



HUNGARIAN
HELSINKI
COMMITTEE

BACKGROUND PAPER

on Systemic Deficiencies of the Legal Framework and Practice of the Secondment of Judges in Hungary

6 September 2022

I. INTRODUCTION

Secondment (in Hungarian “*kirendelés*”) is a **measure of court administration that substantially changes the legal status of the individual judge**. It practically entails the transfer of the judge concerned from one court to another, as a result of which seconded judges may be ordered to hand over their cases entrusted to them and serve at a significantly higher or lower tier within the ordinary court system. Although secondment is presumed to be temporary by nature, due to the lack of adequate guarantees in the Hungarian legal framework, it may last for several years. The absence of safeguards against arbitrary application creates a loophole in the ordinary line of judicial career enabling political interference with the status of individual judges and a possibility to influence the outcome of individual cases. The practice of secondment and the underlying legislation create a number of rule of law deficiencies that jeopardize the independence of the judiciary in Hungary.

Below we summarize the most important breaches of the principles of rule of law arising with respect to the secondment of judges. For the purposes of this background paper, we only deal with the secondments that fall within the discretionary power of the President of the National Office for the Judiciary (**NOJ President**).¹ In all cases we provide (A) a description of the concrete rule of law concern [connected to Article 2 of the Treaty of the European Union (**TEU**) and Article 2 of Regulation 2020/2092² (**Conditionality Regulation**)]; (B) concrete examples illustrating the systemic problem (C) relevant sources of recognised institutions warning of the breach of the rule of law [as required by Article 6 (3) of the Conditionality Regulation] and (D) recommendations regarding corrective measures to be adopted to eliminate the breach.

The present background paper deals with systemic deficiencies of the legal framework and the practice of secondment of judges in Hungary. The concrete examples included in the background paper aim to illustrate the abstract concerns raised. None of the examples provided are intended to raise doubts regarding the independence and impartiality of the individual judges affected by these measures or to erode public trust in sitting judges or the judgments they deliver. For that reason, the present background paper refers to individual judges in an anonymised manner.

¹ According to Article 31 (1) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges (the **LSRJ**): “A judge may be seconded by the president of the regional court, if the secondment takes place between a regional court and a district court or between district courts operating within the territory of the same regional court. In all other cases the NOJ President shall be entitled to second a judge.”

² Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget

II. WHY THE SECONDMENT OF JUDGES BREACHES RULE OF LAW PRINCIPLES IN HUNGARY?

- 1) **Irremovability of judges is not guaranteed at a constitutional level.** Decisions on the secondment of judges are fully left to the discretion of administrative leaders. This jeopardizes the independence of the judiciary and **leads to a mass application of secondments** [see **section III.1.** below].
- 2) **No objective criteria of secondments are established by law.** The legislation does not provide for criteria narrowing the discretion of the NOJ President. Neither criteria for applying the legal basis of secondment, nor the designation of the receiving court, the selection of the seconded judge or the term of the secondment are established by law. This is in breach of the principle of legality and **allows for abusive application of the discretionary powers.** [see **section III.2.** below]
- 3) **The discretionary powers of the NOJ President are not surrounded by procedural guarantees.** This is in breach of the principle of good administration and allows for the abusive application of the rules of secondment, inter alia by creating a **disguised probationary period at higher court positions** [see **section III.3.** below].
- 4) **The legislation allows for involuntary secondments** to reduce the excessive workload at receiving courts. This is against the principle of irremovability, even if not applied in practice [see **section III.4.** below].
- 5) **The NOJ President is not obliged by law to state the reasons for his/her decisions.** This is in breach of the principle of good administration and in practice means that none of the decisions delivered by the NOJ President on secondments are reasoned [see **section III.5.** below].
- 6) **The decisions of the NOJ President lack sufficient democratic accountability** and therefore arbitrary application of the law and abusive practices cannot be contested [see **section III.6.** below].

III.1. IRREMOVABILITY OF JUDGES IS NOT GUARANTEED AT A CONSTITUTIONAL LEVEL

(A) The systemic rule of law issue: breach of the principle of legality

The irremovability of judges is an important aspect of judicial independence,³ yet the **Fundamental Law** (the constitution of Hungary) **does not expressly guarantee the irremovability of judges.**⁴ Instead, it leaves to cardinal laws to detail the legal status of judges⁵ and to define the reasons and the procedure for removing a judge from office.⁶ Based on this constitutional authorisation, the rules governing the secondment of judges are set out by cardinal laws.⁷ Nevertheless, the **provisions on secondments are too vague and general,**⁸ therefore – contrary to the principles of legality - **they do not define with sufficient clarity the lawful limits of secondment.**

In fact, while the Fundamental Law leaves it to cardinal laws to regulate the terms of secondment, the provisions of the cardinal law practically delegate further the power to decide on secondments to the NOJ President.⁹ **By this chain of authorisations, the constitutional requirement – according to which judges can only be removed from office in accordance with the reasons and procedure set out by a cardinal law – is in practice reduced to a resolution taken by the NOJ President with full discretion** in a process lacking procedural guarantees against arbitrary practices.

As described below, **the Hungarian legislation on the secondment of judges is in breach of the principle of legality**¹⁰ as it does not sufficiently delimit the powers conferred to administrative leaders of the judiciary in taking decisions on secondments, leaving a wide margin for arbitrary application of discretionary powers. The legislation lacks substantial and procedural guarantees creating a regulatory environment that is prone to be misused. The deficiencies in the regulation of secondment jeopardize one of the major factors¹¹ that support the independence of the judiciary: the principle of irremovability of judges.

³ See: CDL-AD(2012)001 § 76. The irremovability of judges and security of tenure are recognised as fundamental guarantees of judicial independence. See: Council of Europe, European Charter on the statute of judges, 8-10 July 1998, DAJ/DOC (98) 23, https://www.icj.org/wp-content/uploads/2014/06/European-Charter-on-Statute-of-Judges_EN.pdf (hereinafter: **Charter on the Statute of Judges**) point 3.4; Council of Europe Committee of Ministers, Recommendation CM/Rec(2010)12, Judges: independence, efficiency and responsibilities, 17 November 2010 <https://rm.coe.int/16807096c1> (hereinafter **2010 Recommendation**), points 49 to 52; Council of Europe Consultative Council of European Judges (CCJE), Magna Carta of Judges (Fundamental Principles), 17 November 2010, CCJE (2010)3 Final, <https://rm.coe.int/16807482c6> (hereinafter: **Magna Carta**) point 4; International Bar Association, Minimum Standards of Judicial Independence, 1982, https://www.icj.org/wp-content/uploads/2014/10/IBA_Resolutions_Minimum_Standards_of_Judicial_Independence_1982.pdf (hereinafter: **IBA Minimum Standards**) point 22; United Nations, Basic Principles on the Independence of the Judiciary, 1985, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> (hereinafter **UN Basic Principles**) point 12; International Association of Judges, Universal Charter of the Judge, revised 2017, https://www.unodc.org/res/ji/import/international_standards/the_universal_charter_of_the_judge/universal_charter_2017_english.pdf Article 2-2.

⁴ According to Consultative Council of European Judges (CCJE), Opinion No. 1 on standards concerning the independence of the judiciary and the irremovability of judges (2001) „*The irremovability of judges should be an express element of the independence enshrined at the highest internal level.*”

⁵ Article 25 (8) of the Fundamental Law.

⁶ Article 26 (1) of the Fundamental Law.

⁷ The LSRJ and Act CLXI of 2011 on the Organisation and Administration of Courts (the **OAC**).

⁸ Articles 31-33 of the LSRJ and Article 76 (5) h) and 151 (1) a) of the OAC.

⁹ Article 31 (1) of the LSRJ and Article 76 (5) h) of the OAC. For the purposes of this background paper we only deal with the powers conferred to the NOJ President.

¹⁰ The principle of legality requires state actions to be in accordance with and authorised by law. “*A basic requirement of the rule of law is that the powers of the public authorities are defined by law. In so far as legality addresses the actions of public officials, it also requires that they have authorisation to act and that they subsequently act within the limits of the powers that have been conferred upon them, and consequently respect both procedural and substantive law.*” See: European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, CDL-AD(2016)007rev, 18 March 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e) (hereinafter: **the Venice Commission’s Rule of Law Checklist**) § 45.

¹¹ European Commission for Democracy through Law (Venice Commission), Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, CDL-AD(2012)001, 19 March

(B) The factual consequence: mass application of secondments

The factual consequence of the insufficient legislation and the lack of guarantees of the irremovability of judges is that **the practice of the secondment of judges in Hungary is characterised by mass application, moving a remarkable percentage of judges between courts** without meeting the core requirements attached to judicial transfers.

