



# HUNGARIAN HELSINKI COMMITTEE

Budapest, 5 October 2023

**Council of Europe**

**DGI – Directorate General of Human Rights and Rule of Law**

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

F-67075 Strasbourg Cedex

France

[dgi-execution@coe.int](mailto:dgi-execution@coe.int)

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

Dear Madams and Sirs,

The **Hungarian Helsinki Committee** (HHC) hereby respectfully submits its observations and recommendations under Rule 9(2) of the *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements* regarding the execution of the judgment of the European Court of Human Rights in the **Baka v. Hungary case** (Application no. 20261/12, Judgment of 23 June 2016), in advance of the next meeting (December 2023) (DH) of the Ministers' Deputies on the execution of judgments.

The 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.

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**)<sup>1</sup> and the latest Decision CM/Del/Dec(2023)1459/H46-11 adopted by the CM in March 2023 (hereafter: **2023 CM Decision**).<sup>2</sup>

The present communication also intends to reflect on the notes attached to the latest CM decisions, with special regard to CM/Notes/1411/H46-16 (hereafter: **2021 CM Note**)<sup>3</sup> and CM/Notes/1459/H46-11 (hereafter: **2023 CM Note**).<sup>4</sup>

<sup>1</sup> See: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a597f9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a597f9)

<sup>2</sup> See: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2023\)1459/H46-11E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2023)1459/H46-11E)

<sup>3</sup> See: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a3a4fe](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a3a4fe)

<sup>4</sup> See: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1459/H46-11E>

## I. PRELIMINARY NOTES AND RECOMMENDATIONS

### I.1. All available procedural measures should be weighed to persuade the Hungarian authorities to execute the judgment

More than seven years have passed by since the *Baka v. Hungary* judgment was delivered on 23 June 2016. Since then, the Baka-case has become an outstanding example for non-execution of judgments of the European Court of Human Rights (ECtHR). The fact that the implementation of the judgment requires general measures to guarantee protection from undue interference in the status of judges and safeguards for their freedom of expression adds further dimensions to the consequences of non-execution of the Baka-judgment, shedding light on Hungary's reluctance to respect democratic values and the rule of law.<sup>5</sup> Despite the enhanced supervision of the execution by the Committee of Ministers, after six CM decisions -- including an interim resolution -- and almost a dozen of Rule 9 submissions by different civil society actors calling attention to the urgent need for the implementation of the judgment and the detrimental consequences of non-execution, there is still no progress in the case. Hungarian authorities *de facto* ignore the CM decisions and refuse to abide by the final judgment in adopting general measures.

**For the above reasons, the HHC respectfully recommends the CM to continue examining under enhanced procedure the execution and effective implementation of the judgment in the *Baka v. Hungary* case and to consider all available procedural measures to persuade Hungarian authorities to take the execution process seriously.**

### I.2. Remarkable changes over the years in the general context of the case should be considered

During the time lapsed since the removal of András Baka in 2012 and the delivery of the Baka judgment thereafter in 2016, **the general context within which the judgment should be executed has significantly changed.** The Hungarian judicial system has been remarkably reshaped, mostly as a consequence of several subsequent legislative amendments adopted by the ruling majority over the years.<sup>6</sup> One of the major changes was the **radical politicisation of the position of the Kúria President in 2020 by electing András Zs. Varga as Kúria President**<sup>7</sup> based on the new rules of eligibility introduced a couple of months before the election became due. Parachuting András Zs. Varga to the position of Kúria President based on *ad hominem* legislation without former experience as a judge and against the manifest objection of the National Judicial Council (NJC) was interpreted by the UN Special Rapporteur on the Independence of Judges and Lawyers 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.”*<sup>8</sup>

This particular development is highly relevant for the execution of the *Baka v. Hungary* judgment which requires stronger safeguards against the removal of the Kúria President and guarantees for the freedom of expression of judges in general. **Therefore, we are of the view that the general measures prescribed by the CM should reflect on the role and activity of the new Kúria President as an**

<sup>5</sup> The non-implementation of the Baka-case was highlighted in the European Commission's 2023 Rule of Law Report. [https://commission.europa.eu/system/files/2023-07/40\\_1\\_52623\\_coun\\_chap\\_hungary\\_en.pdf](https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf)

<sup>6</sup> The undue and premature termination of the mandate of András Baka was the first step in the series of systemic attacks against the independence of the judiciary in Hungary. Since then, for over a decade now, the governing majority has been systematically undermining the independence of the judiciary through legislative steps and court administration measures.

