

The 13 billion Euro question: Do Hungary's judicial reforms fulfil the four judicial super milestones needed to unblock the cohesion funds?

The Hungarian government under prime minister Viktor Orbán has been deliberately undermining democracy, the rule of law, and fundamental rights for over a decade. It has systematically repressed judicial independence, minority rights, academic, and press freedom. As a result, the EU parliament declared Hungary no longer a functioning democracy in September 2022.

Since then, 27.8 billion Euros in Hungarian EU funding have been blocked via three separate instruments: Under the so-called conditionality regulation around 6.3 billion Euros from the regular EU budget to Hungary was frozen at the end of 2022. To release these funds, the Hungarian government must meet a total of 17 remedial measures. Additionally, Covid-recovery money worth 5.8 billion has been withheld under the Recovery and Resilience Facility (RRF) Regulation. The 17 remedial measures from the conditionality regulation and 10 additional needed reforms to strengthen the independence of the judiciary and audit and control mechanisms have been transformed into 27 so-called super milestones necessary to unblock the funds. Finally, the Common Provisions Regulation (CPR) ties the spending of EU money from eight funds to respecting the EU Charter of Fundamental Rights. The Commission concluded that Hungary currently does not meet this condition. The reasons are the lack of judicial independence, the so-called "child protection law" and "serious risks" for academic freedom and the right to asylum. The result: 22 billion Euros from the EU budget have been frozen - including the 6.3 billion suspended under the conditionality procedure.













In May 2023, the Hungarian government introduced a number of legislative reforms to meet the requirements set out under the different instruments. Specifically, the government requested the un-freezing of the 13 billion Euro blocked under the CPR connected with the independence of the judiciary. Shortly, the European Commission is expected to give its assessment if, and to what extent the Hungarian reforms fulfil the four judicial super milestones needed to unblock the 13 billion Euro.

We as the European Parliament's rule of law negotiators from EPP, S&D, Renew, and the Greens/EFA groups provide our assessment of the judicial reforms below. We come to the conclusion that not only are these reforms insufficient even if fully implemented, but also that more time is needed to assess their effect and successful implementation. **Specifically, we urge the Commission to wait with its decision at a minimum until AFTER the elections to the National Judicial Council (NJC) towards the end of November/beginning of December 2023.**

To conclude, the Hungarian government's self-assessment of having fully met the judicial super milestones is called into question by the reforms' legal shortcomings as well as obvious efforts to thwart its implementation. We therefore call on the Commission to allow for more time to monitor implementation and further developments regarding judicial independence in Hungary - at a minimum until after the elections to the NJC are completed. Our demand is underlined by the Commissions' own assessment and subsequent December 2022 Council decision to halt the unblocking of funds under the conditionality regulation until the prescribed changes were put into action.

The 13 billion Euro question:

Do Hungary's judicial reforms fulfil the four judicial super milestones needed to unblock the cohesion funds?

No.	Super milestone		Potential of reform to fulfil the milestone	Implementation / Outcome
213	Strengthen National Judicial Council (NJC) while safeguarding its judicial independence			 ¹
214	Strengthen Kúria's judicial independence	a) Reform election of Kúria president		
		b) Reform case allocation scheme		
		c) Amend functioning of the Kúria		
215	Remove obstacles to references for preliminary rulings to the ECJ			
216	Abolish review of final judgements by Constitutional Court			

¹ No guarantee for free and fair elections of NJC (next elections to be completed end of Nov./beginning of Dec.).

Detailed assessment

Colour code: adequate / fully implemented, partly adequate/implemented, inadequate/not (yet) implemented

No	Super milestone	Description	Potential of reform to fulfil the milestone	Implementation / Outcome
213	Strengthen National Judicial Council (NJC) while safeguarding its independence	<p>Strengthen NJC to counterbalance the powers of the president of the National Office of the Judiciary (NOJ).</p> <p>a) NJC shall make motivated binding decisions on individual decisions and on regulations.</p> <p>b) Access to documents, information, data related to administration of courts, biannual report of the NOJ president.</p> <p>c) NJC shall have budget autonomy, possess adequate resources; relieve NJC judges from adjudicating duties; judges-members of NCJ shall not be re-elected more than once, shall elect from themselves the NCJ chair, court presidents and vice-presidents as members shall not participate in deliberation and vote on matters relating to their administrative activities.</p> <p>d) Establish the right for the NJC to seize the competent court and the Constitutional Court to enforce its rights.</p> <p>e) NJC shall be consulted on legislative proposals affecting the justice system and can propose new legislation.</p> <p>f) Establish rules on the designation of ad interim court presidents through a pre-set order of positions.</p> <p>g) Prohibit the president of the NOJ from seconding judges to a higher court.</p>	<p>a) Law entered into force.</p> <p>b) Further guarantees needed. Reform does not ensure power of NJC to give a motivated binding opinion on regulations. Reform should provide for maximum initial period during which NJC can review and consent.</p> <p>c) Further guarantees needed.</p> <p>d) No criticism.</p> <p>e) Further guarantees needed.</p> <p>f) No criticism.</p> <p>g) No criticism.</p> <p>N.b.: Reform continues to allow NOJ President to grant the position of presiding judge ('tanácselnök') without application procedure.</p>	<p>Key powers transferred from NOJ to NJC BUT no guarantee for free and fair elections of NJC (next elections to be completed end of Nov./beginning of Dec.).</p> <p>Signs that elections are meddled with: Although process is supposed to be fully confidential, the president of Hungary's largest regional court in Budapest interfered with election process by instructing court leaders to convene open plenary "consultations". Requesting judges to discuss voting intentions publicly, in the presence of their superiors, influences voters' choice.</p> <p>It is absolutely crucial for the decision about the frozen funds to be taken AFTER the elections. The NJC can only do its work if it is independent!</p> <p>Until March, NJC is in "incubation period" (subordinate to NOJ and reliant on it for funding and staff). No funds should be unfrozen until it will be clear whether NJC has been able to establish its independence from NOJ in practice.</p>
214	Strengthen Kúria's judicial independence	<p>a) Amend rules of election of Kúria president</p> <p>i) 5 years of experience as a judge,</p> <p>ii) no re-election,</p>	<p>a) Reform prohibits re-election of Kúria president.</p> <p>b) No guarantee of cases being</p>	<p>a) Commission has not requested removal of irregularly appointed Kúria president (who still has 7</p>

