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Full transcription of the conference on the importance of judicial independence in Europe *In the light of two case studies:*

Yalcinkaya v. Türkiye and Baka v. Hungary

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Frederik Sundberg:

The EU could do a lot once it reached a certain level of political visibility.
Democratic backsliding tends to occur in states with weaker economies and lower growth, often because they promote systems of government that are not conducive to economic development and instead become reliant on EU aid.
If a government is functioning well, it should not experience democratic backsliding. However, to exert force—even economic force—legitimacy is required. Cases from the ECtHR that have exposed shortcomings in Hungary and Poland highlight this need for legitimacy.
An example is the inter-state case against Greece after the coup d'état of the colonels in 1977. The colonels justified their coup by claiming an imminent communist revolution, yet there was no real indication of such a takeover. The Greek government lacked legitimacy, and the rest of Europe could not accept it as legitimate. The situation was assessed in a reliable manner, and ultimately, democracy was restored in Greece.

Beyond simply issuing judgments, the fact-finding role of the Court—especially at the Committee of Ministers stage—is crucial. It influences the legitimacy of actions taken by other institutions, such as

the European Bank. There are numerous spin-off effects, both positive and negative, in the handling of individual cases. However, the time between lodging a complaint in Strasbourg and the implementation of a judgment has significantly increased.
Currently, the time from filing a complaint to resolving the issue can take up to 10 years—moving in the wrong direction due to a lack of resources in the system. In contrast, the *Klimaseniorinnen* case was resolved in just 3.5 years, showing how prioritization can affect case timelines. This raises concerns about the politicization of the Court when choosing which cases to prioritize.
A major issue is subsidiarity. When contracting parties act in good faith, subsidiarity works well. But when countries experience democratic backsliding and fail to uphold their obligations, Strasbourg procedures become significantly prolonged. One potential solution is to apply stricter subsidiarity rules when there are serious doubts about the national judiciary and the effectiveness of its legal procedures. Instead of automatically assuming that all states provide effective legal remedies, a more rigorous approach could be taken.

The Court faces pressure related to both time and financial constraints. As a result, it aims to resolve cases as quickly as possible, often without fully considering individual measures such as opening new investigations. In many cases, these issues are handled by Ministries of Foreign Affairs, where they tend to stall. This is a loss for the system, as real justice should not be limited to financial compensation but should also include accelerated proceedings and proper investigations.
The Council of Ministers (CoM) examines all types of violations, assessing whether a specific case reflects a broader systemic problem. If so, the CoM must develop an action plan to address the issue.
Judicial independence, as a core element of the rule of law, is essential for democracy. Historically, judicial review of executive actions has always been linked to democratic governance. Under monarchies, such as those ruled by the "King by the grace of God," true judicial review was nonexistent. The rule of law requires independent and trustworthy institutions that serve the people fairly.
In democratic systems, the executive branch does not always implement parliamentary decisions correctly, making judicial oversight necessary. The concept of judicial review emerged in the 1700s in the UK and later, in the 19th century, Sweden began scrutinizing whether the government faithfully executed parliamentary decisions.

In the early years of the European Convention on Human Rights, cases referred by the Commission often dealt with the scope of judicial oversight over administrative actions. The 1980s marked a turning point in this regard.
With respect to the EU, the allegiance of member states to the European legal system led to the recognition of EU law supremacy over national law. The European Community emphasized that it upheld the same human rights standards as the Convention system.
This legal framework also played a significant role in economic trust. The stability fostered by the Convention system, both among member states and within the European Community, was a key driver in the integration and security of European economies.
For instance, Margaret Thatcher attempted to privatize media in the UK, but due to the absence of constitutional protections, there was no legal safeguard against selling media assets to foreign entities, such as American shareholders. This highlights the broader economic implications of human rights protections.

Another critical issue is the intersection of business and human rights. National and international financial institutions must work together to prevent corporate actions from infringing on human rights. Implementing UN principles in this area is crucial. The European Human Rights and Social Charter further strengthens democracy by imposing positive obligations on states under the Convention. Given the urgency of democratic backsliding, the Council of Europe must efficiently use its procedures—especially at the execution stage of judgments—to counteract backsliding and safeguard judicial independence.

Dr hab. Ireneusz C. Kamiński:

Yalcinkaya v. Turkey

Summarize the case from Turkey, I was asked to prepare a policy paper for this case a couple of months ago, as the case is not like the others for the independence of the judiciary…

Yesterday we went for dinner, to a nice Italian restaurant, very tasty Italian dishes, we came across some ideas of reflection about the independence of the judiciary.

« If judges are remunerated – is a relevant question for independence of the judiciary » or is it reserved/organizational? Is it something for the ECtHR?

Judges are poor, they likely would look for some other financial resources and this would create structural corruption.

I worked and was confronted with this kind of questions in practice, the judges were remunerated very low, which created the problem of structural corruption, very rooted.

They are different contexts/aspects for our reflection for our independence of the judiciary.

Starting with something general: the concept of independence of the judiciary is constitutional, something by its nature, reserved by the nature of the convention for the states themselves. There is nothing literal in the convention about the independence of the judiciary. Of course, there is the principle of fair trial. But problem to find point of reference in the convention to prepare good indication to the court referring to the ECHR for the problem of independence of the judiciary. It is not an easy task. Applicants (as it happens from time to time) and applicants are successful. Transforming human rights issues into the general in the right direction – starting with the question of the independence of the judiciary.

Yalcinkaya v. Turkey:

Do you have cell phones?

Do you have WhatsApp on your cell phones? Yes, software communications is necessary.

This case is also about a certain communication application, that everybody could download in Turkey. But downloading «ByLock» turned to be dangerous for those having this application. What happened in Turkey about this application?

Perhaps you know that in 2016, there was a coup d'état in Turkey, following this coup d'état, a terror network.

The spiritual leader died in October 2024. At one point, he split with Prime Minister Erdogan. Gulen was responsible for this attempt and a number of actions were undertaken, these allegedly cooperating members of this network dangerous to the State.

Mister Yalcinkaya was public school teacher and was accused of being an underground member of this structure. He has been sentenced to jail. What was the illegal ground for this accusation and subsequently penalty? If a certain act is considered a crime, this act must meet some constituent elements: material and mental for this crime.

In case of the prosecution of mister Yalcinkaya, that this Turkish teacher was a member of an illegal, armed, terrorist organization. What did the Turkish authorities do in his case? They decided that mister Yalcinkaya downloaded the application ByLock, and it was sufficient to find that he was guilty of membership in that illegal terrorist organization. No factual analysis, no evidence for Mr. Yalcinkaya, that he was part of it. No mental element, the only evidence was that he was using this application. Period. Striking. Unreasonable.

It happened because in 2017, the highest Turkish court for criminal cases decided that the usage of ByLock was sufficient to bring the users of this application to legal responsibilities under Art. 314. It was sufficient for the conclusion that they were members of an illegal armed terrorist structure.
This case was decided in September 2023, only after 3 years the events (good news compared to 7 or 10 years), the case has been decided by the Grand Chamber (biggest court for most complicated and important cases).

The ECtHR ruled that there were 3 violations:

Reasoning (violations):

1. **ECtHR found that there was a violation of Art. 7** – prohibition of punishment and crime without legal basis. → must be legal ground for crimes.

   Why? Interpretation and application of domestic law is reserved, it is the principle for domestic courts. It is not a matter for domestic courts of human rights. The ECtHR said of course it is a principle, something exceptional: one of the reasons for the formation of the Grand Chamber, the Court accepted. Criminal law needs some developments, domestic courts are permitted. Deal with applications in exceptional cases because interpretation of domestic courts must be reasonably foreseeable. Was it reasonably foreseeable? There was no evidence of the intentions (*mens rea*) and no actions (*actus reus*). The Court said that the interpretation by the Turkish courts was not reasonably foreseeable. Art. 314(2) of the Turkish penal code has been transformed into a crime of strict liability. If you have ByLock → you are guilty of a crime of being a member of an armed terrorist organization. ECtHR used very elegant words: this interpretation was unreasonably unforeseeable but we could use: 'This interpretation was stupid.' Striking that the Highest Turkish Courts could have elaborated these standards.

2. **Art. 6 – Right to a fair trial.**
   Issues reserved – principle for domestic courts – no application, no interpretation → some issues regarding the evidence. What happened during the case? Turkish courts relied solely on the prosecution of evidence. No independent assessment court collected by the prosecution. What's more, the applicant and his lawyers did not have access to the evidence due to state security concerns. The accused and his lawyers did not have access to these materials. For the trial to be fair, it must be adversarial and ensure equality of arms between the prosecution and the defense. There was no such thing in this case. There was nothing. So the Court decided that there was a violation of Art. 6 ECHR.

3. **Violation of Art. 11 – Freedom of Association.**
   The two organizations were shut down during the coup d'état. What was legal became illegal. The domestic courts, the mere fact of shutting down these organizations.

This case is individual, is important, decided by the Grand Chamber. Important for the general, for other Turkish citizens. Why? Because more than 100,000 cases similar to this are currently pending to the Court. 100,000 cases. Generally, around 2 million people in Turkey might be affected by the interpretation adopted by the Court of Cassation. Huge problem in Turkey regarding the interpretation/application of Art. 314.
The question is, if we are confronted with issues of legal reasoning, or with a bigger problem of lack of independence of the judiciary with the Highest Court in Turkey? Creates these striking interpretations. Demonstrating something going on with the judiciary in Turkey – demonstrates the bigger issue of the

lack of independence of the judiciary. Justified to put some general questions if the highest institutions make decisions that are strikingly unreasonable, they must be demonstrative of something bigger.

Frederik Sundberg:
I see we have a time problem, the topic is a bit too vast for it to be in the time limit. Let's invite Professor Fikfak to tell us something about the challenges which the implementation of these judgments brings with it. Thank you.

Professor Veronika Fikfak:

Thank you so much. Sorry I can't be with you. I am currently in very cold Copenhagen where we are finishing a six-year project that we've been running since 2018-2019 on looking at issues of compliance, or execution if you'd like, with judgments of the ECtHR.

