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Reflections on Viktor Vadász's paper entitled "Is There a Crisis in The Administration of The Courts?"

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Reflections on Viktor Vadász's paper
entitled *"Is There a Crisis in The Administration of The Courts?"*[1]

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In his paper, the author examines and gives a detailed criticism of the provisions of Act no. CLXI of 2011 on the Organisation and Administration of the Courts of Hungary (hereinafter referred to as the Courts Administration Act), a cardinal act of law with constitutional significance that has laid down the foundations for the 2011 renewal of the model of the courts' administration. The author raises the question of whether there is a crisis in the administration of the courts, however, his starting point is that the question should be answered in the affirmative. Since the author's declared intention is to raise a number of issues for discussion, it is of high importance that his core suggestions should be considered through a professional debate which is based on factual evidence, and unfettered by emotions and by personal remarks that appear in certain parts of his paper. In that regard, the author's – unfortunately partially failed – efforts to put the examination of the courts' administration back to the context of a public law discourse based on legal arguments and facts should be welcomed.

The author failed to carry out an on-the-merits analysis, from a scientific and a methodological viewpoint, of the Hungarian model of administration and the operation thereof. In his analysis, he does not take account of the arguments for and against, the historical background, as well as the same and different types of solutions of the various international models, moreover, he fails to present the context and factual results of the Hungarian model of administration. Thus, the readers' impression of the situation of the judiciary could be as non-comprehensive and non-objective as if a judge's work performance would be evaluated on the basis of only five or six of his quashed decisions. The conclusions that can be drawn from such a subjective and one-sided "sampling" are predictable: they certainly have to be negative, nonetheless, it is obvious that no general conclusions on the quality of the judges' actual work – in several hundred cases – can be deduced from it.[2]

The readers may, however, feel a clear sense of loss in that context: although the author – rightly – refers to a number of countries without any judicial crisis in which judges are given substantially fewer rights of self-administration in comparison with the Hungarian model, but he fails to give an explanation as to why these foreign models do not necessarily fall into depression. Yet if many European countries' models, criticised by VADÁSZ, do not lead to crises in the courts' administration,[3] then it is reasonable to think that the situation in Hungary is not caused only by the legal solutions and interpretations described by the author. In addition, if there is no direct and compelling link of causation between the model elements criticised and the problems emerged, then the *de lege ferenda* proposals become irrelevant: they cannot achieve their set out objectives.

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[1] MTA Law Working Papers, Issue no. 2018/3; https://jog.tk.mta.hu/uploads/files/2018_13_Vadasz.pdf

[2] "It should not be allowed to arbitrarily select data and to hide results incompatible with a paper's conclusions." **Point 4.2 of the Code of Conduct for Scientific Integrity of the Hungarian Academy of Sciences**; https://mta.hu/data/dokumentumok/hatteranyagok/tudomanyetikai_bizottsag/tudomanyetikai_kodex_kgy_20100504.pdf

[3] In the Austrian model, there is no judicial council – responsible for the judges' self-administration – that would be the equivalent of the National Judicial Council of Hungary. Similarly, in the Czech Republic and in Germany, no such judicial councils exist and the administration powers – that are vested in the President of the National Office for the Judiciary in Hungary – are exercised by the Minister of Justice.

It would also have been important to examine (deny or justify) the link of causation regarding whether the problems that had not been present during the first six years of the Hungarian model's operation and had surfaced only at the time of the commencement of the activities of the newly set up National Judicial Council emerged as a result of systemic issues or due to interpersonal and communications conflicts.[4] Moreover, it would have been necessary to give a more detailed assessment of how the restructuring of competencies with respect to the current model of administration, which have safeguarded and guaranteed operational efficiency[5] and the independence and autonomy of the adjudication of cases, might impact the latter elements the existence of which has not been disputed by VADÁSZ – and of whether such restructuring might erode them. This is particularly crucial, because during the discussions held on the basis of VADÁSZ's approach at the Institute for Legal Studies of the Hungarian Academy of Sciences, FLECK pointed out[6] that the so-called feudal-oligarchic model of the courts' self-administration established by the 1997 Courts Administration Act had been the worst and the most harmful one. Therefore, the poorly thought through expansion of the courts' self-administration may bring about adverse effects as well as operational difficulties and problems of efficiency.

