- higher judicial position);
- result of the professional aptitude test;
- result of the Bar Exam;
- the academic degree;
- any certificate to practice law in a specific jurisdiction or other secondary certificate (for a specific field of discipline);
- any study trip abroad made in a specific field of discipline after receiving the law degree;
- language skills;
- any publication relating to legal issues;
- grade in compulsory education arranged for practicing law in a specific jurisdiction for which a Bar Exam is required, and participation in facultative trainings;
- any extra-curricular activities that may be taken into consideration for judgeship;
- the findings of the interview by the Local Judicial Council (this is generally considered as a subjective criterion);
- the opinion of the president of the district court or administrative and labor court where the post is available.

In the case of applicants for a higher judicial office, the first and third criteria of the list shall be given priority in the process of evaluation (this is because of the assumption that those persons can be eligible for filling higher judicial position who have previous judicial work experience). Otherwise, there are no priority criteria, the number of points is decisive in the ranking. Where several applicants have the same number of points, their ranking shall be decided based on the conclusions made by the Local Judicial Council following the interview. If the applicants are given the same scores after being interviewed by the judicial council, their ranking shall be decided by a reasoned decision of the judicial council adopted by simple majority, in writing.

There is a possibility for both the court president and the president of the NOJ to deviate from the ranking established by the Local Judicial Council, and may recommend the appointment of the second or third placed applicant. In that case she shall give reason for the decision. If the president of the NOJ deviates from the ranking she need to obtain the consent of NCJ.

Table 4: Proportion of approved deviations from the original ranking

<b>Year</b>	<b>Total number of appointments</b>	<b>Number of deviations from the original ranking</b>	<b>Number of deviations approved by the NCJ</b>	<b>Number of deviations disapproved by the NCJ</b>
<b>2014</b>	105	14	14	0
<b>2015</b>	99	5	2	3
<b>2016</b>	94	6	6	0

A recent development has been that the government redesigned the recruitment system for administrative judges: previous professional experience in the public administration is rewarded with extra points in the judicial application process while the points awarded by Local Judicial Councils are halved. That means a huge advantage for candidates coming from the public administration. Critics, accusing the government with a ‘Polish-style court packing’ (to which the Hungarian Constitutional Court fell victim after 2012), point to a threatening consequence of the new regime: Through this reform the government can fill the vacant administrative judicial positions with ex-governmental officers who are loyal to the political orientation of the government currently in office. The relevance of the criticism is supported by a fact following from a reform of the court procedure

in administrative review cases: from 1 January 2018, administrative courts need to hire approximately 200 new judges.<sup>35</sup>

For candidates, it is compulsory to undergo a professional aptitude test which include medical and physical examination, as well as **psychological assessment**. The examinations shall cover all mental and health considerations that may preclude or severely impair the judge's performance,<sup>36</sup> and shall assess the judge's intelligence and personality. The test shall provide an assessment of the candidate's personality from the perspective of his/her suitability for being a judge. The list of faculties to be tested as follow:

1. decision-making ability,
2. ability to cooperate,
3. analytical thinking,
4. foresight,
5. discipline,
6. responsibility,
7. determination,
8. careful attention,
9. integrity,
10. communication skills,
11. conflict-solving skills,
12. creativity,
13. self-assurance, confidence,
14. independence,
15. problem analysis and observation skills,
16. problem solving skills,
17. ability to use professional knowledge in practice,
18. organization and planning skills,
19. communication skills verbally and in writing,
20. objectivity.

However, according to the ministerial decree which provides the detailed rules of the test only an exploring conversation (exploratio), and Rorschach, MMPI as well as RAVEN tests are compulsory to conduct. If necessary some complementing tests may be added such as MAWI (IQ test), Szondi and CPI. It is not clear how these basic examinations can assess properly the faculties above. There is no dispute on the reliability and usefulness of the applied psychological tests. An author, however, says that this psychological test was a simple reception of the aptitude test applied to navy seal candidates in the USA. The reason for that was that lawmakers did not find an adequate model for assessing judicial faculties at the time of the birth of this decree.<sup>37</sup>

Nonetheless, during the interview some of the abovementioned faculties can be evaluated. Besides, the job evaluation made on the applicant's previous activity may contain some hints that can be

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<sup>35</sup><https://444.hu/2017/11/15/eddig-nem-engedtek-be-a-kormany-embereit-az-igazsagszolgalatasba-de-most-felretoltak-az-utbol-az-akadekoskodo-birakat>

<sup>36</sup>There is no regulation or professional protocol in order to determine the physical disabilities which prevent judge candidates from conducting judicial activity. Nonetheless, according to a competent court leader, there is a consensus amongst medical experts that challenges in movement are not such disabilities. However complete deafness and blindness prevent the candidates performing a court hearing that is why such persons are not eligible for judgeship. It must be emphasized that in lack of official regulation, the standpoint above is the mere opinion of medical experts. In Hungary there has not yet been assessed a candidate judge with complete blindness of deafness.

<sup>37</sup>Hack, Péter, Bevezetés, In: Hack Péter, Garai Borbála (eds.), *Az igazságszolgáltatási rendszerek átláthatósága: A Transparency International 2007. évi korrupciós világlejelentésének magyar változata*. [Transparency of Administration of Justices] Transparency International Magyarország, Budapest, 2008. p. 18.

informative on legal competence, treatment of parties, capacity to work efficiently and capacity to work in team. These are important sources of information as the vast majority (with insignificant exceptions) of newly appointed judges come from the pool of court clerks who previously worked as judge trainees for years (at least three years). During the training period, the trainee has the opportunity to **observe the practical judicial work**, and can gain the adequate professional knowledge with conscious and systematic preparation for the Bar Exam. Judge-trainees are continuously evaluated by their instructor judges, and the members of the Local Judicial Council who determine the ranking of applicants are aware of the result of this evaluation.

A very recent development was that in 2016 the rules of the **selection procedure for judge trainees** were redesigned in order to be **reasonably meritocratic** (previously a permanent criticism headed toward judicial administration because the selection process was prone to nepotism).<sup>38</sup> The reform is of utmost importance because of the very high proportion of **successful candidates come from within the judicial system**. That is why it is worth-while to summarize the rules of the selection process of judge-trainees.

The aim of the reform of the judge trainee selection was to measure the essential qualities to serve as a judge in the future (**competence-based test**). In the exam skills of communication, the technique of legal writing and general knowledge of the candidate are equally examined. That means that skills of application of substantive and procedural legal rules plays an important part of the admission test, but logical abilities, technique of legal writing, the ability to determine what is essential, empathic capability and creative thinking are also examined. The underlying assumption behind the creation of this system was that the best way of maintaining, even increasing the quality of adjudication is the recruitment of judge trainees who already have the necessary capabilities to become a judge. Their competence can further be developed in the time of the internship. That is why verbal expression as well as capability of managing conflicts and acting decisively are assessed during the admission test.

First the applicant must submit an application (according to the actual application standards within deadline) with a letter of motivation and with all necessary attachments such as certificate of negative criminal record and a curriculum vitae. The application form allows setting a list of preferences amongst the vacant judge trainee positions. The applicant must pass a centrally organized written and an oral competition exam at the Hungarian Academy of Justice (Magyar Igazságügyi Akadémia) which is, otherwise, the center of professional training for judges under the supervision of the President of the NOJ in Budapest.

Test questions are determined on a yearly basis and the exams evaluated by the Entrance Exam and Internal Competition Committee appointed by the President of the NOJ. It can be 120 points to score maximum in the exam. In the written part of exam, the general and legal knowledge, basic legal institutions and procedural models are in focus, and sometimes, even detailed legal provisions are asked (that means that candidates have to know the text of important laws by heart). All applicants do the test in an anonymous way with a personal code number assigned to them. In the oral part of the exam the applicant talks about his/her motives, professional background then she must solve a fictive legal case, a personal situation and a workplace affair before a three-member panel.

The applicant can get 30 extra points, which are allocated to the qualification of the law degree (summa cum laude, cum laude), study trip abroad, distinguished rank in national student research competition and foreign language skills. If the application is unsuccessful, the applicant is put on the

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<sup>38</sup> The president of the court of appeal could decide alone and without binding guidelines on hiring someone to a judge-trainee position. Under these circumstances children, other relatives and friends of judges of the affected court enjoyed a huge advantage in the recruitment process. See Badó, Attila, Bóka, János, Európa kapujában [In the Gate of Europe], Bíbor Kiadó, Miskolc, 2002, pp. 159-160

waiting list so she can apply for the position of a trainee judge within a year after the exam. In this case she can request a reevaluation of his/her application on the basis of the results of the passed exam. Applicants are ranked by their points and the president of the affected court can choose from them on a discretionary basis and hear them personally. But there is a limit to this discretion: if there are applicants who obtained more than 90% of the maximum points (that is more than 135 points), the president must not choose an applicant with lower points. This means that the new system is more objective, because previously the scores of the applicants were not decisive: the president could choose anyone according to his/her subjective consideration. The very purpose of the introduction of the new system is to ensure the professional excellence of the hired applicant. Subjective considerations currently can play a role in the oral part of the exam and the personal hearing, where the evaluation of empathic capability and creative thinking can depend on personal impressions.

As we were informed there is another way to be court employee with law degree. Court presidents can employ administrative staff members without conducting the above-mentioned application and selection process. It is not prohibited to hire a person for this job with law degree. That person works within the system and can take the Bar Exam like the judge-trainees. After the Bar Exam she is eligible to be appointed to court-clerk and after one year she can apply for the position of a judge. So, there is a **loophole** in the system by which the objective and transparent Entrance Exam can be skipped.

### 2.2.3. Selected candidates

Though according to the relevant law, the application is open for any qualified person, the 2013 figures show that **applicants** come mostly **from within the court system** (the total number of applicants was 588 out of which 497 were court employee). After 2015, there are no data available concerning the proportion of external and internal applicants, however, demographic composition of newly appointed judges is published. These figures show that the overwhelming majority of successful candidates was court clerk previously. We have no reason to assume that the proportion of external and internal applicants has changed in the last two years (Table 5). This raises again the issue of the opportunity to skip the Entrance Exam because, considering the overwhelming majority of successful internal applicants, it weakens the effectiveness of the judge trainee selection reform. Though we do not have exact data on the proportion of court administrators with law degree it is a telling figure that while from 2015 to 2016 the number of judge trainees decreased by 19 persons, the number of court administrators with higher education degree increased by 20 persons.<sup>39</sup>

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<sup>39</sup> See Table 2 and the annual report of the President of the NOJ from 2015 and 2016 (<http://birosag.hu/obh/elnoiki-beszamolok/feleves-eves-beszamolok?tid=All>). It must be emphasized that we do not know whether all (or any) of the newly hired court administrators have a law degree or not.

Table 5: Proportion of successful external/internal candidates

Year	Total number of applicants	Number of newly appointed judges	Number of successful “internal” candidates	Number of successful “external” candidates
2013	588	43	40	3
2014	508	67	66	1
2015	554	57	56	1
2016	559	59	59	0

As far as we know **gender balance** and **minority representation** is not a point of interest in the selection process either in the selection of judges or judge-trainees. Nonetheless, 69 percent of all judges are female. It may be because the working time of judges are more calculable than that of the advocates and thus being a judge can be more attractive for women who have to take care of children, household, and they can also be satisfied with lower salary (see below).<sup>40</sup> It is worth mentioning that in the upper levels of the hierarchy the proportion of genders changes significantly. The data below are from 2012. Since then there have been no data broken down by court levels. The aggregated gender data, however, have not changed significantly since 2012.

Table 6: Proportion of female and male judges (information provided by the president of the NOJ)

Court levels/gender proportion	Female judges	Male judges
District courts	71,7%	28,3%
Administrative and labor courts	72%	28%
Regional courts	66,9%	33,1%
Regional courts of appeal	61,9%	38,1%
Curia	50,6%	49,4%

As the prestige and the salary of a judge increases more significantly with positions of higher courts it may be not risky to say that these numbers suggest that a weak ‘glass-ceiling’ effect is present in the Hungarian judiciary. Besides, it is a problem for court leaders to re-allocate the work of many female judges who are absent longer time because of parental leave or caring a sick child. The lack of proper handling of this kind of absence may have a detrimental effect on the efficiency of the judicial system.

As far as we know there is no policy in the judicial administration on guaranteeing any kind of minority representation and there is no debate about that either. It is worth noting that the proportion of the biggest ethnic minority (Romanians) is only a little more than 3 percent in the whole population.<sup>41</sup>

#### 2.2.4. Training and internship of apprentice judges

There is a **practice-oriented compulsory training** for court clerks and apprentice judges organized by the Hungarian Academy of Justice at national level. Each takes five days (40 hours). Courses given to clerks and junior judges focus on general knowledge and abilities a judge needs, such as ethics, proper judicial behavior, managing court hearings, judicial writing etc. There are no exams at the end of the courses.

<sup>40</sup> See fn. 19 p. 144-145

<sup>41</sup> [http://www.ksh.hu/nepszamlalas/tablak\\_nemzetiseg](http://www.ksh.hu/nepszamlalas/tablak_nemzetiseg)

Training courses do not differ by the professional background of the newly appointed judges. The only difference between judges with and without previous work experience within the court system is that the latter ones have to take part in courses focusing on administrative aspects (mostly case management) of the judicial work. The lack of customized trainings is, however, not a fatal problem considering the very homogenous professional experience of apprentice judges (see above).

Furthermore, each apprentice judge has an **“instructor” judge** (just like judge trainees have) who supervises her/his work. The apprentice judge can consult with her, the instructor may attend the hearings held by the apprentice judge, she reads through the decisions of the judge and gives her advices. The instructors shall respect the judicial independence of the supervised judge. The period of supervision takes at least one year and it can be prolonged if it is necessary. The supervising activity ends with a report on the supervised judge made by the supervisor.

Apprentice judges learn **judicial writing** during the compulsory training (one day, 8 hours). This training aims at improving their writing skills. Judge trainees and court clerks also have trainings courses focusing on judicial writing. Moreover, a judge trainee (and court clerk) is preparing 4-500 draft decisions for their instructor judge by the time she is appointed judge.

