



HUNGARIAN
HELSINKI
COMMITTEE

International standards and legal options regarding the removal of high public office holders

Background paper

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Following the 16-year long period with Fidesz in power, the general elections held on 12 April 2026 resulted in such an overwhelming victory for the new opposition force, Tisza, that it gained a two-thirds parliamentary majority, sufficient even for the amendment or redraft of the constitution. Péter Magyar, the Tisza party's since elected candidate for prime minister declared in his speech celebrating electoral victory¹ that the scale of authorization would render the change of government a change of regime at the same time: the functioning of the rule of law, which was systematically undermined while the Fidesz government was in power, would be restored, and the illiberal political system would be driven back to a democratic track. That necessitates the replacement of those important public office holders who, by heading the institutions destined in principle to counterbalance the government and safeguard constitutionality, actively contributed to maintaining Fidesz in power and to an unlimited exercise of governmental authority. Accordingly, Péter Magyar, in the evening of the general elections called on the President of the Republic, the President of the Kúria (Supreme Court), the President of the National Office for the Judiciary, the Prosecutor General, the President of the Constitutional Court, the President of the State Audit Office, the President of the Competition Authority, and the President of the Media Council to resign. He set the deadline of 31 May for the persons addressed to resign, and declared that in case they do not leave their offices voluntarily, they would be removed by legal means.

The deadline for resignation has expired without any change, none of the persons concerned has resigned so far, and, accordingly, the governing majority will probably take the necessary steps to remove high public office holders, and will elect new persons to their office. The government has undertaken to ensure that the procedures will conform to rule of law standards, and no unlawful procedures will take place as, for example, in the case of the 2011 removal of András Baka, the former President of the Supreme Court of Hungary. That commitment is necessary for the restoration of the rule of law, but implementing it is far from being simple. Namely, the procedures must be in conformity with Hungarian constitutional principles and also with international and EU standards.

What makes the situation more difficult is that no international or EU criteria have been fully developed yet concerning the removability of high public office holders as part of the restoration of the rule of law. Within the European Union a similar procedure has been going on in Poland since 2023, but so far there have been only a few cases that yielded international documents containing specific guidelines, so it is very difficult to draw any conclusions as to the desirable mode of the repair in Hungary.

However, international and EU case-law, and also opinions handed down by international monitoring organizations, such as the Venice Commission or the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), discuss the requirement of the irremovability of high public office holders in an array of contexts when it is applied as part of the erosion of the rule of law and with the aim to undermine checks and balances. It follows from the principle of the rule of law that heads of independent institutions, as a general rule, should enjoy security of tenure, and the requirement of irremovability should apply in their case because their primary function is to check and counterbalance the government, which function cannot be efficiently performed if they have to face the threat of being removed by the government.

¹ https://www.youtube.com/live/CJTci2Wg610?si=N5-wk_AUH7uSEopQ

However, the restoration of the rule of law, being an exceptional situation, provides strong and justifiable grounds for the government to derogate from the general rule of irremovability by adopting a unique, exceptional measure accompanied by due guarantees. In the following, we provide an overview of the different aspects that should be taken into account in light of the available international and EU sources. If the Hungarian government intends to keep its promise to apply only solutions that are compatible with the requirements of the rule of law, it must comply with the international and EU standards thus outlined. With respect to the fact, to which we referred earlier, that no rule of law restoration similar to the one envisaged by the new Hungarian governmental majority has taken place yet, and, accordingly, no corresponding overall international assessment is available, we complement our survey by referring to the opinions of legal experts who have already expressed their views on the issue.

In case of the three highest-ranking public offices most relevant for rebuilding the rule of law, i.e. the President of the Republic, the President of the Kúria, and the Constitutional Court justices, we provide the details of the specific legal solutions for removal that would be viable in light of the abovementioned standards.

The irremovability of independent public office holders in general

In a rule of law context, heads and members of independent institutions designed to counterbalance governmental power should be protected by security of tenure and irremovability, as a general rule. The rules applicable to the cases of the termination of mandate must be set out narrowly, clearly, and in advance. Independent officials shall not be dismissed on grounds of political dissatisfaction or the content of their decisions, they may be removed only without prejudice to their independence, i.e. on substantial and objectively justifiable grounds, in an individual procedure in which one-sided political influence is excluded. The procedure must comply with the requirement of legal certainty: it should be based on clear and foreseeable laws. Providing appropriate legal remedies may also be a requirement: the decision resulting in removal should be subject to review by an independent institution in a legally regulated procedure, where the person concerned can express their view and challenge the need for removal.

Derogation from the principle of irremovability in case of the restoration of the rule of law

Accordingly, the security of tenure of the heads of independent public institutions is an essential requirement of the functioning of the rule of law. If, however, the new government embarks on the restoration of the rule of law in a state where the functioning of the rule of law used to be systematically undermined, it becomes crucial that the heads of the institutions which, in the previous regime, served as instruments to attain the political goals of the governing majority instead of fulfilling their counterbalancing function, should be removable so that the independent functioning of the institutions can be restored. Their removal is justified, on the one hand, because they contributed to the erosion of the rule of law, and as result, public confidence in them has declined, and their independence can be questioned. On the other hand, one might fear that they would use their powers to obstruct the restoration of the rule of law.

When the new government decides on the removal of the senior officials at issue, it must take into consideration the fundamental requirements of the restoration of the rule of law.² This includes the requirement of ensuring broad public participation in the decision-making process concerning the restoration. It should be ensured that the legal act laying down the framework for restoration is adopted in an inclusive and transparent procedure, that it is supplemented by publicly available explanatory documents and is based on substantial parliamentary debate. The legitimacy of the procedure can be safeguarded if, in addition to political decision-makers, other stakeholders, such as the representatives of the legal profession, civil society, human rights institutions, and the wider public, are also involved in the procedure. As a main rule, this procedure, too, should comply with the basic principles of the rule of law, such as legal certainty, the protection of legitimate expectations, predictability, non-retroactivity, *res iudicata*, and the irremovability of judges.

However, derogations from the principles of the rule of law may be allowed in times of restoration, provided such derogation is justified by a compelling need and yields proportionate measures. When applying the derogation, account should be taken of the gravity of the system's flaws, the length of the period during which the regime has been maintained, and the extent to which public confidence in state functions has been undermined. The measures necessary for restoration should be adopted speedily to minimize periods of uncertainty. A longer period of time spent in office may legitimize even an irregularly created mandate, if the functioning of the given institution has been impeccable since.³ During restoration, opinions of international tribunals and monitoring organizations should be taken into account. Transitional measures should be adopted, if necessary (to ensure proportionality).

