



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law No. 174

May 2014

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***Baka v. Hungary - 20261/12***

Judgment 27.5.2014 [Section II]

**Article 6**

**Civil proceedings**

**Article 6-1**

**Access to court**

Inability of Supreme Court President to contest premature termination of his mandate:  
*violation*

**Article 10**

**Article 10-1**

**Freedom of expression**

Premature termination of Supreme Court President's mandate as a result of views expressed publicly in his professional capacity: *violation*

**[This case was referred to the Grand Chamber on 15 December 2014]**

*Facts* – The applicant, a former judge of the European Court of Human Rights, was elected President of the Supreme Court of Hungary for a six-year term ending in 2015. In his capacity as President of that court and of the National Council of Justice, the applicant expressed his views on various legislative reforms affecting the judiciary. The transitional provisions of the new Constitution (Fundamental Law of Hungary of 2011) provided that the legal successor to the Supreme Court would be the *Kúria* and that the mandate of the President of the Supreme Court would end following the entry into force of the new Constitution. As a consequence, the applicant's mandate as President of the Supreme Court ended on 1 January 2012. According to the criteria for the election of the President of the new *Kúria*, candidates were required to have at least five years' experience as a judge in Hungary. Time served as a judge in an international court was not counted. This led to the applicant's ineligibility for the post of President of the new *Kúria*.

*Law* – Article 6 § 1: According to the test set out in *Vilho Eskelinen*, an applicant's status as a civil servant acting as the depositary of public authority could justify excluding the protection embodied in Article 6 subject to two conditions: firstly, the State must have expressly excluded in its national law access to a court for the post or category of staff in question and, secondly, the exclusion must be justified on objective grounds in the State's interest. In order for the exclusion to be justified, it was not enough for the State to establish that the civil servant in question participated in the exercise of public power,

it also had to be demonstrated that the subject matter of the dispute was related to the exercise of State power. Under Hungarian law judges of the Supreme Court, including their president, were not expressly excluded from the right of access to court. In fact, domestic law expressly provided for the right to a court in the event of dismissal of a court executive. Rather than by express exclusion, the applicant's access to a court had been impeded by the fact that the impugned measure – the premature termination of his mandate as President of the Supreme Court – had been written into the new Constitution itself and had therefore not been subject to any form of judicial review, including by the Constitutional Court. In view of the above, the Government had not demonstrated that the legal policy choice of enacting the premature termination of the applicant's mandate into the new Constitution had involved an express identification of an "[area] of public service involving the exercise of the discretionary powers intrinsic to State sovereignty where the interests of the individual must give way". Therefore, it could not be concluded that the national law had "expressly excluded access to court" for the applicant's claim. The first condition of the *Eskelinen* test had not been met and Article 6 applied under its civil head.

Furthermore, even assuming that the national legislative framework had specifically denied the applicant the right of access to a court, the applicant's exclusion from that right had not been justified. The Government maintained that his post as President of the Supreme Court had by its very nature involved the exercise of powers conferred on him by public law and duties designed to safeguard the general interests of the State. However, the mere fact that the applicant was in a sector or department which participated in the exercise of power conferred by public law was not in itself decisive. In order for the exclusion to be justified, it was for the State to show that the subject matter of the dispute at issue was related to the exercise of State power or that it had called into question the special bond of trust and loyalty between the civil servant and the State. In the applicant's case, the Government had not adduced any arguments to show that the subject matter of the dispute had been linked to the exercise of State power in such a way that the exclusion of the Article 6 guarantees had been objectively justified. In this regard, the Court considered it significant that, unlike the applicant, the former Vice-President of the Supreme Court had been able to challenge the premature termination of his mandate before the Constitutional Court.

*Conclusion:* violation (unanimously).

Article 10: The facts of the case and the sequence of events showed that the early termination of the applicant's mandate as President of the Supreme Court was not the result of restructuring of the supreme judicial authority, as the Government had contended, but a consequence of views and criticisms he had publicly expressed in his professional capacity. The proposals to terminate his mandate and the new eligibility criterion for the post of President of the *Kúria* had all been submitted to Parliament after the applicant had publicly expressed his views on the legislative reforms at issue, and had been adopted within an extremely short time. The fact that the functions of the President of the National Council of Justice had been separated from those of the President of the new *Kúria* was not in itself sufficient to conclude that the functions for which the applicant had been elected had ceased to exist after the entry into force of the new Constitution. Furthermore, neither the applicant's ability to exercise his functions as president of the highest court in the country, nor his professional behaviour had been called into question. The early termination of his mandate thus constituted an interference with the exercise of his right to freedom of expression.

The applicant's impugned opinion concerned four legislative reforms affecting the judiciary. Issues concerning the functioning of the justice system constituted questions of public interest, the debate of which enjoyed the protection of Article 10 of the Convention. Even if an issue under debate had political implications, this was not in itself sufficient to prevent a judge from making a statement on the matter. It had not only

been the applicant's right but also his duty as President of the National Council of Justice to express his opinion on legislative reforms affecting the judiciary. The applicant had used his prerogative to challenge some of the legislation concerned before the Constitutional Court and to express his opinion directly before Parliament. There was no evidence to conclude that the views he had expressed went beyond mere criticism from a strictly professional perspective, or that they had contained gratuitous personal attacks or insults. As regards the proportionality of the interference, the applicant's term of office as President of the Supreme Court had been terminated three and a half years before the end of the fixed term applicable under the legislation in force at the time of his election. Furthermore, although the applicant had remained in office as a judge of the new *Kúria*, the premature termination of his mandate had had pecuniary consequences.

The Court reiterated that the fear of sanction had a "chilling effect" on the exercise of freedom of expression and in particular risked discouraging judges from making critical remarks about public institutions or policies, for fear of losing their judicial office. In addition, the impugned measure had not been subject to effective judicial review by the domestic courts.

Having regard to the foregoing considerations, the interference with the applicant's right to freedom of expression had not been necessary in a democratic society.

*Conclusion:* violation (unanimously).

Article 41: question reserved.

(See also, as regards the issues arising under Article 6 § 1, *Vilho Eskelinen and Others v. Finland* [GC], 63235/00, 19 April 2007, [Information Note 96](#); and *Harabin v. Slovakia*, 58688/11, 20 November 2012, [Information Note 157](#))

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