

Betrayal

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Various EU bodies have started to appreciate the threat the anti-constitutional challenge poses to fundamental rights and the entire EU. The Fundamental Rights Agency (FRA), the body primarily tasked with watching over fundamental rights, chose a different path and committed to collaboration and to legitimizing an illiberal regime. As earlier contributors to FRA reports on Hungary, we felt the responsibility to call attention to this unfortunate development: The FRA recently [committed](#) to rely on reporting from two governmental-controlled institutions, the National University of Public Service and the Hungarian ombudsperson.

You might not be blamed for not being aware of its existence during the past years' rule of law and human rights crises, but the EU has a dedicated institution focusing on human rights issues, the FRA. We have even been contributing to its reports, hoping that they might feed into European institutional responses to the anti-constitutionalist turn that readers of this blog are well aware of. What we have witnessed instead is an EU body with a clear mandate to protect fundamental rights becoming complicit in legitimizing an authoritarian regime. We are now in the uncomfortable position to sound the alarm bell as researchers who have been documenting the backsliding, including as experts in FRA reporting up to this decision, and who are committed to the values of democracy, human rights, and the rule of law. Although the EU and its various bodies are sworn to protect these values too, the FRA made a move that shows such manifest complicity with the Hungarian regime that we could not remain silent.

We have to start with some background: The main task of the FRA is to conduct EU-wide research on various issues related to human rights protection. In order to be able to accomplish this, the FRA selects contributors to their reports via a multi-annual framework. Such a [call](#) was published in 2022 for the upcoming four-year reporting period. One bidder from Hungary this time was the National University of Public Service which also listed the Office of the Commissioner for Fundamental Rights (the Hungarian ombudsperson). Both institutions have a track record of supporting backsliding that undermines fundamental rights, and both are entities captured by the Hungarian regime. The National University of Public Service is a higher education institution under close government control. Under the law, the person ultimately responsible for decisions related to the maintenance, administration and management of the NUPS is "the political director of the Prime Minister" (Art. 4 of [Act No. 132 of 2011](#)). This institution is known for receiving disproportionate funding, [partly from EU sources](#), in an environment where academia has been extremely [underfunded](#). [Reports](#) range from bogus projects legitimizing the government (under the label of 'good governance') to ousting colleagues with critical views or blocking promotions on similar grounds.

The Hungarian ombudsperson is a regime loyalist who fails to live up to the mandate of the institution he leads. The Hungarian Helsinki Committee reported on the systemic

failures in [a detailed analysis](#). Based on these developments, the Global Alliance of National Human Rights Institutions (GANHRI) has downgraded the status of the Ombudsperson's office (Office of the Commissioner for Fundamental Rights) to "[B – partially compliant](#)" under the UN's Paris Principles. Similar issues have been noted by the Commission, in its 2022 Rule of Law report on the Hungarian situation: "[Concerns as regards the independence of the Commissioner for Fundamental Rights have been aggravated by the takeover of the responsibilities of the Equal Treatment Authority by the Commissioner.](#)"

In this light, it is surprising and disturbing to see the Fundamental Rights Agency picking these institutions specifically to provide information on the fundamental rights situation in Hungary. This could have been an omission, even if a major one, from the institution tasked with providing '[objective](#)' and '[reliable](#)' information on the situation of fundamental rights in Member States. After all, we have all been witnessing how Hungarian developments took many EU institutions off-guard. But it has become clear that this was not an oversight: the FRA confirmed and stood by its decision even after these circumstances were brought to its attention through repeatedly submitted observations urging reconsideration. This comes at a time when other European bodies have realized, after over a decade of backsliding, the threat the Hungarian regime poses to the functioning of the EU. EU conditionality specifically includes the denial to recognize higher education institutions with compromised autonomies (adopted under [the rule of law conditionality decision on Hungary](#) and referring to [conflicts of interest and the transparent use of EU support](#)) for the purposes of EU academic support (Horizon and Erasmus programs). These concerns apply a fortiori to the National University of Public Service, which is under direct government control. If higher education institutions with politicians in their management and supervisory bodies cannot be considered independent enough to qualify as universities, this is undoubtedly the case with an entity under the command of the political director of the Prime Minister.

