



## The premature termination of the President of the Hungarian Supreme Court's mandate on account of his criticisms of legislative reforms was contrary to the Convention

In today's **Grand Chamber** judgment<sup>1</sup> in the case of [Baka v. Hungary](#) (application no. 20261/12) the European Court of Human Rights held that there had been:

**by 15 votes to two, a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights, and**

**by 15 votes to two, a violation of Article 10 (freedom of expression).**

The case concerned the premature termination of the mandate of Mr Baka, President of the Hungarian Supreme Court, following his criticism of legislative reforms and the fact that he was unable to challenge that decision before a court. His six-year term of office was brought to an end, three and a half years before its normal date of expiry, through the entry into force of the Fundamental Law (the new Constitution), which provided for the creation of the Kúria, the highest court in Hungary, to succeed and replace the Supreme Court.

The Court found, in particular, that Mr Baka had not enjoyed the right of access to a court, since the termination of his term of office resulted from the transitional measures of the new Fundamental Law, constitutional legislation that was not subject to any form of judicial review. In the Court's opinion, this lack of judicial review had resulted from legislation whose compatibility with the requirements of the rule of law was doubtful. The Court also emphasised the importance of intervention by an authority which was independent of the executive and legislative powers in respect of every decision affecting the termination of a judge's office.

The Court also held that the premature termination of Mr Baka's mandate had amounted to an interference with his right to freedom of expression, given that it resulted from the opinions and criticisms that he had expressed publicly, in his professional capacity, on matters of general interest; it defeated the purpose of maintaining the independence of the judiciary; it had undoubtedly had a chilling effect not only on Mr Baka but also on other judges and court presidents, dissuading them from participating in future in public debate on legislative reforms affecting the courts and matters concerning the independence of the judiciary; and, from a procedural perspective, the restrictions on the right to freedom of expression had not been accompanied by effective and adequate safeguards against abuse.

### Principal facts

The applicant, András Baka, is a Hungarian national who was born in 1952 and lives in Budapest (Hungary).

Mr Baka, a former judge at the European Court of Human Rights (1991-2008), was elected on 22 June 2009 by the Parliament of Hungary as President of the Supreme Court of Hungary ("the Supreme Court"). He was due to serve a six-year term, due to expire on 22 June 2015. In that capacity, he was also the Head of the National Council of Justice and was under a legal duty to

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

express his opinion on parliamentary bills affecting the judiciary. Between February and November 2011 Mr Baka criticised various legislative reforms concerning the courts, including a proposal to reduce the mandatory retirement age for judges from 70 to 62. He expressed his opinions through his spokesman, in public letters or communiqués, and in speeches to Parliament.

From April 2010 a programme of constitutional reform was undertaken in Hungary. It was in this context that, in December 2011, the Transitional Provisions of the new Hungarian Constitution (Fundamental Law of Hungary of 2011) were adopted, providing that the Kúria (the historical name for the highest court in Hungary) would be the legal successor to the Supreme Court and that the mandate of the President of the Supreme Court would terminate upon the entry into force of the Fundamental Law. As a consequence, Mr Baka's mandate terminated on 1 January 2012 – i.e. three and a half years before its normal date of expiry. As a result, Mr Baka lost the remuneration to which a President of the Supreme Court was entitled throughout his mandate as well as some post-function benefits.

Under the criteria for the election of the President of the new Kúria, candidates were required to have at least five years' experience as a judge in Hungary. Time served as a judge in an international court was not counted, and this led to Mr Baka being ineligible to apply for the post of President of the new Kúria.

In December 2011 Parliament elected two candidates, namely Péter Darák and Tünde Handó, as President of the new Kúria and President of the National Judicial Office respectively. Mr Baka remained in office as president of a civil-law bench of the Kúria.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court) of the Convention, Mr Baka complained that he had been denied access to a court to defend his rights in relation to the premature termination of his mandate as President of the Supreme Court, since the measure resulted from legislation at constitutional level, and was therefore not subject to any form of judicial review, including by the Constitutional Court.

Relying on Article 10 (freedom of expression) of the Convention, Mr Baka alleged that his dismissal had resulted from the criticism publicly expressed by him, in his capacity as President of the Supreme Court and Head of the National Council of Justice, with regard to the legislative reform of the justice system.

Under Article 13 (right to an effective remedy), Mr Baka also considered that he had been deprived of an effective domestic remedy in relation to the premature termination of his mandate. Under Article 14 (prohibition of discrimination), taken together with Article 6 § 1 and Article 10, Mr Baka also submitted that he had been treated differently from his colleagues in a similar situation because he had expressed politically controversial opinions.

