

**The European Commission's 2021 Rule of Law Report**  
**Virtual meeting with the representative of the Curia of Hungary on 26 April 2021**

**Questions by the European Commission**

Answers given by the Curia of Hungary

**Introduction**

First of all I would like to express our thanks for this meeting. Me and my distinguished colleagues have accepted the invitation because we see it as an opportunity for an open professional consultation about the topics raised by the draft report. Let me underline the *professional* nature of our cooperation because there can be some concerns regarding the uncertainty of EU or Member State competencies on administration of the judiciary. And I also have to draw your attention to the circumstance that some of the questions should not be asked by the national Government or Parliament, because it would violate the independence of the Curia. But there is no obstacle to conduct a *professional* exchange of views.

As a general introduction I also would like to assure all the partners involved that we respect the principle of the rule of law as a Hungarian and European value. Hungary and the Hungarian judiciary have fought for it for a long time. We respect it and we are ready to safeguard and to take care of it as our most important attribution every day. The Curia of Hungary and its President read and observe in this spirit the Fundamental law, the national legislation and the law of the EU. We respect and apply Article 2 of the Treaty on the European Union, but we also respect and apply its Article 4.

**1. Could you elaborate on the role of judicial bodies in the judicial appointment of members of the Constitutional Court? Could you explain the role of judicial bodies in the selection/election of the president of the Kúria? Is the president of the Kúria selected from among judges of the Kúria?**

These issues are regulated by the relevant Hungarian legislation and the provisions of the Fundamental Law. The aforementioned rules may be accessed by the European Commission both in Hungarian and English. A repeated and brief explanation of their content does not change their meaning. The Commission may ascertain the entire relevant legal background by consulting them.

Pursuant to the Fundamental Law of Hungary (the Hungarian Constitution), the Curia is the country's supreme ordinary court. The task of the central administration of the courts is not to be carried out by the Curia or its President, but by the President of the National Judicial Office. The National Judicial Council supervises the central administration of the courts. The Chief Justice shall be elected by the Parliament with a two-thirds majority (qualified absolute majority) vote of all the MEPs on a proposal from the President of the Republic. I have to mention, that there are no binding international or European Union rules that lay down any requirement for the EU Member States in respect of this question. There are only recommendations of prestigious institutions of the EU and the Council of Europe that were taken into consideration when our laws were drafted and adopted.

In accordance with section 114, subsection (1) of the Act on the Organisation and Administration of the Courts, the President of the Curia shall be elected in accordance with Article 26, paragraph (3) of the Fundamental Law by the Parliament from among the judges appointed for an indefinite period of time who served at least five years as a judge. In calculating the period of a judge's service relationship, the experience gained while serving as judge or senior consultant in an international organization of the judiciary, or constitutional court judge, or as senior consultant in the Office of the Constitutional Court shall be taken into consideration as well.

In the same way as under the previous legal regime in force at the time of Hungary's accession to the European Union, the National Judicial Council (similarly to the then National Council of Justice) gives an opinion on the person proposed as a candidate for President of the Curia. Prior to formulating an opinion, the National Judicial Council hears the candidate. Following the latter's hearing that took place on 13 October 2020, the Council held – in a not-yet-been clarified but definitely disputable manner – a closed meeting to decide on the candidacy.

The President of the Republic decided on the nomination of the new President of the Curia who was a Constitutional Court judge and the Hungarian member of the Venice Commission at that time. Following his resignation from the post of Constitutional Court judge, the Curia's new President was elected by the Hungarian Parliament to become Chief Justice as of 2 January 2021.

Since the 1990 transition, the rules on election were the same. As a previous requirement, in force at the time of Hungary's accession, former judicial experience was not a requirement. The Chief Justice only had to have a law degree and have passed his/her professional legal examination. It was the Fundamental Law that narrowed the pool of candidates down by requiring that the Chief Justice must be elected from among judges. However, it has to be noted that in Hungary there has never been a provision that has required that the Chief Justice must be elected from among the Curia's judges.

