

Question (and sub-questions) addressed to the European Commission for Democracy through Law of the Council of Europe by Tamás Sulyok, President of the Republic of Hungary on May 29, 2026 (supplemented on June 4, 2026)

In light of European and international standards, can the political accountability of the President of the Republic be established in a parliamentary democracy, where the President is not directly elected, and if not, can the President be removed from office without a finding of a violation of the Fundamental Law or legislation?

In a parliamentary democracy, does a President of the Republic who has not been directly elected, have political accountability according to international constitutional standards?

The relevance of this issue stems from the fact that there has recently been a strong political demand to establish the political accountability of the President of the Republic. However, the President of the Republic is not currently subject to political accountability and has been elected indirectly.

Since 1990, the Presidents of Hungary have not been subject to political accountability, they were only accorded limited legal accountability. The termination of the President's term of office has been regulated in a similar manner by both the former Constitution and the 2012 Fundamental Law currently in force. The accountability of the President of the Republic has remained unchanged since the transition to democracy, and these rules governing the accountability of the President of the Republic comply with European and international constitutional standards. No objections have been made in this regard either by international judicial forums or other constitutional bodies.

The President is not considered to bear political responsibility, meaning that he or she cannot be removed from office for political reasons, only for intentional violations of law. Under the current Fundamental Law, if the President intentionally violates the Fundamental Law or any law in connection with the exercise of his office, or commits an intentional criminal offense, upon the motion of one-fifth of the members of the National Assembly, two-thirds of the members of the National Assembly shall decide by secret ballot on whether to initiate impeachment proceedings. Impeachment proceedings fall within the jurisdiction of the Constitutional Court. If this body finds that there has been an intentional violation of the law, the commission of a criminal offense, or an intentional violation of the Fundamental Law, it may decide on the removal from office of the President of the Republic. Removal is possible only in cases and as a result of a process laid down in legislation; the Constitutional Court may remove the President from office based on a detailed and well-reasoned motion prepared by the National Assembly. In the proceedings, it must be proven beyond a reasonable doubt that the President intentionally violated a provision of the Fundamental Law, or intentionally violated a law in connection with the exercise of his or her office, or committed an intentional criminal offense.

At present, however, there is a clear and strong political drive to remove from office the President of the Republic for political reasons, and establish a political accountability of the President of the Republic. The Prime Minister has cited several grounds for the President's removal, all political in nature, and none of them falls within the scope of the President's limited legal accountability as defined in the Fundamental Law. The fact that the governing party sees

no constitutional grounds for the removal of the President of the Republic, based on legal accountability is supported on the one hand, by the very fact that the Government has repeatedly stated that the Fundamental Law will be amended in order to remove from office the President of the Republic, and on the other hand on the reasons given by the Government for the Presidents expected resignation and intended removal from office.

On the one hand, the Government refers to “regime change” and the strong democratic legitimacy as a reason for the removal from office of the President of the Republic. The new government has repeatedly invoked democratic mandate, which, supposedly grants them the authority to remove from office the figures of the “former regime”. In connection with the removal of the President of the Republic, it has been explicitly stated that the current ruling party has received a mandate to change the system and to remove him along with the other figures of the “previous system” through the use of constitutional means. It is unclear, however, – and the new government has not clarified either – exactly why such change of system and the removal of the President of the republic would be necessary.

The Government has not claimed that the election of the President of the Republic – whether the regulations or the election of the current holder of office – violated any constitutional principles. The method of nominating and electing the President of the Republic has been regulated in the same manner by the Constitution in force until 2011 and the Fundamental Law in force since January 1, 2012 (the rules of the electoral process have evolved into a two-round system under current law, but this has not been significant in the case of the past four presidential elections). Consensus among the parties has never been a requirement for the election of the President of the Republic (in fact, to date, there has been only one instance in which the nomination and election were based on consensus). The President’s accountability – that is, his legal accountability – and the absence of political accountability have also remained unchanged since the regime change of 1989. Neither the Venice Commission’s nor the European Commission’s reports on the rule of law in Hungary, nor the reports of European courts or civil society organizations on the rule of law, have found fault with Hungary regarding the rules governing the presidential election and the removal of the President from office. In the case of the current President of the Republic, there has been no suggestion whatsoever that he was elected in violation of international or constitutional norms. The system governing the election and accountability of the President of the Republic has remained essentially unchanged since 1990; the previous government did not abuse its democratic mandate in the past either, so the President of the Republic cannot be accused of having been elected through tailor-made legislation that would violate common European constitutional principles. Finally, the Respect and Freedom Party itself has won a two-thirds mandate in a democratic election, under the electoral system reformed during the previous government’s term, in accordance with its rules.

All this suggests that the invocation of the “regime change” (transition to democracy) in connection with the President of the Republic appears to be a merely political reason rather than a legal one, since it cannot be argued in any way that the removal of the President of the Republic elected during previous parliamentary and governmental cycle would be necessary to restore the rule of law. The latter has not expressly been argued either, the Government has claimed plainly that a strong democratic mandate enables them to remove the President of the Republic.

The other argument raised in connection with the removal from office of the President has been the President's so called unworthiness, and unpopularity. Instead of justifying the existence of the grounds for removal laid down in the Fundamental Law, the new government consistently argues that the President of the Republic is unworthy, unpopular, and that an amendment to the Fundamental Law will make it possible to remove the President of the Republic. However, these arguments also seem to be political in nature they do not appear in the Fundamental Law as a reason for removal.

In view also of the fact that the government deems it necessary to amend the Fundamental Law in order to remove from office the President of the Republic for any of the above mentioned reasons, also supports that in present, the President of the Republic cannot be considered to bear political accountability according to the Fundamental Law in force.

What do constitutional standards regarding the removal of a President of the Republic who has not been directly elected and who plays a constitutional role as a counterweight within the system of separation of powers entail in a parliamentary democracy (including regarding amendments to accountability provisions affecting the incumbent President)? Can such Presidents of the Republic be removed from office on grounds that do not involve a finding of a violation of the law?

According to the practice of the Venice Commission, the length of the term of office, as well as the rules governing appointment and removal, are important safeguards for the stability of the body in question and its independence from the executive branch.¹

In the context of the removal of the head of state, the Venice Commission has warned against the arbitrary use of procedures for the removal of the head of state, as this can undermine the credibility of state institutions and the system of checks and balances. The Venice Commission has also previously emphasized that a decision to remove a head of state must be proportionate to the gravity of the violation of the law; otherwise, the principle of separation of powers is also violated.²

It seems that if an amendment to the Fundamental Law were to allow for the removal of the President on grounds of unworthiness or similar reasons, this would retroactively impose political accountability on the President, and could fundamentally alter the President's role and responsibilities. Similarly, if the decision on the removal of the President of the Republic was to fall within the jurisdiction of the National Assembly, rather than the Constitutional Court, the President would become vulnerable to the majority in the National Assembly, and indirectly to the governing majority. The President's status could become dependent on the majority's opinion. Establishing a political form of accountability for the President of Hungary either in the framework of the current Fundamental Law or with retroactive amendment of the Fundamental Law may be in violation of constitutional principles.

¹ CDL-PI(2022)047 Romania Urgent Opinion On Three Laws Concerning The Justice System, 18 November 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure

² CDL-AD(2019)019 Opinion on the powers of the President to set the dates of elections, adopted by the Venice Commission at its 120th Plenary Session, (Venice, 11-12 October 2019) 100-101.

Opening the possibility of removal without the existence of a violation of the law or the Fundamental Law could also amount to onerous retroactive legislation in violation of the principle of legal certainty

Within the framework of the principle of separation of powers, longer terms of office that extend beyond a single government cycle – in the case of *inter alia* the President of the Republic – constitute an expression of the temporal separation of powers and a fundamental guarantee of that separation. The protection of appointments lasting longer than the parliamentary term is known to be of particular importance, especially when the ruling party holds a two-thirds majority in parliament, which serves as a guarantee for such appointments. The principle of separation of powers may be undermined when the balance of power shifts significantly toward a certain branch of government.³ Such a situation could arise if the Fundamental Law were to permit the removal of the President of the Republic on grounds of political reasons such as incompetence or unworthiness.

