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2021 Rule of Law Report Country Chapter on the rule of law situation in Hungary

(...)

ABSTRACT

As regards efficiency and quality, the Hungarian justice system performs well in terms of the length of proceedings and has a high level of digitalisation. The gradual increase of salaries of judges and prosecutors continues. However, as regards judicial independence, the justice system has been subject to new developments adding to existing concerns, expressed also in the context of the Article 7(1) TEU procedure initiated by the European Parliament. The new rules allowing for appointment of members of the Constitutional Court to the Supreme Court (*Kúria*) outside the normal procedure, have been put in practice, and enabled the election of the new *Kúria* President, whose position was also endowed with additional powers. This *Kúria* President was elected despite a negative opinion of the National Judicial Council. The recommendation to strengthen judicial independence, made in the context of the European Semester, remains unaddressed. This includes the need to formally reinforce the powers of the independent National Judicial Council to enable it to counter-balance the powers of the President of the National Office for the Judiciary.

(...)

I. JUSTICE SYSTEM

Hungary has a four-tier ordinary court system. 113 district courts operate at first instance, while 20 regional courts hear appeals against district court decisions and decide on certain cases at first instance. Five regional appeal courts decide on appeals against decisions of the regional courts. The main role of the Supreme Court (*Kúria*) is to guarantee the uniform application of the law. The Fundamental Law tasks the President of the National Office for the Judiciary (NOJ), elected by Parliament, with the central administration of the courts. The National Judicial Council is an independent body, which, under the Fundamental Law, supervises the NOJ President and participates in the administration of the courts. Judges are appointed by the President of the Republic following a recommendation of the NOJ President based on a ranking of candidates established by the local judicial councils (composed of judges elected by their peers). The NOJ President cannot deviate from this ranking without the prior consent of the National Judicial Council. The Constitutional Court is not part of the ordinary court system, and reviews the constitutionality of laws and judicial decisions. The prosecution service is an independent institution vested with powers to investigate and prosecute crime. The Hungarian Bar Association and the regional bar associations are autonomous self-governing public bodies¹.

[Kúria1] megjegyzést írt: In order to clarify the inaccuracies in the text, the *Kúria* of Hungary attaches the following comments to Chapter I of the Report. (For a more simple redaction footnotes were moved to the end of the text.)

[Kúria2] megjegyzést írt: As it is demonstrated in details, the Report would raise serious concerns if it had any basis. Its arguments are either erroneous or incorrect or lack any actual basis. It can therefore only be regarded as a criticism of political nature which would have to be rejected if it had been formulated by the legislative or executive powers of the Member State concerned. It will not be more acceptable if it comes not from the Member States' authorities but from the European Commission. It should also be pointed out that if the arguments of the Report on appointment and election of the new President were correct, neither CJEU nor ECtHR judges would be legitimate, as they are appointed specifically on political procedures. And if an appointment and procedure comply with the rule of law at EU and CoE level, it does not comply less for Member States which follow more stricter legal rules.

[Kúria3] megjegyzést írt: However, the legal status of the Constitutional Court is linked to the ordinary courts. For example: the remuneration of justices of the Constitutional Court is based on the rules of remuneration of ordinary judges (130% of the salary of a presiding judge of the *Kúria* in the case of justices, and 120 % of the President of the *Kúria* in the case of the President of the of the Constitutional Court). Time of service as justice in the Constitutional Court has been accepted as time of service as a judge from 1990.

[Kúria4] megjegyzést írt: It should be noted that more than 90% of the cases of the Constitutional Court are constitutional complaints against ordinary judicial court decisions. Constitutional Complaints are judicial remedies. The ECtHR requires constitutional complaints to be exhausted before starting a procedure before ECtHR as *effective remedies* (cases Szalontay v. Hungary, Geréb v. Hungary and Takács v. Hungary). Consequently the Constitutional Court – following the German model – functions as a Supreme cassation Court with restricted competences (constitutional complaint may be lodged only on constitutional grounds), and the justices of the Constitutional Court fulfil the same duties under the same guarantees (independence, impartiality etc.) as judges of the ordinary courts. How could the Constitutional Court annul a judgment of an ordinary court if it is not a court of law?

