

Summary of Points

EIN online briefing to the Committee of Ministers on 17th September 2020

The following recommendations were presented at the briefing by:

- 1) András Kádár, Co-chair, Hungarian Helsinki Committee, and Dr. Dávid Vig, Director of Amnesty International Hungary, on [Baka v Hungary](#)
- 2) Vanessa Kogan and Grigor Avetisyan, on the [Khanamirova group of cases v Russian Federation](#)

For further details, you can watch the videos on the [Baka v Hungary case](#), and on the [Khanamirova group of cases](#).

Baka v Hungary

Amnesty International Hungary and the Hungarian Helsinki Committee respectfully recommend the Committee of Ministers to **continue examining under enhanced procedure the execution of the judgment** in the *Baka v. Hungary* case, and to **call on the Government of Hungary to:**

1. **Protect the integrity of the NJC's judge members** by taking effective measures to guarantee that they can exercise their statutory rights and obligations of safeguarding judicial independence through, among others, formulating and disseminating critical opinions on the administration and independence of the judiciary **without any undue interference**. More effective protection of NJC's judge members should be ensured against intimidation, attacks on their reputation as well as retaliatory administrative and other measures;
2. **Refrain from and condemn any public harassment, intimidation or retaliation against judges**, and communicate clearly that while criticism of jurisprudence as a part of a public debate is necessary in a pluralistic society, personal attacks against judges are unacceptable;
3. **Abstain from** any public critique, recommendation, suggestion or solicitation regarding court decisions **that may constitute direct or indirect influence** on pending court proceedings or otherwise undermine the independence of individual judges in their decision-making;
4. **Amend the law** to ensure that **if a judicial leader challenges their dismissal** by launching a lawsuit, and if the judge concerned is reinstated, legal guarantees ensure that the **judge may be reinstated to their former leadership position**, for example, by making sure that the position could only be filled temporarily;
5. **Address the issue of judicial independence holistically and comprehensively**. In order to address the long-standing structural problems and to ensure the independence of the judiciary, **the laws on the judiciary should be amended to ensure compliance with international standards and specific recommendations on the situation of the Hungarian judiciary by international bodies** including the Venice Commission, the Council of Europe Commissioner for Human Rights, and the Council of Europe Group of States against Corruption.

Khanamirova group of cases v Russian Federation

Stichting Justice Initiative proposes the following non-exhaustive list of general measures to be indicated to prevent similar violations in the future:

1. To recommend the courts to indicate the terms of the execution of the court decision as clearly as possible, including by indicating in the decision what measures the bailiffs should take when enforcing the decision, including in the case of a child's physical restraint by the

debtor and in case of the child's refusal to return to the parent in whose favour the judgment was passed.

2. To prescribe in law that in each case bailiffs should develop a set of measures for a successful transfer of a child to the applicant. To develop guidelines and best practice for the facilitation of transfer of children according to the terms of court decisions which would avoid counterproductive behaviour, such as bailiffs asking children during the enforcement proceedings which parent the child wants to live with, or otherwise questioning or undermining the court's decision.
3. To establish deadlines for the execution of court decisions on a child's place of residence and decisions on order of communication with a child (not exceeding, for example, 6 months).
4. In cases in which bailiffs violate the deadlines for executing decisions of this category, or in which the court recognizes the bailiffs' actions/inactivity as unlawful – to prescribe sanctions such as removal from the enforcement proceedings, disciplinary measures, supervision of measures taken to eliminate the established violations.
5. To transfer an enforcement proceeding in which the debtor, contrary to the court decision on the child's place of residence, changed the region or district of the child's residence, to the Federal Bailiff Service, which has jurisdiction throughout the territory of the Russian Federation, for execution.
6. To considerably increase the amount of the administrative fine for disobedience to a bailiff's lawful requests within the framework of an enforcement proceeding concerning a child custody and access to a child, or to provide for other sanctions such as: administrative arrest up to 3 days as a sanction for a repeated disobedience to a bailiff's lawful requests (Article 17.15 of the Code of Administrative Offenses of the Russian Federation), or criminal liability.
7. To introduce criminal liability for "family kidnapping," i.e. for kidnapping by a parent. In ongoing cases in which children are kidnapped by family member other than their parent, in which criminal liability already exists, to instigate criminal cases on these facts.
8. To create within the framework of the Federal Bailiff Service of Russia specialized Department on implementation of the decisions of this category, which would include also psychologists and which empowers bailiffs working in such departments to use their powers on the whole territory of Russia.

In January 2020, the Russian authorities announced their intention to introduce criminal liability for refusing to transfer a child under a court order. This signals the authorities' acknowledgement that, as argued above, current sanctions for failure to execute an enforcement order are insufficient to induce compliance, and is undoubtedly an important step towards recognizing that non-enforcement is a systemic problem that must be remedied with new legal mechanisms.

According to public sources, a draft bill will be submitted to the State Duma only in December 2020, and the law itself is supposed to be adopted in 2021. In addition, it is not yet clear whether, in addition to non-enforcement of a court decision, the issue of "family kidnapping" will be addressed as well, which often occur after an applicant has already obtained a custody decision in her favour. Such kidnappings are characterized by several factors, and is often a premeditated crime involving several perpetrators. In connection with the prolonged separation of children from their mothers, it is also not clear how the statute of limitations for these crimes will be calculated. Second, the proposed initiative may not comprehensively address the problems outlined in this submission. For example, it is not clear how, if at all, the initiative to criminalize the refusal to transfer a child solves the issue of the authority of the bailiffs to search for, establish and, most importantly, return children subject to a court order. Therefore, we recommend the Committee to indicate the list of general measures as laid out above.