



Permanent Representative of Hungary to the United Nations Office
and Other International Organizations in Geneva

To:
Ms. Jane Connors
Chief
Special Procedures Branch
United Nations High Commissioner for Human Rights

Geneva, 14 May, 2012

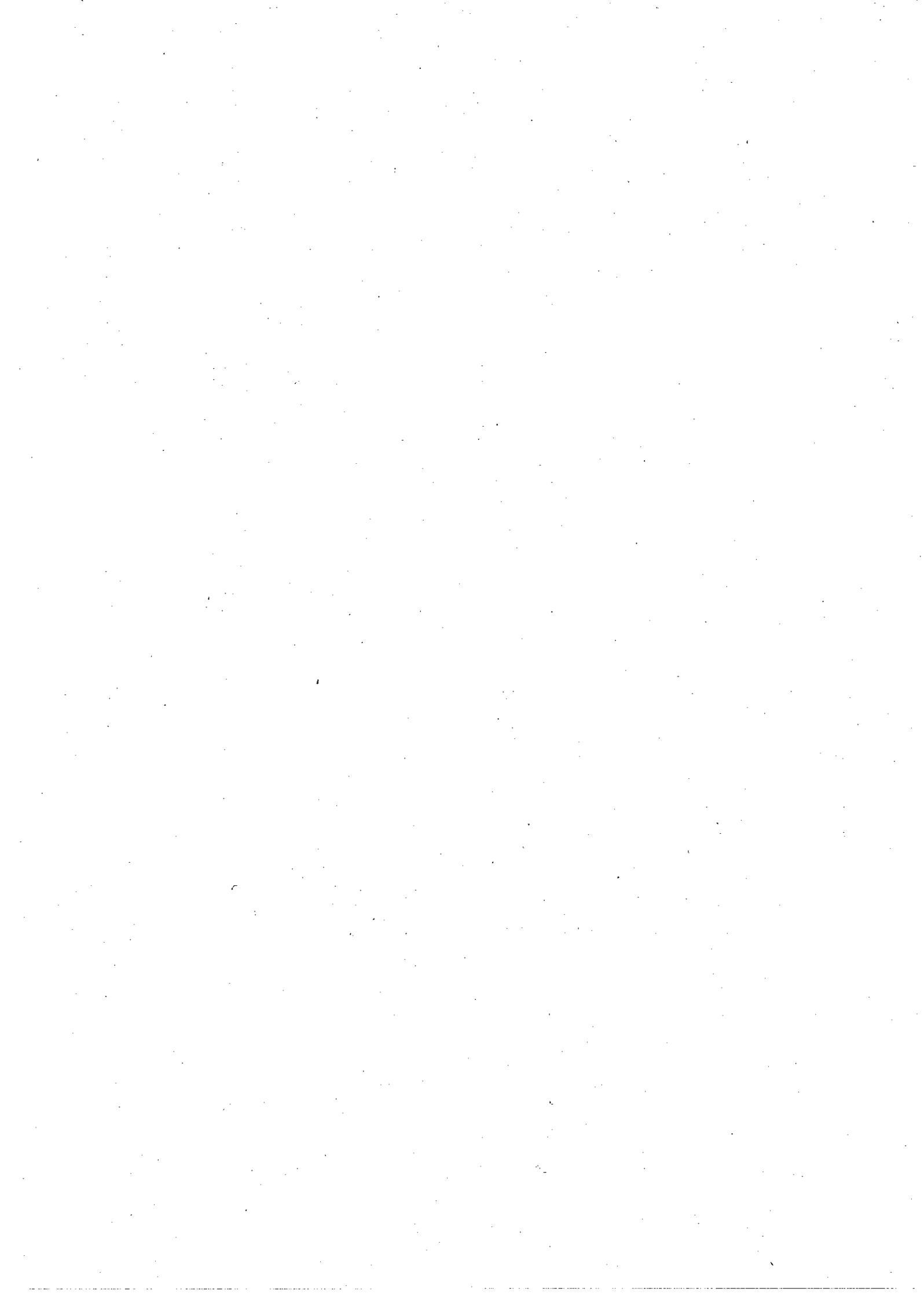
Dear Ms. Connors,

Please, find attached the response of the Government of Hungary to the allegation letter (UA G/SO 214 (3-3-16) HUN 1/2012) sent on 29 February, 2012 by the Special Rapporteur on the independence of judges and lawyers.

Sincerely yours,

András DÉKÁNY
Ambassador





1. Is the information in the summary of the new constitutional and legal provisions accurate?

Laws promulgated in Hungary can be found www.kozlonyok.hu. The official text of laws effective in a given moment can be found on www.magyarorszag.hu or www.njt.hu. We acknowledge that the references included in your communication are in general correct.

2. Please explain the reasons for the replacement of the Supreme Court by the Curia and for the legislative modifications related to the election requirements as President of this body.

The administration of justice can only be efficient and adequate if professional direction and consistency in the application of the law are ensured. This can only be achieved if the management of the Curia (the principal judicial organ) is effective. If the Curia effectively uses the legal institutions created to ensure the uniform application of the law, and addresses questions regarding the application of the law raised at lower-level courts with the required promptness, it can promote not only the predictability but also the timeliness of the delivery of judicial decisions.