Independence

Perceived judicial independence continues to be average among the general public and low among companies. The perceived independence of courts and judges by the general public continues to be average, dropping from 48% in 2020 to 40% in 2021. 32% of companies perceive judicial independence as ‘fairly or very good’², an increase compared to the 26% in 2020. As regards the general public, there has been a negative trend in perceptions in the last five years (interrupted in 2020)³; as regards companies, after a significant drop in 2019, perception continued to improve⁴.

The National Judicial Council continues to face challenges in counter-balancing the powers of the President of the National Office for the Judiciary as regards the management of the courts. As indicated in the 2020 Rule of Law Report⁵, the National Judicial Council is facing a series of structural limitations that prevent it from exercising effective oversight regarding the actions of the NOJ President. The National Judicial Council has no legal personality⁶ and has no right to propose legislation or to be consulted on legislative proposals affecting the justice system⁷. New members and substitutes have been elected to the National Judicial Council⁸; it has an agreed budget, and the NOJ President has provided it with one additional staff member⁹. The current NOJ President cooperates better with the Council than his predecessor, but that cooperation is limited to the extent required by law¹⁰, and no legislative steps have been taken to address structural issues. The Council recommendations¹¹ in the context of the European Semester, to ‘strengthen judicial independence’ remain to be addressed. The NOJ President has repeatedly filled vacancies in higher courts, without a call for applications, with judges performing administrative tasks in the NOJ¹².

The President of the *Kúria*, the Supreme Court, has received additional powers in organising the functioning of that court. As of 1 January 2021, new rules¹³ entered into force, allowing the *Kúria* President to set up judicial panels composed of a presiding judge¹⁴ and four judges¹⁵ for certain groups of cases, following a non-binding opinion of the department concerned and of the judicial council of the *Kúria*.

[Kúria5] megjegyzést írt: It should be noted that most of examples in this are not “additional” powers. Majority of them was given in 2011, some of them even before, in 1997.

[Kúria6] megjegyzést írt: The text is incorrect. Two different powers are mixed up.
The President of the *Kúria*, as every court president in Hungary has – and always had since 1990 – the right to organise the panels (as basic administrative units of the court) composed by one or more presiding judges and one or more judges. The number and composition of panels is part of the case-allocation-scheme. The number of panels is influenced by the workload in the different types of cases.
As to the procedural laws in appellate and revision cases the acting panels in a case are composed by one presiding judge and two judges. The presiding judge in a particular case may order – without any external influence – that two other judges join the acting panel, the two extra-judges are assigned by the president of the competent chamber. This opportunity is still in force. The new rule in force since 2021 gives the right to the president of the *Kúria* to decide that the acting panels *in general in a specific type of cases* (not in a particular case) are composed by five judges. If decides so, the composition of the panels is made public as part of the case-allocation-scheme. But this does not mean that new panels are set up. Also, panels composed by a higher number of judges are a tradition in the supreme courts of the Western countries and actually Hungarian legal traditions also support this. It should be noted that, despite the possibility of this, it has not been ordered yet.

[Kúria7] megjegyzést írt: The wording itself is incorrect (and not coherent). The basic administrative units of the *Kúria* are the panels. Judges (and panels) acting in the same field of law (criminal, civil or administrative) form chambers. The supreme administrative and decision-making form of operation is the Plenary Session. The elected judicial council is a separate consultative and co-decision-making body, its members are elected by the Plenary Session.
The opinion of the chamber and of the judicial council on the case-allocation-scheme is not binding, but the some centuries old tradition of the *Kúria* as part of constitutional aquis of Hungary in reality prohibits the President to decide against them. E. g. in 2021 the changes in the case-allocation-scheme was adopted with strong support – the latest percent of votes 100% (Criminal Chamber), 76% (Civil Chamber), 95% (Administrative Chamber). All the suggestions (100%) by the judicial council were accepted and incorporated in the scheme. It could not have had happened otherwise – the new President strengthened the consultation processes, and declared as a principle of operation that ‘The *Kúria* has a President and not the President has a *Kúria*’.
Even the footnotes 14 and 15 are incorrect. Formally the president of the *Kúria* evaluates the application of the new judges and appoints the presiding judges. However, the role of the competent chamber and of the judicial council *is binding*. In the case of new judges the President may differ from the order of applicants accepted by the judicial council *only with the consent of the National Judicial Council*. In the case of the presiding judges there is more room for deviation, the President may differ from the opinion of the competent chamber but (s)he *must inform the National Judicial Council* about the reasons of deviation; if the President intends to appoint a presiding judge who is not supported by the majority of the chamber, (s)he needs the consent of *the National Judicial Council*. (These rules are clearly stated on statutory level. The misunderstanding of the text is incomprehensible hence in other parts of the report this decisive role of the National Judicial Council is explicitly mentioned.)