<sup>7</sup> See: <https://helsinki.hu/en/new-chief-judge-potential-transmission-belt-of-the-executive/>

<sup>8</sup> See: <https://helsinki.hu/en/the-appointment-of-andras-zs-varga-not-even-the-un-was-provided-with-an-explanation-by-the-government/>

**important aspect of the general context within which the judgment must be executed.** This requires particular care at assessing the adequacy of the general measures prescribed, especially the ones that should serve to lift and countervail the chilling effect on the freedom of expression of judges.

We urge the CM to consider the fact that **the Kúria President actively contributes to curtailing the freedom of expression of judges and keeping up the chilling effect amongst judges** [see below under Section III.2.]. This means that adequate safeguards against the removal of the Kúria President will be insufficient for guaranteeing the freedom of expression of Hungarian judges in general, and concrete legislative steps must be taken to remedy the breach caused in the freedom of expression of judges.

**For the above reasons, the HHC respectfully recommends the CM to take into account with due care the role and activity of the current Kúria President as part of the context of proper execution when assessing the general measures to be taken by Hungarian authorities to guarantee the freedom of expression of judges. General measures prescribed to lift and countervail the chilling effect on the freedom of expression of judges and rebuild the confidence of Hungarian judges in their ability to express their opinions without fear of negative consequences shall primarily require the Hungarian authorities to introduce legislative measures, possibly at the rank of cardinal laws that guarantee the exercise of the freedom of expression and provide adequate legal remedy against its breaches.**

### **I.3. The 2023 Judicial Reform did not implement the *Baka v. Hungary* judgment**

#### *A) The Information Note of the Hungarian Government on the Judicial Reform*

On 22 May 2023, the Hungarian Government submitted an information note (Information Note) to the CM. The Note informed the CM that the Hungarian Parliament had adopted Act X of 2023 on the Amendment of Certain Laws on Justice Matters related to the Hungarian Recovery and Resilience Plan (Judicial Reform), which had entered into force on 1 June 2023. The Information Note emphasizes that the Judicial Reform was passed to implement the four judicial super milestones set by the European Council and the European Commission to get access to the Recovery and Resilience Fund (RRF) and cohesion funds allocated for Hungary. At the same time, it also claimed that the Hungarian Government “trust that the adoption of the Act will put an end to the debates on the independence of the Hungarian judicial system not only within the European Union but also within the Council of Europe.”<sup>9</sup> **The expectations of the Hungarian Government to close all outstanding issues by the adoption of the Judicial Reform are unrealistic.** The Judicial Reform was exclusively introduced to achieve the super milestones set by the European Union. Although it could have also been an opportunity to execute the *Baka v. Hungary* judgment, the Hungarian authorities did not take any steps to implement the judgment in the framework of the Judicial Reform.

#### *B) The overall assessment of the Judicial Reform*

The HHC together with Amnesty International Hungary (AIHU) and the Eötvös Károly Institute prepared a detailed assessment of the Judicial Reform<sup>10</sup> in May 2023, and concluded that even though in general it showed a willingness to fulfil the RRP milestones, deficiencies remained, and these deficiencies signalled that the Hungarian government’s willingness to comply with the conditions for accessing EU funds was not paired with a true commitment to restoring the rule of law. The joint assessment also calls attention to future risks and prospects to be considered in restoring the independence of the

<sup>9</sup> See page 3 of the Information Note [unnumbered].

<sup>10</sup> The joint assessment is available here: [https://helsinki.hu/wp-content/uploads/2023/05/Assessment\\_of\\_the\\_Judicial\\_Reform\\_052023.pdf](https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf)

judiciary, pointing out that the Judicial Reform does not provide effective and adequate safeguards against abuse when it comes to restrictions on judges' freedom of expression.

### C) The Judicial Reform should not exempt Hungarian authorities from evaluating domestic legislation

In March 2022, the CM adopted Interim Resolution CM/ResDH(2022)47 reminding Hungarian authorities of their undertaking to evaluate the domestic legislation on the status of judges and the administration of courts regarding the guarantees and safeguards protecting judges from undue interferences, to enable the Committee to make a full assessment as to whether the concerns regarding the 'chilling effect' on the freedom of expression of judges caused by the violations in these cases have been dispelled.