As the subjects (the main branches of the Hungarian legal system such as civil law, criminal law, administrative law etc.) of the Bar Exam in Hungary are uniform for all lawyers, many judges (almost half of them) have obtained a **postgraduate diploma** in the legal field she intended to specialize. These postgraduate courses are offered and organised by law schools and take one or two years.

## 2.3. Continuous evaluation of judges

### 2.3.1. Evaluation bodies

Pursuant to the statute in effect, as a general rule, judges are assessed firstly in the third and secondly in the sixth years from their appointment and after that in every eighth year.<sup>42</sup> The first evaluation is of great importance because junior judges are appointed for a determined three years “probationary” period. If a judge proves to be incompetent at the first evaluation her judgeship ceased automatically.<sup>43</sup> Apart from this regular inspection, an extraordinary evaluation can be carried out in specific situations/circumstances (signs of professional incompetence, skipping compulsory trainings, more than two years undue delay in a tried case and if the judge herself asks for it for some reason).

During both types of assessment (regular and extraordinary), the **head of the affected department** (or other experienced judge appointed by her) **assesses** the quality of the judge’s work including the observation of substantive and procedural laws and case managerial regulations. Her trial conduct practice is also evaluated.

### 2.3.2. Evaluation process

This subsection also contains an issue which should be originally discussed under subtitle “Focus on the evaluation of judgements and legal writings”. This is so because in the process of the evaluation these issues are intertwined.

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<sup>42</sup> For specific provisions see Sections 71 to 77 of the Act CLXII of 2011 on the Status of the Judiciary

<sup>43</sup> This regulation can be criticized on the ground that the temporary nature of the first appointment maximizes the pressure on the judge to align with the judicial practice of the closest court of appeal. As the judges of the courts of appeal (generally regional courts) evaluate the junior judge, she can achieve a permanent post if she meet the expectations of the upper court judges. This situation may discourage the independent judicial thinking and thus may threaten the personal independence of the judge. See also the opinion of the Venice Commission: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)028-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e)

An order of the President of the NOJ contains a **very detailed** list on the **assessment criteria** (NOJ No 8 of 2015) for both types of assessment. The assessment has three aspects: a **quantitative** and a **qualitative** aspect of the judicial work as well as the evaluation of **judicial skills**. They are as follow:

Table 7: Aspects of judicial evaluation

<b>Quantitative</b> (based on data from the last year before the assessment)	<b>Qualitative</b>	<b>Judicial skills</b>
Number of trial days	Preparation for the trial	Focused thinking
Number of trials	Trial conduct	Ability to make decisions
Number of finished cases	Evidencing, practice of postponing trials	Thoroughness
Effectiveness of time management of trial days	Judicial writing	Handling with parties in a proper manner
	Legal competence	Organizational skills
	Administrative competence	Working capacity
	Complying with deadlines	Quality of verbal and written communication

As for the quantitative evaluation, the activity of the judges is assessed in a statement based on caseload and activity-related data as well as second instance and review decisions, which shall be taken into consideration during the overall assessment.

The qualitative part of the evaluation and checking the ‘judicial skills’ are conducted by the same methods. A certain number of **judgments (that became final in the first instance)** rendered by the judge are examined. Furthermore, ‘panel justice notes’ prepared in the examined period are considered during the assessment. . (Justice panel notes are memos made by the chief justices of the appellate panels when reviewing appeals. Regarding to quality-check it is useful because they contain remarks on writing and argumentative style of the judge which are typically not mentioned in appellate judgments.)

As part of the qualitative assessment, the **persuasive force** of the oral and written justifications provided by the assessed judge has to be evaluated as well. The **opinion of the head of the department** competent in the legal area (if that person is different from the person conducting the examination) is also taken into consideration. The assessor judge shall examine the files of cases in which parties **submitted complaint** for undue delays or other reasons. According to the relevant law and regulation the proportion of the **quashed/changed judgments** of the assessed judge is not a quality indicator, but in practice it may have an impact on the outcome of the evaluation. The number of successful compensation claims against the judge for faulty professional activity does not play a role in the evaluation either (partly because this number is very low).<sup>44</sup> As a uniform and compulsory writing manual for judges has not yet been adopted in Hungary (see details under subsection 3.3) its observation cannot be taken into consideration in the evaluating process.

The assessed judge has the opportunity to comment on the report made by the assessor judge. The result of the evaluation can be the following: incompetent, competent, highly competent, and highly

<sup>44</sup> In 2016 only about 10 judgments were delivered at the national level in which the court declared faulty judicial activity. ([http://birosag.hu/sites/default/files/allomanyok/obh/elnokei-beszamolok/elnokei\\_beszamolok\\_2016\\_online.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnokei-beszamolok/elnokei_beszamolok_2016_online.pdf))

competent for a higher judicial position (between 2012 and 2016 four judges proved to be 'incompetent', their incompetence was revealed in their first assessment). If the assessed judge finds the result unfair, she has the right to **seek legal remedy** before the service court.<sup>45</sup>

The result of the evaluation does **not affect the salary** of the assessed judge, however, if she applies for higher judicial position, the result is taken into consideration in the promotion process. It would be also useful if the system of the compulsory trainings and the evaluation mechanism were connected (e.g. the assessor would point to judicial skills of the assessed judges that should be improved by trainings).

As one might notice, the judge's professional activity is assessed by her **immediate professional superior** who knows her personally as well as on whom their professional career is decisively dependent. This situation raises the problem that apart from the detailed assessment criteria the assessor's personal opinion on the examined judge may play a role in the assessment. Therefore, judges of lower courts are generally **encouraged to align** their judicial activity predominantly to the viewpoint of the reviewing second instance panel as well as to its judicial style, regardless of her opposing professional convictions. This situation affects judicial independence even if the reasonable uniformity of the practice of lower courts is also desirable.

This assessment method may just as easily lead to the **fragmentation of judicial practice** including the quality of judicial opinions. Since only very few cases at district court level are reviewed by the Curia, the direction of legal practice conducted in the majority of cases is preponderantly determined by the legal thinking of the specific judges working at courts of second instance (regional courts). The assessor and the assessed judge are from the same county, judges from other counties are never involved in the assessing process; therefore, the judicial qualification mechanism may promote divergence of court of law practice by counties. This is especially true for questions of judicial activity that are typically not subject to review by the Curia (e.g. trial conduct and reasoning style, evidence practice or even sentencing).<sup>46</sup>

### 2.3.3. Consequences of judicial evaluation on the appointment to managerial positions

Although regular evaluation of judges has some components from which one can draw conclusions on the managerial skills of the judge (the report has to reflect the administrative and managerial activity, organizational skills of the judge, and her handling with parties and working capacity), it is designed fundamentally to check the judicial skills and competencies and **not the managerial ones**. In the Hungarian judicial system, there are basically two kinds of court leaders: professional and administrative. Chairs of judicial panels in appellate courts belong to the former group (they are leaders of their panels in a professional sense without administrative competences) while all the other court leaders exercise administrative competences. Within the latter group there are leaders who are responsible primarily for the professional quality of adjudication. They are the heads of departments (civil law, criminal law, and administrative and labor law) and leaders of groups (groups are also organized by the major fields of law at some district courts). The other type of administrative leaders is court presidents and deputy presidents who take primarily the task of **running the court organization** they preside (managerial and administrative issues).

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<sup>45</sup> The service court is a judicial body that consists of judges appointed by the NCJ. The service court decides on disciplinary proceedings against judges and disputes arising from the evaluation of the judicial work. The service court is organized centrally at national level. (<http://birosag.hu/en/njc/service-court>)

<sup>46</sup> For the latter see Badó, Attila, Bencze, Mátyás: Területi eltérések a büntetékiszabási gyakorlat szigorúságát illetően Magyarországon 2003 és 2005 között. [Disparity in sentencing in Hungary between 2003 and 2005] In: Fleck, Zoltán (ed.): *Igazságszolgáltatás a tudomány tükrében*. ELTE Eötvös Kiadó, (ELTE Jogi Kari Tudomány 6.) 2010. p 125-147. It is also a good indicator of the seriousness of the jurisprudential differences that the President of the Curia in 2016 set up a working group in order to analyze the disparity in sentencing and to elaborate some kind of 'sentencing guidelines'.

All court leaders in the judiciary must be a judge (with the exception of the deputy president of the NOJ who can be other court employee). There are **no professional managers** amongst court leaders, but managerial trainings are organized for court leaders at the Hungarian Academy of Justice. Trainings for leaders on management competences are prioritized within the annual training plan of the judiciary.

According to the relevant statute, **higher court leaders** are appointed by the President of the NOJ or the President of the Curia, while the presidents of the regional courts of appeal and presidents of regional courts appoint **lower court leaders**. If the appointing person is other than the president of the court affected by the appointment, a recommendation from the president of the court where the appointment is made has to be obtained.

As a general rule the positions of court leader are filled by way of an application procedure. A project proposal attached to the application has to contain the **applicant's long-term plans** concerning the operation of the court, the department or group (only in case of applications to positions of department/group leader), as applicable, covering also the timetable for the implementation of such plans. The competent judicial body (hereinafter: opinionating body) of the court (most frequently the plenary session of judges of the affected court or the members of the affected department) where the applicant intended to be a court leader shall express its opinion on the applicants by way of **secret ballot**. The opinionating body shall present its **recommendation** in the sequence of the result of the vote.

The appointing person conducts an **interview** with the applicants. She makes her decision taking into consideration the recommendation of the opinionating body. The appointing person **is not bound by the recommendation** of the opinionating body, however, if the decision is contradictory to the recommendation the reasons must be detailed in writing. In case that the president of the NOJ or the President of the Curia intends to appoint an applicant who was not supported by the majority of the assessment body, they have to obtain the prior opinion of the NCJ on the applicant. The applicant in question may be appointed if the NCJ gives its consent.

As it can be seen, in the selection of court leaders the possibility of the enforcement of both the **professional and the democratic** aspects are guaranteed by the law. We did not find detailed regulations on **substantive criteria** which must be considered in the process of appointing judges to managerial positions. Presumably, the appointing person knows the applicants personally and/or she can be informed of her skills from the letter attached to the application and from the result of the ballot of the competent judicial body. In case the applicant has been a court leader prior to the application, the quality of her managerial work is taken into consideration. The applicant's compatibility with the strategic goals of the NOJ is also a factor in her evaluation.

In the absence of detailed criteria, the selection mechanism can be **flexible enough**, but at the same time subjective factors (personal sympathy/antipathy of the appointing person towards the applicant) may also influence the application process. The rules of the selection procedure are clear and detailed, but the substantive part of the selection i.e. the principles, criteria which guide the decision are **not transparent**. Nonetheless, figures from 2012 show that in 29 percent of the calls more than one applicants applied. This suggests that there is a real competition for leadership positions and the application process is not pre-arranged. It is also interesting but not necessarily a positive phenomenon that a great proportion of application procedures were declared unsuccessful (in 2015 almost 20%, in 2016 36% of all calls).<sup>47</sup>

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<sup>47</sup>Annual report of the president of the NOJ from 2015 and 2016. For the internal criticism of this practice see <https://444.hu/2017/10/16/elvileg-johet-hando-tundenel-is-rosszabb-vezeto-de-ezt-belulrol-most-nehez-elkepzelni> and [http://index.hu/belfold/2017/10/05/az\\_a\\_biro\\_esett\\_handonak\\_akit\\_korabban\\_o\\_tuntetett\\_ki/](http://index.hu/belfold/2017/10/05/az_a_biro_esett_handonak_akit_korabban_o_tuntetett_ki/)

There is no legal obligation to guarantee the gender balance amongst court leaders. However, Hungary, as we mentioned above, is a special case as 70 percent of the judges are female. Nonetheless, the higher the rank of the court leaders the bigger the proportion of the males:

Table 8. Number of female and male court leaders

	Female president	Male president	Female deputy president	Male deputy president	<b>Total number (female)</b>	<b>Total number (male)</b>
Regional courts of appeal	1	4	3	2	<b>4</b>	<b>6</b>
Regional courts	12	8	9	12	<b>21</b>	<b>20</b>
District courts/ Administrative and labor courts/ Company registration courts	88	58	34	16	<b>122</b>	<b>74</b>

#### 2.3.4. In-service judicial trainings

The idea of establishing a central institution dedicated to judicial trainings was born in 2000 and a few years later, in 2006 the Hungarian Judicial Academy (Magyar Bíróképző Akadémia) started to provide courses and training for judges. It is currently functioning under the name of the Hungarian Academy of Justice, and is organisationally integrated into the NOJ.

According to Article 76 (7) of the AOAC the President of the NOJ is in charge of determining the tasks regarding judicial trainings at national level and she is responsible for monitoring the execution of educational programs. Within her capacity, the President shall develop an annual program for trainings in which the topics that are prioritized in the given year are clearly indicated. The NCJ can participate in this process by making its own initiative or providing opinion on the trainings plan. The President of the NOJ is also responsible for defining the tasks at regional level.

In 2012, when the first President of the newly established NOJ announced her program, the improvement of the existing scheme of judicial trainings was among the main objectives of the judicial administration.

The President of the NOJ acknowledged in her report that the previous system for trainings was ineffective since local and regional trainings were not coordinated at all. While the law had made judicial trainings compulsory before 2012, only trainees and clerks were in fact obliged to participate in trainings. As a result, voluntary training was the norm with regard to judges, and only junior judges had to attend compulsory training – a so-called initial training (see 2.2.4 above.)

The Act of CLXII of 2011 on the Legal Status and Remuneration of Judges (hereinafter: Status Act) also prescribes compulsory trainings for judges on a regular basis, but it does not determine the exact time (hours or days) judges have to spent on compulsory trainings in a given year (Article 45.) In 2012 the new training system was not yet established, and in 2013, Hungary still lacked general compulsory training for judges. Nevertheless, the number of the available trainings has increased significantly in recent years and by now, the compulsory in-service training for professional judges has also been introduced. Judges have to attend some compulsory trainings each year. The main topics are determined by the central judicial administration yearly in the annual training plan, on the

proposals of judges or courts. Trainings are coordinated at the central level by the Hungarian Academy of Justice, but then organized and held primarily at the regional and local level.

