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DRAFT REPORT

on the situation of fundamental rights: standards and practices in Hungary
(pursuant to the European Parliament resolution of 16 February 2012)
(2012/2130(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Rui Tavares

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‘Haza csak ott van, hol jog is van’

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)

(2012/2130(INI))

The European Parliament,

- having regard to Article 2 of the Treaty on European Union (TEU), setting out the values upon which the Union is founded,
- having regard to Articles 3, 4, 6 and 7 of the Treaty on European Union (TEU), Articles 49, 56, 114, 167 and 258 of the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR),
- having regard to its resolution of 16 February 2012 on the recent political developments in Hungary¹ instructing the Committee on Civil Liberties, Justice and Home Affairs, in cooperation with the European Commission, the Council of Europe and the Venice Commission, to follow up the issue of whether and how the recommendations set out in that resolution have been implemented, and to present its findings in a report,
- having regard to its resolutions of 10 March 2011 on the media law in Hungary² and of 5 July 2011 on the Revised Hungarian Constitution³,
- having regard to its resolution of 15 December 2010 on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon⁴,
- having regard to its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010 - 2011)⁵,

¹ Texts adopted, P7_TA(2012)0053.

² Texts adopted, P7_TA(2011)0094.

³ Texts adopted, P7_TA(2012)0315.

⁴ Texts adopted, P7_TA(2010)0483.

⁵ Texts adopted, P7_TA(2012)0500.

- having regard to the Commission Communication on Article 7 of the Treaty on the European Union entitled ‘Respect for and promotion of the values on which the Union is based’ (COM(2003) 606 final),
- having regard to the Council and Commission statements presented at the plenary debate held in the European Parliament on 18 January 2012 on the recent political developments in Hungary,
- having regard to the statements of the Hungarian Prime Minister Viktor Orbán, who addressed the European Parliament on 18 January 2012 in the plenary debate on the recent political developments in Hungary,
- having regard to the hearing held on 9 February 2012 by the Committee for Civil Liberties, Justice and Home Affairs,
- having regard to the report of a delegation of Members of the European Parliament on their visit to Budapest from 24-26 September 2012,
- having regard to the working documents on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) comprising working documents No 1 – Independence of the Judiciary, No 2 – Fundamental principles and Fundamental Rights, No 3 – Media legislation, No 4 – Principles of democracy and the rule of law and No 5 – Concluding Remarks by the Rapporteur, which were discussed in the Committee for Civil Liberties, Justice and Home Affairs on 10 July 2012, 20 September 2012, 22 January 2013, 7 March 2013 and 8 April 2013 respectively, as well as the comments of the Hungarian Government thereon,
- having regard to the Fundamental Law of Hungary, adopted on 18 April 2011 by the National Assembly of the Hungarian Republic, which entered into force on 1 January 2012 (hereinafter referred to as ‘the Fundamental Law’), and the transitional provisions of the Fundamental Law of Hungary, adopted on 30 December 2011 by the National Assembly, which also entered into force on 1 January 2012 (hereinafter referred to as ‘the transitional provisions’),
- having regard to the First Amendment of the Fundamental Law, tabled by the Minister of National Economy on 17 April 2012 and adopted by the Hungarian Parliament on 4 June 2012, establishing that the transitional provisions are part of the Fundamental Law,
- having regard to the Second Amendment of the Fundamental Law, tabled on 18 September 2012 in the form of an individual member’s bill and adopted by the Hungarian Parliament on 29 October 2012, introducing the requirement of voter registration into the Fundamental Law,
- having regard to the Third Amendment of the Fundamental Law, tabled on 7 December 2012, adopted by the Hungarian Parliament on 21 December 2012 and establishing that the limits and the conditions of the acquisition of agricultural land and forest and the rules governing the integrated organisation of agricultural production shall be defined by

cardinal law,

- having regard to the Fourth Amendment of the Fundamental Law, tabled on 8 February 2013 in the form of an individual member’s bill and adopted by the Hungarian Parliament on 11 March 2013, which, among other provisions, integrates into the text of the Fundamental Law the transitional provisions (with the exception of the provision requiring voter registration) annulled by the Constitutional Court of Hungary on 28 December 2012 on procedural grounds (Decision No 45/2012),
- having regard to Act CXI of 2012 on the Amendment of Act CLXI of 2011 on the organisation and administration of courts and Act CLXII of 2011 on the legal status and remuneration of judges of Hungary,
- having regard to Act No XX of 2013 on the legislative amendments of upper age limits to be applied in certain judicial legal relations,
- having regard to Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities, of Hungary (the Act on Churches), which was adopted on 30 December 2011 and entered into force on 1 January 2012,
- having regard to Opinions Nos CDL(2011)016, CDL(2011)001, CDL-AD(2012)001, CDL-AD(2012)009, CDL-AD(2012)020 and CDL-AD(2012)004 of the European Commission for Democracy through Law (Venice Commission) on the new Constitution of Hungary, on the three legal questions arising from the process of drafting the new Constitution of Hungary, on Act CLXII of 2011 on the legal status and remuneration of judges of Hungary and Act CLXI of 2011 on the organisation and administration of courts of Hungary, on Act CLI of 2011 on the Constitutional Court of Hungary, on the cardinal acts on the judiciary that were amended following the adoption of opinion CDL-AD(2012)001 on Hungary, and on the Act on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary,
- having regard to Joint Opinion No CDL-AD(2012)012 of the Venice Commission and the OSCE/ODIHR on the Act on the elections of Members of Parliament of Hungary,
- having regard to the Hungarian Government’s comments Nos CDL(2012)072, CDL(2012)046 and CDL(2012)045 on the draft opinion of the Venice Commission on the cardinal acts on the judiciary that were amended following the adoption of opinion CDL-AD(2012)001. on the draft joint opinion on the Act on the elections of Members of Parliament of Hungary and on the draft opinion on Act CLI of 2011 on the Constitutional Court of Hungary,
- having regard to the initiatives undertaken by the Secretary General of the Council of Europe, Mr Jagland, including the recommendations on the judiciary laid down in his letter of 24 April 2012 addressed to the Hungarian Deputy Prime Minister, Mr Tibor Navracsics,
- having regard to the letters of reply of 10 May 2012 and of 7 June 2012 from

Mr Navracsics declaring the intention of the Hungarian authorities to address the recommendations by Mr Jagland,

- having regard to the letter of 6 March 2013 sent by the Secretary General of the Council of Europe, Mr Jagland, to Mr Navracsics expressing his concerns about the proposal for the Fourth Amendment of the Fundamental Law and calling for the postponement of the final vote, and the letter of reply of 7 March 2013 from Mr Navracsics,
- having regard to the letter of 6 March 2013 sent by the Ministers of Foreign Affairs of Germany, Netherlands, Denmark and Finland to the Commission President, Mr Barroso, calling for a mechanism to foster compliance with fundamental values in the Member States,
- having regard to the letter of 8 March 2013 sent by the Hungarian Minister of Foreign Affairs, Mr János Martonyi, to all his counterparts in the Member States of the EU explaining the purpose of the Forth Amendment,
- having regard to the letter of 8 March 2013 sent by Mr Barroso to Mr Viktor Orbán on the concerns of the European Commission regarding the Fourth Amendment of the Fundamental Law and the letter of reply from Mr Orbán to the Commission President, copies of which were sent to both the President of the European Council, Mr Van Rompuy, and the President of the European Parliament, Mr Schulz,
- having regard to the joint statement of 11 March 2013 by President Barroso and Secretary General Jagland recalling their concerns regarding the Fourth Amendment of the Fundamental Law with respect to the principle of the rule of law,
- having regard to the request for an opinion of the Venice Commission on the Fourth Amendment of the Fundamental Law of Hungary, sent on 13 March 2013 by Mr Martonyi to Mr Jagland,
- having regard to the Council and Commission statements on the constitutional situation in Hungary presented at the plenary debate held in the European Parliament on 17 April 2013,
- having regard to the letter of 16 December 2011 from the Commissioner for Human Rights of the Council of Europe, Mr Hammarberg, to Mr Martonyi, raising concerns on the subject of the new Hungarian law on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, religious denominations and religious communities, and having regard to Mr Martonyi's reply of 12 January 2012,
- having regard to Opinion No CommDH(2011)10 of 25 February 2011 of the Commissioner for Human Rights on Hungary's media legislation in light of the Council of Europe's standards on freedom of the media, as well as to the annotations of 30 May 2011 from the Hungarian Minister of State for Government Communication to that opinion,
- having regard to the statements by the Office of the UN High Commissioner for Human Rights (OHCHR) of 15 February 2012 and of 11 December 2012 calling on Hungary,

respectively, to reconsider legislation criminalizing homelessness and to uphold the Constitutional Court's decision decriminalising homelessness,

