

Hungary: Rule-of-Law Developments May 2023 - Mid-January 2024

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News

This news item continues the overview of concerning rule-of-law developments in Hungary, including their implications on the protection of the EU budget. It covers the period from the end of May 2023 to mid-January 2024. It follows up the overview in [eucrim 1-2023/, 5-6](#).

- 26 May 2023: In an [open letter](#), NGOs urge the EU Ministers to proceed with the Article 7 TEU-procedures against Hungary and Poland due to the continuous rule-of-law backsliding in these countries. With regard to Hungary, the NGOs draw attention to the latest assessment by Hungarian civil society organisations of recent reforms proposed by the Hungarian government in a bid to access EU money and to their proposed recommendations that the Council could adopt under Article 7(1) TEU. They criticise that reform attempts in Hungary take place in a "dismantled system of checks and balances and a distorted media landscape, where the Government continues to have excessive regulatory powers and where legal certainty is lacking." The letter also mentions that "there is a persistent practice of non-execution of both domestic and international court judgments and persons from various vulnerable groups face human rights violations without independent institutions being capable or willing to protect their rights."
- 30 May 2023: The General Affairs Council holds its [sixth hearing of Hungary as part of the Article 7 procedure](#) against the country. The procedure was initiated by the European Parliament in 2018. EU Ministers receive an update of the situation in Hungary with regard to the issues raised by the EP and the Commission in its 2022 rule of law report.
- 1 June 2023: The [judicial reform package](#) adopted by the Hungarian Parliament at the beginning of May 2023 to comply with the super milestones set out in Hungary's Recovery and Resilience Plan with a view to enhancing the independence of the judiciary (→ [eucrim 1/2023, 6](#)) enters into force.
- 1 June 2023: In a [non-legislative resolution](#), the European Parliament (EP) raises concerns over the further deterioration of the rule of law and the fundamental rights situation in Hungary despite the EP's activation of the Article 7 mechanism and since the adoption of the EP's resolution of 15 September 2022, in which it found that serious issues remained to be solved or further issues had arisen in all the 12 areas of concern highlighted in its original reasoned proposal of 2018 on the Article 7 procedure. MEPs are particularly worried about the adoption of several pieces of legislation in a non-transparent way without the sufficient possibility for parliamentary debates and amendments and without meaningful public consultation; it is further concerned about the repeated and abusive invocation of the "state of danger", the misuse of whistleblower protections to undermine LGBTIQ+ rights and freedom of expression, and the restriction of teachers' status and the infringement of their social and labour rights, which is threatening academic freedom. MEPs raise a number of concerns

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about corruption and the misuse of EU funds; unblocking should only happen with legal and political certainty. Lastly, MEPs question Hungary's credibility to fulfill the required tasks as Council Presidency in the second half of 2024.

