

**Central & Eastern European Judicial Exchange Network  
Webinar Spotlight Series: Judiciaries in Peril in Central and Eastern Europe**

**Spotlight #6:**

**JUDICIARY IN PERIL: HUNGARIAN CASE STUDY**

**Thursday 10 June 2021**

**Transcript Speakers:**

1. Andras Kadar, Co-Chair, Hungarian Helsinki Committee
2. Judge Viktor Vadász, Member of the National Judicial Council
3. Professor Agnes Kovács, Assistant Professor, Department of Human Rights and Politics at ELTE University

**Background:**

International organizations and NGOs have continuing concerns that judicial independence has been under attack in Hungary. These arose in 2012 after a thorough re-regulation of the administration of courts, which became highly centralized and placed in the hands of the President of the newly established National Judicial Office (NJO), elected by the Parliament and holding excessive powers. These reforms were criticized by the Venice Commission, GRECO, the European Parliament and the European Commission. In 2018–2019, the abuse of powers by the NJO President in relation to judicial leadership appointments resulted in a prolonged conflict between the NJO President and the National Judicial Council (NJC), the judicial self-governing body which is responsible for overseeing judicial administration, under the Hungarian Fundamental Law.

Although the conflict subsided when the NJO President was replaced in late 2019, all of the structural issues that had led to the crisis still prevail, and the provisions that allowed the abuses are still in force. In recent years, NJC members and the Hungarian Judicial Association, as well as individual judges raising their voices in protection of judicial independence have been systematically targeted by government-affiliated media. In addition, high-ranking officials of the government and the incumbent party have made numerous public statements designed to undermine public trust in the judiciary. A law adopted in 2019 opened the way for channelling politically sensitive cases out of the ordinary court system to the Constitutional Court (already packed with pro-government judges), and in 2020, a one-party appointee parachuted to the top of the judicial system when he was elected President of the Kúria (Hungary's highest court, the successor of the Supreme Court) against manifest opposition by the NJC.

In this Spotlight discussion, our guest speakers will discuss the overwhelming powers of the President of the NJO and the international criticisms levelled at the judicial administration in Hungary. More generally, they will review how the appointment of judges and court presidents can affect the judicial independence, and discuss the 'chilling effect' and negative impact on the freedom of speech in the Judiciary while assessing the possible risks of a political influence in the judiciary.

[TRANSCRIPT BEGINS]

**Freda Grealy, CEELI Senior Program Manager (FG):** Good evening, or afternoon everybody. You're very welcome to this -- the sixth in our spotlight series, where we shine a light on judiciaries in peril in Central and Eastern Europe.

Thank you for joining us for this our sixth spotlight webinar event where we focus on the Judiciary in Hungary. I'm Freda Grealy. I'm a program manager at the CEELI Institute in Prague. And before I introduce our speakers, I'd like to hand you over to Chris Lehmann, Executive Director of the CEELI Institute for a brief welcome.

**Chris Lehmann, CEELI Executive Director (CL):** Thank you, Freda, and good afternoon to our panellists and to our guests. This is one of our ongoing spotlights focusing on judicial challenges to some of the countries in the region of Central and Eastern Europe. Today, obviously Hungary will be the focus of our attention. These series have allowed us to really look in depth at some of the judiciaries that have been most challenged. Hungary obviously is an interesting case because it's a European Union member. And yet the judges have struggled really for the last decade with a high degree of government interference.

This project is part of a much larger project that we have at the CEELI Institute, which is our network of judges from Central and Eastern Europe. Almost 200 judges from 18 countries over the last 10 years participating in this network. We have used it to bring judges together to share experiences, discuss challenges, write and draft tools that would be of use to the judges in the region. And we continue to, to look forward to continuing this effort and certainly extend a warm welcome to any Hungarian judges that would be interested in participating more, more deeply in the network. So, Freda, without more – I'll turn it back over to you.

**FG:** Thanks so much, Chris. So as I said, we have three speakers. I'm delighted to introduce them in the order in which they will speak. Each presenter has about 10-15 minutes and then we will move on to questions and answers.

So firstly, we will hear from Andras Kadar, he's an attorney at law and co-chair of the Hungarian Helsinki Committee, which is one of Hungary's oldest and largest human rights watchdog NGOs. He provides legal representation before domestic and international forums, including the European Court of Human Rights, and is responsible for HHC's various research projects, trainings and advocacy activities in the areas of criminal justice, law enforcement and the rule of law. Between 2008 and 2014, he was a member of the Independent Police Complaints Board, and this is a civilian oversight body adjudicating complaints into fundamental rights violations by the police. He's one of the two Hungarian members of the European Network of Legal Experts in general equality and non-discrimination matters.

Secondly, we hear from Judge Viktor Vadász, and he is a penal judge at the Budapest Regional Court and a member and spokesperson of the National Judicial Council. He represents the council in the executive board of the European Network of the Councils for the Judiciary, and he's responsible for the international relations of the council too. He deals with high profile economic crime cases—frauds, tax evasions, money laundering and organized crimes. And he also adjudicates regularly as an investigative judge at the Buda Central

District Court. Between 2012-2015, he was the director of the Hungarian Academy of Justices, which is the training institution for judges and court staff.

And then we have Professor Agnes Kovács, and she's an assistant professor in the Department of Human Rights and Politics at ELTE University in Budapest. She's also a researcher at the Eötvös Károly Policy Institute, which is an NGO dedicated to promoting the rule of law and constitutionalism in Hungary. Her primary research interests are in constitutional adjudication, the legitimacy of judicial review, and theory of legal reasoning. Recently, she was involved in international research projects on judicial independence and the quality of justice in Europe. She is a member of the editorial board of *Fundamentum*, which is a Hungarian Human Rights Quarterly.

