

# Hungary: Rule-of-Law Developments November-December 2021

Thomas Wahl

## News

This news item continues updates on recent rule-of-law developments in Hungary (as far as they relate to European law). For the last overview → [eucrim 3/2021, 137-138](#).

- 16 November 2021: In the infringement proceedings between the Commission and Hungary on the Hungarian asylum legislation ([Case C-821/19](#)), the CJEU follows the Advocate General's opinion of 25 February 2021 (→ [eucrim 1/2021, 5](#)) and **held** that Hungarian law which criminalises the organising activity of persons for international protection of asylum seekers in Hungary, infringes EU law. The CJEU found that the Hungarian legislation restricts, first, the right of access to applicants for international protection and the right to communicate with those persons and, second, the effectiveness of the right afforded to asylum seekers to be able to consult, at their own expense, a legal adviser or other counsellor. In sum, criminalising such activities impinges on the exercise of the rights safeguarded by the EU legislature in respect of the assistance of applicants for international protection.
- 23 November 2021: The CJEU **rules** on the handling of a reference for a preliminary ruling by the Hungarian judiciary ([Case C-564/19](#)). The background is a criminal case in Hungary against a Swedish citizen who was assisted by an interpreter during the first interrogation. The competent judge in Hungary had doubts about the selection and skills of the interpreter. In this context, he referred questions to the CJEU for a preliminary ruling as regards the interpretation of Directives 2010/64 and 2012/13 (guaranteeing rights to translation/interpretation and information in criminal proceedings). At the request of the Hungarian Prosecutor General, the Hungarian Supreme Court declared the request for a preliminary ruling unlawful. Disciplinary proceedings were initiated against the judge as well. The CJEU now rules that the review of the request for a preliminary ruling was contrary to EU law. The CJEU has exclusive jurisdiction to review the admissibility of requests for a preliminary ruling. In addition, the initiation of disciplinary proceedings against the national judge also violates EU law. This impairs the mechanism of preliminary references and judicial independence. It also jeopardised the uniform application of EU law. For the question in substance, the CJEU emphasised the right of every accused person to be informed of the charges against him in a language he understands. Member States must take specific measures to ensure this right. A register of certified interpreters could help. Furthermore, the measures adopted by the Member States must enable the national courts to ascertain that the interpretation was of sufficient quality, so that the fairness of the proceedings and the exercise of the rights of the defence are safeguarded. If the national judge considers the interpretation provided inadequate or he/she cannot ascertain its quality, criminal proceedings conducted *in absentia* may be discontinued because the rights of defence are infringed.

### AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

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- 8 December 2021: In a [joint letter](#) ahead of the General Affairs Council meeting on 14 December 2021, several NGOs urge the Council to take essential steps in the Article 7 procedures against Poland and Hungary. The NGOs voice their concern over “the bold defiance of the authority of the CJEU and the ECtHR by the governments of both Poland and Hungary”. They also demonstrate that the governments of Hungary and Poland have continued on their path away from the founding EU values despite numerous efforts made by the EU institutions.
  - 10 December 2021: [The Hungarian Constitutional Court decides](#) on a motion of Hungarian Minister of Justice, *Judit Varga*, which asked the Court whether Hungary does not need to follow the important CJEU judgment of 17 December 2020, by which the Hungarian procedure for granting international protection and returning illegally staying third-country nationals were declared incompatible with EU law. On the one hand, the Hungarian Constitutional Court emphasized that it is not in the position to review specific CJEU judgments. [Observers assess](#) this as the failure of the Minister’s attempt to get a carte blanche to ignore the CJEU’s binding judgment as did the Polish Constitutional Court (→ [eu-crim 3/2021, 137](#)). As a consequence, Hungary would in particular be obliged to stop its practice of push-backs at its borders. On the other hand, the Hungarian Constitutional Court held “that where the joint exercise of competences is incomplete, Hungary shall be entitled, in accordance with the presumption of reserved sovereignty, to exercise the relevant non-exclusive field of competence of the EU, until the institutions of the European Union take the measures necessary to ensure the effectiveness of the joint exercise of competences”. [This can be interpreted that](#) Hungary has the sovereign right to pass laws for the protection of fundamental rights - until the conditions to effectively execute EU law are guaranteed. Furthermore, the Hungarian Constitutional Court draws conclusions from the “right to self-determination stemming from one’s traditional social environment”. This could mean that Hungarians have the right to live in a more or less homogeneous country, where people aren’t too different from one another.
  - 31 December 2021: The Hungarian Helsinki Committee publishes [a research paper](#) in which it is demonstrated that Hungary has been failing to implement judgments of the Strasbourg and Luxembourg courts, and Hungarian authorities are repeatedly disregarding the judgments of the country’s own domestic courts. This is seen as another sign of the country’s rule-of-law backsliding.
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