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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

HUNGARY

ACT CLXV OF 2020

AMENDING CERTAIN LAWS IN THE FIELD OF JUSTICE

EXTRACTS AMENDING

**ACT CLXI OF 2011 ON THE ORGANISATION AND ADMINISTRATION
OF THE COURTS**

AND

**ACT CLXII OF 2011 ON THE LEGAL STATUS AND REMUNERATION
OF JUDGES**

9. Amendment of Act CLXI of 2011 on the Organisation and Administration of the Courts

Section 39 Subsection (2) of Section 10 of Act CLXI of 2011 on the Organisation and Administration of the Courts (hereinafter referred to as “Bszi.”) shall be replaced by the following:

“(2) Where one or more branches are concerned, the President of the Kúria (Curia) may, following consultation with the college affected, decide that chambers composed of five judges shall have exclusive power to hear and determine the cases specified in Subsection (1) of Section 24. This shall be indicated in the case allocation rules of the Kúria. The case allocation rules of the Kúria shall, furthermore, provide for the appointment of judges to the local government chamber and the uniformity complaints chamber, and also for the assignment of judges to the various uniformity panel branches.”

Section 40 Section 41/A of Bszi. shall be replaced by the following:

“Section 41/A (1) Uniformity complaints shall be adjudicated by the uniformity complaints chamber. The uniformity complaints chamber shall be chaired by the President or the Vice-President of the Kúria (Curia). The uniformity complaints chamber shall consist of the president and at least eight other members. Members are selected by the chair from the colleges of the Kúria, where each college shall be represented by at least one member.

(2) The uniformity complaints chamber shall

a) conclude uniformity complaints on the merits by way of decision;

b) conclude all other issues that may arise in uniformity complaint procedures by way of ruling.

(3) The uniformity complaints chamber shall adopt its decision in closed session by vote, without abstentions, by simple majority. Where a member of the uniformity complaints chamber is in dissent from the majority opinion, such dissenting opinion may be attached under the reasons given for the decision.

(4) The president of the uniformity complaints chamber shall head the chamber and organise its work. In that context, the president may take all measures or adopt rulings which are not expressly referred to the competence of the chamber by the rules of the procedure underlying the uniformity complaint.”

Section 41 Section 41/B of Bszi. shall be replaced by the following:

“Section 41/B (1) A uniformity complaint may be filed against a Kúria (Curia) decision - except for any ruling relating to the conduct of hearings - where no further challenge lies in the form of appeal, application for review or motion for review (in this Subtitle hereinafter referred to collectively as ‘application for review’), where any deviation in questions of law from a Kúria decision delivered after 1 January 2012 and published in the *Bírósági Határozatok Gyűjteménye* (Register of Court Decisions) has already been alleged (for the purposes of this Subtitle hereinafter referred to as ‘published Kúria decision’) and the Kúria failed to remedy the infringement resulting from the deviation in its decision.

(2) A uniformity complaint may be filed also if the adjudication chamber of the Kúria deviates in a question of law from the published Kúria decision - without initiating the unification procedure - knowing that such deviation had not been applied in the decision of the lower courts.

(3) In the adjudication of a uniformity complaint, a judge who was disqualified according to the rules applicable to the underlying proceedings, and any judge who participated in proceedings preceding the decision contested by the uniformity complaint is excluded from the hearing.

Section 42 Section 41/C of Bszi. shall be replaced by the following:

“Section 41/C (1) A uniformity complaint may be lodged within 30 days from the date of delivery of the decision referred to in Subsections (1) and (2) of Section 41/B at the Kúria (Curia) by a person who has the right to submit an application for review under procedural law. In uniformity complaint proceedings a motion for the suspension of enforcement or for urgent legal aid may be submitted according to the rules applicable to the underlying

proceeding. A motion for the suspension of enforcement or for urgent legal aid shall be presented in the uniformity complaint. The chamber of the Kúria hearing the case in the proceedings underlying the uniformity complaint shall forthwith bring the complaint and the relevant documents before the uniformity complaints chamber.