So as I say, each speaker has about 15 minutes now, and I am delighted to invite Andras to take the virtual floor. Over to you Andras.

**Andras Kadar (Kadar):** Thank you very much. I will quickly share my screen. So, thank you for the kind invitation and the possibility to talk about this very, very important issue. My role in today's session will be just to outline the historical context or the context of the past decade regarding judicial independence.

After gaining the landslide constitutional majority in 2010, the incumbent Fidesz government started a very incremental but very systematic and conscious process of weakening the system of checks and balances - eliminating or occupying all those institutions and actors which can provide a certain control over what the executive is doing. And as we all know, the judiciary might be the most important of these institutions, might be the branch of power that is the most capable of controlling excessive measures and violations by the government.

So, it's no surprise that very soon after this landslide victory, the systematic undermining of judicial independence started. It started through legislative and organizational steps, which were part of this larger process of gaining control over all the institutions and actors. And it was also this... this process was accompanied by an attempt to prevent judges from actually speaking out against this kind of undermining.

So just to create a chilling effect to make sure that judges would not exert resistance or exert significant resistance against these processes—done through undermining the credibility of the judiciary as a whole, attacking individual judges, and putting administrative pressure on judges through vaguely formulated internal policies. I'm going to talk about some aspects of the systemic undermining of judicial independence. But my colleagues will say more about these individual steps.

The process started in 2011, when there was an overhaul. There was a sort to say a reform of the administration of courts creating the National Office for the Judiciary... the President of which was elected by the Parliament, who, according to the law must be a judge, but since he or she is elected by the Parliament and without a very meaningful role of the judiciary itself, we can regard him or her as an external actor—not someone representing the judiciary.

The President of the National Office for the Judiciary was given in 2011 very important roles regarding the budget of the judiciary, appointment of individual judges, appointment of judicial leaders.

So basically, as the Venice commission formulated in their opinion on the reforms, these powers were way too wide in the hands, to be in the hands of one thing, one single person.

Now, not so long after this happened. There was a compulsory retirement of judges by very abruptly, basically overnight, abruptly reducing the compulsory retirement age of judges from 70 to 62 years of age. As a result of this measure, like 300 out of the 3000 Hungarian judges were sent into early retirement. This measure was found to be discriminatory by the Luxembourg court of the European Union. And after this judgment was handed down by the CJEU, judges were offered the possibility to return to their judicial positions, but not to their judicial administrative leadership positions. So they could choose between a quite substantial compensation or going back to become judges again. But if they were court presidents or vice presidents or collegium presidents beforehand, they had no right to regain those positions. Only if those positions were not fulfilled or filled in the meantime.

But in most cases, those positions were filled by the time they could have returned, which means that the system managed to get rid of very senior judges and leadership positions, providing the opportunity for the President of the National Office for the Judiciary to appoint new judges. And this created a conflict between the National Judicial Council, which is Hungary's top, judicial, self-governing body...the body that Judge Vadász is a member of and is going to talk more about the council.

2018, the NJC started to look into the practice of how the President of the NOJ is appointing judges and found that there were serious violations, which was an attempt to actually overhaul the top tiers of the judiciary. Parallel with this, there was this kind of rhetoric attack on the judiciary. Incumbent politicians try to exercise undue influence on the judiciary by undermining the credibility of individual judicial decisions, or judiciary independence as a whole.

I don't want to... I mean, I would love to give you individual examples because I think that they are very illustrative and scary. I'm just gonna give you one example which concerns judicial independence as a whole. The Speaker of the House of the Hungarian Parliament, Laszlo Kover gave a presentation at one of the university's faculty of state administration and what he said is here on the slide — “The system of checks and balances, I don't know what you learned about it, but it is dumb. Forget about it. It has nothing to do with either the rule of law or with democracy.” So basically said that the checking of the executive power is something that the students of state administration and law should forget about. He also said that judges must decide whether they are standing on the side of those who want to build the country or on the side of those who want to destroy the country, referring here to opposition and forces that are critical of the government.

They were also attacks on individual judges who spoke out against these procedures, who criticized the NOJ President, who criticized the government measures to undermine judiciary. In Hungary, the media is largely overhauled by friends of the government so to say, and there have been some very fierce and very unjust attacks on those judges who spoke out against

these processes. Some of them actually won defamation lawsuits for forced or distorted information that was disseminated against them.

There were also administrative measures to kind of chill the freedom of expression of judges in this situation. As I mentioned, the NOJ President has very wide-ranging rights in choosing and appointing court presidents. And these court presidents then in return, can actually put pressure on individual judges through a wide variety of administrative measures.

Court presidents decide on the bonuses, the annual bonuses of judges, so they can cut these bonuses because the legislation and the legal framework around these very vague, so basically, it's very easy to make arbitrary decisions. You're gonna get a bonus, you're not gonna get a bonus. And if you look at who got the bonuses and who didn't get the bonuses, you could very easily see that the renitent, dissenting judges were the ones who suffered consequences financially.

Some of these judges were excluded from judicial working groups or training opportunities, or were simply provided with harsher working conditions. For instance, they were not provided with clerks to help their work. So basically, there were all these administrative measures that are kind of, you know, trying to prevent the judges from speaking up and create a situation...

