



HUNGARIAN
HELSINKI
COMMITTEE

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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

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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 and the **Hungarian Helsinki Committee** hereby respectfully submit their joint 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 2023) (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 seven 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 right to privacy to ensure that human rights are enjoyed by everyone in Hungary.

The **Hungarian Helsinki Committee (HHC)** is an independent human rights watchdog organisation, working towards defending the rule of law in Hungary. The HHC submitted (together with other Hungarian NGOs) a third-party intervention in the *Baka v. Hungary case*, and submitted several communications to the Committee of Ministers in relation to the non-execution of the judgment in the *Baka v. Hungary case*, since 2019, jointly with AIHU.

The present communication concerns the execution of the judgment in particular the implementation of the general measures prescribed by the **Interim Resolution CM/ResDH(2022)47** of the Committee of Ministers (CM) adopted in March 2022 (hereafter: **2022 CM Resolution**).¹

¹ See: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a597f9

PRELIMINARY NOTES AND RECOMMENDATIONS

On **18 January 2023**, the Hungarian government published a draft law² (**Draft Law**) on the judiciary for public consultation on its official website. The Draft Law was drawn up by the Ministry of Justice as part of the execution of the milestones prescribed by the European Council in the framework of the approval of Hungary's recovery and resilience plan.³ The Draft Law contains a reform of the Hungarian judicial administration that aims to amend substantially, amongst others, the long-standing power imbalance between the National Judicial Council (NJC) as the judicial self-governing body supervising the administration of courts and the President of the National Office for the Judiciary (NOJ). The Draft Law is open for public consultation until 3 February 2023. It is intended to be adopted by the Parliament within the first quarter of 2023 and should become effective by 31 March 2023.

The present communication does not cover the amendments proposed by the Draft Law: on the one hand, due to the short period lapsed since its publication, and on the other hand, because the final wording of the law will be adopted by the Parliament during the upcoming months. According to the first assessment by AIHU and HHC, while the Draft Law remarkably strengthens the powers of the NJC against the NOJ President, it **does not provide effective and adequate safeguards against abuse when it comes to restrictions on judges' freedom of expression**.

Based on the above, as a preliminary recommendation, AIHU and HHC respectfully recommend that the CM continue examining under enhanced procedure the execution and effective implementation of the judgment in the *Baka v. Hungary* case in order to be able to carry out a proper assessment of the upcoming legislative reform from the point of view of the execution of the *Baka* case. Until the adoption of the prospective legislative amendments, AIHU and the HHC uphold all their former recommendations.⁴

I. CONTINUING DISMISSIVE APPROACH BY HUNGARIAN AUTHORITIES

The execution of the *Baka v. Hungary* judgment has been on the agenda of the Committee of Ministers 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, but to no avail. The dismissive approach taken by the Hungarian authorities in the proceeding pending before the CM persisted, and the Hungarian authorities did neither respond to the CM's invitation to submit an updated action plan by 30 September 2022 nor presented an evaluation of the domestic legislation regarding guarantees and safeguards protecting judges from undue interferences, to dispel concerns as to the chilling effect on the freedom of expression of judges in Hungary. Non-implemented general measures cover both the **violation of Article 6** of the European Convention of Human Rights (Convention) (lack of "*safeguards in connection with ad hominem constitutional level measures terminating a judicial mandate*") and **violation of Article 10** (lack of "*safeguards against abuse when it comes to restriction of judge's freedom of expression*") established in the *Baka v. Hungary* case.

The dismissive approach of Hungarian authorities is not only manifested by the consistent omissions in the proceeding pending before the CM. The present Rule 9 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 undue intervention in the status and the freedom of expression of judges have remained problematic on the merits. The most recent attacks against the independence of the Hungarian judiciary show a common pattern with the *Baka* case, involving not only the passivity on behalf of the Hungarian authorities but also their active participation in the breach of the independence of the judiciary, both with respect to (i) **the lack of guarantees against undue intervention regarding the removal of a judge** from office (see below under Section II the so-

² The draft law is available here: <https://kormany.hu/dokumentumtar/egyes-igazsagugyi-targyu-torvenyek-modositasarol-szolo-torvenyjavaslat>.

³ The milestones regarding judicial independence were adopted by the Council based on the proposal of the European Commission. See: https://commission.europa.eu/system/files/2022-12/COM_2022_686_1_annexe_EN.pdf The proper implementation of the milestones is a precondition to any payment request under the recovery and resilience plan of the European Union.

⁴ See the latest Rule 9 submission by the two organisations here: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)158E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)158E)

called Schadl-Völner case) and (ii) the **amplification of the “chilling effect” on the freedom of expression of judges** (see below under [Section III](#) the smear campaigns carried out to undermine the reputation of individual judges who voice criticism concerning the state of the independence of the judiciary in Hungary).

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

II.1. Involvement of administrative leaders in an attempt to remove a judge from office remains unclarified

In 2021, the prosecution brought charges against György Schadl, President of the Hungarian Chamber of Bailiffs, according to which Schadl regularly used to give cash as an undue advantage to the then State Secretary of the Ministry of Justice, who, in turn, made use of his competence deriving from his position as deputy minister according to the interests of the person offering the bribe to him. As indicated in the investigation documents leaked in **January 2022**, **Schadl contacted the NOJ President in June 2021 with the aim of attaining the removal of a judge from her position**. According to the documents of the National Protective Service (the body investigating the corruption case), the NOJ President arranged a meeting for Schadl with Péter Tatár-Kis, the President of the Metropolitan Regional Court (MRC). At the meeting, Schadl asked Tatár-Kis to fire the judge. Schadl said in a wiretapped phone call that as a response to his request, Tatár-Kis had informed him that *“he was unable to fire the judge, but he could revoke her appointment as a group leader and could achieve that she feels unease at her workplace”*. Irrespective of the fact that the judge concerned was not removed from office, the mere fact that the NOJ President and the president of the biggest regional court in Hungary discussed the removal of a judge with an external actor severely and gravely undermines the perception of judicial independence in Hungary and confirms the concerns regarding the *de iure* possibilities of administrative leaders – and through them, even external actors – to exert undue pressure on judges.