When restoring the rule of law, even removal by legislation and the exclusion of legal remedies may be acceptable, if they serve legitimate purposes and the removal is inevitable (i.e. there are no other means to attain the legitimate purpose that would entail less serious consequences). Balance should be struck between the individual guarantee of irremovability and the need to restore and safeguard the functioning of the rule of law. In this context, irremovability is an instrumental and, in that sense, a subordinate guarantee,⁴ and, accordingly, the irremovability of the official is not a goal/value *per se*, but one of the means to safeguard the rule of law, and in case it comes into conflict with the rule of law, or the restoration thereof, it may be dispensed with, subject to the above conditions and procedures.

Thus, facilitating the restoration of the rule of law may justify otherwise prohibited removals, but appropriate and detailed reasons must be provided to explain what the persons concerned did to erode the rule of law and why it cannot be expected that their functioning will meet the requirements of the rule of law.⁵ Furthermore, it is an essential requirement that the vacant posts of the removed heads of independent institutions should be filled in a procedure that confirms the independence of these institutions. For that, it may be necessary to modify or derogate from the rules applicable prior

² Venice Commission, *The Updated Rule of Law Checklist*, CDL-AD(2025)002-e, 12-13 December 2025, <https://www.coe.int/en/web/venice-commission/-/cdl-ad-2025-002-e>, §§ 152-160.

³ Venice Commission, *Poland – Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law concerning the status of judges appointed or promoted between 2018 and 2025 and other related matters*, CDL-AD(2026)002, 6-7 March 2026, <https://www.coe.int/en/web/venice-commission/-/cdl-ad-2026-002-e>, § 38.

⁴ *Ibid.*, § 36.

⁵ A good example is the Polish Explanatory Report attached to the draft law on the removal of unlawfully appointed judges (Explanatory Report, <https://www.coe.int/en/web/venice-commission/-/cdl-ref-2026-003-e>), in which the need for removal is explained in a very detailed manner.

to the rule of law backsliding, since the backsliding was caused precisely by those unsatisfactory rules. In other words, the best solution may not necessarily consist in electing new officeholders under the same rules which were applied earlier to elect those who are now intended to be removed in order to restore the rule of law: a new backsliding must be prevented, so unsatisfactory rules must be modified to efficiently safeguard independence. The deficiencies that caused the decline must be remedied, while missing guarantees must be strengthened.

The undertaking according to which the government will not use any means of removal that would be contrary to the rule of law, does not mean that certain legal solutions, that are exceptions to the guarantees valid under normal conditions of rule of law functioning, could not be exceptionally availed of. If we exclude the possibility to apply exceptional measures, we contribute to upholding the very regime that caused the erosion of the rule of law. The restoration of the rule of law can be an objective that may justify derogations from otherwise applicable, essential rule of law requirements (e.g. non-retroactivity). That is not contrary to the principle of the rule of law, but serves precisely to restore it.⁶

When removing significant public legal actors, it must be highlighted that they should not be removed because they belong to another political force but because they assumed an active role in the previous regime to demolish constitutional democracy and they cannot be expected to function in an independent manner.⁷ The removal may be justified by several reasons. One can refer to retrospective reasons that evaluate the past: the persons need to be removed because they assisted to the functioning of an undemocratic regime, so they became unworthy for the office, and accordingly, their removal is essentially doing justice for the breaches of law in the past. One can also refer to prospective, future-oriented reasons: the persons must be removed because they are a threat to the functioning of the constitutional institutional system. The most convincing argument is a combination of both views: the removal is necessary because the given office holder, due to their past activity, has lost public confidence, in lack of which, however, they cannot fulfill their constitutional function; alternatively, they are unfit for assuming their constitutional role in the future in light of their past behavior, that is, not only public confidence is lacking in their case but also the capability of assuming constitutional functions.⁸ Provided there is a sufficiently strong reason, proportionality must equally be ensured. That is, the reasoning must take into consideration the gravity of the social injustice caused by the given official's activity or inactivity, the scale of the risk that the official would curb democratic functions, the magnitude of the loss of public confidence, and the extent of dysfunctional operation.⁹

Organizational restructuring may be a means of removal, provided it strengthens the given institution's independence. However, if the real purpose of the reorganization is only the removal of a given public office holder, then it is carried out in bad faith, and, accordingly, it is antidemocratic, breaches the

⁶ András Sajó, "A csalárd törvények semmisségének gondolata korántsem jogdogmatikai képtelenség." ["The idea of the nullity of fraudulent laws is far from being a nonsense of legal dogmatics."] *Válasz Online*, 7 May 2026, <https://www.valaszonline.hu/2026/05/07/sajo-andras-jogallam-torvenyek-elszamoltatas/index.html#gsc.tab=0>.

⁷ Mátyás Bencze – Zsolt Körtvélyesi – Balázs Majtényi – Ágota Szentes, "Alkotmányos helyreállítás: hogyan szabadulhatunk meg az autokrácia kiszolgálóitól?" ["Constitutional repair: how can we get rid of the servants of autocracy?"] 444, 6 May 2026, <https://444.hu/2026/05/06/alkotmanyos-helyreallitas-hogyan-szabadulhatunk-meg-az-autokracia-kiszolgaloitol>.

⁸ János Mécs – Zoltán Pozsár-Szentmiklósy – Bernadette Somody, "El lehet-e mozdítani hivatalukból a közjogi tisztségviselőket, és ha igen, hogyan?" ["Can high public office holders be removed from office, and if yes, how?"] *Qubit*, 2 June 2026, <https://qubit.hu/2026/06/02/el-lehet-e-mozditani-hivatalukbol-a-kozjogi-tisztsegviseloket-es-ha-igen-hogyan>.

⁹ Ibid.

principle of irremovability, and cannot be justified, not even if it otherwise meets the principle of legality. If institutional reform is needed to ensure the independent and efficient functioning of an institution, this may entail the removal of heads/members, but this should not be implemented hastily, in an accelerated procedure, with the exclusion of the public, only by means of inclusive and well-deliberated legislation, which altogether do not allow for quick actions.¹⁰

Organizational restructuring (by legislation or constitutional amendment) as means of removal may be problematic also because it is not provided for among the grounds of removal in the laws applicable at the time of the taking up of duties by the officials concerned, and, accordingly, the foreseeability criterion is unmet.¹¹ Officeholders have a legitimate expectation to serve their full term of office, which also bears on their income and the calculation their retirement pension, and, as a corollary of their right to respect for private life, it also concerns their professional reputation.¹²

In the current Hungarian context, János Kis proposes a specific solution¹³ that is not a bad faith solution (does not involve *ad hominem* legislation), nor does it alter hastily the constitutional structure of the organization of the state (it does not consist in a removal by organizational restructuring). According to his proposal, the Fundamental Law could be supplemented by a unique regulation applicable for a single occasion, which would cease to apply once implemented. This regulation would list those high public office holders whose mandate shall be terminated. Its explanatory memorandum could refer to the overriding interest related to the moral integrity and authority of rule of law institutions, and its final provisions would include the provision that the laws applicable to the terms of office and the grounds of termination of the mandate shall be suspended during its implementation. He argues that this would undoubtedly be an exceptional measure, but which, nevertheless, could be justified by the exceptional circumstances and necessities of the return to the democratic rule of law. It would not amount to retroactive legislation, because it would not provide on penalties with respect to legal relationships already terminated, but it would be based on the idea that the conditions applicable at the time of appointment have profoundly changed, and among the new conditions, it is not only that the tenure should not be protected, but it would be clearly inappropriate to uphold it. (János Kis's argumentation applies to several types of public officials at the same time, so we do not repeat it in the following when discussing the views and possible legal solutions regarding each particular official.)

