

# Defective Judicial Appointments in Hungary

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In recent years, a series of irregularities have been revealed in relation to judicial appointments in Hungary which have compromised judicial independence and raised serious rule of law concerns. These problems have been highlighted by various domestic and international stakeholders, and issues in the judiciary have become a core chapter in negotiations between Hungary and the EU within the framework of several rule of law mechanisms. The latest round of debates revolves around judicial appointments made by Chief Justice Varga to the Supreme Court which again raise the problem of institutional manipulation of the rules safeguarding the independence of the judiciary.

For many years, controversial appointments concerned primarily court executives, especially court presidents who wield very wide powers over the working conditions of the judiciary and individual judicial careers. The number one perpetrator was Tünde Handó, the President of the National Office for the Judiciary (NOJ) from 2012 to 2019, who regularly hacked the appointment process by declaring calls unsuccessful, thereby bypassing the powers of judicial self-governing bodies and appointing court executives at her own discretion. She also established a practice of disguised promotion in which favoured judges could reach senior offices without participating in ordinary, competitive appointment processes. As the President of the NOJ was elected by the Parliament and had close personal ties to the ruling elite, the judicial leadership remade by her had [become aligned with](#) the political expectations of the governing parties.

After various scandals within the central court administration, Tünde Handó was transferred to the Constitutional Court by the Fidesz-KDNP majority. Meanwhile, EU institutions have put increasing pressure on the Hungarian government to strengthen the guarantees of judicial independence and eliminate abusive practices concerning selection, promotion, and case allocation. The [2022 EU Rule of Report](#) reiterated that Hungary should strengthen the role and powers of judicial self-governing bodies, especially the National Judicial Council (NJC) and local judicial boards in order to ensure real institutional checks on court executives, in particular on the President of the NOJ and the Chief Justice. But looking at these very problematic fields, we can see that nothing has really changed.

Today, when billions of EU funds allocated to Hungary are at risk, one would expect that the regime shows some restraint and seeks to make some concessions to the European Commission, for instance in terms of the functioning of the judiciary. The most recent developments in judicial appointments, however, indicate that autocratic tendencies still dominate in court administration.

Although Handó had left for the Constitutional Court, scandals still abound within the judicial organisation, mostly attributed to the new Chief Justice, András Zs. Varga. Previously, he was a judge of the Constitutional Court elected only by MPs of the governing parties, and his election as Chief Justice of the Supreme Court (Kúria) already sparked [serious objections](#) for the heightened politicization of the process, and also for his lack of professional experience as a trial judge and a court executive. A few examples from the very recent past can highlight his controversial activity as the head of the Hungarian judiciary.

## **A strained relationship with the NJC**

Since he took office as Chief Justice, he has been waging a war against the judicial council for institutional and personal reasons. In an [academic paper](#) published in 2020, he already urged the reform of the judicial council by attacking the very concept of judicial self-government, depicting it as something that brings close judges to political activity and that is detrimental to the independence of the judiciary. In Hungary, despite its limited competences, the current NJC is the only fully autonomous body within the judicial organisation which operates as a meaningful check on the administrative leadership of the judiciary. In April 2022, Varga [established](#) a research group in the Supreme Court dedicated to the issue of the “institutional guarantees of judicial independence”. In the kick-off meeting, Varga argued that by establishing judicial councils, an era of uncertainty has arrived when the independence of judicial decision-making has been overshadowed by the independence of court administration; and the system has become politicised and determined by corporate interests.

Personally Varga cannot forget that the NJC overwhelmingly rejected his nomination as Chief Justice by a 13-1 vote, thereby causing a clear legitimacy deficit for him right before he took office. Although the Chief Justice is an ex officio member of the National Judicial Council (NJC), Varga boycotted the debates of the NJC on the new Code of Ethics, then challenged it before the Constitutional Court on the ground that its Preamble fails to make any reference to the Fundamental Law and provides a very broad understanding of judges’ freedom of speech. The new Code of Ethics now in force declares that “a judge can freely express her views also on the law, the legal system and on court administration, and in particular, she can publish, give lectures and teach.”

In 2024, the mandate of the current NJC will expire and a new council will be elected by the judges. There are legitimate fears that either the government will modify the rules on the composition or election of the members of the NJC, or as it already happened in 2018 the judicial leadership will exert undue pressure on their peers in order to prevent the subsequent establishment of an autonomous self-governing body.

## Irregular appointments in the Supreme Court

In recent years, a large number of vacancies in the Supreme Court were not filled through public calls and ordinary appointment processes, but by seconding judges from lower courts to do service in the top court. This practice was established by the previous Chief Justice Péter Darák, and was later justified by Varga with reference to the Covid-19 pandemic. Judicial secondment can jeopardise judicial independence, as seconded judges can be exposed to indirect pressure to meet the expectations implicitly required for a permanent appointment in the Supreme Court. Data on recent appointments [revealed](#) that a large number of seconded judges benefited from the secondment and were later appointed to the Supreme Court.