At its meeting held on 2 February 2022, the NJC urged the NOJ President to initiate a disciplinary procedure against Tatár-Kis. In a public statement issued with respect to the meeting, the NJC pointed out that *“the lack of response to arbitrary managerial conduct could have an unfavorable, chilling effect on the members of the Hungarian judiciary, it may pose a threat of rendering their situation impossible in terms of professional work and livelihood. That amounts to a direct and genuine threat to independent judicial activity free from external interference.”*⁵ Instead of initiating a disciplinary procedure to allay concerns, the NOJ President initiated a comprehensive targeted administrative investigation related to complaints’ handling with respect to the MRC and all the district courts operating within its jurisdiction regarding the full calendar year of 2021.⁶

At the meeting held on 13 June 2022, the NOJ President confronted the members of the NJC with the fact that he had classified the full documentation of the internal investigation as *“intended for limited distribution”*, which, under the law, means that access may be granted to the outcomes of the internal investigation in 2037 at the latest. The Hungarian Association of Judges (MABIE) immediately voiced its deep concerns over the decision.⁷

Facing the classification, the NJC called upon the NOJ President on 6 July 2022 to send the NJC the decision by means of which the outcomes of the targeted internal investigation were classified as *“intended for limited distribution”* and the underlying proposal for classification and to grant access to documents to NJC members who request so. Although the law explicitly allows NJC members to consult classified documents, the NOJ President refused to grant the possibility for NJC members to consult the documents of the case. The NOJ President did not grant the request and failed to provide detailed legal reasoning for his decision (although he promised to do so). Members of the NJC waited until October 2022 for the NOJ President to meet their request to be granted access to the documents of the case and the decision on the classification, without any result.

⁵ See: <https://orszagosbiroitanacs.hu/hatekony-azonnali-es-torvenyen-szabalyozott-fellepes-szukseges-a-fuggetlen-igazsagszolgalatatast-veszelyeztetendo-minden-jelenseg-ellen/>

⁶ See: <https://birosag.hu/obh/hatarozat/6sz2022-i-28-obhe-hatarozat-fovarosi-torvenyszeken-lefolytatando-celvizsgalatrol>

⁷ See: <https://www.mabie.hu/index.php/1654-sosem-tudjuk-meg>

Finally, on 5 October 2022, the NJC issued an official warning against the NOJ President, calling attention to the unlawful conduct of the NOJ President.⁸

At the end of October 2022, a few weeks after the official warning was issued by the NJC, a smear campaign of formerly unseen intensity was launched against two members of the NJC who act as representatives of the NJC before the public. In his public statement issued on 4 November 2022, the NOJ President practically joined the smear campaign in discrediting the members of the NJC and raising doubts with respect to the legitimacy and lawfulness of their actions.⁹ [see below under Section III.1.]

II.2. Uncontrolled power to declare an application procedure unsuccessful

The possibility to declare the application procedure unsuccessful without a legal remedy¹⁰ still allows the NOJ President¹¹ (and the Kúria President, both of them elected by the parliamentary majority) to block any judicial appointment, creating the effect of a "glass ceiling" in judicial careers and exerting a palpable chilling effect amongst potential candidates. While the prospective modifications (required to be adopted by 31 March 2023)¹² are expected to put an end to the uncontrolled powers of the NOJ President, in 2022, the NOJ President still applied this power¹³ and declared two application procedures for court president positions unsuccessful. In one particular case,¹⁴ the NOJ President **rejected the appointment of a candidate as regional court president who was supported by the majority of the judges' plenary meeting**. The NOJ President did so partly in response to **harsh criticism expressed by the candidate with respect to the NOJ's court administration measures in front of judicial peers**.¹⁵

II.3. Survey among Hungarian judges indicates undue interference in judicial mandates

The European Network of Councils for the Judiciary (ENCJ) prepares a survey among the judges of Europe about their independence on a periodical basis. The most recent ENCJ Survey on the Independence of Judges¹⁶ took place in the first quarter of 2022 (ENCJ Survey 2022). 29% of Hungarian judges¹⁷ participated in the survey. The data of the survey show that **over a longer timespan¹⁸ the independence of the judiciary has deteriorated in Hungary**.¹⁹

⁸ See a thorough description of the Schadl case in English here: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HHC_Schadl-Volner-case_18112022.pdf

⁹ See the public statement of the NOJ President issued on 4 November 2022 <https://birosag.hu/hirek/kategoria/birosagokrol/az-orszagos-birosagi-hivatal-elnokenek-kozlemenye>

¹⁰ The precedential decision of the Kúria excludes judicial remedy against such decisions [see judgment Mfv.10.049/2021/16. of the Kúria, sections (58)-(93)].

¹¹ Article 18 (4) of Act CLXII of 2011 on the Legal Status and Remuneration of Judges. In case of judicial applications at the Kúria, the Kúria President holds the same power under Article 19 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges.

¹² In the framework of the above-referenced milestones regarding judicial independence that were adopted by the Council of the European Union based on the proposal of the European Commission. See: https://commission.europa.eu/system/files/2022-12/COM_2022_686_1_annexe_EN.pdf

¹³ The NOJ President declared five judicial application procedures unsuccessful [see: 113.E/2022. (IV. 7.) OBHE decision (declared unsuccessful for procedural irregularities); 122.E/2022. (IV. 21.) OBHE decision (declared unsuccessful for problems "related to work organisation" but in reality, for the full rejection of the candidate by the local judicial council), 193.E/2022. (V. 24.) OBHE decision (declared unsuccessful for procedural irregularities); 277.E/2022. (VII. 4.) OBHE decision (declared unsuccessful for procedural irregularities) and 429.E/2022. (XI. 21.) OBHE decision (declared unsuccessful for problems related to work organisation)].

¹⁴ 286.E/2022. (VII. 14.) OBHE decision; see the minutes of the hearing at https://birosag.hu/sites/default/files/2022-08/meghallgatasi_jegyzokonyv.pdf. After declaring the appointment unsuccessful, the NOJ President mandated a hand-picked judicial leader to temporarily fill the position of court president at the Győr Regional Court by decision no. 287.E/2022. (VII. 14.) OBHE. Later, in December 2022, the temporarily assigned court president got appointed as sole candidate of an application procedure by 484.E/2022. (XII. 15.) OBHE resolution, also supported by the judges' plenary meeting.

¹⁵ According to the reasoning, the NOJ President as "the decision-maker is not bound by the opinion of the judicial bodies" and that "a contrary interpretation would in practice mean that any person applying for a leadership position on his or her own would, merely by fulfilling the narrow statutory conditions for appointment and with the support of the judicial body, acquire a substantive right to appointment, which would render the procedure of the assessor [the NOJ President] completely empty and formalistic."