- having regard to the statements by the OHCHR of 15 March 2013 voicing concerns over the adoption of the Fourth Amendment to the Fundamental Law,
- having regard to the ongoing infringement proceedings in Case C-288/12 brought by the European Commission against Hungary over the independence of the data protection authority,
- having regard to the Decision of the Court of Justice of the European Union of 6 November 2012 on the radical lowering of the retirement age for Hungarian judges,
- having regard to the Decisions of the Constitutional Court of Hungary of 16 July 2012 (No 33/2012) on the lowering of the retirement age of judges in Hungary, of 28 December 2012 (No 45/2012) on the transitional provisions of the Fundamental Law, of 4 January 2013 (No 1/2013) on the Act on the electoral procedure and of 26 February 2013 (No 6/2013) on the Act on the freedom of religion and the legal status of churches,
- having regard to the upcoming report by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe,
- having regard to the upcoming assessment of the Fourth Amendment of the Fundamental Law by the European Commission,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2013),

I-BACKGROUND AND MAIN ISSUES AT STAKE

European common values

- A. whereas the European Union is founded on the values of democracy and the rule of law as set out in Article 2 TEU, on unequivocal respect for fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights and in the ECHR, and on the recognition of the legal value of such rights, freedoms and principles, as is further demonstrated by the EU's forthcoming accession to the ECHR pursuant to Article 6(2) TEU;
- B. whereas the common values enshrined in Article 2 TEU constitute the core of the rights attached to the status of EU citizens irrespective of their nationality or cultural and political identities, and whereas citizens can fully enjoy those rights only if fundamental values and principles are upheld;
- C. whereas respecting and promoting such common values is not only an essential element of the European Union's identity but also an explicit obligation deriving from Article

- 3(1) and (5) TEU, and therefore a *sine qua non* for becoming an EU Member State as well as for fully preserving membership prerogatives;
- D. whereas the obligations incumbent on candidate countries under the Copenhagen criteria continue to apply to the Member States after joining the EU by virtue of Article 2 TEU, and whereas all Member States should therefore be assessed on a regular basis in order to verify their continued compliance with the EU's common values;
- E. whereas Article 6(3) TEU underscores that fundamental rights, as guaranteed by the ECHR and as arising from the constitutional traditions common to the Member States, constitute general principles of Union law, and whereas such rights are a common heritage and asset of democratic European states;
- F. whereas, with the entry into force of the Treaty of Lisbon and pursuant to Article 6 TEU, the Charter has the same legal value as the Treaties, hence transforming values and principles into tangible and enforceable rights;
- G. whereas Article 7(1) TEU grants the EU institutions the power to assess whether there is a clear risk of a serious breach of the common values referred to in Article 2 by a Member State, and to engage politically with the country concerned in order to prevent and redress violations, while the ultimate purpose of the means laid down in Article 7(2) and (3) TEU is to penalise and remedy any serious and persistent breach of common values;
- H. whereas the scope of Article 2 TEU is not restricted by the limitation of Article 51(1) of the Charter and the scope of Article 7 TEU is not limited to the policy areas covered by EU law, and whereas as a consequence the EU can also act in the event of a breach of, or a clear risk of a breach of, the common values in areas falling under Member State's competences;
- I. whereas pursuant to the principle of sincere cooperation laid down in Article 4(3) Member States shall facilitate the achievement of the Union's tasks and refrain from any measures which could jeopardise the attainment of the Union's objectives, including the objective of respecting and promoting the Union's common values;
- J. whereas respect for the Union's common values goes hand in hand with the EU's commitment to diversity, translated into the obligation for the Union to respect '*the equality of Member States before the Treaties as well as their national identities*' as stated in Article 4(2) TEU;
- K. whereas, in the framework of the Treaties, respect for '*national identities*' (Article 4(2) TEU) and for '*different legal systems and traditions of the Member States*' (Article 67 TFEU) are intrinsically associated with the principles of sincere cooperation (Article 4(3) TEU), mutual recognition (Articles 81 and 82 TFEU) and thus mutual trust;
- L. whereas a departure from, or a violation of, the Union's common values by a Member State cannot be justified by national traditions nor by the expression of a national identity when such departure results in the deterioration of the principles at the heart of the European integration, such as the rule of law or the principle of mutual recognition,

with the consequence that a referral to Article 4(2) TEU is applicable only so far as a Member State respects the values enshrined in Article 2 TEU;

- M. whereas the Union's objective to uphold and promote its values in its relations with the wider world, as set out in Article 3(4) TEU, is further reinforced by the specific obligation for the Union's action on the international scene to be guided by the principles which inspired its creation, development and enlargement: democracy, the rule of law and the universality and indivisibility of human rights and fundamental freedoms (21(1) TEU);
- N. whereas, therefore, not only the credibility of the Member States and of the EU on the international scene, but also the Union's objectives in its external action, would be undermined if Member States were not able or willing to live up to the standards to which they have agreed and bound themselves;
- O. whereas respect by the Member States for the same set of fundamental values is an indispensable condition for ensuring mutual trust and consequently the correct functioning of mutual recognition, which is at the heart of the creation and development of the internal market as well as of the European area of freedom, security and justice, and whereas, therefore, any attempt to disrespect or weaken the common values adversely affects the whole construction of the European process of economic, social and political integration;
- P. whereas the common values set out in Article 2 TEU, and proclaimed in the Preambles to the Treaties and the Charter of Fundamental Rights and referred to in the Preamble to the ECHR and in Article 3 of the Statute of the Council of Europe, require a separation of powers between independent institutions based on a correctly functioning system of checks and balances, and whereas core features of these principles include: respect for legality, including a transparent, accountable and democratic process of enacting laws; legal certainty; a strong system of representative democracy based on free elections and respecting the rights of opposition; effective control of the conformity of legislation with the constitution; an effective, transparent, participatory and accountable government and administration; an independent and impartial judiciary; independent media; and respect for fundamental rights;

Reforms in Hungary

- Q. whereas Hungary was the first former Communist country to accede to the ECHR, and as an EU Member State was the first to ratify the Treaty of Lisbon on 17 December 2007, and whereas Hungary played an active part in the work of the Convention and the Intergovernmental Conference in 2003 and 2004 in, among other issues, the drafting of Article 2 TEU, and took the initiative which resulted in the inclusion of the rights of persons belonging to minorities;
- R. whereas Hungary is also a party to the International Covenant on Civil and Political Rights and other international legal instruments obliging it to respect and implement international democratic principles;
- S. whereas following the 2010 general elections in Hungary the governing majority gained

more than two thirds of the seats in parliament, enabling it to rapidly initiate intense legislative activity to reshape the whole constitutional order of the country (the Constitution has been amended twelve times and the Fundamental Law four times so far) and thus substantially modify the institutional framework as well as a number of fundamental aspects of public life;

