

Public



Scrutiny

the European Court on Human Rights completed a revolution
with and by its judgment in the case of *Baka versus Hungary*, 23 June 2016
this version and the Dutch version are authentic

Introduction

The European Court bestowed upon a judge protection (of Human Rights).

The applicant has a career as judge; from 1991 to 2008 as a judge at the European Court of Human Rights and subsequently member of the Budapest Court of Appeal; after circa one year elected (by the Parliament of Hungary) as President of the Supreme Court for a six-year term, until 22 June 2015. He was also President of the National Council of Justice. On 13 October 2011 the General Assembly of the Network of the Presidents of the Supreme Judicial Courts of the European Union elected the applicant President of the Network for a two-year term (from 2011 to 2013).

In a Hungarian law making process, to reduce the age of retirement for judges from 70 years to the general retirement age of 62 (§19) and later certain legislative acts concerning judicial procedure and the judicial system (§22) were adjusted. As a consequence of the entry into force of all these constitutional and legislative amendments, the applicant's mandate as President of the Supreme Court terminated on 1 January 2012 (§33). The applicant remained in office as judge and as president of a civil-law division of the Kúria (§33) (Kúria is the new name for the Supreme Court).

The applicant alleged, in particular, that he had been denied access to a tribunal to contest the premature termination of his mandate as President of the Supreme Court. He also complained that his mandate had been terminated as a result of the views and positions that he had expressed publicly in his capacity as President of the Supreme Court, concerning legislative reforms affecting the judiciary. He relied on Article 6 §1 and Article 10 of the Convention (§3).

The published version of this judgment (*case of Baka versus Hungary*, 23 June 2016) is at this site www.publicscrutiny.nl available under the menu item "The Manual for Public Scrutiny (...) and more documents".

Hereafter the European Court of Human Rights will be mentioned to as "European Court" and the European Convention for the Protection of Human Rights and Fundamental Freedoms will be mentioned to as Convention.

Survey of the judgment

The judgment is divided in three main parts: part one contains introduction and involved law and is divided in four sections; part two contains the European Court's reasoning and is divided in five sections; finally part three contains the decisions.

Part 1

In the paragraphs 1 until 10 is the instituting procedure at the European Court described. The European Court's Grand Chamber is composed with 17 judges and a deputy-registrar.

In the paragraphs 11 until 37 are the situations with facts and circumstances of the happenings in Hungary described, in three chapters.

- A. Election of the applicant as President of the Supreme Court and his functions
- B. The applicant's public statements and positions concerning the legislative reforms affecting the judiciary
- C. Termination of the applicant's mandate as President of the Supreme Court
- D. Election of a new president to the Kúria
- E. Consequences of the early termination of the applicant's mandate as President of the Supreme Court

There are no signatures of the private person and government that the descriptions are according the submitted circumstances and facts and that these are complete.

II. RELEVANT DOMESTIC LAW AND PRACTICE (blz.10 – blz.21)

- A. Constitution of 1949
- B. Organisation and Administration of the Courts Act (Law no. LXVI of 1997)
- C. Legal Status and Remuneration of Judges Act (Law no. LXVII of 1997)
- D. Parliamentary decision no. 46/1994. (IX. 30.) OGY on the Rules of Parliament
- E. Constitution of the Republic of Hungary (Amendment) Act
- F. Fundamental Law of Hungary of 25 April 2011
- G. Transitional Provisions of the Fundamental Law of Hungary
- H. Organisation and Administration of the Courts Act (Law no. CLXI of 2011)
- I. Legal Status and Remuneration of Judges Act (Law no. CLXII of 2011)
- J. Judgment no. 33/2012. (VII. 17.) AB of the Constitutional Court of 16 July 2012
- K. Judgment no. 3076/2013. (III. 27.) AB of the Constitutional Court, of 19 March 2013

III. RELEVANT MATERIALS CONCERNING THE SITUATION IN HUNGARY, INCLUDING THE TERMINATION OF THE APPLICANT'S MANDATE AS PRESIDENT OF THE SUPREME COURT (blz.21 – blz.41)

- A. Opinions of the Venice Commission
- B. The Council of Europe Commissioner for Human Rights
- C. The Parliamentary Assembly of the Council of Europe
- D. The European Union
 - 1. The European Commission
 - 2. The Court of Justice of the European Union
 - 3. The European Parliament