The trainings are held mostly by the so-called ‘trainers’ who are actually senior judges of appellate courts. A judge can be qualified as a ‘trainer’ after having attended courses which are held by the Hungarian Academy of Justice and called ‘the trainers’ training’. Sometimes, external experts are also invited to speak, but lectures are held most of the times by judges. In 2017, for instance, judges serving in the civil branch were obliged to participate in an eight-day long training on the newly adopted act on civil procedure. Apart from division-specific trainings, general trainings are also held. In 2017, a one-day compulsory training was organized around the comprehensibility and understandability of judgments and this training must be attended by each judge. (The year 2017 is officially dedicated to comprehensibility in the justice system.)

Judges can choose from a great variety of voluntary trainings which concern typically the subject-matters of newly enacted laws just as the basic and advanced skills and competences needed for judges.

If a judge fails to participate in the compulsory trainings due to her fault, she must be subjected to extraordinary supervision and the judge is not allowed to apply for a higher judicial position.

Since 2012 managerial trainings for court presidents have been organized at the Hungarian Academy of Justice. These trainings target primarily the development of managerial skills and competences and to some extent promoting business and economic education among court presidents.

Currently, a new system for registering judicial trainings is being developed in order to gain easily accessible information on which trainings individual judges attend. This initiative is intended to provide a unified registration system in this field.

### **2.3.5. Consequences of the judicial evaluation on the quality of justice**

Judicial evaluation in Hungary combines three aspects (quantitative, qualitative and judicial skills) and the evaluative criteria are determined in detail. This makes the work of the assessor easier and the system of assessment more objective. The quality criteria and judicial skills to be assessed are relevant for the evaluation of the judicial activity. However, there is no methodological guidelines for the assessor judges (for example what are the evaluating standards of ‘careful attention’, analytical thinking’ or ‘foresight’ and what the hierarchy between these faculties is), thus the substantive part of the evaluation is not uniform in the country.

It is hard to judge the impact of the assessment on the quality of justice. Firstly, because the current regime is quite a new one (even if it has not transformed fundamentally the previous one). Secondly, because, as opposed to the quantitative evaluation, there are no clear and measurable indicators of quality of justice. In general, it can only be said that the concept of quality of justice in Hungary is understood as meeting the requirement set by the higher courts. If a judge’s activity satisfies appellate judges then the quality of her work is considered high. That attitude is reflected in the current evaluation system where the opinion of court users does not matter at all (although, for example, extraordinary and continuously high proportion of appeals against judgments of a given judge can reliably indicate a problem with her professional competence).

Apart from these problems, the new system of evaluation in which each of the above-listed quality criteria and judicial skills are marked separately by the assessor can help judges improve their judicial performance in the fields where it is needed. Nonetheless, it seems that quality improvement of

complex intellectual activities such as judicial reasoning or evaluation of evidence needs more effort than regular assessment of judges.<sup>48</sup>

It is also worth noting that an implicit assumption is reflected in the current evaluation system: for a Hungarian judge, a good judicial career is equal to an appointment to a higher court (higher prestige, higher salary etc.). That is why the most ambitious judges focus their effort to achieve an appointment to a higher court. (It is not a coincidence that the best outcome of the regular assessment is “competent for higher judicial position”.) Consequently, the most excellent and most experienced judges are appointed to higher (appellate) courts while at the district court – where the vast majority of cases starts and finishes – judges with less experience adjudicate. It is a reasonable demand, however, from the public that first instance court should operate at the same quality as higher courts

### 2.3.6. Debate on possible reforms

#### 2.3.6.1. Evaluation of judges

For the sake of excluding prejudice and exacting a uniform application of the law, the evaluation of the judicial activity should be carried out on the basis of the system that is used during the quality examination of scientific publications. Therefore, assessment of judgments rendered by a judge could be trusted to professionally renowned fellow justices functioning at other regional courts of law, who would give their opinion on the particular judge’s work based on anonymized decisions and case files (**‘blind peer-review’**). This way, disparities of legal practice and reasoning style within the country may be brought to the surface more easily apart from the objective assessment of the particular judge. This kind of blind peer-review system could bring awareness to dispensing justice.<sup>49</sup>

#### 2.3.6.2. Homogenous professional background of judges

A pitfall of the professional homogeneity (judge-trainees, court clerks) of the selected judges may be that the vast majority of the judges has never seen the **reality of the “other side”** of court cases. For example, as for the fact-finding in the Hungarian criminal procedure the crucial period is the police investigation. Judges mostly base the factual ground of their decisions on testimonies and other evidence recorded and collected during the investigation.<sup>50</sup> Attorneys often complain that judges have no clue whether the pieces of evidence gathered by the police are really reliable or not, nonetheless, they accept them even if evidence revealed before the court points to the opposite direction. Judges may be more sensitive to this problem with previous work experience as an attorney, or a longer internship at the police or at the prosecution office.<sup>51</sup>

## 2.4. The evaluation of courts activities

### 2.4.1. Actors involved

Court evaluation is managed by the central judicial administration, especially by the NOJ through strategies and indicators that **are determined almost exclusively at national level**. Local initiatives are underdeveloped, but we can find some promising projects at this level as well. One of these projects is the so-called “Debrecen model”. This will be briefly presented in section 3.4, under the heading “innovative practices”. External actors such as representatives of other legal professions or

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<sup>48</sup> For a recent quality project that has addressed judicial writing see sub-section 3.3. In relation with the evaluation of evidence (confirmed by judges) our experience is that a ‘copy-paste’ method is spreading across Hungarian criminal courts. This means that the judge copies the testimonies of witnesses, experts and defendants from the records then pastes them in the judgment while ignores to explain her reasons to accept or refuse the relevant pieces of evidence.

<sup>49</sup> See [http://jog.tk.mta.hu/uploads/files/14\\_Bencze\\_Matyas\\_Bado\\_Attila.pdf](http://jog.tk.mta.hu/uploads/files/14_Bencze_Matyas_Bado_Attila.pdf)

<sup>50</sup> According to a research conducted by the Hungarian Helsinki Committee, a very high number of convicted persons complained about illegal (physical or psychological) pressure from the side of the police in order to get confession from them. See Kádár, András: *A vétkeesség vélelme*, [Presumption of Guilt] Magyar Helsinki Bizottság, Budapest, 2004, pp. 53–78

<sup>51</sup> See Bencze, Mátyás, „Nincs füst, ahol nincsen tűz” [Where There Is Smoke, There Is Fire], Gondolat Kiadó, Budapest, 2016, p. 178.

the Ministry of Justice do not participate in this process. Nevertheless, the NOJ is making efforts to involve court users in this exercise by encouraging courts to conduct customer satisfaction surveys. However, this latter initiative, as we will see below, is also in its infancy.

#### 2.4.2. Evaluation process

According to the AOAC, the President of the NOJ determines and annually updates the agenda of judicial administration which encompasses the long-term objectives of the Hungarian judiciary and the conditions for fulfilling these aims.<sup>52</sup> Within her capacity, in 2012, the President of the NOJ has established the **fundamental strategic objectives of the Hungarian judiciary**. These goals include (1) an independent judiciary administering high-quality and timely justice; (2) the optimal allocation and utilization of human and (3) material resources; (4) the integrity of the judicial organization, and a transparent adjudication and judicial administration, the latter being also predictable and controlled; (5) easy access to courts and finally, (6) the improvement of the training system and cooperation with other legal professions. Among these objectives, the first one – the quality and timeliness of justice provided by independent judges – is of crucial importance concerning the constitutional role of the courts, and all the other aims may serve as means to achieve the first and most important objective. **The former six goals are still in place in 2017** and available at the website of the NOJ.<sup>53</sup> The objectives set out by the President of the NOJ can be reference points in establishing the criteria of assessing courts' activities.

**The President of the NOJ has to submit an annual report to the Parliament** on the actual situation and performance of the judiciary. The President also reports on these issues to the parliamentary committee on justice once a year. The findings of these reports contain data on the performance of the courts, so we rely mainly on these reports and the background statistical data when seeking to collect the existing methods for assessing the courts' performance in Hungary.

In 2012, the new head of judicial administration took office, and in her first report she made some general observations concerning the performance of the Hungarian judiciary. The report of the President of the NOJ pointed out that the **excessive workload** of the judges had made it difficult to achieve the goals of quality and efficiency simultaneously. The report highlighted **huge differences in the workload of individual judges and various courts** in the last 11 years.<sup>54</sup> There were courts where judges had to deal with over two and the half times more incoming cases than judges serving at other courts. These differences were even higher with regard to the total number of pending cases and the rate of the cases pending over 2 years before courts, and the central region produced the worst figure in this regard. The President's report pointed out further deficiencies in administering justice in Hungary, namely the lack of coherence in judicial practice and the issue of timeliness which also resulted in significant differences across courts. The report stated that these defects stemmed to a large extent from the **failures of the previous model of judicial administration**. Therefore, the primary task of the judicial administration in the early 2010s was to reduce the enormous workload of the judges in order to provide them with sufficient time for deciding every single case on the merit. Fewer cases per judges would improve the timeliness of the proceedings which are intimately intertwined with human rights claims, such as access to justice or fair trial. Furthermore, if human resources are properly allocated within the judicial system, the quality of judicial activity would likely be improved. Finally, the administrative burden on judges was considered extremely high which

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<sup>52</sup> Article 76 (1) of the AOAC

<sup>53</sup> See the central website of the Hungarian judiciary: <http://birosag.hu/obh/strategia>. For a detailed description of the strategic objectives in English see: [http://birosag.hu/sites/default/files/allomanyok/stat-tart-file/english\\_strategy\\_corrected\\_3\\_1.pdf](http://birosag.hu/sites/default/files/allomanyok/stat-tart-file/english_strategy_corrected_3_1.pdf)

<sup>54</sup> [http://birosag.hu/sites/default/files/allomanyok/obh/elnoke-beszamolok/obhe\\_beszamolo\\_2012\\_ifelev\\_teljes.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnoke-beszamolok/obhe_beszamolo_2012_ifelev_teljes.pdf)

A judge confirmed that in the last few years, the judicial system had to tackle with huge workload imbalances that originated in the pre-2010 period.

could have a negative impact on the timeliness of justice as well. Hence, in 2012 the central administration aimed also at reducing the administrative tasks of the individual judges in the short run, primarily by increasing the number of the administrative staff of the judiciary. (However, in 2017 one judge still finds the administrative tasks enormous and burdensome and his staff too small and underqualified. He has named this difficulty first within those factors that hinder high-quality and effective adjudication. Nevertheless, a judge working at a smaller court has not complained about the huge administrative burden.)

#### **2.4.2.1. Performance indicators**

In Hungary, the day-to-day activity of the individual judges and courts is subject to monitoring and evaluation on a regular basis. **Performance indicators exist**, and the benchmarks can be found in the annual report of the President of the NOJ. We were told that more or less the same indicators (see below) have been applied for a long time (more than 20 years) by the Hungarian judicial administration to monitor the performance of the courts. The indicators were established in the office of the central judicial administration, particularly at the **statistical department** by expert statisticians, based on popular statistical methods and on those databases which contain information conveyed by individual judges. Currently, we have no further information on whether any other actors had participated in the process of determining the methods of evaluation.

It is important to note at the outset, that the comprehensive reform of the management system after 2011 which institutionalized a highly centralized judicial administration led by a single person, has been carried out with the aim of improving the quality and efficiency of administering justice in Hungary. As we will see, **the new administration put a great emphasis on the clearly visible “numbers” in terms of the performance of the justice system which constitute only one aspect of quality.**

The **performance indicators**, according to the annual reports of the President of the NOJ, encompass (1) incoming cases, (2) resolved cases (3) backlog, (4) timeliness (length of proceedings) (5) workload (6) appeal ratio. These items provide easily quantifiable results concerning the performance of the Hungarian courts.

#### **Incoming cases**

The central judicial administration keeps a record of and publishes each year the total number of incoming cases. This data itself provides little information about the performance of the judiciary. However, this figure is relevant if it is compared to the number of resolved cases in the same year, as the two can highlight the so-called “clearance rate” which is a telling figure of the effectiveness of the justice system. Furthermore, registering the total number of incoming cases is important since it allows to assess if the current judicial staff can deal with the caseload. Consequently, we can draw inferences from this figure on the suitability of human and material resources. The Hungarian judiciary traditionally deals with **a huge caseload**. In the last few years the number of incoming cases has significantly exceeded a million on an annual basis. In 2016, 1.411.569 cases were filed with the Hungarian courts. This, however, shows a slow decline compared to previous years’ figures.<sup>55</sup>

#### **Resolved cases**

The number of resolved cases is also published in the reports of the President of the NOJ. This data is important with regard to the “clearance rate” of the Hungarian judiciary. **As to clearance rate, Hungary performed very well in the early 2010’s<sup>56</sup>**, but today, it does not rank so high among

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<sup>55</sup> [http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/elnoki\\_beszamolo\\_2016\\_online.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/elnoki_beszamolo_2016_online.pdf)

<sup>56</sup> Data of the 2014 EU Justice Scoreboard, available at: [http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2014\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2014_en.pdf) (figure 5, page 10)

Member States according to the EU Justice Scoreboard 2017.<sup>57</sup> But as we lack basic information on the reasons for the changes in the ranking, we cannot provide a plausible interpretation on this issue.<sup>58</sup> Nevertheless, this indicator can hardly be seen as a reliable one unless the term “resolved case” is clearly defined. For instance, for the performance of the courts it is significant how decisions are counted: namely, if decisions transferring a case to the competent court or joining two or more cases are relevant for the category of final cases, or only judgments on the merits are counted in this regard. **The lack of a clear definition on “final or resolved cases”** decreases the validity of this figure and makes the comparison between Member States difficult.

### **Backlog**

In Hungary, the backlog of the courts is monitored and measured at all court instances and concerning all case-types. According to the annual report of the President of the NOJ, between 2013 and 2015 the backlog of the courts dropped year by year. All court levels – except the Curia – were able to reduce the number of pending cases in almost all types of cases (in litigious and non-litigious cases, in cases of minor offences and concerning business entities etc.). In the last few years, special efforts were made by the courts to **cut the massive backlog**, in particular the number of “old” cases. The courts were very successful in this respect. We will discuss below the special projects that have been dedicated to reducing the backlog of the courts.

