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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**Act CXI of 2012
on the Amendment
of Act CLXI of 2011
on the Organisation and Administration of Courts
and Act CLXII of 2011
on the Legal Status and Remuneration of Judges
of Hungary**

1. Amendments to Act CLXI of 2011 on the Organisation and Administration of Courts

Section 1

Section 27 (4) of Act CLXI of 2011 on the Organisation and Administration of Courts (hereinafter: "OACA") shall be replaced by the following provision:

"(4) The President of the NJO* shall inform the President of the Curia if he or she is of the opinion that a law standardisation procedure is necessary in the interest of a uniform application of the law; the President of the NJO shall not have the right to initiate law standardisation procedure."

Section 2

(1) Section 62 (1) of the OACA shall be replaced by the following provision:

"(1) The President of the NJO, taking into account the principles laid down by the NJC may, as an exception, appoint a court with the same competence for the assessment of a case instead of the competent court if the case or a specific group of cases received by the court during a given period cannot otherwise be assessed within a reasonable time due to the extraordinary and is proportionate workload of the court and if the appointment does not result in a disproportionate burden for the appointed court."

(2) Section 62 of the OACA shall be supplemented with the following paragraph (4):

"(4) The court initiating the appointment of a different court shall inform the parties involved in the proceeding through a notice sent by postal service and, simultaneously, by posting a notice on the notice board. The notice shall contain information on the judicial review against the appointment of a different court."

Section 3

(1) Section 63 (2) of the OACA shall be supplemented with the following sentence:

"(2) In his/her decision, the President of the NJO shall present the application of the principles laid down by the NJC."

(2) Section 63 (3) of the OACA shall be replaced by the following provisions:

"(3) Parties affected by the appointment of a proceeding court shall have the right to lodge an appeal against the decision on the appointment of the proceeding court within 8 days of its publication on the official website of the courts and on the central website. The failure to meet this deadline may not be excused by the submission of a justification. The appeal shall be submitted to the President of the NJO in writing, the number of copies shall exceed by one the number of parties involved in the proceeding.

(4) Appeals submitted in accordance with the provisions in (3) shall be adjudicated by the Curia within 8 working days in out-of-court proceeding. Appeals submitted after the expiry of the deadline shall be rejected by the Curia without assessing their merits. The Curia can only revise the discretionary decision of the President of the NJO to the extent that the President of the NJO has breached the legal provisions applicable to the making of the decision.

(5) If the Curia determines during the review that the decision of the President of the NJO on the appointment of the proceeding court is in conformity with the rules on the appointment of

proceeding courts set out in this Act, the Curia shall uphold the decision. If the decision is not in conformity with the rules on the appointment of proceeding courts set out in this Act, the Curia shall repeal the decision. The Curia may not modify the decision on the appointment of the proceeding court.

(6) The decision of the Curia shall be delivered to the parties through the President of the NJO and at the same time it shall be published on the official website of the courts and on the central website. If the Curia confirms the decision on the appointment of the proceeding court, the President of the NJO shall without delay inform the appointed court and, if the appointment affects a criminal case, the Prosecutor General. The delivery of the decision of the Curia to the parties or the unsuccessful delivery shall not affect the appointment of the proceeding court."

(3) Section 64 of the OACA shall be replaced by the following provision:

"No new appointment as discussed in the present Chapter shall be made in the case affected by the appointment, with the exception laid out in Section 63 (3)-(6)."

Section 4

(1) Section 76 (1) d) of the OACA shall be replaced by the following provision:

(In his/her general central administrative position the President of the NJO shall)

"d) make proposals on legislation concerning courts to the bodies that have the right to initiate legislation concerning courts,"

(2) Section 76 (3) a) of the OACA shall be replaced by the following provision:

(In his/her role concerning the budgets of courts the President of the NJO shall)

"a) draw up – after having consulted on the Chapter of the Act on the State Budget on the courts with the President of the NJC with respect to the NJC and the President of the Curia with respect to the Curia, and by communicating their opinions – his/her proposal concerning the budget of courts and the report on the implementation of the budget which the Government shall put forward to the Parliament as part of the Act on the State Budget and its implementing provisions without amendment,"

(3) Section 76 (4) b) of the OACA shall be replaced by the following provision:

(In his/her role regarding statistical data collection, case distribution and the measuring of workloads the President of the NJO shall)

"b) taking into consideration the principles laid down by the NJC, designate another court to proceed instead of the presiding court if so necessitated by the objective of adjudicating cases within a reasonable period of time,"

(4) Section 76 (8) c) of the OACA shall be replaced by the following provision:

(In his/her role regarding information the President of the NJO)

"c) shall annually report to the Parliament on the general situation of courts and the administrative activities of courts, and once in between annual reports to the Parliamentary Committee of the Judiciary."

