

Targeted stakeholder consultation for the European Commission's 2023 Rule of Law Report

— Answers provided by the President of the Kúria of Hungary —

About you

I am giving my contribution as

Other

If “Other”, please specify

The President of the Kúria of Hungary

Organisation name

The Kúria of Hungary

Main areas of work

Justice system

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

The organisation's official website is as follows: <https://kuria-birosag.hu/>. The Kúria of Hungary is the supreme judicial forum of the country, having competence in civil, economic, labour, criminal and administrative cases.

Country of origin

Hungary

First name

András Zs.

Surname

Varga

Email address of the organisation (this information will not be published)

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Publication of your contribution and privacy settings

Public – Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution.

I. Justice system - Hungary

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

The Kúria of Hungary is the country's supreme judicial forum that has no legislative powers. The recommendations provided by the 2022 Report in respect of the justice system in Hungary are essentially to be implemented by the Hungarian legislature, thus, such measures can be taken only by the Parliament. The observations previously made by the Kúria on the 2022 Report's findings have been made available to the Kúria's various foreign partner institutions as well as to the European Commission, but the latter has rather disregarded them. Please find attached the Kúria's observations on the 2022 Report's findings in respect of the justice system of Hungary.

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

Please note that the answers provided for the 2022 Report's consultation are still valid, subject to some updates indicated in the Kúria's attached observations on the 2022 Report's findings in respect of the justice system of Hungary.

In July 2022, the National Judicial Council and, consequently, the European Commission criticised the practice of the President of the Kúria in respect of the appointment of Kúria judges. Nevertheless, the President of the Kúria has been following the same practice in the evaluation of the 2021 calls for applications as it had always been done in the previous decade. The only difference is that the National Judicial Council, which had found this practice to be regular in all previous years, changed its position in 2022 and found firstly the procedure of the President of the Kúria and then secondly that of the President of the National Office for the Judiciary (regarding not only the Kúria but all the Hungarian courts) to be irregular. However, the position of the National Judicial Council is only an opinion and not a legally binding decision. Nor could it be, because that position was not formulated as a result of a due process of law by an administrative or judicial authority. At the heart of the debate is the question of how to assess applications when there are calls for applications for several vacancies at the same time. The usual practice, and the one followed by the President of the Kúria in 2021, is to always accept the application of the highest ranked and appointable candidate in the order of ranking established by the Kúria's Judicial Council. If, in the case of multiple applications evaluated at the same time, an application has already been accepted for a judicial post, then the applicant is no longer eligible for appointment to subsequent posts. The legality of this practice is confirmed not only by the fact that this has always been the practice, which the National Judicial Council earlier found to be regular, but also by the fact that no successful or unsuccessful applicant has challenged the assessment of their application before the Service Court, although they had the right to do so. The reason for the foregoing is that the President of the Kúria has supported only those candidates who had won by being first in the ranking or by obtaining the first position in the ranking because their competitors being in a higher position in the ranking had already won other judicial posts. The procedure is in line with the preliminary position of the Kúria's bodies that are to give their opinion on the candidates and has been reported, in detail, by the President of the Kúria to the Full Bench of the Kúria.

As regards the secondment of judges to the Kúria, it has to be stressed that from 16 July 2022 no seconded judges have been adjudicating cases at the Kúria, and from that date on the

secondment of judges to the Kúria has ceased.

Irremovability of judges, including transfers (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

Please note that the answers provided for the 2022 Report's consultation are still valid, subject to some observations made by the Kúria on the 2022 Report's findings. The Kúria's observations can be found in the attached document.

Promotion of judges and prosecutors (incl. judicial review)

Please note that the answers provided for the 2022 Report's consultation are still valid.

Allocation of cases in courts

Please note that the answers provided for the 2022 Report's consultation are still valid, subject to some updates indicated in the Kúria's attached observations on the 2022 Report's findings in respect of the justice system of Hungary.

In addition, it has to be noted that the current and automated case allocation order of the Kúria, entered into force on 1 January 2023, which contains not only a set of predetermined, objective criteria for the allocation of cases, but also the composition of the Kúria's adjudicating panels, was unanimously supported by all of the Kúria's three chambers during the month of October 2022, and was also agreed on by the Judicial Council of the Kúria.

Moreover, it has to be emphasised that there has been a change at the Kúria from the system of three-member adjudicating panels to that of five-member adjudicating panels from Spring 2022 in respect of administrative cases, and from 1 January 2023 regarding criminal and civil cases as well.

