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NATIONAL JUDICIAL COUNCIL OF HUNGARY

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To: Ms Madeleine Mathieu
President of the ENCJ

Distinguished Ms President,

At our most recent meeting, you encouraged the National Judicial Council (NJC) to inform you of any problems or threats we perceive that affect the Hungarian judiciary system. Taking this opportunity, I am reaching out to you for the following reasons.

The Ministry of Justice has once again prepared and submitted to the Parliament a highly complex legislative proposal affecting the foundations of the judiciary, under the name "Bill No. T/11917 on the amendment of laws related to justice."

This draft bill does not comply with the requirements of the rule of law due to the circumstances of its creation, the disregard for a significant portion of judicial observations, and the unreasonable nature of its provisions, and can be considered an attack on judicial independence.

Regarding its creation, I would point out that the Ministry sent a voluminous document to the NJC on April 4, 2025, labeling it a draft bill and requesting comments from the Council within a few days. Based on the circumstances of its delivery, the NJC concluded that the document was not yet a formal bill, but rather a written proposal leading to the creation of such a bill.

This conclusion was also supported by the fact that, after receiving comments from the NJC and other judicial bodies, the Minister of Justice invited representatives of the National Office for the Judiciary, as well as presidents of general courts and courts of appeal, to a consultation on the proposal. (I note that the NJC was excluded from the list of invitees.) The Minister later announced the successful consultation online, followed by another consultation on the criminal law section of the proposal scheduled for a Wednesday. This time, the NJC was included as an invitee.

Although the consultation eventually took place, the Ministry submitted the proposal to the legislature as a formal bill on the night before the scheduled meeting.

Regarding the disregard of judicial comments, I would note that the NJC submitted a 19-page opinion on the draft, to which the legislature did not respond at all concerning the civil law sections.

In my opinion, this process does not meet the requirements of the rule of law.

I will not comment on the professional quality of the bill, but I would like to highlight one provision which I believe could have a long-term significantly negative impact on the judicial system and should be viewed as an attack on judicial independence.

This provision concerns the proposed amendment to Act CXXX of 2016 on the Code of Civil Procedure, introducing pecuniary compensation in cases where deadlines are missed.

First and foremost, I must point out that Hungary already has a legal instrument for pecuniary compensation due to the prolongation of proceedings, regulated by Act XCIV of 2021 on pecuniary compensation in the event of delay in civil litigation (hereinafter: the Compensation Act), which aligns with European standards.

In contrast, the proposed provision aims to sanction certain procedural omissions by courts, even if such omissions are not attributable to the court or did not cause delays in the proceedings, all while maintaining the existing regulations.

In this regard, we cited the case law of the European Court of Human Rights (Frydlender v. France, Obermeier v. Austria, Comingersoll S.A. v. Portugal, König v. Germany, Deumeland v. Germany, Pretto and Others v. Italy, Beaumartin v. France, Sürmeli v. Germany, Katte Klitsche de la Grange v. Italy, Papachelas v. Greece, H. v. the United Kingdom, Humen v. Poland, Tierce v. San Marino), but our references were to no avail. Either the Ministry is unfamiliar with these precedents, or it does not intend to apply them.

As I have mentioned, the subject of pecuniary compensation is already governed by a specific law. The proposed parallel and contradictory regulation violates the principle of *ne bis in idem*—the same fact cannot be evaluated twice.

To comply with this principle, it is not sufficient to deduct the amount established in one procedure from the amount in another. The special compensation procedure necessarily requires examining missed deadlines individually and collectively. Both the current and proposed systems result in double evaluation, which violates this centuries-old legal principle.

Moreover, the Compensation Act and the government decree No. 372/2021 (VI. 30.) on the amount and calculation rules of pecuniary compensation set the daily compensation amount at HUF 400. Under the new proposal, this amount would be HUF 4,362 per day—more than ten times higher, and would increase with the minimum wage—without any justification provided by the legislator.

To implement such a measure, the state must ensure adequate working conditions and a balanced, equal workload for courts across the country. Only if a proper support system is in place can individual missed deadlines be justly scrutinized.

This new legal institution also seems unjustified because delays in cases are generally not caused by missing standard deadlines. Hence, it is questionable whether the new regulation would effectively expedite proceedings.

Furthermore, the introduction of such a legal instrument may result in numerous legal disputes and objections to delays, as it is not always clear whether a delay constitutes a legal deadline violation by the court. This is partly because the starting date for procedural deadlines often depends on one party's action, and is not strictly defined.

According to the draft, pecuniary compensation would automatically be due to all parties in the event of any missed deadline, even if the delay had no impact on the duration of the procedure and caused no actual harm—or if harm occurred, it was not to the parties.

In the absence of any actual infringement, imposing a pecuniary obligation for every missed deadline is unjustified, especially if the delay has no effect on the proceedings.

As the draft does not introduce a similar legal instrument in other state procedures, criminal procedures, or non-contentious notarial proceedings, the regulation is discriminatory.

The proposed regulation also fails to consider that missed deadlines may result from objective reasons (e.g., the judge's vacation or illness), or even from the behavior of the parties. Courts cannot request deadline extensions or submit justification requests—options available to the parties.

Regarding procedural details, the proposed regulation is underdeveloped, lacks procedural safeguards, and nearly completely lacks guarantee norms. The court is not even required to issue a decision regarding pecuniary compensation—only a notice to the financial office containing certain information. Thus, the party cannot decide whether to claim the compensation, nor can they appeal the notice, even if they dispute, for example, the number of delayed days or the amount. In contrast, if the court fails to act on compensation due to a missed deadline, the party may file an objection with the court handling the case, which may not always be an effective legal remedy.

Beyond all this, the proposed institution also has the potential to violate judicial independence, for the following reasons.

A fundamental principle and key component of judicial independence is the right to a legally assigned judge, which ensures that a case is assigned based on predetermined rules, thereby safeguarding impartial adjudication and the appearance of it.

However, if court responsibility is objective and there is no possibility of exemption, courts will be forced to structure the case allocation system so that any judge at the court may handle any case to avoid sanctions. This undermines the right to a legally assigned judge.

Considering all of the above, introducing pecuniary compensation in the form proposed is unjustified, infringes on judicial independence, diverts resources from the judiciary, and aims to discipline the courts.

In light of the above, I respectfully ask that, if you agree with my conclusions, you communicate these concerns to the relevant decision-makers whenever the opportunity arises.

Budapest, May 23, 2025

Dr. Csaba Pecsenye
President of the National Judicial Council