

Dismissals of the Court Presidents in the Visegrad Group Countries in the Light of Article 6(1) of the European Convention on Human Rights*

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Abstract

The dismissals of the court presidents have been an issue of considerable controversy in several European jurisdictions, notably in the Visegrad Group countries (Czechia, Hungary, Poland, and Slovakia). On the one hand, these actions might be perceived as a potential threat to the independence of the judiciary. Still, on the other hand, the premature termination of the court president's mandate may prove necessary under certain circumstances. The article explores the common problems that have arisen in the V4 states and the guarantees stemming from Article 6(1) of the European Convention on Human Rights. It provides an insight into the domestic removal mechanisms. Based on the existing ECtHR case-law, the positive duties of the States are further reconstructed with regard to the dismissals of the court presidents. The article also includes several proposals for solving specific problems that the Court has not directly addressed. Furthermore, it lists the criteria to be met by the High Contracting Parties so that the national practices regarding dismissal proceedings fully comply with the Convention.

Keywords

Court Presidents; Judicial Independence; Independent and Impartial Tribunal; Fair Trial; Removal Decisions; Transmission Belts; European Court of Human Rights; Visegrad Group.

Introduction

Over the years, the removal of court presidents has stirred significant controversies in some Central and Eastern European countries. In fact, discretionary dismissals prove

* I would like to express my gratitude to Prof. Wojciech Piątek, Prof. Witold Płowiec, Dr Adam Płoszka and Konrad Górski for their insightful comments on the draft version of this article. I am also thankful to Prof. Krisztina Rozsnyai and Prof. Lukáš Potěšil for clarifying certain aspects of the Czech and Hungarian systems. Last but not least, I would like to extend my appreciation to the anonymous reviewers and the members of the editorial board for their valuable feedback on my manuscript. All errors are my own. This research received funding from the National Science Centre, Poland, grant number: 2017/25/B/HS5/00343, research project: 'Administrative Supervision of Courts and Judges'.

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to be a 'common practice' in the region.¹ Several pressing challenges have been identified in the existing literature, particularly concerning the Visegrad Group countries (Czechia, Hungary, Poland, and Slovakia). Nevertheless, the existing problems have not been examined more systematically, and the conceptualisation of this topic is still limited. Most of the current literature focuses on instances of abuses directed at court presidents in Central and Eastern Europe. Selected dismissal cases have been analysed mainly in relation to the discourses on judicial independence and illiberal democratic backsliding. These discussions tend to be fragmented, which may lead readers to question the relevance of these findings for developing new judicial independence standards for other countries that have not faced such severe attacks on the positions of court presidents. Admittedly, the influence of international law on the domestic institutional court designs has already been discussed to some extent in the literature.² What has been lacking, however, is a more robust focus on the impact of the international human rights law on the construction of dismissal mechanisms of court presidents.

The way the dismissal mechanisms affecting the court presidents are constructed in domestic legal systems is not without significance for how the presidents administer their courts. Ultimately, even though they are judges, their role does not consist in adjudication. Depending on the national provisions and non-legislative determinants, they may increase the quality of services provided by the courts, improve the working environment of rank-and-file judges, influence their careers and/or shape the image of the judiciary to varying degrees.³ The premature termination of their mandates may be viewed as a 'negative assessment' of their performance. From this perspective, the question arises about sufficient safeguards to protect the court presidents against arbitrary dismissals. In this regard, the relationship between the domestic removal mechanisms and the scope of the judges' rights deriving from the European Convention on Human Rights remains unclear. The article seeks to fill this research gap. The main research question is: to what extent might the interpretation

¹ BLISA, A., KOSAŘ, D. Court Presidents: The Missing Piece in the Puzzle of Judicial Governance. *German Law Journal*. 2018, Vol. 19, no. 7, pp. 2041–2075. ISSN 2071-8322. DOI: <https://doi.org/10.1017/S2071832200023324>; SPÁČ, S., ŠIPULOVÁ, K., URBÁNIKOVÁ, M. Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia. *German Law Journal*. 2018, Vol. 19, no. 7, p. 1746. ISSN 2071-8322. DOI: <https://doi.org/10.1017/S2071832200023221>; GERSDORF, M., PILICH, M. Judges and Representatives of the People: a Polish Perspective, *European Constitutional Law Review*. 2020, Vol. 16, no. 3, p. 358. ISSN 1744-5515. DOI: <https://doi.org/10.1017/S1574019620000206>; BOBEK, M. The Administration of Courts in the Czech Republic – In Search of a Constitutional Balance. *European Public Law*. 2010, Vol. 16, no. 2, p. 258. ISSN 1354-3725. DOI: <https://doi.org/10.54648/euro2010018>

² See, for example, KOSAŘ, D., LIXINSKI, L. Domestic Judicial Design by International Human Rights Courts, *American Journal of International Law*. 2015, Vol. 109, no. 4, pp. 729–741. ISSN 0002-9300. DOI: <https://doi.org/10.5305/amerjintelaw.109.4.0713>

³ See, for example, ŠIPULOVÁ, K., SPÁČ, S., KOSAŘ, D., PAPOUŠKOVÁ, T., DERKA, V. Judicial Self-Governance Index: Towards better understanding of the role of judges in governing the judiciary, *Regulation & Governance*. 2023, Vol. 17, no. 1, pp. 22–38. ISSN 1748-5991. DOI: <https://doi.org/10.1111/rego.12453>; BLISA, KOSAŘ, 2018, op. cit., pp. 2032–2033; ZHOLOBOV, Y.B., KORNEV, V.N. Legal status of the president of the court as a judge and organizer of judicial activities: Structure and models, *Vestnik of Saint Petersburg University Law*. 2021, Vol. 12, no. 4, p. 931. ISSN 2587-5833 DOI: <https://doi.org/10.21638/spbu14.2021.407>; MUSCALU, E. Managerial Approach on the Role and Responsibility of the Presidents of the Court and the Individual Performance of Judges. *Bulletin of Taras Shevchenko National University of Kyiv. Economics*. 2014, Vol. 164, no. 11, pp. 87–89. ISSN 1728-3817. DOI: <http://doi.org/10.17721/1728-2667.2014/164-11/15>

of Article 6(1) of the European Convention on Human Rights affect the scope of duties imposed on all the Council of Europe member states concerning the practices of dismissals? A recent study by D. Kosář and K. Šípulová has revealed that supranational protection of selected supreme court presidents in Central and Eastern Europe has significantly affected the dynamics between judges and governments.⁴ In my article, I will therefore not only reflect on past violations of the Convention but also discuss the need for reforms to domestic dismissal mechanisms in the Council of Europe states, which might prevent future infringements of Article 6(1). While I acknowledge that the premature termination of a court president's mandate may be necessary under certain circumstances, the development of international standards concerning judges' positions complicates the distinction between legitimate and illegitimate dismissals. The findings from this research, however, can offer crucial guidance for parties involved in proceedings, judges, and decision-makers when addressing dismissal practices. Ultimately, the discussion in my article aims to contribute to the ongoing debate on enhancing the institutional resilience of courts against potential threats from other state actors. It brings attention to a seemingly narrow yet fundamental topic that has not been central in the existing literature on judicial independence. The structure of this article enables a thorough examination of the problem. The first section provides insight into the crucial issues that have occurred in the V4 states with regard to the discretionary dismissals of the court presidents. Each of the domestic legal systems provides different dismissal mechanisms. The juxtaposition of these closely related states with various institutional frameworks enables the identification of some common problems with the dismissals. The second section examines the stances the ECtHR has taken on these controversial actions and to what extent the interpretation of Article 6(1) has evolved. The third section covers the significant problems that have not yet been fully addressed in the ECtHR case-law but are likely to arise in the future. It provides specific proposals for solving these problems. Based on my analysis, I argue that even though Article 6(1) does not require the High Contracting Parties to adopt a particular model of removing court presidents, it constitutes a legal obstacle for some domestic mechanisms. The summary lists the criteria to be used by the national authorities when assessing the compliance of domestic provisions and the practice of applying these regulations with Article 6(1) of the Convention.

1 The Pressing Problems in V4 Countries

The dismissal procedures differ substantially between domestic legal systems, which becomes quite evident after a close overview of the replies provided by the state authorities to the questionnaires on the role of court presidents prepared by the Consultative Council of European Judges in 2016. However, based on the data collected from 36 countries, three distinctive models of dismissing court presidents can be identified.⁵ These models can be distinguished

⁴ KOSAŘ, D., ŠÍPULOVÁ, K. Judicial Empowerment of Chief Justices in Central Europe through Supranational Means: Judicial Self-Defense or Judicial Self-Dealing? *International Journal of Constitutional Law*. 2025, Vol. 23, no. 1, pp. 279–297. ISSN 1474-2640. DOI: <https://doi.org/10.1093/icon/moaf017>

⁵ I refer to Opinion n° 19 (2016) on the role of court presidents by Consultative Council of European Judges (10. 11. 2016).

on the sole criterion of the competent authority – ‘the judicial council model’, ‘the court model’, and ‘the ministerial model’.⁶ The third one, in which the Minister of Justice is the only body empowered to remove court presidents, can be easily misclassified as a CEE phenomenon. This argument can be easily countered by pointing out that in Czechia, the court presidents can only be removed as a result of proceedings before a disciplinary court, while in Hungary, the President of the National Office for the Judiciary has a respective competence in that sphere. However, Poland and Slovakia do represent the ‘ministerial model’.

