

Hungary: Update on Rule-of-Law Developments

Thomas Wahl



News

The following continues the overview in recent eucrim issues regarding the clash between the EU and Hungary on maintenance of the rule of law ([eucrim 2/2020](#), 69 and [eucrim 1/2020](#), 4).

- 12 August 2020: Following up their *ad hoc* analysis of 27 May 2020 (see [eucrim 2/2020](#), p. 69), a [joint assessment paper by NGOs](#) (Amnesty International Hungary, the Eötvös Károly Institute, the Hungarian Civil Liberties Union and the Hungarian Helsinki Committee) reiterated criticism of the so-called Transitional Act of June 2020. The Transitional Act repealed the much contested Authorisation Act that gave the Hungarian Government excessive powers during the state of danger to cope with the corona crisis ([eucrim 1/2020](#), 5). The NGOs point out that the Government can resume its wide executive powers also on the basis of the Transitional Act if there is a state of “epidemiological preparedness”. This would, in particular, allow the suspension of the application of parliamentary acts, derogate from provisions of acts, and rule by means of decrees. The [NGOs criticise](#) that if in the future the Government declares a state of danger again, it will automatically have a carte blanche mandate to rule by decree. Furthermore, the Transitional Act ensures that many provisions originally included in the decrees adopted under the previous state of danger continue to apply. The NGOs also voice concern over other issues in the Transitional Act that endanger the exercise of fundamental rights or touch upon constitutional values.
- 22 September 2020: The [General Affairs Council deals with](#) the Article 7(1) procedures against Poland and Hungary. The Commission updates on rule of law developments since the end of 2019. Regarding Hungary, the Commission outlines the situation in several areas, including the independence of the judiciary, media pluralism and academic freedom. The ministers refrain from taking concrete decisions, but conclude that the Article 7 procedure will “not be terminated”.
- 1 October 2020: Hungary reacts to the Commission’s Rule of Law Report (→ separate news item) with [fierce criticism](#). The Commission had given Hungary a bad review, *inter alia*, on its lack to investigate/prosecute corruption cases involving high-level officials, and on its failure to ensure media pluralism. Hungary called the report “not only fallacious, but absurd”. The sources of the report are “biased and non-transparent”. The statement of the International Communications Office also criticises the methodology and concept of the report and its “ill-founded” contents. It is claimed that the Rule of Law Report cannot serve as a basis for any further discussion on rule of law in the EU. Lastly, Hungary condemns the report as “written by organisations forming part of a centrally-financed international network engaged in a coordinated political campaign against Hungary”. This could be understood as a hint to the Open Society Foundations linked to U.S. billionaire *George Soros* whom Hungarian Prime Minister *Viktor Orbán* considers an enemy of the Hungarian government.

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- 6 October 2020: The CJEU confirms the incompatibility of the Hungarian government's law on higher education with the EU's fundamental rights and international trade law ([Case C-66/18](#)). In 2017, Hungary introduced special requirements for foreign higher education institutions. First, the exercise, in Hungary, of teaching activities leading to a qualification by higher education institutions situated outside the European Economic Area (EEA) was made subject to the existence of an international treaty between Hungary and the third country. Second, the exercise of activities of the foreign higher education institutions in Hungary was made subject to the condition that they are offered in the country of origin. This law was obviously targeted against the international Central European University (CEU), which was founded by *George Soros* and which had to move from Budapest to Vienna at the end of 2017, because the CEU was the only higher education institution that did not fulfil the new requirements. The [Commission considered](#) the restrictions to be a violation of the General Agreement on Trade in Services (GATS) within the framework of the World Trade Organization (WTO). The judges in Luxembourg follow these arguments. In addition, Hungary violated fundamental EU rights and freedoms, such as academic freedom and the freedom of establishment.
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