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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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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 Hungary[1] 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 Hungary[2] and of 5 July 2011 on the Revised Hungarian Constitution[3],

– 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 Lisbon[4],

– having regard to its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011)[5],

– having regard to the Commission Communication on Article 7 of the Treaty on European Union – Respect for and promotion of the values on which the Union is based (COM(2003)0606),

– 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

[1] Texts adopted, P7_TA(2012)0053.
[2] OJ C 199 E, 7.7.2012, p. 154.
[3] OJ C 33 E, 5.2.2013, p. 17.
[4] OJ C 169 E, 15.6.2012, p. 49.
[5] Texts adopted, P7_TA(2012)0500.

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 on 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 to 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 on 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 to the Fundamental Law, tabled by the Minister for 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 to 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 Transitional Provisions,

– having regard to the Third Amendment to the Fundamental Law, tabled on 7 December 2012, adopted by the Hungarian Parliament on 21 December 2012 and establishing that the limits and conditions for acquisition of ownership and for use of arable land and forests and the rules concerning the organisation of integrated agricultural production are to be laid down 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 some exceptions including the provision requiring voter registration) annulled by the Constitutional Court of Hungary on 28 December 2012 on procedural grounds (Decision No 45/2012), and remaining provisions of a genuinely transitional nature in this document,

– 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 in Hungary,

– having regard to Act XX of 2013 on the legislative amendments relating to the upper age limit applicable 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, Thorbjørn Jagland, including the recommendations on the judiciary laid down in his letter of 24 April 2012 addressed to the Hungarian Deputy Prime Minister, 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 to 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, the Netherlands, Denmark and Finland to the Commission President, José Manuel 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 Fourth Amendment,

– having regard to the letter of 8 March 2013 sent by Mr Barroso to Mr Orbán on the concerns of the European Commission regarding the Fourth Amendment to 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, Herman Van Rompuy, and the President of the European Parliament, Martin 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 to the Fundamental Law with respect to the principle of the rule of law; and having regard to the confirmation made by Prime Minister Orbán, in his letter addressed to President Barroso on 8 March 2013, of the full commitment of the Hungarian Government and Parliament to the European norms and values,

– having regard to the request for an opinion of the Venice Commission on the Fourth Amendment to 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, Thomas 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 to that opinion of 30 May 2011 from the Hungarian Minister of State for Government Communication,

– having regard to the statements by the Office of the UN High Commissioner for Human Rights (OHCHR) of 15 February 2012 and 11 December 2012 calling respectively on Hungary to reconsider legislation allowing local authorities to punish 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 legality of the termination of the mandate of the former Commissioner for Data Protection still pending before the European Court of Justice,

– 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, and having regard to the subsequent adoption of Act No XX of 2013 amending Act CLXII of 2011 – adopted by the Hungarian Parliament on 11 March 2013 – following the decision of the European Court of Justice,

– 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 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 to 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 (A7-0229/2013),

I - BACKGROUND AND MAIN ISSUES AT STAKE

European common values

A. whereas the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, 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 enjoyed by persons living within the EU and especially by EU citizens, irrespective of their nationality and no matter where they might consider themselves to belong in cultural or religious terms, and whereas such persons can fully enjoy those rights only if the EU's fundamental values and principles are upheld;

C. whereas the values set out in Article 2 TEU have to be addressed politically and legally, this being an indispensable foundation of our democratic society, and whereas, therefore, Member States, as well as all the EU institutions, must commit themselves to

them, clearly and unambiguously;

D. 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;

E. 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 the principle of sincere cooperation, 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;

F. whereas Article 6(3) TEU underscores the fact 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 strength of democratic European states;

G. 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;

H. whereas Article 7(1) TEU, by a defined procedure, 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; whereas before making such a determination, the Council shall hear the Member State in question, acting in accordance with the same procedure;

I. whereas the scope of Article 2 TEU is not restricted by the limitation of Article 51(1) of the Charter, whereas 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 States' competences;

J. whereas, pursuant to the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are to 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;

K. 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, inherent in their fundamental structures, political and constitutional', as stated in Article 4(2) TEU; whereas the European core values set out in Article 2 TEU result from the constitutional traditions common to the Members States and cannot therefore be played off against the obligation under Article 4 TEU, but make up the basic framework within which Member States can preserve and develop their national identity;

L. 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, as well as with respect for cultural and linguistic diversity (Article 3(3) TEU);

M. whereas a violation of the Union's common principles and values by a Member State cannot be justified by national traditions nor by the expression of a national identity when such a violation results in the deterioration of the principles which are at the heart of European integration, such as democratic values, the rule of law or the principle of mutual recognition, with the consequence that a referral to Article 4(2) TEU is applicable only in so far as a Member State respects the values enshrined in Article 2 TEU;

N. whereas the Union's objective of upholding and promoting 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);

O. 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 by signing the Treaties;

P. whereas respect by the Member States for the same set of fundamental values is an indispensable condition for ensuring mutual trust and, consequently, the proper 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 those common values adversely affects the whole construction of the European process of economic, social and political integration;

