



Termination of President of Hungarian Supreme Court's mandate for criticising legislative reforms breached the Convention

In today's Chamber judgment in the case of [Baka v. Hungary](#) (application no. 20261/12), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

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

a violation of Article 10 (freedom of expression).

The case concerned the premature termination of Mr Baka's mandate as President of the Supreme Court of Justice of Hungary (the Supreme Court) and his lack of access to court to challenge the termination.

The Court held that Mr Baka's access to court had been impeded, not by express legislative exclusion, but rather by the fact that the premature termination of his mandate had been written into the new Hungarian Constitution itself and was therefore not subject to any form of judicial review.

It also found that Mr Baka's dismissal had been due to the criticism he had publicly expressed of government policy on judicial reform when he was President of the Supreme Court, underlining that the fear of sanction, such as losing judicial office, could have a "chilling effect" on the exercise of freedom of expression and risked discouraging judges from making critical remarks about public institutions or policies.

Principal facts

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

Mr Baka was a former judge at the European Court of Human Rights (1991-2008). In 2009, he was elected by the Parliament of Hungary as President of the Supreme Court for a six-year term, until June 2015. In that capacity, he was also the Head of the National Council of Justice and was under a legal duty to express his opinion on parliamentary bills affecting the judiciary. Between February and November 2011, Mr Baka criticised some legislative reforms – 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, including to other members of the judiciary, as well as in a speech to Parliament.

From April 2010 a programme of constitutional reform was undertaken in Hungary. Thus, on December 2011, the Transitional Provisions of the new Hungarian Constitution (Fundamental Law of Hungary of 2011) were adopted, providing that the legal successor to the Supreme Court would be the *Kúria* (the historical Hungarian name for the Supreme Court) and that the mandate of the

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

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. Therefore, 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 (including severance allowance and pension supplement for life).

According to 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. The time served as a judge in an international court was not counted and this led to Mr Baka's ineligibility for the post of President of the new *Kúria*.

In December 2011, the Parliament elected two candidates, Péter Darák as President of the new *Kúria* and Tünde Handó as President of the National Judicial Office. Mr Baka stayed in office as an ordinary judge of the *Kúria*.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to court), Mr Baka complained that he had been denied access to a tribunal to contest his dismissal as the premature termination of his presidential mandate had been written into the Fundamental Law itself and was therefore not subject to any form of judicial review, even by the Constitutional Court. Under Article 10 (freedom of expression), he also alleged that his dismissal was the result of the criticism he had publicly expressed of government policy on judicial reform when he was President of the Supreme Court. He also alleged that his premature dismissal breached Article 1 of Protocol No. 1 (protection of property), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 14 March 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
İşıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helena **Jäderblom** (Sweden),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

and also Abel **Campos**, *Deputy Section Registrar*.

Decision of the Court

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

The Court reiterated that civil servants could only be excluded from the protection of Article 6 subject to two conditions, and that it was for the contracting States to prove that these conditions had been met². Firstly, national law must have “expressly” excluded access to a court for the post or category of staff concerned. Secondly, the exclusion must have been objectively justified on public interest grounds – in this regard, States had to establish that the subject matter of the dispute was linked to the exercise of public power by the civil servant concerned.

The Court considered that the authorities had failed to demonstrate that the Hungarian law had expressly excluded the judges of the Supreme Court from the right of access to a court. In fact,

² *Vilho Eskelinen and Others v. Finland*, 19 April 2007, application no. 63235/00.

Mr Baka's access to a court had been impossible in practice because the termination of his mandate had been provided for by the Fundamental Law and, as such, could not have been challenged before the Constitutional Court.

Moreover, even assuming that the national legislative framework had specifically denied Mr Baka the right of access to a court, the Court considered that Mr Baka's exclusion from the right of access to a court was not justified. Indeed, the authorities had failed to prove that the early termination of Mr Baka's mandate had been linked to the exercise of State power in such a way that the exclusion of the guarantees of a fair trial had been objectively justified on public interest grounds.

The Court therefore concluded that there had been a violation of Article 6 § 1.

Article 10 (freedom of expression)

The Court noted that the proposals to terminate Mr Baka's mandate as well as the new eligibility criterion for the post of President of the *Kúria* had all been submitted to Parliament after Mr Baka had publicly expressed his views on several legislative reforms affecting the judiciary, and had been adopted within an extremely short time. Moreover, the fact that the functions of the President of the National Council of Justice had been separated from those of the President of the new *Kúria* were not sufficient in itself to conclude that the functions for which Mr Baka had been elected ceased to exist on the entry into force of the Fundamental Law. Lastly, neither his ability to exercise his functions nor his professional behaviour had been called into question before the Hungarian authorities.

Therefore, the Court found that the facts and the sequence of events seen as a whole corroborated Mr Baka's contention that the early termination of his mandate had not been the result of a restructuring of the supreme judicial authority but had been related to the criticisms he had publicly expressed when he was President of the Supreme Court, which constituted an interference with the exercise of his right to freedom of expression.

The Court then went on to examine whether this interference had been justified. Firstly, it found it particularly important that the reforms (the functioning of the judicial system, the independence and irremovability of judges and the retirement age of judges) on which Mr Baka had expressed his opinion were matters of public interest. Secondly, it had not only been Mr Baka's right but also his duty as President of the National Council of Justice to express his views on legislative reforms affecting the judiciary. Thirdly, the Court observed that the mandate had been terminated three and a half years before the end of the fixed term applicable under the legislation in force at the time of his election, which had led to serious pecuniary consequences for Mr Baka. The fear of such a sanction could have a "chilling effect" on the exercise of freedom of expression and in particular risked discouraging judges from making critical remarks about public institutions or policies. Lastly, the premature termination of Mr Baka's mandate had not been subject to effective judicial review by the Hungarian courts.

The Court therefore concluded that the interference with Mr Baka's exercise of his right to freedom of expression had not been "necessary in a democratic society" and had amounted to a violation of Article 10.

Article 1 of Protocol No. 1 (protection of property)

The Court reiterated that future income could not be considered as "possessions" unless it had already been earned or was definitely payable, and that there was no right under the Convention to continue to be paid a salary of a particular amount. Mr Baka's dismissal had precluded him from receiving a further salary. Furthermore, the new legislation passed in 2011 had prevented him from enjoying some special post-retirement benefits. However, that income had not been actually earned. Nor could it be argued that it was definitely payable. This part of the complaint was therefore rejected by the Court as inadmissible (Article 35 § 4).

[Article 13 \(right to an effective remedy\) in conjunction with Article 10](#)
[Article 14 \(prohibition of discrimination\) read in conjunction with Articles 6 and 10](#)

The Court held that it was not necessary to examine these complaints separately.

[Article 41 \(just satisfaction\)](#)

In the circumstances of the case, the Court considered that the question of the application of Article 41 was not ready for decision. Accordingly, that question had to be reserved and the subsequent procedure fixed, having regard to a possible agreement between the Government and Mr Baka (Rule 75 §§ 1 and 4 of the Rules of Court).

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpres@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.