This further increased the administrative powers of the *Kúria* President, which include appointing presiding judges⁶, assigning judges and presiding judges to chambers¹⁷, appointing heads of department¹⁸, and establishing the case allocation scheme among chambers⁹. The *Kúria* President also has important powers as regards the role of the *Kúria* in ensuring the uniform application of law by courts²⁰. To that effect, the *Kúria* makes uniformity decisions which are binding on courts²¹. When a chamber wishes to deviate from the *Kúria*'s published case law, it must stay the proceedings and request a uniformity decision²². The uniformity panel can be chaired by the *Kúria* President or Vice President²³; its six members are selected by the chair on an ad hoc basis from among judges of the given department.

[Kúria9] megjegyzést írt: The situation prescribed in footnote 17 is outdated. Since 1st of July 2021 assignment of one of the presiding judges to perform administrative tasks - which opportunity has existed for several years - was abolished. The Statute of the *Kúria* regulates that if in one of the panels there are more than one presiding judges - and usually there are at least two - the administrative task are fulfilled by their agreement, without any external influence. The abolishment was promised to the visiting experts of the European Commission and the *Kúria* complied with it.

[Kúria10] megjegyzést írt: The footnote 18 is incorrect. It was demonstrated above that the President does not have full discretion in the decision-making on heads of department.

[Kúria8] megjegyzést írt: As it was demonstrated above, there is absolutely *no increase* of powers except the formal decision that the acting panel in general in a specific type of cases is composed of five and not three judges. Such a decision will be taken - if necessary - with the normal consent of the competent chamber (as usual).

[Kúria11] megjegyzést írt: a) The footnote 19 is formally correct but incorrect in merits. It was demonstrated above that theoretically the President has the right to differ from the opinion of the chambers and of the judicial council regarding the case-allocation-scheme, but in reality it does not happen. Just contrary.
b) The last remark of the footnote is even more incorrect. It is true that the case-allocation-scheme was modified frequently. The reason of the changes is that the case allocation is more and more automatic. This requires that every change - retirement and appointment of new judges, allocation of different types of cases to the panels - must be reflected. In brief: the frequent change of the scheme is an inevitable consequence, a *sine qua non* condition - of the automatic case allocation.

[Kúria12] megjegyzést írt: a) This procedure is absolutely not a new one. The rules are the same since 1997. However, absence of the parties from this procedure was criticised by the Venice Commission and other European consultative bodies. Just this was the reason of establishment of the new procedure of uniformity complaint mentioned later.
b) The uniformity panel can also be chaired by head of department or deputy head of department.
c) Footnote 23 is incomplete and like this, misleading: the position for the vice-president shall be filled by way of tender and the Plenary Session shall comment on the applicants by way of secret ballot then presents its recommendation in the sequence of voting rights. The recommendation is needed to be taken into consideration.

Moreover, the parties may lodge a uniformity complaint against a final decision of the *Kúria* if it deviates from the *Kúria*'s published case law²⁴. The uniformity complaint panel is chaired by the *Kúria* President or Vice President; its eight members are selected by the chair based on an algorithm²⁵. The uniformity complaint panel may quash final decisions handed down by the chambers in individual cases²⁶. The *Kúria*'s judicial bodies (e.g. the judicial council or the departments), which have a merely consultative role²⁷, are unable to counter-balance the extensive powers of the *Kúria* President²⁸.