- 20 June 2023: On the fifth anniversary of Hungary's anti-NGO laws, [16 civil society organisations call on](#) the Hungarian government to fully implement court judgments that would put an end to stigmatizing national civil society organizations (CSOs). They also stress that "[t]he unlawful administrative, criminal law, and financial measures that are still in effect render the operation of the CSOs excessively difficult and exert a chilling effect on the functioning of the entire Hungarian society". The CSOs make concrete recommendations for repealing measures that obstruct the work of CSOs in Hungary and call upon the Hungarian government to stop its smear campaigns against CSOs. In addition, the [Hungarian Helsinki Committee](#) publishes a [paper](#) with an overview of the attacks that Hungarian NGOs have been facing during the past five years in the course of Hungary's illiberal transition.
- 22 June 2023: The [ECJ finds](#) that Hungary had breached its obligations under the Asylum Procedures Directive. The ECJ follows the arguments put forward by the Commission, which had brought an action for failure to fulfil obligations in 2021. The reason for the infringement proceedings ([Case C-823/21](#)) was the introduction of a national asylum law regulation, according to which each applicant had to submit a declaration of intent in a Hungarian embassy outside the EU and obtain authorisation to enter Hungary, which was only granted at the discretion of the authorities. The ECJ argues that the completion of a preliminary procedure or other administrative formalities is not a requirement under EU law. The Hungarian law inadmissibly restricts the effective exercise of the right to apply for asylum in a Member State and to remain there while the application is being examined. Hungary's objection that this is justified for reasons of public health, among others, does not hold water.
- 9 October 2023: In an [updated summary assessment](#), NGOs submit that Hungary can be deemed to have completely fulfilled only one out of four super milestones by its new legislation on the reform of the judicial independence (see above) - a precondition for the release of frozen EU funds. In conclusion, concerns are maintained with regard to the role of the National Judicial Council, the composition of the Supreme Court (Kúria), and remaining substantive obstacles for preliminary ruling references to the CJEU. The update refers to joint analyses in which the risks to the fulfillment of the judicial milestones are identified. In addition to the legal deficiencies, the effectiveness and sustainability of the adopted changes is questioned.
- 31 October 2023: The Hungarian Helsinki Committee (HHC) reiterates the [standpoint of civil society](#) that compliance of the Hungarian Parliament's judicial reforms (see above) do not comply with set EU milestones and explains why the remaining deficiencies must be considered as fundamental.
- 2 November 2023: The HHC publishes a [paper](#) entitled "Hungary: No True Commitment to Restoring the Rule of Law". It summarises the main rule of law and human rights developments that have unfolded since the Council hearing of 30 May 2023 in the Article 7(1) TEU procedure against Hungary (see above). The paper proposes points of inquiry and recommendations regarding five topics that pose the major rule-of-law concerns in Hungary.
- 15 November 2023: Following the hearing of 30 May 2023 (see above), the [General Affairs Council discusses the state of play](#) regarding respect of EU values by Hungary. Ministers echo the Commission's remaining concerns, in particular as regards the fight against corruption, media freedom, the rights of migrants and persons belonging to minorities, pressure on civil society and the extensive use of emergency powers by the Hungarian government. The Ministers urge Hungary to continue to address all the issues raised.
- 15 November 2023: An [assessment](#) by CSOs concludes that the Hungarian government has so far not complied with most of the conditions necessary to access EU funds. The [CSOs say](#): "The government has not taken firm steps to fully address the rule of law and human rights problems that the European

- Union had identified. Barely anything has improved compared to the bleak situation at the end of April. The most significant deficiency relates to the compliance with the Charter of Fundamental Rights of the EU, since the government hasn't completely fulfilled any of the related four conditions." In particular, the CSOs consider that none of the 17 anti-corruption measures have been implemented.
- 22 November 2023: The [press reports](#) on a letter from Hungarian Prime Minister *Viktor Orbán* to European Council President *Charles Michel*, in which Orbán threatens the EU to block any further aid for Ukraine until EU leaders have a "strategic discussion" on the EU policy towards Ukraine. According to diplomats, the letter indirectly suggests that Hungary could use its veto power to block the disbursement of a planned €50 billion in aid for Ukraine if the Commission does not release €13 million of frozen EU funds to Hungary.
 - 26 November 2023: The Hungarian government [extends the "state of danger" for another 180 days](#) until the end of March 2024. This allows to rule by decree with the effect of a more facilitated restriction of fundamental rights and reduced parliamentary power. The "state of danger" was initially introduced in March 2020 and justified with the coronavirus outbreak. CSOs maintain that the entire regulatory framework of the state of danger needs to be reconsidered. They also argue that many emergency decrees have not had any connection to the real justification of the state of danger.
 - 27 November 2023: CoE Human Rights Commissioner *Dunja Mijatović* [issues a statement](#) against the Hungarian bill on the "protection of sovereignty" (see details below 12 December 2023). According to *Mijatović*, the proposal "poses a significant risk to human rights and should be abandoned". She also criticises that "[i]f this proposal is adopted, it will provide the executive with even more opportunity to silence and stigmatise independent voices and opponents."
 - 8 December 2023: [NGOs argue](#) that Hungary's last minute legislative amendments to the justice system ahead of the European Commission's decision on the fulfillment of judicial super milestones are only makeshift solutions and breach relevant laws and bylaws as well as rule of law principles.
 - 8 December 2023: In a [letter](#), *Irene Khan*, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and *Mary Lawlor*, UN Special Rapporteur on the situation of human rights defender, urge the Hungarian Government to refrain from adopting the legislative proposal on the Protection of Sovereignty (see below) as currently drafted and to seek international assistance and expertise from international and regional human rights mechanisms and bodies. According to the UN special rapporteurs, the draft bill "appears to be a restrictive legislative measure that could negatively impact the enjoyment of fundamental rights and civic space in Hungary."
 - 12 December 2023: The ruling Fidesz and KDNP parties [pass the "Protection of National Sovereignty Act"](#). An [English translation](#) is made available. The Act entails amendments to the Hungarian constitutional law, the criminal law and other laws. According to the Hungarian government, it aims to prevent the influence of foreign interests that threaten Hungary's sovereignty or national security. It is to protect the will of Hungarian voters which may be influenced by parties that receive funding from abroad for election campaigns. The Act establishes a new authority, the "Sovereignty Protection Office" (SPO). It is officially tasked with "protecting constitutional identity". Powers include the conduct of investigations against individuals or legal entities that are suspected of serving foreign interests or threatening national sovereignty. Investigations are followed by a public report on the findings of the SPO. The SPO is entitled to receive support from the intelligence agencies, can request the disclosure of data from the investigated entity and shall notify any other state body if it detects facts or circumstances that give rise to criminal or other administrative proceedings. In addition to the SPO, the Act amends the Hungarian criminal code by introducing the offence of "Illegal influence of the will of voters". The offence is punished with up to three years of imprisonment.
 - 12/13 December 2023: Press and media as well as civil society organisations [heavily criticise](#) the Protection of National Sovereignty Act. They mainly protest against the SPO's unlimited powers and the lack of oversight and legal remedy. Moreover, they are concerned over the vagueness of the legal text

