

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

Date: 29/01/2025

DH-DD(2025)111

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1521st meeting (March 2025) (DH)

Communication from an NGO (Amnesty International Hungary) (20/01/2025) in the case of BAKA v. Hungary (Application No. 20261/12).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1521^e réunion (mars 2025) (DH)

Communication d'une ONG (Amnesty International Hungary) (20/01/2025) dans l'affaire BAKA c. Hongrie (requête n° 20261/12) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Budapest, 20 January 2025

Council of Europe

DGI – Directorate General of Human Rights and Rule of Law

Department for the Execution of Judgments of the European Court of Human Rights

F-67075 Strasbourg Cedex

France

dgi-execution@coe.int

Subject: NGO communication under Rule 9(2) of the Rules of the Committee of Ministers concerning the execution of the judgment of the European Court of Human Rights in the case of *Baka v. Hungary* (Application no. 20261/12)

Dear Madams and Sirs,

Amnesty International Hungary hereby respectfully submits its observations and recommendations under Rule 9(2) of the *“Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements”* regarding the execution of the judgment of the European Court of Human Rights in the **Baka v. Hungary case** (Application no. 20261/12, Judgment of 23 June 2016), in advance of the next meeting (March 2025) (DH) of the Ministers’ Deputies on the execution of judgments.

Amnesty International Hungary (AIHU) is a membership-based, independent Hungarian civil society organization founded in 1990. AIHU is a member of the globe’s largest human rights organization, Amnesty International, which has ten million supporters in more than 70 countries. AIHU carries out research, campaigns, advocacy, and human rights education, and empowers and mobilizes local communities with a special focus on gender equality, rule of law and LGBTI rights to ensure that human rights are enjoyed by everyone in Hungary.

The present communication concerns the execution of the judgment in particular the implementation of the measures prescribed by the decision **CM/Del/Dec(2024)1501/H46-15**.¹

¹ Council of Europe, Ministers’ Deputies, *CM/Del/Dec(2024)1501/H46-15*, 13 June 2024.

I. THE STATE FAILS TO EFFECTIVELY IMPLEMENT ARTICLES 6 AND 10 OF THE CONVENTION

The execution of the *Baka v. Hungary* judgment has been on the agenda of the Committee of Ministers (CM) since 2017. In March 2022, after over five years, the lack of progress in the execution of the required general measures prompted the CM to adopt an interim resolution, which required, amongst others, from the Hungarian authorities to evaluate Hungarian legislation on the status of judges and the administration of courts, and to present the conclusions of their evaluation, including the guarantees and safeguards protecting judges from undue interferences, all in connection with concerns regarding the chilling effect on the right to freedom of expression of judges.²

It is concerning that the Hungarian authorities have not responded to the CM's June 2024 Decision's invitation to submit an updated action plan to implement the judgment by 30 October 2024. They have also not presented an evaluation of domestic legislation regarding guarantees and safeguards protecting judges from undue interference, to dispel concerns about the chilling effect on judges' right to freedom of expression in Hungary, as required by the CM.

On 20 December 2024, the Hungarian government submitted its action report³. However, it did not provide any new developments or improvements that would bring forward the execution of the Baka judgment.

The *Baka v. Hungary* judgment required Hungary to implement some general measures to safeguard the exercise of articles 6 and 10 of the European Convention of Human Rights (Convention), including “*safeguards in connection with ad hominem constitutional level measures terminating a judicial mandate*” and “*safeguards against abuse when it comes to restriction of judge's right to freedom of expression*”. **These have not yet been implemented.**

The present Rule 9(2) communication aims to point out that since the removal of András Baka as President of the Supreme Court in Hungary in 2012, the guarantees against any restrictions, improper influences or interferences in the status and the right to freedom of expression of judges have remained inadequate and do not fully protect the rights guaranteed in the Convention. Furthermore, recent attacks against the independence of the Hungarian judiciary are concerning, both with respect to (i) **inadequate guarantees against the independence and security of tenure of a judge** from office (Section II) and (ii) risks around the “**chilling effect**” and **judges' right to freedom of expression** (Section III). These developments raise further concerns around the protection of articles 6 and 10 of the Convention.

² Council of Europe, Committee of Ministers, *Interim Resolution CM/ResDH(2022)47* (Adopted by the Committee of Ministers on 9 March 2022 at the 1428th meeting of the Ministers' Deputies)

³ Hungarian Government, Communication from Hungary concerning the case of BAKA v. Hungary (Application No. 20261/12), 20 December 2024, <https://rm.coe.int/0900001680b30419>

II. LACK OF ADEQUATE GUARANTEES AGAINST UNDUE INTERFERENCE WITH RESPECT TO THE REMOVAL OF A JUDGE [ARTICLE 6 OF THE ECHR]

The judgment in the Baka case established the unlawful removal of Mr. Baka as president of the Supreme Court. Recent developments at the Kúria (the successor of the Supreme Court) show that security of tenure and protection against arbitrary removal or reprisal against judges and judicial personnel remains a persistent concern at the highest instance court of the country.

