



Updated summary assessment on Hungary's compliance with the 4 super milestones aimed at restoring the independence of the judiciary

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The European Union is currently blocking EU funds to Hungary under three separate instruments:

- Under **the conditionality mechanism**, Hungary has committed to adopt **17 anti-corruption measures**. In December 2022, the Council found that the remedial measures adopted up to that point had significant weaknesses, and decided to suspend 55% of the budgetary commitments under three operational programmes with regard to Hungary, amounting to approximately €6.3 billion. The Council also prohibited, in relation to EU funds, entering into financial commitments with public interest asset management foundations.
- Regarding **the Recovery and Resilience Plan (RRP)**, the Council defined numerous milestones with a rule of law connection, including **27 "super milestones"** that Hungary has to fully and correctly fulfil before it can receive any payment under the EU's Recovery and Resilience Facility – €5.8 billion in total. A significant part of the milestones coincide with the measures required under the conditionality mechanism, while four super milestones are aimed at restoring the independence of the judiciary.
- Finally, the Commission found in relation to 10 operational programmes that Hungary fails to comply with the so-called **horizontal enabling condition** "effective application and implementation of the Charter of Fundamental Rights" (1) due to deficiencies around judicial independence (as also raised under the RRP), and so Hungary cannot access the respective EU funds until these are addressed. Under certain operational programmes, it is also set out as an obstacle to accessing funds that (2) the operation of public interest asset management foundations, many of them maintaining universities, (3) various elements of the Hungarian asylum system and (4) the Hungarian anti-LGBTQI+ law adopted in 2021 also violate the Charter.

**Under the latter two instruments, the requirements to release funds include 4 super milestones related to the independence of the judiciary.**

The Hungarian Parliament adopted a judicial package to fulfil these criteria on 3 May 2023<sup>1</sup> in a procedure that breached the rules on law making.<sup>2</sup> With this move, the government claims to have met all the relevant judicial milestones. The table below shows that in fact, only 1 super milestone can be deemed completely fulfilled.

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<sup>1</sup> See the detailed assessment of Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan prepared jointly by the Hungarian Helsinki Committee, Amnesty International, and the Eötvös Károly Institute: [https://helsinki.hu/wp-content/uploads/2023/05/Assessment\\_of\\_the\\_Judicial\\_Reform\\_052023.pdf](https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf)

<sup>2</sup> Farkas, Erika; Kádár, András: *Restoring the Rule of Law By Breaching It: Hungary's Judicial Reform and the Principle of Legality*, *VerfBlog*, 2023/7/10, <https://verfassungsblog.de/restoring-the-rule-of-law-by-breaching-it/>

DESCRIPTION	EVALUATION	EXAMPLES OF PROBLEMS WITH IMPLEMENTATION
<p><b>ENTRY INTO FORCE OF LEGISLATIVE AMENDMENTS TO STRENGTHEN THE ROLE OF THE NATIONAL JUDICIAL COUNCIL WHILE SAFEGUARDING ITS INDEPENDENCE</b></p>	<p><b>PARTIALLY</b></p>	<p>The Reform fails to ensure via transitional rules the effective exercise of the powers of the NJC to give a motivated binding opinion on regulations. The Reform should ensure the effective exercise of this power by providing, among the transitional provisions, for a maximum initial period during which the NJC endowed with new powers, should be able to review the regulations in question and exercise its right to consent. Furthermore, the Reform continues to allow the President of the National Judicial Office (NJO) to grant the position of presiding judge (<i>tanácselnök</i>) without an application procedure after the termination of the secondment of judges, allowing them to obtain a judicial leadership position circumventing the normal application system.</p>
<p><b>STRENGTHENING THE JUDICIAL INDEPENDENCE OF THE KÚRIA (SUPREME COURT)</b></p>	<p><b>PARTIALLY</b></p>	<p>The Reform, while formally states that the Kúria President cannot be reelected, does not change the current rules that allow a one-third minority of the Parliament to keep the Kúria President in office (as the Kúria President remains in office as long as their successor is not elected by a two-third majority). The Reform further narrows the pool of potential candidates for the President's position by modifications not required by the milestone. The Reform fails to provide concrete guarantees of cases being assigned to judges without human intervention because it does not specify the objective criteria based on which the automatic assignment should be carried out (e.g. the order of arrival as an objective criterion). There are no objective criteria for the establishment of the chamber proceeding in the case (which is not <i>per se</i> the same as the bench hearing the case according to the Reform), which makes it possible to manipulate the final composition of the bench hearing the case. The Reform cements the composition of the uniformity complaint chamber without providing adequate guarantees for its autonomy and professionalism in decision-making. The Reform maintains the possibility for members of the Constitutional Court who have already been appointed as judges under the previous rules to retain their judicial appointment and become active judges at higher courts (although not at the Kúria) without an adequate application procedure even years after the amended legislation will have entered into force.</p>
<p><b>REMOVE OBSTACLES TO REFERENCES FOR PRELIMINARY RULINGS TO THE COURT OF JUSTICE OF THE EUROPEAN UNION</b></p>	<p><b>PARTIALLY</b></p>	<p>The Reform abolishes the procedural obstacles preventing judges from making a preliminary reference, but fails to address the substantive obstacle leaving effective and applicable the binding precedential decision Bt.III.838/2019/11. of the Kúria, which declares that a preliminary reference shall be deemed unlawful <i>"if the request to initiate the preliminary ruling procedure does not concern the interpretation or validity of European Community norms"</i>.</p>
<p><b>REMOVE THE POSSIBILITY FOR PUBLIC AUTHORITIES TO CHALLENGE FINAL DECISIONS BEFORE THE CONSTITUTIONAL COURT</b></p>	<p><b>YES</b></p>	