In 2020, more than 16% of the total number of judges were seconded; 38% of the total number of judges at the Kúria were seconded.¹²

In 2019, approximately 30% of the total number of judges were seconded; 16% of the total number of judges at the Kúria were seconded.¹³

In 2018, approximately 30% of the total number of judges were seconded; 41% of the total number of judges at the Kúria were seconded.¹⁴

In 2017, approximately 25% of the total number of judges were seconded; 34% of the total number of judges at the Kúria were seconded.¹⁵

For further information please see Annex 1 of the present paper detailing the numbers of secondments between 2017 and 2020. For year 2021, the NOJ President has not yet prepared his annual report, but according to the members of the ad hoc Committee of the National Judicial Council (NJC) (on the Committee's work see Section III.6. below), in total 137 secondments were ordered by the NOJ President in 2021, out of which 39 secondments took place at the Kúria (the apex court of Hungary).¹⁶

(C) Relevant sources from recognised institutions regarding the unsatisfactory level of regulation

The unsatisfactory level of regulation has been criticised from the first moment since the Fundamental Law was adopted. In 2011, the Venice Commission claimed that *“the new Constitution only establishes a very general framework for the operation of the judiciary in Hungary, leaving it to cardinal law to define the detailed rules [...] This part of the Constitution also contains rather vague and general provisions.”*¹⁷ In 2012, the Venice Commission repeated the above concerns concluding that *“the level of regulation of judicial issues in Hungary seems to be unsatisfactory”*¹⁸, and that *“[the cardinal laws governing the legal status of judges and administration of courts] must be considered against the*

2012, [https://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)001-e.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2012)001-e.aspx) (hereinafter: **CDL-AD(2012)001**) § 14. *“Major factors that support the independence of judges include a guaranteed term of office, the principle of irremovability and freedom to decide.”*

¹² Taking into account the total number of judges as reported by the NOJ President as of 31 December 2020. See:

<https://birosag.hu/beszamolok/az-orszagos-birosagi-hivatal-elnokenek-2020-evi-beszamoloja> p. 28.

¹³ Taking into account the total number of judges [2926 judges] as reported by the NOJ President as of 31 December 2019.

See: https://birosag.hu/sites/default/files/2020-11/obhe_2019_eves_beszamolo-1.pdf p. 21.

¹⁴ Taking into account the total number of judges [2933 judges] as reported by the NOJ President as of 31 December 2018.

See: <https://birosag.hu/sites/default/files/users/%C3%89ves%20Besz%C3%A1mol%C3%B3%202018.pdf> p. 25. and 61.

¹⁵ Taking into account the total number of judges [2862 judges] as reported by the NOJ President as of 31 December 2017.

See <https://birosag.hu/beszamolok/az-orszagos-birosagi-hivatal-elnokenek-2017-evi-beszamoloja> p. 29.

¹⁶ See the minutes taken of the Meeting of the NJC of 6 April 2022, <https://orszagosbiroitanacs.hu/2022-04-06/> p. 8.

¹⁷ European Commission for Democracy through Law (Venice Commission), Opinion on the New Constitution of Hungary CDL-AD(2011)016, 20 June 2011, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)016-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e) § 102 et seq.

¹⁸ See: European Commission for Democracy through Law (Venice Commission), Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, CDL-AD(2012)001, 19 March 2012, [https://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)001-e.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2012)001-e.aspx) § 20. *“While some principles, as well as the general structure, composition and powers of the National Council of Judges and the National Judicial Office, should have been developed in the Constitution itself, most of the details could have been left to ordinary laws that do not require a qualified majority in Parliament.”*

background of a Constitution that provides insufficiently detailed guarantees for the independence of the judiciary.”¹⁹

(D) Recommendations - The Fundamental Law and the cardinal laws must expressly guarantee the irremovability of judges. Specific forms of judicial transfers, including all types of secondments (voluntary, involuntary secondments as well as secondments within the ordinary court system and outside) shall be thoroughly regulated exceptions in the legislation.

III.2. THE OBJECTIVE CRITERIA OF SECONDMENTS ARE NOT PROVIDED BY LAW

(A) The systemic rule of law issue: breach of the principle of legality and of judicial selection

Fundamental guarantees of the independence of the judiciary comprise that the terms of office of judges shall be established by law and the selection, nomination and career (appointment and promotion)²⁰ shall be based on objective criteria. In accordance with this principle, judges should be selected on the basis of merit and objective criteria not only to ensure public confidence in the judiciary but also to guarantee of the personal independence of judges. As stated by the European Court of Human Rights (ECtHR), “Objective criteria accompanied by a transparent process are regarded as the standard in the selection, appointment and promotion of judges as a safeguard of judicial independence and autonomy, so as to avoid arbitrary interference or the improper use of discretion. [...] The Court considers these **principles of international law on the appointment of judges to be equally valid in the case of their transfers.**”²¹ For this purpose, the ECtHR considered it necessary for the law to be couched in unequivocal terms, to the extent possible, so as not to allow arbitrary interferences in the appointment process, including by the executive.²²

Contrary to the above highlighted general standards of judicial selection, appointment and promotion of judges (also applicable to judicial transfers), **the Hungarian legislation on secondments does not provide for objective criteria with respect to secondments.**

The main deficiencies of the legislation are the following.

(1) The legislation does not provide for any objective criteria for assessing whether the legal grounds of secondment are in place. According to the law, judges may only be seconded for two reasons: (i) to reduce excessive workload at the receiving court or (ii) to facilitate their professional advancement.²³ As a major deficiency, the legislation does not define what excessive workload shall mean and especially, on the basis of what objective reasons the NOJ President shall opt for reducing the workload by secondment instead of creating a permanent new position at the court concerned. The lack of detailed provisions regarding the grounds of secondment leave it to the full discretion of the NOJ President to decide whether secondment is necessary without the possibility to control whether the decision was reasonable and justified regarding its merits.

(2) The legislation does not provide for objective criteria for the selection of seconded judges. There is no rule for establishing the pool of judges to be seconded and for selecting seconded judges from the pool. In case of secondment for the purpose to reduce excessive workload, nothing guarantees that the seconded judge in fact has the adequate professional experience needed and

¹⁹ See: European Commission for Democracy through Law (Venice Commission), Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, CDL-AD(2012)001, 19 March 2012, [https://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)001-e.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2012)001-e.aspx) § 17.

²⁰ See Charter on the Statute of Judges point 4; 2010 Recommendation point 44; Magna Carta point 5; IBA Minimum Standards point 26; UN Basic Principles point 13; Universal Charter, Articles 4-1 and 5-1.

²¹ Judgment of the European Court of Human Rights (ECtHR) Bilgen v. Turkey, (application no. 1571/07) § 63.

²² Judgment of the ECtHR in Guðmundur Andri Ástráðsson v. Iceland (application no. 26374/18) § 230.

²³ Article 31 (2) of the LSRJ.

that the secondment does not create a backlog at his/her original position, reproducing the original problem at his/her original court. The lack of defining objective criteria for the selection of seconded judges opens the pool of possible candidates for secondment in an unlimited manner and **provides the NOJ President with full discretion to pick judges from the whole judicial system**. This is especially problematic in case of secondments ordered for the purposes of facilitating professional advancement, due to the fact that practically all judges serving at lower courts could be eligible for this purpose and nothing impedes the NOJ President to select amongst them in an arbitrary manner.

(3) The legislation does not limit in any way the direction and grade of transfer by secondment. This means that even a district court judge can be seconded to the Kúria (the supreme court of Hungary) for any reasons and vice versa, judges serving at higher tier courts can be seconded downwards, to lower tier courts.

(4) The legislation does not limit the term of secondment in any way. This entails that the NOJ President is practically free to decide on the term of secondment: judges may be seconded for an indefinite period of time, for definite terms varying between a few weeks and over a year, or even for consecutive definite terms that altogether may last for several years.

The insufficient regulation of objective criteria as to the legal basis of secondment, the designation of the receiving court, the selection of the seconded judge and the term of the secondment is not only in breach of the principle of legality but creates a risk of abusive application of the discretionary powers.

(B) The factual consequence: abusive application of discretionary powers of the NOJ President

The lack of objective criteria with respect to the secondment of judges enables the improper use of the NOJ President's discretionary powers. Below, we provide examples of secondments that prove that the practice of secondment of judges extends far beyond its professed legal objectives and raise doubts with respect to arbitrary application (for detailed examples please see [Annex 2](#) of this paper):

(i) irrationally long secondments ordered on the basis of facilitating professional advancement of a judge [see for example the case of *Judge I* (Annex 2, Section I, Example no. 1.),²⁴ who was seconded to the Kúria to facilitate her professional advancement for five consecutive terms, altogether for over two years];

(ii) secondments ordered on evidently false legal basis [see for example the case of *Judge VIII* (Annex 2, Section II, Example no. 1.), who was seconded to the same court for more than six years on different legal bases, e.g. the fourth year of his secondment to the same court was ordered with the professed aim of facilitating his professional advancement];

(iii) prolonged secondments ordered instead of opening an application procedure [see for example the case of *Judge IX* (Annex 2, Section II, Example no. 2), who was seconded back to her former position for five consecutive years after being appointed as judge at the Kúria];

²⁴ The present background paper deals with systemic deficiencies of the legal framework and the practice of secondment of judges in Hungary. The concrete examples included in the background paper aim to illustrate the abstract concerns raised. None of the examples provided are intended to raise doubts regarding the independence and impartiality of the individual judges affected by these measures or to erode public trust in sitting judges or the judgments they deliver. For that reason, the present background paper refers to individual judges in an anonymised manner.