The Head of State

Applying the above principles, the necessity of the removal of Tamás Sulyok, the President of the Republic, can be justified, on the one hand, by the fact that he failed to perform his constitutional functions during his term of office: he failed to embody the unity of the nation and to be the guardian

¹⁰ János Kis, "Minden nehézséget a kétharmad sem old meg." ["Not even the two-thirds majority solves all difficulties."] *Qubit*, 21 May 2026, <https://qubit.hu/2026/05/21/kis-janos-minden-nehezseget-a-ketharmad-sem-old-meg>.

¹¹ *Baka v Hungary* (Application no. 20261/12), 23 June 2016; OSCE/ODIHR, *Final Opinion on Draft Amendments to the Act on the National Council of the Judiciary and Certain Other Acts of Poland*, 5 May 2017, <https://odih.org/sites/default/files/f/documents/f/c/315946.pdf>, §§ 80-86.

¹² *Pajak and Others v Poland* (Applications nos. 25226/18, 25805/18, 8378/19, 43949/19), 24 October 2023.

¹³ János Kis, "Minden nehézséget a kétharmad sem old meg." ["Not even the two-thirds majority solves all difficulties."] *Qubit*, 21 May 2026, <https://qubit.hu/2026/05/21/kis-janos-minden-nehezseget-a-ketharmad-sem-old-meg>.

of the democratic functioning of the state organization.¹⁴ On the other hand, there is a strong argument that his remaining in office could paralyze the legislative process needed for the constitutional repair, could render the dismissal of political appointees impossible, and could even hinder the adoption of the numerous laws on which the access to EU funds depend. Exactly this happened in Poland: based on the promises of the government, the EU gave green light to the release of EU funds, but the reforms cannot proceed as originally foreseen in the commitments, due to the resistance of the head of state.¹⁵

According to the statements by Tamás Sulyok, he intends to support the realization of the Tisza Party's political platform as well.¹⁶ It is uncertain whether this will be so. However, this emphatic willingness to cooperate may be problematic, too, if it means that he would be ready to ignore his supervisory functions – as he did during the Orbán government – to unconditionally support the government in office. János Kis points out that Mr. Sulyok asserts in his statements that it is his duty as head of state to sign what is to be signed, to appoint who are to be appointed, and that he does not have to express his views publicly on questions related to the functioning of the state or societal issues. He is suggesting that he would behave the same way during the Tisza government, and one should not be afraid that he would become a hindering factor. However, even if this would prove to be true, he should not remain in office, because this demonstrates exactly his lack of integrity and authority necessary for the credibility of his impartial, constitutional and lawful functioning. Since he participated in maintaining the authoritarian regime, he lost the public confidence and dignity needed to occupy the office.¹⁷

The reason for removal could be the declaration of unworthiness for the post, on the grounds that the undermined social credibility of the person assuming the office threatens the fulfillment of the institution's constitutional functions, i.e. in case of the head of state, to embody the nation's unity. Thus, the institution of the head of state becomes non-functional with the given person, which may be sufficient grounds for removal.¹⁸ One of the arguments may be that the head of state failed to use his right of veto when he should have (it is his duty to do so under the Fundamental Law, in case he detects any unconstitutionality), he did not assume his supervisory functions at the time of democratic backsliding. It is problematic that it is for the Constitutional Court to proceed in cases of deprivation of office (due to unworthiness), which cannot be expected to make an impartial decision. Accordingly, in Gábor Halmai's view, first the Fundamental Law should be amended and the powers to deprive of office should be transferred from the Constitutional Court to the Parliament. In Halmai's view, in this

¹⁴ Fundamental Law, Article 9 (1).

¹⁵ Renáta Uitz, "Out of Illiberal Christian Democracy: Hungary's Prospects for Constitutional Resettlement." *ConstitutionNet*, 26 May 2026, <https://constitutionnet.org/news/voices/out-illiberal-christian-democracy-hungarys-prospects-constitutional-resettlement>.

¹⁶ György Farkas, "Sulyok Tamás a Tisza-kormányt is támogatná." ["Tamás Sulyok would support the Tisza government, too."] *24.hu*, 2 June 2026, <https://24.hu/belfold/2026/06/02/magyar-peter-alkotmanymodositas-sulyok-tamas-interju/>.

¹⁷ János Kis, "Minden nehézséget a kétharmad sem old meg." ["Not even the two-thirds majority solves all difficulties."] *Qubit*, 21 May 2026, <https://qubit.hu/2026/05/21/kis-janos-minden-nehezseget-a-ketharmad-sem-old-meg>.

¹⁸ János Mécs – Zoltán Pozsár-Szentmiklósy – Bernadette Somody, "El lehet-e mozdítani hivatalukból a közjogi tisztségviselőket, és ha igen, hogyan?" ["Can high public office holders be removed from office, and if yes, how?"] *Qubit*, 2 June 2026, <https://qubit.hu/2026/06/02/el-lehet-e-mozditani-hivatalukbol-a-kozjogi-tisztsegviseloket-es-ha-igen-hogyan>.

case the retroactive amendment of the Fundamental Law could be acceptable as a unique, necessary and proportionate exception to the prohibition.¹⁹

Judges and constitutional court justices

As for judges, in the context of the functioning of the rule of law the starting point is that the “guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it [...] The principle of irremovability requires, in particular, that judges may remain in post provided that they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. While it is not wholly absolute, there can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. Thus it is widely accepted that judges may be dismissed if they are deemed unfit for the purposes of carrying out their duties on account of incapacity or a serious breach of their obligations, provided the appropriate procedures are followed.”²⁰ Therefore, not even external observers should have any reasonable doubt as to judicial independence, which means that it is not enough that judges are selected according to a procedure that formally ensures independence but it is also necessary that they seem independent and impartial when performing their functions. This is facilitated by irremovability as it, in principle, prevents judges to be threatened to be removed from office as a consequence of their decisions.

