



# ATTEMPTS TO SILENCE JUDICIAL DISSENT IN HUNGARY

The cases of Kúria Judge András Kovács and  
X., a senior scientific advisor at the Kúria

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**Breaches of the freedom of expression of judges have been a long-standing problem in Hungary. The individual instances may not be as blatant as in the case of Poland, however, the issue is persistent: for a long time, pressure through different administrative means has been put on judges speaking out in defence of the separation of powers and judicial independence. Two recent cases from Hungary's apex court illustrate the problem clearly.**

## I. THE CASE OF JUDGE ANDRÁS KOVÁCS

Judge András Kovács has been a judge since 2003 and has served as a Head of Panel<sup>1</sup> at the Kúria (Hungary's apex court) since 2012. He has referred a remarkable number of cases for preliminary rulings to the Court of Justice of the European Union (CJEU), pointing out possible incompatibilities of Hungarian law with the EU acquis. He is also a habilitated professor, a member of the public body of the Hungarian Academy of Sciences and the author of numerous [academic articles](#), [commentaries](#) and university [textbooks](#). Judge Kovács has a track record of speaking up in different forums against steps undermining judicial independence. Already in a 2019 [article](#), he drew attention to domestic trends that limit the adequate application of EU law. In 2021, he [criticised](#) in a prestigious international journal the Kúria's case allocation system for being prone to abuse.

### I.1. The dissolution of Panel II and its procedural aftermath

As of April 2020, there have been seven panels within the administrative college<sup>2</sup> of the Kúria. The composition of Administrative Panel No. II was essentially unchanged from this date, with two Heads of Panel, Judge András Kovács and Judge Kincső Tóth, alternating as presiding judges. Over the years, Panel No. II issued a number of politically sensitive decisions unfavourable to the Hungarian government. In 2021, it ruled that an [anti-LGBTQ referendum](#) question initiated by the government

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<sup>1</sup> Panels are pools of 5-7 judges, which serve as units to which incoming cases are allocated; adjudicating panels are formed from the judges within a given panel and consist of 3 or 5 judges depending on the type of case. The Head of Panel is partly an administrative, and partly a judicial function. The Head of Panel organises the work of the judicial panel, but also presides over the adjudicating panel in the course of the actual court hearings and is authorised to make important decisions regarding how an individual case is conducted.

<sup>2</sup> The college is the group of all the judges hearing cases in a given branch of law (criminal, civil, administrative) at a given court.

could not be put to a vote. In 2022, it ruled that the government's mass email [campaign](#) sent ahead of the parliamentary elections to voters' contact details collected for another purpose was unlawful. In 2023, following a preliminary ruling from the CJEU, Panel No. II obliged the immigration authority, by direct application of EU law, to consider in the expulsion procedure the individual circumstances of a foreign national who was to be expelled on grounds of public security. In June 2023, Panel No. II ruled on the so-called "teachers' referendum", another politically sensitive issue. While the government was not in favour of the referendum, Panel No. II. concluded that two questions proposed by the teachers met the legal requirements of a national referendum. The Constitutional Court annulled both decisions in August 2023 and the case went back to the Kúria.

In October 2023, the Kúria President (András Zs. Varga, a political appointee who was elected by the Parliament to this position against the objection of the National Judicial Council, the self-governing body of judges) put forth a motion for amending the Kúria's case allocation scheme in a way as to dissolve Panel No. II. and scatter its judges among other Panels.<sup>3</sup> Since the amendment of the scheme inevitably impacted the personal position of the concerned judges, it should have been subject to a closed vote according to the internal rules (which prescribe a closed vote for personal matters), however, it was put on an open vote instead, despite the objections of Judge Kovács and a number of other judges of the college. Under these circumstances, the new case allocation scheme was supported by a majority of the administrative college and came into effect on 1 January 2024. However, it did not contain transitional provisions on which panel should deal with the pending and recommencing cases of the dissolved Panel No. II (including the cases concerning the teachers' referendum questions). Judge Kovács was moved to Panel III, where – since his position was untouched by the reallocation of the panels – he continued to act as Head of Panel along with two other Heads of Panel.

