

2018.OBH.XXIX.D.1.

INFORMATION

on the practice of the President of the National Office for the Judiciary
in the course of the assessment of applications for judicial appointments in 2018

(31 October 2018)

1. Regulatory Framework

1.1 Legal regulations

1.1.1 Act CLXI of 2011 on the organisation and administration of courts of Hungary (OACH)

- in the area of human resources, the National Judicial Council (NJC) publishes its opinion annually on the practice the President of the National Office for the Judiciary (NOJ) follows with respect to assessing applications for judicial positions (Section 103 (3) (f))

1.1.2 Act CLXII of 2011 on the legal status and remuneration of judges (LSRJ)

- applications for judicial positions are assessed by the President of the NOJ (Section 17)
- if the President of the NOJ agrees that the applicant ranked first should be appointed, he or she shall rule on the application by forwarding it to the President of the Republic for appointment or, in the case of a judge, by transferring the judge (Section 18 (1))
- the President of the NOJ may decide to deviate from the ranking provided by the judicial council and propose the second or third candidate on the list to fill the post, or may rule on the application by transferring the second or third candidate on the list (Section 18 (3))
- when assessing the applications, deviation from the shortlist is only allowed with the prior written approval of the National Judicial Council (Section 18 (4)-(5))
- application procedures are unsuccessful if
 1. no application is received, or the chair of the court has rejected all applications in accordance with the provisions of Section 13 of LSRJ, or
 2. the President of the NOJ entitled to assess the applications or, in the event of candidacy for the Curia, the President of the Curia does not intend to fill the post with any of the applicants because
 - ❖ appointing the applicant would give rise to conflict of interest as envisaged in Section 41 of the LSRJ
 - ❖ the participants involved in the assessment process breached procedural requirements during the assessment procedure

- ❖ the judicial council failed to comply with its obligation to give reasons as laid down in Section 15 (2) and (2a) of the LSRJ
- ❖ changes in work organisation, workload or budget occurring after publishing the call for applications make it administratively unreasonable to fill in the post
- ❖ a circumstance arose after publishing the call for applications as a result of which, the vacancy is to be filled without a call for applications as laid down by law (Section 8 of the LSRJ),

1.1.3 Decree No. 7/2011 (III. 4.)

Decree No. 7/2011 (III. 4.) by the Minister of Public Administration and Justice on the detailed rules of assessing the applications for judges and on the scores awarded during the ranking of applicants (“Decree on Scoring”)

1.2 Authoritative decision of the National Judicial Council

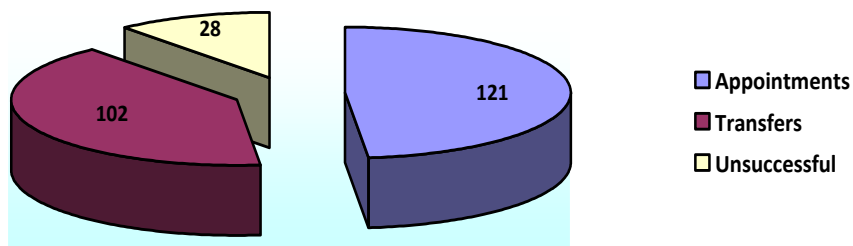
Decision No 3/2013 (I. 21.) of the National Judicial Council on the principles to be taken into account (to be examined and applied) by the President of the NOJ and the President of the Curia upon a departure from the ranking of applications during the assessment of applications for judicial positions

- the general rule is to appoint the candidate ranked number one (the ranking has priority)
- in exceptional cases, departure is allowed from the ranking if
 - it complies with the principles set out by the National Judicial Council, and
 - considering all other circumstances and the key aspects for the post concerned, the appointment of the candidate ranked number two or three is justified in general.

2. Number and outcome of the assessed applications

2.1 Applications assessed

Outcome of the assessment of applications



By 31 October 2018, a total of 251 applications invited for judicial positions were assessed, in the course of which the President of the NOJ decided

- to propose the appointment of the applicant as a judge for a definite period in 121 cases
- to transfer a judge in 102 cases, and
- to declare the call for applications unsuccessful in 28 cases.

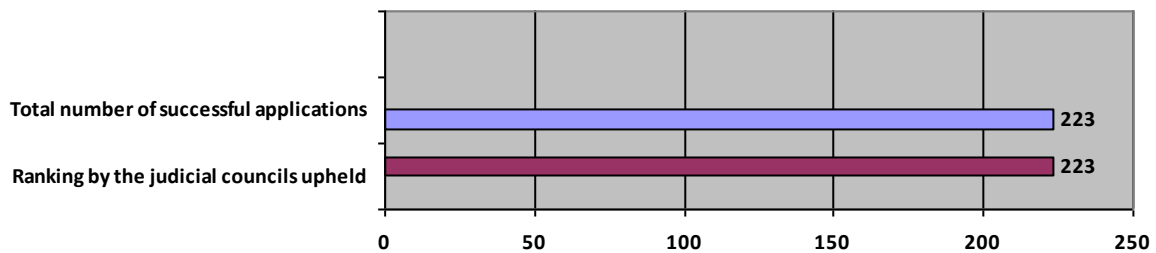
A total of 1562 applications were received in response to the calls.