Although having a prior judge's position for a long period of time, the former President of the Supreme Court, firstly elected after the transition in 1990 had no judgeship status but a Constitutional Court judge's position at the time of his election as Chief Justice. Furthermore, another Chief Justice elected in 2009 to become the President of the Supreme Court, was not a Supreme Court judge but a regional appellate court judge with a very short period of service at the time of his election. The lastly proposed candidate for the Curia's presidency served as a Constitutional Court judge at the time of the candidacy, while had a Curia judgeship status at the time of the election to become President. I also have to take your attention on the fact that from 2012 90% of the cases of the Constitutional Court have been full complaints against final court decisions. Adjudication of full complaints is an efficient judicial remedy expected by the European Court of Human Rights to be exhausted. Consequently the Constitutional Court functions as a specialised court of extraordinary supervision. This is the reason of the opportunity of appointment of its justices as ordinary judges. They do have judicial experience – they are the only judges who have the competence to revise the judgments of the Curia. During my interrupted mandate I took part in revision of more than 1000 court decisions, in more than 200 as justice rapporteur, majority of them formerly decided by the Curia.

**2. Could you elaborate on the method of case allocation to the various sections ("tanács") in the Kúria? How are judges assigned to the various sections? How are members of the section reviewing municipal decrees ("önkormányzati tanács") selected? How are cases allocated to the various judges-rapporteur ("előadó bíró") within the given section? Is the composition of the judicial panel hearing a given case ("eljáró tanács") established in the case allocation scheme in a transparent manner?**

As President of the Curia, the oldest permanently functioning Supreme Court of Justice within the European Union, I can assure the European Commission that judicial independence and the right to a fair trial inherently belong to the Hungarian constitutional heritage. The Curia has adapted the case allocation standards of the European Court of Justice, however, it has also introduced a number of stricter rules. Contrary to the previous case allocation regimes, the Curia is now given a transparent, comprehensive and fully regulated method of case allocation (available on the internet site of the Curia). The regulation is adopted in cooperation with the Colleges of the Curia composed by all the judges and in cooperation with the Elected Judicial Council of the Curia. I am completely familiar with the relevant practice of the Venice Commission, in addition, I previously acted as a Constitutional Court judge-rapporteur in a case in which the Constitutional Court held that a fixed method of case allocation should be put in place, and the Curia took due note of the Constitutional Court's findings in the preparation of the Curia's new case allocation order.

The Curia's joint (or larger) panels were created last year due to changes of competencies of the Curia. The case allocation regime has been under modification since the beginning of the year with the aim of making it more transparent and predetermined. The shortcoming that the case allocation order had not included the members' list of the individual adjudicating panels has been immediately eliminated. Since the 23 February 2021 modification, the case allocation order has been detailing the composition of the individual adjudicating panels within the joint (or larger) panels of each College ("kollégium").

In addition, the case allocation algorithm has been further restricted and, where appropriate, there is now an automated process to allocate the cases to the adjudicating panels.

The Curia's previous case allocation order (in 2019-2020) had been, in principle, based on three-member adjudicating panels, but in some cases it had also allowed either for the functioning of joint panels that had been created via the merger of two three-member panels or for the establishment of larger panels with more than three judges. Under the previous regime, the case allocation order detailed the composition of the three-member adjudicating panels that had to be formulated within the joint panels, furthermore, it designated the so-called administrative heads of panels of the joint panels who had been liable for the administrative management thereof. The year 2020, however, brought about a number of changes that resulted in a lack of the indication, by the case allocation rules, of the composition of the adjudicating panels in respect of some of the joint (or larger) panels. At the same time, a new instruction was adopted to entitle the administrative heads of panels to determine the composition of the adjudicating panels within their joint (or larger) panels and to allocate the cases among the members of the adjudicating panels.

In February 2021, the above case allocation rules were modified and significantly restricted. The modifications have also been agreed on by the Curia's Colleges and its elected Judicial Council. The new case allocation rules provide, in all cases, for the concrete composition of the adjudicating panels (panels "A" and "B") within the joint (or larger) panels. They specify that

an automated case allocation process is to be applied to allocate a case to the panel “A” or to the panel “B”. They lay down the method of and conditions for the replacement of judges and judicial panels.

As of 1 January 2012, the Curia of Hungary has been given the special task of exercising a judicial control over the legislative actions of local governments (namely the legality review of local government decrees and the establishment of a local government’s omission to legislate). The aforementioned task had previously been carried out by the Constitutional Court. Between 2012 and 2020, such judicial control had been exercised by the Curia’s three-member municipality panel. As of 1 January 2021 and as a result of an amendment to the Act on the Organisation and Administration of the Courts of Hungary, the Curia’s municipality panel has to have not three but five adjudicating members. Having regard to the fact that the Curia’s municipality panel currently includes more than five judges (it has seven members: three heads of panels and four judges), the Curia’s case allocation order specifies and predetermines the composition of the adjudicating version of the Curia’s municipality panel for each case. Both the heads of panels and reporting judges vary on a case-by-case basis, in addition, the composition of the panel automatically changes from case to case.