(iv) **repeated ad hoc secondments of the same judge to the same court** [see for example the case of *Judge X* (Annex 2, Example no. 3), who was seconded eight times between 2016 and 2022 to the Metropolitan Court of Appeal];

(v) **fully non-transparent selection of judges to be seconded** [see for example the case of a judge who was repeatedly seconded²⁵ to the Kúria to facilitate his professional advancement from the Budapest IV and XV District Court, which belongs to the lowest tier of adjudication];

(vi) **secondments ordered to fill in newly opened positions at a newly established court** [see the example of the secondment of three judges²⁶ to fill in the newly opened positions at the administrative court of appeal established with effect of 1 March 2022].

The Hungarian Helsinki Committee (HHC) has turned to the NOJ President to request data with respect to the objective criteria applied by the NOJ President to select judges seconded by a particular resolution. The HHC chose the particular resolution of the NOJ President because it was manifestly ill-founded: it aimed at filling positions (under the pretext of “reducing workload”) at a newly established court of appeal where the positions should have been filled through calls for applications according to the law. According to the answer provided by the NOJ President *“the disclosure of the ‘criteria’, ‘factors’ and ‘reasons’ that [the HHC] seeks to know fall outside the legislative definition of data of public interest. By these questions [the HHC] expects further justification of the resolutions of the NOJ President delivered in accordance with the powers delegated to him by cardinal laws (namely [...] the selection of judges to be seconded), with respect to which – in the absence of a legislative obligation to do so - the NOJ President may not be obliged to provide a reasoning.”*²⁷

(D) Recommendations - The legislation must provide for objective criteria justifying the applied legal grounds of secondment with respect to the selection of judges to be seconded, the direction and grade of secondment and the term of secondment in order to exclude the possibility of the abusive application of the NOJ President’s discretionary powers.

III.3. THE LEGISLATION DOES NOT ESTABLISH PROCEDURAL SAFEGUARDS FOR SECONDMENTS

(A) The systemic rule of law issue: breach of the principle of legality

The legislation does not establish procedural safeguards for secondments. The “process” of secondment by the NOJ President is set out as follows:

- (i) **The secondment of an individual judge is always initiated by an administrative leader**, namely (a) the NOJ President, in case the secondment takes place to reduce excessive workload or (b) the president of the receiving court (the president of the Kúria, the court of appeal or the regional court) in case the secondment takes place to facilitate the professional advancement of the judge concerned.²⁸
- (ii) **No procedural rules govern the selection of the individual judge to be seconded.** From the perspective of the process, the judge is already selected when the secondment procedure starts.
- (iii) **The judge concerned shall be informed about the secondment at least 30 days prior to the term of secondment** indicating the reasons, the place and the term of the secondment. No procedural rules govern the term within which the resolution on secondment shall be taken by

²⁵ The judge was seconded to the Kúria from 1 September 2021 to 31 December 2021. The term of the secondment was prolonged from 1 January 2022 to 15 July 2022.

²⁶ The secondment of these three judges was ordered with effect from 1 March 2022 to 31 December 2022.

²⁷ See the answer of the NOJ President to questions 5-6 of the HHC here: <https://helsinki.hu/wp-content/uploads/2022/06/OBH-valasza-kozerdeku-adatkeresre-20220603.pdf> p. 2.

²⁸ Article 31 (5) of the LSRJ.

the NOJ President, therefore secondments may take place on the basis of resolutions delivered only a couple of days prior to the starting date of the term of secondment.

- (iv) **The judge shall give his/her consent to the transfer** (except when the secondment takes place involuntarily), but the legislation does not set a deadline for consideration by the judge, it is up to the NOJ President to set a deadline.
- (v) **The resolution on the secondment is taken by the NOJ President**, irrespective of who initiated the secondment. The involvement of a collective body - judicial council or other type of judicial self-governing body - is not required.²⁹
- (vi) **The legislation does not require the NOJ President to provide reasons for his/her decision on secondment.** [see below under section III.5]
- (vii) **The legislation does not regulate the termination of secondment in any way.** As the practice of the NOJ President proves, **secondments may be terminated unilaterally by a resolution of the NOJ President even before the pre-established term of secondment expires.** According to the practice of the NOJ President, even the withdrawal of the prior consent of the seconded judge can lead to the immediate termination of the secondment.

The above listed deficiencies of the process of secondment not only breach the principle of legality, but also **create an institutional and regulatory environment that is prone to misuse by administrative leaders.** As indicated by the examples below, the practice of secondment infringes the standards of good administration and the principle of legality, which requires that public authorities act in accordance with the law and that they do not take arbitrary measures, even when exercising their discretion.³⁰

(B) Relevant consequence: secondments are used as a disguised probationary period

The lack of objective criteria for secondment paired with the absence of procedural guarantees entail that in practice, secondments can be applied as disguised probationary periods at higher courts. According to international standards for judicial independence, **probationary periods present a danger from the perspective of the independence and the impartiality of the judge in question**, who is hoping to be established in a certain post.³¹

In case of the Kúria, the **application of secondments as unregulated “probationary periods” is clearly confirmed by the practice of appointment of last years.** Examples collected in Annex 3 show that an overwhelming majority of judges appointed to the Kúria were seconded to the Kúria preceding their appointment. From this perspective, it is important to note that all judges seconded to the Kúria were seconded on the legislative ground of facilitating their professional advancement. In case of this legal ground, the judges to be seconded are selected by the Kúria President under non-transparent criteria.

²⁹ As an exception, in cases of involuntary secondments (i.e. when the secondment takes place without the express consent of the judge concerned), the judicial council of the seconding court shall be entitled to give a non-binding opinion on the secondment. [Article 151 (1) a) of the OAC.] The opinion however is not a pre-requisite of the secondment, it is not published or accessible for the public and its non-binding nature entails that the NOJ President can carry out the secondment even against the negative opinion of the judicial council. Similarly, if judges of a regional court or court of appeal are seconded, the president of the seconding court may provide an opinion on the secondment, which is neither published, nor binding the NOJ President. Article 32 (1) of the LSRJ.

³⁰ Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, Section 2. <https://rm.coe.int/cmrec-2007-7-of-the-cm-to-ms-on-good-administration/16809f007c> Article 2.

³¹ See European Commission for Democracy through Law (Venice Commission), Report on the Independence of the Judicial System, CDL-AD(2010)004, 16 March 2010, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)004-e) 33-38. See also: Charter on the Statute of Judges point 3.3; 2010 Recommendation point 51; IBA Minimum Standards point 23.

Almost in all cases, their secondment is still ongoing while the application proceeding is opened, and they usually get appointed to the judicial post they formerly filled by way of secondment.³²

The possibility of this **probation-like application of secondments is facilitated by a deficiency of the legislation regarding the termination of the secondment**. As highlighted above, the termination of secondments is completely unregulated by the legislation leaving it to the unlimited discretion of administrative leaders. This means that – even if a judge has consented to a secondment for a determined period of time, the secondment can be terminated unilaterally by an administrative leader, even before the term lapses [see the examples in Annex 4].