(2) In the uniformity complaint procedure the provisions of the Code of Civil Procedure applicable to

- a) submissions;
- b) the contents and the types of summons;
- c) service of process;
- d) demurrer to service;
- e) calculating time limits;
- f) judicial vacations;
- g) the records of proceedings, with the exception of keeping records by way of single sequence recording containing visual images and sound alike;
- h) cost allowances;
- i) bearing unpaid duties and costs advanced by the State;
- j) initiating the proceedings of the Court of Justice of the European Union, the Alkotmánybíróság (Constitutional Court) and the Kúria;
- k) judicial succession

shall apply mutatis mutandis subject to the derogations provided for in this Subtitle.

(3) In addition to the general rules relating to submissions, the uniformity complaint shall specify:

- a) the decision against which the party makes the complaint;
- b) the published Kúria decision from which the deviation in a question of law is alleged by the party.

(4) In uniformity complaint procedures legal representation in accordance with the Code of Civil Procedure is mandatory.

(5) As regards the admission of a uniformity complaint, the uniformity complaints chamber shall examine it within 30 days from the date of delivery to the Kúria for the purpose of compliance with statutory requirements. If the uniformity complaint contains a motion for the suspension of enforcement or for urgent legal aid, it shall be determined within 30 days according to the rules governing the proceedings underlying the uniformity complaint.

(6) The uniformity complaints chamber shall - refraining from issuing a request for remedying deficiencies - reject the uniformity complaint if

- a) it was submitted by a person without proper entitlement;
- b) it was submitted without the involvement of legal counsel;
- c) the procedural fee was not paid in full;
- d) it was filed in delay;
- e) it was submitted according to Subsection (1) of Section 41/B, however, in the application for review the mover did not make an allegation of deviation in a question of law from the published Kúria decision;
- f) it was submitted for reasons other than alleging any deviation from a Kúria decision delivered after 1 January 2012 and published in the Bírósági Határozatok Gyűjteménye (Register of Court Decisions);
- g) it was submitted against a Kúria decision delivered before 1 July 2020; or
- h) it does not comply with the requirements set out in Subsection (3), and no appropriate supplement is made within the time limit referred to in Subsection (1).

(7) The uniformity complaints chamber shall communicate the uniformity complaint admitted to the persons who have the right to submit an application for review under procedural law in the underlying proceedings, excluding the mover, and such persons shall have the right to make a statement within 30 days from said communication.

(8) If the uniformity complaints chamber is of the opinion that a hearing is in order, it shall summon the complainant and the persons specified in Subsection (7) in accordance with the Code of Civil Procedure.

(9) The uniformity complaints chamber shall suspend the uniformity complaint procedure in the case of reference to

- a) the preliminary ruling of the Court of Justice of the European Union;
- b) proceedings of the Alkotmánybíróság with a view to declaring that any law or statutory provision, legal act for the governance of bodies governed by public law or uniformity decision is alleged to be contrary to the Fundamental Law or to an international treaty;
- c) proceedings of the Kúria for determining whether a municipal decree is to be considered unlawful.

(10) At any time during the proceedings the uniformity complaints chamber may terminate the proceedings of its own motion:

- a) if the uniformity complaint should have been rejected pursuant to Subsection (6);
- b) upon the complainant's death or cessation of existence, provided that the nature of the relationship precludes succession;
- c) if the complaint is withdrawn by the complainant;
- d) if the complainant's legal representation was terminated, and they failed to provide for a replacement within the time limit prescribed by the presiding judge of the chamber; or
- e) if the decision contested by the complaint, or the decision to which the allegation of deviation in a question of law stated by the complainant pertains is annulled by the Alkotmánybíróság or the complaint is no longer relevant for other reasons."

Section 43 The following Section 41/D shall be inserted in Subtitle 12/A of Bszi.:

"Section 41/D (1) If the uniformity complaints chamber finds a deviation in a question of law from the published Kúria (Curia) decision, it shall put forth a binding interpretation for the courts and shall:

- a) rule to uphold the decision contested by the complaint if the deviation was justified;
- b) establish the infringement resulting from the deviation, but shall uphold the decision contested by the complaint if
 - ba) the complaint was lodged in a case where the duration of court proceedings was limited at five days by law,
 - bb) so ordered by another act;
- c) vacate the decision contested by the complaint in whole or in part, and order the Kúria to carry out a new procedure and to give a new decision if the deviation was not justified.