¹⁶ The ENCJ Survey for the Independence of Judges 2022 (ENCJ Survey 2022) was published on 3 June 2022 available at . <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf>

¹⁷ According to the data supplied by the NJC on the basis of the number of judges by the end of 2021. See the Hungarian summary of the ENCJ Survey 2022 <https://orszagosbiroitanacs.hu/2022-06-13/> p. 2.

¹⁸ Based on the experience of judges that have been working for many years.

¹⁹ The ENCJ Survey 2022, main findings, point 3., p. 3.

The most relevant data indicating system-level problems are the following:

(i) **39% of judges do not believe that the National Judicial Council (NJC) has the appropriate mechanisms and procedures to defend judicial independence effectively**, further 27% are not sure and only 35% agree.²⁰ This is the second worst rate in whole Europe²¹ and is 16 percentage points higher than the European average.

(ii) The answers given to questions related to the appointment and promotion of judges in Hungary show an even worse picture:

- **42% of judges agree that judges in Hungary have entered the judiciary on their first appointment other than solely on the basis of ability and experience during the last three years**, a further 18% are not sure and only 40% disagree; this is the worst data in whole Europe and 26 percentage points higher than the European average;²²
- **52% of judges agree that judges in Hungary have been appointed to the Supreme Court (Kúria) other than solely on the basis of ability and experience during the last three years**, a further 17% are not sure and only 31% disagree; this is the second worst data in whole Europe and 32 percentage points higher than the European average;²³
- **44% of judges agree that judges in first instance and appeal courts in Hungary have been appointed to other positions other than on the basis of ability and experience during the last three years**, 17% are not sure and 38% disagree; this is the worst data in whole Europe and 23 percentage points higher than the average.²⁴

(iii) Every fifth judge - 19% of judges - believes that during the last three years, cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case; 16% was not sure and 65% disagreed; this is the third worst data in whole Europe and 12 percentage points higher than the European average.²⁵

(iv) 15% of judges believe that corruption is an issue and individual judges have accepted bribes or have engaged in other forms of corruption as an inducement to decide cases in a specific way. Only 61% disagree while 24% are not sure. According to the ENCJ, *"the fact that judges are uncertain about the occurrence of corruption is a bad sign in itself."*²⁶ Based on the outcome of the survey, the ENCJ distinguished three categories where Hungary falls in the group of European countries in which a higher percentage of judges believe that corruption occurs.²⁷

III. AMPLIFICATION OF THE CHILLING EFFECT AMONGST JUDGES [ARTICLE 10 OF THE ECHR]

III.1. Smear campaign against judges as members of the NJC

A) The context of the 2022 smear campaign against judges

In order to understand **the context of the smear campaigns targeted against individual judges as members of the NJC in 2022**, it is important to bear in mind that the NJC is the constitutional body mandated by the Fundamental Law *"to supervise the administration of courts."* The NJC is composed of 15 judge members out of which 14 judges are elected by their peers and there is only one *ex-officio* member: the Kúria President. Despite the fact that the Hungarian legislation has serious deficiencies that prevent the NJC from fulfilling its constitutional role, in its current composition, **the NJC is strongly committed to fulfilling its mandate of having meaningful oversight over the administration of courts and raising awareness of the steps**

²⁰ The ENCJ Survey 2022, p. 66.

²¹ By whole Europe we mean the 27 countries participating in the ENCJ Survey 2022.

²² The ENCJ Survey 2022, question 19., p. 74.

²³ The ENCJ Survey 2022, question 20., p. 74.

²⁴ The ENCJ Survey 2022, question 21., p. 75.

²⁵ The ENCJ Survey 2022, question 10., p. 69.

²⁶ The ENCJ Survey 2022, p. 26.

²⁷ In this category 6% - 36% and more than 15% (up to 51%) are uncertain. See the ENCJ Survey 2022, p. 26.

undermining judicial independence. The fact that the NJC voiced criticism on several occasions against measures undermining the independence of judges and the rule of law in Hungary has led to conflicts between the NJC and the two powerful administrative leaders of the Hungarian judiciary: the NOJ President and - most lately - the Kúria President (both of them political appointees elected by the Parliamentary majority). **The conflicts heightened by the second half of 2022, after the ongoing rule of law conditionality proceeding initiated by the European Commission and debates over the approval of the recovery and resilience plan for Hungary were extended to matters related to the independence of the Hungarian judiciary.**

B) Escalation of conflicts between the NJC and the current NOJ President

Until 2019, conflicts between the NOJ President and the NJC escalated around the widespread practice of the NOJ President in misusing powers with respect to judicial appointments and promotions. The conflict turned into a constitutional crisis²⁸ entailing the transfer of Tünde Handó, former NOJ President, to the Constitutional Court, and the election of György Senyei as the new NOJ President from 1 January 2020. Nevertheless, as a consequence of the lack of any legislative steps taken to address structural issues, **the relationship between the NOJ President and the NJC has remained problematic.**²⁹ Since the mandate of the new NOJ President started, the NJC has had to issue **three official warnings to the NOJ President calling attention to the breach of law by the NOJ President** and call attention to several other undue interferences in judicial careers.

- (i) The **first official warning** was issued in June 2021,³⁰ because the NOJ President denied access to the documents clarifying the legal basis and the amount of bonuses and other forms of **payments effected based on full discretion by the NOJ President** in addition to the remuneration defined by the law.
- (ii) The **second official warning** was issued in June 2022,³¹ after the NOJ President denied access to documents and information requested by the *ad hoc* committee established by the NJC to **examine the secondment practice of the NOJ President.** As declared by the NJC, the practice of secondment became so extensive that it infringes the principles of appointment based on merits and it creates, *contra legem*, a disguised “probationary” judicial status.³²
- (iii) The **third official warning** was issued by the NJC in October 2022,³³ after the NOJ President classified the report on the comprehensive investigation initiated to clarify the role of the President of the Metropolitan Regional Court in the **Schadl-case**³⁴ without any reasonable explanation and refused to inform the members of the NJC about the investigation’s outcome even in an in-camera session [see more in detail above under Section II.1.].
- (iv) In addition to the above, in October 2022 the NJC also discovered that **the NOJ President had presented false information to the NJC regarding his appointment practice.**³⁵ As members of the NJC revealed, in 2021, the NOJ President appointed several judges to the bench in ways circumventing the right to consent by the NJC and distorting the merit-based judicial career system.³⁶

²⁸ See: European Association of Judges, Report on the fact-finding mission of the EAJ to Hungary, May 2019, <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 5.