Finally, my last slide. What my colleagues will talk about in more detail. There was a shift in strategy in 2019, because throughout the decade, the Hungarian judges and judiciary provided to be very resilient actually. They just did not give in to this kind of governmental pressure. And judges kept, certain judges kept speaking out publicly. Also, when you look at the politically sensitive cases, you can see that judges took judicial independence very seriously, and even in cases that were very painful for the government, they decided on the basis of the law and their conscience and not according to political expectations. And I think there came a realization in the Hungarian policymakers and the government politician, that they need to shift the strategy.

And what happened is that late 2018, this shift came along, and instead of trying to domesticate the whole judiciary through the court president, through the appointment of the court president, they decided just to attack the top tier of the judiciary, the Kuria, which is Hungary's High Court. And it started by parachuting Mr. Andras Varga into the position through a number of legal amendments that made it possible for him to be elected. He used to be a prosecutor, then a judge of the Constitutional Court, which is not part of the ordinary court system in Hungary. He had no judicial experience, no courtroom experience, no experience with judicial administration. And the NJC...

The National Judicial Council has the right to form an opinion on the election of the nominee for the Kuria President position. And there was an express and sweeping objection against Mr. Varga -- certain members of the NJC voted against him and only one voted in favor of him because they said that he is not sufficiently independent. And he cannot be seen by outside observers as sufficiently independent due to the way that he arrived at this position. And if we look at the Chief Justice's views on judicial independence, we will understand why, before he became the chief justice of Hungary, before he became an ordinary judge, so to say, he called judiciary, the most dangerous branch of power. He said that the concept of

judicial self-administration was a delusion, a misunderstanding, and something that brings more harm than benefits. And he also said that the concept of the rule of law is so arbitrary that it has in the hands of European institutions and judges themselves become tyrannical. Moreover, a totalitarian concept that is used to suppress dissent by countries in illiberal regimes such as Hungary or Poland.

And after parachuting him into this position, there were further steps to actually increase the weight of the Kuria, the High Court of Hungary, regarding the jurisprudence, regarding how cases are decided in Hungary...this is something that Agnes will talk about in more detail.

So what you have to see is there has been a decade long struggle between the government, which is backed by the legislature, and the Hungarian judiciary. And for a long time, judges really stood their ground. And eventually, there came the realization that if you narrow your focus, and you try to use a top-down approach to somehow domesticate the judiciary, it's easier than to deal with a body of 3000 judges, raised and educated in the ethos of judicial independence.

So this is the historical context. And I will be happy to hand over to my colleagues who will give you more of the details.

**FG:** That's great Andras, thank you so much for that very useful overview. I'm now going to hand over to Judge Vadász Thank you so much.

**Judge Viktor Vadász (VV):** Thank you. Okay, so just very briefly, the National Office for the Judiciary was developed in 2012. And in Hungary, the Institute for National Judicial Council, which is where the members are elected, or at least the majority of the members are elected by the peer judges... There is this position, the President of this National Office for the Judiciary, who's elected by the Parliament for nine years with two-thirds majority, which means that the judicial self-governing bodies has, they have no effect on who will be the Chief Justice in Hungary. I mean, who will be the chief of the judicial administration. This person, the President, is electing/is appointing all the court presidents, but also appointing the judges and deciding on the promotion of judges, training of judges, budgetary issues.

But the most important thing that the court presidents, they have enormous powers over the judges in Hungary, because the court presidents, they can decide in the evaluation of judges that they can initiate a disciplinary procedure against the judge, they are deciding in the case allocation. Also, they have a direct effect on the working conditions of the judges. And they decide on the bonus also. This system made a very, very strong court management and central administration with this National Office for the Judiciary, and a very, very weak National Judicial Council, where the remaining body elected by the judges, by the peers, it doesn't even have a legal entity. We should supervise the President of the Office...

But the National Judicial Council, where I'm also member, we don't have any tools. We don't have a separate budget that we can use. And we don't have staff members. So there are only 14 judges who are keep dealing with their cases. And besides that they need to do some work in the judicial administration but trying to supervise anyhow, the President of the National Office for the Judiciary. The only tool we have is to signal problems somehow. And if you're signaling these problems, but then if there is nothing happening, the only thing that we can

do, we can propose the dismissal of the President of the Office. But the decision whether she or he will be dismissed is decided by the Parliament, the Parliamentary majority. So this is a very, it's not a very complex tool and not an effective tool in our hands to somehow try to oversee and supervise the President of the National Office for the Judiciary

The third participant is the Supreme Court, which in the past 10 years was like an island in the middle of the sea, because the President of the National Judicial Office has no effect on the Supreme Court. And the council was not the member of... the President of the Supreme Court was a member of the National Judicial Council also, but was quite passive in the role as member of the National Judicial Office. So the previous President of our Supreme Court of the Kuria was not really going into these debates between the National Office for the Judiciary and the National Judicial Council. So what's the base of the conflict? Because Andras already mentioned this, but maybe I should give you a brief description how the judges are appointed and promoted in Hungary.

There's always an open application for each of the positions, which is launched by the President of the Office, and all the candidates will be interviewed by the local Judicial Council. So if there is an open position in a certain court, in a regional court... then in this regional court, the Judicial Council that the members are elected from the judges from that court are interviewing the candidates. And according to a ministerial decree, and according to the interview, they can give certain points... they decide to give some credit points to the candidates, and each of the candidates are receiving these credit points. And this will set a rank of the candidates. If the President of the National Office for the Judiciary would like to appoint the first ranked candidate, then he or she can do it without any further approval. But if he or she wants to appoint the second or the third ranked candidate-- needs the approval of the National Judicial Council. And without this approval, only the first ranked candidate, so the winner, can be appointed in this competition.