In this context it seems to be of particular relevance, that the President of the Republic has an important constitutional role in the system of checks and balances, namely the initiation of *ex ante* constitutional norm control. The President is obliged to assess within five days whether the legislation is in line with the Fundamental Law. If the President of the Republic considers the Act or any of its provisions to be in conflict with the Fundamental Law he or she shall send the Act to the Constitutional Court for examination of its conformity with the Fundamental Law. In view of the constitutional role of the President of the Republic in the system of separation of powers, amendment to the accountability of the President of the Republic would have an effect on the principle of separation of powers. Political accountability would weaken the President of the Republic's role as a counterweight to power within the system of separation of powers. The President of the Republic could come under pressure when, for example, he or she is required to make an unpopular decision arising from his or her constitutional role, such as in the exercise of a constitutional or political veto. The President could find himself at the mercy of the will of the ruling majority, which would essentially render its role as a constitutional counterweight weak or impossible.

The Venice Commission also emphasized the constitutional court's role as a safeguard in the removal process. The fact that national assemblies does not have broad discretion in such a decision serves as a guarantee of the President of the Republic's constitutional role and autonomy.⁴ The Venice Commission recommended involving the Constitutional Court in the proceedings to remove the President of the Republic from office even before the final vote in Parliament.⁵ According to the Venice Commission's practice, excluding the Constitutional

³ e.g. CDL-AD(2021)005-e Russian Federation - Interim opinion on constitutional amendments and the procedure for their adoption, adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021), CDL-AD(2022)008, Belarus - Urgent interim opinion on the Constitutional Reform, issued on 21 February 2022 pursuant to Article 14a of the Venice Commission's Rules of Procedure, endorsed by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022), Belarus final opinion on the constitutional reform adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022) CDL-AD(2022)035

⁴ CDL-AD(2014)033 Montenegro - Opinion on the Draft Law on the Constitutional Court, para 19-22, CDL-AD(2009)044-e Amicus Curiae Opinion on the Law on the Integrity of High-Ranking Public Administration Officials and Elected Persons of Albania adopted by the Venice Commission at its 80th Plenary Session (Venice, October 9–10, 2009)

⁵ CDL-AD(2020)019 Venice Commission opinion on ten acts and bills implementing legislative proposals subject to opinion CDL-AD(2020)006 Adopted by the Venice Commission at its 124th Plenary Session (Online, October 8–9, 2020) 45. Since “proved misconduct” can be equated with a criminal act, officials who may be dismissed for such acts

Court from the decision to remove the President of the Republic from office, or, in the event of suspension, depriving the President of the right to appeal to the Constitutional Court, may violate the principle of separation of powers.⁶

Amendments either to the reasons or the process of establishing accountability of the President could affect his impartiality and therethrough the principle of separation of powers. In the present case, these risks are particularly acute because, on the one hand, the ruling party holds a two-thirds majority in the National Assembly, so even a two-thirds majority rule would not provide any additional guarantee in the event of removal initiated by the governing majority, and on the other hand, the ruling party has already signalled its intention to remove the President of the Republic from office.

In connection with the removal of the President of the Republic, a constitutional question also arises regarding the election of a new President of the Republic and the determination of the date thereof. According to the Venice Commission, “the idea of an ‘extraordinary,’ i.e., early, election of the President of the Republic is also unacceptable. In every political system, the head of state symbolizes and guarantees the stability and continuity of state action, and his or her term of office is fixed. The Constitution allows [the head of state] to choose the most favourable date for the next election, thereby facilitating the appointment of his or her successor or the extension of his or her own term. This provision is therefore incompatible with democratic norms – it would allow the president to seek a new and reinforced mandate directly from the voters, which could turn the elections into a referendum on the country’s leadership and provide legitimacy to authoritarian tendencies.”⁷ The Venice Commission’s reasoning may similarly apply to a situation where it is not the president of the republic but the government or parliament that seeks to take advantage of a favourable moment to replace the president of the republic with its own candidate, in a manner that allows it to rely on the instrument of direct democracy, confident that their candidate will be elected. Such a situation may arise particularly in the period immediately following parliamentary elections, when the government can reasonably expect its own voter base to elect the candidate it supports. In this way, by removing the President of the Republic before the end of the term and by choosing the timing of this removal, the government could ensure the election of its supported candidate even in the case of a direct presidential election.

Although changing the method of appointing the President of the Republic, or strengthening or altering his role, certainly does not in itself violate the principle of the separation of powers,⁸ the Venice Commission has emphasized that, in the case of independent state bodies, the length

(President of Malta, Attorney General, State Advocate, Ombudsman) should have the right to appeal to the Constitutional Court against a finding of such misconduct, prior to the final vote in Parliament. 96.

⁶ CDL-AD(2012)026-e Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other state institutions and on the Government emergency ordinance amending Law No. 47/1992 regarding the organization and functioning of the Constitutional Court and on the Government emergency ordinance amending and supplementing Law No. 3/2000 regarding the organization of a referendum in Romania, Adopted by the Venice Commission at its 93rd Plenary Session (Venice, December 14–15, 2012)

⁷ CDL-AD(2016)029-e Azerbaijan - Opinion on the draft amendments to the Constitution submitted to the Referendum of 26 September 2016, endorsed by the Venice Commission at its 108th Plenary Session (Venice, 14–15 October 2016)

⁸ CDL-AD(2002)012-e Opinion on the Draft Revision of the Romanian Constitution, adopted by the Venice Commission at its 51st plenary session (Venice, July 5–6, 2002)

of the term of office is significant, as is the fact that it does not coincide with the parliamentary term. Any constitutional amendment procedure must respect the principle of the separation of powers, including the balance of power between the President of the Republic and the legislature.⁹

EU case law has established strict standards regarding the head of the data protection authority. The Court of Justice of the European Union found that the independence of the Authority had been undermined due to the shortening of its mandate through legislation. The office of Data Protection Commissioner was abolished under the new Fundamental Law, and the National Authority for Data Protection and Freedom of Information was established in its place. The Court of Justice of the European Union found that Hungary had violated EU law by shortening the term of office of the head of the independent supervisory authority without this being justified by serious misconduct. “If it were permissible for every Member State to compel a supervisory authority to vacate office before serving its full term, in contravention of the rules and safeguards established in that regard by the legislation applicable, the threat of such premature termination to which that authority would be exposed throughout its term of office could lead it to enter into a form of prior compliance with the political authority, which is incompatible with the requirement of independence That is true even where the premature termination of the term served comes about as a result of the restructuring or changing of the institutional model, which must be organised in such a way as to meet the requirement of independence laid down in the applicable legislation.”¹⁰ The prohibition on shortening a term of office, stemming from the EU principle of impartiality and independence, may also apply to any state body that, by virtue of its constitutional function, must be independent of or have autonomy from the legislative and executive branches.¹¹ The above practice indicates that the termination of the term of office of independent officials may undermine the body’s independence, even if the termination results from a change in the organization’s structure. Given that the principle of the rule of law under EU law requires the separation of powers and prohibits the arbitrariness of the executive branch, it may also be concluded that the removal of the President of the Republic through legislation or constitutional amendment is contrary to the rule of law as interpreted by EU law, and the principle of the separation of powers. The reform of the institution of the President of the Republic and changes to the election procedure may serve to strengthen the rule of law and the system of checks and balances; however, such legislation cannot be applied to remove the incumbent President of the Republic from office.