IV. INTERNATIONAL AND COUNCIL OF EUROPE MATERIALS ON THE INDEPENDENCE OF THE JUDICIARY AND THE IRREMOVABILITY OF JUDGES

- A. The United Nations
- B. The Council of Europe
- C. The Inter-American Court of Human Rights
- D. Other international texts

Part 2

THE LAW (blz.41 – blz.52)

I. ALLEGED VIOLATION OF ARTICLE 6 §1 OF THE CONVENTION

- A. The Chamber judgment
- B. The parties' submissions to the Grand Chamber
 - 1. The applicant
 - 2. The Government
- C. Submissions of third-party interveners
- D. The Court's assessment
 - 1. Principles established by the Court's case-law
 - 2. Application of the above principles to the present case
 - (a) Applicability of Article 6 of the Convention
 - (i) Existence of a right
 - (ii) "Civil" nature of the right: the Vilho Eskelinen test
 - (b) Compliance with Article 6 § 1 of the Convention

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION (blz.52 – blz.71)

- A. The Chamber judgment
- B. The parties' submissions
 - 1. The applicant
 - 2. The Government
- C. Submissions of third-party interveners
- D. The Court's assessment
 - 1. Existence of an interference
 - (a) The application of Article 10 of the Convention to measures against members of the judiciary
 - (b) Whether there had been an interference in the present case
 - 2. As to whether the interference was justified
 - (a) "Prescribed by law"
 - (b) Legitimate aim
 - (c) "Necessary in a democratic society"
 - (i) General principles on freedom of expression
 - (ii) General principles on freedom of expression of judges
 - (iii) Application of those principles in the present case

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 10 (blz.71 – blz.72)

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 6 § 1 AND 10 (blz.72 – blz.73)

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION (blz.73 – blz.75)

- A. Damage
- B. Costs and expenses
- C. Default interest

Part 3

FOR THESE REASONS, THE COURT (blz.75)

Separate opinions (blz.77 – blz.112)

- JOINT CONCURRING OPINION OF JUDGES PINTO, DE ALBUQUERQUE AND DEDOV
- CONCURRING OPINION OF JUDGE SICILIANOS (blz.91 – blz.97)
- DISSENTING OPINION OF JUDGE PEJCHAL (blz.98 – blz.99)
- DISSENTING OPINION OF JUDGE WOJTYCZEK (blz.100 – blz.112)

Introduction of the Public Scrutiny

(Quoted:) It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 (art. 6-1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees (§35). In §36 are the fair, public and expeditious characteristics of article 6, §1 regarded without elaboration. Later is elaborated in the judgment of the Case of Pretto and Others vs Italy, 8 December 1983, §21 the cause and goal of the obligated public pronouncement of a judgment namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial (Case of Pretto, §27). This case in 1983 does not change the retroactivity of each European Court's judgment and so of the public scrutiny down from the date that the Convention came in power.

The public scrutiny is a unity and an equally "established by law" or an equally by "law making treaty" (§36) established judging authority like every (disciplinary) tribunal. The European public sizes to about 450 million citizens minus the governmental employees, public servants and officers. In article 6, §1, Convention, is also the press excluded from the public. Who are member of the public scrutiny is described in the "Manual for public scrutiny" (URL: www.publicscrutiny.nl, item 4). Why the public scrutiny is a unity and by what it is united is sufficiently explained in paragraph 18e further on.

Introduction of the European Court of Human Rights

The European Court has jurisdiction that shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto (article 32, §1). In the event of dispute as to whether the Court has jurisdiction, the Court shall decide (article 32, §2). So, the European Court has dictatorship on the interpretation and application of the Convention.

The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto (article 47, §1). The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47 (article 48). So, the European Court has dictatorship on giving advisory opinions on legal questions concerning the interpretation (not the application) of the Convention.

The final judgment shall be published (article 44, §3). Advisory opinions of the Court shall be communicated to the Committee of Ministers (article 49, §3). So, the judgments of the European Court are published and therefore within the public scrutiny's jurisdiction while European Court's advisory opinions are secret and therefore outside the public scrutiny's jurisdiction.

Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration: "I swear" – or "I solemnly declare" – "that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations."

The obligatory principles for any scrutiny of the judiciary

Good faith is surely absent because otherwise each dispute has two justices while only one is possible to be in line with the author; respecting good faith without discrimination makes a just scrutiny or court trial fake and useless.