The paper's probably sloppiest part is the issue's core element, the situation of judicial independence.[7] Despite the fact that the author refers to it fourteen times and quotes word-for-word its exact definition from the relevant international documents, he does not go beyond the level of subjective feelings in the examination of this key issue. *"The European public eye is of the opinion that the fact that the President of the National Office for the Judiciary was elected by the Parliament from among the judges is not a sufficient guarantee for safeguarding judicial independence"* says VADÁSZ, but it is not known who form part of this public eye, how their legal viewpoint can be learnt, and what the author's basis is for his assertion. VADÁSZ himself states[8] that judicial independence is a complex concept which has different elements in the fields of the adjudication of cases, the administration of the courts and the judges' personal (financial) independence and these elements can be identified only by way of a uniform examination of several guarantee arrangements. These different elements are not assessed by VADÁSZ, as he voices a general criticism about the current model of administration determined by the Fundamental Law of Hungary and the Courts Administration Act without referring to any specific detail or factual evidence to support his claim according to which there has been a violation of judicial independence.

There has been no criticism of substance – following the 2011 judicial reforms – about judicial independence with respect to the activities of the President of the National Office for the Judiciary and the President of the Curia of Hungary either from the judiciary or from the

[4] Such an examination would have been justified also because of the author's membership in the National Judicial Council and him being personally affected by the subject.
[5] VADÁSZ (2018), cited above, p. 13
[6] Zoltán FLECK: Jogállam és igazságszolgáltatás a változó világban (Rule of law and administration of justice in a changing world), Budapest, Pallas Páholy – Gondolat Publishing House, 2008, p. 175 and Zoltán FLECK: Bíróságok mérlegen. Igazságszolgáltatásunk újabb tíz éve (Pondering the courts' operation. Another ten years of our justice system), Budapest, Pallas Publishing House, 2008
[7] As regards the theoretical and substantive issues of judicial independence, see among others: István BIBÓ: Az államhatalmak elválasztása egykor és most (The separation of state powers then and now) in: István BIBÓ: Válogatott tanulmányok (A selection of studies), 1945-1949, Editor: István VIDA, Budapest, Magvető Publishing House, 1986; Attila RÁCZ: Alkotmányos alapelvek és a bírósági szervezet vitakérdései (Constitutional principles and the debated issues of the court system), Journal of Legal Literature, 2002, p. 373-377; János HORVÁTH: A bírói hatalom néhány kérdéséről (On a number of issues regarding judicial power), Hungarian Law, 2003, p. 212-219; Béla POKOL: A bírói hatalom (Judicial power), Budapest, Századvég Publishing House, 2003
[8] VADÁSZ (2018), cited above, p. 5

representatives of the professional and scientific community.[9] Within the framework of his legal study on the situation of judicial independence following the 2011 change of the model of the courts' administration, BENCZE examined a number of judicial decisions and found that *"judges are not afraid to deliver decisions that are contrary to the interests of state authorities"* and that *"adjudicating judges continue to enjoy independence and there is no atmosphere of threat within the courts, which would force judges to render decisions contrary to the applicable pieces of legislation and their conscience"*.[10]

The meeting organised by the Institute for Legal Studies of the Hungarian Academy of Sciences for the purpose of discussing the paper's assertions – due to a lack of scientific methodology and impartiality as referred to above – was distinctly a non-professional debate workshop. Both the scientific staff members of the Hungarian Academy of Sciences and the author himself stressed that the paper aimed at launching a debate on the ideal model of the courts' administration and on its feasibility. On such an interpretation, it may be important to substantially supplement and clarify the issues raised in order to accurately assess the situation.

In his paper, the author expresses his thoughts under three main topics:

1. problems of the model of administration with particular regard to the issue of the courts' self-administration
2. criticism about the activities of the National Office for the Judiciary and the President of the National Office for the Judiciary, and
3. powers of the National Judicial Council and the strengthening of the courts' self-administration

1.