and its chilling effects. According to a [statement by ten independent media outlets](#), the law makes it clear that "in Hungary today, anyone who takes part in democratic debate or even simply informs the public is suspect to those in power. Independent media outlets that obtain and report information in the public interest are repeatedly accused of serving 'foreign interests'." In an open letter, [over 100 NGOs say](#) that the law is the government's attempt "to deter its own citizens from democratic participation and to discourage the discussion of public affairs".

- 13 December 2023: The [Commission approves](#) Hungary's reforms regarding judicial independence and thus paves the way that Hungary can claim reimbursement of eligible expenditure of up to around €10.2 billion for the EU's 2021-2027 Cohesion Policy, Maritime and Fisheries, and Home Affairs programmes. However, the Commission upholds its concerns with regard to the budget conditionality mechanism. The Commission deems Hungary compliant with the horizontal enabling condition on the EU Charter of Fundamental rights, since Hungary strengthened the independence of its judiciary, e.g. by increasing the powers of the independent National Judicial Council and reforming the functioning of the Supreme Court (Kuria) to limit risks of political influence. However, the Commission also stress that Hungary has not fulfilled other horizontal enabling conditions and has neither adopted nor formally notified the Commission of any new remedy to address outstanding issues that apply under the general regime of conditionality (→ [eucrim 3/2020, 174-176](#)). As a result a total of €11.2 billion remains suspended.
- 23 December 2023: The controversial Protection of National Sovereignty Act (see above) enters into force.
- 17 January 2024: [MEPs debate in plenary](#) on the situation in Hungary. Many MEPs urged EU leaders not to give into Hungary's blackmail, to provide further information about the Commission's unblocking of elements of EU funding that were frozen due to rule-of-law concerns, and to respond to the Article 7 procedure that was launched by the EP in 2018. MEPs, however, also stress the need to maintain open communication with Hungary and to listen to its concerns.
- 18 January 2024: In a [resolution](#), the European Parliament (EP) expresses strong concern about the further erosion of democracy, the rule of law and fundamental rights in Hungary, in particular through the recently adopted "national sovereignty protection" package (see above) - which has been compared with Russia's infamous 'foreign agents law'. [MEPs call on the European Council](#) to take the next steps in the Article 7 TEU procedure against Hungary. They voice serious concerns over the Commission decision considering that the horizontal enabling condition of the Charter had been fulfilled in relation to judicial independence (see above, 13 December 2023), thus enabling the Hungarian authorities to submit reimbursement claims of up to €10,2 billion without adequate control mechanisms or public procurement procedures in place to guarantee sound financial management and the protection of the EU budget. It is believed that this decision politically contradicts the decision to prolong the measures adopted under the Conditionality Regulation. Furthermore, the resolution clarifies that the measures required to release EU funding under different rules must be treated as a single package, and no payments should be made if deficiencies persist in any area. The EP will examine whether legal action should be pursued to overturn the Commission decision to partially unfreeze funds. The Commission is urged to use all available tools to address the clear risk of a serious breach by Hungary of the values on which the Union is founded, in particular, financial measures and expedited infringement procedures.

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