The study focuses on the Central and Eastern European states since the efforts to remove the court presidents have been particularly evident in the region. The question, however, might arise about the logic behind the selection of countries (Czechia, Hungary, Poland, and Slovakia). The study follows the ‘most similar cases’ principle.⁷ All four selected countries share significant similarities, which can be largely attributed to their post-communist heritage. Each of these countries has been involved in the ongoing European integration processes within the Visegrad Group, the European Union, and the Council of Europe.⁸ Moreover, the national constitutions of the V4 states provide similar provisions regarding judicial independence.⁹ Despite these similarities, the safeguards of judicial independence have been realised by various means, including by adopting different ‘models’ concerning the dismissals of the court presidents. To varying degrees, these institutional designs have been affected by political actors’ efforts to undermine the judiciary’s independence. Notwithstanding different legal frameworks and various experiences, the dismissals of court presidents have, at least at a certain point, led to some contentious issues in the V4 states. Therefore, it is worth exploring the central problems in each of those countries and identifying what ties them together.¹⁰

⁶ Some countries cannot be unambiguously classified. While in some domestic systems the competence to remove court presidents is not exclusive to a single body, there is also a number of institutions that can be described as unique, because the power to remove court presidents is granted to some ‘less common’ body, such as Parliament (in Ireland).

⁷ HIRSCHL, R. The Question of Case Selection in Comparative Constitutional Law. *American Journal of Comparative Law*. 2005, Vol. 53, no. 1, pp. 132–139. ISSN 0002919X. DOI: <https://doi.org/10.1093/ajcl/53.1.125>

⁸ For this reason, other CEE states have been considered less ‘comparable’ for this case study. For example, Croatia and Ukraine (as member states of the Council of Europe) were also initially considered when selecting the countries for the case study. However, it must be acknowledged that Croatia, which has been a part of the European Union for a shorter period, was also affected by some other significant variables (mainly as a result of the dissolution of Yugoslavia and the wars). At the same time, Ukraine is only a member of the Council of Europe, not the European Union, and the socio-political background of the country could make the comparison less plausible.

⁹ Article 82 of the Constitution of the Czech Republic, 16. 12. 1992, the Czech Collection of Laws 1/1993; Article 26 of the Fundamental Law of Hungary, 18. 4. 2011; Article 178 of the Constitution of the Republic of Poland, 2. 4. 1997, Polish Journal of Laws 1997, No. 78, Item 483; Article 144 of the Constitution of the Slovak Republic, 1. 9. 1992, the Collection of Laws of the Slovak Republic, 460/1992, as amended.

¹⁰ The following remarks refer mainly to ordinary courts. It turns out that generally the institutional design might differ as regards the highest courts and specialised courts. For example, in Poland, the Voivodship Administrative Court presidents may be dismissed by the President of the Supreme Administrative Court (article 21a of the Law on the System of Administrative Courts, Polish Journal of Laws 2021, Item 137, as amended).

1.1 Czechia

As mentioned above, the Czech court presidents can be dismissed solely by a disciplinary court. One might erroneously conclude that the so-called ‘court model’ is exclusively specific to the states that have been cultivating democratic traditions for a long time (Austria, Denmark, Finland, Germany), the group to which Czechia does not seem to belong as a post-Communist state. Admittedly, Ministers of Justice could dismiss court presidents (until the relevant laws were deemed unconstitutional by the Constitutional Court in 2006).¹¹ However, it cannot be overlooked that the court presidents were not deprived of the opportunity to challenge the removal decisions, even though it was not always entirely obvious. In 2005, the Municipal Court in Prague stated that the ministerial acts could be reviewed before an administrative court and that they must meet the standards for justification of administrative decisions.¹² Accordingly, it became clear that the Czech ministers could not act on a discretionary basis since their decisions were subject to a subsequent review. The 2005 judgment was given over 15 years after the Velvet Revolution (1989). At first glance, it could be assumed that several ministers would be inclined to apply the legal provisions arbitrarily if they – wrongly – supposed that their decisions were final. Nevertheless, as D. Kosař points out, they tended to be reluctant (with some exceptions) to use their power owing to ‘the extremely high political costs’.¹³ The fact remains that there was a recurring threat that another new minister would jeopardise the position of court presidents. More importantly, it is not entirely clear why some presidents were dismissed while others served for many years.

In 2006, the Constitutional Court of the Czech Republic declared Article 106 of the Czech Law on Courts and Judges unconstitutional, citing the principles of the separation of powers and the independence of the judiciary.¹⁴ Consequently, the Minister of Justice lost the competence to dismiss court presidents, which was a significant shift because at that time the court presidents were appointed for indefinite terms (‘life appointment’).¹⁵

The 2008 amendment introduced a new dismissal mechanism. After it entered into force, the court presidents are appointed for fixed terms with the possibility of being dismissed by a disciplinary court.¹⁶ In most cases, the term lasts for 7 years.¹⁷ The introduction of fixed terms could have been perceived as an *ex lege* dismissal of all the Czech court presidents and

¹¹ KOSAŘ, D. Politics of Judicial Independence and Judicial Accountability in Czechia: Bargaining in the Shadow of the Law between Court Presidents and the Ministry of Justice. *European Constitutional Law Review*. 2017, Vol. 13, no. 1, pp. 105–108. ISSN 1744-5515. DOI: <https://doi.org/10.1017/S1574019616000419>

¹² BOBEK, 2010, op. cit., pp. 258–259.

¹³ KOSAŘ, 2017, op. cit., pp. 105–106; BOBEK, 2010, op. cit., p. 265.

¹⁴ The judgment of the Czech Constitutional Court 11. 7. 2006, Pl. ÚS 18/06.

¹⁵ KOSAŘ, 2017, op. cit., p. 99; BOBEK, 2010, op. cit., p. 265.

¹⁶ KOSAŘ, 2017, op. cit., pp. 108–109; See: § 3 of the Law on Proceedings in the Cases of Judges, Prosecutors and Bailiffs, 11. 1. 2002, 7/2002, as amended.

¹⁷ See: § 102–105 of the Law on Courts and Judges, 11. 1. 2002, the Czech Collection of Laws 6/2002, as amended.

vice-presidents. However, since the pressure from court presidents was so high, after the amendment, the Minister of Justice appointed the incumbent presidents for another term.¹⁸ According to § 106 of the Law on Courts and Judges, the court president may be removed from their office only as a result of disciplinary proceedings.¹⁹ Motions to initiate disciplinary proceedings may be lodged by several bodies, in particular: (a) the President of the Republic against most court presidents, (b) the Minister of Justice, (c) the Public Defender of Rights, (d) the president of the court against the vice-presidents of the same court and against the presidents and vice-presidents of lower instance courts.²⁰ From the 2008 amendment, the Supreme Administrative Court was a disciplinary court for the court presidents.²¹ However, it must be noted that in 2024, the existing (one instance) model of disciplinary proceedings was significantly changed. Consequently, under the current legislation, disciplinary courts are, in the first instance, the superior courts and, in the second instance, the Supreme Court and the Supreme Administrative Court.²²

The case of Czechia provides an example of the shift from ‘the ministerial model’, in which the executive had extensive power over the court presidents, toward ‘the court model’, which ultimately allows other judges to remove the court presidents within disciplinary proceedings. Even though the Minister of Justice can still file a motion to initiate disciplinary proceedings, it is ultimately the competence of the disciplinary courts to evaluate the behaviour of judges and potentially decide on removing them from the position of court presidents.

1.2 Hungary

The actions initiated against the court presidents have also raised significant controversies in Hungary, yet not because the competent authorities have issued several arbitrary dismissal decisions. From 1 January 2012, the retirement age of judges was lowered from 70 to 62 years, with the consequence that a substantial part of the most experienced Hungarian judges (around 10%), including several court presidents, were ousted from power. The possibility of reappointment was excluded because the retirement age was lowered, and judges were dismissed not only from their offices as presidents but also from their posts as judges. The lowering of the age was later declared unconstitutional by the Hungarian constitutional court as incompatible with judicial independence.²³

¹⁸ On this issue see KOSAR, 2017, op. cit., pp. 109–112; MOLITERNO, J. E., ČUROŠ, P. Recent Attacks on Judicial Independence: The Vulgar, the Systemic, and the Insidious. *German Law Journal*. 2021, Vol. 22, no. 7, p. 1171. ISSN 2071-8322. DOI: <https://doi.org/10.1017/glj.2021.63>

¹⁹ The Law on Courts and Judges, 11. 1. 2002, the Czech Collection of Laws 6/2002, as amended.

²⁰ § 8 (3) of the Law on Proceedings in the Cases of Judges, Prosecutors and Bailiffs, 11. 1. 2002, 7/2002, as amended.

²¹ § 5 (7) of the Amending Act, 16. 1. 2008, 314/2008.

²² § 1 (10) of the Amending Act, 11. 12. 2024, 438/2024.

