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DA CAPO WITHOUT FINE

In hunt for corruption until the end of times

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EXECUTIVE SUMMARY

On 30 November 2022, the European Commission found that Hungary had not sufficiently progressed in its reforms, therefore, the conditions to suspend union funds remained in place and further essential steps would be needed to eliminate the risks for the EU budget. Several of the 27 anti-corruption and rule of law “super milestones” prescribed by the European Commission¹ relate to the restoration of the independence of the judiciary, confirming the criticism previously voiced by Hungarian NGOs.² The fact that an independent judiciary is essential to fight corruption becomes clear in light of two high-profile corruption cases that got derailed at courts during the term of the ongoing Rule of Law Conditionality Procedure. These cases provide a clear proof that while the Hungarian Government declares to have taken all appropriate measures to disperse the serious concerns raised with respect to the effectiveness of the Hungarian anti-fraud and anti-corruption framework, the steps taken are insufficient to reassuringly address the serious rule of law concerns. The two cases highlight that proper legislative steps are necessary to restore the independence of courts and judges in Hungary, otherwise, all anti-corruption proceedings will end up in a court system where political appointees have almost complete freedom to allocate any case to any judge, converting the system of court administration into an inroad of corruption. The below described individual cases also point out the crucial role of court leaders. The mere fact that all judicial leaders involved in the administrative decisions blocking the normal course of the proceeding gained their judicial position by non-standard means reflects on the necessity of a full screening of the judiciary. This means that in addition to the “super milestones” prescribed by the European Commission that may put an end to arbitrary and uncontrolled court management powers for the future, a full screening of the Hungarian judiciary as a milestone zero should be introduced³ in order to restore the damages already done over a decade.

INTRODUCTION

The present paper describes **two high-profile corruption cases**, which reached the Hungarian courts, but were derailed within the court system through administrative means. What is common in both cases is that these have strong ties with high-ranking politicians of the ruling Fidesz-KDNP party and in all cases, **court administration measures were applied to block the normal course of the proceeding**. Finally, the measures were taken by judicial leaders who were appointed by the ruling majority.

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7273

² See: Half-hearted Promises, Disappointing Delivery, An Assessment of the Hungarian Government’s New Measures to Protect the EU Budget and Related Recommendations, 7 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/Assessment-of-measures-to-protect-EU-budget.pdf> p. 5.

³ https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HHC_judiciary_milestone_zero_28112022.pdf

I. THE SIMONKA-CASE

Budget fraud with HUF 1.4 billion (EUR 3.4 million) financial loss

The former Fidesz MP György Simonka⁴ built a reputation as a vegetable and fruit sales entrepreneur during the 2000's in the Dél-Alföld Region which is one of the most undeveloped rural parts of Hungary. Besides his business activities, he became the mayor of a small village in the region and was also the president of the Hungarian Melon Association. In 2014, Simonka got elected as MP for Fidesz and won the seat again in 2018. Exploiting his financial and political influence, Simonka successfully built an extensive network of firms operating across the region. The companies that were part of the network were managed by immediate relatives and acquaintances of Simonka and other Fidesz MPs. The group showed a very significant ability to successfully apply for domestic and EU subsidies.

After the election of Simonka as mayor of Pusztaotlaka (a village of 400 residents) in 2006, the village achieved outstanding successes in applying for EU funds. The settlement received more than HUF 600 million (approximately EUR 1.4 million⁵) in support from several 2007-2013 EU funds⁶ and HUF 1.9 billion (approximately EUR 4.6 million) in subsidies from 2014-2020 operative programmes,⁷ making it the most successful settlement in the region. Despite the spectacular application successes, several large-scale developments⁸ have not achieved the project goals,⁹ including the construction of an industrial park, a bicycle tour centre and the development of a wildlife park experience centre. One of the main beneficiaries of the subsidies concerning the unimplemented developments at Pusztaotlaka was a nonprofit organization lead by Simonka's sister.

