



SLOWLY, STEADILY, STEALTHILY

HOW RULE OF LAW IS FURTHER UNDERMINED IN HUNGARY

JANUARY - SEPTEMBER 2019

On 12 September 2018, the European Parliament voted to trigger proceedings against Hungary under Article 7 of the Treaty on European Union on account of the systemic threat to the core values of the EU. A year later, the risk of a serious breach of the EU founding values has increased: Hungarian authorities have continued to silence dissent and run intimidation campaigns against individuals and organizations that want to hold the government accountable. This has been achieved through enacting or enforcing laws that curb fundamental freedoms and by further increasing government control over the media and the judiciary.

The European Council should now resolutely address the substantive concerns in the Article 7 framework.

THREATS TO THE INDEPENDENCE OF THE JUDICIARY

“The Hungarian judiciary is facing a kind of ‘constitutional crisis’ since May 2018” while “checks and balances, which are crucial to ensuring judicial independence, have been further weakened within the ordinary court system”. These are the findings of the [European Association of Judges](#) and the [European Commission](#) about the deteriorating independence of Hungarian courts. The [constitutional crisis](#) over the supervision of court administration has escalated amidst a heated propaganda campaign against critical judges and judicial autonomy. The prolonged crisis between key judicial actors has continued to hinder the effective supervision of court administration.

The National Judicial Office (NJO) and its President have wide powers over court administration, including the recruitment and promotion of judges. The NJO President is elected by the Parliament, without the participation of the judiciary – under the current political circumstances, this means the governing majority can appoint its own candidate. The body responsible for supervising the NJO President is the National Judiciary Council (NJC). The NJC’s members, except for the president of the Curia (Supreme Court), are elected by judges by secret ballot. The body represents judicial self-administration in the system and has the power to scrutinize the actions of the NJO President. The NJC has veto power only in very few instances (e.g. in certain cases of judicial appointments). The NJO President claims that the NJC is not operating lawfully, as the number of its members have decreased below the statutory number of NJC members (15) and also because administrative and labour courts are no longer represented in the NJC due to resignations in 2018, hence the NJO President refuses cooperation with the NJC. The president of the Curia, the Minister of Justice and the head of the National Bar Association all continue to participate in the work of the NJC. At the NJO President’s motion, in March 2019, the [Ombudsperson referred a question](#) to the Constitutional Court on the functionality of the NJC in its reduced capacity. The case is still pending.

In May 2019, the NJC [presented a motion with detailed reasoning](#) to the Parliament, requesting the removal of the NJO President on the grounds that she had breached her duties and had become unworthy of the office.

The motion included observations following the inquiries carried out by the NJC: for example, the NJO President, in direct contradiction with laws, prevented the NJC to comment on the courts' budget proposal, refused to grant access to documents, and despite warnings by the NJC, did not investigate alleged illegal reappointment of certain court presidents. Requesting the removal of the NJO President was seen as a measure of 'last resort' by the NJC, which has no further legal tools to address the NJO President's failure of fulfilling her duties. In June 2019, Parliament voted down the Council's proposal to remove the NJO President. Consequently, the prolonged conflict remains between the NJO and the NJC with no end in sight – jeopardizing any effective control over the administration of the judiciary. On 11 July, a judge [asked the Court of Justice of the European Union \(CJEU\) preliminary questions](#) on the independence of the judiciary. The preliminary reference concerns, among other matters, the appointment of court presidents and the low salary of judges and whether, despite the allegedly unlawful appointment practice of the NJO President, the judge's own court may be deemed independent.

Pressure on individual judges has further increased. On 17 July 2019, the Hungarian National Authority for Data Protection and Freedom of Information (DPA) [found](#) that in February 2019 a regional court president illegally black-listed 51 judges in his district who were members in a judges' association. He also reportedly tried to persuade court leaders at his court to encourage judges to end their membership in the association. The DPA fined the court for breach of privacy rights. Government-aligned propaganda media have continued to target and discredit individual judges, including [members of the NJC](#) and other judges who publicly criticised the judicial administration.

