

# Rule-of-Law Developments in Hungary

Thomas Wahl



## News

### AUTHOR

**Thomas Wahl**

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

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Although the executive attacks on the independence of the judiciary in Poland dominate headlines in the media, European institutions also have rule-of-law concerns with regard to Hungary. Next to Poland, Hungary is subject to an Article 7 TEU procedure, which may eventually lead to sanctions against an EU Member State if the Council states a clear risk of a serious breach of EU values. The procedure against Hungary was triggered by the European Parliament in September 2018. Concerns mainly address judicial independence, freedom of expression, corruption, rights of minorities, and the situation of migrants and refugees. As in the case of Poland, Hungary faces several infringement actions before the CJEU. The recent developments in brief:

- 14 January 2020: [Advocate General Campos Sánchez-Bordona proposes](#) that the CJEU declares Hungarian legislation imposing restrictions on the financing of civil organisations from abroad to be incompatible with EU law. The Hungarian legislation imposes several obligations of registering, providing certain pieces of information and publication on civil organisations if they receive donations above a certain threshold from abroad. The case was brought to the CJEU in an infringement action by the Commission ([Case C-78/18](#)). The AG argues that the legislation is contrary to the principle of free movement of capital in that it includes provisions amounting to unjustified interference with the fundamental rights of respect for private life, protection of personal data, and freedom of association as protected by the Charter. Objectives, such as the protection of public policy and the fight against money laundering and terrorist financing, cannot justify the Hungarian legislation.
- 16 January 2020: The European Parliament notes in a [resolution on the ongoing Article 7 procedures](#) against Poland and Hungary that reports and statements by the Commission, the UN, OSCE, and the Council of Europe indicate that “the situation in both Poland and Hungary has deteriorated since the triggering of Article 7(1).” MEPs expressed their dissatisfaction on the hearings within the Council; they have not yet resulted in any significant progress. The resolution states that “the failure by the Council to make effective use of Article 7 of the TEU continues to undermine the integrity of common European values, mutual trust, and the credibility of the Union as a whole.” The Council is called on to determine the existence of a clear risk of Hungary’s serious breach of the values on which the Union is founded. The EP also criticizes the modalities of the procedure and shortcomings in the proper involvement of the EP in the Article 7 procedure.
- 5 March 2020: In other infringement proceedings ([Case C-66/18](#)), Advocate General [Juliane Kokott voices her belief](#) that the 2017 amendments of the Hungarian law on Higher Education do not comply with EU and WTO law. The amendment stipulates that higher education institutions from countries outside the European Economic Area would only be allowed to continue their activities in Hungary if an international treaty existed between Hungary and their home country. In addition, the new rules



require foreign universities to operate in their country of origin if they want to offer higher education in Hungary. The law was seen as a move against Hungarian-born US businessman *George Soros* – an opponent of Hungarian Prime Minister *Viktor Orbán* – because his funded Budapest-based Central European University was the only active foreign higher education institution in Hungary that did not meet the new requirements. According to AG *Kokott*, the new rules are discriminatory and disproportionate; they infringe the freedom of establishment, the Services Directive, the Charter of Fundamental Rights, and the national treatment rule of the General Agreement on Trade in Services (GATS).