Q. 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 properly 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;

R. whereas the Commission, under Article 17 TEU, 'ensure[s] the application of the Treaties ... [and] oversee[s] the application of Union law under the control of the Court of Justice of the European Union';

Reforms in Hungary

S. 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;

T. whereas over the course of Hungary's centuries-long history, the peaceful coexistence of nationalities and ethnic groups has enhanced the nation's cultural richness and its prosperity; and whereas Hungary should be called upon to continue that tradition and to take resolute steps to curb any attempts to discriminate against individual groups;

U. 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;

V. 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 former Constitution has been amended twelve times and the Fundamental Law four times so far) and thus substantially to modify the institutional and legal framework, as well as a number of fundamental aspects of not only public but also private life;

W. 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 the will of the people, its values and its political commitments**,** provided that, in so doing, it does not breach the values and principles of democracy and the rule of law prevailing in the European Union; whereas in all Member States special constitutional procedures render constitutional amendment more difficult compared with procedures governing ordinary legislation, namely through the use of a qualified majority, additional decisional processes, time delays and referenda;

X. whereas the history of democratic traditions in Europe shows that reforming a constitution requires the 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;

Y. whereas the scale of the comprehensive and systematic constitutional and institutional reforms which the new Hungarian Government and Parliament have carried out in an exceptionally short time frame is unprecedented, and explains why so many European institutions and organisations (the European Union, the Council of Europe, the OSCE) have deemed it necessary to assess the impact of some reforms; whereas there should be no double standards in the treatment of Member States, meaning that the situation in other Member States should also be monitored, while enforcing the principle of equality of the Member States before the Treaties;

Z. 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 abovementioned community of democratic values;

AA. whereas the Commission, in the exercise of its responsibility for overseeing the application of Union law, has to show the utmost skill, respect the independence of others and act diligently, swiftly and without delay, especially when it is called upon to deal with a case in which a Member State may have committed a serious breach of Union values;

The Fundamental Law and its Transitional Provisions

AB. 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 short time frame of 35 calendar days calculated from the presentation of proposal (T/2627) to the parliament, thus restricting the possibilities for a thorough and substantial debate with the opposition parties and civil society on the draft text;

AC. whereas the draft constitutional text submitted to the Hungarian Parliament on 14 March 2011 was the one produced by the elected representatives of the Fidesz-KDNP coalition and not the working document based on the discussions within the ad hoc parliamentary committee, even though that committee had been set up expressly for the purpose of drafting the new Fundamental Law; whereas this situation exacerbated the failure to consult the opposition;

AD. whereas the 'national consultation' on constitution making consisted of a list of twelve questions on very specific issues drafted by the governing party in a way that could have led to self-evident replies, and whereas the consultation did not include the text of the draft Fundamental Law;

AE. Whereas on 28 December 2012, following a constitutional petition by the Hungarian Commissioner for Fundamental Rights, the Constitutional Court of Hungary annulled (Decision No 45/2012) more than two thirds of the Transitional Provisions on the grounds that they were not of a transitional nature;

AF. whereas the Fourth Amendment to the Fundamental Law, adopted on 11 March 2013, integrates into the text of the Fundamental Law most of the Transitional Provisions annulled by the Constitutional Court, as well as other provisions previously found unconstitutional;

Extensive use of cardinal laws

AG. 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;

AH. whereas since the adoption of the Fundamental Law the parliament has enacted 49

cardinal laws[1] (in one and a half years);

AI. 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;

Accelerated legislative procedures, practice of individual members' bills, parliamentary debate

AJ. whereas important legislation, including the Fundamental Law, the second and fourth amendments thereto, 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;

AK. 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 or belief and on the National Bank of Hungary, inevitably restricted the possibilities for an adequate consultation of the opposition parties and civil society, including, when relevant, employers' organisations, trade unions and interest groups;

AL. whereas Act XXXVI of 2012 on the National Assembly has vested the Speaker of the Parliament with extensive discretionary power to limit MPs' free expression in the parliament;

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

AM. whereas, under the Fundamental Law, the possibility for two new kinds of constitutional complaint to the Constitutional Court has been introduced, while the *actio popularis* for ex post review has been abolished;

AN. whereas under the Fundamental Law the Constitutional Court's powers of ex post review of the constitutionality of budget-related laws from a substantive point of view 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 to be discriminated against;

AO. whereas the Fourth Amendment to the Fundamental Law left untouched the already existing right of the Constitutional Court to review amendments to the Fundamental

[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.