The Kúria President has expressly affirmed this interpretation (which is, again, in breach of the irremovability of judges): *“A precondition of seconding a judge is a consent between the court where the judge holds a post, the court of secondment and the judge. **In the absence of the consenting declaration of any party, the secondment cannot be ordered or it shall be terminated.** [emphasis added] *Secondment is an extraordinary form of judicial service. Therefore, withdrawal of the consenting declaration and thus the termination of the secondment shall not be explained or reasoned.*”³³ If this interpretation of the law should be accepted, **any secondment can be terminated any time by the president of the receiving court or the NOJ President with practically immediate effect** (just as in the case of probationary periods). The examples of unilateral terminations listed in Annex 4 indicate that secondments terminated unilaterally are effected within 2-5 days.*

The application of a disguised probationary period was also openly confirmed by the Kúria President. At the 6 April 2022 meeting of the NJC, where members of the NJC discussed the findings of the ad hoc NJC Committee established to examine the practice of secondments, and the problem of mass secondments to the Kúria were raised, the Kúria President said: *“I don’t quite remember why more secondments were ordered at the Kúria last year than the year before. The answer is that it wasn’t quite clear where the complication of competences would lead [by this phrase the Kúria President referred to the reform adopted in 2019 which concentrated overly wide powers of adjudication in the hands of the Kúria], therefore President Darák [the former Kúria President who was entitled to initiate secondments on behalf of the Kúria until 31 December 2020] intended to fill the new judicial panels with seconded judges and last year this seemed to remain, therefore we’ve decided to fill 15 out of 17 posts, but not more, it can’t be more. Some secondments are still ongoing, calls for applications are published continuously by the NOJ President, based on the request of the Kúria, anyone can verify that. There is no abuse of power in this. **Calls for applications are not published completely blindly and carelessly because there is not much to do regarding a position at the Kúria, if someone doesn’t feel comfortable because he or she is unable to fulfil his/her duties. That would be a loss of prestige for everyone, if in that case [the appointed judge] would say sorry, this doesn’t work for me, I’d like to go back** [emphasis added].”³⁴*

Later, at another meeting of the NJC, the Kúria President insisted that the legislative ground for “facilitating professional advancement” should be interpreted as a possibility to test judges. *“What I obviously disagree with is when someone reads the law and diverts it, because what judge Léhmán [member of the NJC Committee] said with respect to the probationary period contained in the report [of the NJC Committee], please say, what shall be meant by “gaining experience”? **Does it not mean that the judge gains experience at another court, and that other court gains experience with respect***

³² See for example the case of judges, who were transferred to the Kúria by way of appointment but in fact simply continued their work at the same position. https://kuria-kozadatok.birosag.hu/sites/default/files/field_attachment/ur_tajekoztato_2022_06_01.pdf

³³ Press release of the Kúria of 4 May 2022 on the termination of the secondment of a judge dealing with a high-profile corruption case <https://kuria-birosag.hu/hu/sajto/kuria-kozlemenye-questor-ugyben-eljaro-biro-kirandulesenek-megszuntetese-targyaban>

³⁴ See the Minutes taken at the meeting of the NJC held on 6 April 2022 <https://orszagosbiroitanacs.hu/2022-04-06/> p. 28.

to what those judges seconded to that court can or cannot do?³⁵ (For the sake of clarity, the law does not provide for secondments to “gain experience”).

Contradicting the above statement, a couple of weeks later, the Kúria President published a press release in the name of the Kúria claiming that “[I]t is true, that **in the past years more judges were seconded to the Kúria**. The reason of this is very specific. In case it has been overlooked by anybody, during the past two years, the coronavirus pandemic has seriously hit the country, which not only **affected the workload, but also the possibilities of tendering judicial posts**. As soon as the pandemic – even temporarily – allowed it, **the Kúria took measures to fill in the vacant judicial positions** - as can be verified from publicly available calls for applications - and **parallelly terminated the secondments**.”³⁶ The above statement suggests that secondments at the Kúria were applied as measures taken in the stead of permanent appointment procedures which temporarily could not be carried out. This reasoning implies that the secondments were ordered to reduce workload at the Kúria, but – as shown in Annex 3 of this background paper, in reality, **all secondments in 2020, 2021 and 2022 were ordered on the legal ground of facilitating the professional advancement of the seconded judges**. As already described above, the applied legal ground already raises doubts if we consider the prolonged term of the secondment, but in light of the above statements, **the abusive application of this legal ground becomes evident**. The high percentage of equivalence between judges seconded to the Kúria at the time of opening a call for applications and judges appointed as a result of the application procedure proves that secondments to higher courts – especially the Kúria – can be used as a disguised probationary period that sometimes may last for over two years (see the case of *Judge III* who was seconded to the Kúria for two years less 15 days before being appointed as Kúria judge Annex 3).

III.4. JUDGES CAN BE SECONDED AGAINST THEIR WILL

(A) The systemic rule of law issue: breach of the principle of irremovability of judges

A specifically problematic element of the Hungarian legislation is that **judges may be seconded to another court even against their will**, for a maximum period of one year within each three years,³⁷ in case it is necessary to reduce excessive workload at the receiving court. The legislation does not provide clear criteria regarding what shall be deemed as excessive workload and how the judges to be seconded shall be selected. Decision on the secondment shall be taken by the NOJ President. Judicial councils (i.e. the bodies of judicial self-government) shall be entitled to formulate a non-binding opinion on the secondment against the will of the judge concerned.³⁸ The opinion however is not a pre-requisite of the secondment, it is not published or accessible for the public and its non-binding nature entails that the NOJ President can carry out the secondment even against the negative opinion of the judicial council.

(B) Factual consequence

Involuntary secondments have not been reported recently, nevertheless, it remains a lawful option based on the legislation, and even in the absence of an actual application of these rules, the mere possibility is capable of exerting pressure on judges.

(C) Relevant sources from recognised institutions

³⁵ See the Minutes taken at the meeting of the NJC held on 4 May 2022 <https://orszagosbiroitanacs.hu/2022-05-04/>, p. 16.

³⁶ See the press release of the Kúria of 28 April 2022 <https://www.kuria-birosag.hu/hu/sajto/kozlemeny-6>

³⁷ Article 31 (3) of the LSRJ.

³⁸ Article 151 a) of the LSRJ.

The possibility on involuntary secondment has been criticized from the first moment it was introduced. According to the Venice Commission *“Judges must not be under the threat of being transferred from one court or tribunal to another, as this threat might be used to exercise pressure on them and to attack their independence. Therefore transfers against a judge’s will may be permissible only in exceptional cases.”*³⁹ On this ground the Venice Commission criticized the *“excessively large possibility of transferring a judge ‘for service reasons’, for a maximum of one year every three years, which seems to be too often.”* Although the reason of secondment has been narrowed down to *“reduce excessive workload”*, in the absence of clear criteria regarding what shall be deemed as excessive workload, the possibility of transfer still remained too broad. As the Court of Justice of the European Union (CJEU) warned, judicial transfers without the consent of a judge *“may constitute a way of exercising control over the content of judicial decisions because they are liable not only to affect the scope of the activities allocated to judges and the handling of cases entrusted to them, but also to have significant consequences on the life and career of those persons and, thus, to have effects similar to those of a disciplinary sanction.”*⁴⁰

(D) Recommendations – The possibility of involuntary transfers shall be abolished.

III.5. THE NOJ PRESIDENT IS NOT OBLIGED BY LAW TO STATE REASONS FOR HIS/HER DECISIONS

(A) Systemic rule of law issue: breach of the prohibition of arbitrariness

Providing reasons for administrative decisions is a basic requirement of the rule of law and the principle of prohibition of arbitrariness.⁴¹ **In the absence of the obligation to state reasons for decisions, the exercise of discretionary powers becomes unfettered and may be applied in an arbitrary manner.** As described by the Venice Commission, the NOJ President became the *“crucial decision-maker of practically every aspect of the organisation of the judicial system”*⁴² since very significant and comprehensive powers are concentrated in the hands of the NOJ President while many of these powers are of discretionary nature described in rather broad terms without clear criteria governing their application. The mere fact that the NOJ President has discretionary powers to resolve on administrative matters of the judiciary would not be problematic if sufficient guarantees were established by law to provide protection against the arbitrary use of this power. According to the CJEU *„[t]he fact that a law confers a discretion on the authorities responsible for implementing it is not in itself inconsistent with the requirement of foreseeability, provided that **the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give adequate protection against arbitrary interference.**”*⁴³ As already described above, in case of secondments, the legislation does not provide adequate protection against arbitrary interference. One of the most concerning deficiencies of the regulation is that the law does not require

³⁹ European Commission for Democracy through Law (Venice Commission), Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, CDL-AD(2012)001, 19 March 2012, [https://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)001-e.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2012)001-e.aspx) § 76.

⁴⁰ Judgment of the CJEU in case C-487/19, point 113.

⁴¹ See the Venice Commission’s Rule of Law checklist, p. 68. *„The obligation to give reasons should also apply to administrative decisions.”* [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

⁴² See: European Commission for Democracy through Law (Venice Commission), Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, CDL-AD(2012)001, 19 March 2012, [https://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)001-e.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2012)001-e.aspx) § 118 *“The main problem is the concentration of powers in the hands of one person, i.e. the President of the NJO. Although States enjoy a large margin of appreciation in designing a system for the administration of justice, in no other member state of the Council of Europe are such important powers, including the power to select judges and senior office holders, vested in one single person. Neither the way in which the President of the NJO is designated, nor the way in which the exercise of his or her functions is controlled, can reassure the Venice Commission. The President is indeed the crucial decision-maker of practically every aspect of the organisation of the judicial system and he or she has wide discretionary powers that are mostly not subject to judicial control. The President is elected without consultation of the members of the judiciary and not accountable in a meaningful way to anybody except in cases of violation of the law. The very long term of office (nine years) adds to these concerns.”*

⁴³ See judgment of 17 June 2010, *Lafarge v Commission*, C-413/08 P, EU:C:2010:346, paragraph 94.

the NOJ President to state the reasons for his/her decisions (neither when he/she seconds a judge, nor when the secondment is withdrawn). According to the law,⁴⁴ the NOJ President shall only state the reasons for his/her decisions “to the extent necessary” leaving it to the discretion of the NOJ President to decide whether and to what extent a given decision shall be reasoned.