**In order to provide clear proof that the Judicial Reform has resolved the possibilities of undue interference with respect to the removal of judges and the exercise of their freedom of expression, the Hungarian authorities have to proceed with the evaluation of the domestic legislation on the status of judges and the administration of courts, including an analysis of the impact of all legislative and other measures adopted and foreseen on judges' freedom of expression to make a full assessment as to whether the concerns regarding the 'chilling effect' on the freedom of expression of judges caused by the violations in these cases have been dispelled.**

#### **I.4. The dismissive approach of the Hungarian authorities persists**

The dismissive approach taken by the Hungarian authorities in the proceeding pending before the CM persists, and the Hungarian authorities did neither respond to the CM's invitation to submit an updated action plan by 30 September 2023 nor presented an evaluation of the domestic legislation regarding guarantees and safeguards protecting judges from undue interferences, to dispel concerns regarding the chilling effect on the freedom of expression of judges in Hungary. Non-implemented general measures are related to 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.

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

### **II.1. The non-execution of the required general measures are part of a wider pattern**

Over the years, the CM has urged Hungarian authorities on several occasions to amend the legislation to ensure that a **decision by Parliament to impeach the Kúria President will be subject to effective oversight by an independent judicial body**, given the crucial importance of judicial independence for the rule of law. Despite the reiterated requests by the CM, the Hungarian authorities insist on excluding access to court in such cases. The persisting reluctance by the Hungarian authorities to modify the rules of impeachment by Parliament without effective oversight by an independent judicial body is, in fact, **part of a wider pattern which aims to uphold political pressure on the judiciary by the legislature via the Kúria President.**

Taking a closer look at the rules governing the mandate and the status of the Kúria President makes it clear that – simultaneously with the removal of András Baka in 2012 – the ruling majority established a **set of rules that allow undue political pressure on (and via) the highest judicial position.** The lack of an effective oversight by an independent judicial body regarding Parliament's competence to

remove the Kúria President is just one element of the set of rules that enable political interference with the position. In addition to the widely criticized rules of election of the Kúria President, introduced in 2019 and repealed by the Judicial Reform as part of compliance with the super milestones, several other rules can have this effect.

- (i) The Kúria President is elected by Parliament by a two-thirds majority, for a period of nine years.<sup>11</sup> This **term can practically be prolonged for an indefinite period**. According to the Hungarian legislation, even when the nine-year long mandate expires, if there is no two-third majority for electing a new Kúria President in Parliament, the Kúria President shall remain in office until the new president is elected.<sup>12</sup> This means that **a blocking minority in Parliament can prevent the election of a new president and keep the incumbent Kúria President in office for an undetermined period of time**.
- (ii) In addition to that, the legislation allows the Kúria President to **stay in office beyond the statutory retirement age for judges**, leaving it fully to a one-third minority in Parliament to decide on the termination of the mandate.<sup>13</sup>
- (iii) Removing the Kúria President from office for becoming “unworthy” of the position may be initiated by the President of the Republic and voted by the Parliament by two-thirds majority. This means that the same blocking Parliamentary minority can keep the Kúria President in office (even after the mandate terminates, for an indefinite period) which can prevent the Kúria President from being removed from office (even if called out for being unworthy).
- (iv) While the removal of the President of the National Office for the Judiciary (NOJ) can be initiated by the National Judicial Council (the body supervising the administration of courts), the removal of the Kúria President cannot be initiated by the NJC that otherwise holds powers to supervise the administrative powers of the Kúria President.<sup>14</sup> Thus, **the legislation leaves it fully to political actors, without the involvement of a judicial body** (not even the judicial self-governing body) to launch the relevant procedure and to decide on the removal of the Kúria President.

Considering the fact that the Kúria President holds key powers within the judiciary both in the final adjudication of cases, in ensuring the uniformity of the jurisprudence of Hungarian courts and in the management of the apex court, the possibility of keeping or removing the Kúria President in position allows the legislature to exert undue pressure on the Kúria President.