The evidences of perjury, abuse or infringements do not change that the offenders are able whether or not by accident to express just findings or conclusions. Also offending courts do not change this.

Each lawsuit is one party who executes his rights (empowerment is a right) against an opposite party who is unwilling to endure this execution. This examined case of Golder attests a government unwilling to agree with the Commission for Human Rights. The reason for just scrutiny is to unveil the cause in effort to a solution: is it a contrary right, a lack of knowledge about the (executing) right or sometimes is it to make disadvantage or worse. A judge is equipped and facilitated to disclose the legislative author's working papers to publish its cogitation, object and purpose with the law and involved articles. This is a demanded obligation.

The place and importance of the Convention

The Convention is the non-tolerant and non-exceedable outer boundary of the "Rule of Law", in which all the activities or human resultings happen (*see paragraph "Introduction"*). Not the same but close comparable with the safety rules for products in the society, which have their own particular rules for construction and working. So, how well and according the law a product or part is made, if it does not pass the safety rules then it is out of use and out of the human lives in a together living society.

The Convention is a regular contract, with at one side the Contracting States and on the other side everyone (*article 1, Convention*). Each breach of contract has also legal results by the Agreements Rights in the country where the offences take place.

The Human Rights do not turn over roles, exchange with persons in their official capacity or turn over the occurred levels of power. The Human Rights is nothing more and nothing less than an equalizing power.

Final Conclusions on the judgment within the Human Rights

This document is made in harmony with the preceding judgments by the public scrutiny

1. Inherited: determined in preceding scrutinies

(1) Correct (= legal) interpreting

Interpretation is not opinion and is opposite to opinion. The public scrutiny complies to the legal manner of interpreting which differs on essential fundamentals from the way of interpreting used by the European Court and among more (national) courts.

Interpretation is sufficient identified in the document "Inventory of the identifiers" and what legal interpreting is and is done, is sufficient clarified in the document

"Interpretation of the Articles of the Convention (ECHR)" both at this site www.publicscrutiny.nl in the section "The Manual for Public Scrutiny (...) and more documents".

NOTE: The legal interpreting ended many, many years before 2018 (The year of the draft Copenhagen Declaration). As guideline can be taken that the legal interpreting is nearly completed before 1990.

The content of both documents are inseparable intersperse at this place.

(2) Condemnation of the European Court

The European Court is by public scrutiny condemned in "Public Scrutiny of the case Golder" and "Public Scrutiny of the European Court's opinion on the Convention system, the Court's role and workload" and "Public Scrutiny of the Guide on the Article 13". The conclusions are inseparable intersperse at this place and completely.

2. Precognition: possessor of the Human Rights

- (3) The Convention has the object to guarantee the protection and the purpose to protect the Human Rights and Fundamental Freedoms for everyone. Each Contract State is the supplier and hereby is impossibility a receiver or beneficiary. One can not receive what one already has in stock 'to give away'.
- (4) Article 17 states Convention's rights for any State. Because any State is impossibility the receiver of Human Rights then any State's rights are to restrict the Human Rights permitted under the Convention. These rights of any State are limited by Article 18. So, only civil citizens possess the Human Rights.

3. Precognition: excluded citizens are civil servants on duty

- (5) Citizens in a Contract State are civil (not exercise State's duties) or civil servants (exercise State's duties). Any Contract State's duty is also to provide, supply and apply the Human Rights and Article 13 protects against violations by citizens acting in an official capacity. These are civil servants on duty, out of duty these are civilians.
- (6) Although among citizens everyone is obliged to apply Human Rights to one another a citizen acting in an official capacity can not receive Human Rights from its State (one can not possess or receive what one has in stock to give away). Thereby are Human Rights not applicable to civil servants (citizens on duty: acting in an official capacity) and these persons are excluded from protection by the Convention.

4. Precognition: judges remain always civil servants

- (7) The European Court confirms and agrees that judiciary, courts and judges are part of the civil service. Quote: "The Court observes that the judiciary, while not being part of ordinary civil service, is nonetheless part of typical public service. A judge has specific responsibilities in the field of administration of justice which is a sphere in which States exercise sovereign powers. Consequently, the judge participates directly in the exercise of powers conferred by public law and performs duties designed to safeguard the general interests of the State." (case of Pitkevich vs. Russia, 8 February 2001, §1, middle of page 8).
- (8) That a judge remains civil servant will never change and courts, tribunals or judges shall never be independent as the European Court itself confessed ("Public Scrutiny of the European Court's opinion on the Convention system, the Court's role and workload.", at this site). As this case of Baka vs. Hungary again evidences. The judiciary, courts, tribunals and judges are obliged to join the public scrutiny's unity.