		<ul style="list-style-type: none"> iii) NCJ gives motivated binding opinion on the candidate. b) Amend cases allocation scheme. c) Amend rules on functioning of the Kúria. <ul style="list-style-type: none"> i) Stronger power of judicial Council of the Kúria and Kollegium concerned. ii) Members of the constitutional court cannot be appointed to Kúria without application procedure. iii) binding NCJ opinion on Kúria vice president. iv) Strengthened powers of NJC also apply to Kúria president when acting as appointing authority. 	<p>assigned without human intervention due to lack of objective criteria. Possibility to manipulate final composition of the bench hearing the case due to lack of objective criteria.</p> <ul style="list-style-type: none"> c) i) No criticism. ii) Problematic Constitutional Court justices can no longer be directly transferred to Kúria, but may still take up a bench at any Court of Appeal ('ítélőtábla'), instance just below the Kúria. iii) Reform narrows pool of potential candidates by modifications not required by the milestone. iv) No criticism. 	<p>years on his mandate). Reform prohibits his re-election, but mandate can be extended until a successor is elected with $\frac{2}{3}$ majority. Meaning that $\frac{1}{3}$ blocking minority in Parliament can keep the Kúria president in office indefinitely (mandatory retirement age does not apply to the president).</p> <ul style="list-style-type: none"> b) New algorithm not applied by computers, case assignments still done by humans authorised to use numerous exceptions. No plans to automate process to remove human discretion. <p>Reforms not substantial enough to disrupt political control of panel composition or distribution of cases to specific judges.</p>
215	Remove obstacles to references for preliminary rulings to the ECJ	<ul style="list-style-type: none"> a) Remove possibility for Kúria to review legality of a judge's decision to make a preliminary reference to the ECJ. b) Remove any obstacle to a court to make a preliminary reference. 	Referenced sections in Criminal Procedure Court were amended, procedural obstacles of making a preliminary reference were removed.	Reform fails to address Kúria precedential decision undermining the mechanism of references to the ECJ and judicial independence.
216	Abolish review of final judgements by the Constitutional Court	Prevent public authorities from challenging final decisions before the Constitutional Court.	Direct appeal by the state to the Constitutional Court has been removed. No criticism.	Irrelevant in practice. Appeal was necessary to maintain government's ability to overrule Kúria judges. Now that Kúria is government-controlled, referral to (packed) Constitutional Court no longer necessary.

Generally too soon to tell whether the new law will have an effect at restoring judicial independence. In particular, the Commission will not have the information that would allow it to judge whether main reforms work in practice until **March**. Additionally, the reforms leave past damages to the independence of the judiciary without possibility of remedy. Hungarian courts are now composed of judges appointed in a politically tainted system for 12 years. Their positions are unaffected by the reforms and they are the only candidates eligible for promotion to key positions in the near future (especially because of new provisions on the qualifications for the top positions in the judiciary, limiting the set of judges eligible for promotion to those who have served a certain number of years in their current posts). Without an overhaul of the current judges, or at least a vetting process, the reform will not have the desired effects. We strongly advise for the introduction of a "milestone zero" to ensure a full screening of the judiciary and the restoration of damages already done.

For further details, please consult the following documents:

Rule of law-related 'super milestones' for Hungary (relevant milestones no. 213-216).

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/741581/IPOL_BRI\(2023\)741581\(ANN01\)_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/741581/IPOL_BRI(2023)741581(ANN01)_EN.pdf)

Analysis of the Hungarian Helsinki Committee, Amnesty International, and the Eötvös Károly Institute, part I.

https://helsinki.hu/wp-content/uploads/2023/05/Assessment_of_the_Judicial_Reform_052023.pdf

Analysis of the Hungarian Helsinki Committee, Amnesty International, and the Eötvös Károly Institute, part II.

https://helsinki.hu/wp-content/uploads/2023/05/Compliance_Judicial_Milestones_20230523.pdf

Analysis of the Hungarian Helsinki Committee, part III (updated version from October 2023).

<https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/update-judicial-milestones-09102023.pdf>

Explanations on a "Milestone Zero".

https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/HHC_judiciary_milestone_zero_28112022.pdf

Prof. Scheppele et al., Verfassungsblog.

(Forthcoming).