²⁹ See a summary of main conflicts between the NOJ President and the NJC at <https://helsinkifigyelo.444.hu/2022/11/24/sulyos-valsagtunetek-a-birosagok-igazgatasaban>

³⁰ See the minutes of the meeting of the NJC <https://orszagosbiroitanacs.hu/2021-06-02/>

³¹ See more on the ad hoc committee established by the NJC <https://helsinki.hu/wp-content/uploads/2022/09/Background-Paper-on-the-Secondment-of-Judges-in-Hungary-updated-06092022.pdf> p. 13.

³² NJC Resolution 43/2022. (VI. 13.). See: <https://orszagosbiroitanacs.hu/download/az-obt-2022-junius-13-i-ulesenek-osszefoglalaja/?wpdmml=2181&refresh=63d1fa7aa2foa1674705530>

³³ NJC Resolution 72/2022 (X.5.) See the minutes of the NJC’s meeting held on 5 October 2022, p. 38. Available at: <https://orszagosbiroitanacs.hu/2022-10-05/>

³⁴ See the summary of the whole case under: <https://helsinki.hu/en/the-schadl-volner-case-and-the-battered-independence-of-hungarian-courts/>

³⁵ In October 2022, the members of the NJC discovered that the information provided by the NOJ President on his appointment practices in 2021 was not based on real data. While the NOJ President informed the members of the NJC that in 30 out of 32 applications evaluated, he had proposed appointments or transfers in accordance with the ranking of the local judicial council and had requested the NJC’s consent in cases of deviation from the ranking, it became clear to the NJC members, after a file review, that in four other cases, the second-ranked judge had actually been appointed without the NJC’s consent. Because of the false information, the members of the NJC could only conclude that their powers had been circumvented after due enquiry.

³⁶ See the minutes of the meeting of the NJC held on 5 October 2022 <https://orszagosbiroitanacs.hu/download/az-obt-2022-oktober-5-i-ulesenek-jegyzoikonnyvel/?wpdmml=2339&refresh=63c44722d1bad1673807650> p. 21.

(v) Conflicts around the supervisory competences became general between the NOJ President and the NJC. In September 2022, the NJC requested information from the NOJ President on the practice of regional court and court of appeal presidents regarding their appointment practice of lower judicial leadership positions (e.g. heads of panels or college presidents).³⁷ The NJC requested the data after it became public that the wife of the Kúria President had gained a judicial leadership position disregarding the votes of judge peers.³⁸ The NOJ President declined³⁹ the NJC's request, claiming that the NJC does not have the competence to oversee local court administration.

C) Intensified conflicts between the NJC and the Kúria President

In addition to the ongoing conflicts between the NOJ President and the NJC, **a new front of conflict opened up between the Kúria President and the NJC after the governing majority elected András Zs. Varga as the new Kúria President in 2020**,⁴⁰ who also became an *ex officio* member of the NJC by law from 1 January 2021. The relationship between the Kúria President and the NJC has been strained from the first moment since the NJC overwhelmingly rejected his appointment as chief justice,⁴¹ stressing the legitimacy deficit of his election as Kúria President. The strained relationship turned into open conflicts with respect to a series of issues discussed at the meetings of the NJC.

- (i) In May 2022, after consciously boycotting the debates of the NJC on the new Code of Ethics of Judges (the "Code"), the **Kúria President challenged the Code adopted by the NJC before the Constitutional Court**⁴² (CC) on the ground that its Preamble fails to make any reference to the Fundamental Law and provides a very broad understanding of judges' freedom of speech. The new Code of Ethics now in force declares that "a judge can freely express her views also on the law, the legal system and on court administration, and in particular, she can publish, give lectures and teach." [see Section III.2. in more detail].
- (ii) In June 2022,⁴³ **the NJC formed a critical opinion on the system and practice of the secondment of judges**, especially with respect to the long-term secondment practice established at the Kúria also raising concerns with respect to the court management decisions of the Kúria President.⁴⁴
- (iii) In July 2022,⁴⁵ **the NJC formed a critical opinion on the appointment practice of the Kúria President** signaling that the Kúria President circumvented the right to consent by the NJC and manipulated the outcome of the application procedure by opening several positions in one package and then considering the applications in an arbitrary order. As a result, while the illusion of a regular application procedure was maintained, judicial appointments were not granted in a transparent, foreseeable, and objective manner. In 2021, the Kúria President granted five appointments to the Kúria⁴⁶ utilizing this artificially created loophole. As revealed by the data published, amongst others, Barnabás Hajas, a former state secretary without any prior judicial experience also became a judge at the Kúria as a consequence of this unlawful practice.⁴⁷

By the fall of 2022, the conflicts between the NJC and the two powerful administrative leaders - both of them political appointees within the judiciary, elected by the parliamentary majority and vested by law

³⁷ See the minutes of the NJC's meeting held on 7 September 2022, pp. 41-42. Available at: <https://orszagosbiroitanacs.hu/2022-09-07/>

³⁸ See the details at: <https://helsinkifigvelo.444.hu/2022/08/19/egy-itelotablai-tanacselnoki-kinevezes-magyarazatanak-margojara-a-tenyek-tukreben>

³⁹ See the minutes of the NJC's meeting held on 7 December 2022, p. 20. Available at: <https://orszagosbiroitanacs.hu/2022-12-07/>

⁴⁰ See: <https://helsinki.hu/en/new-chief-judge-potential-transmission-belt-of-the-executive/>

⁴¹ See: <https://verfassungsblog.de/defective-judicial-appointments-in-hungary/>

⁴² Available in Hungarian:

[http://public.mkab.hu/dev/dontesek_nsf/o/b1e83afc8b10b1d2c125885b005b3b7e/\\$FILE/II_1285_o_2022_ind%C3%ADtv%C3%A1ny.002.pdff/II_1285_o_2022_ind%C3%ADtv%C3%A1ny.pdf](http://public.mkab.hu/dev/dontesek_nsf/o/b1e83afc8b10b1d2c125885b005b3b7e/$FILE/II_1285_o_2022_ind%C3%ADtv%C3%A1ny.002.pdff/II_1285_o_2022_ind%C3%ADtv%C3%A1ny.pdf)

⁴³ See more on the ad hoc committee established by the NJC <https://helsinki.hu/wp-content/uploads/2022/09/Background-Paper-on-the-Secondment-of-Judges-in-Hungary-updated-06092022.pdf> p. 13.