So, just to say a bit about myself, I am Professor of International Law at University College London, I am also a judge at the ECtHR. I have studied the ECtHR in different ways, about 15 years I would say, and for the last six years, I have really looked at decisions on compliance and execution, and I am using those interchangeably.
As part of this big project, I have a team of nine researchers, and we have looked over this time at 25,000 judgments from the ECtHR.
And specifically in that context, also Hungary and Poland and the rule of law cases. Really, today I was thinking that it might be interesting for you, in the context of judicial independence, in the context of rule of law, for me to speak a bit about the system as a whole—maybe a bit about the countries—but really as a system as a whole and the dynamics of compliance or execution within the Council of Europe.
And what I'd really like to do within my time that's been allotted, I'd like to make three points:

#1The first one is that when we think about compliance with judgments or execution of judgments, we're really talking about the tip of the iceberg. And I'll talk a bit about the sea around it.
#2, I'd like to talk about where compliance happens, where execution happens, and how we and our project were able to notice the rule of law crisis in our data before even people started to talk about it.
#3, for us, the big question has been—and I expect for the people in the group—how do you ensure better human rights protection around Europe, around the Council of Europe? And how do you do that through bettering compliance?
So I'll talk a bit about those three things. I hope you can hear me okay?

Frederik Sundberg:

Yeah, yeah, absolutely. Super, thank you.

Professor Veronika Fikfak:

I. So the first point I'd like to make is that we can't—we usually want to talk about compliance, we focus on one country, and we talk about that country's behaviour. We also usually only talk about one judgment. But really, from our perspective, when we're looking at the whole system, we really need to think about compliance as the behaviour of a state in a series of cases that it is complying with. Because

if we're looking not only at one judgment but at a number of judgments, what we can see is the strategy of that state and the behaviours that the state is adopting more widely. And I would like to even expand it a bit more and talk first about the issue of friendly settlement.
So, since 2019, the European Court of Human Rights requires that all applications that come to the Court undergo an obligatory settlement stage. That means that any application will, for 12 weeks, be sort of in negotiation between the state and the Court and the applicant.

In the ECHR context, we've had settlements taking place since 2000. And when we did our analysis, we found that up to today, there have been 12,000 cases that have been settled since the 1990s.
It is important to underline—and this is why I'm talking about it in the rule of law, judicial independence context—that certain states are using the procedure of settlement, called friendly settlement, strategically as a way to avoid precedent-setting decisions.
And a number of countries are being allowed to make these settlements in a large majority of cases that come to the Court. We're seeing countries settle 50, 60, even 70% of all of the applications that come to the Court.

And the argument I almost most often get when I talk about settlements—I get a sort of response from the audience that, "These are only repetitive cases."
We have looked at our 12,000 cases, and what we have found is that these are also right to life cases. They are also prohibition of torture cases. And they are also rule of law cases.
Now, why do I mention the issue of settlement in the context of rule of law and compliance? Because our analysis has actually shown that even before we start talking, in Hungary, for example, about Orban taking over, or before we're starting to talk about court packing, what we're seeing in terms of the dynamics of, let's say, Hungary's behaviour in front of the European Court of Human Rights—we see this big jump in 2010 of Hungary quietly settling twice as many cases as there are judgments coming out of the Court.

So let me give you an example.
If Hungary, on average, every year has about 30 judgments coming out against it, it is also, in addition to those 30 judgments, settling another 50 to 80 cases every year.
And it has done so until 2020 or 2021—from 2010 to 2021—so about 10 years of settlements.
Now, this is really what we are identifying as an approach of avoidance—of avoidance of judgments. Where, for example, we're not seeing this in Poland. Poland is already taking a much more confrontational approach to the European Court of Human Rights and is refusing to settle any cases that come before it. And it goes in defense organs very clearly in front of the Strasbourg Court.
So for us, settlements are really an important indication of the state's behaviour. How the state chooses to behave when they're really examples of states trying to avoid international institutions or seeking confrontation with them. They are strategies to avoid precedent-setting judgments that would require compliance. So it's a way of preventing the need for compliance, if you would like. And it's a strategy that essentially allows the state to avoid being told off by a court.

So from our perspective, we're seeing the beginnings of the rule of law problems through these data points even before they become visible internally. So from our position, when we think about compliance—compliance with judgments that have actually come out of the Court—within that, that is really the tip of the iceberg. And what we're not seeing underneath are all of the cases that never made it in front of the European Court of Human Rights because they have been settled.
And so when we think about the cases that were mentioned by speakers before that came before me—the Hachette case and other cases, right—those are cases that actually made it. But we need to be concerned also about the cases that never make it because they are settled. Those cases never make the law, and they also don't trigger the need for compliance. So that's my first point.

II. My second point is: where does compliance actually happen? And as part of our analysis, we looked at 10 different countries of the Council of Europe, and we wanted to understand who were the actors within each one of these countries that were—we call them compliance actors.
So who are the actors that were responsible for implementation? And we mapped out domestic courts that we turn a lot about, we mapped out the government, parliament, we mapped out civil society, and we mapped out NHRIs. And we wanted to understand both the type of cases that these actors get involved in but also the full network.
And the question for us was: are these structures or networks of compliance—are they centralized? Are they decentralized? Do they mobilize only in enhanced proceedings cases or in standard cases? How does the structure affect compliance?
So, for example, what we found in Hungary—just to go back to this case—we found that it's a very centralized network. So when a judgment is rendered against Hungary, it travels to a department called the Human Rights Department within the Ministry of Justice. And this kind of centralized picture is a very traditional picture of a number of other countries and the compliance structures that they put in place.

So, having one department that is responsible for coordinating all of the compliance and implementation—now, this centralized structure can work really well when it works. But when the process of compliance doesn't work, or when the central actor, like the Human Rights Department in Hungary, is disabled—when it is hollowed out—then compliance is just not going to happen. And so what we have found, for example, in Hungary, is that in 2014, that department of human rights is legislatively stripped of its competence to, for example, disseminate rulings to the judiciary. That means that there's no communication, all of a sudden, with the judiciary.
We find that instead of the Human Rights Department coordinating, all of a sudden, as it normally does, compliance and execution, what it ends up doing is becoming silent and merely reporting what the government did to the Committee of Ministers. And then what we find is that it's really the government taking over its communication with the Committee of Ministers and deciding what is going to be implemented and what is not.

So the Human Rights Department—the central power broker, the central actor that should be facilitating execution within Hungary—but we've seen it also in other countries—essentially is hollowed out during this rule of law crisis, both legislatively and in some sense physically or practically. And it means that essentially nothing is happening.
But the Human Rights Department isn't the only actor that has been hollowed out. We also looked at what happens to the courts and whether or not we can see in this network—just through the absence of links that used to exist—how relevant courts are to compliance. And we see, for example, the Supreme Court before 2010 being super important.
Internalising judgments of the European Court of Human Rights domestically, and it's what we would call a highly influential node, a highly influential actor in the compliance network. Taking the decisions and making it, internalising it domestically. And then as the rule of law issues arise, as we get court packing, as we get other interventions—legislative and other unconstitutional—into the courts, essentially, the Supreme Court loses its relevance, loses its influence and its connections into the network, and becomes a disabled organ that is unable to really participate anymore in execution and compliance.

So what this tells us when we speak about compliance or execution is that we're not only thinking about what countries do in response and what kind of remedies they take and what they offer to undertake, but more importantly, who is taking charge of the process. Is it the people who've been there for a while, who have the know-how, or are those people disabled? And we've got new people coming in, new institutions, new organs? And this is really important.

We see that these kinds of centralized networks really work well when we have people who have been trained, travel to Strasbourg, who know people in Strasbourg, pick up the phone and say, "How should we comply with this? How should we execute this?" People who regularly engage on the international level. Those types of relationships work well, and compliance and implementation work well. But once we've taken those people out of the equation, the only thing that remains is essentially pressure from NGOs and civil society.

So from our perspective, our second story is that we believe that states should commit, and we have to encourage them to build and establish compliance networks that are resilient regardless of who is in power, regardless of who is the leader or who is in the government. And in certain circumstances, a decentralized network—where you've got multiple actors, like here in Denmark—actually works much better because somebody else can step in once an organ is hollowed out.

III. And this then brings me to my third point, which is a point about how we can achieve better human rights protection, better compliance across the whole of Europe.

When we think about compliance, when we think about execution, we usually speak about one case, and we speak about one country. Maybe we do a bit of comparison—this is what Country A behaves like, this is what Country B behaves like.

What we have found is that we have to start thinking about execution and compliance as a behaviour of states within one system—the system of the Council of Europe.

So generally, the Court will be silent on what needs to be done in relation to a judgment. It will be up to countries to decide what they will propose in terms of remedies, in terms of what they want to do to a judgment. They may say they don't want to comply, but that's quite rare.

And so when states are deciding what to do, what they often do is they speak to other states. And if we think about that—if states are picking up phones and saying, "What did you do? What would you allow me to do?" Or if they get into a meeting of the Committee of Ministers and agree on what would be acceptable—this means that these states are learning from each other, they are sharing their experiences, they are imitating each other, and they will imitate the same behaviour that came before them in another case.

And we're seeing that with a number of countries who are using, for example, the isolated case argument. So they come to the Committee of Ministers, or to the Department of Executions, and say, "Actually, you know, this is an isolated case, you should close it. We don't want to engage with it. We'll just settle it."

And we're seeing a number of countries use that argument increasingly as they've seen it with other states. And so our concern here really is a concern of imitation, a concern of contagion.

If good behaviour is contagious, bad behaviour is even more contagious among states, as it is among people. And so we need to intervene into the system. And when I say "we," I mean NGOs, I mean civil society, I mean the Department of Executions. And the Department of Executions I underline because it sets the guidelines. It sets the threshold for what will be acceptable in terms of remedies that countries adopt, but also in terms of when we will close the case. And we have to have high expectations for states when they choose their remedies and in terms of when we will allow them to close a case, when we will allow them to say, "This is enough to comply."