Law on procedural grounds, and whereas it excludes the Court being able in the future to review constitutional amendments on substantive grounds;

AP. whereas the Constitutional Court, in its abovementioned 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);

AQ. whereas the Fourth Amendment to 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 by doing so explicitly contradicts the Constitutional Court's Decision No 22/2012 in which the Court established that its statements made on fundamental values, human rights and freedoms and on the constitutional institutions that have not been changed fundamentally by the Fundamental Law remain valid; whereas the Fourth Amendment reintroduced into the Fundamental Law a number of provisions previously declared unconstitutional by the Constitutional Court;

AR. 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 and allowing the President of the Republic to dissolve the parliament;

AS. 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 Authority for Data Protection***;*** whereas such changes are currently under review by the Court of Justice of the European Union;

AT. 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

AU. 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;

AV. whereas on 2 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 on

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

AW. whereas key safeguards for judicial independence, such as irremovability, guaranteed term of office and the structure and composition of the governing bodies, are not regulated by the Fundamental Law but are – together with detailed rules on the organisation and administration of the judiciary – still set out in the amended cardinal laws,

AX. whereas the independence of the Constitutional Court is not set forth in the Fundamental Law of Hungary and neither is the independence of the administration of the judiciary;

AY. 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 fails to lay down objective normative criteria for the selection of the cases to be transferred;

AZ. 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;

BA. 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, as well as prosecutors and notaries, from 70 to 62 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;

BB. whereas on 11 March 2013 the Hungarian Parliament adopted Act No XX of 2013 amending the upper age limits with a view to partly 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

BC. whereas the governing majority in parliament reformed the election system in a unilateral manner without striving for consensus with the opposition,

BD. 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 resident in Hungary by a system of voluntary registration as a condition for exercising the individual’s right to vote,

BE. whereas the Second Amendment to 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,

BF. whereas the Venice Commission and the OSCE/ODIHR prepared a joint opinion on the Act on the Election of Members of Parliament of Hungary on 15 and 16 June 2012,

BG. 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,

BH. 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 of the elections, disproportionally limit freedom of expression and freedom of the press,

Media legislation

BI. 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 the freedom to express opinions and the freedom to receive and communicate information without control, interference or pressure from public authorities;

BJ. 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*;

BK. whereas an autonomous and strong public sphere, based on independent and pluralistic 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*;*

BL. 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;

BM. whereas Member States have a duty constantly to 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;

BN. whereas Parliament has repeatedly expressed its concerns about media freedom,

pluralism and concentration in the EU and its Member States;

BO. whereas criticism of a number of 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;

BP. 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 licences, and the vagueness of norms potentially conducive to arbitrary application and enforcement;

BQ. whereas in its resolution of 10 March 2011 on media law in Hungary 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, the OSCE and the 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;

BR. 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 as to what information and coverage must 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 the absence of an effective domestic remedy for media actors subject to decisions of the Media Council;

BS. 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;

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

BU. whereas the OSCE recommendations[1] 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;

BV. 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 overturning several provisions as unconstitutional regarding the content regulation of the printed press, the protection of the sources of journalists, the requirement of data provision, and the institution of the Media and Telecommunications Commissioner, the OSCE Representative on freedom of the Media has deplored the fact 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;

BW. 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;

BX. whereas an analysis by Council of Europe experts[2] (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;

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[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.

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

BZ. whereas the Hungarian Authorities have stated their intention of reviewing the rules on the restrictions in political advertising during electoral campaigns; whereas the Hungarian Government is in consultation with the European Commission on the issue of political advertising; whereas, however, the Fourth Amendment imposes a broad and potentially vague prohibition on speech aimed at violating the dignity of groups, including the Hungarian nation, that may be used to arbitrarily interfere with freedom of expression and may have a chilling effect on journalists, and also on artists and others;

CA. whereas the National Media and Infocommunications Authority and the Media Council have not conducted assessments of 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

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

CC. whereas the right not to suffer discrimination is a fundamental right enshrined in Article 21 of the Charter of Fundamental Rights;

CD. 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 anti-Semitic and anti-Roma hate speech, particularly when it is expressed in official or public forums, including the Hungarian Parliament;

CE. whereas the lack of reaction by the law-enforcement authorities in cases of racially motivated crime[1] has resulted in mistrust of the police forces;

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

CG. whereas, although intolerance against the members of Roma and Jewish communities is

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

not a problem solely associated with Hungary, and whereas other Member States are faced with the same issue, recent events have raised concerns as to the increase in anti-Roma and anti-Semitic hate speech in Hungary;

CH. whereas the imposition of retroactive tax and pensions legislation has increased social vulnerability and poverty on a massive scale, a fact which is not only causing great uncertainty among the people, but also constitutes a violation of private ownership rights and undermines fundamental civil liberties;

Freedom of religion or belief and recognition of churches

CI. 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 area should be that of a neutral and impartial guarantor of the right to exercise different religions, faiths and beliefs;

CJ. 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;

CK. whereas the obligation set out in the Act on Churches to obtain recognition by the parliament as a condition for the establishment of a church was deemed by the Venice Commission[1] to be a restriction of the freedom of religion;

CL. 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;

CM. 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 in its Decision 6/2013 of 26 February 2013 declared some of them unconstitutional and annulled them with retroactive effect;

CN. whereas in that Decision the Constitutional Court, 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 reasons for a decision which refuses recognition of church status, that no deadlines were specified for the parliament's actions and that the Act did not provide the possibility of effective legal remedy in cases of refusal or lack of a decision;

CO. 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

[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).