⁴⁴ See more on the systemic deficiencies related to the secondment of judges

<https://helsinki.hu/wp-content/uploads/2022/09/Background-Paper-on-the-Secondment-of-Judges-in-Hungary-updated-06092022.pdf>

⁴⁵ See the minutes of the meeting of the NJC held on 6 July 2022 <https://orszagosbiroitanacs.hu/download/az-obt-2022-julius-6-i-ulesenek-jegyzoikonnye-2/?wpdmdl=2234&refresh=63c4457de40081673807229> p. 25. See the report of the Kúria President

https://helsinki.hu/wp-content/uploads/2022/09/Kuria_elnok_tajekoztato_palyazatok_2021.pdf

⁴⁶ See: <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/09/Tribunal-Established-by-Sleight-of-Hand.pdf>

⁴⁷ See the detailed report of the Kúria President here: https://helsinki.hu/wp-content/uploads/2022/09/Kuria_elnok_tajekoztato_palyazatok_2021.pdf

with practically uncontrolled administrative rights - heightened, and a smear campaign of formerly unseen intensity was started in the government-friendly propaganda media. The Kúria President, the NOJ President, and politicians of the governing majority joined the smear campaign aimed at putting pressure on and discrediting the members of the NJC.

D) The first wave of the smear campaign

The first wave of the smear campaign was initiated in August 2022, just a few months after the 2022 CM Resolution was adopted, urging guarantees against undue interference in the freedom of expression of judges under Article 10 of the ECHR. Preceding the first wave of the smear campaign, (i) in June 2022, the NJC issued an official warning with respect to the secondment practice of the NOJ President, also criticizing secondments effected by the Kúria President to the apex court; (ii) in July 2022, the NJC formed a critical opinion on the appointment practice of the Kúria President establishing the breach of several legal provisions and circumventing the right to veto of the NJC; (iii) on 14 August 2022, an article by the Guardian⁴⁸ reported on the controversial appointment to a judicial leadership position of the wife of the Kúria President, which became public as an outstanding example of the promotion system of judges, were due to lack of guarantees, court presidents may appoint judicial leaders even against manifest opposition by judicial peers.⁴⁹ In the article of the Guardian, judge Csaba Vasvári, the spokesperson of the NJC voiced his concerns over government overreach aimed at swaying courts. He told the Observer, that *"he and his colleagues on the bench 'have been witnessing external and internal influence attempts' for several years. [...] Vasvári said political overreach came from all sides of the political spectrum. [...] One 'clear internal influence attempt' Vasvári cited was a discussion among senior court officials and a prime suspect in a corruption case about firing a judge or making life 'uncomfortable' for them at work, according to redacted secret documents leaked to Hungarian media. [here, judge Vasvári referred to the Schadl-case] [...] Vasvári also lamented the lack of transparency in judicial appointments made by the president of the National Office for the Judiciary. [...] 'We just want a transparent and meritocratic system,' Vasvári said."* The statements of the spokesperson of the NJC triggered severe defamatory attacks against him as judge and as a member of the NJC from the pro-government propaganda media, claiming the spokesperson of the NJC to be a judge of a "terror regime" and to be connected to former governments [see the summary of the articles in Annex I. to the present Rule 9 Submission].

On 16 August 2022, the NJC issued a public statement calling attention to the increasing pressure on Hungarian judges standing up for the independence of the judiciary reminding that *"in a modern European State governed by the Rule of Law it is unacceptable to discredit the person of a judge for propaganda purposes."*⁵⁰

E) The second wave of the smear campaign

The second wave of the smear campaign was initiated in October 2022, nearing an important deadline given to the Hungarian government to enact the remedial measures it committed to in the framework of the rule of law conditionality mechanism. Preceding the first wave of the smear campaign, (i) in September 2022, the NJC requested information from the NOJ President on the controversial appointment practice of court leaders (after it became public that the wife of the Kúria President gained judicial leadership position disregarding the votes of judge peers); (ii) in October 2022, the NJC issued an official warning with respect to the classification of the Schadl-case and (iii) signaled that the NOJ President presented false information to the NJC regarding his appointment practice and that the NOJ President circumvented the right to veto of the NJC when assessing judicial appointments in 2021.

The second wave of the smear campaign was targeted against the spokesperson of the NJC, judge Csaba Vasvári and the member responsible for international relations, judge Tamás Matusik. The judges were attacked and their independence was questioned for accepting an invitation to meet the ambassador of the USA in their

⁴⁸ See: <https://www.theguardian.com/world/2022/aug/14/viktor-orban-grip-on-hungary-courts-threatens-rule-of-law-warns-judge>

⁴⁹ See the details at: <https://helsinkifigyelo.444.hu/2022/08/19/egy-itelotablai-tanacselnoki-kinevezes-magyarazatanak-margojara-atenyek-tukreben>

⁵⁰ <https://orszagosbiroitanacs.hu/az-orszagos-biroi-tanacs-nyilatkozata/>

capacity as representatives of the NJC, to talk about the situation of judges and judicial independence in Hungary.⁵¹ The smear campaign was launched in an anonymous blog post of the right-wing media on 28 October 2022 which was consciously boosted by the government propaganda media. The captured media landscape allowed the pro-government propaganda to boost the smear campaign and keep it as a topic for weeks. As demonstrated by [Annex II.](#) throughout the second wave, **more than 450 publications joined the smear campaign in personally discrediting judge Vasvári and judge Matusik** as judges and members of the NJC. As a compilation of articles contained in [Annex III.](#) demonstrates that the allegations targeted the judges personally, claiming that they delivered judgments favoring the Gyurcsány government (for example, calling judge Vasvári a "blood judge" of the 2006 riots). In this regard, several publications cited Wikipedia as an objective source of information. A great number of articles openly or indirectly argued how the United States intervened in the independence of the Hungarian judicial system and controlled the judges. In fact, the case prompted the authors to formulate strong anti-American, anti-Biden administration comments and in some cases implied homophobia as well. Several articles mimicked constitutional thinking, using principles such as the separation of powers or the independence of the judiciary to condemn the meeting and urged the resignation of the judges. Besides these constitutional principles, it was also suggested that judges might have committed a crime, and the meeting violated the rules of international law too. The aim could have been to discredit the NJC through its representatives in the eyes of the widest possible public and to divert attention from the serious breaches discovered by the NJC.