### **Timeliness (Length of Proceedings)**

Timely adjudication is a crucial issue for the central judicial administration which is reflected in the fact that recently, numerous distinctive programs have been explicitly dedicated to reducing the number of cases pending before Hungarian courts for a long time. Here, we present some general figures regarding the timeliness of adjudication in Hungary. According to the annual reports, in 2014, **77% of the proceedings finished within 1 year**. This figure raised to 87% in 2015 which shows an improvement on the part of the courts in this regard. In Hungary, those cases that have not been solved within 2 years are considered ‘old’ ones. The presidents of the courts and the head of departments pay special attention to these old cases. Judges must report on a monthly basis on the measures that have been taken to complete those cases pending more than 2 years. Since 2014, judges must be subject to extraordinary evaluation if a case has not been resolved in 2 years due to the fault of the judge.<sup>59</sup>

In 2015 an online “warning system” was introduced which notifies the judge on the important deadlines she must meet in a given proceeding (“határidő-figyelő”). Judges receive notice if, for instance, the deadline for taking the first action after the assignment of the case, for making a written record of the hearing or for making the written form of the judgment is expiring or has already expired.

### **Workload**

The central judicial administration puts a heavy emphasis on the goal of ensuring a balanced workload for judges. In this regard, the NOJ’s proposal stated that the differences should ideally be less than 15% compared to the average workload. According to figures from 2011 the courts of central Hungary and Budapest had an excessive workload: the number of pending cases judges had to deal with was 140% of the average workload. By the end of 2015, this number dropped significantly in

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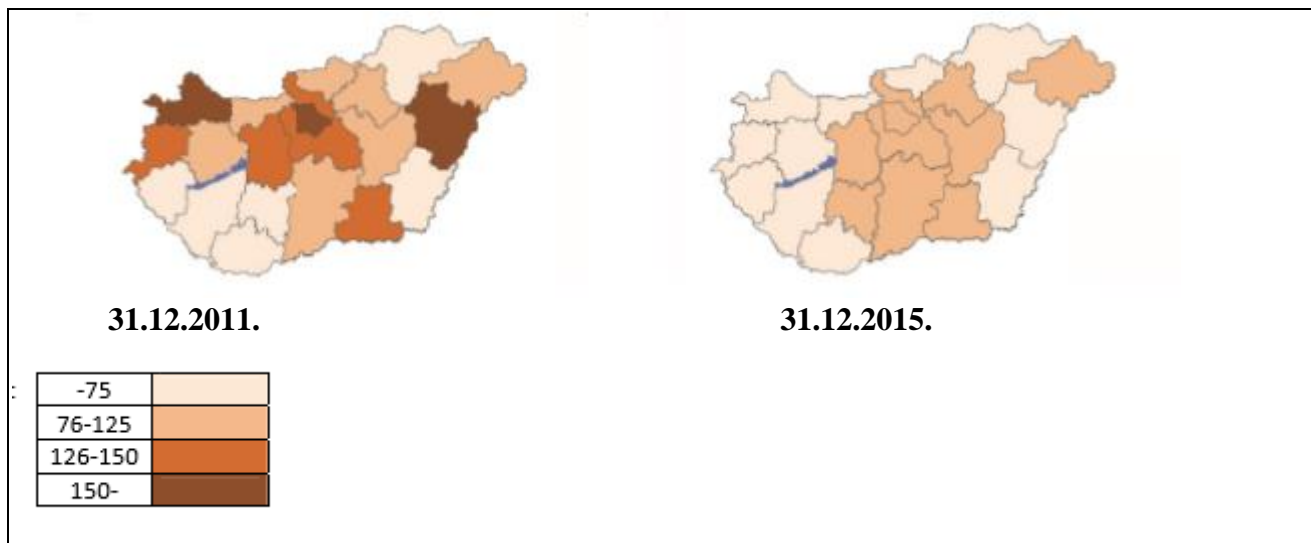
<sup>57</sup> [http://ec.europa.eu/newsroom/document.cfm?doc\\_id=43918](http://ec.europa.eu/newsroom/document.cfm?doc_id=43918)

<sup>58</sup> The Hungarian media have recently reported that some judges sitting on the Budapest Capital Administrative and Labor Court received a letter from their administrative superior in which they were called to give evidence on why they had failed to resolve at least ten cases in February 2017. (See [http://hvg.hu/itthon/20170327\\_Hando\\_birosag\\_teljesitmeny\\_autonomia\\_munkajog](http://hvg.hu/itthon/20170327_Hando_birosag_teljesitmeny_autonomia_munkajog). Last access: 4 April 2017)

<sup>59</sup> Article 69. c) of the Status Act

the central region, and the figure was only slightly above the average which also decreased considerably, from 112 to 78.

Figure 3: Workload of the judges in different district courts by regions in criminal cases (case/judge)<sup>60</sup>



By now, **the workload has thus become much more balanced**, but, as the Hungarian social, economic and political life is heavily capital-oriented, the courts in the central region remain the most vulnerable to a massive caseload. In Hungary, Budapest – the most densely populated city – has nearly ten times more inhabitants than other big cities in the country which intrinsically implies a huge caseload compared to other areas. Furthermore, as political and business life are largely concentrated in the capital, courts in this region have to deal with the most complex and difficult cases which may also result in an excessive workload. For this reason, the situation of the central region attracts the most attention from the central administration.

Later, we will return to the issue of judicial workload in order to present the recent developments in this field. As reducing workload imbalances constitutes a strategic goal of the central judicial administration, new methods for workload measurement have been established to receive more reliable and comparable data on this issue.

### Appeal ratio

Data on the appeal ratio has been published since 2011. In the annual report of the President of the NOJ these data are presented under the heading “**the soundness of adjudication**”. Until 2014, the judicial register did not make it possible to obtain data directly and explicitly on the appeal rates, so the figures were based on all types of judicial decisions and were calculated in a way that the incoming appellate cases of regional courts in a given year were compared to the resolved cases of the previous year at district courts. Now, in order to get the appeal rate, the number of the resolved cases at first instance is compared to the incoming new cases at second instance in the period considered. Certainly, the many ways of calculating appeal rate make the comparison of the annual figures difficult. Nevertheless, one can see the endeavors of the judicial administration to establish more sophisticated methods for obtaining reliable data on the performance of the courts in this regard.

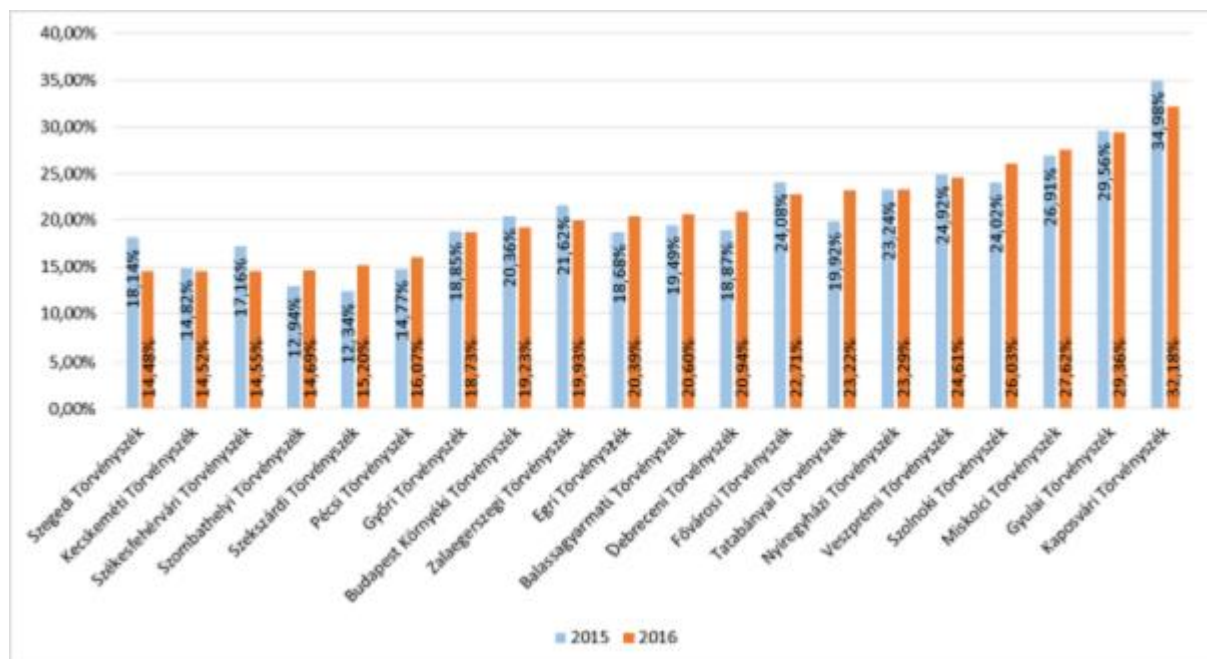
As to appeal rate, we find this quality benchmark relevant since it represents an external perspective, namely the opinion of court users. If one of the parties of the proceeding is not satisfied with the

<sup>60</sup> 2015 annual report of the President of the NOJ, 29. [http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/2015.\\_eves\\_elnoki\\_beszamolok.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/2015._eves_elnoki_beszamolok.pdf)

court's decision she can appeal against it to a higher court. Our assumption is that in courts which produced significantly higher appellate rate **year by year** than others something went wrong. According to the annual report of the NOJ, **the appeal rate reflects the quality of verdicts in terms of their soundness**. The Hungarian figures from 2014, 2015 and 2016 show that approximately 80 percent of the decisions are not subject to appeal and therefore, become final right at first instance in district courts' civil, administrative and labor proceedings.<sup>61</sup> The appeal ratio varies considerably within the country according to the data from 2016, approximately between 14% and 29%, so the highest rate is more than double of the lowest. It is the district courts belonging to the jurisdiction of the Budapest Capital Regional Court that have the highest appeal rate.

Data on appeal ratio in criminal cases in the years 2015 and 2016 also reveals huge differences between courts. The average appeal rate was 21,5% and 21,2% in the respective years, but the rates varied from 12,3% to 35% in 2015, and from 14,5% to 32,2% in 2016. The following table shows the exact figures broken down to regional courts.

Figure 4: Appeal ratio in criminal cases in 2015 and 2016<sup>62</sup>



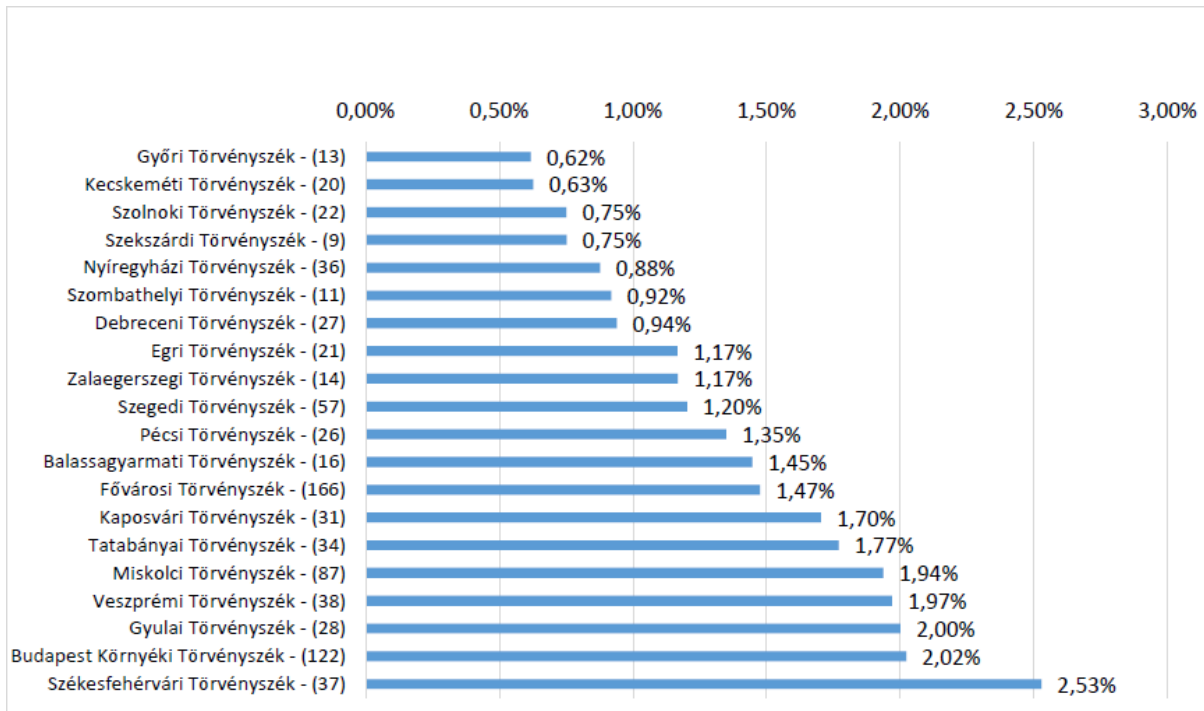
The 2016 detailed report on the caseload and activity of the judiciary also indicates the rate of quashed decisions of district courts in civil and criminal matters: the figures vary from 0,27% to 1,27% in civil, and from 0,62% to 2,53% in criminal cases.

Figure 4: Quashed decisions in criminal cases - 2016<sup>63</sup>

<sup>61</sup> See [http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/elnoki\\_beszamolo\\_2014.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/elnoki_beszamolo_2014.pdf) (p. 33)

<sup>62</sup> [http://birosag.hu/sites/default/files/allomanyok/stat-tart-file/beszamolo\\_2016.\\_ev.pdf#overlay-context=kozerdeku-informaciok/statisztikai-adatok/ugyforgalmi-adatok](http://birosag.hu/sites/default/files/allomanyok/stat-tart-file/beszamolo_2016._ev.pdf#overlay-context=kozerdeku-informaciok/statisztikai-adatok/ugyforgalmi-adatok)

<sup>63</sup> [http://birosag.hu/sites/default/files/allomanyok/stat-tart-file/beszamolo\\_2016.\\_ev.pdf#overlay-context=kozerdeku-informaciok/statisztikai-adatok/ugyforgalmi-adatok](http://birosag.hu/sites/default/files/allomanyok/stat-tart-file/beszamolo_2016._ev.pdf#overlay-context=kozerdeku-informaciok/statisztikai-adatok/ugyforgalmi-adatok)



We find it an important development in terms of quality assessment that a more sophisticated method has been established to determine appeal ratio, and more detailed data on quashed decisions are also available now.

