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B7-0379/2011

## **MOTION FOR A RESOLUTION**

further to Question for Oral Answer B7-0316/2011

pursuant to Rule 115(5) of the Rules of Procedure

on the revised Hungarian Constitution

**Renate Weber, Sophia in 't Veld, Sarah Ludford, Sonia Alfano, Cecilia Wikström, Alexander Alvaro, Norica Nicolai, Nathalie Griesbeck, Gianni Vattimo**

on behalf of the ALDE Group

**European Parliament resolution on the revised Hungarian Constitution**

*The European Parliament,*

- having regard to Articles 2, 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), relating to the respect for, the protection and the promotion of fundamental rights,
  - having regard to the New constitution of Hungary, adopted on 18 April 2011 by the National Assembly of the Hungarian Republic and signed by the President of Hungary on 25 April 2011, that will enter into force on 1 January 2012 (hereinafter referred to as ‘the Constitution’),
  - having regard to the Opinions no. CDL(2011)001 and CDL(2011)016 of the Venice Commission for Democracy through Law of the Council of Europe, respectively on the three legal questions arising in the process of drafting the new constitution of Hungary and on the new constitution of Hungary,
  - having regard to the motion for resolution no. 12490 tabled on 25 January 2011 in the Parliamentary Assembly of the Council of Europe on ‘Serious setbacks in the fields of the rule of law and human rights in Hungary’,
  - having regard to the ruling no. 30141/04 of the European Court of Human Rights (Schalk and Kopf vs. Austria), and particularly its *obiter dicta*,
  - having regard to the Oral Questions tabled in the European Parliament on the new Hungarian Constitution and to the Council and Commission statements on the revised Hungarian constitution and following debate held on 8 June,
  - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas the European Union is founded on the values of democracy and the rule of law, as stipulated in Article 2 TEU, and the unequivocal respect of fundamental rights and freedoms, as enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights, and the recognition of the legal value of said rights, freedoms and principles, which is further affirmed by the upcoming accession of the EU to the ECHR,
- B. whereas while the drafting and the adoption of a new constitution falls in the remit of Member States' competences, Member States, current and acceding, and the EU, have a duty to ensure that the contents and the processes are in conformity with EU values, the Charter of Fundamental Rights, the ECHR, and that the word and the spirit of the adopted constitutions do not contradict these values and instruments; whereas this is clearly demonstrated by the fact that a number of current EU Member States had to

review and amend their constitutions to ensure accession into the EU or adapt their constitutions to subsequent EU Treaties requirements, notably upon EU Commission request,

- C. whereas, as the Venice Commission has regretted, the ‘constitution-making process, including the drafting and the final adoption of the new Constitution, has been affected by a lack of transparency, shortcomings in the dialogue between the majority and the opposition, the insufficient opportunities for an adequate public debate, and a very tight timeframe<sup>1</sup>’ and that the constitution is ‘a commonly accepted framework for ordinary democratic processes...(which is) a precondition for fully successful and legitimate constitution-making process’<sup>2</sup> that ‘should be based on the largest consensus possible within the Hungarian society’<sup>3</sup>,
- D. whereas the Constitution has been widely criticised by national, European and international NGOs and organisations, including by representatives of Member States’ governments, and has been adopted exclusively with the votes of the deputies from the governing parties, therefore lacking the above-mentioned political and societal consensus,
- E. whereas the European Parliament shares the concerns voiced by the Venice Commission, about the weakening of the system of checks and balances, particularly the provisions concerning the parliamentary majority powers and the undermining of the Constitutional Court and the courts and judges as independent guarantors of the legal order, that may put the independence of Hungarian judiciary at risk,
- F. whereas the Constitution fails to explicitly declare a number of rights and duties, which Hungary, stemming from its international obligations, is obliged to respect and promote, such as the prohibition of death penalty, the prohibition of discrimination based on sexual orientation, life imprisonment without parole and the suspension or restriction of fundamental rights in a special legal order,
- G. whereas the Constitution, through the values set out in it as well as unclear wording when defining basic notions such as "family" and the right to life from the moment of conception, carries the risk of discrimination against certain groups in the society, namely ethnic, religious and sexual minorities, single-parent families, people living in civil union and women,
- H. whereas the Constitution does not explicitly guarantee that Hungary respects the territorial integrity of other countries, and the lack of this provision together with the unclear wording of the preamble, particularly the parts concerning the Hungarian state's obligations towards ethnic Hungarians living abroad may create a legal basis for actions that neighbouring countries would consider as meddling into their internal matters, which may lead to tensions in the region,
- I. whereas the Constitution provides its Preamble with legal significance, which may have

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<sup>1</sup> Point 144

<sup>2</sup> Point 12

<sup>3</sup> Point 21

legal and political implications and may lead to legal uncertainty and whereas the incorporation of the European Charter of Fundamental rights may cause overlapping competences between Hungarian and international courts, as pointed out in the opinion issued by the Venice Commission,

