Former Minister of Justice László Trócsányi was instrumental in undermining rule of law in Hungary. Now he is Commissioner-designate for Neighbourhood and Enlargement. What could possibly go wrong?

Hungarian Helsinki Committee

In Hungary, the Minister of Justice, as a member of the government, is responsible for preparing the amendments of the constitution and numerous other laws, including the laws on the judiciary, and is responsible for designing and implementing the government's justice policy.

During the tenure of Mr László Trócsányi as Minister of Justice between 2014 and 2019, a number of developments in Hungary breached the Copenhagen criteria and do not comply with the mission letter of the President-elect of the European Commission Ursula von der Leyen. Ultimately, these and earlier steps led to the European Parliament vote on 12 September 2018 that triggered 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.

Entrusting Mr Trócsányi with the responsibility of enforcing the Copenhagen criteria would mean putting him in charge of promoting and safeguarding values that he was instrumental in undermining in Hungary as Minister of Justice and a member of the Hungarian government.

Relevant Copenhagen criteria

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- Ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.

Relevant points of the mission letter presented to Mr Trócsányi by the President-elect of the EC:

- "Speeding up structural reforms with a strong focus on the fundamentals of the rule of law"
- "Focus on the outstanding issues […] notably on the rule of law, the fight against corruption and the role of an independent media and civil society"

1. THREATS TO THE INDEPENDENCE OF THE JUDICIARY

1.1. Conflict between the President of the National Judicial Office & the National Judicial Council (2018–2019)

- "Checks and balances […] are seen to be under further pressure within the ordinary courts system. The National Judicial Council faces increasing challenges in counter-balancing the powers of the President of the National [Judicial Office]. Questions have been raised regarding the consequences of this for judicial independence." *(Council of the European Union, 2019)*
- "[T]he Hungarian Judiciary is facing a kind of "constitutional crisis" since May 2018 due to the activity of the President of the [National Judicial Office] who denies any collaboration with the National Judicial Council." *(European Association of Judges, 2019)*

1.2. Plans to set up a heavily government-controlled administrative court system (2018–2019)

- "The major drawback is that very extensive powers are concentrated in the hands of a few stakeholders and there are no effective checks and balances to counteract those powers." *(Venice Commission, 2019)*

2. HUMAN RIGHTS NGOS STIGMATIZED, STARVED & STRANGLED

2.1. Adopting the Russian-style Foreign Funded Organisations Act (2017)

- "[T]he Bill would […] discriminate against, delegitimize and stigmatize NGOs that receive all or part of their funding from abroad [and] would have a chilling effect not only on expressions of peaceful dissent but also on the legitimate work of NGOs and individual human rights defenders […]." *(UN Special Rapporteurs, 2017)*
- "The sanction of dissolution and striking non-compliant organisations off the court register risks destroying the very essence of the right to association protected by Article 11 of the European Convention on Human Rights." *(Commissioner for Human Rights of the Council of Europe, 2017)*
- "[T]he Law will cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination." *(Venice Commission, 2017)*
- "The [EC started] legal proceedings against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions in the NGO Law which indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. […] Hungary violates the right to freedom of association and the rights to protection of private life and personal data […]." *(European Commission on referring Hungary to the CJEU, 2018)*

2.2. Adoption of the "Stop Soros" Law and introducing the special immigration tax (2018)

- "The constant stoking of hatred by the current government for political gain has led to this latest shameful development, which is blatantly xenophobic and runs counter to European and international human rights standards and values. […] It continues and deepens the Hungarian government's assault on civic space […]." *(UN High Commissioner for Human Rights, 2018)*
- "The effect of the legislation introducing the special immigration tax represents […] a disproportionate interference with [NGO's] right to freedom of association. The special tax represents […] an unjustified interference with the right to freedom of expression of NGOs." *(Venice Commission & OSCE/ODIHR, 2018)*
- "The Hungarian legislation […] criminalising support to asylum applications […] is in violation of the Asylum Procedures Directive and the Reception Conditions Directive." *(European Commission on referring Hungary to the CJEU, 2019)*

3. VIOLATING THE HUMAN RIGHTS OF MARGINALIZED GROUPS

3.1. Automatic rejection of asylum-seekers, starvation in detention (2018)

- To date, 27 persons have been denied food while detained in the transit zone at the border. The European Court of Human Rights issued emergency orders in 17 cases.
- "[T]he new law and the constitutional amendment on asylum curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights." *(European Commission on launching a new infringement procedure against Hungary, 2018)*
- "The Commission finds that the detention conditions in the Hungarian transit zones, in particular the withholding of food, do not respect the material conditions set out in the Return Directive and the Charter of Fundamental Rights of the European Union." (*European Commission on launching a new infringement procedure for not providing food in detention, 2019)*

3.2. Legalising collective expulsions of migrants (2016)

- "The risk for shared responsibility of the Agency in violation of fundamental rights in accordance to Article 34 of the European Border and Coast Guard Regulations remains very high." *(Frontex FRO Monitoring Mission to Hungary, 2017)*
- "The Hungarian law does not comply with the EU's Return Directive as it fails to ensure that return decisions are issued individually and include information on legal remedies. As a result, migrants risk being returned without the appropriate safeguards and in breach of the non-refoulement principle." *(European Commission on referring Hungary to the CJEU, 2018)*

3.3. Automatic arbitrary detention of all asylum-seekers (2017)

- "Given the worsening situation of asylum-seekers in Hungary, I urge States to suspend any Dublin transfer of asylum-seekers to this country until the Hungarian authorities bring their practices and policies in line with European and international law." *(UNHCR, 2017)*
- "Hungarian legislation falls short of the requirements of the Asylum Procedures Directive […] The border procedure implemented by Hungary is not in compliance with EU law […] The Commission considers that the indefinite detention of asylum seekers in transit zones without respecting the applicable procedural guarantees is in breach of EU rules as set out in the Reception Conditions Directive." *(European Commission on referring Hungary to the CJEU, 2018)*

3.4. Criminalizing homelessness on a constitutional level (2018)

- "It is absolutely unacceptable that the Government would fail to discharge its duty under international human rights law to address and prevent homelessness and then have the audacity to treat the homeless population in the harshest of ways through fines they obviously cannot pay and the threat of imprisonment." *(UN Special Rapporteur on housing, 2018)*

4. Restricting Academic Freedom: Lex CEU

- "[T]he law as amended is not compatible with the freedom for higher education institutions to provide services and establish themselves anywhere in the EU. […] [T]he new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union and the Union's legal obligations under international trade law […]." *(European Commission on referring Hungary to the CJEU, 2017)*

5. Systemic Lack of Effective Measures against Corruption

- "GRECO concludes that Hungary has still only implemented satisfactorily or dealt in a satisfactory manner five of the eighteen recommendations contained in the Fourth Round Evaluation Report. […] It is a particularly disappointing to GRECO that in respect of twelve out the thirteen pending recommendations (with the exception being the information provided in respect of recommendation xvii) no further information was provided by the Hungarian authorities other than that no further progress had been made in almost a year and a half since the adoption of the Compliance Report." *(GRECO Interim Compliance Report of Hungary, 2018)*