(B) Factual consequence

Since the entry into force of the LSRJ on 1 January 2012, **the NOJ President has issued more than 600 resolutions on secondment of individual judges. None of these resolutions were reasoned.**

When the HHC turned to the NOJ President to request data with respect to the reasons of a **manifestly abusive resolution on seconding judges to a newly established court** on the legislative ground of “reducing excessive workload” instead of opening application procedures, the NOJ President replied that “*the secondments were applied for the reasons precisely stated in resolution [...], which is publicly available and has also been reiterated in the question: for reasons established in Article 31 (2) of the LSRJ.*”⁴⁵ In fact, the resolution concerned – just as all other resolutions of the NOJ President - does not contain any reasoning. In light of this fact, the answer of the NOJ President can be interpreted as “*the application of Article 31 (2) of the LSRJ is justified by Article 31 (2) of the LSRJ*”.

The lack of reasoning also allows the NOJ President to decide on secondments on a collective basis. The majority of resolutions on secondments do not only relate to one single judge. More often, judges are seconded collectively by one single resolution (sometimes even complete judicial panels are seconded together by one single resolution). Although formally resolutions are taken in relation to individual judges, they are ordered and executed collectively, with respect to 10-15 judges.

(C) Relevant sources from recognised institutions

In its opinions issued with respect to the judicial system of Hungary, the Venice Commission insisted that the **decisions of the NOJ President should be reasoned explicitly**. According to the Commission: “*If the clause ‘where applicable’ could be interpreted as implying that [the NOJ President] has discretion to state the reasons of his or her decisions, it should be removed and the reasoning of the decision of [the NOJ President] should be made the general rule.*”⁴⁶ This recommendation has not been implemented since 2012, and the Venice Commission had to recall it as still valid in 2021.⁴⁷

(D) Recommendations – The NOJ President should be obliged by law to state the detailed reasons for all his/her decisions, including the ones delivered regarding the secondment of individual judges, covering the objective criteria of the application of secondments, the selection of the seconded judge and the crucial elements of the procedure leading to the secondment.

1.6. LACK OF DEMOCRATIC ACCOUNTABILITY OF THE NOJ PRESIDENT

(A) Systemic rule of law problem: lack of democratic accountability

⁴⁴ See: Act CLXI of 2011 on the Organisation and Administration of Courts, Article 77 (2).

⁴⁵ See: <https://helsinki.hu/wp-content/uploads/2022/06/OBH-valasza-kozerdeku-adatkeresre-20220603.pdf> and <https://helsinki.hu/wp-content/uploads/2022/06/OBH-valasza-kozerdeku-adatigenylesre-20220517.pdf>

⁴⁶ European Commission for Democracy through Law (Venice Commission), Opinion on the Cardinal Acts on the Judiciary that were Amended Following the Adoption of Opinion CDL-AD(2012)001, CDL-AD(2012)020, 15 October 2012, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e) (hereinafter: **CDL-AD(2012)020**) § 23.

⁴⁷ European Commission for Democracy through Law (Venice Commission), Opinion on the Amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and the Remuneration of Judges adopted by the Hungarian Parliament in December 2020, CDL-AD(2021)036, 16 October 2021, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)036-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)036-e) (hereinafter: **CDL-AD(2021)036**) § 18.

Although mandated by the Fundamental Law to supervise the central administration of courts,⁴⁸ the NJC is vested with insufficient powers to fulfil its constitutional role. As stated by the Venice Commission the powers of the NOJ President “clearly prevail over those of the NJC”.⁴⁹ The powers granted to the NJC are not strong enough to exercise effective supervision over the NOJ President. In case of secondments, it means that the NJC has practically no oversight of and cannot control anyhow the practice of the NOJ President.

(B) The relevant consequence: the decisions of the NOJ President cannot be examined

On 5 January 2022, the National Judicial Council established an ad hoc Committee (**NJC Committee**)⁵⁰ to examine the secondment practice of the NOJ President. The NJC Committee was mandated to carry out a fact-based examination of the NOJ President’s practice of secondments and to overview the regulatory environment of secondments. On 10 February 2022, the NJC Committee turned to the NOJ President in a letter asking him to allow the Committee access to the documents related to resolutions on altogether 56 resolutions on secondments effected in 2021. The NJC based the competence of the NJC Committee on its competence to control the central administration activity of the NOJ President.⁵¹ Their request to access the underlying documents was based on the provisions entitling all members of the NJC to inspect the documents related to the activity of the NOJ President and request data and information from the NOJ President.⁵²

In his letter dated 23 March 2022, the NOJ President denied access to the documents, claiming that it is evident that **the NJC has no competence to examine the practice of secondments**, therefore “*the NJC is not entitled by the law to have access to more data in addition to the resolutions of the NOJ President, which are anyway public based on Article 77 (3) of the OAC, and it is not authorised by law to make declarations in connection with the secondment practice of the NOJ President.*”⁵³ After being rejected by the NOJ President, the NJC Committee drew up a report based on publicly available resolutions of the NOJ President. The report was summarised by the NJC Committee at the meeting held on 4 May 2022.

The NJC Committee raised the following concerns with respect to the practice of secondments.

- (i) the practice of the NOJ President on secondments has become so extensive that it infringes the principles of appointment based on merits;
- (ii) it creates, *contra legem*, a disguised “probationary” judicial status;
- (iii) seconded judges gain unjustified advantages as compared to their peers at subsequent application procedures;
- (iv) doubts can be raised that secondment are in fact ordered for reasons other than the legislative grounds stipulated by the law;
- (v) it is not transparent why posts are filled by long-term secondments instead of opening application procedures;
- (vi) long term secondments can “freeze” the normal lines of judicial career;
- (vii) the term of secondment is not established in a transparent manner, and it is also non-transparent on what grounds seconded judges are relieved from the tasks of their original posts or obliged to maintain these;

⁴⁸ Article 25 (5) of the Fundamental Law of Hungary.

⁴⁹ CDL-AD(2012)020, p. 32.

⁵⁰ By resolution 2/2022 (I.5.) OBT, see the Minutes of the Meeting of the NJC of 5 January 2022 <https://orszagosbiroitanacs.hu/2022-01-05/> p. 54.

⁵¹ Article 103 (1) a) of the OAC.

⁵² Article 112 (1) a) of the OAC.

⁵³ See the Minutes of the Meeting of the NJC of 6 April 2022 <https://orszagosbiroitanacs.hu/2022-04-06/> p. 8.

- (viii) the criteria and procedure for the selection of judges to be seconded for the purposes of facilitating their professional advancement is completely unregulated;
- (ix) the assessments of workload that should serve as the basis of secondments for the purposes of reducing excessive workload are not available.⁵⁴

Although the NJC Committee raised serious concerns with respect to the practice of secondments, the NOJ President rejected all requests for access to documents and the NJC Committee could not carry out the examination it was mandated to.

(D) Recommendations –The NJC shall be vested with powers that enable the exercise of effective control over the NOJ President.

Annex 1 – Numbers of reported secondments between 2017-2020

Annex 2 – Secondments raising doubts with respect to the legal ground of the transfer

Annex 3 – Correlation between ongoing secondments and appointments to the Kúria

Annex 4 – Unilateral termination of secondments

⁵⁴ See the Minutes of the Meeting of the NJC of 4 May 2022 p. 10.

ANNEX 1

GENERAL NUMBERS OF REPORTED SECONDMENTS BETWEEN 2017–2020

In 2020,⁵⁵ 471 judges were seconded, amounting to **more than 16% of the total number of judges**.⁵⁶ Out of these secondments, 388 were ordered by regional court presidents and **83 were ordered by the NOJ President**. (These numbers do not include the secondments that were ordered before 2020, but were still effective in 2020.) According to the annual report of the NOJ President published for year 2020, all secondments ordered by the NOJ President were initiated by court presidents and consented by the judge concerned. Out of the 83 secondments ordered by the NOJ President, **43 judges were seconded to the Kúria**, which is an extremely high number as compared to the total number of 113 positions at the Kúria.⁵⁷ Further, 1 judge was seconded from the Kúria to a regional court, 2 judges were seconded from a court of appeal to a regional court, 32 judges from a regional court to a court of appeal and 5 judges from the territory of one regional court to the territory of another regional court.

In 2019, 849 judges were seconded, **almost one third of the total number of judges**.⁵⁸ Out of these secondments, 729 were ordered by regional court presidents and **120 were ordered by the NOJ President**. (These numbers do not include the secondments that were ordered before 2019, but were still effective in 2019.) According to the annual report of the NOJ President published for year 2019, all secondments ordered by the NOJ President were initiated by court presidents and consented by the judge concerned. Out of the 120 secondments ordered by the NOJ President, **15 judges were seconded to the Kúria**, 1 judge was seconded from the Kúria to a regional court, 7 judges were seconded from one court of appeal to another, 10 judges were seconded from a court of appeal to a regional court, 33 judges were seconded from a regional court to a court of appeal and 54 judges were seconded from the territory of one regional court to another.