#### 2.4.2.2. Performance targets

Today, some performance targets **are set for judges at national level**. At court level, the president of the court or the head of the department can determine minimal standards for ensuring the productivity and effectiveness of administration of justice. Performance targets can be set for each individual judge. As far as we know, general standards are not specified to courts, goals for productivity are defined mostly in temporary projects (see below). Nevertheless, courts have to establish annual work plans in which goals in terms of productivity could be set in advance. In addition, the project proposals of the presidents submitted in their application for the positions of court president serve as institutional strategies of the courts since the main medium-term objectives at court level are set within that.

Performance targets for judges encompass some minimum standards such as hearing days per week (a judge adjudicates at a court of first instance must hold hearings on two days a week) or the productivity of hearing days. This latter objective is defined by law: Article 54 of the Status Act requires judges to hold hearings on hearing days in a way that makes effective use of the time spending with hearings and facilitates the handling of cases within a reasonable time frame. Presidents of the courts can also determine performance targets at court level. The standards defined by the presidents do not necessarily coincide with those that are determined at national level. Presidential resolutions or local regulations for the organization and operation of the courts may contain lower and higher standards as well, for instance concerning the number of hearing days. As we have already indicated above, according to media coverage, at the Budapest Capital Administrative and Labor Court two judges were required to give reasons for failing to resolve at least 10 cases per months. The president of the court probably expected a minimum standard of productivity from the judges in terms of the number of resolved cases. The Budapest Capital Regional Court (and lower courts belong to it) traditionally deals with a heavy workload and the president might have found it important for timely adjudication to exert a tough control over the backlog in that way.

If these above standards are not met by the individual judge in the long run, the president, first, may check the administrative record of the judge, and if these data prove to be insufficient to substantiate the poor performance of the judge, the president may ask the judge to provide a report on the reasons for his failing to comply with the expected standards. As we indicated above, if a tried case is not finished within two years, this fact is a reason for extraordinary evaluation of a judge.

In 2014, some courts carried out **self-assessment process based on CAF 2013**<sup>64</sup> to reveal the strengths and weaknesses of the organization. These courts then proposed action plans based on the findings of the evaluation procedure. The NOJ and the Curia also participated in this project and applied the CAF. This quality management tool has not been introduced within the judiciary (it is not a mandatory instrument) but courts that carried out self-assessment with the help of this framework emphasized their commitment to regularly apply CAF in the future. Some courts published their reports on the assessment procedure and these are available on the internet. The Eger Regional Court identified the existing reward scheme as an improvement area: a more transparent and objective system would be needed to better motivate judges and reward excellent performance.<sup>65</sup> The Budapest Environs Regional Court presented the huge administrative burden and the great deal of old cases as problems that should also be handled.<sup>66</sup> The action plan of the Curia put a heavy emphasis on developing internal and external communication.<sup>67</sup>

#### **2.4.2.3. Data for the assessment**

According to Article 76 (4) (e) of the AOAC, the President of the NOJ is in charge of developing and reviewing **the methods and datasheets for measuring judicial workload**. The President has to monitor the workload and the caseload of the courts and it is her duty to determine the general annual workload for each judicial instance broken down to different case-types.

In the early 2010s the central judicial administration found the former system for data collection **deficient and insufficient**, and indicated that the **scope of the information** needed for the inquiry had to be broadened. There was thus a pressing need for establishing novel means to gather information that can serve as a basis for performance assessment of the judiciary.

In Hungary, very detailed statistics are produced with regard to the activity of the judicial system. The President of the NOJ is responsible for collecting statistical data, and this process is carried out mainly within the framework of a national program called OSAP (Országos Statisztikai Adatgyűjtési Program) as the NOJ is an integral part of the Official Statistical Service. Some additional information is known from the online registers of the courts.

Individual judges are obliged to provide data on their judicial activity on a regular basis. Methods for recording data **vary from court to court**. All judges must keep a **'hearing book'** in which each phases of the trial and all the other details of the case must be registered. At some courts, these data must be supplied by the judges on paper, while at other courts via the internal IT system of the judiciary. Ultimately, all relevant information is included into an electronic register to which the central judicial administration has access.

Courts are obliged to provide information on a monthly basis concerning the activities of individual judges. The scope of the datasheets has not changed considerably in recent times, even if the report of the President of the NOJ from 2012 emphasized the need for improvement in data collection. It

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<sup>64</sup> The CAF (Common Assessment Framework) is a tool to assist public-sector organizations across Europe in using quality management techniques to improve their performance. See <http://www.eipa.eu/en/topic/show/&tid=191>

<sup>65</sup> [http://egritorvenyszek.birosag.hu/sites/egritorvenyszek.birosag.hu/files/field\\_attachment/caf\\_egyben.pdf](http://egritorvenyszek.birosag.hu/sites/egritorvenyszek.birosag.hu/files/field_attachment/caf_egyben.pdf)

<sup>66</sup> [http://budapestkornyekitorvenyszek.birosag.hu/sites/default/files/field\\_attachment/caf\\_ertekeles.pdf](http://budapestkornyekitorvenyszek.birosag.hu/sites/default/files/field_attachment/caf_ertekeles.pdf)

<sup>67</sup> [http://kuria-birosag.hu/sites/default/files/caf\\_szervezeti\\_onertekeles\\_vezetoj\\_jelentes.pdf](http://kuria-birosag.hu/sites/default/files/caf_szervezeti_onertekeles_vezetoj_jelentes.pdf)

seems to us, that a long-standing and well-established practice exists for recording the workload and other activities of individual judges.

Besides, **presidents of courts have to make annual reports** in which the NOJ must be informed about the performance of the court. In the process of collecting and conveying data and compiling the annual report of the president, the statistician of the court plays a crucial role and she relies primarily on the court's register. The head of departments are also involved in this process of data collection as they also exert administrative control over the performance of the adjudicative panels. The NOJ examines the provided data and makes publicly available reports upon these data on the functioning of the courts on an annual and semi-annual basis.

#### ***2.4.2.4. Tools for eliminating workload imbalances***

As we have already stated above, workload imbalances have been a long-standing issue of the functioning of the Hungarian judiciary. Since 2012, it is a primary objective and strategic goal of the central judicial administration to make the highly uneven workload of individual judges more balanced. In an oral evidence before the Constitutional Court, the President of the NOJ marked the imbalances of judicial workload as being the most pressing and serious issue of judicial administration since the 1989 democratic transition. So far, various attempts have been made to mitigate or eliminate the huge workload differences between judges. Beside deploying transitional solutions such as (1) judicial secondment, (2) the short-lived system of case transfer, and (3) establishing positions for “mobile judges”, the central administration has taken important steps to develop the adequate method for workload measurement. Three projects have already been dedicated to this objective, two of which have been implemented at an initial stage: these are (4) the “case registry” based on weights allocated to case-types and (5) the “ratio tables”. In the following section, we will provide a brief overview on these devices.

#### **Judicial secondment**

Within the Hungarian judiciary, in order to ensure a balanced workload among individual judges and to accomplish the goal of administering justice in a timely fashion, the means of seconding judges is extensively used by the presidents of the courts. It is the president of the regional court who can decide on judicial secondment within the jurisdiction of the regional court, and the President of the NOJ can assign judges from one regional court or regional court of appeal to another and from or to the Curia as well. Generally, judges must give their consent to their secondment, especially if they keep on adjudicating in their original venue in the meantime. However, judges can be assigned to another venue without their consent in every three-year time for a maximum of one year. The figures show that in 2014, 739 judges were seconded by the presidents of regional courts, and 303 judges by the President of the NOJ. In 2015, the numbers peaked at 1264 and 406, and then dropped to 834 and 394 in 2016. The remarkably high numbers of the year 2015 are explained by the President of the NOJ in part by the surge in asylum seekers. The figures, nevertheless, reflect that judicial secondment constitutes the most frequently applied temporary remedy for caseload imbalances.

### **The system of transferring cases – a failed attempt**

In order to reach a significant improvement in the timeliness of justice in the short run, from 2012 the President of the NOJ had been entrusted with the power to transfer a case from the competent court to another one if the former had an enormous workload which was likely to compromise the timely resolution of the case in question. This new competence of the central judicial administration was justified by the goal of an effective time management in administration of justice and was not an unprecedented instrument in this regard in Hungary. Case transfer as a possible remedy for the massive backlog and delays within the Hungarian judiciary was originally introduced in 2011 and it was the Supreme Court that could decide, on the proposal of the President of the National Judicial Council, on reallocating cases from one court to another. The presidents of the regional courts and regional courts of appeal could initiate this procedure. Later, also in 2011 the Act on Criminal Procedure was amended, and the Chief Prosecutor was given the power of case transfer in “cases of great importance”: the competent public prosecutor could institute a criminal proceeding before non-competent courts upon the decision of the Chief Prosecutor with regard to the reasonable time frame requirement. It was this latter provision that was first struck down by the Constitutional Court at the end of 2011.<sup>68</sup> Nevertheless, case transfer was preserved in 2012 and the government made several attempts to establish the constitutional grounds of this institution: it was incorporated into the Transitional Provisions of the Fundamental Law and then into its Fourth Amendment, after the former was found unconstitutional by the Constitutional Court. It is also telling that the President of the NOJ invoked foreign countries inter alia the Netherlands as an example where the same practice existed.<sup>69</sup>

The system of the transfer of cases was subjected to fierce criticism from its inception in Hungary and abroad.<sup>70</sup> It was considered to be capable of undermining the principle of fair trial (among them the right to a lawful judge, judicial impartiality or the principle of the equality of arms) by being used in cases of great political importance. The huge controversy was triggered mainly by the failures of the relevant legal framework to provide sufficient guarantees against the arbitrary decision of the President of the NOJ. As Hungary was put under international pressure in this regard, the government finally retreated, and the system was repealed by the legislature in 2013. Shortly afterwards, the Constitutional Court also declared the relevant legal rules which were not in effect anymore but on which proceedings were still pending, unconstitutional.<sup>71</sup>

However, this sort of threat was not fully eliminated, since the system of designating judges to cases that originally belong to the competence of other courts is still in place, and in most instances, it is not the judges but rather the cases that are in fact transferred from one court to another. For instance, if a judge or a court is designated to adjudicate a case or a group of cases pending before another court, the designated judge or court in fact sits within its original venue and hears the given case there. Even the President of the NOJ acknowledged in oral evidence given to the Constitutional Court that the established practice of judicial secondment was de facto tantamount to transferring cases to newly designated courts due to the above-mentioned reasons. A recent report of a famous Hungarian weekly “HVG” has also emphasized that in the name of judicial secondment, many times, it is not the judge but the case files that are moving from one court to another.<sup>72</sup> The threat that judicial independence can also be compromised by seconding judges to certain cases lies in the fact that the case-assignment system is not fully automatic in every court (see below), thus the judge who is responsible for assignment can decide alone on allocating cases to the designated judge/judicial panel.

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<sup>68</sup> Decision of the Hungarian Constitutional Court no. 166/2011. (XII. 20.)

<sup>69</sup>[http://public.mkab.hu/dev/dontesek.nsf/0/c89e70bd4e261a16c1257ada00524d2f/\\$FILE/Jegyzokonyv\\_szemelyes\\_meghallgas\\_2013\\_aprilis\\_23.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/c89e70bd4e261a16c1257ada00524d2f/$FILE/Jegyzokonyv_szemelyes_meghallgas_2013_aprilis_23.pdf)

<sup>70</sup> Opinion of the Venice Commission on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, Strasbourg, 19 March 2012, 663/2012, CDL-AD(2012)001

<sup>71</sup> Decision of the Hungarian Constitutional Court no. 36/2013. (XII. 5.)

<sup>72</sup> Erika Pálmai: ‘Közbenső ítélet’ [Interim judgment] HVG, 29/06/2017 pp. 16-18

### **“Mobile judges”**

In Hungary, under Article 33 of the Status Act, judges can be appointed to positions for a 3-year term (initial appointment) which imply a changing venue for administering justice. The instrument of the so-called “mobile judge” (“mozgóbíró”) is typically deployed if there are huge imbalances in the caseload among district courts belonging to the jurisdiction of a given regional court. The position itself indicates that the judge can be assigned to various venues to administer justice without giving her consent to it each and every time. In 2015, 13 positions of that kind were called for by the President of the NOJ, while in 2016 only 7 statuses for “mobile judges” were established. These figures suggest that judicial secondment as an alternative to establishing positions to changing venues is a more established practice in Hungary to ensure a balanced workload for individual judges and the timeliness of administering justice.

### **Case weights and the ‘case registry’ – a new scheme for classifying cases**

In Hungary courts have to make annual plans for case allocation which is determined primarily by the president of the court. The departments and the Local Judicial Council express their opinions on the annual plan. Case allocation can also be determined by other judges appointed to this task by the president. As a result, in principle, cases are not automatically assigned to judges. Although Articles 9-11 of the AOAC lay down the fundamental principles of case allocation, they allow a broad discretion for presidents. Since these annual plans are open for the public, it is evident that many of them institutionalize an essentially automatic allocation system which takes into consideration the subject-matter and the date of receipt of the case. However, we can also find case allocation plans which state only laconically the following: it is the president who decides on this issue.

In 2012, the central administration of the Hungarian judiciary announced the plan of developing a new scheme called “case registry” (ügykataszter) for classifying incoming cases on the basis of their types and difficulty level. The process was launched in the hope that the new registry would contribute to a more sophisticated system of case allocation and would provide a firm ground for ensuring a balanced workload for judges. The new registry was also expected to facilitate access to more reliable statistical data on the performance of individual judges and courts. The “case registry” was developed by the NOJ between 2012-2014, and by now, it is being applied in criminal and civil cases. The most important element of the registry is **the system of case weights** (súlyszám-rendszer). While the general weights attached to particular case-types have been developed within the NOJ, the head of the departments and individual judges were also involved in the process.