In November 2023, Panel No. II. (still operating on the basis of the old case allocation scheme) [ruled for the second](#) time on the proposed referendum questions and concluded again that they could be put to vote. In January 2024, the Constitutional Court again annulled the decisions, but since in the meantime, Panel No. II. had been dissolved, the cases could not be heard by the same judges who had previously heard them, although this would have been the normal course of action. Having been referred back by the Constitutional Court, one of the cases landed before Panel III, with Judge Kovács acting as the presiding judge. In accordance with his professional conviction that the lack of transitional provisions may raise problems regarding the right to one's lawful judge, he notified the parties of the change in the composition of the adjudicating panel and about the remedial possibilities. The initiator of the referendum submitted a procedural objection. In a resolution of March 2024, Judge Kovács, acting as the presiding judge, concluded that the objection was partly justified, and his new panel could not be regarded in that specific case as lawfully established. He issued an instruction that the case should be reallocated to a different panel.

## **1.2. The banned study and the limitations on Judge Kovács's freedom of expression**

Parallel to the above developments, Judge Kovács wrote two studies. The first one is a case study titled *"Running out of air, or an explanation for everything: Case study regarding the first (2023) occasion of exercising the judicial college's right to agree in relation to the Kúria's case allocation scheme"* (hereafter: [Case Study](#)).<sup>4</sup> Although it finds that the college's right of consent regarding the case allocation scheme, introduced to strengthen judicial independence, has partly fulfilled the hopes of the European Commission and the Hungarian legislature, it also contains – strictly professional –

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<sup>3</sup> According to an academic [article](#) about the developments, the dissolution of the panel was a retaliation for the decisions the panel handed down in politically sensitive cases.

<sup>4</sup> "Elfogy a levegő, avagy magyarázat mindenre: Esettanulmány a Kúria ügyelosztási rendjére vonatkozó kollégiumi egyetértési jog első (2023) gyakorlásáról"

criticism regarding the decision to dissolve Panel No. II. and the procedure leading there. In the other study (hereafter: [Freedom of Expression Study](#)),<sup>5</sup> Judge Kovács and his co-author elaborate on the limitations of the freedom of expression of judges, and argue that judges have not only the right but also the obligation to use information at their disposal in defence of their independence. Since the studies concerned the Kúria and its President, on 30 April 2024, Judge Kovács sent both studies to the Kúria President for commenting. On 7 May 2024, the Kúria President categorically instructed, within his employers' rights, Judge Kovács to refrain from publishing the Case Study, on the basis that the data used in it are not public and their publication would compromise the authority of the courts. As a result of the instruction, at present, the Case Study is not accessible for the general or professional public. With the help of the Hungarian Helsinki Committee, Judge Kovács has asked for the judicial review of the ban on publication.

As far the Freedom of Expression Study is concerned, a high-profile public debate of the document was organised by the Hungarian Academy of Sciences and a prestigious research network for 14.00 o'clock 27 June 2024 with academics, university lecturers, judges, judicial associations and representatives of civil society participating. Just one day before the debate, Judge Kovács was summoned for a hearing in the integrity procedure launched against him (see below) for the exact same time for which the debate was scheduled. He indicated that he was not available at the time of the hearing and that he could not prepare for the hearing on such a short notice, but the integrity officer told him that it was not possible to hold the hearing at any other time. Taking all the circumstances into account, it is difficult not to conclude that the Kúria's leadership did intentionally set the date and time of the hearing to coincide with the debate in order to create a situation in which Judge Kovács must choose between participating in the debate or having a chance to present his stance regarding the integrity procedure. Eventually Judge Kovács chose to attend the public debate of the Freedom of Expression Study.

### **I.3. The procedures launched against Judge Kovács**

In relation to the above outlined events, a series of coordinated employment measures were initiated against judge András Kovács.

#### **A) THE INTEGRITY PROCEDURE**

The rules of the integrity procedure are set forth by two internal norms: Instruction 6/2016. (V. 31.) OBH of the President of the National Office for the Judiciary on the Integrity Regulation, which pertains to all the lower tier courts, and Presidential Instructions 3/2016 and 22/2017 of the Kúria President, which regulate integrity related issues, including the integrity procedure, in relation to the Kúria.<sup>6</sup> One of the main problems with these regulations (which, in principle, aim to guarantee the impartial and irreproachable attitude of judicial employees and operation of courts) is that they heavily overlap with the laws regulating disciplinary issues, but lack the substantive and procedural guarantees that those laws offer. For example, the integrity definition of Presidential Instruction 22/2017 is very vague, and – among others – requires compliance with the “goals, values and principles” determined in the instructions and recommendations of the Kúria President. In addition, due to the absence of procedural guarantees (including the lack of any form of appeal against the conclusions), the concerned judges are not protected against arbitrary application, which is well illustrated by the fact that Judge Kovács was summoned just one day before his integrity hearing, his request for an alternative date was rejected, and eventually the integrity procedure was concluded without his hearing, so he was given no chance to present his stance on the matters. No sanctions may be imposed