II.1. Suspension of a Kúria judge from his position of a leadership role and disciplinary proceeding ongoing

In November 2024, the Kúria President, Varga Zs. András was reported⁴ to have suspended a Kúria judge, András Kovács from his position as head of panel for a duration of two years.⁵

According to the Hungarian Helsinki Committee⁶, Justice Kovács had wanted to publish a paper entitled “*Running out of steam, or an explanation for everything*”, in which he would have reported on the circumstances of a 2023 amendment to the Kúria's case allocation scheme (when Kovács's chamber was disassembled as from 1 January 2024⁷). However, the Kúria President blocked the publication of the paper, and the online publication site refers to this paper as a “*Manuscript, Not public, available for consultation with the author with the permission of the Kúria President*”.⁸ A news outlet unsuccessfully tried to gain access to the paper.⁹

In November 2024, the lawyer representing Justice Kovács shared in an interview with a news outlet¹⁰ that three proceedings were brought against the judge at the Kúria: a disciplinary proceeding, an integrity proceeding, and a proceeding aimed at establishing whether he is fit to the leadership role as head of panel. In the last proceeding, although his unfitness to a leadership role was not established, his leadership role was suspended for two years. According to the judge¹¹, the suspension as head of panel was due to his legal opinions that had contradicted with that of the Kúria President. Kovács claimed that “***such and similar managerial sanctions can irreversibly shake the belief in irremovability in the judiciary***”.

The Kúria President denies that Kovács's suspension as head of panel was due to his legal opinion¹².

⁴ Hungarian Helsinki Committee, “Presidential retaliation against critical opinions at the Kúria”, 20 December 2024, <https://helsinki.hu/en/presidential-retaliation-critical-opinions-kuria-supreme-court-hungary/>

⁵ András Kovács, “Nyilatkozat” [Declaration], [without a date], https://www.mabie.hu/images/LEVELEK%202024/1129_1/Kovacs%20Andras%20velemenye.pdf (in Hungarian).

⁶ Hungarian Helsinki Committee, “Presidential retaliation against critical opinions at the Kúria”, 20 December 2024, <https://helsinki.hu/en/presidential-retaliation-critical-opinions-kuria-supreme-court-hungary/>

⁷ Ágnes Kovács, “Taking Revenge for Dissent”, 13 December 2023, <https://verfassungsblog.de/taking-revenge-for-dissent/>

⁸ <https://m2.mtmt.hu/gui2/?mode=browse¶ms=publication:34904203>

⁹ Viktória Serdült, “Kritikus vélemények: főtanácsadót rúgtak ki, és egy bíró ellen is fellépett a Kúria” [Critical opinions: the Kúria fires a chief advisor and takes action against a judge], 18 December 2024, https://hvg.hu/360/20241218_kritika-velemenynyilvanitas-Kuria-eljaras-Kovacs-Andras-tanacselnok-Varga-Zs-Andras (in Hungarian).

¹⁰ <https://www.youtube.com/live/XLipfNyXoPM?si=F7R-q6hwCWEVVKDm&t=2938&cbid=1>

¹¹ András Kovács, “Nyilatkozat” [Declaration], [without a date], https://www.mabie.hu/images/LEVELEK%202024/1129_1/Kovacs%20Andras%20velemenye.pdf (in Hungarian).

¹² Kúria, Statement of the Kúria, 29 November 2024, <https://kuria-birosag.hu/hu/sajto/kuria-elnokenek-kozlemenye-3> (in Hungarian).

II.2. Dismissing a Kúria chief advisor allegedly due to their professional activities

The Kúria employs ‘chief advisors’ to support the legal work of the judges at the Kúria by for example preparing legal analyses.

According to reports¹³, in October 2024, a Kúria chief advisor was dismissed reportedly for planning to publish a paper in which their co-author would have touched upon the lack of independence and “occupation” of the Kúria. Moreover, without her knowledge, an integrity investigation was also ongoing against her without her knowledge, reportedly because of a question she asked at a conference in April 2024, which might have harmed the integrity of the Kúria.¹⁴

¹³ Hungarian Helsinki Committee, “Presidential retaliation against critical opinions at the Kúria”, 20 December 2024, <https://helsinki.hu/en/presidential-retaliation-critical-opinions-kuria-supreme-court-hungary/>

¹⁴ Viktória Serdült, “Kritikus vélemények: főtanácsadót rúgtak ki, és egy bíró ellen is fellépett a Kúria” [Critical opinions: the Kúria fires a chief advisor and takes action against a judge], 18 December 2024, https://hvg.hu/360/20241218_kritika-velemenynyilvanitas-Kuria-eljaras-Kovacs-Andras-tanacselnok-Varga-Zs-Andras (in Hungarian).

