



**European Network of Councils
for the Judiciary (ENCJ)**

**Réseau européen des Conseils
de la Justice (RECJ)**

ENCJ Newsletter September 2023

Dear ENCJ community,
Dear colleagues,

It is a great pleasure to (re)introduce the European Network of Councils for the Judiciary Newsletter.

This ENCJ initiative aims at ensuring a possibility to share recent developments of national news concerning judiciaries of our Members and Observers. I believe sharing this information to be essential as it allows to follow, understand and stay up to date with regard to situations developing in the ENCJ community.

I hope that the ability to share and follow national news, related to the Councils for the Judiciary and judiciaries will be appreciated by the readers, as it ensures the dissemination of the most important developments and results in increased knowledge.

Therefore, I kindly invite you to share recent national developments with the ENCJ community related to: judiciary, Councils for the Judiciary, judicial policies and other issues such as reforms, independence, resources, subjects on the agenda and others.

I wish you all good reading.

Dalia Vasariene
President of the ENCJ

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Click above to read the interview by the OBT President and spoke's person to hvg.hu, where the detailed information on the OBT elections is provided.

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NATIONAL JUDICIAL COUNCIL OF HUNGARY (OBT)

COUNTRY SITUATION UPDATE

The following developments regarding the National Judicial Council, were shared by the National Judicial Council of Hungary (OBT).

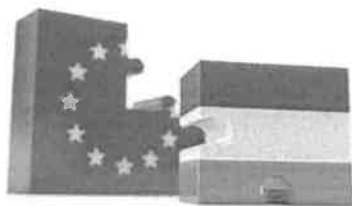


The 'new' National Judicial Council (OBT) has started to work as a legal entity and has been registered by the Hungarian State Treasury after the judicial reform entered in force on 1 June. Based on the law there is a 9 months long transition period (starting with 1 June 2023)', during which the National Office for the Judiciary (OBH) completes OBT's economical duties and assists in its secretariat activities.



The law also provides that presidents of the OBT and the OBH shall make a contract on the details of the cooperation during this period. This was signed recently: [Munkamegosztási megállapodás az OBH és az OBT között | Magyarország Bíróságai \(birosag.hu\)](#)

In its communication OBT stated that this reform and its enforcement so far is a big success of the independent judiciary. Meanwhile, OBT has exercised some of its new competences, especially the co-decision powers of secondment of judges from one court to another. Another good example is that OBT received access to administrative files of an inquiry report of the OBH President, which were not accessible for OBT members before the judicial reform.



While OBH cooperates with the OBT does not criticise the new judicial reform, Kúria President Varga publicly claims that the new law is inoperable and is seen to assign blame to the OBT for the European Commission's interventions. In one of his statements, President Varga attacks the European Commission and OBT at the same time: <https://kuria-birosag.hu/hu/sajto/kuria-elnokenek-kozlemenye-2>

OBT had issued a statement on the same topic acknowledging the results of the new judicial reform and stating that OBT is dedicated in the successful enforcement:

[Az Országos Bírói Tanács közleménye a jogállamisági jelentésről - Országos Bírói Tanács \(orszagosbiroitancs.hu\).](#)



In June, 2023 OBT addressed the Ministry of Justice in order to raise the judicial salaries based on the high inflation rate. Hungarian judicial salaries are among the lowest in the European Union. News on this: <https://orszagosbiroitanacs.hu/illetmenyemeles/>. Minister of Justice Judit Varga resigned a couple of weeks ago after 4 years in office, and Bence Tuzson state secretary of another ministry, is her will successor.



In the meeting of Hungarian Council for the Judiciary in July (where President of the Kuria was absent), OBT attempted to comment on OBH and Kúria's appointment practice in the previous years. While President of the OBH provided the Council with all the necessary information and OBT did not raise objections against his practice, President of Kuria denied access to the requested data. Thus, OBT was not able to formulate an opinion on the issue.

[https://orszagosbiroitanacs.hu/wp-content/uploads/2021/11/93-2021-XI.3.-OBT-hatarozat-SZMSZ .pdf](https://orszagosbiroitanacs.hu/wp-content/uploads/2021/11/93-2021-XI.3.-OBT-hatarozat-SZMSZ.pdf)



On 5 July, András Zs. Varga, President of the Kúria issued a statement, in which he wrote: *"The chapter on Hungary in the European Commission's 2023 Rule of Law Report regrettably adopted, without verification, the arbitrary opinion of the National Judicial Council, which is without any factual basis, repeatedly refuted with data, and violates the personal integrity of many judges. It can be stated that not a single word of the findings is true."*