5. Precognition: each tribunal or judge is always the last in line

- (9) Any claim to end a dispute exists before it is lodged at a court and forwarded to a tribunal or judge. This function of a tribunal or judge shall never change. Thereby is a tribunal or judge always the last in line and this shall never change.
- (10) The European Court also, is always the last in line (Article 35, §1) and this shall never change.
- (11) Due to the rules of "Fair play" is any tribunal or judge prohibited to decide on any opinion. Provided that the used opinion(s) is/are not brought to knowledge beforehand to the disputing parties. Each judgment that is not decided by law and the legislator's intentions, objects and purposes is intolerable unfair. This is closely similar with the Convention and the Convention's author in the duty of interpreting or applying.

(12) Due to the verifiable intolerable unfairness, are nearly all judgments after 1990 of the European Court injustice and a violation against the Human Rights and rules of law thus invalid. Nonetheless, remains possible that the European Court unconscious or accidentally state an own opinion that meets the requirements for a legal interpretation. Then the public scrutiny emphatically agrees as interpretation.

6. Precognition: the Convention obligates the European Court also

(13) Article 19 establishes the European Court. Unmistakeably there is one European Court, established and it is not a State as purposed in Article 17, but is indisputably a group. So, Article 17 reflects to the European Court also.

(14) The European Court does not guarantee the protection (of the Human Rights and Fundamental Freedoms) but its goal is to ensure the observance of the engagements undertaken by any Contract State (Article 19, Convention).

(a) The measures and the measuring must comply with the rules of "fair play". The rules of "fair play" are identified in the document "Inventory of the identifiers" (paragraph 1, above).

(b) The insurance by the European Court effects to the same as the guarantees by any Contract State namely the enjoyment of the protection for everyone (of the Human Rights).

(c) A fair measure of the engagements obligates to an equal fair procedure and an equal fair treatment in this procedure as the fair trial to determine the Civil Rights.

NOTE: Civil Rights include Human Rights, but Human Rights not include Civil Rights.

(15) So, beams the Convention equally to the guarantees as to the insurance. So, equally towards the European Court as it does towards any Contract State. Parallel does each each Contract State experiences the fair trial from the European Court as everyone experiences the fair trial from any Contract State.

NOTE: The Convention's Section II includes Section I, but Section I not includes Section II.

7. Compliance

(16) The precognition is object and purpose of the Convention and complies with the harmony between each of the Articles as required.

The most particular violations in this judgment

Violations that are determinated in one earlier Public Scrutiny's judgment is for all equal cases, so for this case too and do not need re-determinated in the present circumstances.

8. The violation against Article 46, and betrayal to high moral character

(17) The European Court agrees in §102: (quote) "As to the "civil" nature of the right, the Court had held, (...), that employment disputes between the authorities and public servants whose duties typified the specific activities of the public service, (...), were not "civil" and were therefore excluded from the scope of Article 6, §1 of the Convention.". So, a public servant (that is a citizen acting in an official capacity) can not have civil rights and is therefore excluded from rights of the Convention. Also judges and other civil servants in the judiciary: (quote) "Following the functional criterion adopted in Pellegrin, employment disputes involving posts in the judiciary were excluded from the scope of Article 6.". Although the used route of derivation differ to perform legal interpreting, is the statement in harmony with chapter 3 above.

(18) The European Court suddenly changes without reason: (quote) "the Court developed

new criteria for the applicability of Article 6, §1 to employment disputes concerning civil servants.". The European Court has no authority to do this and acts outside its jurisdiction (Article 32, Convention). Also does the European Court violate Article 46: the binding force of earlier or earliest judgments of earlier or earliest European Courts and betrayals to the high moral character of the earlier or earliest judges. By this the causal judgment and all the resulting judgments are illegal.