Removing the President of the Republic before the expiration of his or her term of office through an amendment to the Fundamental Law may in itself violate the requirement of legal certainty and the principle of legitimate expectations. The principle of legitimate expectations is part of the general principle of legal certainty, which expresses that authorities must not only comply with the law but also with their promises and the expectations they have raised. According to the principle of legitimate expectations, the legitimate expectations of those who act in good faith and in accordance with the law in force must not be undermined. At the same time, new circumstances may justify amendments to legislation that, in exceptional cases, override legitimate expectations. The European Court of Human Rights recognizes the right to complete one’s term of office, which serves partly as a safeguard for the principle of judicial

⁹ CDL-AD(2019)022-e Peru - Opinion on linking constitutional amendments to the question of confidence, adopted by the Venice Commission at its 120th plenary session, Venice, 11–12 October 2019, 44.

¹⁰ C-288/12, Commission v Hungary ECLI:EU:C:2014:23754.

¹¹ C-202/18, C-238/18, Rimšēvičs v Latvia, ECLI:EU:C:2019:299

independence and partly as an individual right of judges.¹² The Venice Commission also links the necessity of completing one's term to the protection of legitimate expectations and the principle of legal certainty. According to the Commission, even if lawful and compelling reasons can be established, the termination of the term of office of a court president must respect the principles of legal certainty (legitimate expectations) and proportionality.¹³ The Venice Commission has reaffirmed this principle in numerous opinions. "Although the term of office of court presidents is currently limited to five years from the date of their appointment, it can nevertheless be argued that court presidents had a legitimate expectation that their previous appointment would not be terminated before the expiration of the five-year period specified in the Fundamental Law."¹⁴ In another case, the Commission similarly noted: "There is no justification in the amendment for a radical replacement of court presidents; the proposed rules may give the impression that their sole purpose was the radical replacement of court presidents. [...] Court presidents who had already been appointed until retirement had a legitimate expectation that their prior appointments would not be reviewed or terminated before they reached retirement age."¹⁵ The Venice Commission emphasized: "The abrupt change of the framework not only raises issues of arbitrariness and proportionality, but by radically altering it also interferes with the right of already established institutions to rely on the existing set of rules and organise their continued operation, and thus fails to satisfy the principles of foreseeability and legitimate expectations, as part of the general principle of legal certainty."¹⁶ As stated in the Venice Commission's rule of law checklist: "[I]aw can be changed, but with public debate and notice, and without adversely affecting legitimate expectations."¹⁷ Based on the above practice, the right to complete a term of office may also apply to the President of the Republic, based on the protection of legitimate expectations arising from the principle of legal certainty, as well as on the principle of the separation of powers, taking into account the President's independent status and five-year term.

Finally, it is not only the text of the legislation – or, in this case, the text of the constitutional amendment – that may be significant, but also the context, circumstances of the regulation.¹⁸ Statements by the Prime Minister calling for the resignation of the President of the Republic, particularly the statement that if he does not resign, his removal will be "resolved" through constitutional means, may place a new constitutional regulation and its retroactive effect (in a

¹² Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft law on amendments to the Organic Law on General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014, CDL-AD(2014)031), 97. referenced in ECtHR, *Baka v Hungary* (20261/12), See, e.g., ECtHR, *Kövesi v. Romania* (3594/19), ECtHR, *Grzęda v. Poland* (43572/18)

¹³ CDL-AD(2020)016 Armenia Opinion on Three Legal Questions in the Context of Draft Constitutional Amendments Concerning the Mandate of the Judges of the Constitutional Court

¹⁴ CDL-AD(2014)031-e Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, October 10–11, 2014), para. 97

¹⁵ CDL-AD(2014)021, On the Draft Law on Introducing Amendments and Addenda to the Judicial Code of Armenia (Term of Office of Court Presidents)

¹⁶ CDL-AD(2017)022, Hungary Venice Commission opinion on Act XXV of April 4, 2017, on the amendment of Act CCIV of 2011 on national tertiary education 78.

¹⁷ Venice Commission Checklist on the Rule of Law, para 60. referenced by CDL-AD(2017)022, Hungary Venice Commission opinion on Act XXV of April 4, 2017, on the amendment of Act CCIV of 2011 on national tertiary education 78.

¹⁸ ECtHR, *Baka v Hungary*, C-123/22, *Commission v Hungary*, ECLI:EU:C:2024:493, 90.

sense that it would apply to the incumbent President) into context. If the amendment to the Fundamental Law is explicitly or at least partially aimed at removing the head of state, this may violate the principles of the rule of law and the separation of powers.¹⁹

How should statements by the Prime Minister suggesting that the President of the Republic needs to step down or be removed from office – in part due to the assumption that he might, by exercising his constitutional powers, “slow down” the legislative process concerning the recovery of EU funds – be assessed in light of international constitutional standards? How could in light of the constitutional role of the President of the Republic of Hungary, the intent communicated by the Government affect the conformity of a future amendment of the Fundamental Law concerning the removal of the President of the Republic with international constitutional standards? Can a constitutional amendment, the identifiable purpose of which is to remove from office the legally and duly elected President of the Republic, be in conformity with constitutional standards?

The Prime Minister’s repeated and open statements that the law – specifically, an amendment to the Fundamental Law – would be used to “resolve” the removal of the President of the Republic already seem to indicate an intention to engage in personalized lawmaking, with the underlying political goal of the legislation being the removal of the current President of the Republic. This is further reinforced by the fact that the Government has indicated in advance that a comprehensive constitutional reform would also take place, yet they still consider it necessary to amend the Fundamental Law in the short term.

The Prime Minister stated that the President’s resignation (to be understood in light of the fact that the resignation is not regarded a free choice but an alternative to being removed by means of constitutional amendment) is necessary because, the President “might suddenly be waking up to his role;” and, “by exercising his constitutional powers”, could “slow down” the legislative process. The Prime Minister made it clear that he wishes to remove the President in part precisely because of the President’s constitutional powers and effective role as a check and balance, as he is concerned that the President “can start quibbling over legalities in a negative sense” and thereby hinder the legislative process aimed at recovering EU funds. The Prime Minister – given the head of state’s role in the system of separation of powers – intends to ensure that the President of the Republic cannot, so to speak, slow down the legislative process by exercising his power of preliminary review of legislation. Since he fears that the current President of the Republic might exercise this power, he wishes to remove him from office. Based on these statements an essential aim for the President of the Republic’s removal could be to prevent him exercising preliminary constitutional review, a procedure of the Constitutional Court that can be initiated exclusively by the President of the Republic. The attempt to prevent the preliminary review of constitutionality raises the violation of the separation of powers and the protection of constitutional principles and fundamental rights.

It does not seem logical that, in order to eliminate violations of the EU’s fundamental values, the government would seek to abolish the constitutional review of legislation. The President of the Republic in his letter to the Venice Commission, the annex of which is the present document,

¹⁹ ECtHR, *Grzęda v. Poland* (43572/18) § 307, ECtHR, *Juszczyszyn v. Poland* (35599/20)

pointed out that the EU values the restoration of which is the aim of the legislation necessary to release funds, are also constitutional principles.

Under Hungarian constitutional law, the President of the Republic has the discretion to decide whether he considers legislation in violation of the Fundamental Law, the President of the Republic only has an obligation to send legislation to the Constitutional Court if he himself considers the legislation in violation of the Fundamental Law. Therefore, it cannot be argued in any way, that the competence of *ex ante* constitutional norm control in itself could be a threat to the effective enforcement of EU law, especially since the prospective legislation in question will aim to restore or strengthen the protection of fundamental values of EU law.

The argument that a constitutional or political veto would slow down the process of legislation and thus the restoration of the rule of law does not seem to be neither a valid nor a logical reason to remove the incumbent President either. If even only because the amendment would not affect the competence of constitutional veto of the President of the Republic itself.

The Prime Minister, prior to the statements referenced above have already stated clearly that the Fundamental Law will be amended precisely in order to remove the President of the Republic from office.