On [31 October 2022](#), the NJC issued a public statement in defense⁵² of its representatives reminding that the practice of meeting with ambassadors has been usual in the practice of both the NJC and on behalf of the NOJ President. The Hungarian Association of Judges (MABIE),⁵³ the European Association of Judges (EAJ),⁵⁴ and the representatives of the European Network of Councils for the Judiciary⁵⁵ openly expressed their solidarity towards the targeted members.

F) Proactive participation of representatives of Hungarian authorities in the smear campaign

Although the smear campaign was initiated by an anonymous source in the propaganda media, it was built up and kept alive in a very conscious manner with the proactive participation of representatives of the Hungarian authorities. The campaign was at first boosted by pro-government think tanks and propagandists and was further fed for weeks by representatives of Hungarian authorities, including high-ranking officials of the ruling majority, government politicians, and even the representatives of the judiciary: the NOJ President and the Kúria President.

The first one to join the smear campaign was **the Kúria President**, representing the judicial branch on the highest levels. On [31 October 2022](#), András Zs. Varga published his opposing opinion formulated as a member of the NJC but using the official website of the Kúria. In the letter published, which was originally addressed to the President of the NJC⁵⁶ the Kúria President **expressly objected to the publication of the official statement of the NJC issued in defense of the attacked members.** The Kúria President disputed the adequateness of the meeting in practically all possible aspects, also raising doubts as to the right of the spokesperson and the international representative of the NJC to represent the NJC. In the words of the Kúria President: "*I am not aware that the relationship between the National Judicial Council (NJC) and the Ambassador of the United States of America was on the agenda of either of the two NJC meetings in October. Therefore, I am not aware of which party initiated the meeting and why it took place in the embassy's building, nor am I aware of anyone authorizing the members of the NJC to express their critical views to a representative of another country. Moreover, I have no knowledge of the content of the meeting. In any case, the representative of the NJC is the President-in-Office and*

⁵¹ See: [Telex: The US Embassy in Budapest speaks out against state media's attack on visiting judges](#)

⁵² See: <https://orszagosbiroitanacs.hu/az-orszagos-biroi-tanacs-kozlemenye/>

⁵³ See: <http://www.mabie.hu/index.php/1669-a-mabie-elnoksegnek-kozlemenye-a-birokat-ert-sajtotamadasokrol>

⁵⁴ See: <https://www.iaj-uim.org/news/eaj-statement-on-hungary/>

⁵⁵ See: <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/News/ENCJ%20visit%20to%20Budapest%20report%202022.pdf>

⁵⁶ See: <https://kuria-birosag.hu/hu/sajto/kuria-elnokenek-allasponcija-az-obt-kozlemenyevel-kapcsolatban>

she should have requested authorization for the meeting. [...] I consider the attempt by the NJC to cover up the behavior of some of its members, which has given rise to public concern, by issuing an untrue and offensive statement to be unacceptable. I inform you, Madam President, that I will make my own position public if the statement is issued, as I still do not wish to share the responsibility for the discrediting of the judiciary for the sole benefit of group interests.”

On 1 November 2022, **Imre Vejkey, a high-ranking ruling majority MP**, President of the Parliamentary Committee of Justice gave an interview⁵⁷ claiming: *“I am concerned about the case. How is this possible? Our Fundamental Law clearly defines the independence of judges. What happened is quite astonishing, this move can only be interpreted as an interference in the Hungarian judiciary.”* In another interview, Vejkey gave to the government mouthpiece propaganda media, he went further claiming: *„If I would have any type of case which would be dealt by these judges, especially, if it would be connected to a case concerning Christian values, I would certainly declare a bias, because I think that a judge who consulted with the American ambassador - who is an open adherent of the open society and who is known to represent different values - is not likely to be able to give an unbiased judgment on a matter of different values.”*⁵⁸

On 4 November 2022, the **NOJ President** issued a statement⁵⁹ according to which he publicly questioned the legitimacy of the representatives claiming further that: *“It should be noted, however, that members of the NJC acting in such capacity are not entitled to the enhanced protection provided to judges in the exercise of their judicial functions. Such public appearance from a member of the NJC establishes an exceptional public figure status, where the member is obliged to tolerate a higher level of criticism - with the proviso, of course, that this criticism cannot harm human dignity. The justification and lawfulness of the meeting in question are clearly disputable and can therefore be subject of well-founded criticism as defined above, additionally, the content of what was said there is not known in detail.”*

On 9 November 2022, **Gergely Gulyás, the Minister heading the Prime Minister's Office**⁶⁰ claimed on behalf of the government that *“We accept the judicial reform requested by the European Commission, an important part of which is the strengthening of the NJC's powers. [...] Most of the judges are not interested in these disputes. Although it may be of their interest that some members of the NJCunprecedentedly stretched their limits, only out of personal interest. The fact that two members of the NJC visited the residence of the American ambassador clearly shows their attitude toward independence. I consider it more worrying that the statement issued afterward revealed that the relevant leaders of the NJC do not know who the elected leaders and who the appointed leaders are.”*

G) Protection of the attacked judges was expressly denied by the NOJ President and the Kúria President as highest representatives of the judiciary

During the term of the smear campaign, members of the NJC requested in vain on several occasions the NOJ President and the Kúria President as high-level representatives of the judicial branch to defend the attacked judges under their obligation to protect the freedom of expression of judges who raise their voice in the protection of the rule of law and the independence of the judiciary.

At the meeting of the NJC held in November 2022, the Kúria President expressly refused to express solidarity in defense of the members of the NJC claiming that *“I am the President of the Kúria, and if any judge of the Kúria is attacked, I raise my voice without exception. [...] With respect to other courts, I have no responsibility to do so.”*⁶¹

⁵⁷ See: https://mandiner.hu/cikk/20221101_beavatkozas_amerikai_nagykovet_obt_talalkozo_vejkey_imre

⁵⁸ See: <https://www.origo.hu/itthon/20221102-vejkey-imre-interju.html>

⁵⁹ See: <https://birosag.hu/hirek/kategoria/birosagokrol/az-orszagos-birosagi-hivatal-elnokenek-kozlemeny>

⁶⁰ See:

https://mandiner.hu/cikk/20221109_gulyas_gergely_az_obt_ket_tajjanak_latogatasa_az_amerikai_nagykovetnel_jol_mutatja_a_fuggetlenseghez_valo_hozzaallasukat

⁶¹ See: https://orszagosbiroitanacs.hu/download/az-obt-2022-december-7-i-ulesenek-jegyzo_konyve/?wpdmdl=24331&refresh=63c00a30a85a01673529904 p. 39.

