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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LEGISLATIVE SOLUTIONS

PROPOSED BY THE GOVERNMENT OF HUNGARY

**IN RELATION TO THE 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**

**TRANSMITTED
BY THE MINISTRY FOR FOREIGN AFFAIRS OF HUNGARY
ON 14 MARCH 2011**

OPINION OF THE VENICE COMMISSION	LEGISLATIVE SOLUTION
<ul style="list-style-type: none"> • Administrative powers are vested in a single person (VC opinion, paragraph 26) 	<ul style="list-style-type: none"> • Several powers of the President of the NJO¹ will be transferred to the NJC², including: <ul style="list-style-type: none"> - in the case of the resignations of judges, approval of a notice period shorter than 3 months, and/or the decision to relieve the judge of his/her duties for the whole or part of the notice period, - in the case of a judge retiring or reaching the upper age limit the decision to relieve the judge of his/her duties during the notice period, - the grant of a derogation in the case of a conflict of interest between a court leader and his/her relative adjudicating in an organizational unit under the leadership of the court leader, - the possibility to provide for the adjudication of cases as a matter urgency
<ul style="list-style-type: none"> • The President of the NJO is not accountable and is under no control (VC opinion, paragraphs 26, 30, 38, 43) 	<ul style="list-style-type: none"> • Introduction of a new legal institution: in the framework of reporting, the President of the NJO may be given questions in writing and should answer in writing • Reporting obligation every six months instead of annually
<ul style="list-style-type: none"> • The NJC has no members from the “outside”, that is, civil society is not represented in the administration of courts (VC opinion, paragraph 27) • The composition of the NJC is uniform because it is composed of judges exclusively (VC opinion, paragraph 45) 	<ul style="list-style-type: none"> • The NJC would continue to be composed of judges exclusively, however, participation in an advisory capacity shall be extended (involving the Chief Prosecutor, the President of the Hungarian Bar Association and NGO-s)
<ul style="list-style-type: none"> • The right to initiate legislation is conferred on the President of the NJO, which is problematic, since the Fundamental Law grants the right to initiate an Act to the President of the Republic, the Government, any Parliamentary Committee or any Member of Parliament (VC opinion, paragraph 35) 	<ul style="list-style-type: none"> • The text will be adapted to provide that the President of the NJO may only make a proposal to initiate legislation to those entitled to initiate legislation
<ul style="list-style-type: none"> • In cases when the President of the NJO reports on his or her activities, the content of such reports should be further specified (VC opinion, paragraph 37) 	<ul style="list-style-type: none"> • A more precise description of the report’s content will be provided for
<ul style="list-style-type: none"> • Technical background of the operation of the NJC is ensured by the NJO, this however may lead to undue influence (VC opinion, paragraph 40) 	<ul style="list-style-type: none"> • The independence of the NJC will be reinforced in technical and budgetary questions