(2) If the uniformity complaint pertains to a decision refusing the review or declaring the application for review inadmissible and the uniformity complaints chamber finds an unjustified deviation in a question of law, it shall vacate the decision contested by the complaint and shall order the court to open review proceedings.

(3) If the uniformity complaints chamber finds that no deviation took place in a question of law from the published Kúria decision, it shall refuse the uniformity complaint. It shall suffice to bring this to light in the reasons given for the decision, with the applied legislation also indicated, however, it shall offer clear explanation as to why no deviation was found between the decision previously published and the one contested as regards the given question of law.

(4) If the uniformity complaints chamber finds a deviation in a question of law from the published Kúria decision, the costs incurred in connection with the adjudication of the complaint shall be borne by the State.

(5) The decision brought under Subsection (1) shall have the effect of a uniformity decision and shall be published in the Magyar Közlöny (Hungarian Gazette) according to the rules on the publication of uniformity decisions.

(6) In cases reopened under Paragraph c) of Subsection (1) and under Subsection (2), the Kúria shall deliver its decision in priority proceedings."

Section 44 Paragraph f) of Subsection (5) of Section 76 of Bszi. shall be replaced by the following:

(The President of OBH in his/her function related to staff issues)

"f) may assign a judge to the Kúria, the OBH, and to the body provided for in the Act on the Legal Status and Remuneration of Judges (hereinafter referred to as 'relevant body'), and shall decide on the withdrawal of such assignment and transfer the judge back to his/her original judicial office;"

Section 45 Subsection (4) of Section 94 shall be replaced by the following:

“(4) The judges assigned to the Kúria, the OBH, and the judges assigned to the relevant body shall vote in the plenary session of the court where they served immediately before their appointment.”

Section 46 (1) Subsection (5) of Section 118 of Bszi. shall be replaced by the following:

“(5) The deputy secretary-general of the Kúria shall be vested with full powers when taking the place of the secretary-general - if unavailable for any reason, including if the position is vacant except as specified in Subsection (6) - and shall discharge the administrative duties conferred upon them under the organisational and operational regulations of the Kúria.”

(2) The following Subsection (6) shall be inserted in Section 118 of Bszi.:

“(6) If the mandate of the secretary-general and deputy secretary-general of the Kúria ends at the same time, the vice-president delegated by the President of the Kúria from among the vice-presidents shall carry out their duties until the new secretary-general and deputy secretary-general are appointed.”

Section 47 The following Subsection (2a) shall be inserted in Section 127 of Bszi.:

“(2a) The appointment of the secretary-general and deputy secretary-general of the Kúria (Curia) shall be for the term of the President of the Kúria. If the mandate of the President of the Kúria ends before the term in office expires, the mandate of the secretary-general and deputy secretary-general of the Kúria shall also terminate.”

Section 48 The following Subsection (2a) shall be inserted in Section 130 of Bszi.:

“(2a) The President of the Kúria shall - after consulting with the president-elect - invite applications at least 20 days and at most 30 days before the term in office expires for the office of secretary-general and deputy secretary-general. The president-elect of the Kúria shall evaluate the applications immediately after taking office. If the mandate of the President of the Kúria ends before the term in office expires, the president-elect of the Kúria shall publish a notice for inviting applications immediately after taking office.”

Section 49 (1) Subsection (1) of Section 163 of Bszi. shall be replaced by the following:

“(1) The Kúria (Curia) shall publish uniformity decisions, decisions delivered in uniformity complaint procedures and in appeal proceedings to ensure legality, its decisions adopted on the substance of a matter and annulment decisions, the court of appeal shall publish its decisions adopted on the substance of a matter, the general court shall publish its decisions adopted in administrative actions on the substance of a matter, if the reviewed administrative decision was adopted in a single instance proceeding and no ordinary appeal may be lodged against the court decision, in the Bírósági Határozatok Gyűjteménye (Register of Court Decisions) in digital form.”

(2) The following Subsections (1a) and (1b) shall be inserted in Section 163 of Bszi.:

“(1a) The Kúria (Curia) shall also publish its decisions not mentioned in Subsection (1), adopted on the merits of an application for review in the Bírósági Határozatok Gyűjteménye.

(1b) The decisions published by the Kúria shall be accompanied by the decisions' content in principle or, in the absence thereof, by a brief overview and the legislation applied.”