Concerning the removability of judges, however, it is also relevant whether their appointment duly met the guarantees of independence or they were appointed by means of a politicized procedure. Judges appointed in a politicized procedure do not meet the requirement of an independent and impartial tribunal established by law. They could be removed on those grounds, because their appointment was based on laws that did not guarantee independence. As emphasized by the Venice Commission concerning one of the planned measures for the restoration of the rule of law in Poland (see below), persons elected unconstitutionally cannot rely on the security of tenure provided by that very Constitution.²¹ Therefore, there are two aspects that must be treated separately: first, whether the removal is necessary on the grounds of the wrongfulness and politicized nature of the appointment, which renders the given mandate unlawful since the beginning, and second, whether it is necessary to remove the person concerned due to their performance during their term of office, as it was professionally insufficient. In the first case, a correction (removal) by means of legislation without any applicable remedies might be an acceptable solution, but in the second case, an individual procedure, appropriate grounds for justification, fair trial and remedies are required.

¹⁹ Gábor Halmai, “Alkotmányossági dilemmák.” [“Constitutional dilemmas.”] *Élet és Irodalom*, 24 April 2026, <https://www.es.hu/cikk/2026-04-24/halmai-gabor/alkotmanyossagi-dilemmak.html>.

²⁰ C-619/18, *Commission v Poland*, 24 June 2019, §§ 74., 76.

²¹ Venice Commission – Directorate General of Human Rights and Rule of Law of the Council of Europe, *Poland – Urgent Joint Opinion on the Draft Law Amending The Law on the National Council of the Judiciary*, CDL-AD(2024)018, 24 June 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)018-e), § 53.

In this second group of cases, and in a rule of law context, judges may be removed only on the grounds and in the procedures as provided for in advance by law. Removal by means of *ad hominem* legislation is considered unlawful.²² If judges need to be afraid of being removed at any time even without any concerns regarding their professional activity, it affects the performance of their tasks and threatens their independence. The judicial review of the decision on removal must be ensured. That requirement may be dispensed with only on the basis of the so-called Eskelinen-test established by the case-law of the European Court of Human Rights (ECtHR), i.e. only in cases when national laws expressly exclude the possibility of access to court regarding the given office, and the exclusion of access to court can be objectively justified by the state.²³ The restoration of the rule of law may be such justification.

In light of the case-law of the ECtHR and the European Court of Justice (ECJ), the guarantees of judicial independence shall apply to constitutional court justices, too, but there are exceptions to this rule, with respect to the specific functions and composition of constitutional courts, different from those of ordinary courts.

In case a constitutional court is structurally reorganized to strengthen the independence of the institution, and its objective is not the undermining of the legitimacy or the independence of the constitutional court, it may be justifiable even if it entails premature removals. In the *Gyulumyan and Others v Armenia* case,²⁴ the ECtHR found no violation of the Convention when the organization of the constitutional court was reformed in Armenia by means of constitutional amendment, as a result of which the terms of office of incumbent members were terminated. In the ECtHR's view, it was a crucial aspect that the reform did not aim at the removal of judges but rather at strengthening the body's independence. The ECtHR also concluded in the case that Article 6 of the European Convention on Human Rights (ECHR) on the right to a fair trial is not applicable to legal disputes concerning the premature removal of constitutional court justices, and therefore, it is not mandatory to ensure judicial review.

Constitutional court justices may be dismissed on grounds of their judicial activity only very exceptionally and for compelling reasons, and under foreseeable rules (due to a "breach of oath", i.e. unworthiness). According to the judgement of the ECtHR in *Ovcharenko and Kolos v Ukraine*,²⁵ the liability of a judge for the content of judicial activity is a highly delicate question. Distinction has to be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure amounting to a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand. Only the latter conducts may entail accountability. Furthermore, the cases concerning the liability of a judge require the assessment of the mental element: a good-faith legal error should be distinguished from bad-faith judicial misconduct.²⁶ In the specific case, members of the Ukrainian Constitutional Court were removed from office on the grounds that they broadened the President's powers thereby violating the rule of law and the principle of the separation of powers. The ECtHR accepted that those may be justifiable reasons for dismissal, however, the procedure itself must be appropriate, too: it must be based on foreseeable and clear rules, it cannot be hasty, and the possibility of individual review must

²² *Baka v Hungary* (Application no. 20261/12), 23 June 2016; *Grzęda v Poland* (Application no. 43572/18), 15 March 2022.

²³ *Baka v Hungary* (Application no. 20261/12), 23 June 2016; *Grzęda v Poland* (Application no. 43572/18), 15 March 2022; *Żurek v Poland* (Application no. 39650/18), 16 June 2022.

²⁴ *Gyulumyan and Others v Armenia* (Application no. 25240/20), 21 November 2023.

²⁵ *Ovcharenko and Kolos v Ukraine* (Application nos. 27276/15 and 33692/15), 12 January 2023.

²⁶ *Ibid.*, § 104.

be granted in the case of each judge. The removal by Parliament without ensuring procedural safeguards violates the judges' right to respect for private life.

The principle of irremovability of judges and the requirements derived from it are discussed in numerous judgements of the ECtHR and the ECJ, and opinions handed down by the Venice Commission and the OSCE/ODIHR, respectively, *inter alia* in the context of changing the statutory age of pension for judges, the establishment of disciplinary liability or the reorganization of the judicial system. Since there are currently no known corresponding political proposals in Hungary, we do not discuss those issues here.

The assessment of Polish restoration efforts

Opinions concerning specific cases of rule of law restoration have been handed down by the Venice Commission and the OSCE/ODIHR only in Polish cases so far. The views expressed in those opinions may be relied on to some extent to see which of the Hungarian restoration concepts could be compatible with international standards.

In 2017 in Poland the rules governing the election of the fifteen judicial members of the National Council of the Judiciary (NCJ), the supreme body of judicial self-governance, were amended to introduce election by the Polish legislative body, the Sejm, instead of the election by judges, and the mandates of the fifteen judicial members elected under the former rules were terminated as of the appointment of the new judges. Since those changes suggested that political influence was exerted over the NCJ, from that moment on, the independence of judges nominated by the body was also questioned. International organizations and the ECtHR found that the removal of former NCJ members from office by means of legislation violated judicial independence.²⁷ Furthermore, judges appointed in the new procedure, with the participation of an NCJ composed under political influence cannot be considered independent, i.e. they do not meet the requirement of an independent and impartial tribunal established by law.²⁸

Following the change of government in 2023, the restoration of judicial independence began, which was both an EU and an international obligation in light of the decisions of the ECJ and the ECtHR. In order to **restore the independence of the NCJ**, the new regulation set out that the term of office of the members appointed by the Sejm shall be terminated and new members shall be elected by judges again. The Venice Commission was of the view²⁹ that the *ex lege* dismissal of the NCJ judicial members

²⁷ Venice Commission, *Poland – Opinion on the Draft Act Amending the Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court, and on the Act on the Organisation of Ordinary Courts*, CDL-AD(2017)031, 8-9 December 2017, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e); OSCE/ODIHR, *Final Opinion on Draft Amendments to the Act on the National Council of the Judiciary and Certain Other Acts of Poland*, 5 May 2017, <https://odihr.osce.org/sites/default/files/f/documents/f/c/315946.pdf>; *Grzęda v Poland* (Application no. 43572/18), 15 March 2022; *Żurek v Poland* (Application no. 39650/18), 16 June 2022.