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Please note that the answers provided for the 2022 Report's consultation are still valid.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

Please note that the answers provided for the 2022 Report's consultation are still valid, subject to the Kúria's attached observation on the 2022 Report's relevant finding.

In addition, as regards the eventual disciplinary liability of a Hungarian judge who initiated a reference for a preliminary ruling to the European Court of Justice and whose reference was reviewed by the Kúria as a result of a petition in the interest of legality submitted by the Prosecutor General, it has to be pointed out that, under the European Convention on Human Rights and the European Court of Human Rights' established case-law [see, in that regard, the judgement in the case of *Matthews v. the United Kingdom* (application no. 24833/94) and the Grand Chamber judgement in the case of *Bosphorus Airways v. Ireland* (application no. 45036/98)], Contracting States, such as Hungary, remain responsible for ensuring that Convention rights are duly guaranteed even in the case of the Contracting States' compliance

with their obligations originating from their membership in a supranational organisation such as the European Union. Consequently, the Hungarian State is to remain responsible for guaranteeing the right of an accused person to have his/her criminal case heard within a reasonable time and without the unnecessary protraction of the national judicial proceedings, which may result from the national court's unjustified decision to make a reference for a preliminary ruling to the European Court of Justice.

Furthermore, the Kúria is not aware of any Service Court decision establishing the disciplinary liability of a Hungarian judge for making a reference for a preliminary ruling.

Referring to the European Court of Justice's relevant judgment (judgement in case C-564/19, IS), the statistics published by the European Court of Justice do not show any chilling effect, the development of the number of preliminary ruling procedures initiated by Hungarian judges is in line with the trend of previous years (in 2016: 15; in 2017: 22; in 2018: 29; in 2019: 20; in 2020: 18; in 2021: 17) and these figures are still outstanding compared to those of several other countries that joined the EU in 2004 (such as the Czech Republic and Slovakia).

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

Please note that the answers provided for the 2022 Report's consultation are still valid.

Judicial salaries have been increased in three phases, in 2020, 2021 and 2022, resulting in a total salary increase of more than 60 percent. In addition to the judges' already existing entitlement to jubilee bonuses after 25, 30, 35 and 40 years of service, from the year 2022 judges have become entitled to a jubilee bonus after 45 years of service as well.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

Please note that the answers provided for the 2022 Report's consultation are still valid, subject to some updates included in the Kúria's attached observations on the 2022 Report's findings in respect of the justice system in Hungary.

B. Quality of justice

Accessibility of courts (e.g. court/legal fees, legal aid, language)

Please note that the answers provided for the 2022 Report's consultation are still valid.

Resources of the judiciary (human/financial/material)

Please note that the answers provided for the 2022 Report's consultation are still valid.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

On a national level, it is the Hungarian Academy of Justice, operated by the National Office for the Judiciary, that provides compulsory and optional in-person or online trainings for the members of the judiciary. In addition, there are a number of foreign and European training initiatives and organisations (such as the European Judicial Training Network, the European

University Institute or the European Academy of Law) that invite Hungarian judges and judicial employees to participate in international seminars, webinars and conferences.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

Please note that the answers provided for the 2022 Report's consultation are still valid.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

Please note that the answers provided for the 2022 Report's consultation are still valid.

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization

Please note that the answers provided for the 2022 Report's consultation are still valid.

According to the new regulation, from 1 March 2022 the Regional Appellate Court of Budapest has exclusive jurisdiction to hear appeals against the decisions of the high courts in administrative matters. As from 1 March 2022, the Regional Appellate Court of Budapest is to decide on the exclusion of high court judges from court proceedings, on the designation of the competent administrative body to proceed, on conflicts of territorial competence and on objections lodged on the basis of a high court's failure to act.

At the same time, the scope of decisions that can be challenged in judicial review proceedings falling within the jurisdiction of the Kúria is extended in administrative matters: a petition for judicial review may be submitted not only against the final judgment, but also against the court order rejecting the statement of claims or terminating the proceedings. From 1 March 2022, the Kúria is to act in the form of a judicial panel composed of five professional judges instead of three of them in administrative cases.

The alleviation of the excessive workload of the Administrative Chamber of the Kúria allows the latter chamber to concentrate its resources on its judicial review and jurisprudence-harmonisation tasks.