- T. whereas any Member State of the European Union is absolutely free to review its constitution and whereas the very meaning of democratic alternation is that it enables a new government to enact legislation reflecting its values and political commitments;
- U. whereas the tumultuous history of democratic traditions in Europe shows that reforming a constitution requires utmost care and due consideration of procedures and guarantees aimed at preserving, among other things, the rule of law, the separation of powers and the hierarchy of legal norms – the constitution being the supreme law of the land;
- V. whereas the comprehensive and systematic constitutional and institutional reforms (a root-and-branch revision of the legal system), which the new Hungarian Government has carried out in an exceptionally short time frame¹ is unprecedented, and explains why so many European institutions and organisations (the European Union, Council of Europe, OSCE) as well as the U.S. Administration have deemed it necessary to assess the impact of some reforms carried out in Hungary, whereas the situation in other Member States, although following a different pattern, may also need to be monitored, while enforcing the principle of equality of the Member States before the Treaties, and whereas there should be no double standards in the treatment of Member States;
- W. whereas a dialogue based on openness, inclusiveness, solidarity and mutual respect between the European institutions and the Hungarian authorities is necessary in the framework of the above-mentioned community of democratic values;

The Fundamental Law and its transitional provisions

- X. whereas the adoption of the Fundamental Law of Hungary – which was passed on 18 April 2011, exclusively with the votes of the members of the governing coalition and on the basis of a draft text prepared by the representatives of the governing coalition – was conducted in the exceptionally short time frame of one month, thus restricting the possibilities for a thorough and substantial debate with the opposition parties and civil society on the draft text;
- Y. whereas the ‘national consultation’ on the draft Fundamental Law only consisted of a list of twelve questions on very specific issues drafted by the governing party in a way that could have lead to self-evident replies and which, above all, did not include the text of the draft Fundamental Law so that the public was not in a position to submit its views thereon;
- Z. whereas following a constitutional petition by the Hungarian Commissioner for Fundamental Rights, the Constitutional Court of Hungary annulled on 28 December 2012 (Decision No 45/2012) more than two thirds of the transitional provisions, on the

¹ See Annex to Working Document No 5.

grounds that they were not of a transitional nature;

- AA. whereas, despite that Decision, the Fourth Amendment to the Fundamental Law, adopted on 11 March 2013, integrates into the text of the Fundamental Law all the transitional provisions annulled by the Constitutional Court, with the exception of the provision requiring electoral registration, as well as other previously-annulled provisions;

Extensive use of cardinal laws

- AB. whereas the Fundamental Law of Hungary refers to 26 subject matters to be defined by cardinal laws (that is laws the adoption of which requires a two-thirds majority), which cover a wide range of issues relating to Hungary's institutional system, the exercise of fundamental rights and important arrangements in society;
- AC. whereas since the adoption of the Fundamental Law the parliament has enacted 49 cardinal laws¹ (in one and a half years);
- AD. whereas a number of issues, such as specific aspects of family law and the tax and pension systems, which usually fall under the ordinary decision-making powers of a legislature, are regulated by cardinal laws;

Practice of individual members' bills and accelerated procedures

- AE. whereas important legislation, including the Fundamental Law, its second and fourth amendments, the transitional provisions of the Fundamental Law and a number of cardinal laws were enacted on the basis of individual members' bills, to which the rules set out in Act CXXXI of 2010 on the participation of civil society in the preparation of legislation and in Decree 24/2011 of the Minister of Public Administration and Justice on preliminary and ex-post impact assessment do not apply, with the consequence that legislation adopted through this streamlined procedure is subject to a restricted public debate;
- AF. whereas the adoption of a large number of cardinal laws in a very short time frame, including the acts on the legal status and remuneration of judges of Hungary and on the organisation and administration of courts of Hungary, as well as the acts on the freedom of religion and on the National Bank of Hungary, inevitably restricted the possibilities for an adequate consultation of the opposition parties and the civil society;

Weakening of checks and balances: Constitutional Court, Parliament, Data Protection Authority

- AG. whereas, under the Fundamental Law, the powers of the Constitutional Court to review budget-related laws have been substantially limited to violations of an exhaustive list of rights, thus obstructing the review of constitutionality in cases of breaches of other fundamental rights, such as the right to property, the right to a fair trial and the right not

¹ These laws include cardinal laws all provisions of which require a two-thirds majority, cardinal laws specific provisions of which have to be adopted by simple majority and acts the specific provisions of which require a two-thirds majority of the Members of Parliament present.

to be discriminated against;

- AH. whereas the Fourth Amendment of the Fundamental Law left untouched the already existing right of the Constitutional Court to review amendments to the Fundamental Law on procedural grounds, and whereas it excludes in the future the Court being able to review constitutional amendments on substantive grounds;
- AI. whereas the Constitutional Court, in its above-mentioned Decision 45/2012, held that ‘Constitutional legality has not only procedural, formal and public law validity requirements, but also *substantial* ones. The constitutional criteria of a democratic State under the rule of law are at the same time constitutional values, principles and fundamental democratic freedoms enshrined in international treaties and accepted and acknowledged by communities of democratic States under the rule of law, as well as the *ius cogens*, which is partly the same as the foregoing. As appropriate, the Constitutional Court may even examine the free enforcement and the constitutionalisation of the *substantial* requirements, guarantees and values of democratic States under the rule of law.’ (Point IV.7 of the Decision);
- AJ. whereas the Fourth Amendment of the Fundamental Law further stipulates that the rulings of the Constitutional Court adopted before the entry into force of the Fundamental Law shall be repealed, and reintroduces into the Fundamental Law a number of provisions previously annulled by the Constitutional Court¹;
- AK. whereas a non-parliamentary body, the Budget Council, with limited democratic legitimacy, has been granted the power to veto the adoption of the general budget, thus restricting the scope for action of the democratically elected legislature;
- AL. whereas the new Freedom of Information Act, adopted in July 2011, abolished the institution of the Commissioner on Data Protection and Freedom of Information, thus prematurely terminating the six-year-long mandate of the Commissioner and transferring its powers to the newly-established National Agency for Data Protection whose independence is currently under review by the Court of Justice of the European Union;
- AM. whereas the Commission initiated an infringement procedure against Hungary on 8 June 2012, declaring that Hungary had failed to fulfil its obligations under Directive 95/46/EC by removing the data protection supervisor from office before the end of the mandate, thus putting at risk the independence of the office;

Independence of the judiciary

- AN. whereas, according to the Fundamental Law and its transitional provisions, the six-year-long mandate of the former President of the Supreme Court (renamed the ‘Kúria’) was prematurely ended after two years;
- AO. whereas on 2nd July 2012 Hungary amended the cardinal laws on the judiciary (Act CLXI of 2011 on the Organisation and Administration of Courts and Act CLXII of 2011

¹ See paragraph 4 of Working Document No 5.

on the Legal Status and Remuneration of Judges), partly implementing the recommendations of the Venice Commission;

- AP. whereas key safeguards for judicial independence, such as irremovability, guaranteed term of office, the structure and composition of the governing bodies, are not regulated in the Constitution but are – together with detailed rules on the organization and administration of the judiciary – still set out in the amended cardinal laws,
- AQ. whereas the independence of the Constitutional Court is not set forth in the Fundamental Law of Hungary and neither is the independence of the autonomous administration of the judiciary;
- AR. whereas the amendment of the cardinal laws on the judiciary as regards the power of the President of the National Judicial Office to transfer cases from the presiding court to another court to ensure the adjudication of cases within a reasonable period of time neither lays down objective criteria for the selection of the cases to be transferred nor entrusts the National Judicial Council with the mandate to adopt objective selection criteria;
- AS. whereas, following the entry into force of the Fundamental Law its transitional provisions and cardinal Act No CLXII of 2011 on the legal status and remuneration of judges, the mandatory retirement age for judges was reduced from 70 to 62 years of age;
- AT. whereas the Decision of the Court of Justice of the European Union, adopted on 6 November 2012, states that the radical lowering of the retirement age for Hungarian judges from 70 to 62 years of age constitutes unjustified discrimination on grounds of age, and whereas two complaints were submitted by two groups of Hungarian judges to the ECtHR on 20 June 2012 seeking a ruling to establish that Hungary's legislation on lowering the retirement age for judges violates the ECHR;
- AU. whereas on 11 March 2013 the Hungarian Parliament adopted Act No XX of 2013 amending the upper age limits with a view to complying with the rulings of the Hungarian Constitutional Court of 16 July 2012 and of the Court of Justice of the European Union of 6 November 2012;

