



Grand Chamber Panel's decisions

At its last meeting (Monday 15 December 2014), the Grand Chamber panel of five judges decided to refer one case and to reject 13 other referral requests¹.

The following case has been referred to the Grand Chamber of the European Court of Human Rights.

Baka v. Hungary (application no. 20261/12): which concerns the premature termination of the applicant's mandate as President of the Supreme Court of Justice of Hungary and his lack of access to court to challenge the termination.

Referral accepted

[Baka v. Hungary \(application no. 20261/12\)](#)

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 of Justice of Hungary ("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 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*.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, Mr Baka complains that he was 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) of the Convention, he further alleges 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 alleges 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).

In its Chamber [judgment](#) of 27 May 2014, the European Court of Human Rights, held, unanimously, that there had been a violation of Article 6 § 1 of the Convention. The Court found 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. The Court also concluded, unanimously, that there had been a violation of Article 10 of the Convention. In this respect, it 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. Lastly, the Court declared inadmissible Mr Baka's complaint under Article 1 of Protocol No. 1 and held that it was not necessary to examine separately his complaints under Article 13 and Article 14.

On 15 December 2014 the case was referred to the Grand Chamber at the request of the Hungarian Government.

Requests for referral rejected

Judgments in the following 13 cases are now final².

Requests for referral submitted by the applicants

Tershiyev v. Azerbaijan (application no. 10226/13), [judgment](#) of 31 July 2014

Čalovskis v. Latvia (no. 22205/13), [judgment](#) of 24 July 2014

Čačko v. Slovakia (no. 49905/08), [judgment](#) of 22 July 2014

Buglov v. Ukraine (no. 28825/02), [judgment](#) of 10 July 2014

Firth and Others v. the United Kingdom (no. 47784/09 and nine others applications), [judgment](#) of 12 August 2014

Requests for referral submitted by the Government

Zornić v. Bosnia and Herzegovina (no. 3681/06), [judgment](#) of 15 July 2014

Amadayev v. Russia (no. 18114/06), [judgment](#) of 3 July 2014

Antayev and Others v. Russia (no. 37966/07), [judgment](#) of 3 July 2014

Kadirzhanov and Mamashev v. Russia (nos. 42351/13 and 47823/13), [judgment](#) of 17 July 2014

Mamadaliyev v. Russia (no. 5614/13), [judgment](#) of 24 July 2014

² Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

Nemtsov v. Russia (no. 1774/11), [judgment](#) of 31 July 2014

Oao Neftyanaya Kompaniya Yukos v. Russia (no. 14902/04), [judgment](#) (just satisfaction) of 31 July 2014

Rakhimov v. Russia (no. 50552/13), [judgment](#) of 10 July 2014

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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.