The Fundamental Law defines the Curia as the principal judicial organ at the top of the judicial system. Its tasks have increased both in quantity and quality, including the role to ensure the uniform application of the law and other tasks of constitutional nature. The Curia and the judicial organisation require leadership and effective management. The previous structure, where the President of the main professional organ, i.e. the Supreme Court, was at the same time the President of the central body for administrative direction, i.e. the National Council of Justice, did not meet the above requirements. Both positions demand full attention. In order to be able to perform his task to a high standard, the President of the Curia, who bears the main responsibility for professional activities, had to be relieved of central administrative competences. Therefore, according to the Fundamental Law and the Act on the Organisation and Administration of the Courts of January 1, 2012, two separate positions were established: the position of a professional leader (President of the Curia) and the position of an administrative leader (President of the National Judicial Office).

The main organ dealing with professional tasks has always been the Curia, while the central administration of courts has traditionally been performed by the President of the National Judicial Office (the central administration rights of the National Council of Justice and the president of the National Council of Justice have been transferred to the President of the National Judicial Office.) It must be emphasized that the succession of the Supreme Court by the Curia does not affect the status of the judges of the Supreme Court. The competence to appoint judges continues to be exercised by the President of Hungary.

The aim of the judicial reform has been to eliminate the dysfunctional operation resulting from parallel positions and the overlaps in personnel between the Supreme Court and the National Council of Justice. With the establishment of new bodies not only the names of the present bodies but also their competences and structures have been changed.

The judicial body has been given new tasks: courts may decide on whether a local government decree is contrary to another law (and if necessary on its annulment), as well as on whether a local government has failed to comply with its law-making obligations based on

an Act (Article 25(2) of the Fundamental Law). This task is similar to that of the Constitutional Court, with the difference that ordinary courts may only decide on whether there is a conflict with a law; the examination of conflicts with the Fundamental Law is within the competence of the Constitutional Court.

As a result of the four-tier court system, fewer and fewer cases reach the Curia by way of (ordinary or extraordinary) legal remedy, and consequently the collegium of judges (specialised thematic groups) of the Curia find it harder to obtain a reliable database that would be necessary for a complete horizontal and vertical overview of jurisprudence. In view of the above, the Curia, besides the right to make decisions on the uniform application of the law, will have some new instruments at its disposal to ensure the unity of law. On the one hand it will have collegium of judges analysing the jurisprudence of the courts according to different subject areas determined yearly, and on the other hand the Curia may, in addition to publishing court decisions rendered by its judicial councils, publish court rulings by a lower level court provided they concern questions of general relevance in matters affecting large groups of society or in matters of great importance for public interest.

In addition, the new regulation has improved the procedure for the uniform application of the law by stipulating detailed rules regarding the exchange of information between courts.. It also widens the circle of those persons entitled to submit motions. Finally it draws up identical and detailed procedural rules to ensure the uniform application of the law both in criminal and civil law matters.

The transitional regulations to the Fundamental Law of Hungary stipulate that the Supreme Court and the National Council of Justice shall be replaced by two separate units. The transitional regulations also set forth that the mandate of the President of the Supreme Court and of the President and members of the National Council of Justice shall expire with the entry into force of the Fundamental Law. In order to ensure the smooth institutional transition the transitional regulations state that Curia and the president of the National Judicial Office shall be the legal successors of the Supreme Court, the National Council of Justice and its president.

Due to the structural reforms and changes, Parliament had to elect the new presidents of the newly created Curia and National Judicial Office with a two-thirds majority. In order to ensure the operation of the two new organs from January 1, 2012, the Constitution and the new Act on the Organization and Administration of Courts set forth that the president of the Curia and the president of the National Judicial Office shall be elected by the end of 2011.

In order to find senior court office candidates who are able to comply with the new judicial tasks and who meet the enhanced expectations, it was necessary and justifiable to introduce more stringent conditions of appointment. The largest association of judges, in which more than one half of Hungary's judges are represented, proposed to the legislator that senior court office holders should meet particularly stringent criteria. Based on the proposal of the community of judges, the Act on Courts stipulates that, in order to qualify for nomination as the President of the Curia and the President of the National Judicial Office, a judge must have a minimum of five-years of judicial service. Likewise, the Act on Courts stipulates that senior court positions may only be held by judges appointed for an indefinite term. In view of the fact that an appointment for an indefinite term may only be awarded after an initial

appointment for a fixed term of 3 years, this implies that a judge may only apply for a senior court position after minimum 3 years of experience as a judge.

The determination of the above mentioned appointment criteria were the result of a wide professional consensus. It was the Committee on Constitutional, Legislative and Judicial Matters who, after a unanimous decision, submitted the above described motion to modify the bill.

Taking into consideration the new scope of activities and competences of the new judicial bodies it was necessary to apply the new statutory criteria to all new senior appointments, including the heads of the bodies.