²³ On this issue see also, for example: GYULAVÁRI, T., HŐS, N. Retirement of Hungarian Judges, Age Discrimination and Judicial Independence: A Tale of Two Courts. *Industrial Law Journal*. 2013, Vol. 42, no. 3, pp. 289–297. ISSN 1464-3669. DOI: <https://doi.org/10.1093/indlaw/dwt010>; KOSAR, D., ŠIPULOVA, K. The Strasbourg Court Meets Abusive Constitutionalism: Baka v. Hungary and the Rule of Law. *Hague Journal on the Rule of Law*. 2017, Vol. 10, no. 1, p. 87. ISSN 1876-4053. DOI: <https://doi.org/10.1007/s40803-017-0065-y>; HALMAI, G. The Early Retirement Age of the Hungarian Judges. In: NICOLA, F., DAVIES, B. (eds). *EU Law Stories. Contextual and Critical Histories of European Jurisprudence*. Cambridge: Cambridge University Press, 2017, pp. 471–488. ISBN 9781316340479. DOI: <https://doi.org/10.1017/9781316340479.024>

Under the current legislation, the court presidents in Hungary are appointed for fixed terms of 6 years (§ 127 of the Hungarian Law on the Organisation and Administration of Courts). However, according to § 76 (5), the President of the National Office for the Judiciary (NOJ) may dismiss them before the expiry of the term (§ 138). The status of the authority empowered to remove court presidents is undoubtedly specific since they are elected by the Parliament from among the judges upon a recommendation of the Hungarian President (§ 66 and § 67).²⁴ The Hungarian model appears, therefore, problematic because the powerful position of the NOJ may be considered ‘detrimental to the judicial independence’.²⁵

A motion for the dismissal of the Hungarian court presidents can be lodged by the plenary meeting of judges (§ 144), which consists of the judges assigned to *Kúria*, namely the Hungarian Supreme Court, and the regional courts of appeal, but may also include the judges of the district and regional courts (§ 143). The dismissal procedures can also be initiated by the judicial council by a two-thirds majority (§ 151). Moreover, the management activities of a court executive may also be inspected by the President of *Kúria* (§ 136). If the inspection finds that a court executive is ‘unfit’ for the position, the court president is automatically relieved of their duties with immediate effect. This prerequisite of ‘unfitness’ is certainly vague, but importantly, the court executive relieved from office may lodge an appeal against the decision with the respective ‘service court’ within 15 days from the date of delivery (§ 140). This right applies to all presidents whose activities were negatively assessed in such procedures.²⁶ Consequently, in spite of the significant power held by the President of the NOJ, the removal decision can still be challenged before the court.

Besides the investigation of management activities, which might result in the relief of duties with immediate effect, the Hungarian court presidents are not exempt from disciplinary proceedings before a court, which can still be conducted even if the presidents resign from their position voluntarily (§ 139).²⁷ It can be concluded that, despite the controversial position of the NOJ, the Hungarian model has still offered some safeguards for removed court presidents because, eventually, the cases concerning the dismissals will be resolved by the judges themselves. It cannot be overlooked that there is an ongoing risk of attacks on the independence of the disciplinary courts, which can potentially undermine the position of court presidents as well.²⁸

1.3 Poland

By contrast, Poland is one of the states that fit into the ‘ministerial model’. Polish court presidents (as well as vice-presidents) may be dismissed by the Minister of Justice during

²⁴ See the Law on the Organisation and Administration of Courts, the National Legal Repository of Hungary CLXI, as amended.

²⁵ SZENTE, Z. Stepping Into the Same River Twice? Judicial Independence in Old and New Authoritarianism. *German Law Journal*. 2021, Vol. 22, no. 7, p. 1323. ISSN: 2071-8322. DOI: <https://doi.org/10.1017/glj.2021.69>

²⁶ See the Law on the Organisation and Administration of Courts, the National Legal Repository of Hungary CLXI, as amended.

²⁷ Ibid.

²⁸ MATUSIK, T. Targeting Disciplinary Courts. Why Hungary Is on the Verge of a Full-scale Judicial Capture. *Verfassungsblog* [online]. 16. 1. 2025. DOI: <https://doi.org/10.59704/e4efc1a09b94c193>

the term of office in four cases: (a) glaring or persistent failure to fulfill professional duties, (b) serving as a court president cannot be reconciled with the interests of justice, (c) particularly low effectiveness in terms of the supervisory or organisation of work in courts or lower courts has been recorded, and (d) a resignation has been submitted.²⁹ The expressions used in the legislative text, especially about (b) and (c), are general, which makes the criteria evaluative and prone to arbitrariness.³⁰ Therefore, it is a question of whether satisfactory safeguards have been provided.

The Minister of Justice must issue a notification to the court college, composed of regional court presidents.³¹ The positive opinion issued by this body entitles the Minister of Justice to remove the court president.³² If the opinion is negative, the Minister of Justice may apply to the National Council of the Judiciary, which is empowered to issue another statement in this regard. However, their negative opinion is binding only if a two-thirds majority vote has been achieved.³³

The position of the Minister of Justice appears to be limited by judges serving in different bodies. Yet, after careful consideration, it becomes even more apparent that this is not the case. Firstly, the regional court presidents sitting in the court colleges are appointed by the minister.³⁴ In other terms, the Minister of Justice has a decisive influence on the careers of the court college members. Secondly, the Minister of Justice also serves as the Prosecutor General and hence holds extensive power over judges and prosecutors.³⁵ Thirdly, the National Council of the Judiciary has been considered to be dependent on politicians since the controversial 2017 reforms came into force. Under the current legal framework, most members of this body, including judicial members, are selected by the Polish parliament.³⁶ Thus, the actual ‘objection’ against the removal decisions is rather unlikely.

The powers of the Minister of Justice were further extended under temporary regulations introduced as part of the judicial system reform (2017–2018). Within six months after

²⁹ The Law on the System of Ordinary Courts, 27. 7. 2001, Polish Journal of Laws 2020, Item 2072, as amended, Art. 27 § 1.

³⁰ This problem was emphasised in the judgment of the Polish Constitutional Tribunal (18. 2. 2004, K 12/03) with regard to the expression ‘the interests of justice’.

³¹ The Law on the System of Ordinary Courts, 27. 7. 2001, Polish Journal of Laws 2020, Item 2072, as amended, Art. 27 § 2, Art. 28 § 1, Art. 30 § 1.

³² Ibid., Art. 27 § 5.

³³ Ibid., Art. 27 § 5a.

³⁴ Ibid., Art. 23 § 1, Art. 24 § 1, Art. 25 § 1.

³⁵ On this issue see, for example, ŚLEDZIŃSKA-SIMON, A. The Rise and Fall of Judicial Self-Government in Poland. *German Law Journal*. 2018, Vol. 19, no. 7, p. 1857. ISSN 2071-8322. DOI: <https://doi.org/10.1017/S2071832200023257>

³⁶ On this issue see, for example: ŚLEDZIŃSKA-SIMON, 2018, op. cit., pp. 1854–1855; GRAJEWSKI, K. Dysfunctionality of the National Council of the Judiciary in the Polish Constitutional System After Statutory Changes. *Gdańskie Studia Prawnicze*. 2020, Vol. 48, no. 4, pp. 161–167. ISSN 1734-5669. DOI: <https://doi.org/10.26881/gsp.2020.4.12>. However, the Polish Parliament has been working on the amendments regarding the National Council of the Judiciary, which may result in significant changes to the selection procedures. According to the current proposal, the majority of the Council members would be elected by rank-and-file judges.

the enactment of the amendment to the Act on the System of Ordinary Courts, the Minister of Justice was able to dismiss and appoint court presidents at his discretion, with no substantive conditions and without any approval of the bodies of judicial self-government, the court colleges or the National Council of the Judiciary.³⁷ Furthermore, in practice, the former Minister of Justice used his power in a wide range. As many as 158 court presidents and vice-presidents were dismissed (without proper justification), accounting for around 21% of all the court executives in Poland. Subsequently, new court presidents were appointed, some of whom were said to have personal and/or occupational ties with the incumbent Minister of Justice.³⁸

Finally, the dismissed court presidents may face insurmountable difficulties when attempting to challenge the removal decisions. The likelihood of administrative courts rejecting potential complaints is extremely high due to the views expressed in the existing case-law. Under Polish law, disputes arising between supervisors and subordinates lie outside the jurisdiction of the courts.³⁹ Seemingly, it would be difficult to claim that the members of the judiciary are subordinate to the executive authority. However, Polish administrative courts assume there are ‘reporting lines’ between the Minister of Justice and the judges.⁴⁰ No matter how ‘fragile’ this concept might seem in light of the principles of judicial independence and the separation of powers, the ministerial decisions are considered final. I pointed out that the indeterminate criteria might pose some risks. It seems this ‘flexibility’ might go even further, considering that the removal decisions are not subject to judicial review. Thus, Polish ministers whose decisions are not subject to subsequent review may tend to apply the legal provisions arbitrarily⁴¹.