**For the above reasons the HHC respectfully recommends the CM to put emphasis on the non-execution of the Baka judgment as part of a wider pattern by Hungarian authorities to put undue political pressure on the judiciary through the Kúria President and require general measures that remedy holistically the possibilities of undue interference in the mandate of the Kúria President.**

### **III. UNDUE RESTRICTIONS OF THE FREEDOM OF EXPRESSION OF JUDGES [ARTICLE 10 OF THE ECHR]**

#### **III.1. The freedom of expression of Hungarian judges should be assessed in a holistic manner**

**The Baka v. Hungary judgment applies a holistic assessment of the freedom of expression of Hungarian judges**, when it takes into account the chilling effect Mr Baka’s removal might have played on other judges. Since 2021, the notes attached to the CM decision repeatedly claim that *“It is recalled at the outset that the Court in the Baka judgment held under Article 10 that the premature termination of the applicant’s mandate undoubtedly had a ‘chilling effect’ also on other judges and court presidents*

<sup>11</sup> Article 26(3) of the Fundamental Law.

<sup>12</sup> Section 115(4) of Act CLXI of 2011.

<sup>13</sup> Article 26(2) of the Fundamental Law.

<sup>14</sup> Section 116(1) of Act CLXI of 2011.

*(see case description). It follows, therefore, that once the measures outlined above are taken to safeguard the right to freedom of expression on the most senior and prominent member of the judiciary, namely the President of the Kúria, this would be a major step forward in redressing the chilling effect created by the violations.”*

While in principle this is undoubtedly true, because of the Kúria President’s obvious unwillingness to stand up for the protection of judges’ freedom of expression, in addition to the focus on the safeguards regarding the removability of the Kúria President, **just as much attention should be paid in the execution process to those gaps in the legal framework that can contribute to the silencing of judges who would wish to raise their voice publicly in relation to judicial independence and the functioning of the justice system.**

**In that context, the HHC respectfully recommends the CM to require the Hungarian government to take effective measures to guarantee the freedom of expression of judges, including legislation that unambiguously regulates this issue in accordance with the ECtHR’s jurisprudence and in the vein of the relevant provisions of the new Code of Ethics as adopted by NJC.**

### III.2. The role of the Kúria President in silencing critical judges

Instead of speaking up against attempts to silence judges, the Kúria President, who once called the judiciary the most dangerous branch of government and said that judicial self-administration was the “consequence of a misunderstanding” and “a delusion”,<sup>15</sup> has joined the ranks of those who publicly attacked members of the NJC,<sup>16</sup> and challenged the new Code of Ethics of Judges<sup>17</sup> adopted by the NJC to implement the *Baka v. Hungary* judgment.

Since the last review of the *Baka v. Hungary* case, the Kúria President has further contributed to the efforts aimed at hindering the free expression of judicial opinions regarding subjects to which judges’ freedom of expression extends according to the ECtHR jurisprudence. The Kúria President also took a leading role in building the new political narrative on the Judicial Reform.

On 3 July 2023, barely one month after the entry into force of the Judicial Reform, the Kúria President gave a radio interview<sup>18</sup> in which he claimed that the Judicial Reform was externally driven and forced on Hungarians, unapplicable, causing legal instability in the operation of the Kúria and was ultimately “ordered” to petrify the Hungarian judicial system. The interview outlined a new political narrative, according to which the sovereignty of Hungary needs to be protected against the actors requiring the country to adopt the Judicial Reform. The Kúria President took a leading role in building this narrative in his interview, where he claimed, amongst others, the following.

*“I have said, it is not a secret, that there are some provisions in this law [the Judicial Reform], and it is not me, who says this, but the domestic drafters of the law are saying that it is an imposed law. [...] There are parts of it that cause confusion, as if those who wrote this law wanted*

<sup>15</sup> See: <https://helsinki.hu/en/an-illiberal-chief-justice/>

<sup>16</sup> As the NJC’s criticism came at a time when stakes became high for the Hungarian government, because rule of law issues - including problems related to the independence of the judiciary - could for first time easily lead to freezing or losing European Union funds, a fierce smear campaign was started against the two NJC members in October 2022 for accepting the Ambassador’s invitation. As outlined in HHC’s former Rule 9 submission,<sup>16</sup> over 450 discrediting articles were published in government-affiliated media outlets about the two concerned judges, and high-ranking government and party politicians also made condemning statements questioning their integrity. [see: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)157E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)157E) p 10.]