In 2018, 814 judges were seconded, **almost one third of the total number of judges**.⁵⁹ Out of these secondments 682 were ordered by regional court presidents and **132 were ordered by the NOJ President**. (These numbers do not include the secondments that were ordered before 2018, but were still effective in 2018.) According to the annual report of the NOJ President published for year 2018, all secondments ordered by the NOJ President were initiated by court presidents and consented by the judge concerned. Out of the 132 secondments ordered by the NOJ President, **38 judges were seconded to the Kúria**, 1 judge was seconded from the Kúria to a court of appeal, 1 judge from the Kúria to a regional court, 20 judges were seconded from one court of appeal to another, 28 judges were seconded from a court of appeal to a regional court and 39 were seconded from the territory of one regional court to another.

In 2017, 595 judges were seconded, approximately **25% of the total number of judges**.⁶⁰ Out of these secondments 407 were ordered by regional court presidents and **188 were ordered by the NOJ**

⁵⁵ General numbers regarding secondments are published by the NOJ President as part of his/her annual report towards the Parliament. The NOJ President has not yet published his annual report for year 2021, therefore general numbers are only publicly available from former years.

⁵⁶ Taking into account the total number of judges as reported by the NOJ President as of 31 December 2020. See: <https://birosag.hu/beszamolok/az-orszagos-birosagi-hivatal-elnokenek-2020-evi-beszamoloja> p. 28.

⁵⁷ See: <https://birosag.hu/beszamolok/az-orszagos-birosagi-hivatal-elnokenek-2020-evi-beszamoloja> p. 17.

⁵⁸ Taking into account the total number of judges [2926 judges] as reported by the NOJ President as of 31 December 2019. See: https://birosag.hu/sites/default/files/2020-11/obhe_2019_eves_beszamolo-1.pdf p. 21.

⁵⁹ Taking into account the total number of judges [2933 judges] as reported by the NOJ President as of 31 December 2018. See: <https://birosag.hu/sites/default/files/users/%C3%89ves%20Besz%C3%A1mol%C3%B3%202018.pdf> p. 25. and 61.

⁶⁰ Taking into account the total number of judges [2862 judges] as reported by the NOJ President as of 31 December 2017. See <https://birosag.hu/beszamolok/az-orszagos-birosagi-hivatal-elnokenek-2017-evi-beszamoloja> p. 29.

President. (These numbers do not include the secondments that were ordered before 2017, but were still effective in 2017.) Out of the 188 secondments ordered by the NOJ President, **32 judges were seconded to the Kúria**, 1 judge was seconded from the Kúria to a regional court, 1 judge from the Kúria to a regional court, 73 judges were seconded from a regional court to a court of appeal, 10 judges were seconded from a court of appeal to a regional court, 55 judges were seconded from one court of appeal to another and 16 judges were seconded from the territory of one regional court to another.

ANNEX 2

SECONDMENTS RAISING DOUBTS WITH RESPECT TO THE LEGAL GROUND OF THE TRANSFER

I. SECONDMENTS ORDERED ON THE LEGAL GROUND OF FACILITATING PROFESSIONAL ADVANCEMENT OF A JUDGE

EXAMPLE NO. 1. ~ Illustrative case of a judge seconded to the Kúria for two years and three months to facilitate her professional advancement

With effect from **1 April 2020** *Judge I* was seconded from the Metropolitan Regional Court to the Kúria until 31 December 2020 on the legal ground of **facilitating her professional advancement**. The secondment was subsequently prolonged four times:

- (i) from 1 January 2021 to 31 March 2021;
- (ii) from 1 April 2021 to 15 July 2021;
- (iii) from 16 July to 31 December 2021;
- (iv) from 1 January 2022 to 15 July 2022.

By the end of the last prolongation, the term of the secondment will last two years and three months, and nothing impedes the NOJ President to prolong it further. All through the prolonged term, the legal ground of the secondment remained facilitating the professional advancement of the judge concerned.

FURTHER EXAMPLES ~ Irrationally long secondments on the legal ground of professional advancement

Other cases of irrationally long secondments on the legal ground of facilitating the professional advancement of the seconded judge:

- (i) *Judge II* was seconded to the Kúria for **two years**;⁶¹
- (ii) *Judge III* was seconded to the Kúria for **two years less 15 days**;⁶²
- (iii) *Judge IV* was seconded to the Kúria for **one year and five months**;⁶³
- (iv) *Judge V* was seconded to the Kúria for **one year and three months**;⁶⁴
- (v) *Judge VI* was seconded to the Kúria for **one year and four months**;⁶⁵
- (vi) *Judge VII* was seconded to the Kúria for **one year and four months**.⁶⁶

The above list of examples is not exclusive, the practice of seconding judges for an unreasonably long period to facilitate their professional advancement has been continuous.

⁶¹ From 1 January to 31 December 2018 and from 1 January to 31 December 2019.

⁶² The secondment was ordered from 15 September 2019 to 15 March 2020 and prolonged on four occasions: from 16 March 2020 to 31 December 2020 from 1 January 2021 to 31 March 2021, from 1 April 2021 to 15 July 2021 and from 16 July to 31 December 2021. All through the prolonged term, the legal ground of the secondment was formally ordered to facilitate her professional advancement.

⁶³ The secondment was ordered from 1 April 2020 to 31 December 2020 and prolonged three times: from 1 January 2021 to 31 March 2021; from 1 April 2021 to 15 July 2021; and from 16 July to 31 December 2021. All through the prolonged term, the legal ground of the secondment was ordered to facilitate her professional advancement.

⁶⁴ The secondment was ordered from 1 April 2020 to 31 December 2020 and prolonged on two occasions: from 1 January 2021 to 31 March 2021 and from 1 April 2021 to 15 July 2021. All through the prolonged term, the legal ground of the secondment was formally ordered to facilitate her professional advancement.

⁶⁵ The secondment was ordered from 18 March 2019 to 12 July 2019 then prolonged on three occasions: from 1 September 2019 to 31 December 2019 from 1 January 2020 to 31 March 2020, from 1 July 2020 to 31 December 2020. All through the prolonged term, the legal ground of the secondment was formally ordered to facilitate her professional advancement.

⁶⁶ The secondment was ordered from 1 April 2019 to 12 July 2019 and prolonged on three further occasions: from 1 September 2019 to 31 December 2019, from 1 January 2020 to 30 June 2020, from 1 July 2020 to 31 December 2020. All through the prolonged term, the legal ground of the secondment was formally ordered to facilitate her professional advancement.

II. PROLONGED SECONDMENT AS A MEASURE TAKEN INSTEAD OF OPENING AN APPLICATION PROCEDURE

EXAMPLE NO. 1. ~ Secondment for a period exceeding six years

With effect from **1 March 2016** *Judge VIII* was seconded from the Kaposvár Regional Court to the Metropolitan Court of Appeal until 31 August 2016. The legal ground of the secondment was not indicated in the resolution. The secondment was subsequently prolonged several times:

- (i) from 1 September 2016 to 31 December 2016
[the legal ground was not clarified];
- (ii) from 1 January 2017 to 31 December 2017
[the legal ground was not clarified];
- (iii) from 1 January 2018 to 31 December 2018
[to **facilitate his professional advancement**, this was the third year of his secondment];
- (iv) from 1 January 2019 to 31 December 2019
[to **facilitate his professional advancement**, this was the fourth year of his secondment];
- (v) from 1 January 2020 to 31 December 2020
[the legal ground was not clarified];
- (vi) from 1 January 2021 to 31 December 2022
[the legal ground was **to reduce workload**];
- (vii) from 1 January 2022 to 31 December 2022
[the legal ground was **to reduce workload**].

EXAMPLE NO. 2. ~ Seconding “back” a freshly appointed judge of the Kúria to reduce workload at the court of her former position

Judge IX was appointed to the Kúria with effect of **1 October 2017** and transferred from the Metropolitan Regional Court. **With effect from the same date of her appointment to the Kúria, she was seconded “back” to the Metropolitan Regional Court** for one year, until 30 September 2018. The legal ground of the secondment was not clarified but considering that the secondment was ordered from a higher court to a lower court, it is evident that it was ordered to reduce workload at the receiving court. The secondment was prolonged by further four years:

- (i) from 1 October 2018 to 31 December 2018;
- (ii) from 1 January 2019 to 31 December 2019;
- (iii) from 1 January 2020 to 30 June 2020; (from this moment on the NOJ President reasoned the secondment by the even distribution of workload)
- (iv) from 1 July 2020 to 31 December 2020;
- (v) from 1 January 2021 to 30 June 2021;
- (vi) from 1 July 2021 to 31 December 2021;
- (vii) from 1 January 2022 to 30 June 2022.