If someone has less points and will be ranked fourth or fifth or even lower... than cannot be appointed for the position. The appointment of Court President is a little bit different. Because there is an open application and judges with at least five years of experience can apply for this. And the candidates need to show their plans and intentions in a detailed program, aligned with the strategy and aims of the President of the National Judicial Office. And the conference of judges. I mean, all the judges of that regional court, will formulate an opinion. This opinion is formulated by an election, where all the candidates can receive a supportive or a not supportive vote from each of the members of that court, each of the judges. And this is a secret ballot, of course, and the President of the National Judicial Office can appoint only someone who received at least 50% support of the judges. So 50% plus one vote needs to have by the candidate to be appointed. Without this, only the approval of the National Judicial Council can make it possible to appoint some to be appointed to Court President or Vice President.

Of course, this system seems to be very correct and in line with the international regulations. But we all know that the devil always is in the details. So I can give you two stories, where both of the stories are unsuccessful applications. The first one in 2017, a Hungarian judge from the First Central District Court was applying for a position at the court of Regional Court of Appeal. And after this interview, he was ranked first among several candidates, but the President of the National Judicial Office doesn't want to appoint him because he was not

in favor of this candidate. So the only thing she could do is to ask for the approval of the National Judicial Council. But it was sure in 2017, the National Judicial Council would not approve for such a deterioration from the rank. And for this reason, she decided to call this, to declare this whole procedure unsuccessful.

She decided that we don't need that position anymore at that certain court, at the Regional Court of Appeal. But despite this decision, on the next day, she restarted this procedure, the application. And this judge was applying once again, and was ranked first once again. And the President of the National Judicial Office decided once again that this is an unsuccessful procedure because she changed her mind. She doesn't want to fulfill this position anymore.

The second example is the President of the Metropolitan for the Budapest Regional Court, the largest court...where the former president of the court was reapplying for his position. He wanted to be elected for our next six years. And as the only candidate, he was supported by 75% of the judges. After this, the President of the Office, the judicial office decided this is also an unsuccessful application because she doesn't want to appoint him to become the Metropolitan court. And after this, the procedure was restarted. And when the candidate was applying once more with a large support of the judges, but was refused once again by the President of the Judicial Office. And this whole thing escalated as a new council was elected in 2018. And after this happening...

Before the judges were electing very critical—members they were sure that they will be very, very critical with the President of the National Judicial Office. And the new members immediately started an inquiry. And based on this inquiry, they declared that this practice of the National President of the National Judicial Office, by calling/declaring unsuccessful these applications is totally against the law. Of course, formally, it seems okay. But if you look behind the intentions, and the way she exercises this, and the practice, and the pattern shows that this is the misuse of her powers. And we warned her that she shouldn't continue this procedure, of course. It was not really successful. Because as an answer to this, the Presidents of the National Judicial Office started to pressure some of the members. And members of the National Judicial Council and some members and substitute members resigned.

And then the President of the National Judicial Office declared the National Judicial Council an illegitimate party. And also there were other reactions. One of the reactions was against not only the members of the National Judicial Council with some articles in the government media, slander campaign against the judges against OBT members, but also against the Hungarian Association of Judges. So members of the judicial association are listed by Court President, and they were called that maybe they should resign from the association, and other retaliated measures were taken against the association. So it was like an open war between the judicial administration, between the President of the Judicial Office (appointed by the Parliament), and Court President appointed by the President of the National Judicial Office against all the judges or against the Association of Judges, against the National Judicial Council.

Some examples of these defamatory articles— in one of the Hungarian radio broadcast, the President of the National Judicial Office, after the National Judicial Council was inviting the newly elected President of the European Network of Councils for the Judiciary for a visit to Hungary. She gave an interview, and she said that I find it regrettable that some of our judges

forgetting themselves and their duties and responsibility for the community, go abroad and betray our country. So these were quite very strong, quite strong words against members of the National Judicial Council. Also, in the favorite newspaper of the Hungarian Prime Minister, there's an article that they mind working of some judges together with Soros Network. Another newspaper named five members of the Council, in a long article that stated that Council is politically biased against the government in various ways, which can be deducted by court decisions where members were involved, as acting judges in the past.

Andras already mentioned that they needed to sue these government papers, and we won the case against them because of these defamatory articles... so the question is that –what was the council, how the council was reacting? After eight times, we gave a signal—we were signaling problems. And after this, we turn to the Parliament in 2019, May. And we ask the Parliament to dismiss the President of the National Judicial Office. However, the Parliament refused to investigate this and refused and in a very rapid procedure without the debate, they rejected our proposal. The question – how could this happen?

Of course, I need to add some things to this. The President of the National Judicial Office was a close friend of the Prime Minister and the family of the Prime Minister, and she was the wife of a leader of the EP delegation, a founding member of the governing party. So despite she was a judge and the institution, in the name of the institution, it's a judicial office. But it was obvious that who the appointment of the President of the Judicial Office was a political decision, and that's why the dismissal, not dismissing was also a political decision.

But afterwards, in November 2019. Finally, the government decided that they need to solve the problem. The solution was... Their solution was, to promote the President of the National Judicial Office to the Constitutional Court. And the new president was elected by the Parliament, this new candidate was supported anonymously by the National Judicial Council also. And we see right now after one and a half years that the problem is that, of course, it's important that they tried to solve the problem by dismissing the previous President of the Office.