The governing majority in Parliament [had planned to set up](#) a separate administrative court system that would have jurisdiction over taxation, public procurement and other economic matters as well as election, freedom of assembly, asylum and other human rights issues. The European Commission for Democracy Through Law ([Venice Commission](#)) found that according to the plans "very extensive powers" are concentrated in the hands of a few stakeholders, and there are "no effective checks and balances to counteract those powers" in the system proposed by then-Minister László Trócsányi and the Hungarian Government. On 3 June 2019, the Parliament indefinitely [postponed](#) the entry into force of the Act on Administrative Courts. On 21 June 2019, the Hungarian Constitutional Court, however, [ruled](#) that the proposed Act on Administrative Courts was in line with Hungary's Fundamental Law. Despite the postponement, there are signs that the government will eventually aim to introduce the administrative courts: (i) the separation of administrative courts and ordinary courts has not been removed from the Constitution itself and (ii) in July, the Speaker of Parliament, [László Kövér told a radio news](#) channel that the postponement is only temporary and when "the time is ready" the Parliament will relaunch the Act. In July, the Deputy Minister of Justice confirmed in an interview that the [revision of the Fundamental Law is on its way](#) and it may affect the area of courts and prosecution among others.

MEDIA FREEDOM FURTHER ERODED

Media freedom has further deteriorated. The establishment of the Central European Press and Media Foundation ("KESMA" in Hungarian) in November 2018 has created an [unprecedented level of concentration of media ownership](#). The new media empire was created by owners donating 476 media outlets, including websites, newspapers, television channels and radio stations to the foundation. A vast array of a total of media outlets, including the entire regional daily newspaper market, the only commercial radio station that broadcasts nationally, the largest online news site, as well as a variety of political and tabloid newspapers, are [now openly held by the pro-government conglomerate](#) KESMA. Based on revenue, pro-government media control about 80% of the news media market and coverage of political content. Reportedly, [state advertising spending](#), especially the government's various political campaigns, [substantially contribute](#) to the funding of this media empire. Neither the Competition Authority nor the Media Authority had investigated the merger.

[State media](#) continues to engage in propagandistic editorial practices. In December 2018, a series of peaceful demonstrations took place in front of the headquarters of the public broadcaster MTVA, and some opposition MPs managed to get into the building. Several of them were subsequently subject to physical assaults by the security personnel after they intended to broadcast a petition. For several years, the majority of these opposition MPs have not been invited to the public broadcaster for interviews or comments, while the state

media outlets systematically [provide plenty of air time for government-affiliated](#) politicians and experts who follow the government's narrative in their comments.

IN SEARCH OF A NEW ENEMY: HOMOPHOBIC NARRATIVES AND HATE CRIMES

During the last four years, the Hungarian authorities have run a series of campaigns targeting certain individuals, groups and organizations in Hungary and beyond (including [asylum-seekers, foreigners, homeless people, the European Union, NGOs](#) and [George Soros](#)) and depicting them as enemies of the nation, with the intention to fuel to citizens' basic fears and incite hatred against these targets. Now the government and certain public figures have been targeting a new group with negative and discriminatory comments, portraying the LGBTQ community as a "new enemy". Anti-LGBTQ statements from governing party politicians have multiplied. Most prominently, the Speaker of the Parliament, László Kövér [drew parallels](#) between the right of homosexual couples to marry and adopt children and paedophilia, and stated that a normal homosexual "does not necessarily consider himself equal". Additionally, a Fidesz MP has repeatedly [called for](#) banning the Budapest Pride march to "protect children". Government mouthpiece media outlets, mostly owned by the centralized foundation KESMA closely linked to the government, often [dedicate columns](#) and airtime to spread the anti-LGBTQ narrative.