At the meeting of the NJC held in December 2022, the members of the NJC highlighted the public statements of the representative of Hungarian authorities in the smear campaign, raising the question "*as to whether such a statement by a politician, who also holds a public power exercising public authority, does or does not erode confidence in the courts.*" and requesting the NOJ President to reconsider his neutral position taken with respect to defending the attacked judges. The NOJ President persisted that the judges who act as members of the NJC become public actors and therefore cannot avail themselves under the protection of judges. In the words of the NOJ President: "*It is the public stage that creates the special status of public actor.*"⁶²

At the meeting of the NJC held in January 2023,⁶³ with the participation of both the Kúria President and the NOJ President, judge Matusik once again spoke up reminding the duty of the judiciary to be resilient and defend its position when the constitutional role of the judicial power is threatened. Judge Matusik expressly referred to **Opinion no. 25. adopted by the Consultative Council of the European Judges (CCJE)**⁶⁴ according to which "*When a judge makes such statements not only in his or her personal capacity but also on behalf of a judicial council, judicial association or other representative body of the judiciary, the protection afforded to that judge will be heightened.*" In his answer, the NOJ President maintained his former position (regarding the needlessness of defending the members of the NJC).

III.2. Hungarian judges' New Code of Ethics challenged by the Kúria President

A) The NJC passing the new Code

According to the law,⁶⁵ the NJC's competences include the "*adoption of the Code of Ethics for judges and its publication on the central website.*"⁶⁶ The Code of Ethics for judges is an internal set of rules that guides judges to be irreproachable not only professionally, but also morally, and thus helps to maintain and strengthen public confidence in courts. The Code may be used by service courts when deciding disciplinary matters against judges.

Since October 2019, the NJC has been holding meetings to discuss the adoption of a new Code, as – amongst others – the previous Code of Ethics had not contained rules preventing abuse of power by court leaders, nor had it clarified the vague notion of "prohibition of political activities".⁶⁷ Neither had the previous Code addressed the chilling effect amongst judges, for which the Hungarian judiciary and its legal background is criticized by many including the CM, in relation to the execution of the present Baka case. At its meeting on 2 March 2022, the NJC adopted the new Code that replaced the old Code with effect from 15 July 2022.⁶⁸

The adopted new Code includes clearer wording for judges' freedom of expression, stating that a judge may participate in "public events organized in accordance with the law", but their participation should not create the perception of political commitment.⁶⁹ An important development is that the Code also states that judges are free to express their opinions on "laws, the legal system and the administration of justice",⁷⁰ which was previously at least doubtful. In addition, it sets out more detailed ethical standards for court leaders (requiring them to respect judicial representative bodies or not to speak on behalf of judges working in their courts).⁷¹

⁶² See: <https://orszagosbiroitanacs.hu/download/az-obt-2022-december-7-i-ulesenek-jegyzokonyve/?wpdmdl=2431&refresh=63d27c79e4ff11674738809> p. 31.

⁶³ See the minutes of the meeting: <https://orszagosbiroitanacs.hu/download/az-obt-2023-januar-11-i-ulesenek-jegyzokonyve/?wpdmdl=2493&refresh=63d25933eace11674729779>

⁶⁴ See: <https://rm.coe.int/opinion-no-25-2022-final/1680a973ef%0A%0A>

⁶⁵ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103 (1) e)

⁶⁶ I.e. on the central website of the judiciary, birosag.hu

⁶⁷ Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 39 (1) provides that "judges may not be members of political parties and may not pursue political activities".

⁶⁸ NJC Resolution No. 16/2022. (III. 2.) on the Judges' Code of Ethics, available at: <https://birosag.hu/birosagi-kozlonyok/2022/2022-evi-3-szam>

⁶⁹ Code, Article 2 (1)

⁷⁰ Code, Article 4 (2)

⁷¹ Code, Article 9

B) Connection between the Code and the execution of the judgment in the Baka v. Hungary case

On 6 October 2021, during the discussion of the draft Code of Ethics,⁷² former NJC member Viktor Vadász especially referred to the non-execution of the Baka v. Hungary judgment. Mr. Vadász articulated that one solution/option for Hungary and for the NJC to address the chilling effect caused by the termination of the mandate of chief justice Baka would be to supplement the new Code of Ethics with a provision that explicitly allows judges to express their opinions on "laws, the legal system and the administration of justice". The Kúria President was present at this NJC meeting, so he challenged the Code later being fully aware that the implementation of the *Baka v. Hungary judgment* is closely connected to drafting the Code provisions allowing less restricted freedom of expression of judges, especially regarding legal changes and the judiciary system. The Code was passed in the context of an Integrity Policy⁷³ issued by the NOJ President which can be used as a tool to silence judges who want to speak up *inter alia* for judicial independence, by claiming that the topic is political and/or an activity that infringes their integrity. The current NOJ President has not amended the Integrity Policy since his election.

C) Code was challenged by the Kúria President at the CC

On 27 May 2022, the Kúria President challenged⁷⁴ the constitutionality of the Code before the CC and the law allowing the NJC to adopt it. (The Kúria President boycotted the discussions and adoption of the Code after a reference to the Fundamental Law was removed from the draft.) The Kúria President requested the CC to annul the NJC decision adopting the Code (and thus the Code itself), along with the legal provision allowing its adoption, on the basis that they are unconstitutional. In his submission, the Kúria President raises a number of arguments against the Code of Ethics, starting with stating that the NJC was not in the position to adopt it, and he also states that since the text of the Code of Ethics does not refer to the Fundamental Law, the Code is unconstitutional.

In July 2022, four Hungarian NGOs submitted a joint *amicus curiae* brief to the CC to point out that the arguments of the President of the Kúria are unfounded, and to support the independence of Hungarian judges.⁷⁵ In their *amicus curiae* brief, Amnesty International Hungary, the Eötvös Károly Institute, the Hungarian Helsinki Committee, and the Hungarian Civil Liberties Union reminded CC justices that the CC has no power to review and annul the Code, since, contrary to the argument of the Kúria President, it is not a legal norm but only a collection of rules of conduct. In fact, the CC already ruled in 2016⁷⁶ that the previous Code of Ethics was not a law, therefore its overview falls out of the scope of competence of the CC and thus cannot be annulled by the CC. The joint NGO *amicus curiae* refuted the arguments of the Kúria President one by one. The NGOs pointed out that not only was it the right of judges to adopt a new Code of Ethics, but it was also necessary because the restrictive interpretation of the previous version of the Code disproportionately curtailed judges' freedom of expression and contributed to their reluctance to express their opinions on the legal system and the administration of the courts.