The electoral reform

- AV. whereas as part of the recent electoral reform the Hungarian Parliament passed, on 26 November 2012, on the basis of an individual member's bill, the Act on the election procedure, which aimed to replace the previous automatic voter registration of all citizens with residence in Hungary by a system of voluntary registration as a condition for exercising the individual's right to vote,
- AW. whereas the Second Amendment of the Fundamental Law enshrining the requirement of voter registration was tabled as an individual member's bill on the same day as the draft law on the election procedure, namely on 18 September 2012, and was adopted on 29 October 2012,
- AX. whereas, following the petition of the President of the Republic of 6 December 2012, the

Constitutional Court established that the registration requirement represents an undue restriction on the voting rights of Hungarian residents, and is therefore unconstitutional,

AY. whereas, while considering voter registration for citizens residing abroad as justified, the Constitutional Court in its decision of 4 January 2013 further held that exclusion of the possibility of personal registration of voters without an address living in Hungary is discriminatory and that the provisions allowing the publication of political advertisements only in the public media service during the electoral campaign, and the rules banning the publication of public opinion polls within six days before the elections, disproportionately limit freedom of expression and freedom of the press,

Media legislation

AZ. whereas the European Union is founded on the values of democracy and the rule of law, and consequently guarantees and promotes freedom of expression and information as enshrined in Article 11 of the Charter and Article 10 of the ECHR, and whereas these rights include freedom to express opinions and freedom to receive and communicate information without control, interference or pressure from public authorities;

BA. whereas the ECtHR has ruled that there is a positive obligation on Member States to ensure media pluralism, arising from Article 10 ECHR, and whereas the Convention's provisions are similar to those contained in Article 11 of the Charter as part of the *acquis communautaire*;

BB. whereas an autonomous and strong public sphere, based on independent and plural media, constitutes the necessary environment in which the collective freedoms of civil society – such as the right of assembly and association – as well as individual freedoms – such as the right to freedom of expression and the right of access to information – can thrive, and whereas journalists should be free from the pressure of owners, managers and governments, as well as from financial threats;

BC. whereas the Council of Europe and the OSCE through declarations, resolutions, recommendations, opinions and reports on the subjects of media freedom, pluralism and concentration have created a significant body of common pan-European minimum standards in this field;

BD. whereas Member States have a duty to constantly promote and protect freedom of opinion, expression, information and the media, and whereas, should these freedoms be placed at serious risk or violated in a Member State, the Union is obliged to intervene in a timely and effective fashion, on the basis of its competences as enshrined in the Treaties and in the Charter, to protect the European democratic and pluralistic order and fundamental rights;

BE. whereas Parliament has repeatedly expressed its concerns about media freedom, pluralism and concentration in the EU and its Member States;

BF. whereas criticism of a number of the provisions of Hungarian Media legislation has been voiced by Parliament and the Commission, the OSCE Representative on Freedom of the Media and the Council of Europe Commissioner for Human Rights, as well as by

the Secretary General of the Council of Europe, the UN Special Rapporteur on the promotion of right to freedom of opinion and expression, and by a large number of international and national journalists' organisations, editors and publishers, NGOs active in the area of human rights and civil liberties, and Member States;

- BG. whereas criticism has been levelled which relates mainly to the adoption of legislation under the parliamentary procedure of individual members' bills, the highly hierarchical structure of media supervision, the managerial authority of the Chairperson of the Regulatory Authority, the lack of provisions ensuring the independence of the Authority, the extensive supervisory and sanctioning power of the Authority, the considerable impact of certain provisions on the content of programming, the lack of media-specific regulation, the lack of transparency in the bidding process for licenses, and the vagueness of norms potentially conducive to arbitrary application and enforcement;
- BH. whereas in its resolution of 10 March 2011 on media law in Hungary¹, Parliament stressed that the Hungarian media law should be suspended as a matter of urgency and reviewed on the basis of the comments and proposals of the Commission, OSCE and Council of Europe, and whereas Parliament urged the Commission to continue the close monitoring and assessment of the conformity of the Hungarian media law as amended with European legislation, and particularly with the Charter;
- BI. whereas the Commissioner for Human Rights of the Council of Europe has stressed the need to amend the legislation in order to tackle encroachments on the freedom of the media such as prescriptions on what information and coverage shall emanate from all media providers, the imposition of penalties on the media, pre-emptive restraints on press freedom in the form of registration requirements and exceptions to the protection of journalists' sources, and whereas, regarding the independence and pluralism of the media, he has expressed the need to address issues such as weakened constitutional guarantees of pluralism, lack of independence in media regulatory bodies, lack of safeguards for the independence of public service broadcasting and absence of an effective domestic remedy for media actors subject to decisions of the Media Council;
- BJ. whereas the Commission has raised concerns regarding the conformity of the Hungarian media law with the Audiovisual Media Services Directive and the *acquis communautaire* in general, notably in relation to the obligation to offer balanced coverage applicable to all audiovisual media service providers, and has also questioned whether that law complies with the principle of proportionality and respects the fundamental right to freedom of expression and information enshrined in Article 11 of the Charter, the country of origin principle and registration requirements, and whereas, in March 2011, following negotiations with the Commission, the Hungarian Parliament amended the law to address the points raised by the Commission;
- BK. whereas the OSCE has expressed serious reservations regarding the material and territorial scope of Hungarian legislation, the politically homogeneous composition of the Media Authority and Media Council, the disproportionate penalties imposed, the lack of an automatic procedure for suspending penalties in the event of an appeal to the

¹ Texts adopted, P7_TA(2011)0094.

courts against a Media Authority ruling, the violation of the principle of the confidentiality of journalistic sources and the protection of family values;

- BL. whereas the OSCE recommendations¹ included deleting the legal requirements on balanced coverage and other content prescriptions from the laws, safeguarding editorial independence, ensuring that different rules regulate different forms of media – print, broadcast and online – deleting registration requirements deemed excessive, ensuring that the regulatory body is independent and competent, ensuring objectivity and plurality in the process of appointment of organs governing the media sector, refraining from placing print media under the jurisdiction of the regulatory body and effectively encouraging self-regulation;
- BM. whereas while welcoming the amendments to the media legislation adopted in March 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has highlighted the need to address remaining concerns pertaining to regulation of media content, insufficient guarantees to ensure the independence and impartiality of the Media Authority, excessive fines and other administrative sanctions, applicability of the media legislation to all types of media, including the press and the Internet, registration requirements, and lack of sufficient protection of journalistic sources;
- BN. whereas an analysis by Council of Europe experts² (which assessed compliance of the Media Acts as proposed for amendment in 2012 with Council of Europe standard-setting texts in the field of media and freedom of expression) recommended that specific provisions on registration and transparency, content regulation, obligations on news coverage, protection of sources, public service media and regulatory bodies be thoroughly revised, clarified or in some cases eliminated;
- BO. whereas, despite the fact that the laws were amended in 2011 following negotiations with the European Commission and in May 2012 further to the decision of the Constitutional Court of December 2011, the OSCE Representative on freedom of the Media has deplored that several amendments were introduced and adopted at short notice without consulting stakeholders and that fundamental elements in the legislation have not been improved, notably the appointment of the president and members of the Media Authority and Media Council, their power over content in the broadcast media, the imposition of high fines and the lack of safeguards on the financial and editorial independence of public broadcasters;
- BP. whereas, further to the dialogue conducted with the EU and the Secretary General of the Council of Europe through an exchange of letters and expert meetings, further legal amendments were tabled in February 2013 in order to strengthen and guarantee the independence of the media regulatory bodies, notably in respect of the rules relating to the conditions of the appointment and election of the President of the National Media

¹ Legal analysis sent to the Hungarian Government on 28 February 2011 <http://www.osce.org/fom/75990>
See also the analysis and assessment of September 2010: <http://www.osce.org/fom/71218>