Section 5

(1) Section 77 (2) of the OACA shall be supplemented with the following sentence:

"The President of the NJO shall – where applicable – state the reasons of his/her decisions."

(2) Section 77 (4) of the OACA shall be replaced by the following provision:

"(4) The President of the NJO shall publish the report on the general situation of courts and the administrative activities of courts prepared for the Parliament and the minutes of the interviews of applicants for a leading position that falls under the appointment authority of the President of the NJO on the central website.

(3) Section 77 of the OACA shall be supplemented with the following paragraph (7):

"(7) The President of the NJO shall draw up the information and the report set forth in Section 76 (8) a)-c) by providing details on his/her responsibilities under Section 76, with special regard to the criteria and circumstances of the exercise of his/her competences under Section 76 (4) b) and Section 76 (5) b), h) and m)."

(4) Following Section 77, the OACA shall be supplemented with the following Section

77/A

"Section 77/A (1) Judges can submit a constitutional complaint to the Constitutional Court against the regulations adopted by the President of the NJO if the conditions set out for constitutional complaints in the Act on the Constitutional Court are met.

(2) Judges may challenge decisions affecting their judicial service relationship status adopted by the President of the NJO exercising his/her power in personnel matters before administrative and labour court, unless the law confers the adjudication of the service dispute within the competence of the service court."

Section 6

Section 78 (2) of the OACA shall be replaced by the following provision:

"(2) The President of the NJO shall be, in case of impediment and also if the position is vacant, substituted by the general Vice President of the NJO. The general Vice President of the NJO, in case of impediment, shall be substituted by other deputies of the President of the NJO, according to the order laid down by the President of the NJO. In the absence of a person authorized for the substitution, the duties of the President of the NJO shall be performed by the President of the NJC."

Section 7

(1) Section 103 (1) b) of the OACA shall be replaced by the following provision:

(In the area of general central administration the NJC)

"b) shall propose to the President of the NJO to exercise the power set out in Section 76 (1) d),"

(2) Section 103 (1) of the OACA shall be supplemented with the following point d):

(In the area of general central administration the NJC)

"d) shall approve the rules of procedure of the service court and publish it on the central website."

(3) Section 103 of the OACA after paragraph (2) shall be supplemented with the following paragraph (2a):

"(2a) In the areas of statistical data collection, the distribution of cases and the measurement of workload, the NJC

- a) may, in especially justified cases, order the adjudication of cases concerning a broad spectrum of society or cases of outstanding importance with a view to public interest as a matter of urgency,
- b) shall determine the principles to be applied by the President of the NJO when appointing a proceeding court in the context of the use of the power to appoint a different proceeding court in the interest of adjudicating cases within a reasonable period of time."

(4) Section 103 (3) of the OACA shall be replaced by the following provision:

"(3) In the area of human resources the NJC

- a) shall express a preliminary opinion on persons nominated as President of the NJO and President of the Curia on the basis of a personal interview,
- b) shall determine the principles to be applied by the President of the NJO and the President of the Curia when adjudicating the applications in the context of using their power to award a position to the applicant in the second or third position in the rankings,
- c) shall have the right of consent in the adjudication of applications where the President of the NJO or the President of the Curia wishes to award a position to the applicant in the second or third position in the rankings,
- d) shall exercise the right of consent regarding the appointment of court leaders who did not receive the approval of the reviewing board [Section 132 (6)],
- e) shall decide on the approval to the renewal of the appointments of Presidents and Vice Presidents of the regional courts of appeal, tribunals, administrative and labour courts and district courts if the President or the Vice President has already served two terms of office in the same position,
- f) shall publish its opinion annually on the practice of the President of the NJO and the President of the Curia with respect to evaluating the applications of judges and court leaders,
- g) shall appoint the President and members of the service court,
- h) may grant a derogation in the case of a conflict of interest between a court leader and his/her relative adjudicating in an organisational unit under the leadership of the court leader,
- i) shall carry out inspection procedures relating to financial disclosure statements of judges,
- j) may award, upon initiative of the President of the NJO titles of "honorary/titular tribunal judge", "honorary/titular judge of the regional court of appeal", "honorary/titular judge of the Curia", "councillor of the Curia", the titles of 'chief councillor', 'councillor' in the case of judicial employees, furthermore, based on the initiative of the President of the NJO, it may propose the awarding of decorations, prizes, diplomas or plaque, and may approve the awarding of prizes, plaques, diplomas by others,
- k) in the case of resignations of judges, it may approve a notice period shorter than 3 months, and may relieve the judge from his/her work related duties for the notice period in full or in part, and
- l) in the case of a judge retiring or reaching the upper age limit he/she shall make a decision concerning the relief of the judge of his/her duties during the notice period in line with the Act on the Legal Status and Remuneration of Judges."

Section 8

Section 104 (1) of the OACA shall be replaced by the following provision:

"(1) The NJC shall determine its budget for each year before the start of the given year, and shall subsequently agree thereon with the President of the NJO. The budget of the NJC shall be allocated separately within the budget of the NJO. The technical conditions necessary for the operation of the NJC shall be provided by the NJO.

Section 9

Section 105 (2) of the OACA shall be replaced by the following provision:

"(2) The meeting of the NJC shall be convened and the proposed items shall be put on the agenda if proposed by at least one-third of the members of the NJC. The plenary meeting of the Curia or the plenary conference of a court of appeal or tribunal may propose any issue falling within the competence of the NJC to be put on the agenda of the NJC and discussed by the NJC."

Section 10

(1) Section 106 of the OACA shall be replaced by the following provision:

"Section 106 (1) The meeting of the NJC shall be open to judges, except when the NJC orders a closed meeting to be held. Meetings of the NJC shall be attended by the President of the NJO , the Minister responsible for justice, the Prosecutor General, the President of the Hungarian Bar Association, the President of the Hungarian Chamber of Notaries Public and the President of the NJC with consultative rights, furthermore by any ad-hoc expert invited by participants with consultation rights, and the representatives of any civil society and other interest groups invited by the President of the NJC. A minute-taker shall participate in NJC meetings.

(2) At the meetings of the NJC, in case he/she is impeded, the Minister responsible for justice shall be substituted by a State Secretary, the President of the NJO shall be substituted by the general Vice President deputy of the NJO, the Prosecutor General shall be substituted by the deputy Prosecutor General, the President of the Hungarian Bar Association shall be substituted by the Vice President, and the President of the Hungarian Chamber of Notaries Public by the Vice President.

(3) The NJC may order a closed meeting, especially if this is indispensable for the purpose of protecting classified information, business secrets or any other secret defined in a specific legal act, furthermore if that is justified for the purpose of protecting the personal rights of the person heard at the meeting. If a closed meeting is ordered, participants with consultation rights may not participate at the meeting, except if the NJC provides otherwise."

(2) Section 107 (1) of the OACA shall be replaced by the following provision:

"(1) Minutes shall be taken of the meeting of the NJC, and a summary shall be prepared of the decisions concerning the broader context of administration of courts and the activities of judges which might draw public interest. The President of the NJC shall ensure that the minutes and the summaries are prepared. The points of the agenda to be included in the summary and the content of the summary shall be decided upon by the NJC at the meeting. The summary shall not contain any agenda items discussed in a closed meeting."

Section 11

Section 132 (4)-(6) of the OACA shall be replaced by the following provisions:

"(4) The person authorised to make the appointment shall make his/her decision by taking into account the proposal of the reviewing board. The person authorised to make the appointment shall not be bound by the recommendation of the reviewing board, however, he/she shall state the detailed reasons in writing of any decision departing from the recommendation.