III. CONTINUED CONCERN ABOUT THE CHILLING EFFECT AMONGST JUDGES [ARTICLE 10 OF THE ECHR]

As regards chilling effect of the violations affecting the right to freedom of expression of judges, the Ministers' Deputies regretted *"the lack of information also in this respect, strongly urged the authorities to proceed with the evaluation of the domestic legislation on the status of judges and the administration of courts, including an analysis of the impact of all legislative and other measures adopted and foreseen on judges' right to freedom of expression and urged them to present the conclusions of their evaluation to enable the Committee to make a full assessment as to whether the concerns regarding the 'chilling effect' on the right to freedom of expression of judges caused by the violations in these cases have been dispelled"*.¹⁵

The latest action report by the Hungarian government claims that *"the current Hungarian legal environment and the content of the Code applicable to courts can be assessed as allowing judges a wide margin of freedom of expression"*.

As this Section III will demonstrate, this claim is debatable, as shown by numerous instances where judicial leaders have been placed under significant pressure in different ways by the government to agree to undefined judicial reforms (Section III.1.); judges protesting against such agreement were subject to concerning communications by the Chief Justice (Section III.2.); judges' right to freedom of expression has been curtailed by not involving their representatives (the National Judicial Council) in the lawmaking process affecting the judiciary (Section III.3.); a judge needed to be defended by the NJC from attacks for his filing a complaint to the European Commission (Section III.4.). A survey conducted by MABIE amongst judges provides an insight into the concerns and experiences of members of the judiciary in Hungary (Section III.5.).

The current developments could contribute to the chilling effect amongst Hungarian judges, and therefore undermine their right to freedom of expression. This is particularly concerning in a context where safeguards to protect judges and their right to freedom of expression, as required by the Baka case, have not been adequately or effectively implemented in Hungary.

III.1. Government putting undue pressure on the judiciary to push judges to agreeing to undefined reforms may further strengthen the chilling effect

As a result of an agreement forced by the Hungarian government upon the judiciary leadership in November 2024, the National Judicial Council (NJC) together with the National Office for the Judiciary (NOJ) President and the Kúria President has been consenting to undefined overall reforms that may further undermine the independence of the judiciary, in exchange for the promise of a salary raise for judges and judicial staff. Many in the judiciary claimed that such an agreement was an undue pressure in nature as provision of adequate salary to judges and court staff – that is a precondition for the independence of the judiciary¹⁶ – has been subjected to conditions, which is contrary to international standards on the independence of the judiciary.

¹⁵ Council of Europe, Ministers' Deputies, *Decision CM/Del/Dec(2023)1459/H46-11*, 9 March 2023, para. 5.

¹⁶ United Nations, *Basic Principles on the Independence of the Judiciary*, Article 7, „It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.”

Context:

Since the summer of 2023, the previous and current NJC, together with the NOJ President and the Kúria President, aimed at a significant salary increase for both judges and court staff as salaries have not been increased for several years and reached a level in which it had put the independence at risk. As an example, in June 2024, the NJC proposed¹⁷ to raise the salaries of both judges and court staff significantly and to introduce annual automatic indexation of judges' salary base.

The underlying problem has been that as a result of high inflation rates in Hungary in 2022 and 2023, and a lack of a salary increase, the real value of judges' and court staff's salary decreased significantly – and consequently, many professionals have left the judiciary.¹⁸ According to the NJC's July 2024 public statement, *“the current salaries of judges and judicial staff are not commensurate with the responsibilities of the work they do, and in some cases are not even sufficient to provide a decent living. This situation risks undermining the independence of the judiciary.”*¹⁹

In November 2024, the negotiations on the state budget for 2025 started in Parliament. On 18 November 2024, the Ministry of Justice shared the draft of a so-called “Agreement”²⁰ with the members of the NJC. The draft was proposed to be signed by the Ministry of Justice, the NOJ President, the Kúria President and the NJC. The agreement was not a draft law, but a letter of intent/concept note. It included the following:

- broad concepts of a judicial reform, including amongst others:
 - increase of the judges' age limit from 30 to 35;
 - make it possible for judges to extend their tenure till the age of 70, based on their request;
 - transfer the jurisdiction of registering companies and other legal persons (possibly including political parties or CSOs) from the courts to the public administration;
 - when applying for a judicial position, increase the chances of those having a professional experience outside of the judiciary;
 - make possible to relocate district court judges to any district court within the county they work in;
 - in civil cases, allow for judges to not include a reasoning for their judgments *“if the parties are likely not to exercise their right of appeal”*;
 - reorganization of the court system (without giving further details).
- promise of the implementation of a salary increase for judges and judicial staff in three steps from 1 January 2025 to 1 January 2027 – that was much lower than the NJC had asked for.

