



HUNGARY MOVING BEYOND RED LINES

DEVELOPMENTS RELATED TO THE RULE OF LAW

SEPTEMBER 2018 - JANUARY 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. Five months later, the risk of a serious breach of core European values has increased as the Hungarian government and the ruling party further reduced the space for dissent and holding government accountable. This was achieved through enacting or enforcing laws that curb fundamental freedoms and further increase the government's control over the media and the judiciary.

The Hungarian government is moving fast to breach the red lines drawn by the European Parliament to complete its illiberal state.

UNPRECEDENTED MEDIA CONCENTRATION

In November 2018, a new media empire was created by owners donating 476 media outlets, including websites, newspapers, television channels and radio stations with a combined revenue of about 190 million EUR in 2017, to the Central European Press and Media Foundation (KESMA), a foundation founded and run by PM Orbán's loyalists. Although the competent departments of the Competition Authority internally proposed the launching of a competition inspection procedure into the huge merger, this was prevented by Government Decree no. 229/2018 (5 December 2018), which declared the merger to be of national strategic importance. The Government justified its decision in two words: "public interest". Therefore, the merger was exempted from a competition investigation. The launch of KESMA resulted in an unprecedented concentration on the Hungarian media market, and the new entity further contains significant printing, distribution and publishing capacities. More than half of the revenue generated on the print newspaper market will be under the control of KESMA. The media market and media plurality are seriously distorted by this concentration, and fair economic competition is impossible under these circumstances. KESMA became an enormously powerful government mouthpiece.

STATE MEDIA IN ACTION

A series of protests erupted across the country and in Budapest in December 2018 in particular, after two controversial laws on overtime and on administrative courts were adopted amid contested and chaotic parliamentary circumstances: the Overtime Act and the Act on Administrative Courts. Neither the demands of the demonstrations nor the controversial nature of the adopted laws was discussed in the public broadcasting media. Following a demonstration in front of the Parliament on 16 December 2018, thousands marched to the headquarters of the public broadcaster (MTVA). Opposition MPs, using their privileges that allow them to enter any public building, arrived at the scene and requested a meeting with news editors. As no one was willing to meet them, MPs decided to spend the night in the building, waiting for the protesters' five demands, including a call for an independent public media, to be read out on air. Private armed security guards used force to remove the group of 13 MPs from the building; they literally threw out

some of them, one of whom had to be hospitalized. Despite the MP's express request to them, police were reluctant to intervene and stood by idly. The prosecutor's office refused to investigate the criminal complaints made by the MPs, instead, it launched an investigation against the complainant MPs for allegedly disturbing the operation of a public interest entity.

NEW ADMINISTRATIVE COURT SYSTEM THREATENS THE INDEPENDENCE OF THE JUDICIARY

On 13 December 2018, Parliament adopted two laws on administrative courts that will be set up by 1 January 2020. The new courts will decide on public administrative cases, thus their decisions will affect fundamental rights such as matters related to elections, violations by the police, asylum cases or the exercise of the right to peaceful assembly. Courts will also decide on issues with significant economic relevance: disputes over taxation and customs, media, public procurement, construction and building permits, cases of land and forest ownership, land and real estate public records or even market competition matters. There is a high risk that the new system of court organization will pave the way for political interference in the judiciary and will undermine independent adjudication.

The new system blurs the boundaries between the executive power and the judiciary, thus violates the principle of the separation of powers with several measures. The Minister of Justice will have an enormous room for manoeuvre in judicial appointments. This allows the Minister to control the selection process of judges from the publication of the call for applications up to the final decision, and thus to effectively have the final say in who gets to be a judge and who does not, without effective control mechanisms. The new law allows for persons from outside the judiciary to become judges at the administrative courts even with no prior judicial experience. If a significant number of new judges with administrative backgrounds will flood the administrative courts, the attitude and the experience of long-sitting judges may easily become irrelevant. As the law currently stands, it is possible that a person who is a subordinate of the Minister in the government administration becomes an administrative judge selected by the Minister, will adjudicate decisions of the very same Minister at the highest level of the administrative judiciary. The Law will allow for misusing disciplinary procedures against the critics of the court leadership, thus the work of judicial self-governance bodies may be jeopardized as well. Moreover, the Minister will have extremely broad powers over budgeting, regulations and internal investigations. While the ministerial administration of courts is not unprecedented in Europe, the reorganization of a relatively well-functioning judicial branch provides the executive with an opportunity to pack the administrative courts with loyal people without substantive control from judicial self-governance bodies.

The concept for the law was prepared behind closed doors giving the public only three workdays to comment on the proposal. The legislative process has been flawed and both domestic legislation and the Venice Commission's standards on the legislative process were breached on several occasions. Even though significant concerns about the rule of law were raised during the parliamentary debate, the governing majority pushed the bill through its law-making machinery at a vote which erupted into scenes of turmoil. While the government itself requested the Venice Commission's opinion on the Bills, Parliament adopted the laws well ahead of the opinion's publication, which is not expected before March 2019.

FREEDOM OF ASSEMBLY: NEW CHALLENGES AS PROTEST INCREASE

A new law on freedom of assembly came into force in October 2018, which has made it more difficult for Hungarian citizens to protest. While the law clarified several controversial issues, it created a new set of uncertain situations and very broad conditions for prior restraint. Since the law came into force, authorities have been increasingly relying on the uncertainties built into the law. Hence the police's decision in many cases will be challenged in court as broader powers for authorities often result in prior restraints of protests. At the same time, in December 2018, several organised and spontaneous demonstrations took place almost daily in Budapest in front of the Hungarian Parliament and the Hungarian public TV broadcaster's building as well as in several cities across the country. During these demonstrations,

the police's conduct was overall compliant with standards but several cases of disproportionate use of force and restraining measures were reported, which call for thorough and effective investigations. Several protesters were arrested and charged with serious crimes, including collective assault on a public official, based on only the testimonies of police officers without further evidence.