² Expertise by Council of Europe experts on Hungarian media legislation: ACT CIV of 2010 on the freedom of the press and the fundamental rules on media content and ACT CLXXXV of 2010 on media services and mass media, 11 May 2012.

and Infocommunications Authority and the Media Council and concerning, respectively, the nomination procedure, the person making the appointment and repeated appointment;

BQ. whereas the Fourth Amendment imposes press restrictions as it bans all political advertising during electoral campaigns except for advertising in the public media;

BR. whereas the National Media and Infocommunications Authority and the Media Council have not conducted assessments on the effects of the legislation on the quality of journalism, the degrees of editorial freedom and the quality of working conditions for journalists;

Respect of the rights of persons belonging to minorities

BS. whereas the respect for the rights of persons belonging to minorities is explicitly recognised among the values referred to in Article 2 TEU and the Union is committed to promoting these values and combating social exclusion and discrimination;

BT. whereas the responsibility of Member States to ensure that the fundamental rights of all are respected, irrespective of their ethnicity or belief, covers all levels of public administration as well as the law enforcement authorities and also implies actively promoting tolerance and firmly condemning phenomena such as racial violence and hate speech;

BU. whereas the lack of reaction by the law enforcement authorities in cases of racially motivated crime¹ has resulted in mistrust of the police forces;

BV. whereas it is noteworthy that the Hungarian Parliament has enacted legislation in criminal and civil areas to combat racial incitement and hate speech;

BW. whereas, although intolerance against the members of Roma and Jewish communities is not a problem solely associated with Hungary and other Member States are faced with the same predicament, recent events have raised concerns as to the increase in anti-Roma and anti-Semitic discourse in Hungary;

Freedom of religion and recognition of churches

BX. whereas freedom of thought, conscience and religion as enshrined in Article 9 of the ECHR and Article 10 of the Charter is one of the foundations of a democratic society, and whereas the role of the State in this respect should be that of a neutral and impartial guarantor of the right to exercise various religions, faiths and beliefs;

BY. whereas the Act on Churches established a new legal regime for the regulation of religious associations and churches in Hungary which imposed a set of requirements for the recognition of churches and made such recognition conditional on prior approval by the parliament by a two-thirds majority;

¹ Report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/20/33/Add. 1)

- BZ. whereas the obligation set out in the Act on Churches to obtain recognition by the parliament as a condition to establish a church was deemed by the Venice Commission¹ to be a restriction of the freedom of religion;
- CA. whereas as a result of the entry into force of retroactive provisions of the Act on Churches more than 300 registered churches lost their legal status of church;
- CB. whereas at the request of several religious communities and the Hungarian Commissioner for Fundamental Rights, the Constitutional Court examined the constitutionality of the provisions of the Act on Churches and declared in its Decision 6/2013 of 26 February 2013 some of them unconstitutional and annulled them with retroactive effect;
- CC. whereas the Constitutional Court in that Decision, while not questioning the right of the parliament to specify the substantive conditions for recognition as a church, considered that the recognition of church status by a vote in Parliament might result in politically biased decisions, and whereas the Constitutional Court declared that the Act did not contain any obligation to provide detailed reasoning of a decision which refuses recognition of church status, that no deadlines were specified for the parliament's actions and that the Act did not ensure the possibility of legal remedy in cases of refusal or lack of a decision;
- CD. whereas the Fourth Amendment to the Fundamental Law, adopted two weeks after the decision of the Constitutional Court, amended Article VII of the Fundamental Law and elevated to the level of the constitution the power of the parliament to pass cardinal laws to recognise certain organisations engaged in religious activities as churches, thus overruling the Constitutional Court's decision;

II- ASSESSMENT

The Fundamental Law of Hungary and its implementation

1. Recalls that respect for legality, including a transparent, accountable and democratic process of enacting laws, and for a strong system of representative democracy based on free elections and respecting the rights of the opposition are key elements of the concepts of democracy and the rule of law as enshrined in Article 2 TEU and proclaimed in the Preambles to both the Treaty on the European Union and the Charter,
2. Firmly reiterates that, while the drafting and the adoption of a new constitution falls within the scope of Member States' competences, Member States and the EU have the responsibility to ensure that the constitutional processes and the contents of constitutions are in conformity with the common values of the Union, the Charter and the ECHR,
3. Regrets that the process of drafting and adopting the Fundamental Law of Hungary lacked the transparency, openness, inclusiveness and ultimately the consensual basis that

¹ Venice Commission Opinion 664/2012 of 19 March 2012 on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary (CDL-AD(2012)004).

could be expected in a modern democratic constituent process, thus weakening the legitimacy of the Fundamental Law itself,

4. Takes note of the above-mentioned Decision of 28 December 2012 of the Constitutional Court declaring that the Hungarian Parliament exceeded its legislative authority when it enacted a number of transitional provisions of the Fundamental Law containing permanent and general rules,
5. Strongly criticises the provisions of the Fourth Amendment to the Fundamental Law, which undermine the supremacy of the Fundamental Law by reintroducing in its text a number of rules previously declared unconstitutional – i.e. incompatible on procedural or substantive grounds with the Fundamental Law – by the Constitutional Court;
6. Recalls that in its above-mentioned Decision of 28 December 2012, the Constitutional Court gave a clear ruling on both substantive and procedural standards of constitutionality by declaring that: *‘In democratic States under the rule of law, constitutions have constant substantial and procedural standards and requirements. The substantial and procedural constitutional requirements shall not be set lower in the era of the Fundamental Law than they were at the time of the Constitution (Act). The requirements of a constitutional State under the rule of law continue to be constantly enforced requirements in the present and they are programs for the future. The constitutional State under the rule of law is a system of constant values, principles and guarantees’¹*; considers such a clear-cut and dignified statement to be valid for the European Union and all its Member States;
7. Recalls that the common values of the Union of democracy and the rule of law require a strong system of representative democracy based on free elections and respecting the rights of the opposition and that according to Article 3 of Protocol 1 to the ECHR elections should guarantee the *‘expression of the opinion of the people in the choice of the legislator’*;
8. Considers that the extensive use of cardinal laws to regulate areas that are covered by ordinary laws in most Member States or to set forth very specific and detailed rules undermines the principles of democracy and the rule of law as it has enabled the current government, which enjoys the support of a qualified majority, to set in stone political choices with the consequence of making it more difficult for any new future government having only a simple majority in the parliament to respond to social changes and thus of potentially diminishing the importance of new elections;
9. Considers that use of the individual members’ bills procedure to implement the constitution (through cardinal laws) does not constitute a transparent, accountable and democratic legislative process as in practice it restricts public debate and consultation, and that it could run counter to Fundamental Law itself, which makes it an obligation for the government (and not individual members) to submit to the parliament the bills necessary for the implementation of the Fundamental Law;
10. Shares the opinion of the Venice Commission (No CDL-AD(2012)001), according to

¹ Point IV.7 of the decision.

which the adoption of a large amount of legislation in a very short time frame could explain why some of the new provisions do not comply with European standards;