Despite her appointment to the Kúria from 1 October 2017, *Judge IX* has not served a single day as Kúria justice until the termination of her secondment on 30 April 2022 upon her own request. As a consequence of the prolonged term of secondment, *Judge IX* served for almost five years in a position equal to her original one to reduce workload at the Metropolitan Regional Court.

EXAMPLE NO. 3. ~ A judge who is always available for secondment

Judge X was seconded eight times between 2016 and 2022, always to the same receiving court (except for one case) even though her original position has changed in the meanwhile. By being seconded repeatedly, she has spent almost three years (approximately the half of the time) as seconded judge.

On **6 September 2016**, *Judge X* was seconded from the Buda Environs District Court⁶⁷ to the Metropolitan Court of Appeal for **two months** [from 1 October 2016 to 30 November 2016]. The resolution on the secondment did not contain any reasoning, not even the legal ground of the secondment was clarified.

On **29 August 2017**, *Judge X* was seconded from the Budapest Environs Regional Court to the Metropolitan Court of Appeal for **four months** [from 1 September 2017 to 31 December 2017]. The resolution on the secondment did not contain any reasoning, not even the legal ground of the secondment was clarified.

On **27 November 2017** the secondment of *Judge X* to the Metropolitan Court of Appeal was prolonged with **half a year** [from 1 January 2018 to 30 June 2018]. The resolution on the secondment did not contain any reasoning, the legal ground of the secondment was still not clarified.

On **26 June 2018**, once again the secondment of *Judge X* to the Metropolitan Court of Appeal was prolonged by **two months** [from 1 July 2018 to 3 August 2018]. The resolution on the secondment did not formally link the secondment to a legal ground.

On **23 September 2019**, *Judge X* was seconded from the Budapest Environs Regional Court to the Metropolitan Court of Appeal for **two months** [from 1 October 2019 to 30 November 2019]. According to the resolution, the secondment took place **to reduce the workload** at the Metropolitan Court of Appeal.

On **23 June 2021**, *Judge X* was seconded again, but this time to the Metropolitan Regional Court for **one year** [from 1 July 2021 to 30 June 2022] **to reduce workload**. *Judge X* partially retained her tasks from her original position at the Budapest Environs Regional Court.

On **5 October 2021**, while still being seconded to the Metropolitan Regional Court (and parallelly still serving in part in her own original position), *Judge X* got seconded once again to the Metropolitan Court of Appeal for **four months** [with effect of the same date as the date of the resolution, i.e. from 5 October 2021 to 5 February 2022] **to reduce workload**.

On **2 February 2022** the secondment to the Metropolitan Court of Appeal was prolonged by **seven months** [from 6 February 2022 to 30 September 2022].

Momentarily, *Judge X* parallelly fulfils (i) judicial tasks stemming from her original judicial position at the Budapest Environs Regional Court, (ii) tasks attached to her secondment to the Metropolitan Regional Court and (iii) judicial tasks of her secondment to the Metropolitan Court of Appeal (the court of appeal mandated to review the decisions of the Metropolitan Regional Court and the Budapest Environs Regional Court). **Since September 2016, *Judge X* spent altogether three years as seconded judge at the Metropolitan Court of Appeal.**

⁶⁷ District courts are the lowest tier courts in the Hungarian judicial system.

ANNEX 3.

CORRELATION BETWEEN ONGOING SECONDMENTS AND APPOINTMENTS TO THE KÚRIA

APPOINTED JUDGE	DATE OF APPOINTMENT TO THE KÚRIA	SECONDMENT TO THE KÚRIA
<i>Judge XXV</i>	1 September 2022	from 1 January 2020 until 15 July 2021* [1]
<i>Judge XXVI</i>	1 September 2022	from 1 September 2021 until appointment* [2]
<i>Judge XI</i>	1 June 2022	from 1 January 2022 until appointment* [3]
<i>Judge XII</i>	1 June 2022	from 1 September 2021 until appointment * [4]
<i>Judge IV</i>	1 September 2021	from 1 April 2020 until appointment * [5]
<i>Judge III</i>	1 September 2021	from 1 April 2020 until appointment * [6]
<i>Judge XIII</i>	1 July 2021	from 15 April 2021 until appointment * [7]
<i>Judge XIV</i>	1 June 2021	from 1 April 2020 until appointment * [8]
<i>Judge XV</i>	1 June 2021	from 1 April 2020 until appointment * [9]
<i>Judge XVI</i>	1 June 2021	from 1 April 2020 until appointment * [10]
<i>Judge XVII</i>	1 December 2020	from 1 April 2020 until appointment * [11]
<i>Judge XVIII</i>	1 October 2020	from 1 January 2020 until 30 June * [12]
<i>Judge XIX</i>	1 October 2020	from 1 January 2020 until appointment * [13]
<i>Judge XX</i>	1 October 2020	from 1 April 2020 until appointment * [14]
<i>Judge VII</i>	1 October 2020	from 1 April 2019 until appointment * [15]
<i>Judge XXI</i>	1 October 2020	from 1 April 2020 until appointment * [16]
<i>Judge II</i>	1 January 2020	from 1 January 2018 until appointment * [17]
<i>Judge XXII</i>	1 January 2020	from 1 September 2019 until appointment * [18]
<i>Judge XXIII</i>	1 January 2020	from 1 September 2019 until appointment * [19]
<i>Judge XXIV</i>	1 January 2020	from 15 October 2018 until appointment * [20]

IN 2022 ~ By 1 September 2022 applications for seven judicial positions were opened at the Kúria, out of which four positions were filled by judges who were seconded to the Kúria preceding their appointment. Some appointed judges have worked at the Kúria as seconded judges during the application procedure. The legislative reason of the secondment was – in all cases - facilitating their professional advancement.

***[1]** With effect from **1 September 2022** *Judge XXV* was appointed to the Kúria and got transferred from the Győr Court of Appeal. Preceding his appointment as judge of the Kúria, *Judge XXV* was **seconded to the Kúria for over two years** based on subsequent resolutions delivered on the legal ground of facilitating his professional advancement.⁶⁸ His secondment terminated within one year of his appointment as judge.

***[2]** With effect from **1 September 2022** *Judge XVI* was appointed to the Kúria and got transferred from the Budapest IV and XV District Court. Preceding his appointment as judge of the Kúria, *Judge XVI* was **seconded to the Kúria for eleven months** based on subsequent resolutions delivered on

⁶⁸ Judge XXV was seconded to the Kúria from 1 February 2019 to 31 August 2019. The secondment was renewed from 1 January 2020 to 31 March 2020, then continuously prolonged on four occasions until 15 July 2021.

the legal ground of facilitating his professional advancement, **also covering the term of the application procedure.**⁶⁹

***[3]** With effect from **1 June 2022** *Judge XI* was appointed to the Kúria and got transferred from the Regional Court of Szekszárd. Preceding his appointment as judge of the Kúria, *Judge XI* was **seconded to the Kúria for over a half year** based on subsequent resolutions delivered on the legal ground of facilitating his professional advancement.⁷⁰

***[4]** With effect from **1 June 2022** *Judge XII* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding his appointment as judge at the Kúria, *Judge XII* was **seconded to the Kúria for almost a year** based on subsequent resolutions delivered on the legal ground of facilitating his professional advancement.⁷¹

IN 2021 ~ Applications for eleven judicial positions were opened in 2021 at the Kúria, out of which six judicial positions were filled by judges who were seconded to the Kúria directly preceding the appointment.⁷² All seconded judges have worked at the Kúria during the application procedure. The legislative reason of the secondment was – in all cases - facilitating their professional advancement.

***[5]** With effect from **1 September 2021** *Judge IV* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge at the Kúria, *Judge IV* was **seconded to the Kúria for almost one and a half years** based on subsequent resolutions delivered on the legal ground of facilitating her professional advancement.⁷³

***[6]** With effect from **1 September 2021** *Judge III* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge at the Kúria, *Judge III* was **seconded to the Kúria for almost two years** based on subsequent resolutions delivered on the legal ground of facilitating her professional advancement.⁷⁴

***[7]** With effect from **1 July 2021** *Judge XIII* was appointed to the Kúria and got transferred from the Szeged Regional Court. Preceding his appointment as judge at the Kúria, *Judge XIII* was **seconded to the Kúria for three months** on the legal ground of facilitating his professional advancement.⁷⁵

***[8]** With effect from **1 June 2021** *Judge XIV* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge at the Kúria, *Judge XIV* was **seconded to the Kúria for more than one year** based on subsequent resolutions delivered on the legal ground of facilitating her professional advancement.⁷⁶

⁶⁹ His secondment was ordered from 1 September 2021 until 31 December 2021 and was prolonged from 1 January 2022 until 15 July 2022.