In July 2019, [verbal and physical attacks](#) against participants and organizers of the events accompanying the Budapest Pride month have significantly increased. Members of the LGBTQ community [have voiced fears](#) that this is a consequence of politicians' statements that had been instrumental in encouraging hatred. In some cases, [as reported by the victims](#), the police did not provide adequate protection for the participants of such events (e.g. arrived late at incidents or discouraged victims to report hate crimes), leaving the events vulnerable to disruption by far-right extremists.

GENDER EQUALITY AND VIOLENCE AGAINST WOMEN

[A new report by the Council of Europe Commissioner on Human Rights](#) found that Hungary is backsliding in gender equality and women's rights. Hungarian authorities have continued to fail to take focused efforts to promote women's rights and to commit to prioritizing gender equality. No steps have been taken to prepare a long overdue, new national strategy on gender equality and an action plan for its implementation, despite the government's stated intentions to do so. Questions related to women's rights and gender equality remain associated solely with family affairs in the government's policies.

Facing real demographic challenges in Hungary, [the government launched a family protection action plan in February 2019](#). [This plan includes](#) a series of measures to facilitate integrating work and family life, and to improve family support, especially for families with many children. While many welcome these measures, women's rights groups have [reported](#) that the family benefits system appears to favour middle- to high-income parents over low-income families who are ineligible to claim most such benefits. These policies, by depicting women's role in society as child-bearers and caregivers only, carry the risk [of reinforcing gender stereotypes](#) that already permeate the public sphere, and do not empower women or address gender segregation in the labour market. On 5 September 2019, at an [international conference on demography](#) organised by the government, the Speaker of the Parliament argued that "having children is a public matter, not a private one" and said that childless people are "not normal" and "stand on the side of death", while Prime Minister Orbán spoke of the risk of "population replacement."

The [Council of Europe Commissioner on Human Rights](#) also identified concerns with regards to the law enforcement protections against domestic violence. [As civil society reported](#), Hungarian authorities have failed to prevent and combat violence against women and domestic violence, while prosecutions of these crimes remained limited. [At least three women are killed](#) each month by their current or former intimate partner. In the absence of systematic data collection on the prevalence of gender-based violence and on the number of

investigations, prosecutions and convictions in such cases, this number, however, might be even higher. Reporting of domestic violence continues to be very low, which can signal a lack of trust in police and law enforcement actors by the victims. Those who do file a complaint and decide to start civil or criminal judicial proceedings often experience stigmatization, insensitive treatment or lack of interest or trust of law enforcement officers and judges in their testimonies. These could lead to victim-blaming and biased judgments.

The authorities continued to ignore repeated calls by Hungarian civil society organizations and international human rights bodies to ratify the Istanbul Convention. So much so, that the newly elected [Minister of Justice described the urging of the ratification as “political whining”](#). Authorities have also failed to amend Criminal Code provisions on sexual violence and rape to define rape on the basis of lack of consent by the victim.

DISPROPORTIONATE CONTROL OVER EDUCATION

When the Parliament [amended the Law on Public Education](#) in July 2019, it further undermined the ability of education professionals and parents to make individualised decisions serving the best interests of the child. In particular, by requiring all children to enter kindergarten from the age of 4 and to begin school at the age of 6 regardless of their personal circumstances, the state is unduly restricting its duty to ensure that each child enjoys the right to an education which is appropriate to their needs and level of development. If the aim of the amendment is to prevent parents’ from taking their children out of the public system, then the answer is not such draconian measures but better investment in state schools in line with Hungary’s right to education obligations.

Pedagogical expertise has also been further undermined by preventing the use of any alternative teaching materials beyond what is stipulated by the state. Central control over education is also increased by removing the right of teachers, parents and students to be consulted and express their opinion on appointments of their own institution heads, thereby risking decisions being made centrally on political grounds rather than local needs.

