

The role of the CJEU in safeguarding EU values

Case of Hungary

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PROTECTION OF HUMAN RIGHTS IN EUROPE

- HR: Important legal area after the 2nd WW
- 1948: Universal Declaration of Human Rights by the UN
- **1950: European Convention on Human Rights**
- Incorporation of the HR into the national constitutional legal orders (DDHC, GG, HRA...)
- Main role played within the **Council of Europe and its ECHR**
- 1957: EEC → little on HR
- 1957/2009: EU conception through ECHR and CJEU
- 2009: Lisbon treaty → Charter of FR

HUNGARY (*Magyarország*)

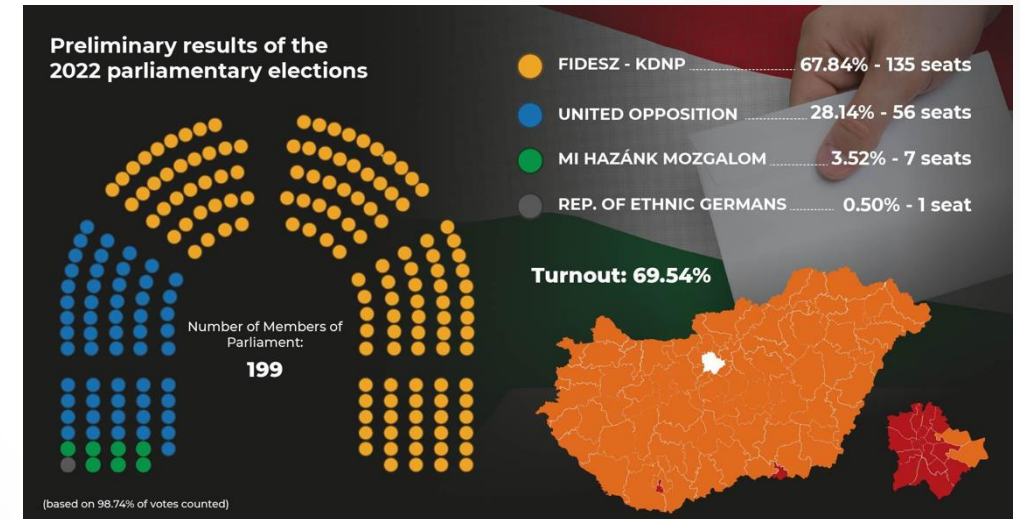
- 1945/1991: cold war NATO/Soviet Union
- 1989: 3rd Republic
- 1990: Council of Europe & ECHR
- 1991: Collapse of Soviet Union
- 1999: NATO
- 2004: European Union
- 2010: Electoral win of Fidesz & V. Orban as PM



POLITICAL CONTEXT IN HUNGARY

- Conservative Fidesz– Hungarian Civic Union: major conservative party
- 2010 election: Fidesz-KDNP won a two-thirds majority of seats

→ PM Victor ORBAN



I. THE PROTECTION OF HUMAN RIGHTS THROUGH EUROPEAN INSTITUTIONS

A. The major role of the Council of Europe

1) Institutional organisation of the Council of Europe

a. Creation of the Council of Europe

- Secretary General: Alain Berset
- Committee of Ministers (of foreign affairs)
- Parliamentary Assembly
- Congress of Local and Regional Authorities
- the European Court of HR.

b. The European Court of HR

- President: Marko Bošnjak
- Hungarian judge: Péter Paczolay
- In 70 years: more than 23,000 judgments
 - ➔ 1.500 concern Hungary





2) LEGAL CONVENTIONS OF THE COUNCIL OF EUROPE

a. Convention for the Protection of Human Rights and Fundamental Freedoms

- Signed on 4.11.1950, into force on 3.9.1953
- Right to life (art. 2), prohibition of torture (art. 3), prohibition of slavery (art. 4), right to liberty and security (art. 5), right to a fair trial (art. 6), no punishment without law (art. 7), right to respect of private and family life (art. 8), freedom of thought, conscience and religion (art. 9), freedom of expression (art. 10)...
- Creation of the ECHR



b. The other (224) Conventions of the Council of Europe

- 1957: European Convention on Extradition
- 1959: European Convention on Mutual Assistance in Criminal Matters
- 1961: European Social Charter
- 1983: Protocol No. 6 concerning the Abolition of the Death Penalty
- 1992: European Charter for Regional or Minority Languages
- 1995: Framework Convention for the Protection of National Minorities