In October 2018, the Hungarian National Assembly suspended Simonka's immunity as MP. In August 2019, the Hungarian prosecution service charged¹⁰ Simonka and his co-defendants with corruption and mismanagement of EU and state funds. According to the indictment handed down by the prosecution, the budget fraud resulted in particularly considerable financial loss amounting to HUF 1.4 billion (approximately EUR 3.4 million). The scale of the fraud might have been several times higher, as not all related cases were included in the indictment.¹¹ [See a more detailed description of the indictment under [Annex 1](#)]. Despite the serious charges, Simonka avoided arrest, unlike several of his co-defendants. For the purposes of the criminal procedure, the prosecution separated¹² the investigation of crimes related to the misuse of EU funds from the domestic subsidy misuse charges. Prosecuting authorities are conducting the EU funds related investigation separately from the core-case, therefore the court proceeding with respect to union funds still waits to be launched.

The "unexpected twist" in the court proceeding

The criminal trial against Simonka and his co-defendants (including his wife, relatives and friends) was initiated at the Metropolitan Regional Court in August 2019. In the summer of 2022, **after three years and 25 trial days at court, the presiding judge of the case was replaced before the first instance judgment could be delivered.** In accordance with the Hungarian rules of criminal proceedings,

⁴ György Simonka used to serve as mayor of a village in the Dél-Alföld Region of Hungary, named Pusztaotlaka between 2006-2014. Parallel with that, between 2010-2022 Simonka used to be MP of the governing Fidesz party. Since 2022, Simonka serves as deputy mayor of Pusztaotlaka.

⁵ When calculating the amounts in EUR, we applied the HUF/EUR exchange rate as per the date of the present document.

⁶ TÁMOP, GEOP, DAOP [ERDF and ESF]. Please see here: http://eupalyazatiportal.hu/nyertes_palyazatok/ To see all results, search for "EU 2007-2013" under "Development programmes", "Dél-Alföld" under "Region" and "Pusztaotlaka" under "Location (settlement)."

⁷ TOP, GINOP, EFOP [ERDF and ESF]

⁸ See in Hungarian: <https://magyarnarancs.hu/kismagyarorszag/meg-nem-valosult-milliardos-projektek-simonka-falujaban-135288>

⁹ See in Hungarian: <https://24.hu/kozelet/2022/01/26/csatater-2022-simonka-gyorgy-pusztaotlaka-oroshaza-eu-tamogatas/>

¹⁰ See: <https://hungarytoday.hu/fidesz-mp-gyorgy-simonka-and-accomplices-charged-of-fraud/>

¹¹ See: https://en.civitasintezet.hu/wp-content/uploads/2022/02/Black_Book_II.pdf p. 143.

¹² See: <https://magyarnarancs.hu/kismagyarorszag/simonkara-valoszinuleg-ujabb-buntetoeljaras-var-derul-ki-a-kozponti-nyomozo-fogveszseg-vadiratbol-126318>

replacing the judge meant that the whole court stage of the criminal procedure had to be started anew, from scratch.¹³

According to the official reasoning shared with the public, the change of the presiding judge was inevitable. As the spokesperson of the Metropolitan Regional Court Tamás József Szabó claimed, the change is “[n]either fortunate, nor optimal, but unavoidable in a professional and organizational sense, as our colleague [the presiding judge of the corruption case] has left the Metropolitan Regional Court.” Nonetheless, if we take a closer look at the transfer of the presiding judge, the circumstances suggest that **the change was hardly unavoidable, but rather facilitated by the highest administrative leaders of the court system.**

An appointment facilitated by court administration measures

Based on the publicly available information, it is clear that **the judge of the Simonka case got appointed to the Kúria via a tailor-made application procedure.** His appointment was facilitated by the following court administration measures:

- (i) A couple of months before the opening of the application procedure, with effect from 1 September 2021, the judge of the Simonka case was **seconded to the Kúria**. His secondment was initiated by the Kúria President, András Zs. Varga on the legal ground of *“facilitating his professional advancement.”* (This legal ground was applied despite of the fact that the judge of the Simonka-case was already seconded to the Kúria in 2014 for more than half year.) The secondment was ordered by the President of the National Office for the Judiciary (NOJ). The resolution did not contain any reasoning as to the merits of the secondment (e.g. why exactly the judge of the Simonka-case was selected to gain additional professional experience at the Kúria), just indicated that the judge consented to the secondment. (It must be added that under the Hungarian rules, even though the judge of the Simonka-case was seconded to the Kúria, he could carry on with hearing the case at Metropolitan Regional Court.)
- (ii) Before the expiry of its term on 31 December 2021, the **secondment was prolonged** for more than half a year until 15 July 2022. The prolongation was initiated by the Kúria President, ordered by the NOJ President and consented by the judge of the Simonka-case.
- (iii) During the prolonged term of the secondment, an **application procedure was opened** at the Kúria for the position of a criminal judge. According to the call for application *“experience in appeal proceedings at the Kúria”* was evaluated as an advantage. For applicants (necessarily serving at lower tier courts) the only way to gain *“experience in appeal proceedings at the Kúria”* was by secondment – just as happened in the case of the judge of the Simonka-case. By little surprise, the judge of the Simonka-case was chosen to be appointed. The fact that his position as Kúria judge was pre-secured is also reflected by the circumstance, that although he was finally transferred to the Kúria by way of a new appointment, he simply continued to work at the same position as he started to work at as a seconded judge earlier.

The judge of the Simonka case got appointed as a Kúria judge with effect from 1 June 2022. With respect to the individual judge, the above court administration measures provided an undue advantage during the application procedure and paved his way to the top tier of the court system. From the perspective of the Simonka case, the above described court administration measures resulted in a remarkable delay in the proceedings due to the fact that the change of the judge required

¹³ Article 518 of Act XC of 2017 on the Code of Criminal Procedure.

the restart of the procedure. In the meantime, Simonka himself – ex MP of Fidesz – slowly returned to public life and became the deputy-mayor of Pusztaotlaka in October 2022.¹⁴

II. THE QUAESTOR-CASE

The biggest fraud case in the recorded history of Hungary

The Quaestor-case is the biggest fraud case ever pending at the courts of Hungary. The main suspect of the criminal procedure is Csaba Tarsoly, the owner and former CEO of the Hungarian Quaestor group, a businessman who reportedly had strong ties and active connections with the Fidesz-KDNP government and its high-ranking politicians. The scandal broke out in March 2015, when the Central Bank of Hungary suspended the trading license of a Quaestor brokerage company because it was suspected that **out of the HUF 210 billion** (approximately EUR 512 million) **bonds issued by the company, HUF 150 billion's** (approximately EUR 365 million's) **worth of bonds were non-existent**. One day before the company collapsed, the Minister of Foreign Affairs, Péter Szijártó emptied the Ministry's account held at the brokerage company. Later, the Ministry denied insider trading. At the same time, 24 local governments were also among the victims of the fraud and the brokerage company left 10 000 Hungarian investors without compensation.¹⁵

Arbitrary secondment terminated at a critical point of the proceeding

The case was brought to court by the prosecution service in 2016. After six years, it is still pending at the Metropolitan Regional Court acting as first instance court.

At the time of initiating the criminal procedure, the case was allocated to a judge appointed to the Metropolitan Regional Court. In the first year of criminal trial of the Quaestor-case, the judge dealing with the case applied for an open position at the Kúria and got appointed from 1 October 2017. Despite her appointment to the Kúria (a remarkably higher position in the court system), she continued to serve in her original position, because with effect from the date of her appointment to the Kúria, she was seconded "back" to the Metropolitan Regional Court. The legal ground of the secondment was not clarified but considering that the secondment was ordered from a higher court to a lower court, it is evident that it was ordered to reduce workload at the receiving court (and not for professional advancement of the judge, which is the other reason for which a judge may be seconded to a different court). Seconding the judge of the Quaestor case back to her original position for the purposes of reducing excessive workload raised several concerns:

- (i) On the one hand, the mere fact that seconding a judge back to his/her former position at an inferior court for years after being appointed to a higher court is a proof that prolonged secondments are used as an alternative to new appointments. Instead of appointing a new judge to the position, the judge of the Quaestor case was requested to continue working in that same position as a seconded judge. This is against the law because secondments should only serve as temporary solutions.
- (ii) On the other hand, the application of the rules of secondment in such a way, that the judge is seconded back to her former position exactly from the day she should have been promoted is – beyond doubt – effected with the clear purpose to keep the judge on that particular case. This is also against the law, which does not allow for seconding judges to deal with specific cases (but rather to reduce workload in general).