[Kúria13] megjegyzést írt: The reason of this new procedure was explained by the Explanatory Memorandum to Act CLXII of 2011:

“The Venice Commission’s report no. CDL-AD(2010)004 points out that the practice of guidelines (that are of a legislative nature and do not originate from judicial decisions delivered in individual legal disputes) adopted by the supreme judicial forum and binding on lower courts which exists in certain post-Soviet countries is problematic, therefore it is more preferable if the higher courts ensure the consistency of case-law throughout the territory of the country through their decisions in the individual cases (paragraphs 70 and 71). The Venice Commission’s compilation of opinions and reports concerning courts and judges confirms that the issuing of guidelines – other than the ones included in individual decisions – on matters of application of legislation is not a rule-of-law solution, and instead the application of a precedent-based system is proposed, while the establishment of a special department within the court is opposed (subheading 3.2.1). The foregoing has also been reiterated by the latest individual decisions. The Venice Commission’s report no. CDL-AD(2017)019 on Armenia suggests the delivery of individual Court of Cassation decisions ensuring the consistent application of laws instead of issuing abstract guidelines for the judicial development of the law. The report considers it important that the lower courts be given the possibility to deviate from the Court of Cassation’s decisions, despite their binding effect, since the lower courts’ decisions may be reviewed by the Court of Cassation and they may even be approved to overturn the supreme judicial forum’s previous judicial practice (paragraphs 21–32 and 37)¹. Moreover, the report proposes that the court’s various departments specialised in different fields of law adopt joint decisions (first point of the recommendations). The Venice Commission’s report no. CDL-AD(2018)011 on Serbia reaffirms that consistency in the case-law should be achieved through the application of precedent and not through issuing general directives or instructions to lower courts (paragraphs 28 and 34).”

Consequently, the new form of procedure was established based on the recommendations of the Venice Commission. Marking it as a concern regarding rule of law is incomprehensible.

[Kúria14] megjegyzést írt: The case of the algorithm deserves more attention. The *Kúria* of Hungary intended to follow the case-allocation standard of the Court of Justice of the European Union as the standard of rule of law. It was found by surprise that the CJEU has no public case-allocation-scheme. Therefore the *Kúria* was forced to create a stricter scheme – it was not difficult, every scheme is stricter than the lack of scheme. The algorithm of the *Kúria* is absolutely objective: every presiding judge is part of the Uniformity Complaint Panel. The list is compiled following the length of service as presiding judges. The acting members in a certain case are chosen automatically in the same proportion from the most long and the most brief term of service. The President may change not more than only one of members and only if special expertise is required by the case, and (s)he has to give written reasons (such a need for change occurred only once in 2021).

[Kúria15] megjegyzést írt: The text probably intended to mention 'panels'.

[Kúria16] megjegyzést írt: As it was demonstrated above, this statement is fully unfounded, it contradicts the legal situation in Hungary and it contradicts even the other statements of this report. The only possible background may be the prejudice.

A new *Kúria* President was elected as of 1 January 2021 under the new special rules on judicial appointments. It is recalled that in June 2020, the President of the Republic, appointed as of 1 July 2020 eight members of the Constitutional Court as *Kúria* judges upon their request²⁹, six of which without experience as a judge in an ordinary court. As explained in the 2020 Rule of Law Report, following an amendment adopted in 2020, members of the Constitutional Court, having obtained the status of a judge, could request to be appointed to the *Kúria* after the termination of their service in the Constitutional Court³⁰. On 5 October 2020, the President of the Republic recommended³¹ that Parliament elects one of them to the post of *Kúria* President. After having heard the person concerned in line with the relevant legal provisions³², the National Judicial Council rejected his nomination almost unanimously³³.

[Kúria17] megjegyzést írt: Such a rule (requirement of service in lower courts before nomination to the *Kúria*) have never existed in Hungary. Just contrary. In the previous 30 years, dozens of *Kúria* judges were nominated after service in other branches of the judiciary or administration. Opportunity given to the justices of the Constitutional Court is reasoned by their expertise at the superior instance. There is no reasonable argument against it: if justices of the Constitutional Court are independent enough and have the necessary professional competence to supervise judgments of the ordinary court they are independent enough and have the necessary professional competence to give judgments as judges of ordinary court.