We need to do that because if we let states get away with little, if we get states—if we allow states to adopt compliance minimalism, which we see across the whole system, then there is no point to having this system. And so I would really encourage—and this is sort of my third takeaway—that we, NGOs, civil society, the Department of Executions, us academics, really find different ways of intervening into the process of execution and compliance, also through a conference like this.

And we do that by showing what the appropriate remedies in a specific case should be, by reporting on what remedies actually have been implemented, by giving information to the Department of Executions

about what actually has occurred, what remedies have not been adopted, and by asking all of these actors to set the bar higher so that we can ensure that states are held accountable not only at the court level but also when it comes to the execution of judgments.

So when I think about compliance and the dynamics of compliance and non-compliance, the takeaways from my talk are really three:

1. When we think about compliance, we're only talking about the tip of the iceberg. There's a lot of behaviour that we don't know about, that is settled away.
2. When we talk about execution and compliance, we need to be thinking about who the actors are. How do we protect them? How do we ensure that they survive a change in government, a change in politics?
3. When we're thinking about execution, we need to think about protecting the system as a whole. And we need to expect more from all the states, from the organs of our governments, and not allow them to get away with compliance minimalism.

I'll stop there. Thank you very much.

Frederik Sundberg:

Yes, this is extremely important, and because it goes to the heart of what makes the efficiency of the system. I have some questions myself, but if there are questions from the floor, then we may perhaps open up if you agree with this.
The first question that you said about the friendly settlements—I made a similar study to yours before, from 2010 to 2020, and I found roughly 30,000 unilateral declarations and friendly settlements. I dealt with them in the same way because many friendly settlements within this procedure before the Court are rather forced upon the applicant than anything else.

So, but that's a huge amount, and I never had the time to look through them as you did, to see what was in all these cases. But I go down the same line of conclusions that in the Execution Department, we thought was right, namely that a lot of interesting cases never get through.
And this brings us to one very important conclusion of all this work—only roughly 200 cases a year are really leading cases, setting in motion some kind of legislative reform or something like that. And of these, in less than 10%, you have some guidance from the Court.
The rest of that work is carried out in the procedure before the Committee of Ministers. And I think that there is something to say in favour of that procedure, in that it does create, as I tried to say myself, big machines for change out of very simple judgments because the judgment is seen in the light of all the information available to the Committee as demonstrating a general problem when states usually accept that the Committee's...
So that, I think, is a very positive sign.

That, and then the small judgments aren't accepted to be able to reveal much more than what is apparent from the simple conclusions in the judgment.
There is also a practice which I think is worth noting and where I think it will be interesting to have your view. We always group cases. That is, once we get cases which approach a certain problem—like that on judicial independence—from different angles, we start to group them. We can have a group of arbitrary application of criminal law in its art by John, for example. We can have a group of arbitrary detention. And this grouping of cases is very important to give them political visibility.
And that is something which is… so and so used. It is certainly something which could be another tool to improve and become notable, particularly with Hungary. If you look at what is in the caseload, there

is a huge case to be made about arbitrary application of law in Hungary, beyond what you've said about the organisation of the agents' office.

And on that side, I would just like to say that sometimes it's a bit difficult to see what the reorganisation means. In Russia, for example, the execution of judgments was first under the President, then came a case that challenged him personally somehow. And so we understood when he transferred the obligation to execute from his own office to the Minister of Justice. Even if that was lowering it down, we understood that the President might not be so keen on executing a judgment which goes against himself and his authority.

And then, at the end of that, we still had very good cooperation with the people. And so, the simple major change wasn't very negative. In fact, you have to dig a bit deeper.
And the last comment on that is that this is perhaps an area where civil society must help a lot, because diplomatic organs and the Committee prevent the Council of Europe bodies from challenging the internal organisation of the state. And there is a good faith presumption in all the work in the Council of Europe, which is very difficult to break. You really have to behave very, very badly before that is possible—and then possibly even too late.
These are some remarks, perhaps including some question bits. Would you like to comment on any of these before I give the floor further?

ProfessorVeronika Fikfak:

Thank you so much for those comments. I think they're really important.

So one thing I'll mention on civil society and NGOs—what we have found is that in a number of countries, civil society and NGOs don't really get turned on, you know, don't participate in the execution until the case has become enhanced in terms of proceedings or until it becomes a political hot potato.
And in some sense, it is when cases are not closed quickly that NGOs really become super important and play a really big role. And I think that the Department of Executions is also really underlining that need for these actors, these institutions, to provide information, because they are not able to know everything that happens internally, everything that happens within the borders of a certain country, and whether or not what the state has provided is actually true or not. So I really underline the role that civil society and NGOs play.

I think on the rest, we agree. I'm very grateful that you mentioned your own work on friendly settlements. I think friendly settlements have been understudied, and yet they represent so much of what the Court does, what the registry does.
And I think it's becoming more and more prominent, because a lot of the things you described are really a result of the workload that the Court is facing. And therefore, it is trying to set up all of these things—it is trying to group cases, etc., etc. And it is deferring the definition of remedies, the agreement on compliance, to the Committee of Ministers.
And it is doing all of that so that it says, "This is not our task. We want to focus on those 200 leading cases."
And I understand that decision, but it is a structural decision that then means that a lot of these questions become political questions.
Thank you.

Frederik Sundberg:

We have some further comments from the floor. I could probably raise one short further remark. If you read what the Court says about its role, it is usually that its role is to decide individual cases and provide individual justice. That is not the role of the Court when you look at documents from the Committee of Ministers or more political bodies. And there is a strange hiatus between the Court's perception of itself and the perception from the outside of what role it has in Europe, and which someone might wish to work on.

Professor Veronika Fikfak:

Yeah, agree.

Frederik Sundberg:

Out of time. And I think that the things which are highly interesting, as we have gathered here, and we do have the time even to run over time—and we will do this. Shall I now give the floor to—I think it is Ledi eventually.

Ledi Bianku:
Baka v. Hungary

Thank you very much, Frederick, and I thank the organisers. This event, which as has already been mentioned, deals with a very important topic in Europe. And as you mentioned, from doing not only figure now, I've been asked to speak about the case of Baka versus Hungary.
I'm not going to go through the judgment because, of course, you can read the judgment on the Internet, and we don't have time. I planned 15 minutes, and my presentation here is like 11 pages, so I focused on some of the most important aspects of the document.
But before speaking about the judgment, let me mention—perhaps it is not an anecdote, but at least it is a history about a grounded case on Baka. And to show how the European Court of Human Rights was itself concerned about the independence of the judiciary at the Court—within the Court—in dealing with the case of Baka.

Why? I'll speak only about my personal case. There have been some other judges dealing with the same issue. I was sitting in Baka. But when the formation came out, I saw my name. And I went to the President, and I said:
"Mr. President…"
It was the Italian President, Guido Raimondi. I said: "I've met Mr. Baka once—just when Mr. Baka left the Court in 2008. I joined, and I just said hello once. And we have also been sitting in one Grand Chamber case. He was the Hungarian judge. So tell me whether these kinds of events are enough for me to ask for recusal from the case."
Sorry—start. Whether these events raise any kind of suspicion. It was not the kind of suspicion because I didn't have any kind of information or exchange with Mr. Baka about his story or whatever. But it is also a question of appearance—whether these events would appear like the Court, or myself, being not independent in dealing with the case.

And it was the President who decided that I should continue and deal with the case. And, as I said, in several other cases—within the same section, etc.—they found other solutions. But just to bring you within the context.
So Baka deals with… the Baka judgment deals with the issue of the independence of the judiciary and, more specifically, as well, Article 6. And also with Article 10 of the Convention—the freedom of expression of judges.

When we speak about Article 6, well, this is not the first case the Court has been dealing with regarding the independence and impartiality of a tribunal established by law, which is a notion included in Article 6, paragraph 1 of the Convention.
There have been also older cases, for example, Campbell and Fell v. the United Kingdom in 1984.
There's been another case which I consider as one of the most important and legally perfect cases dealing with the independence of the judiciary, which is Oleksandr Volkov v. Ukraine—one of the strongest as well, because the Court ordered the reinstatement of Mr. Volkov at the Ukrainian Supreme Court. And we're dealing with a country, probably in judicial terms, with the highest corruption cut-off data amongst European member states of the Council of Europe.

If I move to the case of Baka, which was delivered on the 23rd of June 2016 by the Grand Chamber. And it is interesting because there was a chamber case finding a violation in Baka. The case was decided by the panel to be sent to the Grand Chamber because of the growing importance of the topic at the time. Already in 2015, 2016, the Polish scenario was coming. So the Court wanted to show that it was answering, to sum up, most warning messages coming from some member states—in this case, Hungary—but also there were some other states which were showing worrying attitudes.
Indeed, in the case of Baka, the Court, in the Grand Chamber—as I said, one of the first Grand Chamber cases in relation to the independence of the judiciary as such—set, or rather, the chamber said, that the notion of the separation of powers between the executive and judiciary has assumed growing importance in its case law. The same, says the Grand Chamber, applies to the importance of safeguarding the independence of the judiciary. So they are both linked—independence of the judiciary and separation of powers.

And the Court—these are the general principles elaborated by the Grand Chamber.
What is also interesting in Baka is that the Court tries to establish a kind of catalogue of international instruments in dealing with the independence of the judiciary. Because we shall also remember that there are many other institutions, not only the Council of Europe—like the Consultative Council of European Judges, which basically controls all the judicial reforms in the member states, with few exceptions, with the only exceptions being those which are problematic within the EU, as long as they are powerful organisations. The UN also has a Special Rapporteur on the independence of judges.

So the Grand Chamber uses the opportunity of Baka to refer to some of these instruments. And, for example, it refers to the UN High Commissioner for Human Rights, General Comment No. 32, and Article 14 of the ICCPR—the right to equality before courts and tribunals and the right to a fair trial—so it takes this into account.

The Universal Charter of the Judge. The Bangalore Principles on the Independence of the Judiciary—so it takes these into account—and also the work of the Consultative Council of European Judges.
Then it deals with the main issue in the Baka case.
The main issue was that Mr. Baka left the European Court of Human Rights, where he had been the Hungarian judge for, if I remember correctly now, almost 15 years, between 1993 and 2008. He went back to Hungary for a year or so. He was President of the Court of Appeal. Then he was appointed President of the Supreme Court in Hungary.