9. The combat against the public scrutiny

(19) The European Court combats illegal against the legal public scrutiny by an own opinion and by disharmonise the Convention's Articles. Quote: "And Article 11 para. 2 (art. 11-2) in fine, which allows States to impose special restrictions on the exercise of the freedoms of assembly and association by "members of the armed forces, of the police or of the administration of the State", confirms that as a general rule the guarantees in the Convention extend to civil servants." (case of Glasenapp vs. Germany, 28 August 1986, §49) (comparable to §54 in the case of Engel and Others vs. the Netherlands, 8 June 1976). This opinion of the European Court does not harmonise with Article 13. A citizen can not act in official capacity and at the same time be civilian. By this the causal judgment and all benefiting judgments are illegal. Differences in work, tasks, duties, and so on is not discrimination on a ground.

(20) The European Court combats unauthorised against the public scrutiny's judgment (chapter 2, above) by stating "it is not enough for the State to establish that the civil servant in question participates in the exercise of public power". Because this already is the essence of being obligated to provide and apply Human Rights within his tasks and duties. One can not posses or receive what one has in stock to supply or provide.

10. The combat against the European Court itself

(21) The European Court came to an interpretation in 1976 (reference paragraph 19, above) that the Convention extends to civil servants, then without any need in 1999 (reference paragraph 17, above) changed the European Court and civil servants were excluded from the Convention but changed again without any need in 2007 (§103) that civil servants were included in the Convention and excluded by the European Court's criteria, which are not according the objects and purposes of the Convention's author with its Convention. The European Court combats the European Court.

(22) The European Court's chamber combats with the Grand Chamber (quote) "Whilst the Court stated in the Vilho Eskelinen and Others judgment that its reasoning in that case was limited to the situation of civil servants (§61, *ibid.*), the Grand Chamber notes that the criteria established in that judgment have been applied by different Chambers of the Court to disputes regarding judges." (§104 in the Baka judgment). The European Court's chambers combats the European Court's Grand Chamber and the chambers likely combat one another.

11. The combat against the principles of international law

(23) The Article 46 guarantees that only one (1) judgment exists for everyone in all the equal cases. The Article 14 guarantees prohibition of discrimination between all the equal cases on any ground thus in any circumstance. The European Court combats this

(24) The European Court combats unauthorised against the principles of international law such as legal consistency, legal certainty, legal order, and so on. As revealed in chapter 9 and 10 above. The European Court is, like any court, prohibited to decide by own opinions on the emotional waves of likes and dislikes.

12. The combat to become first in line and leading

Continuing chapter 5 above and in advance of chapter 18.

- (25) The European Court states in §165 (Baka judgment) "(...), the Court has also stressed that having regard in particular to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, (...)". Chapter 17 above reveals the judiciary combats to become first in line, notwithstanding that it participates in the preparation of the lawmaking process while the judiciary do not allow politics to participate in the preparation of the judgment making process.
- (26) Already makes the European Court a huge overload of illegal personalised judgments to be abided by a Contract State (Article 46, §1, Convention). By which the European Court in fact differs in nothing from a licensing department in a State. Regardless whether the license grants each individual civilian one or more personalised rights or grants the State rights to continue in the personalised case. After the fair trial has vanished, due to the intolerable unfairness, has now, by this (Baka) judgment at the least, the tribunal (article 6, Convention) vanished. This is the cause of violence in the world today, as predicted in the preamble of the UN's Universal Declaration.
- (27) Very closely similar is the practice in each Contract State by the national judiciary, courts, tribunals or judges. Caused by the union and networks which by default vanishes the independency of each participating judiciary, court, tribunal or judge. This is the cause of violence in the countries today, as predicted in the preamble of the UN's Universal Declaration.

13. Perjury

- (28) Each judge at the European Court, before taking up office, shall take the following oath or the following solemn declaration: (quote) "I swear" – or "I solemnly declare" – "that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations." (Rule 3, Rules of Court, by Article 24, Convention). So, the combats and following chapters are firstly perjury rather than violation, by the European Courts that succeed the earlier or earliest ones.