- 24 March 2020: Given the plans of the Hungarian government to expand “state of danger” measures due to the COVID-19 pandemic and to rule with executive decrees, the [EP’s Civil Liberties Committee \(LIBE\)](#) issues a [reminder](#) that all Member States have a responsibility to respect and protect fundamental rights, the rule of law, and democratic principles, even in difficult times. The chair of the committee, [Juan Fernando López Aguilar \(S&D, ES\)](#), called on the Commission to assess whether the proposed bill complies with the values enshrined in [Article 2 of the Treaty on European Union](#).
- 30 March 2020: The Hungarian Parliament passes the contentious “state of emergency extension” [bill](#). [The new law \(dubbed the “Enabling Act”\)](#) gives the national conservative Hungarian government headed by Viktor Orbán the right to pass special executive decrees in response to the coronavirus outbreak. It also changes the Hungarian criminal code by introducing jail terms of up to five years for people who spread “fake news” about the virus or measures against it. Severe penalties were also introduced if people breach the quarantine ordered by authorities. For details, see also the [analysis by Renáta Uitz on Verfassungsblog](#). The law was heavily criticized by the opposition, the Council of Europe, and human rights organisations. They mainly disagree with the indefinite term of the expanded state of emergency and fear inappropriate restrictions on the freedom of press and freedom of expression. Another fear is that the “Enabling Act” cements the erosion of the rule of law in Hungary. In a [letter of 24 March 2020](#) to Viktor Orbán, CoE Secretary General [Marija Pejčinović Burić](#) stated, *inter alia*: “An indefinite and uncontrolled state of emergency cannot guarantee that the basic principles of democracy will be observed and that the emergency measures restricting fundamental human rights are strictly proportionate to the threat which they are supposed to counter.” CoE Human Rights Commissioner [Dunja Mijatović](#) commented the following on Twitter: “[#COVID19](#) bill T/9790 in [#Hungary's](#) Parliament would grant sweeping powers to the gov to rule by decree w/o a clear cut-off date & safeguards. Even in an emergency, it is necessary to observe the Constitution, ensure parliamentary & judicial scrutiny & right to information.”
- 15 April 2020: Upon the initiative of Transparency International EU, 30 MEPs and 50 civil society organisations send an [open letter](#) to the presidents of the European Commission and the Council calling on “swift and decisive actions” against Hungary. The letter eyes the new Hungarian emergency law of 30 March 2020. Although exceptional times during the Covid pandemic “demand exceptional measures and it may be legitimate for governments to temporarily use extraordinary powers to manage the situation,” the latest actions by the Hungarian government are a “flagrant attack on the cornerstones of the rule of law and the values of the Union,” the signatories emphasise. The law of 30 March 2020 has a “chilling effect on free speech and anticipate the potential to suffocate those remaining elements of the checks and balances system in Hungary.”
- 17 April 2020: In a [resolution on EU coordinated action to combat the COVID-19 pandemic](#) and its consequences, the EP voices deep concern over the steps taken by Hungary to prolong the state of emergency indefinitely, to authorise the government to rule by decree without a time limit, and to weaken the emergency oversight of the parliament. These measures are deemed “totally incompatible with European values.” The Commission is called on to make use of all available EU tools and sanctions to address this serious and persistent breach; the sanctions could include budgetary cuts. The Council is called on to resume the ongoing Article 7 procedures against Hungary.

- 20 April 2020: 75 European personalities, including former European Commission president *Jean-Claude Juncker*, former heads of state and government, and major figures from European civil society [publish an open letter](#) calling on the EU to swiftly propose and adopt sanctions against the latest “democratic backsliding” by the Hungarian government. The signatories voice concern over the recent drift of *Victor Orban’s* government towards autocracy in Hungary. The emergency law of 30 March 2020 is criticized as an unprecedented concentration of power: “It does not serve the fight against Covid-19 or its economic consequences; instead, it opens the door to all types of abuses, with both public and private assets now at the mercy of an executive that is largely unaccountable,” the letter says. The letter calls on all European stakeholders to get aware of the situation in Hungary and to take collective action. As guardian of the EU Treaties, the Commission is called on to urgently propose sanctions taking into account the seriousness of violation of European rules and values. The EP and Council should adopt these sanctions without delay. National media are advised to dedicate news segments to the Hungarian situation (daily, if necessary) and to grant Hungarian citizens free access to their content as a source of pluralistic and independent information.
  - 7 May 2020: In a [hearing before the Committee on Legal Affairs \(JURI\)](#), Commissioner for Justice and Consumer Affairs, *Didier Reynders*, reiterates that the Commission closely monitors the proportionality of emergency measures taken by the EU Member States during the coronavirus crisis. This includes the Enabling Act in Hungary with its indefinite term of application and its restrictions to the freedom of expression/freedom of press. MEPs are concerned over the situation in countries like Poland and Hungary, which they fear used the crisis to put in place measures that weaken democracy.
  - 14 May 2020: In a plenary debate with European Commission Vice-President *Vera Jourová* and the Croatian Presidency of the EU, [several MEPs reiterate their criticism of the emergency measures](#) taken by the Hungarian government to fight the COVID-19 pandemic. Next to the indefinite state of emergency, MEPs particularly criticise the criminalization of ostensible “fake news,” as it is a measure directed against government-critical statements. MEPs urge the Commission to promptly open infringement procedures against the Hungarian emergency law. Furthermore, EU funding to Hungary should be stopped, unless rule of law is respected. The Council is called on to move forward with the Article 7 procedure initiated by the EP in 2018.
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