<https://www.kuria-birosag.hu/hu/sajto/kuria-elnokenek-kozlemenye-2>

On the next day, Minister of the Prime Minister's Office, Gergely Gulyás held a press conference, saying: "I think the same as the President of the Kúria about the EC report, it is hard not to agree with everything András Zs. Varga says. It is particularly unfortunate that some members of the OBT, who, as judges, have also been keen to negotiate with foreign governments in recent months, have reported their own governments to Brussels in order to get legislation passed on a personal basis so that they can be re-elected, and they do not seem to have completed this activity. And what is particularly ridiculous is that these people used to say that personalised legislation was unacceptable, and even saw it where it did not exist, and then when it was personalised to their needs, they said that they did not want to use it. Watch them all run (in the OBT elections)." Video available at (from minute 33):

<https://hirado.hu/belfold/cikk/2023/07/06/kovesse-nalunk-a-kormanyinfot>.



ON THE UPCOMING OBT ELECTIONS

On 24 July, Péter Tatár-Kis, President of the Metropolitan Court, sent a letter to his subordinates (the presidents of the Budapest district courts and the heads of divisions). In his letter, Tatár-Kis asked the addressees to provide the opportunity for the nomination of candidates to OBT elections in their own departments "in the framework of a judicial consultation". He also explained the conditions and deadlines for nomination.

The Act on the Organisation of Courts does not provide for a forum called "judicial consultation" and it never happened in the court's history during the previous elections. In his letter, when Tatár-Kis listed the conditions that candidates must meet, the list interestingly included the statement that "a judge who has previously been a member of the OBT cannot be nominated and elected as a delegate". The fact is, however, that according to the judicial reform, the current members of the OBT are eligible for re-election once and for all.

The rules of the OBT elections are stated in the Organisational and Operational Rules of the OBT (so called SZMSZ), based on the Act on the Organisation of Courts. Section 37 Paragraph 3 of the SZMSZ clearly states that *"The possibility for the judge to make a proposal (in the OBT elections) cannot be restricted. A provision requiring that the nomination must be preceded by a decision of a department, group or panel of judges shall be considered as such."*

[https://orszagosbiroitanacs.hu/wp-content/uploads/2021/11/93-2021-XI.3.-OBT-hatarozat-SZMSZ .pdf](https://orszagosbiroitanacs.hu/wp-content/uploads/2021/11/93-2021-XI.3.-OBT-hatarozat-SZMSZ.pdf)

The Metropolitan Court, however, wrote to the press inquiry that these "judicial consultations" aim that *"a department as a community should be able to decide who the collective would like to see in the nomination position"* and that *"an organisational community can find the candidate(s) it considers most suitable"*.

<https://444.hu/2023/08/23/maris-megkezdodott-a-kuzdelem-a-birosagokert>

The OBT regards these aims as contrary to the written and known regulations of the elections.

At the OBT meeting on 6 September the OBT discussed these anomalies. The President of the Kúria claimed that the letter of the Metropolitan Court President is welcome, as it helps the election process in such a large organisation. Elected members of the OBT said the purpose of the letter was irregular and it was sad if it cast a shadow over the fairness of the OBT election. Superior of the Metropolitan Court President, OBH President Senyei was absent but he wrote in his letter to OBT that *"the initiative of the Metropolitan Court President was not unlawful but its necessity is questionable"*.

In an interview to **hvg.hu** and HVG print, OBT president and spokesperson gave detailed information on this topic and said that the ministers (as members of the Government) may not comment on OBT elections as it could harm the separation of powers.



Full interview available at:

<https://hvg.hu/itthon/20230905> Nem ujrának az Országos Bírői Tanács tagjai

<https://hvg.hu/360/20230906> Matusik Tamás Abert János OBH OBH Kuria bírósági reform jogállamisági eljárás EU hvg.

On the same day, elected members of the OBH issued a statement in which they declared that they do not wish to run for re-election to the OBH because they do not consider personalised (ad hominem) legislation to be acceptable. They recalled that they did not support the election of Mr Varga Zs., because the law has been amended twice to allow it to be elected. "*Personalised legislation is not acceptable even if we were the beneficiaries of it.*" <https://orszagosbiroitanacs.hu/az-obt-valasztott-tagjainak-nyilatkozata/>.

The first round of OBH elections in each court is held in September, the elected electors will elect new OBH members among themselves later on. The current OBH's mandate expires on 30 January 2024.

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ON THE ISSUE OF JUDICIAL REMUNERATION

The Judicial Council of the Republic of Slovenia filed a request for a review of the constitutionality of the regulation governing judicial salaries in the Public Sector Salary System Act, on the grounds that it is incompatible with the principles of judicial independence and the separation of powers. The Judicial Council argued that the remuneration of judges is too low, taking into account the nature and responsibilities of the judicial office, and that it is not regulated in a manner that is properly comparable to the remuneration of the representatives of the other two branches of power.