In this regard it appears relevant, that in the context of institutional independence from the executive branch, the external appearance of independence must also be preserved. According to established case law of European courts, the requirement of judicial independence does not permit even the appearance that the courts are under the influence or pressure of the executive or legislative branches.²⁰ This principle may apply not only to the courts but also to all bodies that, by virtue of their constitutional mandate, must be independent of the government. The exertion of pressure against the heads of independent, autonomous, constitutional bodies and public officials, or the threat of their removal may be contrary to the separation of powers, the rule of law, and fundamental rights, particularly the freedom of expression. Concerning the President of the Republic, he cannot fulfil his constitutional role if threatened with removal at any time – even through amendments to constitutional rules – depending on the political intention. Such statements may urge the President to refrain from making decisions or statements that harm the interests of the future government; in fear retaliation, including removal through legal means.

These statements – and especially if removal were to occur in this manner – which suggest that democratic mandate permits the removal of any public dignitaries, among them that of the President of the Republic, even by means of an amendment to the Fundamental Law, may systematically and permanently undermine the independence and autonomy of the institution, as those elected may later fear similar removal if they fail to meet the ruling party's demands. The fact that the Prime Minister has indicated that he does not wish to remove the president of the Hungarian National Bank because indicating that he has confidence in him, while threatening almost all other public dignitaries, also reinforces the impression that the grounds for such removals are determined solely by personal sympathy and subjective judgments regarding their professional work. In the case of the head of state, the question arises that if the law and the Hungarian constitution can be used to remove the head of state, then by the same

²⁰ C-791/19, Commission v. Poland, ECLI:EU:C:2021:596, 60

principle, any president – even one directly elected – could later be removed through a constitutional amendment. This principle could apply to other independent state bodies.

The Venice Commission also noted that removal from office can also have a chilling effect. The government justified the dismissal of the former chief prosecutor of the Romanian National Anti-Corruption Directorate by arguing that public criticism of legislative reforms in the fight against corruption constituted abuse of office and damaged the country's reputation. The Strasbourg Court found that his dismissal was a "particularly severe sanction" that had a "*chilling effect*" on other judges and prosecutors.²¹ Similarly, the Venice Commission condemned the threats against constitutional judges. "The Venice Commission's delegation became aware of statements by public officials that showed disrespect toward the Constitutional Court. These statements even included calls for the dismissal of the Constitutional Court's judges. Such statements, regardless of whether they originate from the president, the government, or members of parliament, which undermine the credibility of the judges, give rise to serious concern, even if they do not formally prevent the judges from fulfilling their constitutional mandate. Even if such statements are later retracted, the damage to state institutions – and thus to the state as a whole – has already been done. [...] Personal attacks against all judges or individual judges are clearly unacceptable and jeopardize the integrity of the judiciary, as well as the public trust and respect necessary for it. The independence and impartiality of the Constitutional Court are endangered when other state institutions or their members publicly attack it. Such attacks contradict the Court's role as the guarantor of the supremacy of the Constitution and are also problematic from the perspective of the constitutionally guaranteed independence and irremovability of the Court's judges."²² These arguments could apply in the present case to the statements by the Prime Minister towards the President of the Republic.

Finally, based on international and EU case law, when examining legislative intent, the circumstances of the legislation must be taken into account, and the statements made may also play a role.²³ If, based on the circumstances of the legislation, it can be established that the purpose of amending the Fundamental Law is to remove the incumbent President of the Republic from office or to facilitate his removal, such legislation may for this reason alone result in a violation of the principle of the rule of law. Strengthening the rule of law entails modifying procedures and reinforcing safeguards, not replacing individuals, as that could undermine the very principle of their independence.²⁴

To close the line of arguments, reference to an opinion of the Venice Commission concerning the importance of strong constitutional culture appears to be relevant in the present case too. In connection with the constitutional crisis that arose in Romania in 2012, the Venice Commission referred also to the importance of the protection of constitutional culture and the requirement of mutual respect among state bodies in the event of a change of government.

²¹ ECtHR, *Kövesi v. Romania* (3594/19)

²² CDL-AD(2006)006 Opinion on the Two Draft Laws amending Law No. 47/1992 on the organization and functioning of the Constitutional Court of Romania, paragraph 7, CDL-AD(2016)001-e Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11–12 March 2016)

²³ ECtHR, *Baka v Hungary*, C-123/22, *Commission v Hungary*, ECLI:EU:C:2024:493

²⁴ CDL-AD(2012)001-e Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16–17 March 2012) 32. 111-115.

„Compliance with the rule of law cannot be restricted to the implementation of the explicit and formal provisions of the law and of the Constitution only. It also implies constitutional behaviour and practices, which facilitate the compliance with the formal rules by all the constitutional bodies and the mutual respect between them. ... [T]here has been a lack of respect for institutions. Institutions have not been kept separate from persons occupying them. This is shown in the way office holders have been treated as representatives of the political forces which had nominated them or voted them to office. Office holders may have been expected to favour the positions of respective political parties, and a new parliamentary majority may feel justified to dismiss the office holders elected by a previous majority. Such a lack of respect for institutions is closely linked to another problem in the political and constitutional culture: namely disregard of the principle of loyal cooperation between the institutions. This principle is of particular importance in cases where offices, for example that of the President and the Prime Minister, are held by persons with different political backgrounds. Only mutual respect can lead to the establishment of mutually accepted practices, which are in compliance with the European Constitutional Heritage and which enable a country to avoid and serenely overcome crises.... It seems that some stakeholders were of the opinion that anything that can be done according to the letter of the Constitution is also admissible. The underlying idea may have been that the majority can do whatever it wants to do because it is the majority. This is obviously a misconception of democracy. ... Even if part of these acts may have been constitutional and legal on their own, their quick succession contradicts the principle of loyal co-operation between state institutions. ... Respect for a Constitution cannot be limited to the literal execution of its operational provisions. The very nature of a Constitution is that, in addition to guaranteeing human rights, it provides a framework for the state institutions, sets out their powers and their obligations. The purpose of these provisions is to enable a smooth functioning of the institutions based on their loyal co-operation. The Head of State, Parliament, Government, the Judiciary, all serve the common purpose of furthering the interests of the country as a whole, not the narrow interests of a single institution or the political party having nominated the office holder. Even if an institution is in a situation of power, when it is able to influence other state institutions, it has to do so with the interest of the State as a whole in mind, including, as a consequence, the interests of the other institutions and those of the parliamentary minority. The Venice Commission is of the opinion that the Romanian state institutions should engage in loyal co-operation between themselves and it is pleased about the statements from both sides expressing their intention to respect their obligations.”²⁵

²⁵ CDL-AD(2012)026-e Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, Adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012) 73.-75. 87-88.

Question addressed to the European Commission for Democracy through Law of the Council of Europe by Tamás Sulyok, President of the Republic of Hungary on June 23, 2026

Submitted as a supplement to the request for opinion of the European Commission for Democracy through Law of the Council of Europe by Tamás Sulyok, President of the Republic of Hungary on May 29, 2026

Question: Is the draft of the Amendment 17 of the Fundamental Law of Hungary concerning the removal of the President of the Republic consistent with constitutional principles, with special regard to the rule of law, separation of powers, and fundamental rights?

On 22 June 2026 the Prime Minister announced a draft amendment to the Fundamental Law in the Parliament, which includes the establishment of a new office (National Office for the Recovery and Protection of State Assets) and amendments affecting several constitutional bodies. Part of the planned amendment to the Fundamental Law is the termination of the President of the Republic's term of office, through a non-normative act included in the closing provisions of the Fundamental Law, as follows: "On the day following the entry into force of the Seventeenth Amendment to the Fundamental Law, the term of office of the incumbent President of the Republic shall cease."

The draft amendment to the Fundamental Law published by the ruling party, which currently holds a constitutional majority in Parliament, constitutes a serious violation of the separation of powers and the rule of law as well as fundamental rights.

Rule of law

Non-normative and ad hominem law-making

The draft amendment to the Fundamental Law would insert a specific (non-normative) provision into the Fundamental Law that would terminate the term of office of the President of the Republic. The Fundamental Law, as currently in force, establishes strict substantive and procedural rules governing the removal from office of the President of the Republic. The President of the Republic has limited legal accountability and may be removed from office through an impeachment procedure whereby the decision on the accountability and removal from office of the President shall be made by the Constitutional Court. In direct contradiction to these provisions of the Fundamental Law, the present draft amendment to the Fundamental Law explicitly provides for the termination of the term of office of the President of the Republic currently in office in a specific (non-normative) act included in the final provisions.