Democratic system of checks and balances

11. Recalls that democracy and the rule of law require a separation of powers between independent institutions based on a correctly functioning system of checks and balances and effective control of the conformity of legislation with the constitution;
12. Considers that the limitation of constitutional jurisdiction relating to the laws on the central budget and taxes is in contradiction with the requirements of democracy, the rule of law and the principle of judicial review, as it weakens the institutional and procedural guarantees for the protection of a number of constitutional rights and for controlling the parliament's and the government's powers in the budgetary field;
13. Recalls that as declared by the Constitutional Court in its Decision No 45/2012, *'Constitutional legality has not only procedural, formal and public law validity requirements, but also substantial ones [...]. As appropriate, the Constitutional Court may even examine the free enforcement and the constitutionalisation of the substantial requirements, guarantees and values of democratic States under the rule of law'*;
14. Considers that after the entry into force of the Fourth Amendment the Constitutional Court can no longer fulfil its role as the supreme body of constitutional protection as the legislature is now entitled to modify the Fundamental Law as it wishes even in the case of the constitutional amendments contradicting other constitutional requirements and principles;
15. Is deeply concerned about this shift of powers in constitutional matters to the advantage of the parliament and to the detriment of the Constitutional Court, which severely undermines the principle of separation of powers and a correctly functioning system of checks and balances, which are key corollaries of the rule of law;
16. Is also extremely concerned about those provisions of the Fourth Amendment which repeal 20 years of constitutional jurisprudence, containing an entire system of founding principles and constitutional requirements, including any potential case-law affecting the application of EU law and of European human rights law;
17. Is also concerned about the conformity with EU law of the provision of the Fourth Amendment which enables the Hungarian Government to impose a special tax in order to implement EU Court of Justice judgments entailing payment obligations when the state budget does not have sufficient funding available and when the public debt exceeds half of the Gross Domestic Product;
18. Criticises the accelerated process of enacting important laws as it undermines the rights of the opposition parties to be effectively involved in the legislative process, thus limiting their scrutiny of the majority's and the government's action and ultimately negatively affecting the system of checks and balances;
19. Recalls that the independence of data protection authorities is guaranteed by Article 16

TFEU and Article 8 of the EU Charter of Fundamental Rights;

20. Stresses that protection against removal from office during the term of office is an essential element of the requirement of the independence of national data protection authorities under EU law;
21. Welcomes the fact that the Commission has launched an infringement procedure against Hungary over the independence of the data protection supervisor;
22. Deplores that the above-mentioned institutional changes resulted in a clear weakening of the systems of checks and balances required by the rule of law and the democratic principle of the separation of powers;

Independence of the judiciary

23. Recalls that independence of the judiciary is required by Article 47 of the Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights and is an essential requirement of the democratic principle of the separation of powers derived from Article 2 TEU;
24. Recalls that the Constitutional Court, in its above-mentioned Decision 33/2012, qualified the independence of the judiciary and judges as an achievement of the historical constitution of Hungary, when it declared that the *'principle of judicial independence, with all of its elements, is an achievement beyond doubt. Therefore the Constitutional Court establishes that judicial independence, and the resulting principle of irremovability, is not only a normative rule of the Fundamental Law, but also an achievement of the historical constitution. Thus it is an interpreting principle obligatory to everybody, based on the provisions of the Fundamental Law, and which is to be applied also in the course of exploring other potential contents of the Fundamental Law'*¹;
25. Stresses that the effective safeguarding of independence of the judiciary forms the basis of democracy in Europe and is a prerequisite for consolidating mutual trust between the judicial authorities of the various Member States and thus smooth cross-border cooperation in the common area of justice, based on the principle of mutual recognition as enshrined in Articles 81 TFEU (civil matters) and 82 TFEU (criminal matters);
26. Regrets that the numerous measures adopted – as well as some on-going reforms – do not provide sufficient assurances of constitutional safeguards as to the independence of the judiciary and the independence of the Constitutional Court of Hungary;
27. Considers that the premature termination of the term of office of the Supreme Court's President violates the guarantee of security of tenure, which is a key element of the independence of the judiciary;
28. Welcomes the above-mentioned Decision 33/2012 of the Constitutional Court declaring the compulsory termination of the service of judges at the age of 62 unconstitutional as

¹ Point (80) of the decision.

well as the above-mentioned decision of the Court of Justice of the EU of 6 November 2012, which held that the radical lowering of the retirement age of judges in Hungary constitutes unjustified discrimination on grounds of age and is therefore in breach of Council Directive 2000/78/EC;

29. Welcomes the amendments to Act CLXI of 2011 on the organisation and administration of courts of Hungary and Act CLXII of 2011 on the legal status and remuneration of judges of Hungary, adopted by the Hungarian Parliament on 2nd July 2012, which address many of the concerns previously expressed in its resolution of 16 February 2012 and by the Venice Commission in its opinion;
30. Regrets, however, that not all the recommendations of the Venice Commission have been implemented, in particular as regards the need to limit discretionary powers of the President of the National Judicial Office in the context of the transfer of cases, which potentially affect the right to a fair trial and the principle of a lawful judge;
31. Welcomes the adoption of Act XX of 2013 on the legislative amendments relating to the upper age limit applicable in certain judicial legal relations, which sets the retirement age of judges at 65 years of age at the end of a transitional period of 10 years and arranges for the reinstatement of those judges unlawfully dismissed;
32. Regrets, however, that as regards presiding judges, Act XX of 2013 provides for their reinstatement in their original executive posts only if these judicial positions are still vacant, with the consequence that not all unlawfully dismissed judges are guaranteed to be reinstated in exactly the same position with the same duties and responsibilities they were holding before their dismissal;
33. Welcomes the Commission's proposal for a permanent scoreboard on justice in all 27 EU Member States as put forward by Vice-President Reding, which shows that safeguarding the independence of the judiciary is a general concern of the EU;
34. Acknowledges the professionalism and dedication of the Hungarian judicial community and its commitment towards the rule of law, and recalls that since the start of the democratic process in Hungary the Constitutional Court has been recognized as an outstanding constitutional body throughout Europe and the world;

Media pluralism

35. Acknowledges the efforts of the Hungarian authorities that led to legislative changes aimed at addressing a number of the shortcomings identified in order to improve media legislation and bring it into line with EU and Council of Europe standards;
36. Welcomes the continued constructive dialogue with international actors and stresses that the fruitful cooperation between the Council of Europe and the Hungarian Government bore tangible results, as reflected in Act XXXIII of 2013, which address several concerns previously highlighted in the legal assessments of media legislation, notably in relation to the appointment and election procedures for the presidents of the Media Authority and the Media Council;

37. Expresses concern at the effects of the provision of the Fourth Amendment banning political advertising in the commercial media, as although the announced aim of this provision is to reduce political campaign costs and create equal opportunities for the parties, it jeopardises the provision of balanced information;
38. Reiterates its call on the Hungarian authorities to take action in order to make or commission pro-active regular assessments on the impact of the legislation on the media environment (reduction of the quality of journalism, instances of self-censorship, restriction of editorial freedom and erosion of the quality of working conditions and job security for journalists);
39. Deplores that the creation of the state-owned Hungarian News Agency (MTI) as the single news provider for public service broadcasters, while all major private broadcasters are expected to have their own news service, has meant it has a virtual monopoly on the market, as most of its news items are freely available; recalls the recommendation of the Council of Europe to eliminate the obligation on public broadcasters to use the national news agency as it constitutes an unreasonable and unfair restriction on the plurality of news provision;
40. Notes that the national competition authority needs to make regular assessments of the media environments and markets, highlighting potential threats to pluralism;
41. Stresses that measures to regulate the access of media outlets to the market through broadcast licensing and authorising procedures, rules on the protection of state, national or military security and public order and rules on public morality should not be abused for purposes of imposing political or partisan control or censorship on the media, and underlines that a proper balance needs to be ensured in this respect;
42. Is concerned that public service broadcasting is controlled by an extremely centralised institutional system which takes the real operational decisions without public scrutiny; underlines that biased and opaque tendering practices and the biased information of the public service broadcasting reaching a wide audience distort the media market;
43. Recalls that content regulations should be clear, allowing citizens and media companies to foresee in which cases they will be infringing the law and to determine the legal consequences of possible violations; notes with concern that in spite of such detailed content regulations, recent anti-Roma public stances remained unsanctioned by Hungary's Media Authority and calls for balanced application of the legislation;

Rights of persons belonging to minorities

44. Notes that the Hungarian Parliament has enacted legislation in criminal and civil areas to combat racial incitement and hate speech; points out, however, that legislation on its own cannot achieve the goal of creating a society free from intolerance and discrimination throughout Europe;
45. Underlines that the authorities in all Member States have a positive obligation to act to avoid violation of the rights of persons belonging to minorities and cannot remain neutral when faced with such violations;