1.4 Slovakia

The Slovakian domestic legal system provides another example of the evolution within the ‘ministerial model’. The new 2000 Law on Judges and the 2001 Constitutional Amendment, which established the Judicial Council of the Slovak Republic, altered the functioning of the judiciary in many ways. Still, the Minister of Justice maintained the competence

³⁷ The amendments to the Law on the System of Ordinary Courts, 12. 7. 2017, Polish Journal of Laws 2017, Item 1452. The problem was also mentioned in para. 100 of the Opinion of the European Commission for the Democracy through Law. No. 904 / 2017 on the Draft Act Amending The Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts. Adopted at its 113th Plenary Session, 8.–9. 12. 2017. CDL-AD(2017)031.

³⁸ Report Following the Commissioner for Human Rights Visit to Poland from 11. to 15. 3. 2019, 28. 6. 2019. CommDH(2019)17.

³⁹ The Law on Proceedings Before Administrative Courts, 30. 8. 2002, Polish Journal of Laws 2023, Item 1634.

⁴⁰ See the decisions of the Voivodeship Administrative Court in Warsaw: 7. 7. 2009, II SA/Wa 173/09; 15. 11. 2012, II SA/Wa 1450/12; 18. 3. 2020, VI SA/Wa 456/20.

⁴¹ The Polish Constitutional Tribunal had not endeavoured to question any removal decisions until the incumbent Minister of Justice dismissed one of the court presidents who overtly and repeatedly interfered with the independence of rank-and-file judges. Paradoxically, this specific ministerial decision was not arbitrary at all, yet it was based on many well-grounded arguments. On this issue see: the commentary of the Ministry of Justice, 21. 2. 2024. Available at: <https://www.gov.pl/web/sprawiedliwosc/odwolanie-prezesa-sa-w-warszawie-sedziego-piotra-schaba>

to remove court presidents at their will for many years. Since the dissolution of Czechoslovakia in 1993, many Ministers of Justice could resort to arbitrary dismissals and extensively used their powers in practice, especially Minister Štefan Harabin (2006–2009), who removed as many as 56% of the presidents of district and regional courts.⁴²

It is noteworthy that, according to ex § 38 (5) of the Law on Courts, access to judicial review of removal decisions issued by the Minister of Justice, was explicitly excluded. The same provision made it impossible to apply general rules regarding administrative procedures or challenge ministerial decisions in any way.⁴³ The problem was eventually explored by the Constitutional Court in the ruling given on 8 May 2014.⁴⁴ However, the power to remove court presidents was not questioned *per se* because, according to the Court, the Minister was responsible for the proper administration of justice. The relevant law was deemed unconstitutional due to the lack of any safeguards against the arbitrary use of the Minister's competence, which, according to the Constitutional Court, infringed the very essence of the rule of law (the prohibition of arbitrariness).⁴⁵ The judgment was not limited to the declaration of incompatibility. The Court provided some relevant requirements regarding the dismissal procedures, which should be regulated by the legislature ('legal guarantees'). As it was phrased, the removal decisions ought to be 'reasoned' and also 'reviewable by an administrative court'.⁴⁶

Ultimately, the Slovakian legal system did not escape the 'ministerial model' but departed from its strong variant. Under the current legislation, the court presidents generally serve fixed terms of 5 years⁴⁷ but may resign earlier by a written notification sent to the Minister.⁴⁸ However, the Minister of Justice may still dismiss the court president if they do not comply with the duties of the court president stipulated by law.⁴⁹ The dismissal procedure may also be initiated upon request of (a) the Slovak Judicial Council, (b) the council of the respective court, or (c) the president of a higher court. Nonetheless, the Minister is not bound by such requests but is obliged to decide within 60 days after delivery of the proposal.⁵⁰

Under the current wording of § 38, the removal decision must include the justification and an instruction that the decision may be challenged before an administrative court within 15 days.⁵¹ This provision is a result of the above-mentioned ruling issued by the Slovak

⁴² SPÁČ, ŠIPULOVÁ, URBÁNIKOVÁ, 2018, op. cit., pp. 1746–1749.

⁴³ The Law on Courts, 9. 12. 2004, the Collection of Laws of the Slovak Republic, 757/2004, as amended.

⁴⁴ The judgment of the Slovak Constitutional Court, 7. 5. 2014, PL. ÚS 102/2011.

⁴⁵ SPÁČ, ŠIPULOVÁ, URBÁNIKOVÁ, 2018, op. cit., p. 1759.

⁴⁶ ŠTIAVNICKÝ, J., STEUER, M. The Constitutional Court of the Slovak Republic: The many faces of law-making by a constitutional court with extensive review powers'. In: FLORCZAK-WĄTOR, M. (ed.). *Judicial Law-Making in European Constitutional Courts*. Milton Park: Routledge, 2020, p. 190. ISBN 9781003022442. DOI: <https://doi.org/10.4324/9781003022442>

⁴⁷ The Law on Courts, 9. 12. 2004, the Collection of Laws of the Slovak Republic, 757/2004, as amended, § 36 and § 38 (1).

⁴⁸ *Ibid.*, § 38 (2).

⁴⁹ *Ibid.*, § 38 (5).

⁵⁰ *Ibid.*, § 38 (4).

⁵¹ *Ibid.*, § 38 (5).

Constitutional Court. Consequently, the Minister of Justice, who decides on the dismissals (at their initiative or upon request of one of the competent bodies), cannot resort to arbitrary actions so easily because, ultimately, the removal decision can be reviewed by the members of the judiciary.

1.5 Common Problems

Despite considerable disparities in institutional architecture, it reveals that comparable socio-legal problems appear in all four domestic systems. The national experiences demonstrate that the proceedings initiated by the Minister of Justice can be perceived as potentially excessive interference in the independence of the judiciary (Czechia, Poland, and Slovakia). The doubts may also increase if the position of the respective body evokes controversies (Hungary). In addition, there are recurring problems connected with access to judicial review of removal decisions. The criteria to consider when dismissing court presidents vary between the V4 legal systems. Some of them are rather precise (Czechia, Slovakia), while others seem vague and open to interpretation (Hungary, Poland). Hence, the question arises whether the national authorities do not apply the provisions arbitrarily. For this reason, the constitutional courts of Czechia and Slovakia emphasised the importance of providing due justifications for such decisions.

The aforementioned circumstances demonstrate that the national practices regarding the dismissal of court presidents constitute a challenge to the European standard regarding the independence of the judiciary. Given the potential threats to the very essence of the rule of law, a common approach to this matter is an absolute necessity. The above comparative overview highlights the most pressing problems that need to be addressed when reflecting on the European standards regarding the removal of court presidents.

2 The Dismissals of the Court Presidents in the ECtHR Case-law

The problem of arbitrary dismissals has been recognised – to some extent – in the ECtHR case-law.⁵² Although the relevant judgments do not necessarily concern all the challenges that have emerged in the V4 states, and some of them cover largely analogous problems in the states outside the V4, it is necessary to examine them carefully while determining what stance the Court adopts towards such practices.⁵³

If one analyses the Convention, some doubts might arise as to whether these particular disputes between court presidents and the respondent States are covered by fair trial guarantees. The wording of Article 6(1) reads: ‘In the determination of his civil rights and

⁵² It should be noted that many cases concern dismissals of judges from their judicial positions, not from the position of the court presidents. On this issue see, for example: KOSAŘ, LIXINSKI, op. cit., pp. 729–741.

⁵³ Two cases regarding *ex lege* dismissals – ECtHR 23. 6. 2016, *Baka vs. Hungary*, No. 20261/12, and ECtHR 22. 11. 2016, *Erményi vs. Hungary*, No. 22254/14 – have been purposely omitted in this section. The relevant judgments raise considerable concerns, and they were both issued under special circumstances. In my view, they are not fully compatible with other ECtHR judgments and therefore they are taken under scrutiny in the further section.

obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. However, in the extensive case-law, the Court has adopted a liberal interpretation of the concept of 'civil rights' encompassing on a case-by-case basis, 'purely economic rights', which has eventually led to many public law areas being covered.⁵⁴ The disputes concerning employment in the public sector, including the judiciary, were generally considered outside of the reach of Article 6, although the position was not always clear-cut.⁵⁵

In the *Pellegrin vs. France* judgment, the Court adopted a functional criterion to determine the applicability of Article 6(1) to public servants, noting that 'employment disputes between the authorities and public servants whose duties typified the specific activities of the public service, in so far as the latter was acting as the depositary of the public authority responsible for protecting the general interests of the State' did not fall under 'civil rights and obligations'.⁵⁶ Not long afterwards, the application of a Russian judge concerning her dismissal was declared inadmissible. The Court pointed out that judges participate directly in exercising the sovereign powers of the State, hence the inapplicability of Article 6.⁵⁷

The later shift in the Court's approach might be attributed to *Vilho Eskelinen vs. Finland*. According to this judgment, it was primarily for the State, not the Court, to expressly identify those areas of public service involving the exercise of the discretionary sovereign powers. There is a presumption that Article 6 applies unless the Government demonstrates that two conditions are met. Firstly, the national law expressly excludes access to a court for the post or category of staff. Secondly, excluding the rights under Article 6 is 'justified on objective grounds in the State's interest' (in principle, there is no justification as far as the ordinary labour disputes – relating to salaries, allowances or similar entitlements – are concerned).⁵⁸ Although this concept is still problematic, the applicability of Article 6 has been widened.⁵⁹

The question arises as to what extent fair trial guarantees apply to the removal of court presidents. Some interesting notes were made in the case of Krunislav Olujić, the former President of the Croatian Supreme Court.⁶⁰ The applicant was removed from his office in the disciplinary proceedings instituted against him. The Court stated that Article 6 encompasses cases of dismissal, and in the given case, the proceedings before the National Judicial Council and subsequently before the Constitutional Court should be compatible with the Convention guarantees. In the judgment of *Denisov vs. Ukraine*, the European

⁵⁴ See for example: RAINEY, B., WICKS, E., OVEY, C. *Jacobs, White, and Ovey: The European Convention on Human Rights*. 7. ed. Oxford: Oxford University Press, 2017, pp. 278–284. ISBN 9780198767749.