The application was lodged with the European Court of Human Rights on 14 March 2012. On 27 May 2014 a Chamber of the Second Section delivered a judgment. It held, unanimously, that there had been violations of Article 6 § 1 and Article 10 of the Convention. On 27 August 2014 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 15 December 2014 the panel of the Grand Chamber accepted that request. A hearing was held on 17 June 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luis López Guerra (Spain), *President*,  
Mirjana Lazarova Trajkovska ("the Former Yugoslav Republic of Macedonia"),  
Ledi Bianku (Albania),  
Ganna Yudkivska (Ukraine),

Vincent A. De Gaetano (Malta),  
Angelika Nußberger (Germany),  
Julia Laffranque (Estonia),  
Paulo Pinto de Albuquerque (Portugal),  
Linos-Alexandre Sicilianos (Greece),  
Erik Møse (Norway),  
Helen Keller (Switzerland),  
Paul Lemmens (Belgium),  
Helena Jäderblom (Sweden),  
Aleš Pejchal (the Czech Republic),  
Krzysztof Wojtyczek (Poland),  
Faris Vehabović (Bosnia and Herzegovina),  
Dmitry Dedov (Russia),

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

## Decision of the Court

### [Article 6 § 1 \(right of access to a court\)](#)

With regard to the applicability of Article 6 § 1 of the Convention, the Court noted that Mr Baka had been elected on the basis of a law<sup>2</sup> fixing the mandate of court executives at six years and containing an exhaustive list of reasons<sup>3</sup> for terminating such mandates. Of these reasons, dismissal, which was only possible in the event of demonstrated incompetence in performing managerial tasks, made it possible to terminate the mandate in advance, against that person's will; in that event, the incumbent was entitled to seek judicial review. The Court thus considered that there existed a right for the incumbent to serve his or her full term in office. It noted that the constitutional principles regarding the independence of the judiciary and the irremovability of judges confirmed that Mr Baka's entitlement to serve his full term had been protected. Lastly, it considered that the fact that the mandate was terminated by operation of new legislation<sup>4</sup>, which entered into force on 1 January 2012 under the new Fundamental Law, could not remove, retrospectively, the arguability of Mr Baka's entitlement under the applicable rules in force at the time of his election.

The Court reiterated that, under its case-law<sup>5</sup>, civil servants could be excluded from the scope of Article 6 § 1 of the Convention if two conditions were met: firstly, the national law must have expressly excluded access to a court for the post or category of staff in question, and, secondly, this exclusion had to be justified on objective grounds in the State's interest. With regard to the first condition, the Court noted that, prior to the dispute, Mr Baka had not been expressly excluded from the right of access to a court; on the contrary, domestic law expressly provided for the right to challenge a decision dismissing a court executive before the Service Tribunal. Nonetheless, Mr Baka's access to a court had been impeded by the fact that the premature termination of his mandate had been included in the transitional provisions of the Organisation and Administration of the Courts Act and that the termination of his mandate took effect through the Transitional Provisions of the Fundamental Law, which entered into force on 1 January 2012. He had thus been precluded from contesting that measure before the Service Tribunal, although he would have been able to do had he been dismissed under the legal framework existing when he was elected. The Court therefore considered that it had to determine whether access to a court had been excluded

<sup>2</sup> Act LXVI of 1997 on the Organisation and Administration of the Courts.

<sup>3</sup> Mutual agreement, resignation or dismissal, expiry of the period of the term of office and termination of the person's judicial office.

<sup>4</sup> Section 185 of Act CLXI of 2011 on the Organisation and Administration of the Courts and section 11 of the Transitional Provisions of the Fundamental Law.

<sup>5</sup> *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007-II.

under domestic law before the impugned measure concerning Mr Baka had been adopted, rather than at the point of its adoption. In consequence, the Court concluded that national law had not expressly excluded access to a court for Mr Baka in order to challenge the lawfulness of the termination of his mandate. As the first condition of its case-law had not been met, the Court did not examine the second, and held that Article 6 § 1 of the Convention was applicable.