A recent order of the President of the NOJ [no. 18/2016. (XII. 30.)] provides a definition of „case registry” which reads as follows: it is a current list of cases which indicates the type of the case (the specific subject-matter of the case), the code number and the weight assigned to each type.

Due to the establishment of case weights, today, case allocation depends not on sheer numbers, as it was the case before, when the practice of distributing cases among judges on an equal basis was based on the orthodox view that judicial workload would be balanced in the long run anyway. By now, a much more refined system has been introduced which takes into consideration **the case-type** (primarily the subject-matter) and **the complexity of the case** (in criminal cases, for instance, the number of the accused persons within the proceeding, the length of the indictment, or if foreign law needs to be applied etc.). At first, cases were given a weight from 1 to 5 based on the subject matter; from 2017, for practical purposes, the scale ranges from 10 to 50. These weights are adjusted to the complexity of the cases. For instance, if the number of the parties in civil or administrative cases is above 6, the weight of the case increases by 20%, or the same degree of diversion is applied if the length of the application exceeds 10 pages. In criminal matters, if more than 3 people are accused in

one proceeding, the weight of the given case increases by 40%, and the weights also rise if the number of witnesses or experts is high.

The new system was generally welcomed by judges as it provides an objective system for case allocation, therefore serves as an important check on the administrative practice in this regard. Due to case weights, the workload of the judges can be compared and balanced much easier, and we can obtain more reliable data on the performance of individual judges. The registry is subjected to an ongoing supervision for making it more refined. The major problem lies in the fact, that the weight is assigned to the case at the very beginning of the trial (**initial weight**), and the complexity of the case can change in the meanwhile. This problem is relevant primarily in civil matters. Judicial complaints have targeted this latter difficulty, and all these challenges have been taken seriously and assessed thoroughly. As a response to these challenges, the District Court of Debrecen, for instance, introduced the system of **“post-weighing” of cases** in civil matters to obtain a more reliable calculation of judicial workload, but this method is used only if the weight of the case increases during the proceeding.

Case weights have been determined in all fields: in civil, criminal, administrative and labor cases as well. However, as we have been informed, small district courts with a very few judges have not implemented the system and preserved the traditional case allocation system in which each judge receives the same number of cases.

It is widely held by judges, that case weights allow the comparison of individual judges' workload only within one particular court and amongst judges who deal with similar case-types, as in the process of determining the initial weight of a given case, many subjective components can have a bearing, and a lot depends on the individual assessment of the judge charged with case allocation. This latter observation and the fact that case weights have not been introduced in every court have led to the development of another tool which enables the comparison of the courts' workload at national level. This instrument which will be presented in the next section is called “ratio tables”.

#### “Ratio Tables” (Aránytáblák)

In 2015 a project was launched by the NOJ in order to develop an adequate method for measuring judicial workload. The project has resulted in the establishment of tables on the ratios of the incoming cases and the authorized judicial staff which provide comparable data on the workload of courts broken down to case-types and judicial instances.

The concept of establishing the tables was grounded on the idea that judicial secondment is only a temporary solution, so the balanced workload across courts as well as timely adjudication can be provided in the long run by creating new positions at those courts where it is needed due to the huge workload.

These tables are primarily utilized **in the process of filling vacancies**, since the figures can show if the vacancy needs to be filled at the court concerned, or the position must rather be transferred from one court to another or must be abolished. The tables can also be used when a decision on the temporary secondment of a judge must be made. Consequently, the tables can contribute to making well-established and justified decisions in the field of human resources management. The tables which build on the data of the last 12 months are updated on a monthly basis.

Apart from the tables on the ratios of incoming cases and judicial positions, the number of the resolved and pending cases per judges in each case-type and at every court level is also recorded by the NOJ in order that the average workload of an individual judge to be determined at national level. The President of the NOJ shall publish on a semi-annual basis these data on the intranet of the judiciary.

Presidents of regional courts and regional courts of appeal also participate in the process of workload measurement and shall take the necessary steps if long-standing and significant discrepancies in the workload of the judges occur. Presidents are responsible for the continuous monitoring of the number of incoming cases and the development of the judicial staff within the court that works under their leadership, and they also have to determine and publish quarterly the average number of incoming cases per judges and the average workload of the judges taking into account the weights assigned to the cases.

While some judges during informal talks have found the introduction of the tables a very successful initiative, the report of the HVG have provided a much more pessimistic picture on this issue. Referring to internal information and undisclosed documents, the article stressed that some judges in the central region have recently resigned due to the enormous workload they should have tackled, and some others have criticized heavily the President of the NOJ in the sitting of the NCJ as they found the policy of the central administration on filling vacancies and balancing the workload differences **non-transparent** and a failed attempt.<sup>73</sup> As we were not permitted to conduct any interview with judges who are members of the NCJ, and the records of the sittings of the NCJ is not accessible to the public (only available for judges via the intranet system), we cannot give greater details on this debate.

It is interesting though that while the annual reports of the President of the NOJ have indicated a significant improvement in ensuring a much more balanced workload among judges, according to the report of the HVG, the huge disparities in the courts' workload have not been eliminated or mitigated.

#### **2.4.2.5. Temporary national projects targeting timeliness**

In the present subsection, we set out two programs which have been developed at national level and targeted various issues relating to court activities. The main objective of the projects was to increase public confidence in courts. Within this general aim, a strong emphasis was put on handling delays and reducing the number of cases that had not been resolved within a two-year time. Both projects have attached consequences (awards) to the results that have been achieved by courts.

In 2015, the President of the NOJ has launched a ten-point program called "*Courts as Providers of Service*" (A szolgáltató bíróságért!) which aimed, inter alia, **to improve public trust and customer satisfaction** regarding the judiciary and to enhance the timeliness and efficiency of the administration of justice. According to media reports, the President of the NOJ, when announcing the program publicly, stressed that to a certain extent, it was the increasing number of attacks on the judiciary, which had given rise to the initiative.<sup>74</sup> However, we have no information about what the President of the NOJ exactly referred to. (In a few sensitive cases, some politicians – some of them being high-ranking government officials – have criticized the judiciary heavily, putting somewhat political pressure on the courts.<sup>75</sup> Also, judges were exposed to criticism from the media and the general public occasionally. Most of these challenges were unsubstantiated and lacked any well-founded legal arguments, but we do not know exactly if the President of the NOJ actually hinted at these attacks).

The program targeted all segments of the administration of justice (court presidents just as individual judges, the legal profession as such, the government, public prosecutors and parties as well) to contribute to this joint enterprise of enhancing social respect of courts. Within this framework, the presidents of the courts were encouraged to develop action plans in order to promote the aim of **timeliness**. All regional and regional courts of appeal joined the agenda to achieve a radical drop (at

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<sup>73</sup> Erika Pálmai: 'Közbenső ítélet' [Interim judgment] HVG, 29/06/2017 pp. 16-18

<sup>74</sup> <http://nepszava.hu/cikk/1061270-zero-tolerancia-johet-a-birosagi-ugyek-halogatasa-ellen>

<sup>75</sup> <https://dailynewshungary.com/the-head-of-the-national-judicial-office-warns-against-attempts-to-put-pressure-on-judiciary/>

least 20 %) in the number of cases pending over 2 years before courts. It was a clearly identifiable performance target set by the central judicial administration to which courts were subjected.

The program was completed by the end of March 2016, and proved highly successful. Within the ten-month time frame, courts were able to reduce the overall number of cases pending excessively long (more than 2 years) **by more than 25%**.<sup>76</sup> This means that the performance target was met. Nevertheless, we have only little information about how the other objectives of the program have been fulfilled. For that reason, it seems that the principal goal was to improve the figures on timeliness.

Right after the end of this program, a new project called '*Sustainable Development*' was announced by the central administration to maintain the results and the level of progress that have been achieved within the previous project. Timeliness and reducing delays were once again brought to the forefront in the action plans of the courts. If courts made commitments in their action plans to introduce other innovative measures (e.g. developing staff satisfaction surveys or number dispenser for customers) they were given extra scores within the project which increased the financial bonuses a court could receive. Those courts that performed well and met the targets and commitments they had made were rewarded by **extra financial resources** which were then distributed among individual judges at court level. The bonuses were paid to the judges according to their individual contribution to the overall performance of a given court.

#### **2.4.2.6. Customer satisfaction surveys**

The opinion of court users is of crucial importance in terms of the quality of justice. Consequently, the level of customer satisfaction can be a reliable indicator of the performance of the Hungarian judiciary. This indicator fits into the current objectives of judicial administration which aims to create **a customer-friendly environment** providing easy access for the users to the services of the courts. In the order no. 10/2012 (VI. 15.) the President of the NOJ issued a **questionnaire** through which the opinions and the feedbacks of the users can be collected.<sup>77</sup> This questionnaire is not too ambitious in its original form as it includes only **seven questions** which can be measured on a five-grade scale. These questions focus on the topics of courthouse facilities (entrance system, security services etc.), access to information in court buildings, quality and timeliness of the services provided by the administrative staff, the measures taken for providing equal opportunities for users.

While many courts use the original questionnaire developed by the NOJ, some have improved it to some extent and for instance, made it more detailed by breaking down the original questions to further elements. We have also found questionnaires that include questions on the performance of the judges, particularly on how judges communicate with the parties, or whether their instructions or judgments are comprehensible, and if they act in an impartial and objective manner. Some refined questionnaires also allow customers to make their own free comments to the respective questions. Some judges, nevertheless, raised their doubts whether customers' opinions on the work of the judges can be seen as reliable feedbacks and called for caution when assessing such opinions. The results of some surveys are available on the internet and they provide information on the measures that have been taken to improve customer satisfaction.<sup>78</sup>

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<sup>76</sup> [http://birosag.hu/sites/default/files/allomanyok/obh/elnoke-beszamolok/obhe\\_beszomolo2016ifelev.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/elnoke-beszamolok/obhe_beszomolo2016ifelev.pdf)

<sup>77</sup> [http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/10\\_2012\\_obh\\_utasitas\\_panaszszab.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/10_2012_obh_utasitas_panaszszab.pdf)

<sup>78</sup> See the detailed report of the Regional Court of Eger which was invoked as a 'best practice' in the 2014 annual report of the NOJ: [http://egritorvenyszek.birosag.hu/sites/egritorvenyszek.birosag.hu/files/field\\_attachment/ugyfelelegedettseg\\_egyben.pdf](http://egritorvenyszek.birosag.hu/sites/egritorvenyszek.birosag.hu/files/field_attachment/ugyfelelegedettseg_egyben.pdf)

The NOJ have also examined the findings of the surveys and announced very favorable results. According to the 2015 annual report of the President of the NOJ, the users were satisfied with the services provided by courts **up to 90%**.

However, we find only little information about how customers' opinions have been channeled into the process of making administrative decisions at the regional and national level. Furthermore, it is striking that most of the standardized questionnaire do not contain questions concerning the trials and hearings. As a result, in most cases court users are not able to evaluate the very performance of the judges within this framework which makes the surveys less relevant in terms of the quality of justice. By judicial performance, we seek to refer here to those aspects of judicial behavior which are not subject to appeal (e. g. politeness, understandability etc.).

Beside the questionnaire, courts have developed "**Users' Charter**" in which they have laid down a few fundamental principles as minimum standards of the operation of courts. These principles concern mostly the issues that are raised in the satisfaction surveys and they are formulated in a very abstract language. Further undertakings involve, for instance, child-friendly operation of the court, more publicity on the work of the court, providing special hearing rooms for minor witnesses etc. Courts make a commitment to ensure the implementation of these standards, however, it is open to question if the Charter remains mere declaration, or entails real consequences on the functioning of the judiciary.

#### **2.4.2.7. Integrity and independence**

In 2016, the President of the NOJ issued an order aiming **to ensure and strengthen the integrity of the judicial system**.<sup>79</sup> The new regulation seeks to establish an intra-institutional control mechanism within the judiciary which can contribute to reducing the risk of corruption and preventing those incidents which may compromise the independence of the judiciary. The regulation defines those situations in which the integrity and the independence of the judges can be undermined. (For instance, when judges have a second job, engage in political activity or receive gifts.) Nevertheless, many instances of "integrity-violation" are also handled within already existing criminal and disciplinary regulations which calls into question the necessity of issuing the "integrity regulation".<sup>80</sup>

The regulation has notably been enacted with regard to the need to enhance public trust in the judicial system. As to the rate of the citizens' trust in the justice system, we lack any recent general domestic survey, so in this regard, we should rely on the surveys of the Eurobarometer and the World Economic Forum (WEF) which examined the perception of the general public and business entities on judicial independence. The Eurobarometer survey shows that in 2017 a little less than 50% of the citizens have a positive opinion on courts (48% saying that the independence of courts and judges is "very good" or "fairly good") which is quite close to the EU average (55%) and ranks Hungary at the twentieth place among EU Member States, according to the 2017 EU Justice Scoreboard.<sup>81</sup> More or less the same figure applies to the opinion of the companies on judicial independence in 2017; however, it is much better than the last year's result, and closer to the EU average, therefore places

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<sup>79</sup>[http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/6\\_2016\\_integritas\\_szab\\_2016.07.01\\_0.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/6_2016_integritas_szab_2016.07.01_0.pdf)

<sup>80</sup> The President of the NOJ has recently stressed in a written statement in the proceeding before the Constitutional Court that the integrity regulation only collects and consolidates those rights and obligations of judges that are already laid down in other laws concerning judicial integrity and independence, so it does not create new duties and establish autonomous sanctions.