Freedom of religion and recognition of churches

46. Notes with concern that the modifications introduced in the Fundamental Law by the Fourth Amendment attribute to the parliament the power to recognise, by way of cardinal laws and without the constitutional duty to justify a refusal of recognition, certain organisations engaged in religious activities as churches, which might negatively affect the duty of the State to remain neutral and impartial in its relations with the various religions and beliefs;

Conclusion

47. Concludes – for the reasons explained above – that the systemic and general trend of repeatedly modifying the constitutional and legal framework in very short time frames, and the content of such modifications, are incompatible with the values referred to in Article 2 TEU, Article 3, paragraph 1 and Article 6 TEU and deviate from the principles referred to in Article 4, paragraph 3 TEU; considers that - unless corrected in a timely and sufficient manner - this trend will result in a clear risk of a serious breach of the values referred to in Article 2 TEU;

III- RECOMMENDATIONS

Preamble

48. Reaffirms that its present resolution is not only about Hungary, but inseparably about the European Union as a whole, and its democratic reconstruction and development after the fall of the 20th century totalitarianisms. It is about the European family, its common values and standards, its inclusiveness and its capacity to engage in dialogue. It is about the need to implement Treaties which all Member States have voluntarily acceded to. It is about the mutual help and mutual trust that the Union, its citizens and Member States need to have if these Treaties are to be more than just words on paper but the legal basis for a true, just and open Europe respecting fundamental rights;
49. Shares the idea of a Union which is not only a ‘union of democracies’ but also a ‘Union of Democracy’, based upon pluralistic societies where respect for human rights and the rule of law prevail;
50. Reaffirms that while in times of economic and social crisis one may yield to the temptation to disregard constitutional principles, the credibility and robustness of constitutional institutions play a pivotal role in underpinning economic, fiscal and social policies;
51. States that it is ready – and calls on the Council and Commission to also be prepared – in the event that Hungary does not implement the recommendations set out in paragraph 61, to take action under Article 7(1) TEU to determine the existence of a clear risk of a serious breach by Hungary of the common values of the Union as set out in Article 2 TEU;

Appeal to all Member States

52. Calls on the Member States to comply with their Treaty obligations to respect, guarantee, protect and promote the Union's common values, which is an indispensable condition for respecting the substance of Union citizenship and for building a culture of mutual trust enabling effective cross-border cooperation and a well functioning EU area of freedom, security and justice;
53. Considers that it is the moral and legal duty of all Members States, as well as of the Union institutions, to defend the European values as enshrined in the Treaties, the Charter of Fundamental Rights and the European Convention on Human Rights to which the EU will soon accede;
54. Calls on the national parliaments to enhance their role in monitoring compliance with fundamental values and to denounce any risks of deterioration of these values that may occur within the EU borders with a view to maintaining the credibility of the Union vis-à-vis third countries, which is based on the seriousness with which the Union and its Member States take the values they have chosen as foundations;
55. Expects all Member States to take the necessary steps, particularly within the Council of the European Union, to contribute loyally to the promotion of the Union's values and to cooperate with Parliament and the Commission in monitoring their observance, especially in the framework of the 'Article 2 Trilogue' referred to in paragraph 76;

Appeal to the European Council

56. Reminds the European Council of its responsibilities within the framework of the area of freedom, liberty, security and justice;
57. Notes with disappointment that the European Council is the only EU political institution that has remained silent, while the Commission, Parliament, the Council of Europe, the OSCE and even the U.S. administration have voiced concerns over the situation in Hungary;
58. Considers that the European Council cannot remain inactive in cases where one of the Member States is faced with changes that may negatively affect the rule of law in that country and therefore the rule of law in the European Union at large, in particular when mutual trust in the legal system and judicial cooperation may be put at risk;
59. Invites the President of the European Council to inform Parliament of his assessment of the situation and rapidly engage in consultations with the President of Parliament and the President of the Commission;

Recommendations to the European Commission

60. Calls on the Commission as the guardian of the Treaties:
 - to inform Parliament of its assessment of the Fourth Amendment of the Fundamental Law and its impact on cooperation within the EU;
 - to be determined in ensuring full compliance with the common fundamental values

and rights set out in Article 2 TEU, as violations thereof undermine the very foundations of the Union and mutual trust between Member States;

- to focus not only on specific infringements of EU law to be remedied notably through Article 258 TFEU, but to draw the consequences of a systemic change of the constitutional and legal system of a Member State where multiple and recurrent infringements unfortunately result in a state of legal uncertainty which no longer meets the requirements of Article 2 TEU;
- to adopt a more comprehensive approach to addressing any potential risks of serious breach of fundamental values in a given Member State at an early stage and immediately to engage in a structured political dialogue with the relevant Member State and the other EU institutions; this structured political dialogue should be coordinated at the highest political level of the Commission and have a clear impact on the full spectrum of negotiations between the Commission and the Member State concerned in the various EU fields;
- to create – as soon as risks of violations of Article 2 TEU are identified – an ‘Article 2 TEU/Rule of Law Alarm Agenda’ to be dealt with by the Commission with exclusive priority and urgency, coordinated at the highest political level and fully taken into account in the various EU sectoral policies until full compliance with Article 2 TEU is restored and any risks of violation thereof are defused;
- to hold meetings at technical level with the services of the Member State concerned but not to conclude any negotiations in any policy fields other than Article 2 TEU-related ones until full compliance with Article 2 TEU has been ensured;
- to apply a horizontal approach involving all the Commission services concerned in order to ensure respect for the rule of law in all fields, including the economic sector;
- to update its 2003 communication on Article 7 of the Treaty on European Union (COM(2003) 606) and to draw up a detailed proposal for a swift and independent monitoring mechanism and an early warning system;
- to regularly monitor the correct functioning of the European area of justice and to take action when the independence of the judiciary is put at risk in any Member State, with a view to avoiding the weakening of mutual trust between national judicial authorities, which would inevitably create obstacles to the correct application of the EU instruments on mutual recognition and cross-border cooperation;
- to ensure that Member States guarantee correct implementation of the Charter of Fundamental Rights with respect to media pluralism and equal access to information;
- to monitor the effective implementation of rules ensuring transparent and fair procedures for media funding and state advertising and sponsoring allocation, so as to guarantee that these do not cause interference with freedom of information and expression, pluralism or editorial lines taken by the media;
- to take appropriate, timely, proportionate and progressive measures where concerns

arise in relation to freedom of expression, information, media freedom and pluralism in the EU and the Member States on the basis of a detailed and careful analysis of the situation and of the problems to be solved and the best ways to address them;

- to address these issues in the framework of the implementation of the Audiovisual Media Services Directive in order to improve cooperation between regulatory bodies of the Member States and the Commission, bringing forward as soon as possible a legislative proposal aimed at reviewing Article 30 of that Directive;
- to address the issue of the conformity with EU law of the new provision of the Fourth Amendment enabling the Hungarian Government to impose a special tax in order to implement EU Court of Justice judgments entailing payment obligations when the state budget does not have sufficient funding available and when the public debt exceeds half of the Gross Domestic Product, and to suggest adequate measures to prevent what may result in a breach of sincere cooperation as enshrined in Article 4(3) TEU.