What more: the *Kúria* has powers which are unique within the ordinary courts and which are similar to the competences of the Constitutional Court:

- supervision of legality of decrees of local governments (the process is perfectly the same as supervision of constitutionality of laws by the Constitutional Court);
- uniformity and uniformity complaint procedures (these procedures follow exactly the procedures of the Constitutional Court).

Consequently, the opportunity of justices of the Constitutional Court to be nominated as judges to the *Kúria* is the only way to have this experience at the *Kúria*. No judge of a lower court could replace it.

On the other hand very few former justices of the Constitutional Court will serve at the *Kúria* in the same period – one or two in the next ten years. Thus the new opportunity will not abolish the balance within judges of the *Kúria* – one or two former justices among about one hundred judges.

[Kúria18] megjegyzést írt: a) This 'almost unanimously' assessment is delusive. It should be noted – as mentioned in footnote 33 – that the representative of the *Kúria* (just the former President) had no objection against the new nomination. Only the other members of the NJC, judges of lower courts were against. Hence the composition of NJC does not follow the recommendations of the Venice Commission – there are no guaranties against judicial corporativism, the objection against the new nomination is hardly objective. Lack of objectivity is also confirmed by the fact that the opinion of the NCJ was adopted after a secret session. The personal opinion of members was not made public, only the formal opinion and the proportion of votes was announced in an open session. It is not without importance that in this case the secret session could have been ordered only on the request of the person effected (the new nominee) who did not ask for a closed session.

b) It also should be noted that the NCJ did raise only one personal objection: lack of experience of the nominee in administration of the judiciary. This is a factual error. The nominee served as member (replacing the Attorney General) in the former National Council of the Judiciary (OIT) between 2000-2006 and in 2011, and he took part in sessions of the NJC in 2013.

c) In the former 6 years serving as justice of the Constitutional Court the newly elected President of the *Kúria* took part in supervision of more than 1000 judgments of ordinary courts, in about 250 acting as justice rapporteur. How could this judicial experience – which actually is unique within the ordinary courts – be left out of consideration?

d) The NJC mainly objected to the constitutionality of the applicable laws. However, this is not covered by its constitutional authority. As a public body, it has a duty to apply the law. Only the former president of the *Kúria* would have had the right to appeal to the Constitutional Court to challenge the legislation, but he did not. This takes a lot of the seriousness of the NJC's arguments.

After having terminated his membership in the Constitutional Court, on 19 October 2020, the nominee was elected by the National Assembly to the post of *Kúria* President as of 1 January 2021 for a period of nine years³⁴. Also on 19 October, the then *Kúria* President assigned him to the *Kúria*, where he served as a presiding judge in one of the chambers until he took office as *Kúria* President. These developments confirm the concerns already flagged in the 2020 Rule of Law Report³⁵, with an appointment to the top judicial post being decided without involvement of a judicial body, and not in line with European standards³⁶. The UN Special Rapporteur on the independence of judges and lawyers characterised the election as an ‘attack to the independence of the judiciary and as an attempt to submit the judiciary to the will of the legislative branch, in violation of the principle of separation of powers’³⁷. In the light of the administrative powers of the *Kúria* President and the key role of the *Kúria* in the justice system³⁸, these developments raise serious concerns as regards judicial independence³⁹.

(...)

[Kúria19] megjegyzést írt: It should be underlined that the person in case as a legally appointed judge could be elected to the post of President of the *Kúria* as any other judge. Subsequent contestation without any legal and constitutional basis of appointment as a judge and of the election of the President in compliance with the law, leads to reduction of confidence in the judiciary. This is not upholding the rule of law, but it is undermining it.

[Kúria20] megjegyzést írt: Such ‘European standards’, at least binding ones do not exist. The recommendations and other connecting opinions are not binding. Judgments of the CJEU would be mandatory if they had any in common with the situation in Hungary. Without taking a stand in the merit of them, it should be fixed that case C-585/18, C-624/18 and C-625/18 was about a special chamber of the Supreme Court of Poland appointed under special rules. Such speciality does not exist in Hungary, and even this Report does not demonstrate the contrary.