### **3. How are members of the judicial panel deciding on issues of uniformity ("jogegységi tanács") and of the panel hearing complaints related to uniformity ("jogegységi panasz tanács") selected in the Kúria? How are judges hearing cases related to elections selected?**

The Curia’s uniformity panels do not deal with individual disputes between different parties. Within the existing legal framework, the members of the uniformity panels are primarily selected (proposed by the Heads of Colleges) on the basis of their expertise, since the uniformity panels are entrusted with the task of deciding on legal issues of principle.

The uniformity complaint panel is set up on the basis of a predetermined, automated selection process, without any on-the-merits decision taken by the President of the Curia of Hungary (who presides, ex officio, the uniformity complaint panel). The composition of the panel varies from case to case in accordance with the following set of criteria. Uniformity complaints (since they aim at requesting the review of Curia decisions) may be dealt with only by the Curia’s heads of panels who are put, by virtue of the case allocation rules, in an order in each College concerned. The order is based on the principle of seniority, i.e. on the length of their service as a head of panel.

The members of the uniformity complaint panel are then appointed by the head thereof from among the heads of panels included in a fixed list drafted by each College and following the above order. In addition, their appointment depends on the nature of the uniformity complaint in a way that the College concerned by the complaint provides four members, while the remaining two College give two members each to the panel. The appointments are alternately made, on an equal basis and one by one, from the top and the bottom of the fixed lists as the complaints continue to be received. If the two directions of appointment “come across” each other, then the appointments have to restart from the top and the bottom again. In the event that the above case allocation rule does not provide for the possibility of the involvement of a judge having expertise to adjudicate in the field of law that is affected by the complaint in the work of the uniformity complaint panel, then a judge having such expertise and being next on the list has to be appointed. In the subsequent case, the order of appointment continues from the point where the sequence has been interrupted as a result of the appointment of a judge having

expertise to adjudicate in the field law that is affected by the complaint. The above lists concerning the order of appointments have to be kept separately in each of the Curia's three Colleges. The "appointments" made by the President of the Curia of Hungary are therefore not on-the-merits decisions, because they originate from an automated order.

There has always been and there will always be an automated case allocation regime in respect of election cases. If needed due to workload, additional election panels may be designated.

**4. Could you elaborate on the role of presiding judges ("tanácselnök") in the Kúria? In particular, how are presiding judges appointed? What is the role of presiding judges in appointing the judge-rapporteur ("előadó bíró") and determining the composition of the judicial panel hearing the given case ("eljáró tanács")? Are all presiding judges entrusted with such administrative tasks? How are presiding judges entrusted with administrative tasks selected? Do they receive more allowance compared to presiding judges not entrusted with administrative tasks? Are all presiding judges invited to the conference of presiding judges ("tanácselnöki értekezlet")?**

The heads of judicial panels entrusted with administrative tasks are mainly responsible for ensuring the efficiency of the administration of the judicial panels and organising the work of their staff members. As regards the adjudication of cases, they have the same status as the other heads of panels and they receive the same amount of salary.

Based on the Curia's Organisational and Operational Regulations, the conferences of the Curia's heads of panels have no decision-making powers, they function as advisory forums for the President of the Curia where the heads of panels do not express their own personal views but the views of all the members of the panel they preside.

However, the status of administrative head of panel will cease to exist as of September this year as a result of the modification of the Curia's Organisational and Operational Regulations and case allocation order, because the Curia plans to introduce an even more uniformed, predetermined and automated case allocation and hearing order. This will have an impact on the conferences of the Curia's heads of panels that exclusively deal with administrative issues as the President's advisory forums. These conferences are not involved in the adjudication of cases, but their existence is justified by the need for a forum where the heads of panels, being present in a significant number, may express the views of their panels. Following the cessation of the position of administrative head of panel, the conferences will continue to include one head of panel from each panel even designated among themselves.

In accordance with the applicable pieces of legislation, the head of panel is responsible for managing the panel's work. Nevertheless, the new case allocation order planned to be introduced in September 2021 will further automatize this process, taking into account the judges' expertise in a given field of law.

**5. Please feel free to complement your answers to these questions in writing. Please be advised that your written answers may be subject to access to documents requests addressed to the Commission.**