With regard to the model of administration, the author correctly declares from a public law point of view that *"the constitutional authority is vested with the right to develop the courts' organisational structure"* under the condition that the latter has to be in compliance with the relevant European and international legal framework. The Parliament's constitutional power – as opposed to its simple legislative power – is an embodiment of the Hungarian State's sovereignty. In its capacity as a constitutional authority, the Parliament may decide at its absolute discretion on the structure of state authorities, the relationship between the different branches of power that are subject to state sovereignty and the powers of bodies and persons exercising public authority. On the other hand, it also follows from the principle of the separation of powers that there is no absolute and illimitable power in a constitutional democracy, and the different branches of power counterweight each other,[11] which is the

[9] The post of the President of the National Office for the Judiciary was deemed to be a personal guarantee for ensuring judicial independence even in the eye of some public writers who opposed the 2011 judicial reforms on an ideological basis, see for instance the article of Mária VÁSÁRHELYI: https://168ora.hu/velemeny/vasarhelyi-maria-legalabb-az-ellenzek-ne-dolgozzon-a-fidesz-keze-ala-13313

[10] Mátyás BENCZE: A bírósági rendszer átalakításának értékelése (The evaluation of the restructuring of the court system), MTA Law Working Papers, Issue no. 2014/41, p. 2; https://jog.tk.mta.hu/uploads/files/mtalwp/2014_41_Bencze.pdf

[11] Firstly, Constitutional Court decision no. 38/1993 AB (of 11 June 1993), the 1993 Collection of Constitutional Court Decisions, p. 256 and 261; then Constitutional Court decision no. 41/1993 AB (of 30 June 1993), the 1993 Collection of Constitutional Court Decisions, p. 292 and 294; Constitutional Court decision no. 55/1994 AB (of 10 November 1994), the 1994 Collection of Constitutional Court Decisions, p. 296 and 300; Constitutional Court decision no. 28/1995 AB (of 19 May 1995), the 1995 Collection of Constitutional Court Decisions, p. 138 and

European equivalent of the American constitutional principle of the system of checks and balances. In this system, the President of the National Office for the Judiciary may exercise his/her powers according to the provisions of the Courts Administration Act, a piece of legislation with constitutional force. The author's criticism about the competencies of the President of the National Office for the Judiciary is, therefore, directed at the substance of the expression of the Hungarian State's and the Parliament's sovereignty. If one wishes to take the author's basic premise according to which the debate should be conducted in the field of public law seriously, then it is not the legitimising decisions of a judicial council referred to by the author that can justify the powers of the President of the National Office for the Judiciary and the legitimate exercise thereof. This hiatus, in a public law sense, is completely irrelevant, so much so that the appointment of judges by a judicial body would amount to the prohibited self-legitimisation of judicial power.

VADÁSZ (2018) refers to Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe, adopted on 13 October 1994, which, in principle, does not denounce the mechanism of the Ministry of Justice's involvement in the administration of the courts.[12] Under the recommendation's terms, the courts' administration should be carried out by respecting judicial independence and refraining from influencing the substance of the adjudication of cases.[13] The State's function *vis-à-vis* the judiciary is to protect the value of judicial independence: the latter *only serves a justice system which is operational, unimpaired and in line with the requirements of the rule of law, and which does not primarily promote the establishment and enforcement of professional privileges*.[14] Nonetheless, the violation of judicial independence by the courts' administrative bodies has been suggested neither by the author nor by the National Judicial Council under its previous and current compositions. The factual situation is that the activities and statements[15] of the National Office for the Judiciary and its President have been strictly limited to issues of administration, have fully respected and have explicitly protected the judiciary's free-from-interference adjudicating independence.

The democratic legitimacy of the courts' administrative managers cannot be disputed, as it has been pointed out as a matter of principle by the Constitutional Court.[16] The protected

142; Constitutional Court decision no. 66/1997 AB (of 29 December 1997), the 1997 Collection of Constitutional Court Decisions, p. 397 and 403

[12] See a study giving a more nuanced overview of the topic, presenting the models of the courts' administration by the Minister of Justice, and analysing, among others, the Czech model of administration: Mátyás BENCZE – Ágnes KOVÁCS: Judicial independence and models of court administration, MTA Law Working Papers, November 2018