See:

[http://public.mkab.hu/dev/dontesek.nsf/0/b8b4a549c5c37b1fc1257ff0005876c0/\\$FILE/IV\\_1259\\_8\\_2016\\_OBH\\_allasfo glalas\\_anonimiz%C3%A1lt.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/b8b4a549c5c37b1fc1257ff0005876c0/$FILE/IV_1259_8_2016_OBH_allasfo glalas_anonimiz%C3%A1lt.pdf)

<sup>81</sup> [http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2017\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2017_en.pdf)

Hungary sixteenth on the 2017 Scoreboard. According to the survey of the WEF, businesses gave a score of 3.1 in a 1 to 7 scale which fits into a downward trend.<sup>82</sup>

However, in the previous years, criminal proceedings against judges which can compromise the integrity of the justice system were rarely initiated. This fact also casts some doubts on whether there have been well-established grounds for introducing the integrity regulation.<sup>83</sup>

The “integrity regulation” has been publicly criticized by some judges, since it says, inter alia, that the regulation aims to ensure the implementation of those values that are determined by the President of the NOJ in her capacity as the head of judicial administration. For some judges, this latter objective raises great concerns and may **threaten the independence of the judicial branch**, as it allows judicial behavior to be subjected to expectations determined unilaterally by the President of the NOJ. Therefore, judges have challenged the regulation before the Hungarian Constitutional Court and the European Court of Human Rights.<sup>84</sup> In a recent decision rendered by the Constitutional Court, some provisions of the integrity regulation have been found unconstitutional.<sup>85</sup>

#### 2.4.2.8. *The jurisprudence of the European Court of Human Rights (ECtHR)*

The practice of national and international human rights courts may also serve as a check on the quality of administration of justice in Hungary. These courts can supervise the performance of ordinary courts **under the “fair trial” principle** since constitutive elements of this principle such as “the length of proceedings” and the “reasoned judgment” criteria are closely related to the quality of adjudication. The ECtHR has found on several occasions that Hungary violated Article 6 of the European Convention on Human Rights as the length of the judicial proceedings were not compatible with the ‘reasonable time’ requirement.<sup>86</sup> The case-law of the ECtHR is likely to be a major factor in recent aspirations of the central judicial administration to improve the timeliness of adjudication. The annual reports of the NOJ **explicitly mention the ECtHR jurisprudence** relating to the “timeliness” standard and propose a more closer scrutiny of the practice of the Strasbourg tribunal in order that the findings of the ECtHR will be effectively incorporated into the administrative decisions and the operation of the Hungarian judiciary.<sup>87</sup> As to the “reasoned judgment” criterion, we have no information if the jurisprudence of the ECtHR has ever been scrutinized in this regard by the judicial administration.

#### 2.4.3. *Consequences of the evaluation of quality of justice at court level*

Currently, we have only little information about whether the evaluation process has any direct consequences on the courts budget or on the president of the court. If a court fails to comply with the fundamental requirements of the central administration, and serious shortcomings and malfunctions are revealed (huge backlog, delays etc.), the president of the court in question can be subjected to **disciplinary proceedings, and disciplinary sanctions** can be imposed on her. The most serious sanction (removal) is not used as presidents are more likely to **resign** than being dismissed.

Well-performing courts can be rewarded by allocating **additional resources** to them. This was the case when courts were particularly successful in reducing backlog, primarily the number of old cases within some temporary projects that run in the previous years. Also, we can add to the list of consequences the **symbolic rewards**: for instance, when courts are named explicitly in the media or in the annual report of the NOJ as pioneers of “best practices”.

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<sup>82</sup> [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf)

<sup>83</sup> The annual reports of the president of the NOJ contain information on criminal proceedings against judges.

<sup>84</sup> [http://hvg.hu/itthon/20170309\\_hando\\_tunde\\_obh\\_integritasi\\_szabalyzat\\_strasbourg\\_alkotmanybirosag\\_birok](http://hvg.hu/itthon/20170309_hando_tunde_obh_integritasi_szabalyzat_strasbourg_alkotmanybirosag_birok)

<sup>85</sup> Decision of the Hungarian Constitutional Court no. 33/2017. (XII. 6.)

<sup>86</sup> See the findings of the case *Gazsó v. Hungary* (no. 48322/12) 16 July 2015

<sup>87</sup> 2014 annual report of the NOJ, p. 89.

#### 2.4.4. Debate on possible reforms

So far, the quality of adjudication has attracted only little theoretical interest in Hungary, so the issue has not been thoroughly studied by the academic community. Currently, a research group has been established at the University of Debrecen to map the so-called “Debrecen model”. We hope that this inquiry will boost research in this field.

We have no information about any upcoming reform or other initiative that has been tabled by the Ministry of Justice.

### 2.5. Resources allocation to courts

#### 2.5.1. Actors involved

##### 2.5.1.1. Legal background and main actors defined in laws

Because of the special Hungarian institutional design (the judiciary is not connected to the Ministry of Justice, its administration is done by the NOJ), the budget of the courts is a **separate chapter** (Chapter VI.) **within the state budget**.<sup>88</sup> Thus, **formally** the allocation of the budget is finally made by the decision of the Parliament, as a part of the law on State Budget (recently, for 2017 the Act XC of 2016).

This process, and the actors are described in Article 76 (3) of the AOAC:

- (3) The President of the NOJ in his function related to the budget of courts:
- a) shall prepare a proposal for the budget for courts following consultation with the NCJ on the court chapter of the act regarding the central budget and the NOJ, and with the President of the Curia regarding the Curia, include a presentation of their opinion, and drafting a report for the implementation thereof; the Government shall present this proposal to Parliament unaltered, as part of the bill on the act on the central budget and the bill on the act for the implementation thereof;
  - b) shall be invited to participate in the Government meetings and meetings of the Parliament Budget Committee debating the budget chapter (...)

According to this text, besides the Parliament, the **other three players** in the formation of the budget are:

- the President of the NOJ, who is preparing the budget proposal,
- the President of the Curia, who is consulted on the budget of the Curia,
- the NCJ which has a general consultation right.

Among these actors, the President of the NOJ plays by far the most important role.

The NCJ, which is the “control body of the central administration of courts”<sup>89</sup>, **de iure has great power** on the budget control, (as on everything). According to the law:

- (2) In the field of budget planning, NCJ:
- a) shall assess the proposal for the budget of courts and the report on the implementation thereof;
  - b) shall monitor the financial management of the courts; and
  - c) shall assess the detailed conditions for and the amount of other benefits.<sup>90</sup>

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<sup>88</sup> Section 4 of the AOAC states: “(t)he courts shall comprise an independent budget chapter in the act on the central budget. Within that chapter the Curia shall have its own title.”

<sup>89</sup> AOC Section 88

<sup>90</sup> AOC Section 103 (2)

**De facto**, however, the NCJ's role is quite formal. For example, from the 130 resolutions that were made by the council in 2016 only 3 were dealing with budgetary issues, and all three are one sentence long: namely, the body formally accepts the reports of the President of the NOJ.<sup>91</sup>

### 2.5.1.2. Informal participants and actors

There are also three other actors, not mentioned by the text of the law, but who are involved **informally** in the process:

- The **Ministry of Justice**. It has been mentioned both by the Minister and the President of the NOJ several times that the Minister himself, and the Ministry is giving a strong support and arguments, when the lobbying process during the budget formulation is going on.
- The practical, technical planning, budgeting process is done by the **National Ministry of Economy, where the Department of Budgeting** (which was previously the Ministry of Finance) is the key player.
- Finally and most importantly, the final decision on the budget of the judiciary is made by the **Prime Minister**.<sup>92</sup>

### 2.5.1.3. The budget of the court system in the context of the whole state budget

Table 9: Court budget in Hungary per year

In € Mln CC	State budget (total yearly public expenditures)	Courts' budget total	Increase / decrease YoY	Budget support	Own revenue	Personnel cost and taxes	Personnel cost increase/decrease YoY	Other costs	Personnel cost in the ratio of total budget	Courts' budget as a percentage of public expenditures
2008	29 182	234		217	17	193		41	82%	0,80%
2009	29 000	234	0,15%	216	18	196	1,78%	38	84%	0,81%
2010*	44 107	228	-2,67%	210	18	189	-3,64%	39	83%	0,52%
2011	47 092	242	6,24%	224	18	197	4,12%	45	81%	0,51%
2012	48 896	258	6,65%	251	7	211	7,12%	48	82%	0,53%
2013	52 284	279	8,09%	272	7	207	-1,80%	72	74%	0,53%
2014	55 454	289	3,48%	282	7	209	0,89%	80	72%	0,52%
2015	56 110	291	0,60%	283	7	206	-1,39%	85	71%	0,52%
2016	54 963	300	3,31%	293	7	217	5,43%	83	72%	0,55%
2017	47 644	321	6,81%	313	7	239	10,10%	82	75%	0,67%

\* The significant increase in the main sum in 2010 is due to some changes in the accounting policy.

As it is visible from the table, **the budget of the courts is constantly increasing** since 2010 well above the inflation rate, so from this point of view the judicial system is one of the winner of the Orbán-government. This general statement, however is not entirely true for the personnel cost, which remained practically on the same level since 2002, and there was an increase only recently. It is not

<sup>91</sup> Website of the decisions of the NCJ: <http://birosag.hu/obt-dokumentumai-dontesek>

<sup>92</sup> It is widely known, that the Prime Minister and the President of the NOJ were mates in the Bibó István College during their university years, though we have no information about how close this relationship is nowadays. Other sources are also supporting this information. Tünde Handó (President of the NOJ) stated in an interview, that the salary raise of the judges became possible after the Prime Minister's „very nice speech” where he stated, that „it is very important that our salaries are fair and just, and as the country can step ahead, we can be sure that we can move ahead too” (“Inforádió” radio station, ”Arena” program, “Vendégünk Handó Tünde...” episode [“Our guest is TündeHandó”] 2016. 11.10.) [http://inforadio.hu/arena/2016/11/10/vendegunk\\_hando\\_tunde\\_a\\_orzagos\\_birosagi\\_hivatal\\_elnok/ \(2. rész\), \(10:22 – 11.05\)](http://inforadio.hu/arena/2016/11/10/vendegunk_hando_tunde_a_orzagos_birosagi_hivatal_elnok/ (2. rész), (10:22 – 11.05))

visible from the table, but from 2012 the President of the NOJ succeeded to obtain additional resources for two purposes: the renovation of certain court buildings, and the working off the backlog in cases.

## 2.5.2. Resources allocation process

### 2.5.2.1. Theory and practice – the 2016 case

Though **formally the Parliament decides** on the allocation of resources to the judiciary, as we mentioned above the process is more complicated. While other chapters are fiercely debated, there were no debates within the Parliament on the “court chapter”, except in 2016; this will be later detailed.

This means, that theoretically (**legally**) the President of the NOJ should have to take nothing into consideration when designing the budget, and she could submit a proposal containing for example the double sum of the previous year. The reality however is more complicated, the process is not entirely an open one. There are serious limits of budget planning.

First, the budget is planned by a **“base approach”**, i.e. taking last years’ budgetary figures into consideration as a starting point. The normal process is that these figures are increased with a certain percentage.

Second, the increase itself is decided by the political sphere, practically **by the prime minister**, and his inner circle. This can be influenced, and sometimes it is influenced by the President’s actual arguments, or other factors we do not exactly know. For example, in the beginning of the 2010s, when the new system was enacted, the President had enough power to procure additional money for certain goals. These goals were explicitly written in the yearly state budgets (e.g. “Renovation of the Pest regional court building” – 2012-2014 budgets, or “More clerks for the acceleration of judicial processes” – 2012 budget). The budget of the judiciary – as we mentioned above – was increased above 5% yearly, while the inflation rate was well below this level.

However, we know very little about the **real planning** process. Sometimes stories emerge, when there are turbulences within the system. On 13.05.2016 the opposition led chairman of the budget commission of the Parliament in his speech quoted the letter of the President of the NOJ, where the President wrote, that the “budget proposal she received is entirely different from the one that has been submitted to the parliament”.<sup>93</sup> The difference was that in the original budget there was a 5% increase planned for salary raise. The mistake has been corrected. A week later the President of the NOJ has been heard by the Budgetary Committee. Here, she said that “from the 13 000 employees that are employed by the court system, more than 2500 get the base salary. Sometimes it happens, that a shelf-stacker job is more attractive than a clerk’s in the judicial system”.

Apart from the particular events, the whole story shows, that the NOJ President’s room for maneuvering is not as big as it is written in the text of the law.

### 2.5.2.2. Internal and external budget allocation

The allocation of the budget means two things.

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<sup>93</sup>Speech of Sándor Burány (Socialist Party) at 13.05. 2017. (#78. speech at 14:00) [http://www.parlament.hu/folyamatban-levo-torvenyjavaslatok?p\\_auth=iG7GGveF&p\\_p\\_id=pairproxy\\_WAR\\_pairproxyportlet\\_INSTANCE\\_9xd2Wc9jP4z8&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_pairproxy\\_WAR\\_pairproxyportlet\\_INSTANCE\\_9xd2Wc9jP4z8\\_pairAction=%2Finternet%2Fcpls1%2Fogy\\_naplo.na plo\\_fadat%3Fp\\_ck1%3D40%26p\\_uln%3D152%26p\\_felsz%3D78%26p\\_szoveg%3D%26p\\_felszig%3D78](http://www.parlament.hu/folyamatban-levo-torvenyjavaslatok?p_auth=iG7GGveF&p_p_id=pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcpls1%2Fogy_naplo.na plo_fadat%3Fp_ck1%3D40%26p_uln%3D152%26p_felsz%3D78%26p_szoveg%3D%26p_felszig%3D78)

What has been discussed until now is the **external** determination of the budget: the formation process of the main numbers, figures will be later included in the state budget. The determination of this number, as indicated above, is **an eminently political process** in Hungary. The arguments that are used for increasing the amount are mainly **quantitative** arguments: worn out buildings, low salaries, and primarily the speeding up of the judicial processes, as well as working off the backlog. While the President's reports contain a lot of qualitative elements, like training of the judges, "open court program" etc., in budgetary issues visibly the quantitative, material arguments are more effective. Finally, it is very probable, that the overall budget number **de facto** is decided by the Prime Minister and his inner circle, and planned by the Ministry of National Economy, though **de jure** this should be the task and responsibility of the President of the NCJ.

The other aspect of the budgetary issues is the *internal allocation* of the sum available for the courts. This is not an entirely free process, since the whole system has serious determinations.

- The main determination is, that more than 70% of the total budget is spent on salaries, and taxes and social contributions connected to salaries. Since these amounts are determined by the Status Act, here there is very limited room for maneuvering. However, the **allocation of the staff** itself – the so-called statuses (judges and clerks) – is still an issue (see below).<sup>94</sup>
- Some 10% of the budget should be allocated to "material costs" which are mainly the cost elements of processes that cannot be allocated to the parties. (Like court experts' costs, that are arisen in procedures where the litigants are not charged.)
- Some 15-20% of the total budget, (20-30 Mln €) **is subject to bargain**, or budgetary decisions. Due to the fact, that we had no possibility to make interviews with the President, or with people who are taking part of this process we have only scarce and scattered information from the annual reports of the President (see below).