Removal from office of the President through a non-normative act constitutes an open rejection of the rule of law, the legal limitation on the exercise of power. It is person-specific law making, also in violation of legal certainty, and the principle of legitimate expectations.

The Venice Commission has stated that the constitutional amendments should rise above "ordinary politics",²⁶ and since in Hungary where the ruling party has qualified majority to amend the constitution, extra care should be taken to make sure that the constitution does not become part of the ordinary politics

²⁶ CDL-AD(2010)001 European Commission For Democracy Through Law (Venice Commission) Report On Constitutional Amendment Adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009) 75.

and used as a means to eliminate opposition. This especially true when we deal with constitutional office holders.

Ad hominem legislation is in violation of the rule of law and legal certainty, especially if the legislation is non-normative in nature. The Venice Commission has noted that the removal of a public officials must be based on pre-existing legal grounds rather than custom-built legislative maneuvers. The Venice Commission has held that “law should define the situations in which a prosecutor may be dismissed. However, in the case at hand it is the draft law itself which directly provides for the removal of the Supreme State Prosecution from his position. In this part the draft law is a non-normative, *ad hominem* piece of legislation. The Venice Commission is concerned with such abuse of the legislative powers: it undermines legal certainty (because normally the removal of a prosecutor should be based on the grounds provided by a law in advance) and is contrary to the nature of the legislative activity, which is to define general rules of behaviour, not to take executive action in respect of specific individuals or situations.”²⁷

In the context of the principle of legal certainty, it is also necessary to emphasize that the removal of the President of the Republic is effected by a specific act, such that the grounds mentioned above do not become possible through a retroactive amendment to the normative regulations governing removal, but rather that the removal of the President of the Republic is established by the constituent through a specific provision enshrined in the Fundamental Law, while the rules governing the removal of the President of the Republic remain in force. The specific act regarding the removal of the President of the Republic is in irreconcilable conflict with the provisions of the Fundamental Law governing the removal of the President of the Republic.

Establishing political accountability in a retroactive manner

Part of legal certainty is stability and consistency of law.²⁸ As regards legal certainty, the Venice Commission observed that it is “essential to the confidence in the judicial system and the rule of law”, it “requires that legal rules are clear and precise, and aim at ensuring that situations and legal relationships remain foreseeable.”²⁹

The amendment to the Fundamental Law provides for the removal of the President of the Republic on grounds that are clearly political, as can be inferred also from the explanatory memorandum to the amendment. The President of the Republic has only limited legal accountability, yet the amendment to the Fundamental Law strips him of his mandate on political grounds and by a political decision. The President of the Republic is not subject to political accountability and has been elected indirectly, he is accorded limited legal accountability. (The accountability of the President of the Republic has remained unchanged since the transition to democracy, and these rules governing the accountability of the President of the Republic comply with European and international constitutional standards.) The President is not considered to bear political responsibility, meaning that he or she cannot be removed from office for political reasons, only for intentional violations of law. Under the current Fundamental Law, if the President intentionally violates the Fundamental Law or any law in connection with the exercise of his office, or commits an intentional criminal offense, upon the motion of one-fifth of the members of the National Assembly, two-thirds of the members of the National Assembly shall decide

²⁷ CDL-AD(2021)012 Montenegro - Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the Prosecutor’s Office for organised crime and corruption, § 28.

²⁸ CDL-PI(2022)004 Or. Engl. European Commission For Democracy Through Law (Venice Commission) Compilation Of Venice Commission Opinions And Reports Concerning Legal Certainty

²⁹ CDL-AD(2012)014 Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina, § 24, 25, 27.

by secret ballot on whether to initiate impeachment proceedings. Impeachment proceedings fall within the jurisdiction of the Constitutional Court. If this body finds that there has been an intentional violation of the law, the commission of a criminal offense, or an intentional violation of the Fundamental Law, it may decide on the removal from office of the President of the Republic. Removal is possible only in cases and as a result of a process laid down in legislation; the Constitutional Court may remove the President from office based on a detailed and well-reasoned motion prepared by the National Assembly. In the proceedings, it must be proven beyond a reasonable doubt that the President intentionally violated a provision of the Fundamental Law, or intentionally violated a law in connection with the exercise of his or her office, or committed an intentional criminal offense.

The draft, however establishes clear political accountability, the relevant part of the explanatory memorandum reads as follows: “The electorate has conferred an extraordinary mandate on the two-thirds majority of the National Assembly to restore constitutional democracy and ensure the effective functioning of constitutional institutions.” The explanatory memorandum of the draft refers to democratic legitimacy as a reason for the removal from office of the President of the Republic. The new governing party has previously repeatedly invoked democratic mandate, which, supposedly grants them the authority to remove from office the figures of the “former regime”. The other argument raised in connection with the removal from office of the President has been the President’s so-called unworthiness. The draft also refers to these arguments. “Public confidence in the incumbent President has been seriously undermined.” However, these arguments are purely political in nature, they do not appear in the Fundamental Law as a reason for removal.

Circumventing the President’s limited legal liability and the Constitutional Court’s jurisdiction, the constituent—taking advantage of the ruling party’s two-thirds majority—decides on its own to remove the President from office, citing political reasons and without following the proper procedure. Such amendment is in violation of the rule of law.

Need for restoration of the rule of law cannot be argued

The ruling party has not claimed that the election of the President of the Republic – whether the regulations or the election of the current holder of office – violated any constitutional principles. The method of nominating and electing the President of the Republic has been regulated in the same manner by the Constitution in force until 2011 and the Fundamental Law in force since January 1, 2012 (the rules of the electoral process have evolved into a two-round system under current law, but this has not been significant in the case of the past four presidential elections). Consensus among the parties has never been a requirement for the election of the President of the Republic (in fact, to date, there has been only one instance in which the nomination and election were based on consensus). The President’s accountability – that is, his legal accountability – and the absence of political accountability have also remained unchanged since the regime change of 1989. Neither the Venice Commission’s nor the European Commission’s reports on the rule of law in Hungary, nor the reports of European courts or civil society organizations on the rule of law, have found fault with Hungary regarding the rules governing the presidential election and the removal of the President from office. In the case of the current President of the Republic, there has been no suggestion whatsoever that he was elected in violation of international or constitutional norms. The system governing the election and accountability of the President of the Republic has remained essentially unchanged since 1990; the previous government did not abuse its democratic mandate in the past either, so the President of the Republic cannot be accused of having been elected through person-specific legislation that would violate common European constitutional principles.

Such interference that violates the principle of the rule of law, therefore, could not be justified even by the need to restore the rule of law. No set of criteria for restoring the rule of law has been established. No interference violating the rule of law has previously occurred within the framework of the rules governing the appointment and tenure of the President of the Republic. Strengthening the rule of law should entail modifying procedures and reinforcing safeguards, not replacing individuals, as that could undermine the very principle of their independence.³⁰

Legitimate expectations

Removing the President of the Republic before the expiration of his or her term of office through an amendment to the Fundamental Law may in itself violate the requirement of legal certainty and the principle of legitimate expectations even if it was a part of a legislative reform of the institution. The principle of legitimate expectations is part of the general principle of legal certainty, which expresses that authorities must not only comply with the law but also with their promises and the expectations they have raised.³¹ The Venice Commission also links the necessity of completing one's term to the protection of legitimate expectations and the principle of legal certainty. According to the Venice Commission, even if lawful and compelling reasons can be established, the termination of the term of office of a court president must respect the principles of legal certainty (legitimate expectations) and proportionality.³² The Venice Commission has reaffirmed this principle in numerous opinions.³³ In another case, the Commission similarly noted: "There is no justification in the amendment for a radical replacement of court presidents; the proposed rules may give the impression that their sole purpose was the radical replacement of court presidents. [...] Court presidents who had already been appointed until retirement had a legitimate expectation that their prior appointments would not be reviewed or terminated before they reached retirement age."³⁴ Finally, as stated in the Venice Commission's rule of law checklist: "[I]aw can be changed, but with public debate and notice, and without adversely affecting legitimate expectations."³⁵

Based on the above practice, the right to complete a term of office also applies to the President of the Republic, based on the protection of legitimate expectations arising from the principle of legal certainty, taking into account the President's independent status and five-year term. Shortening the five-year term without sufficient reasons violates legitimate expectations of the President of the Republic (and his or her constituents)³⁶, as well as the principle of proportionality. While the principle of legitimate

³⁰ CDL-AD(2012)001-e Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16–17 March 2012) 32. 111-115.