elevated to the level of the constitution the power of the parliament to pass cardinal laws in order 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, including when adopting a Fundamental Law, 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, which provides that 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail', and as proclaimed in the Preambles to both the Treaty on the European Union and the Charter; regrets that, from the point of view of protecting European core values, the EU institutions have not always managed in the past to live up to their own standards; maintains, therefore, that it falls to them in particular to take a stand in order to safeguard European fundamental rights as referred to in Article 2 TEU, both at Union level and in the Member States;

2. Firmly reiterates that, while the drafting and adoption of a new constitution fall within the scope of Member States' competences, the Member States and the EU have a responsibility to ensure that the constitutional processes and the content of constitutions comply with the commitments entered into by every Member State under the EU Accession Treaties, that is to say, with the common values of the Union, the Charter and the ECHR;

3. Regrets the fact that the process of drafting and adopting the Fundamental Law of Hungary lacked the transparency, openness, inclusiveness and, ultimately, the consensual basis that could be expected in a modern democratic constituent process, thus weakening the legitimacy of the Fundamental Law itself,

4. Takes note of the abovementioned Decision of 28 December 2012 of the Constitutional Court declaring that the Hungarian Parliament exceeded its legislative authority when it enacted a number of permanent and general rules in the Transitional Provisions of the Fundamental Law, inter alia, that 'it is the task and the responsibility of the constituent power to clear up the situation after the partial annulment. The Parliament shall make an evident and clear legal situation', while adding the requirement that this shall not mean the automatic insertion of the annulled provisions into the Fundamental Law without any distinction, because the parliament 'must review the regulatory subjects of the annulled non-transitional provisions, and it has to decide about which ones need repeated regulation, on what level of the sources of law. It is also the duty of the Parliament to select the provisions – to be regulated repeatedly – that need to be placed in the Fundamental Law, and the ones that require regulation in an Act of Parliament';

5. Strongly criticises the provisions of the Fourth Amendment to the Fundamental Law, which undermine the supremacy of the Fundamental Law by reintroducing into 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 abovementioned Decision of 28 December 2012, the Constitutional Court gave a clear ruling on 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 programmes for the future. The constitutional State under the rule of law is a system of constant values, principles and guarantees'; considers this clear-cut, dignified statement to be applicable to the European Union and all its Member States;

7. Recalls that the common Union values 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 while the use of two-third majority laws is common in other Member States and has been a feature of the Hungarian constitutional and legal order since 1989, the extensive use of cardinal laws 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; considers that such use should be re-evaluated, in order to ensure that future governments and parliamentary majorities are allowed to legislate in a meaningful and comprehensive manner;

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 it lacks the guarantees of ensuring meaningful social 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. Takes note of the opinion of the Venice Commission (No CDL-AD(2011)016) which 'welcomes the fact that this new Constitution establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles'; further takes note of the opinion of the Venice Commission (No CDL-AD(2012)001) according to 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; further takes note of the opinion of the Venice Commission on the Fourth Amendment to the Hungarian Fundamental Law (No CDL-AD(2013)012)

stating that 'the Fourth Amendment itself brings about or perpetuates shortcomings in the constitutional system of Hungary';

11. Welcomes the fact that the Fundamental Law of Hungary reiterates and reaffirms the articles of the Charter of the Fundamental Rights of the European Union, and that Hungary, as the fourth country in the EU, in Article H recognises Hungarian sign language (HSL) as a fully fledged language and defends HSL as part of Hungarian culture;

12. Welcomes the fact that, in its Article XV, the Fundamental Law of Hungary specifically prohibits discrimination on the grounds of race, colour, gender, disability, language, religion, political or other views, national or social origin, or financial, birth or other circumstances, and stipulates that Hungary will adopt special measures to protect children, women, the elderly and persons living with disabilities, in accordance with Articles 20 to 26 of the Charter of Fundamental Rights of the European Union;

Democratic system of checks and balances

13. Recalls that democracy and the rule of law require a separation of powers among independent institutions based on a properly functioning system of checks and balances and effective control of the conformity of legislation with the constitution;

14. Recalls that the constitutional majority raised the number of constitutional judges from 11 to 15 and abolished the requirement to reach agreement with the opposition regarding the election of constitutional judges; is concerned that as a result of these measures eight out of the current 15 constitutional judges were elected exclusively by the two-thirds majority (with one exception), including two new members who were appointed directly from their position as members of parliament.

15. Welcomes the introduction of a possibility for two new types of constitutional complaint to the Constitutional Court and understands that a democratic system that is founded on the rule of law does not necessarily need a constitutional court in order to function properly; recalls, however, Opinion No CDL-AD (2011)016 of the Venice Commission, which notes that in states that have opted for a constitutional court, this court should be entitled to assess the compliance of all laws with the human rights guaranteed in the constitution; considers, therefore, that the limitation of constitutional jurisdiction relating to the laws on the central budget and taxes weakens the institutional and procedural guarantees for the protection of a number of constitutional rights and for the control of the parliament's and the government's powers in the budgetary field;

16. 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’;

17. Considers that, in light of the systematic amending of the Fundamental Law at political will, the Constitutional Court can no longer fulfil its role as the supreme body of constitutional protection, especially since the Fourth Amendment explicitly prohibits the