Independence of judges is enshrined in Article 125 of the Constitution of the Republic of Slovenia. As explained in the decision of the Constitutional Court of the Republic of Slovenia nr. U-I-772/21-37 of 1st June 2023, there are several aspects to judicial independence, but in this case its material aspect was highlighted and discussed. Provisions of law, as far as they relate to the amount of judges' remuneration, should only be criticized for inconsistency with Article 125 of the Constitution if the amount of judges' remuneration was clearly inappropriately determined. Such assessment, however, should not solely be based on the amount of judges' salaries; instead, the assessment should take into account several criteria that, individually or as a whole, indicate whether judges' salaries are in accordance with the requirements that arise in relation to the principle of material independence. These requirements include that judges' salaries must be relatively stable and must follow the general economic development of the country or the development of the standard of living in the country.

The Constitutional Court found the challenged provisions to be **inconsistent with the constitutional requirement of the stability of judges' salaries**. These have significantly lost their real value over the past ten years. According to the Constitutional Court, there are also other complaints that may be of relevance in the assessment of the challenged regulation in view of the principle of judicial independence. For instance, complaints that the growth of judges' salaries lags behind the growth of the average salary in the country or in a certain narrower segment, which is even more connected to judges; that there are inadequate ratios between salaries of judges and other salaries; that insufficient remuneration of judges affects the attractiveness of the judicial profession. Under certain conditions, complaints about the entitlement of judges to social transfers could also be relevant.

When assessing the compliance of the challenged provisions with the principle of separation of powers, which is enshrined in Article 3 of the Constitution of the Republic of Slovenia, the Constitutional Court reiterated that **the three branches of power must be equal also with regard to the material status of their officials**. This requirement, however, is of relative comparability.

Hence, (only) if significant disproportions between the salary classes of judges' positions compared to the salary classes of the executive and legislative branch functions are established will the placement of judicial offices into salary brackets be found inconsistent with the principle of separation of powers. The Constitutional Court found that the regulation of the basic salaries of judges was **inconsistent with the principle of separation of powers**, as far as salary ratios between members of the Parliament and the lowest-ranking judges are concerned.

Valid law on the monthly lump sum that belongs to the members of the Parliament to cover the costs related to the performance of the parliamentary function in the electoral unit, and the fact that the members of the Parliament can be placed in higher salary brackets than the starting one, were of decisive nature in the assessment.

Challenged provisions on the readjustment of the amount of judges' salaries were also found to be **inconsistent with the principle of judicial independence**. This regulation provides that judges' salaries are normally adjusted once a year, which does not guarantee that in the event of a significant drop in the real value of judges' salaries, they will actually be readjusted. Therefore, the constitutional requirement, according to which the legislator must provide for mechanisms to prevent a substantial fall in the real value of judges' salaries, has not been met.

The Constitutional Court issued a **declaratory decision**, given that repealing the provisions, regulating basic judges' salaries and their readjustment, would render this question unregulated. It also set a **six-month deadline** for the legislative body (deadline is 3rd January 2024) to remedy the unconstitutionality found, taking into account that the legislator and the Government have been aware of the issue for a long time.

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HIGH COUNCIL OF JUSTICE OF UKRAINE

COUNTRY SITUATION UPDATE

The following developments regarding the judiciary were shared by the High Council of Justice of Ukraine.



HCJ will form a working group to calculate the optimal number of judges

A working meeting on determining the number of judges in local and appellate courts was held in the High Council of Justice, involving the members of the HCJ, HQCJU, representatives of the Council of Judges of Ukraine, the Supreme Court, the State Judicial Administration of Ukraine and the National School of Judges of Ukraine.

The Chairman of the High Council of Justice Hryhorii Usyk informed that the HQCJ of Ukraine has raised the issue of the necessity to determine the number of judges in local and appellate courts due to the fact that in August 2023, 582 candidates will be able to participate in the competition for vacant positions.

“At present, the judicial system is facing a situation of great uncertainty. The workload of the courts varies not only between regions but even within a single region due to changes in the jurisdiction of judicial cases. It is difficult to predict how the map of courts might change due to their further optimization. Therefore, a solution needs to be found to address this situation”, - noted the HCJ Chairman.



Inna Plakhtii, a member of the High Council of Justice, proposed to solve the issue of personnel shortage in the courts by determining the temporary number of judges in order to complete the selection for the positions of judges in local courts and initiate new competitions for the positions of judges in appellate courts.