¹⁴ <https://magyarnarancs.hu/kismagyarorszag/simonka-gyorgy-alpolgarmester-lett-puszaotlakan-252806>

¹⁵ See more in English in the Black Book of Corruption in Hungary 2010-2018, Transparency International https://transparency.hu/wp-content/uploads/2018/03/Black-Book_EN.pdf p. 39.

(iii) Finally, the fact that throughout all these years the Quaestor case was heard by a seconded judge, **weakened the position of the judge as the lawful judge of the case.** In fact, the secondment was first ordered for one year, but it was later prolonged by further four years via seven consequent resolutions. This also means that by every new term of secondment, the judge had a chance to reconsider whether she wanted to take the case further.

According to the last resolution, the secondment was supposed to end on 30 June 2022, but in April 2022, the secondment was terminated before the expiry of the term. The resolution taken by the NOJ President on 28 April 2022 terminated the secondment with effect of 30 April 2022 (within two days). The termination of the secondment in practice resulted in a significant delay in the proceeding which had already been pending for six years at the court of first instance. It is unquestionable that the delay caused by changing the judge in the sixth year of the proceeding is far more remarkable than the delay that the replacement of the judge would have caused in the first year of the proceeding (when the secondment started).

The situation is even worse considering the interpretation provided by the Kúria President, according to which the secondment could have been terminated anytime during the whole term either by the judge concerned or by administrative leaders. The Kúria President has expressly affirmed this interpretation (which is completely in breach of the principle of irremovability of judges and the right to a lawful judge): *“A precondition of seconding a judge is a consent between the court where the judge holds a post, the court of secondment and the judge. **In the absence of the consenting declaration of any party, the secondment cannot be ordered or it shall be terminated. Secondment is an extraordinary form of judicial service. Therefore, withdrawal of the consenting declaration and thus the termination of the secondment shall not be explained or reasoned.**”*¹⁶ [emphasis added]

III. THE ROLE OF ADMINISTRATIVE LEADERS

In both cases described above, the court administration measures were taken and/or initiated by judicial leaders who were elected by the ruling majority: the NOJ President and the Kúria President. In both cases, the third court-leader agreeing to the secondment was the President of the Metropolitan Regional Court (the most significant court in size and caseload). Since 2019, this position is filled by a close relative of a high-ranking ruling party politician, whose appointment as a judge of the Metropolitan Regional Court was effected applying one of the long-known but unaddressed loopholes in the Hungarian legal provisions that enables to circumvent judicial appointments.¹⁷

Both high-profile corruption cases had to be reassigned to a new judge after years of trial at first instance. In both cases, amongst others, the measures of secondment¹⁸ were applied to ease the transfer of the judge concerned.

¹⁶ Press release of the Kúria of 4 May 2022 on the termination of the secondment of a judge dealing with a high-profile corruption case <https://kuria-birosag.hu/hu/sajto/kuria-kozlemenye-questor-ugyben-eljaro-biro-kirendelesenek-megszuntetese-targyaban>

¹⁷ See: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HHC_Schadl-Volner-case_18112022.pdf

¹⁸ See: <https://helsinki.hu/wp-content/uploads/2022/09/Background-Paper-on-the-Secondment-of-Judges-in-Hungary-updated-06092022.pdf>

ANNEX I.

Summary of the charges brought against Simonka and his accomplices by the prosecutor's office

The charges brought against Simonka by the prosecutor's office in August 2019¹⁹ can be summarised as follows:

The prosecutor's office requested in the indictment eight and half years of prison sentence and forfeiture of HUF 850 million (approximately EUR 2 million) in assets for György Simonka, ex Fidesz MP in case he accepts the charges and waives his right to defend himself. The criminal proceeding was initiated against 33 people in the dock. According to the charges, as of 2009 Simonka and his fellow businessmen involved in vegetable and fruit farming in the Dél-Alföld Region of Hungary had set up an organized and extensive system to deceive and corrupt representatives of state authorities with the aim of getting hold of non-refundable EU and domestic grants. The group of 33 persons suspected includes immediate relatives of Simonka and other Fidesz MPs.