After Mr. Orbán came into power in 2010, he started a series of constitutional reforms dealing, amongst others, with the composition of the courts. And one of the measures was that judges should not retire anymore at the age of 70, but at the age of 62.
In France, probably they would love it—if you have followed the debates about the pension reform in France.

Another measure was that a President of a court—and this was a dominant measure—should have been exercising, for more than five years in a row, a judicial position in Hungary, which was not the case for Mr. Baka, as the exercise of judicial functions in Strasbourg could not count. So it was really tailored for Mr. Baka.

Then the Court had to reply to this issue, and it says, in relation to the removal and sanctioning of judges—because Mr. Baka was obliged to leave the Supreme Court as President, though not as a judge—factors relevant to safeguarding their independence include the reasons for which judges can be removed and/or sanctioned, and which body carries out disciplinary proceedings against them.
It takes into account, specifically, the Magna Carta of Judges, which provides—underlining a specific provision—that at least 50% of the members of the disciplinary bodies sanctioning judges should be completely composed of serving judges.
This follows the constant line of the Strasbourg Court, including the very recent Armenian case, Antonián, three weeks ago. With the exception of a bigger case—there is a big exception—there are no judges as members of the disciplinary chambers. And the third point which the Court makes in relation to these standards is the procedural fairness of disciplinary removals. Proceedings—this statement in Baka has been confirmed in Ramos Nunes de Carvalho e Sá v. Portugal, Grand Chamber, basically 2017.

The Court, in paragraph 64, says that the international Council of Europe instruments, as well as the case law of the Court and international courts, attach increasing importance to procedural fairness in cases involving the removal or dismissal of judges. In particular, they specify that an authority which is independent of the executive and legislative should be involved in every decision affecting the termination of office of a judge. And then it continues to cite several Council of Europe instruments in this regard, which deal with the issue of the independence of the body deciding on the mandate of the judge.

In paragraphs 72 to 86, it underlines the following points:
Judges shall be subject to suspension or removal only for reasons of proven incapacity, conviction for a crime, or behaviour that renders them unfit to discharge their professional duties. It also adds that standards should be prepared and published to define not just the conduct which might lead to removal from office, but also all conduct which might lead to any disciplinary status or change of status—including, for example, a move to a different court or an area. That, in several Turkish cases, for example, transfers of judges, and also in Polish cases concerning the transfer of judges through unfair procedures.

And the Court says at the end that decisions in disciplinary, suspension, or removal proceedings should be subject to an independent review with the possibility of recourse before a court with full jurisdiction. So this is critical. Mr. Baka didn't have the possibility, because there were procedural obstacles. He didn't have the possibility to go before a court. It was automatically a violation of Article 6 of the Convention. Then, what is interesting in the case of Baka is Article 10 as well. Because Mr. Baka, being the President of the Supreme Court in Hungary, was at the same time the ex officio President of the National Council of the Judiciary—the body that assesses all judicial reforms, etc.

So when the Orbán government—not the first, but the second Orbán government, at the time 2010—started with the new reforms and intervention in the judiciary, Mr. Baka, especially in his capacity as the President of the National Council of the Judiciary, started to speak out.

What he thought were interferences with the independence and impartiality of the judiciary.
He spoke in the media.
He also spoke before Parliament.
Also in constitutional gatherings.
Now, the question was that, after these positions taken in public, the sanctions against Mr. Baka were adopted. Then the Court had to elaborate a very interesting position in relation to the freedom of expression of judges—what judges can say and what judges cannot say in the framework of Article 10 of the Convention.

And let me mention a few of the most interesting points from the judgment:
The Court says that it has already been affirmed that Article 10 applies to the workplace, and that civil servants, including judges, also enjoy the right to freedom of expression.
It also adds that expression by judges on matters of public importance benefits from a high level of protection under Article 10.
And that restrictions imposed on the freedom of expression of judges must not have a chilling effect on their willingness to participate in public debate on matters concerning the judiciary—especially, for example, legislative reforms or issues concerning the independence of the judiciary.

In this context, the Court says it might therefore be the case that it is not only the right and the support, but also the duty of judges to express their opinion on reforms of the judiciary.
And this position by the Court in Baka has also been confirmed later in the case of Kövesi v. Romania in 2020 and Żurek v. Poland in 2022, where the same issue came up. The Court continues to fine-tune its approach.
It says that the context in which a judge has spoken, expressed an opinion, or acted, and the reasoning behind the decision to sanction a judge, are relevant to the assessment of whether the interference was proportionate or not.

For example, disciplinary measures taken against a judge based on their expression of views in a public forum, such as when the judge delivers a public lecture or makes a statement to the media.
This has been considered in Wille v. Liechtenstein in 1999.
A statement in the media in Kudeshkina v. Russia in 2009, writing a letter to politicians or members of public office, or delivering a speech or issuing a public communiqué, as it was the case in Baka, all constitute an interference with Article 10 of the European Convention on Human Rights.
However, because there is a paragraph 2 of Article 10, we have to be careful about maintaining the independence and impartiality of the judiciary.

In assessing the proportionality of interference, the Court recalls that the exercise of this freedom—since it carries with it duties and responsibilities—may be subject to such formalities, conditions, restrictions, or penalties as prescribed by law, which are necessary in a democratic society for the protection of the reputation or rights of others and for the authority and impartiality of the judiciary.
The main issue is that a judge cannot speak about a specific case in which he is part of the formation that will decide on the case.

So the Court takes the time to clarify this point, because it is extremely important. This has later been dealt with in the case of Borys v. Boons Morrison in 2016.
So what was the issue?
The judge had taken a position on a case, and later, he was part of the formation deciding this case. So the Court continues: The protection of the authority and impartiality of the judiciary is, therefore, a legitimate aim, in pursuit of which the right to freedom of expression might be restricted. So judges must be careful.

However, the Court then shifts the balance again. It recognizes this legitimate aim for restriction, but in paragraph 156 of the judgment, it states that, however, a state cannot invoke the independence of the judiciary as a reason to sanction a judge for the exercise of their freedom of expression if the measures taken against them would, in fact, have the opposite effect.

It is a careful exercise that the Court is conducting here, especially in relation to Article 10.
For example, the Court continues: The early termination of a judge's mandate as a consequence of their exercise of freedom of expression could undermine impartiality where their termination was not in accordance with the law, did not relate to any grounds of professional incompetence or misconduct, and did not relate to speech that was itself harmful to impartiality. So these are the main takeaways from the Baka judgment.

Judge Alexandros Sicilianos, who would later become the President of the Court, wrote a concurring opinion.
He agreed with the finding of a violation.
However, he raised a very interesting issue, which—now with the benefit of time—I think was the right moment to bring up and support.
His point was: Are we assessing the issue of the independence of the judiciary from an institutional point of view, seeing the judge as part of the state structure and as an actor in conducting judicial power?
Or shall we also raise the issue as the subjective right of the judge not to be removed?
As the Court has done, for example, in the case of Eskelinen v. Finland. Just to mention the case.

And this is a very interesting debate, not only doctrinally but also in terms of substantive protection, in order to achieve better and more effective protection of judicial independence.
Baka intervened at a very critical moment. Then, there are a few cases—not of the same importance—since then. However, I must say that as far as the Polish judicial reform was concerned, the Court of Justice intervened with some extremely powerful judgments. June 2019, November 2019—Commission v. Poland, A.K.A. Poland, and a series of cases, both preliminary rulings and direct actions by the Commission. And they set up the scene, really.

I am pleased to see that Baka served as a reference in most of these cases. But we must also recognize the fact that the European Court of Justice established a much more autonomous concept of an independent and impartial tribunal established by law.
The Strasbourg Court, to a certain extent, tends to be more deferential to national authorities, especially in the case of Guðmundur Andri Ástráðsson v. Iceland in December 2020. The European Court of Justice has elevated Baka, which then in turn has been followed by the Strasbourg Court, in all the light of politicians. But this was my role in explaining the Baka judgment.

Frederik Sundberg:
I give the floor to András Kristóf.
He will be able to explain it more than I would be able to do.

Dr. Kádár András Kristóf:

Thank you very much.
There is a problem regarding the streaming.
As a lawyer, I'm used to standing up to speak.
You are now my judges, so basically, yeah, thank you.
So, Baka becomes key.

It's an extremely important decision that came in a particular context.
The context was that after the Fidesz government—the government of Mr. Orbán—gained a landslide victory in 2010, it secured a constitutional majority. This meant that at any time, whenever they wanted to change the Constitution—not just simple laws—they could do so without any support from any opposition party. This created an enormous opportunity for them to really undermine and attack the system of checks and balances in a legally and procedurally impeccable way. That's one big difference between what happened in Poland and what happened in Hungary. The Polish government that started the backsliding towards illiberalism did not have the luxury of a constitutional majority.

So, after 2010, this first incremental, but then accelerating and very conscious, attack on the system of checks and balances started. Basically, the executive—with the help of the legislature—tried to undermine, eliminate, or occupy any actor or institution that could control the executive in any way. It started with state institutions, the Constitutional Court, the media, civil society.
It's a long story. But obviously, you know, their first target—after the Constitutional Court—was the ordinary court system. So, the judiciary had its share of the attacks.

The Baka decision and also the early retirement of judges—which meant getting rid of older judges—played a crucial role in this. Older judges tend to hold administrative positions.
I mean, you become an administrative judicial leader only after you have some experience.
So, administrative judicial leaders were highly overrepresented among older judges. It was an attempt to get rid of those judges who held these positions, with the goal of placing new people in those roles.

This was not by accident, nor was it because the legislature simply failed to consider the situation of these judges who had been serving for so long. Mr. Baka's removal was also part of this series of attacks on judicial independence, in the context of trying to eliminate all controllers of the executive.
Now, the judges in Hungary turned out to be very resilient, I have to say.
So, whereas the government—I will refer to this as the government because, in the Hungarian context, there is no real separation between the government and the legislature. It is not the parliament having the government, but rather the government having a parliament. So please forgive this inaccuracy—I will refer to this as the government, even though, of course, legislative measures were behind many of these steps.