- J. whereas the Constitution calls for the adoption of over 30 of so-called cardinal laws, also subject to constitutional majority of 2/3, which will stipulate a great range of issues concerning the institutional system of Hungary, the application of fundamental rights, as well as cultural, religious, socio-economic and financial policies, which practically makes their adoption a part of the constitutional process, and whereas the Constitution provides its Preamble with legal significance, which may have legal and political implications and may lead to legal uncertainty,
- K. whereas, according to the Constitution a number of issues, such as specific rules of family legislation and the basic rules of the tax and pension systems, which normally fall under the competence of the government or the regular decision of the legislative body, will also have to be regulated by cardinal laws, tying the hands of any future government not having a two-third majority and diminishing the significance of future elections and more possibilities for a two-third majority to cement their political preferences, thus regulating specific and detailed rules by cardinal acts can put the principle of democracy at risk,
- L. whereas, as underlined by the Venice Commission, cultural, religious, socio-economic and financial policies should not be cemented in a cardinal law,
- M. whereas a non-parliamentary body, the Budget Council, with limited democratic legitimacy, will have the power to veto the adoption of the general budget by the National Assembly, in which case the Head of State can dissolve it, severely restricting the action of the democratically elected legislature; whereas the well-functioning system of four parliamentary commissioners will be reduced to one general ombudsman and two deputies, which may not provide the same level of protection of rights and will not include the competencies of the former Commissioner for Personal Data and Freedom of Information; the competencies of the latter will be transferred to an authority whose functioning is not specified,
- N. whereas in parallel with the adoption of the new Constitution the government of Hungary and the governing parties carried out large scale replacements in key positions, such as the new attorney general, the President of the State Audit Office, the president of the Budget Council; whereas according to the new constitution, the current term of the President of the Supreme Court will cease and the new President of the Curia, will be elected directly by the Hungarian Parliament, in which the governing parties have a two-third majority, and whereas five members of the Constitutional Court have just been proposed and elected by the governing parties,
- O. whereas the Parliamentary Assembly of the Council of Europe has decided to prepare a report on the Constitution, including on the basis of the opinion of the Venice Commission,

- P. whereas the drafting and the adoption of a new constitution was not mentioned in the electoral program of the governing parties,
- Q. whereas the Secretary General of the United Nations, Mr Ban-ki Moon stated that ‘he would appreciate if the Hungarian government sought advice and recommendations from within the country and from the Council of Europe or the United Nations’ and thinks that Hungary, as a member state of the European Union, should address the European institutions for advices and a review of the Constitution,
- R. whereas the Prime Minister of Hungary, Viktor Orbán has declared his readiness to submit the Constitution for such a review,
1. Calls on the Hungarian authorities to address the numerous and serious issues, concerns and recommendations raised by the Venice Commission in its opinions and to implement them either via amendments to the Constitution, cardinal laws, ordinary laws, constitutional interpretation, as indicated by the Commission; fully shares the Venice Commission criticism on the vagueness of the Constitution in key sectors such as the judiciary and individual fundamental rights and on the high number of cultural, religious, moral, socio-economic and financial policies that will be cemented via cardinal laws by a 2/3 majority, while they should be left to the majority vote of the elected legislature; agrees on the Commission remarks on the Preamble in relation to the interpretation of the Constitution;
  2. Calls on the Hungarian authorities to actively seek wide consensus, to ensure greater transparency, actual political and social inclusion and a broad public debate in the forthcoming drafting and the adoption of the cardinal laws laid down in the Constitution;
  3. Calls on the Hungarian authorities to amend the Constitution so that it explicitly protects all fundamental civil and social rights in line with the international obligations of Hungary, prohibits the death penalty, life imprisonment without parole, discriminations on the basis of sexual orientation, and makes it clear that the citizens of Hungary acquire fundamental rights upon birth, without being tied to obligations;
  4. Calls on the Hungarian authorities to amend the Constitution, particularly its preamble, so that it ensures equal protection of the rights of every citizen, no matter what religious, sexual, ethnic or other societal group they belong to, mirroring art. 21 of the Charter of Fundamental Rights, and include a more explicit declaration on the separation of the church and the state and on the freedom of the press as an individual right and not only as a State obligation;
  5. Calls on the Hungarian authorities to amend the Constitution, including its preamble, so that it explicitly guarantees that Hungary respects the territorial integrity of other countries in relation to ethnic Hungarians living abroad;
  6. Calls the Hungarian authorities to reaffirm the independence of the judiciary, by ensuring explicitly the independence of the management of the judicial system, restoring the right of the Constitutional Court to review budget-related legislation

without exceptions as required by ECHR law and jurisprudence and revising the provision on the lower mandatory retirement age for judges;

7. Calls the Hungarian authorities to ensure that the upcoming cardinal laws regulate issues such as abortion, family policy, tax and pension system and more in general cultural, religious, moral, socio-economic and financial policies in a way to allow future governments and democratically elected legislatures to decide on these issues without that these policies are cemented in the Constitution or in too detailed cardinal laws; calls on the Hungarian government to revise the current mandate of the Budget Council;
8. Calls on the Hungarian authorities to make sure that the incorporation of the Charter of Fundamental Rights does not cause problems of interpretation and overlapping competences between domestic courts, the Constitutional Court and the European Court of Justice;
9. Calls on the Hungarian authorities to ensure that the reorganisation of the system of the parliamentary commissioners will not entail a lowering of the existing level of guarantees for the protection and promotion of rights in the fields of national minority protection, personal information protection and transparency of publicly relevant information, as well as the independence of the respective bodies; calls the Hungarian authorities to legally compensate for the abolishment of *actio popularis* relative to the Constitutional Court, for example by retaining the indirect action via an intermediary actor, such as the Ombudsman or other relevant bodies;
10. Calls on the European Commission to conduct a thorough and profound examination and analysis on the Hungarian constitution as well as the forthcoming adoption of the generic laws on the basis of the ECHR, the Charter of Fundamental Rights, the word and the spirit of the Treaties and the *acquis communautaire*;
11. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe, the governments and parliaments of Member States, the Fundamental Rights Agency, the OSCE and the United Nations Organisation.