### 2.5.2.3. Decision about the allocation of the staff

Personnel costs represent the highest amount within the budget. Therefore, the allocation of the staff is one of the most important issues within the judiciary.

Before 2011, the biggest problem of the judiciary was the imbalanced workload, where the workload of the judges working in the Budapest Capital Regional Court was 40% higher than in any other court. We think this was one of the main reasons of the formation of the recent system. Between 2012-2013, the President of the NOJ was empowered to reallocate the cases from the competent court to other courts where the workload was lower. As mentioned before, this practice was exercised on an ad hoc basis, therefore raised grave constitutional concerns, so this solution was finally aborted. Then the President of the NOJ, beside the temporary transfer of judges from one court to another (judicial secondment), has chosen a more effective, but very "hand-made" solution. In this system, the allocation of human resources is **entirely centralized**. In 2014, the President made a resolution, 283/2014. (VII. 2.) OBHE (NOJ President's resolution)<sup>95</sup>, which is an eight-page document, enlisting all the regional courts, and the "permitted number of FTE" in each court per 10 job types, from the judges to the administrators. This solution practically means that any change within the number of job positions is possible only if this resolution is changed by the President. So, the management of the job positions within the judiciary is totally centralized.

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<sup>94</sup>The 240 Mln € seems to be a high amount but in reality – compared to other EC countries, according to the CEPEJ report – salaries of the judges and the other staff in Hungary are very low. Concerning the salaries of the beginner judges there is only *one* country within the EU where the salaries are lower - Bulgaria. The gross average salary quota (beginners' salary compared to the average salary) is also one of the worst, taking the poorer countries into consideration. (European judicial systems - Efficiency and quality of justice - CEPEJ STUDIES No. 23 - Edition 2016 (2014 data), <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%202023%20report%20EN%20web.pdf> 110.

<sup>95</sup>See: [http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/283\\_0.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/283_0.pdf)

According to our sources, not just the changes in number of job positions is centralized, but also the decision on **filling the vacant positions is entirely depending on the discretion of the President of the NOJ**. This information, however, seems to be at odds with information on establishing “ratio tables” for making well-founded decisions in the process of filling vacancies. (see section 2.4.2.4.)

According to the 2015 Report any job advertisement is preceded by a permission process:

“In this process the following parameters are examined: the manpower limit (cap) of the court, the caseload dynamics (change over time), and the workload of the judges. Based on these parameters a decision is made, whether the job vacancy is advertised locally, or in another court.”

Another way of disencumbering the judges is to empower the clerks to certain activities, where judges are not needed. In certain respects this also happened, and is happening at the moment.<sup>96</sup>

Despite all of its limitations, this “micro-management” method seems to work. At the end of 2011 the average caseload of a judge was 112, and 157 at the Budapest Capital Regional Court. By the end of 2015 the respective figures were 78 and 80. This drop is spectacular.

According to the report of the President of the NOJ, a **software** is under construction which will register all the positions, the number of vacancies, the gross personnel spending, and therefore an “optimal distribution of resources will be possible. (... where) more detailed quotas can be determined that how many clerks, and other office jobs, helping the judges’ work is needed”<sup>97</sup>. We have no further information on the implementation of the software.

#### **2.5.2.4. Allocation of resources – internal budgetary bargains and other issues**

As we mentioned above the other aspect of the internal resource management and allocation is the allocation of the **15-20% of “free” money**. These resources are mainly aimed for renovation, or ad hoc remunerations etc. Though the report of the President mentions a series of “budget meetings, where the NOJ meets the presidents of the local courts and the financial officers” and where “structured discussions” are taking place, we have no further information about these discussions and meetings. According to our information the real process is that the president is deciding practically on every important issue.

We have to mention here, that, according to the yearly reports, there are some further efforts and projects going on to improve the financial management of the courts. For example, the 2015 report speaks about the introduction of **a new controlling software**, which is providing real time information about the financial status of the courts. It is also mentioned here, that the quantity of ad hoc information which had to be provided by court leaders (rather stressful task) between 2012 and 2014 has been also reduced. A further initiative is, that a monitoring system was enacted (no further info on that) and sample regulations (model rules) were introduced in the financial field.

#### **2.5.3. Consequences of resource allocation on quality of justice in Hungary**

It is clear, that the resource allocation process (both the financial and the human resources) has two features in Hungary:

- it is a political process
- it is highly centralized, where the key player is the President of the NOJ

It is dominated by the **politics**, because

- there are no rules, and guarantees for a minimum budget

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<sup>96</sup> 2015 Report, 15.

<sup>97</sup> 2015 Report, 112.

- there is no other guarantee for any element of the budget
- budget decisions on the whole judiciary is made formally by the Parliament, but practically by the Prime Minister, and his inner circle.

The internal resource allocation is **over-centralized**, because

- according to the reports the disposable 15-20% of the total budget is distributed on budget meetings, but we have no further information on these meetings. According to our information these decisions are mainly made by the President of the NOJ
- allocation of human resources is formally centralized by a Presidential resolution; no human resource decision can be made without the consent of the President of the NOJ
- NCJ has a formal role, it is practically not controlling the President of the NOJ on budgetary issues.

Despite of its over-politicization there were two serious improvements in the resource allocation field in Hungary. 1. The **backlog** of cases has been successfully reduced 2. The **inequalities in workload** – where the burden of the capital courts was 40% higher than other courts – have also been reduced.

Still, the over-politicization, and over-centralization is dangerous, because there are practically no institutional and legal control over the President. As long as she is using this power for “enlightened” purposes it is good, but as soon as a greater political pressure or any budgetary restraints appear, this can have a direct and fast dangerous impact on the whole system.

## 2.6. Assessment of existing evaluation methods

The picture on the existing assessment methods is very complex. The evaluation process of individual judges is greatly elaborated as it incorporates a **wide range of indicators** regarding the adjudication, regarding both quality and quantity. The scheme could be appropriate to address all the skills and competences that are crucial for high-quality judicial work. However, as mentioned earlier, it is a long-established practice that the assessment is carried out by the professional superiors of the examined judges. Therefore, although it has not yet been invented in the world better method to check the quality of justice than “**human**” **evaluation**, factors such as personal relationship, dependency and prior knowledge can compromise the integrity of the process and the objectivity of the results.

While ‘quality-considerations’ play, in principle, a significant role in the evaluation of the judges, this aspect of adjudication is largely neglected when the performance of the courts is at issue. This latter process is dominated by quantitative standards (backlog, timeliness, resolved cases etc.), and even if efficiency can be conceived as an indicator of quality: namely, that of good functioning of the courts, further qualitative elements are much less addressed. Nevertheless, we experience the efforts of the judiciary to develop more refined and sophisticated methods of assessment to obtain reliable information on the operation of the judiciary. Many of the new initiatives – e.g. satisfaction surveys, stylebook – now **focus more on quality** than efficiency.

The situation in the field of judicial quality control in Hungary (as in other countries, too) is strongly connected to the traditional and deeply embedded cultural and political image of judges and all jurists. The underlying concept in Hungary is that judges as all other legal practitioners are high-qualified professionals such as doctors, engineers etc. That is why they can be assessed by using only internal-professional standards and they are mostly measured by productivity standards in a hierarchical way. The system of legal education in Hungary supports this model of quality control both directly and indirectly. On the one hand legal education puts emphasis on the text of the laws and on legal-doctrinal knowledge and cares much less about the social responsibility of lawyers and improving their ‘soft skills’. On the other hand the exams are extremely text(book)-oriented (it is often required to recite the text of the law by heart in front of the teacher), there is very little room for team-work, essay writing and moot-court activities. This hierarchical, productivity-oriented approach is similar

to the assessment of judges. That is why it is not a surprise that court users' opinions do not matter in the course of evaluation.

### 3. Innovative practices in quality evaluation and quality development

#### 3.1. System of mentor judges

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. On the one hand mentor system can be a good initiative for the personal improvement of junior judges. It is so because a newly appointed judge has to adjudicate as a single decision-maker even in quite complicated and difficult cases. (At the same time, senior judges in appellate courts review the junior judges' verdicts in panels generally consist of three experienced judges. In our opinion this situation can hardly be justified.) On the other hand, being a “mentored” judge proved to be a “stigma” on judges who enlist in this program. Another question to be answered: who bears the professional responsibility if a junior judge makes a faulty decision based on the advice of the mentor judge?

#### 3.2. EU law consultant network

Since 2012 a special organization is functioning under the umbrella of NCJ, the network of EU law consultant judges. Originally the initiative was started after the EU accession as a series of trainings, but later the group of trainers formed an informal network, and finally in 2012 the new President created a formal structure out of it.

Recently the network consists of 54 judges from around the country, and from different courts. They receive a working time reduction, and 10% extra remuneration. Their main task is the **consultation locally in legal matters affected by EU law**. A “side effect” of the network is, that the members of the network are representing the Hungarian judiciary in foreign forums, and conferences.

The network holds compulsory trainings twice a year, which are two days long. One day is held in English. The topics are comprised of different EU law fields. The participation is compulsory for the members of the network, which is registered by the coordinator (leader) of the network. For example, recently a training was held on legal aspects of EU migration law.

The participants should self-educate themselves, and quarterly upload a report, and a self-assessment on an online form. Their activities (advice given, presentations, publication activity) should be registered here. This system is not only a tool for the performance measurement, but, since the advising activity (in the EU law problems that have arisen) is also registered, it gives a territorial and per court **overview on the everyday EU legal problems** of the courts as well.

#### 3.3. The principles of drafting: the ‘Stylebook’

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. The analysis addressed five issues concerning the drafting of decisions: spelling/grammar, style, citations, structure, and the substance of the judgment. Although the “drafting group” concentrated exclusively on the practice of the Curia, it was assumed that the proposed changes would likely affect the practice of lower courts, at least indirectly.

As a result of the analysis, a report has been published on the website of the Curia which first highlighted **the fundamental shortcomings of drafting practices** (e.g. the divergent and incomprehensible internal structure of the judgments, obsolete linguistic terms, long and intricate arguments and redundancies in the text, the great variation of citation methods etc.). Then, it made some moderate proposals to enhance the uniformity of the language, style and structure of judgments. The 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 to 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. The “Stylebook” is not compulsory. It is only recommended for the Curia, and we know little about its actual impact on the drafting practices of the courts. The Curia has already started to use this “style guide”, and we were told that some lower courts are now doing the same. Recently, the work of the jurisprudence-analysis groups has been communicated to courts to make their activity and results known for the entire judicial branch. These latter developments might reflect the very first steps of a process of gradual implementation.

Some of these issues concerning drafting were also raised in the medium-term institutional strategy of the Curia which was adopted in 2013.<sup>98</sup> In this document the emphasis was put particularly on the structure of reasoning aiming to facilitate the **transparency** and the persuasive force of the justification part of the judgment. The strategy also considered crucial that the arguments provided by courts may be **understandable** for the general public. The strategy recommended the main principles of drafting and the fundamental standards of linguistic and stylistic clarity to be determined by the President of the Curia in the medium term.

### 3.4. Best practices: The “Debrecen Model” – a bottom-up initiative to promote timeliness

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 criminal cases. The project was launched in the early 2014 and is built on three pillars: (1) timely and effective administration of justice, (2) staff satisfaction and (3) customer satisfaction. The new management system was developed as a response to the previous years’ unfavorable trends in the court’s performance: the court faced huge backlog, and the number of the cases pending more than 2 years before the court was also extremely high, according to the statistical data of the early 2010’s. 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 (regardless of the number of cases she finished in the previous 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**”).

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<sup>98</sup>The Medium-Term Institutional Strategy of the Curia, available at [kuria-birosag.hu/sites/default/files/allamiprojekt/kuria\\_imprimaturahoz.pdf](http://kuria-birosag.hu/sites/default/files/allamiprojekt/kuria_imprimaturahoz.pdf)

This system implies that if a judge performs well and completes cases effectively, she can save time. She will not get extra cases if she finishes more cases than other judges. It was the District Court of Debrecen which first embarked on applying “case weights” in the process of case allocation: weights are established to each particular incoming case and these weights are taken into account in the course of case allocation in order to ensure a balanced workload among individual judges. Case weights in a slightly amended form were later implemented nationwide and today serve as the basis of the “case registry”. Apart from establishing a more fine-tuned system of case allocation based on case weights, novel methods of monitoring and administrative control over judicial activities have been introduced which include, for instance, the tight monitoring of old cases pending over 2 years before the court, inspection visit to the hearings by senior judges, informal discussions with judges on the adequate and effective methods of organizing work etc.

Besides, a complex **motivational system** has also been elaborated which is directly linked to the performance of the judges. It is a great innovation in itself that the “Debrecen model” deliberately creates a wide range of incentives to motivate judges to carry out their work effectively. As a result, outstanding performance is recognized and rewarded by free time (holiday) which can be spent – according to the choice of the judge concerned – on preparation for hearings, drafting judgments, trainings, language learning, or study trips abroad etc.

Statistical data reveals 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. Further figures show that beside the substantial decrease in the old cases, the backlog of the court in general has been reduced considerably in the last few years. (The number of pending cases was reduced from 1812 to 787 by the beginning of 2016.) The spectacular performance regarding case completion concerned both easy and complex cases.

Within the “Debrecen model” a lot of emphasis is put on staff satisfaction. This is reflected by the abovementioned motivational system and other novel instruments such as the regular needs assessment of the employees regarding the working conditions, the motivational questionnaires targeting the future plans of staff members for their individual career paths, or other measures put in place to provide a friendly working environment.

Customer satisfaction as the third pillar of the “Debrecen model” is sought to be improved through satisfaction surveys which are assessed on an annual basis.

The “Debrecen model” has recently been subjected to a comprehensive scholarly analysis in order to reveal those features of the model that can be implemented by other courts. The study seeks to explore how the introduction of the new model has affected other areas of the quality of administering justice at the District Court of Debrecen.