The NJC asked⁷⁷ the President of the CC that the CC's decision be brought after the personal hearing of the representatives of the NJC. Moreover, the NJC informed the CC that it agrees with the *amicus curiae* referenced above. In his response CC justice Zoltán Márki informed the NJC that, as of now, the conditions for the hearing are not met. The NJC regretted this approach and hoped that the CC "*will be willing to hear the arguments of the*

⁷² NJC meeting minutes of 6 October 2021, p. 34, available at <https://orszagosbiroitanacs.hu/2021-10-06/>

⁷³ <https://birosag.hu/obh/szabalyzat/62016-v31-obh-utasitas-az-integritasi-szabalyzatrol-o>

For more details, see Amnesty International's Fearing the Unknown report, 2020,

<https://www.amnesty.org/en/documents/eur27/2051/2020/en/>, Section 3

⁷⁴ The proceeding is under case No. II/01285/2022 at the CC, the case file is available at:

<http://public.mkab.hu/dev/dontesek.nsf/o/B1E83AFC8B10B1D2C125885Bo05B3B7E?OpenDocument>

⁷⁵ <https://www.amnesty.hu/ngos-turn-to-the-constitutional-court-in-support-of-judicial-independence/>

⁷⁶ CC decision No. 3003/2016. (I.15.) AB

⁷⁷ NJC Resolution No. 63/2022. (IX. 7.)

*self-governing body of the judiciary, which drafted the Code, in the proceedings of the constitutional review”.*⁷⁸ We do not know when we can expect a CC decision, as it has no deadline to take a decision. The new Code that had been consulted with the judges themselves grants a freer space for judges to participate in public debates and that also empowers judges to defend judicial independence by criticizing or voicing opinions related to laws or the legal or judicial system. As compared to the above Integrity Policy’s vague and general prohibition of political and other activities by the NOJ President, in the Code, the judges themselves have independently set more detailed and more tangible rules of conduct, which expressly stipulate that they are free to express their opinions on professional matters.

D) The Code being challenged further strengthens the chilling effect amongst Hungarian judges

By challenging the Code adopted by the judicial self-governing body, the Kúria President as representative of the apex court did not only publicly question the Code itself, but also the NJC’s competences and its legitimacy. As commented by NJC member judge Matusik,⁷⁹ by challenging the Code of Ethics, the Kúria President *“also questioned the competence granted by the Fundamental Law i.e. whether we have the right to pass a new code of ethics.”*

There is a clear connection⁸⁰ between the non-execution of the present judgment and the chilling effect amongst Hungarian judges that the NJC aimed to address by way of passing the new Hungarian Code of Ethics and an explicit provision allowing judges to express their opinions on “laws, the legal system and the administration of justice”, therefore allowing them to step up for judicial independence or against laws or measures threatening judicial independence. The Kúria President – by challenging the Code of Ethics – hinders such efforts of the NJC to strengthen the freedom of expression amongst Hungarian judges. The person at the top of the judiciary, the Kúria President also sent a clear message to Hungarian judges i.e. they are not entitled to or just in an extremely narrow sense are entitled to the freedom of expression. Consequently, the above developments regarding the Code further contribute to the chilling effect amongst Hungarian judges.

IV. RECOMMENDATIONS

Amnesty International Hungary and the Hungarian Helsinki Committee respectfully recommend the Committee of Ministers to **continue examining under enhanced procedure the execution and effective implementation of the judgment** in the *Baka v. Hungary* case condemning the lack of progress by the Hungarian authorities. Due to the lack of non-implementation and the consistently dismissive approach of the Hungarian authorities, Amnesty International Hungary and the Hungarian Helsinki Committee uphold all their former recommendations and call on the Hungarian authorities as follows:

- **Address the issue of judicial independence holistically and comprehensively.**⁸¹ 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 standards⁸² and specific recommendations on the situation of the Hungarian judiciary by international bodies.**

⁷⁸ See: <https://orszagosbiroitanacs.hu/the-constitutional-court-holds-that-as-of-now-the-conditions-for-hearing-the-national-judicial-council-are-not-met-in-the-proceedings-initiated-by-the-president-of-the-curia/>

⁷⁹ NJC meeting minutes of 6 July 2022, p. 32, available at <https://orszagosbiroitanacs.hu/download/az-obt-2022-julius-6-i-ulesenek-jegyzo-konyve-2/>

⁸⁰ As, for example, was referred to by NJC member Viktor Vadász, see above.

⁸¹ For a comprehensive list of recommendations in this regard, see: 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.

⁸² Inter alia, the United Nation’s Basic Principles on the Independence of the Judiciary, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> and the Venice Commission’s Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, 6 March 2010

- 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 capable of exerting a negative influence on judges**, taking into account the concerns raised by international stakeholders. Similarly, **effective protection of NJC's judge members shall be ensured against intimidation**, attacks on their reputation as well as retaliatory administrative and other measures.
- **In order to eliminate undue interference and retaliatory measures against judges voicing criticism in relation to the independence of the judiciary, the legislation shall be amended to**
 - **oblige the NOJ President to justify in detail all his/her decisions.**
 - **put an end to the NOJ President's unlimited powers regarding the appointment of judges and court leaders**, in a way that the law shall prescribe clear criteria for declaring an application proceeding unsuccessful and the consent of the NJC shall be required for the decision.
 - 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.⁸³
 - **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 public 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.

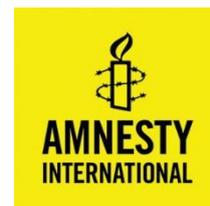
Sincerely yours,



András Kristóf Kádár
co-chair
Hungarian Helsinki Committee



Dávid Vig
director
Amnesty International Hungary



⁸³ Act CLXII of 2011 on the Legal Status and Remuneration of Judges

LIST OF ANNEXES

[Annex I.](#) ~ The First Wave of the 2022 Smear Campaign Against Hungarian Judges (compilation)

[Annex II.](#) ~ List of Publications of the 2022 Smear Campaign's Second Wave

[Annex III.](#) ~ The Second Wave of the 2022 Smear Campaign against Hungarian Judges (compilation)