[Kúria21] megjegyzést írt: The final statement would raise serious concerns if it had any basis. As it was presented above, the arguments are either erroneous or incorrect or lack any actual basis. It can therefore only be regarded as a criticism of political nature which would have to be rejected if it had been formulated by the legislative or executive powers of the Member State concerned. It will not be more acceptable if it comes not from the Member States’ authorities but from the European Commission. Finally, it should also be pointed out that if the arguments of the report on appointment and election were correct, neither CJEU nor ECtHR judges would be legitimate, as they are appointed specifically on political procedures. If former justiceship in a constitutional court is not hampering membership of CJEU or ECtHR there is no argument to think that it hampers other judicial service in a Member State. If lack of former judicial practice in an ordinary court is not an obstacle to membership (or even to position of President) of CJEU or ECtHR there is no argument to think that it is an obstacle to other judicial service in a Member State. And if an appointment and procedure comply with the rule of law at EU and CoE level, it does not comply less for Member States which follow more stricter legal rules.

¹ The Hungarian Bar Association is vested with the duties to represent the legal profession vis-à-vis the government, exercise a general oversight over the regional bar associations, determine certain rules pertaining to the legal profession by issuing by-laws and to review the decisions of the regional bar associations relative to disciplinary measures. (Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 22.)

² Figures 47 and 49, 2021 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%). Figure 44, 2020 EU Justice Scoreboard; Figure 47, 2021 EU Justice Scoreboard.

³ Figure 44, 2020 EU Justice Scoreboard; Figure 47, 2021 EU Justice Scoreboard.

⁴ Figures 46 and 48, 2020 EU Justice Scoreboard; Figures 49, 2021 EU Justice Scoreboard.

⁵ The NOJ President is nominated by the President of the Republic and elected by Parliament with a two-thirds majority from among judges with at least five years' experience as a judge for a period of nine years, without the possibility of re-election. The National Judicial Council is composed of the *Kúria* President *ex-officio* and 14 judges-members (and 14 substitute members) elected by their peers for a period of six years, without the possibility of re-election. The NOJ President operates under the supervision of the National Judicial Council. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 2-3.

⁶ Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 9.

⁷ Information received from the National Judicial Council in the context of the country visit to Hungary. The Council is not allowed to communicate through the courts' website (Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 9.) beyond the publication of information required by law. When the NJC wanted to reach every judge via email (e.g. to consult them on the draft of the new code of ethics), a special email address was registered for the National Judicial Council in the official email system to directly communicate with the whole judiciary.

⁸ Input from Hungary for the 2021 Rule of Law Report, p. 5.

⁹ Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 9.

¹⁰ Information received from the National Judicial Council in the context of the country visit to Hungary.

¹¹ See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 3.

¹² Contribution from the European Association of Judges for the 2021 Rule of Law Report, p. 7. Section 58(3) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges. See, e.g., Decisions 83.E/2020. (II. 21.) OBHE and 62.E/2021. (III. 12.) OBHE.

¹³ Act CLXV of 2020 amended Section 10(2) of Act CLXI of 2011 as of 1 January 2021. The introduction of panels of five has to be indicated in the case allocation scheme (input from Hungary for the 2021 Rule of Law Report, p. 4.); the department composed of judges (*kollégium*) concerned gives a non-binding opinion on the introduction of panels of five (Section 10(2) of Act CLXI of 2011); the judicial council of the *Kúria* gives a non-binding opinion on the case allocation scheme (Section 151(1)(d) of Act CLXI of 2011). Also, Act CLXV of 2020 introduced Sections 118(6) and 127(2a) of Act CLXI of 2011, allowing the *Kúria* President to appoint a Vice-President to act as Secretary General *ad interim* and linking the term of office of the (deputy) Secretary General to that of the *Kúria* President.

¹⁴ Presiding judges are appointed by the *Kúria* President (Section 128(3) of Act CLXI of 2011) following a non-binding opinion of the competent department (Sections 131(c) and 132(4) of Act CLXI of 2011). The presiding judge decides on the composition of the panel hearing a given case and appoints the judge- rapporteur.