¹⁷ National Judicial Council, Decision No. 104/2024. (VI.19.), 19 June 2024, <https://obt-jud.hu/sites/default/files/hatarozatok/2024-07/104-2024-VI-19-OBT-hatarozat.pdf> (in Hungarian).

¹⁸ telex.hu, “Óriási hiány van leírókból a bíróságokon, ez már a napi szintű munkát is ellehetetleníti” [There is a huge shortage of transcribers in the courts, which makes it impossible to work on a day-to-day basis], 5 December 2024, <https://telex.hu/belfold/2024/12/05/elszivarogtak-a-birok-alol-az-adminisztrativ-dolgozok> (in Hungarian). Or, for example, National Judicial Council, Minutes of the 26 February 2024 meeting of the NJC, https://obt-jud.hu/sites/default/files/ulesek/Jegyzokonyv_2024.02.26.pdf pp. 16-34. (in Hungarian).

¹⁹ National Judicial Council, public statement, 16 July 2024, <https://obt-jud.hu/hu/az-orszagos-biroi-tanacs-sajtokozlomenye> (in Hungarian).

²⁰ https://obt-jud.hu/sites/default/files/sajtokozlomenyek-mellekletek/Agreement_Nov-22-2024.pdf

On 20 November, 40 hours after the MoJ sending the draft, the NJC held a meeting and debated about the draft agreement extensively.²¹ Based on the minutes of the meeting:

- NJC members' understanding was that the Government has linked the question of the salary increase with the judicial reform (implying that if they do not vote to sign the agreement, they would risk any salary increase altogether), which alone threatens judicial independence.²²
- The NJC had no influence over the drafting of this agreement and the MoJ sent the draft to the NJC members "as is", on a take-it-or-leave-it basis.²³
- No meaningful consultation had been done with the representatives of the judges beforehand, including the Hungarian Association of Judges (MABIE), and no impact assessment had been made. As NJC members discussed, the draft agreement was only shared with the NJC members and other stakeholders (including the president of MABIE) 40 hours before the NJC meeting.²⁴ It was understood that the reasoning for this rush was that any amendment to the draft law on the 2025 budget was to be made urgently.

Finally, the NJC voted (8 for and 7 against) in favour of approving²⁵ the signing of the agreement, without any amendments.

III.2. Concerning remarks from the Chief Justice against judges and court staff members protesting against the agreement

On the same day of signing the above-mentioned agreement, on 20 November 2024, the largest judges' association, the Hungarian Association of Judges (MABIE) issued a public statement²⁶ protesting against both the method in which the "agreement" was approved and the content thereof. MABIE claimed that *"in the development of the concept of changes that would fundamentally affect the whole organisation, the stakeholders could not participate, [...] so the NJC decided to support the agreement without knowing the position of the representatives of judges and judicial staff"*. MABIE's other concern was that providing reasonable salaries to members of the judiciary may not be subject to any kind of "service" (i.e. accepting the above reform), and was concerned that this could jeopardize judicial independence.

²¹ National Judicial Council, Minutes of the 20 November 2024 meeting of the NJC, https://obt-jud.hu/sites/default/files/u/lesek/Jegyzokonyv_2024.11.20.pdf, pp. 7-64. (in Hungarian).

²² National Judicial Council, Minutes of the 20 November 2024 meeting of the NJC, https://obt-jud.hu/sites/default/files/u/lesek/Jegyzokonyv_2024.11.20.pdf, p. 33. (in Hungarian).

²³ National Judicial Council, Minutes of the 20 November 2024 meeting of the NJC, https://obt-jud.hu/sites/default/files/u/lesek/Jegyzokonyv_2024.11.20.pdf, p. 28. (in Hungarian).

²⁴ National Judicial Council, Minutes of the 20 November 2024 meeting of the NJC, https://obt-jud.hu/sites/default/files/u/lesek/Jegyzokonyv_2024.11.20.pdf, p. 34. (in Hungarian).

²⁵ National Judicial Council, Decision No. 200/2024 (XI.20.), 20 November 2024, <https://obt-jud.hu/sites/default/files/hatarozatok/2024-12/200-2024-XI-20-OBT-hatarozat.pdf> (in Hungarian).

²⁶ Hungarian Association of Judges, "A MABIE közleménye az OBT-OBH-Kúria-Igazságügyi Minisztérium közötti megállapodás megkötéséről" [Statement of MABIE on the conclusion of the agreement between the NJC, the NOJ, the Kúria and the Ministry of Justice], 20 November 2024, <https://www.mabie.hu/berjavaslat/a-mabie-koezlemenye-az-obt-obh-kuria-igazsaguegyi-miniszterium-koezoetti-megallapodas-megkoetesrol> (in Hungarian).

By mid-December, altogether around 2000 judges and court staff members joined the MABIE's protest²⁷ and a similar protest by the Res Iudicata judges' association²⁸ by signing protesting declarations.