<sup>17</sup> As opposed to the old code, the new Code of Ethics (i) includes clearer wording for judges’ freedom of expression, stating that a judge may participate in “public events organized in accordance with the law”, with the limitation that their participation should not create the perception of political commitment; (ii) it also states that judges are free to express their opinions on “laws, the legal system and the administration of justice” which was at least doubtful in the previous code; and finally, (iii) it sets out more detailed ethical standards for court leaders (e.g. banning them from speaking on behalf of judges working in their courts). [See: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)157E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)157E) p 11.]

<sup>18</sup> See the interview at <https://www.youtube.com/watch?v=EspkKuhO4Zo>

*it not to work. Now, we're doing our best to make it work, but it's not going to be easy." [...] "The Kúria is not in a position to challenge the law. [...] The established system is certainly not stable, it will not work in the long run because it is not possible. So irrespective of funds, if there is a real disruption within the judiciary, not these fictitious scandals [referring to the irregularities revealed by the NJC], but a real disruption, if the judiciary breaks down, I can say what others have said, and it was also said today in Parliament, that this is a sovereignty issue from now on." [...] We will do everything to make sure that we are not proven right for as long as possible. It is funny after all, because it's our duty, so this law has to be enforced, but it won't work."*

The interview also contained well-placed messages to potential candidates and future members of the next term of the NJC suggesting that their right to give their opinion on the judiciary should be restricted. The Kúria President suggested that matters concerning the justice system and the judiciary shall not be debated in the public.

*"What is missing from this system at the moment is elevation. And how could that be preserved? **By not talking about these things publicly.**" [...] **"There should be a kind of restraint, that we try to settle the debates internally."***

On 5 July 2023, the same day when the European Commission's 2023 Rule of Law Report was released, the Kúria President issued a statement<sup>19</sup> claiming that "[t]he Hungarian Country Chapter of the European Commission's 2023 Rule of Law Report regrettably adopted, without verification, the arbitrary opinion of the National Judicial Council, which lacks any factual basis, was repeatedly refuted with data, and personally violates the integrity of many judges. It can be said that **not a single word of the findings is true.**" The statement went further in discrediting the members of the National Judicial Council (NJC) for fulfilling their supervisory role. "All this is the result of the self-serving ambitions of some former and current members of the NJC. I find this very regrettable. I dissociate myself from these ambitions not only on behalf of the Kúria, but on behalf of all honest Hungarian judges."

On 6 July 2023, the Minister of the Prime Minister's Office, Gergely Gulyás joined the narrative of the Kúria President at a press conference.<sup>20</sup> He said: "With respect to the European Commission's Rule of Law Report **I think the same as the Kúria President.** I find it hard not to agree with everything András Zs. Varga said, considering that his statements are fact-based and do not contain value judgments. **It is particularly regrettable that some members of the NJC, who, as judges, have also been keen on negotiating with foreign governments during the past months and have denounced their own government in Brussels in order to achieve the adoption of an ad hominem legislation securing that they can be re-elected.** They do not seem to have terminated this activity. And what is particularly ridiculous is that these people used to say that ad hominem legislation was unacceptable, and even saw it where it did not exist, and then when the legislation was tailor-made to fit them and their needs, they said that they did not wish to make use of it and they do not want to become candidates again for the elections [for the next term of the NJC]. Watch them all run!"

On 7 July 2023, the government aligned propaganda media released an article<sup>21</sup> claiming that the NJC should be abolished for being biased. The title of the article suggested that members of the NJC are old guttersnipes.

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<sup>19</sup> See the statement <https://kuria-birosag.hu/hu/sajto/kuria-elnokenek-kozlemenye-2>

<sup>20</sup> See the press conference: <https://hirado.hu/belfold/cikk/2023/07/06/kovesse-nalunk-a-kormanyinfot> (from minute 33)

<sup>21</sup> See: <https://magyarnemzet.hu/tollhegyen/2023/07/regi-csibeszek-6?fbclid=IwAR183cd9dHW957kE-SMkLzxcntul2XmAM6OISx4PkiYHKCZU2rzHVvHbF44>