14. Deliberately suppression of civilians and discrimination

- (29) The European Court states: (quote) "Accordingly, in the light of the (...) legislative framework in force at the time (...), the Court considers that the applicant could arguably claim to have had an entitlement under (...) law to protection (...)." (§109 in the Baka judgment). This is discrimination and humiliates the European civilians, by the following among more.
- (30) The European Court on the contrary changes the pseudo interpretations in its new judgements, makes unneeded sudden new criteria (paragraph 18 above), and departs from preceding judgments ("Public Scrutiny of the European Court's opinion on the Convention system, the Court's role and workload", this site, "The Public Scrutinies"). Just equal to the Hungarian government. Additional to this are the reasonless inadmissible declarations. These new judgments are no civilian to blame, but nonetheless are parties rejected. This result suppresses the European civilian citizens and it is pure bullying.
- (31) The discrimination is emphasized by the statement (quote) "(...) the question of whether a right existed under domestic law cannot therefore be answered on the basis of the new legislation." (§110 in the Baka judgment). While the European Court violates and does change the content of fully interpreted rights or restrictions at the moment of changing judgments to achieve the existence of this new right's content.
- (32) This violation and suppression has the most bearable weight due to the fact that the

Convention not changes, as complying to the principles of international law (reference chapter 11 above). The equal suppression of domestic civilians is exercised by national judiciary, courts, tribunals or judges under protection by the European Court.

- (33) Similar suppression and violations are exercised by the European Court, the national judiciary, courts, tribunals or judges under protection by the European Court by means of ever changing opinions, used as pseudo interpretations, and accordingly ever changing judgments. This is not a duty of the European Court.

15. The European Court is, again, not impartial

- (34) The applicant complaints in the being of a judge and a president of a Supreme Court, is an 'old' colleague-member of the European Court, present President of Networks that the European Court supports (§12-§13-§14 in the Baka judgment), combating for more money in the name of independency of judges or judiciary (§36-§37-§20-§53 in the Baka judgment). The European Court is not bothered anywhere in its judgment by its non-impartiality in the case of Baka vs. Hungary. This application ought to be declared inadmissible with a complete reasoning but is taken admissible.
- (35) The applicant is not dismissed from its office as judge of the Kúria (formerly Supreme Court) and not dismissed from the presidency of the Kúria.
- (36) The applicant is allowed to participate in the law-making process and is allowed to speak out without hindrance, his opinion (§15 up into §23 in the Baka judgment). Nonetheless is complaint about absence of right to freedom of expression (§3 in the Baka judgment).
- (37) The European Court takes in consideration in §73 (Baka judgment) out of the General Comment No. 32 on Article 14 of the International Covenant on Civil and Political Rights (Right to equality before courts and tribunals and to a fair trial) published on 23 August 2007, the UN Human Rights Committee as follows: (partly citation) "protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws", and "It is necessary to protect judges against conflicts of interest and intimidation.". So, politics may not interfere with judges, but judges do may interfere with politics (paragraph 33 directly above). Also, is it necessary to protect judges against conflicts of interest and intimidation which they themselves create. Nonetheless is non-impartial considered the equality before courts and to a fair trial (§73 in the Baka judgment)

16. Independency is not a Human Right of any court, tribunal or judge

- (38) Firstly, a judge in its official capacity does not have Human Rights or the protection by the Convention (chapter 2, 3 and 4 above).
- (39) As evidenced in the first judgment by the European Court up to the latest, is each court part of a Contract State. Also by another aspect: alike any Contract State must each court provide the fundamental guarantees of Article 6, §1 (case of De Cubber vs. Belgium, 26 October 1984, §32). This shall never change.
- (40) So, the Human Rights are not a possession of any Contract State, court, tribunal or judge, but of a private individual solely. So, this right of independent tribunal (or court or judiciary) can be claimed by a private individual solely and never by a Contract State, court, tribunal or judge (§53 in the Baka judgment).