[13] Another significant aspect of this issue is the assignment of cases which is not dealt with in substance by VADÁSZ, hence, it is worth mentioning it and pointing out that the President of the National Office for the Judiciary decided to introduce an automated system of case assignment and an objective workload measurement method, based on a number of weighting factors, in the courts' administration. See on the topics of case assignment and workload: Attila BADÓ – Kata SZARVAS: „As luck would have it..." Fairness in the distribution of cases and judicial independence, in: Attila BADÓ (editor): Fair Trial and Judicial Independence: Hungarian Perspectives, Berlin; Heidelberg; New York: Springer, 2013, p. 52-62

[14] Regine SCHRÖDER: Dienstzeiten und Anweseheitspflichten für Richterinnen und Richter, Neue Juristishe Wochenschrift, 2005, p. 1160-1161

[15] See among others the 2016 observations of the President of the National Office for the Judiciary and a 2016 press release with respect to the restructuring of the system of administrative justice: https://birosag.hu/media/aktualis/az-orszagos-birosagi-hivatal-kozlemenye-0

[16] Constitutional Court decision no. 53/1991 AB (of 31 October 1991) found acceptable a legislation under which the legislator would give certain administrative powers to the Minister of Justice in order for him/her to provide the human and technical resources necessary for the administration of justice. In their dissenting opinion,

value of judicial independence focuses not on a particular person fulfilling a given position, such as the President of the National Office for the Judiciary, the President of the Curia of Hungary or a member of the National Judicial Council, but is "the rule-of-law guarantee of the justice system".[17] Under the provisions of the 2011 Courts Administration Act, the President of the Curia of Hungary and the President of the National Office for the Judiciary, both of them being members of the judiciary, do not assume from a public law point of view – which is proposed by VADÁSZ as the debate's framework[18] – any political or legal liability towards the Parliament.

2.

As regards the exercise of the appointing powers of the President of the National Office for the Judiciary, a quantitative analysis may provide an objective view of the exercise of such powers.[19] Well-founded conclusions on the model's systemic functioning can be drawn from a number of individual cases only via a correlation analysis that is based on a larger sample.

Concerning the exercise of the power to appoint administrative managers, VADÁSZ (2018) and BENCZE-KOVÁCS (2018) make a proposal for the establishment of a more differentiated allocation of powers. On the other hand, it can be stated that, under the current model set up by the 2011 judicial reforms, 38 administrative managers, as defined by the Courts Administration Act, may be appointed by the President of the Curia of Hungary, 48 administrative managers by the presidents of the five regional appellate courts, 548 administrative managers by the presidents of the twenty high courts, while 119 administrative managers by the President of the National Office for the Judiciary. This means that the President of the National Office for the Judiciary is responsible for the appointment of only 15.8 percent of the court system's altogether 753 administrative managers.

- **Invitation of applications for vacant judge positions**

In the year 2017, the President of the National Office for the Judiciary decided on 274 invitations of applications for vacant judge positions. Based on these invitations, altogether 1919 applications were submitted, which means that an average of 7 persons applied for each vacant position. In 94.5 percent of the cases, the vacant judge position was successfully filled, either by way of appointment or by way of transferal. In 15 cases, the President of the National Office for the Judiciary declared the invitation of applications unsuccessful, while in 4 cases from among the unsuccessful invitations, no applications at all were submitted.

In 2018, the President of the National Office for the Judiciary decided on 251 invitations of applications for vacant judge positions from among which 223 proved to be successful. In case of each of the successful invitations, the President made a decision in compliance with the relevant judicial council's ranking, meaning that in no cases did the President deviate from the judicial councils' ranking.

	2017	Till 31/10/2018

Antal ÁDÁM and Imre VÖRÖS accepted the legitimacy of such legislation and drew a distinction between two types of court administration: they distinguished an internal and an external one.

[17] Attila RÁCZ: Alkotmányos alapelvek és a bíróság szervezet vitakérdései (Constitutional principles and the debated issues of the court system), Journal of Legal Literature, 2002, p. 376

[18] VADÁSZ (2018), cited above, p. 1

[19] As regards the exercise of the appointing powers of the President of the National Office for the Judiciary, the author had at his disposal a complete set of data with respect to the year 2017.