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<sup>5</sup> “A muszáj Herkules, avagy a bíró véleménynyilvánítási és tájékoztatási kötelezettsége” (“The must be Hercules, or judges' obligation to express their opinion and provide information”),

<sup>6</sup> Instruction 6/2016. (V. 31.) OBH is [accessible for the public](#) too, but Presidential Instructions 3/2016 and 22/2017 of the Kúria President are not.

on the basis of an integrity procedure, but if it is concluded that the concerned judge has breached their obligations, it may lead to further proceedings, including a disciplinary procedure, where the findings of the integrity procedure can be taken into account among the facts of the case.

The integrity procedure against Judge Kovács was launched on two grounds: his decision to inform the parties in the referendum case of the potential problems arising with regard to the right to a lawful judge, and the fact that he sent the two studies to the editors of the academic journal where he wished to have them published. The integrity procedure concluded in July 2024 that Judge Kovács had violated integrity requirements in both respects. In the first case, because whether a case is assigned to a judicial panel in accordance with the rules is a matter of internal administration, and if a party to a case is informed about a document in which a judge questions the case allocation's compliance with the rules, it creates the impression that the Kúria's operation is unlawful, which is a violation of the Kúria's organisational integrity. In relation to the second matter, it was concluded that even if only the editors of the journal were provided with access to the non-public information and negative, critical statements concerning the Kúria contained in the manuscript, this could still undermine the trust in the institution.

#### B) THE EMPLOYER'S REPRIMAND ISSUED BY THE KÚRIA PRESIDENT

On 19 September 2024, Judge Kovács received an employer's reprimand from the Kúria President. According to the reasons attached to the reprimand, Judge Kovács had not requested the President's permission to participate in the public debate of the Freedom of Expression Study and failed to show up for his integrity hearing and thus violated his obligation to cooperate in the procedure. Judge Kovács challenged the reprimand before the so-called service court (which was the only available remedy for him), the case is pending.

#### C) THE EXTRAORDINARY SUITABILITY ASSESSMENT INITIATED BY THE KÚRIA PRESIDENT

On 24 September 2024, based on the conclusions of the integrity procedure, the Kúria President ordered an extraordinary assessment of Judge Kovács's suitability for a leadership position.<sup>7</sup> In the Hungarian system, there are mandatory regular suitability assessments, and throughout his 21-year-long career as a judge and judicial leader, Judge Kovács has always been found to meet the highest standards in the course of these regular assessments. The last such assessment took place one and a half years ago.

The decision to launch the extraordinary assessment claims that by deciding on the above-mentioned procedural objection in one of the referendum cases, Judge Kovács defied the instructions of a superior, and revealed to the party in his resolution internal rules and norms that are not supposed to be public; furthermore, his specific decision was arbitrary, seeking to enforce the allocation of cases in accordance with his own interpretation of the norms. A further justification provided for the extraordinary assessment was that Judge Kovács intended to publish a study that was critical of the Kúria and was suitable for damaging the reputation of judicial leaders. According to the justification, the contents of the study itself show that Judge Kovács cannot identify with the objectives and principles represented by the Kúria President.

The assessment was concluded on 5 November 2024; it could not identify any specific shortcomings in the way Judge Kovács has complied with his administrative duties related to managing the work of the judicial panels he had been heading. However, the conclusions of the assessment emphasise that Judge Kovács has been critical of the Kúria's case allocation system for a long time, which creates tensions

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<sup>7</sup> Head of Panel is regarded in the Hungarian system as a judicial leadership position due to the administrative competences attached to it.

within the Kúria. Furthermore, he voices this criticism outside the Kúria, thus questioning the lawfulness of the Kúria's operation and potentially undermining the trust in the justice system. According to the conclusions of the assessment, this raises a potential violation of the obligation of bona fide cooperation as stipulated by the Kúria's organisational and operational rules, and therefore questions Judge Kovács's suitability for a leadership position.

