



Weekly Briefing

Hungary external relations briefing:

Attacks on Hungary

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Attacks on Hungary

Throughout the history of the European Union, the distinction between the EU and the Member State level has always been unclear, and constant change has often made it impossible to know where to draw the line between EU and national competences. The question is of both practical and theoretical relevance. On the one hand, it is reasonable to assume that the EU is not just an economic integration and must therefore be based on common values. On the other hand, given the differences in historical heritage and level of development, it also makes sense to leave it up to countries to decide how to deal with certain issues. (See subsidiarity principle!). Current debates in the EU revolve around intervention by the European Commission in domestic affairs.

Introduction

The European Commission published its Rule of Law Report on 20 July 2021, in which two member states, Poland and Hungary, are heavily criticized. Most of the criticism is aimed at the weakness of anti-corruption measures, media freedom and problems in judicial systems. Although there is no direct link between the report and access to EU funds, media reports and various analyses often suggest the possibility of withholding these funds. Didier Reynders, EU Commissioner for Justice has already told the media that the European Commission will not support the Hungarian recovery plan and will not grant access to EU funds unless reforms are made in the judicial system and state guarantees are given for the proper investigation of corruption cases of European Anti-Fraud Office. At the same time, the European Commission launched an infringement procedure against Hungary (and Poland) for violations of LGBTIQ¹ rights. This briefing addresses the main arguments of the Hungarian government in these cases and the further consequences of the measures that the Hungarian government wants to take.

¹ LGBTIQ: Lesbian, Gay, Transgender, Intersexed, Queer

The Hungarian government's reactions

The Hungarian Government has issued a decree setting out the procedure to be followed regarding the funds of the Recovery Plan. The decree was published in Hungarian Bulletin on 23 July 2021. According to the regulation, Hungary will receive the EU funds only on the condition that no other conditions are attached to the use of the funds to Hungary than to other EU member states (prohibition of double standards). The decree argues that the European Commission is delaying approval of Hungary's economic stimulus package due to pressure from the European Parliament. It adds to the tension that the political pressure on the Hungarian government arises mainly because of the debate on a newly adopted Hungarian law that restricts NGOs' access to children in schools and kindergartens and upholds the rights of parents in regards to child education, specifically concerning matters of sex education. The government refers to Article 14 of the EU Fundamental Rights Charta, which states that "the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right." The decree goes on to say that the Hungarian government is using the non-discrimination clause of the Fundamental Right Charta as originally interpreted.

There are clear domestic political aspects to the debate, as the Hungarian government was heavily criticized for the law and only one opposition group party, Jobbik, voted for it in parliament. There is another element: the Hungarian government has initiated a referendum on the law. In our opinion, the referendum has two objectives: (1) the confirmation of the law also helps to strengthen the domestic political support of the government, (2) in the European political landscape, the positive outcome of the referendum can defend the position of the Hungarian government, because the headwind created by the steps that the Hungarian government has taken to protect national interests in the EU seems to be extremely strong this time.

Under the government's initiative, the referendum would raise five questions, all of which relate to minors, that is, children under the age of 18. The questions ask about voter support in various aspects:

1. Are you in favor of allowing media content about gender reassignment to be shown to minors?
2. Do you support allowing media content that is likely to influence the sexual development of children to be shown to minors without restriction?

3. Do you support that gender reassignment therapies should be accessible to minors?
4. Do you support that gender reassignment surgery should be advertised among minors?
5. Do you approve of allowing minors to attend sexual orientation training in public educational institutions without their parents' consent?

On 23 July 2021, the Hungarian Prime Minister underlined in his radio interview that the European Commission called for a change in child protection in a 54-page document, but education issues were the responsibility of member states, he stressed. He added that according to Brussels, there are rights that come before the rights of parents to educate their children, but the right to education of children is not a matter of freedom, but a matter of education. In the same interview, the Prime Minister stressed that the Hungarian government would continue with its economic stimulus programs even if the European Commission were to freeze EU funds for Hungary.

The reactions and arguments of the European Commission

On 15 July 2021, the European Commission launched infringement procedures against Hungary and Poland for violations of the fundamental rights of LGBTIQ people. In the case of Hungary, the European Commission argued that “The protection of minor is a legitimate public interest which the EU shares and pursues. However, in this case Hungary has failed to explain why the exposure of children to LGBTIQ content as such would be detrimental to their well-being or not in line with the best interests of the child”²

According to European Commission, the law violates the Audiovisual Services Directive, the E-commerce Directive, the Single Market Transparency Directive, the freedom to provide services and the free movement of goods. As these areas fall within the scope of EU law, the Hungarian Children Protection Law “also violate human dignity, freedom of expression and information, the right to respect of private life as well as the right to non-discrimination”.

In addition to the infringement proceedings, the European Commission is seeking a postponement of talks on Hungary's economic recovery plans. The EU commissioner for Justice Didier Reynders stressed that Hungary will only get European Commission approval for the country's recovery plans if judicial reforms are carried out and national authorities do conduct proper investigations into corruption cases. The Hungarian prime minister responded by saying

² EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people, July 15, 2021. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668

that “They can delay them [recovery plans], but can’t withhold them, so the government has decided to pre-finance the programmes that Brussels has already approved ...”

Summary

The reasons for the debates between the European Union and the Hungarian government are twofold. There has always been a debate between the Member States and the European Union bureaucracy (especially the European Commission) about competences. If you look back at the history of the EU, you can see how integration progressed and included more and more areas that belonged to the core competences of nation states. And this process made sense in economic and business-related issues, as globalization made it more sensible to manage certain issues at the EU level than at the Member State level. Over time, however, integration has become a self-propelling process that interferes with the sovereignty of states without need. The battle between the EU and Hungary is part of this debate. The emerging EU bureaucracy needs these fights to justify its existence and the need to bring new territories into the EU and place them under EU rule. At the same time, the Hungarian side is trying to draw the red lines that the EU should not cross, and the education and justice issues are among these areas.

The other reason for the debate is the spread of identity politics in the world. Identity politics is basically the political innovation of the left and liberal forces in the US and Western Europe. In the 1990s, these political forces abandoned their traditional issues (income equality, justice for workers, poverty, etc.) with which they could appeal to the broad social strata, and instead turned to smaller groups in society and tried to activate them politically by addressing their fragmented identity problems. The result became a growing tribalism in these societies. The cases of Hungary and Poland show us that the different historical backgrounds of these countries makes these societies less vulnerable to tribalism and identity politics.

The above reasons show us why the debates between the European Commission, the European Parliament and some Central European states are not temporary but permanent.