But this problem is a systematic problem. And systematic problem can only be solved with a systematic answer. And this is not a systematic answer. This is an answer, just changing the person. And this new President seems to be very cooperative on the first days, but there are no real changes. And despite the fact that the Venice Commission, the European Commission, the GRECO, ENCJ, the International Association of judges, so various international organisations, who are urging for legal changes to strengthening the Judicial Council, and not giving so much power to a person who is appointed by the Parliament, it was not successful. And then the council was, there was no changes, no amendments. And then the council was proposing altogether 50 detailed amendments, the Minister of Justice refused all of it. And the Minister of Justice said that they only find-- no they don't find any of it. So zero proposals as acceptable. So there were no changes. Of course, the judges want finally peace and quiet.

And it was very important that they received a salary raise in the past three years. But I think this salary raise was just something that makes most of the judges, it makes them... it silence them. So it's also, it's a leash, it has a chilling effect, because this salary raise is in three steps,

and we are looking for the last part of the salary raises. If we won't get this, then, of course, if the judges are too loud, they might not get this.

So finally, the new target as Andras mentioned will be the President of the Kuria, will be the Kuria, because the governments realize that the National Judicial Office, they are not able to control through the National Judicial Office, the whole judiciary...because the National Judicial Council is still fighting against the President of the Judicial Office. But they were choosing someone for this position who is very loyal to the government. And not because of his loyalty, but because of the ad hominem legislation, but which made possible his election. And also because he has absolutely no judicial practice. The National Judicial Council was not supporting, the huge majority was not supporting the election of the President of the Supreme Court, the Kuria. I think Agnes will speak about that later. Thank you.

**FG:** Thank you so much, Judge Vadász. That was very informative. Thank you so much for your insights. And now I will hand the floor over to Agnes. Thank you so much.

**Agnes Kovács (Kovács):** Okay, thanks a lot. So in the remaining time, I will speak about the Supreme Court specifically and tell the story of the top court of Hungary. And my aim is, first of all, to illuminate how the government has changed course in dealing with the Kuria in order to contain and take control over the old judiciary. And second, I hope that the story of the Kuria can provide us a better understanding about the dynamics of judicial politics in authoritarian regimes. Because what I claim is that Hungary has turned into an authoritarian regime.

So the story of the Supreme Court must be told from 2010 when the Fidesz took power, of course. And this story shows us a kind of dialectic between disempowering the Kuria as a first stage and then empowering the Kuria in the second stage. And if we pose the question of what happened with the Kuria in the last decade, we can see that after a failed attempt to curb the jurisdiction of the Supreme Court, the top court of Hungary... the government realized that in order to control the whole judiciary, it is sufficient to control the top court, the most important player in the judiciary, the Supreme Court. And therefore, it implemented another tool and started to empower, rather than disempower-- what happened previously, so it started to empower the Kuria, transferring significant powers to the Supreme Court.

And (parallely)...it packed or started to pack the court with politically reliable judges and started to capture the Kuria with the tool of court packing. And, of course, we have to emphasize that the Supreme Court can be considered as the most important veto player within the judiciary as it is the court of the last instance in civil cases and criminal cases and administrative cases as well.

So the first stage after Fidesz took power in 2010, was about disempowering the Supreme Court. And the legislative steps that have been made at the beginning was targeting the independence of the Supreme Court and the government sought to curb the jurisdiction and formally limit the jurisdiction of the Kuria. Some of the steps have already been discussed as addressed by Andras as well. So I will not go into the details of what happened. But of course, we have to mention the very famous case of the former President, Chief Justice of the Supreme Court, Baka. Andras's case is very famous, as it was brought before the Strasbourg court. So I will not elaborate more on what happened. But his mandate was terminated

prematurely. More than three years before the expire of his mandate. This was the first step in 2011.

And then, of course, a large number of judges were forced to retire. It was also mentioned by Andras. And what we have to emphasize here is that these measures affected seriously the top court, the Supreme Court, as well, because experienced judges and judges in senior court positions were forced to retire suddenly. And the very important element of this story of how to disempower the Supreme Court, the Kuria, is when the Constitutional Court was entrusted with a new competence to review the decisions of the ordinary judiciary, and specifically the decisions of the Supreme Court. So new competence was given to the Constitutional Court in 2012, which is called for constitutional complaint and the Constitutional Court was captured by the government. And today there is a politically captured Constitutional Court, which can supervise the jurisprudence, the decisions of the Supreme Court, which of course affect the independence of the ordinary judiciary. So it was a measure that was introduced in 2012.

And last step that I would like to mention is that there was a plan to establish a separate system of public administrative justice. It was on the government's agenda for 2016. And the plan was made into law in 2018. And this whole idea of channeling the politically sensitive cases into a special court system, separate court system which has a separate high court - top court as well, which is called the Supreme Administrative Court. So it was made into a law, but finally, in 2019, the government retreated and announced that that it withdrew the plan to organize and set up a separate system for administrative cases. So this is the short story about those measures that sought to curb the competencies and the independence of the Supreme Court.

And afterwards, the government realized that, okay, we don't need a separate system for administrative justice. But we need to change course and transfer more powers and competencies to the Supreme Court and at the same time capture the top tier of the judiciary. And an omnibus bill was a very long bill containing very different various regulations was adopted in late 2019.

And this bill/act, increased the power of the Kuria. So it is a totally different idea compared to what happened before. And just to name a few example, what it means and how the role of the Supreme Court has been strengthened by this act is that a new form of an extraordinary appeal was introduced, for instance, which is called uniformity complaint.