³¹ Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft law on amendments to the Organic Law on General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014, CDL-AD(2014)031), 97. referenced in ECtHR, *Baka v Hungary* (20261/12), See, e.g., ECtHR, *Kövesi v. Romania* (3594/19), ECtHR, *Grzęda v. Poland* (43572/18)

³² CDL-AD(2020)016 Armenia Opinion on Three Legal Questions in the Context of Draft Constitutional Amendments Concerning the Mandate of the Judges of the Constitutional Court

³³ CDL-AD(2014)031-e Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, October 10–11, 2014), para. 97

³⁴ CDL-AD(2014)021, On the Draft Law on Introducing Amendments and Addenda to the Judicial Code of Armenia (Term of Office of Court Presidents)

³⁵ Venice Commission Checklist on the Rule of Law, para 60. referenced by CDL-AD(2017)022, Hungary Venice Commission opinion on Act XXV of April 4, 2017, on the amendment of Act CCIV of 2011 on national tertiary education 78.

³⁶ CDL-AD(2019)024-e Armenia - Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) on the amendments to the Judicial Code and certain other laws, adopted by the Venice Commission at its 120th Plenary Session (Venice, October 11–12, 2021)

expectations is not violated in the case of an appointment for an indefinite term or a change in a long-term legal relationship brought about by legislation, in the case of a five-year appointment, the revocation of the term before its expiration rightly raises the issue of a violation of legitimate expectations and, thereby, a violation of legal certainty. The principle of legal certainty would require that the President of the Republic serve out his or her term, while the next President of the Republic could then be elected under the new system. In this case however, the removal from office is not even part of an institutional reform, which makes violation of legitimate expectations clear and obvious.

Separation of powers

The office of the President of the Republic, which is an independent, neutral branch of government separate from the executive and legislative branches, would lose these characteristics as a result of this amendment to the Fundamental Law. The constitutional duties of the incumbent President of the Republic – and his role as a counterweight in the balance of powers – will be rendered impossible if the ruling party can replace him at its discretion, a precedent which the current ruling party seeks to establish with said amendment. The fact that, under the draft amendment to the Fundamental Law, the new President of the Republic would also be elected in accordance with the currently effective Fundamental Law leaves no room for doubt in this regard. This constitutional solution will result in a serious and systemic violation of the separation of powers that extends beyond the institution of the president of the republic. Invoking the democratic majority, to remove the President of the Republic through a non-normative act, the governing party sends a clear message: this can be done at any time to any public official or any representative of an independent branch of government. If the decision on the removal of the President of the Republic can be decided by the National Assembly, rather than the Constitutional Court, the President becomes vulnerable to the majority in the National Assembly, and indirectly to the governing majority. The President's status could become dependent on the majority's opinion. Establishing a political form of accountability for the President of the Republic either in the framework of the current Fundamental Law or with retroactive amendment of the Fundamental Law may be in violation of constitutional principles.

According to the practice of the Venice Commission, the length of the term of office, as well as the rules governing appointment and removal, are important safeguards for the stability of the body in question and its independence from the executive branch.³⁷ In the context of the removal of the head of state, the Venice Commission has warned against the arbitrary use of procedures for the removal of the head of state, as this can undermine the credibility of state institutions and the system of checks and balances. The Venice Commission has also previously emphasized that a decision to remove a head of state must be proportionate to the gravity of the violation of the law; otherwise, the principle of separation of powers is also violated.³⁸ The Venice Commission has emphasized that, in the case of independent state bodies, the length of the term of office is significant, as is the fact that it does not coincide with the parliamentary term. Any constitutional amendment procedure must respect the principle of the separation of powers, including the balance of power between the President of the Republic and the legislature.³⁹ Within the framework of the principle of separation of powers, longer terms of office that extend beyond a single government cycle – in the case of *inter alia* the President of the Republic – constitute an expression of the temporal separation of powers and a fundamental guarantee of that separation. The protection of appointments lasting longer than the parliamentary term is known to be of

³⁷ CDL-PI(2022)047 Romania Urgent Opinion On Three Laws Concerning The Justice System, 18 November 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure

³⁸ CDL-AD(2019)019 Opinion on the powers of the President to set the dates of elections, adopted by the Venice Commission at its 120th Plenary Session, (Venice, 11-12 October 2019) 100-101.

³⁹ CDL-AD(2019)022-e Peru - Opinion on linking constitutional amendments to the question of confidence, adopted by the Venice Commission at its 120th plenary session, Venice, 11–12 October 2019, 44.

particular importance, especially when the ruling party holds a two-thirds majority in parliament, which serves as a guarantee for such appointments. The principle of separation of powers may be undermined when the balance of power shifts significantly toward a certain branch of government.⁴⁰ Such a situation arises as precedent is made to the removal from office of the President of the Republic through the non-general act, based on the decision of the governing party.

In this context it seems to be of particular relevance, that the President of the Republic has an important constitutional role in the system of checks and balances, namely the initiation of *ex ante* constitutional norm control. The President is obliged to assess within five days whether the legislation is in line with the Fundamental Law. If the President of the Republic considers the Act or any of its provisions to be in conflict with the Fundamental Law he or she shall send the Act to the Constitutional Court for examination of its conformity with the Fundamental Law. In view of the constitutional role of the President of the Republic in the system of separation of powers, amendment to the accountability of the President of the Republic would have an effect on the principle of separation of powers. Political accountability weakens the President of the Republic's role as a counterweight to power within the system of separation of powers. The President of the Republic could come under pressure when, for example, he or she is required to make an unpopular decision arising from his or her constitutional role, such as in the exercise of a constitutional or political veto. The President will find himself at the mercy of the will of the ruling majority, which would essentially render its role as a constitutional counterweight weak or impossible.

Based on EU case law, even the reorganisation of the institution shall not automatically allow for the shortening of mandates either. The Court of Justice of the European Union found that Hungary had violated EU law by shortening the term of office of the head of the independent supervisory authority without this being justified by serious misconduct.⁴¹ The prohibition on shortening a term of office, stemming from the EU principle of impartiality and independence, may also apply to any state body that, by virtue of its constitutional function, must be independent of or have autonomy from the legislative and executive branches.⁴² The above practice indicates that the termination of the term of office of independent officials may undermine the body's independence, even if the termination would have resulted from a change in the organization's structure. In the present case, however, the removal was not even prompted by a reorganization, which might also have given the appearance of undermining the independence of the office of the President of the Republic. The amendment to the Fundamental Law directly provided for the removal of the incumbent President of the Republic. The infringement of the institution's independence is thus more evident.

In the course of the violation of the separation of powers, it is not only the text of the legislation – or, in this case, the text of the constitutional amendment – that may be significant, but also the context, circumstances of the regulation.⁴³ Statements by the Prime Minister calling for the resignation of the President of the Republic, particularly the statement that if he does not resign, his removal will be “resolved” through constitutional means, may place a new constitutional regulation and its retroactive effect (in a sense that it would apply to the incumbent President) into context. If the amendment to the Fundamental Law is explicitly or at least partially aimed at removing the head of state, this may violate

⁴⁰ e.g. CDL-AD(2021)005-e Russian Federation - Interim opinion on constitutional amendments and the procedure for their adoption, adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021), CDL-AD(2022)008, Belarus - Urgent interim opinion on the Constitutional Reform, issued on 21 February 2022 pursuant to Article 14a of the Venice Commission's Rules of Procedure, endorsed by the Venice Commission at its 130th Plenary Session (Venice and online, 18-19 March 2022), Belarus final opinion on the constitutional reform adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022) CDL-AD(2022)035

⁴¹ C-288/12, Commission v Hungary ECLI:EU:C:2014:23754.

