



**Council of Europe**

Rome, 18.01.2023

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

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

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Subject:

Execution of the judgement of the ECtHR in the Case Baka vs. Hungary of 6.2.2016  
(Application No 20261/12);

NGO communication under Rule 9 para 2 of the Rules of the Committee of Ministers  
concerning the execution of the judgments of the European Court of Human Rights

Dear Madam, dear Sir,

The European Association of Judges (EAJ), Regional Group of the International Association of Judges (IAJ), which is an unpolitical, independent NGO with the objective of fostering the independence of the judiciary and protecting human rights and the rule of law with legal status under Italian law, which represents the most representative judges associations of 43 of the 46 member states of the Council of Europe, including Hungary, respectfully forwards this communication under Rule 9 para 2 of the Rules of the Committee of Ministers concerning the execution of the judgments of the European Court of Human Rights and asks to take this information into account in the deliberations regarding the execution of the judgment of the European Court of Human Rights (ECtHR) in the case Baka vs. Hungary.

This statement does not comment on all general consequences, which are needed in order to respect and execute the judgment, but is limited to the many cases of disrespect of the right of freedom of expression of judges and the still blossoming chilling effect, which is a result of that.

In its judgement the Grand Chamber of the European Court of Human Rights in the case of Baka v. Hungary (Application no. 20261/12) the Court identified that the dismissal of the President of the Curia, Mr. Baka, was among others motivated by his critical statements on the reform of the justice system, which was intended by the government. The Court therefore assessed this as an infringement of the claimant's right of freedom of expression, established a violation of Article 10 of the Convention and underlined that the incriminated act had a chilling effect.

Consequently, the Committee of Ministers as competent body to monitor the execution of the judgements of the Court already at its 1280th meeting in March 2017 as regards this chilling effect requested that the Hungarian authorities take measures to lift and countervail the “chilling effect”.

The EAJ regrets that it has to report that its observations showed many undue statements in the government-friendly media, statements which do not deal with arguments, but focus on personal insultations of the respective judge or the judiciary at large without any defence by government representatives or the National Office for the Judiciary (NOJ).

Three examples may illustrate this situation.

Recently (November 2022) the chair of the National Council of Judges (NCJ) and the spokesperson of the NCJ were invited to meet the new ambassador of the United States to Hungary. A press campaign followed, by which the two judges were attacked as traitors and also the president of the National Office for the Judiciary gave a critical statement on this visit.

EAJ Board reacted and issued a Statement dated on November 7<sup>th</sup> 2022 which is attached to this communication for your information.

When the EAJ three years ago undertook a fact-finding mission to Hungary to meet representatives of the ministry, the bar, the judges association, the National Office for the Judiciary, the National Council of Judges they members of the delegation were defamed in a campaign as being in the sold of George Soros, which should cause a negative image and reduce the credibility of the experts. The judges, whom the delegation met were criticized.

In summer last year an Hungarian judge, Csaba Vasvari gave an interview to an English newspaper, in which he judged the situation of the rule of law in Hungary critically and claimed that the government regularly overreaches its authority. Again, defamatory attacks followed against the judge.

There is no effective means to punish perpetrators who defame or annoy judges. Neither the government nor the National Office of the Judiciary defend judges or the judiciary against such attacks.

The National Council of Judges has the jurisdiction to supervise the administration of the justice system which is exercised by the National Office of the Judiciary. In practice the means which are available for the NCJ are not sufficient. The National Council also has no official possibility to initiate legislative measures. It should be the protector of judicial independence and somehow the voice of the judiciary. But, as shown above, its representatives are criticized when they raise their voice.

To summarize: The EAJ considers the Hungarian authorities as far from meeting the expectations of the Committee of Ministers to guarantee the freedom of expression of judges and by that to lift and countervail the chilling effect of infringements. The right of freedom of expression, which sometimes also means the duty of judges to raise their voices, is not only underlined in the judgment *Baka vs. Hungary* but also extensively endorsed in the Opinion No 25 (2022) of the Consultative Council of European Judges (CCJE) on freedom of expression of judges.

EAJ deems it absolutely necessary to create effective means to react on defamatory and annoying statements on judges and to adopt clear legal provisions to safeguard the right of members of the National Council of Judges and representatives of judges associations to express their views even if they are critical against the other powers of the state. The means

of the NCJ to supervise the National Office for the Judiciary should be strengthened as recommended by the Venice Commission and other European bodies.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Duro Sessa', with a long horizontal stroke extending to the right.

Duro Sessa  
President of the EAJ