



EUROPEAN COMMISSION

Complaint – Infringement of EU law

Complaint form for breach of EU law

https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/

Information about the complainant:

Citizens “on the Track” for the Livable Environment Association
(Polgárok a Pályán az Élhető Környezetért Egyesület - POPÉK)
popek.egyesulet@gmail.com

Authority or body you are complaining about:

Government of Hungary, Arany János utca 25. 1051, Budapest

1.1.3 National measures suspected to infringe Union law

- Government Decree No. 381/2023. (VIII. 10.) Korm. on the special application of rules on defence and military construction during a state-of-danger - Resolution No. 2572-135/2023 of the Ministry of Defence on the designation of the "Southern Circle Rail" of Budapest (Déli Körvasút) development project as an essential defence object - Resolution No. JN/59/08615-48/2023. of the Government Office for Jász-Nagykun-Szolnok County on the issue of the environment permit for the construction of the Southern Budapest Railroad Ring. The environmental authorisation of the construction of the so-called "Southern Circle Rail" (This is the “Déli Körvasút”, the track extension project of the Kelenföld-Ferencváros railway line in Budapest) – which involves a 50% expansion of the existing capacity – has been going on since December 2019. In view of the repeated gross violations of the EU environmental impact assessment directive (2011/92/EU) and the implementing Hungarian legislation by the permitting authority, affected local governments and NGOs have successfully blocked the project before Hungarian courts. In order to overcome local opposition, the Government, in August 2023, adopted a decree (Government Decree No. 381/2023. (VIII. 10.) Korm.) that enables the designation of civilian infrastructure as military objects. Such designation reduces the rights of affected parties to take part in the authorisation as well as their effective judicial protection. Based on Government Decree No. 381/2023. (VIII. 10.), the Ministry of Defence designated the fully civilian "Southern Circle Rail" as a military object based on the sole fact that in case of military mobilisation it might also be used for military purposes. No technical parameters of the project or the authorisation dossier were modified. The sole publicly admitted purpose behind the arbitrary reclassification of the project was to create a fait-accompli situation around the project. As a result, the existing authorisation dossier (that commenced as a civilian project) was transferred to military administration, which issued, on 22 November 2023, an authorisation for the project with limited judicial protection (no interim measure can be sought in court). In must be

pointed out that the "Southern Circle Rail" receives or is planned to receive funding from multiple EU sources (see below).

EU law you think has been breached

-Treaty on the European Union: principles of rule of law (Art. 2) -Charter of Fundamental Rights: principles of rule of law, environmental protection (Art. 37)., right to an effective remedy and to a fair trial (Art. 47.) -Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment -Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget

1.1.4 Problem description

1) Case summary The Hungarian government have employed multiple legislative and political techniques to intervene in a high-profile rail development project ("Southern Circle Rail") authorisation with a view to circumventing the correct application of relevant EU procedures, notably the environmental impact assessment procedure. In particular, in August 2023 the government adopted a legislation as a "state-of-danger" measure (a proxy for governing by decrees with reference to the war in Ukraine) that enabled the classification of any civilian project as defence infrastructure at will. A few days later the on-going, fully civilian, "Southern Circle Rail" project was reclassified as a military project, transferred to military administration to another part of the country. The military authorities quickly issued the so-called environment (EIA) permit irrespective of incoming NGO comments.

2) Reasons The authorisation of "Southern Circle Rail" violates EU law on multiple accounts as follows: violation of the principles of rule of law: by way of adopting a special legislative vehicle that enables the designation of civilian projects as military ones and reduces citizens' rights of access to decision-making and justice, and reclassifying an on-going rail authorisation project as a defence project without any change in the use or parameters of the project the Hungarian government violated rule of law principles enshrined in Art. 2 TEU, the Charter of Fundamental Rights and the rule-of-law conditionality regulation (non-transparent, unaccountable law-making process, lack of legal certainty, arbitrariness of the executive power and removal of effective judicial protection), violation of the EIA directive: designation of the essentially civilian "Southern Circle Rail" as a military project runs counter to the EIA directive and the jurisprudence of the CJEU, the content of the authorisation is in contravention of the substance of the EIA directive, violation of EU funding rules: the project receives financial support from multiple EU funds. Violation of rule of law principles and the EIA directive amount to a breach of the legislation governing the Cohesion Fund and the Connecting Europe Facility. The Hungarian Government has already applied to the European Commission for CEF2 (Connecting Europe Facility 2) support with the "Southern Circle Rail", but it was rejected due to the unclear legal status of the project. Due to our information, the application is being resubmitted for CEF2 financing.

Does the Member State concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?: Yes

Does your complaint relate to a breach of the EU Charter of Fundamental Rights?: Yes

Please explain how EU law is involved and which fundamental right has been breached:

- Principles of rule of law (preamble, as interpreted by Regulation 2020/2092, i.e. principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law,
- Environmental protection (Art. 37), - Right to an effective remedy and to a fair trial (Art. 47.).

1.1.5 Supporting documents

List of documents:

- Government Decree No. 381/2023. (VIII. 10.) Korm. on the special application of rules on defence and military construction during a state of danger
- Resolution No. 2572-135/2023 of the Ministry of Defence on the designation of the Southern Budapest Railroad Ring development project as an essential defence object (If the Ministry of Defence releases the document.)
- Resolution No. JN/59/08615-48/2023. of the Government Office for Jász-Nagykun-Szolnok County on the issue of the environment permit for the construction of the "Southern Circle Rail" of Budapest.
- EU legal analysis by Citizens "on the Track" for the Livable Environment Association (Polgárok a Pályán az Élhető Környezetért Egyesület - POPÉK)

1.1.6 Previous attempts to solve the problem

Have you already taken action in the Member State concerned to try to solve this problem?: Yes

What action have you already taken?:

Administrative action (e.g. appeals, complaints to the relevant public authorities (central, regional or local), complaints to a national or regional ombudsman), Yes

Legal action (I have already gone to court in the Member State concerned to solve this problem) Yes

Administrative - Please explain what type of decision(s) resulted from this.:

We filed a complaint to the Hungarian Constitutional Court and the Ombudsman also, but their investigation could take years, while the government, taking advantage of all this, has already started the implementation of the investment ('Southern Circle Rail'), causing irreversible damage to the environment.

Legal - When can a decision be expected?:

The Capital Court (Budapest) has already annulled the environmental protection permit of the 'Southern Circle Rail' twice (2022 and 2023: 110.K.703.194/2020/79., 109.K.704.523/2022/41.), but the government office always reissues it: most recently on November 24, 2023. (JN/59/08615-48/2023.)

We went to court again on December 22, 2023. So, the new environmental protection permit of the 'Southern Circle Rail' is currently under litigation in Hungary (among the plaintiffs are the Municipality of Budapest XI. district and two civil organizations).

Have already contacted any of the following EU institutions or services dealing with problems of this nature?:

European Commission: Ares (2023)743639, Ares (2022)664096, Ares(2021)7166880, Ares (2021)5811338 and Ares (2021)5572903

Are you aware of any action in the Member State concerned covering the issue you raise in this complaint?: No