Recommendations to the Hungarian Authorities

61. Urges the Hungarian authorities to implement the following recommendations without any further delay, with a view to fully restoring the rule of law and its key requirements on the constitutional setting, the system of checks and balances and the independence of the judiciary, as well as strong safeguards for fundamental rights, including freedom of expression, media and religion and the right to property:

On the Fundamental Law:

- to fully restore the supremacy of the Fundamental Law by removing from it those provisions previously declared unconstitutional by the Constitutional Court;
- to fully apply the recommendations of the Venice Commission and, in particular, to revise the list of policy areas requiring a qualified majority in line with the recommendations of the Venice Commission and with a view to ensuring future meaningful elections;
- to secure a lively parliamentary system which also respects opposition forces by allowing a reasonable time for a genuine debate between the majority and the opposition and for the participation of the wider public in the legislative procedure;

On checks and balances:

- to restore the right of the Constitutional Court to review all legislation without exception with a view to counterbalancing parliamentary and executive actions and ensuring, through full judicial review, that the Fundamental Law always remains the supreme law of the land;
- to fully restore the prerogatives of the Constitutional Court as the supreme body of constitutional protection, and thus the primacy of the Fundamental Law, by removing from its text the limitations on the Constitutional Court's power to review the

constitutionality of any modifications of the Fundamental Law as well as the abolition of two decades of constitutional case-law;

- to restore the case-law of the Constitutional Court issued before the entry into force of the Fundamental Law, in particular in the field of fundamental rights¹;
- to restore the prerogatives of the parliament in the budgetary field and thus secure the full democratic legitimacy of budgetary decisions by removing the restriction of parliamentary powers by the non-parliamentary Budget Council;
- to provide clarifications on how the Hungarian authorities intend to remedy the premature termination of the term of office of senior officials with a view to securing the institutional independence of the data protection authority;

On the independence of the judiciary:

- to fully restore and guarantee the independence of the judiciary by ensuring that the principles of irremovability and guaranteed term of office of judges, the rules governing the structure and composition of the governing bodies of the judiciary, as well as the safeguards on the independence of the Constitutional Court, are enshrined in the Fundamental Law;
- to promptly and correctly implement the above-mentioned decisions of the Court of Justice of the European Union of 6 November 2012 and of the Hungarian Constitutional Court, by enabling the dismissed judges who so wish to be reinstated in their previous positions, including those presiding judges whose original executive posts are no longer vacant;
- to establish objective selection criteria, or to mandate the National Judicial Council to establish such criteria, with a view to ensuring that the rules on the transfer of cases respect the right to a fair trial and the principle of a lawful judge;
- to implement the remaining recommendations laid down in the Venice Commission's opinion No CDL-AD(2012)020 on the cardinal acts on the judiciary that were amended following the adoption of Opinion CDL-AD(2012)001;

On the media and pluralism:

- to fulfil the commitment to further discuss cooperation activities at expert level on the more long-term perspective of the freedom of the media, building on the most important remaining recommendations of the 2012 legal expertise of the Council of Europe;
- to ensure timely and close involvement of all relevant stakeholders, including media professionals, opposition parties and civil society, in any further review of this legislation, which regulates such a fundamental aspect of the functioning of a democratic society, and in the process of implementation;

¹ See Working Document n° 5.

- to observe the positive obligation arising from European Court of Human Rights jurisprudence under Article 10 ECHR to protect freedom of expression as one of the preconditions for a functioning democracy;
- to respect, guarantee, protect and promote the fundamental right to freedom of expression and information, as well as media freedom and pluralism, and to refrain from developing or supporting mechanisms that threaten media freedom and journalistic and editorial independence;
- to make sure that legally binding procedures and mechanisms are in place for the selection and appointment of heads of public media, management boards, media councils and regulatory bodies, in line with the principles of independence, integrity, experience and professionalism, representation of the entire political and social spectrum, legal certainty and continuity;
- to provide legal guarantees regarding full protection of the confidentiality of sources principle and to strictly apply European Court of Human Rights-related case-law;
- to ensure that rules relating to political information throughout the audiovisual media sector guarantee fair access to different political competitors, opinions and viewpoints, in particular on the occasion of elections and referendums, allowing citizens to form their own opinions without undue influence from one dominant opinion-forming power;

On respect for fundamental rights

- to take positive action to ensure that the fundamental rights of all persons, including persons belonging to minorities, are respected;

On the freedom of religion and the recognition of churches:

- to establish clear, neutral and impartial requirements and institutional procedures for the recognition of religious organisations as churches which respect the duty of the State to remain neutral and impartial in its relations with the various religions and beliefs and to provide effective means of redress in cases of non-recognition or lack of a decision in line with the constitutional requirements set out in the above-mentioned Decision 6/2013 of the Constitutional Court;

Recommendations to the EU institutions on setting up a new mechanism to effectively enforce Article 2 TEU

62. Reiterates the urgent need to tackle the so-called ‘Copenhagen dilemma’, whereby the EU remains very strict with regard to respect for the common values and standards by candidate countries but lacks effective monitoring and sanctioning tools once they have joined the EU;
63. Firmly requests that Member States be regularly assessed on their continued compliance with the fundamental values of the Union and the requirements of democracy and the rule of law;

64. Calls for closer cooperation between Union institutions and other international bodies, particularly with the Council of Europe and the Venice Commission, and for use to be made of their expertise in upholding the principles of democracy, human rights and the rule of law;
65. Acknowledges and welcomes the initiatives undertaken, the analysis conducted and the recommendations issued by the Council of Europe, in particular its Secretary General, Parliamentary Assembly and Commissioner for Human Rights and the Venice Commission;
66. Calls on all EU institutions to launch a joint reflection and debate – as also requested by the Ministers of Foreign Affairs of Germany, Netherlands, Denmark and Finland in their above-mentioned letter to Commission President – on how to equip the Union with the necessary tools for it to fulfil its Treaty obligations on democracy, the rule of law and fundamental rights, while avoiding any risks of applying double standards between its Member States;
67. Considers that a future revision of the Treaties should lead to a better distinction between an initial phase, aimed at assessing any risks of a serious breach of the values referred in Article 2 TEU, and a more efficient procedure in a subsequent phase, where action would need to be taken to address actual serious and persistent violation of those values;
68. Given the current institutional mechanism laid down in Article 7 TEU, reiterates the calls it made, in its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011), for the establishment of a new mechanism ('Copenhagen high-level group') to ensure compliance by all Member States with the common values enshrined in Article 2 TEU;
69. Reiterates that the setting-up of such a mechanism could involve the rethinking of the mandate of the European Union Agency for Fundamental Rights, which should be enhanced to include regular monitoring of Member States' compliance with Article 2 of the TEU;
70. Reiterates that, in any case, this new mechanism has to be independent from political influence, swift and effective;
71. Recommends that this mechanism serve to:
 - regularly monitor respect for fundamental rights, the state of democracy and the rule of law in all Member States while fully respecting national constitutional traditions;
 - conduct such monitoring uniformly in all Member States to avoid any risks of double standards between its Member States;
 - warn the EU at an early stage about any risks of deterioration of the values enshrined in Article 2 TEU;
 - issue recommendations to the EU institutions and Member States on how to respond

and remedy any deterioration of the values enshrined in Article 2 TEU;

72. Instructs its committee responsible for the protection within the territory of the Union of citizens' rights, human rights and fundamental rights, and for determining clear risks of a serious breach by a Member State of the common principles, to submit a detailed proposal in the form of a report to the Conference of Presidents and to the Plenary;
73. Emphasises that this mechanism shall not interfere with, nor duplicate, the work carried out by the Council of Europe and other international bodies, but shall operate in full cooperation with them;
74. Intends to convene a Conference on this issue, before the end of 2013, that brings together representatives from the Member States, the European institutions, the Council of Europe, national Constitutional and Supreme Courts, the Court of Justice of the European Union and the European Court of Human Rights;

IV- FOLLOW-UP

75. Calls on the Hungarian authorities to inform Parliament, the Commission, the Council Presidency and the Council of Europe of the procedure and the calendar they intend to follow for the implementation of the recommendations contained in paragraph 61;
76. Invites the Commission and the Council to each designate a representative who, together with the Parliament's rapporteur ('Article 2 Trilogue'), will carry out an assessment of the information sent by the Hungarian authorities on the implementation of the recommendations contained in paragraph 61;
77. Asks the Conference of Presidents to activate the mechanism laid down in Article 7(1) TEU in case the replies from the Hungarian authorities to the above-mentioned recommendations do not comply with the requirements of Article 2 TEU;
78. Instructs its President to forward this resolution to the Parliament, President and Government of Hungary, to the Presidents of the Constitutional Court and the Kúria, to the Council, the Commission, the governments and parliaments of the Member States and the candidate countries, the Fundamental Rights Agency, the Council of Europe, the OSCE and the U.S. Secretary of State.