Of the 121 newly appointed judges, 101 had worked as court secretaries, and 20 persons worked in legal jobs outside the judiciary before their application.

Of the 102 judges transferred, 53 were promoted to a higher level court.

2.2 Successful applications for judicial positions

Applications for judicial positions assessed identically with the ranking established by judicial councils



The President of the National Office for the Judiciary upheld the ranking established by the judicial council in all (100 %) of the decisions on the 223 successful applications.

Intending to depart from the ranking relating to 2 calls, the President of the NOJ sought the prior approval of the National Judicial Council in a submission.

In one case, the President of the NOJ agreed with the submission of the chair of the regional court and proposed to transfer the judge ranked second in the shortlist of applicants invoking the principles of equal assessment and absolute discretion applied the protection of the career of judges as laid down in Decree No. 3/2013 (I .21.) of the National Judicial Council. Failing to obtain the agreement of the National Judicial Council, the President of the NOJ submitted to the President of the Republic for appointment the applicant ranked first, who was a court secretary at that time. (Sárvár District Court)

In another case, the President of the NOJ also proposed to transfer the judge ranked second in the shortlist, invoking the effective handling of cases, the need to consider special professional requirements and to ensure the continuity of work, the protection of the careers of judges, and principle of assessing the applicant's earlier work performance as laid down in Decree No 3/2013 (I .21.) of the National Judicial Council. Failing to obtain the agreement of the National Judicial Council, the President of the NOJ transferred the applicant ranked first in the shortlist, who was a judge at the time. (Budapest Environs Regional Court)

2.3 Calls for applications for judicial positions declared unsuccessful

The President of the NOJ declared unsuccessful 28 calls for applications to fill judicial vacancies (11%) due to the following reasons:

2.3.1 No application submitted in 7 cases (Section 20 (1) (a) of the LSRJ)

	Reason	Position specified in the call	Decision of the President of the NOJ
1-7	No application submitted	Kunszentmiklós District Court (case number: 2017.OBH.XXIX.B.200.)	A new call was published.
		Central District Court of Pest (PKKB) (case number: 2018.OBH.XXIX.B.40.)	
		Central District Court of Pest (PKKB) (case number: 2018.OBH.XXIX.B.47.)	
		Central District Court of Pest (PKKB) (case number: 2018.OBH.XXIX.B.76.)	
		Central District Court of Pest (PKKB) (case number: 2018.OBH.XXIX.B.78.)	
		Central District Court of Pest (PKKB) (case number: 2018.OBH.XXIX.B.122.)	
		Dabas District Court (case number: 2018.OBH.XXIX.B.174.)	

2.3.2 Breach of procedural requirements in 1 case (Section 20 (1) (bb) of the LSRJ)

	Reason	Position specified in the call	Decision of the President of the NOJ
1.	The judicial council considered the candidate's motion submitted to the Constitutional Court for opinion as expressing an opinion on a law *	Budapest 2nd and 3rd District Court (case number: 2017.OBH.XXIX.B.286.)	A new call was published.

* The judicial council erred in its assessment when awarding points to the applicant ranked first in the shortlist for past activities involving the evaluation and drafting of legislation.

As regards the evaluation and drafting of legislation, the legislator appreciates the special expertise in the field of codification, as well as the knowledge of and skills involved in drafting legislation. The preparation of legislation is a process in the course of which the professional content of the legal regulation is elaborated. An element of that process involves expressing an opinion on the legislation whereby the legislator is informed about the experience of judicial practitioners. The organisations affected provide their opinion and make their proposals in narrative form - as an expression of their opinion – about amending an existing piece of legislation or on making a new law. Opinions expressed or proposals formulated by employees of such organisations may be evaluated as additional activities in during application procedures for judicial positions.

The candidate's submission prepared 13 years earlier - in 2005 - and submitted directly to the Constitutional Court does not meet the above requirements, therefore no points should have been awarded for that (5 points were granted).

As part of the same call, the judicial council also made an error in scoring the applicant ranked second by failing to score the applicant's publications by author's sheets.

Considering the scoring errors detailed above, the judicial council, which has exclusive competence for ranking of applicants, established the ranking improperly as the first ranked applicant, who was also proposed by the vice-chair of the regional court, became runner up.

All of that resulted in declaring the call unsuccessful.

2.3.3 A circumstance arose in 20 cases after the publishing the call as a result of which the position was to be filled without inviting applications (Section 8), as foreseen in the act (Section 20 (1) (be) of the LSRJ.)