Court from reviewing constitutional amendments that contradict other constitutional requirements and principles;

18. Taking account of the right of a democratically elected parliament to adopt law in line with fundamental rights, with respect for political minorities, and with a democratically adequate and transparent procedure, and of the duty courts, both ordinary and constitutional, to safeguard the compatibility of the laws with the constitution, underlines the importance of the principle of separation of powers and a properly functioning system of checks and balances; is concerned in this connection about the shift of powers in constitutional matters to the advantage of the parliament and to the detriment of the Constitutional Court, which undermines severely the principle of separation of powers and a properly functioning system of checks and balances, which are key corollaries of the rule of law; welcomes in this regard the Eger joint statement of 16 May 2013 by the Presidents of the Hungarian and Romanian Constitutional Courts, Péter Paczolay and Augustin Zegrean, stressing that constitutional courts bear a special responsibility in countries ruled by a two-thirds majority;

19. 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; notes that the Court already used its previous decisions as a source of interpretation; is concerned, however, at the fact that other courts may not be able to base their decisions upon the previous case law of the Constitutional Court;

20. 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; takes note of the ongoing dialogue between the Hungarian Government and the European Commission on the issue;

21. Criticises the accelerated process for 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;

22. Recalls that the independence of data protection authorities is guaranteed by Article 16 TFEU and Article 8 of the EU Charter of Fundamental Rights;

23. Stresses that protection against removal from office during the term of office is an essential element of the requirement for independence of national data protection authorities under EU law;

24. Points out that the Commission has launched an infringement procedure against Hungary over the legality of the termination of the mandate of the former Commissioner for Data Protection, as regards the adequate independence of such body, which case is currently pending before the European Court of Justice;

25. Deplores the fact that the abovementioned 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

26. 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;

27. Recalls that the Constitutional Court, in its abovementioned Decision 33/2012, described 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];

28. Stresses that the effective safeguarding of the 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, in consequence, 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);

29. Regrets the fact that the numerous measures adopted – as well as some ongoing 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;

30. 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;

31. Welcomes the abovementioned Decision 33/2012 of the Constitutional Court declaring the compulsory termination of the service of judges at the age of 62 unconstitutional, as well as the abovementioned 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;

32. 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

[1] Point (80) of the decision.

judges of Hungary, adopted by the Hungarian Parliament on 2 July 2012, which address many of the concerns expressed in the European Parliament's resolution of 16 February 2012 and by the Venice Commission in its opinion;

33. 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 right of a lawful judge; takes note of the expression of intent by the Hungarian Government to review the system of transfer of cases; believes that the recommendations of the Venice Commission in this regard should be implemented;

34. 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 at the end of a transitional period of 10 years, and arranges for the reinstatement of those judges unlawfully dismissed;

35. Regrets, however, that in the case of 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 only a few unlawfully dismissed judges are guaranteed to be reinstated in exactly the same position with the same duties and responsibilities they held before their dismissal;

36. 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; underlines the fact that in some Member States serious concerns might be raised on these issues; calls for an enlargement of the justice scoreboard also to cover criminal justice, fundamental rights, the rule of law and democracy, as already requested;

37. Acknowledges the professionalism and dedication of the Hungarian judicial community and its commitment to the rule of law, and recalls that since the start of the democratic process in Hungary the Constitutional Court has been recognised as an outstanding constitutional body throughout Europe and the world;

The electoral reform

38. Recalls that the redrawing of electoral districts, the adoption of the Act on the election of members of parliament of Hungary and the electoral procedural law considerably change the legal and institutional framework for the next elections due in 2014, and therefore regrets that these laws were adopted unilaterally by the ruling parties, with no broad consultation of the opposition.

39. Is concerned that in the present political environment the current provisions for the procedure to appoint the members of the National Election Committee do not adequately guarantee balanced representation and the committee's independence;

40. Welcomes the fact that the Hungarian authorities requested the opinion of the Venice Commission on the Act on the Election of Members of Parliament of Hungary on 20

January 2012; considers however that a comprehensive analysis is needed in order to evaluate the fundamentally changed electoral landscape.

41. Welcomes the fact that Act XXXVI of 2013 on the election procedure in Hungary, specifically Article 42, prescribes that, upon request, people with disabilities must be provided with instructions in braille, relevant information in easy-to-read form, voting samples in braille at polls, full accessibility of polls, including particular attention to the needs of the wheelchair users; in addition, on the basis of Article 50 of the abovementioned Act, disabled voters can ask to be registered at another, more accessible, polling station in order to cast their votes in the given constituency, in accordance with the obligation to provide at least one fully accessible polling station in every constituency laid down in Article 81;

Media pluralism

42. 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;

43. Welcomes the continuing constructive dialogue with international actors, and stresses that the cooperation between the Council of Europe and the Hungarian Government has borne tangible results, as reflected in Act XXXIII of 2013, which addresses some of the concerns previously highlighted in the legal assessments of media legislation, notably in relation to the appointment and election procedures of the presidents of the Media Authority and the Media Council; recalls, however, that there are still concerns regarding the independence of the media authority;