¹⁵ Normally, judicial panels hearing the cases (*eljáró tanács*) are composed of a presiding judge (*tanácselnök*) and two other judges belonging to the same chamber (*ítélkező tanács*). The number of judicial posts in the *Kúria* is not set by statute, but is determined by the NOJ President (See Section 76(4)(a) of Act CLXI of 2011). Currently, there are 114 posts (see Decision 14.SZ/2021. (II. 24.) OBHE), 24 of them are vacant. It is to be noted that the *Kúria* President decides on the appointment of *Kúria* judges; the President of the Republic only plays a formal role (Figure 54, 2021 EU Justice Scoreboard).

¹⁶ Section 128(3) of Act CLXI of 2011.

¹⁷ In a given chamber, there can be more than one presiding judge. In that case the *Kúria* President assigns one of them to perform administrative tasks. The chambers are organised in civil, criminal and administrative departments. The head of department distributes cases among the chambers following the case allocation scheme. The municipal chamber reviews the legality of municipal decrees; its members are appointed by the *Kúria* President.

¹⁸ The full court and the competent department give a non-binding opinion on the candidates (Sections 131(a) and (c) and 132(4) of Act CLXI of 2011).

¹⁹ The *Kúria*'s judicial council and the departments give a non-binding opinion on the case allocation scheme (see Section 9(1) of Act CLXI of 2011). Since 1 January 2021, the *Kúria* President has modified the case allocation scheme nine times.

²⁰ Since 1 April 2020, lower level courts have been required by law to explain why they do not follow the interpretation of legal provisions given by the *Kúria* in its published decisions. Such deviation is a ground for an extraordinary remedy before the *Kúria*. See e.g. Sections 561(3)(g), 648(d), 649(6), 652(1) of Act XC of 2017 on the Code of Criminal Procedure; Sections 346(5), 406(1), 409(3) and 424(3) of Act CXXX of 2016 on the Code of Civil Procedure. The Council of Bars and Law Societies of Europe notes that these rules were introduced without consulting the judiciary, that the availability and searchability of the precedents published by the *Kúria* is not up-to-date, with individual decisions being published in various publications, and that it is not clear whether only the ratio decidendi of decisions is to be followed or also obiter dicta. In its view, the new rules will reduce the judges' autonomy with regard to the interpretation of the law in the light of the circumstances of the concrete case. (Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 24.)

²¹ Article 25(3) of the Fundamental Law. The uniformity procedure – which is initiated by one of the chambers, or the President, or (vice-) head of department of the *Kúria*, the president of a regional appeal court or the Prosecutor General – is different from the uniformity complaint procedure which is initiated by one of the parties to a case.

²² Section 32(1)(b) and (2) of Act CLXI of 2011. Each department has its own uniformity panel.

²³ The *Kúria* Vice Presidents are appointed by the President of the Republic following a recommendation by the *Kúria* President (Section 128(1) of Act CLXI of 2011).

²⁴ Section 41/B of Act CLXI of 2011. As of 1 January 2021, an amendment to the rules specified the cases where the uniformity complaint had to be rejected, extended the scope of the judicial decisions that may be challenged through a uniformity complaint (while limiting them to those delivered after 1 July 2020), strengthened the parties' right of disposition in the proceedings (it entitled them to revoke their complaint), and allowed for the suspension of the court's proceedings and the making of a reference for a preliminary ruling to the CJEU. The law allows for the establishment of a uniformity complaint panel with more than nine members (which is also their minimum number). (Contribution from the *Kúria* President for the 2021 Rule of Law Report, pp. 9-10.)

²⁵ Section 41/A(1) of Act CLXI of 2011. As of 1 May 2021, the *Kúria* President amended the case allocation scheme to introduce an algorithm for the composition of the uniformity complaint panels.

²⁶ Section 41/D(1)(c) of Act CLXI of 2011. The Council of Bars and Law Societies of Europe notes that the new system of uniformity complaints may lead to confusion and decreased independence of judges while granting too much decision-making power to the *Kúria* (Contribution from the Council of Bars and Law Societies of Europe for the 2021 Rule of Law Report, p. 24.).