The President of the Republic and the Parliament had to observe the statutory provisions during the recommendation and the election process, namely they could only recommend or elect persons who fit the statutory appointment criteria.

In the case of senior court office holders, including the President of the Supreme Court, the principle of judicial immunity must be enforced; the new regulation fully observes this principle by stipulating that the President of the Supreme Court must, following the cessation of this office, be appointed as a Chamber President at the Curia without the invitation of applications for the post. Therefore, only the title of senior office of the President of the Supreme Court was abolished, not his judicial employment relationship. The President of the Supreme Court maintained his position as judge with the legal successor of the Supreme Court as well as with the Curia, and was appointed as Chamber President without application.

3. Please explain the reasons for the dismissal of the last President of the Supreme Court, Mr. András Baka, before the end of his term. Please specify whether he is currently considered suitable or not to serve as President of the newly established Curia, given that he has not served for five years as a judge in Hungary.

The reasons for terminating the President of the Supreme Court have been set forth in the answer to Question 2. As discussed, while nominating and electing the president of the Curia, the President of the Republic and the Parliament had to observe the statutory criteria, and accordingly, they could only nominate or elect a person who fits completely these statutory criteria.

4. Please indicate the reasons for granting numerous important powers to the President of the National Judicial Office. Please provide in addition a detailed description of the competences of the National Judicial Office as a body, as well as of the National Council of Judges.

a) The system introduced by the Act on the Organisational and Administrative Structure of Courts and the Act on the Legal Status and Remuneration of Judges passed in 1997 was heavily criticised on a number of issues. The reform implemented at the time, delegated the powers of central court administration to the National Council of Justice, a body independent from the executive power.

The National Council of Justice was initially comprised of 15 members: 9 judges, elected by the judges themselves, 5 external delegates (Minister of Justice, Chief Prosecutor, Chair of

Chamber of Attorneys and 2 Members of Parliament) and the President of the Supreme Court as the President of the Council.

The National Council of Justice and its composition provoked debates at an early phase:

- Practice confirmed that the plenary conferences of judges delegated their leaders, typically the presidents of county courts, to the National Council of Justice in respect of whom the National Council of Justice exercised the authority and the employer's rights. Concerns therefore emerged that in fact court leaders monitored themselves.
- Some even criticised the National Council of Justice on the grounds that, in the absence of restrictions on the possible re-election of members, some judges were sitting on the Council during several cycles.
- Meeting only once a month, the body was unable to make decisions effectively especially in situations requiring immediate action.
- The positions of the President of the National Council of Justice and the President of the Supreme Court were considered incompatible as both offices are full-time jobs, and it was difficult to reconcile the administrative duties of the President of the National Council of Justice with the professional role of the President of the Supreme Court.
- The members of the National Council of Justice could not fulfil their duties properly in addition to their judicial work.
- One of the most prominent critical remarks of studies examining the operation and administration of the judiciary was the deficiencies regarding the transparency of the administration and the organisation of courts,

The heaviest criticism concerned the process of appointment of judges. Although the application procedure and the process of assessment were formally codified, the criteria for the evaluation of judges was not regulated and therefore considered as overly subjective. In addition, the judicial councils assessing the applications did not have the obligation to justify their decision. After all applicants had been heard by the judicial councils, the selected applicant was nominated by the President of the court who was not bound, however, by the opinion of the judicial council and likewise had no obligation to justify his/her decision. Applications were eventually decided on by the National Council of Justice, and it presented the appointment to the President of the Republic for nomination. The National Council of Justice was likewise not bound by the recommendation of the President of the court, however, in practice it almost always affirmed the person nominated by the President of the court.

In addition to the above, the issue of duration of the proceedings, the disproportionate allocation of cases and the regional concentration of protracted cases emerged as the most significant problems of the administration of justice in Hungary.

The reform process aiming at creating an efficient administration of justice started late 2010 when the Parliament adopted an amendment to the Act on the Organisation and Administration of the Courts, whereby some of the competences of the National Council of Justice were transferred to its President. However, further steps were needed, in particular to separate professional legal and administrative direction, as well as to transfer the tasks of central administration to a new responsible person.

When the new Cardinal Act on the Organisation and Administration of the Courts (Act CLXI of 2011) was drawn up, the main aim was to better assign responsibility for decisions and to increase accountability. It was thought that the person responsible for central administration should be familiar with the operational mechanisms of the judiciary. That is why the tasks of central administration of the judiciary were transferred to the President of the National Judicial Office who generally has extensive court practice. During the drafting of this Act the full enforcement of the fundamental principle of independence of the judiciary was taken into account since, due to the country's historical past, the Hungarian public opinion is particularly sensitive to this issue. Legislators were aware that the independence of the court system of the executive is best served by a separate and independent administration model for the courts. In addition, regulatory mechanism had to be identified which ensure the efficiency within the central court administration.

The central administration of courts, a function that is independent of the legislative and executive powers, is supervised by the President of the National Judicial Office and subject to strict control. The President of the National Judicial Office is elected by Parliament with a two-thirds majority, following a nomination by the President of the Republic, from judges with a judicial service time of at least 5 years.