CRIMINALISATION OF HOMELESSNESS

The government has further stigmatised homeless people as criminals. It has been trying to declare rough sleeping illegal since 2011. Now the Seventh Amendment to the Fundamental Law and an amendment to the Petty Offences Act, both adopted in June 2018, ban homelessness by prohibiting 'habitual residence' in public spaces throughout the whole country, which seriously violates human dignity. While the Seventh Amendment requires all state bodies to protect Christian culture, it also conversely persecutes people without shelter. Until now, sleeping rough could only be deemed illegal by an act of parliament or by local decree in respect of certain parts of a public place. Under the new rules, if people „use the public place habitually” and they refuse to leave the premise after the police had ordered them to do so, refuse to be taken to a homeless shelter, or this has occurred on already three occasions, courts may punish them with community service work or confinement.

Until today, around ten people are known to have been prosecuted in petty offence proceedings since the new rules took effect. Three local courts have suspended ongoing cases in November 2018 and turned to the Constitutional Court to annul the amendment of the Act on Petty Offences referring to breaches of the right to dignity, freedom of movement and the freedom to choose the place of residence enshrined in the Fundamental Law and in the International Covenant on Civil and Political Rights (ICCPR).

LEGISLATION TARGETING FREE CIVIL SOCIETY

The 25% **special tax on immigration** that is levied on financial support for activities and organisations “supporting migration” came into force on 25 August 2018. The first deadline for declaring and paying the tax was 15 September 2018. A number of NGOs that had been identified by Fidesz politicians as the main targets of the tax responded to media inquiries that the tax did not apply to them. In response, the National Tax and Customs Administration issued a press release on 17 September 2018 that said, “certain organisations speak openly about circumventing the laws and tax norms”. The tax authority warned it would be strict in overseeing the tax law's implementation and emphasised that if an organization failed to pay the tax, it would also have to pay a fine. To date, no tax audits have been launched or sanctions imposed, but some NGOs were invited to a consultation with the Tax Authority.

On 14 December 2018, in a joint opinion, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights called on the government to repeal the tax law. The reasons put forward in the opinion concluded that due to its vagueness, the doubtful legitimacy of its aims and the excessiveness of state monitoring implied, the special immigration tax constituted unjustified interference with the right to freedom of expression and of association of the NGOs affected; would have a “chilling effect” on the exercise of basic human rights and on individuals and organisations that defend them; and would deter potential donors from supporting these NGOs and hinder civil society engagement in legitimate human rights' activities.

In its response, the Hungarian Government refused to consider the merits of the criticism. Instead, it dismissed the opinion by claiming that the Venice Commission had become an actor in the fight between pro- and anti-migration forces, siding with the former, and intended to put political pressure on Member States opposing migration. A high-ranking government official said that the Commission replaced its legal advisory role with “a political pressurising feature”, and made it clear that the Hungarian Government would not comply with the body's recommendations.

On 24 January, the European Commission stepped up the infringement procedure by sending a reasoned opinion to Hungary concerning what the government has named the “**Stop Soros**” legislation, effective since 1 July 2018, that criminalises activities that support asylum and residence applications and further restricts the right to request asylum.

ACADEMIC AND SCIENTIFIC FREEDOMS UNDER MORE PRESSURE

The Hungarian government continued its crackdown on academic freedom and university autonomy.

On 3 December, the **Central European University** (CEU) announced that it will launch all of its U.S.-accredited degree programs in Vienna in September 2019 because Hungary’s “Lex CEU” forbids it to accept new students after 1 January 2019. The move to Vienna would guarantee that the university can recruit students in time for the beginning of the next academic year. CEU emphasised that over the course of 20 months, it has taken all steps to comply with Hungarian legislation, launching educational activities in the U.S. that were certified by U.S. authorities. Nevertheless, the Hungarian government has made it clear it has no intention of signing the agreement that it negotiated over a year ago with the State of New York, which would ensure CEU’s operations in Budapest for the long term.

In October, **gender studies** were removed from a list of approved university master's programs by a government decree. The government cited as the rationale for the decree low enrolment numbers as well as the government’s ideological opposition to gender studies programs.

The government has intensified attempts to put the research institutes of the **Hungarian Academy of Sciences** under direct political control, by seeking more control over the research budget and claiming the academy’s network of research institutes needs to be restructured to boost excellence in research and innovation. The government insists that applied research should take precedence over disciplines in the social sciences and says funding for innovation and research should be separated. At the academy’s general assembly in December, its president called for a full evaluation of the entire research and innovation system in Hungary that is not limited solely to the academy. Many academics suspect the evaluation is a disguise for the government to take illegitimate action that would limit the freedom of researchers and force the institutes to stay out of topics that government policies oppose, such as gender studies or migration policy.

PROLONGED BREACH OF THE RIGHTS OF CHURCHES

Earlier versions of the **Church Law** were found to be very problematic: in 2013, Hungary’s Constitutional Court struck down significant portions of the law, and in 2014 the European Court of Human Rights ruled that the law violated religious freedom and the freedom of association. In December 2018, the Hungarian Parliament amended the Church Law, however, the changes failed to remedy the rights violations found by the courts. The law introduces a four-tier system for the legal status of religious denominations, and discriminatively regulates the status of organizations in the lower tiers, especially in the lowest tier. While courts have exclusive competence to register religious associations, the most controversial parts of the law will not change as Parliament will continue to decide which church may become an incorporated church, in a non-transparent, politically motivated manner and based on uncertain criteria.