Based on the assessment, on 26 November 2024, the Kúria President handed down an individual measure in which he suspended Judge Kovács's leadership authorisations for a period of two years, while leaving his other privileges intact. This means that Judge Kovács will continue to bear the title "Head of Panel" and his remuneration and other entitlements will also not change, however, he will be deprived of his right to organise the operation of Panel III, and will also lose his right to preside over adjudicating panels in individual cases. His primary role for the next two years will be that of a 'voting judge', meaning that his potential impact on the development of the Kúria's jurisprudence will be severely diminished.

In the minutes of the handing over of the assessment report, the Kúria President expressly states that the main reason for the measure is that Judge Kovács interprets the case allocation scheme differently from him and other Kúria leaders and that in the course of his adjudicating activities he tries to assert this interpretation. This statement makes it absolutely clear that the suspension is a sanction of Judge Kovács's adjudicating activities and his views on matters of law.

Judge Kovács is planning to challenge the individual measure before a labour tribunal with the assistance of the Hungarian Helsinki Committee.

## **II. THE CASE OF X, A SENIOR SCIENTIFIC ADVISOR AT THE KÚRIA**

X is a researcher and university teacher. Parallel to her research and teaching career, she has worked part-time as a senior scientific advisor at the Kúria for several years. In this capacity, she has assisted the judges of the Kúria in their work and has also participated in the preparation of specific cases. Although not judges, the members of the network of scientific advisors (who must have an academic degree and must be engaged in academic work) contribute significantly to the adjudicating activities of Hungary's apex court through advising the judges on issues requiring specialised knowledge. Therefore, even if they are not covered by the safeguards that would otherwise protect judges, such as the guarantees of immovability, it is of the utmost importance that they act without any pressure, undue influence and on a purely professional basis.

X is the co-author of an English-language academic study that aims at providing a comparative analysis of domestic jurisprudence, including an analysis of the communication between the court system and government institutions, as well as the willingness of judges to request preliminary rulings from the CJEU and to refer cases to the Constitutional Court. A workshop on the study was held in September 2024 at the Institute of Legal Studies of the Centre for Social Science Research (JTI). The workshop was the only occasion when the authors made the manuscript of the study available to a restricted group of researchers, JTI staff and two external interested parties who had pre-registered for the workshop. Since then, the manuscript has not been published anywhere, is not available in the public domain and is currently being revised on the basis of the contributions made at the workshop.

In October 2024, one month after the date of the workshop, Kúria President András Varga Zs. dismissed X with immediate effect. Before her dismissal, she was heard, and only then was it revealed to her that an integrity procedure had been conducted against her already in the summer of 2024 on the basis that at a public conference held in April 2024 she had posed a question that had 'breached the integrity of the Kúria'. This integrity procedure was conducted entirely without her knowledge, she was not informed of the launching of the proceedings, she was not heard in the case, nor was she presented

with the conclusions until months later, one day before her dismissal. (In September 2024, she was given a verbal warning for her question posed at the conference, but it was not made clear to her that she had been subject to an integrity procedure and that her question had been found to have breached the integrity of the Kúria).

X's dismissal was justified with the study and her conduct allegedly breaching the integrity of the Kúria was found to have been an aggravating circumstance. According to the letter of dismissal, in the study, the senior scientific advisor, as co-author, 'made a number of worrying statements in relation to the Kúria and its President'. In his view, the allegations made in the study, "which also call into question the impartiality of the judges, go well beyond the freedom of expression" and "are capable of undermining the authority and dignity of the judiciary and undermine public confidence in the courts. [The] allegations of »occupying« the Kúria and »weakening« the National Judicial Council are particularly likely to seriously damage the reputation of the Kúria as the highest judicial body and public confidence in the independent and impartial functioning of the judiciary."

In addition to amounting to an unlawful limitation of the freedom of expression and scientific research, it must be added that the excerpts quoted by the Kúria President as reasons for the dismissal were not actually written by X, but by her co-author. X did not did not criticise the Kúria President or the functioning of the Kúria, either in the study or during the workshop. It is also clear that an unpublished manuscript that has been discussed in a very restricted circle of experts, cannot be capable of undermining public confidence in the judiciary. Furthermore, the critical remarks described in the dismissal letter as "worrying statements" were based on facts already established in academic and public discourse.

The dismissed senior scientific advisor has brought an action for a declaration that the immediate dismissal was unlawful.

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