



HUNGARIAN
HELSINKI
COMMITTEE



CRITERIA

for monitoring the operation and activities of the National Judicial Council of Hungary

May 2024

Over the past years, the Hungarian Helsinki Committee and Amnesty International Hungary as human rights watchdog organisations have been closely monitoring the situation of the Hungarian judiciary as part of their activity aimed at defending human rights and the rule of law.

Besides keeping track of legislative changes affecting the courts, we also examine and evaluate the organisation of the judiciary, the activities and statements of court administration actors and judicial bodies. In line with our former practice, we will continue to monitor the activities of the National Judicial Council (NJC), the highest judicial self-governing body mandated to supervise the central administration of courts. As a result of the election process due, as from 30 January 2024 the NJC continues to carry out its duties in a new composition. In addition to that, since 1 June 2023, the date of entry into force of Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan (the Judicial Reform), the NJC was granted legal personality, an autonomous budget and increased powers, including the right to propose legislation, comment on draft laws affecting the judiciary, have access to documents related to the administration of courts, consent to personnel matters and seek remedy against violations of its rights and competences. For this reason, it is particularly important to monitor how these powers are exercised by the NJC.

As the currently effective legal provisions establish a broad framework for the operation of the NJC as a body, its members have a wide margin of manoeuvre to define their operation, role and scope of supervision. Acknowledging that establishing the frameworks of the operation of this body is the shared task and responsibility of NJC members, based on the experience of the past years we consider it important to set out the standards and criteria under which, if met, we consider that the autonomy and uninfluenced operation of this body and the effective performance of its supervisory role is ensured from the perspective of judicial independence.

In line with the principle of judicial independence and the method of operating delineated by the best practices established during the former years of operation of the NCJ, as set out below, the two civil society organisations will monitor the NJC's supervisory function and its involvement in the administration of courts and will share their experiences with the public.

I. Dialogue, social and international relations

As the highest judicial self-governing body, the NJC should exercise its powers and perform its duties autonomously, without influence, seeking to protect and promote the independence and impartiality of judges and the judiciary. The meetings of the NJC should provide an active forum for discussing the problems affecting the judicial organisation. The NJC President should ensure that judicial associations and representative organisations of judges can participate in the discussions held at the meetings of the NJC with a right to consult and should provide opportunity for the participation of judges as observers. The participation of representatives of other legal professions (Prosecutor General, President of the Hungarian Chamber of Civil Law Notaries, President of the Hungarian Bar Association) in the activities of the NJC is not a mere formality but a real opportunity to raise issues and engage in dialogue on common matters affecting the judiciary. The primary forum for communication and dialogue with the Ministry of Justice is the NJC meeting to ensure transparency on the issues discussed with the government.

As a constitutional body, the NJC should be aware that its activities are of significance in an international context. Treating judicial independence as a universal value and in the spirit of solidarity, the NJC should take a clear and consistent stance with respect to attacks directed against judges in other countries.

The NJC should maintain a meaningful relationship with international actors, organisations and bodies whose mandate includes monitoring, protecting and ensuring the independence of the judicial system (in particular the European Commission, GRECO, ENCJ, ODIHR, the UN Special Rapporteur on the Independence of Judges and Lawyers and the international associations of judges). In line with its supervisory role aimed at preserving judicial independence, it accepts diplomatic invitations and requests from international organisations and experts and publicly communicates about them. On a topic or in a field relevant to Hungary, the NJC takes an active part in the activities of the ENCJ, the European organisation uniting councils for the judiciary.

II. Publicity, transparency, freedom of information

The NJC should carry out its supervisory activities relying on public attention. The NJC should use the national and international press as an effective tool for communicating with the public the data and information that is relevant to its supervisory activities. Those who inform the public on behalf of the NJC should be judge members of the NJC. Representatives of the NJC should not refrain from responding to questions and requests of journalists. Persons speaking on behalf of the NJC in public should express a position adopted by the council and should only exceptionally share their private opinion, always indicating if the opinion is not based on a consensual position adopted by the NJC.

Public statements released by the NJC should respond to the phenomena affecting the courts in a timely and balanced manner, formulated in simple and accessible language. It should be clear from the wording of statements that these represent the autonomous position of the council. For the sake of clarity, statements should refer to the factual background and context of the communication and provide clear reasons for the need to speak out in protection of judicial independence in line with the mandate of the council.

As a main rule, the NJC should hold open meetings. The NJC should announce the dates of its meetings in advance, publish promptly their agenda and any amendments thereto. At the end of the NJC's meeting, a summary of the decisions taken, and the subjects discussed at the meeting should be drawn up, approved by a separate resolution of the members and published by the NJC on its website on the day of the meeting.

Except for matters discussed at closed meetings, the NJC should take verbatim minutes of all meetings of the NJC and publish them on the NJC's website within 1-2 weeks after the meeting, preferably in a searchable format. Before the minutes are published, the speakers should be granted the opportunity to read them.

Discussions held at closed meetings should not be published in the minutes, but the minutes should clearly indicate the reasons for ordering a closed meeting. The NJC should weight the reasons for the attendance of participants with consultation rights at closed session on a case-by-case basis.