On 11 December 2024, over one hundred judges, court clerks and their supporters protested²⁹ in front of the NJC for the right to freedom of expression of judges, for the protection of the independence of courts and against the "agreement".

Partly as a result of the backlash against the agreement, the president of the NJC, Péter Szabó resigned as president on 3 December and a new president³⁰, Csaba Pecsénye was elected on 11 December³¹.

The Kúria President harshly criticized those protesting and his remarks both at the NJC's meeting and in his letters to judges might have caused a chilling effect amongst judges:

- On the 11 December 2024 NJC meeting, the Kúria President had the opinion³² that the agreement serves the interests of the judiciary, and those, who *"claim otherwise and mobilize, recklessly and arbitrarily mislead their fellow judges. Certainly there are those who have misunderstood what has happened, but there are also those who knowingly fabricate falsehoods."* **This statement may discourage judges and court staff members from expressing their views in the future.**
- At the same time, the Kúria President also criticised the presidents of the service courts (courts that adjudicate in disciplinary cases against judges, amongst others) who also signed a letter of protest against the agreement³³: *"[but there are also those who knowingly fabricate falsehoods.] In the latter category are the presidents of the service courts, who, by stepping out of their judicial role, violating the requirement of impartiality and giving prior exemption from the legal consequences of any unconstitutional or illegal conduct, are at the forefront of the deception of judges."* **By talking about legal consequences, he implied that there can be reprisals against judges for expressing their views.**

²⁷ Hungarian Association of Judges, "Felhívás véleménynyilvánításra, csatlakozó nyilatkozatok megküldésére"[Call for expressing opinions and for sending supporting declarations], 21 November 2024, <https://www.mabie.hu/berjavaslat/felhivas-velemenynyilvanitasra-csatlakozo-nyilatkozatok-megkueldesere> (in Hungarian).

²⁸ Res Iudicata Association, "Közlemény a bíróságokat érintő megállapodásról" [Statement on the agreement affecting the judiciary], 21 November 2024, <https://resiudicata.hu/kozlemeny-a-birosagokat-erinto-megallapodasrol/> (in Hungarian).

²⁹ Magistrats Européens pour la Démocratie et les Libertés, "Solidarity with Hungarian Judges", 10 December 2024, <https://medelnet.eu/solidarity-with-hungarian-judges/>

³⁰ National Judicial Council, Minutes of the 3 December 2024 meeting of the NJC, https://obt-jud.hu/sites/default/files/u156/Jegyzokonyv_2024.12.03.pdf, p. 13. (in Hungarian).

³¹ National Judicial Council, Decision No. 214/2024. (XII.11.), 11 December 2024, <https://obt-jud.hu/sites/default/files/hatarozatok/2024-12/214-2024-XII-11-OBT-hatarozat.pdf> (in Hungarian).

³² National Judicial Council, Minutes of the 11 December 2024 meeting of the NJC, https://obt-jud.hu/sites/default/files/u156/Jegyzokonyv_2024.12.11.pdf, p. 58. (in Hungarian).

³³ Open letter of Dr. Katalin Éva Farkas, president of the service court of second instance and Dr. Dávid Éliás, president of the service court of first instance, 9 December 2024, <https://www.mabie.hu/images/LEVELEK%202024/1209/Szolgalmati%20Birosag%20levele.pdf> (in Hungarian).

- According to news reports,³⁴ the Kúria President sent a letter with New Years' wishes both to all judges and to his colleagues at the Kúria in January 2025. In the latter he claimed – when addressing those protesting against the agreement – that “[...] – *fortunately few in number – who we know **did not act out of misunderstanding or momentary impulse, but deliberately, knowingly and willingly.** Having fed the public with falsehoods, they have even been **willing to ridicule the judiciary in the real street** or they participated in stepping out of the judicial role as an institution, as leaders of a formation that considers itself a court*”. (The Kúria President may have referred to the presidents of the service courts who had protested against the agreement.) “*They have tried to harm the Kúria – although there was no real danger of this – and they have tried to harm our courts in Hungary even more – and there was a real danger of this. We endeavour to put this right*” – he continued. **This latest remark may also be interpreted as a threat against judges simply for expressing their opinion on the agreement.**

In response to the Kúria President's above letter, the NJC issued a statement³⁵ that “*firmly rejected the position expressed in the letter of the Kúria President, which condemns judges who use the legal means of expressing opinions*”. The NJC also considered it “*unacceptable that the letter from the Kúria President implies sanctions on those who take a different view from his own*”.

III.3. Judges' rights to freedom of expression and association curtailed by officials bypassing judges' professional bodies in the lawmaking process affecting the judiciary

According to the law³⁶, the NJC must be consulted in relation to any draft laws that affect the judiciary.