And under this new instrument, the judgment of the Kuria can be appealed to the Kuria, so even the Kuria can monitor and control how the various panels of the Supreme Court decides on different cases. And it can, as a result of the uniformity complaint and procedure, it can determine the mandatory interpretation of law, and it can even repeal judgments of other panels of the Kuria. This is a very new instrument that was given as a kind of power to the Supreme Court.

The second one is that this Omnibus Act introduced somewhat limited precedent system, it is called by the government as a limited precedent system, which means that all the published decisions of the Supreme Court is binding on the Supreme Court itself and on the lower courts as well. And in case a judge seeks to deviate from the interpretation that is contained in

the published decision of the Supreme Court, she must provide a reason for it, she must provide a justification for it.

So this limited precedent system, again, strengthen the role of the Kuria and how to interpret the law, how to decide questions of law. And all these two instruments... They are very new ones, but it is clear that they aim to limit judicial discretion and to limit the autonomy of individual judges in deciding cases.

And the third example can be that as part of the reform of the administrative court system, new competencies (further new competencies) were provided for the Supreme Court correctly. From 2020, freedom of assembly cases out there, out by the Supreme Court, it is the first and final instance of dealing with most of the freedom of assembly cases.

So all these measures can result in the empowering of the Supreme Court. And the parallel measure was that the government started to fill the Supreme Court with loyal judges--who are loyal to the government, so we can see some examples of political appointments for recent time. One has already been mentioned also by Andras and by Victor as well.

So a new President of the Supreme Court was elected in 2020, and he took office this year, Mr. Varga. And the new Vice President of the Supreme Court was also appointed. And the very, very recent news is that a new administrative judge was appointed to the Kuria. And all these appointments or elections can be seen as political advancement. And if we want to figure out what are the common features of these appointment procedures and what are the common features of the careers of these judges, we can see that all of them so, so the three have arrived from outside of the judiciary.

One of the judges who is now the Chief Justice, the President of the Supreme Court arrived, so Mr. Varga arrived directly from the political captured Constitutional Court. The Vice President can be seen also as a political appointee as he had very important functions that can be seen as government friendly functions. He served as Director of university that was established by the government and generously funded by the government, it is the National University of Public Service. So he was the former director of this government friendly university. And he was also the Head of the National Election Commission. And the third figure who was appointed just a few weeks ago to an administrative judge position arrived directly from the Ministry of Justice. And he had very important positions. He was, for instance, as Chief of Staff of one of the former justice ministers and served as someone who is in charge of setting up this administrative court system that was finally dropped by the government. And so this is a common feature in all of these appointments that these judges arrived from outside of the judiciary.

It has also been mentioned that most of them have no judicial experience at all. Only one of the judges who was appointed as Vice President has a short period of experience as a judge, but all the others did not serve as judges of ordinary courts before. And the third common element in their career is that they were involved, or at least most of them were involved in some kind of scandals, which really makes the professional integrity as lawyers questionable. I will not go into the details what happened with them, but it is also, I guess, elaborated and accessible in English as well.

And the fourth common feature is that if we look at their previous positions, if we look at their statements, if we look at their academic career, it can be seen that they are close allies of the current regime. So what we can see is that while the government entrusted with very significant and strong powers... Supreme Court at the same time, it captured or at least started the process of capturing it by court packing, by filling the top court with political appointments—with judges who are loyal to the government and politically reliable.

And I don't know whether I have time to conclude. But I would like to, okay, just a very short conclusion. So if we pose the question, it is an interesting question. Okay, what we can say about the state of judicial independence in Hungary today? Of course, we can see, or we can say that independence is a matter of degree. And of course, judicial independence cannot be fully eliminated, it cannot be fully destroyed. But the question is that is it possible to win a case, a politically sensitive case against the government? Can we imagine that courts decide which not promote the interests of the government? Can we imagine that courts confront with the government?

That is a question that we can raise in the context of the jurisprudence of the Supreme Court. And, what we can see in the most recent jurisprudence, and these are very recent trends and experience concerning the jurisprudence, the case law of the Supreme Court...we have to provide a fairly pessimistic reading because recently there were interesting cases handled by the Supreme Court on freedom of expression, or media freedom, or freedom of assembly cases. And what we can see is that the Supreme Court does not want to confront the government and does not want to make a decision that is unfavorable for the government.

These are very recent examples, instances of decisions. But we have to be very worried about these trends – what's going on in terms of the jurisprudence and in terms of the development of the case law in the Hungarian supreme court?

Thank you.

**FG:** Thank you so much, Agnes. Some very complex issues there. But that was extremely useful. You explained those very well. So thank you so much for that. And I see in the chat, we do have... there are three questions there. So maybe we will take them one by one.

Firstly, there is a question about the public perception of the judiciary. And I wonder, firstly, I suppose what is that public perception of the judiciary? And then also, have judges been able to use any other--Or do they use any other media or methods to try and counter these attacks?

So Judge Vadász, I might put that one to you first, if you would?

**VV:** Yes. Thank you. I think it's a very good question. And it's the most important thing. If the people, the citizens – because judicial independence is not a privilege, it's a fundamental right of the people. But if the people are not protecting their judges, how do they expect the judges to protect them from the government, in cases.

So that's why it's a very, very important issue. And what I think is, what I see important, for example, where the judicial associations are very, very active, and judges are very active and

involved in these volunteer campaigns to raise awareness among the people in the society. So it's very, very important.