Invitations of applications decided on	**274**	**251**
Applications submitted	**1919**	**1562**
Invitations of applications decided on in accordance with the judicial council's ranking	**248**	**223**
Invitations of applications decided on by deviating from the judicial council's ranking	**11**	**0**
Invitations of applications declared unsuccessful	**15**	**28**[20]
Lack of any valid applications [section 20, subsection (1), point a) of the Act on the Legal Status and Remuneration of Judges]	**4**	**7**
Procedural infringement [section 20, subsection (1), point bb) of the Act on the Legal Status and Remuneration of Judges]	**6**	**1**
Reasons concerning the organization of work and the courts' workload [section 20, subsection (1), point bd) of the Act on the Legal Status and Remuneration of Judges]	**5**	**0**
The vacant position needs to be filled without any invitation of applications [section 20, subsection (1), point be) of the Act on the Legal Status and Remuneration of Judges]	**0**	**20**

- **Invitation of applications for vacant court manager positions**

In 2017, the President of the National Office for the Judiciary was entitled to appoint 119 court managers out of the judiciary's altogether 753 managers. In the year 2017, 16 invitations of applications for vacant court manager positions were launched, 8 of them resulted in an appointment, 5 of them were declared unsuccessful for the lack of any applications, and 2 of them were unsuccessful due to a lack of the opinion-giving body's support. Lastly, one of the invitation proceedings was terminated without any result, as the President of the National Office for the Judiciary, by exercising a power of discretion provided for by law, decided not to appoint the applicant. In the period between 1 January and 31 October 2018, 35 invitations of applications for vacant court manager positions were launched, 5 of them were declared unsuccessful for the lack of any applications, and 2 of them were unsuccessful due to the revocation of the sole applicant's application. In 9 of the remaining 28 cases, the chosen applicant could not obtain the support of the majority of the

[20] In 19 cases from among them, the invitations of applications were declared unsuccessful due to the establishment of the District Court of Érd, because 19 judges from the District Court of Budaörs and the Buda Environs District Court requested their future transferal to the District Court of Érd.

members of the opinion-giving judicial body, which resulted in an unsuccessful invitation, while in an additional 5 (including two cases that concerned the same position, namely the post of President of the High Court of Budapest) of the remaining 28 cases, the President of the National Office for the Judiciary decided not to appoint the applicant enjoying the majority support of the opinion-giving body on grounds of reasoned professional objections. In the remaining 14 cases, the applicants enjoying the majority support of the relevant opinion-giving body were appointed. Hence, in case of the majority support of the opinion-giving body in 2018, there were 4 (there was a fifth case in which the invitation of applications was re-launched) of the 35 invitations of applications which were declared unsuccessful by the President of the National Office for the Judiciary on the basis of a power provided for by the Courts Administration Act.

Invitations of applications for vacant court manager positions (between 1 January 2017 and 31 October 2018)	Invitations of applications for vacant court manager positions not decided on (between 1 January 2017 and 31 October 2018)	Invitations of applications for vacant court manager positions decided on (between 1 January 2017 and 31 October 2018)
51	**12**	**39**

RESULTS OF THE 39 INVITATIONS OF APPLICATIONS FOR VACANT COURT MANAGER POSITIONS DECIDED ON BETWEEN 1 JANUARY 2017 AND 31 OCTOBER 2018		
Appointments in accordance with the majority position of the opinion-giving body	**Invitations of applications declared unsuccessful by accepting the lack of the majority support of the opinion-giving body**	**Invitations of applications declared unsuccessful in spite of the majority support of the opinion-giving body**
22	**11**	**6**[21]

- **Conclusions drawn from the facts of the exercise of the appointing powers of the President of the National Office for the Judiciary**

The facts of the above sets of data show that, in case of invitations of applications for vacant judge positions, the President of the National Office for the Judiciary accepted the position of the relevant opinion-giving judicial body and the appointments were made in line with the rankings – based on objective scores – in 97 percent of the cases concerned. The President of the National Office for the Judiciary exercised her right to deviate from the rankings for the appointment of judges only in a couple of cases and under exceptional circumstances over a period of two years and she duly submitted her reasoned proposals to deviate from the rankings to the National Judicial Council. This practice has eminently strengthened judicial independence and professionalism in the case of appointments for purely professional judge positions in respect of about 500 judgeship statuses. The above conclusion's theoretical basis has been expressed by the finding of BENCZE (2014) according to which *"one of the most*

