



## Practice of the case allocation system in Hungary

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### Summary

In Hungary, the rules governing case allocation within courts are generally very complex and allow for too much flexibility. This allows for the possibility that sensitive or politically important cases can be allocated to “reliable” judges who will adjudicate according to political interests. An analysis was conducted of the case allocation systems across eleven Hungarian courts – including small and large courts and all Regional Courts of Appeal – to further understand their structure and application. The principles of specialisation, order of arrival, and balanced caseload are the most frequently used for case allocation. The analysis found that the size of the court is not necessarily correlated with the systems for case allocation that are applied; smaller courts are generally applying specialisation while larger courts are not. It is concerning that the norms for deviating from the case allocation systems are exceptionally flexible and work against accountability and transparency.

A move to a predictable and automated method of allocating cases is recommended to protect accountability and transparency within the judicial system. Options could be a method based on the parties’ name or the time of arrival of the cases. This would increase the predictability of case allocation and remove opportunity for cases to be allocated based on political allegiance or leaning. It is also recommended that the judge who is responsible for case allocation should not be responsible for evaluating judicial performance. The overall priority should be simplifying the case allocation systems and rules so that parties can easily access information on who the judge is in their case, and how that judge has been allocated. Reducing the number of exceptions and clarifying the case allocation rules would be a significant step towards a more transparent system. The addition of procedural guarantees to the case allocation rules could also protect judges from pressure or influence from superior judges.

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## I. Introduction

A key tenant of judiciary independence – the concept that the judiciary should be independent from the other branches of government – is the right to a lawful judge. According to the case allocation rules, a judge shall be selected for a case from a panel of judges of the court vested with competence and jurisdiction in due course of the law.

The specifics of the case allocation system are important from two perspectives:

1. **Internal independence:** the case allocation system should protect judges from undue influences and from pressure from other judges, including the Head of Court, the Head of College, and the Judicial Council. Where a case allocation system is inappropriate or is inappropriately applied, internal independence cannot be upheld. This leaves opportunity for rulings to be impacted by the influence of other judges, particularly where other judges have a role in how the ruling judge's career will progress. One measure of how judges' performances are evaluated is the number of legal proceedings they have completed in a year. If a judge is only allocated complex cases, this may have a negative impact on the result of their evaluation. In this situation it may be harder for the judge to progress in their career.
2. **Impartiality:** a predetermined and predictable case allocation system can ensure impartiality as cases cannot be assigned to a judge on the basis that they will give a lighter or more serious judgement in the given case. It will also protect judges from colleagues who are not impartial as it limits the impact they can have on other cases.

Both perspectives clearly show that a judge can only make an independent, impartial judgement if the case allocation system is predictable and transparent.

Case allocation systems are not uniform across Europe and the United States. A comparative study on the case allocation rules applied in Europe<sup>1</sup> found that regulation is tightly linked to the legal system and the system of judicial administration and is also influenced by some negative historical experiences related to judicial independence. In some countries, such as Denmark and the United States, case allocation systems are determined by the degree of specialisation within the particular court system. If the courts are not specialised then the cases are assigned to judges through randomisation or by lottery – automatic case allocation methods. However, where judges specialise in certain types of cases, then the allocation follows a two-step method. Cases are first allocated based on specialisation, followed by the second step where cases are assigned to judges alphabetically (by the applicant's or the defendant's name or domicile). Austria, Germany, and Italy apply this practice.<sup>2</sup>

In Hungary, a mixed system is used for case allocation where the head of a court is entitled to determine the rules on an annual basis. As a result, courts and branches of law may have different case allocation

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<sup>1</sup> Marco Fabri, Philip M. Langbroek: A Comparison of Case Assignment Systems in Six European Judiciaries: Description and Comparativ Grid. In: Philip M-Fabri, Marco: The Right Judge for Each Case. Intersentia, Antwerpen-Oxford, 2007, Badó Attila: A bírói függetlenség egyes garanciális elemeinek összehasonlító vizsgálata, MTA Doktori Értekezés, Szeged, 2017 57-64 p.

<sup>2</sup> Langbroek above,

rules, using either the specialisation or randomisation practices both of which are used in Hungary. Case allocation is governed by both law and decree, but the details are set by Resolution no. 6/2015. (XI. 30.) of the President of the National Judicial Office (NJO).