However, on 12 December 2024, governing party politicians submitted draft laws³⁷ to the Parliament that aimed to implement some parts of the above-mentioned agreement. The draft laws contained detailed rules on the salary increase, on the increasing of the judges' age limit from 30 to 35; and also on requiring a 2-year legal practice as a precondition of judicial applications (in case of future applications). **The laws were passed but the NJC was not consulted.** Consequently, the NJC also issued a public statement³⁸ on the exclusion of the right

³⁴ Bálint Bódog, “Varga Zs. András reméli, hogy tudják a Kúria bírái, mit kockáztattak, mikor a kormánnyal közös megállapodást kritizáltak” [András Varga Zs. Hopes Kúria Judges Know what They Risked when Criticizing the Agreement with the Government], 4 January 2025, <https://444.hu/2025/01/04/varga-zs-andras-remeli-hogy-tudjak-a-kuria-birai-mit-kockaztattak-mikor-a-kormannyal-kozos-megallapodast-kritizaltak> (in Hungarian).

³⁵ National Judicial Council, public statement, 6 January 2025, <https://obt-jud.hu/hu/kozlemeny-kuria-elnokenek-ujevi-kozszontojevel-kapcsolatban> (in Hungarian).

³⁶ Hungary, 2011. évi CLXI. törvény a bíróságok szervezetéről és igazgatásáról [Act CLXI of 2011 on the Organisation and Administration of Courts], 2011, <https://net.jogtar.hu/jogszabaly?docid=a1100161.tv> (in Hungarian), Article 103 (1) b)

³⁷ T/9997 “Magyarország Alaptörvényének tizennegyedik módosítása” [On the Fourteenth Amendment of the Fundamental Law], https://www.parlament.hu/web/guest/iromanyok-lekerdezes?p_p.id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p.lifecycle=1&p_p.state=normal&p_p.mode=view&p_auth=V5uxm7KT&hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcpql%2Fogy_irom.irom_madat%3Fp_ckl%3D42%26p_izon%3D9997%26p_alsz%3D7 (in Hungarian) and T/10012 “Magyarország 2025. évi központi költségvetésének megalapozásáról” [On the Foundation of the State Budget of 2025] <https://www.parlament.hu/irom42/10012/10012-0017.pdf> (in Hungarian).

³⁸ National Judicial Council, public statement, 19 December 2024, <https://obt-jud.hu/hu/birosagi-szervezetrendszer-reformjaval-kapcsolatos-jogalkotasi-folyamatrol> (in Hungarian).

to be consulted and condemned the curtailment of its powers: *“the legislative process is considered to be a complete and deliberate abrogation of the NJC's power to give opinions on legislation, as laid down in the cardinal law, which, apart from being manifestly contrary to the State's obligations to make the legislative process qualitative, predictable and transparent, seriously violates the principles of the rule of law and the fundamental rules of the democratic legislative process.”*

III.4. The NJC had to defend a judge from attacks for his filing a complaint to the European Commission

In July 2024, a Hungarian judge, Gaszton Oláh, filed a complaint³⁹ with the European Commission claiming that *“the salaries of judges and court staff have lost at least 40% in real terms in recent years”*, and expressed the concern that this situation could jeopardise the independence of all his Hungarian colleagues. He also urged his fellow judges to join him and make use of this instrument in as many cases as possible.

A public statement by the NJC⁴⁰ in July 2024 revealed that **there had been suggestions that Justice Oláh should not have submitted his application**. In the statement, the NJC *“rejected any suggestion that individual initiatives launched by upholding the law could be restricted”*⁴¹ and said it will defend the judge and those judges who join him (Amnesty International do not know what suggestions the NJC referred to). The NJC held that *“all judges, court employees and court organisations have the right to use the legal means available to them under the law to obtain an adequate salary”*.

III.5. Results of a questionnaire conducted amongst judges show reduced level of independence

The Hungarian Association of Judges (MABIE) is an NGO representing the interests of judges, which in November and December 2023 conducted an online survey⁴² among judges on whether they think they can express their opinions, and what the possibilities and limitations are. The results of the survey were published in June 2024. 285 judges (amounting to around 11% of all Hungarian judges) completed the survey questionnaire and, although under-represented among judges in Budapest and new judges, it provides some insights into the perspective of some judges as to the current context and scope for them to express their opinions.

The results of the MABIE survey underline Amnesty International's research⁴³ that show that there is a substantial chilling effect amongst judges that curtail judges' right to freedom of expression.

³⁹ Gaszton Oláh, “PANASZ a magyar igazságszolgáltatás intézményi függetlenségének haladéktalan helyreállítása érdekében” [COMPLAINT for the immediate restoration of the institutional independence of the Hungarian judiciary], [without a date] <https://24.hu/app/uploads/2024/07/hatteranyag-1.pdf> (in Hungarian).

⁴⁰ National Judicial Council, public statement, 16 July 2024, <https://obt-jud.hu/az-orszagos-biroi-tanacs-sajtokozlomenye> (in Hungarian).