⁵⁵ See, for example, CLAYTON, R., TOMLINSON, H. *Fair Trial Rights*. Oxford: Oxford University Press, 2001, pp. 82–83. ISBN 0199246343. DOI: <https://doi.org/10.1093/oso/9780199246342.001.0001>

⁵⁶ ECtHR 8. 12. 1999, *Pellegrin vs. France*, No. 28541/95.

⁵⁷ ECtHR 8. 2. 2001, *Pitkevich vs. Russia*, No. 47936/99.

⁵⁸ ECtHR 19. 4. 2007, *Vilho Eskelinen and Others vs. Finland*, No. 63235/00, paras. 50–64.

⁵⁹ KLOTH, M. *Immunities and the Right of Access to Court Under Article 6 of the European Convention on Human Rights*. Leiden: Brill, 2010, pp. 9–11. ISBN 978-90-04-18990-4. DOI: <https://doi.org/10.1163/ej.9789004181847.i-220>

⁶⁰ ECtHR 5. 2. 2009, *Olujić vs. Croatia*, No. 22330/05.

Court of Human Rights deliberated the issue to an even greater extent.⁶¹ The case originated in the application of Anatoliy Denisov, who was dismissed by the High Council of Justice as the President of a Court of Appeal owing to ‘lack of proper planning, control and effective use of human resources’. The decision was afterwards unsuccessfully challenged before the Higher Administrative Court. The Grand Chamber explicitly stated that the case concerned an ‘ordinary labour dispute’ in the understanding of *Vilho Eskelinen*, which might be perceived as groundbreaking. Under the circumstances, both the Council and the Administrative Court were examined regarding the requirements of Article 6.

The reasonings in the *Olujić vs. Croatia* and *Denisov vs. Ukraine* cases have multiple consequences. The implications of this judgment for court presidents are still significant: it appears that the competent authorities empowered to remove court presidents should, generally, comply with the principles of an independent and impartial tribunal. It is not immediately obvious whether the dismissals in the ‘judicial council model’ provide the necessary guarantees laid down in the Convention. As far as the Ukrainian High Council of Justice is concerned, the European Court of Human Rights pointed out, *inter alia*, that non-judicial members constituted a majority capable of determining the outcome of the proceedings.⁶² Needless to say, the judicial councils are not ‘courts’ as such.

It is also evident that the ‘court model’ will not necessarily comply with Article 6. It has been established in the Court’s case law that the word ‘tribunal’ has an autonomous meaning. It is characterised in the substantive sense by its ‘judicial function’ and further requirements, such as independence, impartiality, the duration of its members’ terms of office, and guarantees afforded by its procedure.⁶³ Nationally applied definitions of the terms ‘tribunals’ or ‘courts’ should not be viewed as determinative. In this context, it suffices to recall that in the *Denisov* case, the judicial review by the Higher Administrative Court did not comply with the standards of independence and impartiality.

The *Denisov* judgment did not explicitly address how the European Court of Human Rights views the ‘ministerial model’. There can certainly be serious concerns regarding the removal of court presidents in Poland, given that the office of the Prosecutor General has been merged with the Minister of Justice in recent years.⁶⁴ It cannot be overlooked that the Consultative Council of European Judges emphasised that the participation of executive authorities in the procedure of pre-term removal should be avoided.⁶⁵

The issue mentioned above was addressed to some extent by the Court in the *Broda and Bojara* ruling. The applications were lodged by the judges who had been previously removed

⁶¹ ECtHR 25. 9. 2018, *Denisov vs. Ukraine*, No. 76639/11.

⁶² ECtHR 9. 1. 2013, *Oleksandr Volkov vs. Ukraine*, No. 21722/11, para. 114.

⁶³ These requirements were set out *inter alia* in: ECtHR 28. 6. 1984, *Campbell and Fell vs. the United Kingdom*, No. 7819/77; 7878/77, para. 64 at para. 76. See also: HARRIS, D., O’BOYLE, M., BATES, E., BUCKLEY, C. *Law of the European Convention on Human Rights*. 3. ed. Oxford: Oxford University Press, 2014, pp. 285–286. ISBN 9780199606399.

⁶⁴ ŚLEDZIŃSKA-SIMON, 2018, *op. cit.*, p. 1857.

⁶⁵ It was suggested in the previously mentioned Opinion n° 19 (2016) on the role of court presidents, Consultative Council of European Judges (10. 11. 2016), para. 47.

from their term of office as vice-presidents by the Minister of Justice under temporary regulations described in the previous section.⁶⁶ The removal was officially justified on the grounds of the alleged administrative irregularities, even though the judges considered themselves well-reputed and had not received any negative comments before the dismissal. Nevertheless, they were informed by the official of the Ministry of Justice that the given decisions were final and could not be challenged. Under the circumstances, the Court held that there had been a violation of the applicant's right of access to a tribunal competent to examine the premature termination of the mandate⁶⁷.

In many points of the *Broda and Bojara* judgment, the Court reiterated the importance of the rule of law, the separation of powers, and judicial independence. It cannot be ignored that the Court made some significant contributions to the standards in terms of removal procedure, concluding that the absence of judicial review of such ministerial decisions is not in the interest of the State. In para. 146, the Court reiterated one phrase from *Kövesi vs. Romania*, which, in my opinion, should be cited here *in extenso*: 'senior members of the judiciary should enjoy protection from arbitrariness from the executive power and only oversight by an independent judicial body of the legality of such a removal decision can render such a right effective'.⁶⁸ In the end, it was clarified that the violation of Article 6 was declared because the right of access to a court had not been provided. It is right to say that the State's obligation to provide the possibility of challenging decisions before an independent and impartial tribunal may increase the likelihood that the removal procedure is based on clear and objective criteria.

The ECtHR has not concluded so far that there has been a violation of the 'right of a judge to protect their independence', nor has the Court declared such a right to be protected under the Convention.⁶⁹ Based on the case-law, it becomes, however, apparent that the concept of judicial independence has evolved significantly over the years. There has been a noticeable shift in the traditional paradigm that considers Article 6(1) a 'tool' to protect individuals against the State⁷⁰. Because the applicability of Article 6 has been recognised in employment-related disputes involving judges and other public officials,⁷¹ the applications can be lodged not only by individuals but also by court presidents themselves. I do not argue that this relatively new approach is inherently designed to improve the protection of labour

⁶⁶ ECtHR 29. 6. 2021, *Broda and Bojara vs. Poland*, No. 26691/18.

⁶⁷ As a response to this ECtHR judgment, the Polish Constitutional Tribunal (the judgment 10. 3. 2022, K 7/21, OTK ZU A/2022, Item 24) declared the article 6(1) of the Convention unconstitutional to the extent in which the 'civil rights and obligations' encompass the 'subjective right to hold an administrative position in the structure of ordinary courts'. It should, however, be noted that the ECtHR did not 'create' any such right.

⁶⁸ ECtHR 5. 5. 2020, *Kövesi vs. Romania*, No. 3594/19, para. 124; See also: ECtHR 15. 3. 2022, *Grzęda vs. Poland*, No. 43572/18, para. 327; ECtHR 16. 6. 2022, *Zurek vs. Poland*, No. 39650/18, para. 133.

⁶⁹ See also: LELOUP, M. Who Safeguards the Guardians? A Subjective Right of Judges to their Independence under Article 6(1) ECHR, *European Constitutional Law Review*. 2021, Vol. 17, no. 3, pp. 406–414. ISSN 1574-0196. DOI: <https://doi.org/10.1017/S1574019621000286>

⁷⁰ The dissenting opinion of Judge Wołtyczek, ECtHR 8. 11. 2016, *Szanyi vs. Hungary*, No. 35493/13, para. 2.

