

Hungary: Recent Rule-of-Law Developments

Thomas Wahl

News

This news item continues the overview of recent rule-of-law developments in Hungary. For reports in previous issues → [euCRIM 1/2021, 4-5](#); and [euCRIM 4/2020, 257-258](#); and [euCRIM 3/2020, 162-163](#) with further references.

- 21/26 May 2021: The [Hungarian Helsinki Committee \(HHC\)](#) releases two information notes on the creation of parallel state structures by the Hungarian government. The [first note](#) relates to the state's financing of public universities by public trust funds. The [second note](#) deals with the creation of new managerial and regulatory powers to one single supervisory, government-sponsored authority in the areas of tobacco retail, judicial enforcement, gambling, and liquidation.
- 3 June 2021: The [CJEU dismisses an action by Hungary](#) seeking annulment of the European Parliament's resolution of 2018, which triggered the procedure for determining a clear risk of a serious breach – by a Member State – of the values on which the European Union is founded (procedure of Article 7 TEU). Hungary argued that the EP did not count the abstentions among the votes cast when adopting the resolution, which required a two-thirds majority. Hungary put forth that only counting the votes cast in favour and against the resolution, while excluding the abstentions, is not in line with Art. 354 TFEU and Rule 178(3) of the EP's Rules of Procedure. The CJEU holds Hungary's action for annulment pursuant to Art. 263 TFEU admissible but unfounded ([Case C-650/18](#)). The CJEU notes that the concept of "votes cast" in Art. 354 para. 4 TFEU is not defined in the Treaties but invites autonomous interpretation in accordance with the usual meaning of the concept in everyday language. As a result, this concept covers only the casting of a positive or negative vote on a given proposal, whereas abstention is understood as a refusal to adopt a position at all and cannot be treated in the same way as a "vote cast." Consequently, the rule laid down in Art. 354 para. 4 TFEU must be interpreted as precluding abstentions from being taken into account. The CJEU follows the [opinion of AG Bobek](#) presented on 3 December 2020.
- 15 June 2021: The Hungarian parliament passes the "[Anti-Paedophilia Act](#)". Besides introducing heavier penalties for sexual offences against minors, the ruling Fidesz party made last-minute amendments to the bill that sparked controversy all over Europe. The legislation passed also foresees several bans that critics find a violation of freedom of expression and LGBTQI+ rights. According to the law, it is forbidden to:
 - Make available content to minors featuring portrayals of homosexuality or sex reassignment;
 - Promote homosexuality or sex reassignment when educating students;
 - Broadcast advertisements that portray or promote "deviation from the identity corresponding to one's sex at birth, sex reassignment, or homosexuality."

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The Hungarian government defended the bill by arguing that it is not discriminatory and aims only at protecting children. [NGOs criticised](#) that “this move endangers the mental health of LGBTQI youth and adults, and inhibits them from accessing information and support in a timely manner for preventive purposes.” They also pointed out that the new law is part of a [series of measures](#) that curtail the rights of LGBTQI people and have been stigmatizing them since 2018. The new law has triggered harsh criticism by the EU.

- 23 June 2021: European Commission President [Ursula von der Leyen](#) [calls](#) the passed Hungarian anti-paedophilia bill “a shame”, which “goes against all the fundamental values of the European Union.” Her staff will send a formal letter to the Hungarian government to clarify the content of the anti-paedophilia legislation.
 - 24 June 2021: 17 heads of state or government [sign a joint letter](#) in the margin of the EU summit in which they pledge to “continue fighting against discrimination towards the LGBTI community”. Although the letter does not name Hungary expressly, it is clearly targeted at the Hungarian anti-paedophilia law. [Dutch Prime Minister Mark Rutte](#) said at the summit that, with the LGBT law, “Hungary has no place in the EU.” Luxembourg’s Prime Minister [Xavier Bettel](#) commented that Mr. [Orban](#) was wrong to conflate homosexuality with paedophilia within the law. Germany’s chancellor [Angelika Merkel](#) condemned the act as “wrong”. According to [civil rights organisations](#) in Hungary it remains to be seen how the law will be enforced since the legal definitions are apparently unclear.
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