[21] Two of them were the same invitation of applications regarding the post of President of the High Court of Budapest, one and the same person applied for the position in case of both unsuccessful invitations.

important guarantees of judicial independence lies in who can become a judge.[22] *The essential criterion in that respect is that the requirements for acquiring the status of a judge should be as objective as possible and such requirements should not include the personal and sometimes even illegitimate considerations and interests of persons with decision-making authority".*[23]

The situation is slightly different in the case of invitations of applications for vacant administrative manager positions. During the period between 1 January 2017 and 31 October 2018, in 33 out of the 39 invitations, the President of the National Office for the Judiciary decided on the appointment of managers in accordance with the opinion-giving judicial body's opinion. This amounts to a 84.6 percent acceptance of the opinion of the judiciary's self-administrative bodies by the President of the National Office for the Judiciary. During the examined nearly two-year-long period of time and with respect to court managers whose appointment is to be made by him/her in his/her capacity of employer by virtue of the provisions of the Courts Administration Act, the President of the National Office for the Judiciary deviated from the self-administrative judicial bodies' opinion and declared the invitations of applications unsuccessful in 6 cases and in respect of 5 persons, which amounts to a 15.4 percent deviation. The constraints on the length of the present paper exclude a detailed analysis of the 6 invitations of applications declared unsuccessful, but objectivity requires us to note that these invitations mostly concerned court manager positions in the judicial system's particularly important geographical area, *i.e* in the central region of Hungary.[24]

It can be established that, in respect of appointments for professional (and non-managerial) judge positions, the President of the National Office for the Judiciary rendered an appointment decision in accordance with the professional opinion-giving bodies' opinion and with the rankings based on objective scores and by fully taking into account the applicants' professional competences and the opinion of the judiciary's self-administrative bodies in an overwhelming majority (in 97 percent) of the cases. As regards court managers whose appointment falls within his/her power, the President of the National Office for the Judiciary delivered an appointment decision in line with the opinion-giving bodies' position in a predominant majority (in 85 percent) of the cases.

The President of the National Office for the Judiciary exercised a power of appointment, that is based on a personal responsibility and has a central and crucial role in the central administration of the courts as defined by the Courts Administration Act, without taking the opinion-giving judicial bodies' position into account only in 15 percent of the cases. Concerning the total number of administrative managers (753), the President of the National Office for the Judiciary had a 0.79 percent influence on their appointment in a period of 22 months, *i.e.* during the examined time period between 1 January 2017 and 31 October 2018. This means that the President of the National Office for the Judiciary exercised a power to deviate from the opinion-giving bodies' position with respect to the appointment of court managers in the period between 1 January 2017 and 31 October 2018 only in less than 1 percent of the cases. As it was indicated earlier, the weight and significance of the

[22] BENCZE regards the requirements for acquiring the status of a trainee judge as the first and foremost elements of the requirements for acquiring the status of a judge, in that regard the introduction, by the President of the National Office for the Judiciary, of open competitions based on objective criteria for the recruitment of trainee judges should be highlighted.
[23] BENCZE (2014), cited above, p. 3
[24] This passage is of importance also because the proportions alone would disaffirm VADÁSZ's viewpoint.

appointment decisions may differ from one case to the other, and they cannot be considered equal, thus, the above nominal ratio does not represent the systemic importance of the role of the President of the National Office for the Judiciary, as defined by the Fundamental Law of Hungary and the Courts Administration Act. However, the ratio does show in an objective manner that the President of the National Office for the Judiciary has not engaged in an abusive practice, going against the opinion-giving bodies' position in terms of the appointment of court managers. The findings and conclusions of VADÁSZ in that context (the taking into account of the judicial self-administrative bodies' opinion at a rate higher than the current 99 percent) need to be subjected to a strong critical review and be deprived of subjective feelings.

3.

The judicial self-administrative bodies and the National Judicial Council cooperate with each other in accordance with the relevant constitutional provisions. The protected legal status of the members of the National Judicial Council and the prohibition of administrative measures against them are ensured by the Courts' Administration Act's guarantee arrangements (the requirement of the National Judicial Council's consent, an independent disciplinary tribunal, completely separated from the central administration of the courts). The content of these guarantee arrangements has been determined by the sovereign legislative branch of power and under the supervision and approval of international professional legal bodies.