(5) In the case of a decision departing from the recommendation of the reviewing board, the President of the NJO and the President of the Curia shall inform the NJC of the reasons for the departure in writing, simultaneously with the appointment, and shall expose the reasons at the next meeting of the NJC. The written report submitted by the President of the NJO or the President of the Curia to the NJC and the information provided at the next meeting of the NJC shall not affect the appointment of the court leader, with the exception set out in paragraph (6).

(6) If the President of the NJO or the President of the Curia wishes to appoint a candidate who did not obtain the majority support of the reviewing board, the President of the NJO shall obtain the prior opinion of the NJC on the candidate before making the appointment. The candidate may only be appointed if the NJC has agreed to his/her appointment."

Section 12

Points d) and e) of Section 144 of the OACA shall be replaced by the following provisions, and shall be supplemented with the following point f):

(Duties of the conference:)

"d) to decide on the dismissal of a member of the judicial council,

e) to decide on an initiative to dismiss court leaders appointed by President of the NJO, and

f) to initiate any issue within the scope of competence of the NJC to be put on the agenda of the NJC and be discussed by the NJC."

Section 13

In Section 153 (2) of the OACA, the phrase "the President" shall be replaced by "the President of the judicial council".

Section 14

Sections 70 (4), 76 (4) c) and 76 (5) k), l) and n) of the OACA shall cease to have effect.

2. Amendments to Act CLXII of 2011 on the Legal Status and Remuneration of Judges

Section 15

(1) Section 15 (2) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges (hereinafter: "ALSRJ") shall be replaced by the following provision:

"(2) If there are multiple candidates in the same position in the ranking with the same score, their order shall be determined based on the result of the hearing by the judicial council. If the applicants achieved the same score at the hearing as well, the judicial council shall determine the order on the basis of a written, justified decision adopted by simple majority."

(2) Section 18 (3)-(5) of the ALSRJ shall be replaced by the following provisions:

"(3) The President of the NJO may deviate from the ranking set up by the judicial council in accordance with the provisions set out in Paragraphs (4) and (5), and may propose for appointment as a judge a candidate ranking second or third, and may also adjudicate the application by rearranging the order of the second and third ranking candidates.

(4) If the proposed candidate is not a judge, then the President of the NJO shall send the NJC the applications of the first three candidates by indicating the candidate proposed, accompanied by a proposal in writing containing the reasons for the deviation, in order to obtain its consent. The NJC shall decide on the proposal within 15 days. If the NJC agrees with the proposal of the President of the NJO, the President of the NJO shall submit the candidate for appointment to the President of the Republic within 8 working days. If the NJC does not agree with the proposal of the President of the NJO, the President of the NJO shall submit the first-ranking candidate for appointment to the President of the Republic within 8 working days, if he/or she is not a judge, or if the first-ranking candidate is a judge, transfer him/her within 8 working days, or make a new proposal to the NJC, or declare the application procedure unsuccessful.

(5) If the proposed candidate is a judge, then the President of the NJO shall send the NJC the applications of the first three candidates by indicating the candidate proposed, accompanied by a proposal in writing containing the reasons for the deviation, in order to obtain its consent. The NJC shall decide on the proposal within 15 days. If the NJC agrees with the proposal of the President of the NJO, the President of the NJO shall transfer the judge within 8 working days. If the NJC does not agree with the proposal of the President of the NJO, the President of the NJO shall transfer the first-ranking candidate, if he/she is a judge within 8 working days, or if the first-ranking candidate is not a judge, submit the candidate for appointment to the President of the Republic within 8 working days, or make a new proposal to the NJC, or declare the application procedure unsuccessful."

Section 16

Section 19 of the ALSRJ shall be replaced by the following provision:

"Section 19 In the case of a call for applications to the Curia, the provisions of Section 18 shall be applied with the exception that the powers of the President of the NJO shall be exercised by the President of the Curia, and if the call for applications is successfully adjudicated, the President of the Curia shall contact the President of the NJO regarding the transfer or appointment recommendation within 8 working days, who shall comply with the request of the President of the Curia within 8 working days."

Section 17

(1) The subtitle preceding Section 21 of the ALSRJ shall be replaced by the following subtitle:

"11. Notification of Candidates and Judicial Review Against the Result of the Call for Applications"

(2) Section 21 of the ALSRJ shall be supplemented with the following Subsections (3)- (6):

"(3) The President of the NJO shall publish his/her decisions on the transfer of judges on the official website of the courts and on the central website, and in the official journal of the courts.