The uniformity of the courts' case-law is guaranteed by the Kúria through the uniformity procedure and the uniformity complaint procedure. The former has been integrated into the latter, based on the model of the preliminary ruling procedure of the Court of Justice of the European Union. Two permanent uniformity complaint panels have been established at the Kúria as of 1 January 2022. These panels have a large number of members, they may include a maximum of 21 members (they shall include, by virtue of the law, the President of the Kúria and a minimum of eight additional members, there are currently two permanent uniformity complaint panels, each of them has 21 members, however, they may also be supplemented by the members of the Kúria's relevant chamber, by the members of the Kúria's several or all chambers or by the members of the Kúria's Full Bench), and are composed of the Kúria's heads of panels and senior court leaders. The heads of panels are assigned to the two uniformity complaint panels in the alphabetical order of their surnames within the panels. The allocation of cases is automatic, the two uniformity complaint panels take it in turns to receive their cases. Both uniformity complaint panels are chaired by the President of the Kúria. The

Vice-President of the Kúria in charge of ensuring uniform jurisprudence is a member of both uniformity complaint panels. The decision on the admissibility of a complaint is to be taken by the full board of the respective panel. In the year 2022, the Kúria had to hear 41 uniformity complaint cases, 23 of them were dealt with on their merits, 16 of them were rejected without any substantive examination and two of them were reregistered. Furthermore, in 2022, the Kúria delivered 12 uniformity decisions.

C. Efficiency of the justice system

Length of proceedings

Please note that the answers provided for the 2022 Report's consultation are still valid.

It has to be emphasised, once again, that, as regards efficiency and quality, the Hungarian justice system performs well in terms of the length of proceedings and has a high level of digitalisation.

The EU Justice Scoreboard shows that Hungary is among the best-performing Member States regarding the timely adjudication of administrative cases.

In civil cases, based on the provisions of Act. no. XCIV of 2021 that entered into force on 1 January 2022, the parties may request pecuniary compensation for the unreasonable protraction of their civil court proceedings. The Act sets a number of deadlines within which first instance, second instance and judicial review proceedings should be reasonably concluded. Failure to do so by the courts entitles the parties to the proceedings to request pecuniary compensation, which certainly has a positive impact on the reduction of the number of lengthy civil court proceedings.

Other – please specify

IV. Other institutional issues related to checks and balances – Hungary

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

The Kúria of Hungary is the country's supreme judicial forum that has no legislative powers. The recommendations provided by the 2022 Report in respect of the system of checks and balances in Hungary, however, are essentially to be implemented by the Hungarian legislature, thus, such measures can be taken only by the Parliament.

A. The process for preparing and enacting laws

Regime for constitutional review of laws

Please note that the answers provided for the 2022 Report's consultation are still valid.

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic, judicial review (including

constitutional review) of emergency regimes and measures in the context of the COVID-19 pandemic

Please note that the answers provided for the 2022 Report's consultation are still valid.

C. Accessibility and judicial review of administrative decisions

Judicial review of administrative decisions, short description of the general regime (in particular competent court, scope, suspensive effect, interim measures and any applicable specific rules or derogations from the general regime of judicial review)

Please note that the answers provided for the 2022 Report's consultation are still valid. Furthermore, see in detail the answers given under the title "Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization".

The judicial review of administrative decisions is regulated by Act no. I of 2017 on the Code of Administrative Litigation, which provides a set of specific rules that derogate from the general regime of judicial review, included in Act no. CXXX of 2016 on the Code of Civil Procedure.

In administrative lawsuits, any person whose rights or lawful interests are injured by an administrative action or the situation brought about by it may request immediate legal protection from the competent administrative court in order to eliminate the directly threatening disadvantage, temporarily resolve the legal relation made disputed or invariably maintain the condition providing grounds for the legal dispute. Within the framework of immediate legal protection, it is possible to request a) the ordering of suspensory effect, b) the relieving of suspensory effect, c) temporary measures, or d) the ordering of the provision of preliminary evidence.

Administrative court decisions may be declared provisionally enforceable, and thus they may be enforced prior to the date when they become final. The administrative court shall *ex officio* declare a decision provisionally enforceable, if it is ordered by law. By request, the administrative court shall declare its decision provisionally enforceable by applying the rule of immediate legal protection *mutatis mutandis*. The ordering of provisional enforceability may be made subject to granting security. The security shall be returned when the decision becomes final or the provisional enforceability is terminated.

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

Please note that the answers provided for the 2022 Report's consultation are still valid.