According to the above, the President of the National Judicial Office has administrative powers while the highest professional leader is the President of the Curia. Pursuant to this arrangement, the function of President of the supreme judicial organ, the Curia, and that of Head of the Court Administration, is held by two different individuals. This arrangement has created a clear system where substantive legal and administrative powers are duly separated.

b) The administration of courts is a complex task, whereby the administrative powers are divided between several persons and organs as follows.

The tasks related to the central administration of courts lie with the President of the National Judicial Office and with the National Council of Judges. The administrative responsibilities that emerge in respect of individual courts are fulfilled by the leaders of the given court (President, Vice-President, Head of collegium, Deputy Head of collegium, Head of Unit, Deputy Head of Unit, Chamber President) as well as by the bodies that operate at the level of the individual courts (plenary conference of judges, division, and judicial council).

The following elements limit the exercise of powers by the President of the National Judicial Office:

- Monitoring and supervisory role of the National Council of Judges,
- Removability,
- Publicity of activities.

Only judges may become members of the National Council of Judges; its members are the President of the Curia and 14 judges who are elected by judges from among them. The National Council of Judges has central administrative duties such as awarding titles to judges, appointing members and presidents of service courts and supervising procedures related to the financial disclosure of judges. Furthermore, it oversees the central administrative activities of the President of the National Judicial Office, supervises the financial operation of courts, delivers opinions on budgetary proposals and takes part in the application proceedings for judicial and senior judicial posts in cases determined by law.

Removal of the President of the National Judicial Office from his/her office may be initiated, on the one hand, by the President of the Republic (as an entity that is independent of the other branches of power and has the right to nominate the President of the National Judicial Office) and, on the other hand, by the National Council of Judges. It is the Parliament which elects and decides on the removal from office of the President of the National Judicial Office.

One of the most important requirements of the operation of courts is transparency. The President of the National Judicial Office informs the National Council of Judges semi-annually and the President of the Curia and the Presidents of courts of appeal and tribunals annually about his/her activities and reports to Parliament once annually on the general state of courts and the administrative activities of courts.

The National Council of Judges functions as a system of checks and balances in respect of the President of the National Judicial Office through its supervisory and oversight role as described above. However, not only the National Council of Judges functions as a checks and balances system in respect of the President of the National Judicial Office but also court leaders and court bodies in the course of the exercise of the various powers of the President of the National Judicial Office. (As the Curia has a special status, the President of the National Judicial Office has only limited administrative powers in its respect.)

In order to ensure an even more complete coherence of the acts on the judiciary with the international norms on the independence of judges and courts, the Hungarian Government requested the Venice Commission of the Council of Europe to give its opinion on these acts. On the basis of the opinion of the Venice Commission the Hungarian Government submitted to the Parliament the legislative proposal no. T/6393 on the amendment of Act CLXI of 2011 on the Organisation and Administration of Courts and Act CLXII Of 2011 on the Legal Status and Remuneration of Judges on 16 March 2012. The draft is currently under consideration by Parliament.

The legislative proposal addresses among others the concern of the Venice Commission that all essential administrative powers are vested in a single person (the President of the National Judicial Office). In order to strengthen the role of the National Judicial Council, the legislative proposal transfers certain powers to the National Judicial Council.

On the one hand, the National Judicial Council is given extra central administrative powers:

- it may order, in the public interest and as a matter of urgency, the adjudication of certain cases of special importance
- it specifies the principles of the designation of courts in order to ensure that cases are decided within a reasonable period of time

On the other hand, staff management competences are transferred from the President of the National Judicial Office to the National Judicial Council:

- the National Judicial Council specifies the principles that lie at the basis of differences in ranking of candidates in connection with the vacancies for judges,
- the National Judicial Council's agreement is necessary for decisions of the President of the National Judicial Office (or the President of the Curia) to derogate from the ranking ,

- the consent of the National Judicial Council is also necessary for the appointment of court leaders in cases, when the candidate has not obtained the support of the majority of the judicial board, and
- the National Judicial Council may grant derogation in case of a conflict of interest between a court leader and his/her relative adjudicating in an organizational unit under the leadership of the court leader.

In the future, the President of the National Judicial Office – on the basis of principles specified by the National Judicial Council – may still disregard the ranking of the judicial council in favour of the candidate ranked second or third. However, the National Judicial Council has a veto. In that case, the President of the National Judicial Office either confirms the candidate ranked first, or makes a new proposal to the National Judicial Council, or declares the application unsuccessful.

The President of the National Judicial Office shall report for each case on the application of the above principles. Therefore, the proposal not only limits the discretion of the President of the National Judicial Office, but at the same time also empowers the National Judicial Council to determine the criteria that will constitute an objective basis for the control of operation by the National Judicial Council.

The Parliament, when deciding on the above proposal, will also decide on the proposal for an amendment, tabled on 27 March 2012, prohibiting the reelection of the President of the National Judicial Office.

c) The central administrative competences are exercised by the President of the National Judicial Office. The National Judicial Office is the general successor of the Office of the National Council of Justice and has the same administrative structure. The independently administered National Judicial Office is led by its President.