KÜPPER[25] is of the view that the requirement of constitutionality would be met even in case of the conferral of only advisory powers upon the National Judicial Council, nevertheless, the Courts' Administration Act, on the basis of the observations of the Venice Commission, has conferred a set of decision-making and administrative powers upon the Council. In addition, the various judicial councils and plenary sessions of judges exercise their powers on the basis of the provisions of the Courts' Administration Act. As BENCZE-KOVÁCS (2018) pointed out regarding the relation between the courts' self-administration and the central administration of the justice system, the national experiences and practices play, in a sociological sense, a decisive role in how the separation of powers is ensured.[26] Moreover, the judiciary's self-administrative bodies, supplemented by members from outside the judiciary, may perform consultation functions for a number of different stakeholders.[27]

The previous oligarchic and closed model of the courts' administration, denounced by FLECK, had been heavily criticised by the representatives of the judiciary, as well as by scientific actors and public figures, their critical remarks have resonated in the 2011 restructuring of the model of administration. In 2011, the legislator decided to set up a system in which the principle of personal responsibility prevails, a single person is entrusted with strong operative powers with regard to the central administration of the courts and the National Judicial Council merely contributes to the exercise of such operative powers instead of the previous model in which there had been a collegiate body responsible for the courts' central administration. As it has been referred to, the judiciary's self-legitimising and purely self-administrative model would result, on the one hand, in the judges' excessive power without any appropriate control institutions in a public law sense, and would reasonably lead, on the other hand, through the selection of administrative court managers by their peers to

[25] KÜPPER (2009), cited above, p. 1846
[26] VADÁSZ (2018), cited above, p. 14-15
[27] Tamás GYŐRFI: Why Is the Equal Merit Principle (Almost) Straightforwardly Wrong? The Modern Law Review, 2017, 80(6), p. 1052-1072

problems of efficiency, adverse selection and – as described by FLECK (2008) and referred to above – oligarchic operation. These concerns could be neither dismissed nor handled by the 1997 model of the courts' administration.

As a result of the patterns of the National Judicial Council's operation and the resignation of some of its elected and alternate members, the number of the National Judicial Council's members has fallen to less than 15 persons and the absence of the Council's delegated and alternate members in the field of administrative and labour law has led to the disappearance of that level of representation. Apart from the requirement concerning the replacement of the Council's resigned members and alternate members by new ones, there is no provision in the Courts' Administration Act on what methods of resolution and what legal consequences should be applied in this situation. In the absence of any mandatory, public law norm in that regard, a couple of parallelly existing guarantee considerations and analogies and a list of pros and cons can be relied on. In the absence of any legal rules to be applied, the issue "tolerates a debate" and a number of public-law professional arguments have been expressed in a transparent manner. A legal debate is to be decided on not on the basis of the number of the supporters of the various positions, hence, it is certain that the issue at hand cannot be resolved by way of a numbers game between the representatives of the different standpoints. On the other hand, it can also be seen that the issue divides both the legal profession and the judiciary, which – in line with the author's opinion – is by no means desirable and ultimately erodes public confidence in the administration of justice.

At this stage, the professional standpoint – originating from international and domestic experiences and based on a primarily liberal legal dogmatics – of KÜPPER (2009) should be recalled, which surely cannot be considered as biased in the present debate, all the more so because it was authored in 2009:[28]

"The excessive enthusiasm for the courts' self-administration, however, must be contrasted with the practice, noticeable in many countries, according to which the courts' administration is carried out by laypersons in multiple fields. The judges' decision-making ethos is rather reactive, their way of thinking is focused on ex-post decisions and verifications, while the courts' administration requires a creative mindset. In addition, many judges lack the necessary expertise to adequately decide, for instance, in building (...), budgetary and human resources matters related to the judicial system. The legislator therefore (...) has to strike a fair balance between professional administration and the courts' self-administration."[29]

[28] KÜPPER's arguments are backed by Ferenc PETRIK from a judge's point of view in: Hol tart a bírósági reform? (At what stage are the judicial reforms?), Hungarian Law, Issue no. 1995/4, p. 218-220
[29] cited above, p. 1847

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