⁷¹ On this issue see: SCHABAS, W. A. *The European Convention on Human Rights. A Commentary*, Oxford: Oxford University Press, 2017, p. 274. ISBN 9780199594061.

rights before national courts, but rather aims to strengthen the protection of judges against other state actors.⁷²

The assertion that the exclusion of the rights under Article 6 concerning judges is justified on objective grounds in the State's interest appears to be difficult to accept.⁷³ Quite the contrary – the judicial review of any acts issued towards the judges is particularly justified in democratic states. The national experiences demonstrate that the authorities whose actions are not subject to any effective judicial control tend to abuse their power. This arbitrariness aimed at court presidents is highly threatening to the judiciary. The court presidents can become vulnerable to external pressures. Even if no dismissal is directly mentioned in the circumstances of the case, there might be a threat of dismissal, which will not always be noticeable. Pressure can create an enforced bond of loyalty, which may implicitly impose undue influence on the rank-and-file judges. Hence, the attempts to use the court president as a 'transmission belt' of the executive might appear to be a tempting solution for political actors.⁷⁴

The enhancement of labour-oriented protection of persons employed in the public sector, particularly judges, guarantees that the national practices of discretionary dismissals can be brought under scrutiny. If the Court had not considered a broader meaning of 'civil rights', the cases mentioned above would have been excluded from its cognition. At the same time, one could recognise that the dismissals of court presidents impose (at least potentially) a grave threat to the very essence of the rule of law, the core value which should be protected under the preamble to the Convention.⁷⁵

The premature termination of the court president's mandate *per se* does not violate Article 6. Still, it cannot be assumed that States can act at their discretion concerning dismissal procedures. There is a risk of infringing the Convention while initiating the removal procedures. This risk level depends on the specific 'model' of dismissals adopted in domestic laws. It might be significantly higher in countries that empower the political branches at the expense of the judiciary.⁷⁶ The ECtHR case-law in this regard is still relatively scarce; thus, many questions are left unanswered. However, based on the existing jurisprudence, the following positive duties of the States can be reconstructed:

- The national legislators should repeal provisions excluding access to judicial review of removal decisions issued by the Minister of Justice, the judicial council, or another body empowered to remove court presidents.

⁷² Supposedly, this line of case-law may be developed in the future since several new cases – regarding various issues of the employment of judges – have been communicated by the ECtHR in recent years. See for example: *Hejsoz vs. Poland*, No. 46854/20, and *Morawiec vs. Poland*, No. 46238/20.

⁷³ LELOUP, M. Not Just a Simple Civil Servant: The Right of Access to a Court of Judges in the Recent Case Law of the ECtHR. *European Convention on Human Rights Law Review*. 2023, Vol. 4, no. 1, pp. 43–44. ISSN 2666-3228. DOI: <https://doi.org/10.1163/26663236-bja10055>

⁷⁴ KOSAŘ, 2017, op. cit., p. 117.

⁷⁵ 'Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration'.

⁷⁶ Cf. KOSAŘ, LIXINSKI, op. cit., pp. 755–777.

- If the admissibility of reviewing the removal decisions is contentious, the national courts should adopt an interpretation of the domestic provisions that enables judicial review of the contested decisions.
- The courts empowered to issue or review removal decisions must comply with the requirements of independence, impartiality, and establishment by the law.

3 The Series of Unanswered Questions

It cannot be overlooked that the ECtHR has elaborated on the practices of arbitrary dismissals to only a minor extent. Whether or not the removal procedures in V4 countries fully comply with the Convention is questionable. There are still some areas which may be described as *terra incognita*. They can be summarised as follows:

- 1) Is excluding access to appeal in the ‘court model’ acceptable?
- 2) Is it acceptable to dismiss a court president based on very vague reasoning, even if the dismissal happens in a ‘court model’ or a ‘judicial council model’?
- 3) In light of the case of *Broda and Bojara*, would the Polish model comply with the Convention if the National Council of the Judiciary had been involved in the procedure?
- 4) Are the national parliaments allowed to adopt legislation terminating the mandates of the court presidents *ex lege*?
- 5) Is it possible that the parties to the proceedings (the citizens) also lodge their application as a response to domestic practices regarding court presidents?

For now, none of the above-mentioned issues has been directly addressed by the ECtHR. It is conceivable that all of these themes might arise in connection with cases of arbitrary dismissals. Nonetheless, these are all pressing problems in the V4 states, and, therefore, national authorities (including legislators, courts, and authorities empowered to remove court presidents) should urgently endeavour to find adequate responses on their own merits. A precautionary review of these issues might uncover existing risks regarding the construction of domestic institutional designs, which can, in the long term, enable the avoidance of a situation in which court presidents whose mandates are prematurely terminated will successfully argue before the ECtHR that the respective states have violated the Convention. Some of the arguments might be valid, others not justified at all. However, the plausibility of specific objections should be evaluated in detail beforehand. Even more importantly, as it will be argued later, adjusting the domestic dismissal mechanisms to meet the requirements arising from Article 6 of the Convention has the potential to reinforce the independence of the judiciary. For this reason, specific proposals for addressing these problems are provided below.

3.1 The Access to Appeal in the ‘Court Model’

When it comes to whether the removal decisions issued by the courts in the so-called ‘court model’ should be subject to review by a ‘higher tribunal’, I would argue that two approaches could be envisaged:

- a) The removal decisions issued by the courts do not have to be subject to subsequent judicial review. Under the Convention, the court presidents do not enjoy the right to appeal.
- b) The removal decisions issued by the courts should be subject to subsequent judicial review. Under the Convention, the court presidents enjoy the right to have these decisions reviewed by a ‘higher tribunal’.

The former approach (a) originates from the well-established view that Article 13 does not guarantee the right to appeal or to a second level of jurisdiction.⁷⁷ In this perspective, the dismissed court presidents do not need access to the ‘review court’; hence, the model previously adopted in Czechia appeared to be acceptable under the Convention.

The latter approach (b) is based on a *simili* argument. According to Article 2 of Protocol 7 to the Convention, ‘everyone convicted of a criminal offence by a tribunal shall have the right to have conviction or sentence reviewed by a higher tribunal’. The removal decision is certainly not a conviction of the criminal court. Still, it is hard to resist the idea that the dismissal of the court presidents is ‘punitive’ in its very essence. Naturally, one could quickly question this manner of thinking with the *exceptiones non sunt extendendae* counterargument (‘exceptions should not be interpreted in a broadening way’). However, it is necessary to assume that the general principle is that the Convention does not guarantee the right to appeal the judicial rulings. On the other hand, it can be easily demonstrated that ‘an effective remedy before a national authority’ appears to be a basic conventional requirement. Hence, any deviation from this rule must be a well-founded exception.

The question thus arises: Is the elimination of the possibility of challenging removal decisions justified from this perspective? In principle, according to the ECtHR approach, the non-appealability of the judgment issued by the first instance court is not problematic, provided that the court is an independent and impartial tribunal established by law. However, one can venture a statement that any removal decision that (potentially) breaches existing rules might be viewed as a ‘serious’ violation of Article 6 and therefore requires judicial review. The ‘seriousness’ is intensified by the assumption that any court president’s dismissal is a potential threat to the independence of the judiciary. Bearing in mind that the independence of the judiciary might be at stake, the following approach can be adopted: ‘Article 13 must be interpreted as precluding provisions of national legislation according to which the removal of the court president can be issued by the tribunal without a possibility of further challenging the decision’. Such an expansive interpretation of Article 13 concerning non-challengeable removal decisions issued by the court would provide the judiciary with

⁷⁷ On this issue see for example: EComHR 13. 10. 1986, No. 10153/82, *Z. and E. vs. Austria*, para. 4; EComHR 10. 12. 1991, No. 12444/86, *Pizzetti vs. Italy*, para. 41; EComHR 1. 7. 1998, No. 28863/95, *Kopczynski vs. Poland*, para. 3; ECtHR 14. 5. 2002, No. 67199/01, *Csepyová vs. Slovakia*, para. 5.

a guarantee that dismissals in the ‘court model’ are not based, under any circumstances, on arbitrary or questionable criteria.

The above position can still be easily questioned for several reasons. Firstly, this revolutionary approach would undermine the coherence of the ECtHR system. Considering that it is explicitly guaranteed in Article 2 (2) of Protocol No. 7 to the Convention that even the right of appeal in criminal matters may be subject to exceptions in cases in which the person concerned was tried in the first instance by the highest tribunals, such national supreme courts, it would be doubtful to provide the dismissed court presidents access to judicial review, based on a rather general provision (article 13). Secondly, the latter approach (b) provokes a ‘slippery slope’ argument. Is it necessary that all decisions concerning the issues of the judiciary are examined in two-instance proceedings? If so, should two-instance proceedings be extended to all the cases in which human rights are at stake? Thirdly, this expansive interpretation of the Article would not be compatible with the existing case-law of the ECtHR, including the judgment *Grosam vs. the Czech Republic*, issued by the Grand Chamber in 2023. In this case, the applicant (an enforcement officer), who was fined for disciplinary misconduct by the disciplinary chamber of the Supreme Administrative Court, alleged a violation of Article 2 § 1 of Protocol No. 7 because he considered the proceedings ‘criminal in nature’.⁷⁸ However, the ECtHR referred to the view that the concept of ‘criminal offence’ does not refer to such proceedings but corresponds to the term ‘criminal charge’ in Article 6(1) of the Convention.⁷⁹ Even though the judgment concerned the enforcement officer, not a court president, it must be underlined that in the previously discussed cases of judges, the ECtHR has also referred to the civil, not the criminal, limb of Article 6(1).

For the reasons given above, I am more inclined to accept the former position (a). From this perspective, it must be concluded that the non-appealability of the court decision dismissing the court president *per se* does not violate the Convention.