In addition to the deficiencies that remain unaddressed at the level of the legal framework, the effectiveness and sustainability of the adopted changes largely remain to be seen. Two techniques of non-implementation can be observed at the legal level:

- Complying on the surface: for example, while the package excludes the possibility of *re-electing* the Kúria President, it leaves unscathed the provision that prescribes the extension of the mandate of the President until Parliament elects a successor with a two-thirds majority. As the mandatory retirement age of judges is not applicable to the President, the mandate holder can remain in position with full powers for an indefinite period by relying on a blocking one-third minority in Parliament.<sup>3</sup>
- One step forward, two steps back: for example, Constitutional Court justices who were appointed as (ordinary) judges under a 2019 amendment found to be problematic by the European Commission can still request their transfer to a higher court without following the normal application procedures. Although they can no longer be *directly* transferred to the Kúria, they may choose to take up a bench at any Court of Appeal (*ítélőtábla*), the second highest court instance, just below the Kúria.

In a joint analysis of the adopted text, we have identified five outstanding key issues that pose significant risks to the fulfilment of the judicial milestones: (i) the state of danger remaining in force; (ii) the role of the captured Constitutional Court; (iii) the role of the captured Kúria and its President as well as the Kúria's tool to control lower courts through the obligatory interpretation of the law; (iv) the National Judicial Council becoming the next target of capture; and (v) the risks threatening the freedom of expression of judges.<sup>4</sup> Although little time has passed since the adoption of the judicial package, two techniques of attempts to derail the changes prescribed in the new law can already be identified, as it was foreseen in the joint analysis:

- Sabotage: a key milestone concerned the case allocation system of the Kúria. While concerns were raised already at the level of the legal framework,<sup>5</sup> we welcomed as a significant development, the introduction of "an automated case allocation without human interference and with the use of an electronic system". However, through a series of freedom of information requests sent to the Kúria and the National Judicial Office, it transpired that no software has been updated or acquired to meet this requirement. The Kúria's response also pointed to the National Judicial Office as the entity handling the requested data. However, according to the National Judicial Office, "it is for the Kúria President to answer these questions".<sup>6</sup> It is in this

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<sup>3</sup> The European Commission has already found this to be an outstanding concern in its 2023 Rule of Law Report when stating that „the possibility to maintain the Kúria President in office after the expiry of his/her mandate could expose him/her to undue political influence.” [https://commission.europa.eu/system/files/2023-07/40\\_1\\_52623\\_coun\\_chap\\_hungary\\_en.pdf](https://commission.europa.eu/system/files/2023-07/40_1_52623_coun_chap_hungary_en.pdf) p. 7.

<sup>4</sup> See in detail in chapter V., 'Risks and Future Prospects' in Hungarian Helsinki Committee, Amnesty International, Eötvös Károly Institute: *Assessment of Act X. of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan in light of the super milestones set out in the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan of Hungary*. 22 May 2023, [https://helsinki.hu/wp-content/uploads/2023/05/Assessment\\_of\\_the\\_Judicial\\_Reform\\_052023.pdf](https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf)

<sup>5</sup> Only the general wording of the relevant super milestone has been transposed at several points of the package, e.g. the package states that cases must be allocated to judicial chambers on pre-established, objective criteria – without defining these objective criteria. The package also allows for deviation from these anyway unspecified objective criteria on a number of vaguely defined grounds. See more in detail in the joint assessment of the adopted package of the Hungarian Helsinki Committee, Amnesty International and the Eötvös Károly Institute, [https://helsinki.hu/wp-content/uploads/2023/05/Assessment\\_of\\_the\\_Judicial\\_Reform\\_052023.pdf](https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf) pp. 8-9.

