

EU 2020: DEMANDING ON DEMOCRACY

*Country & Trend Reports on Democratic
Records by Civil Liberties Organisations
Across the European Union*

HUNGARY



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Hungary // Hungarian Civil Liberties Union (HCLU)



Key concerns

- Concerns about the independence of the judiciary persist
- Corruption still widespread, even more concerning during pandemic
- Toxic media environment: no independent media authority and greatly reduced access to information
- Civil society space: the 2017 NGO law is still in force
- Government taking advantage of the emergency regime to further weaken rule of law and civil liberties

This contribution is meant to briefly highlight some of the most relevant concerns as regards the state of the rule of Law in Hungary. HCLU has contributed to a full report on the situation in Hungary jointly drafted by a coalition of national civil society organisations, which is being submitted to the European Commission and published as a standalone report.

Justice system

Serious concerns about the independence of the judiciary are still valid. The most important new development in this field deepened the distrust among judges: the new president of the Kúria (the supreme court) was appointed despite the objection of the National Judicial Council. The new chief judge, which is very close to the government's ruling party, does not have a proven record of experience in the judiciary. Before his appointment, two acts of parliament were amended in order to allow for him to be elected. The laws were tailored to his personal parameters. Last year, the rule of law report of the European Commission mentioned these amendments as possible threats to judicial independence; the fact that Varga was elected to be the new chief judge is a piece of evidence that such concerns were well-founded.

Corruption

Hiding the misuse of public funds became easier in 2020 as an (intentional) outcome of an amendment to the Fundamental Law.

Over the past years, the government has outsourced national assets to foundations where the level of possible control over the use of these funds are much lower. Recent amendment to

the Fundamental Law cemented this practice: they made it nearly impossible for future governments to change or reverse this since this will need a two-thirds majority in Parliament.

The same amendments to the Fundamental Law narrowed the notion of “public funds”, further restricting the transparency of the use of public funds: the funds lose their public nature if they are going through non-governmental entities (companies, foundations). This amendment was already ruled upon in a judgment as preventing the transparency of certain transactions. Now the Fundamental Law itself enables those who want to hide corruption to do so.

During the first state of emergency (March–June 2020), a government decree defined a number of projects as especially important for the national economy and removed administrative restrictions for their implementation, while an act of parliament put some state properties into the hands of pro-government oligarchs. In another questionable step, the cabinet classified the details of a huge infrastructural project, the 5.4 billion USD Chinese-financed railway line. According to a report of the Corruption Research Center Budapest (CRCB), business circles close to PM Orbán won more public money during the epidemic without competition on an extremely high percentage.¹

Media environment and freedom of expression and of information

A recent research report carried out by HCLU examining the relationship between independent media and public authorities during the coronavirus pandemic in Hungary² shows that:

- Public information on the coronavirus pandemic has been centralized and restricted. Restrictions are most detrimental to independent media that provide daily news.
- Other sources of information have also been narrowed. Potential information providers are intimidated. Retaliation threatens those who leak information to the independent press.
- The amendment of the legal provisions of scaremongering as a criminal offence affects the majority of journalists.
- Discrediting independent media has been intensified and become organized. There is a regular smear campaign carried out in the public service media against critical voices, in particular against the independent media outlets, which immediately sweeps through the propaganda media machine.

Some further developments regarding freedom of information can be reported since the above-mentioned research: data on the pandemic are not available to the public; the national strategy on vaccination is equally

1 The report is accessible here: <http://www.crcb.eu/?p=2464>

2 See https://tasz.hu/a/files/coronavirus_press_research.pdf

not available to the public. The deadline for providing public information related to the pandemic was extended from 15 (+15) days to 45 (+45) days, and the authorities are taking advantage of this new opportunity for not providing timely information.

Additional developments regarding media freedom concern the politically imbalanced media authority's decision-making, which has become obvious when it selectively enforced laws against different media outlets: the very same facts and laws let them prolong the concession for using a radio frequency of a radio station while this was not the case for another radio station critical to the government. This is a piece of evidence that an authority meant to be impartial makes arbitrary decisions if the law enables them to do so.

Enabling framework for civil society

Hungary failed to comply with the judgment of the court of Justice of the EU (CJEU) no. C-78/18 (Transparency of associations). On the contrary, in 2020 it started to enforce the disputed law through a public foundation distributing EU funds, TEMPUS foundation. The foundation decided not to require compliance with this disputed law anymore, after the European Commission started infringement proceedings against Hungary for its failure to implement the CJEU judgment.

Impact of COVID-19

The main concerns regarding COVID-19 are related to the withholding of information, mentioned above. This led to the public's mistrust towards the government's handling of the pandemic, including the vaccination campaign, with detrimental consequences including for the fight against the virus. As a recent example, Hungarian authorities licensed Synopharm vaccine (originated from China), by-passing the European authorization process, without available documentation of the vaccine for the medical professionals, and just after the prime minister proclaimed the political expectation towards this authority to grant the licence to it. When a Member State of the EU declared that they will allow travellers to enter the country only if they are vaccinated with a vaccine that has a European licence, Hungary changed its regulation on the "vaccination clearance": it will not contain the name of the vaccine the traveller got.

Between 11 March and 18 June 2020 and since 3 November 2020 a state of emergency has been declared. The parliament is working but the Government rules by decree. It means that the Executive Branch is entitled to issue government decrees which may suspend the application of certain Acts of Parliament, derogate from the provisions of Acts of Parliament, and that the exercise of fundamental rights can be suspended or can be restricted even beyond a proportional limit. Government decrees affected several fundamental rights (e.g., a general ban of demonstrations is in place, transparency of data of public interest is more limited, health care

professionals are not allowed to quit their job), and sometimes these decrees are not clearly serving the fight against the virus. The government exploited the opportunities created by the special legal order and the political environment to the fullest extent. And when the state of emergency was lifted in the summer, several elements introduced during the special state remained in place (including, e.g., alterations to public law that further weakened constitutional and parliamentary control over the government). The government has created a new type of special legal order under which there is much less oversight over their activity; measures strengthening the influence of government-friendly economic actors and thus the ruling party's economic power also remained in place; steps aimed at severely restricting the financial space for manoeuvre of opposition-led local municipalities were not revoked; and similarly the decisions serving the purpose of silencing critical voices.