With regard to compliance with the requirements of Article 6 § 1 of the Convention, the Court noted that the premature termination of Mr Baka's term of office had not been reviewed by an ordinary tribunal or by another body exercising judicial powers, nor was it open to review. The Court considered that this lack of judicial review had resulted from legislation whose compatibility with the requirements of the rule of law was doubtful. The Court could not fail to note the growing importance which international and Council of Europe instruments, as well as the case-law of international courts and the practice of other international bodies, were attaching to procedural fairness in cases involving the removal or dismissal of judges, including intervention by an authority which was independent of the executive and legislative powers in respect of every decision affecting the termination of a judge's office. In those circumstances, the Court considered that the respondent State had impaired the very essence of Mr Baka's right of access to a court, and held that there had been a violation of Mr Baka's right of access to a court, guaranteed by Article 6 § 1 of the Convention.

#### Article 10

The Court noted that Mr Baka, in his professional capacity, had publicly expressed his views on various legislative reforms affecting the judiciary, especially during his speech to Parliament on 3 November 2011. Shortly after that speech, the proposals to terminate Mr Baka's mandate as President of the Supreme Court were made public and submitted to Parliament, and were adopted within a strikingly short period. On 9 November 2011 the Organisation and Administration of the Courts Bill was amended and a new criterion was introduced as regards eligibility for the post of President of the Kúria, with the result that Mr Baka became ineligible. Having regard to the sequence of events in their entirety, the Court considered that there was prima facie evidence of a causal link between Mr Baka's exercise of his freedom of expression and the termination of his mandate; especially since the domestic authorities had not called into question either Mr Baka's ability to exercise his functions or his professional conduct. In consequence, the Court considered that the premature termination of Mr Baka's mandate had been prompted by the views and criticisms that he had publicly expressed in his professional capacity, and concluded that the premature termination of Mr Baka's mandate had constituted an interference with the exercise of his right to freedom of expression.

With regard to the justification for the interference, the Government argued as a legitimate aim the fact that the termination of Mr Baka's mandate had been intended to guarantee the authority and impartiality of the judiciary. The Court considered that a State Party could not legitimately invoke the independence of the judiciary in order to justify a measure such as the premature termination of the mandate of a court president for reasons that had not been established by law and which were unrelated to any grounds of professional incompetence or misconduct. In the Court's view, this measure could not serve the aim of increasing the independence of the judiciary, since it was, at the same time, a consequence of the previous exercise by Mr Baka, the highest office-holder in the judiciary, of his right to freedom of expression. In those circumstances, the Court found that the premature termination of Mr Baka's mandate, rather than serving the aim of maintaining the independence of the judiciary, appeared on the contrary to be incompatible with that purpose, and concluded that the interference had not pursued a legitimate aim.

Moreover, the Court noted that Mr Baka had expressed his views and criticisms on constitutional and legislative reforms affecting the justice system, on the functioning and reform of the judicial system, the independence and irremovability of judges and the lowering of the retirement age for

judges. The Court noted that Mr Baka's statements did not go beyond mere criticism from a strictly professional perspective and clearly concerned a debate on matters of public interest. Mr Baka's freedom of expression ought therefore to have been granted a high degree of protection and benefited from strict scrutiny of any interference. In addition, although Mr Baka remained in office as judge and president of a civil division of the new Kúria, he had been removed from the office of President of the Supreme Court three and a half years before the end of his term. In the Court's opinion, this situation could hardly be reconciled with the particular consideration to be given to the nature of the judicial function as an independent branch of State power, and to the principle of the irremovability of judges, which was a key element for the maintenance of judicial independence. Against this background, the Court found that the premature removal of Mr Baka from his position as President of the Supreme Court had defeated the purpose of maintaining the independence of the judiciary. Lastly, the premature termination of Mr Baka's mandate had undoubtedly had a chilling effect and must have discouraged not only Mr Baka himself but also other judges and court presidents from participating in future in public debate on legislative reforms affecting the justice system and on issues concerning the independence of the judiciary.

With regard to the procedural aspect, the Court considered that the restrictions imposed on Mr Baka's right to freedom of expression had not been accompanied by effective and adequate safeguards against abuse.

Accordingly, the Court considered that the reasons relied on by the respondent State could not be regarded as sufficient to show that the interference with Mr Baka's freedom of expression had been necessary in a democratic society. Accordingly, it concluded that there had been a violation of Article 10 of the Convention.

#### Other articles

Having regard to its conclusions under Article 6 § 1 and Article 10, the Court did not consider it necessary to examine separately Mr Baka's other complaints.

#### Article 41 (just satisfaction)

The Court held that Hungary was to pay Mr Baka 70,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 30,000 in respect of costs and expenses.

#### Separate opinions

Judges Pinto de Albuquerque and Dedov expressed a joint concurring opinion. Judge Sicilianos expressed a concurring opinion. Judges Pejchal and Wojtyczek each expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.