According to the indictment, members of the group used companies, mainly agricultural cooperatives under their management to apply for agriculture-related domestic and EU funds. The essence of the fraud lied in the alleged practice that the submitted applications included overpriced asset purchases and also set exaggerated contractor fees for the implementation of the projects. Also, in most cases, project goals were mostly fulfilled only on paper. At the same time, as witnesses claimed, building contractors were obliged to return 40-45% of their fee in cash²⁰ to their clients pursuant to the fraud scheme determined by Simonka. Contractors testified during the court procedure that garbage bags were used to bring the negotiated cash to beneficiaries of the fraud. The two flagship agricultural co-ops involved in the subsidy fraud plot were *Magyar Termés TЭСZ Kft.* and *Paprikakert TЭСZ Kft.*

Magyar Termés co-op went bankrupt in 2017. As a consequence of the investigation, state authorities ordered the repayment of unauthorized rural development subsidies amounting to HUF 1 billion²¹ (approximately EUR 2.4 million) that had been provided by the Ministry of Agriculture and several other state institutions beforehand. The Hungarian State Treasury also established that *Paprikakert* co-op, also involved into the fraud scheme, was obliged to repay HUF 410 million²² (approximately EUR 1 million) in subsidies due to fraudulent financial operation. This latter company received EU financial support in addition to domestic agricultural subsidies at the heyday of its operation.²³

According to the indictment, two legal personalities were at the heart of the Simonka-linked company network with respect to the fraudulent use of EU funds. The separated investigation (still going on) covers the activities of *Dél-Békés Mezőgazdasági Termelőiért Közhasznú Alapítvány* (*South-Békés Agricultural Producer's Public Benefit Foundation*) which was provided with HUF 300 million (approximately EUR 730,000) in EU subsidies during the 2007-2013²⁴ programming period and HUF 750 million (approximately EUR 1.8 million) in the 2014-2020²⁵ timeframe. The *Dél-békés Többcélú Kistérségi Társulása* which is also subject of the prosecution's investigation concerning the

¹⁹ See: <http://ugyesszeg.hu/vademeles-az-oroszaggyulesi-kepviselo-es-tarsai-elleni-buntetoeljarasban/>

²⁰ See: <https://magyarnarancs.hu/kismagyarorszag/a-tanu-szerint-kukaszakban-600-millio-forintot-vitt-simonkanak-a-politikus-szerint-ez-hazugsag-243832>

²¹ See: <https://24.hu/fn/gazdasag/2020/06/23/simonka-gyorgy-kozpenz-tamogatas-mvh-allamkincstar-magyar-termes-tesz/>

²² See: <https://24.hu/belfold/2021/12/02/simonka-gyorgy-bekes-megye-pusztatottlaka-paprikakert-tesz-magyar-allamkincstar-transparency-international/>

²³ DAOP-2.1.1/J-12

²⁴ TÁMOP-5.5.1.B-11/2; TÁMOP-2.2.7-B-2-13/1; TÁMOP-1.4.1-12/1

²⁵ TOP-1.2.1-16-BS1; TOP-1.2.1-15-BS1

inappropriate use of EU funds, received HUF 285 million EU (approximately EUR 670,000) financial support between 2007 and 2014.²⁶

As highlighted by Transparency International: *“a particularly interesting aspect of the proceeding against György Simonka is that the accused, being member of parliament of the governing party, voted in November 2019 for the election of Péter Polt as Attorney General for another nine years. Although the vote was secret, there is reason to believe that the two-thirds required for the re-election of the Attorney General was 134 votes in favour, exactly the same number of votes as there are governing party MPs. It is therefore obvious that György Simonka must have voted for the re-appointment of the chief prosecutor.”*²⁷

²⁶ ÁROP-1.1.5-08/C/A; TÁMOP-6.1.5-13; TÁMOP-5.4.9-11/1; TÁMOP-5.1.3-09/2; TÁMOP-5.1.1-09/6

²⁷ See more in English in the Black Book of Corruption in Hungary 2010-2018, Transparency International https://transparency.hu/wp-content/uploads/2018/03/Black-Book_EN.pdf p. 39.