Basically, the government could easily undermine or occupy almost all actors in the system. But with the judges, they had a tough time. After a while, they realized that they could not domesticate these approximately 3,000 Hungarian judges. So, what they started doing relatively recently was focusing on the High Court.
And this was done through ad hominem legislation, which made it possible for the government to appoint a Kúria President. I will frequently refer to him. Before he became Kúria President, he did not really have a strong tradition or experience in the judiciary, but he had some scientific activities. And what you can see here—"The judiciary is the most dangerous branch of power"—is something that he wrote in one of his articles.

So, we now have a Kúria President—a High Court President—who thinks of the judiciary as a very dangerous branch of power. Now, the freedom of expression of judges has become a kind of battleground between the Hungarian judiciary, who are trying to preserve their resilience and independence, and the government, which is trying to domesticate it.
This is something that I can skip—you have a picture of Mr. Baka, so I think this slide is not useless. But Judge Jón Klauss very nicely summarized the most important conclusions of the Strasbourg Court regarding the freedom of expression of judges. It can be limited to protect impartiality, but they must be allowed to speak up publicly when judicial independence is under threat. It's not only a right, but it can also be a duty under certain circumstances.

And here you have an important sentence from the judgment:
It said that Baka's removal had a chilling effect, discouraging other judges from participating in public debate or legislative reforms affecting the independence of the judiciary.
So he's not the only victim of this violation, but the whole Hungarian judiciary is, due to that chilling effect that his removal from a very high and, in principle, protected constitutional position can have on judges of the lower tiers.
Now, the Baka judgment has not been executed.

This is one of several Hungarian decisions—so, judgments of the Strasbourg Court—which have not been executed. And it was handed down in 2016, so it's nine years now. And one of the things that the Committee of Ministers constantly reminds the Hungarian government to do is exactly this: ensuring the freedom of expression of judges. Hungary's position is:
"There's nothing to be seen here. It's all good. We don't have a problem with the freedom of expression of judges."

And this is what they say: Hungarian legal provisions, particularly this section of the Judicial Status Act, make a restriction only on making statements related to adjudicating activities. That is the only limitation we have. And it's true.

Section 43 says that a judge cannot inform the public about ongoing cases, nor about closed cases. Judges and the judicial system communicate about adjudicating matters through the court presidentappointed spokespersons. That's fine.
The problem is that this statement from the Hungarian action report—or plan, I can't really remember which—is highly misleading and erroneous. Because you have two other sections here: One is that judges shall not conduct any political activities. And the other is that they should behave in a manner that does not violate the austerity or undermine the authority of the courts or the trust in judicial procedures. And these are pretty broad categories.

And now, the big question is:
When something is happening in Parliament—when the laws regulating the judiciary are amended—and a judge says, "Hey, this is not okay," is that political?
If, for instance—and we will see examples of this—a judge talks to the public and criticizes those organizations that are there to represent judges, saying that they are not doing their job properly because they are not defending judicial independence sufficiently, does that undermine the austerity of the courts? Does that undermine trust in judicial procedures?

These are debatable things.
And, of course, what is happening is that, from the government's perspective—through the President of the Curia, who is a political appointee—he was not elected by the judiciary. He was selected by the Hungarian Parliament. He was elected, actually, against the objection of the National Judicial Council, which is the self-governing body of Hungarian judges.
So we have this debate regarding recent amendments to laws concerning the judiciary:
Do they fall under political activities?
Are they capable of undermining trust in the courts?
And in that regard, the Baka judgment is an extremely important assistance provided to Hungarian judges who are protecting their own independence.

Now, the National Judicial Council—not this one, but the previous one—was, from the government's point of view, a very progressive, even rebellious, National Judicial Council. It tried to lend a helping hand to Hungarian judges when it passed a new judicial code of ethics. Since they tried to compensate for the absence of clear regulations—clear primary laws—they tried to clarify what a judge can actually

say and what a judge cannot say. And here you have Section 4(2) of this Code of Ethics, which proclaims that judges may freely express their opinions regarding the legal system and the administration of the courts. So you are in the green when you're talking about these things.
What happened here?
You remember the Curia President who thinks that the judicial branch is the most dangerous branch of power?

He challenged the court before the Constitutional Court, which is a highly loyal institution to the government, claiming, among others, that this is a significant expansion of the freedom of expression and that this is the authorization of judges to criticize laws and the justice system, which is not in compliance with Section 37 of the Judicial Status Act, which is the ban on behaviours that might undermine trust in the judicial system.
So the Curia President, who is a parliamentary appointee, challenges before the Constitutional Court this provision, which is perfectly in line with what the ECHR said in the Baka case. So you have this battle raging in the Hungarian judiciary, and then you look at the practice. The Hungarian Association of Judges conducted a survey among judges. It was anonymous, it was public, where approximately 10% of the Hungarian judiciary responded.

And you see a couple of numbers here:
6% of the respondents said that there was a chilling effect when it came to judicial freedom of expression. Over 70% knew about cases from the past five years where a judge faced negative consequences for speaking up in relation to judicial independence. Those judges who responded that they preferred not to speak about this subject said that the prospect of raising retaliation was what held them back. And 82% of judges believe that they are not able to participate in public debates if they have political connotations. 41% said "not at all," and the rest said "not really well."
So I will skip this—I'm not going to go into details due to the lack of time.
But we have individual cases that show that we have serious problems with judicial independence and the freedom of expression when it comes to judges. The head of a judicial panel at the Curia, which handed down judgments that were very, very, very unpleasant for the government in politically sensitive cases—he was the head of a panel that delivered some really brave decisions in a difficult political situation.

And what happened then?
Then came a reorganization of judicial panels. Basically, what happened is that the Curia President, using his prerogative, reorganized the panels—basically scattered the rebellious judges among other panels, and his panel ceased to exist. And the judges he used to work with were distributed among other judicial panels.

What did he do? He wrote an article about it. He didn't go out to the public, he didn't make any horrible claims about the Curia President. He wrote a scientific analysis about this whole process—about how his panel was reorganized. And then the Curia President bans the publication of this article. So if you go to the link to the article, which is in the database of Hungarian scientific articles, you can see that this article can only be read with the permission of the Hungarian Curia President.
No one has ever received that permission.
And also, a series of administrative procedures were launched against this judge. And actually, committees are providing him with legal representation—so I'm not fully unbiased in this case.

Those disciplinary proceedings are pending; they have not yet been completed. And now, the most recent developments—and I'm going to stop my presentation here. So, today there was a mention of judicial salaries in Hungary, which are extremely low. I think they are among the lowest in Europe. And the big problem is that they haven't been raised in three years. Which basically means hyperinflation— or very

high inflation in the meantime. So these salaries lost about 40% of their value within three years. Now, whether there is a raise or not depends on the legislature, which is pretty unhealthy because then one branch of power is in the hands of another branch of power.

And actually, there are some professions in Hungary, including some governmental positions, where you have a kind of automatic system—that when the rate of inflation rises, salaries are corrected. So it would not be unprecedented to have a kind of auto-correct system. But I think there is a reason why there is no such system, and this is exactly the kind of being able to put pressure on judges. And an example of this was in November 2034, when an agreement of the Ministry of Justice, the former President of the National Office for the Judiciary—which is the main institution regarding judicial administration—and the National Judicial Council—not the previous rebellious one, but the new one with a new composition—signed an agreement, a four-party agreement, which basically said that we are going to raise your salaries, and in return, we want your support for certain judicial reforms.

And then the agreement outlines some of those reforms. But what it will end up with… Some of those reforms were actually very problematic from the point of view of judicial independence. For instance, the retirement age for judges—65 years—and actually, one of these suggested forces that did the permission of the judicial leader, the judge, can keep serving up to this age, which means that it's a discretionary decision, left with no objective criteria. So here it is—this is an indirect way to put pressure on the judge, actually, that, you know, if you behave, you know, you keep serving.
So, basically, the reforms that were envisaged were problematic, and there was disagreement. And then the judges—the Hungarian judges—just had really enough. And letters of protest were posted on the website of one of the present two Hungarian judicial associations—more than 800 judges, close to a thousand. So, close to that standard, they signed these letters. There was even a demonstration that forced some position-holders to resign. And finally, the National Judicial Council withdrew its approval from the agreement.

And now, you might say that this is a sign that actually there is no chilling effect, because look—these judges dared to actually voice their opinions. But if you look at the letters of protest—when I say 800 judges—some of those remain anonymous for fear of retaliation. So, some of the letters were approved, signed by one or two judges, and then, you know, there you have a sentence saying that the other 40 colleagues supported but wished to remain anonymous because they are in fear of retaliation.
That's one thing. And the other thing is that in this whole situation, the Service Court President—Service Courts are courts within the courts to deal with disciplinary issues regarding judges—said that we believe that participation in these protests is part of the freedom of expression of judges. This is about judicial independence. This is about issues where judges should be allowed to speak their minds. But the court president launched the very first public attack on the Service Court Presidents, calling them names and stating that they overstepped their authorizations and that they are deceiving judges. So, what you can see there is an ongoing battle for judges' ability to actually talk about issues that are very important for judicial independence. And in that fight, in the battle of the bucket, judgment is a very important point of reference.

And in the coming months, we will see whether a government that has a constitutional majority will pass legislation that will bar judges from being able to speak up or maintain a situation where you have at least this kind of ambiguous situation. And it depends on the bravery—the absolutely clearly existing bravery—of Hungarian judges to speak on matters that are important for all of us. Because, obviously, judicial independence is not only important for the judges—it's important for all the parties before them, for the whole of society.
Thank you very much.

Dr. Jesper Wittrup:

I have been working as a consultant on many traditionally performed projects around the world over the years, and I think it's about trying to strengthen the capacities of that issue. Isn't that way their independence? And I think it's healthy for somebody like me to sometimes stop and reflect—why is this important? Why am I doing this? Does it bring any value at all to society?
Having this opportunity is one reason I'm delighted to be here today, and I think it's healthy for all of us because—why are we doing this? Why do we agree on this? The perspective I will bring to the table will be from that of economics. And the question, you know, economic research asks is: does judicial independence contribute? Does it help to bring prosperity? Does it help us to increase welfare? Does it increase economic growth? That may not be the only thing that's important about judicial independence, but it's quite important, right? And the answer to that question, provided by economic research, is—absolutely, yes, it does.

