

# Hungary is sleepwalking into an authoritarian state. But the European Union is limited in the pressure it is able to exert.

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Hungary is a member of the European Union (EU), but the country is sleepwalking into an authoritarian state, argue [Tamas Dezso Czigler](#) and [Izolda Takacs](#). In their third post on Hungary's government, they explore measures that the EU could take in order to sanction the country, some which may be more effective than others.



In our last two posts, we outlined how Hungary is now a [distorted democracy](#) on the [brink of autocracy](#). The European Commission now needs to step in. But can the European Commission protect Hungary and its people? And if so, why has nothing happened?

It should be noted that we have had our doubts about the effectiveness of European Union (EU) fundamental rights policy, but we are more optimistic now. EU fundamental rights legislation is a uniquely organized body of law that has evolved over three major milestones in past decades. First, the member states of the EEC became members of the Council of Europe (CoE), an independent organization with a sole catalogue on fundamental rights (the European Convention on Human Rights) and an independent court (the European Court of Human Rights – ECHR). The second breakthrough was the incorporation of references to the mandatory character of the European Convention on Human Rights into the Maastricht Treaty (and thereby into the Treaty of the European Union). As it was expressed:



*“the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”.*

The third and final milestone, practically topping all previous efforts, was the adoption of the Charter of Fundamental Rights of the European Union. The Charter has binding power because of a reference put into the Treaty on the European Union (TEU).

In addition, at its present stage, Article 2 of the TEU itself declares that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to Member States' societies in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women prevail.

What, then, is the issue with exercising our fundamental rights? In our opinion, the problem is that the European system was created with “ideal” states in mind. There have been, without a doubt, occasional fundamental rights violations – just recall the case of [Romanian Roma sent home from France](#), the required regulations about the Roma minority absent from the Italian constitution, or the case of the [Slovak language act](#) which banned Hungarians from speaking their own language in government offices – even if the clerk and the customer were both Hungarians.

The EU dealt with most of these issues using awkward compromises. Occasionally it seemed as though every national government would be allowed the facility to restrict human rights. The first scandal regarding fundamental rights broke after the entry of Jörg Haider, the far-right politician and his party into the Austrian government. At issue was the question of whether democratic rights would suffer any damage in Austria if a

far-right wing party gained some power. After considering the facts, the EU decided that the fundamental rights in Austria had not been in danger.

A protective system was established, although which has never been used in practice. The cornerstone of this system is the often-cited Article 7 TEU, stating that the Council of the European Union may determine that there is a clear risk of a serious breach of fundamental rights by a Member State. In addition, if the harm has already occurred, the European Council may determine the existence of a serious and persistent breach. In this case the rights emanating from the EU membership of the country may be suspended, including its right to vote in the councils. However, there is no option within the current set of rules to exclude the member state from the EU. Unless a member state itself wants to leave the Union, it cannot be expelled, based on primary legal sources. In order to be able to exclude a country, the founding treaties would have to be modified, requiring the approval of all member states.

At the moment, a likely more efficient method of legal defence than protecting fundamental rights is the set of proceedings currently in place against Hungary for infringement of EU law – law that ought to be respected by all member states, having been accepted when they joined the Union. Infringement proceedings have three stages: first, the Commission investigates, then the ECJ makes a judgment, and subsequently the Commission and the ECJ co-operate to enforce the judgment. We believe that Hungary has breached EU law in several instances. Four proceedings are in progress: one each in connection with the position of judges, the ombudsman, the central bank, and the possible discrimination against foreign companies by the state voucher system.

In addition to the actions taken under Article 7 and the infringement proceedings, there is a third option available for dealing with Hungary: starting in 2013, the EU intends to withhold financial support by way of the Cohesion Fund, even though in our opinion, Hungary is not in the worst economic situation, and fiscal policy in many other member states equally leaves a lot to be desired. Italy is on the brink of bankruptcy, not to mention the situation in Greece. Yet, from the EU point of view, withholding funds has two advantages: firstly, it serves as an example to others at a historically important time that if a state does not respect economic regulations, it will suffer the consequences. Secondly, the pretence of avoiding the application of the aforementioned Article 7 is allowed to lurk in the background. The result is that economic sanctions have been brought in a political case, because EU institutions were afraid to apply Article 7 and proceed against Hungary for potential infringements of human rights: not because Hungary's fresh legislation is kosher – indeed, the new Hungarian constitutional system as we have detailed may well be a danger to democracy. Member States simply do not want to be next on the firing line.

What about the Charter of Fundamental Rights? Does it have a direct effect on and supremacy over the new Hungarian laws? The Charter of Fundamental Rights only deals with EU law and with the functioning of EU institutions. It does not overwrite the Hungarian constitution in the way it was hoped by parts of Hungarian media. While the Charter does compel EU institutions to be decent, this does not help us at all. Indeed, as we have seen, a “semi-democratic” country can execute a successful presidency of the EU, which consists largely of the background work of coordinating the regulations to be accepted, setting the agenda of talks, and so on. Hungary's completed its presidency without hiccups, even if it did not have major significance.

So for now, the EU's tools – blunted due to repeated political compromise – are inadequate. Moreover, in the middle of an economic crisis, it cannot wage a fight on 27 fronts. Hungary's is that the country's democracy is harmed and the people – bar a few scholars – are not really interested in the problem. Others are fearful, as they have been many times before throughout the course of history.

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*Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.*

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