The competencies of the National Judicial Office are as follows:

- prepare the decisions of the President of the National Judicial Office and ensure their implementation and fulfil the administrative tasks related to the operation of the National Council of Judges,
- if mandated, represent the President of the National Judicial Office and courts in court proceedings,
- manage the central personal register of judges and the financial part of the financial disclosure statements of judges, and
- carry out other tasks as prescribed by law.

5. Please explain the reasons for lowering the mandatory retirement age of judges, as well as provide the text of the legal provisions regulating this issue.

a) Under Article 26(2) of the Constitution, judges, with the exception of the President of the Curia, may serve until they reach the general retirement age.

Accordingly, the Hungarian Government considers the retirement of judges as part of a standard retirement policy, and has determined the upper age limit within this framework.

At present, Act XXII of 1992 on the Labour Code governs the private sector; this will be replaced as of 1 July 2012 by Act I of 2012. Both Acts provide that employers may terminate

the indefinite employment of employees qualifying as retirees without justification. Technically, this falls into the statutory category of ordinary notice, except that the employee concerned is not entitled to either severance pay or protection against termination. Act XXXIII of 1992 on the Status of Public Sector Employees governing the field of public services contains identical rules.

In harmony with the legislation concerning the status of civil servants and government officials currently in force, Act CXCV of 2011 on Public Service Officials – effective as of 1 March 2012 – qualifies the retirement of government officials as a termination of the employment relationship by notice. No justification is required for the termination of an indefinite legal relationship by notice. In these instances, officials are not entitled to either severance pay or protection against dismissal. Consequently, government officials are discharged if they reach the retirement age and have served the time required for a full retirement. In exceptional cases, the employer may continue to employ government officials on request or out of official interests; however, this option is based on the discretionary ad hoc decision of the employer, and also in this case, the employment relationship may not be extended beyond the age of 70.

Unlike employees working in other sectors, judicial officials were previously governed by more preferential rules. These rules allowed judges and prosecutors to remain in office also beyond the completion of the retirement age. At the same time, these rules were not uniform even within the judicial system itself as judges and prosecutors were allowed to maintain their service relationships until the age of 70, with the difference that the Chief Prosecutor had the powers to terminate the service relationships of prosecutors upon the completion of the age of 65.

Therefore, individuals in the judicial system enjoyed positive discrimination while in other sectors, the employer had the right (and continues to have) to unilaterally terminate the employment of an individual that qualified as a retiree. In the case of judges (until the age of 70) and of prosecutors (until the age of 65), the employer had no such powers; by contrast, judges and prosecutors were free to decide whether they wished to retire or to remain active.

In the interest of achieving standardisation, also in the judicial system, Parliament decided to introduce uniform rules in respect of the legal consequences attached to reaching the retirement age. At the same time, the new regulation removes the privileges of the judicial sector, in particular, those of judges, for retirement purposes.

In other sectors, retirement (and the completion of a service time providing eligibility for a full pension) is a sui generis case of the termination of employment, which is enforced as a rule of thumb. Public service officials are no exception to this rule. It should be recalled in this context that the changes implemented in the last two decades primarily concerned civil servants and government officials having reached the retirement age, as a result of which there is now a balanced age structure in public administration.

b) The classical career path of judges working in the Hungarian court system may be described as follows. After graduation from law school, the candidate must complete a clerkship of three years and pass the bar exam, after which he will be appointed as a judicial secretary. He/She is then required to work in this position for at least one year before being able to apply for a judicial appointment. (As of 1 January 2012, the minimum age to be

appointed as a judge is 30, as a result of which court secretaries can only apply as of age 30) However, in practise the waiting period for judicial secretaries to be appointed as judges within the territory of the Metropolitan Tribunal is generally 2-2.5 years. In some courts in the provinces, having to wait for 5 or 6 years or more is not uncommon.

Most judges are appointed from within this new generation of judicial secretaries, "raised" within the court system. Applicants also include numerous candidates wishing to join the ranks of judges from other fields of the legal profession (such as prosecutors, attorneys). Due to the strict conditions related to applications, however, only a handful of them are successful. The high prestige of the judicial profession, the impressive remuneration of judges by Hungarian standards and the reliable career path make the judicial profession increasingly attractive to "outside" applicants. It is therefore generally easy to fill any vacant judicial position.

In the above context, it is also important to refer to the case law of the European Court of Justice. The Court pointed out on many occasions that the better distribution of job opportunities among generations is an aim that may justify the adoption of age-related rules applicable to employees – including, primarily, the reduction of the maximum age and the introduction of retirement age limits. Such measures aim at providing more opportunities for members of the younger generation, and at enabling young employees to progress more swiftly on their selected career paths.

c) Applying the general maximum age limits to the judicial profession also facilitates the planning of judicial vacancies. Previously, judges had the option of retiring after they reached the applicable retirement age. While some judges exercised this option, those remaining in active service had the option to change their minds and were able to decide to retire prior to reaching the earlier maximum age of 70 at any time. This created significant uncertainty in respect to the human resources policy of the courts. The new regulation facilitates the calculation of the expected dates of future vacancies at courts, thereby supporting both the short-term and long-term human resources policy of the courts.

d) It is clear from the above considerations that the benefits of regulation (providing jobs for younger generations, age-restructuring of courts and HR policy planning) substantially outweigh the possible individual disadvantages that may result from the "forced" retirement of judges already qualifying as retirees. In addition to the above benefits, the measures objected to by the Commission allow for a more efficient operation of the courts.