Section 50 Section 175 of Bszi. shall be replaced by the following:

“Section 175 Sections 1-8, Sections 12-15, Chapter II, Subtitles 7-12, Section 41/A, Section 41/B, Subtitle 13, Section 45, Chapter V, Parts Three and Four, Chapters X, XI and XIII/A, and Sections 197-197/B, Section 197/D, Section 207 and Section 209 of this Act shall be considered cardinal pursuant to Paragraphs (6) and (8) of Article 25 of the Fundamental Law.”

Section 51 Subsection (5) of Section 197/B of Bszi. shall be replaced by the following:

“(5) Uniformity complaint procedures may be initiated against the Kúria (Curia) decision provided for in Section 41/B, adopted on or after 1 July 2020. If the conditions under Section 41/B are fulfilled, the uniformity complaint procedure may be initiated irrespective of the procedural law applied and applicable in the case, if the court delivered the decision contested by the application for review after 1 April 2020 and the Kúria delivered its decision after 1 July

2020.”

Section 52 (1) The following Section 197/C shall be inserted in Subtitle 63 of Bszi.:

“Section 197/C (1) Subsection (1b) of Section 163, enacted by Act CLXV of 2020 on the Amendment of Certain Acts Relating to the Judiciary, shall apply to decisions delivered after 1 January 2021.

(2) The decisions made between 1 January 2012 and 31 December 2020, and published in the *Bírósági Határozatok Gyűjteménye* (Register of Court Decisions) shall be accompanied in accordance with Subsection (1b) of Section 163, enacted by Act CLXV of 2020 on the Amendment of Certain Acts Relating to the Judiciary, by the decisions’ content in principle or, in the absence thereof, by a brief overview and the legislation applied by 31 December 2023.”

(2) The following Section 197/D shall be inserted in Subtitle 63 of Bszi.:

“Section 197/D (1) Subsection (1) of Section 41/B, as amended by Act CLXV of 2020 on the Amendment of Certain Acts Relating to the Judiciary, shall apply to uniformity complaints submitted on or after 1 January 2021.

(2) With regard to the secretary-general of the Kúria, the provisions established by Act CLXV of 2020 on the Amendment of Certain Acts Relating to the Judiciary shall for the first time apply after the date of entry into force thereof by way of derogation that between the time when a notice inviting applications for the office of secretary-general is published and the time when the applications are evaluated, the President of the Kúria may serve as secretary-general by way of appointment.”

Section 53 a) The phrase “Kúria decision published” in Subsection (3) of Section 34 of Bszi. shall be replaced by the phrase “Kúria decision published in the *Bírósági Határozatok Gyűjteménye* (Register of Court Decisions)”;

b) The word “three” in Subsection (2) of Section 45 of Bszi. shall be replaced by the word “five”;

c) The text “(2)” in Subsection (1) of Section 127 of Bszi. shall be replaced by the text “(2) and (2a)”.

Section 54 The phrase “(hereinafter referred to as ‘published Kúria decision’)” in Subsection (1) of Section 32 of Bszi. shall cease to apply.

10. Amendment of Act CLXII of 2011 on the Legal Status and Remuneration of Judges

Section 55 In Act CLXII of 2011 on the Legal Status and Remuneration of Judges (hereinafter referred to as Bjt.), Subparagraph *ab*) of Paragraph *a*) of Subsection (1) of Section 14 shall be replaced by the following:

(In determining the ranking of applicants only the following criteria shall be taken into consideration: as regards job evaluation)

“*ab*) time of judiciary experience as a judge or court secretary at OBH for acquiring thorough knowledge about the central administration of courts, and the evaluation by the President of OBH of work done in central administration, evaluation by the President of OBH of judiciary experience of a judge assigned to the Kúria or a court secretary for acquiring thorough knowledge relevant to the preparation of harmonized decisions and jurisprudence analysis, furthermore, the evaluation by the President of the Kúria of the time of judiciary experience as a judge or court secretary at the relevant body specified in Section 27/A by the head of that body for carrying out powers and responsibilities of a public-law nature within the core activity of the relevant body,”

Section 56 Subsection (2) of Section 27 of Bjt. shall be replaced by the following:

“(2) The President of OBH may optionally assign a judge to the OBH, or to the Kúria (Curia) on a recommendation by the President of the Kúria.”