Determining who bears responsibility for defining the case assignment scheme is a particularly important aspect of any case allocation system. In most countries a judicial council makes a forward-looking decision on it with annually. Only France<sup>3</sup> applies a practice similar to Hungary's, where the Head of the Court determines the rules of the case allocation system.

In December 2018 – January 2019, we conducted an analysis of the case allocation systems across eleven Hungarian courts to further understand their structure and application. The analysis was conducted to support advocacy and awareness raising on the issues with case allocation systems in the Hungarian judicial system. This is a very pertinent issue in the Hungarian judicial system because the case allocation rules make it possible for sensitive or politically important cases to be allocated to "reliable" judges who will adjudicate according to political interests. Analysing and documenting the current case allocation systems is an essential step towards understanding how a move to a predictable and automated method of allocating cases can be implemented.

The eleven courts analysed were selected as follows:

- Kúria (Supreme Court): the most important court in the ordinary court system.
- Five Regional Court of Appeals: high courts, just one level below the Kúria.
- Budapest-Capital, Budapest Environs, Pest Central District Court: Budapest is the economic centre of Hungary and these courts have the biggest caseload in terms of number of cases as well as financial size of cases
- Debrecen and Tatabánya: courts in a rural area selected randomly

## **II. Legal background of case allocation**

The rules for case allocation in Hungary are regulated on multiple levels through a law, a Ministerial Order, and a resolution by the President of the NJO. Act CLXI of the 2011 on the Organization and Administration of the Courts sets the general rules to be followed for the case allocation system.<sup>4</sup> According to the law<sup>5</sup>, the case allocation rules of a court shall be defined by the president of the court, upon hearing the opinion of the judges. The case allocation rules shall be drawn up taking into consideration the magnitude of cases, the amount of work a case requires – with particular regard to high profile criminal cases involving some form of economic crime–, the chronological order of the filing of cases, and it shall also endeavor to distribute the workload evenly<sup>6</sup>.

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<sup>3</sup> Langbroek above.

<sup>4</sup> Act CLXI of 2011 on the Organization and Administration of the Courts regulates the fundamental rules of case assignment. The Ministerial Order No 14/2002. (VIII. 1.) of the Ministries of Justice and Resolution no. 6/2015. (XI. 30.) of the President of the NJO contain the detailed provisions of case allocation.

<sup>5</sup> Act CLXI of 2011 9. §

<sup>6</sup> Act CLXI of 2011 10. § (3)

The Ministerial Order and the resolution by the President of the NJO define the allowed methods for case allocation<sup>7</sup>:

- Even, odd numbers
- Specified number groups
- Alphabetical order of parties' name
- Division of jurisdiction between judges
- Court secretaries (cities, districts)
- Distribution of all cases received to a board (judge, court secretary) for a one-week, two-week or monthly distribution
- Specialisation by case, case group, or subject matter
- Taking into account the weighting of cases
- The duration of the clerical and judicial practice
- First come, first served
- Automatic distribution of files by computer programme
- Balanced caseload
- Multiple allocation methods

The eleven analysed courts mostly apply multiple methods simultaneously, particularly specialisation, assignment based on order of arrival, and the principle of balanced caseload. Under specialisation, the case allocation system assigns similar groups of cases to certain judges and judicial councils based on expertise. This is frequently applied in combination with the arrival method. This means, that if multiple councils or judges can hold the trials, then the cases are assigned to them one-after-the-other ordered by the date of arrival. If the order of arrival method is applied alone, then all the judges and judicial councils can hold the trials and the cases are only separated by their types, i.e. criminal or civil, and are assigned based only on the order of arrival. The principles of balanced caseload and weighting of cases are interrelated; if a judge or judicial council is already assigned to multiple difficult cases, then that judge or judicial council will not be allocated to the next-in-the-line case (ordered either by arrival or specialisation). The principle of balanced caseload should also take into account the accumulated backlog of the court.

A Venice Commission (an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law) report on the independence of the judicial system when defining the rules for the case allocation system states that they "*should be based on objective and transparent criteria established in advance by the law or by special regulations on the basis of the law, e.g. in court regulations. Exceptions should be motivated.*"<sup>8</sup> In Hungary, issues with regulation are related to deviations from the general rules being allowed based on very broad interpretations of the applicable law. The decision of the European Court of Human Rights (ECtHR) in the case of DMD Group A.S. v.