²⁸ C-718/21., *L.G. v Krajowa Rada Sądownictwa*, 21 December 2023.

²⁹ Venice Commission – Directorate General of Human Rights and Rule of Law of the Council of Europe, *Poland – Urgent Joint Opinion on the Draft Law Amending The Law on the National Council of the Judiciary*, CDL-AD(2024)018, 24 June 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)018-e). Confirmed by: OSCE/ODIHR, *Urgent Interim Opinion on the Bill Amending the Act on the National Council of the Judiciary of Poland*, 8 April 2024, <https://odihr.osce.org/sites/default/files/f/documents/d/e/566626.pdf>; OSCE/ODIHR: *Final Opinion on the Act*

in 2017, following which their selection became a matter of political decision, cannot be compared to the present situation, when the objective of the removal is precisely to restore independence. In the present situation, the principle of security of tenure is overridden by the interest to restore the rule of law, which was also confirmed by the ECtHR by holding that a rapid remedial action on the part of the Polish State is required. Among the particular circumstances of the case, therefore, there is a pressing need which justifies a departure from the principles of legal certainty and of security of tenure.³⁰ It is equally important that the term of office of former NCJ members shall be terminated only once their successors have been elected, so there will be no transitional period during which the body cannot operate. In this case, the requirement to ensure legal remedies may be dispensed with, with respect to the need of urgent repair and because the lack of judicial remedy is part of a broader reform, the aim of which is not to undermine legitimacy but to restore the independence of the NCJ. Regardless of this, it would be appropriate to provide for the possibility of a legal remedy, which would not suspend the termination of the mandate (although the problem arises that there are no independent judges in the system who could adjudge these requests).

Several scenarios were suggested **to restore the independence of judges appointed through the procedure involving the NCJ**. On a request from Adam Bodnar, Minister of Justice, the Venice Commission delivered a general opinion³¹ about the framework within which this procedure would be acceptable. According to this, the principle of irremovability may be overridden in case of judges whose appointment procedure shows severe deficiencies, but some form of individual assessment must be granted. A procedure violates the rule of law, if it results in the automatic termination of the mandates of all judges appointed unlawfully, as it would be disproportionate. Furthermore, not even the need for the rapid restoration of an operational judiciary may justify the complete lack of some form of judicial review. However, the legal remedy may be one that has no suspensive effect.

The specific draft law established three sub-categories of the judges concerned, providing on different legal consequences regarding each sub-category:

1. green: judges at the beginning of their career, who applied for judicial appointment as trainee judges, court secretaries, assistants to judges in an inherently deficient procedure due to the establishment of the NCJ in 2017 in breach of the rule of law – they shall remain in office;
2. yellow: those who were appointed as judges already before March 2018, but who, thereafter, were transferred or promoted to another post in an inherently deficient procedure due to the establishment of the NCJ in 2017 in breach of the rule of law – they shall return to their previous post, to which they were appointed in a regular procedure at the time;
3. red: judges who were first appointed in an already deficient procedure due to the establishment of the NCJ in 2017 in breach of the rule of law, and who had not held the office of a judge, nor had they been trainee judges, court secretaries, or assistants to judges – they shall be removed from their office of a judge by law, following which they may be court secretaries.

Legal remedies are available only against the classification into sub-categories.

Introducing Amendments to the Act on the National Council of the Judiciary of Poland, 31 December 2024, <https://odhr.osce.org/sites/default/files/f/documents/6/5/585361.pdf>.

³⁰ Ibid., §§ 48-63.

³¹ Venice Commission – Directorate General Human Rights And Rule of Law, *Poland – Joint Opinion on European Standards Regulating the Status of Judges*, CDL-AD(2024)029, 11-12 October 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)029-e), §§ 29-31., 36.

The Venice Commission found this specific draft legislation essentially appropriate, and concluded that the *ex lege* removal can be justified even in the case of judges appointed through a procedure involving the politicized NCJ. It recommended to complement the draft legislation to the effect that the judicial office of those proposed to be removed should terminate only upon the successful conclusion of the job application procedure to fulfill their post. OSCE/ODIHR also found the legislation acceptable, by adding that the judges concerned should be provided adequate advance notice and social security guarantees, as well as the right to legal remedy regarding the financial and other harm suffered due to the removal from office.³²

The issue of the need to restore the guarantees of independence was raised not only in case of ordinary courts, but also concerning the Polish Constitutional Court. **The problem concerning the Constitutional Court** originated from the fact that during 2015 and 2016, three new members and the president were elected unconstitutionally. The ECtHR found for that reason that the Polish Constitutional Court cannot be considered an independent tribunal established by law,³³ which view was upheld by the ECJ.³⁴ In the course of the restoration of the rule of law, several ideas emerged concerning the possible ways of restoring the independence of the Constitutional Court. One of the suggestions consisted in the complete replacement of the whole body. The Venice Commission found that this solution would violate the principle of irremovability because 12 out of 15 members of the Constitutional Court were appointed in a regular procedure, and it is unlikely that they would hinder the restoration of the rule of law. According to the Venice Commission this solution would present the risk that each time there was sufficient parliamentary majority to change the constitution, constitutional court justices would be threatened with the termination of their mandates, while all new justices would be elected by the political majority of the day.³⁵ According to the opinion, the principle of legality cannot be departed from, not even on the grounds that the regularly appointed justices contributed to the erosion of the rule of law with their activity. This view may be surprising because the Venice Commission acknowledged in previous opinions that rule of law principles may be departed from in order to restore independence³⁶ – however, the difference in approach may be justified by the fact that, as opposed to the situation of the members of the NCJ, the rules on the election of Polish constitutional court justices were not modified in order to appoint the justices concerned.

The OSCE/ODIHR examined the modality according to which one-party constitutional court justices, who were elected in a formally regular procedure, would be offered financial incentives to resign. In the body's view, this modality would be unacceptable if this would exert political or personal pressure

³² OSCE/ODIHR, *Poland: Urgent Interim Opinion on the Draft Act on Restoring the Right to an Independent and Impartial Court Established by Law by Regulating the Effects of Resolutions Adopted by the National Council of the Judiciary in 2018-2025*, 5 December 2025,

https://odihr.osce.org/sites/default/files/documents/official_documents/2025/12/2025-12-05_Urgent_Interim_ODIHR_Opinion_-_Draft_Act_on_Status_of_Judges_Poland.pdf.