Section 57 Section 27/A of Bjt shall be replaced by the following:

“Section 27/A (1) The President of OBH may assign a judge

a) to the Alkotmánybíróság Hivatala (Office of the Constitutional Court);

b) to the Alapvető Jogok Biztosának Hivatala (Office of the Commissioner for Fundamental Rights);

c) to the Állami Számvevőszék (State Audit Office);

d) to the public prosecutor's office;

e) to a central government agency;

f) to a Budapest and county government agency.

(2) Assignment to a body mentioned in Subsection (1) (hereinafter referred to as 'relevant body') may be initiated by the head of the relevant body at the request of the judge, or by the Prosecutor General in the case of the public prosecutor's office. The assignment requires the consent of the president judge exercising employer's rights."

Section 58 Subsection (3) of Section 39 of Bjt. shall be replaced by the following:

"(3) Judges assigned to the OBH, the Kúria (Curia) or - with the exception of the public prosecutor's office - to a relevant body may, of the executive offices, only hold the office or be employed in the position of senior department head, deputy senior department head or department head."

Section 59 Subparagraph *bf*) of Paragraph *b*) of Section 42/C of Bjt. shall be replaced by the following:

[Judge subject to security clearance means:

b) a judge who]

"bf) holds an office or a position in the relevant body for which security clearance is required,"

Section 60 The Subtitle 29/A of Bjt. shall be replaced by the following:

"29/A Legal status of judges assigned to the relevant body

Section 62/A (1) A judge may be assigned for carrying out powers and responsibilities of a public-law nature within the core activity of the relevant body. The goal of the assignment is for the judge to acquire practical experience and knowledge through taking part in the work of the relevant body, and to support the work of the relevant body with their judicial experience.

(2) The assignment may be for a fixed or indefinite duration. Judges appointed for a fixed term may be assigned for a duration not exceeding one year.

(3) Assigned judges shall retain their judiciary office and it shall not affect their posting either; however, for the duration of assignment, they may not have a role in the administration of justice. Their salary shall be governed by the provisions applicable to judges.

(4) Employer's rights with respect to a judge assigned to the relevant body shall be exercised by the head of the relevant body.

Section 62/B (1) The judges shall follow and enforce the directions and instructions given by their superiors.

(2) With the exception of Section 45, the provisions set out in Sections 35-55 shall apply *mutatis mutandis* to the legal status of judges.

Section 62/C (1) The President of OBH shall terminate a judge's assignment to the relevant body:

a) at the request of the judge;

b) on a proposal by the head of the relevant body.

2) When a judge's assignment is terminated, the judge shall continue to fulfil their duties for 30 days following receipt of notice or for as long as mutually agreed by the parties.

(3) At the end of the assignment, the judge shall be transferred from the relevant body to serve as a judge in accordance with what is contained in Subsections (3) and (4) of Section 58.

(4) A judge assigned to the relevant body may not take part in determining a case where the relevant body is a party for two years after the termination of such assignment."

Section 61 Section 69/A of Bjt. shall be replaced by the following:

"Section 69/A The executives falling within the appointment authority of the President of OBH, executives appointed for a fixed term within the appointment authority of the President

of the Kúria (Curia) and the vice-presidents of the Kúria, and any judge vice-president of OBH shall not be subject to routine evaluation during such mandate, this exemption also applying to the judges assigned to the OBH, the relevant body or the Kúria during such assignment.”

Section 62 Subsection (6) of Section 71 of Bjt. shall be replaced by the following:

“(6) The performance of judges assigned to the relevant body shall be evaluated by the head of the body of assignment on the basis of the rules applicable to the staff of the body of assignment.”

Section 63 Subtitle 52 of Bjt shall be replaced by the following:

“52. Specific provisions relating to the Kúria, judges assigned to the Kúria, the OBH and to the relevant body

Section 130 As regards the judges assigned to the Kúria (Curia), the OBH and to the relevant body, Sections 105-129 shall apply with the derogation that disciplinary proceedings may be opened upon the initiative of the President of the Kúria, the head of the relevant body through the President of OBH, or the President of OBH against judges assigned to the Kúria, the relevant body and the OBH, respectively.”