¹ NJO: National Judicial Office

² NJC: National Judicial Council

<ul style="list-style-type: none"> • The President of the NJO may attend the <i>in camera</i> meetings of the NJC, which is problematic since the NJC controls the President of the NJO (VC opinion, paragraph 40) 	<ul style="list-style-type: none"> • It will be provided that in case the NJC orders an <i>in camera</i> meeting, the President of the NJO and other persons participating in advisory capacity may not attend, except when this is permitted by the NJC (According to the legislation in force, the President of the NJO and the Minister of Justice may attend the <i>in camera</i> meeting)
<ul style="list-style-type: none"> • The organs of judicial self-government do not participate in the administration of courts with due weight (VC opinion, paragraph 52) 	<ul style="list-style-type: none"> • It will be provided that the all-judges conferences of the courts may propose items to be added to the agenda of the meeting of the NJC
<ul style="list-style-type: none"> • In connection with the appointment of judges, the President of the NJO may deviate from the objective ranking of candidates (may propose the second or third candidate on the list to fill the post) but there is no criteria indicated according to which he or she may use this power of deviation (VC opinion, paragraph 58) 	<ul style="list-style-type: none"> • The NJC shall issue a recommendation on the conditions under which the President of the NJO may deviate from the candidate ranked first towards a candidate ranked second or third. If the President of the NJO intends to appoint a candidate ranked not first but second or third, the consent of the NJC will be required, i.e. the NJC will have a veto based on the recommendation it adopts
<ul style="list-style-type: none"> • In the case of the appointment of court leaders, the person deciding on the appointment is not bound by the recommendation of the reviewing board (VC opinion, paragraph 63) • The President of the NJO may appoint a court leader even if the latter does not obtain the majority support of the reviewing board and the NJC does not recommend the appointment (VC opinion, paragraph 63) 	<ul style="list-style-type: none"> • The consent of the NJC will be necessary for the appointment by the President of the NJO of a judge as court leader who has not obtained the support of the majority of the reviewing board.
<ul style="list-style-type: none"> • The first appointment of a judge is for a fixed period (3 years) in order to ascertain suitability for the position, but in certain cases this 3 year period may increase, therefore the law should specify a maximum limit of cumulative probationary periods (VC opinion, paragraph 67) 	<ul style="list-style-type: none"> • An upper limit of appointment for fixed term will be provided for (a maximum of two occasions)
<ul style="list-style-type: none"> • As regards law standardization procedures, it is problematic that the President of the NJO as an administrative leader may initiate such a procedure that is basically a professional one (VC opinion, paragraph 75) 	<ul style="list-style-type: none"> • The text will be adapted to provide that the President of the NJO may only recommend to the President of the Curie to initiate such a procedure
<ul style="list-style-type: none"> • In the context of the transfer of judges the category „for service reasons” is not clear (VC opinion, paragraph 78) 	<ul style="list-style-type: none"> • Instead of “service reasons” it will be provided that a transfer is possible if the even distribution of the case-load or the professional development of the judge makes it necessary
<ul style="list-style-type: none"> • In case of an ineligible evaluation grade in the course of professional evaluation, the chair of the court shall call upon the judge to resign within 30 days but the judge has no possibility to discuss the outcome of the evaluation (VC 	<ul style="list-style-type: none"> • It will be provided that in such a case the chair of the court communicates the result of the evaluation and provides for the possibility for the judge to express his or her opinion

opinion, paragraph 80)	
<ul style="list-style-type: none"> • It is problematic that although disciplinary proceedings are carried out by the disciplinary court chamber, proceedings can also be initiated by the President of the NJO (VC opinion, paragraph 83) 	<ul style="list-style-type: none"> • The text will be adapted to provide for the possibility of the President of the NJO to initiate such proceeding only in the case of leaders appointed by him or her and in the case of judges appointed to the NJO
<ul style="list-style-type: none"> • During disciplinary proceedings the investigating commissioner may hear the judge but is not obliged to do so (VC opinion, paragraph 84) 	<ul style="list-style-type: none"> • The obligatory hearing of the judge will be provided for
<ul style="list-style-type: none"> • The chamber of three members dealing with a disciplinary case is established by the chair of the service courts, but there should be an automatic case assignment system, in accordance with the principle of the lawful judge (VC opinion, paragraph 84) 	<ul style="list-style-type: none"> • The text will be adapted to provide for the presentation of the chambers and the distribution of the cases in the rules of procedure of the service court • The rules of procedure of the service court will be published
<ul style="list-style-type: none"> • The power of the President of the NJO to direct cases to other courts is problematic (VC opinion, paragraphs 86-94) 	<ul style="list-style-type: none"> • The NJC will issue a recommendation on the matter, that shall be respected by the President of the NJO in the course of transferring cases, and the NJC will control the application of the recommendation
<ul style="list-style-type: none"> • It has to be ensured that judges reaching upper age limit may continue to work during their exemption period (VC opinion, paragraphs 95-96) 	<ul style="list-style-type: none"> • The text will be adapted to provide that judges may continue to work
<ul style="list-style-type: none"> • The chair of the court may call upon a judge in writing to resign from his or her office, but an examination of the judge's state of health is only conducted if the judge fails to resign his office. In the light of the radical step, which the chair of the court takes towards the cessation of the judge's term of office, a prior clarification of facts and examination of the judge's state of health should be stipulated (VC opinion, paragraph 97) 	<ul style="list-style-type: none"> • The text will be adapted: the judge must be heard
<ul style="list-style-type: none"> • In the appointment procedure of court leaders as concerns the position of the reviewing board it should at least be listed among the criteria to be taken into account (VC opinion, paragraph 100) 	<ul style="list-style-type: none"> • It will be provided that the position must be taken into account
<ul style="list-style-type: none"> • When the judicial council evaluates applications of judges, in case of a tied vote the vote of the President is decisive; it needs to be specified that it is the President of the judicial council (VC opinion, paragraph 101) 	<ul style="list-style-type: none"> • The text will be adapted to provide for the decisive vote of the President of the judicial council in case of a tied vote
<ul style="list-style-type: none"> • "Retirement age" (VC opinion, paragraph 102-110.) 	<ul style="list-style-type: none"> • Modification of the Transitional Provisions in consultation with the European Commission