### III.3. Legal consequences of the smear campaigns against judges

In their joint Rule 9 submission of January 2023,<sup>22</sup> AIHU and the HHC called attention to the intense smear campaigns targeted against individual judges as members of the NJC in 2022 after conflicts between the NJC as supervisory body and the Kúria President and the NOJ President intensified [see Section III.1. of the joint communication by AIHU and HHC of January 2023]. The smear campaigns were conducted against judge members of the NJC for calling attention to undue interferences in judicial careers by judicial leaders.<sup>23</sup> These smear campaigns were initiated by an anonymous source in the propaganda media and were built up and kept alive in a very conscious manner with the proactive participation of representatives of the Hungarian authorities.<sup>24</sup>

After an intense smear campaign conducted against him in August 2022, Judge Vasvári, one of the judges attacked in the government aligned propaganda media, filed a report with the police against the unknown authors of the articles for the seriously defamatory claims published discrediting him in his capacity as a judge. In August 2023, after several months lapsed without any meaningful action taken by the prosecution service, the investigation was closed<sup>25</sup> claiming that the case does not fall within the scope of public prosecution (although the smear articles targeted Judge Vasvári in his capacity as judge and defamation shall fall under public prosecution in case it is targeted against a judge<sup>26</sup>). Judge Vasvári lodged a claim against the closure of the case, which is currently pending at second instance. The fact that more than one year after the publication of severely defamatory statements in the media, it is still not clear whether the prosecution service will initiate investigations in the case indicates the **lack of effective protection against severe defamatory statements made with respect to judges in the media.**

## IV. RECOMMENDATIONS

### IV.1. Procedural recommendations

The Hungarian Helsinki Committee hereby respectfully recommends that the Committee of Ministers

- (i) **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;
- (ii) **consider all available procedural measures to persuade Hungarian authorities** to take the execution process seriously;
- (iii) **oblige the Hungarian authorities to proceed with the evaluation of the domestic legislation** on the status of judges and the administration of courts, including an analysis of the impact of all legislative and other measures adopted and foreseen on judges' freedom of expression to make a full assessment as to whether the concerns regarding the

<sup>22</sup> See: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)157E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)157E)

<sup>23</sup> They spoke out against (i) payments effected on full discretion by the NOJ President, (ii) the *contra legem* secondment practice of the NOJ President and the Kúria President that infringed the principles of appointment based on merits and created a disguised "probationary" judicial status [NJC Resolution 43/2022. (VI. 13.). See: <https://orszagosbiroitanacs.hu/download/az-obt-2022-junius-13-i-ulesenek-osszefoglaloja/?wpdmdl=2181&refresh=63d1fa7aa2f0a1674705530>]; (iii) classification of the report of the comprehensive investigation initiated to clarify the role of the President of the Metropolitan Regional Court in the so-called Schadl-case [see the summary of the whole case: <https://helsinki.hu/en/the-schadl-volner-case-and-the-battered-independence-of-hungarian-courts/>] the (iv) unlawful appointment practice of the Kúria President <https://helsinki.hu/en/tribunal-established-by-sleight-of-hand/>.

<sup>24</sup> See a summary of the choreography of a smear campaign here: <https://helsinkifigvelo.444.hu/2023/02/15/igy-gondozd-lejarato-kampanyodat>

<sup>25</sup> See: <https://helsinki.hu/wp-content/uploads/2023/10/2.Nyom-1766-2022-nyomozas-megszunteto-hatarozat-anonim.pdf>

<sup>26</sup> Section 53(3) of Act XC of 2017 on the Code on Criminal Procedure.



'chilling effect' on the freedom of expression of judges caused by the violations in these cases have been dispelled

#### IV.2. Substantial recommendations

- (iv) **address the issue of judicial independence holistically and comprehensively** taking into account the changed general context of the execution of the judgment, including the altered position of the Kúria President;
- (v) condemn all forms of harassment, intimidation or retaliation against judges, including smear campaigns 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.
- (vi) take into account with due care the role and activity of the current Kúria President as part of the context of proper execution when assessing the general measures to be taken by Hungarian authorities to guarantee the freedom of expression of judges.
- (vii) require the Hungarian authorities to introduce legislative measures, possibly at the rank of cardinal laws that guarantee the exercise of the freedom of expression and provide adequate legal remedy against the breach of it.

Sincerely yours,



András Kristóf Kádár  
co-chair  
Hungarian Helsinki Committee