<sup>6</sup> See the response (in Hungarian): [https://helsinki.hu/wp-content/uploads/2023/09/OBH\\_adatkeres\\_20230830.pdf](https://helsinki.hu/wp-content/uploads/2023/09/OBH_adatkeres_20230830.pdf) A detailed analysis on the non-implementation of the milestone related to case allocation, see the Hungarian Helsinki Committee's assessment of 26 September 2023: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/09/case\\_allocation\\_system\\_of\\_Kuria\\_20230926.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/09/case_allocation_system_of_Kuria_20230926.pdf)

light that the statement of the Kúria President, who is also the administrative leader of the apex court, that the new rules “can hardly be complied with” shall be understood.<sup>7</sup>

- Undue interference: for example, one of the main aims of the super milestones was the strengthening of the judicial self-governance body, the National Judicial Council. As the term of the current members of the Council is coming to an end in early 2024, the procedure to select the new members has already begun. Although the process is supposed to be fully confidential, the president of Hungary’s largest regional court in Budapest interfered with the election process by instructing court leaders to convene open plenary “consultations” at their judicial departments so that the judges could discuss who they would like to see as electors. Such gatherings are neither provided for by the law, nor have they been a practice in the past. Requesting judges to declare (or even to discuss) their voting intentions and preferences publicly, in the presence of their superiors, in an open plenary, serves no other purpose than to discourage those judges who are uncertain whether they want to stand as electors and to influence voters’ choice.<sup>8</sup> Despite concerns publicly raised by current members of the NJC, the “consultations” were held.

The existing shortcomings at the legal level, coupled with the attempts to derail the implementation of the adopted judicial package, question the government’s claims about full compliance with the super milestones. That properly assessing the actual implementation of the prescribed changes is needed prior to deciding on the release of EU funds is further supported by the European Commission’s assessment and the consequent decision of the Council of December 2022 regarding compliance with the milestones under the Conditionality Mechanism. At that time, both bodies were of the view that it is necessary to see the changes put to practice before it can be concluded that the relevant milestones have been fulfilled.

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<sup>7</sup> See <https://444.hu/2023/06/23/egymasnak-feszult-a-birosagi-rendszer-ke-t-ner-es-csucsvezetoje>. The Kúria President also claimed, among others, that the package’s aim was to make the Kúria disfunctional and that although it is his duty to ensure to attempt the bona fide operation of the new system, it is unstable as it will not operate on the longer run. See his interview „The extorted judicial reform and the Kúria”, Inforádió, 3 July 2023, <https://www.youtube.com/watch?v=EspkKuhO4Zo>

<sup>8</sup> See the detailed report from 23 August 2023: <https://444.hu/2023/08/23/maris-megkezdozott-a-kuzdelem-a-birosagokert>

For further details, see the respective analyses:

- On the judicial package:
  - Hungarian Helsinki Committee, Amnesty International, Eötvös Károly Institute: *Assessment of Act X. of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan in light of the super milestones set out in the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan of Hungary*. 22 May 2023, [https://helsinki.hu/wp-content/uploads/2023/05/Assessment\\_of\\_the\\_Judicial\\_Reform\\_052023.pdf](https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf)
  - Hungarian Helsinki Committee, Amnesty International, Eötvös Károly Institute: *Summary table of compliance of the judicial package with the milestones*. 23 May 2023, [https://helsinki.hu/wp-content/uploads/2023/05/Compliance\\_Judicial\\_Milestones\\_20230523.pdf](https://helsinki.hu/wp-content/uploads/2023/05/Compliance_Judicial_Milestones_20230523.pdf)
- On the case allocation issues at the Kúria:
  - Hungarian Helsinki Committee: *A brief assessment of the case allocation scheme and case allocation system of the Kúria based on the experiences of the period since the entry into force of the judicial reform*. 26 September 2023, [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/09/case\\_allocation\\_system\\_of\\_Kuria\\_20230926.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/09/case_allocation_system_of_Kuria_20230926.pdf)
- On the super milestone related to removing obstacles to preliminary references to the Court of Justice of the European Union:
  - Hungarian Helsinki Committee, Amnesty International, Eötvös Károly Institute: *Questions and answers concerning the reform expected under component C9.R17 of the Annex to the Council Implementing Decision on the approval of the recovery and resilience facility of Hungary*. 16 May 2023, [https://helsinki.hu/wp-content/uploads/2023/05/Super\\_Milestone\\_215\\_QA\\_20230516.pdf](https://helsinki.hu/wp-content/uploads/2023/05/Super_Milestone_215_QA_20230516.pdf)
- On breaching the rules of lawmaking during the adoption of the judicial package:
  - Hungarian Helsinki Committee, Amnesty International, Eötvös Károly Institute: *Letter to Commissioners Reynders, Hahn, Jourová on the adoption Hungarian legislation on judicial super milestones breaching lawmaking rules*. 2 May 2023, [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/05/joint\\_letter\\_EC\\_judicial\\_reform\\_20230502.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/05/joint_letter_EC_judicial_reform_20230502.pdf)
  - Farkas, Erika; Kádár, András: *Restoring the rule of law by breaching it: Hungary's judicial reform and the principle of legality*. 10 July 2023, <https://verfassungsblog.de/restoring-the-rule-of-law-by-breaching-it/>