17. Independency is not a lifetime job and salary

- (41) The European Court state that the applicant's entitlement: (quote) "was supported by constitutional principles regarding the independence of the judiciary and the irremovability of judges." (§108 in the Baka judgment). In §145 is stated: (quote) "(...) the applicant addressed a letter to the Prime Minister in which he again criticised the proposal on the retirement age of judges, stressing that the proposal was humiliating and that it infringed the principles of the independence and irremovability of judges.". So, the judiciary uses wrongly that the (mandatory) retirement infringed the independency and irremovability supports it.
- (42) The European Court quotes in §73 out of the General Comment No. 32 on Article 14 of the International Covenant on Civil and Political Rights (Right to equality before courts and tribunals and to a fair trial) published on 23 August 2007, the UN Human Rights Committee as follows: (partly citation) "the actual independence of the judiciary from political interference by the executive branch and legislature", and "A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.". This has nothing in connection and also nothing common with money (income) or a lifetime job. Civilians posses freedoms which makes them independent too.
- (43) Restrictions on the pseudo independency are intolerable vague. The European Court quotes in §73 out of the General Comment No. 32 on Article 14 of the International Covenant on Civil and Political Rights (Right to equality before courts and tribunals and to a fair trial) published on 23 August 2007, the UN Human Rights Committee as follows: (partly citation) "Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law.". Perjury is a serious reason for dismissal, but allowed by judges and executive power. Further, except from the public scrutiny, there is no impartial and independent authority to conduct righteous the fair and public hearing. The public scrutiny, the only goal and purpose for the publicly pronouncing of judgments, is again ignored everywhere.
- (44) **Stressed note:** A lifetime job and salary, without public scrutiny, is the best guarantee for criminal activities, also by judges.

18. The judiciary shall always be submitted to the legislative power

- (45) The applicant's dispute originated when a change in law is brought by the one part of the legislator to the other part for the legislation process. The legislation process is exclusive and between a government and the parliament. This process is world-wide adopted and in practice.
- (46) The applicant is judge and gathered a crowd (§21 in the Baka judgment) to achieve amending in his benefit and the domestic judiciary. Although the applicant succeeded in amending the retirement age reduction to the general age of 62 year (§19 in the Baka judgment) into a change to 65 years (§54 in the Baka judgment), not all wishes were granted.
- (47) The legislator finalised legislation and it came into force (§33 in the Baka judgment) without satisfying applicant and the domestic judiciary. Quite similar subjugation does the European Court understand (on this site, "The Public Scrutinies", "Public Scrutiny of the European Court's opinion on the Convention system, the Court's role and workload")
- (48) The European Court's ambition for monopoly in each Rule of Law is expressed by

the "Principles established by the Court's case law" (§100-§106 in the Baka judgment). This is not a duty of the European Court, this pseudo work is outside the Court's Jurisdiction, these principles are not given by the Convention and these principles are ever changing opinions. So, these principles are multiple violating.

19. The destruction of the equalising power of the Human Rights

- (49) The applicant uses the Convention to complain about violation against a pretended possession of the Human Right of access to a tribunal, to contest the premature termination of one of his several jobs as result of the changed law (§3 in the Baka judgment). A beneficiary discrimination with the people in general is left out.
- (50) For the right of access to a (ordinary) tribunal considers the European Court: (quote) "This lack of judicial review was the result of legislation whose compatibility with the requirements of the rule of law is doubtful (see paragraph 117 above)". Not considered is that two judgments of the Constitutional Court, on 16-07-2012 and on 19-03-2013, are in the dossier. Also is not established that applicant not lodged a claim at a court, like any citizen must do before complaining at the European Court.
- (51) Further, (quote) "the Court cannot but note the growing importance which international and Council of Europe instruments, as well as the case-law of international courts and the practice of other international bodies, are attaching to procedural fairness in cases involving the removal or dismissal of judges, including the intervention of an authority independent of the executive and legislative powers in respect of every decision affecting the termination of office of a judge (see paragraphs 72-77, 79, 81 and 84 above)."

Finally, (quote) "Bearing this in mind, the Court considers that the respondent State impaired the very essence of the applicant's right of access to a court."

Concluding: the European Court wants a Contract State to have its Supreme Court judge about and employment disputes of his employee and additionally to perform its duty the apply a law that is accordingly applied. Further, wants the European Court the acquirement of power to interfere with the sovereignty of the legislative power and this way destructs equal powers especially the equalising power of the Human Rights. Additional to exercise the prohibited discrimination of the public scrutiny, being the only official international body to scrutinise the judiciary, is a worst violation. Additional does ignoring the public scrutiny's judgments, being the most independent and objective body, on the judiciary and courts, tribunals or judges on safeguarding fair trials, not even destructs but eliminates the democracy in each democratic rule of law. The European Court still chooses violating and not to join the public scrutiny's unity.