⁴¹ National Judicial Council, public statement, 16 July 2024, <https://obt-jud.hu/az-orszagos-biroi-tanacs-sajtokozlomenye> (in Hungarian).

⁴² Hungarian Association of Judges, “KUTATÁSI JELENTÉS A magyar bírák véleménynyilvánítási szabadságával kapcsolatos egyes kérdésekről” [RESEARCH REPORT On certain issues related to the freedom of expression of Hungarian judges] [without a date], https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf (in Hungarian).

⁴³ Amongst others, Amnesty International, *Fearing the Unknown – How rising control is undermining judicial independence in Hungary*, 2020, https://www.amnesty.hu/data/file/4871-final_fearing-the-unknown_report_amnesty-hungary_e1.pdf?version=1415642342

For example, according to the MABIE survey, Hungarian judges mostly agreed with the statements that

- they are entitled to participate in public events organised within the framework of the law,
- they have a duty to speak out in defence of the rule of law and judicial independence when these are under threat, and
- to express their views freely on the law, the legal system and the administration of justice.⁴⁴

However, fewer judges consider that judges can participate in public debates on legislative reforms affecting the application of the law and the judiciary, and on issues relating to judicial independence in general, even if such debates have political implications.⁴⁵ This is important because, in today's Hungarian context, a professional debate on legislation affecting the judiciary can very easily be labelled a political debate by government representatives.

Amongst other issues, the judges were also asked on what issues they could speak freely. According to the survey more than a third of the judges – amongst those 89 judges who expressed their opinion – report having been disadvantaged because of their opinion.⁴⁶

Those who said they had experienced such a disadvantage for expressing their opinion included: a negative consequence for their career (41%), their workload (33%), their working conditions (33%), and their judicial career (30%).⁴⁷

The results of the questionnaire show that two thirds of the judges did not express their opinion on the judicial profession (specifically on issues concerning the organisation of the judiciary, judicial independence, law, legal system and the application of the law).⁴⁸

⁴⁴ Hungarian Association of Judges, “KUTATÁSI JELENTÉS A magyar bírák véleménynyilvánítási szabadságával kapcsolatos egyes kérdésekről” [RESEARCH REPORT On certain issues related to the freedom of expression of Hungarian judges] [without a date], https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf (in Hungarian), section 3.2.

⁴⁵ Hungarian Association of Judges, “KUTATÁSI JELENTÉS A magyar bírák véleménynyilvánítási szabadságával kapcsolatos egyes kérdésekről” [RESEARCH REPORT On certain issues related to the freedom of expression of Hungarian judges] [without a date], https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf (in Hungarian), section 3.2.

⁴⁶ Hungarian Association of Judges, “KUTATÁSI JELENTÉS A magyar bírák véleménynyilvánítási szabadságával kapcsolatos egyes kérdésekről” [RESEARCH REPORT On certain issues related to the freedom of expression of Hungarian judges] [without a date], https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf (in Hungarian), p. 17.

⁴⁷ Hungarian Association of Judges, “KUTATÁSI JELENTÉS A magyar bírák véleménynyilvánítási szabadságával kapcsolatos egyes kérdésekről” [RESEARCH REPORT On certain issues related to the freedom of expression of Hungarian judges] [without a date], https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf (in Hungarian), p. 17.

⁴⁸ Hungarian Association of Judges, “KUTATÁSI JELENTÉS A magyar bírák véleménynyilvánítási szabadságával kapcsolatos egyes kérdésekről” [RESEARCH REPORT On certain issues related to the freedom of expression of Hungarian judges] [without a date], https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf (in Hungarian), p. 16.

According to the MABIE survey these circumstances have contributed to a chilling effect, manifesting according to XXX as self-censorship, for many: 50% of judges surveyed by MABIE say that this is strongly the case, and 36% say that it is the case to some extent.⁴⁹

IV. RECOMMENDATIONS

Amnesty International Hungary respectfully recommends the Committee of Ministers to **continue examining under enhanced procedure the execution and effective implementation of the judgment** in the *Baka v. Hungary* case and condemn the lack of progress by the Hungarian authorities in implementing this judgement. Due to the non-implementation by the Hungarian authorities, including the provisions of the Judiciary Reform Act, Amnesty International Hungary reiterates all its former recommendations⁵⁰ and calls on the Hungarian authorities to:

- **Promptly address the issue of judicial independence in line with the state's international legal obligations under treaties to which it is state party.**⁵¹ In order to address the long-standing structural problems and to ensure the independence of the judiciary, **the laws on the judiciary should be amended to ensure compliance with international standards⁵² and specific recommendations on the situation of the Hungarian judiciary by international bodies.**
- In order to be capable to execute the above task, the government shall provide a thorough *de iure* analysis of the Hungarian legislation **identifying provisions that may compromise judicial independence and judges' right to freedom of expression**, taking into account the concerns raised by international and regional monitoring bodies (most notably, the UN Human Rights Committee,⁵³ the Commissioner for Human Rights of the Council of Europe⁵⁴, the Venice Commission).⁵⁵ Similarly, **effective protection of judges including the NJC's judge members shall be ensured against intimidation**, attacks on their reputation as well as retaliatory administrative and other measures.