And to substantiate that claim, to support that claim, I will bring to your attention some important elements of economic game theory. I will highlight research findings from economic history. And finally, I will present empirical evidence from quantitative studies on the relationship between judicial independence and economic growth.
So if we go to the next slide, I'll start by introducing a very important concept—that of social trust. In a survey, you can ask people: "Do you trust other people in general?" And some people will answer, "Yeah, most people can actually be trusted." And other people say, "No, you have to be very careful dealing with other people."
And what's interesting is that the answers you get are very different from one country to another. And I've brought an example of some of the distributions of answers up here. So this is from the Integrated Value Survey from 2022. So you'll see that, for instance, in Denmark, Sweden, the Netherlands, the majority of people trust other people. And if you go to Albania, Sub-Saharan Africa, almost no people trust others.

Why is that important? It is important for the economy because in a modern economy, economic activity is all about collaborating with other people, right? And if you lack trust, you also lack a lot of opportunities for economic activity, because people are not willing to engage.
So, for example, if you are in a low-trust society, there's a limit to the types of companies you will have. You can have small family businesses because you can probably trust your family, right? Okay. And you can have really large corporations because they can have big monitoring departments making sure that people are not shirking too much or not stealing the equipment. But that's basically the types of companies you can have.

But you cannot have those important—really important—midsize companies that have been proven to be crucial for a vital economy. So that's an issue.
So let's—I'll give this right. So, so, so that's, of course, a problem if we have this lack of trust. Economists have replicated these findings from surveys by having experiments with people playing games.

Now, I'm venturing into game theory—flipping to game theory—people playing games with each other. So an example could be—let's take you two in the audience. What's your name again? Tommaso and you, Eva? Let's say we're playing a game together, okay? And I hand you maybe €100 each, okay? And the game plays like this:
Tommaso, you will decide whether you will trust Ewa with your €100. And if you do that, I'll promise to double the amount—so Ewa will suddenly have €400. And the final step will be that Ewa has to decide whether to hand you back half of that.
Now, of course, if you are in a low-trust situation, you will think, "Oh, she'll just keep everything!" So you'll decide not to hand over that money, even though together you could make more money. So if

you play that game in, say, Norway, Sweden, most people would end up with a total of €300. But if you play that game in Albania or Sub-Saharan Africa, most people would end up with just €200. So that's an illustration of the economic impact of this lack of trust.
This is important because there is evidence that social trust is highly related to trust in institutions—to trust in the fairness of the system. So if you live in a system you consider to be fair, people also tend to be more willing to trust other people. And that's one way that an independent, impartial judicial system can help bring prosperity to society.

Let's turn to another important game. So this is called the fundamental political dilemma. Because, as we have been aware at least since Thomas Hobbes, we need to create a Leviathan, right? We need to create this monster called the state to help protect us against foreign enemies and to keep some basic law and order—to prevent us from killing each other all the time.
But when we create that monster, the state, there is, of course, the risk that it will turn against us. And that's also a really severe problem.
Well, let's say you are a private citizen, and you consider engaging in some productive activity. So maybe you'll make an extra effort, maybe you will try some innovative ideas. And if you succeed, you'll make a profit and create wealth. But you now have this monster. And what will that—maybe that monster will actually confiscate your wealth.
And if you look at the long human history of autocratic rule, we can see that has happened a lot. So the rational actor in such a situation may decide, "No, I'm not going to make an effort, I'll just try to survive and that's it." So this is—this is a bad game, right?

So the idea is—we could try to improve the game. How can we improve the game? The sovereign monster should somehow be able to credibly commit to not confiscating the wealth created. How can this be done? Basically, in two ways.
You can change the incentives of the game—make it costly for the sovereign to go back and confiscate wealth. That's difficult. In the Middle Ages, it was usually done by hostages. So if you had a very important deal you made, an absolute king would exchange hostages. If you were a prince or a princess, that was part of the job description—you could become a hostage. So that could increase the cost of breaking a promise.

Another option would be to simply remove that option to confiscate. And that's, of course, where an independent judiciary and other important institutions come in—to create these checks and balances that disallow certain actions.
So that's—from an economic perspective—what we want to do. We want to, like Odysseus meeting the Sirens, tie him to the mast. So even though he really wants to follow the Sirens, he can't do it. That—that's the aim of having an independent judiciary.

So let's go to the next.
So what I'm saying here is there are several ways rule of law, including judicial independence, can help—can contribute to economic growth. One way is by providing this credible commitment that even though governments—and governments in all countries sometimes want to do something they really shouldn't do—that they are prevented from doing it. And the second way it can help economic growth is by providing this sense of fairness that increases the social trust between people. So that's, from a theoretical argument, why we want to have judicial independence.

So, next slide. Let's look at economic history.
So what economic history can tell us is that judicial independence is really an important element in a set of institutions that have broken with the traditional way of doing things that we have seen for most of human history. For most of human history, what we have seen is what has been termed "extractive

institutions." And this term has been coined by Nobel Prize-winning economists Daron Acemoglu and James Robinson. So what we have seen is that a small elite has really extracted all the value from a large majority. And they have done this in a system with insecure property rights, protection of vested interests, concentration of power in the hands of a few, and no real constraints on that power. And if there were a judiciary, it was certainly dependent.

And we have seen that modern economic development has depended very much on breaking away from this path and creating inclusive institutions with a more equal distribution of power, checks and balances—including judicial independence.
And this, of course, happened, first of all, in England. Because our life today is really as it is because of the Industrial Revolution. That's the most important event in the last 500 years.
And the Industrial Revolution happened in England. It couldn't have happened in Spain. It couldn't have happened in Russia. It happened in England for a reason—because England gradually developed some rather inclusive institutions.
And this started a long time ago, actually. Have you heard about the Black Death? Killing almost half the population in Europe?

And what this created was—it actually increased the bargaining power of peasants, because there was a lack of labor in England and Western Europe.
Serfdom was limited or abolished because you couldn't—you wanted to have much more power. They were much more important. You couldn't ignore that amount. Or you could actually, because in Eastern Europe, you had the same—the same thing happened, half the population died. But unfortunately, here the extraction just became even worse.
So you saw these two different paths already following the Black Death. Then you saw, when the New World—when America was discovered, in most countries, the transatlantic trade was organized by the king. That did not happen in England. So you suddenly—certainly strong economic actors were established with interests that did not quite coincide with the king. So we had some interests established that actually wanted to limit the power of the king.

And that happened first and foremost following the Glorious Revolution in 1688. And following that, we got British judicial independence gradually developing in England. And following that, we had the Industrial Revolution. Because suddenly, you had a new game in relation to the fundamental political dilemma. If you innovated, if you made an extra effort, you could keep at least some of the gain, as you couldn't have done in Spain, as you couldn't have done in Russia.
So that's why the development of inclusive institutions started in England and spread. This was both the Industrial Revolution, of course, but also the institutions that supported this Industrial Revolution to the rest of the world.

So I will not—because of lack of time—go into other examples. But we could also find other examples. Korea, for instance, started as the same country—same genes, same population—and, of course, with different institutions, developed in quite different ways, as we all know. I'll not go into that.
And if you want to read more, I would encourage you to read these two books by the recent winners of the Nobel Prize in Economics. They really provide an excellent explanation of economic history and the importance of inclusive institutions and judicial independence.
So, just to emphasize this—institutions matter a lot. You're not born as somebody who trusts others. You're not born as corrupt or uncorrupt.
As an example, I'd like to mention that I come from Denmark. And Denmark is often rated the highest when you have comparisons of judicial independence, trust in the judiciary, lack of corruption, and so on. But actually, if you look back in time to the end of the 18th century, Denmark was a deeply corrupt society. If you wanted to be a judge, you bought your position. And the way to make that investment pay off was to take bribes—that was the system.

What happened then? Well, we had a king, Frederick VI, who was, in many ways, one of the worst kings we have had. He started out as a fan of Napoleon—he thought Napoleon was great. And he sided with him all the way to the end. That was not a good decision. So we lost Norway to Sweden, and the state went bankrupt.

And he was a little afraid that many people were not satisfied and that maybe they would think of toppling him. So, the story goes that he asked his advisors:
"What are people most dissatisfied about? How can I make them more satisfied?"
And the answer was: "It's probably corruption."
"Okay, let's do something about that."
So, he really sent the Supreme Court around, auditing all the judges, making some symbolic executions to show that this was not tolerated anymore. That was actually an important step in eradicating some of the corruption in Denmark.
And then one of his successors, Frederick VII—he was only interested in drinking and women. Drinking and women. So he was happy to have Parliament step in. And in that way, we got some inclusive institutions.

You're not born with that information—you're not born with trust or corruption.
So just to—yes, next slide.
So I will be very brief. This is some of my own studies using data from the World Economic Forum. They measure perceived judicial independence by surveying a large number of business executives. And if you run a regression with this component as an independent variable and economic growth as a dependent variable, and you use all the usual control variables, you will see that perceived judicial independence has a clear and significant impact on economic growth.

Actually, also, the point made earlier about the time for enforcement—it also has an impact.
So the faster your enforcement is, the better it is for the economy.
So that's—And this, finally—this is my study, but similar research has been done by some German researchers. They've established their own indicator of judicial independence—de facto judicial independence—looking at, for instance, whether judges continue to stay in their position until normal retirement age, whether budgets are not lowered, and so on.
So starting from that, they created a composite indicator measuring de facto judicial independence, and they find, similarly, that this has a clear impact on economic growth.
It's important to say this is de facto judicial independence because if you try to measure just the rules, there's no effect. So just having the right things on paper doesn't matter. It has to be real.
And of course, there are also some important outliers. If a country has a lot of oil—a lot of oil—it apparently does not need judicial independence as much. This is sometimes referred to as the "curse of oil," because there might be other bad things, but lacking judicial independence doesn't seem to affect the economy in the same way.