Actually, I myself have an idea, because I was thinking --because I feel myself a bit old for that. But I think I will open a Tik Tok account and start to give/make videos, share videos, about what the judges are doing and why it is important, so then they can ask questions. Because it's crucial that the people who are now just maybe 15, 16, 18 years old, they will be the future politicians one day, and the future decision makers. I don't think that we can convince our present decision makers, no matter what political opinions they have, or which party they are standing...but they are not socialized in a way they would truly respect rule of law and judicial independence. At least in Eastern Europe, this is the sad truth. But I think we can change this from starting down from the bottom.

**FG:** Thank you. Andras or Agnes. Would you like to add anything there in relation to the public perception of the judiciary?

**Kadar:** What I can say is, part of the problem is that there are very strict rules for judges and how they can address the public. So actually, and when you have this kind of chilling environment, and when you have court leaders who have been put into their places by, you know, those actors who are loyal to the government, that's no easy job for any judge to speak out. Because actually, based on the regulation on how they can talk to the public and about what they can talk to the public, it's going to be very easy to like launch disciplinary proceedings then, and so on, and so forth. So one thing that I would try to attack is actually this kind of, I think, kind of misinterpretation, because actually in the Baka case that Agnes mentioned – the Strasbourg court emphasized that when it comes to judicial independence, judges should be free to discuss publicly those issues that they think are threatening their independence.

So, why the freedom of expression of judges might be limited in certain ways due to, you know, the separation of powers and so on and so forth. When it comes to judicial independence, they should have every right to speak out, and that should not be sanctioned.

So I think one way, but you know, I am a lawyer and you know, when you have a hammer in your hand, everything looks like a nail to you. But I still think that that one first step could be to kind of challenge the regulation that makes it very difficult for a judge to decide whether this is something that he or she can, you know, speak up about in public. And the question also regards the uses of media by the judges. This is one of the core issues that prevents judges from being able to use other channels than their own judgments to communicate with the public.

And then, as I mentioned, government officials and high-ranking party politicians have no problem whatsoever, you know, giving their very harsh opinions about judges and individual cases. And then judges, you know, have difficulties responding to those because they could be accused of, you know, going political, as it happens many times.

**FG:** It's not an even playing field by any means, then. And Agnes. Is there anything you'd like to add?

**Kadar:** What I would like to add is that this is not just an issue of how judicial freedom of speech is regulated in Hungary. But it's much broader question about the legal culture of Hungary and how judges are socialized within the judiciary. So it is a very deeply politicized judiciary in Hungary, historically. And this attitude should be changed in order to make the judiciary act for speaking up for itself, for its own interest.

**FG:** Sure And, I mean, there is I'm jumping over the questions, but there actually is a related question here. And it says that -- notes the Polish government follows the Hungarian agenda, however, it faces strong resistance from judges associations. So the question relates to the situation of judges associations in Hungary.

I mean, you have touched upon that a little bit... but maybe, you know, is there momentum there for judges associations? Or what motivates the judges associations? how are they structured? And what's their involvement? Maybe Judge Vadász? Yeah, I can ask you...

**VV:** In Hungary there is one large judicial association, very similar to Austria, where they have one single association. Half of the judges are members of this association in Hungary. It should be quite strong, but it's not. And why is it so? I think this is how judges are socialized. They don't really are used to protesting for their own rights. Actually, the Hungarian Judicial Association has a cooperative agreement with the Ministry of Justice, and they are really happy about it. Now, they don't care about that the Ministry of Justice is not fulfilling this agreement, only they have this on paper. And but, so this is how they work. It's not that strong as in Poland. But I see that in the past two years, there was a positive change.

Because when the Council was attacked, when the judicial association was attacked, they started to show to give platform, at least to critical voices. And they do give platform to critical voices. I think in the future, if they are going to have a stronger leadership, they might achieve something. And also there are new associations that have been developed recently. One of the associations is **Res Judicata**, (1:28:53) which seems to be quite strong on the rule of law issue. And also on international level. And this gives and shows some hope. Why the Polish judges are more resilient than Hungarian judges? I think, why the Polish people are more resilient than the Hungarian people? That's the other question. Was always historically this way.

**FG:** And if I could just ask you a follow up question on that because I know in the past you were involved with the training academy for judges. And, you know, if we're talking about the future of the legal profession, the future of the judiciary, you know, is there-- Do you have a sense that there is maybe a new generation that may be more ethically minded or socially conscious? Do you have any sense that things may change?

**VV:** Absolutely. Absolutely, I do have these, but I think Agnes is more involved in this type of legal education. But when I give lectures, the law students are very open and very critical thinking, which is also very important. We'll see what will happen with the universities in Hungary? That's also another question. But that's a political question. So I don't want to go get into that.

**FG:** Sure. Agnes can I ask you then, how about your law students? What do you think the future may hold?

**Kovács:** Okay, so I'm a little bit pessimistic. But currently, I'm not teaching at a law faculty, but I'm teaching at a faculty of social sciences. And sometimes I make comparison between the students, and how open they are in expressing their views, how critical they can be. And we can see differences clearly.

And the legal education is very, I mean, centered on the text and the doctrines and legal argumentation. And I taught a legal theory to the students. And we always addressed very serious questions about what to do in a state of authoritarianism. And what would be the obligation of a judge who must adjudicate in a system that is not democratic anymore -- what should have judges done in the Hitler era? And these are very serious questions, but the law students are not really open to express their views concerning what to do. And they are more stick to the idea that okay, we are judges, we have to apply the law. This is our rules.

And of course, it's a question for today, whether we can say that the current system of the Hungarian government would encourage judges to rely more on principles and more on international norms, rather than to the text of the law. So it's a question that we should, I mean, pose to current judges in the Hungarian system as well.