To fill the vacant offices with permanent appointments, Chief Justice Varga published many calls simultaneously, and candidates applied for several vacancies at the same time. According to the relevant law, it is the local judicial council consisting of judges which establishes a ranking among the candidates based on objective and subjective scores. The Chief Justice who is in charge of judicial selection to the top court either proposes the appointment of the candidate ranked first or suggests changes in the ranking and recommends the second or third candidate for appointment. In the latter case, justification for the change as well as the consent of the NJC is required.

It was the Chief Justice who determined the order for considering and deciding on the calls after the deadlines for application had expired. Also, he decided on which application shall have priority in cases where candidates applied for more than one vacancy. All these decisions lacked any transparent and objective criteria. In selecting the winner of the call, he followed the same pattern: if he appointed someone to a vacancy, he then removed the respective candidate from the other rankings where the candidate was typically ranked at the top. The removal of the already successful candidates from other rankings was the individual decision of the Chief Justice. It could have happened that a candidate originally ranked fourth (!) was finally appointed as the first three candidates already winning appointments for other vacant offices were removed from the list. However, according to the law, someone placed fourth can never be considered as a winner of the application process.

As a result of the abovementioned method, Barnabás Hajas, a former state secretary without any prior experience in the judicial bench who otherwise earned a shared second place in the application process, could also secure a seat in the Supreme Court by the decision of the Chief Justice. The opinion of the NJC was circumvented.

It was the NJC which discussed the 2021 judicial appointments to the Supreme Court. Members of the NJC raised several concerns about the decisions of the Chief Justice on judicial appointments during the discussion. At one point of the heated debate, Chief Justice Varga argued that he knew in advance the “verdict” of the NJC as it was also reflected in the not yet published Rule of Law Report of the European Commission. Finally, the NJC found that appointments did not comply with the relevant laws, were not transparent and foreseeable, and lacked objective

criteria. Varga responded in a [press release](#) denouncing the standpoint of the NJC as absurd, irresponsible, arbitrary and devoid of any factual basis, also labelling it harmful for its possible impact on the stance of the European Commission against Hungary. The Chief Justice argued that no changes were made in the ranking, so the consent of the NJC was not required.

While the relevant legal framework has indeed left several questions unanswered in relation to the appointment process, the arguments of the Chief Justice are unconvincing as in many instances, he acted arbitrarily and not in accordance with the law.

## **Judicial appointments elsewhere – also a family business?**

During the summer, a further appointment scandal was revealed first by international press and then in detail by the Hungarian Helsinki Committee, in which the wife of the Chief Justice was affected. The problem was very similar to what we have already got used to in recent years' court administration: the selection of a court executive, here a head of a judicial panel, has raised concerns. Heads of judicial panels are appointed by court presidents to an indefinite term and belong to the professional leadership of the Hungarian judiciary. The judge concerned has been appointed as head of panel in a regional court of appeal, despite her colleagues supporting the other candidate by a wide margin. According to the leaked documents of the application process, only 14 out of 44 judges supported the wife of the Chief Justice, while her rival received 36 'yes' votes from her peers. Although the opinion of the judges does not bind the president of the court in the application process, the decision clearly ignored the professional standpoint of the judges.

In order to create an uneven playing field in the application process, the president of the court determined the requirements in the call in a way that was tailored to and therefore favoured the wife of the Chief Justice. The call stressed the importance of previous experience in court administration, which could have been fulfilled by the wife of the Chief Justice easily as the president of the court gave her a temporary mandate as head of panel before publishing the call. Deficits in the appointment process are aggravated by the fact that the panel over which the wife of the Chief Justice presides decides on politically sensitive cases on appeal – eg. cases against pro-government news outlets.

## **Conclusion**

Irregularities in judicial appointments can not only undermine the legitimacy of the top court and public trust in it but can also cause troubles for Hungary before international tribunals, especially before the Strasbourg Court which has argued in [Ástráðsson v Iceland](#) and several decisions regarding Poland that deficiencies in the appointment processes can mean that a court no longer meets the standards of a "tribunal established by law".

The problem resonates with the perception of Hungarian judges: 52% of the respondents in the recent [ENCJ survey](#) on judicial independence claimed that appointments to the top court are not solely merit-based, but might be affected by “other” factors. (The EU average is 20%.) A large number of the Hungarian respondents pointed to the same problem in relation to initial selection of judges and to decisions about career advancement. These problems are quite embarrassing as judicial selection is the cornerstone of judicial independence.

The top echelon of the Hungarian judiciary has already been occupied by the governing parties through politicized judicial appointments which provides for the government a less salient but effective means for exerting political control over the administration of justice. These developments are particularly dangerous for judicial independence in a highly hierarchical and apolitical judiciary where submissive attitudes are more rewarding for career advancement than autonomy and assertiveness.

In the course of the conditionality mechanism, whatever commitments the Hungarian government is willing to make to the European Commission, it will not make any difference to the current state of judicial independence. It seems that the government has consolidated its power and influence over the judiciary. Despite the intensifying pressure on the NJC, it vigorously stands for the independence of the judiciary so international institutions should closely monitor the subsequent developments in judicial self-government, especially the 2024 election of the new NJC.