44. Expresses concern at the effects of the provision of the Fourth Amendment banning political advertising in the commercial media since, although the stated aim of this provision is to reduce political campaign costs and create equal opportunities for the parties, it jeopardises the provision of balanced information; takes note that the Hungarian Government is in consultation with the European Commission on the issue of the rules on political advertising; takes note that restrictions also exist in other European countries; takes note of the opinion of the Venice Commission on the Fourth amendment to the Hungarian Fundamental Law (No CDL-AD(2013) 012), which states that "limits on political advertising have to be seen against the legal background of the particular Member State" and that "the prohibition of any political advertising in commercial media services, which are more widely used in Hungary than the public service media, will deprive the opposition of an important chance to air their views effectively and thus to counterweigh the dominant position of the government in the media coverage";

45. Reiterates its call on the Hungarian authorities to take action in order to make or commission regular proactive assessments of the impact of legislation on the media environment (reduction in 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);

46. Deplores the fact 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;

47. Notes that the national competition authority needs to make regular assessments of the media environments and markets, highlighting potential threats to pluralism;

48. 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 the fact that a proper balance needs to be ensured in this respect;

49. Is concerned that public service broadcasting is controlled by an extremely centralised institutional system, which takes the real operational decisions without public scrutiny; stresses that biased and opaque tendering practices and the biased information put out by the public-service broadcasting that reaches a wide audience distort the media market; underlines the fact that, in line with Protocol No 29 to the Lisbon Treaty (on the System of the Public Broadcasting in the Members States), the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism;

50. 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 public anti-Roma stances have so far gone unpunished by Hungary's Media Authority, and calls for balanced application of the law;

Rights of persons belonging to minorities

51. Notes that the Hungarian Parliament has enacted legislation in criminal and civil areas to combat racial incitement and hate speech; considers that legislative measures are an important starting point to achieve the goal of creating a society free from intolerance and discrimination throughout Europe, as concrete measures can only be built upon firm legislation; points out, however, that legislation needs to be actively implemented;

52. Underlines the fact that the authorities in all Member States have a positive obligation to act to avoid violation of the rights of persons belonging to minorities, cannot remain neutral, and should take the necessary legal, educational and political measures when faced with such violations; notes the 2011 amendment to the Penal Code to prevent campaigns by extremist groups to intimidate Roma communities, threatening with up to three years' imprisonment the 'provocative unsocial behaviour' which induces fear in a member of a national, ethnic, racial or religious community; acknowledges the role of the Hungarian Government in launching the European Framework of National Roma Inclusion Strategy during its EU presidency in 2011;

53. Notes with concern repeated changes to the legal order restricting the rights of lesbian, gay, bisexual and transgender (LGBT) people, for instance by seeking to exclude same-sex couples and their children, as well as other varied family structures, from the definition of 'family' in the Fundamental Law; stresses that this runs counter to recent European Court of Human Rights jurisprudence and fuels a climate of intolerance vis-à-vis LGBT people;

54. Welcomes the insertion of provisions in the Hungarian Constitution by the Fourth Amendment stating that "Hungary shall strive to provide every person with decent housing and access to public services" and that the "State and local governments shall also contribute to creating the conditions of decent housing by striving to provide accommodation to all homeless people"; expresses concern, however, at the fact that "in order to protect public order, public security, public health and cultural values, an Act of Parliament or a local ordinance may declare illegal staying in a public area as a permanent abode with respect to a specific part of such public area", which could lead to homelessness being addressed through the criminal law; recalls that the Hungarian Constitutional Court had judged that similar measures contained in the Petty Offences Act were unconstitutional as contrary to human dignity;

Freedom of religion or belief and recognition of churches

55. Notes with concern that the changes made to the Fundamental Law by the Fourth Amendment give the parliament the power to recognise, by way of cardinal laws and without a 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

56. Reaffirms that it attaches the utmost importance to respect of the principle of equality between all Member States and refuses the application of double standards in the treatment of Member States; stresses that similar situations or legal frameworks and provisions should be assessed in the same way; takes the view that the pure fact of changing and adopting laws cannot be considered incompatible with the values of the Treaties; calls on the Commission to identify instances of incompatibility with EU law and for the European Court of Justice to adjudicate any such case;

57. 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 adequate 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

58. 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 its Member States need to have if these Treaties are to be not just words on paper, but the legal basis for a true, just and open Europe respecting fundamental rights;

59. 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;

60. 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 plays a pivotal role in underpinning economic, fiscal and social policies and social cohesion;

Appeal to all Member States

61. Calls on the Member States to comply without delay with their Treaty obligations to respect, guarantee, protect and promote the Union's common values, which is an indispensable condition for respecting democracy, and thus the substance of Union citizenship, and for building a culture of mutual trust enabling effective cross-border cooperation and a genuine area of freedom, security and justice;

62. 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 enshrined in the Treaties and the Charter of Fundamental Rights, and in the European Convention on Human Rights to which every Member State is a signatory and to which the EU will soon accede;