³³ *Xero Flor v Poland* (Application no. 4907/18), 7 May 2021.

³⁴ C-448/23., *Commission v Poland*, 18 December 2025.

³⁵ Venice Commission, *Poland – Opinion on the Draft Constitutional Amendments Concerning the Constitutional Tribunal and Two Laws on the Constitutional Tribunal*, CDL-AD(2024)035, 6-7 December 2024, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)035-e).

³⁶ Scheppele sharply criticizes the view of the Venice Commission for that: Kim Lane Scheppele, "Blinded by Legality. The Venice Commission's Change of Heart on Restoring the Rule of Law in Poland." *VerfBlog*, 23 December 2024, <https://verfassungsblog.de/blinded-by-legality/>.

on justices. Justices whose integrity or professionalism is questionable, should be subject to disciplinary proceedings or other procedures to establish liability.³⁷

The President of the Kúria

As regards the situation in Hungary, the removal from office of the current President of the Kúria, András Varga Zs. could be justified on several grounds in light of the above justification tests. On the one hand, it can be reasonably asserted that already the circumstances of his election render his mandate illegitimate, while on the other hand, he contributed to the erosion of the rule of law by his numerous measures and decisions.

András Varga Zs. was elected as President of the Kúria by means of *ad hominem* legislation, regardless of the manifest objection of the National Judicial Council (NJC) – pointing out precisely the neglect of judicial independence –, and in spite of the fact that he had had no meaningful experience as a practicing court judge from earlier. Accordingly, his appointment procedure failed to meet rule of law standards,³⁸ which was also found by international organizations.³⁹ In fact, the UN Special Rapporteur on judicial independence actually declared the following: “[the] appointment [of András Varga Zs.] may be regarded as an attack to the independence of the judiciary and as an attempt to submit the judiciary to the will of the legislative branch, in violation of the principle of separation of powers. [...] The fact that Justice Varga was elected in spite of the manifest objection of the NJC, the judicial self-governing body, is of particular concern. The decision to ignore the negative opinion expressed by the NJC may be interpreted as a political statement by the ruling majority that [it] does not consider itself bound to respect judicial independence by abiding to, or at least taking into account, the views expressed by the body constitutionally assigned to safeguard the independence of courts and judges.”⁴⁰

Moreover, András Varga Zs. directed the Kúria’s practice of ensuring uniformity of law in a way that it came into conflict with the requirement of the supremacy of EU law and jeopardized the application of EU law by Hungarian courts.⁴¹ By his numerous public speeches and legal procedures, he exerted pressure on judges expressing a critical opinion;⁴² he initiated an amendment to the case allocation

³⁷ OSCE/ODIHR, *Poland: Opinion on Two Bills of the Republic of Poland on the Constitutional Tribunal*, 24 August 2024, <https://odihr.osce.org/sites/default/files/f/documents/b/b/575707.pdf>.

³⁸ Hungarian Helsinki Committee, *New Chief Judge: Potential Transmission Belt of the Executive*, 22 October 2020, <https://helsinki.hu/wp-content/uploads/The-New-President-of-the-Kuria-20201022.pdf>.

³⁹ The Council of Europe Commissioner for Human Rights (https://www.coe.int/en/web/commissioner/news/2019/-/asset_publisher/Arb4fRK3o8Cf/content/the-commissioner-urges-the-hungarian-parliament-to-modify-a-bill-affecting-the-independence-of-the-judiciary) and the European Commission’s Rule of Law Report (eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0316&from=EN).

⁴⁰ The letter of the UN Special Rapporteur on the Independence of Judges and Lawyers addressed to the Hungarian government, 21 April 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26371>.

⁴¹ Anna Madarasi – Tamás Kende, “To Uniformity and Beyond. Hungary’s Supreme Court and the Implementation of CJEU Rulings.” *VerfBlog*, 10 September 2025, <https://verfassungsblog.de/hungary-preliminary-reference/>; Amnesty International – Hungarian Helsinki Committee – K-Monitor – Transparency International, *Assessment of Hungary’s compliance with conditions to access European Union funds*, November 2025, <https://helsinki.hu/en/wp-content/uploads/sites/2/2025/12/HU-EU-funds-assessment-2025.pdf>, pp. 56-57.

⁴² See for example: <https://helsinki.hu/en/wp-content/uploads/sites/2/2026/05/HHC-RULE9-BAKA-2026.pdf>; Hungarian Helsinki Committee, *Attempts to Silence Judicial Dissent: The cases of Judge András Kovács and X, a*

scheme, which suggests that it was carried out in accordance with the government's interests;⁴³ moreover, he appointed judges unlawfully.⁴⁴

As proposed by Erika Farkas,⁴⁵ András Varga Zs. can be removed lawfully by executing the judgement of the ECtHR delivered in the *Baka v Hungary* case. The judgement in *Baka* calls for the judicial review of the decision removing the chief justice. On those grounds, the rules of the unworthiness procedure, based on which removal from office is possible, should be amended in a way that, in addition to its initiation by the President of the Republic and its being voted on by the Parliament by a two-thirds majority, the political decision of the Parliament should be reviewed by an independent judicial body. In the case of András Varga Zs. this body could hold him accountable for his conduct and omissions. The initiation for removal should focus on his personal role played in undermining the independence of Hungarian courts, including the circumstances of his appointment to office. The procedure to elect the Kúria's new President, furthermore, could be strengthened by new guarantees, for example by providing that the election of the President of the Kúria shall require the consent of the National Judicial Council.⁴⁶

David Kosař suggests⁴⁷ that in case the original term of office of six years – which used to be applicable at the time when Chief Justice András Baka was removed from office – was restored, and the *ad hominem* law according to which the statutory age of pension shall not apply to the President of the Kúria was repealed, Varga's mandate would end in October 2026. This solution would be in conformity with the judgment in *Baka* ruling against *ad hominem* legislation.

Constitutional Court justices

Concerning the Constitutional Court, Péter Magyar has so far foreseen the removal of the president only, not of the whole body. There are strong arguments, however, which suggest that it is not enough to remove only the president, but it might be necessary to replace the whole body or at least a substantial part of its members.

The need for removal cannot be based solely on grounds related to the activity of the Constitutional Court justices in the past, because one of the constituting elements of the independence of Constitutional Court justices is that their functioning cannot be affected by their estimation by the government or general society. It must be assessed, however, whether it follows from the justices' past activity that they would not be able to fulfill their task of ensuring constitutional protection in the

senior scientific advisor at the Kúria, 22 October 2025, <https://helsinki.hu/en/wp-content/uploads/sites/2/2025/10/Attempts-to-silence-judicial-dissent-in-Hungary.pdf>.