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<sup>7</sup> Ministerial Order No 14/2002. (VIII. 1.) of the Minister of Justice 31. § Resolution no. 6/2015. (XI. 30.) of the President of the NJO 116. § (1)

<sup>8</sup> CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010) [https://www.venice.coe.int/webforms/documents/CDL-AD\(2010\)004.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2010)004.aspx)

Slovakia also emphasises that the rules for allocating and re-allocating cases should be clear and articulated and should not provide too much room for deliberation when the president of the court applies them to cases.<sup>9</sup>

### III. Rules and practice

Although the rules on methods for case allocation allow for several possibilities, each of the eleven analysed courts applies only two or three of them. The alphabetical ordering of parties' names as a basis for allocation, a well-established case allocation method, is not used by any of the eleven courts. Table 1 below presents a summary of the case allocation systems in the eleven analysed courts.

**Table 1: Case allocation systems in analysed courts**

<b>Court</b>	<b>Who is responsible for case allocation?</b>	<b>Case allocation rules</b>	<b>Exceptions</b>
Kúria	Criminal: Head of College Civil: Head of College	Criminal: first come first served Civil: specialization, first come first served	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload
Budapest-Capital Regional Court of Appeal	Criminal: Head of College Civil: Head of College	Criminal: first come first served Civil: specialization, first come first served	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Győr Regional Court of Appeal	Criminal: Head of College Civil: Head of College	Criminal: first come first served Civil: specialization, first come first served, weighting of cases, timeliness	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Debrecen Regional Court of Appeal	Criminal cases: Head of Court Civil cases: Vice President of Court	Criminal: first come first served, balanced caseload Civil: territoriality	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Szeged Regional Court of Appeal	Criminal: Head of College Civil: Head of College	Criminal: first come first served Civil: specialization	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Pécs Regional Court of Appeal	Criminal: Head of College Civil: Head of College	Criminal: specialization, balanced caseload Civil: specialization	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Budapest-Capital Regional Court	Criminal: Head of College Civil: Head of Group, deputy Head of College	Criminal: specialization, weighting of cases	Extraordinary procedure, joint cases, exclusion of a judge,

<sup>9</sup> Case of DMD GROUP A.S. v Slovakia, 19334/03, available at: <http://hudoc.echr.coe.int/eng?i=001-100883>, paras. 66-68, 70.

Court	Who is responsible for case allocation?	Case allocation rules	Exceptions
		Civil: specialization, balanced caseload, first come first served	balanced caseload, timeliness
Budapest Environs Regional Court	Civil: Head of Court, Vice president of the Court, Head of College, deputy Head of College	Criminal: first come first served, specialization Civil: specialization, first come first served	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Debrecen Regional Court	Head of College	Criminal: weighting of cases, first come first served Civil: specialization	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Tatabánya Regional Court	Head of College	Criminal: first come first served Civil: specialization, first come first served	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness
Central District Court	Head of Court, Vice president of the Court, Head of Group	Specialization, weighting of cases, first come first served, balanced caseload	Extraordinary procedure, joint cases, exclusion of a judge, balanced caseload, timeliness

In Hungarian courts civil and criminal procedures are separated within the case allocation system. For civil procedures, the courts tend to apply the method of specialisation. For criminal procedures, the order of arrival is the primary method. As presented in Table 1, it is common for all courts to use multiple methods in parallel for both civil and criminal procedures.

Based on international experience<sup>10</sup>, specialisation is strongly related to the size of court, and to the number of court divisions and units. The analysis found that in Hungary there is no close connection between the size of the court and the specialisation-based case allocation system. For instance, at one of the largest Hungarian courts – by number of judges<sup>11</sup> – the Central District Court of Pest (PCDC, Pesti Központi Kerületi Bíróság), the primary basis for case allocation is the specialisation. However, in practice all cases could be allocated to almost any judge as specialisation was defined in such broad terms. As per the applicable regulations for case allocation, all the judges in the criminal court could receive cases of criminal procedure of first instance, criminal procedure for juveniles, criminal non-contentious proceedings, and other miscellaneous procedures. Judges in the civil court could receive cases of civil procedures of first instance and civil non-contentious proceedings of first instance. This has the consequence that the broad groups of procedures are overlapping in nature.<sup>12</sup>

The Head of the College lays down the case allocation rules annually. According to these rules, it is generally the Head of the College and the Head of Court who decide on assigning a case to a judge or

<sup>10</sup> Langbroek above.

