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**Judicial independence and freedom of
judicial expression in illiberal systems
– the Hungarian example**

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Attacks on judicial independence

- **After 2010** landslide electoral victory: incremental, but very conscious **attack on system of checks and balances**
- **Judiciary -- constantly changing tactics:** from the aspiration to domesticate the entire judiciary to the realisation that it is sufficient to occupy the highest tier and expand its role (election of the Kúria President through ad hominem legislation → „the judiciary is the most dangerous branch of power”)
- **Freedom of expression:** crucial role in the defence of judicial independence → battle ground



The ECtHR on judicial freedom of expression in Baka

- The freedom of expression of judges can be limited to protect judicial impartiality, but **judges must be allowed to speak up publicly when judicial independence is under threat**, even when those matters have political implications.
- Due to his position, it was not only Mr Baka's right, **but also his duty to express his views** on legislative reforms affecting the judiciary.
- His removal had a **“chilling effect”**, **discouraging other judges from participating in public debate on legislative reforms affecting the independence of the judiciary.**



Source: 24.hu

The legal framework I.

- „Hungarian legal provisions in force [Section 43 of the Judicial Status Act] restrict only **the making of statements related to judges’ adjudicative activities**, judges’ statements on other matters are not subject to legal restrictions” → erroneous and misleading
- Section 39(1): judges shall not conduct any **political activities**.
- Section 37(2): judges shall behave in an impeccable manner worthy of their position, and shall refrain from any action that may **infringe the authority of the courts or the trust in judicial procedures**.
- **Attacks on judges** speaking up for judicial independence (media and administrative)



The legal framework II.

- Section 4(2) of the new **Judicial Code of Ethics** (2022): Judges may freely express their opinions regarding the law, the legal system and the administration of courts, with special regard to the right to publish writings, give presentations and engage in educational activities [on these matters].
- **Challenge by the Kúria President** before the Constitutional Court: „the significant expansion of the freedom of expression [...and] the authorisation [of judges] to criticise laws and the justice system do not comply with Section 37(2) of the Judicial Status Act [...].”



Source: Newsweek

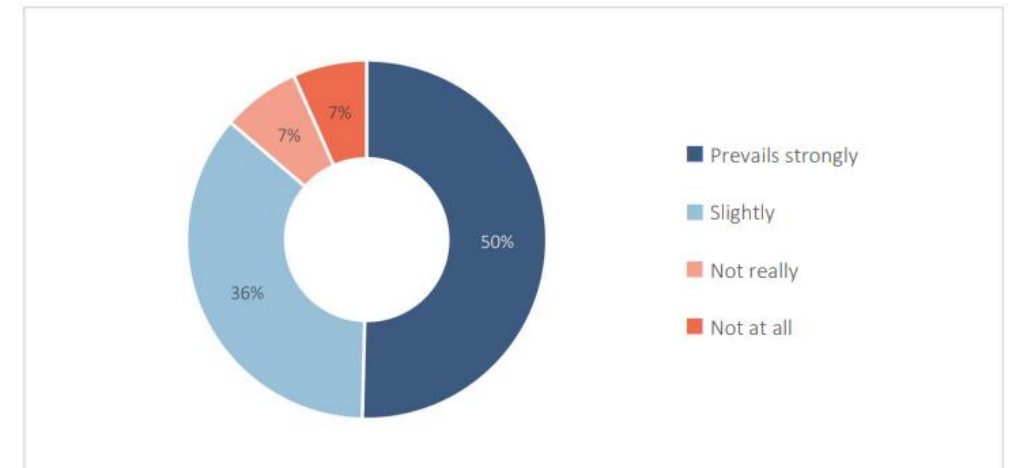
The practice I.

Survey by the Hungarian Association of Judges (Nov-Dec

2023): 285 judges (ca. 11% of the HU judiciary) →

- **86%**: a (strong or light) **chilling effect** regarding judicial freedom of expression;
- **73%** knew about cases **from the past 5 years** when a judge faced negative consequences for speaking up in relation to judicial independence;
- **78%** of those judges who chose not to share their views on judicial independence in official forums, said that **the prospect of retorsion** held them back;
- **82%** believe that **judges are not able to participate** in debates regarding judicial independence if those debates may have political implications (41% not at all, 41% not really).

[Figure 20] In your opinion, to what extent does the chilling effect currently prevail among judges? (%)



Base: full sample

The practice II.

Individual cases → e.g. the case of **Kúria Judge András Kovács**

- Head of panel handing down judgments in politically sensitive cases
- Reorganisation of panel
- Scientific analysis of the process
- Ban of publication by the Kúria President (case pending)
- Series of administrative procedures against Judge Kovács (e.g. the suspension of his rights to preside over a panel of judges – labour case pending)



Source: Verfassungsblog



The most recent developments

- **Judicial salaries** dependent on the will of the legislature → no correction mechanism (lost 40% of their value in the past 3 years)
- Nov. 2024: „**Agreement**” of the MoJ, the Kúria President, the National Office for the Judiciary and the National Judicial Council → insufficient salary raise in exchange for approval of unspecified „reforms”
- **Letters of protest:** more than 800 judges and close to 1000 judicial employees + **demonstration** organised by judicial association (December 2024) → NJC President resigned, the NJC withdrew its approval
- „Reforms” still went ahead + judicial salaries at the Kúria raised significantly (while no substantial raise for ordinary judges)
- Statement of the service court presidents and subsequent public attacks by the Kúria President





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Thank you
for your attention!

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