On the one hand, efficiency may be increased through the re-allocation of freed resources (for example, the higher salary of the retiring judge may be re-allocated to create positions for a younger judge – with a lower salary – and one or more judicial employees). There is indeed a need to create positions for judicial employees because currently, in Hungary, there are 29 judges for every 100,000 residents on average, which figure is far above the European average. The reason for keeping in place the excessive number of judges, is that they are required to perform various administrative tasks which are not closely related to the administration of justice. These tasks would better be assigned to administrative judicial personnel.

On the other hand, efficiency may also be increased through the elimination of geographical disproportions in the distribution of case loads. By distributing the judicial body more

proportionately over the country (i.e. the President of the National Judicial Office may assign the vacant position within one court to another under-staffed court), the operation of the entire judicial system will become more efficient.

6. Please specify the guarantees provided for ensuring an independent administration of the courts, as well as an impartial process of appointment, promotion and transfer of judges.

a) The President of the Republic, who is separated from other branches under the system of checks and balances, recommends the person to be elected to the president of the National Judicial Office. The nominee is heard by the Justice Committee of the Parliament and the National Council of Judges. The president of the National Judicial Office is elected with a two-thirds majority of the members of Parliament.

Only judges may be elected to the post of president of the National Judicial Office. A judge

- may not be a member of any political party,
- may not engage in any political activity,
- may not be a Member of Parliament, of the European Parliament, a local authority representative, a mayor or state leader under the Act on Central Administrative Bodies and on the Legal Status of Government Members and State Secretaries
- may, besides his/her office duties, only perform scientific and educational, training, referee, artistic, copyright, as well as proof-reading, language editing, and technical creation work as paid activities, provided this does not jeopardise or give the impression of jeopardising their independence and impartiality, or prevents them from fulfilling their official responsibilities.

The president of the National Judicial Office, within the scope of his powers related to the budget of the courts, prepares his/her proposal on the budget and its implementation as well as the report, which is submitted by the Government to the Parliament in accordance with the previous regulations, as part of the Act on the Central Budget and its implementation. Regarding the budget of the Curia, the president of the National Judicial Office must obtain the opinion of the president of the Curia.

b) General rules of the appointment of judges:

The new laws on the judiciary, which entered into force on 1 January 2012, did not fundamentally change the process of becoming a judge. Already in 2010, the Government introduced a reform of the procedure of the appointment of judges to the profession's satisfaction. The new rules only changed this procedure to the extent necessary to address the organisational changes; the mechanism and the guiding principles of the system remained the same.

Judicial positions are still filled through applications. The judicial application procedure is structured as follows: the President of the court, to whom the application was submitted, may interview applicants. Within 15 days after the expiry of the deadline for the submission of applications, the judicial council of the respective court interviews the applicants and ranks them according to the scores obtained. (The term "judicial council" refers to bodies operating within the Curia, courts of appeal and tribunals which are comprised of the judges of the given court and whose members are elected by the plenary conference of judges.)

The criteria for ranking are stipulated in detail in the Act on Judges and in Decree No. 7/2011 (III. 4.) of the Minister of Public Administration and Justice on the Detailed Rules of the Assessment of Applications for Judicial Positions and on the Scores Awarded upon the Ranking of Applications.

For the purposes of awarding scores, only the following criteria may be taken into consideration:

- the result of the professional evaluation of the term served as judicial clerk or judicial secretary or judge or, in the case of candidates with no judicial experience, of the evaluation of the previous employer,
- the duration of practice or service time following a successful professional law examination,
- the opinion of the collegium, in the case of candidates applying for senior judicial posts,
- the result of the professional aptitude test,
- the result of the professional law examination,
- academic degrees and qualifications,
- specialisation or any other (job-related) second or post-graduate degree,
- studies completed abroad following graduation,
- language skills,
- publications in the field of law,
- the result of the mandatory trainings and participation in optional training courses,
- other extra activities which may be taken into account for the purposes of the judicial post,
- the result of the interview conducted by the judicial council, and
- the opinion of the President of the district or the administrative and labour court at which the post is available.

The judicial council may only evaluate applicants based on the individual criteria (listed above) and within the score limits determined in the decree. The council ranks the applicants on the basis of the scores achieved.

The judicial council has to observe this order and forwards the ranking of applicants and the applications to the President of the court. If the President of the tribunal or court of appeal agrees that the highest-ranked applicant should fill in the position, he/she sends the rankings and the applications to the President of the National Judicial Office. The President of the court may, however, recommend instead the candidate ranked second or third but is required to justify such decision.