<sup>11</sup> The number of judges at PCDC was 204 at the end of 2017, which makes it the largest local court (report of the the President of NJO 2017., available at: <https://birosag.hu/sites/default/files/2018-10/beszamolo2017.pdf>, p. 66).

<sup>12</sup> Case assignment rules for the PCDC, available at: [https://fovarositorvenyszek.birosag.hu/sites/default/files/field\\_attachment/pkbb\\_-\\_2019.04.16.pdf](https://fovarositorvenyszek.birosag.hu/sites/default/files/field_attachment/pkbb_-_2019.04.16.pdf)

to the chamber of judges. It is important to note that the President of the NJO is entitled to appoint the president of a certain court which could be a problem. As one member of the National Judicial Council (NJC) articulated it:

*"An important authority of the President of the NJO is to appoint the most important judicial leaders; the heads of courts and high courts and the heads of colleges. The heads of courts and high courts have disciplinary rights over the judges in their courts and the heads of colleges have large influence over the judgements made through governing the professional work of the courts. These leaders define the methods for case allocation which means they have influence on which case will be handled by which judge."*<sup>13</sup>

The Venice Commission report states that *"In national legislation, it is sometimes provided that the court presidents should have the power to assign cases to individual judges. However, this power involves an element of discretion, which could be misused as a means of putting pressure on judges by overburdening them with cases or by assigning them only low-profile cases. It is also possible to direct politically sensitive cases to certain judges and to avoid allocating them to others. This can be a very effective way of influencing the outcome of the process"*.<sup>14</sup>

The diverse case allocation practice of the different courts leads to an unpredictable system. Most of the case allocation provisions are extremely detailed, for example the rules of the Budapest Environs Regional Court are outlined in a 56 page document<sup>15</sup>, including annexes. In theory it should have the consequence that the rules establish a predictable and transparent environment, but this is not the case. The overly complicated nature of the rules leads to problems with interpretation of the relevant provisions and it can be difficult to establish concretely which case should be allocated to which judge. On the other hand, there are several exceptions from the general rules. The exceptions are exactly the same for all of the analysed courts. The problem stems from the requirements to achieve 'balanced caseload' and 'timeliness' as the understanding of these terms can vary from court to court. If the Head of College, who usually has the right to assign the case, would like to deviate from the general allocation rules they could automatically use these exceptions in order to do so.

## **Civil Procedures**

While the rules are diverse, usually for civil procedures the general rule of specialisation is followed, therefore there may be units for family law cases, property law cases, or business association cases. However, not all the courts apply the method of specialisation in their day-to-day practice. The Budapest-Capital Regional Court, like the already mentioned PCDC, defines specialisation along civil or non-contentious proceedings of first instance or by appealed procedure of civil litigation or non-

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<sup>13</sup> Viktor Vadász: Krízis az igazgatásban? In: MTA LAW Working Papers, 2018/13, available at:

[https://jog.tk.mta.hu/uploads/files/2018\\_13\\_Vadasz.pdf](https://jog.tk.mta.hu/uploads/files/2018_13_Vadasz.pdf)

<sup>14</sup> CDL-AD(2012)001-e, 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, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), available at:

[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)

<sup>15</sup> Case assignment rules for the Budapest Environs Regional Court,

[https://budapestkornyekitorvenyszek.birosag.hu/sites/default/files/field\\_attachment/bkt\\_2019\\_evi.pdf](https://budapestkornyekitorvenyszek.birosag.hu/sites/default/files/field_attachment/bkt_2019_evi.pdf)

contentious proceeding.<sup>16</sup> Contrary to this, the Debrecen Regional Court of Appeal regulates civil case allocation by the specialisation method. This court designed judicial councils along similar groups of procedures, e.g. mixed contract law related cases, compensation related cases, property related cases, and family law related cases. But in the case of both courts this is problematic. The set of cases can be interpreted widely, and at least twenty types of cases can refer to one chamber of judges, which has the consequence that specialisation is not really affecting the allocation.

### **Criminal Procedures**

The 'first come first served' principle means that the first received case on a given date shall be assigned to the first judge or chamber of judges, the second case to the second judge and so on. There are courts where specialisation is the standalone basis for case allocation, for example the Pest Regional Court of Appeal where the separate chapters of the Criminal Code determine the case allocation for certain judiciary councils.<sup>17</sup> However, the Budapest-Capital Regional Court has a different and multi-layered regulation because the allocation follows specialisation and distinguishes among complicated (so-called "mega") cases, labour-intensive cases, media-related cases, and also applies weighting as a method. This complex allocation system could be motivated by the sheer size of the court, as Budapest-Capital Regional Court is the largest regional court in Hungary.