⁴² C-202/18, C-238/18, Rimšēvičs v Latvia, ECLI:EU:C:2019:299

⁴³ ECtHR, Baka v Hungary, C-123/22, Commission v Hungary, ECLI:EU:C:2024:493, 90.

the principles of the rule of law and the separation of powers.⁴⁴ Based on international and EU case law, when examining legislative intent, the circumstances of the legislation must be taken into account, and the statements made may also play a role.⁴⁵

The Prime Minister's repeated and open statements that the law – specifically, an amendment to the Fundamental Law – would be used to “resolve” the removal of the President of the Republic already seem to indicate an intention to engage in personalized lawmaking, with the underlying political goal of the legislation being the removal of the current President of the Republic. In this regard it also bears relevance that the Prime Minister stated that the President's resignation (to be understood in light of the fact that the resignation is not regarded a free choice but an alternative to being removed by means of constitutional amendment) is necessary because, the President “might suddenly be waking up to his role;” and, “by exercising his constitutional powers”, could “slow down” the legislative process. The Prime Minister made it clear that he wishes to remove the President in part precisely because of the President's constitutional powers and effective role as a check and balance, as he is concerned that the President “can start quibbling over legalities in a negative sense” and thereby hinder the legislative process aimed at recovering EU funds. The Prime Minister – given the head of state's role in the system of separation of powers – intends to ensure that the President of the Republic cannot, so to speak, slow down the legislative process by exercising his power of preliminary review of legislation. Since he fears that the current President of the Republic might exercise this power, he wishes to remove him from office. Based on these statements an essential aim for the President of the Republic's removal could be to prevent him exercising preliminary constitutional review, a procedure of the Constitutional Court that can be initiated exclusively by the President of the Republic. The attempt to prevent the preliminary review of constitutionality raises the violation of the separation of powers and the protection of constitutional principles and fundamental rights. The Prime Minister, prior to the statements referenced above have already stated clearly that the Fundamental Law will be amended precisely in order to remove the President of the Republic from office.

The Venice Commission also noted that such removals from office, even threats thereof, do have a *chilling effect*. The government justified the dismissal of the former chief prosecutor of the Romanian National Anti-Corruption Directorate by arguing that public criticism of legislative reforms in the fight against corruption constituted abuse of office and damaged the country's reputation. The Strasbourg Court found that his dismissal was a “particularly severe sanction” that had a “*chilling effect*” on other judges and prosecutors.⁴⁶ Similarly, the Venice Commission condemned the threats against constitutional judges. “The Venice Commission's delegation became aware of statements by public officials that showed disrespect toward the Constitutional Court. These statements even included calls for the dismissal of the Constitutional Court's judges. Such statements, regardless of whether they originate from the president, the government, or members of parliament, which undermine the credibility of the judges, give rise to serious concern, even if they do not formally prevent the judges from fulfilling their constitutional mandate. Even if such statements are later retracted, the damage to state institutions – and thus to the state as a whole – has already been done. [...] Personal attacks against all judges or individual judges are clearly unacceptable and jeopardize the integrity of the judiciary, as well as the public trust and respect necessary for it. The independence and impartiality of the Constitutional Court are endangered when other state institutions or their members publicly attack it. Such attacks contradict the Court's role as the guarantor of the supremacy of the Constitution and are also problematic from the

⁴⁴ ECtHR, *Grzęda v. Poland* (43572/18) § 307, ECtHR, *Juszczyszyn v. Poland* (35599/20)

⁴⁵ ECtHR, *Baka v Hungary*, C-123/22, *Commission v Hungary*, ECLI:EU:C:2024:493

⁴⁶ ECtHR, *Kövesi v. Romania* (3594/19)

perspective of the constitutionally guaranteed independence and irremovability of the Court's judges."⁴⁷ According to established case law of European courts, the requirement of judicial independence does not permit even the appearance that the courts are under the influence or pressure of the executive or legislative branches.⁴⁸ This principle shall apply not only to the courts but also to all bodies that, by virtue of their constitutional mandate, must be independent of the government. The exertion of pressure against the heads of independent, autonomous, constitutional bodies and public officials, or the threat of their removal may be contrary to the separation of powers. Concerning the President of the Republic, he cannot fulfil his constitutional role if threatened with removal at any time – even through amendments to constitutional rules – depending on the political intention. These statements – and especially the removal of the President of the Republic in the proposed manner – which suggest that democratic mandate permits the removal of any public dignitaries, even by means of an amendment to the Fundamental Law, systematically and permanently undermines the independence and autonomy of the institution, as those elected may later fear similar removal if they fail to meet the ruling party's demands. If the law and the Hungarian constitution can be used to remove the head of state, then by the same principle, any president – even one directly elected – could later be removed through a constitutional amendment. This principle could apply to other independent state bodies.

Finally, in connection with the removal of the President of the Republic, a constitutional question also arises regarding the election of a new President of the Republic and the determination of the date thereof. According to the Venice Commission, "the idea of an 'extraordinary', i.e., early, election of the President of the Republic is also unacceptable. In every political system, the head of state symbolizes and guarantees the stability and continuity of state action, and his or her term of office is fixed. The Constitution allows [the head of state] to choose the most favourable date for the next election, thereby facilitating the appointment of his or her successor or the extension of his or her own term. This provision is therefore incompatible with democratic norms – it would allow the president to seek a new and reinforced mandate directly from the voters, which could turn the elections into a referendum on the country's leadership and provide legitimacy to authoritarian tendencies."⁴⁹ The Venice Commission's reasoning may similarly apply to a situation where it is not the president of the republic but the government or parliament that seeks to take advantage of a favourable moment to replace the president of the republic with its own candidate, in a manner that allows it to rely on the instrument of direct democracy, confident that their candidate will be elected. Such a situation may arise particularly in the period immediately following parliamentary elections, when the government can reasonably expect its own voter base to elect the candidate it supports. This way, by removing the President of the Republic before the end of the term and by choosing the timing of this removal, the government could ensure the election of its supported candidate even in the case of a direct presidential election.

However, the present case, in the short term, gives even more reason for concern. The amendment already states that the newly elected President of the Republic will be elected only for a limited period that may be shorter than full term, until the planned new constitution is adopted. These circumstances also give the appearance that the need for the removal of the current president (elected by the previous governing majority) is only necessary for political reasons, in order to weaken the autonomy of the president of the republic by ensuring that the President is elected by the governing majority. This is also

⁴⁷ CDL-AD(2006)006 Opinion on the Two Draft Laws amending Law No. 47/1992 on the organization and functioning of the Constitutional Court of Romania, paragraph 7, CDL-AD(2016)001-e Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11–12 March 2016)

⁴⁸ C-791/19, Commission v. Poland, ECLI:EU:C:2021:596, 60

⁴⁹ CDL-AD(2016)029-e Azerbaijan - Opinion on the draft amendments to the Constitution submitted to the Referendum of 26 September 2016, endorsed by the Venice Commission at its 108th Plenary Session (Venice, 14–15 October 2016)

confirmed by the prime minister's statements on 22 June, 2026 that he would support a new candidate from the TISZA party or even the government.