63. 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;

64. 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 85;

Appeal to the European Council

65. Reminds the European Council of its responsibilities within the framework of the area of freedom, liberty, security and justice;

66. 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 US Administration have voiced concerns over the situation in Hungary;

67. Considers that the European Council cannot remain inactive in cases where one of the Member States breaches fundamental rights or implements 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, as this has a negative impact on the Union itself;

68. Invites the President of the European Council to inform Parliament of his assessment of the situation;

Recommendations to the Commission

69. Calls on the Commission as the guardian of the Treaties and as the body responsible for ensuring that Union law is correctly applied, under the supervision of the Court of Justice of the European Union:

– to inform Parliament of its assessment of the Fourth Amendment to 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 among Member States;

– to launch objective investigation and start infringement proceedings whenever it considers that a Member State has failed to fulfil an obligation under the Treaties and, in particular, is violating the rights enshrined in the Charter of Fundamental Rights of the EU;

– to avoid any double standards in the treatment of Member States, making sure that, in similar situations, all Member States are treated in a similar manner, thus fully respecting the principle of equality of the Member States before the Treaties;

– to focus not only on specific infringements of EU law, to be remedied notably through Article 258 TFEU, but to respond appropriately to a systemic change in the constitutional and legal system and practice 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 breaching 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/ Alarm Agenda', i.e. a Union values monitoring mechanism, to be dealt with by the Commission with exclusive priority and urgency, coordinated at the highest political level and taken fully 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, as also envisaged in the letter of the Foreign Affairs Ministers of four Member States raising with the President of the Commission the need to develop a new and more effective method of safeguarding fundamental values in order to place greater emphasis on promoting a culture of respect for the rule of law, taken into account by the Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union of 6 and 7 June 2013;

– to hold meetings at technical level with the services of the Member State concerned but not to conclude any negotiations in 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 and social sector ;

– to implement and if necessary 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 among 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 revision and amendment of the directive, and notably of its Articles 29 and 30;

– to continue the dialogue with the Hungarian Government on 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***;***

70. Reminds the Commission that the Charter of Fundamental Rights of the European Union, and the European Union's forthcoming accession to the European Convention on Human Rights, reaffirm a new architecture for European Union law, a structure with human rights more than ever at its heart, thus conferring on the Commission, as guardian of the Treaties, greater responsibilities in this area;

Recommendations to the Hungarian Authorities

71. Urges the Hungarian authorities to implement as swiftly as possible all the measures the European Commission as the guardian of the treaties deems necessary in order to fully comply with EU law, fully comply with the decisions of the Hungarian Constitutional Court and implement as swiftly as possible the following recommendations, in line with the recommendations of the Venice Commission, the Council of Europe and other international bodies for the protection of the rule of law and fundamental rights, with a view to fully complying with 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 on strong safeguards for fundamental rights, including freedom of expression, the media and religion or belief, protection of minorities, action to combat discrimination, 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 reduce the recurrent use of cardinal laws in order to leave policy areas such as family, social, fiscal and budget matters to ordinary legislation and majorities;

– to implement the recommendations of the Venice Commission and, in particular, to revise the list of policy areas requiring a qualified majority with a view to ensuring meaningful future 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 participation by the wider public in the legislative procedure;

– to ensure the widest possible participation by all parliamentary parties in the constitutional process, even though the relevant special majority is held by the governing coalition alone;

On checks and balances:

– 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 changes to the Fundamental Law, as well as the abolition of two decades of constitutional case law; 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 full judicial review; such a judicial and constitutional review may be exerted in different ways in different Member States, depending on the specificities of each national constitutional history, but once established, a Constitutional Court – like the Hungarian one, which after the fall of the communist regime has rapidly built a reputation among Supreme Courts in Europe – should not be subject to measures aimed at reducing its competences and thus undermining the rule of law;

– to restore the possibility for the judicial system to refer to the case law issued before the entry into force of the Fundamental Law, in particular in the field of fundamental rights[1];

– to strive for consensus when electing the members of the Constitutional Court, with meaningful involvement of the opposition, and to ensure that the members of the court are free from political influence;

– 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 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 and the safeguards on the independence of the Constitutional Court are enshrined in the Fundamental Law;

– to promptly and correctly implement the abovementioned 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;

[1] See Working Document No 5.

– 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 electoral reform:

- to invite the Venice Commission and the OSCE/ ODIHR to carry out a joint analysis of the comprehensively changed legal and institutional framework of the elections and to invite the ODIHR for a Needs Assessment Mission and a long and short term election observation.

