But First, Implementation

How to Say Goodbye to an Illiberal Chief Justice

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Hungary is approaching the tenth anniversary of the *Baka v. Hungary judgment* of the European Court of Human Rights (ECtHR). The case concerned the premature termination of the mandate of Hungarian Chief Justice András Baka without legal remedy, shortly after the landslide victory of the Orbán-led Fidesz party in the 2010 parliamentary elections. Sixteen years after the removal of Chief Justice Baka, the execution of the judgment is still pending, and the landslide victory of the opposition Tisza party in the 2026 parliamentary elections put the removal of the incumbent chief justice back on the political agenda. In his victory speech held on the evening of the elections, future Prime Minister Péter Magyar called on Chief Justice András Zs. Varga to resign, claiming that, together with the President of the Republic, the Prosecutor General, and other leaders of key state institutions, he is a "puppet" of Orbán's regime. Magyar also made it clear that they all *"should leave voluntarily, otherwise they'll be removed anyway."*

At first glance, the situation resonates with the Baka case: a politician representing a one-party sweeping constitutional majority steps up with the immediate demand to remove the incumbent chief justice. Yet, the context could not be more different.

In this blog post, I argue that the claim to end Chief Justice Varga's mandate is legitimate and that the proper way to do so is by implementing the Baka judgment. My argument goes back to the old recipe of consistently upholding the principles of human rights and the rule of law, on which even a dark and least worthy chapter of the Hungarian judiciary could be brought to an end brightly and decently.

To understand why the proper execution of the Baka case in its entirety is intertwined with the removal of Chief Justice Varga, it is essential to see the radical changes in the Hungarian context between 2010 and 2026, mostly how overly politicised the role of the Chief Justice became, and how actively Chief Justice Varga contributed to suppressing the freedom of speech of Hungarian judges.

When a wise man points to the moon, only the fool looks at the finger

Back in 2011, when Chief Justice Baka was around the halfway point of his mandate, the ruling majority put forward a judicial reform that severely undermined judicial independence. Acting in his capacity as the president of the Supreme Court, after consulting the courts, he publicly criticised the planned reform on several occasions. Within a strikingly short period of time after raising concerns, he was removed from his office through legislative acts of constitutional rank, beyond judicial control. In its judgment, the ECtHR was wise enough to find that the premature termination of his office was a consequence of his criticism, and also claimed that his removal exerted a chilling effect not only on him, but on other judges, discouraging them from participating in public debate on issues concerning the independence of the judiciary. By establishing the causal link, the ECtHR made it clear that the removal of Chief Justice Baka is only the finger that points at something much bigger and more important: the political pressure on the freedom of expression of Hungarian judges. It is no coincidence that the Baka case is well-known and frequently cited for its doctrinal relevance of ensuring judges' freedom of expression.

The execution of the judgment requires Hungary to take measures to guarantee the freedom of expression of Hungarian judges and ensure their irremovability, all key components of judicial independence, a

fundamental constituent of democracy and the rule of law. As for the Chief Justice, the execution of the Baka judgment expressly requires granting judicial oversight of the decision on his removal. For nearly ten years, the Hungarian government was reluctant to execute the judgment, conveying deep concern from the Committee of Ministers of the Council of Europe. Now there is a historic moment for its implementation, and in the perfect interplay of all elements, granting legal remedy to the Chief Justice against the decision on his removal will allow Hungarian courts to deliver a strong domestic judgment on guarantees of the freedom of expression of judges. It would be a waste to miss this historic opportunity.

How to turn the unworthiness procedure into a meaningful one

Under the currently effective rules, the Chief Justice can be removed from office *"if, due to any act, conduct, or omission, he has become unworthy of the position"*. The procedure may exclusively be initiated by the President of the Republic and voted on by the Parliament by a two-thirds majority. Currently, the legislation leaves it to political actors, without the involvement of a judicial body, to launch the unworthiness procedure and take the final decision on removal. In this construction, the Chief Justice fully depends on the will of a political majority and, at the same time, is totally unaccountable to the judiciary, allowing him to commit gross breaches of administrative powers without any legal consequence. For a balanced proceeding on the unworthiness of the Chief Justice, the Baka judgment must first be executed to relieve the process from political pressure. An independent judicial body must be granted the right to review the political decision on the removal. By reshaping the rules of the unworthiness proceeding, the accountability of the Chief Justice can be shifted from a purely political one to a purely professional one.

This remarkable shift enables the Hungarian judiciary to say the final word on the worthiness of Chief Justice Varga and hold him accountable for all acts, conduct, and omissions committed since his appointment in 2020. The solution avoids the risk of retroactive legislation, as the modified procedural rules can take immediate effect. The legal ground of unworthiness has been there from the first moment of Chief Justice Varga's appointment, just as Hungary's obligation to execute the Baka judgment. If Chief Justice Varga hoped that the Baka judgment would never be executed and that his worthiness would always depend on the politicians who elected him, it is time to prove him wrong.