## **IV. Problems**

**Exceptions:** potential deviations from the general rules of case allocation can be motivated by avoidance of imbalanced caseloads, reduction of backlog of court cases, maintenance of the timeliness of judgements, the subject of the case, long lasting absence of the judge, or other reasons affecting the operation of the court. The high number of exceptions from the general rules interferes with a predictable and transparent case allocation practice. The rules in case allocation are overly detailed and the relevance of formal rules becomes diminished because of the high number of exceptions. This means that the Head of Court and the Head of College have the right to resign a case by selectively applying one of the numerous exceptions. However, there are no publicly available metrics on how frequent the deviations from the general rules are applied.

**Specialisation:** the established fact that there are courts, including the largest one, where specialisation is defined only formally is a general problem in the operation of the system. Specialisation should not mean that all the judges are assigned to the same broadly defined groups of cases. The division by litigation and non-contentious proceedings is overly loose, but there are courts where the case allocation rules are able to define explicit taxonomy with items like action for rectification cases or compensation cases.

**Internal independence:** the Head of College and the Head of Court conduct the professional evaluation of judges. This concentrates the authority for case assignment and the subsequent evaluation

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<sup>16</sup> Case assignment rules of civil proceedings, Budapest-Capital Regional Court, 2019, available at: [https://fovarositorvenyszek.birosag.hu/sites/default/files/field\\_attachment/ftpk\\_-\\_2019.03.12.pdf](https://fovarositorvenyszek.birosag.hu/sites/default/files/field_attachment/ftpk_-_2019.03.12.pdf)

<sup>17</sup> Case assignment rules, Pécs Regional Court of Appeal, 2019, available at: [https://pecsiitlotabla.birosag.hu/sites/default/files/field\\_attachment/pit\\_2019\\_ugyelosztasi\\_rend.pdf](https://pecsiitlotabla.birosag.hu/sites/default/files/field_attachment/pit_2019_ugyelosztasi_rend.pdf)



of judicial performance in the hands of the Heads of Courts. Thus, the Hungarian regulations cannot provide protection for a judge from potential pressure from a superior judge. This means that the professional career of a judge could be either negatively affected or fast-tracked, as the number of completed cases is an important metric for their performance evaluation. Where the majority of complex cases are allocated to one judge, then their performance metrics will inevitably deteriorate, or if they only handle simple cases, their performance evaluation will improve.

**Transparency:** as the Hungarian courts' practice of case allocation does not build on allocations based on the client's address or initials, the transparency of allocation could be violated. Based on the current rules it cannot be determined which judge should handle a certain case, or whether there has been a deviation from the baseline rules.

**Carrier:** the overregulated rules, the high number of exceptions, and the compromised internal independence make it altogether impossible for judges to be autonomous decision makers. A personal criticism of the judicial system, the legislation, or the practice of judicial appointments can lead to a negative evaluation of the professional performance.

## **V. Recommendations**

Based on the analysis of the case allocation system in eleven courts it is recommended that the case allocation rules are simplified. The simplification of the rules should result in parties being easily able to access information on who the judge is in their case, and how that judge has been allocated. An important step would be connecting the meaning of specialisation of judges in the case allocation scheme and the term's meaning in the real specialisation of the judges. For example, in the PCDC the specialisation in the case assignment scheme is defined along procedures (litigation or non-contentious proceedings), while the judges' specialisation groups are divided in terms of areas of law, e.g. property law or family law. The following regulatory changes are proposed to facilitate more transparent and accountable case assignment schemes:

- **Reduce the high number of exceptions and add procedural guaranties to case allocation rulebooks:** reducing the number of exceptions and clarifying the rules is an essential step in simplifying the case allocation systems and ensuring transparency and accountability. The addition of procedural guaranties to the case allocation rules could also protect judges from pressure or influence from superior judges.
- **Responsibility for case allocation:** the the judge who is responsible for case allocation should not also be responsible for evaluating judicial performance. Maintaining independence between the two roles is essential for a transparent and accountable case allocation system.
- **Case allocation systems:** a move to a predictable and automated method of allocating cases is recommended to protect accountability and transparency within the judicial system. Allocation of cases based on parties' names or the time of arrival of the cases would be the best options for this.