**FG:** Okay, very good. I'll move on to another question here. And this is in relation to support from those abroad or international support--perhaps judicial bodies and other countries, organizations active in rule of law... what type of support would the Hungarian judiciary find most useful? I suppose, at the moment. Maybe again, Judge Vadász? I'll start off with you.

**VV:** It's very hard to answer this question. I think this is the most difficult issue because that's what we see...that everyone knows about the problem, they exactly have very good information on what the real problem is and how it should be solved. But they are not able to enforce it. They're not able to put enough pressure on the government, not even the European Commission. And also the other organizations are way weaker. They have weaker power than the European Commission, it's not able to solve it.

But we need to keep pushing this. It means that what the National Judicial Council does is we are informing our international allies through the European network partner organizations in the European Network of Councils for the Judiciary. Also, there is the International Association of Judges and several other institutions. But what I think is the training will be even more important, there is an EJTN-- the European Judicial Training Network, which seems to be very dealing with technical issues. **They don't really deal with the merits, they don't deal with the real problem.** [this line to be deleted]

The real problem is in Hungary, I think, that the judges were chosen for an international study visit or an international training or any event, they're chosen by the President of the National Judicial Office—which means they can be filtered. I think in Poland it might be the same problem. That the National Training Institution is captured. And if the training institution is captured, then the network is not able to work. What the European Network of Councils for the Judiciary did, we needed to suspend the Polish KRS. And they might be expelled very soon from the network...which is, of course, a very strong, but very important message to all the members and to all the stakeholders. So we are doing our best but I know that this seems

sometimes a very hopeless fight, and the hopeless battle with all the populist governments in Hungary, and in Poland and all over in Europe.

**FG:** Thanks for that. Andras, maybe I'll come to you and see -- do you have any suggestions on what.

**Kadar:** I mean couple of ideas. Obviously, when you have a type of government that has so systematically and consciously built up the system, there is only so much you can hope. But I mean, I think judicial associations, national or international, could actually participate in those processes that put a limelight on these on these developments - like the rule of law report of the Commission.

Now, you know, that deadline has passed, but there's gonna be another one next year. Also raising these issues in bilateral talks...asking, you know, people all the inconvenient questions like, you know, you have, you know, what the relationship between the NOJ and the NJC. I mean, the GRECO has criticized it, the European Commission has criticized it, the Venice Commission has criticized it. The Hungarian laws regarding the judiciary have been amended like 100 times in the past two years. Now, anytime someone has the chance to ask someone who has an influence on this process, like— Why on earth guys, are you not changing these regulations? I mean, I really do believe in this kind of, I wouldn't call it blaming and shaming but like warning about the problems. I would really encourage everyone who gets the chance to do that, ask it. Okay, so I have heard this is happening in Hungary. I know that, you know, the Venice commission said this, the GRECO said that, so why don't you want judicial independence in Hungary?

So I think it's important to expose the problems, obviously, the ENCJ will not be able to strongarm the Hungarian legislature into amending the laws, but I think raising them and also, you know, showing support whenever they meet someone. Or I mean, another idea, it could be possible to make it requirement that judges should not be appointed, but judges should actually apply individually for the state training program... saying that, okay, we want individual applications, and then making that kind of segue into the training programs on an international level. So there are a couple of things I think that can be done. And I do believe in small steps. I mean, if I wasn't an optimist, I wouldn't be doing the job that I'm doing today. So I think it's simple.

**FG:** Thank you. And Agnes, I'll give you the last word to you. Please. If you'd like to add anything to that – what can, you know, what can those outside of Hungary do to support the judiciary? Are there any suggestions that might come to mind?

**Kovács:** I would have a question to Viktor—and what is the ENCJ waiting for, so why is it hesitating to expel the Polish Judicial Council. And I think this is the problem --that at the international level, most of the important actors are hesitating to interfere.

**VV:** What I know that the ... I was in the executive board and just now at this general assembly in June, that the executive board was very clear that we made our proposal for the expulsion.

But we also realize that according to our statute and regulation, we need to give the floor to the involved party, to the Polish KRS too, if they want to defend something, they can have to speak up just like in a trial, that they are able to defend themselves and speak up to provide a kind of fair trial for them. But due to the COVID, the ENCJ was not able to meet, the general assembly was not able to meet.

On the other hand, of course, also in the statutes and regulations that all the members...not all the members, but everyone who is participating the General Assembly and participating in this ballot, we need three-quarter majority for the decision of an expulsion, which means if someone would abstain for the reason that wanted to hear the Polish KRS personally before that, and they wanted to then decide on this, then it would make this proposal maybe not strong enough.

These are the reasons. So the ENCJ is waiting for the next general assembly. It will be in October. And I think in October there will be a decision whether the network will expulse from the members the KRS or not. I don't think that there will be any changes in Poland unfortunately, before that.

**FG:** Okay, well, thank you everyone. I'm looking at the clock and I'm afraid that our time is out. But, I found that hugely informative, and I want to give sincere thanks to our panelists, to Judge Vadász, to Agnes, and to Andras.

Thank you so much for all the time you put into preparing and for being here, for giving up your afternoon. We really appreciate it. I want to thank all of our participants as well. And we look forward, as Chris said, we look forward to welcoming members of the Hungarian judiciary to our trainings at some stage in the future.

So have a lovely evening, everybody. And hopefully we all meet each other again, someplace soon. Take care and goodnight. Thank you.

[TRANSCRIPT ENDS]