– to ensure balanced representation within the National Election Committee;

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;

– 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 objective, 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 related European Court of Human Rights 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, including the rights of persons belonging to minorities:

– to take, and continue with, positive actions and effective measures to ensure that the fundamental rights of all persons, including persons belonging to minorities and homeless persons, are respected and to ensure their implementation by all competent public authorities; when reviewing the definition of 'family', to take into account the legislative trend in Europe to broaden the scope of the definition of family and the negative impact of a restricted definition of family on the fundamental rights of those who will be excluded by the new and more restrictive definition;

– to take a new approach, finally assuming its responsibilities towards homeless – and therefore vulnerable – people, as set out in the international treaties on human rights to which Hungary is a signatory, such as the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, and thus to promote fundamental rights rather than violating them by including in its Fundamental Law provisions that criminalise homeless people;

– calls on the Hungarian Government to do all in its power to strengthen the mechanism for social dialogue and comprehensive consultation and to guarantee the rights associated with this;

– calls on the Hungarian Government to increase its efforts to integrate the Roma and to lay down targeted measures to ensure their protection. Racist threats directed at the Roma must be unequivocally and resolutely repelled;

On freedom of religion or belief and 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 abovementioned Decision 6/2013 of the Constitutional Court;

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

72. Reiterates the urgent need to tackle the so-called ‘Copenhagen dilemma’, whereby the EU remains very strict with regard to compliance with the common values and standards on the part of candidate countries but lacks effective monitoring and sanctioning tools once they have joined the EU;

73. 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, avoiding any double standards and bearing in mind that such an assessment must be founded on a commonly accepted European understanding of constitutional and legal standards; firmly requests, furthermore, that similar situations in Member States should be monitored in accordance with the same pattern, since otherwise the principle of equality of the Member States before the Treaties is not respected;

74. Calls for closer cooperation between Union institutions and other international bodies, particularly 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;

75. 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, Commissioner for Human Rights and the Venice Commission;

76. Calls on all the EU institutions to launch a joint reflection and debate – as also requested by the Ministers of Foreign Affairs of Germany, the Netherlands, Denmark and Finland in their abovementioned letter to the Commission President – on how to equip the Union with the necessary tools to fulfil its Treaty obligations on democracy, the rule of law and fundamental rights, while avoiding any risks of applying double standards among its Member States;

77. 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;

78. 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 to ensure compliance by all Member States with the common values enshrined in Article 2 TEU, and the continuity of the 'Copenhagen criteria'; this mechanism could assume the form of a 'Copenhagen Commission' or high-level group, a 'group of wise men' or an Article 70 TFEU evaluation, and build up on the reforming and strengthening of the mandate of the European Union Agency for Fundamental Rights, and on the framework of a strengthened Commission-Council-European Parliament-Member States dialogue on measures to be taken;

79. Reiterates that the setting up of such a mechanism could involve a 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 TEU; recommends that such a 'Copenhagen high-level group' or any such mechanism should build on and cooperate with existing mechanisms and structures; recalls the role of the European Union Agency for Fundamental Rights, which could bring together the highly valuable work of the various existing Council of Europe monitoring bodies and the Agency's own data and analysis in order to carry out independent, comparative and regular assessments of the EU Member States' compliance with Article 2 TEU.

80. Recommends that this mechanism should:

– be independent from political influence, as all European Union mechanisms which relate to monitoring Member States should be, as well as swift and effective;

– operate in full cooperation with other international bodies as regards the protection of

fundamental rights and the rule of law;

– 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 among 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;

81. 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;

82. 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, as well as its committee responsible for the determination of the existence of a serious and persistent breach by a Member State of the principles common to the Member States, to follow the development of the situation in Hungary;

83. Intends to convene a Conference on this issue before the end of 2013 that will bring 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

84. Calls on the Hungarian authorities to inform Parliament, the Commission, the Presidencies of the Council and of the European Council, and the Council of Europe regarding implementation of the measures requested in paragraph 71;

85. Invites the Commission and the Council to each designate a representative who, together with Parliament's rapporteur and shadow rapporteurs ('Article 2 Trilogue'), will carry out an assessment of the information sent by the Hungarian authorities on implementation of the recommendations contained in paragraph 71, as well as follow-up on future possible modifications to ensure compliance with Article 2 TEU;

86. Asks the Conference of Presidents to assess the opportuneness of resorting to mechanisms foreseen by the Treaty, including Article 7(1) TEU, in case the replies from the Hungarian authorities appear not to comply with the requirements of Article 2 TEU;

87. 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 and the OSCE.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	19.6.2013
Result of final vote	+: 31 –: 19 0: 8
Members present for the final vote	Jan Philipp Albrecht, Roberta Angelilli, Edit Bauer, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Salvatore Caronna, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Tanja Fajon, Hélène Flautre, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in ‘t Veld, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Svetoslav Hristov Malinov, Véronique Mathieu Houillon, Anthea McIntyre, Roberta Metsola, Louis Michel, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Nils Torvalds, Kyriacos Triantaphyllides, Wim van de Camp, Axel Voss, Renate Weber, Josef Weidenholzer, Cecilia Wikström, Auke Zijlstra
Substitute(s) present for the final vote	Anna Maria Corazza Bildt, Dimitrios Droutsas, Franziska Keller, Krisztina Morvai, Jan Mulder, Hubert Pirker, Jens Rohde, Raül Romeva i Rueda, Marie-Christine Vergiat
Substitute(s) under Rule 187(2) present for the final vote	Lajos Bokros, Ildikó Gáll-Pelcz, Csaba Sándor Tabajdi