The round up of the final conclusions

Derive from case-law is illegal

The European Court's assessment contains a part "Principles established by the Court's case-law" (§100 in the Baka judgment). Also rights are determined out of case-law by the European or any court. The doing of this both is criminal, because law-making is the exclusive sovereignty of the legislative power. The European or any court is forced by law to interpret by submitting to the law's, treaty's or Convention's author's objects and purposes. The public scrutiny made a gathering of the interpreted harmonised purposes in the document "Interpretations on all articles of the Convention" on this site. This is at the moment the only legal extend of the Convention. This "Inventory" guides also that the

interpreting has ended, because the interpretations are sufficient for use or apply of the article. Hereby are references to case-law illegal and makes a judgment illegal. Because derive an opinion from an opinion makes the illegal uncertainty and inconsistency worse and worse. Also because the courts apply law, treaty or Convention while the public scrutiny examines this, the public scrutiny's references are finding places of the court's contradictions or violations.

Excuses are impossible, for any court, judge or the judiciary

(Quote:) "From 1970 to 1984, the workload of such courts had more than doubled, whereas there had been no increase in the number of judges." (*Case of De Cubber v. Belgium*, 26 October 1984, §34). This is no excuse to let violations and infringes to the Human Rights happen en remain happening. The European Court agrees and relies (quote:) "The Court recalls that the Contracting States are under the obligation to organise their legal systems "so as to ensure compliance with the requirements of Article 6 para. 1 (art. 6-1)" and a bit further (quote:) "The Court's task is to determine whether the Contracting States have achieved the result called for by the Convention, not to indicate the particular means to be utilised." (*Case of De Cubber v. Belgium*, 26 October 1984, §35). To not value the increase of the workload of courts as an intolerable increase of violations and infringes against the Human Rights by the Contracting State's government and its public services, including the courts and its tribunals or judges, is a fundamental crime in itself. The legal results are explained in the preceding paragraph.

Considering binding force

The Human Rights is an equalising power, nothing more and nothing less. Equal to the European Court of Human Rights, is the public scrutiny instituted by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The author must have implied the equal authority as stated in article 46 to the public scrutiny.

As publicly pronounced by the European Court of Human Rights is the jurisdiction of the public scrutiny, the scrutiny of the judiciary regardless European or national. It is not the task of the public scrutiny to take the place of any court. Neither can any court of a Contracting State unjustifiably refuse to abide the judgment or report of the public scrutiny. The public scrutiny is equal to the European Court in the field of scrutiny a Contracting State's tribunal, judge or court and the European Court of Human Rights.

Legal effects

These legal effects is the execution of the effective remedy of the human right stated in article 13.

Emphatic must now the begging for returning our stolen human rights, stop. **Equal emphatic** must the ignoring of the public scrutiny, stop. Act after the press publishes shall aggravate the theft and ignoring.

The European Court of Human Rights is obliged to equal operate in the unity of the public scrutiny and stop the method of working to create legal uncertainty and legal disorder. A huge amount of judgments is by default discrimination.

Priority for the European Court is to standardize the respect and obedience of the freedom of expression as is declared by the United Nations and firstly for the author of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Close followed with the retroactive correction of all judgments, in public.

The European Court ought to recognise the, in this report, supplied elaborations of article 13 and accept this as the cogitation, object and purpose of the author with its expression: the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the event of opposition is needed to refute with citations out of the working papers. Like this necessity with interpreting.

Now that the European Court published a Guide it is obligated to correct this good action and firstly stop the wrong and misleading information. Obligated is to quickly publish the innovated Guide with the articles and attached to each article all the interpreted elaborations of the implied or latent rights. And each interpreted right equipped with the case and paragraph reference. A school example is in the public scrutiny's judgment or report of the case of Golder at the site "www.publicscrutiny.nl".

The European Court is urged to standardize a reformat of its judgment so the section that contains considerations starts with the inheritance of all the existing –correct– interpreted rights per involved article. So the collection is updated with each necessary new judgment. Also needs the end expose the identifiers so the public knows by what, an occurred trouble is identified as equal in the same category.

Note:

This public scrutiny's report is cooperative in harmony with the public scrutiny's other reports at this site in section "The Public Scrutinies".

Inheritance:

In order to acquire knowledge about the violations of the judiciary, it is currently (still) necessary to consult the other reports of the public scrutiny.

The webdossier www.de-openbare-zaak.nl serves for consultation, accusation and return-demand(s) of all our Human Rights with the containing violations by the Dutch judiciary.

The single fact of begging for very many years to return or give back all our, stolen, Human Rights is enough convincing evidence that the Human Rights do not exists in the Netherlands.