Ruslan Sydorovych, the Deputy Chairman of the High Qualification Commission of Judges of Ukraine, remarked that the proposal of the determination of the temporary number of judges is appropriate. This will allow for a swift resolution of the judge shortage issue in local courts with the highest workload. He assured that this year there is an opportunity to complete the competition for the positions of judges in local courts, to start the competition for the selection of judges to appellate courts by the end of this year.

The participants of the meeting agreed that the number of judges in local and appellate courts should be no less than previously determined by the orders of the State Judicial Administration of Ukraine.

HCJ will form a working group to calculate the optimal number of judges | High Council of Justice



FIRST AND FOREMOST, PEOPLE WOULD LIKE TO FIND JUSTICE IN THE COURT - SAID HRYHORII USYK

The Chairman of the High Council of Justice emphasized this during the meeting on the administration of justice under martial law, with the participation of the leadership of the Supreme Court, the heads of appellate courts in Ukraine, and the Head of the High Anti-Corruption Court.

According to Hryhorii Usyk, the increased demand of society for justice during the war and after victory, as well as the attention towards Ukraine from the international community, urge special emphasis on judges' adherence to professional ethics.

The Chairman of the High Council of Justice expressed concern that certain negative manifestations are prompting legislators to initiate new procedures for vetting judges which in turn could lead to an even greater outflow of personnel from the system. He reminded that from January till July 2023 the Council made decisions to dismiss 222 judges.

"But there is an urgent need for disciplinary proceedings, as judges cannot remain in a state of uncertainty - when complaints remain unresolved for years," - stated Hryhorii Usyk.

In his speech, the head of the High Council of Justice also discussed the measures being taken by the Council to address urgent problems within the judicial system, including ensuring an audit of the Unified Judicial Information and Telecommunication System, resolving issues of insufficient funding for the judiciary, restoring the operation of courts in territories liberated from occupiers and other.

Hryhorii Usyk expressed his gratitude to the leaders, judges and employees of the courts of all instances who, in difficult conditions not only of war but also of insufficient funding and material and technical equipment, continue to ensure citizens' access to justice.

First and foremost, people would like to find justice in the court - said Hryhorii Usyk | High Council of Justice (hcj.gov.ua)



Joint Opinion on the draft law “On amending the Law of Ukraine “On the Judiciary and the Status of Judges”

In the framework of the preparation of the draft joint opinion on the draft law “On amending the Law of Ukraine 'On the Judiciary and the Status of Judges' as regards the introduction of additional procedures to enhance public trust in the judiciary” (draft law N° 9454), the rapporteurs met with the following interlocutors:

- the Chairman and members of the High Council of Justice,
- the Chairman of the Parliamentary Committee on Legal Policy of the Verkhovna Rada,
- the President of the Supreme Court and the First Deputy Chief of Staff of the Supreme Court;
- the Head and a member of the High Qualification Commission of Judges,
- the Chairman of the Council of Judges,
- the representatives of the international community and civil society.

The draft opinion will be prepared jointly by the Venice Commission and the Council of Europe’s Directorate General of Human Rights and Rule of Law (DG-I). It will be submitted for adoption at the 136th Plenary Session of the Venice Commission (6-7 October 2023).

Venice Commission :: Council of Europe ([coe.int](https://www.coe.int))





The new court map came into force in Slovakia on 1 June 2023

The new organizational arrangement of the judiciary in the Slovak Republic applies from 1st of June 2023.

The legislation that came into force has changed the number of district courts from the original 54 to 36. Defunct district courts will merge with the successor court and become the workplace of the successor court. The four smallest district courts were abolished.

The City Court of Košice was created from the three district courts in Košice. This change gives the possibility for judges to specialize and adjudicate on cases from one area of law - criminal, civil, commercial and family. This supports the central idea of the reform of the judicial map – the specialization of judges.

Bratislava has four municipal courts: the City Court of Bratislava I is specialized in the criminal law agenda, the City Court of Bratislava II in the family law agenda, the City Court of Bratislava III in the commercial law agenda and the City Court of Bratislava IV in the civil law agenda.

Disputes between citizens and the state are resolved by administrative courts in Bratislava, Banská Bystrica and Košice. We consider the completion of the reform of administrative judiciary, which began on the 1st June 2021 with the establishment of the Supreme Administrative Court, to be a significant contribution to people regaining confidence in justice.

The number of regional courts remained the same. There are eight of them. However, their specialization is changing. Only three regional courts deal with the appellate business agenda. This also applies to the appellate family law agenda.

At the same time, courts are able to use the online form of hearings.

There were three main aims of the new court map: specialization of judges, decisions in a reasonable time, without unnecessary delays and availability of judicial protection. How and to what extent they will be fulfilled is a question of at least two or three years, during which it would be appropriate to consider further rationalization of the judiciary in the Slovak Republic.