At the same time, none of the above amendments was accompanied by much needed additional resources for educational institutions. Hence teachers continue to suffer from excessive workloads and demands without the necessary support to ensure that all children can enjoy their right to quality education. This is particularly the case for pupils with special educational needs, disabilities and/or those experiencing socio-economic disadvantage. None of the above amendments was preceded by a consultation with affected stakeholders, despite their potential impact on millions of children, teachers, and parents.

Compounding their negative impact on the right to education, the new amendments fail to address the ongoing severe problem of segregation of Roma children, even though the European Commission [launched infringement proceedings](#) against Hungary regarding this issue in 2016. The [EC requested Hungary](#) to ensure that Roma children enjoy access to quality education on the same terms as all other children, and urged the government to bring its national laws on equal treatment as well as on education and the practical implementation of its educational policies into line with the Racial Equality Directive. However, in amending the Public Education Law, Parliament has failed to use a key opportunity to comply with both the Commission’s demands and a longstanding human rights violation.

In addition, the amended Law now allows the Minister to immediately remove the director of an educational institution if such “educational or informative activities are carried out in the institution that would potentially violate the right of the students’ rights enshrined in the Fundamental Law of Hungary”. This is particularly worrying in the context of Hungarian NGOs carrying out important human rights related educational programs in schools on a wide range of topics, such as rule of law and anti-discrimination, LGBTQ issues, rights of asylum-seekers and refugees or gender equality. In light of the ongoing governmental attacks against independent NGOs, and [increasing pressure](#) from [government-aligned media outlets](#) and [politicians](#), restricting NGOs’ sensitisation programs in schools risks even further self-censorship, limiting the legitimate human rights education activities of NGOs. Human rights education is an integral component of the right to education as well

as playing a key role in promoting human rights more generally, and instead of unduly restricting it, the government should be encouraging and supporting this essential civic education activity.

NEW CRACKDOWN ON ACADEMIC FREEDOM

In 2019, the Hungarian government continued its crackdown on academic freedom and has built a system in which scientific decisions on research activities and scientific planning are likely to be determined on a political and not on a scientific basis. In 2018, according to the [European University Association](#), it undermined institutional autonomy. It placed universities under the supervision of an administrator appointed directly by the government and forced the [Central European University](#) to move most of its programs from Budapest to Vienna. This year, the Parliament [passed a law](#) which structurally reorganized the network of research institutes of the Hungarian Academy of Sciences, [raising serious concerns](#) about whether the Academy can maintain its independence in the future. Fifteen academic institutes were removed from the Academy and placed in a newly established state research network. While the Academy has equal representation with the Ministry of Innovation in the supervisory board of the network, the head of the board appointed by the Prime Minister has a casting vote. The new law also established a National Science Policy Council that advises the government on innovation and research topics and oversees the research network. As members of this council are appointed by the Prime Minister and headed by the Minister of Innovation, and the Academy fell into an advisory position, many fear that, from now on, scientific decisions are likely to be determined on a political basis. The structural change deprives the Academy of important financial resources, including scholarships for scientists and funds for research projects; the Academy can lose its grant, enshrined in law, to finance its running costs. The Academy of Sciences has unanimously spoken out against the amendment. Its President, László Lovász concluded that the future scientific landscape is "unsuitable for the research community" and that the law violates European principles. On 2 September 2019, Academy President Lovász [submitted a constitutional complaint](#) to the Constitutional Court arguing that the legislation violates freedom of science and the right to property enshrined in the Fundamental Law of Hungary.

CIVIL SOCIETY REMAINS A TARGET

In July 2019, the European Commission (EC) [referred](#) Hungary to the Court of Justice of the European Union (CJEU) for the so-called "Stop Soros" laws, claiming that it is a violation of EU directives that the laws curtail asylum applicants' right to communicate with and to be assisted by relevant national, international and non-governmental organizations and that providing support to asylum applications has been criminalised. This is the second time Hungary is referred to the CJEU due to a law targeting civil society: in December 2017, the EC [referred](#) Hungary to the CJEU for the law stigmatizing NGOs receiving funding from abroad. In the meantime, domestic avenues for redress remain closed: in February 2019, the Constitutional Court of Hungary [decided](#) upon the complaint of Amnesty International Hungary that the new criminal offence of "facilitating illegal immigration", as introduced by the "Stop Soros" laws, is not unconstitutional *per se*. Thus, the laws targeting civil society (including the special immigration tax prescribing a 25% levy on financial support for activities and organizations "supporting migration") remain in effect, and so continue to violate the right to freedom of association and exert a chilling effect on the freedom of expression of CSOs.