3.2 Reasoning behind the Dismissal Decision

Still, another matter is the content of the removal decision, particularly its justification, which in many cases might appear to be the most contentious part. As I mentioned, the State's obligation to provide the possibility of challenging decisions before an independent and impartial tribunal may increase the likelihood that the removal procedure is based on clear and objective criteria. Any dismissal supported only by very vague reasoning would supposedly provoke an outcry in the judiciary and perhaps even in society. It is conceivable, however, that removal decisions might contain somewhat ambiguous reasons or no specific reasons at all, and indeed, such decisions have been issued in practice. Therefore, the question arises: Is it ever acceptable under Article 6(1) of the Convention to dismiss the court president based on rather vague reasoning?

The ECtHR has repeatedly stated in its case-law that court judgments ‘should adequately state the reasons on which they are based’ and the extent to which this duty applies ‘must

⁷⁸ See ECtHR 1. 6. 2023, *Grosam vs. the Czech Republic*, No. 19750/13, paras. 1–29.

⁷⁹ *Ibid.*, para. 140.

be determined in the light of the circumstances of the case'.⁸⁰ In other terms, according to Article 6(1), the national courts are obliged to give reasons for their judgments, which constitutes one of the core *fair trial* guarantees.⁸¹ From this perspective, it is evident that the removal decisions in the 'court model' must be adequately justified, particularly if the relevant legal provisions contain general clauses.

The fact that Article 6(1) typically applies to rulings issued by courts does not mean, however, that other public authorities empowered to remove court presidents, such as judicial councils and ministers, are not bound by any requirements. On the contrary, I argue that they must also provide necessary grounds for any dismissal. If the reasons for such decisions are unclear, court presidents may face significant difficulties while attempting to challenge such decisions in court proceedings. The primary obstacle is that dismissed presidents may not know the exact motives that eventually led these authorities to decide on such dismissals. Consequently, it is hardly possible to deny arguments that the competent authority has not even disclosed. The court reviewing dismissal decisions cannot, therefore, allow the authorities to confine the reasons given for these decisions to stating reasons that are 'too summary and general' to enable 'to mount a reasoned challenge', and such courts cannot 'decline to allow' court presidents to establish that such dismissals were unjustified.⁸² Otherwise, in court proceedings, the so-called 'equality of arms' between the court presidents and the authorities empowered to remove them (ministers, judicial councils) would prove to be an illusory concept. The courts competent to review removal decisions cannot, hence, allow such decisions to be issued without sufficient justification, and, respectively, court presidents ought to be allowed to challenge such decisions as ungrounded.

3.3 The Involvement of the National Council of the Judiciary

In the *Broda and Bojara* judgment, the Court noted that regulations under which the vice-presidents were removed from their positions enabled the Polish Minister of Justice to act mainly at his discretion. Nevertheless, it is sufficient to mention that the Polish judicial council would not be likely to oppose a dismissal decision unless a majority of 2/3rd of votes is achieved since the overwhelming majority of the members of the council are elected by Sejm (one of the chambers of the Polish Parliament), hence – in practice – the same political majority that the Minister of Justice 'represented'.⁸³ One could argue that the Polish model could not be viewed as problematic if there were no such concerns regarding

⁸⁰ See: ECtHR 19. 4. 1994, *Van de Hurk vs. the Netherlands*, No. 16034/90, para. 61; ECtHR 21. 1. 1999, *García Ruiz vs. Spain*, No. 30544/96, para. 26; ECtHR 27. 9. 2001, *Hirvisaari vs. Finland*, No. 49684/99, para. 30; ECtHR 22. 2. 2007, *Tatishvili vs. Russia*, No. 1509/02, para. 58.

⁸¹ CLAYTON, TOMLINSON, 2001, op. cit., pp. 104–105.

⁸² *Mutatis mutandis*: ECtHR 22. 9. 1994, *Hentrich vs. France*, No. 13616/88, para. 56. It must be underlined that this case concerned tax law. However, similar reasoning might be applied in cases concerning dismissals of court presidents.

⁸³ Opinion on the Draft Act Amending the Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts Adopted by the Venice Commission at its 113th Plenary Session, 8.–9. 12. 2017, para. 106.

the position of the judicial council. This matter is, however, more complex than one might suppose at first glance.

On the one hand, the extensive power of the Minister of Justice poses a serious threat to the independence of the judiciary. On the other hand, the authorities, such as the bodies of judicial self-government and the judicial council, could provide an efficient counter-balance to the potential arbitrariness of the executive. Nevertheless, these are not ‘tribunals’ within the meaning of Article 6(1). The decisions issued by such authorities should still be subject to subsequent judicial review. It would be difficult to claim that the provisions excluding access to a court are in any way ‘justified’ on objective grounds in the State’s interest.

3.4 Terminating *ex lege* the Mandates of the Court Presidents

When discussing the problem of arbitrary dismissals, I mainly referred to various types of removal decisions issued by competent authorities. In other terms, these bodies apply the existing rules in order to oust the court presidents (*une décision d’application de la loi*).⁸⁴ Yet the same result can be achieved in a very different manner. It suffices to amend the existing rules so that the incumbent presidents cease to perform their roles under transitional provisions. As I mentioned earlier, introducing a fixed term of office in Czechia could have resulted in removing all the court presidents. This situation was prevented through the reappointment of the previous judges. Otherwise, some ambiguity could arise – similarly to Hungary, where the legislative reforms affected a significant part of the judiciary, including the former President of the Hungarian Supreme Court, András Baka, whose mandate was terminated *ex lege* by the operation of the new legislation which came into force in 2012.⁸⁵ In the judgment delivered on 23 June 2016, the Grand Chamber declared that this premature termination of his mandate was not reviewed or open to review by any body exercising judicial powers as a result of ‘legislation whose compatibility with the requirements of the rule of law is doubtful’, and thus, the very essence of the right of access to a court was impaired.⁸⁶

The question arises about the permissibility of terminating the court presidents’ mandate by the Parliament as part of reforming the judiciary. I deliberately omitted this issue while discussing the stances that the ECtHR has adopted over the years for the simple reason that there seems to be no definite stance yet. In *Baka vs. Hungary*, the applicant was removed from his office due to the ‘legislation conceived to achieve a specific result that was detrimental to a concrete individual’.⁸⁷ In other words, all the circumstances of this case indicated that

⁸⁴ See: some precious remarks provided by Judge Woźcyczek in his dissenting opinion – ECtHR 29. 6. 2021, *Broda and Bojara vs. Poland*, No. 26691/18, para. 5.4.

⁸⁵ See also: KOSAŘ, ŠIPULOVÁ, 2017, op. cit.; VINCZE, A. Dismissal of the President of the Hungarian Supreme Court: ECtHR Judgment *Baka v. Hungary*. *European Public Law*. 2015, Vol. 21, no. 3, pp. 445–456. ISSN 1354-3725. DOI: <https://doi.org/10.54648/euro2015024>

⁸⁶ ECtHR 23. 6. 2016, *Baka vs. Hungary*, No. 20261/12, para. 121.

⁸⁷ These expressions were articulated in the concurring opinions of Judges Pinto de Albuquerque and Dedov – *Baka vs. Hungary*, para. 14.

the new legislation was designed to remove Mr Baka due to his critical statements on the judicial reforms.⁸⁸ Would the Court's assessment be any different if access to a court were provided?

In another judgment, *Erményi vs. Hungary*, concerning the dismissal from the position of the Vice-President of the Hungarian Supreme Court, it also became evident that the termination of the mandate served no 'legitimate aim'.⁸⁹ The applicant challenged the removal before the Constitutional Court.⁹⁰ He was, therefore, not deprived of the right to question the existing provisions before a judicial body.⁹¹ The ECtHR resorted to declaring that the dismissal violated the applicant's right to private life. It is difficult to agree with this statement given that the post of the vice-president is indeed public, not private whatsoever, and, accordingly, the right to a private life should not be interpreted as 'the right not to be dismissed'.⁹² One could certainly argue that the ECtHR has repeatedly declared the violation of Article 8 of the Convention in employment-related cases, such as in the *Sidabras and Džiantas vs. Lithuania*, which concerned applicants who had been deprived of the possibility of seeking employment in various branches of the private sector for the fact that the Government had listed them as 'former KGB officers',⁹³ and in several disputes regarding judges, including *Özpinar vs. Turkey*⁹⁴ as well as *Volkov vs. Ukraine*.⁹⁵ For this reason, it might seem reasonable to infer that dismissals from judicial positions will automatically interfere with private life, but this is not the case. It is noteworthy that in the previously mentioned *Denisov* case, the Court found Article 8 not applicable because the reasons for the dismissal were not linked to his private life, and the consequences of the dismissal did not affect it, either.⁹⁶ The risk of such interference is significantly higher in disciplinary proceedings for the very nature of such procedures.⁹⁷ Meanwhile, in *ex lege* dismissals, it might usually be barely feasible to justify convincingly that such severe interference has occurred.