And finally, of course, we don't have time to discuss it, but there's China, which is also an outlier. But all in all, both theory, history, and empirical evidence support the claim that judicial independence is extremely important for our well-being.
So that's something we should remember, especially in these dire times.

Frederik Sundberg:

Rapidly, to summarize what we have discussed—because time is running—should I ask you if you want to take questions?

Question from the audience:

Yes, please.
One note.
I happened to go to Moscow with—Assembly Sabina, last message. Natalie Bagger was also Minister of Justice in Germany concerning the UCAS report that she was preparing, and we met the Russian Minister of Justice.
And we were discussing the lack of independence of the judiciary, and the Justice Minister was very clear—at least at that moment—that judicial independence was important for economic growth, so they wanted some.
But of course, they also basically asked back:
"You want us to fight corruption in the judiciary, and you want the judiciary to be independent—now, what do you want? If we want to eradicate corruption, we have to control the judges closely. And if you want them to be independent, they will continue to be corrupt." And what she said in response—I found quite memorable.

She said: "Well, of course, you have to let the judiciary be independent, because you can't have them a little bit independent to do the economic growth thing—you know, to give institutional security for investors and
all that—and then keep them dependent for whatever else you want to do." And
she said—this was a woman speaking—she said:
"It's a bit like being pregnant or not. You can't be a little bit pregnant. You have to be independent or not."

I wonder if that is true—if it is possible, maybe in some less-than-democratic countries, that the plan is to have the judiciary independent for 95% of the cases that are not politically relevant, just to keep the economy moving, but keep control over the 5% of cases that are politically relevant.
That goes to the question of power.
I wonder—I strongly admire Ms, but I wonder if she was right in your view.
Can the judiciary possibly be independent and politically controlled for cases that concern the question of power?

Dr. Jesper Wittrup:

Good question and I probably. To satisfy. So so. The benefit of looking having this long perspective, looking at at at the economic history is that it takes a long time period and you can you can see that, but as a, as a society, you really want solution tomorrow, right? Judges to be uncorrupt an independent and that's of course if you're starting from a very bad position with both regards to both these aims that that's difficult either I don't know we've seen. Attempts wasters in Albania with this wedding parties trying to get rid of to to make clear that you only have the good counties left so that that that has been difficult certainly. And we've also seen when Eastern. After the fall of the Soviet influence in he's in Europe, we also saw some attempts to to to, to try to to wait out the bad. Judges, this was done. Differently different countries? I'm not sure I have I have any quick solution for that very difficult.

Ledi Bianku:

Thank you. For the question. But trying to answer that, probably we should start with defining what corruption is. Because to my understanding, you have financial corruption. But we also have political corruption. The judge can be paid from the money of the parties. A judge can be paid from the salary he gets from the government. For me there is no difference. In some cases, political corruption is the very source of the financial corruption, because, as you mentioned, if you have to. Be, or if you do, favours

to the government. Facing an individual and limiting the rights and the government tells you, well, you shouldn't recognise the rights of this individual because this is my interest. Then the judgement soon. What in another case where is my direct interest? I'll pull my interest. Why the minister? Should find his way or her way, and they should not.

So there is a question of properly defining what corruption is, and I think the political corruption is really kind of the source. For example, in Albania in the 90's, the real problem was not at the beginning. The financial pressure was political corruption. At the time, the first Albanian kind of democratic government started to interfere with the independence of the judiciary. In relation to the political opponents. And then it's still over the civil cases, commercial cases. And so that's for me be the source of the source of the problem. But I agree with you, you say there are corrupt or an independent or. Or you're independent 100%.

Dr. Kádár András Kristóf:

Economic cases become politically sensitive after after a while, you cannot keep them apart That is. Experience that. But starts as an economy, Case says money runs out, politics needs money, so it's going to be political. So there is no way of saying that we are OK for the economy, but we are. Deciding in favour of the government's political cases because it's gonna come together and I think this is something that certain foreign companies are experiencing now in Hungary, that eventually this will comments and spend their catch up with them. OK. Thank you.

Frederik Sundberg:

And I'll try to be very brief because I think that we have covered a lot of ground. You go to complex terms what we have. Here in the discussions, one, if I start with the importance of judicial independence, yes, it's very important to protect democracy, in particular to protect. Against executive abuse of parliamentary trust. But of course there is a problem that is you may have to control parliament. Also some states allow judges to do that. Hungary started, but the it's a complex thing. There is rather the European level will have. Which will have to come in, whether it is the EU or the Council of Europe, but. So then it becomes the independence of the judges over there. It's not last, but it just transposed one level up.

And then we have the fact that it promotes economical and social progress. The aims of the Council of Europe and we've heard a lot about the different facts here and the word I retained most is trust. If you trust, you engage in business. You don't have to have huge insurances because you engage because you don't need them and you can. Also extend the trust to other nations and then you can start to to have exchanges between nations in a Safeway. And all this evidently builds a lot of economic wealth. And we can go into further details, but I think you did say that there were really statistical evidence. To a musician, independence was a very important factor in this growth.
This game and the other thing is that notwithstanding these advantages, there is democratic backsliding for different reasons. And we didn't really go into them, but it's a fact. And one of the first victims is judicial independence, because those who take power and think that they have. Full mandates. They don't want to be controlled, they don't. They want to be able to fulfil their mandate, whether it is for the good of the people or for their own interests. And I think often the latter is more true than the former. And it will also found that it was very difficult for national judges to resist this backsliding because there are so many levels that the authorities have to control them and we simply.

There's the control over pensions, the control of our salaries, the control over the couldn't, how the Supreme Courts are organised. That there is at home in legislation, there is a ban on publications, you name it. There are many, many ways in order to get hold over judge career and sanction him if he doesn't please the government. Yeah, I think I am the showed another thing and that was you. Perhaps you don't need to get hold of the whole of the issue. Perhaps you as high active Supreme Court and have it adopted very strange decision and then the lower courts in good as good soldiers just implemented. And. And but this then brings us to. What can Europe do then if it is difficult for the national authorities to come to grips with this and we haven't really dealt with the EU 20 greater extent, but it's evident that it has a lot of economic clout, that it has not been afraid to use it as the European Court of Justice, which? As we said, and had developed a rather substantive and well defined approach to judicial independence, but of course it doesn't reach the whole way and it's difficult to reach on its face. The European Convention system is better, it's accessible to everyone. But we've also seen that it has encountered big problems because many, many hurdles have been put up for individuals to come before the court is spoken of. Massive.

We also see that even these can be abused by domestic states to protect against the. European control, at least the one in the Council of Europe. Try and ensuring excessive reliance on friendly settlements. If we could controlling the government agents so that he loses power and in fact it becomes rather direct dialogue before between the ministers and the ministers in the Committee of Ministers, and that is a political dialogue which is not so prone to reach concrete results in the same way as. The more diffused. Level which is. Different civil servants which exist both domestically and in the Council of Europe. And. There were still there are a number of. Interesting developments on the one hand.

The long time it takes usually can be short, and we saw in Johnson Kya took three years. We saw the green mass a new order to 3 1/2. So perhaps if you do select the right cases, you can get somewhere in fighting judicial attacks to additional independence. Especially as the execution process is very open process which is available to many different authorities and also to other international organisations, and one which can take binding decisions and which also has a great. Outreach in the world in the sense that what happens there can help to influence other players around, whether it is the EU with its United Nations, whether it is the World Bank or the International Monetary Fund and others experience plenty of discussions with these. The bodies during my time there and it has huge potential, but especially when it works together with others like the Parliamentary Assembly, like the Congress, regional authorities, with these other partners which you may find inside and outside of the Council of Europe, so.

There is globally. A big problem and the most important thing to come to grips with it is probably the European level. And that's the most important tool which can reach out to try in the context, especially on the execution of judgments or in the context of infringement procedures before the European Court of Justice, to all these different aspects which are not in themselves rights under the Convention. But there are elements which can be taken into account. And execution process to ensure a result which is convention compliant and then we can look at how the issue council is composed, we can look at how the the salaries are. Find and all these things, but to all this requires a lot of investment, political and economical, and perhaps awareness also in the institutions. But I would say that the case is not hopeless, and especially if it is driven by a number of carrots, namely. Better democracy, more money. There are chances that we will be able to mobilise around this. Thank you.

Questions and Discussions:

Hannah Fischer:

Yeah, I wanted to ask about the political implications of. Case for Hungary within the EU. So how does the case and also overall issues of traditional independence in the country play into infringement procedures against Hungary now you lady back already mentioned? That the case served as a reference to the Court of Justice of the Year, so I would like to hear a little bit more about that.

Ledi Bianku:

The debugger judgement would. Mentioned by the European Court of Justice in English. 2019. Cases in old infringement procedures by the world, by the Commission before the European Court of Justice and through the through the preliminary rulings, so cases brought by, for example, KS, AK, all these cases is a special procedure in Luxembourg. So the judge at national level suspends the proceedings and ask the European Court of Justice in Luxembourg. For an opinion how the EU law would apply in such a space, Barker was mentioned. So the principles elaborated by Barca. As far as I know, there haven't been infringement procedures, proceedings by the Commission against Hungary on the independence of the judiciary. They've been insourced law. Do not insult discrimination law property low as well, but as far as I don't not in relation to the to the independence of the judiciary.

However, I used the opportunity to mention something which is extremely important for the. You list as such in. In the operation of the yellow. Why? The EU court, the European Court of Justice, was brought to tackle the issue of judicial independence. And this is this is curious if you if you here, if you read also the president of the of the European Court of Justice was being instrumental in dealing with these cases school dinners. He also expects this. The European Communities and European Union was not as an economic. Kind of way of integrating here, so not dealing as such with. Fundamental rights, freedoms, liberties, all this was taken for granted for years, at least until the. 2000, when the charter of you from the Bank and Rights was signed and elaborated in this and that entered into power in 2009. It is interesting how the court says we will tackle the issue because the Polish government before the European Court of Justice said, listen, this is the competence of the EU member state. You do not have competence to tell us how to organise our judiciary. And the European Court of Justice said, listen, I have in place this procedure, but they just mentioned the Premier League bullet polling which says that national courts can suspend the proceedings, ask me questions and then in return when I reply. They have to apply EU law and it says if the national court is not independent, this procedure, which is probably the core of the operation of EU law, wouldn't work.