Attacking human rights NGOs remained an important part of governmental communication and policy. For example, preceding the 2019 European Parliament elections, the Prime Minister [suggested](#) that Hungarians should vote in a way to "show Brussels that what happens in Hungary [...] will not be decided in Brussels by all kinds of parties pulling and pushing towards the left, or in the offices of George Soros-style 'civil society organizations'" – i.e. that people should vote on the governing party candidates. In July 2019, he [stated](#) that NGOs, "which are acting against the will of the majority", should not receive funds from the EU budget and that the government will go to "battle" over this in the upcoming period. The funding of NGOs also [came up](#) at a meeting between the Prime Minister and the U.S. President in May 2019, where PM Orbán tried, albeit

unsuccessfully, to persuade President Trump to pressure Norway into allowing the Hungarian government to take control over the distribution of the EEA/Norway Grants NGO Fund for Hungarian NGOs in exchange for Hungary not obstructing a U.S.-Norwegian-Hungarian arms deal.

ASYLUM: DENIAL OF FOOD AND DEPORTATION SHOPPING

The “Stop Soros” laws of 2018 introduced a [new rule](#) that declares inadmissible all applications by asylum-seekers who have not arrived in Hungary directly from a country where they were at risk of persecution. As a result of this unlawful restriction of the right to asylum, practically all asylum applications lodged after 1 July 2018 have been rejected. [Asylum-seekers are detained in two transit zones](#) on the border with Serbia while their cases are pending. Rejected adult asylum-seekers awaiting deportation [had been deprived of food by the authorities](#). In August 2018, eight asylum-seekers had to [seek interim measures from the European Court of Human Rights](#) to stop this inhuman treatment and start receiving meals. Starvations came to a halt shortly before the vote in the European Parliament on 12 September 2018 that triggered the launch of Article 7 proceedings. However, in February 2019 the “starvation practice” restarted. Since then, a further 19 migrants whose asylum claim had been rejected were deprived of food in detention. To date, the total number of persons who had been deprived of food is 27. On 22 July 2019, the European Commission decided to refer Hungary to the Court of Justice of the European Union concerning the asylum-related elements of the “Stop Soros” laws; moreover, it launched a new infringement procedure for the non-provision of food.

The automatic rejection of asylum claims not only results in food deprivation but [puts rejected people at risk of refoulement](#). As the only entrance to the transit zones is from Serbia, a country considered a “safe transit county” by Hungary, asylum applications are [not examined on the merits](#) since July 2018. Rejected applicants are ordered to be deported back to Serbia. However, since September 2015, Serbia has been refusing to readmit migrants whose asylum claim has been rejected from Hungary and the readmission transfers cannot take place. Even after Serbian authorities refuse to readmit an asylum-seeker, the Hungarian National Directorate-General for Aliens Policing does not conduct an in-merit examination of the asylum claim. Instead, it orders that applicants be deported to their country of origin, without any individualised assessment of the potential risks entailed in their return. Returning asylum-seekers to their country of origin without conducting an assessment of at least the risk of *refoulement* is in breach of the Refugee Convention, a practice that in May 2019 the UN Refugee Agency has deemed “[deeply shocking](#)”.

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Amnesty International Hungary www.amnesty.hu

Hungarian Civil Liberties Union www.tasz.hu

Hungarian Helsinki Committee www.helsinki.hu

Mérték Media Monitor www.mertek.eu