Unworthy from scratch

The motion on removing Chief Justice Varga should focus on his personal role in undermining the independence of Hungarian courts, including the circumstances of his appointment. Varga became Chief Justice in 2020, responding to a political call. He undertook the mandate under personalised legislation introduced a few months before his election, allowing him to gain the position of a judge and head of panel without an ordinary appointment procedure. He had no concerns about becoming Chief Justice without any judicial experience, despite all prior concerns raised by the CoE Commissioner for Human Rights and the European Commission. He neglected the well-reasoned objection of the National Judicial Council, which warned him that his appointment *"does not respond to the constitutional requirement according to which the person sitting at the top of the court system shall be independent from other branches and shall appear as impartial to an external observer."*

His taking office has drawn criticism from several international organizations. The UN Special Rapporteur on the Independence of Judges and Lawyers interpreted it as *"an attack to the independence of the judiciary."* The European Commission considered it *"not in line with European standards,"* referring to a landmark judgment of the CJEU. The European Council held that it creates *"risks of political influence over the top court"*. The Venice Commission claimed that it poses a serious risk of politicisation of the supreme court. His decision to undertake the mandate despite all prior warnings on harming judicial independence resulted in immediate detrimental consequences for the reputation of the Hungarian judiciary. His personal responsibility in the

politically biased appointment, against clear objections and in breach of European judicial standards, cannot be overlooked and should be evaluated within the unworthiness procedure.

The power of unaccountability

Varga started office in January 2021, and quickly became the most powerful actor within the Hungarian judiciary through a series of legislative reforms. During his term, he visibly did not forget that he was appointed by one political power and could be removed by them at any moment. From the perspective of judicial independence, his performance as Chief Justice constantly called into question his worthiness for the position. Immediately after taking office, he unlawfully appointed a politician, a former state secretary, to the bench and selected a government loyalist as deputy. He maintained an unlawful secondment practice for years. His power to modify the case allocation scheme enabled direct interference in the adjudication of politically sensitive cases, also allowing him to reshape the final composition of panels at the Supreme Court. A remarkable part of the judicial reform introduced in 2023 to unlock Union funds can be translated as a response to his first two years as Chief Justice.

It was clear from the first moment that Chief Justice Varga's election was intended to enhance internal pressure on judges. Responding to this need, he actively contributed to curtailing the freedom of expression of judges. His public statements and activities in his different roles – as an academic, as a member of the National Judicial Council, as a judge and judicial leader – all pointed towards an overly restrictive interpretation of the Hungarian legislation that fully contradicts the spirit of the judgment delivered in the Baka case. His constant attempts to silence Hungarian judges included challenging the Ethical Code of Judges before the Constitutional Court for expressly entitling judges to speak out in professional matters. His intention to retaliate against critical opinions at the Kúria resulted in the unlawful removal of a senior scientific advisor for making *"worrying statements in relation to the Supreme Court and its President,"* banning the publication of a study criticising his administrative activities, and the unlawful suspension of judge András Kovács from his position as head of panel. He initiated an extraordinary inspection in connection with the publication of a judicial decision, which revealed the pardoning scandal that outraged the Hungarian public and led to the resignation of two leading ruling party politicians: the President of the Republic and the former Minister of Justice. He recurrently attacked independent service courts for protecting the freedom of speech of Hungarian judges, contributed to the conclusion of the "agreement" that forced reforms against pay raise, labelled their sweeping protest and the demonstration of Hungarian judges as a political activity and not only failed to protect judges from being listed, getting doxed or attacked by smear campaigns in the propaganda media, but took every occasion to retaliate against them for speaking out.

In a state of the rule of law, the Chief Justice would have faced immediate consequences for the above, but not in the past 16 years' Hungary. Chief Justice Varga could commit attacks against individual judges, judicial bodies, and the independence of the Hungarian judiciary as a whole, knowing that he held formally unaccountable judicial powers.

But first, implementation

The principle of separation of powers requires that politicians refrain from calling on a judge to resign. By the same logic, judges should also never consider a call to resign that comes from a politician. Politicians should neither directly appoint judges nor force them to resign. They are there to shape the laws that secure the independence of the judiciary. Implementing judgments of the ECtHR is the best baseline for that. Reshaping the procedural norms of the unworthiness procedure, as required by the Baka judgment, is enough to ensure that Chief Justice Varga is held accountable for contributing to the systemic breach of judicial independence. As no case law exists for the unworthiness of a Chief Justice, the outcome of the proceeding is less predictable than that of a political decision. Yet, the real value of this solution is that it

leaves the decision in the hands of those to whom it really belongs: the Hungarian judges, entitling them to speak out in protection of their independence on and off the bench, and empowering them to finally live up to the standards of judicial independence in Europe.

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