⁷⁰ The secondment took place despite of the fact that *Judge XI* has already been seconded to the Kúria in 2015 for three months. Later his secondment was ordered from 1 January 2022 to 31 March 2022; from 1 April 2022 to 15 July 2022. [Before the term of his secondment to the Kúria lapsed, he was seconded to the Pécs Court of Appeal from 1 September 2022 to 31 May 2023 to reduce workload, but this secondment was withdrawn by the NOJ President 5 days after *Judge XI* was appointed to the Kúria.]

⁷¹ First, from 1 September 2021 to 31 December 2021, then the secondment was prolonged from 1 January 2022 to 15 July 2022. (He was seconded to the Kúria to facilitate his professional advancement, despite of the fact that he has already been seconded to the Kúria in 2014 for more than half year).

⁷² Two further positions were filled by judges who were selected by the NOJ President and seconded to work at the Ministry of Justice and the NOJ, one further position was filled by a former state secretary under exceptional rules of appointment.

⁷³ The secondment was ordered from 1 April 2020 to 31 December 2020 and prolonged three times: from 1 January 2021 to 31 March 2021; from 1 April 2021 to 15 July 2021; and from 16 July to 31 December 2021.

⁷⁴ The secondment was first ordered from 15 September 2019 to 15 March 2020 and prolonged on four occasions: from 16 March 2020 to 31 December 2020, from 1 January 2021 to 31 March 2021, from 1 April 2021 to 15 July 2021 and from 16 July to 31 December 2021.

⁷⁵ The secondment was ordered from 15 April 2021 to 15 July 2021.

⁷⁶ The secondment was ordered from 1 April 2020 to 31 December 2020 and prolonged two times: from 1 January 2021 to 31 March 2021; from 1 April 2021 to 15 July 2021. All through the prolonged term, the legal ground of the secondment was ordered to facilitate her professional advancement. (She was seconded to the Kúria to facilitate her professional advancement, despite of the fact that she has already been seconded to the Kúria in 2014 for three months).

*[9] With effect from **1 June 2021** *Judge XV* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding his appointment as judge at the Kúria, *Judge XV* was **seconded to the Kúria for more than one year** based on subsequent resolutions delivered on the legal ground of facilitating his professional advancement.⁷⁷

*[10] With effect from **1 June 2021** *Judge XVI* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge at the Kúria, *XVI* was **seconded to the Kúria for more than one year** based on subsequent resolutions delivered on the legal ground of facilitating her professional advancement.⁷⁸

IN 2020 ~ Applications for nine judicial positions were opened in 2020 at the Kúria, out of which 6 judicial positions were filled by judges who were seconded to the Kúria directly preceding the appointment. The seconded judges have worked at the Kúria during the application procedure. The legislative reason of the secondment was – in all cases - facilitating their professional advancement.

*[11] With effect from **1 December 2020** *Judge XVII* was appointed to the Kúria and got transferred from the Debrecen Court of Appeal. Preceding her appointment as judge at the Kúria, *Judge XVII* was **seconded to the Kúria for nine months** on the legal ground of facilitating her professional advancement.⁷⁹

*[12] With effect from **1 October 2020** *Judge XVIII* was appointed to the Kúria got transferred from the Metropolitan Regional Court. Preceding her appointment as judge of the Kúria, *Judge XVIII* was **seconded to the Kúria for a half year** on the legal ground of facilitating her professional advancement.⁸⁰

*[13] With effect from **1 October 2020** *Judge XIX* was appointed to the Kúria got transferred from the Metropolitan Regional Court. Preceding his appointment as judge at the Kúria, *Judge XIX* was **seconded to the Kúria for one year** on the legal ground of facilitating his professional advancement.⁸¹

*[14] With effect from **1 October 2020** *Judge XX* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge at the Kúria, *Judge XX* was **seconded to the Kúria for more than half a year** on the legal ground of facilitating her professional advancement.⁸²

*[15] With effect from **1 October 2020** *Judge VII* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge at the Kúria, she was **seconded to the Kúria for one year and nine months** on the legal ground of facilitating her professional advancement.⁸³

⁷⁷ The secondment was ordered from 1 April 2020 to 31 December 2020 and prolonged two times: from 1 January 2021 to 31 March 2021; from 1 April 2021 to 15 July 2021. All through the prolonged term, the legal ground of the secondment was ordered to facilitate his professional advancement.

⁷⁸ The secondment was ordered from 1 April 2020 to 31 December 2020 and prolonged two times: from 1 January 2021 to 31 March 2021 and from 1 April 2021 to 15 July 2021.

⁷⁹ The secondment was ordered from 1 April 2020 to 14 July 2020 and prolonged from 15 July 2020 to 31 December 2020.

⁸⁰ The secondment was ordered from 1 January 2020 to 31 March 2020 and from 1 April to 30 June 2020.

⁸¹ The secondment was ordered from 1 January 2020 to 31 March 2020 and prolonged twice: from 1 April to 30 June 2020 and from 1 July 2020 to 31 December 2020.

⁸² The secondment was ordered from 1 April 2020 to 31 December 2020.

⁸³ The secondment was ordered from 1 April 2019 to 12 July 2019 then on three further occasions: from 1 September 2019 to 31 December 2019, from 1 January 2020 to 30 June 2020, from 1 July 2020 to 31 December 2020. All through the prolonged term, the legal ground of the secondment was formally ordered to facilitate the professional advancement of the judge concerned.

***[16]** With effect from **1 October 2020** *Judge XXI* was appointed to the Kúria and got transferred from the Debrecen Regional Court. Preceding her appointment as judge of the Kúria *Judge XXI* was **seconded to the Kúria for a half year** for facilitating her professional advancement.⁸⁴

IN 2019 ~ Applications for five judicial positions were opened in 2019 at the Kúria, out of which four judicial positions were filled by judges who were seconded to the Kúria directly preceding their appointment. The seconded judges have worked at the Kúria during the application procedure. The legislative reason of the secondment was – in all cases - facilitating their professional advancement.

***[17]** With effect from **1 January 2020** *Judge II* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge of the Kúria, *Judge II* was **seconded to the Kúria for two years** without formally indicating the legal ground of the secondment.⁸⁵

***[18]** With effect from **1 January 2020** *Judge XXII* was appointed to the Kúria and got transferred from the Debrecen Administrative and Labour Court. Preceding his appointment as judge of the Kúria, *Judge XXII* was **seconded to the Kúria for four months** without formally indicating the legal ground of the secondment.⁸⁶

***[19]** With effect from **1 January 2020** *Judge XXIII* was appointed to the Kúria and got transferred from the Metropolitan Regional Court. Preceding her appointment as judge of the Kúria, *Judge XXIII* was **seconded to the Kúria for four months** without formally indicating the legal ground of the secondment.⁸⁷

***[20]** With effect from **1 January 2020** *Judge XXIV* was appointed to the Kúria and got transferred from the Kecskemét Regional Court. Preceding her appointment as judge of the Kúria, *Judge XXIV* was **seconded to the Kúria for one year and three months** without formally indicating the legal ground of the secondment.⁸⁸

⁸⁴ From 1 April to 31 December 2020.

⁸⁵ From 1 January to 31 December 2018 and from 1 January to 31 December 2019.

⁸⁶ From 1 September 2019 to 29 February 2020.

⁸⁷ From 1 September 2019 to 29 February 2020.

⁸⁸ From 15 October 2019 to 31 December 2019.

ANNEX 4.

UNILATERAL TERMINATION OF SECONDMENTS

EXAMPLE NO. 1. ~ Termination upon request by the leader of the receiving court

Judge XXVII was seconded from the Metropolitan Regional Court to the Metropolitan Court of Appeal from 1 September 2020 to 31 December 2020 to reduce workload at the receiving court. The secondment was prolonged from 1 January 2021 to 31 December 2021, but before the expiry of the term, on 12 October 2021 the secondment was terminated **for the request of the president of the Metropolitan Court of Appeal** with effect from 15 October 2021 – **within three days** – by resolution of the NOJ President.

EXAMPLE NO. 2. ~ Termination for withdrawal of consent

Judge XXVIII was seconded from the Kúria to the Metropolitan Regional Court on 1 October 2017. Her secondment was prolonged on several occasions, as a result of which she served at the Metropolitan Regional Court on a continuous basis for almost five years. Her secondment was **terminated upon her request before the expiry of the term of secondment on 28 April 2022 with effect of 30 April 2022** (that is within two days).

EXAMPLE NO. 3. ~ Termination for withdrawal of consent

Judge XXIX was seconded to the Kúria to facilitate her professional advancement from the Metropolitan Regional Court from 1 September 2021 to 31 December 2021, without maintaining tasks from her original position. The secondment was prolonged from 1 January 2022 to 15 July 2022, but with the obligation to partially maintain tasks from her original position. On 10 May 2022, two months before the expiry of the term, the secondment was terminated for withdrawal of the consent of the seconded judge **within five days** with effect from 15 May 2022.