I am far from implying that there is no threat to the rule of law when domestic parliaments adopt such measures. These *ex lege* dismissals are still problematic, but, in my assessment, if the court presidents can effectively challenge the transitional provisions before a domestic constitutional court (based on, for example, the violation of the constitutional principle of powers), terminating *ex lege* the mandates does not violate the right of access to a court. One may claim that this approach could render the ECtHR powerless against the so-called 'abusive constitutionalism'. It is not entirely true. If there are reasonable doubts regarding the independence and impartiality of the constitutional court's judges

⁸⁸ *Baka vs. Hungary*, paras. 168–176.

⁸⁹ ECtHR 22. 11. 2016, *Erményi vs. Hungary*, No. 22254/14, paras. 34–38.

⁹⁰ *Ibid.*, para. 10.

⁹¹ KOSAŘ, ŠIPULOVÁ, 2017, *op. cit.*, pp. 105–106.

⁹² See also: the dissenting opinion of Judge Kūris, ECtHR 22. 11. 2016, *Erményi vs. Hungary*, No. 22254/14.

⁹³ ECtHR 27. 7. 2004, *Sidabras and Džiantas vs. Lithuania*, Nos. 55480/00 and 59330/00, paras. 33–63.

⁹⁴ ECtHR 19. 10. 2010, *Özpinar vs. Turkey*, No. 20999/04, paras. 43–79.

⁹⁵ ECtHR 9. 1. 2013, *Oleksandr Volkov vs. Ukraine*, No. 21722/11, paras. 160–187.

⁹⁶ ECtHR 25. 9. 2018, *Denisov vs. Ukraine*, para. 134, No. 76639/11.

⁹⁷ See also: ECtHR 6. 10. 2022, *Juszczejvszyn vs. Poland*, No. 35599/20.

or if the constitutional court is not a ‘court established by law’, the ECtHR should conclude that the right to an independent and impartial court has been violated.

3.5 The Parties to the Proceedings as Applicants in Cases concerning Dismissals of the Court Presidents

So far, the dismissals have been elaborated in the case-law only concerning the applications lodged by the court presidents. Still, I suppose that in the following years, the parties to the proceedings might also lodge their applications if the practices of dismissals turn the court presidents into the ‘transmission belts’ of the executive. This particular problem related to the role of court presidents has been figuratively described in the legal literature⁹⁸ and, to some extent, elaborated by the Court. In some Central and Eastern European jurisdictions, the presidents operated as such ‘transmission belts’ of the Communist parties. It was a common practice that they were supposed to exercise influence over individual judges so that they did not depart from the party line.⁹⁹ Nowadays, there is a risk of reusing the same techniques by the executive and the business actors.¹⁰⁰ The issue manifested itself in the *Agrokompleks vs. Ukraine* case. One of the parties to the proceedings requested various State authorities, including the President of Ukraine, to intervene. Under political pressure, the court president did indeed give direct instructions to reconsider the ruling to two deputies of the Higher Arbitration Court, which could not be regarded as independent or objectively impartial.¹⁰¹ This provides a clear example of an attempt to use the court president as a ‘transmission belt’.

I would argue that in cases similar to *Agrokompleks*, it may also be relevant to consider the relationship between court presidents and the competent authority empowered to remove them. Even if no dismissal is directly mentioned in the circumstances of the case, there might be a threat of dismissal, which will not always be noticeable. I do not think the issue has been directly addressed in any of the Court judgments thus far. Probably the closest the Court has come in the previous case-law is the *Kinský vs. the Czech Republic* judgment, since these nearly ephemeral psychological circumstances were captured by the Court. In the given case, no ‘strong’ actions were initiated against the judges or the court presidents, although the Minister of Justice certainly had the right to institute disciplinary proceedings. A plethora of ‘soft’ instruments were applied, such as making negative comments in the media and sending letters to the presidents of regional courts, asking them to provide information every month.¹⁰² The Court concluded that these factors alerted the judges that

⁹⁸ KOSAŘ, 2017, op. cit., p. 117; SILLEN, J. The concept of ‘internal judicial independence’ in the case law of the European Court of Human Rights. *European Constitutional Law Review*. 2019, Vol. 15, no. 1, p. 112. ISSN 1574-0196. DOI: <https://doi.org/10.1017/S1574019619000014>

⁹⁹ KOSAŘ, 2017, op. cit., p. 101; SPÁČ, ŠIPULOVÁ, URBÁNIKOVÁ, op. cit., p. 1746; MARKOVITS, I. Children of a Lesser God: GDR Lawyers in Post-Socialist Germany, *Michigan Law Review*. 1996, Vol. 94, no. 7, p. 2292. ISSN 0026-2234. DOI: <https://doi.org/10.2307/1289821>

¹⁰⁰ BLISA, KOSAŘ, 2018, op. cit., p. 2049.

¹⁰¹ ECtHR 6. 10. 2011, *Agrokompleks vs. Ukraine*, No. 23465/03.

¹⁰² ECtHR 9. 2. 2012, *Kinský vs. the Czech Republic*, No. 42856/06.

‘their steps were being closely monitored’, hence the justified doubts about the impartiality of the judges.

It appears that a similar effect to that in *Kinskyj* could be attributed to the above-mentioned risk of removal from the position of court president and the consequent abuse of powers concerning the proceeding judges. If the court president does not decide to influence the decision-making directly, there are other alternatives available, such as the so-called ‘death by a thousand cuts’, which essentially means putting pressure on the judge using a series of small, malicious actions.¹⁰³ The idea that undue influence can be as dangerous as pressure from the executive is no longer an unusual notion. The Court has found a violation of ‘internal judicial independence’ in numerous cases.¹⁰⁴ I argue that the construction of dismissal procedures may lead to a situation where the court presidents become ‘transmission belts’. Considering the increasing importance attached to eliminating pressure from other judges and judicial officials, there is a risk that the national courts will cease to comply with guarantees of independence and impartiality. Subordinating the court presidents to the competent authority empowered to remove them might result in multiple applications being lodged with the Court by individuals who may justifiably lose confidence in the national judiciary. I would argue that this systemic threat to the very essence of the rule of law has already manifested itself in Poland, where the Minister of Justice has extensive power over court presidents, but a similar risk might also emerge in other jurisdictions in which external actors take some steps to gain control over the judiciary.

Conclusions

The national practices regarding dismissal proceedings initiated against court presidents are not negligible for ensuring compliance with the European Convention on Human Rights. Attempts to exert influence over the courts that have emerged in V4 states for years underscore the need for a thorough re-interpretation of Article 6(1), taking into account the recurring threats to the independence of the judiciary. This new approach is based on two assumptions. Firstly, court presidents may fully enjoy the right of access to an independent and impartial court. Secondly, the judicial review of the decisions regarding their status is particularly justified in the interest of the democratic states ruled by law, as it guarantees that those responsible for the proper administration of justice are evaluated by applicable laws and free from arbitrariness.

Provided that one consistently adheres to the previously mentioned assumptions while interpreting Article 6(1), it turns out that the court presidents can receive the ‘full protection’ without resorting to the concept of the subjective right of court presidents to safeguard their independence, which has not been acknowledged so far in the existing ECtHR

¹⁰³ The mechanism was perfectly described by A. Blisa and D. Kosař: *“a judge with a small office, a slow computer with a slow Internet connection, relying on ineffective administrative staff and an incompetent law clerk, overburdened due to unfavorable case assignment mechanisms, may either fold and give in to the pressure of the court president, resign or make a mistake and be potentially exposed to disciplinary proceedings”* (BLISA, KOSAŘ, 2018, op. cit., p. 2047).

¹⁰⁴ SILLEN, 2019, op. cit., p. 106.

case-law. At the same time, according to the principle of subsidiarity, it enables the national courts to assess the necessity of dismissals on their own merits. If the concept of the subjective ‘right to be independent’ was additionally adopted, the ECtHR could be placed in a position to assess not only the presence of necessary procedural safeguards but also the material reasonableness of removal decisions. Even the decisions issued in fair proceedings might be thereby questioned before the ECtHR due to the alleged infringement of the president’s independence. The ECtHR does not appear capable of substantively assessing the performance of numerous presidents originating from 46 states.

The extent of protection stemming from Article 6(1) impacts the scope of obligations imposed on the signatory states, despite not requiring them to adopt a particular institutional design to remove court presidents. The risk of infringing the Convention is certainly the lowest in the ‘court model’. Nevertheless, the respective competence can be entrusted to any authority if the following criteria are met:

- The removal decisions should adequately state the reasons on which they are based.
- The justifications should provide detailed explanations if the criteria used in the legislative texts are general and open to interpretation.
- The respective decisions can be challenged before an independent and impartial tribunal established by law (unless the authority empowered to remove court presidents is a ‘court’ itself). The removal decisions must be reviewed within a reasonable time.
- The amendments to laws affecting the duration of ongoing terms can be reviewed by an independent and impartial tribunal established by law (e.g., the constitutional court) in terms of compliance with the principle of independence of the judiciary.

The absence of any of the above-listed guarantees may raise reasonable doubts about whether the court presidents are exposed to undue influence from other state actors. It is troublesome that this abusive interaction can create systemic deficiencies in the judiciary because the rank-and-file judges might adjudicate under constant pressure from their ‘supervisors’. Under such circumstances, building the citizens’ confidence in the judiciary is barely feasible.

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