EXAMPLES OF ECHR JUDGEMENTS

- *Soering c UK* [1989]: **extradition** of a German to the USA to face charges of capital murder violates Article 3 ECHR guaranteeing the right against inhuman and degrading treatment
- *Goodwin* [1996]: protection of **journalistic sources** (Art. 10 ECHR)
- *Loizidou v. Turkey* [1996]: rights of refugees to get their former **properties**
- *Leyla Şahin v. Turkey* [2004]: Turkish law which bans wearing the **Islamic headscarf** at universities is compatible with Art. 10 ECHR (expression)
- *Hirst v UK* [2005]: voting rights for prisoners in the UK
- *Bosphorus* [2005]: compliance of **EU law under ECHR** law
- *Lautsi v. Italy* [2009]: **crucifixes** in classrooms violate freedom to education
- *Mennesson v. France and Labassee v. France*: refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of **surrogacy treatment**
- *M.S.S. v Belgium and Greece* [2011]: non respect of Dublin EU regulation on **asylum seekers**
- *Lambert* [2015]: right to life Art. 2 ECHR → **euthanasia**

- *Baka v. Hungary* [2016] ([no. 20261/12](#)) → **independence of justice** (violation of Art. 6 & 10 ECHR)



- *Ilias and Ahmed v. Hungary* [2019] : asylum-seekers → asylum applications rejected (violation of Article 3 ECHR)



B. THE EUROPEAN UNION INSTITUTIONS FACING HUMAN RIGHTS' CHALLENGES



1) The role of the European Commission

- Michael McGrath, Commissioner (2024-2029) for Democracy, Justice, the Rule of Law and Consumer Protection
 - Migration and border management = 3.2 billion
 - Security & Defence = EUR 2 billion
 - Neighbourhood and the world = EUR 14.4 billion;

➔ Regulation (EU, Euratom) [2020/2092](#) of 16 December 2020 on a general regime of conditionality for the protection of the Union budget



2) The symbolic role of the European Parliament

- Sakharov Prize for Freedom of Thought (2024: María Corina Machado, leader of the democratic forces in Venezuela and President-elect Edmundo González Urrutia)
- Subcommittee on Human Rights (DROI) within the Foreign Affairs Committee



3) The European Union Agency of Fundamental Rights

- Collect and analyse law and data
- Provide independent, evidence-based advice on rights



II. EU COMPETENCES IN HUMAN RIGHTS MATTERS

A. The legal conception of Human Rights in EU Law

1) The EU legal basis for Human rights

a. The EU values of Human Rights in the EU treaties (Art. 2 EU)

→ Sanctions inside:

- Conditionality regulation: endangering the independence of the judiciary; failing to prevent unlawful decisions by public authorities; limiting effectiveness of legal remedies. → Case C-156/21 *Hungary vs Commission* [2022] dismissed
- Procedure against MS (Art. 7 EU) “suspension clause”

→ Sanctions outside: EU external action includes the protection of human rights (Art. 3§5 + 21 EU)

b. The adoption of the Charter of Fundamental Rights

Case C-204/21 *European Commission vs. Poland* [2023]: judgement of failure concerning the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court), whose independence and impartiality are not guaranteed, jurisdiction to hear and determine cases having a direct impact on the status of judges + the examination of compliance with the EU requirements relating to an independent and impartial tribunal previously established by law to be classified as a disciplinary offence

→ “Article 19(1) TEU, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, in the light of the case-law of the European Court of Human Rights concerning Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms”

Source: Aurélien Raccach, *EU vs. Poland: Preventing political control over judiciary*, in Diane Fromage, *Jacques Ziller: a European scholar*, 2022



B. EU judicial action for human rights violations

➔ Access to international protection

- Joined Cases C-643/15 and C-647/15 *Slovak Republic and Hungary v Council* [2017] (dismissed) ➔ relocation of migrants
- Case C-808/18, *Commission vs Hungary* [2020]: failure to fulfill EU obligations
- Dir. 2008/115/EC on common standards and procedures in MS for returning of illegally staying 3rd country nationals
- Dir. 2013/32 : international protection
- Limitation of number of applicants
- System of systematic detention of applicants for international protection in transit zones
- ➔ Case C-123/22 *Commission vs. Hungary* [2024]: lump sum of 200,000,000€ + 900,000€ per day

LIMITATION OF ACADEMIC FREEDOM?

- Case C-66/18 *Commission vs. Hungary* [2020]
- Central European University already established in Budapest
- Infringement to the GATS & WTO agreements
- Art. 13 CFR: Academic freedom