The FRA decision might have been motivated by budgetary considerations; the National University of Public Service has been lavishly funded from public (EU and national) funds, which allows for a lower bid than actors without similar backgrounds. (By the same logic, state funding could allow one to make a bid asking for no or symbolic compensation, leading to further savings.) However, this would only confirm that fundamental rights concerns are relegated to an, at best, secondary role under [the 'best price-quality ratio' that the call commits to](#). Add to this that the setup also goes against core EU principles on state aid: if would-be contractors can offer a fraction of the price because they receive funding from somewhere else, that undermines the idea of fair competition. The decision also indicates a structural problem that goes back to how the FRA functions, the direct influence of Member State governments, including the Hungarian one. The [Management Board](#) member from Hungary is Gergely Deli, rector of the National University of Public Service, which also raises conflict of interest questions. The rector, in his [declaration of interest](#) posted on the FRA website, declares that he has no interest to the choice of contractors, also specifically "in calls regarding the selection of FRANET National Focal Points" ([para. 4](#)).

What the decision reveals about the FRA is also of concern because the problem can be contagious: As we have seen with other illiberal innovations, governments can learn from each other. We think that, after last year's update to FRA regulations, more efforts are necessary from the Council to ensure that the Agency is capable of fulfilling its original mandate, even under a minimalist program, far from the role envisaged for the FRA as a possible [credible guardian of EU fundamental values](#). Note, for example, that the 2020 conditionality regulation specifically mentions the FRA: "The Commission could consult the European Union Agency for Fundamental Rights... if necessary for the purpose of preparing a thorough qualitative assessment." ([para. 16](#)) The FRA undermined its own main mandate, which would have been to provide expertise to European decision-makers as they seek to make sure fundamental rights are protected. As it was defined in the relevant Article 2 of the Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights:

"The objective of the Agency shall be to provide the relevant Union institutions, bodies, offices and agencies and the Member States when implementing Union law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights."

The present account does not rest on the implicit view that EU institutions are responsible for instigating systemic changes in Hungary. True, as concerned Hungarians, we couldn't not notice how the financial and other support from EU membership has been contributing to the consolidation of the Hungarian regime. However, other bodies, from the Court through the Parliament to, ultimately, the Commission and the Council, have all started to take note of this common European responsibility. It is alarming to see the EU body primarily tasked with watching over fundamental rights failing utterly.

Disclaimer: As indicated in the post, the authors were contributors and reviewers in the past to FRA reports, prior to the current decision, and were involved as applicants in the appointment in question.

Note by the editor: *The FRA was given the opportunity to comment on these allegations. This is their answer:*

„Dear Max,

Please find below a comment from the EU Agency for Fundamental Rights (FRA):

Public Procurement

The EU Agency for Fundamental Rights (FRA) has robust public procurement procedures and internal controls in place, as repeatedly confirmed by the regular audits carried out by the European Court of Auditors and the Internal Audit Service of the European Commission.

Under EU rules, private and public economic operators can bid for FRA calls for tenders. These tenders follow the basic principles of EU public procurement. The award criteria for EU procurement procedures are normally composed by two criteria, quality and price (in the EU jargon, most economic advantageous tender), weighting different percentages; in this specific case 60/40 respectively. The bidder obtaining the highest points combining these criteria wins the tender.

If during the evaluation, the evaluation committee considers that the financial offer is “abnormally low”, they proceed to an assessment of the offer and, if needed, the bidder may be requested to provide necessary justification of its prices.

Conflict of interest

FRA has in place comprehensive rules for prevention of conflict of interest concerning its Management Board and Scientific Committee Members.

The Agency runs on a regular basis a process for assessing the declarations of conflict of interest submitted by the members of the Management Board, which are updated annually or whenever there is any substantial change to the individual situation of a member.

This procedure is currently ongoing. Any potential cases of conflict of interest, or risks thereof, are discussed and decided during the regular meetings of the Management Board. The next meeting will take place on 25 and 26 May.

Independence of MB Members

Regarding the independence of FRA Management Board members – FRA’s Management Board brings together people with experience in the management of public or private sector organisations and knowledge in the field of fundamental rights from the Member States, the European Commission and the Council of Europe.

It is composed of:

- one independent person appointed by each of the 27 Member States of the EU and by each of the States holding observer status*
- one independent person appointed by the Council of Europe*
- two representatives of the Commission.*

Please, also note that any information delivered by FRANET to FRA is checked for quality by FRA experts.

We hope our comment answers your request.

Best regards,

[Signature]“