	Reason	Position specified in the call	Decision of the President of the NOJ
1.	Employment of a judge once his/her post at the National Office for the Judiciary was cancelled	Székesfehérvár District Court (case number: 2018.OBH.XXIX.B.109.)	No call published.
2-20	Establishment of Érd District Court on 1 January 2019 **	10 civil law and 4 penal division positions of Érd District Court (case number: 2018.OBH.XXVII.A.1.31.) Dunakeszi District Court (case number: 2018.OBH.XXIX.B.164.) Szigetszentmiklós District Court (case number: 2018.OBH.XXIX.B.165.) Dunakeszi District Court (case number: 2018.OBH.XXIX.B.166.) Central District Court of Pest (PKKB) (case number: 2018.OBH.XXIX.B.122.) Central District Court of Pest (PKKB) (case number: 2018.OBH.XXIX.B.138.)	No call published.

** On the basis of a decision by the legislator, the Érd District Court was established on 1 January 2019. Consequently, the territory of jurisdiction of the Buda Environs District Court and the Budaörs District Court decreased. To carry out the related tasks, also considering their complexity, the President of the NOJ created a project with the participation of the executives of the Budapest Environs Regional Court. It was in that framework that the authorized headcount of district courts was determined in several rounds of consultation with court executives and judges. After receiving continuous and personal information, each of the district court judges affected by the reform made a statement about court where they wished to continue to serve. In view of those statements, 19 judges of the Buda Environs District Court and the Budaörs District Court were transferred as of 1 January 2019 in accordance with the provisions of Section 34(2) of the LSRJ. As a result of these transfers, the calls for applications for judicial positions referred to above had to be declared unsuccessful under Section 8 (1) (d) of the LSRJ.

In the course of the central audit and analysis of the application process, feedback is given about the outcome of the assessments, irregularities, if any, revealed and also about divergent

practices, if any, which serves the purpose of enforcing the basic principles of the system of calls, aiming at ensuring uniformity and consistency. The chair of the court concerned is provided information on the outcome of the assessment in each case, along with instructions to inform the judicial council. Oral information is provided briefly and immediately to the chair of the court, who receives detailed information in writing, with legislative provisions and the President's proposal taken into account. Pursuant to the Act, the chair of the court is responsible for informing the applicants (Section 21 (2) of the LSRJ).

The justification of the decision by the President of the NOJ to declare a call unsuccessful shall respect the candidate's personality rights.

3. Comparison with the 2017 assessment practice

	Year 2017	up to 31 October 2018
Applications assessed	274	251
Applications received	1919	1562
Calls assessed identically with the ranking established by the judicial council	248	223
Calls assessed in divergence from the ranking established by the judicial council	11	0
Calls declared unsuccessful	15	28*
Section 20 (1) (a) of the LSRJ - no valid application submitted	4	7
Section 20 (1) (bb) of the LSRJ - breach of procedural requirements	6	1
Section 20 (1) (bd) of the LSRJ - reason relating to work organisation or workload	5	0
Section 20 (1) (be) of the LSRJ - A circumstance arose after the publishing the call as a result of which the position was to be filled without inviting applications (Section 8), as foreseen in the act	0	20

* 19 calls were declared as unsuccessful as a result of the establishment of and the transfer of judges to the Érd District Court on 1 January 2019.

4. The scores awarded

The candidates received the following scores in case of appointment or transfer on the various levels of courts:

Court level	Appointment				Transfer			
	Number of calls	Minimum score	Maximum score	Mean	Number of calls	Minimum score	Maximum score	Mean
Regional Courts of Appeal	-	-	-	-	12	84	112	98
Regional Court	2	76	83	79	40	73	118	92
Regional College of Administrative and Labour Court Judges ('KMRK')	-	-	-	-	2	88	92	90
Administrative and Labour Courts	47	51	93	67	4	56	90	74
District Courts	72	44	84	61	44	59	84	69

The table above shows that applicants for higher level judicial positions are appointed as judges or transferred with a higher score.

5. Changes in the system of calls for applications

On 1 November 2017 an amendment of the decree on scoring, the fundamental legislative framework for the process of assessing the procedure of applications for judicial positions, took effect. Serious professional work started in the NOJ to ensure that all participants involved in applications procedures are well prepared for the changes.

The following professional guidance documents had been drafted:

- general information on calls for applications for judicial positions [Court Bulletin])
- easily understandable information on calls for applications - FAQ (birosag.hu)
- application inserts (general; for the administrative division)
- user guide to completing application inserts (general; for the administrative division)
- scoring tables (general; for the administrative division)
- submission forms (general; for the administrative division)

- statistical factsheets (in the administrative division)
- statement of judicial practice
- guidance to the assessment criteria set out in the decree on scoring to provide practical guidance and instructions about certification
- application guidelines on topics including but not limited to the submission of additional documents required and the cases of refusal, and a summary providing assistance to the colleges for stating their opinion

All this intends to facilitate and standardise the process of applying for a judicial position for all of the participants involved in the procedure.