(4) In case of a successful call for applications, applicants that participated in the call and were not rejected pursuant to Section 13 can submit an objection within a 15-day forfeit deadline after the publication of the decision on the appointment of the successful applicant in the Official Journal or after the publication of the decision on the transfer of the successful candidate set out in paragraph (3), if the successful candidate does not meet the requirements for becoming a judge laid down in law, or if the successful candidate does not meet the conditions listed in the call for applications.

(5) The objection shall be submitted in writing to the President of the court affected by the call for applications, and – with the exception of calls for application to the Curia – the President shall forward it to the President of the NJO within 5 working days. The objection shall be addressed to the President of the NJO or, in case of call for applications to the Curia, to the President of the Curia. The President of the NJO or the Curia shall forward the objection within 5 working days to the administrative and labour court with jurisdiction for Budapest that has exclusive jurisdiction to hear the case.

(6) The administrative and labour court shall adjudicate the objection within 15 days in out-of-court proceedings. In the case of the appointment of judges, the administrative and labour court shall review the fulfilment of the conditions related to the appointment of judges on the base of the provisions laid down in Section 4 (1) *a), c), d), f)* and *g)*, in Section 4 (2) and in Section 5 (1) of this Act. In the case of transfer of judges, the administrative and labour court shall only review the fulfilment of the conditions laid down in the call for applications. If the administrative and labour court finds that the successful candidate cannot become a judge pursuant to the rules regarding the terms and conditions of judicial appointments in this Act, or the successful

candidate does not meet the conditions laid down in the call for applications, the decision shall be communicated to the candidate who submitted the objection and – with a view to take the necessary measures – to the adjudicator of the application and the President of the Republic. If the objection is unfunded, the administrative and labour court shall reject it, and communicate the decision to the candidate who submitted the objection, the adjudicator of the application and the President of the court affected by the call for applications.”

Section 18

Section 25 (2) of the ALSRJ shall be replaced by the following provision:

"(2) If the term of the judge's actual judicial work did not reach 18 months, the President of the Republic shall – upon proposal by the President of the NJO, by way of the modification the appointment – extend the appointment of the judge by three years, unless the judge does not wish to maintain his/her service relationship. The submission of the proposal shall be governed by the provisions set out in Section 24 (3). The appointment of the judge can be repeatedly extended until the total actual judicial work reaches the 18 months minimally required for assessment."

Section 19

Section 31 (2)-(3) of the ALSRJ shall be replaced by the following provisions:

"(2) A judge may be reassigned to another service post with a view to ensure an even distribution of caseload between courts or to promote his/her own professional development.

(3) A judge may be assigned without his/her consent to a judicial position at another service post on a temporary basis once every three years, for a maximum duration of one year, with a view to ensuring an even distribution of caseload between courts."

Section 20

(1) Section 34 (2) of the ALSRJ shall be replaced by the following provision:

"(2) If a court ceases to operate or when its competence decreases in a manner that the judicial work of a judge there is no longer possible, the President of the NJO shall – if a position at the Curia is affected, after consultation with the President of the Curia – offer the judge in question the available judicial posts in case of which the applications have not yet been adjudicated at courts that are at the same level of the judiciary, or on the next inferior or superior level at which the judge has been working. The judge can choose one of the posts offered within 8 working days. If the cease of operation of the court or the decrease of its competence makes it necessary to transfer more than one judge, the judges shall make their choices in decreasing order of age. If no vacant posts to be offered is available, or the judge does not accept any of the posts offered, the President of the NJO shall transfer the judge, with a consideration of his/her fair interests, to a court on the same level of the judiciary or on the next inferior level.

(2) Section 34 of the ALSRJ shall be supplemented with the following paragraph (4):

"(4) If a judge initiates a service dispute regarding his/her transfer as set out in paragraph (2), the administrative and labour court may only review the decision of the President of the NJO with regard to the observance of the legislation governing the way in which the decision shall be made."

Section 21

Section 81 (1) of the ALSRJ shall be supplemented with the following sentence:

“On the request of the judge in question, the President of the court shall provide the judge in question an opportunity to present his/her position regarding the assessment in the form of a personal hearing.”