So they see the independence of the judiciary and I make a link with what you said in economic terms. As instrumental, as critical for the purpose of the operation of the Common market because the preliminary ruling they concern. Whatever economic issues, free movement of goods. For example, the famous case gases, the Dijon can. A liquor produced in France. Be sold in Germany or not? This was asked by a German judge. If this German judge was not independent when implementing the answer, I'm going back 1979 is the case when implementing the judgement of the European Court of Justice. The government would say, well, you have to apply this way. So the independence of the judiciary is fundamental for the operation of the of the common market. So this is the idea why the European Court of Justice intervened with series of judgments mostly towards problem and As for the mentioned also using. Fix economic power. I remember at the time the vice president of the court in the middle of COVID. Pandemic. Remember the date 8 of April 2020. Everything was closed. She went with the former Portuguese judge. She went to the court in Luxembourg and adopted an interim measure, €500,000 per day against Poland. Delaye of implementing. Which was then brought to 1,000,000, Perdana said. So they're very much using this, this tool to, to force the, to force the reforms.

I don't know if I was responsive to your question? Sorry.

Dr. Kádár András Kristóf:

Just a couple of things. I think, is the reason that I mentioned that in the Hungarian case you had much more incremental measures and much more subtle methods of occupying the judiciary. So the the attacks on the judiciary were not so blatant, therefore. It was more difficult to create those cases through which presumably references could have been raised, and it was much more difficult for the legal service of the Commission to find the handle on the on the Hungarian judicial issues than it was in the case of poor, just to give you. An example of the early retirement of judges that fence 2 locks on that issue, but not as a judicial independence case, but this is as an age discrimination case. So at that moment actually the Commission was not really prepared to look at the system. Independence related aspects of the case and handled it as you know older judges are treated unfairly and did not really look into why and then the court sold their case on the basis of non discrimination are key.

I expect that there might be some cases, as I mentioned, there is a or I may not have mentioned that. So there is actually over 100 complaints from one given judges with the Commission regarding the salary issue. At how deep Hungarian system of judicial salaries or determining certain traditions salaries are in line with the Portuguese judges case, where where the Luxembourg court says CGU said that actually the remuneration of judges. Is an important element in traditional in the so there we are actually waiting for the Commission to decide whether they will launch an infringement procedure or not, but they have actual complaints from Hungarian judges and also I expect that in the future some. Of these cases might actually reach the CGU because as you could see, the situation is accelerating and it's not as awful anymore as it used to be.

Question from the YouTube live participant:

Question is from my friend. On YouTube. So the question is mainly to Professor Kamiński, but other patterns as well are welcome to comment on question. So the Grand Chamber hearing of two clear case. Hearing the lawyers of your Jupiter pleaded about. Judicial independence in Turkey as well by reminding that over 5000 Jackson prosecutors were dismissed over a single night after quote attempt so when I was. Yes, reluctant to address the issue of judicial independence in the captain the Georgia case as a separate violation, My friend asks.

Dr hab. Ireneusz C. Kamiński:

Briefly, because you know there is no provision on the judicial independence. You know, try along the provision of penalties without low. So we could, we should refer to such, you know, provisions in order to construct our allocations so. Will this work up on the human rights level, on the level on some principles? That was even easier, I would say, for the European Court of Justice, because you know, under the. Procedures traditionally reserved for economic issues, you know. Political. After the year, this World Cup. Case, if you look at the opinion of the Advocate General presented before the Court decided this this this case, the Advocate General was against this broadening of the competence of the European Court of Justice. So also within the European Union with huge discussion. Legal discussions on whether the European Union union is entitled to accommodate some political. Questions. Within the fire framework of traditional procedures for non violation of European Union law.

So the argument was that if there is a crisis concerning the judicial system, you Member State some other legal avenues. Should be used. This is all Article 7. Only if there is unanimity in the European

Union, this procedure could be activated, but the answer of the European Court of Justice in this particular case case, so these coded decision, not the opinion of the. European off of the Advocate General was different. We can go into these issues. Using some, you know, provisions from the treaties. Which would which have been considered before us, you know, only used pink being visible for other questions, not political issues. So that was a kind of reversion. This Portuguese case. In the framework of the European Convention. This kind of revolution is rather not possible, so we must concentrate, focus on concrete issues regarding particular provisions, guarantees of the European Convention, so human rights, nothing more.

Frederik Sundberg:

Can I express some hesitation about the lack of competence of the Convention. Because, I mean, of course there's a question, who can complain? But it's clear that. People lose. Eat the rice affected. Have or who would leave with simulants political rights in civil rights or applications or criminal charges and so forth, have a right to an independent tribunal and there is quite some case to the European Court of what that is independence and he you can quote has even found that. The internal independence within the Supreme Court of Ukraine was problematic because. President of the Court had too much power and so force.

So I have some difficulties seeing that there is no grips for the European Court to attack independence in the Convention, but of course it cannot be attacked like that we. Yesterday we discussed whether a judge could claim that he started to miss lack independence because of pressure he was exposed to. It's a new kind of complaint. Possibly it can be linked to articulate and his dignity as a judge is offended by. The fact that they tried to reduce him to. Post. But I mean it's, untested ground, but it is clear that we can go into independence and especially when you have a finding of arbitrariness or something like that, the committee ministers, when it controls execution can certainly go in and look at independence in all sorts of forms. We went. Rather deep into the Syrian situation, we tried to dig into the Hungarian situation also. Now how far the committee will be able to go depends little bit on what is the willingness of the other states to push. And that depends also on the EU and how far they think it's worth like that. The Council of Europe does this work or so it's a complex game, but certainly there are a number of avenues whereby the Council of Europe and the European Court and the committee ministers can dig into independence. Issues and so I'm a bit more optimistic than you, but perhaps I misunderstood what you said.

Dr hab. Ireneusz C. Kamiński:

OK, I do agree with you if you that. Perhaps there are some possibilities. Committee of Ministers. And. In the framework all for the limitation of judgments, because you know the European Court formulates a conclusion it's index judgments, there is more complicated, complex process of implementation of the changes. National level following particular decisions, particular rulings of the European Court of Human Rights in this up to feed. To perhaps you some options political options too for reforms and so well it of course the committee starts when particular case, but can put this Case No bigger respective of how you know some institutions operate. In a particular country. So I do agree with you that spend this something for the commitment of misses. But you must also remember that the container of ministers is composed of ministers, politicians. So it depends on the, you know, summer, summer, summer size strategies built. Within this body by no political groups, but the command park credit up you are you are familiar with this you know.

Frederik Sundberg:

You are right. Science, you can do a lot of things. It's not uncommon that, for example, at some stage we have some government asking us. What are we doing in this case against Hungary or this case against Turkey? We have a question in parliament back home asking us what is Denmark, what is France doing in the committee ministers and to ensure that these problems in Turkey, Hungary or solved and then suddenly things. Become more complex, it's outside of the local governments control and even of the government sitting in the committee ministers because suddenly there new stakeholders which have announced themselves. But to create those kind of pressure, it's like leading a big military campaign. It's a big. That is so to say adventure and you have to find your friends and you have to the spare your resources because there and you have to have a plan etc and. That kind of situation doesn't arise very often. So frequently you are right, but not always.

Ledi Bianku:

Just clarify something. In relation to your question, it is true that the claim was raised before the court is transferred in yet shrink again before the gun chipper. But it depends very much how do you raise the claim in Strasburg and there is a difference. With the procedure in Luxembourg when the Commission brings 3. Because the Commission in Luxembourg, before the Luxembourg Court, can raise general claims about the status of the Polish dictionary, Hungarian judiciary, any judiciary of the Member States. When you play this transport. One of the major criteria under Article 35 of the Convention is that you have to be a victim, so you have to end. In this case, this was the problem in relation to that play. You have to argue why the judges deciding that specifically is we're not independent and the court answers because I open the judgments just to be, just to be sure of what is interesting. Issue 200 hundred 63 and three hundred 164 and the newest. This is. Not the same courage and interested. Note. Intervention Commissioner. Are. And in this London all, of course. To make statements about the general situation of Turkish tissue. You have to come with the concrete claim.

Frederik Sundberg:

It's perfectly true that the court will not do this, but the committee ministers will, and in the cases against hunger instead, against Turkey, for example, Cabala, the committee ministers. Has found, having looked at the position of all the knowledge of the other states, having looked at the information submitted by NGOs and possibly having read report from the United Nations and others that no, that is absence of protection against. Interferences with judicial independence by the executive that is threats of prosecution and God knows and there's also a problem of independence of the Turkish judiciary in general that means the composition of the council of the magistrature which. Decides upon the emotions and other things so the kind of statements you need in order to build a stronger case can come from the committee ministers instead instead. And usually they're pretty authoritative because they're well founded and supported by all the governments because.

Most of these decisions are adopted by consensus. The committee can vote also, of course, if it wants to with 2/3 majority or bit more complex, but still. But it usually doesn't want to, because it's difficult to ensure execution of a judgement against the will of that state. It's easier if you can do it with some kind of consensus approach, but sometimes the committee has forced its way and won quite some way, and we've seen that in the infringement proceedings and Ilgar Mammadov funding Kavala. But then even if you go that way. And it remains the question what should the committee do after the court has confirmed the commissions, The committee's conclusion that there is disrespect of the obligation to abide. Well, now we all agree that it is legal obligation, not just the political obligations will still. Things need to happen, but to the experiences that often things change. Like with Poland, petitions are not eternal and

it's like it educating children. You put constant pressure. Sometimes they give in and then you're there and then you make the move forward. After two times you have gotten quite a. Long way with them, but. That that was just a small comment, I'm not sure. Any further questions around? Because if they are not, I think we should.

Thank you organisers, this was a beautiful event.

Thank you so very much for help taking the initiative.