The position taken by the NJC should be adopted through public debate. Any member of the NJC should be entitled to propose items to the agenda. The NJC President should ensure that the items proposed by the members are placed on the agenda and that the items placed on the agenda are prepared in a timely manner and discussed effectively. When chairing meetings, the NJC President should ensure that the members of the NJC and those present with consultation rights are free to express their views on any item on the agenda. The summary of agenda items should be presented at the meeting before opening a substantive debate. Members should treat proposals as propositions and not as a position to be adopted without discussion. Proposals should merely serve as basis for a public debate in which all members are free to express their opinion and professional stance. Resolutions should primarily be adopted based on discussions and arguments raised at NJC meetings and not on debates held outside these meeting. The content of the resolution adopted reflects the debate leading to its adoption.

The NJC President should periodically, but at least annually report on their activities. The report of the NJC President should be published on the website of the NJC. To ensure transparency, persons representing the NJC should report on their activities at the meetings. At the meetings, the leaders of the NJC provide information on major issues affecting the organisation of the NJC.

The NJC manages public funds in a sensible manner. Its budget is transparent, and the details of the adopted budget are available for the public.

The NJC monitors the legislative processes affecting the judiciary providing an assessment thereof in a transparent manner, publishing its opinions. Its legislative proposals and its opinion on legislative proposals are available to the public.

The NJC responds to formal requests and freedom of information requests by civil society organisations and those interested in the activities of the NJC.

III. Functioning as a body, powers

The operation of the NJC as a body should be based on the active participation of its members, who should be directly involved in the performance of its tasks and the exercise of its powers. Members of the NJC should be equal in exercising the powers of the council. The functioning of the NJC should be continuous, regardless of its actual composition or any eventual change of its membership. To guarantee the continuity of its operation, the NJC should not reopen resolved supervisory issues and, if necessary, should continue the activities previously started or follow up on issues raised that remain unresolved. The NJC should hold meetings at regular intervals, according to the schedule published in advance, with a frequency necessary for the due performance of its tasks. In addition to regular pre-scheduled meetings, the NJC holds extraordinary meetings if necessary. Resolutions taken outside the meetings should be published on the website of the NJC.

The NJC should publicly react to attacks targeting judges in a consistent, timely and balanced manner (in particular when it comes to any form of political pressure, smear campaigns in the media or attempts of influence by representatives of other branches of power or from within the judiciary). Countering phenomena that undermine judicial independence and require an immediate response should be considered as a crucial task of the NJC.

In its role of supervising the central administration of courts, the NJC should put on the agenda of the council and discuss all issues considered as problematic for the organisation and administration of courts, judicial self-government or the individual and institutional independence of judges, and, if necessary, provide its opinion by adopting a resolution. The NJC should draw attention to problems affecting the judiciary and should make use of its powers and scope of action to resolve them in cooperation with judicial associations and representative organisations of judges.

The NJC should fulfil its statutory supervisory duties in a continuous and comprehensive manner, covering all supervisory activities prescribed by law. The NJC should not consider the exercise of its supervisory powers as an option, but as an obligation. The NJC should publish in advance its annual agenda and a quarterly schedule of meetings and arrange them so that these enable the exercise of its supervisory powers in a timely and exhaustive manner. The NJC should also carry out targeted inspections with respect to specific legal questions, topics or areas of court administration. To ensure effective exercise of its powers and duties and prepare well-founded decisions, the NJC may set up permanent and *ad hoc* committees aimed at obtaining an in-depth analysis, examination or recommendation. The mandate of committees (the scope and duration of their supervisory activity) should be established by a resolution of the NJC. During the term of their mandate, the committees should report to the NJC on their activities on a regular basis.

The NJC should establish the fulfilment of its statutory supervisory duties (or the failure thereof) via a resolution and ensure that, where needed, appropriate legal consequences are drawn.

- (a) Should the NJC find everything in order in exercising its supervisory powers, the resolution of the NJC should confirm the receipt of the information or report or declare the completion of any other data request.
- (b) Should the NJC need additional information to fulfil its supervisory duties, the resolution of the NJC should indicate the deficiency and set a time limit for the supervised person to provide the additional information needed or to supply further data.

- (c) Should the NJC detect an omission or breach of the law in exercising its supervisory powers, the resolution should establish the omission or breach of the law and draw appropriate legal consequences.

In the exercise of its powers to consent, the NJC should publish its resolution together with a detailed reasoning thereof.

In performing the tasks falling within its competence, where it is deemed necessary or appropriate, the NJC should involve relevant representatives of the judiciary (judges, court leaders, judicial staff or representative organizations having appropriate expertise), provide an opportunity to channel in the opinion of judges and initiate consultations within the judiciary on specific issues.

IV. The importance of the above criteria and the role of civil society organisations

Amnesty International Hungary and the Hungarian Helsinki Committee carry out their work bearing in mind that without effective and independent courts, the rule of law and human rights for all are inconceivable in Hungary. Independent courts are essential for all to grant fair compensation for unlawful damages suffered; to provide protection against police measures carried out in breach of the law; to guarantee that detentions are lawful; to safeguard the exercise of free speech and the right to protest without retaliation and to ensure that we can cast our votes in fair elections. Safeguarding the independence of the judiciary is not only the individual duty and responsibility of judges sitting in courtrooms, but also of the NJC that represents judges, through the exercise of its powers laid down in the Fundamental Law and in cardinal laws. The NJC is deemed to serve as a guarantee in adopting important regulations affecting judges, in ensuring the transparency and lawfulness of the career and promotion of judges, as well as in selecting the highest judicial leaders.

The strengthened role and the new powers of the NJC granted by the Judicial Reform may only achieve their goal of enhancing judicial independence if exercised by an active NJC that exhausts its powers. As organisations dedicated to safeguarding the rule of law, we will monitor the activities of the NJC based on the above criteria and share our assessment with the public.

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