Separation of powers and due process

The Venice Commission also emphasized the constitutional court's role as a safeguard in the removal process. The fact that national assemblies do not have broad discretion in such a decision serves as a guarantee of the President of the Republic's constitutional role and autonomy.⁵⁰ The Venice Commission recommended involving the Constitutional Court in the proceedings to remove the President of the Republic from office even before the final vote in Parliament.⁵¹ According to the Venice Commission's practice, excluding the Constitutional Court from the decision to remove the President of the Republic from office, or, in the event of suspension, depriving the President of the right to appeal to the Constitutional Court, may violate the principle of separation of powers.⁵²

The removal of the President of the Republic *ex lege* replaces an individual decision assessed in a due process. In the case of the President of the Republic, the decision to remove the President falls within the jurisdiction of the Constitutional Court. The constituent decided to terminate the term of office of the incumbent President thereby circumventing the rules governing the procedure for the removal of the President of the Republic. This decision deprived the President of the Republic of the right to participate in court proceedings and of the procedural safeguards. In order to establish the President's accountability, the Constitutional Court must determine that there was an intentional violation of the Fundamental Law or of a law in connection with the exercise of his or her powers, or that an intentional criminal offense was committed. Following such a finding, the Constitutional Court then considers whether, in light of the violation of the law, it should order the removal of the President of the Republic. By circumventing the guarantees of due process, including also the obligation to provide a statement of reasons, the National Assembly removed the President through a constitutional amendment. This violates both the principle of due process and the principle of the separation of powers, as the constitutional legislator, by its decision, stripped the Constitutional Court of its jurisdiction, which also amounts to an abuse of power, since the constitutional legislator did not use its constitutional authority to make a normative amendment to the Fundamental Law, but rather to enact a specific act, thereby circumventing the jurisdiction of the Constitutional Court.

Freedom of expression

Since the stated reason for the removal was the President's expression of opinion on public affairs – or, more precisely, his refraining from doing so on certain politically divisive issues – this decision constitutes a violation of freedom of expression and amounts to an abuse of power.

According to the case law of the Strasbourg Court, the President of the Republic also has the right to freedom of expression. In the context of members of parliament expressing their opinions, the Court

⁵⁰ CDL-AD(2014)033 Montenegro - Opinion on the Draft Law on the Constitutional Court, para 19-22, CDL-AD(2009)044-e Amicus Curiae Opinion on the Law on the Integrity of High-Ranking Public Administration Officials and Elected Persons of Albania adopted by the Venice Commission at its 80th Plenary Session (Venice, October 9–10, 2009)

⁵¹ CDL-AD(2020)019 Venice Commission opinion on ten acts and bills implementing legislative proposals subject to opinion CDL-AD(2020)006 Adopted by the Venice Commission at its 124th Plenary Session (Online, October 8–9, 2020) 45. Since “proved misconduct” can be equated with a criminal act, officials who may be dismissed for such acts (President of Malta, Attorney General, State Advocate, Ombudsman) should have the right to appeal to the Constitutional Court against a finding of such misconduct, prior to the final vote in Parliament. 96.

⁵² CDL-AD(2012)026-e Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romania in respect of other state institutions and on the Government emergency ordinance amending Law No. 47/1992 regarding the organization and functioning of the Constitutional Court and on the Government emergency ordinance amending and supplementing Law No. 3/2000 regarding the organization of a referendum in Romania, Adopted by the Venice Commission at its 93rd Plenary Session (Venice, December 14–15, 2012)

emphasized that, although individual interests must in some cases be subordinated to the interests of the majority, democracy does not simply mean that the views of the majority must always prevail: a balance must be struck that ensures the protection of members of minorities and prevents the abuse of power.⁵³

The President of the Republic's expression of opinion—particularly regarding public affairs—may enjoy heightened protection, given that, on the one hand, the President of the Republic is, by virtue of his or her constitutional role, a neutral power independent of the executive and legislative branches; on the other hand, his or her constitutional role within the system of checks and balances is primarily established by the right to exercise constitutional and political vetoes. The President's statements on public affairs must be subject to a high level of protection of freedom of expression. In this context, it should be emphasized that freedom of expression may include, in specific cases, both the abstention from expressing an opinion and the expression of a negative opinion. Within the context of freedom of expression, the right to remain silent—which is protected—also has significant constitutional importance in the case of the President of the Republic.⁵⁴ According to the Venice Commission, it is beneficial for the balance of constitutional powers if the President of the Republic maintains a distance from day-to-day politics.⁵⁵ In light of the requirement for the President's political neutrality, the President may not be subjected to pressure by the executive branch—whether for speaking out on public affairs or for refraining from doing so—nor may the President be subject to any measures, retaliation, sanctions, or penalties for such actions.⁵⁶

The termination of the President's mandate was clearly linked to his expression of political views. The central theme of the repeated statements made by the president of the TISZA party against the President of the Republic was that the President of the Republic had remained silent on certain issues and in political debates. According to the Prime Minister, this was the fundamental reason for the President's having become unfit for office and for the necessity of his removal. The Prime Minister repeatedly highlighted the President's failure to speak out in public forums, in close connection with his intention to remove the President. However, the President's refraining from speaking out on politically sensitive issues—particularly in light of the campaign period—cannot be considered inconsistent with the President's constitutional role.

It could be understood that the intent of the legislature shall not only be deduced from the text of the norm. On the contrary, the statements by the Prime Minister – whose party has supermajority in Parliament that enables them to adopt a constitutional amendment – to remove a specific individual from office has significance, to the conformity of the subsequent constitutional amendment with constitutional principles, and even beyond the question of the removal from office of the President of the Republic. In this context, according to the case law of the ECtHR, it is not necessary for this reason to appear among the formal justifications for the legislation; it is sufficient to examine the circumstances surrounding the legislation. In the *Baka* case, the ECtHR found that the removal of the President of the Supreme Court—which formally took place through an amendment to the Fundamental Law as part of the constitutional reorganization of the Supreme Court—in fact constituted a restriction on the President's freedom of political expression. The removal of judicial leaders *ex lege* may have a “chilling effect” on other judges, deterring them from expressing their professional opinions.⁵⁷ In a different case, the government justified the dismissal of the former chief prosecutor of the Romanian National Anti-

⁵³ *Karácsony et al. v. Hungary* (42461/13 and 44357/13); see *Young, James, and Webster v. the United Kingdom*, para. 63; *Gorzelik et al. v. Poland* (44158/98), para. 90

⁵⁴ see, by analogy, the *Baka* case concerning judges' freedom of expression

⁵⁵ CDL-AD(2018)028, Malta – Opinion on Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement, para. 61.

⁵⁶ *Gillberg v. Sweden* (41723/06), paras. 85–86.

⁵⁷ *Baka v. Hungary*

Corruption Directorate by arguing that his public criticism of legislative reforms in the fight against corruption constituted an abuse of office and damaged the country's reputation. The Strasbourg Court found that his dismissal was a "particularly severe sanction" that had a "chilling effect" on other judges and prosecutors.⁵⁸

The Court assesses the sequence of events, including in determining whether the removed judge or official was removed because of his or her political views.⁵⁹ "The evidence may consist of a combination of circumstantial evidence or unresolved presumptions that are sufficiently serious, precisely defined, and consistent. The Court's case law allows for flexibility in this regard, taking into account the nature of the right in question and the specific difficulties in proving the case. Under certain circumstances, only the respondent Government has access to information that can support or refute the applicant's allegations; consequently, the principle of "*affirmanti, non neganti, incumbit probatio*" cannot be applied strictly. ... The facts of the case and the sequence of events must be assessed and weighed "as a whole."⁶⁰

Restricting the President's freedom of expression cannot be considered justified or necessary; on the contrary, such pressure exerted by the ruling party—and the resulting removal of the President—has a profound *chilling effect* not only on the office of the President but on all public-law institutions. Retaliating against the President of the Republic because, during the campaign period, the President did not endorse the position of the then-opposition or the views they communicated regarding proceedings they considered significant cannot in any way be regarded as conduct unworthy of the office of the President or as conduct that undermines the authority of the office.

⁵⁸ Kövesi v. Romania (3594/19)

⁵⁹ See Wille v. Liechtenstein (28396/95), para. 51; Kudeshkina v. Russia (29492/05), para. 80; Baka, para. 152; Döner et al. v. Turkey (29994/02), para. 95; Żurek v. Poland (39650/18)

⁶⁰ Baka v. Hungary, paras. 143–144.