²⁷ As regards the appointment of court managers in the *Kúria*, if the *Kúria* President wishes to appoint a nominee without the consent of the judicial body concerned (expressed by majority of votes) he/she must ask for the consent of the National Judicial Council (Section 132(6) of Act CLXI of 2011).

²⁸ Information received from the Hungarian Helsinki Committee in the context of the country visit to Hungary. For instance, the judicial council and the department give an opinion on the case allocation scheme (Section 9(1) of Act CLXI of 2011).

²⁹ Under the normal procedure, judges are appointed to the *Kúria* by its President, following a call for applications, on the basis of an opinion of the *Kúria*'s competent department (*kollégium*) and of an assessment and ranking of candidates by the *Kúria*'s judicial council composed of judges elected by their peers. Section 3(4a) of Act CLXII of 2011 allowing the judicial appointment of members of the Constitutional Court, elected by Parliament, without a call for applications was introduced by Act CXXVII of 2019 on the amendment of certain Acts in relation to the single-instance administrative procedures of district offices ('the omnibus legislation') (2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, p. 5.). On 21 September 2020, the National Judicial Council called on the NOJ President to propose legislation removing Section 3(4a) of Act CLXII of 2011 (Decision 107/2020. (IX.21.) OBT). During the Council meeting of 9 September 2020, the NOJ President and the representative of the Ministry of Justice were of the opinion that the National Judicial Council has no competence in the matter.

³⁰ Section 88(3) of Act CLXII of 2011.

³¹ <https://www.parlament.hu/irom41/13175/13175.pdf>

³² Section 103(3)(a) of Act CLXI of 2011.

³³ Thirteen judges-members voted against. The one vote in favour was cast by the then *Kúria* President (*ex-officio* member of the National Judicial Council) (Contribution from the *Kúria* President for the 2021 Rule of Law Report, p. 4.). The Council recognised the personal qualities and preparedness of the nominee, his academic merits and the experience he gained in the field of justice, in a broader sense, as member of the Constitutional Court and deputy of the Prosecutor General, but explained the rejection by referring to the nominee's lack of courtroom experience and the fact that his candidacy was made possible by legislative amendments which the Council considered were contrary to the constitutional requirement of independence and impartiality of the head of the judicial system (Decision 120/2020. (X. 9.) OBT). The opinion of the National Judicial Council is not binding. The Government is of the opinion that this arrangement assures the involvement of the judicial bodies (Input from Hungary for the 2021 Rule of Law Report, p. 2.). It is recalled that as of 1 January 2020, Section 1 of Act XXIV of 2019 amended Section 114(1) of Act CLXI of 2011 in the sense that time served as a senior legal secretary at the Constitutional Court or at an international court can be taken into account when calculating the five years' 'experience as a judge' required for the post of the *Kúria* President.

³⁴ Input from Hungary for the 2021 Rule of Law Report, p. 12. 5

³⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, pp. 5-6.

³⁶ Committee of Ministers of the Council of Europe Recommendation CM/Rec(2010)12, para. 47. See also Court of Justice case C-585/18, C-624/18 and C-625/18, *A.K.*, para. 134.

³⁷ Letter of the UN Special Rapporteur on the independence of judges and lawyers dated 15 April 2021. Moreover, as underlined by the European Network of Councils for the Judiciary, the election to the post of *Kúria* President was made possible by *ad hominem* legislation (European Network of Councils for the Judiciary (2020)). Also to be recalled that the Committee of Ministers of the Council of Europe noted with concern the continuing absence of safeguards in connection with *ad hominem* constitutional-level measures terminating a judicial mandate, and Parliament's competence, established in 2012 following the facts of the *Baka v. Hungary* judgment (Application No. 20261/12) of the European Court of Human Rights, to impeach the President of the *Kúria* without judicial review (1383rd meeting, 29 September – 1 October 2020).

³⁸ According to the Government, the key role of the *Kúria* in the Hungarian justice system is fully controlled by the Constitutional Court.

³⁹ According to the Court of Justice, Member States are required to ensure, in the light of the value of the rule of law, that any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary (see Case C-896/19, *Repubblica*, paras. 63 and 64).