Section 22

Section 84 (2) of the ALSRJ shall be replaced by the following provision:

"(2) The investigating commissioner shall clarify all circumstances necessary for establishing the facts of the case. To this end, the investigating commissioner shall hear the judge subjected to proceedings and the chair of the evaluating court, obtain the opinion of the division head of the competent court of appeal (or court hearing review cases) in relation to the judge's post, or, in the case of a district court judge, the opinion of the chair of the court of appeal, while in the case of an administrative and labour court judge and a judge hearing administrative and labour cases at a tribunal, the opinion of the head of the regional administrative and labour division, and may hear witnesses and may view the judge's evaluation documents. Judges and court employees shall provide the necessary information requested by the commissioner."

Section 23

Section 86 (1) of the ALSRJ shall be replaced by the following provision:

"(1) If a judge is unable to fulfil his/her duties for health related reasons on a long-term basis, the president of the court shall call upon him/her in writing to resign from office within 30 days. The notice shall state the grounds and circumstances which indicate the judge's inaptitude based on health related reasons. At the request of the judge, the grounds of inaptitude based on health related reasons shall be explained at a personal hearing, and an opportunity shall be given for the judge to comment."

Section 24

(1) Section 89 c) of the ALSRJ shall be replaced by the following provision:

(The judicial service relationship shall cease)

"c) through exemption by the President of the Republic."

(2) Section 90 j) of the ALSRJ shall be replaced by the following provision:

(A judge shall be exempted)

"j) if it has been found in the course of a judicial review procedure initiated against the result of the call for applications that the legislative conditions for appointment as a judge had not been fulfilled."

(3) Section 94 (3) of the ALSRJ shall be replaced by the following provision:

"(3) In the event of retirement and the attainment of the upper age limit, the judge's exemption period shall be 6 months. The judge shall be exempted from the performance of work for a period of 3 months. At the request of the judge, the NJO may set out a period of exemption from the performance of work shorter than 3 months, or, at the request of the judge, may decide not to exempt the judge of the performance of work at all."

Section 25

The following Section 104/A shall be added to the ALSRJ, after Section 104:

"Section 104/A (1) The rules of procedure of the service court shall contain rules on the composition of the proceeding chambers and on the distributing cases.

(2) The rules of procedure set by the service court shall be approved by the NJC."

(3) The rules of procedure of the service court shall be published by the NJC on the central website of the courts."

Section 26

Section 106 (3) of the ALSRJ shall be replaced by the following provision, and shall be supplemented with the following paragraph (4):

"(3) The President of the NJO may only institute disciplinary proceedings against court leaders appointed by the President of the NJO and the judges posted at the NJO.

(4) If criminal proceedings have been instituted against a judge, not including proceedings instituted on the basis of a private indictment or substitute private prosecution indictment, disciplinary proceedings shall be instituted."

Section 27

Section 230 of the ALSRJ shall be supplemented with the following paragraph (4):

"(4) The rules on exemption from the performance of work shall be applied mutatis mutandis to judges exempted in accordance with paragraphs (2) and (3)."

Section 28

The following phrases shall be replaced in the ALSRJ:

- a) in Section 26 (3), "cases" by "case",
- b) in the title of Chapter IV, "judges" by "judge",
- c) in Section 42 (3), "the President of the NJO" by "the NJC",
- d) in Section 93 (2), "the President of the NJO" by "the NJC",
- e) in Section 232, "the President of the NJO" by "the NJC".

Section 29

(1) The following passages in the ALSRJ shall cease to have effect:

- a) in Section 3 (3) c), the phrase "for another fixed period or",
- b) in Section 23 (1), the phrase "and Section 25 (2) and (4)",
- c) in Section 26 (3) the phrase "and (4)"
- d) in Section 166 (1), the phrase "and former President",
- e) in Section 166 (2), the phrase "and former President".

(2) Sections 25 (4), 76 (1) d) and 78 of the ALSRJ shall cease to have effect.

Section 30

This Act shall enter into force on the day following its promulgation, and it shall cease to have effect on the day following its entry into force.

Section 31

Sections 1–14 and Sections 18–30 of this Act shall qualify as cardinal under Article 25 (7) and Article 26 (1) and (2) of the Fundamental Law.