⁴⁹ Hungarian Association of Judges, "KUTATÁSI JELENTÉS A magyar bírák véleménynyilvánítási szabadságával kapcsolatos egyes kérdésekről" [RESEARCH REPORT On certain issues related to the freedom of expression of Hungarian judges] [without a date], https://mabie.hu/attachments/article/1801/Kutatasi_jelentes_B.pdf (in Hungarian), p. 22.

⁵⁰ Amnesty International – Hungarian Helsinki Committee, *Communication from NGOs (Hungarian Helsinki Committee, Amnesty International) (28/01/2022) in the case of BAKA v. Hungary*, 8 February 2023, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)158E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)158E)

⁵¹ For a comprehensive list of recommendations in this regard, Amnesty International – Hungarian Helsinki Committee, *Recommendations aimed at restoring the independence of the judiciary in Hungary*, December 2019, https://www.helsinki.hu/wp-content/uploads/Hungary_rec_judiciary_AI-HHC_01122019.pdf <https://www.amnesty.hu/hu/news/2656/recommendations-aimed-at-restoring-the-independence-of-the-judiciary-in-hungary>

Amnesty International, *Fearing the Unknown – How rising control is undermining judicial independence in Hungary*, 2020, https://www.amnesty.hu/data/file/4871-final_fearing-the-unknown_report_amnesty-hungary_e1.pdf?version=1415642342, pp. 10-12.

⁵² See, for example, United Nations, *Basic Principles on the Independence of the Judiciary*, Venice Commission, *Report on the Independence of the Judicial System Part I: The Independence of Judges*, CDL-AD(2010)004, 6 March 2010

⁵³ UN Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Hungary* (CCPR/C/HUN/CO/6), 9 May 2018, para. 11.

⁵⁴ Commissioner for Human Rights of the Council of Europe, *DUNJA MIJATOVIĆ, Report Following Her Visit to Hungary from 4 to 8 February 2019*, 21 May 2019, <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>, para. 5.

⁵⁵ Venice Commission, *Opinion on the Cardinal Acts on the Judiciary that Were Amended Following the Adoption of Opinion CDL-AD(2012)001 on Hungary*, CDL-AD(2012)020, para. 88.

- **In order to prevent undue interference and retaliatory measures against judges voicing criticism in relation to the independence of the judiciary, the legislation⁵⁶ shall be amended to**
- **oblige the NOJ President to justify in detail all their decisions;**
 - ensure that the **remuneration of judges is based on a general standard and rely on objective and transparent criteria** and phase out bonuses which include an element of discretion;
 - ensure that **if a judicial leader challenges their dismissal** by launching a lawsuit, and if the judge concerned is reinstated, legal guarantees ensure that the **judge may be reinstated to their former leadership position**, for example, by making sure that the position could only be filled temporarily;⁵⁷
 - **protect the integrity of the NJC's judge members** by taking effective measures to guarantee that they can exercise their statutory rights and obligations of safeguarding judicial independence through, among others, formulating and disseminating critical opinions on the administration and independence of the judiciary **without any undue interference.**
- **Hungarian authorities shall**
- **refrain from and condemn any harassment, intimidation or retaliation against judges**, and communicate clearly that while criticism of jurisprudence as a part of a public debate is necessary in a pluralistic society, personal attacks against judges are unacceptable.
 - **abstain from** any public critique, recommendation, suggestion or solicitation regarding court decisions that may constitute **direct or indirect influence** on pending court proceedings or otherwise undermine the independence of individual judges in their decision-making.

Sincerely yours,



Dr. Dávid Vig
director
Amnesty International Hungary

⁵⁶ Hungary, 2011. évi CLXII. törvény a bírák jogállásáról és javadalmazásáról [Act CLXII of 2011 on the Legal Status and Remuneration of Judges], 2011, <https://net.jogtar.hu/jogszabaly?docid=a1100162.tv> (in Hungarian) and Hungary, 2011. évi CLXI. törvény a bíróságok szervezetéről és igazgatásáról [Act CLXI of 2011 on the Organisation and Administration of Courts] 2011, <https://net.jogtar.hu/jogszabaly?docid=a1100161.tv> (in Hungarian)

⁵⁷ Hungary, 2011. évi CLXII. törvény a bírák jogállásáról és javadalmazásáról [Act CLXII of 2011 on the Legal Status and Remuneration of Judges], 2011, <https://net.jogtar.hu/jogszabaly?docid=a1100162.tv> (in Hungarian), Article 145