Applications are assessed by the President of the National Judicial Office (in case of the Curia, by the President of the Curia). If the President of the National Judicial Office agrees that the highest-ranked applicant should fill the position, he/she presents the applicant to the President of the Republic for appointment. According to legislative proposal No T/6393, the President of the National Judicial Office – on the basis of principles specified by the National Judicial Council – may still differ from the ranking of the judicial council in favour of the candidate ranked second or third. However, this decision may be vetoed by the National Judicial Council in which case the President of the National Judicial Office either proposes the first candidate for nomination, or makes a new proposal to the National Judicial Council, or considers the entire process as unsuccessful.

If the post is awarded to a person already holding a judicial position, such nomination does not need to be presented to the President of the Republic for appointment but action must be taken for his/her transfer to the new post. If the candidate is not yet a member of the judiciary, a nomination by the President of the Republic is required.

In summary, the President of the National Judicial Office may only exercise his/her powers related to the consideration of applications in cooperation with senior court office holders and court organisations (judicial council, collegium), based on their findings. The President of the National Judicial Office may not arbitrarily decide on the filling of positions; his/her decision is limited by the ranking determined by the relevant judicial council (comprised of judges) on the basis of an objective, statutory system of criteria and scores, and the principles specified by the National Judicial Council. Deviating from that ranking is only permitted within a limited scope and subject to agreement by the National Judicial Council (which has the right to veto). In this way, Hungarian law provides for a transparent selection system which is based on objective legal criteria and which provides appropriate opportunities for applicants from both within and outside the judicial organisation.

Finally, it must be emphasized that judges are not appointed by the President of the National Judicial Office but by the President of the Republic.

c) Hungarian law fully respects the principle of the prohibition of dismissal of judges as a fundamental value and the new statutory rules, similar to the ones previously in force, guarantee the enforcement of this principle. Judges may only be dismissed according to the procedure and for the reasons determined by law. The dismissal of a judge is not decided upon by the President of the National Judicial Office but by a special court (Service Court, both first and second instance), or in certain cases, by the National Council of Judges.

d) Long-term secondment abroad is only possible with the consent of the judge. Therefore, the principle of prohibition of dismissal is not harmed.

e) The temporary secondment means that the judge is assigned cases received by a court other than his/her post on a temporary basis, for a fixed term, with or without a change in the judge's post. Indeed, temporary secondment does not automatically involve a change in the judge's place of work as temporary secondment may also be implemented in such a way that the relevant documents are transported to the seconded judge.

The following persons are entitled to initiate temporary secondment:

- the President of a tribunal, if it occurs between courts under the jurisdiction of the tribunal,
- the President of the National Judicial Office, in the case of other instances of temporary secondment. However, in such case, the President of the court of appeal or tribunal concerned must be consulted.

Temporary secondment may only be ordered in the interest of the service or to further the judge's professional development. The equitable interests of the judge should always be taken into consideration. Temporary secondment is considered in the interest of the service e.g. if a judge is seconded to a court to process a backlog of cases, while temporary secondment serves to promote the judge's professional development e.g. if a judge is seconded from an inferior court to a higher court as a member of a chamber of second instance for the purpose of the administration of justice.

Judges may only be seconded without their consent once every 3 years and for maximum 1 year; however, under the Act on the Legal Status and Remuneration of Judges, a secondment to a service post in a place other than the judge's place of domicile, residence or service post is not allowed if family circumstance (e.g. raising a minor as a single parent) or the judge's state of health (e.g. long-term illness) require otherwise. Such special circumstances are specifically defined in the above mentioned act.

Temporary secondment beyond the scope described above is only permitted with the judge's consent, which must be obtained by the person authorised to order the temporary secondment.

The above rules were laid down by the former Act on the Legal Status and Remuneration of Judges and have been in force for more than a decade. In addition, the new act provides for additional guarantees to protect against arbitrary secondment such as the requirement to justify temporary secondment and the stipulation of the (e.g. family) circumstances that prevent temporary secondment.

Another special case is where the job advertisement regarding the judge's position states that the position in question is a position from which the judge may be seconded to another court for a fixed period. In this case, the candidate applying for this position automatically consents to the temporary secondment. This possibility only arises to address issues of disproportionate caseload allocation between courts, and the time constraints set forth in the advertisement must be observed. A judge who is awarded such a post is entitled to a special secondment supplement.

Also in the case of temporary secondment, the President of the National Judicial Office has no exclusive decision-making power since he/she must consult the President of the court of appeal or tribunal concerned. Neither is there any concern regarding the prohibition of dismissal in the case of temporary secondment, as it does not affect the judge's status.

f) A judge may be transferred if the judge submits an application for a position at a court other than his/her service post and is awarded the post on the basis of his/her application. Therefore, transfer is a mere administrative act serving registration purposes and based on the judge's decision and will, and documents the "movement" between two courts.