⁴³ Ágnes Kovács, "Taking Revenge for Dissent. Hungary's Chief Justice to Fully Eliminate Judicial Autonomy." *VerfBlog*, 13 December 2023, <https://verfassungsblog.de/taking-revenge-for-dissent/>.

⁴⁴ Hungarian Helsinki Committee, *Court Capture Project Completed. The Hungarian recipe for getting a grip on the judiciary*, 26 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Court-Capture-Project-Completed-20221026-.pdf>, II. 3.

⁴⁵ Erika Farkas, "But First, Implementation. How to Say Goodbye to an Illiberal Chief Justice." *VerfBlog*, 8 May 2026, <https://verfassungsblog.de/but-first-implementation/>.

⁴⁶ Pál Sonnevend, "Constitutional Repair! Mapping the Context, Needs and Limits of Rebuilding Constitutional Democracy in Hungary." *VerfBlog*, 9 May 2026, <https://verfassungsblog.de/hungary-constitutional-repair/>.

⁴⁷ David Kosař, "Fixing the Hungarian Bench. Don't Imitate – Innovate!" *VerfBlog*, 28 May 2026, <https://verfassungsblog.de/fixing-the-hungarian-bench/>.

future either due to professional incompetence or the lack of social acceptance.⁴⁸ Although there have been no ECtHR or ECJ judgements concerning the Hungarian Constitutional Court which would have found its lack of independence, and, what is more, the ECtHR considers the constitutional complaint procedure before the Constitutional Court as an effective remedy,⁴⁹ scholarly legal literature on the assessment of the Constitutional Court's performance points out the evidences of its politically partial judicial activity, serving the interests of the government.⁵⁰ Regarding this matter, Tímea Drinóczi is of the view,⁵¹ that the removal of Constitutional Court justices could be justified under EU standards, because the Constitutional Court's decisions contributed to the erosion of the basic values of the EU under Article 2 of the Treaty on European Union. One of the tools of the Constitutional Court to do that was abusing the concept of constitutional identity,⁵² which is contrary to the constitutional identity of the EU, and may be used to evade the obligation to apply EU law. Accordingly, it might be used also in the future to obstruct the reconstruction of the rule of law.

Furthermore, the need to remove the body as a whole, can be supported by arguments of procedural nature, which relate to the establishment of the body in its present form and the irregularities regarding the election of its members. As regards the Polish concept envisaging the replacement of the constitutional court in its totality, the Venice Commission found that the removal of lawfully appointed constitutional court justices violates the requirement of legality and cannot be justified. However, one can argue regarding the present composition of the Hungarian Constitutional Court that the establishment of the body was inherently incompatible with rule of law and independence standards, as opposed to the Polish situation where the justices concerned had been appointed under the original rules adopted before the deconstruction of the rule of law.

Namely, the Fidesz majority, already in 2010 shortly after its coming to power, modified the rules on the nomination of Constitutional Court justices: it replaced the then existing committee composition based on parity and introduced nomination by a committee whose composition reflected the size of parliamentary factions. Since the election by the parliamentary two-thirds majority was kept, the new nomination system enabled one-sided nominations by the governing party without the need to look for a compromise with the opposition. Furthermore, raising the number of members from 11 to 15, the increase of the term of office to 12 years, and cancelling the applicable pension age of 70, all had the result that the government majority packed the whole body one-sidedly. In addition, in the latest election procedure of justices, the body admitted a member (Csaba Hende) for the sake of whom the

⁴⁸ János Mécs – Zoltán Pozsár-Szentmiklósy – Bernadette Somody, "El lehet-e mozdítani hivatalukból a közjogi tisztviselőket, és ha igen, hogyan?" ["Can high public office holders be removed from office, and if yes, how?"] *Qubit*, 2 June 2026, <https://qubit.hu/2026/06/02/el-lehet-e-mozditani-hivatalukbol-a-kozjogi-tisztsegviseloket-es-ha-igen-hogyan>.

⁴⁹ *Mendrei v Hungary* (Application no. 54927/15), 15 October 2018; *Szalontay v Hungary* (Application no. 71327/13), 4 April 2019.

⁵⁰ Ágnes Kovács – Gábor Halmai, "The Hungarian Constitutional Court: From a Target to an Agent of Autocratization." *Global Jurist*, 2025/2, pp. 265-291.

⁵¹ Tímea Drinóczi, "Constitutional Reconstruction and Removal of Veto Players." *IACL-AIDC Blog*, 26 May 2026, <https://blog-iacl-aidc.org/2026-posts/2026/5/26/constitutional-reconstruction-and-removal-of-veto-players>.

⁵² Petra Bárd – Nóra Chronowski – Zoltán Fleck, "Use, Misuse, and Abuse of Constitutional Identity in Europe." *CEU DI Working Papers*, 2023/06, <https://democracyinstitute.ceu.edu/articles/petra-bard-nora-chronowski-zoltan-fleck-use-misuse-and-abuse-constitutional-identity>, pp. 20-24.

Act on the Constitutional Court was modified⁵³ in order to make him eligible, so his mandate was generated by means of *ad hominem* legislation, violating the rule of law.

However, there are four members in the body who were elected not only by the two-thirds parliamentary majority but by a part of the opposition, too. The legitimacy of these justices may be justified, thus, one may also argue against their removal.

As regards the president, the weakening of his legitimacy may be referred to as a separate argument, with respect to the fact that before 2012, it used to be the body itself who elected its own president from among its members, but since that date, those powers have been assigned to the Parliament, turning it into a one-sided political decision. Moreover, there is a significant lack of confidence regarding the president, since his activity as the former Prosecutor General was criticized on numerous occasions from a rule of law aspect.

There are several possible procedural methods to remove the Constitutional Court justices. However, it is a very important aspect that, irrespective of the chosen method, the election procedure of the new justices should strengthen the guarantees of independence. This is also possible by returning to the regulations applicable before 2010 (e.g. nomination based on parity) but it may be reasonable to strengthen the independence of the institution by creating further safeguards which refer to the selection procedure of the judges, on the one hand, and which extend the cases of access to the court and its jurisdiction, on the other hand.

Gábor Halmai argues that Constitutional Court justices could be removed by dismissal due to unworthiness (or for other reasons), but since decision on these issues falls within the competence of the plenary of the Constitutional Court under the current rules, the right of dismissal should be first withdrawn from the body by amending the Fundamental Law and/or the Act on the Constitutional Court. In this case (as opposed to the case of the Head of State), however, it may raise concerns if the right of dismissal rests with the Parliament, therefore, this may be only an exceptional, one-time solution.⁵⁴ The Venice Commission, too, is of the view that the removal of constitutional court justices, if possible, should be decided on by the body itself⁵⁵ – but if the whole body's impartiality is questionable, this is obviously not a viable solution. On the basis of Halmai's line of argumentation it can be concluded that generally the independence of the Constitutional Court is at risk if dismissals may be decided by the Parliament on political grounds, but, exceptionally, the removal by the Parliament can be just the appropriate guarantee to restore independence (because this is a necessary and proportionate, and exceptional case). However, that solution requires that one-sided political influence is effectively eliminated when justices are elected later on.