Section 64 Subsection (3a) of Section 147 of Bjt. shall be replaced by the following:

“(3a) Records of the particulars of judges assigned to the relevant body shall be kept at the relevant body.”

Section 65 The following Subtitle 58/A shall be inserted in Bjt.:

“58/A Benefits of the secretary-general and deputy secretary-general of the Kúria

Section 158/A (1) As regards the benefits granted to the secretary-general of the Kúria (Curia), the provisions of the Government Decree on the Benefits Provided to Government Executives and Public Officials of Government Bodies, and on the Conditions Thereof on benefits granted to state secretaries shall apply mutatis mutandis.

(2) As regards the benefits granted to the deputy secretary-general of the Kúria, the provisions of the Government Decree on the Benefits Provided to Government Executives and Public Officials of Government Bodies, and on the Conditions Thereof on benefits granted to deputy state secretaries shall apply mutatis mutandis.”

Section 66 Section 166 of Bjt. shall be replaced by the following:

“Section 166 (1) The costs of access to the benefits to which the President of the Kúria (Curia) and the vice-presidents, the secretary-general and deputy secretary-general of the Kúria, and the President of OBH and the vice-presidents are entitled shall - unless otherwise provided for by law - be covered by the budget chapter on the judiciary of the act on the central budget.

(2) The President of the Kúria and the vice-presidents, the secretary-general and deputy secretary-general of the Kúria, and the President of OBH and the vice-presidents are required to disclose to the relevant body the data and information necessary for claiming their benefits, including any changes in such data. Benefits claimed without legal basis shall be repaid within 15 days from the time of receipt of notice to that effect.”

Section 67 (1) Subtitle 70 of Bjt. shall be replaced by the following:

“70. Derogations relating to judges assigned to the Kúria, the OBH and the relevant body”

(2) Subsection (1) of Section 195 of Bjt. shall be replaced by the following:

“(1) The provisions of Sections 167-194 shall apply to judges assigned to the Kúria (Curia), the OBH and the relevant body subject to the exceptions set out in Subsections (2)-(6) hereof.”

(3) Subsection (3) of Section 195 of Bjt. shall be replaced by the following:

“(3) Except as specified in Subsection (4), the executive bonus of judges working in or posted at the OBH, the Kúria or the relevant body in the positions of senior department head, deputy senior department head and department head shall be the same as that granted:

- a) to heads of college of courts of appeal in the case of senior department heads;
- b) to vice-presidents of general courts in the case of deputy senior department heads;
- c) to presidents of major district courts in the case of department heads.”

(4) Subsections (5) and (6) of Section 195 of Bjt. shall be replaced by the following:

“(5) Judges assigned to the OBH, the Kúria and the relevant body shall be entitled, in addition to the special duty allowance referred to in Subsection (2), to 30 per cent of their basic salary.

(6) The OBT shall have exclusive powers to award special promotions and higher titles by recommendation of the head of the relevant body, the President of OBH and the President of the Kúria pertaining to judges assigned to the relevant body, the OBH and the Kúria, respectively.”

Section 68 Subtitle 76 of Bjt shall be replaced by the following:

“76. Declarations of assets of judges assigned to the Kúria, the OBH and the relevant body

Section 211 The provisions of Sections 197-207 shall also apply to judges assigned to the Kúria (Curia), the OBH and the relevant body, with the proviso that employer’s rights are exercised by the President of the Kúria, the President of OBH or the head of the relevant body.”

Section 69 The following Section 232/R shall be inserted in Bjt.:

“Section 232/R Amendments to the provisions on assignments to the relevant body by Act CLXV of 2020 on the Amendment of Certain Acts Relating to the Judiciary shall not affect the legal status of judges assigned to the Ministry of the minister in charge of the judicial system; as of 1 January 2021, the assignment of judges assigned to the Ministry of the minister in charge of the judicial system shall be recognised as assignment to the relevant body as provided for in the assignment order.”

Section 70 The term “232/Q” in Subsection (1) of Section 237 of Bjt. shall be replaced by the term “232/R”.

Section 71 In Bjt. a) Subtitle 29 shall cease to apply.

b) Subsection (5) of Section 71 of Bjt. shall cease to apply.