The only other case of transfer of the judge is when the court, to which the judge is assigned, has been dissolved or its competence or jurisdiction has been reduced to a degree where the employment of the judge can no longer be continued. In this case, in order to protect the interests of the judge and to prevent the termination of his employment, the President of the National Judicial Office is obliged to offer another judicial post, which the judge is free to accept or reject. The above-mentioned rules to provide further protection for the judge are also applicable. The principle of the prohibition of dismissal is also enforced in the case of transfer as it is made on the basis of the judge's decision.

7. Please describe the powers of the Prosecution Service in the Republic of Hungary in relation to the possibility for prosecutors to select the court in which a particular case is heard and the presiding judge.

According to article 11 (4) of the transitory regulations of the Fundamental Law of Hungary (dated December 31, 2011) "(4) In order to enforce the fundamental right to a court decision within a reasonable period of time ensured by Article XXVIII(1) of the Fundamental Law, the

Supreme Prosecutor, as the leader and director of the prosecution service which operates as a contributor to the administration of justice under Article 29 of the Fundamental Law, may instruct that charges be pressed before a court other than the court of general competence but with the same jurisdiction to balance case loads between courts. This provision shall not affect the right of the President of the National Judiciary Council under article 11 (3) of the above mentioned transitory regulations, or the right of certain prosecution services to press charges before any court which operates within their area of competence.”

Accordingly, an ordinary prosecutor may not choose either court or judge. The choice belongs to the Supreme Prosecutor, and only with respect to the choice of court. The rules, as laid down by the president of the court to which the case is assigned, will further determine which judge or panel of judges will hear the case. Both the accused and the defender may submit a motion for disqualification on the grounds of prejudice in either stage of the proceedings or against either authority or its members participating in the case.

The Criminal Procedure Act has several general and specific jurisdiction rules, which have been amended by the transitory regulations of the new Fundamental Law. Under the new rule, a case may be assigned to a specific court with the objective of finishing the proceedings within reasonable time or to speed up its handling, provided this court has the same level of hierarchy, is constructed similarly, has the same competences and proceeds according to the same rules as the court which would ordinarily hear the case. Keeping criminal proceedings from dragging on for several years, which happens frequently, is not only a matter of public interest, but also to the benefit of the accused. Undoubtedly, it is more advantageous for the accused not to be under criminal proceedings for too long. In order to ensure that cases are dealt with within reasonable time, it was necessary to amend the rules of competencies and to introduce the possibility of involving less encumbered courts.

The above rule also aims at complying with international standards. Indeed, according to article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome, November 4, 1950 “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” The European Court of Human Rights has condemned Hungary on several occasions for not meeting this requirement, which has prompted the legislator to address this issue.

In Hungary all judges are independent and may not be instructed; their judgment is based on the laws and their professional conviction. This independence may lead to different decisions depending on where the prosecutor indicts the accused. Likewise, the possibility by the Supreme Prosecutor to assign a case to a specific court, should not raise doubts in connection with the impartiality of the court since the assigned court will equally be lead by the principle of independence.

Under the legal systems of several other countries where, as in Hungary, the prosecution service is a separate and independent part of the judiciary , (for example Germany, Sweden, Denmark), the Prosecutor may submit the indictment to a different court than the one to which the case should ordinarily be assigned to according to competence and jurisdiction rules. So far, the European Court of Human Rights has not objected to such laws.

It is to be noted that Act I of 1973 on the criminal procedure which was amended after the regime change (1989) in order to allow the prosecutor to submit cases to a county court instead of the local court having jurisdiction, on the basis of the extraordinary significance of the given case. In such instances, the indictment itself was the basis of the jurisdiction of the court. This regulation was applied in several cases of special interest; however, the issue of this being contrary to the constitution was never raised.

Also, the previous Act on the Organization and Administration of Courts (namely paragraph 33/A (1) of 1997 act LXVI) was amended to allow the Supreme Court, from January 7, 2011 onwards, to appoint another court having the same competence, if the judging of the case or a certain group of cases arriving at the court in a certain period of time could not be assured otherwise within reasonable time because of the extraordinary and disproportionate workload. This rule is included in the present organizational act and also the procedural acts.

8. Please explain how the proposed amendments in the law and the new Constitutional provisions in the field of the administration of justice are compatible with international human rights standards regarding the independence of judiciary.

Actually the Fundamental Law consists of only one provision regarding the administration of courts: according to article 25 (5) "the organs of judicial self-government shall participate in the administration of the courts". This provision is embodied through the plenary sessions of judges which perform the same professional and administrative (election of delegates) activities which they performed under the previous Court Administration Act.

With regards to the administrative model of the judiciary, there are no international standards. The documents of the UN, the Council of Europe and the International Association of Judges, as well as international conventions proclaim the requirement of, and the right to, independent and impartial courts of justice, but they contain no provisions regarding their administration. [See the Rome Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, published by Act XXXI of 1993; the International Covenant on Civil and Political Rights adopted by the General Assembly of the UN at its XXI session of 16 December 1966 and published by Law-decree No. 8 of 1976; Recommendation no. R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges; and the European Charter on the Statute for Judges.] The court administration system established in Hungary, in the form as described above, assures entirely the complete independence of judges and courts.