It would be possible to reintroduce the age of pension of 70, and create empty seats in the body thereby.⁵⁶ Although this would mean a return to the system applicable before 2013, this solution is not

⁵³ See Act LXVII of 2024 repealing Section 6(2) of the Act on the Constitutional Court, under which the condition of “at least twenty years of professional practice in the field of law” laid down as part of the criteria for the election of Constitutional Court justices no longer needs to be spent in a position requiring a law degree.

⁵⁴ Gábor Halmai, “Alkotmányossági dilemmák.” [“Constitutional dilemmas.”] *Élet és Irodalom*, 24 April 2026, <https://www.es.hu/cikk/2026-04-24/halmai-gabor/alkotmanyossagi-dilemmak.html>.

⁵⁵ Venice Commission, *Ukraine – Opinion on the Draft Law on the Constitutional Court*, CDL-AD(2016)034, 12 December 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)034-e).

⁵⁶ Pál Sonnevend mentions that if the 70-year age limit were reintroduced with an effect including incumbent justices, 4 new justices could be elected out of the 15, while 7 justices appointed by Fidesz would remain in the body, together with a further 4 justices appointed by Fidesz with the consent of the opposition. Such an

unproblematic either. The decrease of the pension age can be justified, for example, on grounds of social policy, and implemented gradually, but whether it would be justifiable and proportionate to apply such measures to counterbalance earlier manipulations with the composition of the court has not yet been measured against European standards by the organizations in charge. Another possibility would be to decrease the number of justices from 15 to 11 again, and to provide for the termination of the mandates of all incumbent justices after the expiry of a certain transitional period.⁵⁷

According to András Baka, a solution similar to the 1998 reform of the composition of the ECtHR could be introduced. As a result of this, the mandates of all incumbent justices would be terminated, but those who fulfill new election criteria could be re-elected, provided they receive a nomination from the authorized organizations. However, for the sake of ensuring the continuity of the court's judicial activity, half of the members, decided by lot-drawing, would hold their mandates for only half of the office term, so the body would not be replaced in one go.⁵⁸

It must be emphasized that a replacement of the complete membership of the Constitutional Court can be legitimate only if the new Constitutional Court thus composed will indeed comply with independence criteria, and can appropriately perform its constitutional function of counterbalancing the government. That goal may be achieved in several ways. One of the basic rules of guarantee would be that the body's composition should be decided on with the involvement of the political opposition, for example by means of a nomination system based on parity and/or by electing the members by the Parliament's four-fifths majority. Since the opposition might resist cooperation, a carefully designed "anti-deadlock" mechanism should be introduced: for example, after two rounds, the threshold could be lowered to a two-thirds majority. The nomination procedure could be diverse, too: namely, a part of the members could be nominated by the consortium of law schools and the Hungarian Academy of Sciences, another part by the judiciary, and yet another part of them by the Parliament.⁵⁹ As a further election criterion, the current conflict of interest rules should be complemented by adding that no-one can be elected as a Constitutional Court justice who served as a member of parliament within four years preceding the election. As an important safeguard measure, the right of electing the court's president should be returned to the body itself.

A further, but a much more complex and, in the light of Hungarian constitutional traditions, more debatable solution would be to completely abolish the Hungarian Constitutional Court on the grounds that this model did not function well in Hungary. Instead, one of the panels within the organization of

amendment could not be interpreted as court packing and would not necessarily be regarded as a disproportionate restriction on judicial independence, given that this age limit is typically applied for Western European constitutional courts. The previous, politically motivated *ad hominem* abolition of the age limit would also justify its application to incumbent justices. Pál Sonnevend, "Constitutional Repair! Mapping the Context, Needs and Limits of Rebuilding Constitutional Democracy in Hungary." *VerfBlog*, 9 May 2026, <https://verfassungsblog.de/hungary-constitutional-repair/>.

⁵⁷ Ibid.

⁵⁸ András Baka, "Ilyen csak egyszer történt, amikor a náci Németország elfoglalta Hollandiát." ["Such a thing happened only once, when Nazi Germany occupied the Netherlands."] *24.hu*, 29 April 2026, <https://24.hu/belfold/2026/04/29/baka-andras-ketharmad-interju/>. A similar solution is outlined by László Detre, "Restoring Constitutional Justice in Hungary. It Shall Be Done – But It Shall Be Done in a (European) Constitutional Manner." *VerfBlog*, 29 May 2026, <https://verfassungsblog.de/restoring-constitutional-justice-hungary/>.

⁵⁹ László Detre, "Restoring Constitutional Justice in Hungary. It Shall Be Done – But It Shall Be Done in a (European) Constitutional Manner." *VerfBlog*, 29 May 2026, <https://verfassungsblog.de/restoring-constitutional-justice-hungary/>.

the judiciary, or within the Kúria could assume the functions of constitutional justice.⁶⁰ To realize this, however, a well-planned constitutional reform is needed, so this could not be a solution in the short run. Nevertheless, the increase of the efficiency of constitutional justice is also possible without in-depth institutional changes, for example, by granting the right of petition, similar to actions in the public interest (*actio popularis*), that would grant the right to refer to the Constitutional Court to civil organizations, or trade unions, thereby greatly enhancing the access to the court in contrast to the current regime under which abstract constitutional review can be initiated only by public office holders.

Conclusion

There are several legal fields that recognize and deal with situations when a right is exercised formally in a regular manner but for purposes incompatible with the social function of that right. Examples include the abuse of rights (in other words, “exercise of a right contrary to its purpose”), the consequences of which must be remedied appropriately (for example, by the reinstatement or the compensation of an employee dismissed in an abusive manner), or a contract contrary to good morals, which shall be null and void under civil law.

International and European standards seem to substantiate the view that the same logic is applicable in the domain of public law, and according to which the restoration of checks and balances is a constitutional value enjoying priority over the irremovability of high public office holders, even if the office holders concerned were appointed in a formally lawful procedure and their activity formally complied with legal requirements. In fact, it is a decisive factor, that the selection of the office holders concerned and their professional activity as a whole aimed at undermining the rule of law and the elimination of counterbalancing functions. In our background paper we intended to give a summary of the arguments and aspects based on which this systematic abuse may be addressed, and the functioning of independent institutions in a rule of law context may be restored.

It is a matter of political choice to decide which of the solutions outlined here should be finally implemented, but that decision – in order to maintain the safeguards of the rule of law – must be taken in a transparent negotiation procedure and must necessarily go hand in hand with the strengthening of the guarantees of independence related to the selection of the new office holders.

⁶⁰ Ibid.